

# **ATTORNEY DISCIPLINE PROCEDURES IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**MEG BEARDSLEY, STAFF ATTORNEY**

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## **PROCEDURES ARE IDENTIFIED BY RULE**

- All United States Court of Federal Claims attorney discipline procedures are identified in Rule 83.2 of the court's rules ("RCFC").
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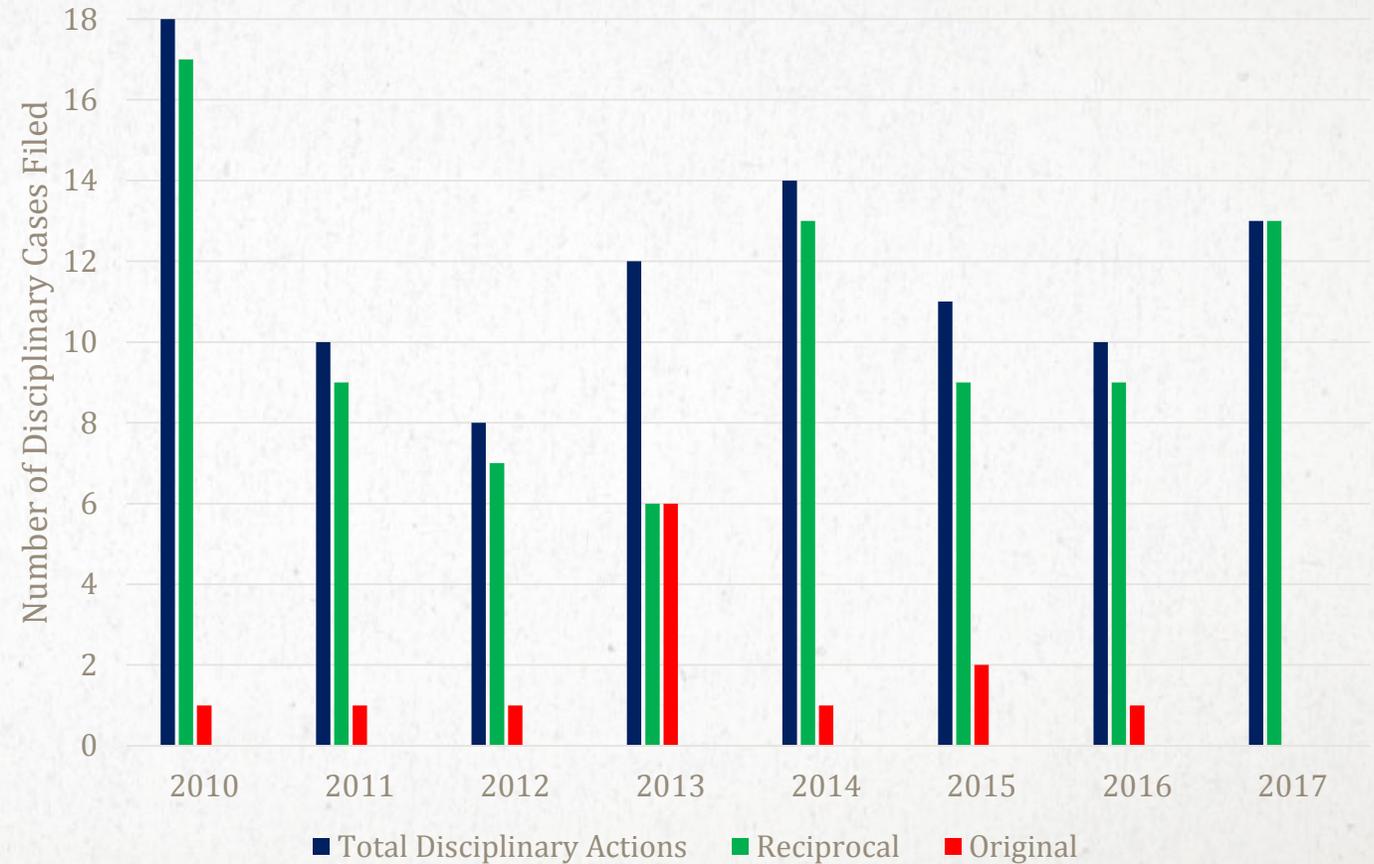
# TWO TYPES OF ATTORNEY DISCIPLINE PROCEEDINGS: RECIPROCAL AND ORIGINAL

- Reciprocal disciplinary cases are filed in the Court of Federal Claims on the basis of disciplinary action initiated in another jurisdiction.
    - Because the Court of Federal Claims has nationwide jurisdiction, all attorneys who practice before the Court are licensed to practice law in other jurisdictions, as well.
  - Original disciplinary cases are initiated on the basis of conduct that has occurred before the Court of Federal Claims.
  - Over the last seven years, the vast majority of the cases on our attorney discipline docket have been reciprocal, not original, disciplinary cases.
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# STATISTICS

- Between 2010 and 2017, 96 attorney discipline proceedings were initiated in the Court of Federal Claims.

