

2005 Annual Report of the
Oregon State Bar Client Assistance Office

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I. INTRODUCTION

This report is the fourth review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2005, through December 31, 2005. Beginning August 1, 2003, all inquiries and complaints about members of the Oregon State Bar are initially screened by CAO. CAO accepts inquiries in writing, by telephone, e-mail, fax, or in person. BR 2.5(a). CAO does request that any inquiry that warrants a response from a lawyer be put in writing in order to give the lawyer adequate notice of the nature of the concerns.

Statistics show that, of the 2968 matters opened by CAO 2210 were specific inquiries and 758 were what are characterized as General Information Inquiries (GII) that did not require some significant intervention or assistance of CAO staff. CAO staff disposed of 2090 matters during that year. Consistent with past history a majority of inquiries (51.68%) were mail inquiries. As noted below it remains clear that telephone access to bar staff regarding the conduct of Oregon lawyers has expanded dramatically since CAO was established. In this reporting period there were 1228 telephone inquiries or 41.37% of the total inquiries for the year. The balance of the inquiries came from e-mail, fax, or walk-ins. These statistics are based on the 2968 matters opened by CAO in 2005.

II. CAO STAFF OPERATION

CAO is part of General Counsel's Office and staff reports to General Counsel. There are currently three staff attorneys, two of whom came from Disciplinary Counsel's Office (DCO). The third attorney was hired December 8, 2003, and came from private practice, where she was a senior attorney in a prepaid legal plan dealing with consumer issues similar to those handled by CAO. The two intake coordinators came from DCO and are experienced in processing consumer inquiries and complaints. As of August 2, 2004, CAO added the position of CAO clerk, who assists the two intake coordinators in processing inquiries and handles general clerical duties. Since the first of December 2005 CAO has not had a clerk but our new clerk Monica Sjoblom begins work February 6, 2006.

A significant amount of both lawyer and administrative time is spent responding to telephone inquiries concerning alawyer conduct, the complaint process, legal fees, and communication with lawyers. If intake coordinators cannot resolve an issue, they refer the question to one of the staff lawyers. Staff lawyers take steps to resolve the issue by contacting lawyers to reestablish communication with the client, provide the client with copy of the client's file, or provide other appropriate assistance.

All inquiries to CAO are public records and entered into an electronic database. As noted above, before CAO staff will require a lawyer to respond formally to an inquiry, staff requires that the inquiry be put in writing. If an inquiry is not in writing, CAO staff may discuss the matter with the lawyer or the person making the inquiry to determine if there is an issue that should be put in writing or if CAO can otherwise assist in resolving the matter or provide information on alternative resources.

CAO staff makes an initial determination by way of preliminary review and investigation whether a matter raises an actual allegation of misconduct. An actual complaint of misconduct exists when CAO staff determines that there is credible evidence to support an allegation that misconduct has occurred. BR 2.5(b). The preliminary review may include telephone contact with the lawyer, correspondence between CAO staff and the lawyer, or other investigation.

If a determination is made that there is credible evidence to support an allegation of misconduct, the matter is referred to DCO for further investigation. Upon transfer, the matter is recorded as a disciplinary complaint in the DCO database. BR 2.5(a)(2). Inquiries referred to DCO as complaints are public records. In calendar year 2005, 307 matters were referred to DCO by CAO for further investigation.

If a matter is determined not to raise an actual complaint of misconduct, CAO staff may attempt to resolve the concerns raised by the person making the inquiry, to the extent possible and as bar resources permit. For instance, if the inquiry suggests that the person needs a lawyer but cannot afford one, CAO staff may refer them to legal aid or low-cost legal services such as St. Andrew's Legal Clinic. If the matter concerns malpractice or a fee dispute, CAO staff may refer the

person to the Professional Liability Fund, or explain the bar's fee arbitration program. Examples of other CAO efforts to resolve concerns are provided below.

A decision by CAO staff that a complaint does not raise an actual complaint of misconduct may be appealed to General Counsel. General Counsel's decision is final. BR 2.5(a)(1). In 2005, 244 appeals were reviewed by General Counsel and 235 of those were affirmed. Of the nine that were sent to DCO, three of them involved three lawyers in the same matter but were recorded as three separate appeals.

Experience gained over the past two years of CAO's operation shows that the program reaches a broader range of people than the prior written complaint-based system. By eliminating the need to initiate a complaint or inquiry in writing, CAO is a more user-friendly means of addressing concerns about lawyer conduct and is available to a broader range of the public. CAO staff has received numerous calls and letters from lawyers, clients, and the general public indicating the program is a less antagonistic means of attempting to resolve the various issues CAO staff encounters on a daily basis.

