

1 **13-2411. Rules of Professional Conduct.**

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

8 USE NOTES

9 This instruction must be given in a legal malpractice case in which the court admits
10 evidence regarding the Rules of Professional Conduct as evidence of the standard of care.
11 [Adopted by Supreme Court Order No. 17-8300-013, effective for all cases pending or filed on or
12 after December 31, 2017; as amended by Supreme Court Order No. S-1-RCR-2024-00095,
13 effective for all cases pending or filed on or after December 31, 2025.]

14 **Committee commentary.**— Historically, the Rules of Professional Conduct were
15 established to discipline lawyers. They were not intended to provide a basis to bring a legal
16 malpractice claim. *See Garcia v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*, 1988-NMSC-014,
17 ¶¶ 18, 20, 106 N.M. 757, 750 P.2d 118; *see also* Preamble (Scope) to the New Mexico Rules of
18 Professional Conduct. In *Waterbury v. Nelson*, 2024-NMSC-020, 557 P.3d 96, the Supreme Court
19 held that “[t]he Rules of Professional Conduct are not an independent basis for civil liability” and
20 cannot be used as the source of a lawyer’s duty because doing so “is contrary to our caselaw.” *Id.*
21 ¶¶ 2, 15. But the Court “reaffirm[ed] the use of the Rules of Professional Conduct to establish
22 standard of care.” *Id.* ¶ 2. Thus, although [~~Although~~] the Rules of Professional Conduct were not
23 intended to create a private cause of action for legal malpractice, the rules [~~nevertheless~~] may

1 provide a standard of care to inform [~~the analysis of the duty (or duties) that a lawyer owed to the~~
2 ~~client(s) (and possibly to others) as well as~~] the analysis of whether the lawyer breached any [~~such~~
3 ~~duty [(or duties)] to the plaintiff.~~ *See Spencer v. Barber*, 2013-NMSC-010, ¶¶ 15-19, 299 P.3d
4 388 (discussing potential relevance of the rules to those issues). [~~; see also Restatement (Third) of~~
5 ~~the Law Governing Lawyers § 52 & cmt. f (2000) (reflecting that the Rules of Professional~~
6 ~~Conduct may provide evidence of both the standard of care or conduct owed and its~~
7 ~~breach); accord Sanders, Bruin, Coll & Worley, P.A. v. McKay Oil Corp.~~, 1997 NMSC 030, ¶
8 16, 123 N.M. 457, 943 P.2d 104 (a malpractice claim should not be barred because its substance
9 enters the realm of conduct covered under the Rules of Professional Conduct). Therefore, the party
10 bringing a legal malpractice claim may refer to the Rules of Professional Conduct in addressing
11 those issues. *See Spencer*, 2013 NMSC 010, ¶ 17.

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

17 Violation of one or more of the Rules of Professional Conduct does not give rise to a
18 presumption, or by itself[~~;~~] prove, that a lawyer breached a duty. *See id.* ¶ 15. Nevertheless,
19 because the rules [~~do~~] establish standards of care or conduct for lawyers and law firms, a lawyer's
20 violation of a rule may be used as evidence of breach of the applicable standard of care or
21 conduct. *See* Preamble (Scope) to the New Mexico Rules of Professional Conduct; *see also*
22 *Spencer*, 2013-NMSC-010, ¶ 19 (the determination of whether a lawyer complied with the
23 standard of care or conduct will depend on the evidence introduced at trial).

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- 2 ~~or after December 31, 2017~~]; as amended by Supreme Court Order No. S-1-RCR-2024-00095.]