



ANDREW S. BIRRELL
President

April 6, 2026

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

Re: Notice of Proposed Rulemaking, Docket No. OAG199 | Re: “Review of State Bar Complaints and Allegations Against Department of Justice Attorneys”

Acting Attorney General Blanche:

NACDL opposes the Department of Justice’s proposed amendment to 28 CFR 77 (hereafter “amendment”).¹ The amendment would effectively eliminate the accountability of DOJ lawyers to state bar agencies, thereby undermining the integrity of, and public confidence in, the administration of justice and the Rule of Law. Paradoxically, by effectively eliminating the accountability of DOJ lawyers to state bar agencies, the amendment would exacerbate the very issue which the DOJ advances as the rationale for the amendment: political weaponization of the law.

The logic of the amendment, moreover, offends the letter and spirit of the Constitution which constrain, rather than maximize, government power and authority, especially where Liberty lies in the balance. The letter and spirit of the Constitution dictate that government power and authority be subject to greater

¹ The proposed rule would amend the “McDade Amendment” passed in 1999 to address alleged misconduct by government lawyers in the prosecution of Congressman Joseph M. McDade (R-PA). *See* Title 28, United States Code, Section 530B. The McDade Amendment subjects government lawyers to the state disciplinary rules which apply to their nongovernment colleagues.

Specifically, the amendment would (1) authorize the Attorney General to direct state bar disciplinary authorities to suspend their investigations of complaints filed against DOJ lawyers and (2) direct the DOJ “to prevent the bar disciplinary authorities from interfering with the Attorney General’s review of the allegations.” Proposed Rule 77.5(d). The amendment does not specify or limit the mechanisms for “to prevent[ing] the bar disciplinary authorities from interfering with the Attorney General’s review.”

oversight of professional integrity, not less. This amendment would accomplish precisely the opposite.

NACDL also notes that the DOJ has proposed this amendment in the context of a historic crisis of confidence in the integrity of DOJ lawyers by courts across the country, especially regarding the duty of candor to the court. This context, reflected in the findings and comments of a diverse spectrum of federal district judges, suggests the need to reinforce rather than undermine the accountability of DOJ lawyers to state bar agencies.

In addition to the concerns expressed above, NACDL opposes the amendment for the following specific reasons.

1. The Amendment Would Effectively Immunize DOJ Lawyers from Meaningful Oversight Thereby Creating the Potential for Violations of Due Process of Law.

The amendment would remove DOJ lawyers from the minimum standards of professional oversight required of their nongovernment colleagues. The amendment allows the DOJ to demand suspension of state proceedings, without any deadline for completing the DOJ review, thereby creating a risk that well-founded complaints would be substantially delayed, delayed during the period of government service, or never investigated.

For these reasons, the amendment would effectively immunize DOJ lawyers thereby generating the potential for numerous constitutional harms related to the Fifth Amendment Right to Due Process of Law including the following:

The Government's Brady Duty - Government lawyers are required to comply with their disclosure obligation under *Brady v. Maryland*, 373 U.S. 83 (1963) and Model Rules of Professional Conduct 3.8. Violations of this obligation have been reported in multiple cases under the current administration.

Vindictive Prosecution - Government lawyers should not investigate or prosecute based on the political views of individuals, groups, or organizations. Violations of this limitation have been reported in multiple cases under the current administration.

2. The Amendment Is Not Necessary.

The DOJ justifies the amendment as a means of addressing the “weaponization” of the bar complaint process without providing any evidence of systematic abuse by state disciplinary authorities. On the contrary, the DOJ acknowledges that state bar agencies typically defer to DOJ investigations and often decline further action after referral.

3. The Proposed Rule Interferes with Federalism Including the Exercise of State Disciplinary Authority.

State supreme courts across the United States hold primary and inherent authority to regulate the practice of law, including disciplining attorneys admitted to their bars. The amendment would undermine that authority by *mandating* that the DOJ “*shall* take appropriate action to ... prevent the bar disciplinary authorities from interfering” with DOJ’s own review process. This mandate is tantamount to systematic interference with state bar disciplinary authorities inconsistent with the principles of federalism. *See Printz v. United States*, 521 U.S. 898 (1997).

