

## Why GAO Did This Study

Instances of professional misconduct—such as a violation of an attorney’s responsibilities to be honest—among DOJ attorneys have called into question DOJ’s efforts to oversee attorney behavior, including its processes for investigating and disciplining misconduct complaints.

Congress mandated GAO to review DOJ’s performance in disciplining attorneys. This report addresses (1) DOJ’s processes to manage misconduct complaints; (2) how supervisors determine work responsibilities for attorneys accused of, or found to have engaged in, misconduct; and (3) DOJ’s policies for paying for representation for attorneys investigated for misconduct. GAO reviewed DOJ regulatory obligations and policies, and legal representation costs from fiscal years 2008 through 2013. GAO also analyzed survey responses on assigning work responsibilities from 48 selected litigating sections. Responses are not generalizable, but provided helpful insights. GAO also interviewed DOJ officials who manage misconduct complaints.

## What GAO Recommends

GAO recommends that DOJ (1) require components to demonstrate that they have implemented discipline for misconduct and (2) establish near-term milestones for expanding PMRU’s jurisdiction to decide discipline for all attorneys with findings of misconduct. DOJ agreed with GAO’s recommendations.

View [GAO-15-156](#). For more information, contact Eileen Larence at (202) 512-8777 or <mailto:larencee@gao.gov>.

## PROFESSIONAL MISCONDUCT

### DOJ Could Strengthen Procedures for Disciplining Its Attorneys

#### What GAO Found

The Department of Justice (DOJ) has made changes to improve its processes for managing complaints of attorney professional misconduct since 2011 but has not implemented plans to improve processes for demonstrating that discipline is implemented, or achieving timely and consistent discipline decisions. For example, GAO found that changes to the Office of Professional Responsibility’s (OPR) processes for assessing the merits of misconduct complaints reduced assessment time that took up to 90 days in 2008 to about 7 days in 2014. However, GAO found that DOJ does not require its components to demonstrate that attorneys have served the discipline imposed on them for misconduct. Ensuring that discipline is implemented helps hold attorneys accountable for violating professional standards and provides the public reasonable assurance that misconduct is being addressed. DOJ also has not implemented a change called for in a January 2011 memorandum from the Attorney General that would expand the purview of the Professional Misconduct Review Unit (PMRU)—the unit that proposes and decides discipline for attorneys with findings of misconduct by OPR. With this change, PMRU would go from deciding discipline for attorneys with professional misconduct findings in U.S. Attorneys’ Offices (USAO) and the Criminal Division to all components. According to the Attorney General, this change could help reduce delays in implementing discipline and ensure consistent decisions about discipline. DOJ did not provide GAO with reasons for not making this change.

DOJ policy provides that supervisors of attorneys accused of, or found to have engaged in, professional misconduct can use discretion to determine what work to assign to these attorneys. DOJ also provides agency-wide guidance to supervisors, such as administrative directives and the *U.S. Attorneys’ Manual*, that identify steps supervisors may take when dealing with attorneys accused of misconduct. Representatives for 12 of the 20 USAOs and 20 of the 28 litigating sections we surveyed reported that supervisors assign work on a case-by-case basis but consider factors, such as the nature of the alleged misconduct, in doing so. A smaller number of respondents reported that supervisors may assign work to such attorneys no differently than to other attorneys until the supervisors determine allegations have merit or professional misconduct is confirmed.

Under departmental policy, DOJ is not to authorize legal representation for attorneys in OPR proceedings, including representation to assist such attorneys in preparing submissions to support their defense. However, DOJ attorneys, like all federal employees, may be provided legal representation by DOJ for carrying out their duties, under certain circumstances. For example, DOJ may provide representation for an attorney whose conduct is the subject of a state bar proceeding while the attorney is also the subject of an OPR investigation related to the same conduct. The representation would cover defense for the state bar but not the OPR proceeding. As a result, from fiscal years 2008 through 2013, DOJ expended \$3.66 million for private counsel representation for 38 DOJ attorneys involved in 18 legal proceedings where there were also related OPR investigations. DOJ found 12 attorneys within these investigations to have engaged in professional misconduct.