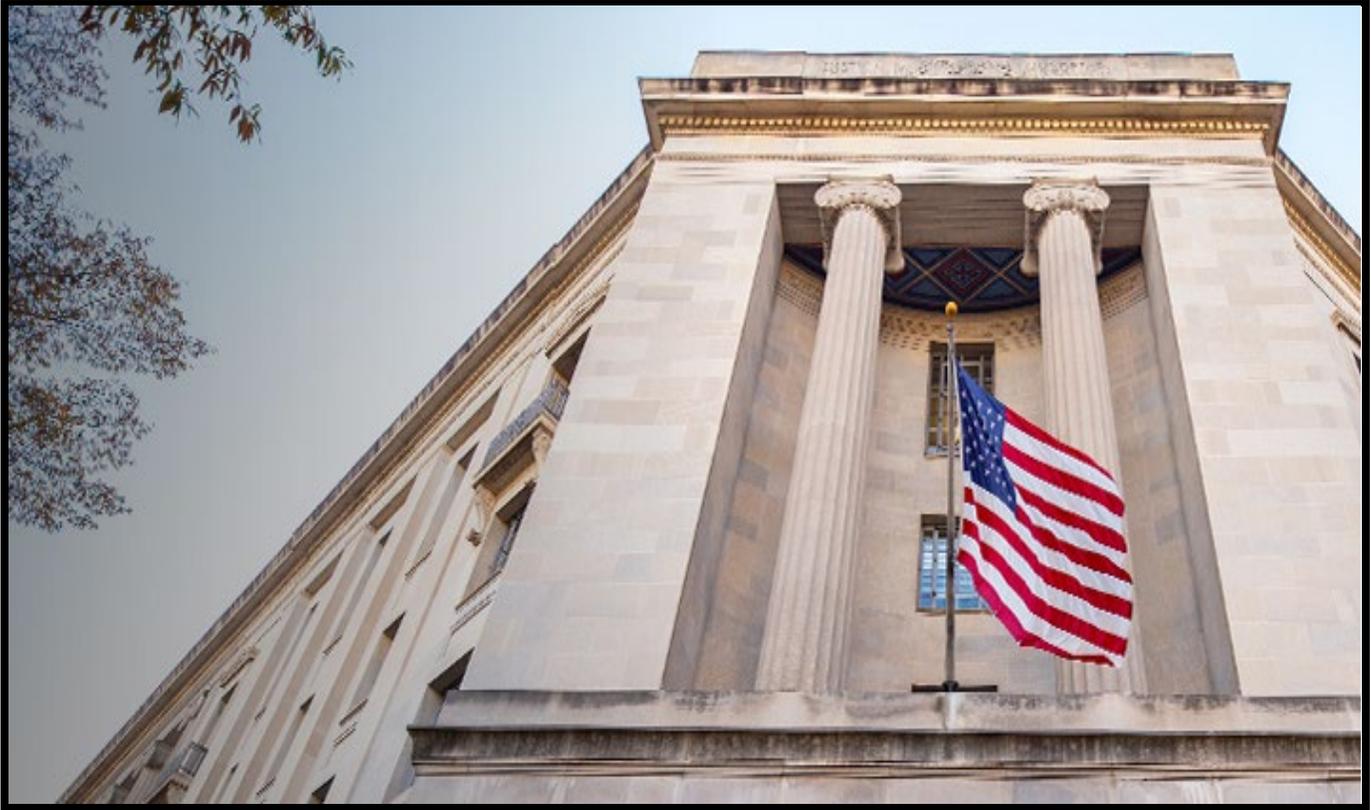




U.S. Department of Justice Office of Professional Responsibility 2023 Annual Report



MESSAGE FROM THE COUNSEL



In Fiscal Year 2023, the Office of Professional Responsibility (OPR) continued to perform its mission of ensuring that Department of Justice (Department) attorneys perform to the highest ethical standards. OPR conducted thorough investigations, which in some cases led to significant findings of professional misconduct through which Department attorneys were held accountable for their actions. OPR reviewed and responded to over a thousand complaints, carefully reviewing the allegations to determine whether further action by OPR was warranted. OPR also engaged in substantial training efforts to promote best practices in the areas in which OPR frequently sees missteps by Department attorneys.

This report provides information and statistical data concerning OPR's activities during Fiscal Year 2023 (October 1, 2022, through September 30, 2023). We summarize our professional misconduct investigations and significant inquiries and describe OPR's various additional responsibilities and duties, including reviewing complaints of retaliation against Federal Bureau of Investigation whistleblowers.

During the fiscal year, OPR completed 19 investigations. In many cases, the review required analyzing thousands of pages of pleadings, orders, transcripts, and internal communications. In all of the investigations, OPR attorneys conducted extensive, detailed interviews of witnesses and subjects. The Fiscal Year 2023 investigations concerned allegations on a range of topics, including discovery, lack of candor, conflict of interest, failure to maintain an active bar license, and grand jury abuse, among others. OPR found professional misconduct, that is, that the subject attorney acted intentionally or recklessly, in 68 percent of the matters. When appropriate, attorneys subject to professional misconduct findings were disciplined and, in cases involving violations of the rules of professional conduct, referred to state attorney disciplinary authorities. OPR also opened 51 inquiries, which enabled OPR to assess and promptly resolve matters without a full investigation.

As described in this report, OPR built on its efforts in prior years to address the increase in Department attorneys failing to maintain an active law license, which resulted primarily from attorneys' failure to pay their bar dues. After observing that attorneys' failure to update their contact information with the bar was a significant cause of many bar lapse cases seen this fiscal year, OPR worked with other Department components involved in oversight of Department attorneys to correct this deficiency through the annual attorney bar recertification process.

In support of the Department's Strategic Plan objective to uphold the rule of law, OPR continued its outreach to Department components and U.S. Attorneys' Offices to provide information and training to Department attorneys. Through in-person and video training, as well as written guidance, OPR managers alerted attorneys and supervisors to the frequent problems and issues that result in OPR investigations and misconduct findings and advised on best practices relating to various litigation issues.

**U.S. Department of Justice
Office of Professional Responsibility**

Fiscal Year 2023 Annual Report



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INTRODUCTION

A. Overview of OPR

On December 9, 1975, Attorney General Edward H. Levi issued an order establishing the Office of Professional Responsibility (OPR) to ensure that Department of Justice (Department or DOJ) employees perform their duties in accordance with the high professional standards expected of attorneys working in the nation's principal law enforcement agency. Department attorneys are privileged to represent the United States, and they exercise significant power, but that power carries with it the obligation to adhere to the highest professional standards. OPR is an independent, nonpartisan internal entity that investigates allegations of professional misconduct against Department attorneys relating to the exercise of their authority to investigate, litigate, or provide legal advice. OPR carefully reviews and thoroughly investigates misconduct allegations against Department attorneys based solely on the facts and applicable standards, without bias or favoritism.



During the four decades since it was established, OPR has demonstrated a high level of expertise in investigating professional misconduct allegations against Department attorneys and analyzing and applying the complex legal and ethical standards governing attorney conduct. Through its staff of experienced attorneys, who have decades of prosecutorial and civil litigation experience, OPR consistently ensures that Department attorneys adhere to stringent ethical standards and maintain the trust of the American people. Any instance of professional misconduct is troubling, and most Department attorneys conduct themselves with the utmost integrity and professionalism. However, maintaining trust requires that when they do not, Department attorneys are held accountable.

OPR discloses information regarding its work to the extent allowed by law. The information contained in this public report and on OPR's website is limited by the Privacy Act of 1974, which requires that personnel records be protected. During Fiscal Year 2023, OPR continued to promptly post summaries of professional misconduct investigations on its website. In addition, OPR exceeds the scope of public disclosures made by most other investigative agencies by disclosing information about its review and investigative procedures. Information about those procedures, as well as information relating to OPR's transparency and independence, can be found on OPR's website.

(www.justice.gov/opr). Individuals with questions about OPR should visit the website, particularly the Frequently Asked Questions section.

B. Significant Management Challenges

Like many governmental entities, OPR must replace aging software programs. In this fiscal year, OPR worked with the Justice Management Division to obtain funding to procure new case and document management software. In the upcoming fiscal year, OPR will continue its efforts to identify an appropriate replacement system and obtain the necessary funding.

OPR leadership also continued to respond to proposed changes to expand the jurisdiction of the Department's Office of the Inspector General (OIG) into the area of attorney professional misconduct allegations. The proposed jurisdictional changes would alter the Department's long-standing and well-established system for investigating and assessing attorney misconduct by authorizing the OIG, in its discretion, to conduct attorney misconduct investigations. Throughout its 48-year history, OPR has consistently demonstrated that it is a strong, independent entity within the Department that effectively resolves challenging issues concerning attorney ethics. The Department, consistently in multiple administrations, has opposed similar jurisdictional changes, which add an additional layer of bureaucracy, require duplicative resources, and undermine the current system for capably and efficiently investigating attorney professional misconduct allegations.

C. Overview of OPR Procedures in Misconduct Matters

OPR is primarily responsible for reviewing allegations of professional misconduct against current or former Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice. OPR's jurisdiction also includes reviewing professional misconduct allegations against immigration judges and members of the Board of Immigration Appeals. In addition, OPR has jurisdiction to investigate allegations of misconduct against Department law enforcement personnel that are related to allegations of attorney misconduct within OPR's jurisdiction. OPR may also investigate other matters when requested or authorized to do so by the Attorney General or the Deputy Attorney General.

OPR investigates allegations that Department attorneys have violated constitutional or statutory obligations; Department policies, rules, or regulations; or state rules of attorney professional conduct. Professional misconduct allegations investigated

by OPR include criminal and civil discovery violations; lack of candor or misrepresentations to the court or opposing counsel; improper conduct before a grand jury; improper opening statements and closing arguments; failure to competently and diligently represent the interests of the government; failure to comply with court orders; unauthorized disclosure of confidential or secret government information; failure to keep supervisors informed of significant developments in a case; improper coercion, intimidation, or questioning of witnesses; improper introduction of evidence; and conflicts of interest. In addition, OPR reviews cases in which courts have awarded attorney's fees to opposing parties based on findings that the government's conduct was frivolous, vexatious, or in bad faith.

OPR receives allegations from a wide variety of sources, including internal Department entities, such as U.S. Attorneys' Offices (USAO) and the Department's litigating components, as well as self-reports from Department attorneys; federal judges; private individuals and attorneys; criminal defendants and civil litigants; other federal agencies; state and local government agencies; congressional referrals; and media reports. OPR also conducts weekly searches of legal databases to identify, review, and analyze cases involving judicial criticism and judicial findings of misconduct to determine whether the criticism or findings warrant further inquiry or investigation by OPR. Department employees are required to report all judicial findings of misconduct to OPR. In addition, Department employees are obligated to report non-frivolous allegations of misconduct to their supervisors or directly to OPR. Supervisors must, in turn, report all non-frivolous allegations of serious misconduct to OPR. Supervisors and employees are encouraged to contact OPR for assistance in determining whether a matter should be referred to OPR.

Upon receipt, OPR reviews each allegation and determines whether further inquiry or investigation is warranted. This determination is a matter of investigative judgment and involves consideration of many factors, including the nature of the allegation, its apparent credibility, its specificity, its susceptibility to verification, and its source. Although some matters begin as investigations, OPR typically first initiates an inquiry and assesses the information obtained prior to conducting a full investigation.

Most complaints received by OPR do not warrant further review because, for example, the complaint is outside OPR's jurisdiction, pertains to matters addressed by a court with no findings of misconduct, is frivolous on its face, or is vague and unsupported by any evidence. In some cases, OPR initiates an inquiry because more information is needed to assess the matter. OPR may request additional information from the complainant or obtain a written response from the attorney against whom the misconduct allegations were made. OPR also may review other relevant materials, such as pleadings

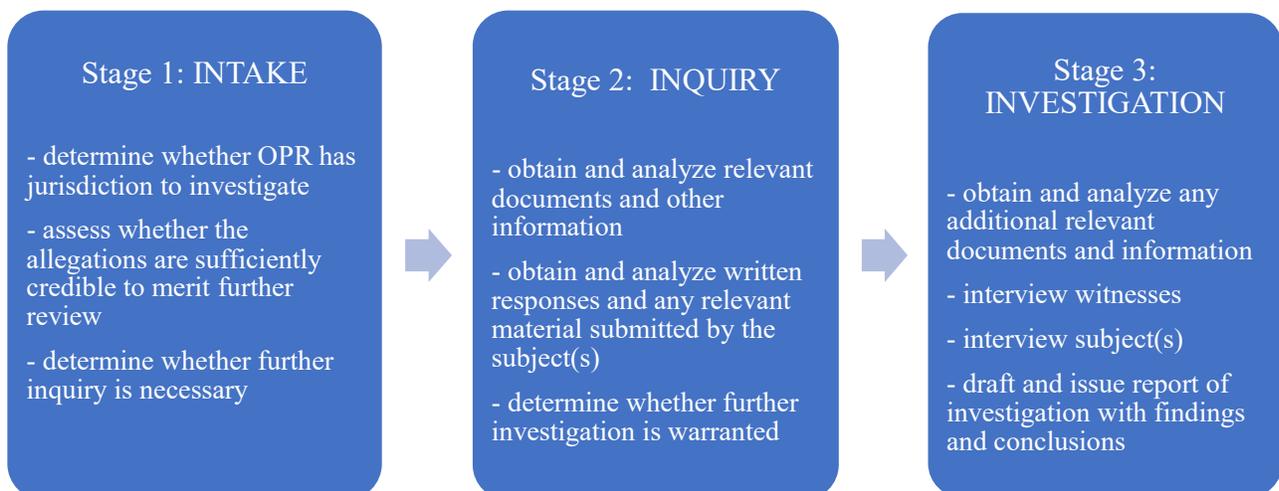
and transcripts. Most inquiries are closed based on a determination that the matter lacks merit or that further investigation is not likely to result in a misconduct finding.

