May 3, 2016

Mitzi Linn mitzi linn@hotmail.com Anonymous someone@somewhere.org

Re: **Subject: TJW 1600210 1600211**

Craig Arnold/Lissa Casey (Mitzi Linn/Anonymous)

Dear Ms. Linn and Anonymous:

Under Bar Rule of Procedure 2.5 and as resources permit, the Oregon State Bar Client Assistance Office determines the manner and extent of review required to determine 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.

We have reviewed all the relevant materials submitted in connection with your complaint regarding Craig "Mike" Arnold and Lissa Casey (hereinafter, collectively referred to as "the Lawyers"). We conclude that there is no sufficient basis to warrant a referral to Disciplinary Counsel for further review.

Based upon press accounts, you expressed concerns that the Lawyers may have improperly solicited clients at the location of the Malheur National Wildlife Refuge during the time it was occupied by armed protestors engaged in a standoff with law enforcement personnel. Because it appeared those concerns might implicate our rules, we asked the Lawyers to respond.

The Lawyers admit that they asked one of the protestors to hand deliver a letter ("the Letter") to Ammon Bundy ("Bundy"), an alleged leader of the armed protestors. After receiving the Letter, Bundy arranged to meet with the Lawyers and, they state, it was he who came to them.

The Lawyers contend that they permissibly offered free legal assistance to Bundy in an attempt to assist him to resolve the occupation and standoff. The Lawyers admit that weeks later, after Bundy had been arrested, they agreed to defend Bundy in the criminal case and they expect financial compensation for that defense. The Lawyers decline to provide further information concerning their communications with Bundy citing their ethical obligations to keep client confidences and secrets. *See*, Oregon Rules of Professional Conduct Rule 1.6(a) [Confidentiality of Information]. The Lawyers also claim their conduct was constitutionally protected speech.

The Lawyers provided a copy of the Letter, with certain redactions. They state that the Letter was not enclosed in an envelope when it was delivered to Bundy. Inspection of the Letter reveals that immediately below the Lawyers' letterhead, in large capital letters, bolded and underlined, are the words "LAWYER ADVERTISING MATERIAL." The subject line of the letter reads: "Re: Offer of Discussion re Possible Pro Bono Legal Services".

In pertinent part, the unredacted portions of the Letter contain the following paragraphs:

"The purpose of this letter is to request a meeting with you to discuss whether the attorneys of Arnold Law may be of any assistance to you, on a *pro bono* basis, in finding a resolution to the situation in Harney County, Oregon. ***

As Oregon lawyers, we cannot assist or advise you to engage in criminal or illegal conduct. Nonetheless, we are genuinely interested in attempting to resolve this situation and believe we are well qualified to listen to your concerns and help present them to the government. ***

We therefore hope that you would be willing to sit down and speak with us in order to see if we can be of help to you on a pro bono basis. ***"

Oregon Rules of Professional Conduct Rule 7.3, entitled Solicitation of Clients, governs the solicitation of clients by lawyers in Oregon. Rule 7.3(a) states:

- (a) A lawyer shall not by in-person, live telephone or realtime electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
 - (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

Rule 7.3(a) does not apply to written letters. Oregon Formal Ethics Opinion 2005-127 [Rev. 2015]. Hence, there is no sufficient basis to find that the Lawyers violated Rule 7.3(a) by causing the Letter to be delivered to Bundy. Because Rules 7.3(a) does not apply, we need not consider whether pecuniary gain was a significant motive for the lawyers when they offered free (pro bono) legal services to Bundy prior to his arrest.

Rule 7.3(b) states:

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
 - (3) the solicitation involves coercion, duress or harassment.

In other words, whether or not a lawyer is motivated by pecuniary gain, Rule 7.3(b) permits a lawyer to solicit professional employment through a written letter, unless the lawyer should know the person solicited could not exercise reasonable judgment in making decisions about employing a lawyer, the person has made known a desire not to be solicited by the lawyer, or the solicitation involves coercion, duress or harassment.

The information we have reviewed is insufficient to support a reasonable belief that Bundy could not exercise reasonable judgment in employing a lawyer or had made known a desire not to be solicited. Nor is there evidence of coercion, duress or harassment by the Lawyers. We could not find that the Lawyers may have violated Rule 7.3(b).

Rule 7.3(c) states:

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

Inspection of the Letter supports that the Lawyers complied with Rule 7.3(c). Because we find the conduct of delivering the Letter did not violate Rule 7.3, we need not address the Lawyers' constitutional arguments.

We also considered your complaint that the Lawyers may have provided advice to Bundy or others about avoiding criminal charges for using or destroying property. The Lawyers are permitted, but not required, to reveal confidential information, such as the content of their advice to a client, to the extent reasonably necessary to respond to allegations in a proceeding concerning the lawyer's representation of the client. See, Rule 1.6(b)(4) [permitting disclosure of confidential information in those circumstances]; Rule 8.1(a)(2) [providing that disclosure of confidential information is not required]. We cannot require the Lawyers to describe the content of their legal advice to a client and they have declined to do so. However, based upon accounts in the press, it appears the Lawyers may have offered advice regarding avoiding further illegal conduct during the protest. It is not misconduct for a lawyer to advise a client whether conduct

Page 4

is legal; nor does a lawyer engage in misconduct by advising a client to refrain from conduct that might be considered illegal.

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 24, 2016. The decision of General Counsel is final.

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

Sincerely,

Troy J. Wood

Assistant General Counsel

Ext. 366

TJW/jmm Attachment

cc: Peter Jarvis, Attorney at Law