



June 16, 2026

Jolene Ann Lauria
Designated Agency Ethics Official
Departmental Ethics Office
U.S. Department of Justice
Justice Management Division
950 Pennsylvania Avenue, NW
Room 1111
Washington, DC 20530

Dear Designated Agency Ethics Official Lauria:

Democracy Defenders Fund (DDF) respectfully writes concerning Acting Attorney General Todd Blanche's participation in the rulemaking process related to the proposed rule "*Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*," 91 Fed. Reg. 10780 (Mar. 5, 2026) ("State Bar Rule"). Mr. Blanche appears to have a disqualifying financial interest in the State Bar Rule for purposes of 18 U.S.C. § 208(a). The State Bar Rule provides that the Attorney General, here Mr. Blanche, would have first right of review of any professional responsibility complaint filed against a Department attorney with a state disciplinary body. At the same time, Mr. Blanche is currently subject to at least one formal complaint concerning his adherence to rules of professional conduct.¹ If the State Bar Rule was enacted, it would give Mr. Blanche the power to directly intervene in his own bar investigations. Not only would that allow Mr. Blanche to use the power of the state in a personal matter, but it would allow him to delay (potentially indefinitely) state oversight of his fitness as an attorney. Given the substantial interest Mr. Blanche has in his continued professional licensure this conflict is non-waivable. Moreover, Acting Attorney General Blanche must avoid any actions that could raise even the appearance of his use of office for private gain. As a result, DDF requests that you direct the Acting Attorney General to recuse himself from further participation in the State Bar Rule.

I. Mr. Blanche has a Financial Conflict of Interest in the State Bar Rule

Pursuant to 18 U.S.C. § 208(a), no Executive Branch government employee or officer may participate personally and substantially in any particular matter in which they, or any other person who is listed in the statute, has a financial interest.² Failure to comply with section 208 carries criminal consequences, and a willful violation constitutes a felony punishable by up to five years of incarceration.³

¹ Letter to Mr. Jorge Dopico from the Legal Accountability Center (Sept. 11, 2025), <https://static1.squarespace.com/static/67367bde1a5ffd49e54fcf7e/t/68cab126dfdd2b081f36d6e0/1758114086895/Blanche+Complaint.pdf>.

² 18 U.S.C. § 208(a); 5 C.F.R. § 2640.201(a).

³ 18 U.S.C. § 216(a).

a. The State Bar Rule is a Particular Matter

The term “particular matter” means any government matter that involves “deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable class of persons.”⁴ The term includes both matters involving specific parties, which generally involve a “specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties” as well as particular matters of general applicability that are “focus[ed] on the interests of a discrete and identifiable class of persons, but does not involve specific parties.”⁵ Regulations that are focused on a discrete and identifiable class of persons constitute a particular matter of general applicability.⁶ As the U.S. Office of Government Ethics (OGE) has previously advised, the term is not limited to the “final stage” of an issue, but “cover[s] the crucial step[s] laying the groundwork for regulatory change.”⁷

The State Bar Rule is a particular matter of general applicability. The State Bar Rule provides in operative part that “[b]efore *the bar disciplinary authorities of the States, the Territories, or the District of Columbia* undertake any investigative steps that seek information or otherwise require participation from an attorney for the government in response to allegations that a current or former attorney for the government violated a rule of ethical conduct while engaging in that attorney's duties for the Department, the Attorney General shall have the right to review the allegations in the first instance.”⁸ Likewise, the rule provides that “Should the relevant bar disciplinary authorities refuse the Attorney General's request, the Department shall take appropriate action to enforce this regulation or to prevent the bar disciplinary authorities from interfering with the Attorney General's review of the allegations.”⁹ As is clear from the face of the rule, it is narrowly focused on the interests of the “bar disciplinary authorities of the state, the Territories, [and] the District of Columbia.”¹⁰ Those state ethics bodies constitute a “discrete and identifiable class of persons” for purposes of 18 U.S.C. § 208(a).

b. Mr. Blanche has a Financial Interest in the State Bar Rule

A government employee has a disqualifying “financial interest” in a particular matter for purposes of 18 U.S.C. § 208(a) when there is “the *potential* for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular

⁴ 5 C.F.R. § 2635.402(b)(3); 5 C.F.R. § 2640.103(a)(1).

⁵ OGE DAEogram DO-06-029, *Particular Matter Involving Specific Parties, Particular Matter, and Matter* (Oct. 4, 2006).

