

# 2006

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## Annual Report

### **OREGON STATE BAR** *Client Assistance Office*

January 1, 2006 to December 31, 2006  
Report to the Oregon Supreme Court

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2006 Annual Report of the  
Oregon State Bar Client Assistance Office

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## I. INTRODUCTION

This report is the fifth review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2006, through December 31, 2006. 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.

Statistics show that, of the 2,627 matters handled by CAO 2,155 were specific inquiries and 472 were what are characterized as General Information Inquiries (GII) that did not require some active intervention or assistance of CAO staff. Because of time constraints all of these short calls are not always reported by staff so this may not be an accurate count of these GII calls.

CAO staff disposed of 1,922 matters during that year. Consistent with past history a majority of inquiries, 1,566, 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 795 telephone inquiries or 30.26% 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. There are currently three staff attorneys, two of whom came from Disciplinary Counsel's Office (DCO). The third attorney was hired July 24, 2006, and came from the Yamhill County District Attorney's Office, where she was the deputy district attorney who prosecuted serious crimes. The two intake coordinators came from DCO and are experienced in processing consumer inquiries and complaints. CAO added a CAO clerk in 2004, who assists the two intake coordinators in processing inquiries and handles general clerical duties. After a short period where

this position was not filled, CAO hired a replacement who started January 22, 2007.

A significant amount of both lawyer and administrative time is spent responding to telephone inquiries concerning attorney 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 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.

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 allegation 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. Because the credible evidence criterion is not a defined term, CAO lawyers frequently meet to evaluate if specific facts meet the procedural test. CAO lawyers are evaluating other definitions to determine if any change in this standard should be considered by the court.

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 2006, 292 matters were referred to DCO by CAO for further investigation.

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). In 2006, 199 appeals were reviewed by General Counsel and 193 of those were affirmed. Of the six that were sent to DCO, one resulted in an admonition, two were dismissed, and three are still under investigation. This appeal process does consume a significant amount of General Counsel's time.

As part of the bar's overall development of a document retention policy, the CAO has in place a departmental retention policy. Depending on the type of document and file, CAO maintains documents from one to three years. Files referred to DCO are subject to that office's retention policy.

Experience gained over the past three 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 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 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, 2006, and December 31, 2006, there were 2,627 inquiries made to CAO. The average time an inquiry was pending was 32.9 days (see Appendix I). This number is up from prior years and seems to be the result of time-intensive or document-intensive investigations required of CAO staff. Yet, of those 2,627 inquiries, approximately 18% were resolved or dismissed on the initial day of intake. Statistics show that CAO staff continues to provide information such as referral to various agencies and information on alternative sources of service to the person making the inquiry. In calendar year 2006, information was provided to 213 of these inquiries, or 11.08% of all inquiries.

## 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); and  
Disposition (Time).

**Table 1: SOURCE OF INQUIRY**

<b>Source of Inquiry</b>	<b># Inquiries</b>	<b>Percent</b>
Client	1,151	53.41%
Opposing Party	376	17.45%
Third Party	261	12.11%
None Listed	147	6.82%
Opposing Counsel	81	3.76%
Unknown	61	2.83%
Self	56	2.55%
Judge	16	0.72%
CAO	5	0.23%
DCO 2.7 Referral	2	0.09%
Unknown	1	0.05%
<b>Total Inquiries:</b>	<b>2,157</b>	

CAO statistics for 2006 again 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 Oregon lawyers to adequately communicate with their clients. This information has again been provided to the bar's CLE department anticipating that a future CLE program should be developed focusing on communication with clients and keeping clients satisfied. Despite efforts by CAO staff to get this information to members, we continue to see this as the primary source for complaints about our members. Board of Governors President Albert Menashe and CAO Manager Chris Mullmann toured Eastern Oregon (and Bend) in the spring and met with local bar leaders and discussed this issue, among others.

