



# 2004 Annual Report

OREGON STATE BAR  
Client Assistance Office

January 1, 2004 to December 31, 2004  
Report to the Oregon Supreme Court

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Oregon State Bar Client Assistance Office

## Table of Contents

I. INTRODUCTION .....	1
II. CAO STAFF OPERATION .....	1
III. PROGRAM MEASURES .....	3
IV. BENCHMARK SUMMARY .....	3
V. OTHER STATISTICAL INFORMATION .....	4
Table 1: Source of Inquiry .....	4
Table 2: Nature of Inquiry .....	5
Table 3: Type of Matter .....	6
Table 4: Size of Firm .....	7
Table 5: Disposition (Result) .....	8
Table 6: Disposition (Time) .....	8
VI. EXAMPLES OF CAO EFFORTS TO RESOLVE INQUIRIES .....	9
VII. CONCLUSION .....	10
APPENDIX I .....	12



## I. INTRODUCTION

This report is the third review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2004, through December 31, 2004. 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.

In 2004, CAO handled 3659 inquiries. 488 were one-time contacts that are not reflected in the total number of matters handled (3171). Statistics show that, of the 3171 actual inquiries handled by CAO staff between January 1, 2004, and December 31, 2004, 1649, or 52%, 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 1628 telephone inquiries, or 66% 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 lawyers, two of whom came from Disciplinary Counsel's Office (DCO). The third lawyer was hired December 8, 2003, and came from private practice, where she was a senior lawyer in a prepaid legal services 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.

A significant amount of both lawyer and administrative time is spent responding to telephone inquiries concerning lawyer conduct, the complaint process, legal fees, and communication with lawyers. If one of the intake coordinators cannot resolve an issue, they refer the question to one of the staff lawyers. Staff lawyers take steps to resolve issues by contacting lawyers to reestablish communication with

clients; provide clients with copy of their files; 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 complaint 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 2004, 370 matters were referred to DCO by CAO for further investigation (approximately 10% of the total number of inquiries received in 2004).

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 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 may be appealed to General Counsel. General Counsel's decision is final. BR 2.5(a)(1).

Since establishment of the CAO, the PLF staff reports an increase in the number of claims it processed in 2003. Whether this increase can be attributed to implementation

of the CAO program is being reviewed at this time; CAO and the PLF are jointly working on the question. The CAO manager will meet with the PLF Board of Directors in February 2005 to discuss this issue.

Experience over the first 17 months 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); and
- 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,
  - \* Disposition of appeals by General Counsel.

### IV. BENCHMARK SUMMARY

Between January 1, 2004, and December 31, 2004, there were 3171 inquiries made to CAO. The average time an inquiry was pending was 18.7 days (see Appendix I). This is up from the July 31, 2004 average of 11.8 days. CAO staff attributes most of that increase to the fact that CAO staff is having more lawyers respond in writing. Of the 3171

inquiries, approximately 38% were resolved or dismissed on the initial day of intake. Statistics show that CAO staff continues to provide a significant amount of information such as referrals to various agencies and information on alternative sources of service to people making inquiries. In calendar year 2004, information was provided to 917 of these inquiries, or 28.92% of all inquiries.

During that same time, there were 273 appeals of CAO staff dismissals and all but nine were upheld by General Counsel. Of those 273 appeals, 142, or more than 50%, involved criminal matters. These appeals have significantly increased 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);
- Disposition (Time).

**Table 1: SOURCE OF INQUIRY**

<b>Source of Inquiry</b>	<b># Inquiries</b>	<b>Percent</b>
Client	1768	55.76%
Third Party	517	16.30%
Opposing Party	514	16.21%
Unknown	164	5.17%
Opposing Counsel	77	2.43%
None listed	77	2.43%
Self	27	0.85%
Judge	22	0.69%
CAO	4	0.13%
DCO 2.7 Referral	1	0.03%
<b>Total Inquiries:</b>	<b>3,171</b>	

CAO statistics again confirm that the most common source of inquiries is our members' own clients. Combined with sta-



tistics 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 been provided to the bar's CLE Seminars Department anticipating that future CLE programs will be developed focusing on communication with clients and keeping clients satisfied.

