

1 **13-829. Workmanlike manner.**

2 Where a person contracts to perform work of a particular skill, ~~[[he]-[she]]~~worker promises
3 to exercise the judgment and to display the quality of workmanship which is standard to that field
4 of work.

5 USE NOTES

6 This instruction should be given when a question of fact arises as to whether a person failed
7 to exercise the judgment or to produce the product which could be expected from any person
8 working in that field. Situations where the parties have contracted for more or less than the standard
9 in the industry can be argued to the jury without further instruction or may give rise to an
10 instruction on waiver.

11 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-2025-
12 00126, effective for all cases pending or filed on or after December 31, 2025.]

13 **Committee commentary.** — The standard of ~~["]"~~“workmanlike manner~~["]"~~” includes both the
14 promises that the work done will be of a quality comparable to the standard in the industry and
15 that the judgment exercised by the skilled worker will equal that industry standard. *Wendenburg*
16 *v. Allen Roofing Co., Inc.*, 1986-NMSC-033, ¶ 11, 104 N.M. 231, 719 P.2d 809~~[(1986)]~~;
17 ~~[*Andriola*]~~*Andriola v. Milligan*, 1948-NMSC-013, ¶ 6, 52 N.M. 65, 191 P.2d 716~~[(1948)]~~. What
18 that standard of ~~[judgment]~~ care may be in professional services may be difficult to ascertain. *See*
19 *State ex rel. Risk Mgt. v. Gathman-Matotan Architects & Planners, Inc.*, 1982-NMCA-130, ¶¶ 15-
20 17, 98 N.M. 790, 653 P.2d 166~~[(Ct. App.)]~~ (architects held to reasonable skill standard, but not
21 held to warrant fitness for a particular purpose in design plans), cert. quashed, 99 N.M. 47, 653
22 P.2d 878 (1982). But *see First* ~~[*Nat.*]~~*Nat'l Bank of Clovis v. Diane, Inc.*, 1985-NMCA-025, ¶ 14,
23 102 N.M. 548, 698 P.2d 5~~[(Ct. App. 1985)]~~ (lawyer held to such skill, prudence, and diligence as

1 lawyers of ordinary skill and capacity); *Sanchez v. Martinez*, 1982-NMCA-168, ¶ 15, 99 N.M. 66,
2 653 P.2d 897[~~(Ct. App. 1982)~~] (insurance agent held to standard requiring purchase of insurance
3 for clients or notification of non-insurance); *Amato v. Rathbun Realty, Inc.*, 1982-NMCA-095, ¶
4 6, 98 N.M. 231, 647 P.2d 433[~~(Ct. App. 1982)~~] (real estate broker held to duty of communicating
5 information).

6 The standard for performance in a workmanlike manner does not prevent the parties from agreeing
7 to performance which is either below or above industry standards. *See Martin v. Foster*, 1970-
8 NMSC-084, ¶ 10, 81 N.M. 583, 470 P.2d 304[~~(1970)~~] (housing contract providing for superior
9 workmanship could be enforced according to its terms); *Moss Theatres, Inc. v. Turner*, 1980-
10 NMCA-116, ¶ 18, 94 N.M. 742, 616 P.2d 1127[~~(Ct. App. 1980)~~] (where contractor had discussed
11 potential problems of fencing with buyer, contractor not liable held for fence's subsequent failure,
12 despite industry standard revealed in building code).

13 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]