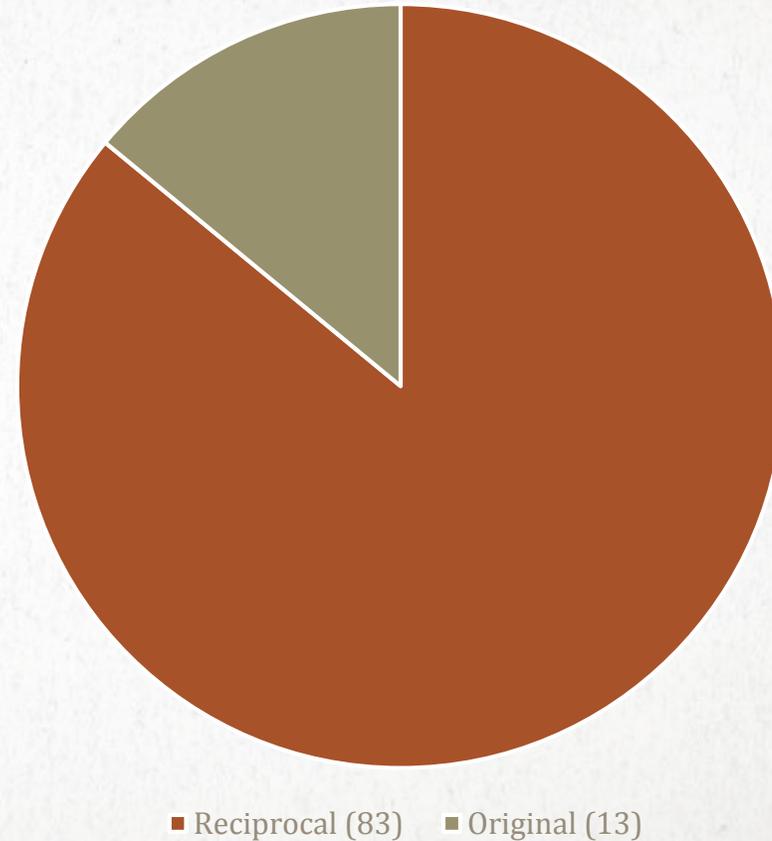
Original and Reciprocal Attorney Discipline Proceedings 2010–2017



## STATISTICS

- Approximately 86% of our attorney discipline docket is comprised of reciprocal disciplines, i.e., attorney discipline proceedings that are initiated on the basis of discipline imposed in another jurisdiction.

Reciprocal vs. Original Disciplines  
2010-2017



# THERE ARE FIVE GROUNDS ON WHICH AN ATTORNEY ADMITTED TO PRACTICE BEFORE THE COURT OF FEDERAL CLAIMS MAY BE DISCIPLINED (RCFC 83.2(c)(1)–(5)):

- An act or omission that results in disbarment or suspension by another court ([reciprocal](#)). RCFC 83.2(c)(2).
- Disbarment on consent or resignation from the bar of another court while an investigation of misconduct is pending ([reciprocal](#)). RCFC 83.2(c)(3).
  - An order imposing discipline is not always required. A resignation while imposition of final discipline remains pending constitutes grounds for reciprocal action.
- Failure to comply with the terms of RCFC 83.2, including failure to notify the court of discipline imposed in another jurisdiction ([reciprocal](#)). RCFC 83.2(c)(4).
  - Written notification must be provided within 14 days of criminal conviction, disbarment, suspension, or resignation. RCFC 83.2(e).

## FIVE GROUNDS FOR DISCIPLINE (CONT.)

- A conviction by another court of a serious crime (original). RCFC 83.2(c)(1).
  - “Serious crimes” include felonies and qualifying misdemeanors. RCFC 83.2(b)(2).
  - Misdemeanors that qualify as “serious crimes” are crimes whose elements include interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file a tax return, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation to commit a serious crime. RCFC 83.2(b)(2)(B).
- “[A]ny conduct before the court that is unbecoming a member of the bar of this court” (original). RCFC 83.2(c)(5).
  - The RCFC are silent as to the meaning of the term “conduct unbecoming,” and a question has arisen as to what set of professional conduct rules apply to our attorneys. RCFC 83.2 does not include a “choice of law” subsection to address the content of the term, and state ethics rules do not by their own terms apply to our court. In practice, the Standing Panel will reference local disciplinary rules and/or ABA Model Rules to establish a consensus of ethical principles supporting a finding of “conduct unbecoming.”