When information gathered during an inquiry indicates that further investigation is warranted, the matter is converted to an investigation. Before making a finding of professional misconduct, OPR conducts a thorough investigation, including a review of the subject's written response to the allegations, case files, court and other relevant records, and interviews of witnesses and the subject. Interviews of witnesses and subject attorneys are conducted under oath, and subject interviews are transcribed by a court reporter. When OPR finds professional misconduct, the subject is given an opportunity to review the draft report and to provide comments on the facts and OPR's conclusions. All Department employees have an obligation to cooperate with and to provide complete and candid information to OPR. Employees who fail or refuse to cooperate with OPR, after being given warnings concerning the use of their statements, may be subject to formal discipline, including termination of employment.

OPR may initiate an inquiry or investigation into allegations concerning a subject attorney's work at the Department even if the attorney is no longer employed by the Department at the time of the inquiry or investigation. If a Department attorney resigns or retires during an investigation, OPR ordinarily completes its investigation in order to assess the impact of the alleged misconduct, to consider a referral to the attorney's state bar disciplinary authorities, and to permit the Attorney General and Deputy Attorney General to consider the need for changes in Department policies or practices. In certain cases, however, the Office of the Deputy Attorney General may authorize OPR to terminate an investigation if it is in the best interest of the Department to do so.

The stages of OPR's workflow process are shown below.

OPR Workflow Process



OPR reports the results of its investigations to the Office of the Deputy Attorney General and, when appropriate, to other components in the Department, including the litigating divisions, USAOs, and the Executive Office for U.S. Attorneys. OPR also reviews case files and statistical data relating to matters under investigation to identify noteworthy trends or systemic problems in the programs, policies, and operations of the Department. Trends and systemic problems are brought to the attention of appropriate Department management officials.

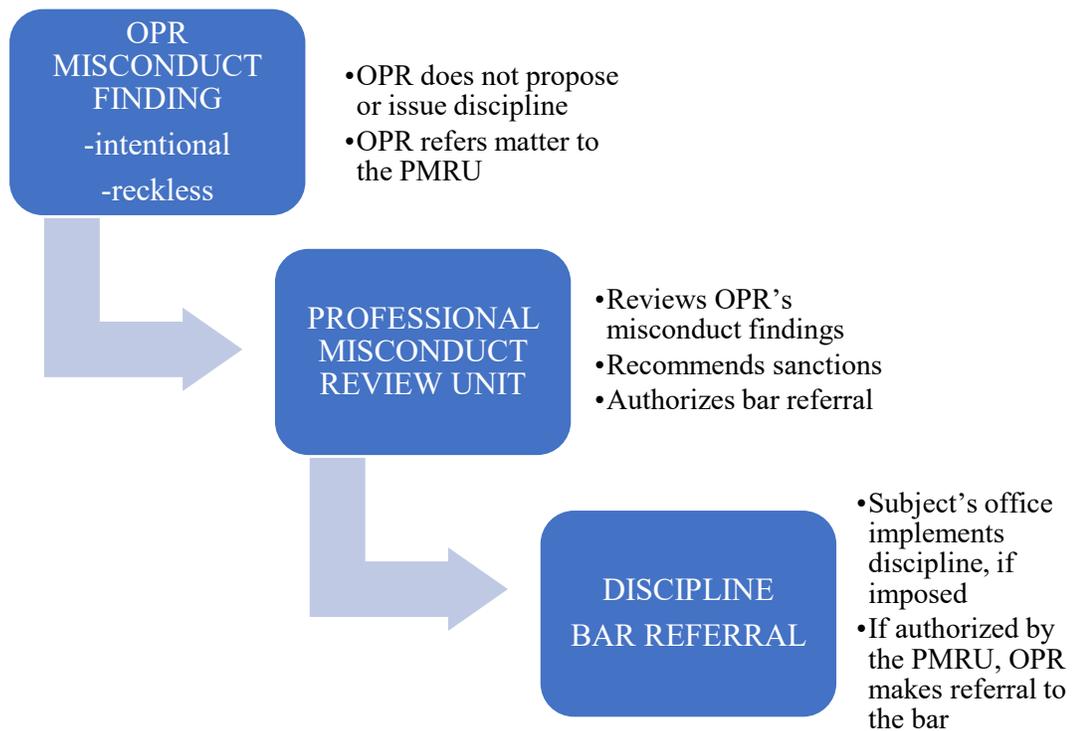
OPR does not propose or impose discipline. In January 2011, the Department established the Professional Misconduct Review Unit (PMRU), which has jurisdiction over most Department attorneys and is responsible for reviewing OPR's findings of professional misconduct against Department attorneys and former attorneys. The PMRU chief reports to the Deputy Attorney General. The PMRU reviews matters in which OPR finds intentional or reckless professional misconduct and determines whether those findings are supported by the evidence and the applicable laws, rules, and regulations.¹ The PMRU also determines the appropriate level of discipline to be imposed and, if a rule of professional conduct is implicated by the attorney's conduct, authorizes OPR to refer matters to appropriate state attorney disciplinary authorities.²

Once a disciplinary action becomes final and after authorization by the PMRU (for matters within its jurisdiction) or the Office of the Deputy Attorney General, OPR notifies the appropriate state attorney disciplinary authorities of conduct that implicates the rules of professional conduct. OPR does not notify disciplinary authorities when the conduct involves internal Department policies that do not implicate a rule of professional conduct. This process is shown below.

¹ OPR's findings of poor judgment or mistake are referred to Department component heads, the Executive Office for U.S. Attorneys, and U.S. Attorneys, for appropriate action.

² Subjects have a right to grieve admonishments, reprimands, and disciplinary decisions imposing a suspension of less than 15 days. Suspensions of more than 14 days or removal from the federal service may be appealed to the Merit Systems Protection Board.

Misconduct Findings Review Process



D. OPR’s Ancillary Responsibilities

In addition to reviewing and resolving Department attorney misconduct allegations, other OPR responsibilities include training and educating Department attorneys regarding issues pertaining to professional misconduct; evaluating claims of whistleblower retaliation by Federal Bureau of Investigation (FBI) personnel; reviewing misconduct allegations against non-Department attorneys and members of the judiciary and, when appropriate, making referrals to disciplinary authorities; reviewing OIG investigations of attorney misconduct and, when appropriate, recommending referral to appropriate state attorney disciplinary authorities; representing the Department with external stakeholders on matters relating to attorney professional misconduct; and handling special projects at the request of the Attorney General and Deputy Attorney General. These responsibilities are discussed in greater detail later in this report.

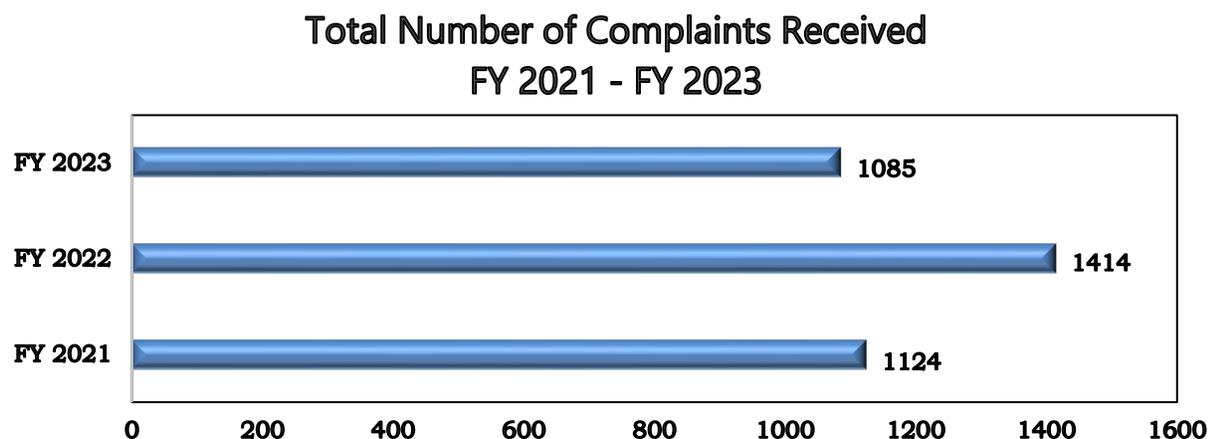
Section I: Statistical Overview of Professional Misconduct Allegations and OPR Actions

This section provides information concerning OPR's review of allegations of professional misconduct involving Department attorneys, including immigration judges.

A. Intake and Initial Evaluation of Professional Misconduct Complaints

In Fiscal Year 2023, OPR received 1,085 new complaints, 178 of which, or approximately 16 percent, were from inmates. Many complaints related to matters that did not fall within OPR's jurisdiction and, when appropriate, were referred to other government agencies or Department components. In Fiscal Year 2023, the total number of complaints decreased by 23 percent from the prior year. This is in sharp contrast to the steady increase in complaints received in the years leading up to this fiscal year. Graph 1 compares the number of complaints received for the last three fiscal years.

Graph 1



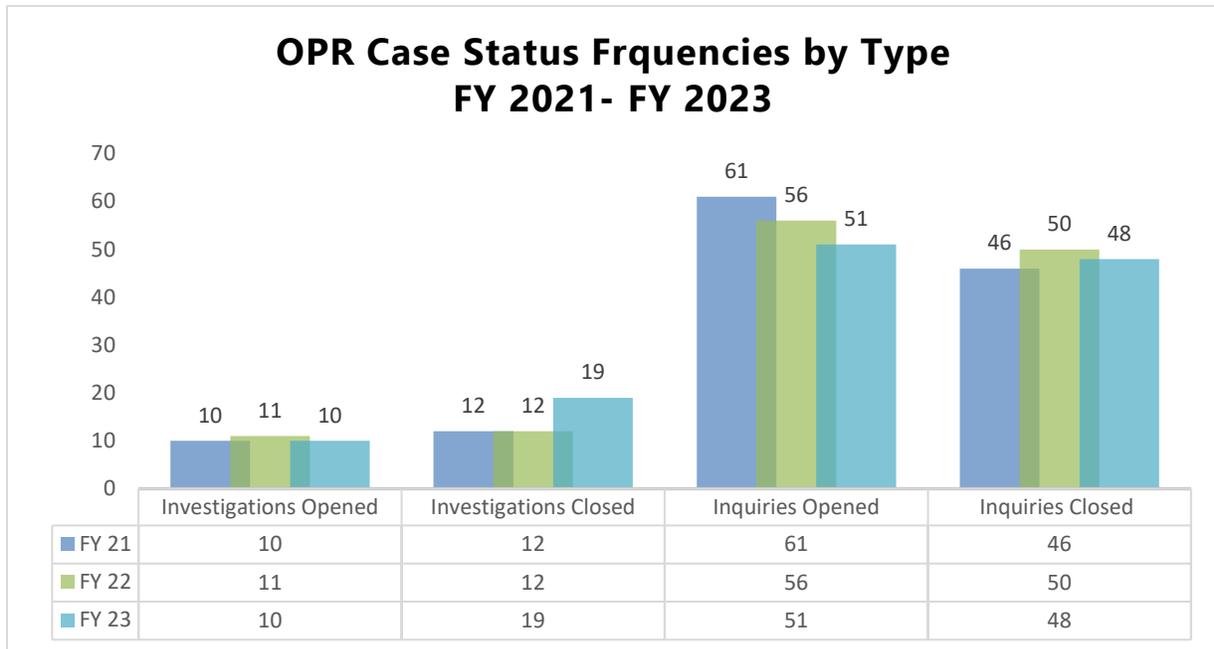
OPR determined that 51 complaints warranted further review and opened inquiries in those matters.³ The remaining matters did not warrant an inquiry or investigation by OPR because, for example, they sought review of allegations that were raised or could have been raised during litigation; had been considered and rejected by a court; or were frivolous, vague, or unsupported by the evidence. Those matters were reviewed and resolved by experienced analysts working under the supervision of an OPR attorney manager.

