



Circular 230

The Office of Professional Responsibility

*So You Think Circular 230 Doesn't
Matter to Return Preparers? Think
Again*

Authority, Jurisdiction and Process



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OPR Mission

“Interpret and apply the standards of practice for tax professionals in a fair and equitable manner”



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Statutory Authority

- 31 U.S.C. § 330 (1884)
- Regulate the practice of representatives of persons before the Department of the Treasury
- Authorizes determinations of practitioner “fitness” to practice



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Regulatory Authority

- 31 C.F.R. Subtitle A, Part 10 (1886)
- Treasury Circular No. 230 (1921)
- 31 C.F.R. 10.1(a)(1)
- Delegation Order 25-16 (Rev. 1)



Rev. Proc. 81-38



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	<u>Rev. Proc. 81-38</u>
What it generally provides:	<p>Tax return preparers may exercise the privilege of limited practice, without enrollment, as a taxpayer's representative.</p> <p>Representation is limited to examinations of tax returns the unenrolled return preparer prepared and signed (or prepared and was not required by the form and instructions to sign).</p> <p>An unenrolled return preparer may appear as a taxpayer's representative only before Examination and similar personnel (such as Customer Service and TAS).</p> <p>Unenrolled return preparers may not engage under any circumstances in limited practice before Appeals, Collection personnel, or Chief Counsel.</p>
Effective for:	Tax returns prepared and signed before January 1, 2016.
Rules in connection with limited practice:	Only eligible individuals are entitled to limited practice, and are required to follow conduct standards and restrictions prescribed in sections 7 and 8 of Rev. proc. 81-38, relating to:
	<ul style="list-style-type: none"> - refraining from disreputable conduct under section 10.51 of Circular 230 - responding to information requests from the IRS - unconscionable fees - client errors or omissions - due diligence - delay in resolving matters before the IRS - acting as a notary public - conflicts of interest - solicitation of business and advertising
Violations and Sanctions:	<p>A preparer's violation of these obligations renders the preparer unauthorized for limited representation, among other bases for ineligibility described in section 9 of Rev. Proc. 81-38, such as:</p> <ul style="list-style-type: none"> - conviction of a federal tax crime or crime involving dishonesty or breach of trust - disbarment or suspension from practice before the IRS - disbarment or suspension from practice as an attorney, CPA, or actuary by a state authority, federal agency, or federal court <p>OPR is responsible for implementing the provisions on ineligibility, by notifying individuals of a proposed determination of ineligibility for limited practice as an unenrolled return preparer and making a final decision after considering anything in defense or mitigation received from the practitioner, including matters presented in an appeal of an initial determination.</p>



Rev. Proc. 2014-42



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	<u>Rev. Proc. 2014-42</u>
What it generally provides:	<p>The revenue procedure established a new, voluntary Annual Filing Season Program, intended for unenrolled return preparers. The IRS Return Preparer Office (RPO, not OPR) will issue an annual Record of Completion to return preparers who apply to participate in the program and satisfy the application requirements. To obtain a Record of Completion, a preparer generally must complete an annual federal-tax refresher course that includes a test and complete annual continuing-education courses.</p> <p>Upon obtaining a Record of Completion for a given year, a return preparer may communicate to taxpayers that the preparer holds a Record of Completion for that calendar year.</p> <p>Return preparers who participate in the program and complete the program requirements may also represent taxpayers before the IRS in examinations of tax returns or claims for refund of tax that the preparer prepared for the taxpayers and signed (unless not required to sign). To practice as a representative, a preparer must have a valid Record of Completion for both (1) the year in which the return or refund claim was prepared and signed; and, (2) the year (or years) of representation.</p>
Effective for:	<p>Tax year 2015 and subsequent years. Also governs representation before the IRS in examinations of returns prepared and signed after December 31, 2015. (For the 2015 year, there is overlap between Rev. Proc. 2014-42 and Rev. Proc. 81-38 depending on whether the preparer has obtained a Record of Completion for the 2015 calendar year or portion thereof).</p>
Rules in connection with limited practice:	<p>Applicants consent to be subject to the duties and restrictions in Subpart B of Circular 230 and to the prohibitions on disreputable and incompetent conduct contained in the Circular at section 10.51.</p> <p>As with Rev. Proc. 81-38, certain individuals are ineligible to participate in the Program, including those:</p> <ul style="list-style-type: none"> - who are disbarred, disqualified, or suspended from practice before the IRS under Circular 230 - who were convicted of a felony for the commission of a tax or financial crime - who are enjoined from preparing returns or representing taxpayers before the IRS - who are not in compliance with their personal federal tax filing or payment obligations - who had a Record of Completion revoked
Violations and Sanctions:	<p>Rev. Proc. 2014-42 provides for the IRS to revoke a Record of Completion for a preparer's breach of the standards of conduct prescribed in the revenue procedure or if a preparer does not comply with the requirements to be in the Program. In addition, the preparer may also be excluded from future participation in the program. Any violation of Circular 230 during representation of a taxpayer will also result in revocation of a Record of Completion, loss of the privilege of limited practice, and possible discipline under Circular 230.</p>

