



SUPREME COURT OF GEORGIA

NATHAN DEAL JUDICIAL CENTER
ATLANTA, GEORGIA 30334

April 2, 2026

U.S. Department of Justice – Docket No. OAG199
Comment of the Supreme Court of Georgia

Our Court writes to comment on the current Department of Justice (“DOJ”) proposal to amend the existing 28 CFR part 77. The proposed amendment threatens significant federal overreach into an area exclusively reserved to the States: the regulation of the practice of law by those who choose to be barred in a particular State. By interfering with the States’ longstanding exclusive authority to regulate the practice of law within their boundaries, the proposed amendment conflicts with core principles of federalism. We recognize — and share — the important interest in avoiding the politicization of bar disciplinary proceedings. But the proposed amendment is not a proper way to serve that interest. Accordingly, as the government entity entrusted by the people of Georgia through our Constitution with the exclusive power to regulate the

practice of law in Georgia, we are duty-bound respectfully to oppose the adoption of the proposed amendment.¹

As the Supreme Court of the United States has made clear, “[s]ince the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions.” *Leis v. Flynt*, 439 U.S. 438, 442 (1979). Since *Leis*, that exclusivity has been repeatedly re-affirmed by the federal courts. *See, e.g., Paciulan v. George*, 229 F.3d 1226, 1230 (9th Cir. 2000) (“[S]tates traditionally have enjoyed the sole discretion to determine qualifications for bar membership.”); *Doyle v. Oklahoma Bar Ass’n*, 998 F.2d 1559, 1569 n.6 (10th Cir. 1993) (“The regulation of the practice of law is a state matter. ... The Oklahoma Supreme Court has exclusive jurisdiction in licensing and disciplinary matters.”).

Although the regulation of the practice of law by lawyers licensed by a particular state is an issue reserved to the States, we acknowledge that whether to require DOJ attorneys practicing exclusively in federal courts and federal agencies to be members of a state bar is a question

¹ This comment does not attempt to address other serious legal questions the proposed amendment may raise.

reserved to the federal government. But Congress has already answered that question in the affirmative by enacting 28 USC 530B (the “McDade Amendment”). We are unaware of any authority suggesting that the McDade Amendment has ever been understood as imposing or supporting any sort of federal authority over state supreme courts (or other state authorities) overseeing the regulation of the practice of law within their states. If DOJ is dissatisfied with Congress’s decision to require DOJ lawyers to be members of state bars, it should take that up with Congress.

Although the supporting materials promulgated by DOJ note the disciplinary powers afforded to the Professional Misconduct Review Unit (“PMRU”) in reviewing findings made by the Office of Professional Responsibility (“OPR”), those powers cannot supplant the plenary authority States have over state bar licensure. And we see no distinction between the PMRU’s disciplinary powers and those enjoyed by an organization that has in its employ members of the legal profession, namely the imposition of required additional training, suspension from employment, or termination of employment. With respect to licensed members of the State Bar of Georgia, however, it is within the Supreme

Court of Georgia's exclusive authority to oversee the process of investigation, litigation, and licensure-related sanction or discipline for violations of the Georgia Rules of Professional Conduct. See *Inquiry Concerning Johnson*, 316 Ga. 876, 879 n.4 (2023) (noting that the Supreme Court of Georgia has “exclusive authority to supervise and regulate the practice of law”); *Sons of Confederate Veterans v. Henry County Bd. of Comm’rs*, 315 Ga. 39, 52 n.10 (2022) (noting that the Georgia Constitution vests in this Court “as an incident of the judicial power the exclusive power to regulate the practice of law”).

In addition to inserting the federal government into the affairs of our Court, we fear that the process created by the proposed regulation could cause the public to lose trust that the disciplinary process still adequately ensures an ethical profession. In particular, if the proposed regulation were adopted, it would be clear to members of the public that Georgia-barred DOJ attorneys charged with unethical conduct would be afforded special treatment unavailable to other lawyers. That difference would impede the timely resolution of disciplinary matters involving DOJ lawyers barred in Georgia. And it would directly contradict the clear and unambiguous requirements of the McDade Amendment that DOJ

attorneys be treated “to the same extent and in the same manner as other attorneys in that State” in which DOJ attorneys engage in their duties. 28 USC 530B(a).