**Table 2: NATURE OF INQUIRY**

<b>Nature of Complaint</b>	<b># Inquiries</b>	<b>Percent</b>
Neglect of legal matter	376	11.86%
Communication	296	9.33%
Legal Advice	289	9.11%
Dishonesty & misrepresentation	269	8.48%
General Information Inquiry	261	8.23%
Competence and Diligence	199	6.28%
Fee dispute – excessive/illegal fees	179	5.64%
Malpractice	151	4.76%
Other / Miscellaneous	142	4.48%
Return client file	115	3.63%
Outside of legal bounds	102	3.22%
Multiple client conflict of interest	85	2.68%
None listed	81	2.55%
Unzealous Conduct	73	2.30%
Fee / Retainer Inquiry	72	2.27%
Criminal conduct	59	1.86%
Improper conduct by Prosecutor	50	1.58%
Disclosing confidences/secrets	48	1.51%
Improper withdrawal	47	1.48%
Conduct prejudicial to justice	40	1.26%
Unlawful practice of law	40	1.26%
Conflict – self-interest	37	1.17%
Judicial Fitness Commission	36	1.14%
Contact with represented party	26	0.82%
Lawyer Debts	18	0.57%
Trial Conduct	17	0.54%
Preserving client funds/property	16	0.50%
Ex parte communication	14	0.44%
Provide accounting	5	0.16%
False or misleading advertising	5	0.16%
Law Referral	4	0.13%
Sexual relations with client	4	0.13%
Threatening criminal prosecution	4	0.13%
Client Security Fund Question	3	0.09%
Problem Re Firm names/letterhead	3	0.09%
Bank error	2	0.06%
Lawyer to Lawyer Communication	1	0.03%
Conflict – lawyer as witness	1	0.03%
Business relationship with client	1	0.03%
<b>Total Inquiries:</b>	<b>3,171</b>	

This table shows that 11.86% of the inquiries received pertain to neglect of a legal matter and 9.33% 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 believes that many of the inquiries characterized as neglect can also be characterized as failures 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.

**Table 3: TYPE OF MATTER**

<b>Type of Matter</b>	<b># Inquiries</b>	<b>Percent</b>
Criminal	832	26.24%
Domestic Relations	545	17.19%
Civil Dispute	215	6.78%
Other	206	6.50%
Unknown	201	6.34%
Personal Injury	186	5.87%
Litigation	160	5.05%
Probate	127	4.01%
Bankruptcy	107	3.37%
Debt Collection	71	2.24%
None Listed	71	2.24%
Workers' Compensation	64	2.02%
Estate Planning	52	1.64%
Landlord/tenant	50	1.58%
Real Estate	48	1.51%
Business	44	1.39%
Juvenile	43	1.36%
Social Security	29	0.91%
Immigration	28	0.88%
Conservatorship	21	0.66%
Guardianship	19	0.60%
Labor	18	0.57%
Land use	14	0.44%
Adoption	9	0.28%
Tax	5	0.16%
Paternity	2	0.06%
Trust Account	2	0.06%
Arbitration	2	0.06%
<b>Total Inquiries:</b>	<b>3,171</b>	

This table also supports the findings reflected in the July 31, 2004 CAO report that criminal law practice is most likely to generate a complaint. For instance, in calendar year 2004 832, or 26.24% of all inquiries, related to criminal matters and almost 62% of those inquiries were dismissed. The other figure that stands out is that domestic relations cases are the next category of practice most likely to generate a complaint. In the calendar year 2004, 545, or 17.19% of all inquiries, are from this practice area.