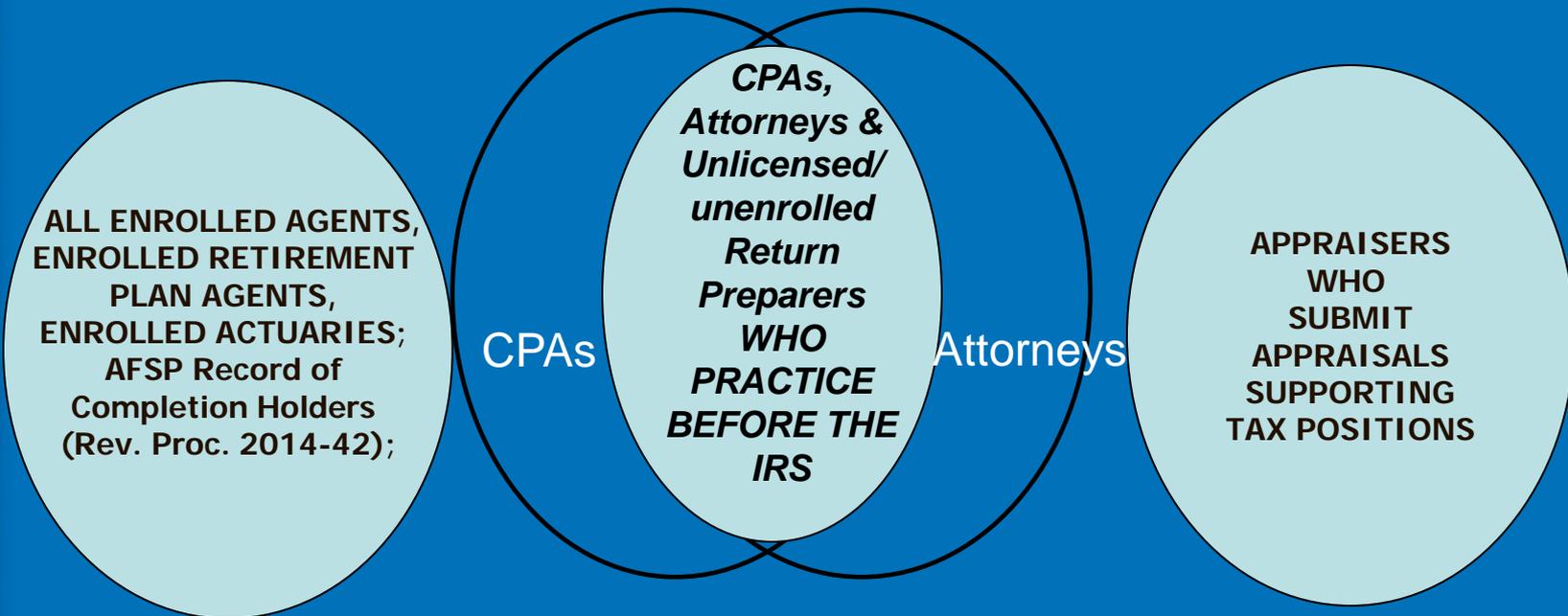


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Jurisdiction





Misconduct Subject to Disciplinary Action

Four broad sources of misconduct:

