



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

April 3, 2026

Mr. Robert Hinchman
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

By submission via Online Portal

Re: Comment of Citizens for Responsibility and Ethics in Washington in response to Notice of Proposed Rulemaking by the Department of Justice: Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, Docket No. OAG199, RIN 1105-AB82, 91 Fed. Reg. 10780 (March 5, 2026).

Mr. Hinchman,

Citizens for Responsibility and Ethics in Washington (“CREW”) is a nonpartisan nonprofit organization dedicated to promoting ethics, transparency and accountability in government. CREW respectfully submits the following comment in response to the Notice of Proposed Rulemaking issued by the Department of Justice (“DOJ” or “the Department”) on March 5, 2026, which would establish a process for the Department to review complaints and allegations filed with state bar disciplinary authorities against DOJ attorneys. CREW strongly opposes the Department’s proposed rule. If implemented, the proposed rule would severely undermine efforts to ensure that DOJ attorneys are held to the highest ethical standards as representatives of the American people.

The legal profession is one of public trust. The American Bar Association’s (ABA) Model Rules of Professional Conduct (Model Rules) note that a lawyer does not merely represent a client, but is “an officer of the legal system and a public citizen having special responsibility for the quality of justice.”¹ The fairness of a legal system and its ability to administer justice relies, in large part, on the ethical conduct of the attorneys who comprise that system. That is precisely why attorneys are subject to comprehensive ethics rules.

¹ Model Rules of Prof’l Conduct: Preamble and Scope (Am. Bar Ass’n), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/ (last visited Mar. 31, 2026, 1:42 PM).

Every state bar association has established its own rules of professional conduct, which are often substantially similar to the ABA Model Rules.² These rules establish the ethical standards that attorneys must meet in both their professional and private lives. For instance, the ABA Model Rules discuss a lawyer's ethical obligations to their current, former or prospective clients; how they must treat opposing parties and counsel; and their responsibilities to their colleagues.³

The importance of these legal ethics rules is underscored by how prominently they feature in legal education and training. Many law schools require students to take a professional responsibility course in order to graduate,⁴ and all but two U.S. states and territories require prospective attorneys to pass the Multistate Professional Responsibility Exam in order to receive a law license.⁵ Some jurisdictions already test knowledge of local ethics rules on the bar exam,⁶ while the NextGen Uniform Bar Exam, which is scheduled to be administered in 49 states, territories and the District of Columbia by 2028, may also test knowledge of the ABA Model Rules.⁷

Professional ethics rules remain critically important throughout every attorney's career, and state bar disciplinary authorities enforce those rules. Once an attorney has been admitted by a state bar association to practice law in that jurisdiction, they are required to comply with that jurisdiction's rules of professional conduct.⁸ If an attorney is accused of violating

² *Additional Legal Ethics and Professional Responsibility Resources*, Am. Bar Ass'n, https://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest/#States (last visited Mar. 31, 2026, 9:40 AM);

Alphabetical List of Jurisdictions Adopting Model Rules, Am. Bar Ass'n, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/ (last visited Mar. 31, 2026, 9:40 AM).

³ *Model Rules of Prof'l Conduct-Table of Contents* (Am. Bar Ass'n 2025), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

⁴ *See Professional Responsibility Courses*, HarvardLaw., <https://hls.harvard.edu/academics/curriculum/registration-information/professional-responsibility-courses/> (last visited Mar. 31, 2026, 1:06 PM); *J.D. Academic Guidance*, U.C. Berkeley Law, <https://www.law.berkeley.edu/academics/registrar/j-d-academic-guidance/>; *Legal Profession/Professional Responsibility*, Georgetown Univ. Law Center, https://curriculum.law.georgetown.edu/jd/legal-profession-professional-responsibility/#:~:text=Georgetown%20Law%20requires%20each%20J.D.%20student%20to,**Bar%20admission%20process**%20*%20**Attorney%20disciplinary%20proceedings (last visited Mar. 31, 2026, 1:07 PM).

⁵ *Jurisdictions*, Nat'l Conf. of Bar Exam'rs, <https://www.ncbex.org/jurisdictions> (last visited Mar. 31, 2026, 10:10 AM).

