



U.S. Department of  
**JUSTICE**

# FY2024 Annual Report



Office of Professional Responsibility

## MESSAGE FROM THE COUNSEL



In Fiscal Year 2024 (FY 2024), the Office of Professional Responsibility (OPR) continued to carry out its mission of ensuring that Department of Justice (Department) attorneys perform to the highest ethical standards. OPR reviewed and responded to over one thousand complaints, carefully reviewing the allegations to determine whether further action by OPR was warranted. When appropriate, 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 also trained attorneys throughout the Department to promote best practices in areas in which OPR frequently sees errors.

This report provides information and statistical data concerning OPR's activities during FY 2024 (October 1, 2023, through September 30, 2024). It also summarizes OPR's professional misconduct investigations, significant inquiries, and various additional responsibilities and duties, including reviewing complaints of retaliation against Federal Bureau of Investigation whistleblowers.

During the fiscal year, OPR completed 13 investigations, involving allegations ranging from lack of candor, mishandling privileged documents, contact with a represented party, failure to maintain an active bar license, and grand jury abuse, among others. In its investigations, OPR attorneys conducted thorough, detailed interviews of witnesses and subjects and reviewed pleadings, orders, transcripts, internal communications, and other relevant records. OPR found professional misconduct, that is, that the subject attorney acted intentionally or recklessly, in 54 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 completed reviews of 61 inquiries, which enabled OPR to assess and promptly resolve matters without a full investigation.

As described in this report, OPR continued the efforts it initiated in prior years to reduce the number of Department attorneys who failed to maintain an active law license, primarily resulting from the failure to pay bar dues. OPR worked with Department components to ensure that attorneys received training and notice about their statutory obligation to maintain an active license and implemented a certification requirement to increase Department attorneys' awareness of the Department's policy.

In addition, after years of research and analysis of its information technology needs, OPR procured a solution to replace its obsolescent case and document management systems. OPR expects the new systems to substantially improve its reporting, document-searching, and case-management capabilities.

As part of its outreach efforts, OPR provided information and training to Department attorneys about frequent issues that result in OPR investigations and misconduct findings and advised on best practices relating to various litigation issues. OPR also met with or provided training to non-Department entities about OPR's mission and practices.

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

**Fiscal Year 2024 Annual Report**

MESSAGE FROM THE COUNSEL

INTRODUCTION ..... 1

- A. Overview of OPR..... 1
- B. Significant Management Challenges ..... 2
- C. Overview of OPR Procedures in  
Misconduct Matters..... 2
- D. OPR’s Ancillary Responsibilities ..... 6

Section I: Statistical Overview of Professional Misconduct  
Allegations and OPR Actions ..... 7

- A. Intake and Initial Evaluation of Professional  
Misconduct Complaints ..... 7
- B. Professional Misconduct Investigations and  
Inquiries by Fiscal Year ..... 8
- C. Professional Misconduct Inquiries Opened and  
Closed in Fiscal Year 2024..... 9
- D. Professional Misconduct Investigations  
Opened in Fiscal Year 2024 ..... 12
- E. Professional Misconduct Investigations  
Closed in Fiscal Year 2024..... 14

Section II: Professional Misconduct Investigations  
Closed in Fiscal Year 2024 ..... 16

Section III: Examples of Professional Misconduct Inquiries  
Closed in Fiscal Year 2024 ..... 23

Section IV: Non-Department Attorney and Judicial  
Misconduct Allegations ..... 31

Section V: FBI Whistleblower Retaliation Claims ..... 34

Section VI: OPR Review of OIG Investigations into  
Attorney Misconduct ..... 39



Section VII: OPR Activities in Response to FOIA	
Requests and Litigation.....	39
Section VIII: Training and Outreach Efforts.....	41
CONCLUSION.....	44



## 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 authority, but that authority 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.



In the 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 (FY) 2024, 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](http://www.justice.gov/opr)). Individuals with questions about OPR should visit the website, particularly the Frequently Asked Questions section.

## **B. Significant Management Challenges**

As noted in the Counsel's message, OPR has engaged in a years-long process to assess potential options for replacing its dated and obsolete case management and document management systems. During this fiscal year, OPR worked with the Department's procurement staff to issue a request for quotes, reviewed proposals and supporting information provided by offerors, tested vendors' proposed software, and issued an award to the successful offeror. OPR expects to complete the process of installing and customizing its new systems and migrating existing data in the next fiscal year. OPR anticipates that the new software will enable OPR to complete its important work more efficiently and effectively.

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 49-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, opposing counsel, or others; improper conduct before a grand jury; improper opening statements and closing arguments; failure to competently and diligently represent the interests of the United States; 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; Congress; 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.

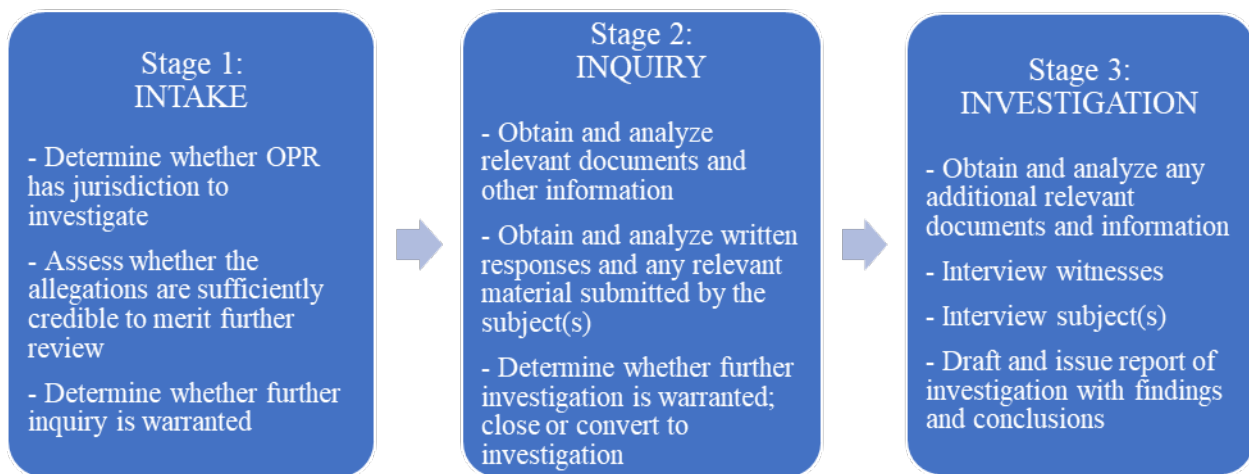
Most complaints received by OPR do not warrant further review because, for example, the complaint is outside OPR's jurisdiction, pertains to matters addressed by a court with no findings of misconduct, is frivolous on its face, or is vague and unsupported by any evidence. In some cases, OPR initiates 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 an inquiry indicates that further information is needed to resolve an allegation, 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 OPR addressing the allegations, case files, court and other relevant records, and interviews of witnesses and the subject. Interviews are conducted under oath; subject and significant witness interviews are transcribed. 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 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 to Department policies or practices.

### **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 may review 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.<sup>1</sup> 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.<sup>2</sup>

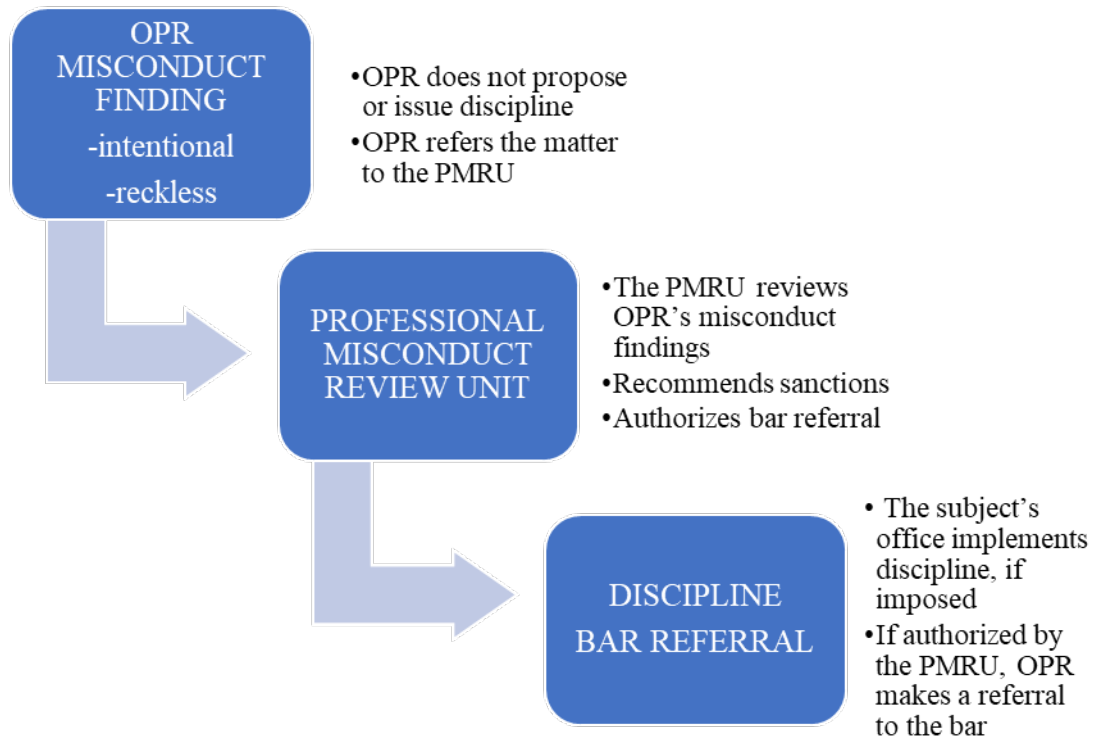
Once a disciplinary action becomes final and after authorization by the PMRU (for matters within its jurisdiction) or the Office of the Deputy Attorney General, OPR notifies the appropriate state attorney disciplinary authorities of conduct that implicates the rules of professional conduct. This process is shown below.

