

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

20-OLR-5

Mark S. Tishberg
Attorney at Law

Attorney Mark S. Tishberg is an emeritus status, good standing member of the State Bar of Wisconsin, admitted to practice on April 4, 1990. His State Bar address of record is 10144 N. Port Washington Rd., Suite 1-C, Mequon, Wisconsin 53092.

Tishberg represented a client in two separate and unrelated matters, each of which eventually led to lawsuits filed in circuit court.

First Matter

Tishberg commenced his representation of the client in this matter, involving an automobile accident, in or about March 2012.

Tishberg agreed to represent the client pursuant to an oral agreement for a 25% contingent fee. There was no written fee agreement governing the representation.

Tishberg filed suit on behalf of the client on January 29, 2014. The defendants counterclaimed.

Tishberg did not file a witness list in accordance with the court's scheduling order, and he offers no explanation for the failure to file. The adverse party and her insurer therefore moved that Tishberg's client be barred from calling any witnesses. At a November 25, 2014 motion hearing, the court did not dismiss the matter, but sanctioned Tishberg's client by limiting Tishberg to calling only his client as a witness. Although the client was a primary

witness in the case, the inability to call any other witnesses had a negative effect on the client's ability to prove his case.

Tishberg likewise failed to answer defendants' Request for Admissions, leading to defendants' motion that the requests be deemed admitted. The court took that motion under advisement on the February 4, 2015 trial date, and the matter proceeded without the requests deemed admitted.

Following the February 4, 2015 jury trial, the court entered orders dismissing the client's complaint and awarding the adverse insurer on its counterclaim the sum of \$1225.38 plus costs and disbursements. The judgment against the client remains unsatisfied.

By representing the client pursuant to a contingent fee agreement not reduced to a writing signed by the client, Tishberg violated SCR 20:1.5(c), which states in relevant part, "A fee may be contingent on the outcome of the matter for which the service is rendered...A contingent fee agreement shall be in a writing signed by the client..."

By failing to file a witness list, Tishberg violated SCR 20:1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to answer the defendants' Requests for Admissions, Tishberg violated SCR 20:3.4(d), which states in relevant part, "A lawyer shall not...in pretrial procedure...fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

Second Matter

Tishberg commenced his representation of the client in this matter in or about October 2010. The client had been a residential tenant at property in the City of Milwaukee. The client alleged negligent property maintenance by the landlord, resulting in an August 2010 sewage backup, causing damage to the client's personal property. The client vacated the residence. The client alleged that the landlord or her representative removed certain of the client's personal property without notice and without providing the personal property to the client. The client alleged that the landlord thereafter failed to properly board up the residence, allowing access by unauthorized persons and their removal of the client's remaining personal property. The client alleged breach of contract in addition to negligence on the part of the landlord.

Tishberg represented the client in the case against the landlord on a 25% contingent fee basis. There is no evidence of a signed, written fee agreement governing the terms of the representation.

Tishberg delayed filing suit against the landlord until June 15, 2016. Tishberg states that in the approximate six-year period between being hired and filing suit, he was "sporadically investigating the matter." His efforts included contacting the City to obtain copies of citations for code violations at the subject property, attempting to determine whether the landlord had insurance on the property, obtaining from his client a list of personal property removed from the premises, and inquiring as to whether the client or the client's daughter had any receipts for property removed from the premises. Tishberg did not hire an outside investigator because the client could not afford to do so.

Counsel for the defendant landlord deposed Tishberg's client in the fall of 2018.

Tishberg states that the adverse party extended a settlement offer after the deposition, which was rejected.

On January 16, 2019, Tishberg filed a motion to withdraw as counsel for the client. By that time, the client had filed an OLR grievance against Tishberg. Further, Tishberg believed that the client's deposition testimony rendered Tishberg a possible witness in the matter. The court granted Tishberg's motion on January 18, 2019. The client thereafter continued without counsel. The case was tried to the court on July 30, 2019.

By oral ruling on September 5, 2019, the court ordered judgment in favor of the defendant for \$1700, including all costs. The judgment against the client remains unsatisfied.

By representing the client pursuant to a contingent fee agreement not reduced to a writing signed by the client, Tishberg violated SCR 20:1.5(c).

Having been hired in 2010, by delaying until June 2016 to commence a civil action on behalf of the client, Tishberg violated SCR 20:1.3.

Prior Discipline

Tishberg was publicly reprimanded in 2014. *Disciplinary Proceedings Against Tishberg*, 2014 WI 118 (2014). In that case, Tishberg engaged in conduct that violated former SCR 20:1.2(a), SCR 20:1.3, SCR 20:1.4(a)(3) and (4), SCR 20:1.4(b), SCR 20:1.5(c), and SCR 20:8.4(c).

