



U.S. Department of Justice
Executive Office for United States Attorneys

Office of the Director

Room 2244A, Main Justice Building
210 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

OCT 20 2010

MEMORANDUM FOR: THE ACTING DEPUTY ATTORNEY GENERAL

THROUGH: David Margolis
Associate Deputy Attorney General

FROM: Lanny A. Breuer *LAB*
Assistant Attorney General
Criminal Division

H. Marshall Jarrett *HMJ*
Director
Executive Office for United States Attorneys

Lee J. Lofthus *LJL*
Assistant Attorney General for Administration

Louis DeFalaise *LD*
Director
Office of Attorney Recruitment and Management

Mary Patrice Brown *Mary Patrice Brown*
Acting Counsel
Office of Professional Responsibility

SUBJECT: Revised Process for Handling Professional Misconduct
Disciplinary Actions

PURPOSE: To Obtain the Acting Deputy Attorney General's Approval for
the Creation of a Revised Process for Handling Professional
Misconduct Disciplinary Actions.

TIMETABLE: As soon as possible.

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RECOMMENDATION:

The Acting Deputy Attorney General should approve the creation of the revised process for handling professional misconduct disciplinary actions, and allocate appropriate staffing, as described above.

APPROVE: _____

DISAPPROVE: _____

OTHER:

Approve - however, the Chief ~~12/5/10~~ of the PMRV must recommend a process for other litigating components, such as the Civil, Civil Rights, National Security, Tax and Environmental & Natural Resources Division ~~to~~ provide input on this new process. There ^{ultimately} should be only one Professional Misconduct disciplinary process. Also, the new Unit should ~~be~~ ^{be} ~~disciplined~~

report to the DAB on a regular basis
its compliance with the time frame set forth
in this memorandum. The frequency of
such reporting should be agreed upon by
the DAB after consultation with the PMRV
Chief once that individual is chosen.

JLP 12/5/10



The Deputy Attorney General

Washington, D.C. 20530

April 30, 2011

MEMORANDUM FOR LANNY A. BREUER
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

H. MARSHALL JARRETT
DIRECTOR
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

KEVIN A. OHLSON
CHIEF
PROFESSIONAL MISCONDUCT REVIEW UNIT

FROM: JAMES M. COLE 
DEPUTY ATTORNEY GENERAL

SUBJECT: Supplemental Guidance Regarding the Establishment of the
Professional Misconduct Review Unit

This memorandum supplements and clarifies the October 20, 2010, memorandum which, upon the signature of the then-Acting Deputy Attorney General on December 5, 2010, established the Professional Misconduct Review Unit (PMRU). This memorandum sets forth the time frames within which disciplinary actions will be resolved. All actions taken must be consistent with procedural rights afforded federal employees pursuant to 5 C.F.R. Part 752. The following deadlines apply:

Action	Time
The PMRU Chief (PMRUC) will review the Report of Investigation (ROI) of the Office of Professional Responsibility (OPR) and make a determination of whether a finding of professional misconduct is supported by the evidence and the applicable law.	The PMRUC will make the determination within 30 days of receipt of the ROI.

Subject: Supplemental Guidance Regarding the Establishment of the Professional Misconduct Review Unit

Action	Time
<p>If the PMRUC determines that the finding(s) of misconduct is not supported by the evidence and the applicable law, the PMRUC will refer the matter either to the subject attorney's component head or, through the Executive Office for United States Attorneys, to the subject attorney's United States Attorney (USA), for whatever action deemed appropriate. The PMRUC will notify the DAG of this action.</p>	<p>The PMRUC will refer the matter to the component head/USA within 10 days of the determination that no professional misconduct occurred, and will notify the DAG within 10 days of the referral to the component head/USA.</p>
<p>If the PMRUC preliminarily determines that a finding of misconduct is supported by the evidence and the applicable law, the PMRUC will refer the matter to a PMRU attorney (PMRUA) who will solicit Douglas¹ factor information from the component head or USA.²</p>	<ul style="list-style-type: none"> • The PMRUC will refer a matter to a PMRUA within 30 days of the PMRU's receipt of the OPR ROI. • The PMRUA will request Douglas factor information within 5 days of the PMRUA's receipt of the referral from the PMRUC. • The component head/USA will submit Douglas factor information within 14 days of the request.

¹See *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981).

²Where the subject attorney is no longer a Department employee, and the PMRUC determines a finding(s) of professional misconduct is supported by the evidence and the law, the PMRUC will issue a letter within 30 days advising the subject attorney of the Department's professional misconduct findings, and informing the subject attorney that he or she may submit an objection to the findings. The letter will include a copy of the relevant portions of the ROI (with attachments). The PMRUC will provide a copy of the letter to the component head or USA. The PMRUC will also have discretion to provide to the subject attorney all or portions of the evidence obtained by OPR during the course of its investigation. The subject attorney will have the opportunity to respond to the findings of the PMRUC within 30 days of receipt of the letter.