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<sup>1</sup> 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.

<sup>2</sup> 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 to determine whether referral to state attorney disciplinary authorities is warranted; 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

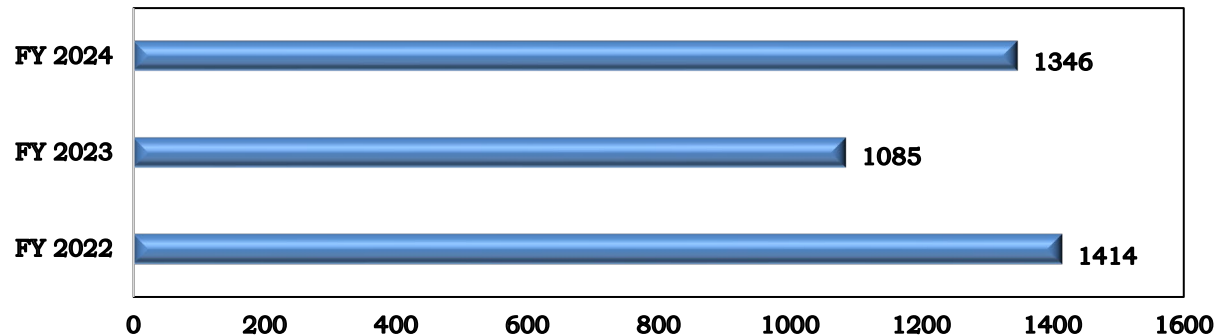
This section provides information concerning OPR’s review of allegations of professional misconduct involving Department attorneys, including immigration judges.

### A. Intake and Initial Evaluation of Professional Misconduct Complaints

In FY 2024, OPR received 1,346 new complaints, 181 of which, or approximately 13 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 FY 2024, the total number of complaints increased by 21 percent from the prior year. Graph 1 compares the number of complaints received for the last three fiscal years.

**Graph 1**

**Total Number of Complaints Received  
FY 2022 - FY 2024**



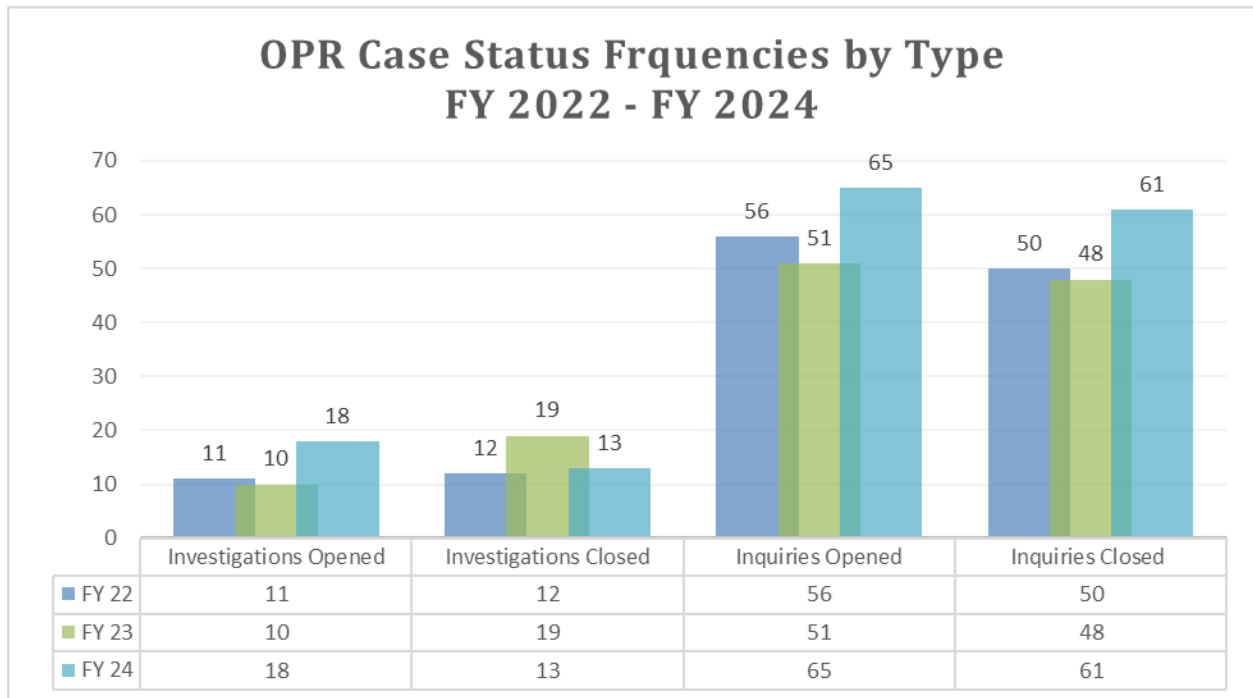
OPR determined that 65 complaints warranted further review and opened inquiries in those matters.<sup>3</sup> The remaining matters did not warrant an inquiry or investigation by OPR because, for example, they sought review of allegations that were raised or could have been raised during litigation; 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.

<sup>3</sup> Some of the complaints that were opened as inquiries may have been received by OPR prior to FY 2024.

**B. Professional Misconduct Investigations and Inquiries by Fiscal Year**

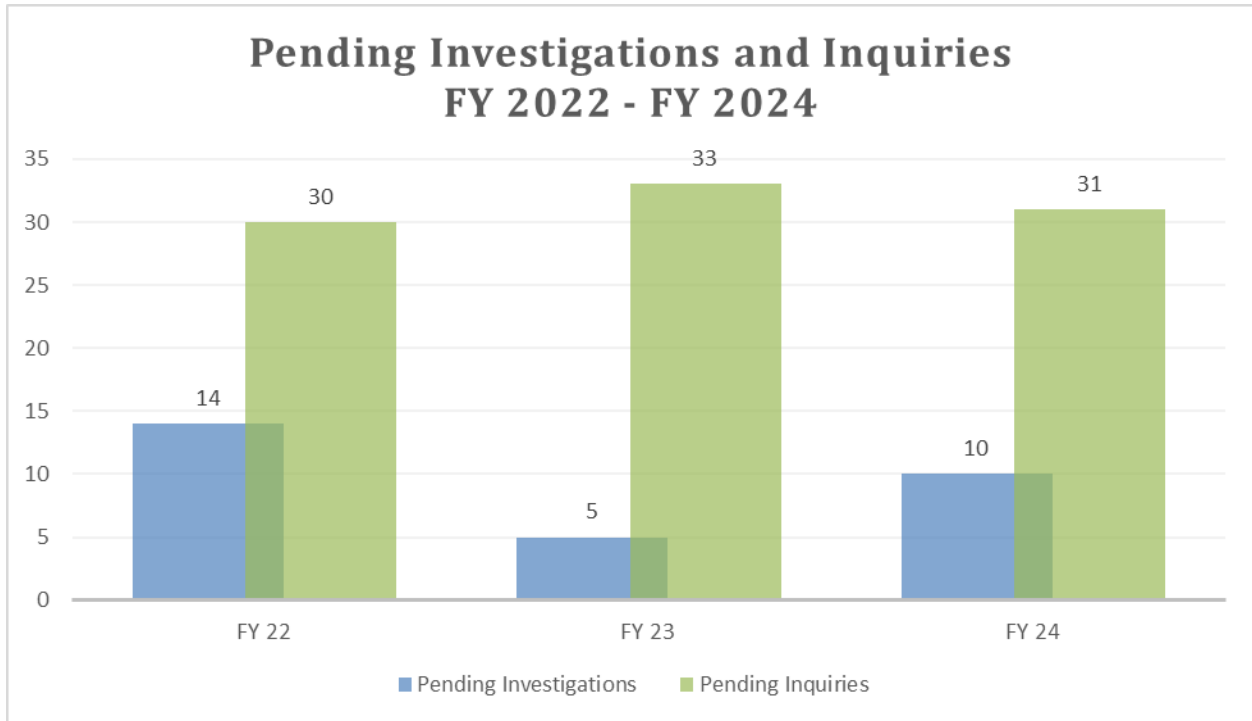
Graph 2 compares the number of investigations and inquiries OPR opened and closed for the last three fiscal years. As reflected in the graph, in FY 2024, OPR opened 65 inquiries and closed 61, and opened 18 investigations and closed 13.