⁶ *Scope of the California Bar Examination*, State Bar of Cal., <https://www.calbar.ca.gov/admissions/examinations/california-bar-examination/scope-california-bar-examination> (last visited Mar. 31, 2026, 10:15 AM).

⁷ *Next Gen UBE*, Nat'l Conference of Bar Exam'rs, <https://www.ncbex.org/exams/> (last visited Mar. 31, 11:20 AM).

⁸ *Model Rules of Prof'l Conduct r. 8.5* (Am. Bar Ass'n 2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_5_disciplinary_authority_choice_of_law/.

applicable ethical rules, the relevant state bar disciplinary authority is empowered to investigate the attorney's conduct.⁹

If the attorney is found to have violated the rules of professional conduct, the state bar association can impose discipline on the attorney, including suspending the attorney's law license or disbarring them entirely.¹⁰ The possibility of investigation and discipline serves to encourage attorneys to comply with rules of conduct and deter them from engaging in unethical behavior. DOJ attorneys are no exception.¹¹ Like all other attorneys, they must be admitted by a state bar association in order to practice law; they must adhere to the rules of professional conduct in the jurisdictions where they are admitted and any other jurisdiction where they practice; and if they violate those ethics rules, they are subject to investigation and discipline by the relevant state bar disciplinary authority.¹²

While it is essential that all attorneys are held to the highest ethical standards, it is especially important with respect to government attorneys, including DOJ attorneys. DOJ attorneys are public servants who wield the vast authority of the executive branch. Some functions that these attorneys perform include enforcing civil rights laws, approving settlements disbursing millions in taxpayer dollars and pursuing criminal prosecutions that could result in defendants being placed in prison.¹³ The very nature of democratic governance and the rule of law demand that DOJ attorneys perform these functions in the public interest. Ethics rules help ensure that they do so.

This proposed rule would weaken the enforcement of professional ethics rules as applied to DOJ attorneys, undermining the ethics framework that is at the core of the legal profession. Specifically, the proposed rule would limit the effectiveness of investigations by state bar disciplinary authorities into alleged misconduct by current or former DOJ attorneys in two ways. First, the proposed rule would give the DOJ the right to review the alleged ethics violations in the first instance while requesting that the state bar disciplinary authority suspend its investigation until the DOJ has completed its review.¹⁴ Second, it would prohibit

⁹ Model Rules for Lawyer Disciplinary Enforcement r. 11 (Am. Bar Ass'n 2020), https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_11/.

¹⁰ Model Rules for Lawyer Disciplinary Enforcement r. 10 (Am. Bar Ass'n 2020), https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_10/.

¹¹ 28 U.S.C. § 530B (1998), <https://www.law.cornell.edu/uscode/text/28/530B>.

¹² *Id.*

¹³ *Our Work*, U.S. Dep't of Just. Civil Rights Div. (Dec. 8, 2025), <https://www.justice.gov/crt/our-work>; Criminal Division, U.S. Dep't of Justice (last visited Mar. 31, 2026, 11:45 am), <https://www.justice.gov/criminal>; Michael D. Continto & Andreas Kuersten, Cong. Res. Serv., R45732, *The Federal Tort Claims Act: A Legal Overview* (2023), <https://www.congress.gov/crs-product/R45732>.

¹⁴ Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, 91 Fed. Reg. 10780 (proposed Mar. 5 2026) (to be codified at 28 C.F.R. pt. 77), <https://www.federalregister.gov/documents/2026/03/05/2026-04390/review-of-state-bar-complaints-and-allegations-against-department-of-justice-attorneys>

the current or former DOJ attorney from participating in the state bar investigation until the DOJ's review is complete.¹⁵ In practice, the proposed rule would, if adopted, effectively block state bar disciplinary authorities from investigating and disciplining attorneys for their conduct while working for the DOJ.

Adopting the proposed rule would be a mistake: weakening the application of ethics rules to DOJ attorneys would be detrimental to the American legal system at a time when strong ethics rules are more important than ever.

The DOJ and state bar disciplinary authorities already exercise concurrent ethics authority over DOJ attorneys. The DOJ does so through its Office of Professional Responsibility (OPR), the mission of which is also to ensure DOJ attorney compliance with professional conduct rules and other legal requirements.¹⁶ In practice, when presented with alleged misconduct by DOJ attorneys, state bar disciplinary authorities typically wait for the results of OPR's findings.¹⁷ Thus, OPR and state bar associations are already able to coexist effectively without the adoption of this restrictive, overly formalistic proposed rule.

