

April 6, 2026

The Honorable Todd Blanche
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

*Re: Opposition to the Department of Justice’s Proposed Rule Regarding State Bar
Complaints and Allegations Against Department of Justice Attorneys*

Dear Acting Attorney General Blanche,

The Brennan Center for Justice at New York University School of Law¹ (the “Brennan Center”) submits this Comment to oppose the Department of Justice’s Proposed Rule, “Review of State Bar Complaints and Allegations Against Department of Justice Attorneys,” 91 Fed. Reg. 10780 (Mar. 5, 2026). The proposed rule seeks to allow the Attorney General to dictate the timing, scope, and development of state bars’ misconduct investigations against Department of Justice (DOJ) attorneys, effectively insulating them from independent scrutiny by state bars. For the reasons below, we urge you to rescind the proposed rule.

**I. The Proposed Rule Contradicts the Legal Framework Established by
Congress in the McDade Amendment**

The proposed rule aims to prevent state bar disciplinary authorities from investigating current or former DOJ Attorneys until the Attorney General has had the opportunity to review the allegations first. The proposed rule purports to give the Attorney General the “right” to review state bar complaints against current or former DOJ attorneys “in the first

¹ The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice. For more than 30 years, the Brennan Center has studied, litigated, and drafted legislative solutions regarding money in politics, voting, and election administration. The views expressed in this comment do not reflect the views, if any, of the NYU School of Law.

instance.”² Under the proposed rule, whenever the Attorney General intends to exercise this “right,” DOJ will request that bar disciplinary authorities suspend their investigations or disciplinary proceedings while the Department completes its own review.

While framed as a request, the proposed rule makes clear that if the state bar disciplinary authorities refuse DOJ’s request to suspend their proceedings, the Attorney General will interfere in those proceedings: it says the Attorney General “shall” take “appropriate action to enforce this regulation or to prevent the bar disciplinary authorities from interfering with the Attorney General’s review of the allegations.”³ Moreover, the proposed rule provides no timeframe for when the Department must complete its review. This risks indefinitely delaying state bar investigations and disciplinary proceedings against current and former DOJ attorneys.

The proposed rule violates the clear directives of Congress. All lawyers, including government lawyers, are required to be licensed to practice law by a state jurisdiction. Accordingly, as explained in the attached Brennan Center paper titled “Legal Ethics and the Rule of Law,” they are “bound by a variety of rules and standards enforced by state and federal courts, bar authorities, and the broader profession.”⁴ This regulatory regime ensures that federal government lawyers are subject to independent ethical constraints administered and enforced by state bar authorities.

Congress established a clear legal framework to govern the interaction between DOJ and state bars with respect to overseeing the professional conduct of DOJ attorneys. In 1999, it passed the McDade Amendment, which codifies the requirement that Justice Department attorneys comply with the professional responsibility rules of the states in which they practice “to the same extent and in the same manner as other attorneys in that State.”⁵

² Department of Justice, “Review of State Bar Complaints and Allegations Against Department of Justice Attorneys,” 91 Fed. Reg. 10780 (March 5, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-03-05/pdf/2026-04390.pdf>.

³ Department of Justice, “Review of State Bar Complaints and Allegations Against Department of Justice Attorneys.”

⁴ Yasmin Abusaif et al., *Legal Ethics and the Rule of Law*, Brennan Center for Justice, September 3, 2025, <https://www.brennancenter.org/our-work/research-reports/legal-ethics-and-rule-law>.

⁵ 28 U.S.C. § 530B(a).

In enacting the McDade Amendment, Congress made clear that DOJ and state bars have shared, independent responsibility for overseeing the professional conduct of DOJ attorneys. The legislative record indicates that Congress wanted additional, external checks on federal prosecutorial abuse because it viewed the Justice Department's system of self-regulation as having been ineffective.⁶ Prior to the law's passage, Congress had expressed concerns about "the problems inherent in any system of self-policing and regulation" regarding DOJ for years.⁷ Evidently frustrated by the perceived lack of an effective mechanism to prevent prosecutorial abuses relating to an independent counsel and other DOJ attorneys, Congress enacted this law to place DOJ attorneys under the same constraints and oversight as other attorneys in the states in which they practiced.⁸