- When advising taxpayers on filing positions or transactions
- During taxpayer representation before IRS
- On practitioner's own return
- External misconduct- moral turpitude



OPR Complaint Process

- Sources of complaints:
From IRS divisions and employees, other government agencies, tax practitioners and private citizens
- Determine OPR Jurisdiction
- Evaluate Potential of a Violation of Circular 230 & Alternative Discipline Options



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Alternative Disciplinary Approaches

- Issuance of a “Soft Letter” (compliance and conduct)
- Issuance of a “Soft 60-Day Letter” (compliance)
- Issuance of a Notice of Allegation (conduct)
- Deferred Disciplinary Agreement (both)



OPR Complaint Process (Continued)

- Issue Notice of Allegation
 - A report of suspected misconduct received.
 - You may have violated one or more Cir. 230 regulations
 - Allegations include.....
 - OPR will begin an investigation
 - If you possess relevant information which you believe will help resolve the allegation(s), please submit it **now**.

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OPR Complaint Process (Continued)

- Investigation
 - Documentation
 - Database Searches
 - Witnesses
 - Other
- Dispute
 - Allegation Letter
 - Conference Opportunity
 - Settlement Opportunity
- Administrative Hearing/Appeal



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Deferred Disciplinary Agreement

- Practitioner Offers and Consents to Agreement in Lieu of a Disciplinary Proceeding.
- Practitioner Admits to Applicable Violations of Circular 230.
- Practitioner Offers Consent to Suspension/disbarment.
- OPR Accepts Offer and Agrees to Refrain From Imposing and Publicizing the Terms of Suspension, Contingent On:
 - Stay in Tax Compliance For 5 Years
 - Withdraw All Outstanding Forms 2848 Within 60 Days
 - Agree Not to Submit Any Forms 2848 to the IRS or Attempt to Practice Before the IRS.
 - If Default, Suspension/Disbarment terms invoked by OPR



Available Sanctions

- Letter of Reprimand (private – may include “soft letter”)
- Censure
- Suspension
- Disbarment
- Disqualify (Specific to Appraisers)
- Monetary Penalty

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Title 26 Penalties – Mandatory Referrals

- 6694(b) Willful attempt to understate tax liability
- 6700 Promoting abusive tax shelters
- 6701(a) Aiding and abetting understatement of tax liability (appraisers)
- 7407 Action to enjoin Tax Return Preparers
- 7408 Action to enjoin specific conduct re: tax shelters and reportable transactions.

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Title 26 Penalties – Discretionary Referrals

- **6662 Accuracy related penalty with facts suggesting lack of due diligence**
- **6694(a) Negligent or intentional disregard of tax rules and regulations (Need a Pattern)**
- **6695 Failure to furnish copy of return; sign a return; keep copies/lists of tax returns prepared;**
- **6695(f) Negotiation (direct/indirect, electronic or paper) of refund checks**
- **6702 Frivolous tax returns or submissions**
- **7206 Fraud and false statements**
- **6111 and 6112 Failure to comply with tax shelter registration requirements** 16



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APPENDIX

RESOURCES



Treasury Department Circular No. 230 (Rev. 6-2014) - Regulations Governing Practice before the Internal Revenue Service:

http://www.irs.gov/pub/irs-utl/Revised_Circular_230_6_-_2014.pdf

Subscribe to News and Updates from the Office of Professional Responsibility:

<http://www.irs.gov/Tax-Professionals/Subscribe-to-News-and-Updates-from-the-Office-of-Professional-Responsibility-OPR>

Latest News and Updates from the Office of Professional Responsibility:

<http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Latest-News-from-Office-of-Professional-Responsibility>

Guidance to Practitioners Regarding Professional Obligations Under Treasury Circular No. 230:

http://www.irs.gov/pub/irs-utl/Guidance_Regarding_Professional_Obligations_Under_Circular_230.pdf

Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases:

<http://www.irs.gov/pub/irs-utl/rightsandresponsibilitiesofpractitioners.pdf>

Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service:

http://www.irs.gov/pub/irs-utl/Guidance_on_Restrictions_During_Suspension_or_Disbarment.pdf



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Jan. 1, 2015 – Mar. 31, 2015

Case Disposition Results



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<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Other</u>	<u>Totals</u>
Total Receipts					305
• Disbarments (FAD/Consent)	-	1	-	-	1
• Suspensions (FAD/Consent)	1	-	-	-	1
• Expedited Suspensions	11	8	1	1	21
• DDA	-	-	2	-	2
• Censure	-	-	-	-	0
• Monetary Sanction	-	-	-	-	0
• Reprimand/Soft Letter					41
• Cease & Desist					13
• CWOS, LOJ, NCOA, CWOA					137
• Reinstatement Requests					9
• Appeals					4
Total Dispositions	12	9	3	1	229

Calendar Year 2014 Case Disposition Results



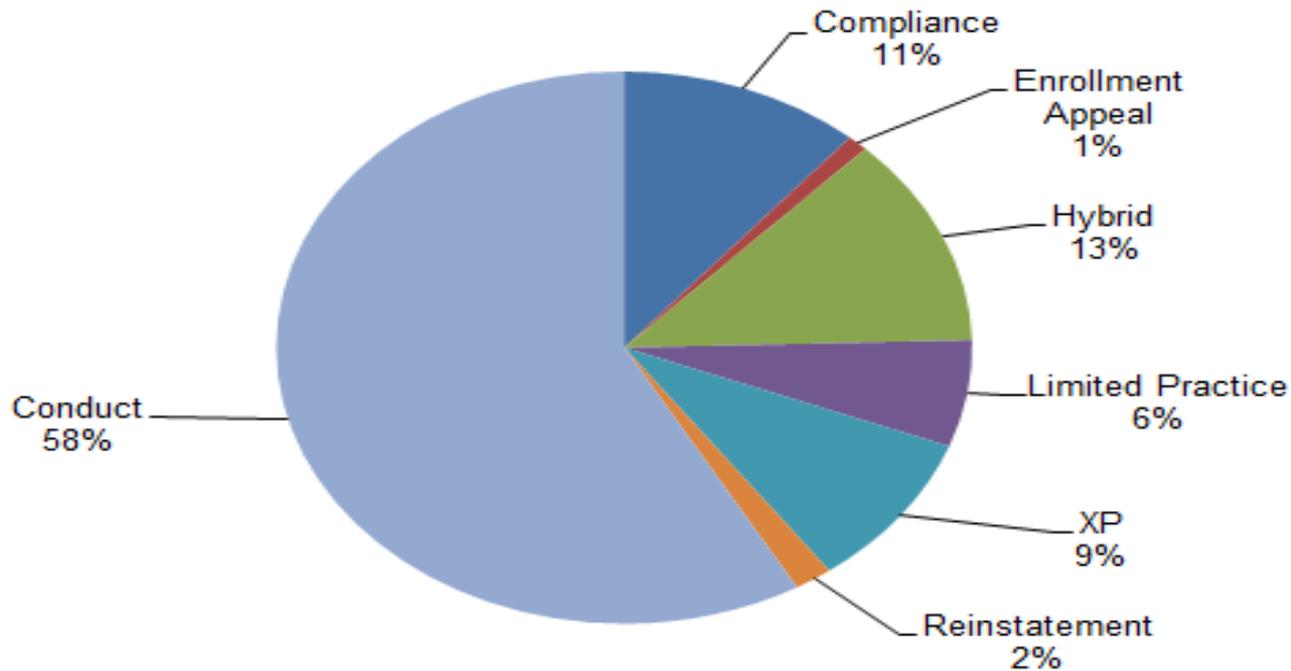
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<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Other</u>	<u>Totals</u>
Total Receipts					864
• Disbarments (FAD/Consent)	1	0	2	2	5
• Suspensions (FAD/Consent)	9	16	7	1	33
• Expedited Suspensions	38	29	7	0	74
• DDA	2	3	1	5	11
• Censure	-	5	1	1	7
• Monetary Sanction	-	-	-	1	1
• Reprimand/Soft Letter					195
• Cease & Desist					32
• CWOS, LOJ, NCOA, CWOA					556
• Reinstatement Requests					33
• Appeals					7
Total Dispositions	50	53	18	10	954

