

Oregon State Bar

2022

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# Annual Report

## Client Assistance Office

January 1, 2022 to December 31, 2022  
Report to the Oregon Supreme Court

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# 2022 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 enables the Bar to more quickly respond to public concerns about lawyers and to enable 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, 2022 through December 31, 2022. During that period, CAO opened 1,798 new matters and provided information or assistance in response to approximately 3,506 telephone inquiries. Consistent with prior years, the largest share of inquiries came from the lawyers' clients. The most common subject was a perceived lack of sufficient communication.

In 2022, CAO resolved 1,636 matters. 62% of the matters were resolved within 60 days of receipt. 27% of the matters were resolved by providing responsive information, referrals, or other assistance. 73% were inquiries about potential lawyer misconduct that were resolved on the merits. For those matters resolved on the merits, 14% were referred to Disciplinary Counsel, and the remainder were dismissed for lack of sufficient supporting evidence.

CAO provides the parties with a written explanation for the dismissal of a matter and notifies the inquirer of the ability to seek review by the Bar's General Counsel. Most inquirers did not request review. More than 99% of CAO dismissals were affirmed on review.

# II. CAO OPERATION IN 2022

CAO was established by in 2003 as an office separate from the Bar's Disciplinary Counsel. It reports to the Bar's General Counsel. Pursuant to OSB Rules of Procedure (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 2022, 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. CAO staff works on site at the Bar center and remotely.

a. Handling of telephone calls

CAO logs telephone calls to monitor call volume and ensure a proper response. In 2022, CAO handled 3,506 calls, an average of 67 a 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 matter was opened, they were not assigned a file number, and they are not included in the total number of new matters.

Most telephone calls involved 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 frequently seek legal advice or other assistance that CAO is unable to provide. When possible, CAO staff referred those inquiries to appropriate resources such as the Bar's Lawyer Referral Service or other public agencies.

b. Processing of 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 opened 1,798 files in 2022, an average of about 36 new files each week.

Pursuant to BR 2.5(a), the CAO determines the manner and extent of review required for the appropriate disposition of 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 provided to reach a disposition.

c. Disposition of inquiries

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.

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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).

(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 2022, CAO disposed of 1,636 inquiries; 172 were referred to Disciplinary Counsel for further evaluation, 96 resolved with CAO assistance, and 1,025 were dismissed. The remainder were provided information and/or referrals to other resources or agencies. (Table 5).

For each inquiry referred to Disciplinary Counsel, CAO notified the parties in writing, and provided the file to Disciplinary Counsel with a confidential legal memo regarding the basis for the referral. Resolution of inquiries involved contacting lawyers about their clients' concerns, so that they could be addressed by the lawyer. For every dismissal, 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. Data regarding the types of inquiries, the time taken to dispose of them, and other significant items are collected in Section III below.

#### d. Review of dismissed inquiries

Pursuant to BR 2.5(c), the dismissal of an inquiry is subject to review by General Counsel upon written request by the inquirer. General Counsel's review is final. Where General Counsel finds sufficient evidence of potential misconduct, the inquiry is referred to Disciplinary Counsel with a confidential memo explaining the basis for the referral.

In 2022, review was requested in 229 matters (less than 25% of dismissals.) In 2022, all CAO dismissals were affirmed on review.

#### e. Other CAO efforts to improve legal services in Oregon

In addition to responding to and evaluating inquiries, CAO staff lawyers 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 focused on ethics, writing articles on ethics issues for legal publication, and answering OSB Legal Ethics Helpline calls. CAO lawyers also served as liaisons to bar sections.

### III. CAO STATISTICAL INFORMATION

Between January 1, 2022, and December 31, 2022, CAO kept statistics regarding the following aspects of our matters received. Because not every factor is known for some inquiries, total numbers do not always equal the number of all inquiries received.

**Table 1: SOURCE OF INQUIRY**

More inquiries originated from clients inquiring about the conduct of their own lawyers than from any other source. The origination of inquiries is largely similar to prior years, with the exception of a decline in the share of complaints received from third parties and judges.

CAO received approximately 60% of these inquiries by email, and 33% by mail. Another 6% were opened after a telephone call. Less than 1% were delivered to the Bar by facsimile transmission or in person.