MEMORANDUM TO DISTRIBUTION LIST

Subject: Supplemental Guidance Regarding the Establishment of the Professional Misconduct Review Unit

Action	Time
<p>After review of the Douglas factor information, the PMRUA will decide whether disciplinary action is warranted. If the PMRUA determines that no disciplinary action is warranted, the PMRUA will notify the subject attorney and the PMRUC who, in turn, will notify the DAG and the component head or USA.</p>	<p>The PMRUA will notify the PMRUC and the subject attorney(s) that no disciplinary action is being proposed within 30 days of the PMRUA's receipt of the referral from the PMRUC. The PMRUC will notify the DAG, as well as the component head or USA, within 5 days of receiving the PMRUA's notification.</p>
<p>If, after review of the Douglas factor information, the PMRUA determines that disciplinary action is warranted, the PMRUA will issue a letter of reprimand or a proposal for discipline (suspension or removal) to the subject attorney and provide a copy to the component head or USA.</p>	<p>The PMRUA will issue a letter of reprimand or proposal for discipline within 45 days of the PMRUA's receipt of the referral from the PMRUC.</p>
<p>If the PMRUA issues a letter of reprimand, the letter will advise the subject attorney of the right to grieve the reprimand to the PMRUC, and of the deadline for doing so. Simultaneously, the PMRUA will provide a copy to the component head or USA and advise him or her of the ability to join in the subject attorney's grievance, or to otherwise comment on the letter of reprimand.</p>	<p>If the subject attorney decides to file a grievance, he or she must do so within 30 days of receipt of the reprimand.³ If the component head or USA decides to join in the grievance or otherwise comment on the letter of reprimand, he or she must do so within 30 days of receipt of the reprimand.</p>
<p>If the subject attorney files a timely grievance, the PMRUC will resolve it. Otherwise, the action becomes final upon the expiration of the grievance period.</p>	<p>The PMRUC will resolve the grievance within 45 days of receipt.</p>

³DOJ Order 1200.1 affords an employee 15 days to grieve a covered action, but 30 days are granted in this context as a result of the complexity of the issues and to avoid requests for extensions.

MEMORANDUM TO DISTRIBUTION LIST

Subject: Supplemental Guidance Regarding the Establishment of the Professional Misconduct Review Unit

Action	Time
<p>If the PMRUA proposes suspension or removal, the proposal will advise the subject attorney of the right to respond orally and in writing to the PMRUC, and of the deadline for providing such a response. Simultaneously, the PMRUA will provide a copy of the proposal to the component head or USA, and advise him or her of the ability to join the subject attorney in the response, respond separately, or otherwise comment on the proposal.</p>	<p>If the subject attorney decides to submit a response, he or she must do so within 30 days of receipt of the proposal.</p> <p>If the component head or USA decides to join in the response, respond separately, or otherwise comment on the proposal, he or she must do so within 30 days of receipt of the proposal.</p>
<p>The PMRUC will issue a decision in the matter. The decision letter will inform the subject attorney of the right to grieve the disciplinary action to the Deputy Attorney General or his designee (for suspensions of 14 days or less), or to appeal the disciplinary action to the Merit Systems Protection Board (MSPB) (for suspensions of 15 days or more, or for removals). The PMRUC will simultaneously provide a copy of the decision to the component head or USA and notify them of their opportunity to join in the subject attorney's response, respond separately, or otherwise comment on the decision.</p>	<p>The PMRUC will issue a decision within 45 days of receipt of the subject attorney's response or of the expiration of the response period.</p> <p>If the subject attorney decides to file a grievance, he or she must do so within 30 days of receipt of the PMRUC's decision.</p> <p>If the component head or USA decides to join in the grievance, respond separately, or otherwise comment on the decision, he or she must do so within 30 days of receipt of PMRUC's decision.</p> <p>The time frames for submission of an appeal to the MSPB are set forth in 5 C.F.R. § 1201.22(b).</p>
<p>If the subject attorney grieves the PMRUC's decision to the DAG, the DAG or his designee will resolve the grievance. Otherwise, the action becomes final upon the expiration of the grievance period.</p>	<p>The DAG or his designee will resolve the grievance within 30 days of receipt.</p>
<p>If the subject attorney appeals the disciplinary action to the MSPB, the MSPB will resolve the appeal.</p>	<p>See 5 C.F.R. Part 1201.</p>

MEMORANDUM TO DISTRIBUTION LIST

Subject: Supplemental Guidance Regarding the Establishment of the Professional Misconduct Review Unit

Action	Time
When an action based on a finding of an intentional or reckless violation of a rule or rules of professional misconduct becomes final, the PMRUC will refer the matter to the appropriate state bar.	The PMRUC will refer the matter to the state bar within 30 days of the final disposition.

In extraordinary cases, the PMRU Chief may extend the time for grievances or responses to proposed discipline for 15 days without notification to the DAG. Otherwise, any extension of the above-referenced deadlines must be approved by the DAG or his designee. In addition, the PMRU will submit to the DAG a compliance report every six months beginning on October 1, 2011, establishing compliance with the above-referenced deadlines and describing any actions taken by the PMRU.



The Deputy Attorney General

Washington, D.C. 20530

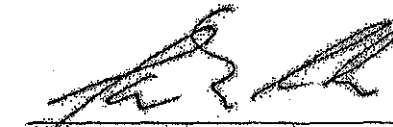
DELEGATION OF AUTHORITY

Pursuant to the authority vested in me as Deputy Attorney General of the United States, including 28 C.F.R. § 0.15, I hereby delegate to:

Kevin Ohlson, Chief, Professional Misconduct Review Unit, the authority to issue or propose disciplinary action and to resolve grievances in matters involving Assistant United States Attorneys and career appointed Criminal Division attorneys when the Office of Professional Responsibility completes a final report of investigation and makes an assessment that professional misconduct occurred.

Terrence Berg and Lara Peirce, Attorneys, Professional Misconduct Review Unit, the authority to propose disciplinary actions or issue written reprimands in matters referred to them for that purpose by the Chief of the Professional Misconduct Review Unit.

Date: May 16, 2011



James M. Cole
Deputy Attorney General