

Oregon State Bar

2016

Annual Report

Client Assistance Office

January 1, 2016 to December 31, 2016
Report to the Oregon Supreme Court

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2016 Annual Report of the Oregon State Bar Client Assistance Office

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I. OVERVIEW

Beginning August 1, 2003, the Client Assistance Office (CAO) has conducted the initial review of all concerns raised about members of the Oregon State Bar (Bar). This report is the fourteenth review of the operations of the CAO and covers those operations from January 1, 2016, through December 31, 2016. During that period, CAO logged 2,027 matters. Hundreds of additional callers received assistance that was not formally logged. Consistent with prior years, clients submitted the largest number of complaints. The most common complaints involved concerns that a lawyer was not communicating or acting diligently. Most complaints arose from criminal or family law matters.

CAO resolved 1,938 logged matters in 2016, referring 283 to Disciplinary Counsel for further evaluation and dismissing 1,180. In the remaining matters, CAO provided information, referred the contact to an appropriate program, or assisted the parties to resolve the concerns raised.

When CAO dismisses a complaint, it provides the complainant with a written explanation of the basis for the dismissal and notifies the complainant of the ability to request review by the Bar's General Counsel. In most cases, complainants did not request review. In 2016, about 98% of the CAO dismissals reviewed by General Counsel were affirmed.

II. CAO OPERATION IN 2016

The Supreme Court established CAO in 2003 as an office separate from the Bar's Disciplinary Counsel. CAO reports to the Bar's General Counsel. In 2016, CAO consisted for most of the year of three staff attorneys and two non-attorney support staff. One CAO attorney transferred to Disciplinary Counsel's Office, resulting in a period of reduced staffing until that attorney was replaced. One CAO staff attorney also serves as CAO manager.

Pursuant to BR 2.5(a), to the extent possible and as 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 form), in order to accurately document the complainant's concerns and give the responding lawyer adequate notice of them. CAO provides reasonable

accommodation to those who are unable to communicate in writing.

CAO logs all written inquiries and complaints into an electronic database. CAO typically handles ten to thirty telephone calls from the public each day. A great number of these telephone calls are not logged due to the volume of contacts and limited staff resources, even though the callers receive substantive assistance of the type described below. Inquiries and complaints logged into the database are assigned matter numbers. In 2016, CAO logged 2,027 matters. 564 of the matters were classified as Inquiries; approximately 244 of those were logged matters handled by telephone.

Attorney and non-attorney staff handle inquiries and unlogged telephone calls by providing 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 assistance to the inquirer.

The remaining 1,463 new matters required 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 CAO provides all information submitted by each party to a complaint 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

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).

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. In 2016, CAO resolved more than 56% of logged matters within 30 days or less. Almost 95% were resolved within 180 days. (Table 6.)

In 2016, CAO referred 283 matters to Disciplinary Counsel for further evaluation. (Table 5.) Although BR 2.5 does not require it, when a complaint is referred to Disciplinary Counsel, CAO provides the complainant and subject attorney with written notice of the referral. A confidential memo regarding the basis for the referral is transmitted to Disciplinary Counsel with the file.

In 2016, CAO dismissed 1,180 complaints, with a written explanation to the complainant and the subject attorney. (Table 5.) The explanation included information about the ability to request review of the dismissal by General Counsel.

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 2016, more than 98% of CAO dismissals were affirmed on review.

To help ensure consistency and quality of review, CAO staff meets on a weekly basis to review cases and procedures. CAO staff lawyers also contribute to the Bar's efforts to assist lawyers to meet their professional responsibilities by contributing to bar publications, speaking at continuing education presentations and responding to General Counsel Ethics Helpline calls.

III. CAO STATISTICAL INFORMATION

Between January 1, 2016, and December 31, 2016, CAO kept statistics regarding the following aspects of matters received.

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

Table 1: SOURCE OF COMPLAINT OR INQUIRY

Source of Complaint or Inquiry	Number	Percent
Client	898	46.22%
Opposing Party	366	18.84%
General Assistance/Unknown	347	17.87%
Third Party	265	13.64%
Opposing Counsel	54	2.78%
Judge	5	0.26%
Self	4	0.21%
CAO	3	0.15%
DCO	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 2: PRIMARY SUBJECT OF COMPLAINT OR INQUIRY

Primary Subject of Complaint or Inquiry	Number	Percent
Competence or Diligence	256	13.19%
General Information Inquiry	229	11.79%
Communication	214	11.02%
Dishonesty or Misrepresentation	201	10.35%
Other/Miscellaneous	109	5.61%
General Client Assistance	99	5.10%
Outside of Legal Bounds	94	4.84%
Fee Dispute – Excessive/Illegal Fees	92	4.74%
Return Client File	86	4.43%
Improper Conduct of a Prosecutor	78	4.02%
Conduct Prejudicial to Justice	59	3.04%
Preserving/Accounting for Funds/ _Property	54	2.78%
Improper Withdrawal	43	2.21%
Malpractice	41	2.11%
Client Conflict – Current	29	1.49%

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

Primary Subject of Complaint or Inquiry	Number	Percent
Disclosing Confidences/Secrets	29	1.49%
Client Conflict – Former	28	1.44%
Rude Behavior	27	1.39%
Legal Advice	25	1.29%
Judicial Fitness Commission	23	1.18%
Quality of Services	21	1.08%
Criminal Conduct	18	0.93%
Unauthorized Practice of Law	18	0.93%
Contact with Represented Party	15	0.77%
Ex Parte Communication	6	0.31%
Improperly Threatening		
Criminal Prosecution	6	0.31%
Trial Conduct	6	0.31%
Conflict – Self-Interest	4	0.21%
Failure to Cooperate with OSB	4	0.21%
Lawyer Debts	4	0.21%
Sexual Relations with a Client	3	0.15%
Business Relationship with Client	2	0.10%
Problem Re Firm Names/Letterhead	2	0.10%
False or Misleading Advertising	1	0.05%

