

Oregon State Bar

2020

Annual Report

Client Assistance Office

January 1, 2020 to December 31, 2020
Report to the Oregon Supreme Court

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I. OVERVIEW

Review of inquiries by the Oregon State Bar Client Assistance Office (CAO) serves the purposes of providing a response to public concerns, and permitting the Bar's Disciplinary Counsel to focus investigation and prosecution resources where they are most needed. This report covers the operations of the CAO from January 1, 2020, through December 31, 2020. During that period, CAO opened 1,801 new file matters. Thousands more received telephone assistance that did not result in the opening of a file. 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.

In 2020, CAO resolved 1,760 matters. In about 53% of them, CAO found insufficient evidence to support a referral to Disciplinary Counsel and dismissed the inquiry. 10.7% were found to merit referral to Disciplinary Counsel for further evaluation. In the remaining matters, CAO provided information, 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 the dismissal of a matter and notifies inquirers of the ability to request review by Oregon State Bar General Counsel. Most inquirers did not request review. More than 99% of CAO dismissals were affirmed on review.

II. CAO OPERATION IN 2020

CAO was established in 2003 as an office separate from the Bar's Disciplinary Counsel and it reports to the Bar's General Counsel. In 2020 CAO was staffed by three full time lawyers and two full time administrative support staff. One of the lawyers also served as manager. To help ensure consistency and quality of review, CAO staff met regularly to review cases and procedures.

The COVID-19 pandemic had a substantial impact on CAO in 2020. Like other departments at the Bar, CAO was able to fairly quickly adjust for mostly remote work, but those adjustments required the lawyer staff to spend additional time on filing and administrative tasks, the administrative staff to provide onsite services to other Bar departments working entirely remotely, and all staff to make extra efforts to coordinate CAO's considerable workflow. Although CAO had already moved to a mostly paperless work

environment, the needs of many inquirers necessitated CAO sending and receiving correspondence via the United States Postal Service as well. With limited staff on site, processing and scanning incoming and outgoing paper mailings took additional time.

Pursuant to BR 2.5(a), and 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 the opening of a file and 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.

In response to telephone inquiries, CAO staff provides information to assist the public with concerns about legal services. The great majority of telephone inquiries do not require active intervention or further assistance from CAO after the initial response. No file is opened, they are not assigned a file number, and they are not included in the total number of logged inquiries. The majority of telephone 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.

After the closure of the OSB Center in March 2020, CAO staff kept informal logs of client assistance calls to more closely monitor call volume and ensure that the public and membership continued to be served. From April through December 2020, CAO staff handled an average of 57 assistance calls each week.

Each written inquiry is logged by CAO staff into an electronic database, a file is opened, and a matter number assigned. Some telephone inquiries requiring follow up efforts are also logged and assigned a file number. CAO

logged a total of 1,801 inquiries in 2020, an average of about 35 new files each week.

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 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.

BR 2.5(b) authorizes the following dispositions:

(1) If the Client Assistance Office determines that, even if true, an inquiry does not allege misconduct, it shall dismiss the inquiry with written notice to the complainant and to the attorney named in the inquiry.

(2) If the Client Assistance Office determines, after reviewing the inquiry and any other information deemed relevant, that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the inquiry shall be referred to Disciplinary Counsel as a grievance. Otherwise, the inquiry shall be dismissed with written notice to the complainant and the attorney.

(3) The Client Assistance Office may, at the request of the complainant, contact the attorney and attempt to assist the parties in resolving the complainant's concerns, but the provision of such assistance does not preclude a referral to Disciplinary Counsel of any matter brought to the attention of the Client Assistance Office.

In 2020, CAO lawyers disposed of 1,760 inquiries: 923 were dismissed, 188 referred to Disciplinary Counsel for further consideration, and 94 resolved with CAO assistance. The remainder were provided information and/or referred to other resources or agencies. (Table 5).