⁶ 5 U.S.C. 2635.402(b)(3), ex. 2 (regulations establishing safety standards for interstate trucking); 5 C.F.R. § 2640.103(a)(1), ex. 3 (regulation dealing with the meat packing industry); 5 C.F.R. § 2640.203(b), ex. 1 (regulation concerning standards for oversight of agency grants); 5 C.F.R. 2640.201(c)(2), ex. 2 (matters affecting all states is a particular matter of general applicability).

⁷ OGE Legal Adv. 06x8 (Aug. 23, 2006) (quoting 2 Op. O.L.C. 313, 315 (1978)).

⁸ 91 FR 10780, 10786 (Mar. 5, 2026) (proposed 28 C.F.R. § 77.5(a)) (emphasis added).

⁹ *Id.* (proposed 28 C.F.R. § 77.5(b)).

¹⁰ 91 FR 10780, 10786 (Mar. 5, 2026).

matter.”¹¹ “Gain or loss need not be probable for the prohibition against official action to apply.”¹² A government employee is prohibited from working on a matter when there is a “direct and predictable ‘link between [the] governmental matter and a pecuniary gain or loss to the employee or specified entity.’”¹³ A direct effect exists where there is a “close causal link between any decisions or actions to be taken in the matter and any expected effect of the matter on the financial interest.”¹⁴ In addition, the effect must be predictable, which means that there is a “real, as opposed to speculative, possibility that the matter will affect the financial interest.”¹⁵

Acting Attorney General Blanche has a “financial interest” “in” the State Bar Rule during the pendency of any disciplinary matter before the New York Grievance Committee.

- First, Acting Attorney General Blanche has a *pecuniary* interest in any state bar professional misconduct investigation. Among other things, it is foreseeable that a disciplinary investigation could result in lost future income, fees defending against the claim, potential fines, and reinstatement costs. These are the types of potential “monetary receipts and expenditures” that the Department of Justice has long found to be at the core of a “financial interests” for purposes of 18 U.S.C. § 208(a).¹⁶
- Second, the rule would give Acting Attorney Blanche the power to delay, or even avoid, a state bar disciplinary investigation. As described above, the State Bar Rule would give the *Attorney General* a “right of first review” which includes a “request that the bar disciplinary authorities suspend any parallel investigations or disciplinary proceedings until the completion of the review.”¹⁷ If a disciplinary authority does not suspend their investigation, the *Attorney General* would be able to “take appropriate action to enforce [the] regulation or to *prevent the bar disciplinary authorities* from interfering with the *Attorney General’s* review of the allegations.”¹⁸ The State Bar Rule would provide Acting Attorney General Blanche with the authority to intervene in *his own* disciplinary investigations, utilize available means to “prevent” the New York disciplinary authority from continuing the investigation, and potentially hold the investigation in abeyance for as long as he is in office. These are not “speculative” risks: the *goal* of the rule is to displace State bar enforcement and redirect it, at least in the first instance, to the Attorney General. As the preamble to the proposed rule explains, the “intrusion” of state bar complaints “requires the Department to reconsider the current system for enforcing ethics rules against Department attorneys” and that, in the Department’s view, “the Attorney General retains the discretion to displace State bar enforcement and to create an entirely Federal enforcement mechanism, or to displace State bar enforcement in part when it is

¹¹ 5 C.F.R. § 2640.103(b) (2005) (emphasis added); *Financial Interests of Nonprofit Organizations*, 30 Op. O.L.C. 64, 67 (Jan. 11, 2006); *Ethical Issues Raised by Retention and Use of Flight Privileges by FAA Employees*, 28 Op. O.L.C. 237, 239 (2004) (emphasis added).

¹² *United States v. Gorman*, 807 F.2d 1299, 1303 (6th Cir. 1987) *cert. denied*, 484 U.S. 815 (1987).

¹³ *Identifying and Preventing Violations of 18 U.S.C. § 208 Arising from Digital Asset Ownership*, OGE LA-23-12 (Sept. 27, 2023) (cleaned up).

¹⁴ 5 C.F.R. §§ 2635.402(b)(1)(i), 2640.103(a)(3)(i).

¹⁵ 5 C.F.R. §§ 2635.402(b)(1)(ii), 2640.103(a)(3)(ii).

¹⁶ *Ethical Issues Raised by Retention and Use of Flight Privileges by FAA Employees*, 28 Op. O.L.C. 237, 240 (2004).

