

1023.5A PROFESSIONAL NEGLIGENCE: LEGAL STATUS OF LAWYER AS SPECIALIST IS IN DISPUTE

In providing legal services to a client, it is a lawyer's duty to use the degree of care, skill, and judgment which reasonably prudent lawyers practicing in this state would exercise under like or similar circumstances. A failure to conform to this standard is negligence. The burden is on (plaintiff) to prove that (lawyer) was negligent.

You are to determine whether (lawyer) was negligent in representing (plaintiff) in light of the facts and circumstances of which (lawyer) was aware or should have discovered at the time legal services were provided to (plaintiff). A lawyer is negligent if the lawyer fails to discover relevant facts or legal principles which reasonably prudent lawyers would discover or if the lawyer's skill or judgment was not consistent with that exercised by reasonably prudent lawyers. A lawyer is not negligent because of the results of (his)(her) representation if (his)(her) efforts were those reasonably prudent lawyers would have taken.

Lawyers who present themselves to the public or their clients as having special experience, knowledge, or skill in a particular area of law are held to the standard of care of reasonably prudent lawyers with that special experience, knowledge, or skill. It is for you to determine from the evidence whether (lawyer) presented (himself)(herself) to the public or (client) as having special experience, knowledge, or skill in the relevant area of law. If your answer to question ___ is "yes," that (lawyer) held (himself) (herself) out as a specialist, you should apply the standard of a specialist in answering question ___. If your answer to question ___ is "no," you should not apply the standard of a specialist when answering question ___.

You have heard testimony during this trial from lawyers who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment which a reasonably prudent lawyer would exercise is not a matter within the common knowledge of lay persons. This standard is within the special knowledge of experts in the field of law and can only be established by expert testimony. You, therefore, may not speculate or guess what that standard of care, skill, and judgment is in deciding this case but rather must attempt to determine this from the expert testimony that you heard in this trial.

(Also Give Wis JI-Civil 265.)

SPECIAL VERDICT - SPECIALIST STATUS IN DISPUTE

1. Did (lawyer) present (himself)(herself) to the public or (plaintiff) as having special experience, knowledge, or skill in (insert specialty, e.g., personal injury law)?

Answer: _____
Yes or No

If your answer to question 1 is yes, you should apply the higher standard of a specialist in considering question 2. If your answer to question 1 is no, you should apply the standard of a general practitioner in considering question 2.

2. Was (lawyer) negligent in (his)(her) representation of (plaintiff)?

Answer: _____
Yes or No

COMMENT

This instruction and comment were approved in 1997. See Comment to JI-Civil 1023.5. In particular, note the discussion of specialist status in Duffy Law Office v. Tank Transport, Inc., 194 Wis. 2d 675, 535 N.W.2d 91 (1995), and DeThorne v. Bakken, 196 Wis. 2d 713, 539 N.W.2d 695 (1995).

If there is a dispute concerning the nature or scope of the representation, add this paragraph:

Whether a lawyer has discharged (his)(her) duty depends on the purpose for which the lawyer was retained or agreed to provide representation. The purpose of the representation for which the lawyer was retained is for you to determine from the evidence.