For each dismissal on the merits, CAO provides a written explanation to both the inquirer and subject lawyer, and notifies the inquirer of the right to General Counsel review of the disposition upon written request. When an inquiry is

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).

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.

Despite the impact of COVID-19, CAO continues to speedily and accurately resolve most inquiries. In 2020, CAO resolved 74% of logged inquiries within 60 days or less. (Table 6.)

Pursuant to BR 2.5(c), the dismissal of an inquiry is subject to review by General Counsel upon written request of the inquirer. General Counsel review is final. Where General Counsel finds sufficient evidence of possible misconduct, the inquiry is referred to Disciplinary Counsel with a confidential memo explaining the basis for the referral. In 2020, more than 99% of CAO dismissals were affirmed on review.

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 in other ways. CAO lawyers offered many additional hours to the presentation of 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, 2020, and December 31, 2020, CAO kept statistics regarding the following aspects of our logged inquiries.

Table 1: SOURCE OF INQUIRY

Most inquiries originated from clients inquiring about the conduct of their own lawyers.

Source of Inquiry	Number	Percent
Client	638	36.4%
Opposing Party	328	18.7%
Third Party	194	11.1%
Opposing Counsel	38	2.2%
Judge	11	0.6%
OSB	3	0.2%
Self Report	1	0.1%
General Inquiry (not directed at a specific lawyer)	268	15.3%
General Client Assistance (not seeking action against a lawyer)	117	6.7%
Other/Unknown	156	8.9%

CAO received more inquiries electronically (864 or 49.2%) than by mail (693 or 39.5%) or delivered in person (13 or 0.7%). Some telephone calls requiring follow up assistance were logged as inquiries (171 or 9.6%). The remaining matters were received from other agencies or sources.

Table 2: PRIMARY SUBJECT OF INQUIRY

Most inquirers express multiple concerns. The primary concern expressed by inquirers most often related to 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 the Bar’s membership.

Primary Subject of Inquiry	Number	Percent
General Information	268	15.3%
Communication	163	9.3%
Competence or Diligence	147	8.4%
Quality of Services (not involving misconduct)	141	8.0%
Dishonesty or Misrepresentation	127	7.5%
General Client Assistance	118	6.7%
Improper Conduct by Criminal Prosecutor	83	4.7%
Return Client File	70	4.0%
Conduct Prejudicial to Justice	65	3.7%
Fee Dispute, excessive or illegal Fees	55	3.1%
Conduct Outside of Legal Bounds	42	2.4%
Seeking Legal Advice	35	2.0%
Client Conflict – Current	33	1.9%
Improper Withdrawal	28	1.6%
Improper Disclosure of Confidential Information	24	1.4%
Client Conflict – Former	23	1.3%
Unauthorized Practice of Law	17	1.0%
Preserving/Accounting for Funds/Property	15	0.9%
Rude Behavior	15	0.9%
Improper Contact with Represented Party	15	0.9%
Criminal Conduct	14	0.8%
Conflict – Personal Interest	13	0.7%
Fee – Retainer Inquiry	11	0.6%
Malpractice	9	0.5%
Judicial Fitness	8	0.5%
False or Misleading Advertising	7	0.4%
Lawyer Debts	5	0.3%
Improper Ex Parte Communication	1	0.1%
Improper Lawyer to Lawyer Communication	1	0.1%
Improperly Threatening Criminal Prosecution	1	0.1%
Trial Conduct	1	0.1%
Other/Miscellaneous	199	11.3%

