

Oregon State Bar

2018

Annual Report

Client Assistance Office

January 1, 2018 to December 31, 2018
Report to the Oregon Supreme Court

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2018 Annual Report of the Oregon State Bar Client Assistance Office

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I. OVERVIEW

This report covers the operations of the Oregon State Bar Client Assistance Office (CAO) from January 1, 2018, through December 31, 2018. During that period, CAO logged 1,968 inquiries. Hundreds more members of the public received telephone assistance that was not formally logged. Consistent with prior years, most inquiries came from clients. The most common subjects were concerns about a lawyer's competence, diligence, honesty or level of communication.

CAO's review of inquiries serves the purposes of providing information and a response to the public, and permitting the Bar's Disciplinary Counsel to focus investigation and prosecution resources where they are needed. CAO resolved 1,947 logged inquiries in 2018. About 56% were dismissed for lack of sufficient evidence to support a referral to Disciplinary Counsel. About 13% 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 an inquiry.

CAO provides inquirers with a written explanation for dismissals and notifies inquirers of the ability to request review by Oregon State Bar General Counsel. Most inquirers did not request review. In 2018, over 98% of CAO dismissals reviewed by General Counsel were affirmed.

II. CAO OPERATION IN 2018

CAO is established as an office separate from the Bar's Disciplinary Counsel and reports to the Bar's General Counsel. CAO began 2018 staffed by three full time lawyers and two full time non-lawyer support staff, with one of the lawyers serving as manager. After the departure of one lawyer for another state, a part time lawyer was hired to assist the remaining staff. A third full time lawyer was hired and began training in December 2018.

Pursuant to BR 2.5(a), to the extent possible and resources permit, the staff of the CAO responds to all inquiries 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 inquiry 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 into an electronic database. Most telephone inquiries that require follow-up by CAO are also logged. Inquiries logged into the database are assigned matter numbers. In 2018, CAO logged 1,968 matters. CAO also handles about ten to thirty telephone calls from the public each day. Even though callers receive assistance as described below, the great majority of telephone calls are not logged due to the volume of calls and limited staff resources.

In response to telephone inquiries, lawyer and non-lawyer staff provide information to assist the public with concerns about legal services. Telephone 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 dispute over fees 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 initiating a bar inquiry. 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 provide additional assistance.

Pursuant to BR 2.5(b) CAO lawyers evaluate or resolve written inquiries. In practice, that evaluation involves collecting information and seeking a response from the subject lawyer to those concerns which may implicate misconduct.¹ CAO provides all substantive information submitted by a party to the other party or parties to the inquiry, who may be asked to comment upon it. CAO may also seek information from additional sources, such as court records or non-party witnesses.

BR 2.5(b) authorizes the following dispositions:

- (1) If CAO determines that, even if true, an inquiry does not allege misconduct, the inquiry is dismissed with written notice to the parties;
- (2) If CAO determines that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the inquiry is referred to Disciplinary Counsel.

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).

Otherwise, the inquiry is dismissed with written notice to the parties;

- (3) At the request of the inquirer, CAO may contact an attorney and attempt to assist in resolving the inquirer's concerns. The provision of such assistance does not preclude a referral to Disciplinary Counsel.

In 2018, CAO lawyers disposed of about 1,947 inquiries: 1,066 were dismissed, 253 referred to Disciplinary Counsel for further consideration, and 111 resolved. (Table 5). The remainder were provided information and/or referred to other resources or agencies. For purposes of comparison, the average number of disciplinary referrals each year over the preceding ten years is 251.

CAO provides inquirers and responding lawyers with written notice when a matter is referred to Disciplinary Counsel. A CAO lawyer also sends Disciplinary Counsel a brief confidential memo containing legal analysis regarding the basis for the referral.

For each dismissal, CAO provides a written explanation to the inquirer and subject lawyer.

Pursuant to BR 2.5(c), the dismissal of an inquiry is subject to review by General Counsel upon written request by the complainant. The written explanation that accompanies dismissals includes a notification that the inquirer may request OSB General Counsel review of the dismissal. General Counsel's decision is final. In 2018, over 98% of CAO dismissals were affirmed on review. The others were referred to Disciplinary Counsel as provided by BR 2.5(c).

