

Oregon State Bar

2009

Annual Report

Client Assistance Office

January 1, 2009 to December 31, 2009
Report to the Oregon Supreme Court

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**2009 Annual Report of the
Oregon State Bar Client Assistance Office**

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I. INTRODUCTION

This report is the seventh review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2009, through December 31, 2009. 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 2,400 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. The balance was uncategorized. 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 about 2,400 matters in 2009. However, this number may be a bit low as time constraints prevent CAO staff from entering all contacts. Brief calls in which CAO staff provides information about whether and how to file complaints or referrals to other resources are not always entered into the database. Consistent with past history, a majority of inquiries, 1,490, were mailed or received by mail. 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 580 telephone inquiries, making up 24% 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. There are currently three staff attorneys and two support staff.

A significant amount of both lawyer and administrative time is spent responding to telephone inquiries concerning attorney conduct, the complaint process, return of client files and legal fees. If the intake staff cannot resolve an issue, they refer the question to one of the staff lawyers. Staff lawyers then take steps to resolve the issue by contacting lawyers to re-establish communication with the client, provide the client with a copy of the client's file, or provide other appropriate assistance. Staff attorneys also occasionally provide ethics assistance to attorneys and give CLEs throughout the year.

All inquiries to CAO are public record 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. (BR 2.5(b)(2)). If so, the matter is referred to Disciplinary Counsel's Office (DCO) for further investigation. The preliminary review may include telephone contact with the lawyer, correspondence between CAO staff and the lawyer, or other investigation. In 2009, 273 matters were referred to DCO by CAO for further investigation, which is one more than was referred in 2008.

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. (BR 2.5(b)(3)). 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.

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. (BR 2.5 (c)). In 2008, 250 appeals were referred to General Counsel, who affirmed 241 (96%) of them. In 2009, 235 appeals were reviewed by General Counsel and 226 (96%) of those were affirmed, suggesting that CAO lawyers are making the correct decision in most matters.

Experience gained over the past eight years of CAO's operation shows that the expanded program reaches a broader range of people than the prior written complaint-based system. CAO is a more user-friendly means of addressing concerns about lawyer conduct. CAO staff has received calls and letters from lawyers, clients, and the general public confirming the program is a less antagonistic means of attempting to resolve issues and commensuring the changes in operation.

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 Table 1);
- The disposition by CAO (see Table 5);
- Number of inquiries dismissed or where additional assistance at intake was provided;
- Number of inquiries referred to DCO (see Table 5);
- Number of dismissals appealed to General Counsel; and,
- Disposition of appeals to General Counsel.

IV. BENCHMARK SUMMARY

Between January 1, 2009, and December 31, 2009, there were about 2,400 inquiries made to CAO. The average time an inquiry was pending was 55 days (see Table 6). Approximately 21% were resolved or dismissed on the initial day of intake. In 2009, information was provided to 682 (28%) of these inquiries.

V. CAO STATISTICS

In addition to the 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 processed by CAO staff.

Table 1: SOURCE OF INQUIRY

Source of Inquiry	# Inquiries	% of Total
Client	986	41.24
Unknown/Unclassified	441	18.45
Opposing Party	297	12.42
Third Party	271	11.33
General Inquiry	184	7.70
General Client Assistance	76	3.18
Opposing Counsel	65	2.72
Self	46	1.92
Judge	14	0.59
CAO	11	0.46
Total Inquiries:	2,391	

CAO statistics for 2009 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 bar members on this topic. The Unknown/Unclassified entry shows that in many cases, CAO cannot determine who is contacting the bar or their role in any particular legal matter.

Table 2: NATURE OF COMPLAINT INQUIRY

Nature of Inquiry	# of Inquiries	% of Total
General Information Inquiry	383	16.02
Legal Advice	232	9.70
Communication	202	8.45
Quality of Services	162	6.78
General Client Assistance	161	6.73
Competence and Diligence	123	5.14
Return Client File	100	4.18
Dishonesty and Misrepresentation	97	4.06
Malpractice	91	3.81
Fee Dispute- Excessive Fee	78	3.26
Improper Conduct by Prosecutor	67	2.80
Neglect	65	2.72
Former Client Conflict	34	1.42
Conduct Prejudicial to Administration	31	1.30
Current Client Conflict	25	1.05
Outside Legal Bounds	25	1.05
Improper Withdrawal	23	0.96
Criminal Conduct	22	0.92
Contact with a Represented Party	21	0.88

Nature of Inquiry	# of Inquiries	% of Total
Self-Interest Conflict	19	0.79
Judicial Fitness Commission	19	0.79
Rude Behavior	18	0.75
Unlawful Practice of Law	16	0.67
Disclosing Confidences/Secrets	14	0.59
Lawyer Debts	11	0.46
Preserving Client Funds/Property	4	0.17
Provide Accounting	4	0.17
Trial Conduct	3	0.13
Ex Parte Communication	2	0.08
Misleading Advertising	2	0.08
Total Inquiries:	2,054	

This table shows that approximately 20% of the inquiries received pertain to issues involving complaints by clients, (neglect of a legal matter, communication, competence and diligence and fees). It should be noted that the CAO database allows only a single entry to describe the nature of the inquiry. Thus, one CAO 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 continue to emphasize fee issues at CLEs. CAO lawyers have been working with staff members at Oregon Public Defense Services (OPDS) to help them identify public defenders who are having some type of problem with their clients. In 2009, CAO referred 17 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

