

An Open Letter to All Department of Justice Lawyers

From Robert J. Rose, Esq.

Like you, I was a Department of Justice lawyer. I also served as a Special Assistant United States Attorney. I understand the demands and pressure of the job, and the pride you feel in representing the United States. My question is:

Why are you still working there?

No matter what state you come from, you are bound by an ethical rule of professional conduct that requires that you exercise independent professional judgment. In other words, you are not allowed to say “Because my client (or employer) told me to do this.” For example, California Rule of Professional Conduct 3-200(C) permits you to resign if your client:

- (b) seeks to pursue an illegal course of conduct, or
- (c) insists that the member pursue a course of conduct that is illegal
- (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member

The ABA Model Rules of Professional Conduct provides in Rule 3.1 that:

“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

On Friday, January 27, 2017, Donald Trump signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The Executive Order was immediately challenged in a

number of jurisdictions. On Saturday, January 28, United States District Judge Ann Donnelly of the Eastern District of New York enjoined certain provisions of the Executive Order after finding that the petitioners had a strong likelihood of success in establishing that the Order violated the Due Process and Equal Protection guarantees of the United States Constitution. On Monday, January 30, 2017, Donald Trump fired Sally Yates, the Acting Attorney General, after she stated publically that she was not convinced that the Executive Order was lawful.

From this day forward if you stay with the Department of Justice you own that Executive Order.