

Oregon State Bar

2008

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# Annual Report

## Client Assistance Office

January 1, 2008 to December 31, 2008  
Report to the Oregon Supreme Court

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**2008 Annual Report of the  
Oregon State Bar Client Assistance Office**

## **Table of Contents**

|  |           |
|--|-----------|
| <b>I. INTRODUCTION .....</b>                                 | <b>1</b>  |
| <b>II. CAO STAFF OPERATION .....</b>                         | <b>1</b>  |
| <b>III. PROGRAM MEASURES .....</b>                           | <b>3</b>  |
| <b>IV. BENCHMARK SUMMARY .....</b>                           | <b>4</b>  |
| <b>V. OTHER STATISTICAL INFORMATION .....</b>                | <b>4</b>  |
| Table 1: Source of Inquiry .....                             | 4         |
| Table 2: Nature of Inquiries .....                           | 5-6       |
| Table 3: Type of Matter .....                                | 7         |
| Table 4: Size of Firm .....                                  | 8         |
| Table 5: Disposition (Result).....                           | 8         |
| Table 6: Disposition (Time).....                             | 9         |
| <b>VI. EXAMPLES OF CAO EFFORTS TO RESOLVE INQUIRIES.....</b> | <b>10</b> |
| <b>VII. CONCLUSION .....</b>                                 | <b>11</b> |
| <b>APPENDIX I .....</b>                                      |           |



## **I. INTRODUCTION**

This report is the sixth review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2008 through December 31, 2008. Since August 1, 2003, all inquiries and complaints about members of the Oregon State Bar have been initially screened by CAO. CAO accepts inquiries in writing, by telephone, e-mail, fax, or in person. BR 2.5(a). CAO requests that any inquiry warranting 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 approximately 2,500 matters handled by CAO, about 1,400 were specific inquiries and 400 were what are characterized as General Information Inquiries (GII) that did not require active intervention or assistance of CAO staff. Because of time constraints, not all of these short calls are reported by staff, so this report may not be an accurate count of GII calls.

CAO staff disposed of 2,400 matters in 2008. Consistent with past history, a majority of inquiries; (1,583) 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 674 telephone inquiries, making up 26% of the total inquiries for the year. The balance of the inquiries came from e-mail, fax, or walk-ins.

## **II. CAO STAFF OPERATION**

CAO is part of General Counsel's Office and staff reports to General Counsel. CAO has three staff lawyers. For 2008 there were 3 support staff. That number has been reduced to 2 in consideration of OSB budgetary concerns.

A significant amount of both lawyer and administrative time is spent responding to telephone inquiries concerning attorney conduct, the complaint process and legal fees. If the intake coordinator cannot resolve an issue, she refers the question to one of the staff lawyers. Staff lawyers then take steps to resolve the issue by contacting lawyers to reestablish communication with the client, provide the client with a copy of the client's file, or provide other appropriate assistance. Staff lawyers also occasionally provide ethics assistance to attorneys.

All inquiries to CAO are public records and are 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 conducts a preliminary review and investigation to determine whether there is sufficient evidence to support a reasonable belief that misconduct may have occurred. If so, the matter is referred to DCO for further investigation. In the 2008 calendar year, 272 matters were referred to DCO by CAO for further investigation. The preliminary review may include telephone contact with the lawyer, correspondence between CAO staff and the lawyer, or other investigation.

If CAO determines there is not sufficient evidence to support a referral to DCO, staff may attempt to resolve the concerns raised by the inquirer to the extent possible and as bar resources permit. For instance, if the person needs a lawyer but cannot afford one, CAO staff may refer them to legal aid or other low-cost legal services programs. 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 is not supported by sufficient evidence may be appealed to General Counsel. General Counsel's decision is final.

In 2008, 250 appeals were reviewed by General Counsel and 241 of those were affirmed.