³ Some of the complaints that were opened as inquiries may have been received by OPR prior to Fiscal Year 2023.

B. Professional Misconduct Investigations and Inquiries by Fiscal Year

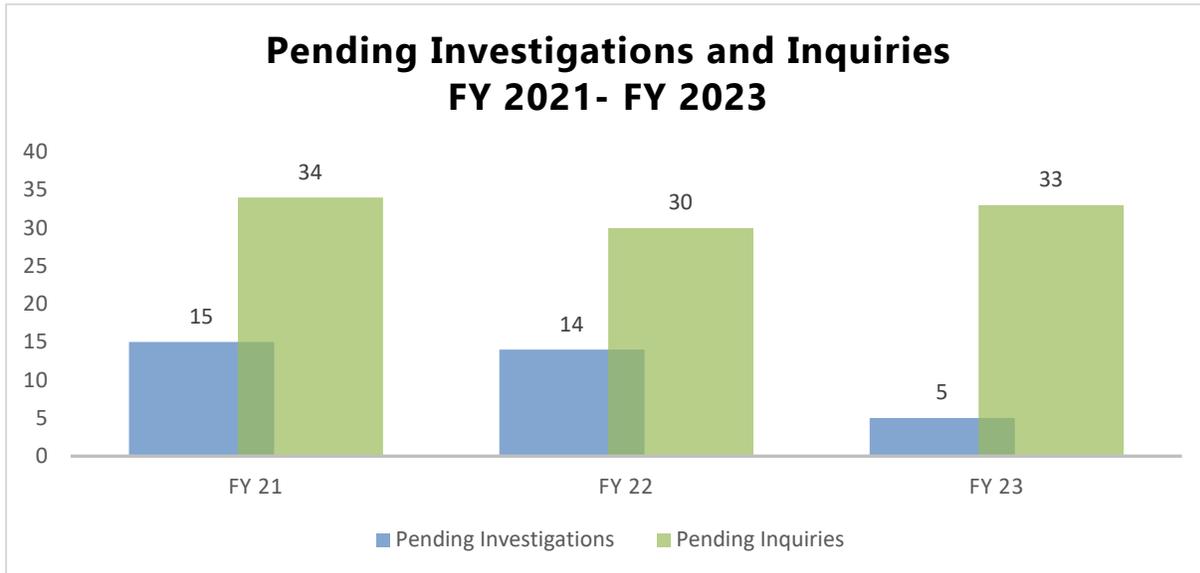
Graph 2 compares the number of investigations and inquiries OPR opened and closed for the last three fiscal years. As reflected in the graph, in Fiscal Year 2023, OPR opened 51 inquiries and closed 48, and opened 10 investigations and closed 19.

Graph 2



Because of the complexity of many of the matters received by OPR, many investigations and inquiries remain under review at the close of the fiscal year, and the outcomes of those matters are reported in the fiscal year they are closed. At the end of Fiscal Year 2023, there were 5 pending investigations and 33 pending inquiries. Graph 3 compares the number of inquiries and investigations pending at the end of each of the last three fiscal years.

Graph 3



C. Professional Misconduct Inquiries Opened and Closed in Fiscal Year 2023

When OPR has determined that an allegation warrants further review, OPR will initiate an inquiry. Most complaints leading to further action by OPR arise from judicial findings of misconduct against a Department attorney, from self-reports by Department employees, or from referrals by their offices. The sources of the complaints for the 51 inquiries opened in Fiscal Year 2023 are set forth in Table 1.⁴

⁴ OPR also evaluates misconduct allegations made by Department employees against non-Department attorneys to determine whether the Department should make a referral to a state attorney disciplinary authority. The 51 matters referred to above do not include matters involving proposed bar notifications relating to non-Department attorneys.

Table 1

Sources of Professional Misconduct Complaints against Department Attorneys in Inquiries Opened in FY 2023		
Source	Complaints Leading to Inquiries	Percentage of All Inquiries
Department components, including self-reports (unrelated to judicial findings of misconduct)	37	72%
Judicial opinions and referrals, including self-reports and referrals by Department employees of judicial criticism and findings of misconduct	9	18%
Private attorneys	3	6%
Private parties	2	4%
Total	51	100%

The types of allegations in these inquiries are set forth in Table 2. Because some inquiries included more than one allegation, the total number of allegations exceeds 51. Consistent with prior years, allegations concerning lack of candor were the most common.

Table 2

Types of Professional Misconduct Allegations in Inquiries Opened in FY 2023		
Type of Misconduct Allegations	Number of Allegations	Percentage of Allegations
Misrepresentation to the court or opposing counsel	23	23%
Failure to maintain an active bar membership	20	20%
Failure to comply with discovery obligations	14	14%
Abuse of authority, including abuse of prosecutorial discretion	10	10%
Failure to comply with Department rules and regulations	9	9%
Improper remarks to a grand jury, during trial, or in pleadings	7	7%
Failure to competently or diligently represent the client's interests	3	3%
Failure to comply with court orders and federal rules	3	3%
Failure to comply with federal law	3	3%
Interference with defendant's rights	3	3%
Failure to keep the client informed	2	2%
Conflict of interest	2	2%
Fitness to practice law or represent the government	1	1%
Total	100	100%

In Fiscal Year 2023, OPR resolved and closed 48 inquiries involving allegations against Department attorneys. These matters involved 110 separate allegations of professional misconduct. OPR may designate more than one Department attorney as the subject of an inquiry, and many matters involved multiple allegations. OPR closes an inquiry when it determines that further investigation is not likely to lead to a finding of professional misconduct or it otherwise lacks merit.⁵

D. Professional Misconduct Investigations Opened in Fiscal Year 2023

The most serious allegations may be opened as investigations, but generally investigations are converted from inquiries after records have been obtained and reviewed. Table 3 identifies the sources of the 10 investigations OPR opened in Fiscal Year 2023.

Table 3

Sources of Complaints against Department Attorneys for Professional Misconduct Investigations Opened in FY 2023		
Source	Complaints Leading to Investigations	Percentage of All Investigations
Department components, including self-reports (unrelated to judicial findings of misconduct)	9	90%
Judicial opinions and referrals, including self-report and referrals by Department employees of judicial criticism and findings of misconduct	1	10%
Total	10	100%

⁵ In Fiscal Year 2023, 10 inquiries were converted to investigations. When an inquiry is converted to an investigation, the matter thereafter is reported in the investigation statistics rather than the inquiry statistics section of OPR’s annual report.

Some of these investigations involved multiple subjects. In addition, because many investigations involved multiple professional misconduct allegations, there were 15 separate allegations of misconduct. The types of allegations investigated are set forth in Table 4.

Table 4

Types of Professional Misconduct Allegations in Investigations Opened in FY 2023		
Types of Misconduct Allegations	Number of Allegations	Percentage of Allegations in Investigations
Failure to maintain an active bar membership	7	46.6%
Misrepresentation to the court or opposing counsel	2	13.3%
Failure to competently or diligently represent the client's interests	2	13.3%
Unauthorized practice of law	1	6.7%
Failure to comply with Department rules and regulations	1	6.7%
Failure to keep the client informed	1	6.7%
Interference with defendant's rights	1	6.7%
Total	15	100%

E. Professional Misconduct Investigations Closed in Fiscal Year 2023

OPR completed 19 investigations in Fiscal Year 2023, some of which involved more than one attorney. OPR found professional misconduct in 13, or 68 percent, of the 19 investigations it closed. OPR finds that a subject attorney committed professional misconduct when the subject (1) intentionally violated a clear and unambiguous obligation or standard imposed by law, applicable rule of professional conduct, or Department regulation or policy;⁶ or (2) recklessly disregarded his or her obligation to comply with that obligation or standard.⁷ Nine of the 13 investigations involved at least one finding of intentional professional misconduct by a Department attorney. OPR found that a Department attorney acted in reckless disregard of a clear and unambiguous obligation or standard in 10 of the 13 investigations.

The 13 investigations closed with professional misconduct findings included 43 sustained allegations of misconduct. Table 5 identifies the types of allegations sustained in those investigations.

⁶ OPR finds intentional professional misconduct when a subject violated an obligation or standard by (1) engaging in conduct with the purpose of obtaining a result that the obligation unambiguously prohibits; or (2) engaging in conduct knowing its natural or probable consequence and knowing that the consequence is a result that the obligation or standard unambiguously prohibits. When several misconduct allegations have been made against a subject, each allegation is resolved separately. Therefore, OPR may conclude that the subject engaged in intentional misconduct with respect to one allegation but find that the subject acted recklessly or exercised poor judgment with respect to another allegation.

⁷ OPR finds that an attorney acted in reckless disregard of a professional obligation or standard when it concludes that the attorney (1) knew, or should have known, based on his or her experience and the unambiguous nature of the obligation, about the obligation; (2) knew, or should have known, based on his or her experience and the unambiguous applicability of the obligation, that the attorney's conduct involved a substantial likelihood that he or she would violate or cause a violation of the obligation; and (3) nevertheless engaged in the conduct, which was objectively unreasonable under all of the circumstances.

Table 5

Types of Professional Misconduct Allegations in Closed Investigations with Findings of Misconduct in FY 2023	Number of Misconduct Allegations	Percentage of Misconduct Allegations
Misrepresentation to the court or opposing counsel	14	33%
Failure to keep the client informed	7	16%
Failure to comply with discovery obligations	3	7%
Failure to maintain an active bar membership	3	7%
Failure to competently or diligently represent the client's interests	3	7%
Failure to comply with Department rules and regulations	3	7%
Failure to comply with court orders and federal rules	2	5%
Improper remarks to a grand jury, during trial, or in pleadings	2	5%
Conflict of interest	2	5%
Failure to comply with federal law	1	2%
Failure to properly supervise another attorney	1	2%
Interference with defendant's rights	1	2%
Missed deadlines	1	2%
Total	43	100%

In the 13 investigations closed in 2023 with professional misconduct findings, OPR made misconduct findings against 15 Department attorneys. At the end of Fiscal Year 2023, the PMRU had issued final decisions in 9 matters and, in all cases, sustained OPR's findings of professional misconduct. Four attorneys resigned from the Department before OPR's reports of investigation were completed. One attorney retired after OPR's report was completed but before the PMRU issued a disciplinary decision. The PMRU imposed discipline against six attorneys, ranging from reprimands to multi-day suspensions. When OPR found violations of state rules of professional conduct, the PMRU authorized OPR to refer the violations to the appropriate state attorney disciplinary authorities.

In 4 of the 6 remaining investigations closed without a finding of professional misconduct, OPR found that an attorney exercised poor judgment. Thus, of the 19 investigations OPR closed in Fiscal Year 2023, OPR made a finding of professional misconduct or poor judgment in 17 cases, or 89 percent of the investigations it closed. OPR refers its poor judgment findings to the Department attorney's component, which may impose disciplinary action or take other remedial measures.

Section II: Professional Misconduct Investigations Closed in Fiscal Year 2023

The following professional misconduct investigations were closed during Fiscal Year 2023. This report includes actions taken by the PMRU when such action occurred in the fiscal year.

As required by the Privacy Act, to protect the privacy interests of the Department attorneys and other individuals involved in the investigations and inquiries summarized in this report, OPR has omitted the names and identifying details from the summaries. Moreover, in certain cases, information and evidence obtained by OPR is protected from disclosure by court orders, evidentiary privileges, and grand jury secrecy rules. OPR alternates the use of gender pronouns each year, regardless of the actual gender of the individual involved; female pronouns are used for this report.



[Investigation of Alleged Failure to Comply with Discovery Obligations and Lack of Candor](#)

An Assistant U.S. Attorney (AUSA) self-reported a court's ruling granting the defendant a substantial reduction from the sentencing guidelines as a sanction for the AUSA's failure to timely disclose impeachment material to the defense and lack of candor with defense counsel and the court.

Based on its investigation, OPR concluded that the AUSA recklessly failed to provide the defense prior to trial with evidence that could have been used to impeach an essential government witness and knowingly failed to correct the witness's false trial testimony. OPR's investigation showed that after trial but prior to sentencing, the AUSA received additional records containing exculpatory and impeachment information regarding the witness. OPR concluded that although the additional records were inconsistent with the witness's trial testimony and had been specifically requested by the defense, the AUSA intentionally failed to provide the defense with the impeachment evidence pertaining to the government witness prior to sentencing; knowingly misled defense counsel concerning the content of the records; and knowingly and intentionally made false or misleading statements at two separate hearings, concerning the existence of the impeachment evidence contained in the records. OPR also concluded that the

AUSA intentionally misled OPR during its investigation.

