



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

This responds to your letter, dated September 12, 2024, to the Department of Justice (Department) Office of Professional Responsibility (OPR), regarding the ongoing investigations and prosecutions overseen by Special Counsel Jack Smith. This letter supplements information the Department previously provided in communications dated June 15, 2023; September 12, 2023; December 15, 2023; January 4, 2024; June 20, 2024; August 6, 2024; August 29, 2024; and September 13, 2024.

As we explained in response to your prior correspondences on this topic, OPR's longstanding policy and practice is to hold in abeyance misconduct allegations concerning Department attorneys during pending litigation.¹ In your most recent letter, you expressed concerns regarding this practice, stating that "it allows Department attorneys who engage in misconduct to continue to do so until the conclusion of the case," which risks "prolonged prosecutorial misconduct." Such concern is misplaced. Courts supervise the litigants before them and have the authority to review allegations of prosecutorial misconduct and hold prosecutors accountable by imposing sanctions on the government or individual prosecutors if appropriate. The additional availability of an OPR review provides further assurance to the public that prosecutors who engage in misconduct will face appropriate professional consequences.

You also raised the concern that, under this practice, "OPR will never have the chance to examine the ethical allegations against" a prosecutor who faces allegations of misconduct and leaves the Department. This concern is also misplaced. OPR has jurisdiction to open an investigation, or to continue with one, even if the subject attorney has left the Department. In fact, OPR has conducted many investigations of former Department attorneys. Upon conclusion of an investigation and a sustained finding of professional misconduct implicating bar rules, the attorney will be referred by the Department to a state attorney disciplinary authority.

¹ Letter from Hon. Carlos F. Uriarte to Hon. Jim Jordan (June 20, 2024); Letter from Hon. Carlos F. Uriarte to Hon. Jim Jordan (Aug. 6, 2024).

OPR's longstanding practice of investigating allegations of attorney misconduct after the conclusion of the cases from which they arise is the result of extensive experience in handling such complaints, including those made during or that stem from ongoing litigation. Among the numerous reasons for this practice are the following:

- Action by OPR to investigate or otherwise address allegations of misconduct while a related case proceeds before a court could interfere with or disrupt a court's own processes for supervising that case. OPR's practice avoids that risk and does not limit a court's authority to investigate and address an issue within the ongoing litigation, including by imposing sanctions or referring attorneys for discipline if appropriate.
- A misconduct investigation amid an ongoing case would be disruptive to the attorneys and witnesses involved. As part of such an investigation, for example, OPR could need to interview opposing counsel, the opposing party, or individuals associated with the opposing party. But attempting to conduct such interviews or obtain records from the opposing party or their associates while they actively litigate their case may be perceived as interfering with their participation in the litigation, and a refusal by such individuals to cooperate would likely hinder OPR's ability to discover necessary evidence. As a result, OPR's ability to effectively resolve the allegations could be undermined.
- Investigations during live cases also risk an internal affairs office becoming an arm of a criminal defendant or civil litigant. If OPR were regularly to act on allegations while the underlying cases continued, defendants could use complaints as a means to have the trial team replaced or otherwise avoid or delay accountability in the case. Under OPR's practice, trial courts are able to assess claims of misconduct and order corrective action as they manage underlying cases.
- Finally, waiting until the conclusion of the litigation allows consideration of all the allegations as a whole, in contrast to a piecemeal approach, which limits the availability of information that is considered by investigators and could result in erroneous conclusions. Events that happen as the litigation proceeds may shed light on the allegations, either positively or negatively, and OPR's practice provides its investigators the opportunity to benefit from those insights.

Investigative entities should follow their standard practices regardless of the nature of the underlying case or persons involved. In the case referenced by your September 12, 2024, letter, OPR has reviewed the allegations, gathered relevant public source documents, and is monitoring the ongoing, underlying case so that its investigators will be prepared to proceed at the appropriate time, consistent with the practices discussed here and in our other communications.

In your September 12, 2024, letter, you also renewed your request for an OPR investigation into the conduct of a Department attorney who participated in *United States v. Stone*, a prosecution by the U.S. Attorney's Office for the District of Columbia that resulted in

allegations investigated by the Office of the Inspector General (OIG). As noted in its report, the
OIG assumed jurisdiction over allegations concerning *Stone* and thoroughly investigated the
conduct of various current and former Department prosecutors associated with the sentencing of
the defendant. According to the OIG, its investigation—which was conducted over multiple
years—“included a review of documents, emails, phone records, and available text messages and
an analysis of relevant laws, regulations, DOJ policies, and [U.S. Sentencing Guidelines]
provisions. [The OIG] also conducted interviews of 24 current and former Department attorneys
and officials, several over multiple days.”² The OIG’s investigation resulted in no findings of
professional misconduct by any current or former Department attorney.

When the OIG determines that a Department attorney has violated a rule, regulation,
policy, or other standard, it refers its findings to the Professional Misconduct Review Unit
(PMRU).³ It made no such referral in the *Stone* investigation. The scope and thoroughness of the
OIG’s work gives no reason to believe that further investigation by OPR would uncover
evidence of professional misconduct. Reinvestigating matters previously reviewed by another
internal affairs entity consumes scarce investigative resources and is generally not done absent
specific reasons to believe the original investigation was deficient.

We hope this information is helpful. Please do not hesitate to contact this office if we
may provide additional assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

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CARLOS URIARTE
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Carlos Felipe Uriarte
Assistant Attorney General

cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

² Office of the Inspector Gen., U.S. Dep’t of Justice, 24-081, An Investigation of Allegations Concerning the
Department of Justice’s Handling of the Government’s Sentencing Recommendation in *United States v. Roger Stone*
at 3 (July 2024).

³ See, e.g., OIG Investigative Summary 24-095 (Aug. 21, 2024) (investigation into conduct of AUSA) and 24-077
(July 9, 2024) (investigation into conduct of Immigration Judge). Referrals to state bars of potential violations of
applicable rules or professional conduct may only be made with the express approval of the PMRU.