**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 FY 2024, there were 10 pending investigations and 31 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 FY 2024**

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 65 inquiries opened in FY 2024 are set forth in Table 1.<sup>4</sup>

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<sup>4</sup> 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 65 matters referenced above do not include matters involving proposed bar notifications relating to non-Department attorneys.



**Table 1**

<b>Sources of Professional Misconduct Complaints against Department Attorneys in Inquiries Opened in FY 2024</b>		
<b>Source</b>	<b>Complaints Leading to Inquiries</b>	<b>Percentage of All Inquiries</b>
Department components, including self-reports (unrelated to judicial findings of misconduct)	53	81.6%
Judicial opinions and referrals, including self-reports and referrals by Department employees of judicial criticism and findings of misconduct	7	10.8%
Other agencies	2	3.1%
Private attorneys	1	1.5%
Private parties	1	1.5%
Inmates	1	1.5%
<b>Total</b>	<b>65</b>	<b>100%</b>

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 65. Allegations concerning lack of candor and discovery violations comprised more than one-third of the total allegations of misconduct.

**Table 2**

<b>Types of Professional Misconduct Allegations in Inquiries Opened in FY 2024</b>		
<b>Type of Misconduct Allegations</b>	<b>Number of Allegations</b>	<b>Percentage of Allegations</b>
Failure to maintain an active bar membership	32	27.1%
Misrepresentation to the court or opposing counsel	24	20.3%
Failure to comply with discovery obligations	20	16.9%
Failure to comply with federal law	13	11.0%
Failure to competently or diligently represent the client's interests	10	8.5%
Failure to comply with Department rules and regulations	8	6.8%
Failure to keep the client informed	4	3.4%
Failure to comply with court orders and federal rules	3	2.5%
Improper remarks to a grand jury, during trial, or in pleadings	2	1.7%
Abuse of authority, including abuse of prosecutorial discretion	1	0.9%
Unauthorized disclosure	1	0.9%
<b>Total</b>	<b>118</b>	<b>100%</b>

In FY 2024, OPR resolved and closed 61 inquiries involving allegations against Department attorneys. These matters involved 136 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.<sup>5</sup>

#### **D. Professional Misconduct Investigations Opened in FY 2024**

The most serious allegations may be opened as investigations, but generally investigations are converted from inquiries after records have been obtained and reviewed. All 18 investigations OPR opened in FY 2024 were referred to OPR by Department attorneys and components. Some of these investigations involved multiple subjects. In addition, because many investigations involved multiple professional misconduct allegations, OPR examined 47 separate allegations of misconduct. The types of allegations investigated are set forth in Table 3.

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<sup>5</sup> In FY 2024, 16 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.

**Table 3**

<b>Types of Professional Misconduct Allegations in Investigations Opened in FY 2024</b>		
<b>Types of Misconduct Allegations</b>	<b>Number of Allegations</b>	<b>Percentage of Allegations in Investigations</b>
Misrepresentation to the court or opposing counsel	9	19.2%
Failure to comply with Department rules and regulations	9	19.2%
Failure to maintain an active bar membership	6	12.8%
Failure to keep the client informed	6	12.8%
Conflict of interest, including appearance of conflict	5	10.6%
Failure to comply with discovery obligations	3	6.4%
Abuse of authority, including abuse of prosecutorial discretion	3	6.4%
Failure to comply with court orders and federal rules	2	4.2%
Improper remarks to a grand jury, during trial, or in pleadings	1	2.1%
Unauthorized disclosure	1	2.1%
Failure to competently or diligently represent the client's interests	1	2.1%
Unauthorized practice of law	1	2.1%
<b>Total</b>	<b>47</b>	<b>100%</b>

## **E. Professional Misconduct Investigations Closed in FY 2024**

OPR completed 13 investigations in FY 2024, some of which involved more than one attorney. OPR found professional misconduct in 7, or 54 percent, of the 13 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;<sup>6</sup> or (2) recklessly disregarded his or her obligation to comply with that obligation or standard.<sup>7</sup> Three of the 7 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 6 of the 7 investigations.

The 7 investigations closed with professional misconduct findings included 17 sustained allegations of misconduct. Table 4 identifies the types of allegations sustained in those investigations.

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<sup>6</sup> 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.

<sup>7</sup> 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 4**

<b>Types of Professional Misconduct Allegations in Closed Investigations with Findings of Misconduct in FY 2024</b>	<b>Number of Misconduct Allegations</b>	<b>Percentage of Misconduct Allegations</b>
Failure to keep the client informed	3	17.6%
Failure to maintain an active bar membership	3	17.6%
Misrepresentation to the court or opposing counsel	2	11.75%
Failure to comply with Department rules and regulations	2	11.75%
Failure to competently or diligently represent the client's interests	1	5.9%
Failure to comply with court orders and federal rules	1	5.9%
Interference with defendant's rights	1	5.9%
Misrepresentation to the bar	1	5.9%
Misrepresentation to the Department	1	5.9%
Unauthorized practice of law	1	5.9%
Interference with the administration of justice	1	5.9%
<b>Total</b>	<b>17</b>	<b>100%</b>

In the 7 investigations closed in FY 2024 with professional misconduct findings, OPR made misconduct findings against seven of the eight Department attorneys involved. At the end of FY 2024, the PMRU had issued a final decision in one matter, sustaining OPR's findings of professional misconduct and authorizing referrals to the appropriate state attorney disciplinary authorities.

In 5 of the 6 remaining investigations closed without a finding of professional misconduct, OPR found that an attorney exercised poor judgment. Thus, of the 13 investigations OPR closed in FY 2024, OPR made a finding of professional misconduct or poor judgment in 12 cases, or 92 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 2024*

The following professional misconduct investigations were closed during FY 2024. 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; male pronouns are used for this report.



### [Investigation of Alleged Falsification of Declaration and Lack of Candor](#)

The Bureau of Prisons (BOP) reported to OPR that in connection with a civil rights lawsuit brought by an inmate against the BOP and others, a BOP attorney assisting with the defense added a signature to a declaration without the declarant's knowledge or authorization. The BOP attorney sent the signed declaration, ready for filing with the court, to the Assistant U.S. Attorney (AUSA) who was responsible for defending the case. When the BOP attorney's supervisor discovered the issue and confirmed that the declarant had not reviewed or signed the declaration, the supervisor questioned the attorney about the declaration. In response, the BOP attorney made misrepresentations to his supervisor, including fabricating an email from the declarant to himself, to conceal that he had added the signature to the declaration without the declarant's authorization. The BOP supervisor provided the AUSA with a properly authenticated and signed declaration from another declarant, which was filed. Shortly after these events, the BOP attorney resigned.

Based on the results of its investigation, OPR concluded that the BOP attorney violated the rules of professional conduct when he knowingly and intentionally added the declarant's signature to the declaration without

authorization and provided it to the AUSA for use in the lawsuit. OPR also concluded that the BOP attorney violated the rules of professional conduct when he intentionally made misrepresentations to his supervisor to conceal that the declarant's signature was unauthorized. The matter is pending before the PMRU.

### [Investigation of Alleged Failure to Maintain Active Bar Membership](#)

A USAO reported to OPR that an attorney's only active bar membership had been suspended because the attorney failed to timely complete his bar membership's continuing legal education (CLE) requirement. OPR determined that the attorney's active bar membership had been suspended during two additional periods because the attorney had failed to timely pay his annual bar membership dues.

OPR investigated and concluded that the attorney committed professional misconduct by acting in reckless disregard of his unambiguous obligation under Department policy to continuously maintain an active bar membership in at least one state, a territory, or the District of Columbia while employed as a Department attorney. OPR found that the attorney should have known, based on his many years as a member of the bar and as a Department attorney, that his failure to timely pay his annual bar dues and to complete his CLE requirement involved a substantial likelihood that he

would violate the Department's bar membership policy. In addition, OPR concluded that the attorney committed intentional professional misconduct, by practicing law during a period of suspension when he knew he was ineligible to do so, in violation of the rules of professional conduct. OPR also concluded that by knowingly failing to inform his supervisors about two of his suspensions, he violated the rules of professional conduct and his unambiguous obligation under Department policy to inform his supervisors about lapses of active bar membership. The matter is pending before the PMRU.

#### [Investigation of Alleged Improper Disclosure of Privileged Materials](#)

A USAO informed OPR of an AUSA's mishandling and improper disclosure of defendants' attorney-client privileged emails. During a criminal investigation, the government, pursuant to a search warrant, obtained a voluminous production of emails related to email accounts associated with various targets of the investigation. Although the AUSA was aware that certain targets of the investigation were represented by counsel in a parallel civil investigation and expected that the search warrant return may include emails to and from attorneys, he failed to establish a filter review team to identify and segregate attorney-client privileged communications. After obtaining an indictment charging multiple defendants with

conspiracy and related offenses, the AUSA disclosed in discovery all the emails obtained through the search warrant to each of the codefendants. Because the attorney-client emails had not been identified and sequestered, the discovery included attorney-client privileged communications which were provided to attorneys and defendants who were not holders of the privilege. After being informed by an attorney representing one of the defendants that the discovery included privileged communications, the AUSA failed to promptly notify other defense counsel or seek a return of the discovery. In subsequent litigation concerning the improper disclosure, the government conceded that the discovery contained attorney-client privileged communications and moved to dismiss the case without prejudice, which the court granted. The AUSA resigned from the Department during OPR's investigation.