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	548	33.8%
Domestic Relations	181	11.2%
Civil Dispute	106	6.5%
Litigation	84	5.2%
Personal Injury	49	3.0%
Juvenile	45	2.8%
Probate	43	2.6%
Landlord/Tenant	29	1.8%
Business	26	1.5%
Real Estate	25	1.5%
Estate Planning	25	1.5%
Bankruptcy	16	1.0%
Guardianship or Conservatorship	15	0.9%
Debt Collection	14	0.9%
Immigration	13	0.8%
Elder Law	12	0.7%
Social Security	10	0.6%
Workers Compensation	10	0.6%
Labor and Employment	8	0.5%
Land Use	7	0.4%
Arbitration	5	0.3%
Tax	3	0.2%
Advertising	2	0.1%
Trust Account	1	0.1%
Adoption	1	0.1%
Other or Unknown	348	21.4%

Table 4: SIZE OF FIRM OF THE LAWYER SUBJECT OF 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 continue to decline in proportion to other inquiries, from 72% in 2017 to 69% in 2018, 67% in 2019, and just under 64% in 2020. Inquiries about lawyers in small firms increased slightly, from 13% of the total in 2019 to 16% in 2020.

Firm Size	Percent of Active Oregon Members	Number of Inquiries	Percent of Inquiries
Solo	46.3%	1119	63.8%
2-5	19.6%	282	16.1%
6-10	9.9%	111	6.3%
11-25	10.6%	132	7.5%
26+	13.6%	110	6.3%

Table 5: DISPOSITION (Outcome)

Only the primary element of the disposition is recorded. Many dispositions, whether dismissals or disciplinary referrals, include information referring the inquirer to other agencies or programs that may be of assistance.²

1,760 inquiries were disposed of in 2020. As in prior years, most inquiries were resolved without referral to Disciplinary Counsel. Referrals to Disciplinary Counsel slightly declined in 2020 (from 12.2% of dispositions to 10.7%). As of mid-June 2021, referrals to Disciplinary Counsel are 13.3% of total dispositions for the year, so that decline appears to be anomalous. The total number of dispositions (1,760) is lower than in prior years (e.g. 2019 1,930). Dislocations to our work flow and processes described in section II above are believed to be the cause.

Disposition	Number	Percent
Dismissed	923	52.6%
Information Provided	457	26.1%
Referred to Disciplinary Counsel	188	10.7%
Resolved by CAO	94	5.4%
Referred to Other Only	35	2.0%
Referred to OSB Lawyer Referral Service Only	28	1.6%
Advised to Initiate Written Inquiry	12	0.7%
Referred to Fee Arbitration Only	8	0.5%
Referred to OPDS Only	4	0.2%
Referred to Unlawful Practice of Law Committee Only	3	0.2%
Referred to Client Security Fund Only	3	0.2%
Referred to Professional Liability Fund Only	3	0.2%
Referred to OSB Public Records Coordinator Only	1	0.1%
Referred to OAAP Only	1	0.1%
Total:	1,760	

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.

Table 6: DISPOSITION (TIME)

In cases where, after reviewing an inquiry, CAO requests more information from the inquirer, or a written response from the subject lawyer, 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 most 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.

Statistics for 2020 show that CAO staff promptly resolved most inquiries. 74% of inquiries were disposed of within 60 days (c.f. 2019 67%). While CAO is on average 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. Dispositions that took longer than 6 months (15.3%) were down from 2019 (18.5%). The average disposition time for all inquiries was 73 days.

Disposition Time	Number	Percent	Avg. Time (Days)
Same Day	319	18.3%	0
1-2 Days	72	4.1%	1
3-6 Days	96	5.5%	4
7-14 Days	301	17.1%	11
15-30 Days	348	19.8%	21
31-60 Days	163	9.3%	42
61-180 Days	186	10.6%	104
Over 6 months	270	15.3%	338

Average: 73 days

IV. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

CAO staff may, with the permission of the inquirer, attempt to resolve concerns before a complaint arises or misconduct occurs. Even where a lawyer may have committed misconduct CAO intervention may mitigate the harm. 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 successful intervention

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 (or, if appropriate, inquirers) to the 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 matters 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 CAO statistics compiled for this report.

V. CONCLUSION

CAO performs a valuable function in 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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