University of San Diego SCHOOL OF LAW
CONSUMER PROTECTION POLICY CENTER
at the
CENTERS FOR PUBLIC INTEREST LAW
5998 Alcalá Park
San Diego, CA 92110-2492
P: (619) 260-4806 | F: (619) 260-4753
www.sandiego.edu/cppc | info@cpil.org

April 6, 2026

Robert Hinchman, Senior Counsel
Department of Justice, Office of Legal Policy

Re: **Docket No. OAG199**: Testimony of the Consumer Protection Policy Center – Review of State Bar Complaints and Allegations Against Department of Justice Attorneys

Dear Mr. Hinchman:

On behalf of the Consumer Protection Policy Center ("CPPC") at the University of San Diego School of Law, I am pleased to submit the following testimony to the Department of Justice ("Department"), Office of Legal Policy regarding the review of State Bar complaints and allegations against Department of Justice attorneys.

CPPC Expertise Regarding State Bar Complaints and Allegations

CPPC is a nonprofit, nonpartisan academic and advocacy center based at the University of San Diego School of Law. For 46 years, CPPC has examined and critiqued California's regulatory agencies that regulate business, professions, and trades, including the California State Bar. CPPC's expertise has long been relied upon by the Legislature, the executive branch, and the courts where the regulation of consumer protection is concerned. CPPC's former executive director and Price Professor of Public Interest Law, Robert Fellmeth, helped establish California's State Bar Court, a welcome reform to attorney discipline and review.

Regulatory Background

On January 20, 2025, the President issued Executive Order 14147 ("*Ending the Weaponization of the Federal Government*"), "to identify and take appropriate action to correct past misconduct by the Federal Government related to the weaponization of law enforcement." The Executive Order required the Attorney General to review activities of relative departments and prioritize enforcement of regulations that govern attorney conduct and discipline. Thus, the Attorney General pronounced evaluations into ways the Department manages, supervises, and disciplines Department attorneys.

On February 26, 2026, the Attorney General issued this proposed Rulemaking to establish a process in which bar complaints and allegations against Department attorneys are reviewed by the

Department "in the first instance," before State Bar agencies review the complaints and allegations themselves. According to the Rulemaking, political activists have weaponized the State Bar compliant and investigation process over the past several years. This includes political activists that filed attorney complaints against senior Department officials, such as the Deputy Attorney General, former Acting Deputy Attorney General, the Deputy Assistant Attorney General for the Federal Programs Branch of the Civil Division, and former interim United States Attorney for the District of Columbia. The Rulemaking further explains that "the willingness of some State bar disciplinary authorities to give credence to such complaints" is "[e]ven more troubling."

Currently, the Department involves three entities that review attorney misconduct: the Office of Professional Responsibility ("OPR"), the Professional Misconduct Review Unit ("PMRU"), and the Office of the Inspector General ("OIG"). OPR reviews allegations of attorney misconduct in investigations, litigation, and legal advice. PMRU reviews OPR decisions and decides whether discipline of those attorneys are appropriate. OIG reviews allegations against attorneys for conduct that concerns waste, fraud, or abuse outside of OPR jurisdiction. According to the Department, State Bar agencies often wait for OPR investigations to conclude before they decide to move forward with complaints against Department attorneys.

The Department believes it has the authority to review Department attorney complaints "in the first instance," and preempt State Bar investigations, under 28 U.S.C. section 530B. In relevant parts, section 530B states: (a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorneys engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State; and (b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

The Regulation Is an Unauthorized Executive Power and In Violation of the Tenth Amendment

While the Department believes the above regulations grant it authorization to create this Rulemaking, the Rulemaking is an unamortized abuse of Executive power and in violation of the Tenth Amendment. The Tenth Amendment states "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The regulation of attorney practice and licensure has been regulated by the States throughout American history. At no point in our nation's history has the Federal government licensed attorneys to practice law and advocate on behalf of the US Government. While the OPR, PMRU, and OIG were established to help examine attorney misconduct within the Department, at no point did the creation of these entities establish an attorney licensure structure that preempts State Bar authority.

The only apparent argument that such preemption of State Bar authority applies is the Department's reference to *Sperry v. Florida ex rel. Fla. Bar*, 373 U.S. 379 (1963). The Department states "Department attorneys are not required to be licensed in each State or jurisdiction in which

they practice – and are not liable for the unlicensed practice of law when they do so – because the Department's officers and agents do not need approval from a State or the District of Columbia to discharge their Federal responsibilities" under the *Sperry* holding. However, in this case, the Court only permitted a non-lawyer to practice before the United States Patent Office due to the legislative history of the Statute and its predecessor provisions show that Congress recognized the Patent Office registration confers a right to practice before the Office regardless of whether the State the practice is conducted would prohibit the conduct. The States maintain control over the practice of law except for the limited extent necessary for the accomplishment of the federal objectives granted by Congress, and only in this limited patent practice was the Tenth Amendment not violated.

Here, the Department would be in direct violation of the Tenth Amendment. Even under the *Sperry* holding, the Department would not be able to solely conduct attorney misconduct complaints and allegations and prevent State Bar investigations, as Congress has not delegated any authority to the Department to take such actions. This Rulemaking would be a direct overreach of Executive power and a violation of the Constitution.

The Regulation Leads to Further Weaponizion of the Federal Government

Lastly, while the Department claims this Rulemaking addresses the weaponization of bar complaints and investigation process, the results of this regulation would only increase government weaponization. Any administration could self-regulate their attorneys and claim their alleged misconduct was only to further the interests of the Government via rigorous, zealous advocacy by Department attorneys. Such internal review and preemption of States investigating attorney misconduct can only lead to improper use of Executive power for generations to come. There are better ways to be sure Department attorneys are fairly reviewed for professional misconduct, and that is done by independent arborators that are ethically walled off from the Department itself.

For the above reasons, CPPC is strongly opposed to this proposed Rulemaking.

Sincerely,

Marcus Friedman

Marcus Friedman
Administrative Director, Consumer Protection Policy Center
Centers for Public Interest Law
University of San Diego School of Law