

Oregon State Bar

2013

Annual Report

Client Assistance Office

January 1, 2013 to December 31, 2013
Report to the Oregon Supreme Court

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2013 Annual Report of the Oregon State Bar Client Assistance Office

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I. INTRODUCTION

This report is the eleventh review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2013, through December 31, 2013. Since August 1, 2003, all inquiries and complaints about members of the Oregon State Bar have been initially screened by CAO. Complaints and inquiries are essentially synonymous terms. CAO accepts inquiries in writing, by telephone, e-mail, fax, or in person. (BR 2.5(a)). However, CAO requests that any complaint 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 approximately 1,788 matters handled by CAO, approximately 1,557 were specific inquiries and 198 were what are characterized as General Information Inquiries (GII) that did not require active intervention or assistance of CAO staff. The balance was uncategorized. In an effort to conserve resources, many short calls are not reported by staff so this report does not accurately account for GII calls. The vast majority of these calls involve questions about whether callers concerns amount to a bar complaint, or referring the client to other resources both inside and outside the bar. It would be an inefficient use of personnel's time to record each of these calls; however, it does lead to a discrepancy between the actual use of the CAO by the general public and that which can be accounted for in this annual report.

CAO staff disposed of about 1,756 documented matters in 2013. Consistent with past history, a majority of complaints, 1008 (57.40%) were sent by mail. However, CAO's efforts to increase paperless filings achieved a milestone in 2013, in that electronic inquiries surpassed telephonic inquiries for the first time. In this reporting period, there were 401 email inquiries, making up 22.84% of all inquiries for the year; whereas, telephone inquiries accounted for 242 or 13.78%. As CAO continues to update its paperless processes, and make electronic complaint forms more user friendly, we expect this trend to continue to grow. As previously mentioned, these numbers do not accurately reflect the number of GII calls, and are not meant to diminish the importance of telephone access to the CAO by the general public. Other complaints came from third parties or were generated internally and came by fax or presented in person.

II. CAO STAFF 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. CAO's founding manager, Chris Mullmann, retired on October 1, 2013. Scott Morrill was promoted to CAO's managing attorney on this same date. We still require three lawyers to efficiently process all of CAO's functions, and just recently hired Stacy Owen who started March 24, 2014.

A significant amount of both lawyer and administrative time is spent responding to telephone inquiries concerning attorney conduct, reviewing written complaints and resolving minor issues. If intake staff cannot resolve an issue, it is referred 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 provide ethics advice to attorneys, write Bar Counsel articles and present at CLE's throughout the year.

All matters submitted 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 concerns that implicate the Oregon RPC's, staff requires that the complaint 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 attorneys conduct a preliminary review and investigation of written complaints 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 2013, 237 complaints were referred to DCO by CAO for further investigation, in 2012, 245 complaints were referred to DCO, in 2011, 260 complaints were referred to DCO, in 2010, 242 complaints were referred to DCO, and in 2009, 273 complaints were referred to DCO. While the total number referred in 2013 may be the smallest amount in the past five years, it also represents the largest percentage (13.50%) referred in that same time. This is explained by the smaller amount of total complaints for the year. CAO believes that the telephone activity of staff has lead to a better educated public and members, which leads to fewer meritless complaints.

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 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/mediation 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 2013, 194 appeals were affirmed by General Counsel, which amounts to 94.17% of all appeals. This would suggest that CAO lawyers are making the correct decisions in most matters. For comparison: In 2012, 153 appeals (92.73%) were affirmed; in 2011, 217 appeals (94.35%) were affirmed; in 2010, 123 appeals (96%) were affirmed; and in 2009, 226 appeals (96%) were affirmed.

Experience gained over the past eleven 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 an 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, 2013, and December 31, 2013, there were about 1,788 complaints made to CAO. The average time a complaint was pending was 38 days (see Table 6). Approximately 11.63% were resolved or dismissed on the initial day of intake. In 2013, information was provided in 276 (15.72%) of these matters.

While these statistics show less efficiency than in 2012 and 2011, they reflect CAO being one staff member short for over one-third of the year.

V. CAO STATISTICAL INFORMATION

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

Source of Complaint	# Complaints	Percent
Client	840	47.84%
Opposing Party	316	18.00%
Third Party	214	12.19%
Unknown/Unclassified	191	10.88%
Opposing Counsel	71	4.04%
General Inquiry	54	3.08%
Self	35	1.99%
Judge	21	1.20%
CAO	10	0.57%
General Client Assistance	3	0.17%

CAO statistics for 2013 confirm 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
Legal Advice	192	10.93%
Competence and Diligence	182	10.36%
Communication	175	9.97%
General Information Inquiry	142	8.09%
Dishonesty and Misrepresentation	137	7.80%
Quality of Service	90	5.13%
Return Client File	79	4.50%
Neglect of a Legal Matter	74	4.21%
Fee Dispute - Excessive Fee	74	4.21%
Outside of the Legal Bounds	67	3.82%
General Client Assistance	56	3.19%
Conduct Prejudicial to Justice	54	3.08%
Other/Miscellaneous	53	3.02%
Improper Conduct of a Prosecutor	48	2.73%
Malpractice	39	2.22%
Improper Withdrawal	30	1.71%
Unclassified	25	1.42%
Client Conflict - Current	23	1.31%
Client Conflict - Former	22	1.25%
Criminal Conduct	21	1.20%
Disclosing Confidences/Secrets	20	1.14%
Conflict - Self-Interest	19	1.08%
Preserving Client Funds/Property	17	0.97%
Fee/Retainer Inquiry	16	0.91%
Contact with Represented Party	15	0.85%
Rude Behavior	14	0.80%
Ex Parte Communication	13	0.74%
Judicial Fitness Commission	13	0.74%
Provide Accounting	10	0.57%
Trial Conduct	6	0.34%

This table shows that approximately 29.66% of the complaints received pertain to issues involving 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 complaint. 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 (over 10%) regarding legal fees charged by lawyers and client property held by lawyers. Many fee related complaints are referred to

the bar's fee arbitration/mediation program. CAO lawyers continue to emphasize fee and client property issues at CLE's.

