

Oregon State Bar

2023

Annual Report

Intake and Client Assistance Office

January 1, 2023 to December 31, 2023
Report to the Oregon Supreme Court

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I. OVERVIEW

The Oregon State Bar Intake and Client Assistance Office (CAO) reviews and responds to public inquiries about the conduct of lawyers in Oregon. CAO review enables the Bar to address public concerns about lawyers and the Bar's Disciplinary Counsel to focus resources where they are needed for potential regulatory action.

This report covers the operations of the CAO from January 1, 2023, through December 31, 2023. During that period, CAO opened 1,755 new files and provided information or assistance in response to approximately 3,108 additional 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 communication.

In 2023, CAO resolved 1,655 matters. 58% of the matters were resolved within 60 days of receipt. 23% of the matters did not implicate misconduct and were resolved by providing responsive information, referrals, or other assistance. 77% were inquiries about potential lawyer misconduct that were resolved on the merits. For those matters resolved on the merits, 19% were referred to Disciplinary Counsel. The remainder were dismissed with a written explanation and the option to request 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 2023

CAO reports to the Bar's General Counsel. It was established in 2003 as an office separate from the Bar's Disciplinary Counsel. Pursuant to OSB Rules of Procedure (BR) 2.5(a), and to the extent resources permit, CAO staff responds to 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 potential response by 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 the inquiry. CAO works with the Bar's ADA Coordinator to provide reasonable accommodation to people who are unable to communicate in writing. In 2023, CAO also worked with the Bar's Referral and Information Services program to add language line support, providing additional interpretation for telephone calls in hundreds of languages.

At the beginning of 2023, CAO was staffed by three full-time lawyers, and two full-time administrative support staff. One of the lawyers also served as manager. In prior years CAO has utilized different part-time lawyers to assist with the processing of files. In May 2023, CAO added a regular half-time lawyer to the team. To help ensure consistency and quality of review, CAO met regularly to review cases and procedures. CAO staff worked on site at the Bar and remotely.

a. Handling of telephone calls

CAO logs telephone calls to monitor call volume and ensure proper response. In 2023, CAO handled approximately 3,108 calls, an average of 60 a week. CAO staff provided information in response to public questions and 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 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 entered into a database, an electronic file was opened, and a matter number assigned. Some telephone inquiries requiring follow up efforts by CAO were also entered and assigned a file number. CAO opened 1,755 files in 2023, an average of 34 new files each week.

Pursuant to BR 2.5(a), CAO determines the manner and extent of review required for the appropriate disposition of inquiries. In practice, that evaluation most often involved collecting information from the inquirer and seeking a response from the lawyer to those concerns which may implicate misconduct.¹ 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.

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).

c. Disposition of inquiries

BR 2.5(b) authorizes the following dispositions:

(1) If the Intake 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 or LP named in the inquiry.²

(2) If the Intake 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 or LP.

(3) The Intake Office may, as it deems appropriate, contact the involved attorney or LP and attempt to assist the parties in resolving the complainant's concerns upon receipt of an inquiry. The provision of such assistance does not preclude a referral of a grievance to Disciplinary Counsel.

In 2023, CAO disposed of 1,655 inquiries; 244 were referred to Disciplinary Counsel for further evaluation, 100 resolved with CAO assistance, and 1,016 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 with CAO assistance most often involved contacting lawyers about their clients' concerns, so that they could be addressed by the lawyers. With every dismissal CAO provided a written explanation to both the inquirer and respondent 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.

² "LP" means a Licensed Paralegal member of the Oregon State Bar. No LP members were yet admitted in 2023.

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 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. The parties are notified of the referral in writing.

In 2023, review was requested in 183 matters (less than 20% of dismissals.) In 2023, General Counsel referred one matter to Disciplinary Counsel after review.

e. Other CAO efforts to improve legal services in Oregon

CAO lawyers offered many additional hours creating and 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, 2023, and December 31, 2023, CAO kept statistics regarding the following aspects of matters received. Because not every factor is known for some matters, total numbers do not always equal the number of all matters.

Table 1: SOURCE OF INQUIRY

The proportion of inquiries from each source is similar to prior years. Inquiries received from judges and third parties returned to a more typical share of the total after a small decline in 2022. More inquiries originated from clients inquiring about the conduct of their own lawyers than from any other source. CAO received 67% of inquiries by electronic mail, 28% by regular mail, and the remainder by walk-in, telephone or facsimile transmission.

Source of Inquiry	Number	Percent
Client	550	33%
Opposing Party	334	20%
Third Party	187	11%
Opposing Counsel	42	2.5%
OSB	30	2.0%
Judge	8	0.5%
Self-Report	5	0.3%
Other/Unknown (category not included or relation not disclosed)	345	20%
General Inquiry (not directed at a specific lawyer)	109	6.5%
General Client Assistance (not seeking action against a lawyer)	75	4.5%

Table 2: PRIMARY SUBJECT OF INQUIRY

Most inquirers expressed multiple concerns. The primary subject of inquiry data represents CAO’s impression of the main concern expressed in each matter. The most common subject of inquiry was a perceived lack of communication. A significant number of inquiries to which CAO responded involved concerns about lawyers that did not implicate misconduct.