4. The DOJ Is Unsuitable to Supervise Any Ethics-Related Investigation

Despite the recent resignation of Attorney General Bondi, her tenure as Attorney General demonstrates that the DOJ is unsuitable to supervise or investigate the professional ethical conduct of its own lawyers.

This unfortunate reality is reflected in the “zealous advocacy” memorandum issued by Attorney General Bondi on her first day in office. In that memorandum, Ms. Bondi threatened DOJ employees with discipline and possible termination for refusing “to zealously pursue the President’s political objectives.”² Based on this memorandum, Ms. Bondi sought to compel DOJ lawyers to violate their ethical obligations under the guise of “zealous advocacy” and retaliated against DOJ lawyers who have refused to surrender their ethical obligations.

Ms. Bondi’s conduct violated the ethical duties of the State Bar of Florida of which she is a member. Specifically, Florida Rule of Professional Conduct 4-8.4(a) makes it misconduct for a lawyer to “knowingly assist or induce another ... to violate the Rules of Professional Conduct.” Further, Rule 4-5.1 imposed ethical duties on Ms. Bondi to take reasonable measures with respect to her

² Memorandum of U.S. Att’y Gen. Pamela Bondi to all Dep’t Emp. on General Policy Regarding Zealous Advocacy on Behalf of the United States (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388521/dl?inline>.

managerial duties as Attorney General and her supervisory duties over subordinate lawyers to ensure that lawyers in the Department comply with their ethical duties. Finally, Rule 4-8.4(d), prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Examples include the following:

- As widely reported in the media, Ms. Bondi and Mr. Blanche, her deputy at the time and now Acting Attorney General, fired an experienced and accomplished attorney, Erez Reuveni, for accurately reporting facts to the court in the case of Kilmar Garcia who was deported to El Salvador due to an administrative error, and contrary to a court order that he not be deported to that country.³
- As widely reported in the media, Ms. Bondi forced the resignation of Denise Cheung, who had served in the Department for nearly a quarter of a century, when Ms. Cheung declined to freeze assets of a government contractor for lack of sufficient evidence.
- Similarly, the dismissal of charges against Mayor Eric Adams of New York prompted the resignation of the Acting U.S. Attorney for the Southern District of New York and almost a dozen other lawyers in that office and the Department's Public Integrity Section. Because the dismissal was based on an improper *quid pro quo*, these lawyers objected and were forced to resign immediately or placed on administrative leave and later resigned rather than express regret for the prosecution.

Conclusion

NACDL respectfully submits that the amendment would create rather than address the problem that it purportedly addresses, weaponization of the law in the context of enforcing rules of professional conduct. NACDL further submits that the amendment would exacerbate the current erosion of trust in the DOJ and its lawyers, generate the risk of due process violations, and offend long established principles of federalism.

³ Sadie Gurman, *He Represented Contentious Immigration Cases for the Government. His Candor Lost Him His Job*, WALL ST. J. (Apr. 15, 2025, at 9:00 ET), https://www.wsj.com/us-news/law/this-lawyer-defended-republicans-and-democrats-his-candor-cost-him-his-job-b3515a38?reflink=desktopwebshare_permalink.

Finally, the DOJ should consider these objections in the broader context. First, the DOJ should respect the Constitution's distrust of government power and authority, which militate against an amendment that would weaken the enforcement of professional rules for DOJ lawyers compared to their nongovernment colleagues. Second, the DOJ should consider the current crisis of confidence in the integrity of the DOJ manifested by a diverse array of federal district judges. The legacy of the newly appointed Attorney General should be to respect the letter and spirit of the Constitution by reversing, rather than deepening, this crisis.

Andrew S. Birrell
President

Martín A. Sabelli
Past President

Lisa M. Wayne
Executive Director

John Wesley Hall
Past President