OPR further concluded that the AUSA exercised poor judgment by failing to re-run the criminal histories of two government witnesses prior to the trial and failing to document her disclosures of criminal record information to the defense.

The subject resigned following the issuance of OPR's report of investigation. The PMRU upheld OPR's findings and conclusions and authorized OPR to refer the matter to the appropriate state attorney disciplinary authority, which OPR has done.

[Investigation of Alleged Improper Contact with a Represented Person and Lack of Candor](#)

Two AUSAs self-reported to OPR that a trial court criticized the prosecution team based on findings that the government violated the defendants' Sixth Amendment rights by obtaining confidential and privileged defense information from a covert cooperator who had been authorized by the government to continue to communicate with represented co-defendants. During its investigation, OPR advised the USAO of information discovered by OPR indicating that evidence and representations previously provided to the court and the defense by the government were not accurate, which led the USAO to file a notice to correct the

record. Following extensive post-conviction proceedings, the court granted a new trial.

OPR concluded that the lead AUSA recklessly violated the rules of professional conduct by allowing the government's covert cooperating defendant to continue communicating with the represented co-defendants about the subject matter for which they were represented by counsel; recklessly violated the duty to competently represent the client by allowing the cooperating defendant to continue interacting with the represented co-defendants and by failing to supervise the cooperating defendant's actions; recklessly violated the obligation to keep the client informed by failing to advise her supervisors and seek their advice prior to instructing the cooperating defendant to continue interacting with the represented co-defendants; knowingly violated the obligation to keep the client informed by failing to accurately inform her supervisors about her role in advising the cooperating defendant to continue interacting with the represented co-defendants; and knowingly violated the duty of candor by misrepresenting to defense counsel that a case agent—rather than the AUSA—was responsible for instructing the cooperating defendant to continue interacting with the represented co-defendants.

OPR concluded that the second AUSA on the prosecution team violated

the rules of professional conduct and the general duty of candor toward the court by knowingly and intentionally eliciting false and misleading testimony from case agents and by knowingly and intentionally failing to correct the false and misleading testimony. OPR also concluded that the attorney violated her duty to keep her client informed by intentionally failing to inform her supervisors that she had received a document from the cooperating defendant, which was contrary to the testimony she had elicited from the case agents. The second AUSA resigned during OPR's investigation.

The PMRU upheld OPR's findings and conclusions, imposed discipline on the first AUSA, and authorized OPR to refer both AUSAs to their respective state attorney disciplinary authorities, which OPR has done.

[Investigation of Alleged Conflict of Interest and Failure to Advise the Client](#)

OPR received complaints that an AUSA was involved in a romantic relationship with a law enforcement agent who assisted in the prosecution of cases she handled. OPR's investigation determined that the AUSA formed a romantic relationship with the agent while prosecuting two cases with the agent and that the AUSA did not disclose the existence of her relationship with the agent to her USAO supervisors until after the relationship had ended. OPR further determined that the AUSA never

disclosed the existence of the relationship to the court and defense counsel in the cases she worked on with the agent after becoming involved romantically.

Based on the results of its investigation, OPR concluded that the AUSA violated her obligations under the rules of professional conduct when she knowingly failed to keep her client reasonably informed by not disclosing to her USAO supervisors that she was involved in a romantic relationship with a law enforcement agent working on her cases and who was a potential witness. OPR also concluded that the AUSA violated her obligations under the rules of professional conduct when she knowingly continued to represent the government despite a conflict of interest that arose from her romantic relationship with the agent and without having obtained her client's consent to her continued representation of the government. OPR further concluded that the AUSA did not violate her discovery obligations when she failed to disclose the existence of her romantic relationship with the agent to the court and defense counsel in the cases they worked on together after becoming involved romantically because the cases resulted in guilty pleas, and therefore the potential impeachment information was not required to be disclosed.

The PMRU upheld OPR's findings and conclusions, imposed discipline, and authorized OPR to refer the matter to the

appropriate state attorney disciplinary authority, which OPR has done.

[Investigation of Alleged Violations of the Speedy Trial Act and Lack of Candor](#)

A USAO reported to OPR a judicial finding dismissing without prejudice an indictment that was returned after expiration of the Speedy Trial Act (STA) deadline requiring that an information or indictment be filed within 30 days when a defendant has been arrested on a complaint. The USAO also reported that the AUSA handling the case had not informed her supervisors of the STA violation, the resulting litigation, or the court's dismissal. During OPR's investigation, the AUSA disclosed to OPR that she had violated the STA's pre-indictment deadline in three additional pending cases.

Based on the results of its investigation, OPR concluded that the AUSA violated the STA in the four cases and, in doing so, recklessly violated her obligation under the rules of professional conduct to act with reasonable diligence and promptness in representing a client. OPR also concluded that by neglecting the deadlines, the AUSA recklessly violated Department and USAO policies and district court rules. In addition, OPR concluded that the AUSA intentionally violated her obligations under the rules of professional conduct and Department and USAO policies by failing to inform her supervisors of the STA violations and,

in the initially reported case, by obtaining an indictment without the required supervisory approval and by failing to inform her supervisors of the ensuing litigation and dismissal.

Shortly after OPR issued its final report of investigation, the USAO informed OPR that it had reviewed the AUSA's pending cases and discovered that she had violated the STA in 17 additional cases from 2019 to 2023. OPR conducted a supplemental investigation and found that the AUSA had made numerous statements to OPR and others that concealed the additional violations. OPR concluded that the AUSA violated the STA in each of the additional 17 cases and, in doing so, recklessly violated her obligation under the rules of professional conduct to act with reasonable diligence and promptness in representing a client. OPR also concluded that by neglecting the deadlines, the AUSA recklessly violated Department and USAO policies and district court rules. In addition, OPR concluded that the AUSA intentionally violated her obligations under the rules of professional conduct and Department and USAO policies by failing to inform her supervisors of the STA violations and violated USAO approval policies by obtaining a plea and a dismissal without management's authorization. Finally, OPR concluded that the AUSA misled OPR, court personnel, and the USAO in violation of the duty of candor imposed by rules of professional conduct governing attorney conduct and rules pertaining to federal employees. At the

close of the fiscal year, the matter remained pending with the PMRU.

Investigation of Alleged Failure to Timely Provide Discovery and Lack of Candor

The Department of Justice Tax Division reported to OPR that in a criminal prosecution for tax evasion and obstructing the administration of the Internal Revenue Code, a magistrate judge found flagrant government misconduct resulting from repeated violations of the government's discovery obligations. A senior Tax Division trial attorney, a junior Tax Division trial attorney, and an AUSA were responsible for prosecuting the case.

Based on the results of its investigation, OPR concluded that the senior Tax Division attorney violated the rules of professional conduct when she knowingly failed to comply with a court order relating to discovery and when she knowingly made false statements to the court with respect to the government's compliance with the discovery order. OPR also concluded that she violated the rules of professional conduct when she recklessly made misrepresentations to defense counsel concerning the discovery issue. OPR concluded that neither the AUSA nor the junior Tax Division attorney violated the rules of professional conduct. All three subjects resigned or retired from the Department during OPR's investigation.

The PMRU upheld OPR's findings and conclusions and authorized OPR to refer the matter to the appropriate state attorney disciplinary authority for the senior Tax Division's licensing jurisdiction, which OPR has done.

[Investigation of Alleged Failure to Comply with Discovery Obligations and Lack of Candor](#)

A USAO notified OPR that a court found that the AUSA assigned to a complex multi-defendant case had violated the government's disclosure obligations and had made misrepresentations to the court about the government's possession of evidence obtained from a third party. OPR further learned that while litigating the same case, the AUSA had made an additional inaccurate statement of fact to defense counsel and the court about evidence presented to the grand jury. Upon learning that her statement was inaccurate, and after allegedly consulting with her supervisor, neither the AUSA nor her supervisor notified the court of the earlier misrepresentation or disclosed to the court the true facts. OPR also examined allegations arising from a defendant's motion to have her case dismissed with prejudice due to alleged vindictive prosecution.

Based on the results of its investigation, OPR concluded that although the misstatement regarding the grand jury evidence resulted from an

excusable mistake, the AUSA and her supervisor engaged in professional misconduct by failing to inform the court promptly about the earlier misstatement, which was material to pending litigation in the case. Accordingly, OPR found that the AUSA violated her general duty of candor and her obligation under the rules of professional responsibility to correct a misrepresentation, and her supervisor violated her duty to provide adequate supervision and to keep the client fully informed. OPR further concluded that the AUSA's failure to disclose to the defense the evidence in question did not rise to the level of professional misconduct because the AUSA believed in good faith, based on earlier court rulings on discovery issues, that the evidence was not relevant or material and did not need to be disclosed.

Regarding the discovery allegations, OPR concluded that although the AUSA should have fully advised the court about the existence of the evidence, the AUSA did not violate her duty of candor in her representations to the court about the evidence because her statements on the subject were responsive to the specific colloquy with the court. In addition, although the AUSA inaccurately described to the court the government's actions with respect to some of the evidence, that inaccuracy resulted from an understandable mistake. Finally, with regard to the alleged vindictive prosecution, OPR concluded that the AUSA did not

prosecute the defendant in bad faith or in a vexatious or frivolous manner.

The PMRU upheld OPR's findings and conclusions, imposed discipline as to the AUSA, and authorized OPR to refer the AUSA and her supervisor to their respective state attorney disciplinary authorities, which OPR has done.

[Investigation of Alleged Conflict of Interest and Failure to Advise the Client](#)

An AUSA reported to OPR that she was involved in a close personal relationship with a law enforcement agent who assisted in the prosecution of cases she handled. OPR's investigation determined that the AUSA formed a romantic relationship with the agent while prosecuting two cases with the agent and that, while their relationship was ongoing, the AUSA presented the agent as a grand jury witness to obtain indictments in the cases without disclosing the existence of the relationship to her USAO supervisors or the grand jury.

Based on the results of its investigation, OPR concluded that the AUSA violated her obligations under the rules of professional conduct when she knowingly failed to keep her client reasonably informed by not disclosing to her USAO supervisors that she was involved in a romantic relationship with a law enforcement agent working on and who was a testifying witness in her cases. OPR also concluded that the AUSA

violated her obligations under the rules of professional conduct when she knowingly continued to represent the government despite a conflict of interest that arose from her romantic relationship with the agent and without having obtained her client's consent to her continued representation of the government. OPR further concluded that the AUSA did not commit professional misconduct when she failed to inform the grand jury of her romantic relationship with the agent in the cases in which she presented the agent as a witness because this potential bias information was not required to be disclosed under applicable law or Department policy.

The AUSA resigned from the Department following OPR's investigation. The PMRU upheld OPR's findings and conclusions and authorized OPR to refer the matter to the appropriate state attorney disciplinary authority, which OPR has done.

[Investigation of Alleged Failure to Timely Provide Discovery and Lack of Candor](#)

OPR opened an investigation as a result of a court's post-conviction findings that the government had failed to comply with its discovery obligations when prosecutors did not disclose to the defense before trial a material exculpatory document. Although the document was disclosed mid-trial, the court criticized the government for failing to timely disclose the document, failing

to advise defense counsel at the time the document was disclosed that it had not been disclosed previously, and making misrepresentations to the court regarding the disclosure to the defense.

Based on OPR's investigation, OPR concluded that although the conduct of members of the trial team was flawed, none of the prosecutors on the trial team committed professional misconduct. Regarding the discovery issue, OPR concluded that the prosecutors had an obligation to disclose the document as required by Department policies and other standards. OPR determined, however, that the failure to disclose the document before trial was the result of the prosecution team's reasonable belief that it had been produced by the prosecutors who had indicted the case, none of whom remained on the trial team; the failure of their predecessors' record-keeping processes for meeting the government's disclosure obligations; and the trial team's good faith, but mistaken, belief that the document was entirely inculpatory. Accordingly, OPR concluded that the prosecutors did not engage in intentional or reckless misconduct as a result of their failure to disclose the document before trial.

In examining additional allegations pertaining to certain prosecutors, OPR concluded that the prosecutor who disclosed the document to the defense exercised poor judgment

when she failed to identify the document as a newly produced exhibit when disclosing it to the defense mid-trial.