# THE ROLE OF THE STAFF ATTORNEYS OFFICE IN THE INITIAL STAGES OF THE DISCIPLINARY PROCESS

- The Staff Attorneys' Office ("SAO") acts as the **case manager** for attorney discipline cases.
  - Upon notification of disciplinary action in another jurisdiction, or upon referral of conduct that is allegedly "unbecoming," the SAO immediately creates an attorney discipline docket.
  - Once docketed, all disciplinary matters are referred to the three-judge **Standing Panel on Attorney Discipline**.
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# REFERRALS TO THE STANDING PANEL ARE NOT DISCRETIONARY

- The Clerk of Court **must** refer to the Standing Panel:
  - any information from another court's bar regarding a disbarment, suspension, or bar resignation,
  - any complaint regarding attorney misconduct received from a judge or special master, and
  - any complaint received from a member of the public.

RCFC 83.2(g)(2).

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## **THE STANDING PANEL ON ATTORNEY DISCIPLINE**

- The judges currently appointed to the panel:
    - Senior Judge Nancy Firestone (Chair)
    - Senior Judge Victor Wolski
    - Judge Patricia Campbell-Smith
  - The Standing Panel's judges are appointed by the chief judge to serve staggered three-year terms. RCFC 83.2(f)(2)(A).
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# THE ROLE OF THE SAO IN RECIPROCAL DISCIPLINES AFTER REFERRAL TO THE STANDING PANEL

- In practice, reciprocal discipline cases are resolved in accordance with a standardized procedure.
  - The SAO investigates the circumstances underlying the misconduct.
  - The SAO makes a recommendation to the Standing Panel as to how to proceed.
  - The vast majority of the time, once the SAO completes its investigation, it recommends that the Standing Panel:
    - (1) issue an **Order to Show Cause** directing the subject attorney to show cause why reciprocal discipline should not be imposed, RCFC 83.2(g)(6)(B);
    - and
    - (2) ultimately, issue a **Final Order** imposing discipline identical to the discipline imposed in the original jurisdiction.
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# THE FIRST ORDER ISSUED BY THE STANDING PANEL IN A RECIPROCAL DISCIPLINARY CASE: THE SHOW CAUSE ORDER

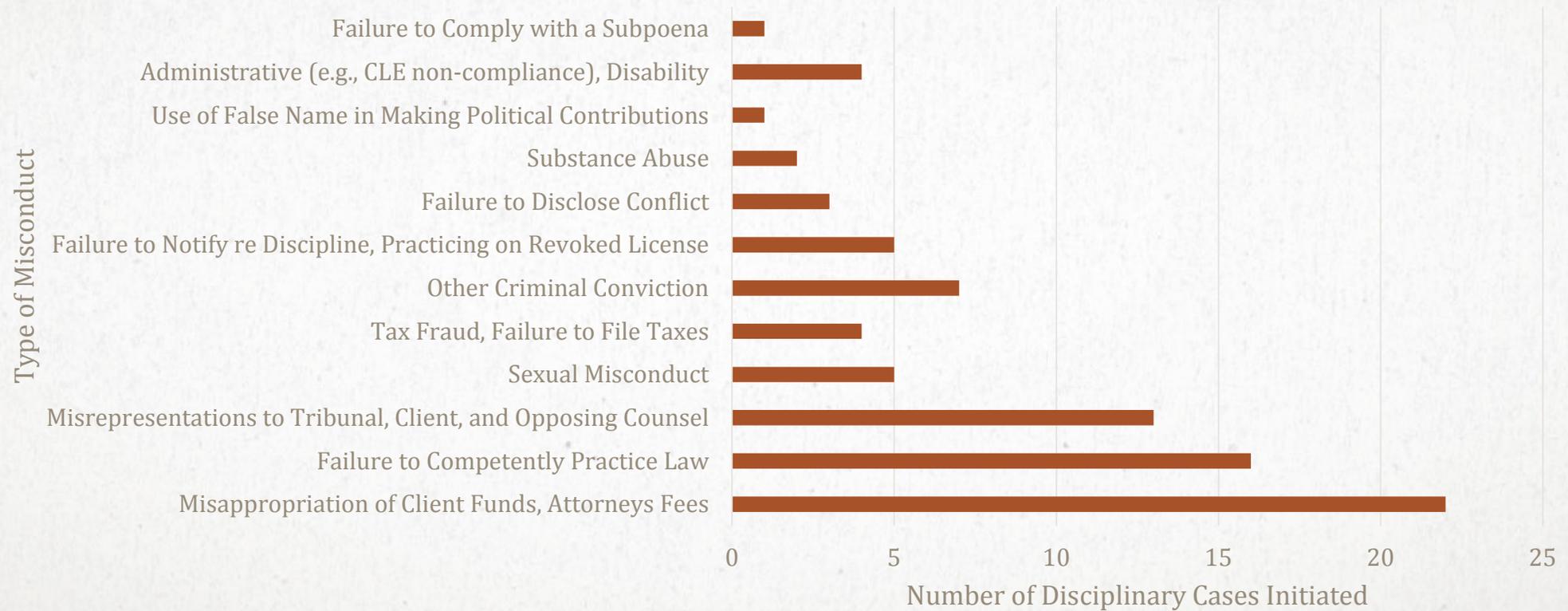
- The Show Cause Order immediately suspends the subject attorney from the practice of law before the court “pending final disposition of this proceeding.” RCFC 83.2(h)(2) (requiring that the Standing Panel “immediately” suspend an attorney upon notice of (1) conviction of a serious crime AND (2) a suspension or disbarment from practice in another jurisdiction); RCFC 83.2(h)(5)(A)(i), (ii) (the Standing Panel treats suspension from the bar of another court, disbarment, and conviction of a serious crime as “conclusive evidence that . . . misconduct in fact occurred”).
- The Show Cause Order also includes:
  - a description of the discipline imposed in the original jurisdiction, and a brief description of the misconduct that gave rise to that discipline;
  - the date the subject attorney was licensed to practice before the Court of Federal Claims;
  - a recitation of what, if any, notice was received from the attorney under RCFC 83.2(e)(1)(B);
  - a deadline for the response: unless otherwise ordered, an attorney’s response to a show cause order must be filed within 30 days (RCFC 83.2(g)(8)); and
  - the presumed final discipline, as required by RCFC 83.2(g)(7).

