

Oregon State Bar

2012

Annual Report

Client Assistance Office

January 1, 2012 to December 31, 2012
Report to the Oregon Supreme Court

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I. INTRODUCTION

This report is the tenth review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2012, through December 31, 2012. 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.

This year was different as one lawyer left in October and was not replaced by the end of the year. CAO continues to handle around 2,000 matters a year. CAO continues to take the lead in efforts to operate more electronically and with less paper. To that end CAO staff developed procedures and policies to accept and process complaints by email. CAO is looking to move toward completely electronic files where possible in 2013.

CAO support staff now has a combined 19 years of experience due to stability in those two positions. The two lawyers who finished up 2012 in CAO have a combined 30 years of experience with the disciplinary process, much of that in the CAO.

Statistics show that of the 1986 new matters handled by CAO in 2012, one thousand, seven hundred and ten were specific inquiries and 276 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 1986 new matters reported in 2012 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 complaints, 1112, came by mail. 349 complaints were received electronically and CAO expects that number to increase as the public becomes more aware of the new way to submit complaints. However, it remains clear that telephone access to bar staff regarding the conduct of Oregon lawyers is still popular with the public. In this reporting period, there were 421 telephone inquiries making up 21.20% of the total complaints for the year. Again, this number may be underreported because of time constraints. The balance of the contacts 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 OPERATION

CAO is part of General Counsel's Office and staff reports to General Counsel. There are currently two staff attorneys and two support staff. A third attorney started on February 19, 2013.

A significant amount of both lawyer and administrative time is spent responding to telephone calls 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. CAO staff attorneys also occasionally provide ethics assistance to attorneys and give CLE's throughout the year.

All complaints 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 a complaint, staff requires that the inquiry be put in writing. If a complaint is not in writing, CAO staff may discuss the matter with the lawyer or the person making the complaint 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 2012, 245 matters were referred to DCO for further investigation, in 2011, 260 matters were referred to DCO, in 2010, 242 matters were referred to DCO and in 2009, 273 matters were referred to DCO by CAO.

If CAO determines there is not sufficient evidence to support a referral to DCO, staff may attempt to resolve the concerns raised by the complainant, 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, the bar's referral service 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 2012 153 appeals (92.73%) were affirmed suggesting that CAO lawyers are making the correct decision in most matters. For comparison- in 2011, 217 appeals (94.35%) were affirmed. In 2010, 125 appeals were considered and 123 (96%) were affirmed. In 2009, 235 appeals were reviewed by General Counsel and 226 (96%) of those were affirmed. In 2008, 250 appeals were referred to General Counsel who affirmed 241 (96%) of them.

Experience gained over the past ten 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 complaints received;
- The time a complaint was pending at the CAO level (see Table 6);
- The disposition by CAO (see Table 5);
- Number of complaints dismissed or where additional assistance at intake was provided;
- Number of complaints 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, 2012, and December 31, 2012, there were about 2,000 complaints made to CAO. The average time a complaint was pending was 33 days (see Table 6), which is 15 days shorter than 2011. Approximately 20% were resolved or

dismissed on the initial day of intake. In 2012, information was provided to 469 (23.62%) of these complaints. The percentages are essentially the same as 2011.

V. CAO STATISTICS

In addition to the raw numbers of complaints 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 COMPLAINT- 2011

Source of Complaint	# Complaints	Percent
Client	847	42.65
Opposing Party	327	16.47
Unknown/Unclassified	235	11.83
Third Party	217	10.93
General Inquiry	189	9.52
Opposing Counsel	47	2.37
General Client Assistance	51	2.57
Self	53	2.67
Judge	11	0.55
CAO	9	0.45

CAO statistics for 2012 confirm, once again, that the most common source of complaints 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 COMPLAINT

Nature of Complaint	# Complaint	Percent
General Information Inquiry	276	13.90
Legal Advice	212	10.67
Communication	173	8.71
General Client Assistance	128	6.45
Competence and Diligence	126	6.34
Quality of Services	125	6.29
Dishonesty and Misrepresentation	122	6.14

Return Client File	104	5.24
Malpractice	81	4.08
Improper Conduct by Prosecutor	60	3.02
Neglect	49	2.47
Fee Dispute-Excessive Fee	46	2.32
Former Client Conflict	33	1.66
Outside Legal Bounds	33	1.66
Improper Withdrawal	32	1.61
Current Client Conflict	29	1.46
Preserving Client Funds/Property	24	1.21
Judicial Fitness Commission	23	1.16
Contact with a Represented Party	20	1.01
Self-Interest Conflict	18	0.91
Rude Behavior	16	0.81
Conduct Prejudicial to Administration	15	0.76
Disclosing Confidences/Secrets	14	0.70
Criminal Conduct	11	0.55
Unlawful Practice of Law	7	0.35
Threatening Criminal Charges	6	0.30
Provide Accounting	6	0.30
Lawyer Debts	5	0.25
Ex Parte Communication	4	0.20

