

July 1, 2016

Eric Dover  
1615 Cloverleaf Road  
Lake Oswego, OR 97034

Re: Nicole A. Krishnaswami      CAO File No. TJW 1501630  
Kathleen Haley      CAO File No. TJW 1001512  
Warren G. Foote      CAO File No. TJW 1001513  
*Eric Dover, M.D., Complainant*

Dear Dr. Dover:

This matter has been transferred to me. Please note the change in file numbers from **SRO** 1501630/1001512/1001513 to **TJW** 1501630/1001512/1001513. The Oregon State Bar (Bar) has reviewed all the relevant materials submitted in connection with your complaint regarding Warren Foote.

The Client Assistance Office (CAO) is responsible for reviewing concerns regarding Oregon lawyers. Under Bar Rule of Procedure 2.5 and as resources permit, CAO determines the manner and extent of review required to determine whether there is sufficient evidence to support a reasonable belief that misconduct may have occurred warranting a referral to Disciplinary Counsel's Office. Misconduct means a violation of the rules of professional conduct and applicable statutes that govern lawyer conduct in Oregon. This file was re-assigned from Stacy Owen to Troy Wood for final review and disposition.

You have raised a number of concerns about Mr. Foote, but the only ethical issue with sufficient enough information to warrant a review was your allegation that he had improper ex parte contact with Administrative Law Judge (ALJ) Rick Barber. This does not mean that your other concerns were not important; it merely means that those other issues did not implicate our ethical rules or lacked corroborating evidence to support the allegation.

For example, you allege that Mr. Foote did not provide you with required discovery. Your allegation does not acknowledge the protective order and discovery rulings issued by ALJ Barber, which limited the materials that were required to be provided through discovery. The materials presented show that Mr. Foote complied with ALJ Barber's orders; thus, these discovery issues do not implicate a violation of our ethics rules.

Based on the submitted materials, we must conclude that there is insufficient evidence to support a reasonable belief that Mr. Foote violated our ethical rules against *ex parte* contact with a judge.

Oregon Rules of Professional Conduct (RPC) 3.5(b) prohibits a lawyer from communicating *ex parte* on the *merits* of a cause with an ALJ, judge or other trier of fact during a proceeding unless authorized to do so by law or court order.

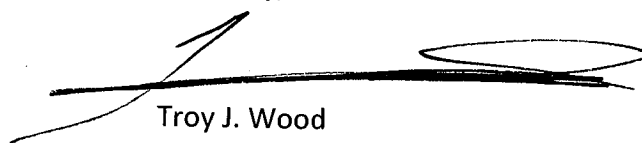
Here, the only evidence presented in support of this allegation was your observation that Mr. Foote was seen speaking with ALJ Barber in a room just off from the room where you had your Oregon Medical Board hearing. While Mr. Foote does not deny the possibility that such a meeting took place, he denies that he had any discussion with ALJ Barber about the *merits* of your case outside of the presence of your attorney. He indicates that it is not unusual for him to exchange pleasantries with the various ALJs that he appears in front of on a regular basis. Such contacts are not prohibited by our ethical rules. Without proof that the alleged discussion was on the merits of your case, we have no basis to review this matter further.

We recognize that you also named Nicole Krishnaswami and Kathleen Haley in your complaint materials; however, you have presented no credible evidence of professional misconduct on either of their parts, so we have not asked them to defend themselves against your allegations. Since no response was required from them, and none was provided, we need not analyze your allegations against them in this dismissal.

Because we find no professional misconduct, we will take no further action on this matter. If you disagree with this disposition, you may have the matter reviewed by General Counsel, provided we receive your request for review in writing no later than July 22, 2016. The decision of General Counsel is final.

We hope we have been of assistance in obtaining Mr. Foote's response to your concerns. Thank you for bringing them to our attention.

Sincerely,



Troy J. Wood  
Assistant General Counsel  
Ext. 366

TJW/jmm

cc: Nicole Krishnaswami, Attorney at Law  
Kathleen Haley, Attorney at Law  
Warren Foote, Attorney at Law

Email submissions to: [cao@osbar.org](mailto:cao@osbar.org) Use subject line: TJW 1501630