

1 **13-2406. Duty of loyalty; definition.**

2 A lawyer has a duty of loyalty to a client. A lawyer breaches the duty of loyalty by putting
3 the lawyer’s own interests, or the interests of another, before those of the client.

4 USE NOTES

5 This instruction should be given when the plaintiff claims that a lawyer has breached the
6 duty of loyalty.

7 If at issue, the jury should be instructed on the Rules of Professional Conduct. *See* UJI 13-
8 2411 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 the practice of law, there is no higher duty than one’s loyalty to
13 a client.” *Roy D. Mercer, LLC v. Reynolds*, 2013-NMSC-002, ¶ 1, 292 P.3d 466. “This duty applies
14 to current and former clients alike.” *Id.* “The client is entitled to the undivided loyalty of the
15 attorney.” *State v. Almanza*, 1996-NMCA-013, ¶ 4, 121 N.M. 300, 910 P.2d 934. “Lawyers are
16 required to avoid divided loyalties that would harm . . . their clients.” Restatement (Third) of the
17 Law Governing Lawyers: Conflicts of Interest Ch. 8 Intro. Note (2000). Influences that interfere
18 with a lawyer’s devotion to a client’s welfare constitute conflicts with that client’s interest. *Id.*

19 The duty of loyalty may arise in several contexts. For example, a lawyer may not represent a client
20 in a matter in which the current client’s interests are [““materially adverse[22]”] to the interest of
21 the former client. *Mercer*, 2013-NMSC-002, ¶ 18[; ~~Rule 16-109 NMRA~~] (quoting Rule 16-109
22 NMRA). The duty of loyalty may also be implicated when counsel represents two clients in the
23 same matter, or when the interests of the client and the attorney diverge. *State v. Martinez*, 2001-

1 NMCA-059, ¶ 25, 130 N.M. 744, 31 P.3d 1018; Rule 16-107 NMRA; Rule 16-108 NMRA. “If
2 counsel’s duty of undivided loyalty is in any way compromised, such as by personal interests or
3 by loyalties to another party, counsel must avoid representing the client.” *State v. Joanna V.*, 2004-
4 NMSC-024, ¶ 6, 136 N.M. 40, 94 P.3d 783.

5 The duty of loyalty continues when a lawyer leaves one firm for another. “When an attorney leaves
6 one law firm and joins another, the attorney continues to owe a duty of . . . undivided loyalty to
7 ~~his or her~~ the attorney’s clients.” *Mercer*, 2013-NMSC-002, ¶ 16. “[W]hen a law firm hires a
8 new associate, any conflict the associate would have individually, is imputed to the entire firm.”
9 *Id.* ¶ 17. “This is because ‘a firm of lawyers is essentially one lawyer for purposes of the rules
10 governing loyalty to the client.’” *Id.* (quoting [~~Rule 16-110, cmt. 2~~] Rule 16-110 NMRA comm.
11 cmt. 2). Thus, “each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer
12 with whom the lawyer is associated.” *Id.*

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14 ~~or after December 31, 2017~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]