## **CERTAIN DISCIPLINARY MEASURES ARE PRESUMED IN RECIPROCAL DISCIPLINARY CASES**

- Certain disciplines are presumed (and must be identified in the show cause order) (RCFC 83.2(g)(7)):
    - conviction by another court of a serious crime → disbarment
    - disbarment or suspension by another court → disbarment or a reciprocal period of suspension
    - disbarment on consent, or resignation from bar of another court, while an investigation is pending → reciprocal disbarment
    - conduct unbecoming → no presumed discipline
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# STATISTICS ON RECIPROCAL DISCIPLINES: GROUNDS FOR DISCIPLINE IN ORIGINAL JURISDICTION

Grounds for Discipline in Original Jurisdiction, 2010–2017



# AFTER THE SHOW CAUSE ORDER IS ISSUED IN A RECIPROCAL DISCIPLINARY CASE

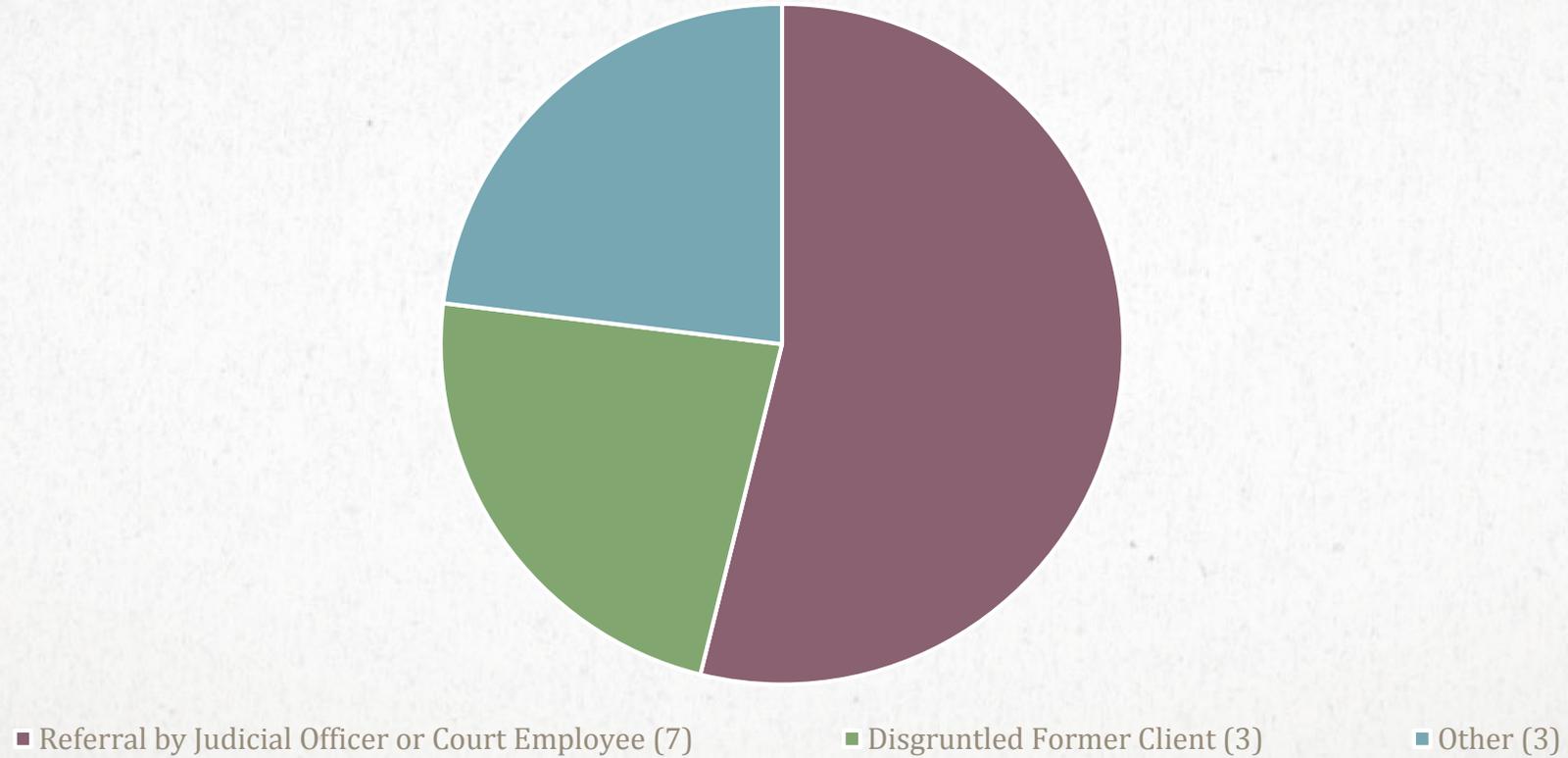
- After the Show Cause Order is docketed, the Clerk's Office immediately terminates the attorney as counsel of record in all pending general jurisdiction or vaccine cases in which the attorney is named as the attorney of record.
  - In each pending case in which the attorney is named the attorney of record, the Clerk of Court issues a Notice terminating the attorney.
  - The attorney's CM/ECF credentials are immediately revoked, and the attorney loses the ability to file electronically.
  - The case reverts to *pro se* and is converted from an electronic to a non-electronic case. Unless and until counsel is substituted pursuant to RCFC 83.1(c)(4), all future filings must be made in paper form.