OPR found that the AUSA engaged in a pattern of repeated neglect that was detrimental and consequential to the case and violated his obligations under applicable rules of professional conduct to act with reasonable diligence and promptness in representing his client, the United States, and to not engage in conduct that is prejudicial to the administration of justice. OPR concluded that the AUSA's pattern of repeated neglect manifested a reckless disregard for his professional obligations under the rules. The matter is pending before the PMRU.

### Investigation of Alleged Failure to Maintain Active Bar Membership and Misrepresentations

A non-career Department attorney in component leadership reported to OPR that he had a lapse of active bar membership the previous year and failed to timely report it to OPR. OPR investigated and determined that the attorney had no active bar membership for over four months because the attorney intentionally changed his active bar status to an inactive status. OPR also determined that the attorney made a misrepresentation to his licensing authority to obtain inactive status. Further, OPR determined that even though the attorney knew that his active bar membership had lapsed, he submitted an annual bar certification form to the Department in which he misrepresented that he had no lapse of active bar membership during the reporting period.

OPR concluded that the attorney committed professional misconduct by knowingly failing to continuously maintain an active bar membership in at least one state, a territory, or the District of Columbia in violation of the Department's bar membership policy. OPR also concluded that the attorney committed professional misconduct by making an intentional misrepresentation to the Department and a reckless misrepresentation to his licensing authority, in violation of the rules of professional conduct. The PMRU

affirmed OPR's findings and authorized referrals to state attorney disciplinary authorities. The Department attorney resigned during the PMRU process.

### Investigation of Alleged Failure to Maintain Active Bar Membership

An AUSA reported to OPR that his active bar membership had previously been suspended for five days because he failed to timely complete his bar membership's CLE requirement. OPR investigated and concluded that the AUSA committed professional misconduct by acting in reckless disregard of his unambiguous obligation under Department policy to continuously maintain an active bar membership in at least one state, a territory, or the District of Columbia while employed as a Department attorney. OPR found that the AUSA knew he needed to complete additional courses to meet his bar membership's CLE requirement and that his failure to do so would result in a suspension of his license. OPR found that the AUSA should have known, based on his many years as a Department attorney and member of the bar, and his familiarity with the Department's bar membership policy, that his failure to complete the CLE requirement involved a substantial likelihood that he would violate the Department's bar membership policy. The matter is pending before the PMRU.



Investigation of Alleged Improper Contact with a Represented Person, Lack of Candor to Defense Counsel, and Failure to Advise the Client

A USAO notified OPR of the conduct of an AUSA in a pre-indictment grand jury investigation. Although the target was known by the AUSA and the agent to be represented by counsel in the investigation, the agent spoke to the target outside counsel's presence and after learning that the target, who was of advanced age, was experiencing significant health problems, suggested that the investigation could potentially be resolved through an administrative agreement to repay the funds that the target allegedly fraudulently obtained. After the agent informed the AUSA of his conversation with the target, the AUSA and the agent agreed that the investigation should be closed. Shortly thereafter, the agent informed the AUSA that he had prepared the repayment agreement and inquired if he could have the target sign the agreement outside the presence of his counsel. The AUSA instructed the agent to ask the target if he wished to have his counsel present and if the target responded in the negative, then the agent could have the target sign the repayment agreement. The agent followed the AUSA's instructions, and the target signed the agreement after declining the presence of counsel. The AUSA later notified the target's counsel in a series of communications about what had

occurred, including that the target had signed the agreement and that the investigation was closed. The AUSA had not previously conferred with his supervisor about the repayment agreement or the decision to close the investigation. The AUSA's initial communications with the target's counsel were inaccurate and incomplete, and he proffered a more complete, corrected version of the facts only upon counsel's repeated questioning.

OPR found that the AUSA committed professional misconduct by acting in reckless disregard of the applicable rules of professional conduct when, knowing that the target was represented in the investigation, he authorized the agent to communicate with the target about the investigation outside the presence of his counsel. OPR also found that the AUSA committed professional misconduct by acting in reckless disregard of his obligations under the applicable rules of professional conduct in failing to explain to his client the facts that were reasonably necessary for the client to make informed decisions about the matter. OPR further concluded that the AUSA exercised poor judgment when he failed in his initial communications with the target's counsel to describe the agent's contact with the target accurately and completely. The matter is pending before the PMRU.

### [Investigation of Unauthorized Person in the Grand Jury](#)

An AUSA self-reported to OPR that during a long-term investigation, he allowed the lead agent on the investigation to join multiple grand jury sessions and listen to live witness testimony in violation of Federal Rule of Criminal Procedure (FRCP) 6(d)(1). A trial attorney with the Department's Criminal Division self-reported that, at the behest of the AUSA, he also allowed the agent to participate in the last of those sessions.

Based on the results of its investigation, OPR concluded that the AUSA acted in reckless disregard of his obligations as set forth in FRCP 6(d)(1) and Department policies, when he allowed a law enforcement agent to observe multiple grand jury sessions. OPR also concluded that the Criminal Division trial attorney violated his obligations under FRCP 6(d)(1) and Department policies by allowing the agent to be present for a grand jury session but under the circumstances, his actions did not rise to the level of professional misconduct.

OPR's findings as to the AUSA are pending before the PMRU.



### [Investigation of Alleged Violation of Fentanyl Guidance](#)

The Office of Special Counsel referred to the Department for investigation, pursuant to 5 U.S.C. § 1213(c), a whistleblower disclosure that Drug Enforcement Administration (DEA) special agents and USAO prosecutors engaged in conduct that may constitute a violation of law, rule, or regulation; an abuse of authority; and a substantial and specific danger to public health and safety. Specifically, a DEA special agent alleged that on multiple occasions in 2023, the USAO instructed DEA agents not to stop vehicles the agents believed were transporting fentanyl, in purported violation of the Department's guidance and recommendations on managing the risk fentanyl presents in Title III investigations (fentanyl guidance). The matter was assigned to OPR for investigation.

Based on its investigation, OPR found that the Department's fentanyl guidance allows investigative teams conducting Title III investigations to use their discretion and judgment to determine how best to conduct their investigations. The guidance reminds teams to balance the risks to public safety of not immediately seizing the suspected drugs with the longer-term goals of the investigation and includes appropriate supervisory personnel in the decision-making process.

OPR found that in the cases it reviewed, decisions not to take immediate and overt enforcement actions against suspected transfers of narcotics were made with adequate oversight and appeared reasonable under the circumstances. Accordingly, OPR found that the conduct alleged by the whistleblower did not violate the fentanyl guidance or a law, rule, or regulation, nor did it constitute an abuse of authority or a substantial and specific danger to public health and safety.

#### [Investigations of Five Suspended Bar Licenses](#)

OPR investigated five separate reports that the District of Columbia (D.C.) bar licenses of AUSAs, a Special

AUSA, and component attorneys had been suspended due to their failure to pay annual bar dues. The periods of suspension ranged from 9 to 36 days. OPR determined that each attorney violated the Department's bar membership policy, which requires Department attorneys to continuously maintain at least one active bar membership while employed as a Department attorney. However, in each case, the D.C. Bar retroactively reinstated the attorney to the date of suspension. Because the Bar's action effectively nullified each attorney's lapse, OPR concluded that the attorneys did not commit professional misconduct. The D.C. Bar's decision to grant retroactive reinstatement is discretionary, however. The attorneys' failure to timely pay their bar dues, despite repeated warnings from the Bar regarding their dues and license status and multiple advisements from the Department or their individual offices about their obligations, placed their only active license at risk. Accordingly, OPR concluded in each case that the attorney exercised poor judgment. OPR referred its findings to the attorneys' respective offices to handle as management matters.

### *Section III: Examples of Professional Misconduct Inquiries Closed in Fiscal Year 2024*

The following summaries are a representative sample of the professional misconduct inquiries closed by OPR in FY 2024.

#### [Allegations of Failure to Comply with Discovery Obligations](#)

A USAO reported to OPR a judicial finding that the government had not satisfied its discovery obligations because it failed to promptly provide favorable information to the defense about potential mental health disorders of a key government witness. As a result, the trial was postponed, and the court sanctioned the government by precluding it from introducing the witness's grand jury testimony at trial. OPR opened an inquiry, requested and reviewed written responses from the two involved AUSAs, and reviewed emails, motions, briefs, court orders, hearing and trial transcripts, law enforcement reports, the USAO's discovery productions, and other case-related materials spanning the three-year life of the case.

