

# WASHINGTON STATE BAR ASSOCIATION

April 3, 2026

Acting Attorney General Todd Blanche  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Re: Notice of Proposed Rulemaking  
Review of State Bar Complaints and Allegations Against Department of Justice  
Attorneys, 91 Fed. Reg. 10,780 (Mar. 5, 2026) (to be codified at 28 C.F.R. pt. 77)  
Department of Justice – Office of the Attorney General  
Docket No. OAG199

Dear Acting Attorney General Blanche:

The Washington State Bar Association (WSBA) submits this comment in opposition to the Department of Justice’s proposed rule titled *Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*, 91 Fed. Reg. 10,780 (Mar. 5, 2026) (to be codified at 28 C.F.R. pt. 77).

The WSBA is an integrated state bar association whose mission is to serve the public and the members of the bar, to ensure the integrity of the legal profession, and to champion justice. The WSBA is governed by the Board of Governors, a body composed of the WSBA president and governors elected from each of the state’s congressional districts, as well as governors elected at-large. The WSBA both serves its members as a professional organization and, operating under the delegated authority of the Washington Supreme Court, licenses and regulates more than 40,000 legal professionals, including lawyers, limited practice officers, and limited license legal technicians. The WSBA’s regulatory staff is charged with reviewing and investigating ethics complaints against licensed legal professionals subject to the Washington Supreme Court’s disciplinary authority.

The Department of Justice (DOJ) has proposed this rule to provide the Attorney General with a “right of first review” of ethics complaints against DOJ lawyers filed with state disciplinary authorities. 91 Fed. Reg. 10,784. The rulemaking process was initiated under the authority of 28 U.S.C. § 530B, commonly called the McDade Amendment or the McDade-Murtha Amendment. *Id.* at 10,781. The McDade Amendment provides that DOJ lawyers “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).

Other comments submitted in opposition to the proposed rule identify various legal and practical infirmities of the rule and the rulemaking process, including that the proposed rule is inconsistent with the plain language of the McDade Amendment and Congress's intent in enacting it and that the proposed rule offends constitutional principles of federalism and separation of powers by purporting to confer on the executive branch of the federal government authority belonging inherently to state supreme courts.

The purpose of this comment is not to repeat points already expressed but rather to illustrate the ways in which the proposed rule would have a deleterious effect on disciplinary functions and individual bar members in the state of Washington. The proposed rule would interfere with the WSBA's mission and its execution of duties delegated to it by the Washington Supreme Court; the proposed rule would needlessly sideline the WSBA in the investigation and prosecution of matters implicating Washington rules and laws; and the proposed rule would create conflicting standards and obligations for WSBA members. Ultimately, if adopted and enforced, the rule will obstruct the Washington Supreme Court's overarching regulatory objective to protect the public. For these reasons, among many others, the DOJ should abandon this rulemaking effort.

**I. The proposed rule would impede the WSBA's mission and ability to administer the disciplinary system.**

The proposed rule would interfere with the WSBA's exercise of the authority delegated to it by the Washington Supreme Court. The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. Washington General Rule (GR) 12; *Graham v. State Bar Ass'n*, 86 Wn.2d 624, 631, 548 P.2d 310 (1976) ("the regulation of the practice of law in this state is within the inherent power" of the Washington Supreme Court). State primacy and power to regulate the practice of law and the professional conduct of lawyers is not unusual or unique to Washington state; it is the norm. *See, e.g., Leis v. Flynt*, 439 U.S. 438, 442 (1979) ("Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions.").

In the exercise of that authority, the Washington Supreme Court delegates to the WSBA numerous regulatory responsibilities and functions, including the responsibility to administer an effective discipline system. GR 12.2(b)(6). The investigative and prosecutorial functions of the discipline

system are performed by the WSBA Office of Disciplinary Counsel. See Rule for Enforcement of Lawyer Conduct (ELC) 2.8.

If adopted as written, the proposed rule potentially could require the WSBA Office of Disciplinary Counsel to suspend indefinitely any investigation of a complaint against a DOJ lawyer. Ultimately, this could forestall action by the entire discipline system—including adjudicators on the Hearing Officer Panel and the Disciplinary Board—which is expected to punctually evaluate cases and recommend disciplinary dispositions to the Washington Supreme Court. If this consequence of the DOJ's stratagem comes to pass, the WSBA would neither be administering an effective discipline system nor fulfilling its mission or its mandate to protect the public and maintain high standards of ethics among its members. See GR 12.2.

