

**SUPREME COURT OF WISCONSIN**  
**OFFICE OF LAWYER REGULATION**

---

Public Reprimand With Consent

Emily Davey, Attorney at Law

2017-OLR- 1

---

Emily Davey is a Wisconsin-licensed attorney admitted to practice on May, 21, 2001.

In February, 2010, a client hired Davey in a State court lawsuit seeking damages for injuries suffered while in the custody of Milwaukee County. The client had previously filed, in January 2010, a *pro se* federal claim based on the same injuries. The January 2010 federal claim was dismissed without prejudice in September 2010. Davey did not represent the client in the federal matter.

On April 25, 2013, Davey and the client participated in mediation with Milwaukee County and the parties settled. The client agreed to release all claims against the County.

On May 17, 2013, Milwaukee County Corporation Counsel mailed Davey a *Proposed Settlement Agreement and Release of Claims* and a *Stipulation to Dismiss and Proposed Order for Dismissal*. Davey mailed the *Proposed Settlement Agreement* to the client for the client's signature. The client signed the agreement on May 29, 2013 and mailed it back to Davey. After receiving the settlement agreement back from the client, Davey signed and backdated the document to May 29, 2013. Davey affixed her signature to the agreement indicating that she was a notary public and that the client had "subscribed and sworn to" the agreement "before" her on May 29, 2013.

On July 2, 2013, Davey signed the *Stipulation to Dismiss* without providing the document to the client. Milwaukee County Corporation Counsel signed the *Stipulation to Dismiss* on July 23, 2013.

By letter dated July 19, 2013, Davey mailed an executed *Proposed Settlement Agreement* to Milwaukee County Corporation Counsel. The document that Davey mailed contained additional “carve out” language stating, that the client “specifically releases only the disputes and claims made” in the State case and “does not release any claims that may be brought under federal law.”

On August 1, 2013, Milwaukee County Corporation Counsel notified Davey of the County’s objection to the “carve out” language. On August 21, 2013, Davey faxed to Milwaukee County Corporation Counsel a *Proposed Settlement Agreement* without the “carve out” language, showing as signed by the client on May 29, 2013.

On June 30, 2014, the client filed another *pro se* federal claim alleging violations of the client’s Eighth Amendment rights. Davey did not represent the client in the second federal claim.

In the federal case, Milwaukee County filed a copy of the *Proposed Settlement Agreement* in response to the client’s federal civil rights claim. In response, the client filed a copy of the *Proposed Settlement Agreement*, purportedly preserving any claim under federal law. On August 1, 2014, the federal court ordered Davey to file a response within 14 days.

On August 28, 2014, Davey filed an untimely response in federal court asserting that she sent a letter to Milwaukee County Corporation Counsel on July 30, 2013 containing the original *Proposed Settlement Agreement*. On September 5, 2014, Milwaukee County Corporation Counsel responded by stating that Milwaukee County never received a letter from Davey on July 30, 2013, but instead only received a copy of the unaltered *Proposed Settlement Agreement* on August 21, 2013, after informing Davey of Milwaukee County’s objection to the “carve out” language in early August.

On September 18, 2014, the federal court ordered Davey to respond with a “detailed chronology and record of the settlement negotiations” within 14 days. On September 27, 2014, the client sent a letter to the federal court asserting that he signed the settlement agreement with the “carve out” language

on May 29, 2013. The client also stated that he never signed a settlement agreement that would waive his right to file a federal claim. The client noted that his signatures on both the original and altered *Proposed Settlement Agreements* appear to be identical while Davey's signatures are different.

On November 10, 2014, the federal court issued another order stating that Davey had filed a response on October 27, 2014, that was "neither informative, nor timely." The order required Davey to comply with the court's October 18, 2014 order, within 21 days, in the form of a declaration.

On November 28, 2014, Davey filed a declaration stating that on an undisclosed date the original *Proposed Settlement Agreement* was forwarded to the client for signature. Davey stated that the client, again on an undisclosed date, requested that the "carve out" language be added to the *Proposed Settlement Agreement*. Without specifying who added the language, Davey declared that the "carve out" language was added to the agreement before it was forwarded to Milwaukee Counsel. Davey failed to indicate which settlement agreement the client signed or when the client signed the settlement agreement.

The client filed a grievance with OLR against Davey. In correspondence dated April 10, 2015 and May 12, 2015, Davey stated to OLR that the client signed the original settlement agreement on May 29, 2013, and the client subsequently requested that the "carve out" language be added. Davey stated that she contacted Milwaukee County Corporation Counsel to discuss the carve out language. Davey further stated that she sent a release with the "carve out" language to Milwaukee County Corporation Counsel on July 30, 2013, who contacted her on August 1, 2013 stating that the "carve out" language was unacceptable.

According to Milwaukee County Corporation Counsel, Davey never called to discuss the carve out language and did not send any correspondence on July 30, 2013.

On January 5, 2015, the client's federal case was dismissed as precluded on *res judicata* grounds. The court's dismissal order explicitly did not resolve the dispute between the client and Davey "regarding the settlement agreement."

By failing to fully consult with the client regarding the client's objective to preserve his right to file suit in federal court; and by failing to ultimately pursue the client's objective to settle his state claim against Milwaukee County while preserving his right to file suit in federal court, Davey violated SCR 20:1.2(a), which states in part, "...[A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter..."

By failing to consult with the client regarding the means for pursuing his objective to settle his state claim against Milwaukee county while preserving his right to file suit in federal court, Davey violated SCR 20:1.4(a)(2), which states, "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished."

By backdating and notarizing the *Propose Settlement Agreement* which was signed by the client outside of Davey's presence on a previous date; and by modifying, notarizing, and sending the modified and falsely notarized *Proposed Settlement Agreement* to Milwaukee County Corporation Counsel, Davey violated SCR 8.4(c), which states, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

By failing to comply with the federal court's orders of August 1, 2014 and September 18, 2014, Davey violated SCR 3.4(c), which states, "A lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists."

