



**ILLINOIS STATE  
BAR ASSOCIATION**

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March 11, 2026

Department of Justice  
Notice of Proposed Rulemaking  
Docket No. OAG 199

Re: “Review of State Bar Complaints and Allegations Against Department of Justice Attorneys”

Dear Attorney General Bondi:

On behalf of its 27,000 lawyer and judge members, the Illinois State Bar Association (“ISBA”) is pleased to submit the following comments on the above referenced proposed rulemaking. The proposed Department of Justice (“DOJ”) rule would establish two procedural “rights” for the DOJ. First, it would provide that the DOJ has a “right of first review” when a disciplinary investigation is initiated against a DOJ lawyer by a State disciplinary agency. Second, it would allow the DOJ to request a State to suspend its disciplinary investigation (or proceeding) against a DOJ lawyer pending DOJ review. It would also mandate that DOJ personnel—lawyer or otherwise—not provide any non-public information to a State disciplinary agency pending conclusion of the DOJ investigation.

In effect, the proposed DOJ rule establishes a shield to protect current and past lawyer employees of the DOJ from disciplinary investigations and prosecutions by their State of licensure. It is unprecedented, unnecessary, and inappropriate. As described in detail below, the ISBA is opposed to it.

1. The proposed DOJ rule ignores the longstanding purposes of State bar regulation and discipline.

In 1970, the American Bar Association published a Report titled “Problems and Recommendations in Disciplinary Enforcement.” The Report was the work of an august body of lawyers, led by U.S. Supreme Court Justice Thomas C. Clark. This “Clark Committee Report” detailed the “scandalous” nature of lawyer discipline in the United States and the public’s mistrust and increasing dissatisfaction with lawyer discipline. The problems identified in the Clark Committee Report included perceptions (oftentimes supported by facts) of inaction, delay, opacity, and “unofficial immunity” for otherwise respected lawyers.

As a result of the Clark Committee Report, State Supreme Courts (including Illinois’) established independent, transparent, and professional disciplinary agencies. (In Illinois, the Illinois Attorney Registration and Disciplinary Commission (“ARDC”) was formed in 1973.) For

more than fifty years these agencies have diligently, efficiently, scrupulously, and publicly enforced State ethics rules. This in turn has helped ensure the credibility of the legal profession in the eyes of the public, as well as meeting every lawyers' obligation to "further the public's understanding of and confidence in the rule of law and the justice system." Illinois Rules of Professional Conduct ("IRPC"), Preamble [6].

The proposed DOJ rule would interfere with and impede the work of State disciplinary agencies and run counter to the foundational purposes of a professional and independent disciplinary enforcement system as recognized in the Clark Committee Report. The proposed DOJ rule offers no guarantee—or even good faith assurances—that the DOJ will undertake timely or transparent investigations of its lawyers accused of misconduct. It offers no assurances that its internal investigations will be independent and free from bureaucratic or political interference. Also troubling for carrying out meaningful and legitimate disciplinary activities is that the DOJ apparently reviews its lawyers' conduct under a much more forgiving standard of misconduct than Illinois applies to its disciplinary prosecutions. The DOJ rulemaking refers to misconduct as when a lawyer has "violated a clear and unambiguous standard either intentionally or recklessly." Fed.Reg. p. 10781, II.C. Illinois' disciplinary prosecutions, however, need not find any element of intentionality or recklessness.

Ultimately, the proposed DOJ rule allowing the DOJ—or conceivably any organization—to perform their own disciplinary investigation of the lawyers it employs and to thereby delay and potentially preempt State disciplinary proceedings is unprecedented and ill-conceived.

2. The proposed DOJ rule is unnecessary.

As offered by the DOJ, the sole rationale for the proposed rule is to deter political activists from abusing the state bar disciplinary process. Fed. Reg. 10782 II.D ("Prioritizing Attorney Discipline and Ending the Weaponization of the Bar Complaint and Investigation Process"). However, the rulemaking provides no examples of investigatory or prosecutorial abuse by State disciplinary agencies. No information is provided that supports the notion that State ethics rules are being applied more strictly or unfairly against DOJ lawyers than other non-government lawyers. Although just one State, review of publicly available Illinois' disciplinary material reveals no unsubstantiated investigations or prosecutions against DOJ lawyers. Claims of "abuse" also seem hollow in that the rulemaking repeatedly notes that current cooperation between the DOJ and State disciplinary authorities is working appropriately. (This is particularly on point as the rulemaking acknowledges that most bars already suspend their disciplinary investigations pending DOJ reviews.)

