



National Association of Assistant United States Attorneys

Safeguarding Justice for All Americans

Board of Directors July 25, 2022

Steven B. Wasserman
President (DC)

Dear Senators:

Adam E. Hanna
Vice President
(S.D. IL)

On behalf of the National Association of Assistant United States Attorneys (NAAUSA), representing the interests of the 6,300 Assistant U.S. Attorneys working in the 93 U.S. Attorney Offices, I write you to express our ***strong concerns with and opposition to including the Inspector General Access Act as an amendment to the National Defense Authorization Act for FY 2023 (FY23 NDAA).***

Mark Vincent
Treasurer
(UT)

Vacant
Secretary

NAAUSA believes that Assistant U.S. Attorneys and all DOJ attorneys should be held to the highest standards. Currently, these attorneys are subject to a myriad of complex bar rules, ethics requirements, and legal standards designed to protect the public from attorney professional misconduct. This legislation fails to identify a problem with the current system and creates new problems that undermine our system of justice and create inherent conflicts of interest.

Kevan Cleary
(E.D. NY)

Karen Escobar
(E.D. CA)

Joseph Koehler
(AZ)

This legislation erroneously conflates “fraud, waste and abuse” investigations into criminal and administrative misconduct traditionally handled by the Department of Justice (DOJ) Office of the Inspector General (OIG) with investigations into attorney professional misconduct handled by the specialized DOJ Office of Professional Responsibility (OPR). *They are not the same.*

Clay West
(W.D. MI)

The OIG uses criminal investigators whose instincts and training are to look for potential crimes. OPR uses attorneys who are trained to apply the ethical and professional rules to attorney conduct. These distinctions have a real potential for achieving different investigative results when applied to the same case.

OPR investigators have unique expertise in navigating complex legal and ethics standards applicable to attorneys within the DOJ that is unlike the process followed within the OIG for handling audits and fraud investigations. This includes navigating numerous state bar rules, which requires established relationships across the nation that OPR maintains. Decisions within OPR are made based on an independent analytical framework and established procedures and precedents developed and solidified since the Office’s creation. This has led to the formation of a highly independent, skilled OPR that reaches conclusions based on an impartial application of clearly defined principles.

Executive Director
Chad Hooper

OPR’s expertise is in the ethical and professional rules of conduct that govern the practice of law by each DOJ attorney. These rules are specific to only attorneys, which is the obvious reason why DOJ, and no other Department in government, has an office like OPR to review allegations against attorneys. Whereas attorneys in private practice are subject to Bar investigations and proceedings for allegations of professional misconduct (conducted by trained Bar counsel), DOJ attorneys first face OPR.

Washington Reps.
Jason Briefel
Natalia Castro

Counsel
Debra Roth

Furthermore, OPR has a transparent process for disclosing summaries of its investigations, statistical information, and procedural information through various means such as annual reports, releases to the public published on the OPR website, and reports to Congress. To the extent that Congress is concerned about transparency related to specific individual cases, OPR

is constrained by the same Privacy Act considerations as the OIG in terms of disclosing specific information about individual DOJ attorneys. Throughout its history, OPR has acted with independent, impartial and transparent procedures.

This legislation leaves it to the OIG's discretion to determine if it would like to review a case of professional misconduct.

At best, this will create inconsistent results and rulings by removing the standardized and dependable method of reviewing cases of attorney professional misconduct. Moreover, it means the lives and professional decisions of DOJ attorneys will be fodder for turf wars between OPR and the OIG, because Congress provides no guidance nor mechanism for adjudicating when both want to conduct investigations. Finally, this legislation creates an inherent conflict of interest because DOJ attorneys and OIG investigators sometimes work side by side on cases. This means an OIG investigator would be able to investigate an attorney they worked with if they do not like the way the attorney handled their case. These unforeseen consequences are highly concerning to our justice system and will fuel political in-fighting that undermines the very goals of this legislation.

It must also be noted that the law *already* allows the OIG to investigate attorney professional misconduct when such additional review is warranted and with the approval of the Deputy Attorney General (DAG). This system allows the DAG to prevent conflicts of interest and political in-fighting.

Expanding the OIG's oversight into attorney professional misconduct cases could undermine the consistent accountability standards necessary for reviewing DOJ attorney professional misconduct and maintaining high standards. It also would produce duplicative efforts and ineffectively capitalize on specialized offices with dedicated skill sets that all available data demonstrate serve the Department and taxpayers well.

This legislation is a solution in search of a problem. Congress should not act without actual knowledge of the problem it seeks to solve. The issue of attorney accountability at the DOJ has not been subject to review by the U.S. Government Accountability Office in nearly a decade, with the [last review](#) in 2014. A GAO review of the current OPR investigative process would assist Congress in identifying the existence, if any, of deficiencies in accountability and the proper steps for improvement.

For these reasons, we strongly oppose inclusion of the IG Access Act in the FY23 NDAA.

Thank you for considering the perspective of NAAUSA. Please do not hesitate to reach out to Jason Briefel (jbriefel@shawbransford.com) if we can be of further assistance on this matter.

Respectfully,



Steven Wasserman
President

Enclosed: IG Access Act Fact Sheet