In doing so, Congress rejected the DOJ's arguments that the Attorney General had the authority to preempt state ethics rules and state enforcement. At least one trial court had previously rebuffed this argument, noting, "[t]o be 'duly licensed and authorized to practice as an attorney,'" the attorney "must of necessity comply with that state's code of professional responsibility. Congress therefore clearly contemplated compliance with state bar ethical standards by [DOJ attorneys]."⁹ The Department, however, continued to argue that requiring its attorneys to be subject to the state ethics rules in which they practice would "silently overrid[e] the Attorney General's power in this area," and could impede its undercover investigations and other federal law enforcement operations.¹⁰ With the McDade Amendment, Congress made clear that the Attorney General lacked the authority to block state bars from enforcing state ethics rules on DOJ attorneys.

⁶ Congressional Research Service, *McDade-Murtha Amendment: Ethical Standards for Justice Department Attorneys*, 5, December 18, 2001, https://www.congress.gov/crs_external_products/RL/PDF/RL30060/RL30060.2.pdf.

⁷ Congressional Research Service, *McDade-Murtha Amendment: A Sketch of Legislation in the 107th Congress Concerning Ethical Standards for the Justice Department Litigators*, 1, December 21, 2001, https://www.congress.gov/crs_external_products/RS/PDF/RS21092/RS21092.3.pdf.

⁸ Congressional Research Service, *McDade-Murtha Amendment: Legislation in the 107th Congress Concerning Ethical Standards for Justice Department Litigators*, 3, December 18, 2001, https://www.congress.gov/crs_external_products/RL/PDF/RL31221/RL31221.2.pdf.

⁹ *United States v. Ferrara*, 847 F. Supp. 964, 969 (D.D.C. 1993).

¹⁰ Congressional Research Service, *McDade-Murtha Amendment: Ethical Standards for Justice Department Attorneys*, 12.

The proposed rule conflicts with the McDade amendment and other federal laws by subverting the independent authority of state bars to hold DOJ attorneys accountable for misconduct. The Justice Department’s position cannot be squared with the clear directives of Congress, which plainly intended for state bar disciplinary bodies to have independent authority to investigate and sanction DOJ attorneys as a safeguard against abuse. For this reason alone, we urge you to abandon the proposed rule.

II. The Proposed Rule Would Damage the Collaborative Relationship Between State Bar Disciplinary Authorities and DOJ and Create Gaps in Oversight

The Proposed Rule is not only contrary to law, but also unnecessary and risks undermining DOJ’s faithful enforcement of the law by creating gaps in oversight of the Department’s attorneys. The McDade Amendment made clear that state bars are empowered to serve as an independent check against misconduct by DOJ attorneys to ensure that they faithfully enforce the law in accordance with prevailing ethical standards. Based on the trust built over years of abiding by high standards of ethics, DOJ has historically benefited from the presumption of regularity that judges have conferred on DOJ attorneys. This presumption, however, is being eroded as courts have increasingly taken note of DOJ’s failure to abide by its ethical duties and obligations, as explained in the attached Brennan Center paper, “The Department of Justice’s Broken Accountability System.”¹¹

Far from interfering in DOJ operations, state bar disciplinary authorities have historically had a collaborative relationship with the Justice Department’s Office of Professional Responsibility (OPR). In many cases, state bars have deferred to the Department to investigate DOJ attorney misconduct cases because of the complexities involved and the strength of the internal systems at DOJ. Alleged misconduct by DOJ attorneys can often implicate federal regulations and DOJ rules that state bars are not familiar with, as well as require consideration of potentially confidential and highly sensitive information only in the Department’s possession. And when OPR is investigating a matter and a state bar receives a complaint regarding the same matter, DOJ may suggest that if the state bar

¹¹ Christine Berger and Joe Gaeta, *The Department of Justice’s Broken Accountability System*, Brennan Center for Justice, October 20, 2025, <https://www.brennancenter.org/our-work/research-reports/departments-justices-broken-accountability-system>.

waits until the Department finishes its investigation, DOJ might be able to share the results of its investigation with the state bar.¹²