CAO continues to speedily and accurately resolve inquiries to the extent staffing allows. In 2018, CAO resolved about 56% of logged matters within 30 days or less. Almost 83% were resolved within 180 days. (Table 6.) To help ensure consistency and quality of review, CAO staff meets regularly to review cases and procedures.

In addition to responding to and evaluating inquiries, CAO staff lawyers also contribute to the Bar's efforts to assist lawyers to meet their professional responsibilities. CAO lawyers offered hundreds of hours to presenting continuing legal education programs, serving Bar sections, writing for legal publication, and answering OSB Legal Ethics Helpline calls.

III. CAO STATISTICAL INFORMATION

Between January 1, 2018, and December 31, 2018, CAO kept statistics regarding the following aspects of matters received.

Table 1: SOURCE OF COMPLAINT OR INQUIRY

Most matters originated from clients inquiring or complaining about their own attorneys.

Source of Inquiry	Number	Percent
Client	780	41.1%
Opposing Party	377	19.9%
Third Party	222	11.7%
Opposing Counsel	88	4.6%
Judge	13	0.7%
OSB	3	0.2%
Self	1	0.05%
General Inquiry (not directed at a specific lawyer)	164	8.6%
General Client Assistance (not seeking action against a lawyer)	78	4.1%
Unknown	173	9.1%

Table 2: PRIMARY SUBJECT OF INQUIRY

Most inquiries express multiple concerns. The primary concerns expressed in most inquiries involved a perceived lack of adequate competence, diligence, honesty or communication. CAO staff engages in efforts to educate lawyers about these issues through bar publications, continuing legal education programs, and other contacts with our membership.

Primary Subject of Complaint or Inquiry	Number	Percent
Competence or Diligence	270	14.3%
General Information Inquiry	210	11.1%
Dishonesty or Misrepresentation	206	10.9%
Communication	157	8.3%
Other/Miscellaneous	129	6.8%
Quality of Services	96	5.1%
Improper Conduct by Prosecutor	90	4.7%
General Client Assistance	85	4.5%
Fee Dispute – Excessive/Illegal Fees	80	4.2%
Conduct Prejudicial to Justice	70	3.7%
Return Client File	64	3.4%
Conduct Outside of Legal Bounds	61	3.2%
Preserving/Accounting for Funds/ Property	47	2.5%

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

Primary Subject of Complaint or Inquiry	Number	Percent
Legal Advice	40	2.1%
Disclosing Confidences/Secrets	34	1.8%
Unauthorized Practice of Law	29	1.5%
Client Conflict – Current	28	1.5%
Judicial Fitness	27	1.4%
Rude Behavior	25	1.3%
Improper Withdrawal	23	1.2%
Client Conflict – Former	21	1.1%
Criminal Conduct	17	0.9%
Conflict – Self-Interest	11	0.6%
Malpractice	11	0.6%
Contact with Represented Party	10	0.5%
Lawyer to Lawyer Communication	6	0.3%
Improperly Threatening		
Criminal Prosecution	6	0.3%
Ex Parte Communication	5	0.3%
False or Misleading Advertising	4	0.2%
Lawyer Debts	4	0.2%
Conflict – Lawyer as Witness	3	0.2%
Sexual Relations with a Client	3	0.2%
Trial Conduct	3	0.2%
Business Relationship with Client	1	.05%

Table 3: TYPE OF MATTER GIVING RISE TO THE INQUIRY

CAO statistics show year after year that criminal law practice is most likely to generate an inquiry, with domestic relations the next most likely. Together, criminal law and domestic relations matters account for almost half of all inquiries received.

