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IN THE SUPREME COURT OF FLORIDA

JON MAY,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

_____/

Supreme Court Case No. SC2025-1020

THE FLORIDA BAR'S RESPONSE TO PETITION FOR WRIT OF MANDAMUS

On July 30, 2025, this Court requested The Florida Bar to file a response to a petition for writ of mandamus filed by Petitioner, Jon May. The Florida Bar responds to the petition as follows:

STATEMENT OF THE CASE AND FACTS

The petitioner challenges a decision of The Florida Bar dated June 6, 2025. The petitioner submitted an Inquiry/Complaint Form against the sitting United States Attorney General. The bar's decision not to investigate or pursue discipline at this time stated as follows:

> Thank you for your inquiry. The Florida Bar does not investigate or prosecute sitting officers appointed under the U.S. Constitution while they are in office. Such proceedings by The Florida Bar, as an arm of the Florida Supreme Court, could encroach on the authority of the federal government concerning these officials and the exercise of their duties.

> Therefore, this matter is closed as of the date of this letter and, consistent with Florida Bar procedures, the computer record will be disposed of one year from the date of closure.
>
> You may refile your complaint once the above named lawyer no longer serves in such a position.

(App'x Ex.B, pg.30).

On July 15, 2025, the petitioner filed a petition for writ of mandamus, asserting that The Florida Bar abdicated its legal duty to investigate alleged misconduct[1] by a member of The Florida Bar. On July 30, 2025, this Court requested The Florida Bar file a response to the petition.

STANDARD OF REVIEW IN A MANDAMUS PROCEEDING

Under Fla. R. App. P. 9.100(e), a petition for a writ of mandamus seeks a writ directed to a judge or lower tribunal. A lower tribunal is defined as a court, agency, officer, board, commission, judge of compensation claims, or body whose order is to be reviewed. See Fla. R. App. P. 9.020(e). Further, an order is defined as a decision, order judgment, decree, or rule of a lower tribunal. Fla. R. App. P. 9.020(f). Mr. May asserts

[1] The petition explicitly states that "this Court is not being asked to determine whether Ms. Bondi has violated any Florida Bar rule." (Petition, pg.7). Therefore, this response will not address the underlying merits of Mr. May's Inquiry/Complaint Form. The sole legal issue in this case is whether a complainant can compel The Florida Bar in a mandamus proceeding to conduct a complete investigation of alleged misconduct by a sitting U.S. Attorney General.

that the bar's decision in closing out his complaint warrants a writ directing The Florida Bar to completely investigate his complaint.

In a mandamus proceeding, a petitioner seeks a common law remedy to compel the performance of a ministerial, as opposed to discretionary, duty by a public officer. *Florida Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260, 1263 (Fla. 2017). A duty is ministerial when "there is no room for the exercise of discretion, and the performance being required is directed by law." *Id*. (quoting *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996)). Entitlement to this extraordinary relief is established where "the petitioner … [has] a clear legal right to the requested relief, the respondent … [has] an indisputable legal duty to perform the requested action, and the petitioner … [has] no other adequate remedy available." *Richardson v. Secretary, Florida Agency for Healthcare Administration*, 395 So. 3d 500, 505 (Fla. 2024) (quoting *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000)).

A writ of mandamus should not issue if there is an adequate legal remedy. *Agency for Health Care Admin. v. Mt. Sinai Med. Ctr. of Greater Miami*, 690 So. 2d 689, 692 (Fla. 1st DCA 1997). Further, "Mandamus will not lie to compel the performance of an act that is futile or impossible to perform." *Miami-Dade County Democratic Party v. Miami-Dade County*

Canvassing Bd., 773 So. 2d 1179, 1180 (Fla. 3d DCA 2000) (quoting *Mt. Sinai Med. Ctr. of Greater Miami*, 690 So. 2d 689, 691 (Fla. 1st DCA 1997)).

The petitioner must establish that he or she has the right to the performance of the act sought to be enforced and the existence of a duty resting on the respondent to perform it. Under R. Regulating Fla. Bar. 3-7.7(e), all applications for extraordinary writs that are concerned with lawyer disciplinary proceedings must be made to the Supreme Court of Florida.