Fiscal Year 2015

CASE MIX



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Fiscal Year 2015

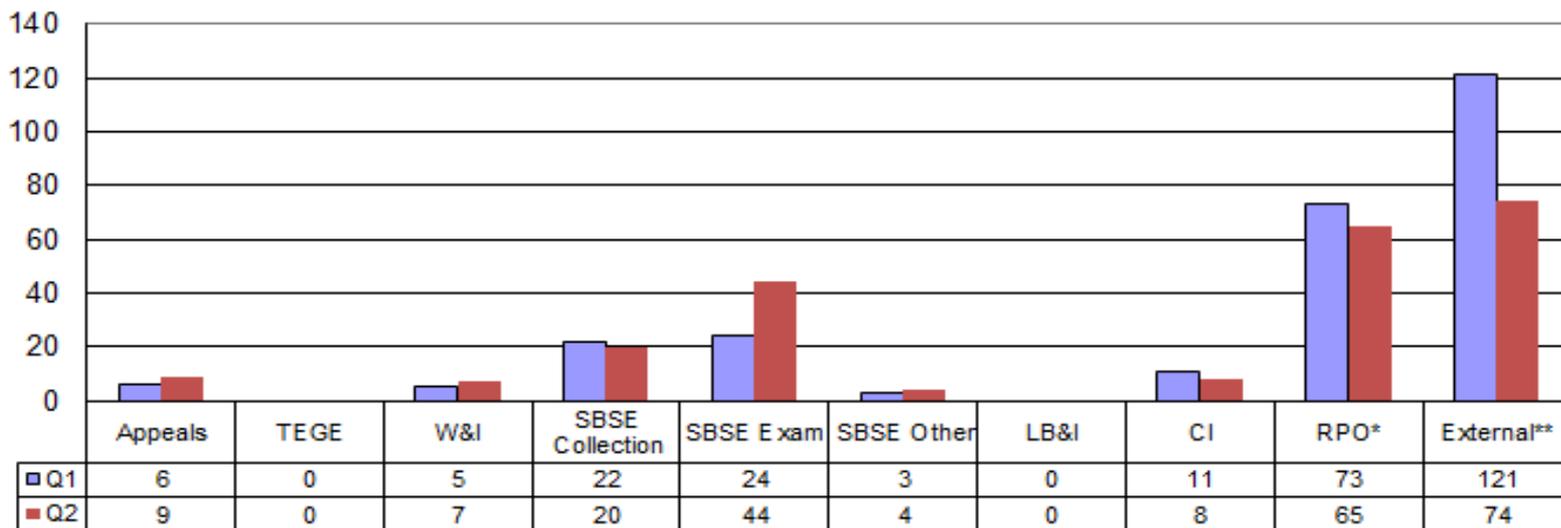
REFERRALS BY SOURCE



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* Loving Decision (February 11, 2014)