Regarding allegations relating to misrepresentations to the court about the disclosure of the document to the defense, the evidence established that another member of the trial team added inaccurate language to a draft letter to the court that had been authored by the prosecutor who made the disclosure to the defense. However, OPR was unable to establish to a preponderance of the evidence whether the prosecutor who inserted the inaccurate language into the response to the court formulated the language on her own initiative or did so at the direction of supervisors, as she claimed. After carefully considering all of the surrounding circumstances, OPR concluded that the inaccurate statement was the result of an extremely compressed period the prosecutor was given to review and file the submission with the court after the prosecutor who originally drafted the letter, and who was most familiar with the underlying facts regarding the disclosure, was unavailable due to a personal emergency; confusion regarding the directions the prosecutor received from her supervisors about the language of the response to the court; and the prosecutor's focus on completing certain trial tasks to the exclusion of other issues in the case, including the disclosure of the document to the defense. OPR concluded that

although the prosecutor did not knowingly or recklessly make a false statement to the court, she exercised poor judgment when she made changes to factual representations in the draft response when she knew that she did not have sufficient knowledge of the facts and without taking sufficient steps to ensure that the representations being made were accurate. OPR further concluded that the prosecutor exercised poor judgment when she failed to notify supervisors that she was unprepared to address the issues in the government's submission to the court.

[Investigation of Alleged False and Misleading Statements Presented to the Grand Jury, Making Inflammatory Statements to the Grand Jury, Lack of Candor, and Failure to Preserve Evidence](#)

A USAO facilitated a self-report by an AUSA that a court recommended dismissing the charges against a defendant because the AUSA and the case agent summary witness presented false and misleading statements to the grand jury that materially differed factually from the theory of the case presented to the court, prejudicing the grand jury's decision to indict. The court also found that the government failed to preserve evidence, providing an alternative ground for dismissal. The court also criticized the AUSA for making inflammatory statements to the grand jury. During its investigation, OPR also

examined additional grand jury testimony, not identified by the court, that was allegedly false and misleading and an allegation that the AUSA made misrepresentations in a court filing.

Based on the results of its investigation, OPR concluded that the AUSA violated her obligations under the rules of professional conduct and Department policies, when she recklessly presented false testimony and made irrelevant, unfairly prejudicial, and inappropriate remarks during the grand jury presentation. OPR also concluded that the AUSA violated her obligations under the rules of professional conduct and her general duty of candor when she knowingly filed a pleading that contained false and misleading statements.

OPR concluded that the evidence did not establish to a preponderance that the AUSA or the agent committed professional misconduct when they presented inaccurate testimony to the grand jury concerning the initial theory of the case because their actions were not unreasonable given the information provided by the victim and the evidence then gathered during the investigation or when the AUSA and the agent failed to preserve evidence.

At the close of the fiscal year, the matter remained pending with the PMRU.

[Investigation of Alleged Failure to Timely Provide Discovery in a Civil Matter and Lack of Candor](#)

A Department trial attorney reported to OPR that a court granted, in part, a plaintiff's motion for sanctions after concluding that additional attorneys' fees and costs were required to be expended by the plaintiff for reopening depositions as a result of the government's failure to timely supplement its discovery responses before the depositions in issue in the case were conducted. OPR also examined the trial attorney's representations to the court about discovery in the case.

Based on the results of its investigation, OPR concluded that the trial attorney acted in reckless disregard of her obligation to timely supplement the government's discovery responses when she failed to inform the plaintiff about certain newly discovered documents prior to two depositions in the case. Even though the trial attorney produced the documents just before a third deposition, the timing and method of production denied the plaintiff the opportunity to review and use the documents at that deposition as well. OPR also concluded that the trial attorney violated the rules of professional conduct when she knowingly made false statements of fact to the court and knowingly made false statements of material fact to the plaintiff's attorney at a court-supervised

deposition about the extent to which the newly discovered documents were previously produced by the government.

The PMRU upheld OPR's findings and conclusions, imposed discipline, and authorized OPR to refer the matter to the appropriate state attorney disciplinary authority, which OPR has done.

[Investigation of Alleged Lack of Candor](#)

An AUSA self-reported a court's ruling granting a defendant's motion to suppress, concluding that the AUSA made intentional misrepresentations to the trial court during two court hearings and misrepresentations to a magistrate judge concerning the facts underlying probable cause to issue the search warrant in question. The court later revised its criticism of the AUSA to conclude that her conduct was reckless rather than intentional.

Based on the results of its investigation, OPR concluded that the AUSA did not knowingly mislead the court in the government's written filings and oral arguments and accordingly, did not violate her duty of candor to the court. OPR also concluded that although the AUSA omitted material information from the search warrant affidavit at issue, rendering the document misleading and lacking in probable cause, the AUSA's actions were not knowingly or recklessly false and did not violate the rules of professional conduct or her general duty of candor to the court. Rather, after carefully considering all of the

circumstances, OPR concluded that the court's misinterpretation of a portion of the search warrant affidavit and belief that the AUSA lacked candor when responding to the court and when creating the affidavit were caused by the AUSA's poor oral advocacy skills and lack of attention to detail.

[Investigation of Alleged Failure to Comply with Discovery Obligations and Lack of Candor](#)

OPR received misconduct allegations stemming from a prosecution of defendants for securities fraud-related offenses. During a mid-trial colloquy with the court about the government's plea allocution communications with counsel for cooperating witnesses, an AUSA asserted that she did not instruct counsel for one of the cooperating witnesses about what the witness should say in the plea allocution. Months later, the AUSA discovered a draft plea allocution for that cooperating witness, which the prosecutor herself had edited, indicating that the AUSA's earlier statement to the court was inaccurate. The district court was informed of the document and issued a ruling indicating that it would grant the defendants' motion for a new trial on grounds that the government withheld exculpatory evidence about its communications with counsel for the cooperating witness regarding the plea allocution and made misleading and erroneous statements to the court.

Based on the results of its investigation, OPR concluded that neither the AUSA nor her co-counsel intentionally or recklessly violated their discovery obligations. OPR also concluded that although the AUSA's representations to the court about her interactions with the attorney for a cooperating witness regarding the witness's plea allocution were inaccurate, the inaccuracy resulted from an inadvertent failure of recollection, was not intentional or knowing, and did not rise to the level of recklessness. OPR also concluded that the AUSA did not violate the rules of professional conduct by failing to disclose more promptly to the court a document that contradicted the statements she made during the mid-trial colloquy because the AUSA did not immediately recognize that the document contradicted her earlier statements, and she made a prompt disclosure as soon as she realized that her prior statements may have been inaccurate.

[Investigation of Alleged False and Misleading Statements Presented to the Grand Jury, Making Improper Statements to the Grand Jury, and Failure to Timely Provide Discovery](#)

OPR received a complaint from a former defendant, alleging that an AUSA engaged in professional misconduct in connection with her prosecution as part of a fraud case. Although originally charged along with others, the charges against the former defendant were

dismissed when the government filed a superseding indictment prior to trial. Among other allegations, the former defendant asserted that the grand jury testimony of a case agent contained materially inaccurate statements about the former defendant that the prosecutor knew or should have known were untrue but which she failed to correct; the prosecutor made improper remarks in presenting the case to the grand jury; and the prosecutor failed to timely produce discovery, in violation of court-imposed deadlines.

Based on the results of its investigation, OPR concluded that the prosecutor committed professional misconduct by acting in reckless disregard of her obligations under Department policy and the rules of professional conduct by soliciting and failing to correct inaccurate and unsupported testimony before the grand jury, which the prosecutor knew or should have known was inaccurate and unsupported; committed professional misconduct by acting in reckless disregard of her obligations under Department policy and the rules of professional conduct by improperly testifying before the grand jury; and committed professional misconduct in violation of a court order and the rules of professional conduct by knowingly failing to produce discovery to the defendants by the court-imposed deadline and by recklessly failing to make a diligent effort to comply with a legally

proper discovery request by defense counsel.

At the close of the fiscal year, the matter remained pending with the PMRU.

[Investigation of Alleged Lack of Candor](#)

OPR received allegations that a senior Department official had, on multiple occasions, signed documents on behalf of subordinates in her office without their knowledge or consent and then filed the signed documents with the court.

Based on the results of its investigation, OPR concluded that in the specific circumstances presented, the senior Department official did not violate a clear and unambiguous standard by signing pleadings "for" or in the name of her subordinates without their consent because she did not make an intentional, reckless, or knowing misrepresentation. The official had authority to sign the documents, and on two of the documents, her own name appeared on the signature lines, indicating her role in signing the documents. Moreover, OPR found that the senior Department official did not intend to misrepresent the facts, but instead was trying to expedite matters and assist her subordinates by signing and submitting documents for them. However, OPR concluded that the senior Department official exercised poor judgment by signing documents that contained certification clauses attesting

to the truth of the contents of the documents in the name of a subordinate who had no knowledge of the documents or of the truth of their contents.

[Investigations of Alleged Failures to Maintain Active Bar Memberships](#)

OPR conducted five investigations involving Department attorneys whose only active bar membership had been suspended due to their failure to timely pay annual bar membership dues. With respect to each matter, OPR determined that the attorney violated the Department's clear and unambiguous policy to continuously maintain an active bar membership in at least one state or territory, or the District of Columbia, while employed as a Department attorney.

Based on the results of its investigations, OPR concluded in two of the matters that the attorneys acted recklessly when they failed to timely update their contact information with the bar and inaccurately certified on the Department's Form 54-A "Attorney's Bar Re-Certification" that they had provided the bar with their current email and office address when they had not done so. As a result, the attorneys did not receive multiple notices sent to them from the bar concerning their dues, failed to timely pay their bar dues, and were suspended for multiple weeks. In another matter, OPR found that the attorney acted recklessly after she failed to pay her dues

despite receiving and reading a notice from the bar stating that it was time to pay her membership dues. In two matters, OPR determined that the attorneys' conduct did not rise to the level of professional misconduct and instead found that the attorneys exercised poor judgment and referred the matters to their respective components to review for appropriate action. OPR noted in both matters that its determination would likely be different in the future following its May 2, 2023 email and memorandum to all Department attorneys reminding them that they have a personal obligation to at all times maintain an active bar license regardless of whether they receive a notice from the bar reminding them of their obligation to pay their dues.

OPR referred the three matters involving professional misconduct to the PMRU, which upheld OPR's findings and conclusions and imposed discipline in two of the matters. The third matter remained pending as of the close of the fiscal year.



Section III: Examples of Professional Misconduct Inquiries Closed in Fiscal Year 2023

The following summaries are a representative sample of the professional misconduct inquiries closed by OPR in Fiscal Year 2023.

[Allegation of Improper Opening Statement and Witness Questioning by Prosecutors](#)

OPR learned that a district judge granted a defense motion for mistrial early in what had been expected to be a lengthy multi-defendant jury trial. The court found the mistrial warranted by the cumulative effect of references made by the government in its opening statement and in questioning two government witnesses about certain events involving witnesses that implicated the defendants in conduct that was not charged in the indictment. The court found that the prosecutors had not committed intentional misconduct, but rather had abused leeway the court had given them to present limited evidence of the uncharged conduct. OPR initiated an inquiry and reviewed relevant portions of the extensive district court record in the case, including transcripts of hearings and the trial, and the interlocutory appellate proceedings. OPR also requested and received from the prosecutors detailed written responses regarding the court's findings and criticism.

Based on the results of its inquiry, OPR concluded that the trial team's strategic decision to incorporate testimony and other evidence relating to the uncharged conduct was known to and approved by supervisors. OPR also concluded that the court's relevant rulings before and during trial did not clearly preclude the portions of the government's opening statement or the witnesses' testimony at issue. OPR noted that multiple judges who reviewed the trial court's mistrial decision—and even the trial judge herself—concluded that there was no intentional prosecutorial misconduct. Finally, OPR concluded that the length and complexity of the case, requiring careful planning by the trial team in consultation with supervisors, indicated that the prosecutors did not act recklessly in presenting information about the uncharged conduct to the jury. Because further investigation was unlikely to lead to a finding of professional misconduct, OPR closed its inquiry.

[Allegations of Failure to Comply with the Principles of Federal Prosecution, Making False Statements in the Indictment, Grand Jury Abuse, and Failure to Comply with Discovery Obligations](#)

A Department component reported to OPR a complaint received by a state bar that an AUSA engaged in misconduct during the prosecution of a criminal case that concluded with the dismissal of or not guilty verdicts on all counts. The complaint alleged that the prosecution was unfounded as a matter of law and fact, the indictment contained false statements, the grand jury heard false testimony and did not receive material exculpatory information, and material exculpatory information was not disclosed to the defense.