Source of Inquiry	Number	Percent
Client	635	36.8%
Opposing Party	322	18.7%
Third Party	143	8.3%
Opposing Counsel	49	2.8%
Judge	4	0.2%
OSB	1	.05%
Self-Report	2	0.1%
General Inquiry (not directed at a specific lawyer)	140	8.11%
General Client Assistance (not seeking action against a lawyer)	134	7.8%
Other/Unknown (category not included or relation not disclosed)	297	14.4%

**Table 2: PRIMARY SUBJECT OF INQUIRY**

Most inquirers expressed multiple concerns. The most common concern expressed by inquirers related to a perceived lack of communication. The next most common inquiries related to quality of service concerns that did not implicate misconduct, followed by allegations of a lack of competence, diligence or honesty. A substantial number of inquiries were requests for general information or general client assistance, and other types of inquiries that did not include allegations of lawyer misconduct.

Primary Subject of Inquiry	Number	Percent
Communication	166	9.6%
Quality of Services (not involving misconduct)	162	9.3%
Competence or Diligence	126	7.3%



<b>Primary Subject of Inquiry (continued)</b>	<b>Number</b>	<b>Percent</b>
Dishonesty or Misrepresentation	98	5.7%
Fee Dispute, Excessive or Illegal Fees	67	3.9%
Conduct Outside of Legal Bounds	67	3.9%
Return Client File	65	3.7%
Improper Conduct by Criminal Prosecutor	63	3.6%
Conduct Prejudicial to Justice	62	3.6%
Seeking Legal Advice or Assistance	34	1.9%
Improper Withdrawal	28	1.6%
Preserving/Accounting for Funds/Property	23	1.3%
Client Conflict – Current	22	1.3%
Rude Behavior	21	1.2%
Judicial Fitness	20	1.2%
Client Conflict – Former	18	1.0%
Conflict – Personal Interest	18	1.0%
Unauthorized Practice of Law	16	0.9%
Improper Contact with Represented Party	14	0.8%
Improper Disclosure of Confidential Information	13	0.7%
Fee – Retainer Inquiry	10	0.6%
Criminal Conduct	8	0.5%
False or Misleading Advertising	6	0.3%
Trial Conduct	6	0.3%
Improper Ex Parte Communication	3	.17%
Seeking Lawyer Referral	3	.17%
Conflict – Lawyer as Witness	1	.06%
Improperly Threatening Criminal Prosecution	1	.06%
Lawyer Debts	1	.06%
Sexual Relations With Client	1	.06%
Other/Miscellaneous/ Non-Jurisdictional	391	22.6%
General Information Inquiry	105	6.1%
General Client Assistance	88	5.1%

**Table 3: TYPE OF MATTER GIVING RISE TO THE INQUIRY**

CAO statistics show year after year that a criminal law practice (or related work like post-conviction relief) is most likely to generate an inquiry, with domestic relations the next most likely. Together, criminal law and domestic relations matters account for over half of inquiries received.

<b>Type of Matter</b>	<b>Number</b>	<b>Percent</b>
Criminal	526	36.3%
Domestic Relations	235	16.2%
Litigation	91	6.3%
Civil Dispute	74	5.1%

<b>Type of Matter</b> <i>(continued)</i>	<b>Number</b>	<b>Percent</b>
Probate	62	4.3%
Personal Injury	44	3.0%
Landlord/Tenant	42	2.9%
Juvenile	30	2.1%
Estate Planning	22	1.5%
Labor and Employment	18	1.2%
Debt Collection	17	1.2%
Real Estate	15	1.0%
Business	14	1.0%
Land Use	10	0.7%
Social Security	8	0.6%
Elder Law	8	0.6%
Workers Compensation	7	0.5%
Bankruptcy	6	0.4%
Immigration	6	0.4%
Guardianship or Conservatorship	6	0.4%
Arbitration	5	0.3%
Tax	4	0.3%
Adoption	2	.14%
Trust Account	1	.07%
Paternity	1	.07%
Other	52	3.6%
Unknown	145	10%

**Table 4: SIZE OF FIRM OF THE LAWYER SUBJECT OF THE INQUIRY**

Inquiries about solo practitioners declined to 56.7%, well below the high of 72% in 2017. Inquiries about lawyers in large firms increased from 5.6% of inquiries in 2021 to 9.5% in 2022.

