

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2023-OLR- 3

Margery Mebane Tibbetts
Attorney at Law

Margery Mebane Tibbetts a/k/a Margery Wakefield was admitted to the bar of the Supreme Court of Wisconsin on June 20, 1989, State Bar No. 1012321. Tibbetts practices in Janesville, Wisconsin and her license is active and in good standing.

FIRST MATTER

In March 2016, S.M. hired Tibbetts to represent her in a divorce action against her husband F.G. In a March 5, 2017 letter to S.M., Tibbetts stated, “Enclosed please find the invoice from WFA Econometrics Corp. for the preparation of the QDRO. You will need to pay one-half of the invoice.”

On March 2, 2017, in anticipation of this fee, S.M. provided Tibbetts with a check in the amount of \$200 to pay for her portion of the invoice from WFA Econometrics (WFA) for a Qualified Domestic Relations Order (QDRO). Tibbetts did not pay the \$200 to WFA and instead applied the \$200 to S.M.’s account balance.

On September 24, 2018, F.G. filed a Motion for Contempt against S.M. in the case. On October 14, 2018, S.M. was served with the Notice of Motion & Motion for Contempt of Court.

On October 15, 2018, S.M. sent a text to Tibbetts stating, “So now I’ve been held in contempt for something you’re responsible for? See email I sent to you on October 30, 2017. You’ve had my \$200 since March 1, 2017 [sic]!”

In an October 15, 2018 text message reply to S.M., Tibbetts stated, "Can you speak on the phone tomorrow? I take full responsibility. Your paperwork mistakenly got filed in the file. I found it when the motion was filed. I plan to get everything to WFS [sic] this week." In a reply text S.M. stated, "I am traveling tomorrow and will be back Thursday. I can speak with you then. Over the lunch hours would be best time to reach me." S.M. did not receive a call from Tibbetts.

In an October 31, 2018 text to Tibbetts, S.M. stated, "Should I just find a new lawyer?" Tibbetts replied, "No I have been working on it. Are you available to speak tomorrow?" Thereafter, they agreed that Tibbetts would call S.M. the following day on November 1, 2018, at 12:00 p.m. Tibbetts did not call S.M.

In a November 2, 2018 text to S.M., Tibbetts stated, "I am at a funeral in Madison. I apologize the mass went through the noon hour. I can email the QDRO first thing Monday morning." S.M. never heard from Tibbetts again and Tibbetts did not complete the QDRO process.

On or about December 18, 2018, S.M. hired a new attorney to represent her regarding the QDRO and the Motion for Contempt. Successor counsel eventually filed the QDRO.

On January 13, 2020, S.M. filed a grievance against Tibbetts with OLR. In a February 12, 2020 email to OLR, Tibbetts stated, "With sincere regret and embarrassment, I acknowledge the sequence of events described by [S.M.] and that my representation in processing the QDRO was far from adequate or diligent."

On July 14, 2021, OLR provided Tibbetts with written notice of the formal investigation and of her duty to cooperate with the investigation. Tibbetts was informed that her written response to the grievance was to be submitted on or before August 6, 2021.

In a July 28, 2021 email to OLR, Tibbetts stated, "Please accept this email as my initial response to the grievance in this matter." Tibbetts also stated, "Regrettably, I acknowledge each

of the factual recitations made by [S.M.] in her grievance regarding my delinquencies in handling the QDRO process after her divorce. I take full responsibility for the same.” Tibbetts further stated, “There is no excuse or ‘defense’ for my lack of properly handling the QDRO situation and the angst it caused [S.M.]”

In an August 6, 2021 email to Tibbetts, OLR staff stated that Tibbetts must provide OLR with a response to each of the numbered requests in OLR’s July 14, 2021 letter to Tibbetts. That same day in a reply email to OLR, Tibbetts stated, “I will work on that first thing next week or over the weekend.”

On August 19, 2021, OLR sent a follow-up email to Tibbetts reminding her of her duty to cooperate and requiring her to provide OLR with a complete response no later than August 26, 2021.

On September 2, 2021, OLR sent a second follow-up email to Tibbetts stating that OLR had not received her complete written response, which was due by August 26, 2021, and reminding her of her duty to cooperate.