## **II. The proposed rule would unnecessarily displace WSBA enforcement of Washington rules and laws.**

The proposed rule is unnecessary. The DOJ intends to displace state disciplinary authorities in favor of a federal enforcement system. 91 Fed. Reg. 10,784.<sup>1</sup> But, unlike the DOJ, the WSBA and its staff of Washington-licensed lawyers possess the expertise and experience to properly evaluate and investigate complaints against DOJ lawyers—and any other lawyers—alleging violations of Washington state's rules and laws.

Staff of the WSBA Office of Disciplinary Counsel and Washington Supreme Court-appointed volunteers understand—based on considerable experience—the application and limits of the Washington Rules of Professional Conduct (RPC) and the Rules for Enforcement of Lawyer Conduct (ELC), as well as the substantial body of Washington state disciplinary caselaw, the State Bar Act (RCW ch. 2.48), the WSBA Bylaws, and other state laws affecting the regulation of the practice of law in Washington state. Consistent with the mandate of the McDade Amendment, WSBA staff and volunteers evenhandedly apply Washington rules and laws to all lawyers subject to the Washington Supreme Court's regulatory authority *to the same extent and in the same manner*. There is simply no need for the federal enforcement system envisioned by the DOJ, particularly one that lacks the depth of experience and expertise of the WSBA. Indeed, the system

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<sup>1</sup> Although the DOJ's evident purpose is to replace state enforcement practices with its own investigative decision-making and processes, the extent of the DOJ's authority after reviewing or investigating allegations of misconduct would be to impose employment consequences on DOJ lawyers. It is only state disciplinary authorities, such as the WSBA and Washington Supreme Court, which can affect a lawyer's state-granted license to practice law. This is yet another reason the proposed rule is ill-conceived and unnecessary.

portrayed in DOJ's notice of proposed rulemaking would apply Washington state rules and laws to DOJ lawyers to a *different* extent and in a *different* manner than they are applied to other lawyers licensed or practicing law in Washington state.

**III. The proposed rule would create conflicting standards and obligations for WSBA lawyer members.**

The proposed rule would create divergent standards and conflicting obligations for WSBA members. If adopted as written, the proposed rule would create a double standard for the review of complaints against WSBA members. Washington-state-licensed DOJ lawyers would be subject to review by their employer, an interested party who may seek to preclude any disciplinary action by the WSBA. Meanwhile, complaints against other WSBA members would remain subject to review only by the WSBA, a neutral regulator. This is a far cry from the equal application of state rules mandated by the McDade Amendment.

Additionally, Washington-state-licensed DOJ lawyers will face conflicting obligations under the proposed rule. To become licensed to practice law in the United States, lawyers take an oath of attorney. A near-universal component of the oath is a commitment to act according to law. Washington state's Oath of Attorney includes the following solemn declarations:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.
2. I will support the constitution of the State of Washington and the constitution of the United States.
3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

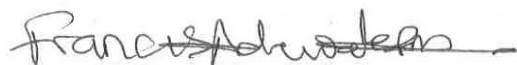
Washington Admission and Practice Rule 5(g). The proposed rule would require Washington-state-licensed DOJ lawyers to subordinate their duties under Washington law and the RPC in favor of the DOJ's rule, putting those lawyers at odds with commitments made under the oath.

Moreover, those lawyers, like all other WSBA lawyer members, are subject to the obligations imposed by the ELC, including the obligation to cooperate with a disciplinary investigation. See ELC 1.5, ELC 5.3(f), ELC 5.3(g). Failure to cooperate may result in an interim suspension of the lawyer's license; it is also grounds for discipline. ELC 5.3(h). As made clear in the Notice of

Proposed Rulemaking, in cases where the Attorney General exercises the “right of first review,” the DOJ plans to direct its lawyers to not cooperate with a state disciplinary investigation, potentially forcing WSBA members with pending grievance investigations to choose between their employment and their license to practice law. This would place an undue and untenable burden on Washington state lawyers employed by the DOJ.

The proposed rule is unwise, unnecessary, and unconstitutional. It would have a detrimental effect on the execution of the WSBA’s mission, the operations of the Washington state discipline system, and Washington state lawyers. The WSBA opposes its adoption and urges the Department of Justice to abandon this rulemaking effort and withdraw the proposed rule.

Sincerely,

A handwritten signature in black ink that reads "Francis Adewale" followed by a horizontal line.

Francis Adewale  
President  
Washington State Bar Association