** A breakdown of external referrals is illustrated on the next page.

Fiscal Year 2015

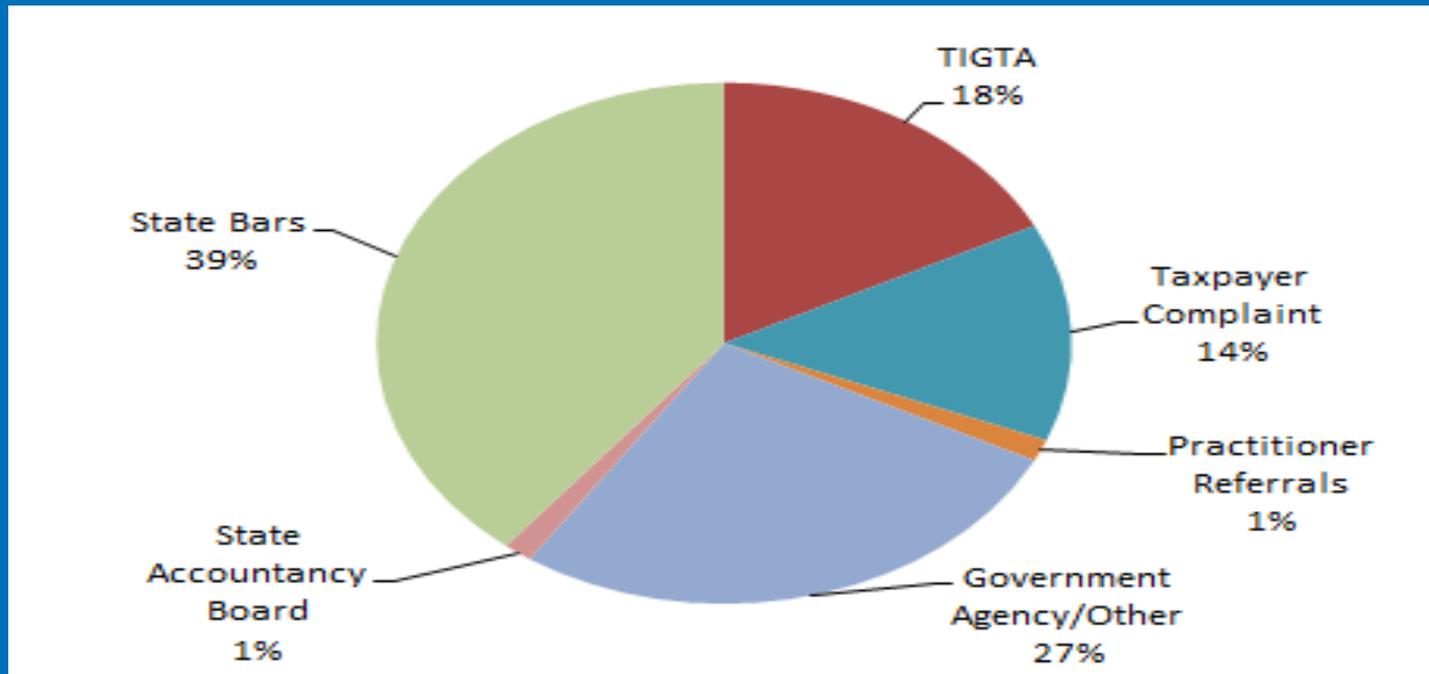
EXTERNAL REFERRALS BY SOURCE



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Charts below are based on a total of 2,510 cases closed between 01/01/2012 and 12/31/2014, regardless of date opened.

Case types: Conduct, Compliance, Hybrid, Expedited Processing, Enrollment Appeals, PTIN Appeals, and Reinstatement Request.

Non Disciplinary: CWOA, CWOS, No 230 Violation, Referred Out, LOJ, Appeal and Reinstatement Decisions, Withdrawn.