¹⁷ 91 FR 10780, 10786 (Mar. 5, 2026) (proposed 28 C.F.R. § 77.5(a)).

¹⁸ *Id.* (proposed 28 C.F.R. § 77.5(b)) (emphasis added).

inconsistent with the Federal Government's determinations regarding the regulation of Federal attorneys.”¹⁹

In summation, Acting Attorney General Blanche has a financial interest in the rulemaking because it contemplates his ability to intervene in his own pending disciplinary proceedings, giving him the legal authority to defer or even avoid compliance with state disciplinary investigations.

II. Mr. Blanche’s Financial Conflict of Interest is Non-waivable

Pursuant to 18 U.S.C. § 208(b)(1), a government employee who has a disqualifying financial interest may participate in a matter they would be recused from if they “first advise[] the Government official responsible for [their] appointment” of the “nature and circumstances” of the conflict and that person has made a written determination that “the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee.” Where practicable, each waiver request must be coordinated with the U.S. Office of Government Ethics.²⁰

OGE has previously explained that “a waiver that would allow an employee to participate in a regulatory policy matter affecting the industry in which his outside employer is a member would usually be inappropriate.”²¹ Here that is doubly so, given Mr. Blanche’s direct, personal, and substantial interest in the rulemaking. Given the substantiality of Mr. Blanche’s financial interest in the State Bar Rule, an attempt to waive his conflict of interest would clearly be inconsistent with the statutory standard and an abuse of discretion. In such cases, a waiver would be *ultra vires* and void *ab initio*.

III. Mr. Blanche’s Participation Would Raise Abuse of Office Concerns

The Fourteen General Principles of Ethical Service, set out in the Standards of Ethical Conduct for Employees of the Executive Branch, provide that all employees “shall not use public office for private gain,” “shall act impartially and not give preferential treatment to any private organization or individual,” and “shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.”²² Taken together, these core precepts of ethical service provide that employees must not only serve impartially and without fear or favor but that they must avoid any instance in which their actions could create the risk or appearance of an abuse of office.

Acting Attorney General Blanche’s participation in the State Bar Rule would raise impartiality concerns given that he has a direct financial interest in the result of that rule. The risk that he will use his office for his own personal gain is immense. Pursuant to the Fourteen

¹⁹ *Id.* at 10784.

²⁰ 5 C.F.R. § 2640.303 and section 301(d) of Executive Order 12731. OGE has explained that “[t]his is a high standard requiring agencies to consult in all but the most exigent circumstances.” OGE DAEOgram DO-10-005 (Apr. 22, 2010).

²¹ OGE Inf. Adv. 07 x 4 (Feb. 23, 2007).

²² 5 C.F.R. § 2635.101(b)(7), (8), (14).

General Principles, Mr. Blanche is obligated to remove himself from the rulemaking to “avoid any actions” that could create even the appearance of a violation of the ethical standards.

IV. Conclusion

As the Acting Attorney General, Mr. Blanche is required to “exercise personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency.”²³ That responsibility begins with his own conduct. Pursuant to 18 U.S.C. § 208(a), Mr. Blanche has a disqualifying financial interest in the State Bar Rule during the pendency of any disciplinary investigation into his own potential misconduct. Pursuant to the Fourteen General Principles, Mr. Blanche has an obligation to avoid even the appearance of an ethical violation. As the Designated Agency Ethics Official, it is your responsibility to “[t]ak[e] appropriate action to resolve conflicts of interest and the appearance of conflicts of interest, through recusals, directed divestitures, waivers, authorizations, reassignments, and other appropriate means” at the Department.²⁴ DDF therefore calls on you to ensure that Mr. Blanche recuses himself from the State Bar Rule, as is required by federal law.

Sincerely,

/s/

Amb. Norman Eisen (ret.)
Executive Chair and Co-founder
Democracy Defenders Fund

/s/

Virginia Canter
Chief Counsel and Director for Ethics and
Anti-corruption
Democracy Defenders Fund

/s/

Christopher Swartz
Senior Ethics Counsel
Democracy Defenders Fund

CC: M. Sean O’Neill, Assistant Inspector General, Performing the Duties of the Inspector General, U.S. Department of Justice

Maura Leary, Acting Chief, Ethics Law Branch, U.S. Office of Government Ethics

²³ 5 C.F.R. § 2638.107.

²⁴ 5.C.F.R. § 2638.104(c)(6).