**Table 4: SIZE OF FIRM**

<b>Firm Size</b>	<b># Inquiries</b>	<b>Percent</b>
Solo	883	51.67%
2 - 5	401	23.46%
6 - 10	140	8.19%
11 - 25	188	11.00%
26 - 100	92	5.38%
> 100	5	0.29%
Total Lawyers	1,709	

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 incidence of inquiries made to CAO. Table 4 shows that 883, or 51.67% of the 1709 files that reflect firm size, were directed at solo practitioners. Another 401 inquiries; or 23.46%, were directed at lawyers in law firms with five or fewer lawyers for a total of 75.15%. As CAO continues to collect data, it may be possible to target additional assistance for solo and small firm practitioners to help avoid complaints. CAO lawyers spoke at a number of CLE presentations and other seminars in 2004 and took the opportunity to address these statistics. CAO staff also developed a CLE program for the annual meeting featuring CAO, DCO, and PLF lawyers to discuss the interrelation between these programs.

**Table 5: DISPOSITION (RESULT)**

<b>Disposition Result</b>	<b># Inquiries</b>	<b>Percent</b>
Dismissed	1,236	38.98%
Information Provided	917	28.92%
Referred to Discipline	359	11.32%
Resolved by CAO	187	5.90%
Referred to RIS	113	3.56%
None Listed	81	2.55%
Advised to file complaint	76	2.40%
Referred to Fee Arbitration	70	2.21%
Refer to Other	61	1.92%
Referred to PLF	48	1.51%
Referred to UPL	13	0.41%
Referred to CSF	6	0.19%
Referred to Public Records	2	0.06%
Referred to Legal Aid	1	0.03%
Referred to Community Services	1	0.03%
Total Dispositions:	3,171	

This table shows that a significant number of inquiries received by CAO are being resolved without referral to DCO. However, for the calendar year 2004, 359 cases had been referred to DCO for further investigation based on a finding of credible evidence of an allegation of misconduct (10% of all inquiries received in 2004). 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. It is anticipated that this information will be provided to the BOG at its March meeting and subsequently reported to the Court.

**Table 6: DISPOSITION (TIME)**

<b>Disposition Time</b>	<b># Inquiries</b>	<b>Percent</b>	<b>Avg. # Days</b>
Same Day	1166	38%	0.00
1 - 2 Days	225	7%	1.46
3 - 6 Days	369	12%	4.52
1 - 2 Weeks	441	14%	9.72
< 31 Days	247	8%	22.42
< 61 Days	336	11%	43.00
< 6 Months	273	9%	93.55
Over 6 Months	22	1%	309.82
Total Dispositions:	3,079		

Statistics for calendar year 2004 continue to show that CAO staff is promptly resolving most inquiries. Thirty-eight percent are resolved the same day. An additional 33% are resolved in less than two weeks. The average disposition

time is 18.7 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. In August 2004, CAO developed a new report for "general inquiries." That report is intended to track "quick response matters" that do not require significant CAO staff follow-up time. These 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. The data CAO did correct shows that staff handled 488 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 of misconduct, 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 receives 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 the July 31, 2004 report, 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 State of Oregon Ombudsman for injured workers to obtain information concerning their pending claims or the Oregon Department of Justice for consumer protection assistance. CAO continues to serve as a "resource broker" for people who may not have an ethics

problem with a lawyer but simply do not know where else to turn. The CAO resource notebook is updated periodically to reflect those resources and CAO staff reviews those resources at staff meetings. 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 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 for both clients and lawyers.

## VII. CONCLUSION

The establishment of CAO is perhaps the biggest change in the Oregon disciplinary system in the last 20 years. To 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.

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, General Counsel, Disciplinary Counsel, and the Board of Governors intend to review the credible evidence standard to determine if it should be revised or better defined.

CAO and DCO staff members meet periodically to ensure that both offices understand the parameters and scope of CAO's responsibility to investigate matters before referring them to DCO.

CAO staff meets every other Wednesday to review cases and policies, and generally to discuss the operation of the

office. We have also instituted in-house continuing legal education programs for staff. For instance, this year we had mini-CLE sessions on issues in immigration law, workers' compensation law, estate administration, award of lawyer fees and their calculation, and a general introduction into the transition from the Code of Professional Responsibility to the Oregon Rules of Professional Conduct. In addition, administrative staff met with Circuit Court Judge Doug Beckman in chambers to discuss his role and then observed a trial and plea agreements. In the afternoon, the administrative staff visited with U.S. Magistrate Don Ashmanskas for his personal view on ethics and the practice of law in federal court and then took the opportunity to watch him accept pleas in federal criminal cases and immigration matters.