Following an extensive review, OPR concluded that it was unlikely that further investigation would result in OPR concluding that either prosecutor engaged in misconduct by intentionally violating or recklessly disregarding the government's discovery and disclosure obligations. As an initial matter, OPR concluded that information in the government's possession about the witness's potential mental health

disorders and malingering—issues that went to the witness's credibility and competency to testify—was material impeachment evidence, and the AUSAs had an unambiguous obligation to timely disclose it. However, OPR concluded that because the defense was able to ascertain and did in fact learn of the witness's mental health diagnosis on its own, prior to trial, the government did not suppress the information. In addition, the defense ultimately had time to make effective use of the information at trial. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry. Nonetheless, OPR found each prosecutor's delays in making the disclosures troubling and referred this matter to the USAO as a performance matter.

#### [Allegation of Violation of Fourth Amendment Rights](#)

A defense attorney alleged that a prosecutor may have given improper direction to law enforcement agents executing a warrant for the search and seizure of a suspect's iPhones. The warrant authorized the agents to compel the suspect to use his biometrics—but not passcodes—to access the phones'

contents, but when the suspect declined to voluntarily open the phones with passcodes, the agents took custody of the phones without compelling his biometrics. At the instruction of the prosecutor, the agents reengaged with the subject two additional times in efforts to access the contents of the iPhones with biometrics. The agents ultimately secured access after the subject used passcodes to open the phones. At the evidentiary hearing, the agents testified that they had not informed the prosecutor that the defendant had used passcodes on the phones.

The court granted the motion to suppress the evidence obtained from the phones, holding that the agents knew that the warrant was fully executed as of the time they originally took custody of the phones and that they acted in reckless disregard of the Fourth Amendment's warrant requirement when, in their subsequent contacts with the defendant, they compelled him not only to use biometrics but also to enter his passcodes. Throughout the litigation of the contested search, and in its final ruling on the suppression motion, the court made no adverse findings against the prosecutor.

After a thorough review of the extensive court record, OPR concluded that the evidence did not demonstrate that the prosecutor acted intentionally or in reckless disregard of his professional obligations. Accordingly, OPR concluded that further investigation was unlikely to

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

#### [Allegations of Failure to Comply with Discovery Obligations and Lack of Candor to the Court](#)

After a district court dismissed a criminal case without prejudice due to the government's failure to timely provide pretrial discovery, the defendants in the reindicted case sought dismissal with prejudice based on allegations that newly discovered information indicated that the government had intentionally failed to provide pretrial discovery and made misrepresentations to the court about the status of discovery. The defendants ultimately pled guilty and did not pursue the allegations, and the court made no misconduct findings as to the two AUSAs who handled the case during the relevant period, but the court severely criticized the AUSAs and their supervisors for mishandling the processing and production of the voluminous electronic discovery throughout the case.

OPR conducted an extensive review of court filings and transcripts, internal USAO documents, and information submitted by the AUSAs and others, and concluded that although the two AUSAs each made errors in various respects, the record did not establish that either engaged in intentional professional misconduct or that the conduct rose to the level of reckless professional misconduct with respect to

the issues raised by the court concerning discovery or the prosecutors' candor. OPR's inquiry revealed numerous systemic and management deficiencies that contributed to the discovery problems, including failing to provide adequate staffing resources, failing to adequately supervise a junior and inexperienced AUSA, and failing to ensure that a discovery plan was in place before indictment, among others. Nonetheless, OPR did not find that these failures rose to the level of reckless professional misconduct with respect to any specific individual. In addition, OPR's inquiry showed that the USAO instituted measures to improve its handling of future cases involving voluminous electronic discovery, and OPR advised the office of its findings with respect to the broader management issues. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.

#### [Allegation of Violation of FRCP 6\(e\)](#)

Following a report from a USAO, OPR initiated an inquiry regarding an appellate court's decision criticizing an AUSA's statements in the government's briefs about the existence of a previously undisclosed grand jury investigation. OPR reviewed relevant appellate and district court filings, decisions, and transcripts, as well as correspondence between the parties, a written response from the subject, and other materials.

OPR determined that although further investigation might establish that the AUSA's statements about the grand jury investigation in the government's appellate pleadings and at oral argument violated FRCP 6(e), the record did not demonstrate that the AUSA's disclosure of arguably protected information was intentional or reckless for purposes of establishing professional misconduct. Rather, the record demonstrated that the AUSA, a civil AUSA with little criminal experience and no grand jury training, was tasked with handling an unusual civil case based on a criminal investigation handled by other Department attorneys. Moreover, one of the government's appellate arguments depended on discussing the existence of a grand jury investigation without violating FRCP 6(e), an issue with which the AUSA had no familiarity. The AUSA consulted repeatedly with supervisors and the prosecutors handling the underlying criminal investigation for their guidance on how to discuss the grand jury investigation in the appellate filings and during oral argument. Under these unique circumstances, it was not unreasonable for the AUSA to rely on guidance from the prosecutors and his supervisors or to fail to recognize that his references to the grand jury's investigation likely violated FRCP 6(e). Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.



### [Allegations of Delayed Charging Decision, Violation of Department Charging Policy, and Related Allegations](#)

OPR received complaints that an AUSA and a Department component trial attorney engaged in professional misconduct during the investigation of a criminal case that resulted in a guilty plea. The complainant alleged that the prosecutors unduly delayed making a charging decision; would violate Department charging policy if a certain charge was brought against the defendant because that charge was unsupported by the law; filed a pleading in a related case that purportedly publicly accused the defendant of a crime, even though he had not yet been charged; failed to investigate alleged unauthorized disclosures by Department personnel of information regarding the investigation; and caused the improper public disclosure of a search warrant relating to the defendant.

OPR reviewed the complaints and related documentation, as well as relevant pleadings and transcripts. OPR determined that given the size and complexity of the investigation, the prosecutors did not unduly delay in reaching a charging decision and that the complaint about the prosecutors' intention to bring a certain charge against the defendant was moot because the defendant ultimately was not charged with that crime. OPR further determined that, in the pleading filed in

a related case, the information provided about the unnamed defendant was not unreasonable or improper given the government's need to provide the court with adequate information to understand the basis for its legal argument, while also shielding the identity of the defendant who had not then been indicted. OPR also concluded that, even assuming the prosecutors did not investigate the unauthorized disclosures, they were not required to do so and generally such investigations, if appropriate, would be the responsibility of OPR or the OIG. In addition, OPR found that the public disclosure of the search warrant was due to an inadvertent administrative oversight that the prosecutor immediately corrected when it came to his attention. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.

### [Allegations of Violations of the Speedy Trial Act](#)

A USAO undertook a comprehensive review of cases charged by complaint to identify any cases not meeting the Speedy Trial Act deadline requiring that an information or indictment be filed within 30 days of a defendant's arrest on a complaint. The USAO reported to OPR preindictment Speedy Trial Act violations by six AUSAs. Following an examination of the reported cases, as well as additional cases that OPR identified as having apparent Speedy Trial Act violations, OPR

concluded that each of the six AUSAs had violated the Speedy Trial Act in at least one case.

In evaluating alleged Speedy Trial Act violations, OPR recognizes that the deadlines set by the Speedy Trial Act can lead to inadvertent or isolated Speedy Trial Act violations, particularly given ambiguity in how to apply rules allowing for Speedy Trial Act time to be excluded in computing the deadlines and inconsistencies in courts' implementation of the statute. Furthermore, arrest-generated or other reactive prosecutions can create challenges in meeting the 30-day deadline. Accordingly, in evaluating whether a violation rises to the level of professional misconduct, OPR considers the presence or absence of aggravating factors, such as a pattern of violations, evidence of intentional or reckless disregard of the Speedy Trial Act, or egregious circumstances. When determining whether a violation is aggravated, OPR considers, among other factors, whether the violation was brief, inadvertent, and not prejudicial to the defendant's ability to defend the case and whether the prosecutor timely informed a supervisor of the violation once known.

OPR did not find such aggravating factors in the preindictment Speedy Trial Act violations by the subject AUSAs. OPR also considered that the referring USAO took significant steps to improve how its staff track and ensure compliance with Speedy Trial Act deadlines. Among these

are periodic training, enhanced tracking systems, and close supervisory attention to Speedy Trial Act time requirements. Accordingly, OPR concluded that further investigation was unlikely to lead to findings of professional misconduct and closed its inquiry.

#### [Allegations of Failure to Comply with Discovery Obligations](#)

A Department component reported to OPR that in a criminal prosecution for fraud-related crimes, a judge declared a mistrial due to the government's late disclosure of discovery materials. The court held multiple hearings and issued an order concluding that the trial team's conduct was not malicious or intentionally fraudulent and that the trial team did not withhold exculpatory or impeachment information with nefarious intent or motive. The court, however, criticized the government's handling of discovery as below the standard of conduct expected of prosecutors appearing before the court. OPR initiated an inquiry into the trial team's late disclosure of discovery materials, as well as other allegations of misconduct made by defense counsel.