ARGUMENT

I. The Petitioner does not have a clear legal right to the relief requested.

The petitioner in this case, Jon May, has no clear legal right to compel the bar to investigate and prosecute another member of the bar. Like any other person, Mr. May can file a sworn complaint against a member of the bar. See R. Regulating Fla. Bar 3-7.3(c). However, The Florida Bar owes no legal duty to the petitioner with respect to attorney discipline. This Court has held that bar disciplinary proceedings are not designed to vindicate the rights of private parties. *The Florida Bar v. Tyson,* 826 So. 2d 265, 268 (Fla. 2002) (quoting *In re Harper,* 84 So. 2d 700 (Fla.

1956)). The foregoing principle is codified in R. Regulating Fla. Bar 3-7.4(i), which provides in pertinent part:

> (i) Rights of the Complaining Witness. The complaining witness is not a party to the disciplinary proceeding. . . . The complaining witness has no right to appeal.

Based on *Tyson*, this Court dismissed a petition for writ of mandamus "[t]o the extent the petitioner seeks to compel The Florida Bar to further prosecute various attorneys." *Robinson v. Section 23 Property Owner's Association, Inc*., 2017 WL 931057 (Fla. 2017); see also *Cole v. Owens*, 766 So. 2d 287, 288 (Fla. 4th DCA 2000) ("Appellant lacked standing to appeal the Bar's decision to not discipline Ms. Owens.").

Mr. May asserts that even though he cannot compel the bar to perform the discretionary act of seeking discipline against a member of the bar, he *is* legally entitled to compel the bar to perform the ministerial act of conducting a "complete investigation" of his sworn complaint. (Petition, pg.2). In asserting such legal entitlement, the petition cites to Rule 3-7.3. (Petition, pg.5). The phrase "complete investigation" appears in subdivision (d) of the rule, which states in pertinent part:

> Bar counsel may dismiss disciplinary cases if bar counsel determines, after complete investigation, that the facts show the respondent did not violate the Rules Regulating The Florida Bar.

The petition interprets this language to mean that the bar must completely investigate every allegation in the underlying complaint submitted to the bar. (See generally App'x Ex.A, pg.5-28). The bar closed out this matter without such a complete investigation based on R. Regulating Fla. Bar 3-7.16(d), which states:

> Inquiries raised or complaints presented by or to The Florida Bar about the conduct of a constitutional officer who is required to be a member in good standing of The Florida Bar must be commenced within 6 years after the constitutional officer vacates office.

Based on the plain language of this rule, the bar correctly closed Mr. May's complaint as prematurely filed and advised him of his right to refile after the subject of his complaint has vacated office.

II. The Florida Bar did not waive its right to assert that Rule 3-7.16(d) applies to the facts of this case.

The petition asserts that the bar waived its right to assert that Rule 3-7.16(d) provision applies to this matter, because it did not cite to the rule in its letter closing out this matter. (Petition, pg.19). The bar's closure letter explicitly stated that it does not investigate or prosecute sitting officers appointed under the U.S. Constitution while they are in office. (App'x Ex.B, pg.30).

The letter does not contain a lengthy legal analysis citing every rule or other legal authority supporting this decision, and the bar is not required to do so. The applicability of Rule 3-7.16(d) is raised in this response, which is the very first time a court requested a response from the bar on this matter. The petition fails to cite any legal authority supporting its argument that the bar waived this argument before the petition was even filed. There was no prior waiver of this issue. See *Zuckerman Spaeder, LLP*, 21 So. 3d 1260, 1263 n.4 (Fla. 1st DCA 2017) ("As these issues were raised by AHCA in its response to the alternative writ of mandamus, its memorandum of law and at the hearing itself, we are perplexed by Zuckerman's contention that these issues were not preserved.").

III. Rule 3-7.16(d) establishes a limitation on the time to open an investigation into the subject of Mr. May's complaint, a constitutional officer, until said constitutional officer vacates office.

Perhaps recognizing that the waiver argument has no basis in law or fact, the petition asserts that Rule 3-7.16(d) is inapplicable in this case for various reasons. The petition asserts that the U.S. Attorney General is not required by law to be a member of any bar. The petitioner argues that the sitting U.S. Attorney General therefore does not qualify as a "constitutional

officer who is required to be a member in good standing of The Florida Bar" under the plain language of Rule 3-7.16(d). (Petition, pg.17-18).