3. The proposed DOJ rule puts DOJ lawyers licensed in Illinois in conflict with their existing professional responsibilities and duties.

As noted above, the proposed DOJ rule would prohibit Illinois licensed DOJ lawyers from cooperating with Illinois' disciplinary agency (the aforementioned ARDC). Such a prohibition is in direct conflict with IRPC 8.1 ("... a lawyer ... in connection with a disciplinary matter shall not fail to respond to a lawful demand for information from an admissions or disciplinary authority...") as well as ARDC Rule 53 ("It shall be the duty of every attorney admitted to practice in this state to respond [to requests for information] within 14 days to any such request

from the Administrator.”). Failure to abide by these existing Illinois rules would subject the Illinois licensed lawyer to discipline.

In addition, the proposed DOJ rule implies that an Illinois-licensed DOJ lawyer need not comply with their reporting obligations under IRPC 8.3 (“Reporting Professional Misconduct and Transfer to Disability Inactive Status”) because the DOJ itself will determine whether to make such a report. Fed Reg. 10785. (“Under the proposed rule, a Department attorney’s obligations to report professional misconduct committed by other lawyers remains unchanged. *OPR* will engage with the bar disciplinary authorities and *will inform them of the Department’s conclusions* with respect to allegations of professional misconduct by current or former Department attorneys (emphasis added).” IRPC 8.3 is not delegable, and it is “absolute.” *Skolnick v. Alzheimer & Gray*, 191 Ill.2d 214, 226 (2000). Its obligations to report misconduct fall to the Illinois lawyer possessing knowledge of another lawyer’s misconduct. Reliance on an employer’s decision to report or not report—especially here as it seems the only information being reported are the DOJ’s *conclusions*—would potentially subject an Illinois lawyer to discipline.

4. The proposed DOJ rule ignores the primacy of the Illinois Supreme Court to regulate Illinois licensed lawyers.

It is axiomatic that the Illinois Supreme Court has the inherent power to define and regulate the practice of law in this state, including the sole power to discipline lawyers. *See, e.g., Ford Motor Co. v. Sperry*, 214 Ill.2d 371 (2005). In exercising this exclusive power, the Court has established the ARDC to regulate, investigate, and discipline lawyers with an Illinois license to practice law. *Id.*

The DOJ has no role in the regulation of Illinois licensed lawyers. It does not set qualifications to become an Illinois lawyer. It does not license individuals as lawyers once those qualifications have been met. It does not investigate or discipline Illinois lawyers. All of these functions and roles fall exclusively to the Illinois Supreme Court.

The Illinois Supreme Court cannot be compelled to act (or more appropriately, defer to act) as contemplated in the proposed DOJ rule. No referenced federal authority supports such an interference with the exclusive authority of the Illinois Supreme Court (or any other State Supreme Court) to regulate the lawyers they license. Accordingly, the proposed DOJ rule can have no effect on Illinois’ disciplinary process. The only impact on Illinois licensed lawyers, as noted above, will be to potentially place Illinois licensed DOJ lawyers in violation of their obligations as Illinois lawyers.

5. Conclusion.

For all the above reasons, the proposed DOJ rule should not be adopted (or even further pursued). It is unnecessary. It will fail to achieve its purported goals. It potentially will create confusion among DOJ lawyers. It contributes nothing to the legitimate investigation and prosecution of unethical lawyer conduct, and in fact may impede such activities. It contributes nothing to protecting the public or instilling confidence in the legal system (even in those rare

instances of lawyer misconduct). And it is entirely ineffective as an attempted regulation of the Illinois disciplinary process.

Thank you for the opportunity to provide these comments. The ISBA looks forward to monitoring this matter and providing additional commentary as necessary in the future.

Respectfully submitted,

Illinois State Bar Association