**Table 2: NATURE OF INQUIRY**

<b>Nature of Complaint</b>	<b># Inquiries</b>	<b>Percent</b>
Communication	277	17.85%
Legal Advice	209	9.70%
Competence & Diligence	179	8.31%
Dishonesty & Misrepresentation	173	8.03%
None Listed	150	6.96%
Return Client File	110	5.10%
Other/Miscellaneous	106	4.92%
Fee Dispute—Excessive/Illegal Fees	102	4.73%
Neglect of Legal Matter	90	4.18%
Malpractice	78	3.62%
Quality of Service	76	3.53%
Outside of Legal Bounds	57	2.65%
Multiple Client Conflict	55	2.55%
Conduct Prejudicial to Justice	50	2.32%
General Information Inquiry	45	2.09%
Improper Withdrawal	44	2.04%
Improper Conduct by Prosecutor	42	1.95%
Unzealous Conduct	35	1.62%
Judicial Fitness Commission	34	1.58%
Conflict—Self-Interest	31	1.44%
Fee/Retainer Inquiry	28	1.30%
Criminal Conduct	27	1.25%
Rude Behavior	23	1.07%
Disclosing Confidences/Secrets	20	0.93%
Unlawful Practice of Law	19	0.88%
Contact with Represented Party	19	0.85%
Provide Accounting	17	0.79%
Lawyer Debts	13	0.60%
Preserving Client Funds/Property	11	0.51%
Ex Parte Communication	11	0.51%
False or Misleading Advertising	7	0.32%
Threatening Criminal Prosecution	6	0.28%
Trial Conduct	4	0.19%
Sexual Relations with Client	4	0.19%
Client Security Fund Question	2	0.09%
Failure to Cooperate with OSB	1	0.05%
<b>Total Inquiries:</b>	<b>2,155</b>	

This table shows that 4.18% of the inquiries received pertain to neglect of a legal matter and 17.85% to communication. 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 have been working with staff members at Oregon Public Defense Services to help them identify public defenders who are having some type of problem with their clients. In 2006, CAO referred 37 inquiries to OPDS.

**Table 3: TYPE OF MATTER**

<b>Type of Matter</b>	<b># Inquiries</b>	<b>Percent</b>
Criminal	708	32.85%
Domestic Relations	302	14.01%
Civil Dispute	225	10.44%
None Listed	150	6.96%
Litigation	98	4.55%
Personal Injury	93	4.32%
Other	79	3.76%
Unknown	63	2.92%
Bankruptcy	56	2.60%
Probate	51	2.37%
Landlord/Tenant	39	1.81%
Real Estate	36	1.67%
Debt Collection	35	1.62%
Social Security	31	1.44%
Workers' Compensation	30	1.39%
Juvenile	28	1.30%
Conservatorship	25	1.16%
Business	20	0.93%
Estate Planning	19	0.88%
Immigration	17	0.79%
Labor	17	0.79%
Land Use	9	0.42%
Guardianship	9	0.42%
Adoption	6	0.28%
Paternity	1	0.05%
Tax	1	0.05%
Trust Account	1	0.05%
Arbitration	1	0.05%
Total Inquiries:	2,210	

CAO statistics again show that criminal law practice is most likely to generate a complaint.

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% 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 the calendar year 2006, 302 or 14.01% of all inquiries were from this practice area. COMPARE WITH OTHER YEARS?

**Table 4: SIZE OF FIRM**

<b>Firm Size</b>	<b># Inquiries</b>	<b>Percent</b>
Solo	785	51.82%
2-5	365	23.43%
6-10	134	8.84%
11-25	133	8.78%
26-100	103	6.80%
> 100	5	0.33%
Total Inquiries:	1,525	

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 51.82% of the files that reflect firm size were directed at solo practitioners. Another 365 inquiries or 23.43% 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 attorney Scott A. Morrill met with the Executive Committee of the Solo and Small Firm Practitioners Section of the bar in the fall to discuss CAO operations. CAO will continue to discuss matters of particular interest to this group during 2007.

**Table 5: DISPOSITION (RESULT)**

<b>Disposition Result</b>	<b># Inquiries</b>	<b>Percent</b>
Dismissed	1,001	52.08%
Referred to Discipline	282	14.67%
Information Provided	213	11.08%
Resolved by CAO	184	9.57%
Referred to RIS	80	4.16%
Advised to File Complaint	38	1.98%
Referred to OPDS	37	1.93%
Referred to Fee Arbitration	29	1.51%
Referred to Other	28	1.46%
Referred to PLF	17	0.88%
Referred to UPL	6	0.31%
Referred to CSF	3	0.16%
Referred to Legal Aid	2	0.10%
Referred to Pubic Records	1	0.05%
Referred to Community Service	1	0.05%
Grand Total	1,922	

This table shows that a significant number of inquiries received by CAO are being resolved without referral to DCO. However, as of December 31, 2006, 282 (14.67% of all inquiries) cases had been referred to DCO for further investigation based on a finding of credible evidence of an allegation of misconduct. 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)**