<b>Firm Size</b>	<b>Percent of Active Oregon Members</b>	<b>Number of Inquiries</b>	<b>Percent of Inquiries</b>
Solo	46%	980	56.7%
2-5	20%	335	19.4%
6-10	10%	134	7.8%
11-25	11%	114	6.6%
26+	13%	164	9.5%

**Table 5: DISPOSITION (OUTCOME)**

Only the primary element of a disposition is recorded. Many dispositions, whether dismissals or disciplinary referrals, also include information provided by CAO referring the inquirer to other agencies or programs that may be of assistance.<sup>2</sup>

<sup>2</sup> For instance, if an inquiry related to fees 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.

In 2022, CAO reached dispositions for 1,636 inquiries, a decline from 2021 and earlier years. Part of the reason for the decline is that fewer matters are entered into the database. In 2022, CAO utilized an alternate means for logging telephone contacts that reduced the need to open a file matter when matters required following up.

The proportion of matters referred to Disciplinary Counsel dipped below 10% of the total number of matters. However, for those inquiries alleging lawyer misconduct, 15% were referred to Disciplinary Counsel, which is near the 2021 proportion of 18%. The difference from prior years is most likely due to the lower total number of dispositions in 2022, and the nature of the matters finished during the year. CAO will continue to monitor the number disposed and result obtained in 2023.

<b>Disposition</b>	<b>Number</b>	<b>Percent</b>
Dismissed	1025	59.4%
Information Provided	287	16.6%
Referred to Disciplinary Counsel	172	9.7%
Resolved by CAO	96	5.6%
Referred to Other	24	1.4%
Referred to OSB Lawyer		
Referral Service Only	19	1.1%
Advised to Initiate Written Inquiry Only	6	0.4%
Referred to Unlawful Practice		
of Law Committee Only	3	0.2%
Referred to Client Security Fund Only	2	0.1%
Referred to Fee Arbitration Only	1	.06%
Referred to OSB Public Records		
Coordinator Only	1	.06%

**Table 6: DISPOSITION (TIME)**

In 2022, CAO continued to speedily and accurately resolve inquiries. CAO reached a disposition of 66% of new file matters within 60 days. (Table 6.) The average time for all dispositions was 93 days. Same day dispositions are less than half the number as 2021 (301).

Same day dispositions are typically telephone contacts. The reduction of same day dispositions partially reflects CAO’s change in 2022 to log and respond to telephone calls without the need to open a file matter and enter a disposition. This means numbers and disposition time are not fully comparable to prior years. CAO continues to seek improvements that reduce matters lingering longer than six months.

Disposition time of inquiries increases significantly when CAO requests more information from the inquirer, or a response from the subject lawyer. CAO typically affords inquirers or responding lawyers 21 days to respond to any request for information and grants reasonable extensions when requested. Additional correspondence from the parties helps CAO determine whether a referral to Disciplinary Counsel is warranted. Continued correspondence, especially via email, has

increased the density of CAO files in a significant number of matters due to the parties' frequent submission of comments and information. This increase in submissions has required CAO to expend additional time to process and review the information received.

While CAO's disposition time is, on average, quite expedient, disposition times are higher when matters are complex, vigorously contested, or involve large amounts of information or correspondence. Even inquiries that are fairly straightforward can be delayed by staff resources and the overall volume of matters.

<b>Disposition Time</b>	<b>Number</b>	<b>Percent</b>	<b>Average Time (Days)</b>
Same Day	135	8.25%	0
1-2 Days	58	3.6%	1
3-6 Days	57	3.5%	4
7-14 Days	166	10.2%	11
15-30 Days	327	19.9%	22
31-60 Days	337	20.6%	44
61-180 Days	224	13.7%	104
Over 6 months	324	19.9%	321

Average: 93 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 violated a rule, CAO intervention may mitigate the harm. 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 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. The share of ethics helpline calls handled by CAO is not included in 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 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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