III. PROGRAM MEASURES

Measuring the efficiency and effectiveness of CAO is critical to the Court, the public, and the bar. Although there are many ways to evaluate the process, it is important to ensure that the evaluation is statistically based. In this report, the following benchmarks are used:

- The number of inquiries received;
- The time an inquiry was pending at the CAO level (see Appendix I);
- The manner of disposition by CAO;
- Number of inquiries referred to DCO;
- Number of dismissals appealed to General Counsel; and
- Disposition of appeals to General Counsel.

IV. BENCHMARK SUMMARY

Between January 1, 2005, and December 31, 2005, CAO disposed of 2090 inquiries. The average time an inquiry was pending was 26.9 days (see Table 6 and Appendix I). This is up from 2004 because of intense investigation required in some cases. Of those 2090 inquiries, approximately 23% were resolved or dismissed the same day they were received. Statistics show that CAO staff continues to provide information such as referral to various county agencies and information on alternative sources of service to the person making the inquiry. In calendar year 2005, information was provided to 279 of these inquiries, or 13% of all inquiries.

As noted above, during this reporting year, there were 244 appeals of CAO staff dismissals and all but nine were upheld by General Counsel. Of those 244 appeals, 112 involved criminal matters. These appeals have continued to increase General Counsel's supervisory responsibility and his workload.

V. OTHER STATISTICAL INFORMATION

In addition to the foregoing statistics, CAO maintains a variety of statistical information to assist the Court, the public, and the bar in understanding the types of matters that are processed by CAO staff. Each intake record includes the following information:

Source of Inquiry;

Nature of Inquiry;

Type of Matter;

Size of Firm;

Disposition (Result); and

Disposition (Time).

Table 1: SOURCE OF INQUIRY

Source of Inquiry	# Inquiries	Percent
Client	1,226	55.48%
Opposing Party	421	19.05%
Third Party	253	11.45%
Opposing Counsel	100	4.52%
None listed	94	4.25%
Unknown	58	2.62%
Self	44	1.99%
Judge	11	0.50%
DCO 2.7 Referral	2	0.09%
CAO	1	0.05%
Total Inquiries:	2,210	

CAO statistics again confirm that the most common source of inquiries is our members' own clients. Combined with statistics below, it is CAO staff's continued impression that there is a significant failure on the part of Oregon lawyers to adequately communicate with their clients. This information has again been provided to the bar's CLE department anticipating that a future CLE program should be developed focusing on communication with clients and keeping clients satisfied. Despite efforts by CAO staff to get this information to members, we continue to see this as the primary source for complaints about our members. Board of Governor President-Elect Albert Menashe and CAO Manager Chris Mullmann will be taking a tour of Eastern Oregon (and Bend) in the spring to meet with local bar leaders and this will be one of their topics for discussion. CAO staff continue to make this a theme of CLE presentations and Bar Counsel articles.

Table 2: NATURE OF INQUIRY

Nature of Complaint	# Inquiries	Percent
Communication	298	13.48%
Legal Advice	211	9.55%
Dishonesty & misrepresentation	192	8.69%
Competence and Diligence	174	7.87%
Neglect of legal matter	127	5.75%
Fee dispute – excessive/illegal fees	123	5.57%
None listed	108	4.89%
Return client file	95	4.30%
Malpractice	92	4.16%
Outside of legal bounds	92	4.10%
Other / Miscellaneous	86	3.89%
Multiple client conflict of interest	67	3.03%
UnZealous Conduct	52	2.35%
Quality of Services	52	2.35%
General Information Inquiry	46	2.08%
Conduct prejudicial to justice	46	2.08%
Improper withdrawal	43	1.95%
Improper conduct by Prosecutor	36	1.63%
Judicial Fitness Commission	32	1.45%
Criminal conduct	32	1.45%
Conflict – self-interest	26	1.18%
Disclosing confidences/secrets	26	1.18%
Fee / Retainer Inquiry	26	1.18%
Unlawful practice of law	23	1.04%
Contact with represented party	15	0.68%
Rude behavior	14	0.63%
False or misleading advertising	13	0.59%
Preserving client funds/property	10	0.45%
Lawyer Debts	9	0.41%
Trial Conduct	9	0.41%
Ex parte communication	8	0.36%
Provide accounting	6	0.27%
Threatening criminal prosecution	6	0.27%
Law Referral	5	0.23%
Sexual relations with client	4	0.18%
Business relationship with client	3	0.14%
Client Security Fund Question	2	0.09%
Problem Re Firm names/letterhead	1	0.05%
Total Inquiries:	2,210	