There are, of course, instances in which employment-related discipline for violation of ethical responsibilities is appropriate and should be meted out by DOJ. However, such employment-related investigation and imposition of discipline is in no way impeded by a parallel state disciplinary process that is entrusted exclusively to the Supreme Court of Georgia. Although employers have extensive authority concerning the employment status and discipline of attorneys within their employment, we understand this Court to be the only body authorized to sanction the license of a Georgia-barred attorney for misconduct, whether that misconduct violates Georgia Rule of Professional Conduct 3.3 (candor toward the tribunal), Rule 4.2 (improper communication with persons represented by counsel), Rule 8.4(a)(4) (professional conduct involving dishonesty, fraud, deceit, or misrepresentation), or any other element of the Georgia Rules of Professional Conduct. This proposed regulation would impermissibly infringe on the process for investigating allegations of unethical conduct,

as well as the process for determining the appropriate sanction for proven violations, both of which are reserved to the exclusive authority of this Court for the holder of a Georgia law license. Such infringements could take the form of a time-bar under existing state disciplinary rules because of DOJ delay or inaction, the unavailability of essential witnesses through the passage of time and the unauthorized delay of justice in the bar disciplinary process, the requirement that disclosures be made to DOJ in contravention of the confidentiality requirements of the Georgia Rules of Professional Conduct, or the implicit requirement in the proposed regulation that this Court and the State Bar of Georgia defer to any findings within the OPR/PMRU process that no ethical violation occurred.

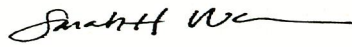
Notwithstanding our objection to the proposed regulation, our Court remains committed to collaboration between Georgia disciplinary authorities under our purview and OPR/PMRU to investigate properly all credible allegations of unethical conduct allegedly committed by DOJ personnel who hold a Georgia bar license to ensure that the public rightfully remains confident in the integrity of Georgia lawyers and our justice system. And like DOJ, we also recognize the importance of

avoiding the politicization of the disciplinary process. Indeed, we share DOJ's concern about the various private organizations that appear to be seeking to weaponize the bar complaint process. *See, e.g.,* Bob Bauer, *The Perilous War Over Legal Ethics in Government and Politics*, Executive Functions Substack, <https://www.execfunctions.org/p/the-perilous-war-over-legal-ethics>, March 17, 2026 (noting that “[s]cores of bar complaints have come to be filed [against federal attorneys], a large number filed by organizations dedicated to this specific mission,” and expressing concern about the “weaponization” of the disciplinary process). But the answer to private organizations seeking to politicize the disciplinary process is for disciplinary authorities to screen complaints properly (as Georgia lawyer disciplinary authorities do), not to replace those authorities with the DOJ.

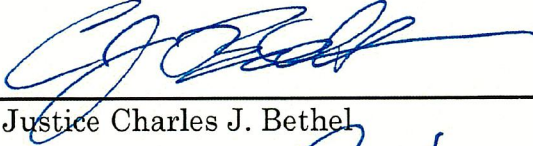
For all of the foregoing reasons, the Supreme Court of Georgia respectfully opposes the proposed amendments to 28 CFR part 77.



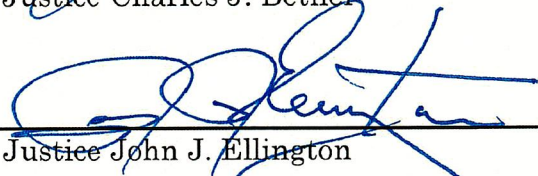
Chief Justice Nels S.D. Peterson



Presiding Justice Sarah H. Warren



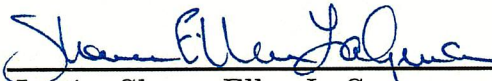
Justice Charles J. Bethel



Justice John J. Ellington



Justice Carla Wong McMillian



Justice Shawn Ellen LaGrue



Justice Verda M. Colvin



Justice Andrew A. Pinson



Justice Benjamin A. Land