

Oregon State Bar

2011

Annual Report

Client Assistance Office

January 1, 2011 to December 31, 2011
Report to the Oregon Supreme Court

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I. INTRODUCTION

This report is the ninth review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2011, through December 31, 2011. 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 1958 new matters handled by CAO in 2011, One thousand, five hundred and nineteen were specific inquiries and 439 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 actual GII calls.

The 2011 reported new matters 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 data base. Consistent with past history, a majority of inquiries, 1238, were mail inquiries. CAO recently implemented an online complaint process and we expect more on line complaints in the future. 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 448 telephone inquiries making up 22.88% of the total inquiries for the year. Again, this number may be underreported because of time constraints. The balance of the inquiries came from e-mail, fax, or walk-ins. E-mail is becoming the preferred choice of communication by a significant number of complainants and attorneys.

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.

Table 1: SOURCE OF INQUIRY- 2011

Source of Inquiry	# Inquiries	Percent
Client	765	39.07
Opposing Party	318	16.24
Unknown/Unclassified	265	13.53
Third Party	185	9.45
General Inquiry	170	8.68
Opposing Counsel	81	4.14
General Client Assistance	78	3.98
Self	68	3.47
Judge	14	0.72
CAO	14	0.72

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 reestablish 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 CLE's throughout the year.

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. (BR 2.5(b)(2)). If so, the matter is referred to 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 2011, 260 matters were referred to DCO for further investigation, in 2010, 242 matters

were referred to DCO, in 2009, 273 matters were referred to DCO by CAO, and in 2008, 272 matters were referred.

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 2011, 230 appeals were referred to General Counsel who affirmed 217 (94.35%) suggesting that CAO lawyers are making the correct decision in most matters. For comparison, 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. In 2010 125 appeals were reviewed by General Counsel and 123 (98%) were affirmed.

Experience gained over the past nine 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 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 Table 6);
- 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, 2011, and December 31, 2011, there were about 2,000 inquiries made to CAO. The average time an inquiry was pending was 48 days (see Table 6), which is 4 days longer than 2010. Approximately 19% were resolved or dismissed on the initial day of intake. In 2011, information was provided to 524 (26.5%) of these inquiries. The percentages are essentially the same as 2010.

V. OTHER STATISTICAL INFORMATION

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.

CAO statistics for 2011 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 many in many cases CAO cannot determine who is contacting the bar or their role in any particular legal matter.

Table 2: NATURE OF INQUIRY

Nature of Complaint Inquiries	# Inquiries	Percent
General Information Inquiry	291	14.86
Communication	198	10.11
Legal Advice	198	10.11
General Client Assistance	147	7.51
Quality of Services	133	6.79

Dishonesty and Misrepresentation	122	6.23
Competence and Diligence	90	4.60
Malpractice	50	2.55
Return Client File	88	4.49
Neglect	67	3.42
Fee Dispute-Excessive Fee	57	2.91
Improper Conduct by Prosecutor	44	2.25
Former Client Conflict	40	2.04
Outside Legal Bounds	33	1.69
Conduct Prejudicial to Administration	31	1.58
Current Client Conflict	25	1.28
Improper Withdrawal	22	1.12
Criminal Conduct	16	0.82
Self-Interest Conflict	16	0.82
Trial Conduct	16	0.82
Judicial Fitness Commission	15	0.77
Unlawful Practice of Law	14	0.72
Preserving Client Funds/Property	13	0.66
Provide Accounting	12	0.61
Contact with a Represented Party	11	0.56
Rude Behavior	10	0.51
Disclosing Confidences/Secrets	7	0.36
Lawyer Debts	3	0.15
Ex Parte Communication	3	0.15

This table shows that approximately 21% 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 CLE's. 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 2011, CAO referred 4 inquiries to OPDS. These numbers are somewhat misleading because, as noted above, CAO staff has not been recording GII in the database. However, the trend is consistent with past years.