This table shows that 5.75% of the inquiries received pertain to neglect of a legal matter and 13.48% to communication. It should be noted that the CAO database allows only a single entry to describe the nature of the inquiry. Thus, one staff member may enter a matter as neglect while another may have entered it as communication. Based on this data entry limitation, CAO staff experience is that many of the

inquiries characterized as neglect can also be considered failure to communicate. Combined, these figures support the conclusion that our members' own clients most frequently complain about their lawyer's lack of action and communication. The table also identifies considerable client concerns about legal fees charged by lawyers and many of those inquiries are referred to the bar's fee arbitration program. CAO lawyers have been working with staff members of Oregon Public Defense Services to help them identify public defenders who are having some type of problem with their clients. In 2005 CAO referred 63 inquiries to OPDS.

Table 3: TYPE OF MATTER

Type of Matter	# Inquiries	Percent
Criminal	721	32.62%
Domestic Relations	377	17.06%
Civil Dispute	202	9.14%
Litigation	109	4.93%
Personal Injury	101	4.57%
Unknown	97	4.39%
Probate	85	3.85%
None Listed	75	3.39%
Debt Collection	56	2.53%
Other	52	2.35%
Bankruptcy	47	2.13%
Real Estate	35	1.58%
Juvenile	34	1.54%
Estate Planning	34	1.54%
Workers' Compensation	33	1.49%
Landlord/tenant	28	1.27%
Business	20	0.90%
Conservatorship	15	0.68%
Tax	15	0.68%
Guardianship	15	0.68%
Immigration	14	0.63%
Land use	12	0.54%
Adoption	10	0.45%
Social Security	9	0.41%
Labor	8	0.36%
Arbitration	4	0.18%
Advertising	2	0.09%
Total Inquiries:	2,210	

CAO statistics again show that criminal law practice is most likely to generate a complaint. In 2004, the first full year of operation, 893, or 25.62% of all inquiries, related to criminal matters. In 2005, 721, or 36.62% of all inquiries,

involved criminal matters. Domestic relations cases are the next category of practice most likely to generate a complaint. In the calendar year 2005, 377, or 17.06% of all inquiries, are from this practice area.

Table 4: SIZE OF FIRM

Firm Size	# Inquiries	Percent
Solo	788	51.20%
2-5	412	26.77%
6-10	106	6.89%
11-25	124	8.06%
26-100	102	6.63%
> 100	7	0.45%
Total Inquiries:	1,539	

This statistic was requested by the Board of Governors to give the bar an idea of whether a correlation exists between the size of a lawyer's law firm and the number of inquiries made to CAO. Table 4 shows that 51.20% of the files that reflect firm size, were directed at solo practitioners. Another 412 inquiries or 26.77% were directed at lawyers in law firms with five or fewer lawyers. However, this may not be disproportionate to the number of active members that work in small firms. Of the 12,767 active members, 8,500 practice in firms of five or fewer lawyers. CAO staff will continue to monitor this statistic to see if continuing legal education could be developed just for such practitioners.

Table 5: DISPOSITION (RESULT)

Disposition Result	# Inquiries	Percent
Dismissed	1,023	48.95%
Referred to Discipline	307	14.69%
Information Provided	279	13.35%
Resolved by CAO	194	9.28%
Referred to RIS	92	4.40%
Referred to OPDS	63	3.01%
Advised to file complaint	43	2.06%
Referred to Fee Arbitration	29	1.39%
Referred to PLF	23	1.10%
Refer to Other	22	1.05%
Referred to UPL	8	0.38%
Referred to CSF	4	0.19%
Referred to Public Records	2	0.10%
Referred to OAAP	1	0.05%
Grand Total	2,090	

This table shows that a significant number of inquiries received by CAO are being resolved without referral to DCO. However, as of December 31, 2005, 307 (14.69% of all inquiries) cases had been referred to DCO for further investigation based on a finding of credible evidence of an allegation of misconduct. These statistics will be compared with those maintained by DCO reflecting disposition of these referrals to develop a better understanding of the effectiveness of the CAO program.

