The Supreme Court
State of Washington

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The Honorable Todd Blanche
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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Submitted via: https://www.regulations.gov

Re: Department of Justice - Office of the Attorney General
Docket No. OAG199
Comment to Proposed Rulemaking: *Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*

Dear Acting Attorney General Blanche:

The Washington State Supreme Court respectfully submits this comment in opposition to the Department of Justice's proposed rule entitled *Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*, 28 C.F.R. pt. 77. We urge the Department to withdraw the proposed rule because it conflicts with the constitutional and statutory framework for state court regulation of the practice of law and interferes with our state's authority and responsibility to protect the public and maintain trust and confidence in the integrity of the legal system.

1. The Proposed Rule Intrudes on State Authority and Responsibility to Enforce Attorney Discipline Rules and Conflicts with our System of Federalism

The licensing and discipline of attorneys has long been reserved to state high courts. This is a feature of both state and federal law and inheres in our system of federalism.

Consistent with Article IV of the Washington State Constitution, the Washington Supreme Court has exclusive authority to regulate the practice of law, including through attorney discipline. *Graham v. State Bar Ass'n*, 86 Wn.2d 624, 631, 548 P.2d 310 (1976) ("[T]he regulation of the practice of law in this state is within the inherent power" of the Washington Supreme Court). The Washington Supreme Court exercises this authority in part by delegating the responsibility to administer an effective system of attorney discipline to the Washington State Bar Association

(WSBA).[1] The WSBA discharges this function effectively because it provides timely and even-handed application of standards of conduct, administered consistently by trained staff and volunteers free from interference by outside entities, including employers of attorneys subject to discipline. Splitting disciplinary responsibility with the DOJ would undermine every one of those tasks. There cannot be two systems of justice in attorney discipline – one for Department attorneys and another for everyone else.

The fact that the proposed rule claims to require only delay in state discipline proceedings does not solve these problems. As WSBA notes in its public comment, "the proposed rule potentially could require the WSBA Office of Disciplinary Counsel to suspend indefinitely any investigation of a complaint against a [Department] lawyer," contrary to its duty "to punctually evaluate cases and recommend disciplinary dispositions to the Washington Supreme Court." April 3, 2026 Comment of Francis Adewale, WSBA President, at 3. The proposed rule directly interferes with Washington State's ability to administer an effective, even-handed discipline system that protects the public and maintains high standards of attorney ethics – a mandate of Washington's discipline system.

By interfering with attorney discipline systems in Washington and other states, the proposed rule also raises significant federalism concerns. State supreme courts have the sole authority and exclusive responsibility to regulate the practice of law within their jurisdiction. *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. The States prescribe the qualifications for admission to practice and the standards of professional conduct. They also are responsible for the discipline of lawyers."). If adopted, the proposed rule would disrupt the balance of authority and responsibility between states and the federal government. This undermines principles of comity that lie at the heart of our federalist system. Moreover, it potentially implicates fundamental anti-commandeering principles recognized in the Tenth Amendment. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 475 (2018) (holding same principles apply to federal commands prohibiting state action as those commanding it).

At the sub-constitutional level, the proposed rule also runs afoul of Congressional limits on the Attorney General's authority to impede state attorney discipline systems. While the proposed rule purports to effectuate 28 U.S.C. § 530B, commonly called the McDade Amendment or the McDade-Murtha Amendment, it is antithetical to the plain language and purpose of that law. As more fully explained in the comment of the National Organization of Bar Counsel (NOBC), the history and text of Section 530B make clear that Department attorneys are fully subject to state attorney discipline rules "to the same extent and in the same manner as other attorneys in that state." 28 U.S.C. § 530B(a); March 25, 2026 Comment of National Organization of Bar Counsel, at 1-6. The Code of Federal Regulations requires the Attorney General to promulgate rules to implement this directive – not to undermine it. 28 C.F.R. § 77.1.

[1] Washington General Rule 12, REGULATION OF THE PRACTICE OF LAW ("The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. The legal profession serves clients, courts, and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons and entities acting under the Supreme Court's authority.").

The Department's proposed right of first review, which requires the complete suspension of state disciplinary investigations against Department attorneys for an indefinite period, provides differential treatment to such attorneys. This plainly violates Section 530B(a)'s mandate. Indeed, the NOBC comment points out that the McDade Amendment was passed in response to earlier attempts by the Department to similarly exempt its attorneys from aspects of state discipline systems. *Id.* at 3 (discussing 1989 Thornburgh Memorandum and former 28 C.F.R. §§ 77.1-77.12). Current regulations under 28 C.F.R. §§ 77.1 *et seq.* safeguard the Department's interests, and there is insufficient justification to jettison the present cooperative system between states and the federal government and adopt a new rule that impedes the regulatory authority and responsibility of state supreme courts.

The proposed rule should be rejected as incompatible with state and federal law and our system of federalism. A consistent theme runs through the law at every level – state supreme courts have sole authority and responsibility to regulate the conduct of attorneys practicing law in their jurisdictions. Attorneys representing the Department of Justice are subject to the same rules and discipline procedures as everyone else.

2. By Interfering with the Authority of State Courts to Protect the Public, the Proposed Rule Erodes Public Trust and Confidence in the Legal System and Undermines the Rule of Law

Not only is the proposed rule incompatible with governing statutory and constitutional principles, it would also undermine public trust in the integrity of the legal profession and prevent our Court from protecting the public.

The public relies on our Court, and the WSBA as its designee, to protect against unethical practices. Washingtonians need to see that the discipline system timely and consistently holds attorneys accountable for violations of professional standards – without favoritism to any group. The Washington Supreme Court, like other state supreme courts, has worked over decades to develop effective rules and processes that uphold the highest standards of professionalism, providing procedural fairness and timely resolution of ethics complaints. In turn, the WSBA has worked over decades to develop effective training and expertise in administering Washington's disciplinary system. The proposed rule would require Washington State to deviate from its well-developed processes designed to ensure the evenhanded application of standards of attorney conduct.

If the Washington Office of Disciplinary Counsel is forced to defer to the Department, turn over information it has received, and then suspend even the investigation of allegations of misconduct, the message conveyed to the public will be that the legal system protects its own, that lawyers' interests win out over the public's interest. As members of the state's highest court entrusted with upholding the Rule of Law, we understand the power of perception – justice must not only be done, justice must also appear to be done. We ask the Department to consider the negative message conveyed to the public by the proposed rule's adoption of a two-tiered system of attorney discipline.

The Washington State Supreme Court respectfully urges the Department of Justice to withdraw the proposed rule.

Respectfully submitted,

Chief Justice Debra L. Stephens
For the Court

Associate Chief Justice Charles W. Johnson
Justice Steven C. Gonzalez
Justice Sheryl Gordon McCloud
Justice Raquel Montoya-Lewis
Justice G. Helen Whitener
Justice Salvador A. Mungia
Justice Colleen M. Melody
Justice Theodore J. Angelis