In a September 7, 2021 email to OLR, Tibbetts asked if she could submit a response by Friday. In a September 8, 2021 email reply to Tibbetts, OLR granted her an extension until September 15, 2021.

On September 16, 2021, OLR received a written partial response from Tibbetts. In particular, Tibbetts failed to provide OLR with a copy of the case file.

In a September 16, 2021 email to Tibbetts, OLR asked Tibbetts to provide a copy of the entire case file for her representation of S.M. in response to OLR’s July 14, 2021 request on or before September 23, 2021. Tibbetts did not respond.

In an October 7, 2021 follow-up email to Tibbetts, OLR stated that it had not received a copy of the case file and reminded Tibbetts of her duty to cooperate. On November 17, 2021, OLR sent another follow-up email to Tibbetts stating OLR has not received a copy of the case file for her representation of S.M. On December 7, 2021, OLR received an email reply from Tibbetts stating she had received OLR's November 17, 2021 email. In another December 7, 2021 email to OLR, Tibbetts stated, "I greatly apologize. Somehow I missed that email. After my trial, I wil [sic] get the file to you."

On January 21, 2022, Tibbetts informed OLR in a telephone conversation that S.M.'s case file was missing, but there were a couple more places where she would search for the case file. It had been nearly six months since OLR first requested a copy of the case file on July 14, 2021.

In a January 21, 2022 email to Tibbetts, OLR reminded Tibbetts of her agreement to respond on or before February 4, 2022, as to whether she was able to locate the case file. Tibbetts did not contact OLR by the deadline. In a March 4, 2022 email to Tibbetts, OLR sent a third follow-up email reminder requesting the status of the missing file.

In a March 7, 2022 email to OLR, Tibbetts stated, "I was not able to locate her file." Thereafter, Tibbetts told OLR the case file may have mistakenly been shredded.

By failing to complete the QDRO process resulting in a Motion for Contempt being filed against S.M., Tibbetts violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to keep S.M. reasonably informed regarding the status of the case, and by failing to respond to S.M.'s text messages and calls requesting information, Tibbetts violated SCR 20:1.4(a)(3) and (4), which state, "A lawyer shall...(3) keep the client reasonably informed about

the status of the matter; (4) promptly comply with reasonable requests by the client for information...”

By failing to timely provide a complete written response to the grievance, Tibbetts violated the following Rules of Professional Conduct for Attorneys:

SCR 22.03(2), which states, “Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation.”

SCR 22.03(6), which states, “In the course of the investigation, the respondent’s willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent’s misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.”

SCR 22.03(2) and 22.03(6) are enforced under the Rules of Professional Conduct for Attorneys through SCR 20:8.4(h), which states, “It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by...SCR 22.03(2).”

SECOND MATTER

On or about January 31, 2020, M.H. hired Tibbetts to represent her in her divorce case. On June 2, 2020, Tibbetts filed a Motion for Withdrawal of Counsel in the case.

In an undated closing letter to M.H., Tibbetts stated, “Since [the Judge] granted the motion to withdraw as your counsel, the firm will now be closing your file.” Upon termination of the representation, Tibbetts did not provide an accounting or any fee arbitration notices to M.H. On June 5, 2020, M.H. filed a grievance against Tibbetts with OLR.

On June 9, 2020, the court granted Tibbetts Motion for Withdrawal. In a June 11, 2020 email to Tibbetts, M.H. stated, “I’m requesting my complete case file, including all court

documents and discovery requests, that were supposed to have been filed by Attorney Wakefield.” Tibbetts did not provide M.H. with the case file.

On or about June 23, 2020, M.H. hired Attorney M.F. to represent her in the divorce case. In a June 25, 2020 letter to Tibbetts, sent via USPS mail and email, Attorney M.F. stated, “I have been retained by [M.H.] in this case. As soon as possible, please provide our office with a copy of her file. You are welcome to send the file via email. Time is of the essence; court proceedings are scheduled. Please let me know if you have any questions. Thank you.” Tibbetts did not provide M.H.’s file in response to Attorney M.F.’s request.

In an August 12, 2020 letter to OLR, Tibbetts stated, “The new attorney has never contacted my office to request a copy of our file,” despite documentation that M.F. sent the request to Tibbetts via USPS mail and email on June 25, 2020.

