

Meet the Moment: Action Alert Resource

Suggested points for inclusion in a comment in response to the DOJ Proposed Rulemaking:

Note that you are an attorney (if applicable) and where you are licensed to practice.

State that you are responding to the Department of Justice’s Federal Register Notice of Proposed Rulemaking: [Review of State Bar Complaints and Allegations Against Department of Justice Attorneys](#). (Docket No. OAG199).

Points to consider in your submittal:

- The Department of Justice (DOJ) has not articulated a viable basis for interfering with state disciplinary investigations or proceedings of DOJ attorneys.
- Lawyer licensing and discipline are powers that rest within each State’s disciplinary authorities.
- The purpose of the rule appears to be to delay, possibly indefinitely, and to prevent state disciplinary authorities from holding DOJ lawyers accountable for violations of their ethical duties.
- All lawyers, including prosecutors, defense counsel, and government attorneys, are subject to rules of the jurisdiction in which they are licensed and may also be subject to discipline where they provide legal services.
- The proposed DOJ Rule violates the McDade Amendment which provides that attorneys for the federal government are bound by the ethical rules of the State where the attorneys practice “to the same extent and in the same manner as other attorneys in that State.” 28 U.S.C. § 530B(a).
- The rule would delay State bar discipline by allowing the DOJ to undertake its own internal review process first. However, there is no timeline for actually implementing or completing a DOJ investigation. This means that, simply by delay, the DOJ could shield attorneys that they may wish to protect from investigation by the State disciplinary authorities.
- If DOJ delays its internal investigations, State disciplinary authorities that are subject to statutes of limitations governing the investigation and prosecution of misconduct may be unable to take action before its statute of limitations expires.
- Lawyer disciplinary systems exist to protect the public and the courts. Unethical behavior leads to the erosion of public confidence. Independent oversight is necessary so there are no special protections for government lawyers that appear to place them above the law. Indeed, the rule of law is supported by lawyers adhering to a code of conduct that requires them to refrain from presenting false statements or false legal theories to the court. Efforts to undermine state disciplinary systems have the effect of undermining the rule of law.
- The proposed rule is particularly problematic in light of the track record of this Department of Justice. For example, the Attorney General, in her first days in office, issued a memo that essentially redefined the meaning of “zealous advocacy” by, in essence, threatening to discipline or terminate DOJ lawyers who refuse to zealously advance the Administration’s interests.

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- In addition, despite allegations of multiple and repeated ethical and statutory violations over the past 14 months that warrant investigation and potentially discipline, neither the DOJ's Office of Professional Responsibility nor its Office of Inspector General – both of which are touted in the proposed rule as proof of DOJ's own vibrant internal system – have taken any action against DOJ attorneys. These alleged violations include, among other things:
 - Threatening the Georgetown University Law Center with retaliation over its internal DEI policies;
 - Repeated attempts to obtain indictments that appear to be based on politically motivated vendettas instead of facts and law;
 - Large-scale firing of DOJ attorneys without due process;
 - Investigating and threatening members of Congress for exercising their First Amendment rights;
 - Ignoring federal court orders regarding immigration matters; and
 - Keeping U.S. Attorneys in office after judicial findings that they illegally occupied those offices.
- The senior leadership of DOJ who have been overseeing this conduct are those who would be responsible for overseeing the internal investigations.
- A substantial portion of the senior leadership within the Office of Professional Responsibility has been removed, reassigned, or forced out of office under this administration, a clear indication that attorney discipline is not a priority.

Conclusion:

For all of these reasons, lawyers who work for the DOJ should continue to be fully subject to the system of discipline that has been in place in each State, territory, and the District of Columbia. If the DOJ chooses to implement its own system of discipline, it should do so as an additional option without any disruption or delay in this existing process.