

Oregon State Bar

2017

Annual Report

Client Assistance Office

January 1, 2017 to December 31, 2017
Report to the Oregon Supreme Court

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I. OVERVIEW

For the last fourteen years, the Oregon State Bar Client Assistance Office (CAO) has conducted the initial review of all inquiries about the conduct of lawyers in Oregon. This report covers the operations of the CAO from January 1, 2017, through December 31, 2017. During that period, CAO logged 2,046 matters. Hundreds more received telephone assistance that was not formally logged. Consistent with prior years, most inquiries came from clients. The most common subjects involved concerns about a lawyer's honesty, level of communication or competence.

CAO resolved 1,942 logged matters in 2017. About 52% were dismissed for lack of sufficient evidence to support a referral to Disciplinary Counsel. About 14% were referred to Disciplinary Counsel for further evaluation. In the remaining matters, CAO provided information to inquirers, referred inquirers to appropriate resources, or assisted inquirers to resolve the concerns that had prompted the inquiry.

When an inquiry is dismissed for lack of evidence, CAO provides the inquirer with a written explanation for the disposition and inquirers are notified of the ability to request review by the bar's General Counsel. In most cases, inquirers did not request review. In 2017, over 96% of the CAO dismissals reviewed by General Counsel were affirmed.

II. CAO OPERATION IN 2017

CAO is established as an office separate from the bar's Disciplinary Counsel and reports to the bar's General Counsel. In most of 2017, CAO consisted of three staff attorneys and two non-attorney support staff. One CAO staff attorney also serves as CAO manager. As a result of the transfer of one of the attorneys to another department of the bar, CAO was staffed for a period of four months by only two attorneys with some part time assistance until a new lawyer was hired.

Pursuant to BR 2.5(a), to the extent possible and resources permit, CAO responds to all inquiries and complaints from the public concerning the conduct of attorneys. CAO accepts inquiries 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 inquirer's concerns and give the responding lawyer adequate notice of them. CAO provides reasonable accommodation to people who are unable to communicate in writing and works with the bar's ADA Coordinator to accommodate persons with disabilities.

CAO logs all written inquiries and complaints into an electronic database. Many telephone inquiries that require written follow-up by CAO are also logged. Inquiries and complaints logged into the database are assigned matter numbers. In 2017, CAO logged 2,046 matters. CAO also handles about ten to thirty telephone calls from the public each day. Even though callers receive assistance described below, the great majority of calls are not logged due to the volume of calls and limited staff resources. In 2017, approximately 599 matters were classified as inquiries; 311 of those were telephone contacts.

Attorney and non-attorney staff handle inquiries and other unlogged telephone contacts by providing information to assist the public to resolve concerns about legal services. Inquiries typically do not require active intervention or further assistance from CAO after the initial response. 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 representation; (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. When possible, CAO staff refers inquirers to resources within or outside the bar that might be able to offer assistance.

The remaining matters required active assistance by CAO attorneys to resolve or investigate as 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 substantive 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 "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).

- (1) If CAO determines that, even if true, a complaint does not allege misconduct, the complaint is dismissed with 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.

In 2017, CAO disposed of about 1,274 complaints on the merits: 1,007 were dismissed and 267 referred to Disciplinary Counsel for further consideration. (Table 5). For purpose of comparison, over the last ten years annual referrals to Disciplinary Counsel have ranged from 206 (in 2015) to 283 (2016). The average over the last ten years is 251.

When a complaint is referred to Disciplinary Counsel, CAO provides the complainant and respondent attorney with written notice of the referral. A confidential memo regarding the basis for the referral is transmitted to Disciplinary Counsel with the file. When a complaint is dismissed, a written explanation is provided to the complainant and subject attorney. The explanation advises the complainant that the complainant may request review of the dismissal by General Counsel.