  - The disciplined attorney is directed to provide the court with his or her client's current contact information within a specified period of time.
  - In closed cases, a suspended or disbarred attorney's name remains on the docket.

# ORIGINAL DISCIPLINARY CASES

- Upon receipt of an allegation of attorney misconduct, the SAO reviews the information received in order to make a recommendation as to whether the matter merits further investigation. If the Standing Panel concludes that the allegation is on its face insufficient to warrant imposition of any discipline, the matter will be dismissed by final order. RCFC 83.2(g)(3)(A).
  - If information prompting the investigation is received from a judge or special master, immediate dismissal is not an option; the Standing Panel must immediately open an investigation. RCFC 83.2(g)(3)(B).
- If the matter is not immediately dismissed, the Standing Panel must appoint investigatory counsel to conduct an investigation. RCFC 83.2(g)(5).
  - The subject attorney is entitled to written notice of the panel's determination that investigation is warranted. RCFC 83.2(g)(4).
  - Appointed counsel may be the court's staff attorney, other appropriate court personnel, or outside counsel. RCFC 83.2(g)(5)(A), (C).
  - Generally speaking, the appointed counsel reviews the relevant documents, interviews witnesses, provides the panel with a report detailing his/her findings, and takes any other steps that are "reasonably necessary to effectuate the investigation." RCFC(g)(5)(B).