Experience gained over the past five 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 every inquiry or concern 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 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 and as accurate as possible. 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 disposition by CAO;
- Number of inquiries dismissed or where additional assistance at intake was provided;
- 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, 2008, and December 31, 2008, there were 2,500+ inquiries made to CAO. The average time an inquiry was pending was 65 days (see Appendix I). Approximately 30% of the inquiries were resolved or dismissed on the day of intake. Information was provided to 871 (34%) of these inquirers.

### **V. CAO STATISTICS**

In addition to raw numbers of inquiries received and disposed of, CAO maintains a variety of statistics to assist the Court, the public, and the bar in understanding the matters that are processed by CAO.

**Table 1: SOURCE OF INQUIRY**

| <b>Source of Inquiry</b>  | <b># Inquiries</b> | <b>% of Total</b> |
|---------------------------|--------------------|-------------------|
| Client                    | 964                | 37.82%            |
| General Inquiry           | 400                | 15.69%            |
| Non Listed                | 376                | 14.75%            |
| Opposing Party            | 303                | 11.89%            |
| Third Party               | 247                | 9.69%             |
| Opposing Counsel          | 88                 | 3.45%             |
| General Client Assistance | 50                 | 1.96%             |
| Unknown                   | 50                 | 1.96%             |
| Self                      | 46                 | 1.80%             |
| Judge                     | 13                 | 0.51%             |
| CAO                       | 10                 | 0.39%             |
| DCO 2.7 Referral          | 2                  | 0.08%             |
| Total Inquiries:          | 2,549              | 100%              |

CAO statistics for 2008 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 many Oregon lawyers to adequately communicate with their clients. This information has again been provided to the bar's CLE department anticipating that future CLE programs should be developed focusing on communication with clients and keeping clients satisfied. CAO staff also meets with local bar leaders to discuss this issue and educate our members on this topic.

**Table 2: NATURE OF INQUIRIES**

| <b>Nature of Inquiry</b>             | <b># of Inquiries</b> | <b>% of Total</b> |
|--------------------------------------|-----------------------|-------------------|
| General Information Inquiry          | 552                   | 21.66%            |
| Communication                        | 250                   | 9.81%             |
| Legal Advice                         | 184                   | 7.22%             |
| Quality of Services                  | 162                   | 6.36%             |
| ???????????                          | 154                   | 6.04%             |
| Other / Miscellaneous                | 127                   | 4.98%             |
| Competence and Diligence             | 116                   | 4.55%             |
| Dishonesty & misrepresentation       | 115                   | 4.51%             |
| General Client Assistance            | 97                    | 3.81%             |
| Fee dispute – excessive/illegal fees | 91                    | 3.57%             |
| Return client file                   | 83                    | 3.26%             |
| Neglect of legal matter              | 76                    | 2.98%             |
| Malpractice                          | 72                    | 2.82%             |
| Outside of legal bounds              | 56                    | 2.20%             |
| Improper conduct by Prosecutor       | 47                    | 1.84%             |
| Conduct prejudicial to justice       | 42                    | 1.65%             |
| Improper withdrawal                  | 36                    | 1.41%             |
| Criminal conduct                     | 34                    | 1.33%             |



| <b>Nature of Inquiry</b>             | <b># of Inquiries</b> | <b>% of Total</b> |
|--------------------------------------|-----------------------|-------------------|
| Multiple client conflict of interest | 34                    | 1.33%             |
| Judicial Fitness Commission          | 29                    | 1.14%             |
| Contact with represented party       | 23                    | 0.90%             |
| Rude behavior                        | 21                    | 0.82%             |
| Conflict – self-interest             | 19                    | 0.75%             |
| Disclosing confidences/secrets       | 18                    | 0.71%             |
| Client Conflict-Former               | 17                    | 0.67%             |
| Client Conflict-Current              | 14                    | 0.55%             |
| Lawyer Debts                         | 12                    | 0.47%             |
| Provide accounting                   | 12                    | 0.47%             |
| Unlawful practice of law             | 12                    | 0.47%             |
| Fee / Retainer Inquiry               | 11                    | 0.43%             |
| False or misleading advertising      | 7                     | 0.27%             |
| Preserving client funds/property     | 7                     | 0.27%             |
| Trial Conduct                        | 6                     | 0.24%             |
| Ex parte communication               | 5                     | 0.20%             |
| Threatening criminal prosecution     | 4                     | 0.16%             |
| Conflict – lawyer as witness         | 1                     | 0.04%             |
| Lawyer to Lawyer Communication       | 1                     | 0.04%             |
| Sexual relations with client         | 1                     | 0.04%             |
| UnZealous Conduct                    | 1                     | 0.04%             |
| Total Inquiries:                     | 2,549                 |                   |

