

Oregon State Bar

2019

Annual Report

Client Assistance Office

January 1, 2019 to December 31, 2019
Report to the Oregon Supreme Court

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2019 Annual Report of the Oregon State Bar Client Assistance Office

TABLE OF CONTENTS

I. OVERVIEW	1
II. CAO OPERATION IN 2019	1
III. CAO STATISTICAL INFORMATION	4
Table 1: Source of Inquiry	4
Table 2: Primary Subject	4
Table 3: Type of Matter	5
Table 4: Size of Firm	6
Table 5: Disposition (Outcome).....	7
Table 6: Disposition (Time).....	7
IV. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS.....	8
V. CONCLUSION.....	9

I. OVERVIEW

This report covers the operations of the Oregon State Bar Client Assistance Office (CAO) from January 1, 2019, through December 31, 2019. During that period, CAO logged 1,971 new inquiries. Thousands 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 competence, diligence, honesty or level of communication.

CAO's review of inquiries serves the purposes of providing information and response to public concerns, and permits Oregon State Bar Disciplinary Counsel to focus investigation and prosecution resources where they are needed. CAO resolved 1,930 logged inquiries in 2019. (2018 1,947) About 55% (56%) were dismissed for lack of sufficient evidence to support a referral to Disciplinary Counsel. Over 12% (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 (74%) did not request review. In 2019, over 98% of CAO dismissals reviewed by General Counsel were affirmed.

II. CAO OPERATION IN 2019

CAO is established as an office separate from the bar's Disciplinary Counsel and reports to the bar's General Counsel. In 2019, CAO was staffed by three full time lawyers and two full time administrative support staff, with one of the lawyers serving as manager. For about half of 2019, a part time lawyer assisted CAO in addressing backlog resulting from the 2018 departure of a staff lawyer who moved to another state, and the need to train her eventual replacement.

Pursuant to BR 2.5(a), to the extent resources permit, the staff of the CAO responds to all inquiries from the public concerning the conduct of lawyers in Oregon. 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 handled a total of nearly 12,000 incoming and outgoing telephone calls in 2019. The great majority of telephone inquiries are not logged due to the volume of calls and limited staff resources. Additionally, a significant portion of those calls related to inquiries previously logged or other bar business.

In response to telephone inquiries, lawyer and non-lawyer staff provide information to assist the public with concerns about legal services. Most telephone-only inquiries do not require active intervention or further assistance from CAO after the initial response. The majority of telephone-only 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.

CAO logs all written inquiries into an electronic database and assigns inquiry numbers. Telephone inquiries that require CAO staff action after the call are often logged as well. In 2019, CAO logged 1,971 (1,968) inquiries.

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 witnesses.

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).

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 for further evaluation as a grievance. 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 2019, CAO lawyers disposed of about 1,930 (1,947) inquiries: 1,052 (1,066) were dismissed, 234 (253) referred to Disciplinary Counsel for further consideration, and 138 (111) resolved with CAO assistance. (Table 5). The remainder were provided information and/or referred to other resources or agencies.

When an inquiry is referred to Disciplinary Counsel, CAO notifies the parties in writing. A CAO lawyer also sends Disciplinary Counsel a brief confidential memo containing legal analysis regarding the basis for the referral.

For each dismissal on the merits, CAO provides a written explanation to the inquirer and subject lawyer and notifies the inquirer that, pursuant to BR 2.5(c), the dismissal of an inquiry is subject to review by General Counsel upon written request. General Counsel review is final.

CAO continues to speedily and accurately resolve most inquiries. In 2019, CAO resolved over 55% (about 56%) of logged inquiries within 30 days or less. Over 81% (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. Over 98% of CAO dismissals were affirmed on review. The others were referred to Disciplinary Counsel as provided by BR 2.5(c).

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.

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 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, 2019 and December 31, 2019, CAO kept statistics regarding the following aspects of our logged inquiries.

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	816	42.6%
Opposing Party	372	19.4%
Third Party	222	11.6%
Opposing Counsel	44	2.3%
Judge	7	0.4%
OSB	3	0.2%
Self-report	1	0.05%
General Inquiry (not directed at a specific lawyer)	129	6.7%
General Client Assistance (not seeking action against a lawyer)	105	5.5%
Other/Unknown	216	11.3%

More inquiries were received electronically (928 or 48.4%) than by mail (702 or 36.7%) or in person (38 or 1.98%). Some telephone calls requiring follow up assistance were logged as inquiries (218 or 11.38%).