# STATISTICS: INITIATION OF ORIGINAL DISCIPLINARY PROCEEDINGS

Grounds for Initiation 2010–2017



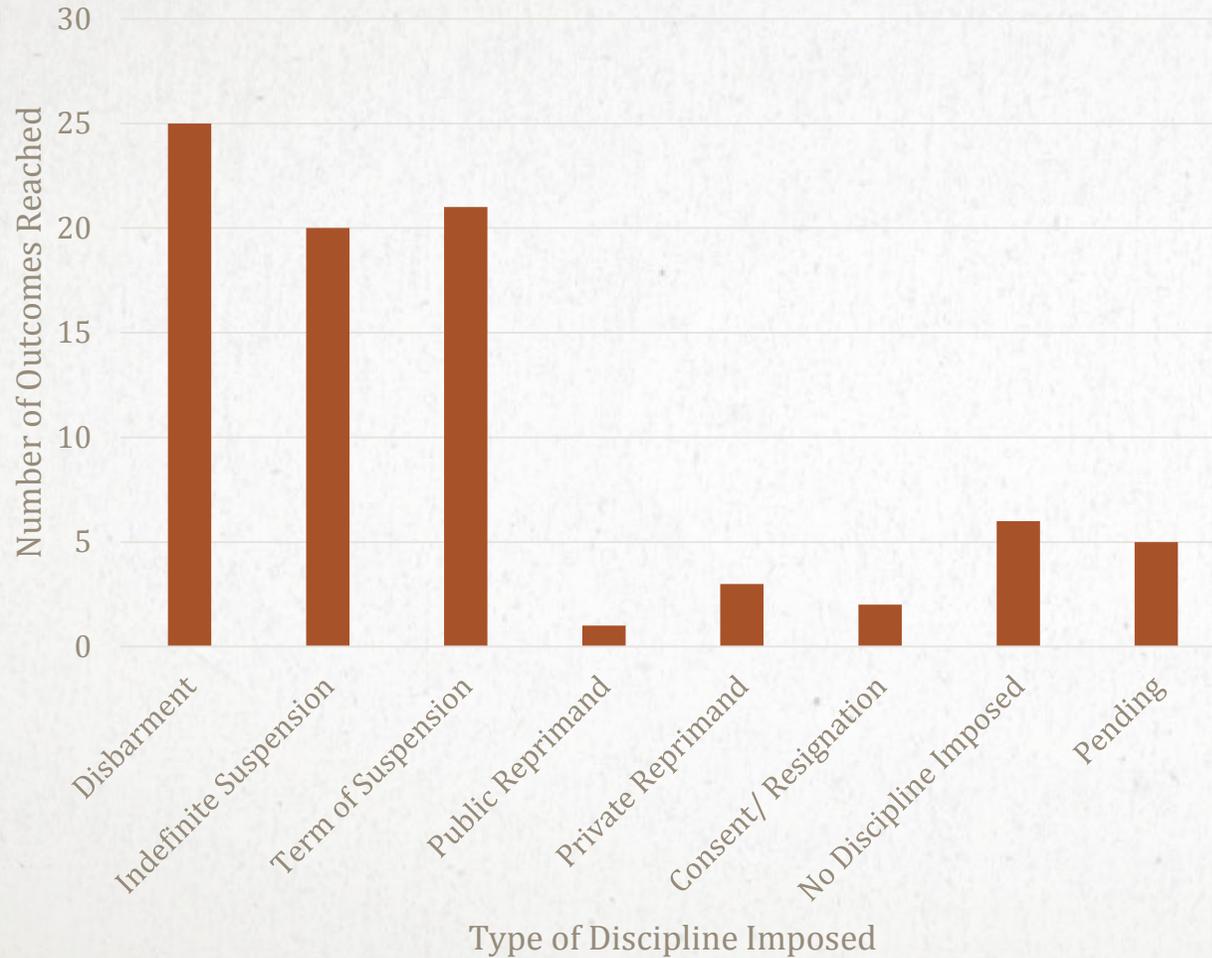
# **THE FINAL ORDER IN ORIGINAL DISCIPLINARY CASES: THE STANDING PANEL IS AUTHORIZED TO IMPOSE DISCIPLINARY MEASURES IDENTIFIED IN RCFC 83.2(d)**

- The following disciplinary measures are available to the Standing Panel in original disciplinary cases under RCFC 83.2(d):
    - disbarment;
    - suspension;
      - definite or indefinite
    - private or public reprimand;
    - restitution or monetary sanctions; and
    - any other disciplinary action warranted by the circumstances.
      - Since 2010, the Standing Panel has not imposed any disciplinary action that falls outside of the four enumerated categories.
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## **IN BOTH ORIGINAL AND RECIPROCAL PROCEEDINGS, THE ATTORNEY MAY REQUEST A HEARING**