These statistics reflect that 21.5% of the inquiries involve lawyer-client relationship issues (neglect of a legal matter, communication, competence and diligence and fees). It should be noted that the CAO database allows only a single description for each inquiry. Accordingly, many of the inquiries may involve multiple issues. For instance an inquiry characterized as neglect may also involve a failure to communicate. 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 at Oregon Public Defense Services (OPDS) to identify public defenders who are having problems with their clients. In 2008, CAO referred 64 inquiries to OPDS. These numbers are somewhat misleading because, as noted above, CAO staff has been recording GII in the database. However, the trend is consistent with past years.

**Table 3: TYPE OF MATTER**

| <b>Type of Matter</b> | <b># of Inquiries</b> | <b>% of Total</b> |
|-----------------------|-----------------------|-------------------|
| Criminal              | 676                   | 36.19%            |
| Domestic Relations    | 304                   | 16.27%            |
| Unknown               | 117                   | 6.26%             |
| Civil Dispute         | 107                   | 5.73%             |
| Other                 | 102                   | 5.46%             |
| Litigation            | 98                    | 5.25%             |
| Personal Injury       | 73                    | 3.91%             |
| Probate               | 55                    | 2.94%             |
| Debt Collection       | 50                    | 2.68%             |
| Bankruptcy            | 42                    | 2.25%             |
| Real Estate           | 36                    | 1.93%             |
| Juvenile              | 28                    | 1.50%             |
| Immigration           | 23                    | 1.23%             |
| Social Security       | 23                    | 1.23%             |
| Workers Compensation  | 23                    | 1.23%             |
| Business              | 21                    | 1.12%             |
| Landlord/Tenant       | 19                    | 1.02%             |
| Estate Planning       | 17                    | 0.91%             |
| Labor                 | 11                    | 0.59%             |
| Conservatorship       | 9                     | 0.48%             |
| Elder Law             | 8                     | 0.43%             |
| Guardianship          | 6                     | 0.32%             |
| Tax                   | 6                     | 0.32%             |
| Adoption              | 5                     | 0.27%             |
| Arbitration           | 4                     | 0.21%             |
| Land Use              | 3                     | 0.16%             |
| Trust Account         | 2                     | 0.11%             |
| Total Inquiries:      | 1,868                 |                   |

As in the past CAO statistics show that criminal law practice is most likely to generate a complaint. In 2004, 25.62% of all inquiries were related to criminal matters. In 2006, that number was 32.85%. In 2008, 35% of all inquiries involved criminal matters.

Domestic relations cases are the next category of practice most likely to generate a complaint. In the 2008 calendar year, 304 or 16% of all inquiries were from this practice area.

**Table 4: SIZE OF FIRM**

| <b>Firm Size</b> | <b># Inquiries</b> | <b>% of Total</b> |
|------------------|--------------------|-------------------|
| Solo             | 1,790              | 70.22%            |
| 2-5              | 384                | 15.06%            |
| 6-10             | 127                | 4.98%             |
| 11-25            | 24                 | 4.86%             |
| 26-100           | 119                | 4.67%             |
| > 100            | 5                  | 0.20%             |

This info is captured to assess whether a correlation exists between the size of a lawyer's law firm and the number of inquiries made to CAO. The large number of inquiries involving solo and small firm practitioners may be a function of the number of lawyers practicing in those settings. At the same time, the bar may want to explore how CLE can focus on the special needs of solo and small firm lawyers. CAO lawyers will continue this outreach to the SSFP Section in 2009 to discuss matters of particular interest to this group.