Table 3: TYPE OF MATTER

Type of Matter	# Complaints	Percent
Criminal	564	36.22%
Domestic Relations	232	14.90%
Civil Dispute	228	14.64%
Unknown	84	5.39%
Other	52	3.34%
Probate	49	3.15%
Debt Collection	47	3.02%
Litigation	39	2.50%
Personal Injury	39	2.50%
Juvenile	26	1.67%
Landlord/Tenant	24	1.54%
Social Security	20	1.28%
Estate Planning	18	1.16%
Conservatorship	18	1.16%
Workers Compensation	16	1.03%
Labor	15	0.96%
Bankruptcy	15	0.96%
Real Estate	12	0.77%
Immigration	11	0.71%
Elder Law	8	0.51%
Advertising	7	0.45%
Guardianship	7	0.45%
Land Use	7	0.45%
Business	5	0.32%
Adoption	4	0.26%
Tax	4	0.26%
Arbitration	3	0.19%
Trust Account	2	0.13%
Paternity	1	0.06%

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. The CAO manager is scheduled to meet with OPDS staff in early 2014 to discuss common concerns.

In 2004, the first full year of operation, 893 or 25.62% of all complaints were related to criminal matters. In 2006, that number was 708 or 32.85% of all complaints involved criminal matters. In 2013, that number was 564 or 36.22% 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 2013, 232 or 14.90% of all complaints were from this practice area. Criminal matters and domestic relations matters account for over half of all complaints received.

Table 4: SIZE OF FIRM

Firm Size	# Complaints	Percent
Solo	1221	69.53%
2-5	257	14.64%
6-10	98	5.58%
11-25	98	5.58%
26-100	76	4.33%
> 100	6	0.34%

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 69.53% of the complaints were directed at solo practitioners. Another 14.64% 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 should be developed just for such practitioners. CAO has met with the Executive Committee of the Solo and Small Firm Practitioners Section of the bar in the past to discuss CAO operations. CAO remains available to discuss matters of particular interest to this group during 2014.

Table 5: DISPOSITION (RESULT)

Disposition Result	# Complaints	Percent
Dismissed	1123	63.95%
Information Provided	276	15.72%
Referred to Discipline	237	13.50%
Resolved by CAO	98	5.58%
Referred to RIS	20	1.14%
Diversion Referral	10	0.57%
Referred to Other	9	0.51%
Advised to File Complaint	6	0.34%
Referred to Fee Arbitration	6	0.34%
Referred to OPDS	5	0.28%
Referred to PLF	4	0.23%
Referred to UPL	2	0.11%
Referred to CSF	1	0.06%
Referred to OAAP	1	0.06%

This table shows that a significant number of complaints received by CAO are being resolved without referral to

DCO. However, as of December 31, 2013, 237 (13.50% of all complaints) cases had been referred to DCO for further investigation based on a finding of sufficient evidence. 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)

Disposition Time	# Complaints	Percent Av.	# Days
Same Day	208	11.63%	0
1-2 Days	296	16.55%	2
3-6 Days	336	18.79%	4
1-2 Weeks	143	8.00%	9
< 1 Month	114	6.38%	23
31-61 Days	241	13.48%	47
< 6 months	409	22.87	97
Over 6 months	37	2.07%	311

Average: 38 days

Statistics for 2013 continue to show that CAO staff is promptly resolving most matters. 11.63 percent were resolved the same day. While this is lower than last year, CAO staff believes that part of the change is due to lack of statistics kept for most GII and fewer staff. By combining statistics, we discover that over 55% of all CAO complaints were resolved in less than two weeks. The average disposition time was 38 days, which is a slightly longer average than in 2012 (33 days); however, CAO believes that this response time will improve once we are fully staffed again.

In cases where CAO requests a written response from a lawyer, the disposition time can increase significantly. The time devoted to any single complaint 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 complaints, freeing DCO staff to focus on investigating more serious matters as well as 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. Again, these undocumented calls have an impact on all CAO statistics, as they divert staff's attention from documented matters.

VI. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

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. Our disciplinary model is based upon misconduct already having occurred; but in many cases CAO can intervene and resolve the issue before the threshold of misconduct is crossed. Many times this may involve just pointing out the applicable ethical rule to the lawyer. In other cases, it may involve helping the client understand that their expectations are beyond industry standards.

For instance, CAO received 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.

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 feedback from clients and members is almost universally positive. Again, the number of these efforts is not adequately reflected in CAO's statistics, as staff members do not have the time to enter all of these inquiries 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 steps 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 complaint. 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 2014. 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 will work with the bar’s information technology and other departments in developing this system. We recognize that this process may still take several more years.

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 2014 is to continue to expand our resolution capacities and offerings to lawyers and members of the public alike. Part of the goal of this expansion is to help members resolve ethical issues before they become disciplinary issues.

The idea that CAO might better deal with minor or correctible ethics concerns was raised in 2013. CAO believes shifting some authority to CAO to deal with minor matters, freeing DCO to deal with serious matters, is an efficient use of bar resources. CAO stands ready to participate in that discussion

Respectfully submitted,

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