CAO continues to speedily and accurately resolve inquiries and complaints. In 2017, CAO resolved about 54% of logged matters within 30 days or less. Almost 92% were resolved within 180 days. (Table 6.) To help ensure consistency and quality of review, CAO staff meets on a weekly basis to review cases and procedures.

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, over 96% of CAO dismissals were affirmed on review.

In addition to evaluating complaints and assisting other inquirers, CAO staff lawyers contribute to the Bar's efforts to assist lawyers to meet their professional responsibilities by contributing to bar publications, speaking at continuing legal education presentations and responding to OSB Legal Ethics Helpline calls.

III. CAO STATISTICAL INFORMATION

Between January 1, 2017, and December 31, 2017, 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	861	43.9%
Opposing Party	368	18.8%
General Assistance	242	12.4%
Third Party	218	11.1%
Unknown	184	9.4%
Opposing Counsel	72	3.7%
Judge	8	0.4%
Self	3	0.1%
CAO	3	0.1%

Most matters concerned a perceived lack of adequate competence, diligence, or communication. (Table 2).

Table 2: PRIMARY SUBJECT OF COMPLAINT OR INQUIRY

Primary Subject of Complaint or Inquiry	Number	Percent
Competence or Diligence	309	15.8%
Dishonesty or Misrepresentation	195	9.9%
Communication	186	9.5%
General Information Inquiry	185	9.4%
Other/Miscellaneous	116	5.9%
Fee Dispute – Excessive/Illegal Fees	100	5.1%
Conduct Prejudicial to Justice	98	5.0%
General Client Assistance	86	4.4%
Return Client File	76	3.9%
Improper Conduct of a Prosecutor	72	3.7%
Preserving/Accounting for Funds/Property	67	3.4%
Outside of Legal Bounds	55	2.8%
Quality of Services	49	2.5%
Client Conflict – Current	43	2.2%
Legal Advice	41	2.1%
Improper Withdrawal	34	1.7%
Malpractice	34	1.7%
Rude Behavior	27	1.4%
Client Conflict – Former	23	1.2%

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

Primary Subject of Complaint or Inquiry	Number	Percent
Unauthorized Practice of Law	22	1.1%
Disclosing Confidences/Secrets	20	1.0%
Contact with Represented Party	18	0.9%
Criminal Conduct	18	0.9%
Conflict – Self-Interest	17	0.9%
Judicial Fitness Commission	15	0.8%
Improperly Threatening		
Criminal Prosecution	9	0.5%
Sexual Relations with a Client	7	0.4%
Lawyer Debts	6	0.3%
Ex Parte Communication	5	0.3%
False or Misleading Advertising	5	0.3%
Trial Conduct	3	0.2%
Business Relationship with Client	1	.05%
Conflict – Lawyer as Witness	1	.05%
Failure to Cooperate with OSB	1	.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 almost 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	583	32.8%
Domestic Relations	291	16.4%
Civil Dispute	128	7.2%
Litigation	99	5.6%
Personal Injury	81	4.6%
Probate	80	4.5%
Landlord/Tenant	45	2.5%
Real Estate	36	2.0%
Estate Planning	34	1.9%
Juvenile	25	1.4%
Business	24	1.4%
Guardianship/Conservatorship	23	1.3%
Elder Law	19	1.1%
Immigration	19	1.1%
Debt Collection	17	1.0%
Labor	17	1.0%

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

Type of Matter	Number	Percent
Bankruptcy	16	0.9%
Social Security	16	0.9%
Workers Compensation	13	0.7%
Adoption	5	0.3%
Trust Account	5	0.3%
Land Use	4	0.2%
Arbitration	3	0.2%
Advertising	2	0.1%
Tax	2	0.1%
Other/Unknown	191	10.7%

