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Michael Cohen is seen leaving his court hearing.

Photographer: Peter Foley/Bloomberg

## Gaetz's Cohen Tweet Could Bring Bar Discipline—Or Nothing

Chris Marr - Bloomberg Law

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- *Of Florida Bar's 4,000 investigations last year, 275 yielded sanctions*
- *Rep. Gaetz's tweet at Michael Cohen drew claims of witness tampering*

U.S. Rep. Matt Gaetz faces a number of potential consequences for his tweet at Michael Cohen on the eve of his congressional testimony, including public reprimand, disbarment, and a congressional ethics investigation. Or the whole thing could blow over.

The second-term congressman, Florida attorney, and vocal supporter of President Donald Trump so far faces a Florida Bar Association investigation and a congressional ethics complaint filed by a Democratic political action committee.

Gaetz also faces public accusations of witness tampering lodged by law professors and others after he asked Cohen publicly via Twitter whether his wife and father-in-law knew about his girlfriends.

"I wonder if she'll remain faithful when you're in prison. She's about to learn a lot..." Gaetz wrote in the Feb. 26 tweet, a day before Cohen testified before the House Judiciary Committee about his past work as Trump's attorney.



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Gaetz has since apologized on Twitter and deleted the tweet. His office didn't respond to a request for comment.

### Fewer Sanctions

The vast majority of Florida Bar investigations end with no sanctions, said Scott K. Tozian, a Florida ethics defense attorney who represents other attorneys in bar association disciplinary matters.

But Gaetz will need to convince the bar that he's genuinely sorry and won't repeat the behavior without grandstanding or trying to throw around the weight of his political office, Tozian added.

"If he goes about it right, I don't think his exposure is terribly great," meaning he's unlikely to be disbarred or suspended from practicing law in Florida, he said. "I think it was incredibly moronic to tweet that, but that's the age we live in."

Florida Bar [statistics](#) show the association investigated nearly 4,000 complaints last year, with 275 resulting in some kind of disciplinary order, including 42 disbarments and 129 suspensions.

The bar's process calls for sending Gaetz a letter seeking a response within 15 days, Tozian said, and the process could end there if the congressman and his lawyer handle the response well.

But Gaetz shouldn't assume he's safe from sanctions just because he's a House member, nor assume that he won't need his law practice since he's serving in Congress now, he added— noting even former President Bill Clinton faced suspension from the Arkansas bar over the Monica Lewinsky scandal.

"Who knows where he'll be two years from now?" Tozian said.

If the Florida Bar continues the investigation beyond the initial letter, it could ultimately bring a case before the Florida Supreme Court, which decides attorney and judicial disciplinary matters.

A spokeswoman for the bar declined to comment beyond a statement that confirmed the association was investigating.

### House Sanctions

Gaetz also could face a range of potential responses from the Democratic House leadership.

House Speaker Nancy Pelosi urged the House Ethics Committee to closely monitor members' social media

and press comments “which may not be protected by the speech or debate clause,” in a tweet on the same day as Gaetz's remarks.

She said members should remember their comments could hurt the ability of committees to get truthful information in hearings.

On Feb. 27, the Democratic Coalition filed a [complaint](#) to the Office of Congressional Ethics, accusing Gaetz of violating House rules by “attempting to obstruct justice and intimidate a witness.”

The House also has procedures for reprimanding, censuring, or even expelling a member, although they're used relatively rarely.

### 'Intent' Needed

If federal prosecutors hope to charge Gaetz with witness tampering, they'll have to be prepared to prove that tampering was his intent when he tweeted at Cohen — not just that his tweet had the potential to intimidate the witness.

A pair of relevant federal statutes—one dealing with witness tampering and one dealing with obstruction of a congressional proceeding—both require the prosecution to prove the tampering or obstruction was intentional, said Scott Grubman, an Atlanta attorney who defends white-collar cases and previously worked as an assistant U.S. attorney.

“Rep. Gaetz could, and likely would, argue that he was engaged in lawful, constitutionally-protected conduct, and that his intent was simply to encourage Cohen to testify truthfully,” said Grubman, a partner at Chilivis Cochran Larkins & Bever LLP.

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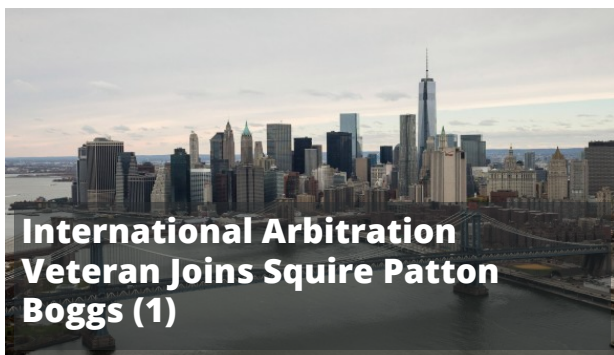
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