The proposed rule would limit the mutually beneficial flexibility which is currently built into the relationship between OPR and state bar disciplinary authorities. The proposed rule would unduly limit the ability of state bar disciplinary authorities to launch investigations into DOJ attorneys when OPR is unable to conduct effective oversight or enforcement. For instance, in cases where information is needed from a non-DOJ employee, including a former DOJ employee, a state bar disciplinary authority has the ability to issue subpoenas while OPR does not.¹⁸ Additionally, at a given moment, either OPR or a relevant state bar disciplinary authority might face comparative resource constraints that prevent it from effectively investigating an attorney, while the other body is better positioned to do so; the concurrent authority in place now ensures that even if one body is unable to provide effective enforcement, the other body still can. Finally, in the worst-case scenario, a future DOJ might weaponize this rule to indefinitely delay state bar investigations while also failing to conduct an OPR investigation, essentially insulating an attorney from accountability and allowing them to engage in misconduct with impunity.

Moreover, the proposed rule would displace state bar associations' role as the licensing authority for attorneys. State bar associations have unilateral licensing authority, a power

¹⁵ *Id.*

¹⁶ *About OPR*, Office of Prof'l Responsibility (Mar. 20, 2026), <https://www.justice.gov/opr/about-opr>.

¹⁷ Jennifer Ricketts & Rupa Bhattacharyya, *DOJ's Proposed Rule Threatens to Stop State Bar Associations from Investigating DOJ Lawyers*, Justice Connection (Mar. 25, 2026), <https://justiceconnection.substack.com/p/dojs-proposed-rule-threatens-to-stop>.

¹⁸ *OPR's Standard of Review, Investigative Findings, and Review of OPR Conclusions (FAQ)*, Office of Prof'l Responsibility (Sep. 19, 2025), <https://www.justice.gov/opr/frequently-asked-questions#review>; Model Rules for Lawyer Disciplinary Enforcement r. 14 (Am. Bar Ass'n 2020), https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_14/.

they derive from their state's highest court.¹⁹ State courts have long been understood to have the inherent power to regulate the practice of law in their state.²⁰ Indeed, no individual can practice law on a regular basis without being admitted by a state bar association.²¹ DOJ attorneys, too, must be admitted to practice law by a state bar association in order to practice law at the DOJ.²² Inherent to the ability to grant a professional license is the ability to revoke that license from an individual who fails to comply with the rules established by the licensing authority, including professional conduct rules. But the proposed rule would interfere with that power, limiting not only the ability of state bar disciplinary authorities to investigate and discipline attorneys who work, or previously worked, for the DOJ, but also interfering with the authority of state courts in violation of our constitution's federalist structure. It would be an unnecessary and unwarranted usurpation of the power of state courts and state bar associations and their disciplinary authorities.

The proposed rule has the potential to do immense harm to the legal profession with little benefit. It would serve primarily to weaken the application of professional ethics rules to DOJ attorneys. That would be a disservice to lawyers everywhere, and to the American public. Attorneys, especially those who work for the DOJ, should be held to the highest possible ethical standards. This proposed rule runs afoul of that most basic principle. Accordingly, CREW urges the Department to withdraw this rule and to continue to ensure that all possible avenues for attorney ethics enforcement remain open.

Sincerely,



Nikhel Sus
Chief Counsel

¹⁹ *Lawyer Licensing*, Am. Bar Ass'n (last visited Mar. 31, 2026, 10:15 AM), https://www.americanbar.org/groups/legal_services/flh-home/flh-lawyer-licensing/.

²⁰ *Leis v. Flynt*, 439 U.S. 438, 442 (1979).

²¹ Victor D. López, *Unauthorized Practice of Law in the U.S.: A Survey and Brief Analysis of the Law*, 26 N.E. J. of Legal Studies 60, 60 (2011), <https://digitalcommons.fairfield.edu/cgi/viewcontent.cgi?article=1080&context=nealsb>.

²² 28 U.S.C. § 530B (1998), <https://www.law.cornell.edu/uscode/text/28/530B>.