

LDD 1600763

OSB CAO Intake [cao@osbar.org]

Sent: Apr 19, 2:32 pm

To: 'lkogan@koganlawgroup.com', 'david.elkanich@hkilaw.com'

April 19, 2018

David A. Cacka
cackadac2c@aol.com

Greg Carleton
gcarcf@aol.com

Re: **Subject: LDD 1600763**
Lawrence Kogan (David A. Cacka/Greg Carleton)

Dear David Cacka and Greg Carleton:

The Oregon State Bar Client Assistance Office (CAO) is responsible for reviewing concerns regarding lawyers in Oregon. Under Bar Rule of Procedure 2.5 and as resources permit, CAO determines the manner and extent of review required to decide whether there is sufficient evidence to support a reasonable belief that lawyer misconduct may have occurred warranting a referral to Oregon State Bar Disciplinary Counsel. Misconduct means a violation of the rules of professional conduct and applicable statutes that govern lawyer conduct in Oregon.

I apologize to you and to Mr. Kogan for the time that has passed since you notified us of your concerns and he responded to our requests for information regarding them. You also complained about Nathan Rietmann, an Oregon lawyer retained by the Board of Directors for the Klamath Irrigation District to serve as general counsel to the District. I address your concerns about Mr. Rietmann in a separate letter.

Mr. Kogan, a lawyer admitted to the practice of law in the State of New York and other jurisdictions, but not the State of Oregon, was retained by the Board of Directors of the Klamath Irrigation District to provide legal and consultative services in connection with land and water rights issues that included significant federal agency and intergovernmental components. You expressed concerns that Mr. Kogan may have practiced law unlawfully in Oregon. Because it appeared possible that your concerns might implicate our rules, we asked Mr. Kogan to respond to them. I have reviewed all the relevant materials submitted in connection with your complaint. I conclude that there is no sufficient basis to warrant a referral to Disciplinary Counsel.

Oregon Rules of Professional Conduct (RPC) 5.5(b) generally prohibits a lawyer not admitted to practice in Oregon from establishing an office or other systematic and continuous presence in Oregon for the practice of law, but it permits a lawyer to provide temporary services in Oregon, especially when those services are offered in association with an Oregon lawyer or they relate to services the lawyer may be otherwise permitted to provide, such as advocacy before a federal agency. Under the circumstances you and Mr. Kogan have described, we could not find sufficient evidence that Mr. Kogan's temporary practice in Oregon constituted a systematic and continuous presence in Oregon for the practice of law, in violation of RPC 5.5(b). To the extent Mr. Kogan may have offered advice or given direction to the District regarding issues of Oregon law, they appear to have been related to the matters for which he could assist the District on a temporary basis. Although you disagree with Mr. Kogan's statements to the Board regarding public meetings law, we could not find that Mr. Kogan's representation in the broad context showed a lack of professional knowledge and ability, in violation of RPC 1.1, the rule requiring competent representation.

You also expressed concerns that Mr. Kogan had improperly instructed you or other officers, agents or employees of the District to refrain from talking to others about particular District issues. RPC 3.1 prohibits a lawyer from taking positions that the lawyer knows have no factual or legal merit. Mr. Kogan's admonition not to speak of matters related to his representation and/or the representation of Mr. Rietmann did not lack a meritorious basis.

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 May 10, 2018. The decision of General Counsel is final.

I hope we have been of assistance in obtaining a response to your concerns. Thank you for bringing them to our attention.

Yours,

Linn D. Davis
Assistant General Counsel
Ext. 332

LDD/jmm

cc: Lawrence Kogan, Attorney at Law
David Elkanich, Attorney at Law

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Email submissions to: cao@osbar.org Use subject line: LDD 1600763

The logo for the Oregon State Bar (OSB) consists of the letters "OSB" in a white, bold, sans-serif font, set against a solid black square background.

Client Assistance Office
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