After reviewing transcripts, pleadings, and written responses from the trial team, OPR concluded that further investigation was unlikely to result in findings of professional misconduct. OPR concluded that defense counsels' allegation that the government improperly used a



confidential informant to provide the trial team with information concerning privileged conversations involving the defendants and their counsel was unfounded. The record demonstrates that the trial team did not direct the informant to record potentially privileged conversations or to share privileged information with them. OPR concluded that defense counsel's allegation that the trial team instructed a government witness to lie about the sources of information he relied upon to prepare a trial exhibit and then redacted the witness's notes to conceal the misconduct was also unfounded. OPR credited the witness's testimony and the trial teams' explanations to the court, which demonstrated that the government's actions were not motivated by an improper intent. Additionally, OPR found that the defendants were not prejudiced by the late disclosure of the unredacted notes because the trial team produced them during the trial, and the defendants were given an additional opportunity to cross-examine the witness. OPR concluded that the evidence did not support defense counsels' allegation that the government induced the defendants to stipulate to the admissibility of a trial exhibit that included information that the government knew was unreliable. OPR found that the trial team produced all of the underlying information regarding the exhibit to the defense long before trial. Moreover, before the government's witness testified about the exhibit, the

trial team provided the defense with copies of emails regarding the witness's concern that the underlying information was potentially inaccurate.

Lastly, OPR concluded that the trial team's late disclosure of discovery did not constitute a violation of the government's obligation to disclose exculpatory or impeachment information. OPR found that most of the discovery materials that the trial team disclosed to the defense mid-trial were not exculpatory, were not material, or had previously been disclosed through other records. Although some of the information disclosed to the defendants mid-trial was material to one defendant's defense, OPR determined that, under the circumstances, it was not unreasonable that the trial team failed to recognize the materiality of the information because its exculpatory value was not apparent until after the trial had commenced and the trial team had received additional information clarifying the substance of the information. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.

#### [Allegations of Failure to Comply with Discovery Obligations](#)

A USAO informed OPR that a court granted a mistrial due to the government's failure to timely produce discovery. On the first day of trial, the defendants informed the court that one

of the government's proposed witnesses had previously testified in a state court trial against a defendant and that the government had not provided that prior testimony to the defendants. The government obtained the transcript the following morning and produced it to the defense. During trial, a government witness testified that the witness recalled having a recorded law enforcement interview, which had not been disclosed to the defense. The government located the missing recording and additional undisclosed discovery and disclosed it. After the court granted a mistrial and the defendants filed a motion to dismiss, the government located more discovery and disclosed it to the defense. The court denied the defendants' motion to dismiss the indictment and, while criticizing the AUSAs' conduct, concluded that they did not appear to have acted intentionally or in bad faith.

OPR initiated an inquiry, received detailed written responses from the AUSAs, and reviewed relevant pleadings, transcripts, and communications. OPR concluded that the AUSAs should have obtained the transcript and disclosed it before trial because there was some evidence that the AUSAs knew about the transcript's existence and one of the court's discovery orders arguably required transcripts of which the government was aware to be disclosed to the defense. However, OPR concluded that additional investigation would be unlikely to find that the AUSAs engaged

in reckless or intentional misconduct when they disclosed the state court transcript the same day the government obtained it and before the witness testified.

In addition, although the recordings of the witness and other materials should have been disclosed before trial, the evidence did not demonstrate that the AUSAs' failure to timely produce the discovery was intentional or reckless for purposes of establishing professional misconduct. Instead, the AUSAs' failure to timely produce the discovery appeared to be an error attributed to their belief that the discovery that law enforcement previously provided to them, and that had been timely disclosed to the defense, was complete. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.

#### [Allegation of Mishandling of Privileged Documents](#)

OPR initiated a preliminary inquiry in this matter after learning of an appellate court decision criticizing the government for failing to seek prior judicial approval to seize privileged materials when the government applied for search warrants of several company locations and for its handling of the company's privileged documents after the search warrants were executed. OPR reviewed relevant appellate and district court filings, decisions, and transcripts, as

well as correspondence between the parties and other materials.

OPR's review showed that the AUSA in charge of the criminal investigation appropriately organized a filter team and that the team was in place when the warrants were executed. OPR's review also indicated that the filter team exercised appropriate care in reviewing potentially privileged materials. OPR did not uncover any authority in the jurisdiction mandating that the government seek prior judicial approval to seize the company's privileged materials. In addition, OPR concluded that the court's criticism that the government refused to return or destroy documents that it acknowledged were privileged was premised on a factual error by the court, as the available record reflected that the government never conceded the accuracy of any of the company's privilege designations. OPR also found that the court's criticism that the government had held the company's privileged documents for too long was unmerited because the available record indicated that the delay was caused in part by the company's own inaction and by the length of time the court took to decide the appeal. Accordingly, OPR concluded that further investigation was unlikely to lead to a finding of professional misconduct and closed its inquiry.

### Allegations of Failure to Comply with Discovery Obligations and Lack of Candor

A defense attorney alleged that a prosecutor failed to disclose his role in inducing a cooperator to write a letter to the sentencing judge that undercut the defense and supported the government's case against the defendant. The defense attorney also alleged that the prosecutor made misrepresentations to the court about his role in the creation of the letter and whether he had provided all discoverable materials—specifically communications between the government and the cooperator's attorney—to the defense.

At trial, the cooperator testified that he believed that his lawyer suggested that he write the letter at the request of law enforcement agents. However, when questioned by the court, the prosecutor denied that the government was involved in the creation of the letter. The trial court allowed the defendant to call the cooperator's former attorney to testify at a hearing about the creation of the letter, and the attorney testified, in part, that he thought he had advised the cooperator to write the letter after speaking with the prosecutor, which suggested that the prosecutor had been involved in the decision. Based on the attorney's testimony, the court indicated that the prosecutor may not have been entirely truthful with the court when denying involvement in the creation of

the letter. However, the court did not make any finding that the prosecutor had violated his duty of candor or any discovery obligations related to the government's interactions with the cooperator.

After a thorough review of the court record, transcripts, and communications between the prosecutor and the cooperator's former counsel, OPR concluded that the cooperator's attorney's testimony contained factual errors. The record did not support either the cooperator's or his attorney's testimony that the prosecutor or law enforcement agents requested that the cooperator write the letter to the sentencing judge. Accordingly, 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.

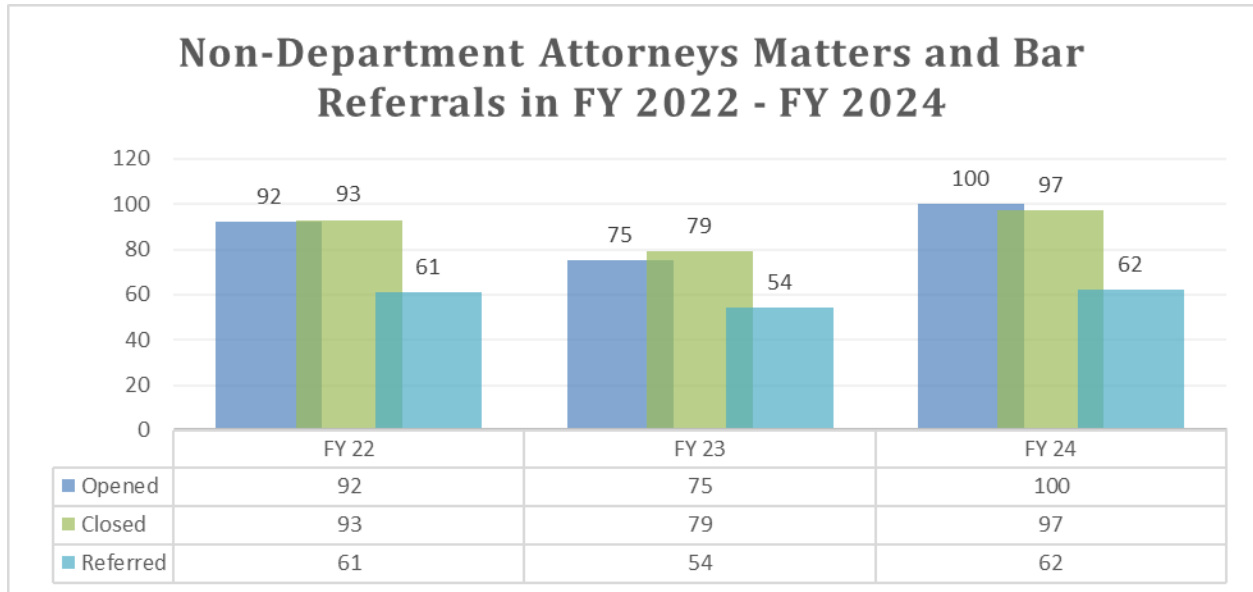
During FY 2024, OPR received 100 submissions from Department components concerning possible professional misconduct by non-Department attorneys. OPR evaluated and closed 97 submissions and referred 62 matters to state attorney disciplinary authorities.<sup>8</sup> OPR did not refer allegations it determined to be uncorroborated or based on mere suspicion, did not constitute a violation of a rule of professional conduct, or 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 FY 2024, OPR referred to disciplinary authorities a variety of criminal conduct by non-Department attorneys, such as bribery, fraud, murder for hire, racketeering, conspiracy to produce child pornography, and drug distribution. 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 an investigation of an unrelated matter, the Department learned that a non-Department attorney purchased methamphetamine from clients and accepted marijuana as payment from a client. Regarding non-criminal conduct, OPR referred to disciplinary authorities 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 attorneys served the government with a fake subpoena, filed false cases in bankruptcy court, practiced law with a suspended license, concealed evidence from a court, and misused trust accounts. Graph 4 depicts the number of non-Department attorney complaints received and resolved during the previous three fiscal years.

