

Public Policy Position
Proposed Rule by the U.S. Department of Justice Regarding Review of State Bar Complaints and Allegations Against Department of Justice Attorneys

The Immigration Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 712 members. The Immigration Law Section is not the State Bar of Michigan and the position expressed herein is that of the Immigration Law Section only and not the State Bar of Michigan. The State Bar's position is to oppose U.S. Department of Justice ("DOJ") proposed rule regarding review of state bar complaints and allegations against DOJ attorneys

The Immigration Law Section has a public policy decision-making body with 15 members. On April 2, 2026, the Section adopted its position after a discussion at a scheduled meeting followed by an electronic vote. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Oppose

Explanation:

The Immigration Law Section opposes the U.S. Department of Justice ("DOJ") proposed rule regarding review of state bar complaints and allegations against DOJ attorneys.

State Bar of Michigan Immigration Section members regularly practice before U.S. Department of Justice attorneys serving as administrative Immigration Judges in the Executive Office for Immigration Review and at the Board of Immigration Appeals. When our members represent individual clients in Petitions for Review and appeals in the U.S. District Courts and U.S. Courts of Appeals, the government is represented by the U.S. Department of Justice (DOJ) either at the local level or by the DOJ's Office of Immigration Litigation (OIL). Federal court practice is a rapidly emerging practice area for many of our members in the current dynamic and rapidly changing immigration policy environment.

Lawyer licensing and discipline are powers that rest within each State's disciplinary authorities. All state lawyer disciplinary systems exist for the protection of the public and to ensure integrity before the courts. The purpose of the proposed rule appears to be to delay, possibly indefinitely, and to prevent state disciplinary authorities from holding DOJ lawyers accountable for alleged violations of their ethical duties. All lawyers, including prosecutors, defense counsel, and government attorneys, are subject to rules of the jurisdiction in which they are licensed and may also be subject to discipline where they provide legal services. The proposed DOJ Rule violates the McDade Amendment which

provides that attorneys for the federal government are bound by the ethical rules of the State where the attorneys practice “to the same extent and in the same manner as other attorneys in that State.” 28 U.S.C. § 530B(a). The rule would delay State bar discipline by allowing the DOJ to undertake its own internal review process first. And, there is no timeline for actually implementing or completing the envisioned DOJ investigation. If DOJ delays its internal investigations, State disciplinary authorities that are subject to statutes of limitations governing the investigation and prosecution of misconduct may be unable to take action before its statute of limitations expires.

The proposed rule stands to undermine confidence in the rule of law. The United States Department of Justice should strive to build maximum public confidence in its attorneys by showing the public that they can meet the highest of ethical standards, not by seeking reduced accountability for its staff. Lawyers who work for the DOJ should continue to be fully subject to the system of discipline that has been in place in each State, territory, and the District of Columbia. If the DOJ chooses to implement its own system of discipline, it should do so as an additional option without any disruption or delay in this existing process.

The proposed rule states that “the willingness of some State bar disciplinary authorities to give credence to such complaints” is a problem that must be addressed. In a system designed to protect the public like Michigan’s attorney discipline system, it is appropriate that all complaints be considered. The Michigan process already includes a variety of procedural safeguards to protect against frivolous or politically-motivated complaints that lack merit with respect to our Michigan Rules of Professional Conduct.

Contact Person: Susan E. Reed

Email: susanree@michiganimmigrant.org