SUPREME COURT OF WISCONSIN

OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2012-OLR-11

Tina F. Gouty-Yellow
Attorney at Law

The Respondent, Attorney Tina F. Gouty-Yellow ("Gouty-Yellow"), age 53, was admitted to the practice of law in Wisconsin on October 26, 1987 and practices in Shawano, Wisconsin.

On or about December 31, 2008, Gouty-Yellow began representing a woman in an ongoing divorce case. The petitioner, the client's husband, appeared *pro se* throughout the divorce proceedings and was first represented by counsel months after the Judgment of Divorce was entered.

On June 2, 2009, the final hearing took place in the divorce action. At the beginning of the hearing, Gouty-Yellow read into the record an oral agreement between the parties concerning custody and placement Gouty-Yellow stated, "Basically, they will continue with joint custody, sharing decision-maker [sic] powers over major decisions such as drivers license, answering to the armed services, second opinions regarding medical matters." Gouty-Yellow further stated, "With regard to placement, they will not have a schedule. It will be reasonable upon reasonable notice, and hopefully at least a day or two ahead of time, and they can just work that out."

The judge accepted this arrangement and ordered it incorporated into the Judgment. The Findings of Fact, Conclusions of Law and Judgment of Divorce were prepared by Gouty-Yellow and her office staff.

On August 3, 2009, Gouty-Yellow signed the cover letter transmitting her proposed Findings of Fact, Conclusions of Law and Judgment of Divorce to the Judge for his signature, with a copy to the client's husband.

The Findings of Fact, Conclusions of Law and Judgment of Divorce, as submitted to the court by Gouty-Yellow, differed in a several key respects from the custody and placement agreement that Gouty-Yellow had read into the record at the final divorce hearing and that the court ordered.

Instead of providing for continued joint custody as the parties had agreed, and the court ordered, Gouty-Yellow's proposed Findings of Fact, Conclusions of Law and Judgment provided sole legal custody of the children to her client and the Findings of Fact included the language, "The respondent is the fit and proper person to be given the care and legal custody of the minor children. The best interests of the children are served by awarding sole legal custody to respondent." The Conclusions of Law and Judgment, submitted by Gouty-Yellow, also included the language, "The respondent is awarded the sole legal custody [of the children]."

Instead of providing for reasonable placement upon reasonable notice as agreed by the parties and ordered by the court, without a set schedule and with only a day or two advance notice as worked out by the parties, Gouty-Yellow's proposed Findings of Fact, Conclusions of Law and Judgment provided that primary physical placement of the children was awarded to her client, and the client's husband, the petitioner, would have physical placement only under a series of conditions. The conditions included weekend placement only with one week's prior notice; daytime placement only; no overnight placement; supervised placement only; placement to be supervised by petitioner's mother; petitioner prohibited from consuming alcoholic beverages during placement or 12 hours prior to placement; if Gouty-Yellow's client suspected

that the petitioner has been drinking prior to placement or during placement, then the client may deny placement; and the parties shall exchange placement in Bear Creek.

On or about January 5, 2010, the client's husband, the petitioner, hired an attorney to represent him. On that date, the client's husband's attorney wrote to Gouty-Yellow to indicate he would be representing the client's husband. The client's husband's attorney also stated that the husband believed there was a discrepancy between the placement provisions ordered at the final divorce hearing and the sole legal custody and supervised placement provisions in the Judgment. The client's husband's attorney asked Gouty-Yellow to explain the discrepancy.

Gouty-Yellow replied by letter dated January 6, 2010, and did not address the discrepancies. Gouty-Yellow stated that her representation of the client ended when the Findings of Fact, Conclusions of Law and Judgment of Divorce were filed with the Court, and suggested that the client's husband's attorney contact the client directly.

The client's husband's attorney subsequently obtained an Order to Show Cause why the Judgment should not be set aside based upon fraud on the court, and thereafter filed a grievance against Gouty-Yellow with the Office of Lawyer Regulation ("OLR"). Gouty-Yellow stated she was unaware of the Order to Show Cause until she was contacted by OLR. Gouty-Yellow's client was represented by another attorney at the Order to Show Cause hearing.

On March 8, 2010, the court abrograted and struck the erroneous language from the Findings of Fact, Conclusions of Law and Judgment, and amended the Findings of Fact, Conclusions of Law and Judgment to include the custody and placement terms agreed to by the parties and approved by the court at the June 2, 2009 divorce hearing.

The client's husband's attorney informed OLR that the Findings of Fact, Conclusions of Law and Judgment presented to the court by Gouty-Yellow did not match the testimony of the

divorce hearing. The client's husband's attorney identified seven discrepancies between the agreement of the parties in the hearing transcript and the Judgment obtained by Gouty-Yellow. The client's husband's attorney focused primarily on the Judgment terms with regard to sole legal custody and conditions on placement.

In her response to the grievance, Gouty-Yellow acknowledged her mistakes. Gouty-Yellow stated, "I met my client at the Courthouse prior to the contested hearing and approached [my client's husband]. A discussion occurred and that is where the parties reached an agreement. I documented their agreement in my hearing notes and that is what was put on the record and reflected on pages 3 and 7 of the transcript from June 2nd, 2009." Gouty-Yellow further stated in her response, "I recall a discussion with my staff regarding my hearing notes. The hearing notes could not be found and we prepared the FFCLJD based upon my "trial issues" and that is where the error occurred." Gouty-Yellow concluded, after a complete search of her file, that her divorce hearing notes were lost.

In her response to the grievance, Gouty-Yellow admitted, "I have recently reviewed the transcript from the hearing and see my mistakes. I have clearly made a mistake in this matter and I am responsible. I can assure you that this mistake was just that, a mistake."

Gouty-Yellow further indicated that she thought that if she was wrong either the client's husband or the court would point out any mistakes. Prior to submitting the proposed Findings of Fact, Conclusions of Law and Judgment to the court, Gouty-Yellow did not obtain a copy of the hearing transcript, nor did she review the additional text notes from the divorce hearing available on the Wisconsin Circuit Court Access ("WCCA") website.

Having recited the correct custody and placement terms on the record in open court, by subsequently submitting the proposed Findings of Fact, Conclusions of Law and Judgment with

erroneous custody and placement terms to the court, while claiming she had lost her divorce hearing notes, and being unsure of the veracity of the submitted-documents, but nevertheless submitting them, Gouty-Yellow violated SCR 20:3.3(a)(1) which states, "A lawyer shall not knowingly…make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

Having recited the correct custody and placement terms on the record in open court, by subsequently submitting the proposed Findings of Fact, Conclusions of Law and Judgment with erroneous custody and placement terms to the court, while claiming she had lost her hearing notes, being unsure of the veracity of the submitted-documents, by failing to obtain a transcript of the divorce hearing, by failing to review the notes from the hearing on the WCCA website, and by acting with reckless disregard as to whether the documents submitted to the court were accurate, Gouty-Yellow violated SCR 20:8.4(c) which states, "It is professional misconduct for a lawyer to:…engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Respondent has no prior discipline.

In accordance with SCR 22.09(3), Attorney Tina F. Gouty-Yellow is hereby publicly reprimanded.

Dated this 8th day of August, 2012.

SUPREME COURT OF WISCONSIN

/s/

Christine Harris Taylor, Referee