

1 **13-2403. Legal malpractice; negligence and standard of care.**

2 A lawyer has a duty to use the same degree of care, skill, and diligence ordinarily used by
3 attorneys under similar circumstances. A lawyer who fails to do so is negligent.

4 USE NOTES

5 This instruction should be used in a legal malpractice case in which an attorney’s
6 negligence is alleged to have caused injury or harm.

7 If the case also involves a legal malpractice claim based on a breach of fiduciary duty by
8 the defendant, the instruction for that claim should be given. *See* UJI 13-2404 NMRA.

9 [Adopted by Supreme Court Order No. 17-8300-013, effective for all cases pending or filed on or
10 after December 31, 2017; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
11 effective for all cases pending or filed on or after December 31, 2025.]

12 **Committee commentary.** — In a negligence case, “[a]n attorney’s duty to a client is ‘to exercise
13 the degree of knowledge or skill ordinarily possessed by others in [~~his or her~~] [the attorney’s]
14 profession similarly situated.’” *Bassett v. Sheehan*, 2008-NMCA-072, ¶ 8, 144 N.M. 178, 184 P.3d
15 1072, (quoting *Resolution Trust Corp. v. Barnhart*, 1993-NMCA-108, ¶ 13, 116 N.M. 384, 862
16 P.2d 1243). “[A]djudication of malpractice claims requires an assessment of whether Defendants’
17 services were rendered ‘with the skill, prudence, and diligence that an ordinary and reasonable
18 lawyer would use under similar circumstances.’” *Potter v. Pierce*, 2014-NMCA-002, ¶ 17, 315
19 P.3d 303 (quoting *Black’s Law Dictionary* 1044 (9th ed. 2009)); [~~*First Nat’l Bank v. Diane, Inc.*~~]
20 *First Nat’l Bank of Clovis v. Diane, Inc.*, 1985-NMCA-025, ¶ 14, 102 N.M. 548, 698 P.2d 5 (“In
21 determining whether an attorney exercised the requisite degree of competence, the crucial inquiry
22 is whether [~~his~~] [the attorney’s] advice was so legally deficient when given that [~~he~~] [the attorney]
23 could be found to have failed to use such skill, prudence and diligence as lawyers of ordinary skill

1 and capacity commonly possess and exercise in the performance of the tasks which they
2 undertake.”).

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