

Oregon State Bar

2015

Annual Report

Client Assistance Office

January 1, 2015 to December 31, 2015
Report to the Oregon Supreme Court

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I. OVERVIEW

Since August 1, 2003, inquiries and complaints about members of the Oregon State Bar (Bar) have been initially reviewed by the Client Assistance Office (CAO). This report is the thirteenth review of the operations of the CAO and covers those operations from January 1, 2015, through December 31, 2015. During that period, CAO logged 1,937 complaints and inquiries. A great deal of additional callers received assistance that was not logged. CAO transitioned to a mostly 'paperless' system in 2015, but continues to accommodate those who rely upon traditional postal service or require other accommodations.

Consistent with prior years, the largest number of complaints in 2015 were received from clients. The most common complaints involved concerns that a lawyer was not diligent or failed to communicate. Most complaints arose from criminal or family law matters.

CAO continues to speedily and accurately resolve inquiries and complaints. Over 60% are resolved within 30 days or less. Under 2% remained unresolved for over 6 months. Of the 1,937 logged matters pending in 2015, CAO referred 206 to Disciplinary Counsel for further evaluation. Approximately 1000 complaints were dismissed. The remaining inquiries and complaints were resolved or referred to other resources.

When complaints are dismissed, complainants are provided a written explanation of the basis for the dismissal and informed that they may request review. In most cases, the complainant does not request review. In 2015, over 98% of CAO dismissals were affirmed on review.

II. CAO OPERATION IN 2015

CAO was established August 1, 2003, as an office separate from the Bar's Disciplinary Counsel. In 2015, CAO consisted of three staff attorneys and two non-attorney support staff. One staff attorney serves as CAO manager. CAO reports to the Bar's General Counsel. Former CAO manager Scott Morrill, a founding member of the CAO staff, retired from employment in 2015. A new manager, Linn Davis, was appointed in April 2015.

Since 2011, Oregon State Bar Rules of Procedure (BR) 1.11(b) has required most lawyers admitted to the practice of law in Oregon to designate an email address for receipt of bar correspondence. Relying on BR 1.11(b), CAO instituted beginning June 1, 2015 a paperless filing and correspondence

system. This paperless system has reduced paper waste, assisted in sharing information within the bar and outside the bar in response to public records requests, and saved postage and related costs. CAO continues to accommodate members of the public who prefer paper correspondence or request other accommodations, and the few bar members who require paper correspondence.

Pursuant to BR 2.5(a), to the extent possible and resources permit, CAO responds to all inquiries and complaints from the public concerning the conduct of attorneys. CAO accepts complaints in writing, by telephone, email, fax, or in person. As permitted by BR 2.5(a), CAO requires that any complaint that warrants a response from a lawyer must be put in writing (or given equivalent concrete format) in order to accurately document the complaint's concerns and give the responding lawyer adequate notice of them.

All written inquiries and complaints are logged into an electronic database. Some telephone or other contacts are also logged. Inquiries and complaints logged into the database are assigned matter numbers. In 2015, CAO logged 1,937 matters. Of the 1,937 logged matters, 459 were classified as Inquiries; approximately 296 of those were received via telephone. A large amount of additional Inquiry contacts received by telephone were not logged due to the volume of contacts and limited staff resources, even though the callers received substantive assistance as described below.

Inquiries are handled by attorney and non-attorney staff who provide information to assist the public to resolve concerns about legal services. Inquiries do not require active intervention or further assistance from CAO. The majority of Inquiries involve questions regarding: (1) standards governing lawyer conduct; (2) reasonable client expectations; (3) means for addressing issues with a lawyer such as a fee dispute or a perceived lack of communications; (4) obligations of a lawyer upon termination of employment; (5) the jurisdiction of the bar; and (6) the process of making a complaint to the bar. Inquirers may also seek legal advice or other assistance that CAO is unable to provide. If possible, CAO staff refers inquirers to resources within or outside the bar that might be able to offer the assistance the inquirer has requested.