OPR reviewed a summary of the complainant's allegations to the state bar, the AUSA's written response to the state bar addressing the allegations, relevant pleadings, and pertinent trial transcripts. OPR determined that there was sufficient evidence to support the charges against the complainant and that his allegations that the prosecution of him was unfounded as a matter of law and fact reflected the defense and government's different interpretations of the evidence against the complainant. OPR further determined that there was insufficient evidence to establish that the indictment contained false statements, that the prosecution knowingly presented false testimony or engaged in

conduct constituting abuse of the grand jury, or that material exculpatory evidence was purposefully withheld from the defense. OPR's review of the allegations revealed a heavily litigated case in which the defense and prosecution differed on the meaning of the evidence and argued their different interpretations at motion hearings and at trial but that the government's interpretation of the evidence was not unreasonable or unsupported. Although the prosecution was not successful, the evidence did not establish that the AUSA's actions constituted professional misconduct. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.



Allegations of Lack of Candor

A district court issued a decision critical of representations made in the Department's pleadings and declarations in a lawsuit seeking disclosure of information under the Freedom of Information Act (FOIA). After rejecting the Department's argument that the deliberative process and attorney client privileges applied, the district court ordered the Department to disclose to the plaintiff an unredacted version of a document, which the Department had previously produced in redacted form.

In its opinion, the district court was critical of representations in the Department's submissions regarding the document and the decision for which the document was prepared. The court determined that the Department's redactions deliberately concealed the document's purpose and that the Department's declarations filed in the matter were inconsistent with the evidence and not credible.

After reviewing the extensive record, including written responses from the subjects, OPR concluded that the Department attorneys' decisions on which portions of the document to redact were not made to improperly conceal the document's purpose and did not violate the attorneys' general duty of candor or the attorneys' ethical obligations under the applicable rules of professional conduct and that further investigation was unlikely to result in such a finding.

The record OPR reviewed during its inquiry demonstrated that the Department's redactions were motivated by the attorneys' understanding of FOIA law, and OPR found no evidence that the attorneys had an intent to conceal the document's purpose. Although reasonable minds might differ on whether more information should have been left unredacted, the evidence shows that the attorneys made a good faith effort to comply with the Department's obligations under FOIA and that the redactions were reviewed and approved by numerous other Department officials.

In addition, OPR concluded it was unlikely to find that the attorneys' representations of the relevant decision-making process in the Department's district court submissions violated their general duty of candor or ethical obligations under the applicable rules of professional conduct. OPR's inquiry did not find evidence that the attorneys intentionally or knowingly misrepresented the decision-making process or otherwise recklessly disregarded their ethical obligations, and further investigation was unlikely to result in such a finding. Lastly, OPR concluded that the attorneys' use of certain specific language in the attorneys' submissions that was criticized by the court did not amount to intentional or reckless false representations in violation of the attorneys' general duty of candor or their obligations under the rules of professional conduct. Accordingly, OPR closed its inquiry.

[Allegations of Failure to Comply with
Discovery Obligations and
Failure to Obey a Court Order](#)

A prosecutor informed OPR that a district court dismissed an indictment with prejudice due to the government's failure to timely produce discovery. After the government provided some discovery shortly before the defendant's trial, but after the court's discovery deadlines, the defense argued that the untimely discovery production prejudiced the defendant, in part, because the discovery purportedly showed that witnesses testified falsely during a hearing. The defense asserted it could have used the belatedly disclosed information in a pretrial motion and to impeach the witnesses about their allegedly false testimony during the hearing. The court dismissed the indictment with prejudice due to the government's failure to timely produce discovery.

OPR initiated an inquiry, received a written response from the subject, and reviewed relevant pleadings, transcripts, and communications. Although OPR concluded that a full investigation would likely establish that the government violated the court's standard discovery order, the evidence showed that the prosecutor's failure to produce the discovery was not intentional or reckless. The law enforcement officer providing the evidence inadvertently failed to provide all of the materials to the

prosecutor and, when questioned by the prosecutor regarding whether certain materials were missing, failed to realize that the disclosure was incomplete and instead inaccurately informed the prosecutor that the materials in question did not exist. OPR also considered that, except for the materials about which the prosecutor asked questions, the evidence she was provided appeared complete, even though it was not. In addition to the discovery issue, OPR reviewed the record relating to the court's dismissal without prejudice of the original indictment in the case. OPR determined that given the context of the dismissal, which was for reasons unrelated to the discovery issue, the evidence did not support a finding that the prosecutor knowingly or recklessly committed intentional or reckless professional misconduct. Rather, the dismissal was the result of circumstances outside the control of the prosecutor and her reasonable interpretation of and reliance on a court order. Because further investigation was unlikely to lead to a finding of professional misconduct, OPR closed its inquiry.

Allegation of Lack of Candor

A state official requested that the Department determine whether the government's briefs and oral arguments in a case before an appellate court contained representations that were inconsistent with prior government statements. The representations and prior statements related to the government's interpretation of a federal department's authority in implementing a specific policy that was at issue in the litigation on appeal. The prior government statements cited were contained in internal memoranda of an agency within the federal department.

OPR examined the relevant court filings and the prior statements in the cited internal memoranda. OPR also obtained a response to the allegations from the government's senior appellate attorney involved in the litigation. After careful review, OPR determined that the referenced memoranda were internal to one office within the agency and concerned a regulatory standard narrower in scope than the one at issue in the litigation. Moreover, to the extent that the cited statements pertained to the office's practices under the policy, they did so only to a limited degree, and in any event, did not reflect the practices of the agency or the federal department as a whole, and therefore did not conflict with the representations made in the litigation. For these reasons, OPR concluded that further investigation was

unlikely to lead to a finding of professional misconduct and closed its inquiry.

Allegation of Failure to Comply with the Speedy Trial Act

OPR learned that a court dismissed a case with prejudice based on the court's finding that the government violated the STA because the defendants were not brought to trial within the time required by the statute. The case did not proceed to trial because there were several unresolved pretrial matters that were left pending before the court for more than seven years. Consequently, the defendants filed motions to dismiss the case with prejudice based on violations of their constitutional rights and the STA. The government conceded that the elapsed time exceeded the time permitted under the STA and that the case should be dismissed; however, the government argued that the circumstances did not warrant dismissal with prejudice. The court concluded that the extreme length of the delay and the resulting prejudice to the defendants warranted dismissal with prejudice and criticized the government for its failure to take action to bring the case to trial in a timely manner.

OPR initiated an inquiry, reviewed the record, and received additional information from the USAO. OPR's inquiry revealed that the delay in bringing the case to trial was not caused

by the government's inaction, but rather was primarily the result of the court's failure to timely rule on the pretrial matters. OPR determined that the prosecutor assigned to the case at the time of dismissal was not responsible for the violation of the STA because she did not enter an appearance in the case until approximately three years after the STA time had already expired. After she became the lead prosecutor, she appropriately consulted with her supervisors regarding the speedy trial issue, but there was nothing she could have done to prevent the court from dismissing the case with prejudice. OPR concluded that further investigation was unlikely to lead to a finding that the prosecutor engaged in professional misconduct for failing to comply with the STA and closed its inquiry.

[Allegation of Offering False Testimony in a Suppression Hearing](#)

OPR received a complaint alleging that an FBI special agent falsely testified during a suppression hearing that she did not have probable cause to believe that the defendant had committed a crime at the time that the defendant was interviewed. The special agent's testimony was contradicted by a search warrant affidavit signed by the special agent before the defendant's interview that asserted that there was probable cause to believe that the defendant had violated federal law. The complaint raised an inference that the prosecutor

who represented the government at the hearing offered evidence that she knew to be false or was otherwise complicit in the special agent's false testimony.

OPR initiated an inquiry, reviewed the record, and received additional information from the prosecutor's office. OPR's inquiry revealed that the prosecutor did not offer false evidence. OPR determined that, during her direct examination, the prosecutor did not pose any questions to the special agent regarding the agent's belief about whether there was probable cause to believe that the defendant committed a crime. Instead, defense counsel raised the issue on cross examination and elicited the statements from the agent that were arguably inconsistent with her representations in the search warrant affidavit. OPR also determined that, after defense counsel's cross examination, the prosecutor took sufficient measures available to her to remediate the issue of the special agent's conflicting statements. Importantly, defense counsel possessed the search warrant affidavit that formed the basis for the allegation that the special agent provided false testimony, and because the affidavit was admitted as an exhibit, the court was also aware of the information. OPR concluded that further investigation was unlikely to lead to a finding that the prosecutor engaged in professional misconduct in connection with the special agent's suppression hearing testimony. OPR referred the

allegations concerning the special agent's conduct to the FBI for appropriate action and closed its inquiry.

[Allegations of Failure to Comply with the Principles of Federal Prosecution and Abuse of Prosecutive Authority](#)

OPR learned that in an opinion vacating a defendant's conviction, a district court criticized the government's decision to bring charges and concluded that prosecutors engaged in misconduct. The court later issued an amended opinion that remained critical of the government's conduct and left undisturbed the decision to vacate the defendant's conviction but removed its findings of prosecutorial misconduct.

OPR carefully reviewed the trial court's order and amended order, trial and grand jury transcripts, a decision from a court in related litigation, and internal Department records and documents. OPR assessed the government's presentation before the grand jury and considered whether the decision to charge the defendant was consistent with the principles of federal prosecution under Department policy. OPR also considered whether a finding of misconduct was likely based on claims that the government did not, in its prosecutorial discretion, drop the charges after a court in related litigation issued a decision finding one of the trial witnesses not credible. After considering the evidence presented at trial, OPR determined that the prosecutors'

decision to proceed with the charges after indictment and to leave the question of the witness's credibility up to the jury reflected a reasonable exercise of the prosecutors' discretion. OPR also concluded that further investigation was not likely to establish by a preponderance of the evidence that the subjects engaged in professional misconduct by intentionally or recklessly violating the Department's charging or grand jury policies or any other clear and unambiguous standard of conduct and closed its inquiry.



Allegation of Lack of Candor

OPR learned about an order issued by a district court in a criminal case in which the court concluded that a Special AUSA falsely represented to the court that the government was unaware of a filing deadline at the time the government belatedly filed a motion. The court concluded that the government was aware of the filing deadline before filing its motion because the prosecutor had been present at an earlier hearing in which the defense counsel argued that such a motion by the government would be untimely. When pressed, the prosecutor agreed with the court, without explanation, that the government had been aware of the timeliness issue before the filing. The court noted that the government's conduct was regrettable but did not otherwise sanction the government or the prosecutor.

OPR initiated an inquiry and reviewed pertinent filings and transcripts from the criminal case; requested and obtained a written response from the attorney, who was no longer working for the Department; and interviewed a witness. OPR's inquiry revealed that the prosecutor was unaware that there was an applicable filing deadline when she filed the government's untimely motion. The contemporaneous record established that the prosecutor had inadequately explained to the court the circumstances leading up to the government's late filing. OPR's inquiry

revealed that after defense counsel raised the timeliness issue at the hearing days before the government filed the untimely motion, the prosecutor had researched and consulted her supervisor about the defense's timeliness argument. The prosecutor's research and consultation with her supervisor led her to erroneously believe that there was no applicable filing deadline. Although the prosecutor was aware of defense counsel's timeliness argument and was incorrect in her conclusion that there was no applicable filing deadline, her error was due to her inexperience with federal practice and reliance on her supervisor's guidance. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding that the prosecutor engaged in professional misconduct and closed its inquiry.

Allegations of Lack of Candor and Lack of Diligence

An AUSA self-reported to OPR that a court admonished her for violating her duty of candor by failing to disclose material facts in an *ex parte* motion. The motion sought to extend an expired non-disclosure order (NDO) regarding a subpoena served on a third party to prevent the third party from informing the target of the investigation about the subpoena. The motion failed to inform the court that other related NDOs, covering different third parties, had also expired. In the court's view, this created the potential that the target had been

notified of the underlying investigation, making the expiration of the NDOs material to the court's decision whether to grant the motion. In addition to admonishing the AUSA for lack of candor, the court also criticized the AUSA's explanations for her conduct and her lack of diligence in allowing the NDOs to expire.

OPR initiated an inquiry, received additional information from the USAO, reviewed the relevant pleadings and transcripts from the case, requested and received a written response from the AUSA, and interviewed a witness. OPR's inquiry revealed that the AUSA's handling of the NDOs for the case was reflective of common practices at her USAO, was known of and tacitly approved by management, and was not in violation of any USAO policy. As to the AUSA's failure to disclose the expired NDOs in the motion, the AUSA asserted that she did not view the information as

material because, based on her experience and office practice, third parties did not inform subpoena targets of an investigation without first notifying the government. This belief was shared by the AUSA's supervisor, and the evidence developed during OPR's inquiry showed that it was not unreasonable. OPR also learned that the supervisor, who was also aware of the expired NDOs, reviewed and approved the motion as filed. The AUSA and her supervisor had also explicitly discussed disclosing the expired NDOs in the motion but decided not to include them. Instead, shortly after receiving approval for the motion, the government filed a separate motion to extend the remaining expired NDOs, indicating that the AUSA did not intend to mislead the court or otherwise conceal material information. OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.

