

March 27, 2026

Mr. Robert Hinchman
Senior Counsel
Office of Legal Policy
U.S. Department of Justice
Room 4252 RFK Building
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Submitted electronically via regulations.gov

Re: Comment on the Department of Justice’s Proposed Rule, Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, Docket No. OAG199.

Dear Mr. Hinchman:

When it comes to enforcing federal laws, our courts must be able to rely on the federal government to only make arguments and representations that have been properly vetted and are well-grounded in fact. Further, there has long been a presumption that federal attorneys operate in good faith and in accordance with the ethical standards demanded of all licensed attorneys. For decades, the professionalism and competence of the attorneys employed by the Department of Justice (“DOJ”) have sustained these presumptions, but those days are behind us. Since January 2025, the DOJ has systematically dismantled its internal accountability structures and terminated long-serving career staff, including ethics professionals. As a result, federal cases have been plagued by prosecutorial overreach and factual misstatements; judicial orders have been evaded or ignored; and courts have repeatedly complained about how far professional standards have fallen. Our democracy deserves better.

Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create an open, honest, and accountable government that serves the public interest; promotes equal rights, opportunity, and representation for all; and empowers all people to make their voices heard in the political process. On behalf of our 1.5 million members and supporters, Common Cause submits this comment in response to the DOJ’s proposal to take over enforcement of *state* ethics rules against federal attorneys. The DOJ has no business enforcing state disciplinary rules, and it violates federal law for the DOJ to push aside state authorities. Moreover, the DOJ has largely dismantled its ineffective ethics enforcement office and, in its diminished form, cannot realistically be expected to take on another task. And the need for prompt and vigorous enforcement of ethics rules by state authorities is particularly pressing. Finally, the DOJ proposal does not provide adequate legal or factual justification for this radical change, which would insulate DOJ attorneys from the professional standards that apply to all other attorneys across the country.

The DOJ proposal violates federal law

Federal law requires that DOJ attorneys be licensed as attorneys under the laws of a state or the District of Columbia. 28 U.S.C. § 530B(a) (2024). And (as the U.S. Supreme Court has noted), it is “the States ... [that] are responsible for the discipline of lawyers,” not the federal government. *Leis v. Flynt*, 439 U.S. 438, 442 (1979).

DOJ now proposes to supplant state authority and give itself the first right to enforce **state** ethics standards against federal attorneys, to refuse cooperation with state authorities while doing so, and, indeed, to ask state authorities to pause any independent investigation.

A previous effort by DOJ to supersede state law and impose its own ethical standards and enforcement processes on federal attorneys was rejected by Congress in the so-called McDade Amendment, which provides: “[a]n attorney for the Government shall be subject to State laws and rules, and local Federal court 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.” 28 U.S.C. § 530B(a) (1998).

The proposed rule would gut the McDade Amendment by giving DOJ precedence over state disciplinary bodies and by interfering with state investigations by declining to provide full federal cooperation until DOJ’s review is complete. This violates the McDade Amendment because under the proposed rule, federal attorneys would no longer be subject to State laws and rules “to the same extent and in the same manner as other attorneys in that State.” Rather, they would be subject to special rules under which their employer – the entity that supervised and often directed or approved their conduct – decides whether that same conduct violated state rules.

The DOJ proposal would all but end the enforcement of state ethics laws

DOJ is notoriously bad at enforcing even its own standards; its procedures have been described as “a veritable graveyard where allegations of prosecutorial misconduct go to die.” Even before the current Administration, the Cato Institute published a report entitled “How DOJ Helps Federal Prosecutors Escape Accountability & Evade Public Scrutiny.”

DOJ’s current proposal would all but guarantee no action against its attorneys who violate the rules expected of all other attorneys. It proposes endless tiers of review by an alphabet soup of entities: first by the DOJ’s Office of Professional Responsibility (OPR); then, if OPR finds professional misconduct, the DOJ’s Professional Misconduct Review Unit (PMRU); and then the Deputy Attorney General can conduct still another review and overrule PMRU’s findings. Moreover, there are no time frames in the DOJ proposal. These multi-tier inquiries can last years, if they ever come to an end. Indeed, that seems the exact purpose of the proposal.

The proposal claims that DOJ can “establish a process wherein the Department assumes the responsibility for enforcing State ethics rules directly against Department attorneys.” But DOJ has no expertise in the different ethical rules governing lawyers in the fifty states and the District of Columbia. And OPR has been whittled down to a shadow of its former self. The head of OPR was fired in mid-2025 and has not been replaced. At about the same time, the Attorney General fired the head of DOJ’s Departmental Ethics Office. And DOJ’s long-time Inspector General has left, and there is no Senate-confirmed replacement. Meanwhile, OPR’s FY 2026 budget was cut by 26%. This is not the time to assign new responsibilities to OPR.

This moment demands the aggressive enforcement of state disciplinary rules

The DOJ is an agency run amok, and there is a crying need for independent, disinterested outsiders – state disciplinary committees – to enforce the rules. Over the past year, judges have repeatedly complained that DOJ attorneys routinely flout court orders. A Justice Department review found that the administration violated more than 50 orders from federal judges in New Jersey alone since Dec. 5, 2025. In Minneapolis, the chief judge listed over 100 orders that the government had ignored. Courts are now frequently threatening contempt charges against DOJ attorneys.



Meanwhile, attorneys have been leaving the DOJ in droves, saying that they have been asked to engage in unethical behavior. For example, in early 2025, seven federal prosecutors in New York – including the acting US Attorney – resigned because they believed the DOJ was asking them to violate their ethical duties by dropping criminal charges against New York City Mayor Eric Adams as part of an illicit *quid pro quo*. Likewise, ten federal prosecutors resigned following the DOJ’s directive that they investigate Alex Pretti and Renee Good rather than the ICE agents who shot them dead in Minneapolis. And the U.S. Attorney in Virginia resigned rather than bring meritless criminal charges against Trump enemies, Jim Comey and Tisch James.

DOJ’s proposal should be rejected

We recognize that state disciplinary proceedings are far from perfect and have themselves been criticized as insufficiently robust, especially when it comes to disciplining attorneys. But that is no reason to remove this critical check on DOJ attorneys. While the proposal claims that the state processes have been weaponized, the only basis for that claim is that some state bars have investigated DOJ attorneys. Given the ample evidence of judges' concerns across the country about DOJ attorneys, it should not be surprising that bar complaints have arisen. Moreover, the proposal contains no evidence that these proceedings were unwarranted. Thus, the DOJ proposal isn't about shielding attorneys from aggressive state scrutiny. It is about shielding them from any scrutiny and permitting them to flout the same rules that apply to every other attorney across the country.

Respectfully Submitted,



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Common Cause