



Office of the Attorney General

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MEMORANDUM FOR H. MARSHALL JARRETT
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FROM:

THE ATTORNEY GENERAL

SUBJECT:

Creation of the Professional Misconduct Review Unit

This memorandum announces the creation of the Department's Professional Misconduct Review Unit (PMRU). In an effort to facilitate timely, fair, and consistent resolution of disciplinary matters arising out of findings of professional misconduct by the Office of Professional Responsibility (OPR), OPR along with the Executive Office for United States Attorneys (EOUSA), the Criminal Division the Justice Management Division, and the Office of Attorney Recruitment and Management (OARM) recommended creation of an adjudicatory unit to resolve such disciplinary matters for employees in those components. The Attorney General's Advisory Committee also concurred in the recommendation.

As I have consistently said, as a result of their commitment to the cause of justice and the hard work that results from that commitment, Department attorneys fully meet their ethical obligations in all except the rarest of cases. However, when allegations of misconduct do arise, timely, fair, and consistent resolution of those allegations is critical both to the attorneys who are

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the subjects of the allegations and to the Department's obligation to address those rare instances when Department attorneys fail to meet ethical obligations. Because the proposed PMRU will be effective towards achieving its intended objectives and because those objectives are consistent with the Department's responsibilities, I have adopted the proposal. The PMRU initially will adjudicate only those cases involving employees of the recommending components. I anticipate, however, that the other litigating components will participate in this process over time. The PMRU will also assume responsibility for making referrals to state bar disciplinary authorities consistent with current Department policy. The PMRU process will be effective for OPR findings of professional misconduct occurring after the PMRU is fully staffed.

OPR has jurisdiction to investigate allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct by law enforcement personnel related to allegations of attorney misconduct within the jurisdiction of OPR. OPR investigations can result in a finding or findings of intentional professional misconduct, reckless professional misconduct, poor judgment, or excusable mistake, or OPR can conclude that an attorney acted appropriately under the circumstances.

Under the existing process, once OPR completes an investigation, it prepares a Report of Investigation (ROI) containing its findings and conclusions, and provides that report to the Office of the Deputy Attorney General (ODAG), as well as to the appropriate Assistant Attorney General, the Director of EOUSA, or other appropriate component head. If OPR finds professional misconduct, it recommends a range of disciplinary action for consideration by the attorney's supervisors or other appropriate disciplinary officials. In cases of poor judgment, OPR refers the matter to the attorney's supervisors for any appropriate action.

If management disagrees with OPR's professional misconduct findings and/or recommended range of discipline, it may submit to an Associate Deputy Attorney General (ADAG) a request to depart from either the findings or the disciplinary range. The ADAG then determines whether to authorize the requested departure, to reassign the matter to another component—frequently OARM—for imposition of discipline unconstrained by OPR's findings and recommendations, or to retain the matter for imposition of discipline by officials within ODAG.

Because the involved Department employees handle these matters as only one of many assigned responsibilities, the existing procedures have resulted in delays in completion of the disciplinary process. In addition, the current process creates the risk of inconsistent resolution of disciplinary actions involving similarly situated employees.

The creation of a PMRU exclusively dedicated to the resolution of disciplinary matters arising out of findings of professional misconduct within established time limitations will not only reduce delays but also permit consistent resolution of matters involving similarly situated employees. The PMRU Chief will administer procedures designed to provide Department

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attorneys a fair opportunity to contest findings of professional misconduct, and to contest proposed disciplinary actions arising from those findings, that are fully consistent with the requirements of federal law and regulations governing adverse actions involving federal employees. The PMRU will administer these procedures within established deadlines and will periodically report to the Deputy Attorney General (DAG) regarding the PMRU's compliance with those deadlines. In addition, the PMRU will notify the DAG of its final determinations within established time frames. For those actions taken by the PMRU Chief that the subject may grieve, ODAG will hear and resolve the grievance likewise within established time frames.

I am firmly convinced that the new PMRU will result in consistent, fair, and timely resolution of disciplinary matters arising out of allegations of professional misconduct, and I appreciate the efforts of those components that worked so hard to develop a process that will serve the Department well as we continue to confront all of the challenges that we face. In the vast majority of cases, Department attorneys meet their professional obligations. When allegations of misconduct arise, however, both Department attorneys and complainants deserve a fair, consistent, and timely resolution of disciplinary matters arising out of those allegations, and the PMRU will facilitate each of those aims.