Type of Matter	# of Inquiries	% of Total
Criminal	672	35.71
Domestic Relations	254	13.50
Other	153	8.13
Litigation	124	6.59
Unknown	122	6.48
Personal Injury	65	3.45
Civil Dispute	62	3.29
Bankruptcy	55	2.92
Probate	54	2.87
Debt Collection	45	2.39
Real Estate	35	1.86
Landlord/Tenant	29	1.54
Social Security	26	1.38
Immigration	24	1.28
Juvenile	24	1.28
Workers Compensation	24	1.28
Estate Planning	17	0.90
Labor	14	0.74
Guardianship	14	0.74
Business	13	0.69
Conservatorship	12	0.64
Land Use	11	0.58
Adoption	9	0.48
Elder Law	8	0.43
Arbitration	7	0.37
Tax	7	0.37
Trust Account	1	0.05
Advertising	1	0.05
Total Inquiries:	1,868	

CAO statistics again show that criminal law practice is most likely to generate a complaint. CAO lawyers continue to work with the Oregon Criminal Defense Lawyers Association to address recurring issues.

In 2004, the first full year of operation, 893 or 25.62% of all inquiries were related to criminal matters. In 2006, that number was 708 or 32.85%. In 2009, that number was 672 or 35.71% of all inquiries. The other figure that stands out is that domestic relations cases are the next category of practice most likely to generate a complaint. In 2009, 254 or 13.50% of all inquiries were from this practice area. Criminal matters and domestic relations matters account for 49.21% or nearly half the complaints received.

Table 4: SIZE OF FIRM

Firm Size	# Inquiries	% of Total
Solo	1731	72.40
2-5	324	13.55
6-10	119	4.98
11-25	103	4.31
26-100	112	4.68
> 100	2	0.08

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 72.40% of the inquiries that reflect firm size were directed at solo practitioners. Another 324 inquiries, or 13.55%, 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. CAO staff will continue to monitor this statistic to see if a continuing legal education seminar could be developed just for such practitioners. CAO attorneys Chris Mullmann and Scott Morrill meet with the Executive Committee of the Solo and Small Firm Practitioners Section of the bar to discuss CAO operations. CAO will remain available to discuss matters of particular interest to this group during 2010.

While the number of complaints regarding solo and small firm practitioners is high, it should be noted that nearly 37% of members are solo practitioners and just over 12% work in firms of two to five. The bar does not keep specific statistics, but the accounting department calculated that of the 13,901 members, about 5,100 are solo practitioners and 1,692 work in firms of two to five attorneys.

Table 5: DISPOSITION (RESULT)

Disposition Result	# Inquiries	% of Total
Dismissed	1186	49.60
Information Provided	684	28.61
Referred to Discipline	273	11.42
Resolved by CAO	95	3.97
Referred to RIS	35	1.46
Advised to File Complaint	26	1.09
Referred to Fee Arbitration	22	0.92
Referred to PLF	18	0.75
Referred to OPDS	17	0.71
Referred to Other	7	0.29
Referred to UPL	3	0.13
Referred to Public Records	1	0.04
Referred to OAAP	1	0.04
Referred to Community Services	1	0.04
Total Inquiries:	2,369	

This table shows that a significant number of inquiries received by CAO are being resolved without referral to DCO. However, as of December 31, 2009, 273 cases (11.42% of all inquiries) had been referred to DCO for further investigation based on a finding of sufficient evidence. 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	% of Total	Percent Av. # Days
Same Day	505	21.31	0
1-2 Days	78	3.29	1
3-6 Days	166	7.00	5
1-2 Weeks	495	20.89	10
< 1 Month	329	13.88	20
31-61 Days	187	7.89	45
< 6 months	486	20.51	103
Over 6 months	117	4.94	512
			Av. # Days: 56

Statistics for 2009 continue to show that CAO staff is promptly resolving most inquiries. 21 percent were resolved the same day. While this is somewhat lower than last year, CAO staff believes that part of the change is due to the characterization of certain inquiries as GII (see above) and fewer staff. 24 percent were resolved within one to two days, and an additional 20.89% were resolved in less than two weeks. The average disposition time is 55 days, which is significantly better than 2008 (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 to make a sufficient 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 more serious matters as well prosecutions authorized by the State Professional Responsibility Board.

These 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 website. Statistics for 2009 show that staff handled 544 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 be low as staff does not have time to enter the inquiry into the database because of the elimination of one full time employee.

VI. EXAMPLES OF CAO EFFORTS TO RESOLVE INQUIRIES

As mentioned above, if a matter does not implicate the rules, 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 had 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 of 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 (DOJ) for consumer protection assistance. The DOJ often refers people to CAO for matters involving the services provided by lawyers. 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.

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 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 explain that CAO has received an inquiry and talk about re-establishing communication before the problem develops into a written complaint. These conversations often focus on the communication rule (ORPC 1.4), emphasizing that this rule is much broader than the neglect rule. 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. 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 week 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 2010. In 2009 CAO had its first offsite planning retreat to discuss operational and technological improvements. We had representatives from General Counsel and Information and Design Technology to discuss how CAO might become the first department at the bar to go "paperless" consistent with the bar's commitment to become more "green."

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 2010 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. CAO is also working toward becoming "paperless," which is a project that will likely take several years.

Respectfully submitted,

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