As an initial matter, Rule 3-7.16(d) illustrates an effort to avoid judicial encroachment by The Florida Bar[2] on impeachment matters explicitly reserved to the legislative branch. See e.g. Art. III, § 17, Fla. Const. (empowering the house of representatives to impeach certain constitutional officers by a two-thirds vote). This Court has contrasted the legislative power of impeachment and the judicial powers of discipline and removal of judicial officers as separate constitutional functions requiring the independence of each branch of government. See *Forbes v. Earle*, 298 So. 2d 1, 2 (Fla. 1974).

By adopting Rule 3-7.16(d), this Court addressed the concern that the lawyer disciplinary process could otherwise be invoked against a sitting constitutional officer to indirectly achieve that person's removal from office. Such a practice would constitute a judicial bypass of another branch of

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[2] When conducting disciplinary proceedings, officials of The Florida Bar act as "mere arms of this Court and can have no greater jurisdiction or authority than this Court possesses." *The Florida Bar v. McCain*, 330 So. 2d 712, 714 (Fla. 1976). Attorney disciplinary proceedings are quasi-judicial rather than civil or criminal. *The Florida Bar v. Tobkin*, 944 So. 2d 219, 224 (Fla. 2006). The bar is only empowered via this Court's judicial authority to seek licensure action against members alleged to have committed violations of the Rules Regulating The Florida Bar.

government's exclusive impeachment or removal power, resulting in a separation of powers issue. The rule also addressed the countervailing concern that a member of the bar could become insulated from the disciplinary process if a six-year statute of limitations applied to his or her actions while a sitting constitutional officer. When adopting subdivision (d) into Rule 3-7.16, this Court addressed these competing concerns as follows:

> The new subdivision clarifies the length of time the Bar has to bring disciplinary action against a former judge or other constitutional officer who while in office must be a member in good standing of The Florida Bar and makes clear that a limitation similar to the six-year time limit contained in subdivision (a) would not commence until a constitutional officer vacates office.

Amends. To the Rules Regulating The Fla. Bar, 763 So. 2d 1002, 1005 (Fla. 2000). In this way, lawyer disciplinary proceedings do not encroach on the exclusive authority of another branch of government. Further, a sitting constitutional officer remains accountable for prior acts of misconduct upon vacating office, as the six-year statute of limitations will be tolled until the constitutional officer vacates office.

The 2000 amendment to the rule codified binding case law and adopted the decades-long practice of The Florida Bar. Specifically, in *McCain*, a former judge argued that the bar lacked jurisdiction to seek

discipline against him for misconduct occurring while he was a judicial officer, because he could only be removed from judicial office. 330 So. 2d at 714 (Fla. 1976). This Court rejected argument that a lawyer is immune from discipline "so long as his misconduct disgraced not only the bar but the bench as well." *Id*. However, this Court also recognized that a disciplinary proceeding against a *sitting* judge could conflict with the constitution, stating as follows:

> …where the constitution creates an office, fixes its term and provides upon what conditions the incumbent may be removed before the expiration of his term, it is beyond the power of the legislature or any other authority to remove or suspend such officer in any manner than that provided by the constitution.

In re Investigation of Circuit Judge, 93 So. 2d 601, 604 (Fla. 1957). In rejecting argument that lawyer disciplinary proceedings could be alternatively utilized to circumvent an established removal process, this Court held:

> This Court is committed to the doctrine that where the Constitution expressly provides the manner of doing a thing, it impliedly forbids it being done in a substantially different manner.

Id. at 606.

As held in *McCain*, the bar may seek discipline against a *former* judge for acts of misconduct while on the bench. However, the bar could not seek discipline against a *sitting* judge for such misconduct, who must

first face removal as a member of the judiciary via charges by the Judicial Qualifications Commission. See Art. V, §12, Fla. Const. The bar could later seek discipline for this same misconduct after the sitting judge has vacated office.

The codification of this longstanding case law into Rule 3-7.16(d) further clarified that the temporary limitation of the bar's prosecution powers against sitting judges equally applied to any constitutional officer who is required to be a member of the bar. In the context of a U.S. Attorney General, the legal mechanism in place to remove that person from office is through the impeachment process initiated by the House of Representatives, followed by a trial in the Senate. U.S. Const. art. II, s. 4. Applying *McCain* and Rule 3-7.16(d) to the facts of this case, the U.S. Attorney General must vacate office—through the impeachment process or otherwise—before the bar opens an investigation into alleged misconduct.