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 2005 is to have staff lawyers "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.

Finally, CAO statistics developed over the first 17 months of operation suggest a need to work with the bar's CLE Seminars Department to design a program for solo and small firm practitioners focusing on client communication and relations. As details emerge from CAO and DCO statistical information, we will attempt to provide the Court, bar members, and the public with better information as to the effectiveness of the program and its impact on the discipline process.

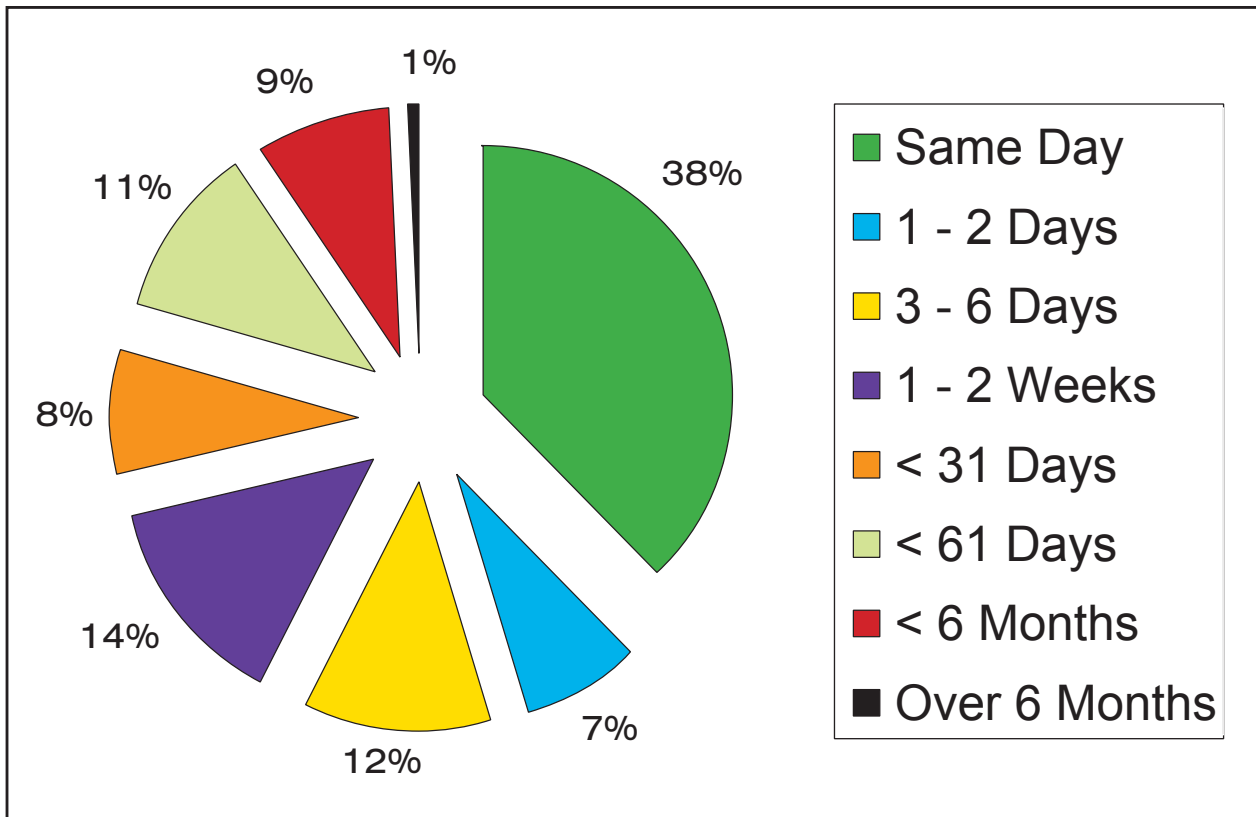
Respectfully submitted,

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# Appendix I

## 2004 Disposition Time



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