<b>Disposition Time</b>	<b># Inquiries</b>	<b>Percent</b>	<b>Av. # Days</b>
Same Day	349	18%	0.0
1-2 Days	198	10%	1.5
3-6 Days	375	20%	4.6
1-2 Weeks	268	14%	9.6
< 1 Month	135	7%	22.0
61 Days	159	8%	43.1
< 6 months	409	21%	102.2
Over 6 months	25	1%	280.6
Error	-4.3%		
Grand Total:	1,918		463.6

Statistics for calendar year 2006 continue to show that CAO staff is promptly resolving most inquiries. Eighteen percent were resolved the same day. While this is up from 2005, CAO staff believes that part of the change is due to the characterization of certain inquiries as GII (see above). Ten percent were resolved within one to two days, and an additional 34% were resolved in less than two weeks. The average disposition time is 32.9 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. 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 Web site. Statistics for 2006 show that staff handled 472 of these "quick response matters" and demonstrated 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, 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. 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. 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.

## 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 last year, 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 2006, CAO staff and General Counsel reviewed BR 2.5 and concluded that while we are comfortable working with the standard, we will continue to evaluate it and make any recommended changes to the court.

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.

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 2007 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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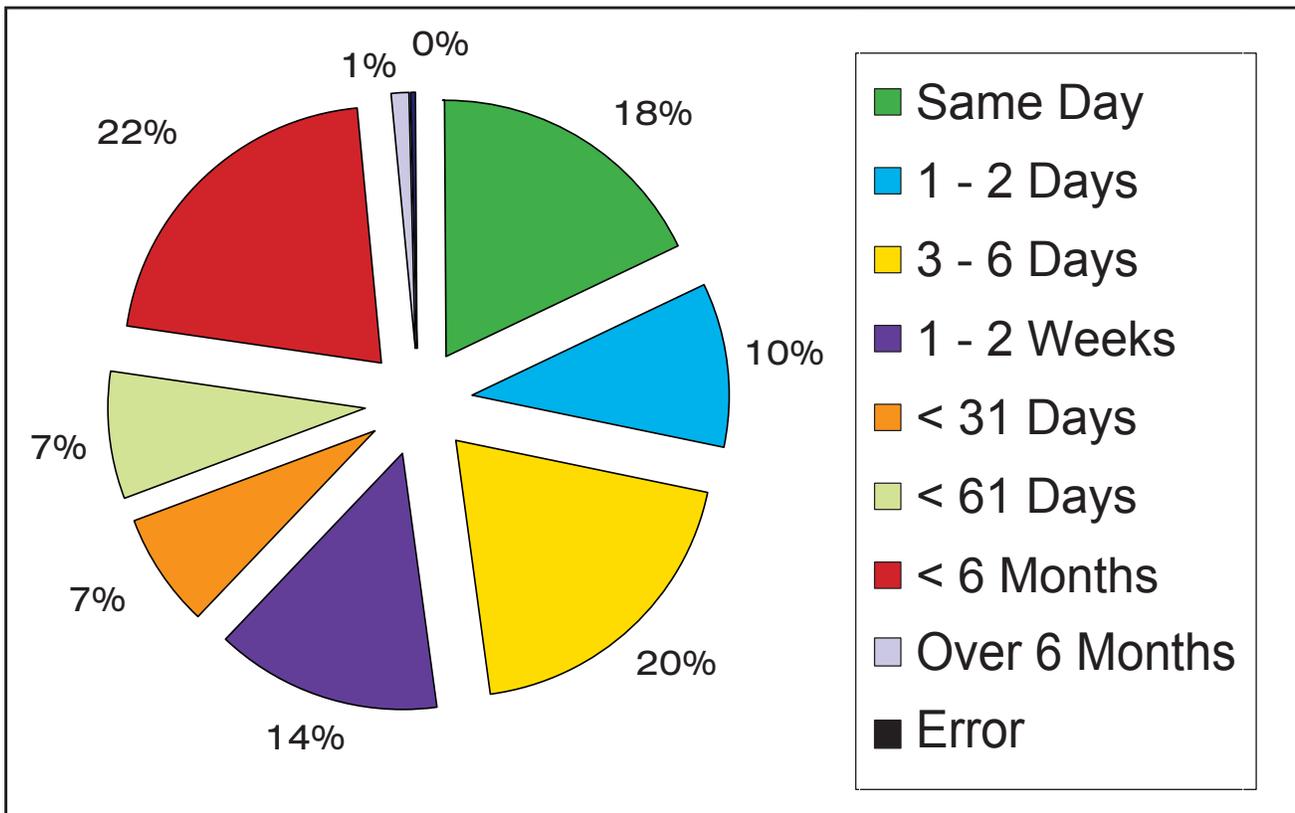
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# Appendix I

## 2006 Disposition Time







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