

From: "[REDACTED] (USANYS)" <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>
Subject: OPR and PMRU Stuff
Date: Thu, 08 Apr 2021 17:22:47 +0000

Here's the relevant section of the Epstein OPR report, and the Justice Manual provision on the Professional Misconduct Review Unit, to which OPR findings of professional misconduct get referred.

From the public Epstein OPR Executive Summary (fn's omitted):

III. OVERVIEW OF OPR'S ANALYTICAL FRAMEWORK

OPR's primary mission is to ensure that Department attorneys perform their duties in accordance with the highest professional standards, as would be expected of the nation's principal law enforcement agency. Accordingly, OPR investigates allegations of professional misconduct against current or former Department attorneys related to the exercise of their authority to investigate, litigate, or provide legal advice. OPR also has jurisdiction to investigate allegations of misconduct against Department law enforcement agents when they relate to a Department attorney's alleged professional misconduct.

In its investigations, OPR determines whether a clear and unambiguous standard governs the challenged conduct and whether a subject attorney violated that standard. Department attorneys are subject to various legal obligations and professional standards in the performance of their duties, including the Constitution, statutes, standards of conduct imposed by attorney licensing authorities, and Department regulations and policies. **OPR finds misconduct when it concludes by a preponderance of the evidence that a subject attorney violated such a standard intentionally or recklessly.** Pursuant to OPR's analytical framework, when OPR concludes that (1) no clear and unambiguous standard governs the conduct in question or (2) the subject did not intentionally or recklessly violate the standard that governs the conduct, then it concludes that the subject's conduct does not constitute professional misconduct. In some cases, OPR may conclude that a subject attorney's conduct does not satisfy the elements necessary for a professional misconduct finding, but that the circumstances warrant another finding. In such cases, OPR may conclude that a subject attorney exercised poor judgment, made a mistake, or otherwise acted inappropriately under the circumstances. OPR may also determine that the subject attorney's conduct was appropriate under the circumstances.

From the Justice Manual

1-4.320 - Adjudicating Findings of Attorney Professional Misconduct—The Professional Misconduct Review Unit

Mission. Where OPR has made findings of attorney professional misconduct, those findings are referred to the Department's Professional Misconduct Review Unit (PMRU). Consistent with memoranda issued separately by the Deputy Attorney General, the PMRU evaluates any findings of professional misconduct by OPR and, where appropriate, issues fair, timely, and consistent disciplinary decisions. The PMRU also authorizes referrals to the appropriate bar authority in those instances in which OPR concludes that a current or former Department attorney violated a rule of professional conduct during his or her tenure with the Department.

Authority of the PMRU. The PMRU has authority to handle disciplinary matters involving career Department attorneys, except for those employed in the law enforcement components and certain employees of the Executive Office for Immigration Review. The PMRU has no authority to adjudicate disciplinary actions in misconduct cases pertaining to non-career attorneys (whether appointed by the President with Senate confirmation, or otherwise politically appointed). The PMRU Chief has authority in his or her discretion to choose not to sustain findings of misconduct referred to the PMRU. The PMRU Chief also has the authority in his or her discretion to include in the PMRU disciplinary decision any poor judgment findings in reports of investigation that are closely related to the professional misconduct findings referred to the PMRU. Closely related findings are those findings that arise from the same report of investigation, are made against the same individual, and are based on the same or substantially similar conduct. The PMRU Chief's disciplinary authority

includes the authority to resolve or authorize the resolution of any disciplinary action pending before the PMRU without the PMRU reaching a final decision on the merits of the action. Depending on the circumstances, the PMRU Chief may serve as the Grievance Official to a Letter of Reprimand issued by a PMRU Attorney or the Deciding Official on a suspension or removal action proposed by a PMRU Attorney. In all of its actions, the PMRU will operate in accordance with the due process requirements established in 5 U.S.C. § 7500 et seq., and 5 C.F.R. Part 752.

Bar Referrals. At the conclusion of any final disciplinary action by the PMRU, including any decision from a final appellate authority, if there is a final determination that a subject attorney committed professional misconduct implicating a rule of professional conduct or when the PMRU Chief otherwise determines that a rule of professional conduct so requires, the PMRU Chief will direct OPR to refer the subject attorney to the appropriate bar authority or authorities. For former Department attorneys, the PMRU Chief may, after receiving an OPR report of investigation finding misconduct, issue a letter advising the subject attorney of the misconduct findings and informing the subject attorney of the right to submit an objection to OPR's findings. After receipt of an objection, if any, the PMRU Chief will determine if the matter will be referred to the appropriate bar authority under the same procedures as for Department attorneys.

The Authority of the Deputy Attorney General. The Deputy Attorney General reserves the authority to designate individuals outside of the PMRU to serve as proposing, deciding, or grievance officials in all disciplinary matters, including those involving findings of professional misconduct by OPR, or to personally serve as the proposing, deciding, or grievance official. The Deputy Attorney General also reserves the right to designate an acting PMRU Chief.

[updated September 2018]

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