The remaining 1,478 matters involved active assistance by CAO attorneys to resolve or investigate Complaints, pursuant to BR 2.5(b). In practice, the investigation of Complaints involves collecting information from the complainant and seeking a response from an attorney to those concerns which may

implicate misconduct.¹ Information submitted by each party to the complaint is provided to the other party or parties, who may be asked to comment upon it. CAO may also seek information from additional sources, such as court records or non-party witnesses.

CAO staff attorneys dispose of Complaints with administrative assistance from the non-attorney staff. BR 2.5(b) authorizes the following dispositions:

(1) If CAO determines that, even if true, a Complaint does not allege misconduct, the Complaint is dismissed with written notice to the complainant and to the attorney named in the complaint;

(2) If CAO determines that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the Complaint is referred to Disciplinary Counsel. Otherwise, the Complaint is dismissed with written notice to the complainant and the attorney;

(3) At the request of the complainant, CAO may also contact an attorney and attempt to resolve the complainant's concerns. The provision of such assistance does not preclude a referral to Disciplinary Counsel.

CAO continues to speedily and accurately resolve inquiries and complaints. Over 60% are resolved within 30 days or less. Under 2% remained unresolved for over 6 months. (Table 6.) 206 matters were referred to Disciplinary Counsel for further evaluation, approximately 14% of the 1,478 Complaints investigated by CAO. (Table 5.) Although BR 2.5 does not require it, when a Complaint was referred to Disciplinary Counsel, the complainant and subject attorney were provided written notice of the referral. In 2015, approximately 1000 Complaints were dismissed, with written notice to the complainant and the subject attorney. (Table 5.) Although the rules do not require it, the notice included a written explanation of the basis for dismissing the Complaint. CAO has successfully focused in 2015 on increasing the quality of that explanation. The remainder of the Complaints were resolved with the assistance of the CAO.

Pursuant to BR 2.5(c), a dismissal by CAO is subject to review by General Counsel upon written request by the complainant. General Counsel's decision is final. In 2015, review was requested in 181 matters. Over 98% (178) of CAO dismissals were affirmed on review.

¹ "Misconduct" means any conduct which may subject an attorney to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court. BR 1.1(s).

CAO staff meets on a weekly basis to review cases and procedures. CAO communicates with Disciplinary Counsel on issues of common concern.

III. CAO STATISTICAL INFORMATION

Between January 1, 2015, and December 31, 2015, CAO kept statistics regarding the following aspects of matters received.

Table 1: SOURCE OF COMPLAINT OR INQUIRY

Source of Complaint or Inquiry	Number	Percent
Client	840	45.73%
Opposing Party	349	19.00%
General Assistance/Unknown	295	16.06%
Third Party	217	11.81%
Opposing Counsel	61	3.32%
Self	55	2.99%
Judge	11	0.60%
CAO	8	0.44%
DCO	1	0.05%

Most matters originated from clients inquiring or complaining about their own attorneys. (Table 1).

Table 2: PRIMARY SUBJECT OF COMPLAINT OR INQUIRY

Primary Subject of Complaint or Inquiry	Number	Percent
Competence and Diligence	253	13.77%
General Information Inquiry	248	13.50%
Dishonesty and Misrepresentation	175	9.53%
Communication	172	9.36%
General Client Assistance	109	5.93%
Fee Dispute – Excessive/Illegal Fees	92	5.01%
Outside of Legal Bounds	81	4.41%
Return Client File	77	4.19%
Other/Miscellaneous	72	3.92%
Improper Conduct of a Prosecutor	62	3.38%
Preserving/Accounting for Funds/Property	52	2.83%
Quality of Services	45	2.45%
Conduct Prejudicial to Justice	42	2.29%
Legal Advice	39	2.12%
Malpractice	37	2.01%
Improper Withdrawal	36	1.96%
Rude Behavior	35	1.91%
Client Conflict – Former	26	1.42%
Client Conflict – Current	24	1.31%

