

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CIVIL  
PROPOSAL 2025-014**

**March 6, 2025**

The Uniform Jury Instructions – Civil Committee has recommended amendments to UJI 13-2411 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
rules.supremecourt@nmcourts.gov  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 5, 2025**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

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**13-2411. Rules of Professional Conduct.**

The Rules of Professional Conduct provide guidance to lawyers. Evidence regarding the Rules of Professional Conduct may be considered in deciding [~~whether~~ \_\_\_\_\_ (*name of defendant*) owed \_\_\_\_\_ (*name of plaintiff*) a duty and] whether \_\_\_\_\_ (*name of defendant*) breached a duty of care to (*name of plaintiff*). However, that evidence is not conclusive. You must consider all of the evidence that you have heard in deciding the question[s] of [~~duty and~~] breach.

**USE NOTES**

This instruction must be given in a legal malpractice case in which the court admits evidence regarding the Rules of Professional Conduct as evidence of the standard of care. [Adopted by Supreme Court Order No. 17-8300-013, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.**— Historically, the Rules of Professional Conduct were established to discipline lawyers. They were not intended to provide a basis to bring a legal malpractice claim. *See Garcia v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*, 1988-NMSC-014, ¶¶ 18, 20, 106 N.M. 757, 750 P.2d 118; *see also* Preamble (Scope) to the New Mexico Rules of Professional Conduct. *In Waterbury v. Nelson*, \_\_\_\_\_, the Supreme Court held that “[t]he Rules of Professional Conduct are not an independent basis for civil liability” and cannot be used as the source of a lawyer’s duty because doing so “is contrary to our caselaw.” *Id.* ¶¶ 2, 15. But the Court

“reaffirm[ed] the use of the Rules of Professional Conduct to establish standard of care.” *Id.* ¶ 2. Thus, although ~~[Although]~~ the Rules of Professional Conduct were not intended to create a private cause of action for legal malpractice, the rules ~~[nevertheless]~~ may provide a standard of care to inform ~~[the analysis of the duty (or duties) that a lawyer owed to the client(s) (and possibly to others) as well as]~~ the analysis of whether the lawyer breached any ~~[such]~~ duty ~~[(or duties)]~~ to the plaintiff. See *Spencer v. Barber*, 2013-NMSC-010, ¶¶ 15-19, 299 P.3d 388 (discussing potential relevance of the rules to those issues). ~~[; see also Restatement (Third) of the Law Governing Lawyers § 52 & cmt. f (2000) (reflecting that the Rules of Professional Conduct may provide evidence of both the standard of care or conduct owed and its breach); accord Sanders, Bruin, Coll & Worley, P.A. v. McKay Oil Corp., 1997 NMSC 030, ¶ 16, 123 N.M. 457, 943 P.2d 104 (a malpractice claim should not be barred because its substance enters the realm of conduct covered under the Rules of Professional Conduct). Therefore, the party bringing a legal malpractice claim may refer to the Rules of Professional Conduct in addressing those issues. See Spencer, 2013-NMSC 010, ¶ 17.]~~

~~[Proof of the standard of care or conduct owed by a lawyer or a law firm is an essential element of a legal malpractice claim. See Spencer, 2013-NMSC-010, ¶ 17. Evidence regarding the New Mexico Rules of Professional Conduct may provide guidance regarding the duty or duties that the lawyer or law firm owed to the client at the time of the conduct in question. See id.; see also Preamble (Scope) to the New Mexico Rules of Professional Conduct.]~~

Violation of one or more of the Rules of Professional Conduct does not give rise to a presumption, or by itself~~;~~ prove, that a lawyer breached a duty. See *Spencer*, 2013-NMSC-010, ¶ 15. Nevertheless, because the rules ~~[do]~~ establish standards of care or conduct for lawyers and law firms, a lawyer’s violation of a rule may be used as evidence of breach of the applicable standard of care or conduct. See Preamble (Scope) to the New Mexico Rules of Professional Conduct; see also *Spencer*, 2013-NMSC-010, ¶ 19 (the determination of whether a lawyer complied with the standard of care or conduct will depend on the evidence introduced at trial). [Adopted by Supreme Court Order No. 17-8300-013, effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**No Comments  
Received**