- If an attorney requests a hearing in his or her response to the Show Cause Order or in a supplemental response, the Standing Panel will schedule a hearing. RCFC 83.2(h)(6)(A).
  - Since 2010, the Standing Panel has never held a hearing in an attorney discipline case. If such a hearing were to be held, the subject attorney would have the right to retain counsel. RCFC 83.2(h)(1).
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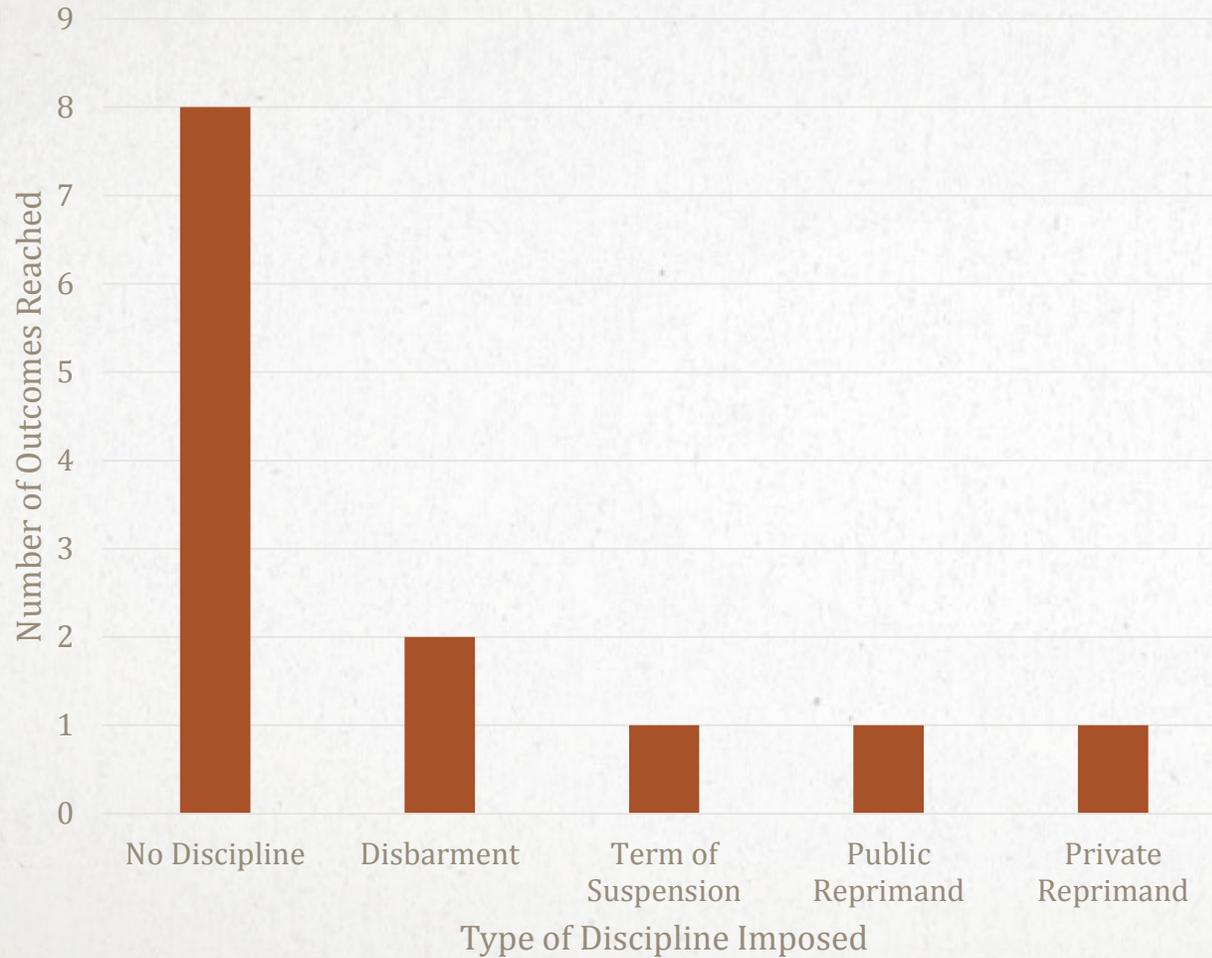
## Outcomes in Reciprocal Disciplinary Cases 2010-2017



## STATISTICS: OUTCOMES

In a majority of reciprocal disciplinary cases, the discipline imposed is reciprocal suspension or disbarment .

Discipline Imposed in Original Disciplinary  
Cases 2010–2017



## STATISTICS: OUTCOMES

Outcomes in original discipline cases are varied.

# AFTER ISSUANCE OF THE FINAL ORDER

- **Petitions for Rehearing.** The subject attorney may seek review of the Standing Panel's final order by filing a petition for rehearing. RCFC 83.2(j)(1)(A)(i).
  - The subject attorney may also "suggest" a rehearing by all active judges of the court. RCFC 83.2(j)(1)(A)(ii).
  - Any petition for rehearing must be filed within 14 days of the final order. RCFC 83.2(j)(1)(C).
- **Reinstatement.** Reinstatement is not automatic. RCFC 83.2(k). An attorney who has been suspended from practice must actively seek reinstatement and may be subject to a hearing (with associated costs). RCFC 83.2(k)(1), (2).

