



March 18, 2026

*Sent by Electronic Means & Certified Mail,
Return Receipt Requested*

Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

**RE: Comment in Response to Docket No. DOJ-OAG-2026-0001-0001
Proposed Rule: Review of State Bar Complaints and Allegations Against
Department of Justice Attorneys (28 CFR Part 77)**

Dear Attorney General Bondi:

I write to express my strong opposition to the Department of Justice's proposed rule that would authorize the Attorney General to intercept and suspend state bar disciplinary investigations of current and former Department attorneys. I submit this comment in my capacity as a civil rights litigator who regularly litigates against government entities under Section 1983, Title VII, and the Federal Tort Claims Act, as a member of the ABA Section of Civil Rights and Social Justice, as a former DOJ trial attorney, and as a veteran of this nation's armed forces who has dedicated his career to defending the constitutional rights of individuals against government overreach.

I. The proposed rule undermines the foundation of attorney accountability.

The proposed rule would establish a process under which the Attorney General would have the right to review bar complaints and allegations against DOJ attorneys in the first instance, while requesting that state bar disciplinary authorities suspend any parallel investigations until the Department completes its own review. This arrangement is fundamentally incompatible with the principle that attorneys are licensed by and accountable to the jurisdictions in which they practice. Independent oversight by state, territorial, and District of Columbia disciplinary authorities is a cornerstone of public confidence in the legal profession and has been so for generations. The proposed rule would erect a federal gatekeeping function that interposes the very institution whose attorneys are under scrutiny between those attorneys and their independent regulators.

II. The proposed rule conflicts with the McDade Amendment and longstanding ABA policy.

The McDade Amendment, codified at 28 U.S.C. § 530B, provides explicitly that DOJ attorneys shall be subject to state laws and rules governing attorneys in each state where such attorney engages in that attorney's duties, to the same extent and in the same manner as other

attorneys in that state. Congress enacted the McDade Amendment precisely because the Department had previously attempted to exempt its lawyers from state ethics rules. The proposed rule effectively seeks to accomplish through regulation what the McDade Amendment was designed to prevent. As reflected in ABA Model Rule of Professional Conduct 8.5 and longstanding ABA policy, the authority of licensing jurisdictions to investigate and discipline the attorneys they admit is not a procedural convenience that can be displaced by executive fiat; it is a structural safeguard embedded in the American system of professional regulation.

III. The absence of timelines creates a de facto shield from accountability.

The proposed rule contains no deadline for the Department to complete its internal review. In practical operation, this means the Department could indefinitely delay state bar investigations by the simple act of opening and never concluding its own review. To be clear, the rule offers no timelines under which a state could follow up if the Department fails to act, and this administration has demonstrated that it is adept at running out the clock to its own advantage. The Office of Professional Responsibility, which would presumably conduct these internal reviews, has experienced significant staffing losses, further diminishing any realistic expectation that meaningful internal review would occur.

IV. The enforcement provision is an extraordinary threat to federalism.

The proposed rule provides that should bar disciplinary authorities refuse the Attorney General's request to suspend their proceedings, the Department shall take appropriate action to prevent the bar disciplinary authorities from interfering with the Attorney General's review. This language is deliberately vague, and its vagueness serves as a coercive instrument. It signals to state regulators that exercising their lawful authority over the attorneys they have licensed may invite federal retaliation, the precise nature of which the Department declines to specify. This provision alone warrants rejection of the rule in its entirety.

V. The rule poses a direct threat to civil rights enforcement.

As a civil rights attorney whose practice is dedicated to holding government entities accountable under Section 1983, Title VII, the Federal Tort Claims Act, and other federal and state civil rights statutes, I have a particular and urgent concern about the chilling effect this rule would have on the enforcement of constitutional and civil rights. The ability of citizens to seek redress for government misconduct depends not only on the courts but also on a functioning system of attorney discipline that deters government lawyers from engaging in unethical conduct in the course of their official duties. When government attorneys know that they face real accountability from an independent disciplinary authority, they are more likely to respect the rights of the individuals whose lives their work affects. This rule would remove that deterrent at precisely the moment when it is most needed.

The mission of my firm, Justly Prudent, is to vindicate the rights of individuals who have been subjected to discrimination, excessive force, retaliation, and other constitutional violations by government actors. The proposed rule would signal to DOJ attorneys that they can engage in

aggressive or ethically questionable conduct in the course of defending government entities and pursuing federal prosecutions without meaningful risk that an independent body will hold them accountable. Furthermore, this rule would extend to former DOJ attorneys, which means that individuals who engaged in misconduct while serving in government could leave federal service and enter private practice shielded by the lingering effects of a never-completed DOJ review. This is an affront to the public trust.

VI. Conclusion

I urge the Department to withdraw this proposed rule in its entirety. State and territorial disciplinary authorities must retain their full, independent authority to investigate and discipline the attorneys they license, including those who serve or have served in the Department of Justice. No attorney, regardless of employer, should be placed above the ethical obligations that define our profession. The public's trust in the justice system depends on it.

Respectfully submitted,

Jordan D. Howlette
JORDAN D. HOWLETTE
Managing Attorney
Justly Prudent