Table 2: PRIMARY SUBJECT OF COMPLAINT OR INQUIRY*(continued)*

Primary Subject of Complaint or Inquiry	# Complaint	Percent
Judicial Fitness Commission	24	1.31%
Trial Conduct	24	1.31%
Disclosing Confidences/Secrets	20	1.09%
Unauthorized practice of Law	18	0.98%
Criminal Conduct	14	0.76%
Lawyer Debts	14	0.76%
Contact with Represented Party	10	0.54%
Conflict – Self-Interest	7	0.38%
Business Relationship with Client	6	0.33%
Failure to Cooperate with OSB	5	0.27%
Ex Parte Communication	4	0.22%
False or Misleading Advertising	4	0.22%
Sexual Relations with a Client	4	0.22%
Lawyer Referral Program Complaint	3	0.16%
Conflict – Lawyer as a Witness	1	0.05%
Improperly Threatening		
Criminal Prosecution	1	0.05%
Problem Re Firm Names/Letterhead	1	0.05%

Most complaints concerned a perceived lack of adequate competence, diligence or communication. (Table 2). CAO staff contributes to efforts to educate lawyers about these issues and other subjects of complaints through bar publications, continuing legal education programs, and other contacts with our membership.

Table 3: TYPE OF MATTER GIVING RISE TO THE COMPLAINT OR INQUIRY

Type of Matter	# Complaints	Percent
Criminal	585	35.35%
Domestic Relations	272	16.44%
Civil Dispute	119	7.19%
Litigation	117	7.07%
Probate	66	3.99%
Personal Injury	65	3.93%
Debt Collection	44	2.66%
Landlord/Tenant	31	1.87%
Guardianship/Conservatorship	26	1.57%
Business	24	1.45%
Immigration	24	1.45%
Real Estate	23	1.39%
Estate Planning	22	1.33%
Workers Compensation	21	1.27%
Juvenile	20	1.21%
Bankruptcy	18	1.09%

Table 3: TYPE OF MATTER GIVING RISE TO THE COMPLAINT OR INQUIRY*(continued)*

Type of Matter	# Complaints	Percent
Social Security	17	1.03%
Arbitration	7	0.42%
Elder Law	7	0.42%
Adoption	4	0.24%
Labor	3	0.18%
Tax	2	0.12%
Land Use	1	0.06%
Other/Unknown	137	8.28%

CAO statistics show year after year that criminal law practice is most likely to generate a complaint, and domestic relations is the area of practice next most likely to generate a complaint. Together, criminal law and domestic relations matters account for over half of all complaints received. (Table 3.)

Table 4: SIZE OF FIRM OF THE LAWYER SUBJECT OF COMPLAINT OR INQUIRY

Firm Size	# of Complaints	% of Complaints	% of Active Members
Solo	1255	68.3%	48.8%
2-5	286	15.6%	16.00%
6-10	91	4.9%	10.2%
11-25	106	5.8%	12.5%
26-100	98	5.3%	10.4%
> 100	1	0.05%	1.9%

The bar's Board of Governors asked the CAO to track information that might show whether a correlation exists between the size of a lawyer's law firm and the number of complaints made to CAO. (Table 4.) The statistics show that about 68% of complaints were directed at solo practitioners, who make up about 50% of the active membership. Firms with 2-5 lawyers receive a proportion of complaints roughly in accord with their share of the membership, about 16%. Lawyers at firms ranging from 6 to 100 received about half the share of the complaints as their share of the membership. In addition to efforts to reach out to the general membership, CAO remains available to discuss matters of particular interest to members of solo and small firms.