# CONFIDENTIALITY

- Absent special circumstances, attorney discipline dockets remain under seal while the proceedings are pending. RCFC 83.2(l)(1).
  - An exception: an ongoing disciplinary proceeding may be disclosed where the Standing Panel determines that it is appropriate to disclose the subject matter “to protect the public, the legal profession, or the administration of justice.” RCFC 83.2(l)(1)(B)(iii).
  - Confidentiality rules are also less strict where allegations are public. RCFC 83.2(l)(1)(B)(i), (ii).
- After issuance of a final order, attorney discipline dockets may or may not remain under seal.
  - Records of cases that do not result in imposition of discipline, or that only result in the issuance of a private reprimand, remain confidential. RCFC 83.2(l)(2)(A).
  - With certain limited exceptions, the records of all other cases are made part of the public record. RCFC 83.2(l)(2)(B), (C).
- Final orders issued since January 1, 2016 are posted on the court’s website:  
<http://www.uscfc.uscourts.gov/attorney-discipline-opinions>.

# EXAMPLES OF ATTORNEY CONDUCT THAT PROMPTED INITIATION OF ATTORNEY DISCIPLINE PROCEEDINGS: CASE STUDY NO. 1

- In 2010, the Standing Panel initiated reciprocal disciplinary proceedings against an attorney whose license to practice law in Virginia had been suspended for 30 days for sexual misconduct.
- The subject attorney made unwanted sexual advances to a client, some of which were caught on hidden surveillance cameras. The attorney entered a plea of no contest to misdemeanor sexual assault, served 30 days in jail, and paid a \$500 fine.
- The attorney failed to notify the court of his suspension as required by RCFC 83.2(e), and he did not respond to the Standing Panel's Order to Show Cause.
- The Standing Panel suspended the attorney for an indefinite period, with readmission conditioned upon readmission to the Virginia Bar.

## **EXAMPLES OF ATTORNEY CONDUCT THAT PROMPTED INITIATION OF ATTORNEY DISCIPLINE PROCEEDINGS: CASE STUDY NO. 2**

- In 2015, a special master initiated original disciplinary proceedings against a vaccine attorney who had improperly retained a significant percentage of the damages awarded to a client (in addition to having received \$31,000 in attorneys fees).
  - The subject attorney subsequently admitted to defrauding 14 of his vaccine clients by withholding percentages of their awards. In total, the attorney had withheld approximately \$775,000 owed to his clients. The attorney pled guilty to felony mail fraud in the District of Arizona, where his practice was located. He was sentenced to 5 years of probation, restitution, and a \$100,000.00 fine.
  - As part of his plea deal, the subject attorney voluntarily relinquished all of his law licenses, including his license to practice in the Court of Federal Claims.
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# EXAMPLES OF ATTORNEY CONDUCT THAT PROMPTED INITIATION OF ATTORNEY DISCIPLINE PROCEEDINGS: CASE STUDY NO. 3

- In 2016, the Standing Panel initiated reciprocal disciplinary proceedings against an attorney who had been suspended from the Pennsylvania Bar for a period of 5 years. The Pennsylvania disciplinary board had found that the subject attorney had continued to practice law despite being suspended, that he had failed to safeguard his clients' escrow accounts, and that he had altered key documents before turning them over to disciplinary authorities for inspection. The subject attorney also failed to appear at his disciplinary hearing and failed to show remorse for his conduct.
  - The subject attorney was subsequently disbarred in New Jersey, the Eastern District of Pennsylvania, the Third Circuit, and the state of Maryland.
  - The attorney failed to notify the court of his disbarments or to respond to the Standing Panel's Order to Show Cause.
  - The attorney was ultimately suspended from practice before the Court of Federal Claims for a period of 5 years.
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# EXAMPLES OF ATTORNEY CONDUCT THAT PROMPTED INITIATION OF ATTORNEY DISCIPLINE PROCEEDINGS: CASE STUDY NO. 4

- In 2017, the Standing Panel initiated reciprocal disciplinary proceedings against a vaccine attorney who had been suspended from practice for 3 years before the United States District Court for the Western District of Texas.
  - The attorney had been found to have fabricated evidence, taken out a baseless restraining order against opposing counsel, and committed other misconduct.
  - At the time the Court of Federal Claims became aware of the Texas discipline, the attorney had at least one case pending before the Office of Special Masters. He also filed numerous vaccine cases that had been closed for purposes of assessments of entitlement to vaccine compensation, but that remained open for purposes of assessments of entitlement to attorneys fees.
  - After holding imposition of final discipline in abeyance pending the outcome of the attorney's appeal of the disciplinary action in Texas to the Fifth Circuit, the Standing Panel ultimately imposed reciprocal discipline identical to that which was imposed in Texas, nunc pro tunc to the date on which the 3-year suspension became effective.
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**QUESTIONS?**

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