The petition argues that bar membership is not a prerequisite to serving as United States Attorney General, and therefore lawyer disciplinary proceedings cannot indirectly result in the attorney general's removal from office.[3] Therefore, the petition asserts that Rule 3-7.16(d)

[3] Eligibility requirements for a U.S. Attorney General were established in the Federal Judiciary Act of 1789, well before mandatory membership into a state bar became a prerequisite to the practice of law.

does not apply, leaving the bar no legal basis supporting its decision to close out Mr. May's complaint as prematurely filed.

The problem with this argument is that the duties of the U.S. Attorney General are quintessentially the duties of a lawyer. Disciplinary action against the attorney general's law license could preclude the lawful performance of these duties. Under federal law, "The Attorney General shall give his advice and opinion on questions of law when required by the President." 28 U.S.C. § 511. Further, "The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department." 28 U.S.C. § 512. When certain questions of law requiring advice arise in the administration of a military department, "the Secretary of the military department shall send it to the Attorney General for disposition." 28 U.S.C. § 513.

This Court has repeatedly held that the giving of legal advice constitutes the practice of law. *The Florida Bar v. Neiman*, 816 So. 2d 587, 588 (Fla. 2002); *The Florida Bar v. Snapp*, 472 So. 2d 459, 460 (Fla. 1985); *Tannenbaum v. Gertstein*, 267 So. 2d 824, 826 (Fla. 1972); *State ex rel. Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962). In Florida, the unlicensed practice of law constitutes a felony. § 454.23, Fla. Stat. To lawfully perform the above duties assigned to the U.S. Attorney General,

the person holding such office must be licensed to practice law. Further, under federal law, "No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney . . . unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia." 28 U.S.C. § 530C(c)(1).

A restriction on the U.S. Attorney General's privilege to practice law might not operate to directly remove the person from office. However, it could prevent that person from lawfully performing legal services assigned by law to the U.S. Attorney General, and it would possibly prevent compensation for such services. A valid law license may not be an explicit eligibility requirement for a U.S. Attorney General as it is for a member of the judiciary. See Art. V, § 8, Fla. Const. However, the lack of such a license could render the U.S. Attorney General an unpaid figurehead unable to perform several of his or her official duties. This is likely one of the reasons lawyers have historically been appointed to serve in this office.

In the context of a sitting judge, this Court recognized that disciplinary action "would not, of course, operate directly to remove petitioner from office, but all parties concede that disqualification proceedings would logically follow therefrom." *In re Proposed Disciplinary Action by Fla. Bar*

Against Circuit Judge, 103 So. 2d 632, 633 (Fla. 1958). This Court need not blind itself to the obvious effect of disciplinary action against the attorney general, as advocated in the petition. Though bar membership may not be an explicit eligibility requirement to be appointed attorney general, it is a requirement to perform the essential functions of this office and be compensated for them. Thus, under these circumstances, the constitutional office of U.S. Attorney General "requires" bar membership in every meaningful sense of the word, even if it is not explicitly delineated as an eligibility requirement under federal law. Consequently, avoiding the potential for encroachment of a power situated with the federal government supports the application of Rule 3-7.16(d) in this matter.

IV. Rule 3-7.16(d)'s plain language applies to both state and federal constitutional officers.

The petition further argues that Rule 3-7.16(d) only applies to *state* constitutional officers, not federal constitutional officers. (Petition, pg.14-17). There is no such limitation in the plain language of the rule, which applies to "disciplinary action against a former judge or other constitutional officer." Nevertheless, the petition attempts to supplement the rule's plain language to limit its applicability to state constitutional officers only. In support, the petition argues that opinions of this Court have linked the term

"constitutional officer" to the Florida Constitution, and the state constitution itself uses this term in the same manner. (Petition, pg.14-17). However, it is a "well-established tenet of statutory construction that courts 'are not at liberty to add words to the statute that were not placed there by the Legislature.'" *Crews v. State*, 183 So. 3d 329, 340 (Fla. 2015) (quoting *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 512 (Fla. 2008)).