Section IV: Non-Department Attorney and Judicial Misconduct Allegations



Most state bars obligate attorneys to report to the jurisdiction's attorney disciplinary authority violations of the rules of professional conduct that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as an attorney. OPR assists Department attorneys in fulfilling their state bar obligations to report rule violations by non-Department attorneys that come to their attention in the course of their professional duties. OPR is responsible for determining whether the Department should refer allegations of possible professional misconduct by non-Department attorneys and

members of the judiciary to state attorney and judicial disciplinary authorities. In fulfilling this role, OPR consults with Department attorneys regarding the non-Department attorney conduct at issue, reviews pertinent records, and conducts legal research as necessary to determine whether a bar referral is required or appropriate.

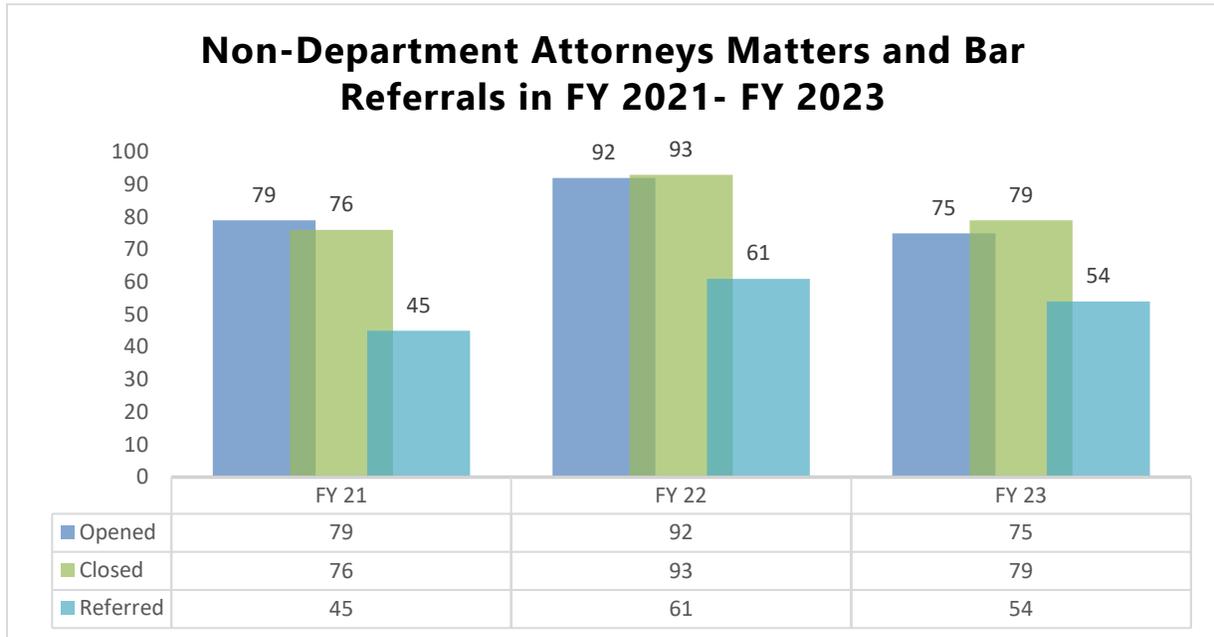
During Fiscal Year 2023, OPR received 75 submissions from components of the Department concerning possible professional misconduct by non-Department attorneys. OPR evaluated and closed 79 submissions and referred 54 matters to state attorney disciplinary authorities.⁸ OPR did not refer allegations it determined to be uncorroborated or based on mere suspicion, or which did not constitute a violation of a rule of professional conduct. OPR also did not refer matters it learned were already under investigation by state or judicial disciplinary authorities. OPR continued to track media reports concerning federal indictments and convictions of attorneys and to proactively contact Department components to ensure timely reporting of such matters.

Many of the referrals OPR sent to state disciplinary authorities concerned an indictment, guilty plea, or conviction of a non-Department attorney for a federal criminal offense. In Fiscal Year 2023, OPR referred to disciplinary authorities a variety of criminal conduct by non-Department attorneys, such as fraud, money laundering, cyber stalking, and drug possession. In some cases, OPR referred evidence of uncharged criminal conduct by non-Department attorneys that came to light incidentally during a government investigation or litigation. For example, during the investigation of a prescription fraud case, the Department learned that a non-Department attorney had illegally obtained prescription drugs. Similarly, during an investigation of an illegal drug distribution case, the Department learned that a non-Department attorney purchased illegal drugs. Regarding non-criminal conduct, OPR referred several allegations concerning false statements, misrepresentations, and other instances of serious misconduct by non-Department attorneys. Among its referrals, OPR notified disciplinary authorities of matters in which evidence revealed that an attorney filed a misleading pro hac vice admission form omitting prior discipline; an attorney sent Department attorneys a fake court summons; an attorney continued to practice law while on a suspended license; and an attorney attempted to aid an inmate in an escape attempt.

Graph 4 depicts the number of non-Department attorney complaints received and resolved during the previous three fiscal years.

⁸ Some of the complaints that were closed included allegations received by OPR prior to Fiscal Year 2023.

Graph 4



During Fiscal Year 2023, OPR received and evaluated three submissions from Department components, concerning possible professional misconduct by members of the judiciary. OPR did not refer two of the matters, one involving allegations of sexual misconduct towards a Department attorney and another involving improper contacts with a victim’s family, because OPR learned that the relevant disciplinary authorities were already aware of the allegations and were investigating them. OPR did not refer the third case because OPR determined that allegations regarding a judge’s potential conflict of interest were appropriately addressed and resolved during litigation.

Complaints against Members of the Judiciary		
	Complaints	Referrals
FY 21	2	0
FY 22	2	1
FY 23	3	1

In some cases, OPR assists the bars by monitoring ongoing federal investigations. For example, in a matter initially reported to OPR in Fiscal Year 2022, concerning allegations that a judge traded favorable dispositions for sexual favors, OPR did not make

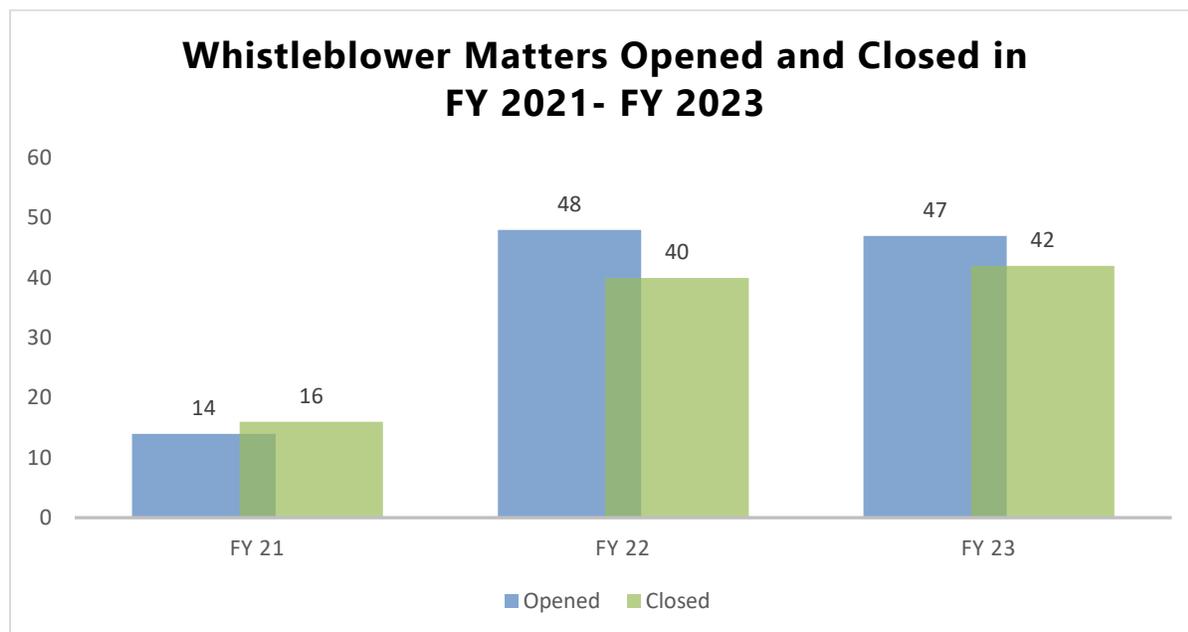
a referral because the bar was aware of the allegations. However, OPR continued tracking the matter and updated the disciplinary authority in 2023 once the judge was indicted.

Section V: FBI Whistleblower Retaliation Claims

The FBI, like certain other federal agencies with intelligence-related duties, is expressly excluded from the statutory whistleblower protection scheme that covers most federal employees. Instead, FBI personnel and applicants for FBI employment are governed by the requirements set forth in 5 U.S.C. § 2302 and 28 C.F.R. Part 27, which generally prohibit FBI personnel from taking retaliatory action against whistleblowers. Pursuant to the regulation, OPR and the OIG share responsibility for reviewing and investigating whistleblower retaliation complaints made by FBI personnel and applicants for FBI employment. OPR evaluates complaints based on the statutory and regulatory provisions, which require evidence that the complainant made a protected disclosure to one of the designated officials or offices; the complainant reasonably believed the disclosure evidenced certain identified types of wrongdoing; and an FBI employee took or failed to take, or threatened to take or fail to take, a personnel action with respect to the complainant. In some instances, OPR determines that a full investigation into the allegations made by the complainant is necessary. In other cases, OPR closes the matter for a variety of reasons, including the failure to meet the jurisdictional elements of the regulation, lack of sufficient evidence to support a finding that agency action was taken due to retaliation, or a decision by the complainant to withdraw the complaint.

After experiencing a decrease during Fiscal Year 2021 in the number of retaliation complaints received, OPR saw a return in Fiscal Years 2022 and 2023 to pre-pandemic levels. During Fiscal Year 2023, OPR received 47 complaints and resolved 42, some of which were received in preceding fiscal years, including OPR's three oldest investigations. At the end of the fiscal year, OPR had 25 pending whistleblower retaliation matters, including 7 investigations. Below is a graph depicting the number of complaints received and resolved during the previous three fiscal years.

Graph 5



The following are examples of whistleblower retaliation allegations closed by OPR this fiscal year.

[Allegation of Whistleblower Retaliation](#)

An FBI employee alleged that after she disclosed to her supervisors that she had sought a legal opinion from the FBI Office of General Counsel regarding the legality of a search, her supervisors gave her a lowered interim performance rating and cautioned that if she again raised such a matter without going through her chain of command, she would be transferred for closer supervision to her immediate supervisor's worksite, which was located a significant distance from her then assigned worksite.

After an initial review, OPR determined that it lacked jurisdiction to investigate the complaint. Because the Office of General Counsel is not an entity

designated to receive protected disclosures, the complainant did not make a protected disclosure as defined by the whistleblower statute and regulations. Moreover, although a lowered annual performance rating qualifies as a personnel action, an interim performance rating does not. Finally, while a threat to transfer an employee might qualify as a personnel action, because the threatened transfer here was in response to a disclosure that was not protected, OPR lacked jurisdiction to investigate it.

[Allegation of Whistleblower Retaliation](#)

Two FBI employees alleged that they were transferred to a different duty station after raising concerns about

being asked to assist with an annual property inventory by searching an absent colleague's office, including the colleague's personal belongings.

OPR opened joint investigations and reviewed FBI records and interviewed the complainants, subjects, and other witnesses. Based on its investigations, OPR found that the complainants were asked to assist administrative staff with the annual inventory but were not specifically asked or ordered to search a colleague's personal belongings, making it a lawful request under established case law. Therefore, OPR found that the complainants did not make disclosures that were protected under the FBI whistleblower statute and regulations. In addition, OPR determined that the FBI would have transferred the complainants even in the absence of the alleged protected disclosures. Accordingly, the evidence did not support a finding that an FBI employee had taken a personnel action against the whistleblowers as retaliation for their protected disclosures.

[Allegation of Whistleblower Retaliation](#)

An FBI employee alleged that after she reported an alleged violation of the FBI's nepotism policy by her supervisor and the creation of a hostile work environment by the supervisor and others in her chain of command, she was subjected to numerous alleged acts of reprisal, including receiving downgraded ratings on performance evaluations and

a reassignment to a less prestigious position. OPR opened an inquiry and, after carefully reviewing the allegations in the complaint, concluded that the whistleblower had alleged a claim that was cognizable under the FBI whistleblower regulations and converted its inquiry to an investigation. Following a thorough investigation, which included reviewing voluminous records and interviewing numerous witnesses and subjects, OPR concluded that the evidence did not support a finding that the actions taken with respect to the whistleblower were in retaliation for protected disclosures.

