

1 **13-2407. Legal malpractice; attorney duty to warn.**

2 A lawyer has a duty to advise the client of negative consequences a reasonable lawyer  
3 would conclude may result from the course of action the lawyer recommends. This duty does not  
4 require a lawyer to discuss with the lawyer’s client every possibility, no matter how small or  
5 remote.

6 USE NOTES

7 This instruction should be given in cases where a plaintiff claims a lawyer breached the  
8 duty of care by failing to inform the client of negative consequences resulting from following the  
9 lawyer’s recommendation.

10 [Adopted by Supreme Court Order No. 17-8300-013, effective for all cases pending or filed on or  
11 after December 31, 2017.]

12 **Committee commentary.** — If the lawyer is aware, or should have been aware, of potential  
13 exposure to the client from following the lawyer’s advice, the lawyer has the duty to warn the  
14 client of the potential adverse risks if the advice is incorrect. *First Nat’l Bank v. Diane, Inc.*, 1985-  
15 NMCA-025, ¶¶ 18, 22, 102 N.M. 548, 698 P.2d 5. However, [~~“if there~~] if “there is no reasonable  
16 ground for [~~him~~] [the lawyer] to believe that [~~his [advice] is~~] [their advice to be] questionable, [~~he~~]  
17 [the lawyer] certainly has no obligation to advise clients of every remote possibility that might  
18 exist.”]” *Id.* ¶ 18 ([~~editing~~] quoting [~~*Smith v. St. Paul Fire & Marine Ins.*~~] *Smith v. St. Paul Fire*  
19 *& Marine Ins. Co.*, 366 F. Supp. 1283, 1290 [~~(M.D. La. 1973)] (M.D. La. 1973)). Whether the~~  
20 burden of potential liability clearly outweighs the benefit to the client is a factor to consider when  
21 assessing a lawyer’s liability for failure to warn. *First Nat’l Bank*, 1985-NMCA-025, ¶ 20.

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