CAO statistics show year after year that criminal law practice is most likely to generate a complaint, with domestic relations as 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 3: TYPE OF MATTER GIVING RISE TO THE COMPLAINT OR INQUIRY

Type of Matter	Number	Percent
Criminal	677	38.21%
Domestic Relations	259	14.62%
Litigation	110	6.21%
Civil Dispute	109	6.15%
Personal Injury	73	4.12%
Probate	59	3.33%
Landlord/Tenant	42	2.37%
Estate Planning	38	2.14%
Debt Collection	31	1.75%
Real Estate	31	1.75%
Business	30	1.69%
Bankruptcy	26	1.47%
Guardianship/Conservatorship	21	1.19%
Workers Compensation	21	1.19%
Immigration	17	0.96%

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

Type of Matter	Number	Percent
Juvenile	17	0.96%
Social Security	13	0.73%
Arbitration	11	0.62%
Elder Law	8	0.45%
Land Use	5	0.28%
Labor	4	0.23%
Adoption	3	0.17%
Advertising	2	0.11%
Tax	2	0.11%
Other or Unknown	162	9.15%

The Bar's Board of Governors asked 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 received by CAO. (Table 4.) The statistics show that just over 67% of complaints concerned solo practitioners, who make up about 55% of the active membership. Firms with 2-5 lawyers receive a proportion of complaints roughly in accord with their share of the membership. Larger firms receive a diminishing proportion of complaints relative to their representation in the active membership.

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

Firm Size	Percent of Active Oregon Members²	Number of Complaints	Percent of Complaints
Solo	54.9%	1306	67.25%
2-5	14.5%	262	13.49%
6-10	8.9%	135	6.95%
11-25	11.2%	124	6.39%
26-100	8.9%	114	5.87%
> 100	1.7%	1	0.05%

The number of dispositions was significantly higher in 2016 than 2015, with over 200 more dispositions recorded. Not only did CAO resolve more cases, but more of these resolutions required a determination on the merits of a complaint, reflected in an increased proportion of dismissals and referrals to Disciplinary Counsel over 2015. As in prior years, most inquiries and complaints were resolved without

² Using July 2017 membership data.

referral to Disciplinary Counsel. (Table 5.) All dispositions may be accompanied by referrals to other appropriate bar services or public bodies. Referrals are separately recorded only where referral was the sole element of the disposition.

Table 5: DISPOSITION OF COMPLAINT OR INQUIRY (RESULT)

Disposition	Number	Percent
Dismissed	1180	60.9%
Information Provided	412	21.3%
Referred to Disciplinary Counsel	283	14.6%
Resolved by CAO	27	1.4%
Advised to File OSB Complaint	15	0.8%
Referred to Unlawful Practice of Law Committee Only	5	0.3%
Referred to OSB Lawyer Referral Service Only	4	0.2%
Referred to Professional Liability Fund Only	4	0.2%
Referred to Fee Arbitration Only	4	0.2%
Referred to Client Security Fund Only	1	0.05%
Referred to Oregon Public Defense Services Only	1	0.05%

Statistics for 2016 show that CAO staff promptly resolved most matters. (Table 6.) About 38% of inquiries and complaints are disposed of within two weeks and over 50% within 30 days. While the speed of dispositions is reduced from 2015, as noted above, significantly more matters were both received and resolved. Few matters remain unresolved after 180 days. 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.

In cases where, after reviewing an inquiry or complaint, CAO requests additional information from the complainant or a written response from a lawyer, the disposition time increases significantly. In most instances, the complainant or lawyer is given 21 days to respond. Further correspondence sometimes 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.

By conducting this review process, CAO serves several valuable purposes. First, it obtains for the complainant a response to the complainant's concerns about a subject lawyer's conduct, while at the same time affording the subject lawyer a forum to respond. Second, it weeds out complaints that are not supported by sufficient evidence of possible misconduct.

Finally, it performs 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).

Table 6: DISPOSITION (TIME)

Disposition Time	Number	Percent	Avg. Time (Days)
Same Day	275	14.2%	0
1-2 Days	163	8.4%	2
3-6 Days	310	16.0%	5
7-14 Days	229	11.8%	9
15-30 Days	114	5.9%	23
31-60 Days	212	10.9%	44
61-180 Days	505	26.1%	111
Over 6 months	126	6.5%	254

Average: 54 days

IV. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

CAO staff may, with the permission of the person who has contacted the bar, attempt to resolve the concerns raised. CAO intervention can help 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 encouraging a lawyer to be mindful of complying with them. The most frequent examples of CAO success involve addressing lawyer-client communication and client property issues. CAO may also refer lawyers to OAAP, PLF or other resources that can assist to mitigate or avoid misconduct. CAO also attempts to early identify and refer to Disciplinary Counsel those instances where information from multiple complainants suggests a lawyer may be engaged in widespread or grave misconduct that requires quick attention to avoid further harm. Finally, as assistants to the Bar's General Counsel, 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.

V. CONCLUSION

The CAO program is working to quickly assess whether disciplinary investigation is warranted. CAO performs a valuable function in quickly responding to public questions and concerns and preserving disciplinary resources for appropriate matters. CAO staff will continue to monitor program measures and outcomes and seek improvements.

Respectfully submitted,

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