

1023.5C PROFESSIONAL NEGLIGENCE: LEGAL – NO CLAIM OF LAWYER AS HAVING CLAIMED EXPERTISE¹

When providing legal services to a client, a lawyer must exercise the degree of care, skill, and judgment that reasonably prudent lawyers in this state would use under comparable circumstances. Failing to meet this standard is negligence. The plaintiff has the burden of proving that the lawyer was negligent.

You must determine whether (lawyer) was negligent in representing (plaintiff) based on the facts and circumstances that (lawyer) knew or should have discovered when providing legal services to (plaintiff). A lawyer is negligent if he or she fails to exercise the skill, knowledge, and care that reasonably prudent lawyers would exercise under comparable circumstances, whether by failing to investigate or research; or by overlooking or misapplying relevant facts or legal principles; or by committing acts or omissions that fall below this standard. A lawyer is not negligent because the outcome of the representation was not favorable, as long as the lawyer's actions were consistent with what reasonably prudent lawyers may have taken under comparable circumstances.

You have heard testimony in this trial from lawyers who appeared as expert witnesses. Their testimony was necessary because the degree of care, skill, and judgment that a reasonably prudent lawyer would exercise is not a matter within the common knowledge of non-lawyers. Instead, this standard is within the specialized knowledge of legal experts and can be established only through expert testimony. Therefore, you must not speculate or guess about this standard when deciding the case; you must determine it based on the

expert testimony presented during this trial.

NOTES

1. The Committee chose to adopt the phrase “claimed expertise” in place of “specialist” to avoid confusion with the formally regulated term “specialist” under Supreme Court Rule 20:7.4, which generally prohibits lawyers from using that designation except in the fields of admiralty and patent law. This substitution also aligns with the holding in Duffey Law Office, S.C. v. Tank Transport, Inc., 194 Wis. 2d 674, 535 N.W.2d 91 (Ct. App. 1995), which imposes a heightened standard of care on attorneys who represent that they possess superior skill or knowledge, regardless of whether the restricted title “specialist” is used.

COMMENT

This instruction and comment were approved in September 2025.

This instruction is designed for use when there is no claim that the lawyer is subject to the heightened standard of care. As such, it refers only to the general standard.

If the status of the lawyer as having claimed expertise is in dispute, see Wis JI-Civil 1023.5B.

If there is no dispute concerning the status of the lawyer, but the lawyer is being held to the heightened standard of care, see Wis JI-Civil 1023.5A.

Wisconsin law permits an attorney to enter into a reasonable limited-scope representation agreement, under which the lawyer’s duties are confined to the services expressly agreed upon. Freude v. Berzowski, 2024 WI App 53, ¶¶11–16, 22, 413 Wis. 2d 644, 12 N.W.3d 893. When a subject matter is expressly excluded in the retainer agreement, the attorney owes no duty to advise the client regarding that subject. Id. ¶14. Consistent with SCR 20:1.2(c), a limited-scope engagement must be reasonable and based on the client’s informed consent; when no challenge is raised as to the agreement’s validity or the client’s informed consent, courts will generally enforce the stated scope.

As a matter of public policy, an attorney has no duty to advise on claims expressly excluded by a valid limited-scope agreement, absent a contrary statute, regulation, or controlling judicial decision. However, when a retainer merely identifies the included scope of work without expressly excluding related or closely associated claims, the existence of a duty may become a litigated issue. In contrast, clear and specific exclusions—i.e., express carve-outs—eliminate any such duty. Id.