Such deference by state bars to DOJ, however, is strictly voluntary. The proposed rule would create a gap in oversight by usurping the authority of state bars to conduct independent oversight of DOJ attorney misconduct, particularly when the attorney no longer works for the Department. OPR's ability to fully investigate and discipline a DOJ attorney can be stymied by the attorney's resignation, at which point, the attorney is no longer subject to the Department's rules requiring cooperation in OPR investigations. By contrast, state bars can investigate DOJ attorney misconduct and impose disciplinary measures after the attorney leaves the Justice Department. In one prominent example, the D.C. Bar investigated former Assistant Attorney General Jeffrey Clark after he left federal service for trying to use the Justice Department's influence to help reverse President Donald Trump's election defeat in 2020.¹³

III. The Proposed Rule Risks Insulating DOJ Attorneys from Accountability for Misconduct

The proposed rule would effectively enable the Attorney General to insulate DOJ misconduct from independent scrutiny by state bars. This is particularly concerning given the breakdown of other accountability systems and the increasing number of concerns raised by courts of potential DOJ misconduct. Courts, for example, have questioned DOJ lawyers regarding hundreds of instances of the federal government's noncompliance with court orders and misrepresentations of fact and law in court.¹⁴ Some courts have taken the

¹² Jennifer Ricketts and Rupa Bhattacharyya, "DOJ's Proposed Rule Threatens to Stop State Bars from Disciplining DOJ Attorneys," *Justice Connection (Substack)*, March 25, 2026, <https://justiceconnection.substack.com/p/dojs-proposed-rule-threatens-to-stop>.

¹³ See D.C. Board on Professional Responsibility, Report and Recommendation of the Board on Professional Responsibility, July 31, 2025, <https://fingfx.thomsonreuters.com/gfx/legaldocs/lbpgzqlqzqvq/DC%20Board%20report%20-%20Jeff%20Clark.pdf?inline=1>; and Keith L. Alexander, "Justice Official Clark Violated Ethics in Aiding Trump, D.C. Bar Panel Finds," *Washington Post*, April 4, 2024, <https://www.washingtonpost.com/dc-md-va/2024/04/04/justice-jeffrey-clark-bar-trump/>.

¹⁴ See, e.g., Hamed Aleaziz and Mattathias Schwartz, "Judges Threaten Trump Officials With Contempt Over Immigration Orders," *New York Times*, February 23, 2026, <https://www.nytimes.com/2026/02/23/us/politics/judges-contempt-immigration-trump.html>; and Austin Sarat, "Courts Have Threatened to Hold the Trump Administration in Contempt. It's Time to Follow Through," *Guardian*, March 7, 2026, <https://www.theguardian.com/commentisfree/2026/mar/07/trump-administration-contempt-court-orders>.

rare step of quashing DOJ's subpoenas with scathing rebukes of DOJ's actions.¹⁵ These concerns have been increasing as the Department's internal accountability mechanisms have been systematically dismantled, as we documented in the attached paper.¹⁶ These circumstances warrant strengthening of the independent guardrails against DOJ misconduct, not undermining them, as the proposed rule would do.

Ensuring integrity in the justice system is critical to the rule of law and building public trust. And given the extraordinary power DOJ attorneys wield, the justice system depends on key guardrails to prevent abuses of that power. The proposed rule would erode an important safeguard against such abuse.

For the foregoing reasons, the proposed rule should be rescinded.

Sincerely,

Brennan Center for Justice

¹⁵ See, e.g., Azeen Ghorayshi and Glenn Thrush, "Judges Threaten Trump Officials With Contempt Over Immigration Orders," *New York Times*, February 23, 2026, <https://www.nytimes.com/2026/02/23/us/politics/judges-contempt-immigration-trump.html>; Gianna Ferrarin, "DC Judge Strikes Down 340B Drug Discount Registration Rule," *Law360 Healthcare Authority*, March 4, 2026, <https://www.law360.com/healthcare-authority/articles/2437582>; and Glenn Thrush, "Judge Rebukes Justice Dept. Over Efforts to Obtain Confidential Patient Details," *New York Times*, October 29, 2025, <https://www.nytimes.com/2025/10/29/us/politics/justice-dept-transgender-patients.html>.

¹⁶ See Berger and Gaeta, *The Department of Justice's Broken Accountability System*.