

1 **13-2412. Legal malpractice; attorney error in judgment.**

2 A lawyer does not necessarily breach a duty to a client just because the lawyer [chooses a  
3 legal strategy] [makes a decision] [makes a recommendation] and it turns out that another  
4 [strategy] [decision] [recommendation] would have been a better choice.

5 USE NOTES

6 This instruction should be given in all cases where a plaintiff alleges the attorney breached  
7 a duty through an error in judgment.

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

10 **Committee commentary.** — A mere error of judgment does not automatically subject a lawyer  
11 to liability. [~~*First Nat'l Bank v. Diane, Inc.*~~] *First Nat'l Bank of Clovis v. Diane, Inc.*, 1985-NMCA-  
12 025, ¶ 14, 102 N.M. 548, 698 P.2d 5. A lawyer is also not liable “for any action or inaction the  
13 lawyer reasonably believed to be required by law, including a professional rule.” *See* Restatement  
14 of the Law (Third) Governing Lawyers § 54. Accordingly, a lawyer is not required “in a situation  
15 involving exercise of professional judgment, to employ the same means or select the same options  
16 as would other competent lawyers in the many situations in which competent lawyers reasonably  
17 exercise professional judgment in different ways.” *See id.* § 53, cmt. B. However, a [lawyer]  
18 lawyer as defendant can still be liable if the lawyer fails to exercise reasonable care or breaches a  
19 fiduciary obligation. *See First Nat'l Bank*, 1985-NMCA-025, ¶ 22 (“That defendant’s  
20 interpretation of the statutes was based on an honest belief in the correctness of [his] [defendant’s]  
21 advice should not under the circumstances here shield [him] [defendant] from liability. The  
22 soundness of defendant’s advice should be evaluated on more than a good faith belief; rather,  
23 whether [he] [defendant] exhibited the requisite degree of competence.”).

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