Table 3: TYPE OF MATTER

Type of Matter	# Inquiries	Percent
Criminal	508	32.19
Domestic Relations	242	15.34
Civil Dispute	126	7.98
Unknown	105	6.65
Litigation	90	5.70
Other	83	5.26
Personal Injury	65	4.12
Probate	60	3.80
Debt Collection	46	2.92
Bankruptcy	42	2.66
Landlord/Tenant	25	1.58
Real Estate	24	1.52
Estate Planning	24	1.52
Conservatorship	20	1.27
Juvenile	17	1.08
Social Security	17	1.08
Workers Compensation	15	0.95
Immigration	15	0.95
Business	8	0.51
Tax	7	0.44
Arbitration	7	0.44
Adoption	7	0.44
Labor	7	0.44
Guardianship	7	0.44
Elder Law	5	0.32
Land Use	3	0.19
Trust Account	2	0.13

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 2011, that number was 508 or 32.19% of all inquiries involved criminal matters. The other figure that stands out is that domestic relations cases are the next category of practice most likely to generate a complaint. In 2011, 242 or 15.34% of the complaints arose from domestic relations matters. In 2010, 263 or 15.65% of the complaints arose from domestic relations matters. Criminal matters and domestic relations matters account for 47.53% or just under half the complaints received.

Table 4: SIZE OF FIRM

Firm Size	# Inquiries	Percent
Solo	1380	70.48
2-5	317	16.19
6-10	79	4.03
11-25	93	4.75
26-100	82	4.19
> 100	7	0.36

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 70.48% of the inquiries that reflect firm size were directed at solo practitioners. Another 317 inquiries or 16.19% 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 have met with the Executive Committee of the Solo and Small Firm Practitioners Sections of the bar to discuss CAO operations. CAO will remain available to discuss matters of particular interest to this group during 2012. 2011 is the first year in which there were more complaints on a percentage basis for firms of 11-25 lawyers and firms of 26-100 lawyers than firms of 6-10 lawyers.

Table 5: DISPOSITION (RESULT)

Disposition Result	# Inquiries	Percent
Dismissed	155	58.99
Information Provided	524	26.76
Referred to Discipline	260	13.28
Resolved by CAO	99	5.06
Referred to RIS	14	0.72
Referred to Other	7	0.36
Referred to OPDS	4	0.20
Advised to File Complaint	3	0.15
Referred to PLF	2	0.10
Referred to Fee Arbitration	2	0.10
Referred to UPL	1	0.05

This table shows that a significant number of inquiries received by CAO are being resolved without referral to DCO. However, as of December 31, 2011, 260 (13.28% of all inquiries) cases had been referred to DCO for further investigation based on a finding of sufficient evidence. This is an increase of about 25 cases over 2010, and the percentage number of referrals is just

a bit higher (11.51% in 2010/13.28% in 2011). 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. The actual numbers here may be misleading as some matters could have more than one result, but the system only allows for one.

Of the 1155 matters dismissed by CAO, 230 were appealed by the complaining party. 217 (94.35%) were affirmed by General Counsel. Thirteen matters were reversed on appeal and referred to Disciplinary Counsel's Office. Two of those have subsequently been dismissed and the rest are pending.

Member Services has a program where lawyers who have had cases referred to Disciplinary Counsel's Office may consult with a volunteer lawyer about their complaints. There are 21 lawyers on the list who have volunteered to consult. CAO advises the referred lawyer about the service. In 2011 Member Services received 34 requests for the list from lawyers whose matters had been referred to Discipline. The Oregon Attorney Assistance Program also refers lawyers to that list and estimates it provided the list to 10-15 lawyers.

Table 6: DISPOSITION (TIME)

Disposition Time	# Inquiries	Percent	Av. # Days
Same Day	389	18.78	0
1-2 Days	138	6.66	2
3-6 Days	234	11.39	4
1-2 Weeks	273	13.18	11
< 1 Month	253	12.22	21
31-61 Days	193	9.32	46
< 6 months	466	22.50	107
Over 6 months	117	5.65	263
			Av. # Days: 48

Statistics for 2011 continue to show that CAO staff is promptly resolving most inquiries. Nearly 19 percent were resolved the same day, which is essentially the same as last year. 6.66 percent were resolved within one to two days, and an additional 13.18 were resolved in less than two weeks. The average disposition time was 48 days, which is just slightly more than 2010 (44 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.

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 are no longer recorded by staff.

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 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 reestablishing 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.

VII. 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 2012. We continue to explore how CAO might become the first department at the bar to go “paperless” consistent with the bar’s commitment to become more “green”. We have gathered information from other states that have gone paperless already and work with IS and outside consultants to move this effort forward. One of CAO’s lawyers met with staff from the Louisiana discipline system that has developed a software package to manage bar complaint matters.

CAO lawyers continue to make presentations to members about how CAO operates. It is our goal to help improve the reputation and image of lawyers, which may help improve the relationship between lawyers, their clients and the public.

Respectfully submitted,

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