In the September 4, 2020 letter to OLR, M.H. stated that Attorney M.F. received the case file via Dropbox on September 3, 2020.

In an April 9, 2021 letter to Tibbetts, OLR requested additional information and documents. On April 28, 2021, Tibbetts sent an email to OLR with several attached emails.

In a May 4, 2021 letter responding to the additional requests in OLR’s April 9, 2021 letter, Tibbetts stated, “The closing letter and electronic file were emailed to [M.H.] by paralegal [J.K.] on June 12, 2020 at 4:39 PM.”

In a June 3, 2021 letter to Tibbetts, OLR requested additional information and documents, including a copy of the email from J.K. to M.H. dated June 12, 2020, at 4:39 PM. In subsequent emails on June 17 and 18, 2021, Tibbetts informed OLR that she was having her staff search for the requested emails to forward to OLR.

In a June 18, 2021 email at 12:38 p.m. to OLR, Tibbetts stated, "Attached is the email chain [staff] found for the August 11th date. He said they are actually from [Attorney T.K.] and not [J.K.]. At times they use each other's computers so that may explain why it looks like [J.K.] sent the emails that day. [Staff] and I are still working on the other email chain." In a June 18, 2021 email reply at 1:14 p.m., OLR staff stated, "Also, in paragraph 1 of my June 3, 2021 letter, I requested an actual copy of the email from [J.K.] to [M.H.] dated June 12, 2020, at 4:39 PM."

In a July 6, 2021 letter to OLR, Tibbetts stated, in part, "... enclosed is the copy of the email from [J.K.] to [M.H.] dated June 12, 2020 at 4:39 PM." Even though Tibbetts explicitly stated that she had enclosed the email dated June 12, 2020 at 4:39 PM she had not done so. In a July 14, 2021 email to Tibbetts, OLR informed Tibbetts that she had not enclosed the email dated June 12, 2020 at 4:39 p.m. as she had stated in her July 6, 2021 letter and OLR again requested a copy of the email.

In a July 20, 2021 email to OLR, Tibbetts stated, "As I understand from conferring with [Attorney T.K.], the email from [J.K.] to [M.H.] that you were asking for a copy was isin [sic] essence not a real email but documentation of the date and time [J.K.] sent the electronic file to [M.H.] via Salesforce." Tibbetts never provided OLR with a copy of the June 12, 2020 email because there was no email sent to M.H. on June 12, 2020 at 4:39 p.m.

By failing to promptly deliver the case file to M.H.'s successor counsel, Tibbetts violated SCR 20:1.16(d), which states, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned

or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.”

By failing to provide the required accounting and fee arbitration notices in writing to M.H. upon termination of the representation, Tibbets violated SCR 20:1.5(g)(2), which states, “(g) A lawyer who accepts advanced payments of fees may deposit the funds in the lawyer's business account, provided that review of the lawyer's fee by a court of competent jurisdiction is available in the proceeding to which the fee relates, or provided that the lawyer complies with each of the following requirements: ... (2) Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following: a. A final accounting, or an accounting from the date of the lawyer's most recent statement to the end of the representation, regarding the client's advanced fee payment. b. A refund of any unearned advanced fees and costs. c. Notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting. d. Notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration.”

By misrepresenting to OLR in an August 12, 2020 letter that her office had never received a request for the case file from successor counsel, when in fact successor counsel sent her a June 25, 2020 letter via email and mail requesting the case file, Tibbetts violated SCR 22.03(6), which states, “In the course of the investigation, the respondent’s willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent’s misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.” SCR 22.03(6) is enforced under the Rules of Professional Conduct for Attorneys

through SCR 20:8.4(h), which states, “It is professional misconduct for a lawyer to fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by...SCR 22.03(2), SCR 22.03(6)...”

THIRD MATTER

On May 26, 2020, M.T. filed a Summons and Petition for divorce against his wife C.T. Attorney C.H. represented M.T. in the divorce case. On or about June 12, 2020, Attorney M.M. began representing C.T. in the divorce case.

On April 16, 2021, the court ordered the parties to participate in mediation through Family Court Services (FCS) to address their custody and placement dispute. The initial mediation was scheduled for June 10, 2021.