The bar's Board of Governors asked the 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 for 2017 show that just over 72% of complaints concerned solo practitioners, a slight but potentially significant increase over prior years, which ranged around 68%. 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 Members	Number of Complaints and Inquiries	Number of Complaints and Inquiries
Solo	55.0%	1418	72.4%
2-5	14.8%	249	12.7%
6-10	8.9%	112	5.7%
11-25	10.4%	94	4.8%
26-100	9.2%	83	4.2%
> 100	1.7%	3	0.1%

The number of total dispositions (1,939) was about the same as in 2016 (1,938). As in prior years, most matters were resolved without referral to Disciplinary Counsel. (Table 5.) Any disposition 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. CAO assisted in more matters than in prior years, which may account for the reduced number of dismissals, even though the total number of dispositions is nearly identical.

Table 5: DISPOSITION OF COMPLAINT OR INQUIRY (RESULT)

Disposition	Number	Percent
Dismissed	1020	52.1%
Information Provided	470	23.9%
Referred to Disciplinary Counsel	267	13.6%
Resolved by CAO	87	4.4%
Advised to File OSB Complaint	41	2.1%
Referred to OSB Lawyer Referral Service Only	23	1.2%
Referred to Other	11	0.6%
Referred to Fee Arbitration Only	10	0.5%
Referred to Professional Liability Fund Only	5	0.3%
Referred to Client Security Fund Only	2	0.1%
Referred to OAAP Only	1	.05%
Referred to Public Records Coordinator Only	1	.05%
Referred to Unlawful Practice of Law Committee Only	1	.05%

Statistics for 2017 show that CAO staff promptly resolved most matters. (Table 6.) About 46% of inquiries and complaints were disposed of within two weeks and over 50% within 30 days. 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 and responding lawyer are given 21 days to respond to any request for information. CAO generally grants extensions when complainants or respondents seek additional time to respond or provide evidence. Further correspondence sometimes follows as the parties provide additional information or CAO attempts to collect the specific information that might help determine whether a referral to Disciplinary Counsel is warranted. While on average CAO is fairly expedient, disposition times are higher when matters are complex, vigorously contested or involve large amounts of information. Even complaints that are fairly straightforward can be delayed by the volume of matters or staffing issues.

CAO's initial review of complaints serves valuable purposes. By dismissing complaints that are not supported by sufficient evidence of misconduct, it enables Disciplinary Counsel to focus resources on those matters where misconduct may have occurred. CAO review also ensures that public concerns about lawyers are heard and considered. Complainants are able to obtain a response to concerns about a lawyer's conduct and respondent lawyers are afforded a forum to respond.

Relatively few matters remain unresolved after 180 days. The average disposition time for all matters was 66 days. While the average speed of dispositions was slower than in prior years,

as the current staff gains experience and has the opportunity to regain ground lost during changes in personnel over the preceding years, we expect that number to approach prior norms.

Table 6: DISPOSITION (TIME)

Disposition Time	Number	Percent	Avg. Time (Days)
Same Day	322	16.6%	0
1-2 Days	113	5.8%	2
3-6 Days	212	10.9%	4
7-14 Days	246	12.7%	10
15-30 Days	152	7.8%	22
31-60 Days	178	9.2%	44
61-180 Days	546	28.1%	125
Over 6 months	171	8.8%	266

Average: 66 days

IV. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

CAO staff may, with the permission of the person who has contacted the bar with concerns, 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. For instance, it is not uncommon for CAO to help a client who needs a copy of their file from a former lawyer. CAO contacts the lawyer, provides background on the lawyer’s ethical obligations, and seeks the lawyer’s response.

At times, CAO staff refers lawyers to OAAP, PLF or other resources that can assist to mitigate or avoid misconduct. CAO staff also seeks to early on 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 noted above, CAO lawyers

assist General Counsel to handle hundreds of calls each year from lawyers seeking advice to comply with their ethical obligations. Those ethics advice calls are not included within the statistics compiled for this report.

V. CONCLUSION

The CAO program is working to quickly assess in most cases 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 continued improvements.

Respectfully submitted,

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