



Utah State Bar®

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Office of the Attorney General, U.S. Department of Justice
Submitted via Regulations.gov

RE: Docket No. OAG199 — Opposition to Proposed Rulemaking: Review of State Bar Complaints and Allegations Against Department of Justice Attorneys, 91 Fed. Reg. 10780 (Mar. 5, 2026)

Dear Acting Attorney General Todd Blanche:

The Utah State Bar Board of Bar Commissioners submits this comment in opposition to the Department of Justice's proposed amendments to 28 C.F.R. Part 77. The proposed rule would grant the Attorney General a right of first review over bar complaints against DOJ attorneys and authorize the Attorney General to demand that state disciplinary authorities suspend their investigations pending that review, backed by a threat of unspecified federal "appropriate action" against State Bars that refuse to comply. The Utah State Bar urges the Department to withdraw this rulemaking effort in its entirety.

In addition to the statutory and Constitutional objections set forth below, the Utah State Bar has significant concerns that the DOJ's proposed rule will negatively impact the integrity and impartiality of Utah's current lawyer discipline system and erode the public's trust in lawyers, the legal system, and the rule of law.

The Utah State Bar is an arm of the Utah Supreme Court, which holds inherent and exclusive authority over attorney licensure and discipline in this state. Utah Const. art. VIII, section 1. *See also Injured Workers Association of Utah, et al. v. State of Utah*, 374 P. 3d 14 (2016). That authority extends to all attorneys practicing in Utah's state and federal courts, including federal government attorneys who hold Utah licenses and those licensed elsewhere but practicing within the state. Utah's Office of Professional Conduct investigates complaints against all such attorneys regardless of employer.

I. The Proposed Rule Contradicts 28 U.S.C. § 530B.

The McDade Amendment codified Congressional intent for independent state oversight over internal Departmental self-regulation. Its command is unambiguous: DOJ attorneys "shall be subject to State laws and rules . . . to the same extent and in the *same manner* as other attorneys in that State." 28 U.S.C. § 530B(a). The phrase "same manner" means the DOJ cannot redirect enforcement away from the state regulators Congress understood to have authority over lawyer regulation.

No other attorney practicing in Utah can require the Utah Office of Professional Conduct to step aside while an employer conducts a parallel internal investigation. The proposed rule creates precisely the disparate treatment Congress prohibited.

The Department's own 1999 regulations, which have been in place for over 27 years, correctly recognized that § 530B "does not change the enforcement authority of [OPR], state authorities, or the federal courts." 64 Fed. Reg. 19273, 19274 (Apr. 20, 1999). Nothing in the statute's text, history, or subsequent events supports the sweeping rulemaking authority the Department now claims. The subsection (b) grant of authority to "assure compliance" authorizes the Attorney General to ensure DOJ attorneys follow state ethics rules, not displace the enforcement authority Congress left with the states.

II. The Proposed Rule Violates the Tenth Amendment.

Attorney licensure and discipline are quintessential state police powers reserved to the states since the founding. *Leis v. Flynt*, 439 U.S. 438, 442 (1979); *Middlesex County Ethics Comm. v. Garden State Bar Association*, 457 U.S. 423, 435 (1982). In Utah, this authority flows from the Utah Supreme Court's inherent constitutional power. A federal regulation requiring the State Bar to suspend its investigations at the executive branch's request, under threat of "appropriate action" is commandeering. *Murphy v. National Collegiate Athletic Association*, 584 U.S. 453, 470–75 (2018) (anti-commandeering doctrine applies equally to federal prohibitions on state regulatory activity).

III. The Proposed Rule Harmful to the Public and Erodes Public Trust in the Legal System.

The proposed rule imposes no time limit on the Attorney General's review, raising the prospect of indefinite suspension of state proceedings. A Utah-licensed DOJ attorney shielded from state discipline retains an active Utah law license and may return to private practice in this state, posing ongoing risk to Utah clients and courts.

The Utah State Bar has significant concerns that the DOJ's proposed rule will negatively impact the integrity and impartiality of Utah's current lawyer discipline system and erode the public's trust in lawyers, the legal system, and the rule of law.

Conclusion

The proposed amendments are contrary to federal statute, contrary to the Constitution, harmful to the public, and threaten the public's trust in lawyers. The Utah State Bar urges the Department to withdraw this rulemaking effort.

Respectfully submitted,

Utah State Bar Board of Bar Commissioners