Further, it is immaterial, and not particularly noteworthy, that a *state* supreme court's written opinions address actions by *state* constitutional officers rather than federal constitutional officers. The same is true regarding the Florida Constitution's use of the term "constitutional officers" when referencing (1) a duty of state constitutional officers to file public disclosures of their financial interests; and (2) a right of access to public records of the state. See Art. II, § 8(a), Fla. Const.; Art. I, § 24(a), Fla. Const. Both the case law of this Court and the provisions of the state constitution cited in the petition involve matters of a state government's subject matter jurisdiction within state boundaries regarding state officials. Neither category of legal authorities justifies a limitation of the plain language of Rule 3-7.16(d), which appropriately recognizes the limits of The Florida Bar's and this Court's judicial authority.

The term "constitutional officer" is unambiguous in the rule. In the context of statutory interpretation, this Court held:

> When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. In such instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.

Koile v. State, 934 So. 2d 1226, 1230-31 (Fla. 2006) (citation omitted) (quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)).

The only remaining question in interpreting an unambiguous statute or rule is whether application of its plain and ordinary meaning leads to an unreasonable result or a result clearly contrary to legislative intent. *Id*. As explained *supra*, the purpose of the 2000 amendment to Rule 3-7.16 was to balance the competing concerns of (1) avoiding a separation of powers issue in the context of disciplinary action against certain constitutional officers; and (2) ensuring these officers are not insulated from discipline for misconduct in office due to the lapsing of the statute of limitations. These concerns are equally present when the constitutional officer serves the federal government.

The rule's applicability to federal constitutional officers additionally avoids potential state government encroachment on the federal government's authority in violation of the Supremacy Clause of the U.S.

Constitution. See U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

In asserting otherwise, the petition argues there is no preemption issue in this case, because the McDade Amendment established that an attorney for the federal government remains bound by state laws. (Petition, pg. 10). The McDade Amendment provides, in relevant part:

> An attorney for the [Federal] Government shall be subject to State laws and rules . . . governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

28 U.S.C. § 530B(a).

To be clear, the bar is not asserting that state law vanishes in the face of federal law. However, state law must yield to federal law when it would interfere with the exercise of federal authority. See *Cunningham v. Neagle*, 135 U.S. 1, 75 (1890). It would be inappropriate for The Florida Bar to exercise its authority in a way that would inevitably lead to a valid, as-applied constitutional challenge. In a prior ethics opinion, The Florida Bar

stated, consistent with federal law, that "regulation of the legal profession is a proper exercise of state power and [] a Supremacy Clause problem would arise only if the state's rule regulated the federal attorneys' conduct in a manner that created an actual conflict with some provision of federal law." See Fla. Bar Ethics Opinion 90-4 (July 15, 1990) (citing *United States v. Klubock*, 639 F. Supp. 117, 126 (D. Mass. 1986)).

As explained *supra*, licensure action against a political appointee could hamper the appointee's ability to perform his or her legal duties. The Appointments Clause of the U.S. Constitution vests in the President the authority to nominate an individual to serve as U.S. Attorney General, who will be appointed with the advice and consent of the Senate. U.S. Const. art. II, § 2, cl. 2; see also 28 U.S.C. § 503. Disciplinary action against someone appointed to the office of attorney general could constitute encroachment by an arm of the state court on the exclusive authorities of the executive and legislative branches of the federal government. This Court likely did not intend to adopt a limitation in Rule 3-7.16(d) necessary to avoid encroachment on the state legislature's authority while failing to avoid similar encroachment on the federal government's authority.

Equally important, the McDade Amendment cited in the petition does not answer the question of *when* state rules of professional conduct attach:

> Although the McDade Amendment makes clear that state rules of professional conduct apply to [Federal] Government attorneys, ***that legislation does not define what those standards are, when they attach***, or what is an appropriate remedy to impose if Government lawyers breach those rules. Instead, it is completely silent as to these matters.

United States v. Grass, 239 F. Supp. 2d 535, 540 (M.D. Pa. 2003) (emphasis added). Rule 3-7.16(d) answers the question of 'when' in the context of constitutional officers who are required to be members of the bar. There is no conflict between state law and federal law in this case if the rule applies to 'constitutional officers' generally, whether serving state or federal government. It would be contrary to the purpose of subdivision (d) of the rule to interpret into its plain language an unwritten distinction between state and federal officials. Both present a similar separation of powers issue involving potential encroachment on the exclusive authority of another branch of government. Further, the latter presents an additional Supremacy Clause issue.