Table 2: PRIMARY SUBJECT OF INQUIRY

Most inquirers express multiple concerns. The primary concerns expressed involved perceived lack of adequate competence, diligence, honesty or communication. CAO staff engages in efforts to educate and remind 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
Communication	198	10.3%
Competence or Diligence	185	9.7%
Quality of Services (not involving misconduct)	178	9.3%
General Information	171	8.9%
Dishonesty or Misrepresentation	171	8.9%
Return Client File	116	6.1%
General Client Assistance	101	5.3%
Fee Dispute, Excessive or Illegal Fees	72	3.8%
Improper Conduct by Criminal Prosecutor	69	3.6%
Conduct Prejudicial to Justice	56	2.9%
Conduct Outside of Legal Bounds	45	2.4%
Client Conflict – Current	40	2.1%
Legal Advice	36	1.9%
Improper Withdrawal	32	1.7%
Preserving/Accounting for Funds/ Property	31	1.6%
Rude Behavior	28	1.5%
Client Conflict – Former	24	1.3%
Criminal Conduct	24	1.3%
Improper Disclosure of Confidential Information	24	1.3%
Unauthorized Practice of Law	20	1.0%
Conflict – Personal Interest	16	0.9%
Improper Contact with Represented Party	14	0.7%
Fee – Retainer Inquiry	13	0.7%
Malpractice	10	0.5%
Judicial Fitness	8	0.4%
Lawyer Debts	5	0.3%
Ex Parte Communication	5	0.3%
False or Misleading Advertising	3	0.2%
Firm Name or Letterhead	2	0.1%
Improper Lawyer to Lawyer Communication	2	0.1%
Improperly Threatening Criminal Prosecution	2	0.1%
Conflict – Lawyer as Witness	1	0.1%
Sexual Relations with a Client	1	0.1%
Other/Miscellaneous	212	11.1%

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	658	37.6%
Domestic Relations	209	12.0%
Civil Dispute	100	5.7%
Litigation	82	4.7%
Personal Injury	70	4.0%
Probate	49	2.8%
Landlord/Tenant	48	2.7%
Juvenile	47	2.7%
Estate Planning	39	2.2%
Guardianship or Conservatorship	27	1.5%
Business	26	1.5%
Real Estate	25	1.4%
Labor and Employment	22	1.3%
Bankruptcy	21	1.2%
Social Security	21	1.2%
Debt Collection	19	1.1%
Immigration	15	0.9%
Elder Law	12	0.7%
Workers Compensation	11	0.6%
Arbitration	7	0.4%
Land Use	6	0.3%
Tax	4	0.2%
Trust Account	1	0.1%
Adoption	1	0.1%
Paternity	1	0.1%
Other or Unknown	228	13.0%

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

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 firm and the number of inquiries received by CAO. Inquiries about solo practitioners show a further reduction from 72% in 2017 to 69% in 2018 and 67% in 2019. Inquiries about lawyers in mid-size firms slightly increased from 6% in 2018 to 8.1% of the total in 2019.

Firm Size	Percent of Active Oregon Members	Number of Inquiries	Percent of Inquiries
Solo	54.3%	1283	67.0%
2-5	14.9%	251	13.1%
6-10	8.5%	111	5.8%
11-25	11.1%	155	8.1%
26+	11.1%	115	6.0%

Table 5: DISPOSITION (Outcome)

Many dismissals and disciplinary referrals are also accompanied by information referring the inquirer to other agencies or programs that may be of assistance. Only the primary element of the disposition is recorded.² 1,930 inquiries were disposed of in 2019. As in prior years, most inquiries were resolved without referral to Disciplinary Counsel

Disposition	Number	Percent
Dismissed	1052	54.9%
Information Provided	412	21.5%
Referred to Disciplinary Counsel	234	12.2%
Resolved by CAO	138	7.2%
Referred to Other Only	31	1.6%
Referred to OSB Lawyer Referral Service Only	20	1.1%
Advised to Initiate Written Inquiry	18	0.9%
Referred to Unlawful Practice of Law Committee Only	9	0.5%
Referred to Fee Arbitration Only	4	0.2%
Referred to Client Security Fund Only	3	0.2%
Referred to Professional Liability Fund Only	3	0.2%
Referred to OPDS Only	3	0.2%
Referred to OSB Public Records Coordinator Only	1	0.1%
Other	1	0.1%
Total: 1,930		

Table 6: DISPOSITION (Time)

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 inquirer 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.

² “For instance, if an inquiry is referred to Disciplinary Counsel or dismissed, that is the disposition recorded even if, as is often the case, the inquirer is also referred to the OSB Fee Dispute Resolution Program.

Statistics for 2019 show that CAO staff promptly resolved most inquiries. Nearly 67% of inquiries were disposed of within 60 days. 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 overall volume of matters. The average disposition time for all inquiries was 72 days.

Disposition Time	Number	Percent	Avg. Time (Days)
Same Day	223	11.6%	0
1-2 Days	79	4.1%	1
3-6 Days	145	7.5%	5
7-14 Days	283	14.6%	10
15-30 Days	335	17.4%	22
31-60 Days	231	12.0%	44
61-180 Days	275	14.6%	108
Over 6 months	357	18.5%	246

Average: 72 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 mitigate the harm of misconduct that has occurred. 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 the Oregon Attorney Assistance Program, the OSB Professional Liability Fund, the 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 inquirers 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 inquiry 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 works 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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