This table shows that approximately 20% of the complaints 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 concern. 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 complaints 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 concerns 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 2012, 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#	Complaints	Percent
Criminal	561	32.98
Domestic Relations	271	15.93
Civil Dispute	127	7.47
Other	118	6.94
Unknown	111	6.53
Personal Injury	90	5.29
Litigation	85	5.00
Probate	45	2.65
Debt Collection	38	2.23
Bankruptcy	37	2.18
Real Estate	26	1.53
Juvenile	24	1.41
Immigration	24	1.41
Social Security	23	1.35
Estate Planning	22	1.29
Landlord/Tenant	18	1.06
Business	14	0.82
Conservatorship	11	0.65
Guardianship	11	0.65
Adoption	8	0.47
Tax	7	0.41
Workers Compensation	6	0.35
Elder Law	6	0.35
Land Use	5	0.29
Arbitration	3	0.18

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 complaints were related to criminal matters. In 2012, that number was 561 or 32.98% of all complaints 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 2012, 271 or 15.93% of the complaints arose from domestic relations matters. In 2011, 263 or 15.65% of the complaints arose from domestic relations matters. Criminal matters and domestic relations matters account for 48.91% or just fewer than half the complaints received.

Table 4: SIZE OF FIRM

Firm Size	#Complaints	Percent
Solo	1403	70.64
2-5	284	14.30

6-10	98	4.93
11-25	96	4.83
26-100	97	4.88
>100	8	0.40

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 complaints made to CAO. Table 4 shows that 70.64% of the complaints that reflect firm size were directed at solo practitioners. Another 284 complaints or 14.30% 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 2013. 2011 was 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. However, those two categories flipped again in 2012.

Table 5: DISPOSITION (RESULT)

Disposition Result	#Complaints	Percent
Dismissed	1090	54.88
Information Provided	469	23.62
Referred to Discipline	245	12.34
Resolved by CAO	91	4.58
Referred to RIS	12	0.60
Referred to Other	9	0.45
Advised to File Complaint	9	0.45
Referred to UPL	7	0.35
Referred to OPDS	4	0.20
Referred to PLF	4	0.20
Referred to Public Records	1	0.05
Referred to Client Security Fund	1	0.05

This table shows that a significant number of complaints received by CAO are being resolved without referral to DCO. However, as of December 31, 2012, 245 (12.34% of all matters) cases had been referred to DCO for further investigation based on a finding of sufficient evidence. This is a decrease of about 15 cases from 2011, but is essentially the same percentage (13.28% in 2011/12.34% in 2012). These statistics will be compared with those maintained by DCO reflecting disposi-

tion 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 staff to choose on option.

Of the 1090 matters dismissed by CAO, 165 were appealed by the complaining party. 153 (92.73%) were affirmed by General Counsel. Twelve matters were reversed on appeal and referred to Disciplinary Counsel’s Office. Of those twelve matters six are still pending in Disciplinary Counsel’s Office, five have been dismissed and one resulted in an admonition.

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 18 lawyers on the list who have volunteered to consult. CAO advises the referred lawyer about the service. In 2012 Member Services received 21 requests for the list from lawyers whose matters had been referred to Discipline. There were 34 requests in 2011. The Oregon Attorney Assistance Program also refers lawyers to that list, but does not share the details of referrals.

Table 6: DISPOSITION (TIME)

Disposition Time	#Complaints	Percent Av.	# Days
Same Day	386	19.88	0
1-2 Days	239	12.31	2
3-6 Days	390	20.08	4
1-2 Weeks	187	9.63	9
<1 Month	116	5.97	22
31-61 Days	183	9.42	46
< 6 months	406	20.91	104
Over 6 months	30	1.54	226

Av. #Days: 33

Statistics for 2012 continue to show that CAO staff is promptly resolving most matters. Nearly 20 percent were resolved the same day, which is slightly better than last year. 12.31 percent were resolved within one to two days, and an additional 20.08 were resolved in less than two weeks. The average disposition time was 33 days, which is just significantly better than 2011 (48 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 complaint to the extent possible and as bar resources permit.

For instance, CAO still experiences numerous complaints 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. CAO revised one of our template letters to streamline our efforts to resolve client file concerns.

As noted in prior reports, CAO receives many complaints 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.

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 complaints 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 2013. 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 IT 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 to investigate whether that system may meet our needs.

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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