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More than 350 Former U.S. Department of Justice Lawyers File Comment Opposing Finalization of Rule that Would Allow Attorney General to Attempt to Indefinitely Delay State Bar Investigations of Department Lawyers

Signatories include former Acting Attorneys General, Former Inspector General, Senior Ethics Officials, and Scores of Others

WASHINGTON, D.C. – Yesterday, more than 350 former U.S. Department of Justice lawyers filed a comment letter in response to a notice of proposed rulemaking issued by the Department that, if finalized, could allow the Attorney General to attempt to indefinitely delay investigations of Department attorneys by state bar authorities for professional misconduct. The letter explains that the proposed rule is inconsistent with a federal law known as the McDade Amendment. Adopted in 1998, that law requires attorneys for the federal government to be subject to State laws and rules to the same extent as other attorneys in the State. By threatening to prevent state bar authorities from investigating Department attorneys while the Attorney General conducts an internal review, the proposed rule would violate that requirement.

The comment also explains that the stated reason for the proposed rule is at odds with the experience of the former Department attorneys who signed on. The Department claims that the Attorney General should be able to delay state bar investigations of Department attorneys because state bar authorities have "weaponized" their investigatory powers and pursued investigations for political reasons rather than based on a good faith application of their ethical rules. For support, the Department notes that there has been an increase in investigations of Department attorneys during the first year of the second Trump Administration.

The comment explains that although politicization concerns have existed for at least as long as the McDade Amendment has been the law, state bars have rarely abused their powers in that manner. It further explains that any increase in the number of state bar investigations of Department attorneys over the past year is likely because there have been increasing reports of those attorneys engaging in unethical practices, including seeking and obtaining criminal indictments to exact political retribution; making misleading statements to courts; and defying court orders. And it notes that this increase in reportedly unethical activity has come at the same time that the Department has systematically weakened its internal checks on attorney misconduct, including firing or forcing out senior Department ethics officials.

"This proposed rule is legally wrong and factually unsupported," said **Samuel Siegel, Senior Counsel at the Institute for Constitutional Advocacy and Protection at Georgetown Law**,

and a former Attorney-Adviser at the Department's Office of Legal Counsel. "Its purported rationale—that the state bar disciplinary process has been weaponized—ignores the fact that any increase in state bar investigations of DOJ attorneys is likely due to the large number of highlypublicized incidents of actions that, if proven, would clearly establish professional misconduct."

The comment also explains that the rule's requirement that Department attorneys not respond to state bar complaints while the Attorney General completes an internal review could leave such attorneys in an impossible position—subject to disbarment with no ability to defend themselves.

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