Table 5: DISPOSITION OF COMPLAINT OR INQUIRY (RESULT)

Disposition	Number	Percent
Dismissed	1001	54.5%
Information Provided	448	24.4%
Referred to Disciplinary Counsel	206	11.2% ²
Resolved by CAO	17	0.93%
Advised to File a Complaint	13	0.71%
Referred to Judicial Fitness Commission or Other Body	9	0.49%
Referred to UPL Committee	5	0.27%
Referred to Professional Liability Fund	4	0.22%
Referred to OSB Lawyer Referral Service	3	0.16%
Referred to Fee Arbitration	2	0.11%

The large majority of inquiries and complaints received by CAO are resolved without referral to Disciplinary Counsel. (Table 5.) The proportion of complaints referred to Disciplinary Counsel is similar to prior years. For instance, in 2014, 12.45% of all dispositions involved referral to Disciplinary Counsel.

Table 6: DISPOSITION (TIME)

Disposition Time	Number	Percent	Avg. Time (Days)
Same Day	342	20.00%	0
1-2 Days	182	10.64%	2
3-6 Days	248	14.50%	4
1-2 Weeks	186	10.88%	9
< 1 Month	121	7.08%	22
< 2 Months	199	11.64%	45
< 6 months	393	22.98%	100
Over 6 months	33	1.93%	229

Average: 36 days

Statistics for 2015 show that CAO staff is promptly resolving most matters. (Table 6.) Over 55% of inquiries and complaints are disposed of within two weeks. As noted above, these statistics do not include significant resources expended by CAO staff each day responding to public inquiries seeking information about lawyers' ethical obligations, the Oregon State Bar or its programs, and miscellaneous other questions.

Where, after reviewing an inquiry or complaint, CAO requests a written response from a lawyer, the disposition time can increase significantly. The subject lawyer is given 21 days

² The percentages in Table 5 are calculated based on all dispositions in 2015. If limited to the 1,478 dispositions of matters classified as Complaints, the proportion referred to Disciplinary Counsel is 13.9%.

to respond. Further correspondence often follows as the complainant replies and CAO attempts to collect specific information from the complainant or subject attorney to determine whether there is an issue that warrants a referral to Disciplinary Counsel. In doing so, CAO serves the valuable purposes of obtaining a response to concerns about a subject lawyer's conduct and affording the subject lawyer a forum to respond to them, weeding out complaints that are not supported by sufficient evidence of possible misconduct, and performing initial investigation and analysis that can assist Disciplinary Counsel in more quickly evaluating those cases where misconduct may have occurred. The average disposition time for all matters is 36 days, which is in line with most prior years, but an increase over 2014 (29 days). A focus on improved explanations of CAO dismissals and a period of reduced staffing due to the retirement of Mr. Morrill may account for that increase.

VI. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

CAO staff may, to the extent possible and bar resources permit, attempt to resolve the concerns raised by a person making an inquiry or complaint. In many cases CAO can intervene and resolve concerns before the threshold of misconduct is crossed, or reduce the extent of misconduct that occurs. CAO's efforts to resolve problems may involve explaining a lawyer's ethical obligations to a client or reminding a lawyer of them and encouraging the lawyer to comply. The most frequent examples of CAO success involve addressing lawyer-client communication and client property issues. CAO may also refer lawyers to the Oregon Attorney Assistance Program, Professional Liability Fund or other resources that can assist to mitigate or avoid misconduct. CAO attempts to early identify and refer to Disciplinary Counsel those instances where information suggests a lawyer may be engaged in widespread or grave misconduct that requires quick attention to avoid further harm. Finally, as members of the OSB General Counsel's staff, CAO lawyers handle calls from lawyers seeking advice to comply with their ethical obligations and avoid misconduct. Ethics advice calls are not included within the statistics compiled for this report.

VI. CONCLUSION

The CAO program is working as designed. CAO staff continues to review and improve the program. Further improvements are expected as CAO evaluates how it might even better implement 'paperless' office procedures. CAO staff continues to monitor the amount of time complaints are pending in CAO and evaluate the time and effort that should be devoted to CAO's initial review.

Respectfully submitted,

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