On or about June 7, 2021, C.T. consulted with Tibbetts to have Tibbetts represent her in the divorce case. On June 18, 2021, Tibbetts filed a Stipulation and Substitution of Attorneys. After Tibbetts was hired, the mediation was rescheduled for July 9, 2021.

In his January 10, 2022 grievance, C.T.’s father M.L. stated, “On July 6 (just three days before the scheduled July 9 mediation), [C.T.] had become particularly depressed, was not eating well, and was vomiting. She suffered two falls at home and, at her request, I took her to UW where she was admitted, administered fluids and otherwise treated, and released later that day.” M.L. provided that he called Tibbetts that same day and explained that C.T. would be physically unable to participate in the July 9, 2021 mediation. Tibbetts informed M.L. that she would secure a postponement.

Contrary to her assertions, Tibbetts did not secure a postponement. Tibbetts later advised M.L. that she left a message with FCS requesting a postponement, but received no response.

Tibbetts did not follow up with FCS and did not advise either C.T. or M.L. that she had not, in fact, secured a postponement.

On July 9, 2021, FCS called C.T. and advised that she was to immediately proceed with a “zoom” mediation. C.T. had not expected the call since she believed Tibbetts had secured a postponement. C.T., being totally unprepared and still ill, was unable to coherently continue with the call and the mediation did not proceed.

In a July 15, 2021 letter to Attorney C.H., the Court Commissioner stated, “Ms. [C.T.] has chosen to violate that court order by failing to attend FCS mediation, in spite of being given two opportunities to do so. The remedy for Ms. [C.T.’s] failure to follow the Court’s order is not to proceed as though mediation occurred. The consequence of Ms. [C.T.’s] failure to follow the Court order is a forfeiture of her ability to object to any custody/placement proposal that Mr. [M.T.] presents to the Court.”

In a July 19, 2021 email to Tibbetts, Attorney C.H. stated, “Though I think the Court will enter what I’ve drafted as the final order regarding legal custody and physical placement, we would prefer to reach an agreement.”

In a July 23, 2021 letter to the Court Commissioner, Attorney C.H. stated, “Pursuant to your correspondence dated July 15, 2021, I am filing with this correspondence Mr. [M.T.’s] proposed Final Order regarding Legal Custody and Physical Placement. I reached out to Atty. Wakefield this week in a further attempt to settle custody and placement, but I have not heard back from her.”

In a July 23, 2021 letter to the Court Commissioner, Tibbetts asked the Court to reconsider its July 15, 2021 forfeiture of C.T.’s right to object to M.T.’s proposed custody/placement order stating, “Ms. [C.T.] acknowledges that mediation did not occur on June 10, 2021 or July 9, 2021.

Ms. [C.T.] did not intend to avoid participating in mediation as ordered.” After a brief explanation of C.T.’s physical condition on the date of the mediation, Tibbetts requested that the Court reconsider the Order in the July 15, 2021 letter.

In her July 23, 2021 letter to the court, Tibbetts failed to inform the court that she had advised C.T. and M.L. she would obtain a postponement of the mediation, that she had left a detailed voicemail message for FCS requesting a postponement of the July 9, 2021 mediation, and further, that she did not inform C.T. and M.L. that she had not received a response from FCS regarding the request for a postponement. As a result, C.T. was unprepared to proceed when the mediator called at the scheduled time.

With respect to why she did not disclose to the court in her July 23, 2021 letter that she had requested a postponement of the July 9, 2021 mediation, Tibbetts told OLR “I cannot answer that.”

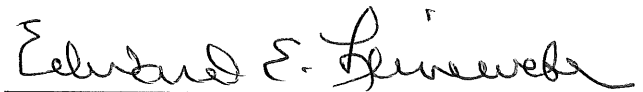
By failing to inform C.T. that she had not received a response from FCS regarding her request for a postponement of the mediation, Tibbetts violated SCR 20:1.4(a)(3), which states, “A lawyer shall...(3) keep the client reasonably informed about the status of the matter...”

Tibbetts has no prior discipline.

In accordance with SCR 22.09(3), Attorney Margery Mebane Tibbetts is hereby publicly reprimanded.

Dated this 23rd day of September, 2023

SUPREME COURT OF WISCONSIN



Referee Edward E. Leineweber