Primary Subject of Inquiry	Number	Percent
Communication	164	9.7%
Competence or Diligence	147	8.7%
Dishonesty or Misrepresentation	123	7.3%
Malpractice/Quality of Services (not misconduct)	110	6.5%
Conduct Prejudicial to Justice	86	5.1%
Return Client File	82	4.9%
Conduct Outside of Legal Bounds	70	4.2%
Fee Dispute, Excessive or Illegal Fees	55	3.3%
Improper Conduct by Criminal Prosecutor	40	2.4%
Seeking Legal Advice or Assistance	40	2.4%
Improper Withdrawal	28	1.7%
Unauthorized Practice of Law	25	1.5%
Judicial Fitness	20	1.2%
Rude Behavior	19	1.1%
Client Conflict – Current	18	1.1%
Client Conflict – Former	17	1.0%
Preserving/Accounting for Funds/Property	16	.95%
Fee – Retainer Inquiry	11	0.7%
Criminal Conduct	11	0.7%
Improper Contact with Represented Party	9	0.5%
Improper Disclosure of Confidential Information	9	0.5%
Conflict – Personal Interest	8	0.5%
False or Misleading Advertising	5	0.3%
Lawyer Debts	3	.18%
Improperly Threatening Criminal Prosecution	2	.12%
Trial Conduct	2	.12%
Improper Ex Parte Communication	2	.12%

Seeking Lawyer Referral	2	.12%
Business Relationship With Client	1	.06%
Conflict – Lawyer as Witness	1	.06%
Sexual Relations With Client	1	.06%
Other/Miscellaneous/Non-Jurisdictional	453	27%
General Information Inquiry	62	3.7%
General Client Assistance	46	2.7%

Table 3: TYPE OF MATTER GIVING RISE TO THE INQUIRY

CAO statistics show year after year that 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 almost half of inquiries received.

Type of Matter	Number	Percent
Criminal	432	31%
Domestic Relations	211	15%
Civil Dispute	110	8.0%
Litigation	92	6.7%
Probate	59	4.3%
Landlord/Tenant	42	3.1%
Personal Injury	41	3.0%
Labor and Employment	34	2.5%
Juvenile	26	1.9%
Estate Planning	25	1.8%
Immigration	20	1.4%
Real Estate	17	1.2%
Social Security	16	1.2%
Elder Law	15	1.1%
Workers Compensation	15	1.1%
Debt Collection	12	0.9%
Bankruptcy	12	0.9%
Business	11	0.8%

Guardianship or Conservatorship	11	0.8%
Land Use	6	0.4%
Arbitration	5	.36%
Advertising	2	.15%
Tax	1	0.1%
Adoption	1	.07%
Other	55	4.0%
Unknown	107	7.8%

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

Inquiries about solo practitioners remained relatively steady at 56.4%, well below the high of 72% in 2017.

Firm Size	# of Inquiries	% of Inquiries
Solo	950	56.4%
2-5	314	18.7%
6-10	138	8.2%
11-25	122	7.2%
26+	161	9.6%

Table 5: DISPOSITION (OUTCOME)

Only the primary element of the disposition is recorded. Many dispositions include referrals to other agencies or programs that might be of assistance.³

In 2023, CAO reached dispositions for 1,655 inquiries, a slight increase from 2022. After a dip in 2022, the proportion of matters referred to disciplinary counsel returned to the typical range of about 15% of the total number of files.

Disposition	Number	Percent
Dismissed	1016	60%
Referred to Disciplinary Counsel	244	14.5%
Information Provided	190	11%
Resolved by CAO	100	6%
Referred to Other	41	2.4%
Referred to OSB Lawyer Referral Service Only	40	2.4%
Advised to Initiate Written Inquiry Only	11	0.6%
Referred to OSB Public Records Coordinator Only	4	0.2%
Referred to Unlawful Practice of Law Committee Only	3	0.2%
Referred to Fee Arbitration Only	3	0.2%
Referred to PLF Only	1	.06%
Referred to OPDC Only	1	.06%
Referred to Client Security Fund Only	1	.06%

3. 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

Table 6: DISPOSITION (TIME)

In 2023, CAO continued to speedily and accurately resolve inquiries. CAO reached a disposition of 58% of new file matters within 60 days. (Table 6.) The average time for all dispositions was 122 days. Disposition time increases significantly when CAO requests more information from the inquirer, or a response from the respondent lawyer. CAO affords inquirers or responding lawyers 21 days to respond to any request for information, and reasonable extensions when requested. While CAO’s disposition time is good on average, disposition times are higher when files are complex, vigorously contested, or involve large amounts of information or correspondence. Even inquiries that are fairly straightforward can be delayed by limited staff resources and the overall volume of matters. CAO continues to seek and implement improvements to reduce the number of matters lingering longer than 6 months.

Disposition Time	Number	Percent	Average Time (Days)
Same Day	73	4.4%	0
1-2 Days	59	3.6%	1
3-6 Days	50	3.0%	5
7-14 Days	140	8.5%	11
15-30 Days	351	21.2%	23
31-60 Days	289	17.5%	44
61-180 Days	259	15.5%	102
Over 6 months	431	26.0%	353

Average: 122 days

IV. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

Pursuant to BR 2.5(b)(3), CAO staff may attempt to resolve the concerns that provoked an inquiry. Even where a lawyer may have committed misconduct, CAO intervention has the potential for mitigating 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.

As appropriate, CAO staff refers lawyers or inquirers to the Oregon Attorney Assistance Program, State Lawyers Assistance Committee, OSB Professional Liability Fund, OSB Client Security Fund or other resources that may mitigate or prevent 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. CAO lawyers also assist General Counsel to handle thousands of Legal Ethics Helpline calls each year from lawyers seeking guidance regarding their ethical obligations. Helpline calls are not included within 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.



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