**Table 5: DISPOSITION (RESULT)**

| <b>Disposition Result</b>   | <b># Inquiries</b> | <b>% of Total</b> |
|-----------------------------|--------------------|-------------------|
| Dismissed                   | 1,016              | 39.86%            |
| Information Provided        | 870                | 34.13%            |
| Referred to Discipline      | 272                | 10.67%            |
| Referred to OPDS            | 64                 | 2.51%             |
| Referred to RIS             | 51                 | 2.00%             |
| Resolved by CAO             | 42                 | 1.65%             |
| Referred to PLF             | 34                 | 1.33%             |
| Referred to Fee Arbitration | 26                 | 1.02%             |
| Refer to Other              | 12                 | 0.47%             |
| Advised to File Complaint   | 7                  | 0.27%             |
| Referred to Public Records  | 1                  | 0.04%             |
| Total Inquiries:            | 2,395              |                   |

A significant number of inquiries received by CAO are being resolved without referral to DCO. These statistics will be compared with those maintained by DCO reflecting the disposition of these referrals to develop a better understanding of the effectiveness of the CAO program.

**Table 6: DISPOSITION (TIME)**

| <b>Disposition Time</b> | <b># Inquiries</b> | <b>% of Total</b> |
|-------------------------|--------------------|-------------------|
| Same Day                | 725                | 30.22             |
| 1-2 Days                | 80                 | 3.33              |
| 3-6 Days                | 247                | 10.30             |
| 1-2 Weeks               | 400                | 16.67             |
| < 1 Month               | 196                | 8.17              |
| 61 Days                 | 213                | 8.88              |
| < 6 months              | 473                | 19.72             |
| Over 6 months           | 64                 | 2.67              |
| Error                   | 1                  | 0.04              |

**Av. # Days: 65**

Statistics for 2008 continue to show that CAO is promptly resolving most inquiries. 30 percent were resolved the same day. While this is somewhat higher from other years, CAO staff believes that part of the change is due to the characterization of certain inquiries as GII (see above) and the end-of-year reduction in staff. 34 percent were resolved within one to two days and an additional 16.67% were resolved in less than two weeks. The average disposition time is 65 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 is continually evaluated, but CAO staff continues to believe it is quickly weeding out groundless inquiries, freeing DCO staff to focus on investigating and prosecuting more serious matters. The GII matters 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 web site. In 2008 staff handled 600 of these "quick response matters" and demonstrated the increased personal effort being made to respond to the public and members of the bar. Again, this number may not fully reflect the amount of assistance offered as staff does not always enter the contact into the database.

## **VI. EXAMPLES OF CAO EFFORTS TO RESOLVE INQUIRIES**

If an inquiry does not implicate the rules, CAO staff may attempt to resolve the concerns raised by the person making the inquiry to the extent possible and as resources permit.

For instance, CAO receives many inquiries from clients who had trouble obtaining their files from their lawyers. Rather than asking the lawyer to respond to the client's concerns, as DCO would have under the old system, CAO staff often telephones the lawyer, discusses the problem and the possible implications of withholding the file, and frequently convinces the lawyer to turn over the file to the client without further delay.

CAO also receives many inquiries from persons needing 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 continues to direct attention to the communication issues between lawyers and clients that may lead to serious problems. Often clients will contact CAO saying that their 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 talk about reestablishing communication before the problem develops into a written complaint. The results are almost universally positive from both clients and lawyers. Again, this number may be low as staff does not always have time to enter the inquiry into the database.

## **VI.CONCLUSION**

To the CAO staff, and based on the statistical information that has been compiled to date, the program is working as designed. 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 previously, 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 and the loss of the Administrative Assistant position. CAO staff continues to evaluate the amount of time that should be devoted to initial review, including whether every complex factual dispute constitutes sufficient evidence to merit a referral to DCO, which is better equipped and staffed for extended investigations.

CAO staff meets every other Wednesday to review cases, policies, and generally discuss the operation of the office. We have also conducted several in-house mini continuing legal education programs for staff and will continue to do so in 2009.

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 2009 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.

Respectfully submitted,

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