

Oregon State Bar

2021

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# Annual Report

## Client Assistance Office

January 1, 2021 to December 31, 2021  
Report to the Oregon Supreme Court

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# 2021 Annual Report of the Oregon State Bar Client Assistance Office

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## **I. OVERVIEW**

The Oregon State Bar Client Assistance Office (CAO) reviews public inquiries about the conduct of lawyers in Oregon. CAO review serves the purposes of providing information and response to public concerns, and permits the Bar's Disciplinary Counsel to focus investigation and prosecution resources where they are most needed for potential regulatory action.

This report covers the operations of the CAO from January 1, 2021, through December 31, 2021. During that period, CAO opened 1,926 new file matters. Thousands of additional members of the public 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 concerns involved lawyer competence, diligence, honesty or communication.

In 2021, CAO resolved 1,854 matters. 12.1% were found to merit referral to Disciplinary Counsel for further evaluation. About 55% were dismissed for insufficient evidence to support a referral to Disciplinary Counsel. In the remaining matters, CAO provided information, referred inquirers to appropriate resources, or assisted inquirers to resolve the concerns that had prompted the inquiry. 67% of file matters were resolved within 60 days or fewer.

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 2021**

CAO was established in 2003 as an office separate from the Bar's Disciplinary Counsel and it reports to the Bar's General Counsel. 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 ensure people with disabilities are properly accommodated.

In 2021, CAO was staffed by three full time lawyers, one part time lawyer, 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 continued to have an impact on CAO workflow in 2021. However, the number of inquiries received from the public and processed by CAO returned to levels similar to prior years.

a. Telephone calls

In 2021, CAO staff kept informal logs of client assistance telephone calls to more closely monitor call volume and ensure that the public and membership continued to be served as staff continued to work largely remotely. CAO handled an average of 71 assistance calls each week. In response to those calls, CAO staff provided information to assist the public with concerns about legal services. The great majority of calls did not require active intervention or further assistance from CAO after the initial response. No file was opened, they were not assigned a file number, and they are not included in the total number of logged inquiries. Most telephone calls involved questions regarding: standards governing lawyer conduct; reasonable client expectations; means for addressing issues with a lawyer, such as a dispute over fees or a perceived lack of communications; obligations of a lawyer upon termination of representation; the jurisdiction of the Bar; and the process of initiating a Bar inquiry. When possible, CAO staff referred inquirers to resources that may be able to provide legal advice or other assistance that CAO is unable to provide.

b. Written Inquiries

Each written inquiry was logged by CAO staff into an electronic database, a file was opened, and a matter number assigned. Some telephone inquiries requiring follow up efforts were also logged and assigned a file number. CAO logged a total of 1,926 inquiries in 2021, an average of about 37 new files each week.

Pursuant to BR 2.5(b), CAO lawyers evaluate and resolve written inquiries. In practice, that evaluation involved collecting information from the inquirer and seeking a response from the lawyer to those concerns which

may implicate misconduct.<sup>1</sup> CAO provides substantive information submitted by a party to the other party or parties to the inquiry, who may be asked to comment upon it. Files are reviewed for disposition after CAO determines sufficient information has been received.

c. Dispositions

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 2021, CAO lawyers disposed of 1,854 inquiries: 1,017 were dismissed, 224 referred to Disciplinary Counsel for further consideration, and 83 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 provided a written explanation to both the inquirer and subject lawyer, and notified the inquirer of the right to review of the disposition upon written request. When an inquiry is referred to Disciplinary Counsel, CAO notifies the parties in writing. CAO also sends Disciplinary Counsel a brief confidential memo containing legal analysis regarding the basis for the referral.

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<sup>1</sup> "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).

Despite the impact of COVID-19, CAO continued to speedily and accurately resolve most inquiries. In 2021, CAO resolved 67% of logged inquiries within 60 days or less. (Table 6.) This number is slightly lower than in 2020 (70%). The average time for all dispositions in 2021 was 89 days.

d. Review

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 2021, review was requested in 242 matters (less than 25% of dismissals.) Over 99% of CAO dismissals were affirmed on review.

e. Other efforts

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 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, 2021, and December 31, 2021, CAO kept statistics regarding the following aspects of our logged inquiries. Because not every statistic is recorded for every inquiry, total numbers in each table do not include all dispositions.

**Table 1: SOURCE OF INQUIRY**

Most inquiries originated from clients inquiring about the conduct of their own lawyers. These numbers are similar to prior years.

<b>Source of Inquiry</b>	<b>Number</b>	<b>Percent</b>
Client	644	34.8%
Opposing Party	344	18.6%
Third Party	207	11.2%
Opposing Counsel	58	3.1%
Judge	12	0.7%
OSB	1	0.05%
Self Report	4	0.2%

<b>Source of Inquiry</b> <i>(continued)</i>	<b>Number</b>	<b>Percent</b>
General Inquiry (not directed at a specific lawyer)	281	15.2%
General Client Assistance (not seeking action against a lawyer)	98	5.3%
Other/Unknown	204	11.09%

CAO received 1,021 inquiries electronically (56%) and 695 by mail (38%). 124 telephone calls requiring follow up assistance were logged as inquiries (6.7%). The remaining matters were received from other agencies or sources. The proportion of electronic complaints continues to increase. In 2020 only 49% of inquiries were received by email or fax.

**Table 2: PRIMARY SUBJECT OF INQUIRY**

Most inquirers express multiple concerns. The primary concerns expressed by inquirers most often related to a perceived lack of adequate competence, diligence, honesty, communication or overall quality. 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.