Table 6: DISPOSITION (TIME)

Disposition Time	# Inquiries	Percent	Av. # Days
Day	488	23%	0.0
1-2 days	431	21%	1.3
3-6 days	334	16%	4.2
1-2 weeks	148	7%	9.4
< 31 days	146	7%	22.2
< 61 Days	184	9%	45.4
< 6 months	326	16%	93.7
Over 6 Months	33	2%	321.9
Grand Total:	2,090		26.9

Statistics for calendar year 2005 continue to show that CAO staff is promptly resolving most inquiries. Twenty-three percent are resolved the same day. While this is up from 2004 CAO staff believes that part of the change is due to the characterization of certain inquiries as GII (see above). Twenty-one percent are resolved within one to two days and an additional 23% are resolved in less than two weeks. The average disposition time is 26.9 days. In cases where CAO requests a written response from a lawyer, the disposition time can increase significantly. The time to be devoted to any single inquiry and the scope of CAO's investigation to make a credible evidence determination are still being evaluated by CAO and DCO. CAO staff continues to believe it is quickly weeding out groundless inquiries, freeing DCO staff to focus on investigating serious matters and prosecutions authorized by the State Professional Responsibility Board. These GII matters would include brief telephone calls that require simple information such as "how do I file a bar complaint" or a discussion about information on the bar's website. Statistics for 2005 show that staff handled 758 of these "quick response matters" and demonstrates the increased personal effort being made to respond to the public and members of the bar.

VI. EXAMPLES OF CAO EFFORTS TO RESOLVE INQUIRIES

As mentioned above, if a matter does not raise an actual complaint, CAO staff may retain the matter and attempt to resolve the concerns raised by the person making the inquiry to the extent possible and as bar resources permit.

For instance, CAO still experiences numerous inquiries where clients have trouble obtaining their files from their lawyers. Rather than send a letter giving the lawyer 21 days to respond, as DCO staff would have done under the old system, CAO staff often telephones the lawyer, discusses the problem and the possible complications from withholding the file, and frequently convinces the lawyer to turn over the file to the client without further delay.

As noted in prior reports, CAO receives many inquiries in which staff did not see an ethical issue with a lawyer's conduct, but recognized that the person needed help finding an appropriate agency for assistance. CAO staff has referred people to the Ombudsman for injured workers to obtain information concerning their pending claims or the Department of Justice for consumer protection assistance. CAO staff along with staff from lawyer referral met with a representative of the Department of Justice to better understand the services they provide to consumers. While there are situations that CAO cannot address or resolve, staff takes the time to explain as best they can why the bar is not the appropriate source of assistance. This year CAO staff prepared three new brochures to provide to consumers who need more knowledge on how CAO operates or how to deal with their lawyer.

CAO staff continues to direct attention to the communication issues between lawyers and clients that may lead to serious problems. Often a client will contact CAO staff saying that his or her lawyer will not return calls. Unless the situation is so severe as to constitute neglect of a legal matter, CAO staff may call the lawyer and explain that CAO has received an inquiry and talk about reestablishing communication before the problem develops into a written complaint. The results are almost universally positive from both clients and lawyers.

VI. CONCLUSION

To the CAO staff, and based on the statistical information that has been compiled to date, the program is working as planned. Staff continues to take measures to improve the quality of service they provide and the ongoing training provided by the office helps meet that goal.

As noted last year, while the goal of CAO is to process all inquiries within 60 days, the process is slowed when CAO staff becomes engaged in a protracted investigation of any particular inquiry. CAO staff continues to evaluate the amount of time that should be devoted to initial review, including whether every complex factual dispute constitutes sufficient credible evidence to merit a referral to DCO, which is better equipped and staffed for extended investigations. In 2005 CAO staff and General Counsel reviewed the standard of review used in evaluating inquiries or complaints and concluded that for the time being we were as satisfied with our rule as with any other we saw from across the country. Chris Mullmann will be moderating a program at the midyear meeting of the National Association of Bar Counsel in Chicago for a discussion of how offices that use this type of intake system operate their offices along with a discussion of their standards of review.

Helen Hirschbiel will be participating in a program at the ABA Center for Professional Responsibility meeting in June 2006 regarding central intake offices and procedures.

CAO staff meets every other Wednesday to review cases, policies, and generally discuss the operation of the office. We have also instituted in-house mini continuing legal education programs for staff.

CAO staff is developing a public awareness program to educate members of the bar and the public about the availability and resources of the Client Assistance Office. One goal of the office in 2006 is to have staff lawyers continue to "reach out" to public sources, such as public service groups, to make presentations about the program. Part of the goal of this program is to help improve the reputation and image of lawyers which may help improve the relationship between lawyers and their clients.

In 2005 the CAO staff developed and disseminated a random survey to people who had filed an inquiry with the office and lawyers who had been contacted regarding their conduct. A copy of the Executive Summary of that survey is attached to this report. As can be seen from the Summary, there are areas for CAO staff to improve upon but overall, the program has enjoyed significant success both with lawyers and the public.

Respectfully submitted,

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Appendix I

2005 Disposition Time