Type of Matter	Number	Percent
Criminal	598	34.3%
Domestic Relations	259	14.9%
Civil Dispute	145	8.3%
Personal Injury	93	3.3%
Litigation	68	3.9%
Probate	59	3.4%
Landlord/Tenant	44	2.5%
Juvenile	38	2.2%
Real Estate	33	1.9%
Debt Collection	29	1.7%
Business	25	1.4%
Estate Planning	24	1.4%
Labor	23	1.3%
Guardianship/Conservatorship	16	0.9%

Table 3: TYPE OF MATTER GIVING RISE TO THE INQUIRY

(continued)

Type of Matter	Number	Percent
Social Security	15	0.9%
Workers Compensation	15	0.9%
Elder Law	14	0.8%
Bankruptcy	9	0.5%
Adoption	6	0.3%
Immigration	6	0.3%
Tax	4	0.2%
Trust Account	4	0.2%
Advertising	3	0.2%
Arbitration	3	0.2%
Land Use	3	0.2%
Other/Unknown	208	11.9%

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

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 inquiries received by CAO. Inquiries about solo practitioners declined from over 72% in 2017 to a more typical share of about 69% of the total.

Firm Size	Percent of Active Oregon Members	Number of Inquiries	Percent of Inquiries
Solo	54.3%	1318	69.4%
2-5	14.9%	253	13.3%
6-10	8.5%	103	5.4%
11-25	11.1%	114	6.0%
26+	11.1%	111	5.8%

Table 5: DISPOSITION (Outcome)

Many dismissals and disciplinary referrals are also accompanied by referrals to other agencies or programs that may be of assistance. Only the primary element of the disposition is recorded. The number of total dispositions (1,947) was slightly increased over 2017 and 2016 (1,939 and 1,938 respectively). As in prior years, most matters were resolved without referral to Disciplinary Counsel.

Disposition	Number	Percent
Dismissed	1067	56.2%
Information Provided	416	21.9%
Referred to Disciplinary Counsel	253	13.3%
Resolved by CAO	111	5.6%

Table 5: DISPOSITION (Outcome)*(continued)*

Disposition	Number	Percent
Referred to Other Only	30	1.6%
Advised to Initiate OSB Inquiry	24	1.3%
Referred to OSB Lawyer Referral Service Only	20	1.1%
Referred to Fee Arbitration Only	10	0.5%
Referred to Client Security Fund Only	7	0.4%
Referred to Professional Liability Fund Only	3	0.2%
Referred to Unlawful Practice of Law Committee Only	3	0.2%
Referred to OAAP Only	1	.05%
Referred to OPDS Only	1	.05%
Referred to OSB Public Records Coordinator Only	1	.05%
Total: 1,947		

Table 6: DISPOSITION (TIME)

Statistics for 2018 show that CAO staff promptly resolved most matters. Over 47% of inquiries were disposed of within two weeks and over 55% within 30 days. In cases where, after reviewing an inquiry, CAO requests information from the inquirer or a written response from a subject lawyer, the disposition time increases significantly. In most instances, the complainant or responding lawyer is afforded 21 days to respond to any request for information from CAO and CAO often grants extensions when inquirers or respondents seek additional time. Further correspondence sometimes follows as the parties provide or CAO collects other 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 inquiries that are fairly straightforward can be delayed by staffing issues or the volume of matters. Two consecutive years of reduced staffing have resulted in an increase in matters pending over 6 months. The average disposition time for all matters was 74 days.

CAO review of inquiries serves valuable purposes. Review ensures that public concerns about lawyers are heard and responded to. Inquirers are able to obtain a response to concerns about a lawyer's conduct and respondent lawyers are afforded a forum to respond. The dismissal of inquiries that lack sufficient evidence of misconduct enables Disciplinary Counsel to focus resources on appropriate matters.

Disposition Time	Number	Percent	Avg. Time (Days)
Same Day	253	12.9%	0
1-2 Days	128	6.6%	1
3-6 Days	248	12.7%	4
7-14 Days	297	15.3%	10
15-30 Days	158	8.1%	21
31-60 Days	133	6.8%	44
61-180 Days	393	20.1%	122
Over 6 months	335	17.2%	244

Average: 74 days

IV. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

CAO staff may, with the permission of the inquirer, attempt to resolve concerns. CAO intervention can help resolve concerns before the threshold of misconduct is crossed, or reduce the extent of misconduct that occurs. CAO 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 asks the lawyer to address the client’s needs appropriately.

At times, CAO staff refers lawyers to Oregon Attorney Assistance Program, OSB Professional Liability Fund, OSB Client Security Fund 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 guidance regarding their ethical obligations. Those ethics help calls are not included within the statistics compiled for this report.

V. CONCLUSION

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

Respectfully submitted,

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