Application of Rule 3-7.16(d) to federal constitutional officers serves the purpose of the rule and abides by its plain and unambiguous language. This leads to neither an unreasonable result nor a result contrary to legislative intent. Therefore, the rule's unambiguous language should govern. See *Koile*, 934 So. 2d at 1230-31. This principle of statutory interpretation holds true regardless of whether the 2000 amendment to the

rule specifically intended for it to apply to federal constitutional officers who are members of The Florida Bar. As stated by the Third District Court of Appeal:

> ***Even when the results of applying statutory language seem*** to us to be harsh or ***unintended*** by the body that enacted it, ***courts are not free to refuse to apply the statute or rule*** or to use the statute or rule's purpose to trump our mandate to follow the clear and unambiguous statutory language.

Dep't of Children and Families v. Feliciano, 259, So. 3d 957, 971 (Fla. 3d DCA 2018) (emphasis added). Instead, "When statutory language is clear or unambiguous, this Court need not look behind the statute's plain language or employ principles of statutory construction to determine legislative intent." *English v. State*, 191 So. 3d 448, 450 (Fla. 2016). This Court need not go behind the rule's plain language in this matter.

V. The Florida Bar's duty to investigate sworn complaints under Rule 3-7.3(b) does not govern over the more specific language of Rule 3-7.16(d) establishing a time limitation regarding investigations of certain constitutional officers.

In a footnote, the petition additionally asserts that Rule 3-7.16(d) is inapposite to this case because it does not explicitly release the bar from its obligations under Rule 3-7.3(b). (Petition, pg.19). The latter rule states that the bar must investigate allegations in a written complaint signed under oath. The petition essentially argues that application of Rule 3-7.16(d) does

not excuse the bar from this duty to investigate. Reconciliation of these two rules is a simple matter of statutory interpretation. This Court has held that "a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms." *McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994). Further, the Second District Court of Appeal held, "We recognize that the title of a legislative enactment and, less frequently, the titles within the codified statutes may be helpful in construing an ambiguous statute." *Fajardo v. State*, 805 So. 2d 961, 963 (Fla. 2d DCA 2001).

To the extent there is *any* ambiguity regarding the interplay of these two rules, Rule 3-7.16 is the more specific rule and governs this matter. Further, the rule is titled, "Limitation on Time to Open Investigation." The bar interprets the rule to mean that investigations of complaints regarding certain constitutional officers are premature until that person has vacated office. The 'time to open investigation' into such a person is the six-year period after the person has vacated office. The complaint in this matter was prematurely filed.

CONCLUSION

A writ of mandamus is inappropriate because Mr. May has no clearly established right to the relief requested based on Rule 3-7.16(d), and the

bar never waived its right to assert that this rule temporarily precludes an investigation of petitioner's complaint. The bar's interpretation of Rule 3-7.16(d), as applied to the facts of this case, is entirely consistent with its plain language and its title. Such an interpretation does not "divest[] this Court of its proper role in overseeing compliance," as asserted in the petition. (Petition, pg. 25). It simply establishes a time limitation to open an investigation. To the extent the petitioner seeks more immediate recourse against a sitting U.S. Attorney General, the proper mechanism available is through removal or the impeachment process. Otherwise, as stated in the bar's letter, the petitioner "may refile [his] complaint once the above named lawyer no longer serves in such a position." (App'x Ex.B, pg.30).

Any investigation by The Florida Bar at this time would be futile based on Rule 3-7.16(d). Mandamus does not lie to compel the performance of an act that would be futile. *Miami-Dade County Democratic Party*, 773 So. 2d at 1180 (Fla. 3d DCA 2000). Further, given the plain statutory language of Rule 3-7.16(d), the petitioner has not established that he has a clear legal right to compel the performance of an indisputable legal duty of The Florida Bar. *Richardson*, 395 So. 3d at 505 (Fla. 2024). The petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the original hereof has been e-filed with the Clerk of the Supreme Court of Florida, on this 13th day of August, 2025, and a true and correct copy of the foregoing has been furnished via e-service to Jon May, petitioner, at jonmay@jonmaycriminaldefense.com.

Mark Lugo Mason, Bar Counsel