<b>Primary Subject of Inquiry</b>	<b>Number</b>	<b>Percent</b>
General Information	277	15.0%
Quality of Services (not involving misconduct)	156	8.4%
Communication	140	7.6%
Competence or Diligence	138	7.5%
Dishonesty or Misrepresentation	129	7.0%
General Client Assistance	89	4.8%
Improper Conduct by Criminal Prosecutor	74	4.0%
Return Client File	67	3.6%
Fee Dispute, excessive or illegal Fees	59	3.2%
Conduct Prejudicial to Justice	53	2.9%
Conduct Outside of Legal Bounds	44	2.4%
Client Conflict – Current	35	1.9%
Seeking Legal Advice	33	1.8%
Improper Withdrawal	28	1.5%
Improper Disclosure of Confidential Information	25	1.4%
Rude Behavior	23	1.2%
Client Conflict – Former	22	1.2%
Criminal Conduct	21	1.1%
Unauthorized Practice of Law	20	1.1%
Fee – Retainer Inquiry	19	1.0%
Preserving/Accounting for Funds/Property	18	1.0%
Improper Contact with Represented Party	15	0.8%
Judicial Fitness	13	0.7%

<b>Primary Subject of Inquiry</b> <i>(continued)</i>	<b>Number</b>	<b>Percent</b>
False or Misleading Advertising	12	0.7%
Conflict – Personal Interest	11	0.6%
Improper Ex Parte Communication	9	0.5%
Malpractice	6	0.3%
Improperly Threatening Criminal Prosecution	3	0.2%
Trial Conduct	3	0.2%
Lawyer Debts	2	0.1%
Improper Lawyer to Lawyer Communication	2	0.1%
Sexual Relations 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.

<b>Type of Matter</b>	<b>Number</b>	<b>Percent</b>
Criminal	512	30.4%
Domestic Relations	233	13.9%
Civil Dispute	93	5.5%
Litigation	88	5.2%
Probate	60	3.6%
Landlord/Tenant	59	3.5%
Personal Injury	49	2.9%
Juvenile	36	2.1%
Real Estate	31	1.8%
Business	27	1.6%
Debt Collection	18	1.1%
Bankruptcy	16	1.0%
Estate Planning	13	0.8%
Immigration	13	0.8%
Workers Compensation	12	0.7%
Labor and Employment	11	0.7%
Guardianship or Conservatorship	11	0.7%
Social Security	9	0.5%
Land Use	9	0.5%
Elder Law	7	0.4%
Arbitration	3	0.2%
Tax	3	0.2%
Trust Account	1	0.1%
Adoption	2	0.1%
Other or Unknown	366	21.8%

**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 remained steady at 63%, well below a high of 72% in 2017. Inquiries about lawyers in small firms showed a further increase, from 13% of total inquiries in 2019, to 16% in 2020, and 18.5% in 2021.

<b>Firm Size</b>	<b>Percent of Active Oregon Members</b>	<b>Number of Inquiries</b>	<b>Percent of Inquiries</b>
Solo	46%	1168	63.0%
2–5	20%	343	18.5%
6–10	10%	129	7.0%
11–25	11%	90	4.9%
26+	13%	12	0.7%

**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.<sup>2</sup> 1,854 inquiries were disposed of in 2021. The proportion of matters referred to Disciplinary Counsel returned to a number over 12%, similar to 2019. The total number of dispositions was greater than in 2020 (1,760) but less than 2019 (1,930).

<b>Disposition</b>	<b>Number</b>	<b>Percent</b>
Dismissed	1017	54.9%
Information Provided	413	22.3%
Referred to Disciplinary Counsel	224	12.1%
Resolved by CAO	83	4.5%
Referred to Other Only	33	1.8%
Referred to OSB Lawyer Referral Service Only	32	1.7%
Advised to Initiate Written Inquiry	11	0.6%
Referred to Fee Arbitration Only	11	0.6%
Referred to Professional Liability Fund Only	3	0.2%
Referred to OPDS Only	2	0.1%
Referred to OSB Public Records Coordinator Only	2	0.1%
Referred to Client Security Fund Only	2	0.1%
Referred to Unlawful Practice of Law Committee Only	1	.05%
Referred to OAAP Only	1	0.1%

<sup>2</sup> For instance, if an inquiry is referred to Disciplinary Counsel or dismissed, that is the disposition recorded even if 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 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. While CAO is on average quite 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 staff resources and the overall volume of matters.

Statistics for 2021 show that CAO staff promptly resolved most inquiries. However, the time for disposition showed an increase over 2020, likely as a result of CAO staff catching up on matters that had not been disposed of in 2020. In 2021, 67% of inquiries were disposed of within 60 days (c.f. 2020 70% and 2019 67%). Dispositions that took longer than 6 months increased to 20.8%, more than 2020 (15.3%) and 2019 (18.5%). The average disposition time for all inquiries was 89 days.

<b>Disposition Time</b>	<b>Number</b>	<b>Percent</b>	<b>Avg. Time (Days)</b>
Same Day	301	16.3%	0
1-2 Days	56	3.0%	1
3-6 Days	77	4.2%	4
7-14 Days	281	15.2%	11
15-30 Days	284	15.4%	20
31-60 Days	237	12.9%	46
61-180 Days	220	11.9%	94
Over 6 months	384	20.8%	319

**Average: 89 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, CAO lawyers assist General Counsel to handle thousands of calls each year from lawyers seeking guidance regarding their ethical obligations. Those ethics helpline calls are not included within the CAO 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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