Although OPR concluded that the whistleblower made at least one protected disclosure, the FBI could demonstrate by clear and convincing evidence that it would have taken the same personnel actions against the employee absent the protected disclosure. Accordingly, there was insufficient evidence to conclude that an FBI employee had taken a personnel action against the whistleblower as retaliation for a protected disclosure.

[Allegation of Whistleblower Retaliation](#)

An FBI employee alleged that she had suffered workplace retaliation after contacting congressional staff regarding her view of the manner in which the FBI was enforcing a certain statute. The employee also gave to congressional staff an internal FBI email regarding the FBI's use of law enforcement resources

that she suggested was at odds with congressional testimony by the Attorney General.

OPR concluded that, as an initial matter, the employee's communications did not constitute protected disclosures as defined by the statute and regulations. OPR also found that the employee did not allege any facts or provide any evidence that the supervisor about whose allegedly retaliatory actions she complained knew about her communications with congressional personnel or the nature of those

communications. Finally, OPR found that the FBI could show by clear and convincing evidence that it would have taken the same personnel actions against the employee even in the absence of the disclosures to Congress. Accordingly, OPR concluded that there were no grounds for corrective action under the FBI whistleblower protection laws.

Section VI: OPR Review of OIG Investigations into Attorney Misconduct



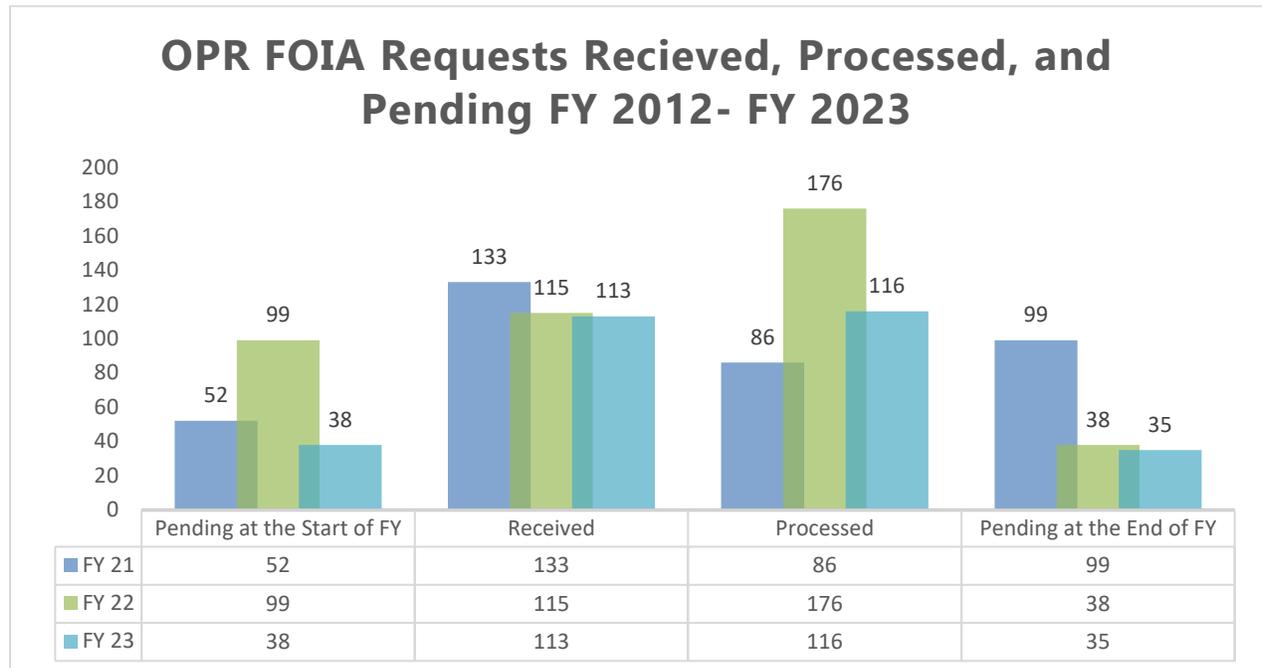
The OIG investigates allegations concerning waste, fraud, abuse, and misconduct in Department programs and by Department personnel, including allegations relating to the conduct of Department attorneys, when the allegations are outside of OPR's jurisdiction. At the request of the PMRU, OPR reviews OIG reports of investigations into Department attorney misconduct to determine whether the subject's conduct may implicate the rules of attorney professional conduct and should be referred to the appropriate state attorney disciplinary authority. In Fiscal Year 2023, OPR reviewed the conduct of three Department attorneys found by the OIG to have violated regulations or Department policies. In all three matters, OPR recommended that the PMRU authorize referrals to state attorney disciplinary authorities. The referred matters concerned lack of candor in completing a required financial disclosure form, lack of candor in an OIG interview, and unauthorized disclosures of confidential client information. OPR made referrals in all three cases after the PMRU authorized OPR to do so.

Section VII: OPR Activities in Response to FOIA Requests and Litigation

The FOIA gives persons the right to request access to government records. Under the FOIA, federal agencies are required to disclose requested information unless the information falls under one of nine exemptions that protect certain sensitive interests, such as personal privacy, national security, and law enforcement. The FOIA works in tandem with the Privacy Act, which gives persons the right to request access to government records about themselves. Agencies respond to individuals’ requests for access to their own records by processing those requests under both statutes. Each year, OPR devotes significant resources to the processing of and timely response to FOIA and Privacy Act requests, while also defending its actions in FOIA lawsuits.

As shown by the chart below, OPR improved its processing of FOIA requests during the fiscal year. During Fiscal Year 2023, OPR substantially decreased the number of days to process simple FOIA requests by responding to them at a median of only 6 days compared to 29 days in the previous fiscal year. In addition, OPR decreased its backlog of FOIA requests and closed 30 percent of its 10 oldest FOIA requests during the fiscal year.

Graph 6



The following are summaries of notable FOIA litigation to which OPR was a party during the fiscal year.

In *America First Legal Foundation v. U.S. Department of Justice*, the plaintiff sought records related to a private citizen, an education technology company, and Attorney General Merrick Garland. OPR conducted a search and found no records responsive to the plaintiff's request. The case remains ongoing while the other Department components from whom the plaintiff seeks records continue to process potentially responsive records.

The plaintiff in *Cabezas v. Federal Bureau of Prisons and the Office of Professional Responsibility* sought from OPR records related to misconduct or ethical violations by two FBI special agents, a task force officer, and an AUSA. OPR did not confirm or deny the existence of any responsive records, pursuant to FOIA exemptions 6 and 7(C). An exhibit to the plaintiff's motion for summary judgment clarified that the plaintiff sought records that were not maintained by OPR but were more likely maintained by the FBI, if they existed. OPR referred those parts of the plaintiff's FOIA request to the FBI for response.

In *CREW v. the Office of Professional Responsibility*, the plaintiff sought to compel responses to two separate FOIA requests. OPR responded to the first request and identified potentially responsive records to the second request. As a result of its search, OPR is reviewing and providing responsive records to plaintiff on a rolling basis.

The plaintiff in *Truesdale v. Federal Bureau of Prisons* asserted that he submitted FOIA requests to OPR and several other Department components via the Department's FOIA/PA Mail Referral Unit. OPR searched its system of records for correspondence from the plaintiff directly or via the Mail Referral Unit. The search yielded no responsive records. OPR filed for summary judgment and is awaiting the court's ruling.

Section VIII: Training and Outreach Efforts

Training on Professional Misconduct Issues

OPR participates in training and outreach events to improve ethical compliance within the Department, as well as to educate external stakeholders about the Department's commitment to accountability. In support of the Department's Strategic Plan objective to uphold the rule of law, OPR's leadership substantially increased its outreach to Department components and USAOs to provide information and training about Department employees' reporting responsibilities regarding attorney misconduct allegations, frequent problems and issues that result in OPR investigations and misconduct findings, and best practices relating to various litigation issues.

In Fiscal Year 2023, OPR conducted 14 training sessions to USAO personnel, which included presentations to new U.S. Attorneys, new AUSAs, USAO criminal chiefs, and AUSAs and supervisors at nine individual USAOs. In addition, OPR gave presentations to components in the Criminal and Civil Divisions, the Professional Responsibility Advisory Office, officials with a foreign delegation, and investigators in a non-Department agency. OPR also worked with the Criminal Chiefs Working Group to develop a training memorandum highlighting best practices in the areas of discovery, grand jury, closing arguments, and privileged information, among others. In September, the memorandum was sent to USAO leadership for distribution to all AUSAs handling criminal matters. Through these presentations and the best practices memorandum, OPR alerts Department attorneys to the many challenging issues faced by Department attorneys to help them avoid missteps, thereby reducing and preventing the reoccurring issues that OPR frequently reviews.



Training and Outreach regarding Bar Lapse Issues

By statute, the Department is prohibited from paying compensation to an attorney who is not "duly licensed and authorized to practice in a State, [a] territory, or the District of Columbia." Consistent with the statutory requirements, all individuals employed as Department attorneys, individuals who provide legal advice regardless of position title, or individuals who are otherwise engaged in the practice of law must maintain an active bar license through which they are authorized to practice law. Attorneys must complete an annual certification confirming that at all times during the year they maintained an active license. Attorneys must immediately self-report to OPR any lapse in active bar membership during Department employment.

In the last three years, OPR has seen a significant increase over the prior three-year period in the number of reports of Department attorneys with suspended bar licenses. In Fiscal Year 2023, OPR opened 25 inquiries and 7 investigations related to bar licensing issues. Factors contributing to the increase included attorneys failing to monitor personal email addresses for communications from the bar, failing to provide bars with their current contact information, failing to ensure that emails from the bar were routed to the appropriate inbox in their Department email account, and failing to monitor office mailboxes. Some attorneys faced difficulties caused by unusual and significant personal circumstances, such as ill health.

OPR took numerous steps in the fiscal year to address the bar lapse issue. After identifying the significant factors leading to the bar lapses, OPR worked closely with the Office of Attorney Recruitment and Management to improve the Department's annual bar certification form (DOJ-54A) and to correct deficiencies. As a result of these efforts, the form was revised to require Department attorneys to provide on the form the contact information on record with their state licensing authority. This revision should alert attorneys to out-of-date contact information and is expected to reduce the number of bar lapse cases stemming from bars sending dues notices and other important communications to inaccurate email addresses. In addition, the OPR Counsel sent a memorandum to all Department attorneys reminding them of their personal obligation to maintain an active bar license. OPR followed up with a memorandum to all Department component heads recommending continued office training regarding the active license requirement and advising managers of their responsibilities in the event of an attorney bar lapse.

External Outreach

OPR routinely engages with various state attorney disciplinary authorities. In accordance with Department policy, OPR notified state attorney disciplinary authorities of findings of professional misconduct against Department attorneys and responded to the bars' requests for additional information concerning those matters. OPR also advised bars of conduct by non-DOJ attorneys that implicated the rules of professional conduct when that conduct came to the attention of Department personnel in the course of their professional duties.

In its capacity as the Department's liaison to state bar disciplinary authorities, OPR representatives attend biannual conferences of the National Organization of Bar Counsel. At the conferences, OPR provides updates on the Department's efforts to investigate allegations of misconduct, consults with bar counsel on methods for efficiently reporting allegations of misconduct to the bars, collects information on best practices for

investigating and analyzing professional misconduct allegations, and keeps informed of current trends regarding the application and interpretation of the rules of professional conduct in jurisdictions across the country. In Fiscal Year 2023, conference topics of particular relevance to OPR concerned conflicts of interest resulting from personal relationships and the procurement of and transition to new case management software. Through its liaison efforts, OPR builds relationships that are useful to both bar counsel and the Department.



CONCLUSION

During Fiscal Year 2023, Department of Justice attorneys continued to perform their duties in accordance with the high professional standards expected of the nation's principal law enforcement agency. When Department attorneys engaged in misconduct, exercised poor judgment, or made mistakes, they were held accountable for their conduct. OPR reviewed and resolved hundreds of complaints and fully investigated allegations when appropriate. OPR participated in numerous educational and training activities both inside and outside the Department and continued to serve as the Department's liaison with state attorney disciplinary authorities. OPR's activities in Fiscal Year 2023 increased awareness of professional standards and responsibilities throughout the Department and helped the Department's attorneys meet the challenge of enforcing the laws and defending the interests of the United States while maintaining the highest ethical standards.