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<sup>8</sup> Some of the complaints that were closed included allegations received by OPR prior to FY 2024.

**Graph 4**



During FY 2024, OPR received three submissions from Department components, concerning possible professional misconduct by members of the judiciary. OPR closed two of the matters without referral, one involving allegations that a judge may have told the target of a search warrant that he was under investigation and another involving allegations that a judge mistreated a Department attorney, because OPR found insufficient evidence of referable misconduct in either case. OPR continues to monitor the third matter because it involves an ongoing criminal investigation. Table 5 depicts the number of judicial misconduct complaints received and resolved during the previous three fiscal years.

**Table 5**

<b>Complaints against Members of the Judiciary</b>		
	Complaints	Referrals
FY 22	2	1
FY 23	3	1
FY 24	3	0

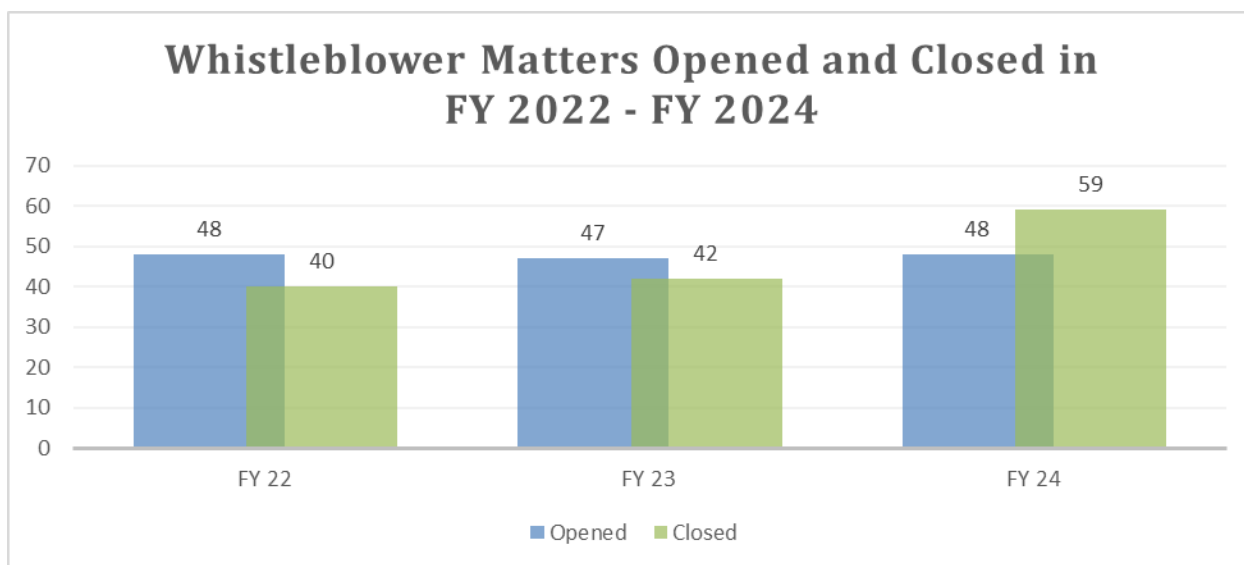
## *Section V: FBI Whistleblower Retaliation Claims*

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 Department 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 a Department 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.

During FY 2024, the Department published final regulations modifying 28 C.F.R. Part 27, which, among other things, conforms the regulations to previous statutory amendments; specifies that compensatory damages may be awarded as appropriate; and provides access to alternative dispute resolution through the FBI whistleblower mediation program. In addition, the Government Accounting Office (GAO) concluded an 18-month audit of FBI whistleblower protection, finding that the Department closed about five times more FBI whistleblower retaliation complaints and settled more complaints since GAO's previous 2015 audit. The GAO also found that OPR's time frames for first contacting complainants had improved since 2015.

OPR continues to see an increase in whistleblower retaliation claims. During FY 2024, OPR received 48 complaints and closed 59, some of which were received in preceding fiscal years. At the end of the fiscal year, OPR had 14 pending whistleblower retaliation matters, a significant decrease in its backlog. Graph 5 depicts 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 the FBI removed him from a significant portion of his duties and gave him an adverse annual performance review after he raised concerns that the FBI took procurement actions that violated multiple federal regulations and caused waste. OPR opened an investigation and reviewed FBI records and interviewed multiple subjects and witnesses.

Following its investigation, OPR concluded that the whistleblower made at least one protected disclosure and suffered a personnel action when the FBI removed him from key duties that impacted his daily work. However, OPR also concluded that the FBI could

demonstrate by clear and convincing evidence that it would have taken the same personnel action against the employee absent the protected disclosure. Accordingly, OPR found 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 agent complained that FBI management transferred him to a less prestigious position and initiated a retaliatory internal investigation against him as punishment for disclosing to his supervisors information pertaining to the FBI's vulnerability to cyber intrusion. OPR investigated the allegations and found



insufficient evidence that the subject matter of the agent's statements or disclosures to his supervisors reflected a reasonable belief that his disclosures related to a violation of law, rule, regulation or other category of misconduct. OPR further found that even if the agent had made protected disclosures, there was no causal connection between the agent's alleged protected disclosures and his transfer or the FBI's internal investigation of him. Similarly, OPR found that the FBI could show by clear and convincing evidence that it would have taken the same personnel actions against the agent in the absence of his alleged protected disclosures. OPR, therefore, concluded that the agent's complaint was not cognizable under the FBI whistleblower regulations and terminated its investigation.

#### [Allegation of Whistleblower Retaliation](#)

An FBI employee alleged that after he reported allegations of a conflict of interest and time and attendance fraud by other FBI employees, many of his duties were transferred to a different employee.

Following a thorough investigation, which included interviewing witnesses and reviewing records, OPR concluded that most of the personnel actions taken with respect to the employee were not causally connected to any protected disclosures he may have made. Rather, the changes in the

employee's duties had been initiated prior to his disclosures in preparation for his retirement.

OPR further found that other changes in the employee's workload did not qualify as personnel actions under 28 C.F.R. § 27.2(b) because the identified duties were not the employee's official duties, or they were not significant enough to qualify as a personnel action. Accordingly, OPR concluded that the employee had not alleged a cognizable claim for relief.

#### [Allegation of Whistleblower Retaliation](#)

An FBI employee alleged that both the USAO in the district where his resident agency was located and individuals within the Department had pressured him and FBI employees he supervised to attest to a search warrant affidavit that the employee did not believe articulated probable cause. The employee claimed that his supervisors abused their authority when they informed him that they had lost confidence in his leadership as a pretext for moving the case to a different resident agency, hoping to find an employee in the other resident agency who would attest to the search warrant affidavit. The employee notified the OIG of his concerns that his supervisors had abused their authority. The employee subsequently alleged that his supervisors retaliated against him by taking adverse personnel actions, including writing negative performance appraisals,

initiating a loss of effectiveness transfer of the employee, and referring the employee's conduct to the FBI Inspection Division.

OPR investigated the matter, reviewing relevant documents and emails and conducting interviews. Based on the results of its investigation, OPR concluded that the employee had not made a protected disclosure because he could not have reasonably concluded that his FBI supervisors, the USAO, or the Department had engaged in an arbitrary and capricious exercise of authority by transferring the case to a different resident agency. OPR further concluded that the employee's disclosure to the OIG was not a contributing factor to any of the later adverse personnel actions taken against him. OPR also concluded that corrective action would be unwarranted in this case because the FBI could demonstrate by clear and convincing evidence that the same personnel actions would have been taken in the absence of any protected disclosure because the personnel actions had been initiated before the employee made the disclosure.

#### [Allegation of Whistleblower Retaliation](#)

An FBI employee alleged that, after he disclosed violations of law and FBI policy regarding home-to-work authorizations to his supervisor, the supervisor retaliated by denying him performance awards. OPR opened an investigation, reviewed FBI records, and

interviewed the complainant, subject, and other witnesses. Based on its investigation, OPR found sufficient evidence that the FBI employee reasonably believed that his disclosure evidenced regulatory violations. Nevertheless, OPR's review of FBI data revealed that the FBI employee's protected disclosure to the supervisor occurred after the supervisor had already submitted a slate of performance award candidates for processing that did not include the whistleblower. Moreover, two FBI supervisors, not involved in the receipt of the protected disclosure, acknowledged that they had, in fact, agreed to nominate the FBI employee for a performance award, but they inadvertently failed to process the submission. Accordingly, OPR found 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 retaliation for complaining to supervisors about harassment by an FBI special agent who was responsible for security at the employee's FBI office building. The employee appeared to have obtained entry into the building for a companion by claiming the two were married. When questioned by the special agent, the employee admitted that the companion was the employee's spouse by virtue of an "unofficial" marriage not recognized by any state. The harassment the

employee disclosed to supervisors included that the special agent used a raised voice during the conversation and acted hostile and antagonistic toward the employee in a subsequent conversation about the matter. OPR concluded that it lacked jurisdiction to investigate the complaint because it involved a minor workplace conflict whose disclosure is not protected under the FBI whistleblower regulations.