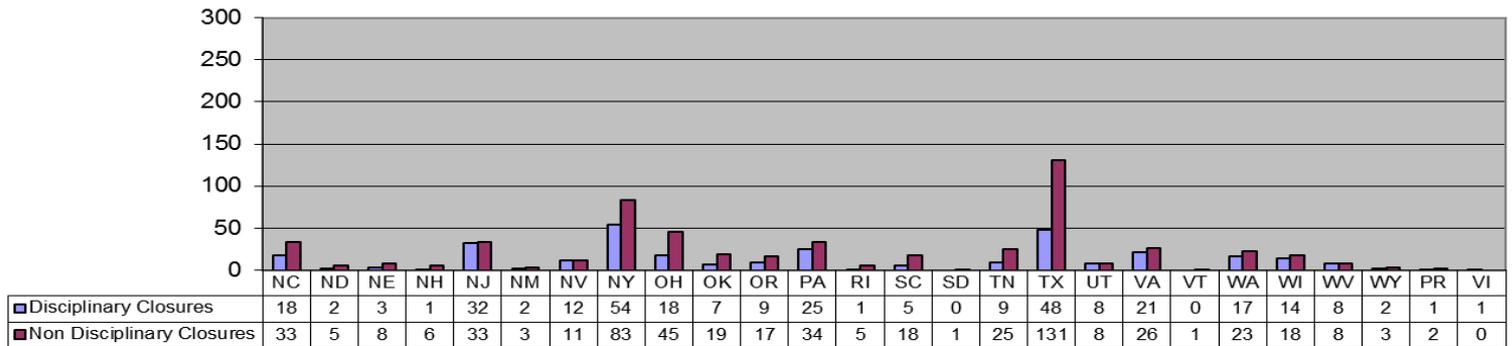
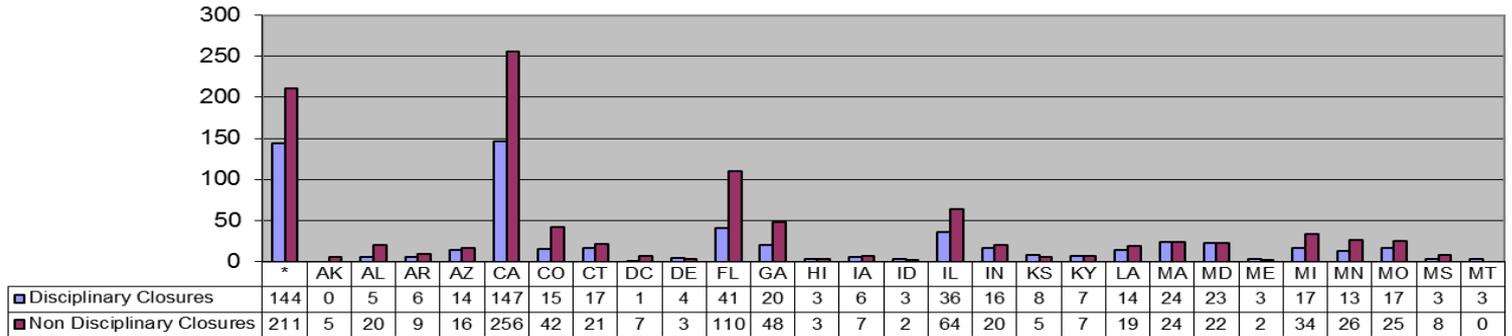
* = No State in CCMS



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OPR Discipline 1998 - 2014



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CY	CENSURE				SUSPENSION				DISBARMENT				REPRIMAND/SOFT LETTER			
	Atty	CPA	EA	Other	Atty	CPA	EA	Other	Atty	CPA	EA	Other	Atty	CPA	EA	Other
1998	0	0	0	0	44	115	6	0	0	4	1	0				
1999	0	0	0	0	12	14	2	0	0	2	1	0				
2000	0	0	0	0	15	41	4	0	0	2	0	0				
2001	0	0	0	0	1	11	3	0	0	1	0	0				
2002	0	0	0	0	22	42	7	0	8	12	2	0				
2003	0	4	0	0	110	34	13	0	1	2	3	0				
2004	1	8	8	0	65	33	47	0	0	4	0	0				
2005	4	5	1	0	113	64	10	0	0	1	0	0				
2006	5	5	3	0	239	103	13	0	2	4	0	0				
2007	3	5	2	0	133	97	17	0	1	4	2	0				
2008	2	7	5	0	242	106	14	0	0	5	0	0				
2009	1	0	1	0	182	68	12	0	5	2	2	0	17	64	44	0
2010	0	0	1	0	95	36	9	0	0	3	1	0	24	97	121	0
2011	0	0	1	0	106	43	6	0	2	3	1	0	17	70	45	0
2012	1	0	1	0	33	21	7	0	0	1	0	0	52	60	63	23
2013	0	2	0	2	17	26	5	6	1	4	4	2	72	84	44	41
2014	0	5	1	1	47	45	14	1	1	0	2	2	47	84	43	64
TOTAL	17	41	24	3	1476	899	189	7	21	54	19	4	229	459	360	128