#### [Allegation of Whistleblower Retaliation](#)

An FBI employee complained of retaliation experienced after disclosing to supervisors acts of harassment and violations of Department policy allegedly committed by two colleagues. The alleged retaliation consisted of a threat of discipline; negative comments in an annual performance evaluation; and denial of several requests made by the

employee, including to be separated from one of the two colleagues, to schedule overnight lodging in a location where the employee had proposed to perform duties, and a more comfortable office with a window. OPR concluded that it lacked jurisdiction to investigate the complaint because none of the alleged retaliation qualified as a personnel action under the FBI whistleblower regulations. In particular, the alleged threat to discipline the employee set forth management expectations and the consequences of failing to meet them and lacked the specificity required for an actionable threat. Similarly, including negative information about an employee's performance in an annual evaluation without lowering the overall rating is not an adverse personnel action.

## *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 FY 2024, OPR reviewed the conduct of six Department attorneys found by the OIG to have violated regulations or Department policies and provided its analysis as to whether the subjects' conduct implicated the rules of professional conduct. The matters concerned unauthorized disclosures of confidential client information, abuse of authority, improper statements, and criminal convictions. OPR made referrals in three cases after authorization by the PMRU.

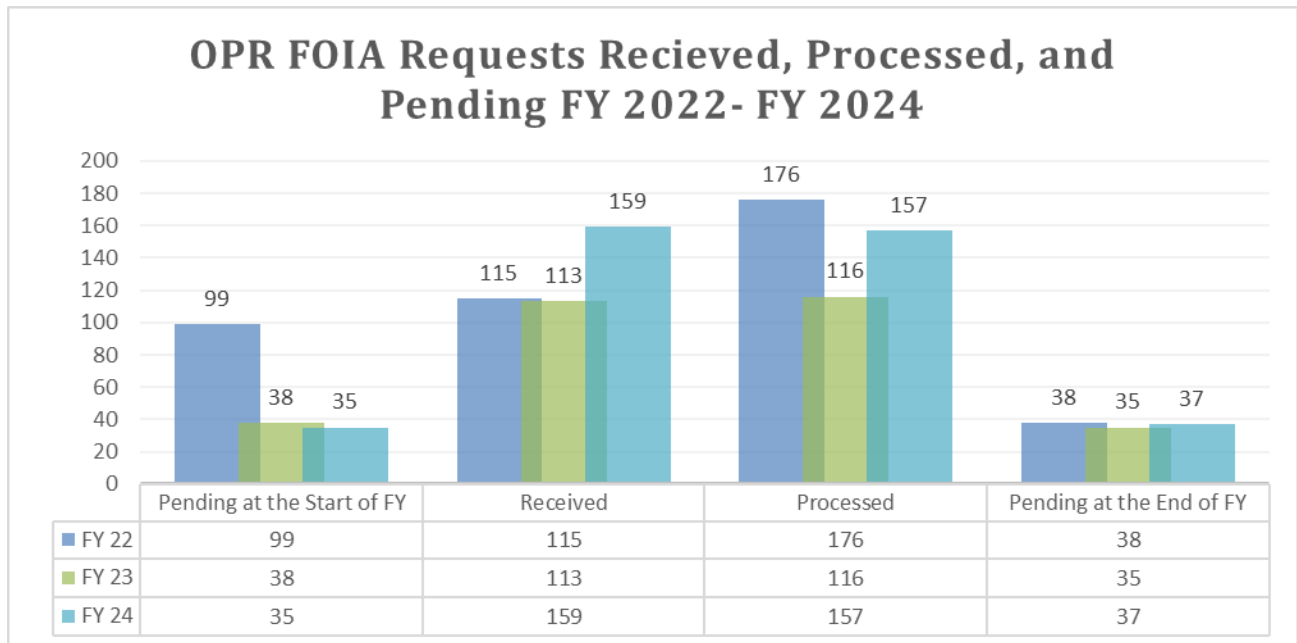
## *Section VII: OPR Activities in Response to FOIA Requests and Litigation*

The Freedom of Information Act (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.

During FY 2024, OPR made significant progress in processing FOIA requests and responding to litigation, despite a 40 percent increase in the number of FOIA requests received over the prior year. The median time it took OPR's FOIA team to process and respond to simple FOIA requests in this fiscal year was 6 days, far less than the 20-day statutory requirement. OPR continued to maintain the 6-day response timeframe from

the previous fiscal year. In addition, OPR’s FOIA team closed 98.7 percent of all FOIA requests and 100 percent of all Privacy Act requests received in FY 2024. Finally, OPR closed 30 percent of its 20 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 *Bain v. Office of the Attorney General*, the plaintiff, a former Department immigration judge, sought all information that OPR received, gathered, or compiled during its inquiry into and subsequent investigation of allegations of her misconduct. Plaintiff also sought records compiled in preparing OPR’s report of investigation. A search for records potentially responsive to plaintiff’s request yielded thousands of pages and by processing at least 500 pages per month, OPR’s small FOIA team completed the processing of more than 16,000 pages within a two-year period. Currently, the parties are discussing settlement.

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 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 on July 30, 2024, the case was dismissed.

In *Miller v. U.S. Department of Justice*, the plaintiff sought all documents relating to an OPR investigation of a former Associate Deputy Attorney General. OPR has reviewed 385 pages of responsive records, 199 of which were sent to other components for consultation. OPR will complete processing and production of all responsive records upon receipt of the outstanding consultation responses.

The plaintiff in *Dent v. U.S. Department of Justice* sought records from many Department components, including OPR, relating to the components' responses to over 100 requests the plaintiff submitted during a 10-year period. The Department filed a motion for summary judgment pursuant to Rule 12(b)(6) on grounds that the plaintiff failed to state a plausible claim for relief.

## *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 provides 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 FY 2024, OPR conducted 11 training sessions, which included presentations to new AUSAs and to AUSAs and supervisors at four individual USAOs. In addition, OPR gave presentations to components in the Criminal and Civil Divisions and officials with a foreign delegation and participated in a panel presentation to members of the National Organization of Bar Counsel (NOBC). OPR also worked with the Criminal Chiefs Working Group to develop written training materials highlighting significant information and best practices relating to the Speedy Trial Act. Through presentations and training memoranda, OPR alerts Department attorneys to the many challenging issues faced by Department attorneys to



help them avoid missteps, thereby reducing and preventing reoccurrence of the most common misconduct allegations that OPR receives and 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 that they maintained an active license and must immediately self-report to OPR any lapse in active bar membership during Department employment.

As part of OPR’s continuing efforts to reduce the number of Department attorneys experiencing license suspensions resulting primarily from attorneys’ failure to pay their bar dues, OPR worked with the Office of Attorney Recruitment and Management to draft a memorandum to all Department attorneys reminding them of the Department’s active membership policy, that they are personally responsible for complying with bar licensing requirements, and that they must provide current contact information to their licensing authorities. To improve communication of this important message, the memorandum required attorneys to acknowledge electronically that they had received and reviewed the policy reminder. OPR identified the electronic acknowledgement process as a useful technological tool, conducted appropriate testing of the technology before the memorandum was issued, and tracked attorney responses. Requiring attorneys to certify that they had received and reviewed the memorandum supported the Department’s ongoing efforts to eliminate bar license suspensions. OPR furthered its efforts to address bar lapse matters through various other approaches, including additional training, notices to Department managers about their responsibilities to address lapses when they occur, and investigations of lapses when necessary.

OPR met with representatives of the D.C. Bar to learn about its standards and procedures for granting retroactive reinstatements for good cause, pursuant to its bylaws. The retroactive reinstatement process decreased the number of professional misconduct findings against Department attorneys with D.C. Bar license suspensions. OPR also met with personnel in the Justice Management Division’s Finance Office to learn more about its role in the Department’s process for handling attorney license suspensions and the criteria that office uses to determine whether to seek reimbursement of funds spent on an attorney’s salary during a period of suspension.

### *External Outreach*

OPR routinely engages with state attorney disciplinary authorities through referrals of misconduct findings, by assisting disciplinary authorities in gaining access to Department records, and through various other liaison efforts. In accordance with Department policy, OPR notified state attorney disciplinary authorities of findings that current or former Department attorneys engaged in misconduct that violated or implicated rules of professional conduct and responded to the bars' requests for additional information concerning those matters. OPR also advised disciplinary authorities of conduct by non-Department 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 attorney disciplinary authorities, OPR representatives attend the NOBC's semiannual conferences. 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 FY 2024, conference topics of relevance to OPR concerned conflicts of interest resulting from personal relationships and the procurement of and transition to new case management software. OPR also participated in an NOBC panel discussion that provided NOBC members with information about OPR and other federal offices with attorney oversight responsibilities. Through its liaison efforts, OPR builds relationships that are useful to both bar counsel and the Department.



## CONCLUSION

During FY 2024, 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 professional misconduct or exercised poor judgment, 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 FY 2024 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.