

13-2409. Legal malpractice; duty to intended beneficiaries; wrongful death.

An attorney representing the personal representative in a wrongful death case owes a duty to the statutory beneficiaries to exercise reasonable care to protect the beneficiaries' interest in receiving any proceeds obtained in the wrongful death case.

[The attorney may end the duty to a statutory beneficiary by providing adequate notice that the beneficiary may not rely on the attorney to act for the benefit of the beneficiary. In deciding whether adequate notice was given, you should consider whether _____ (*name of attorney*) informed _____ (*name of Plaintiff*)

[That _____ (*name of Plaintiff*) was a statutory beneficiary to a wrongful death case, and the parties to that case were _____ (*names of parties*);]

[The amount of the verdict or settlement, or of the terms of any existing settlement offers;]

[The percentage of the verdict or settlement that _____ (*name of Plaintiff*) was entitled to receive;]

[The position of the adverse party; namely, that _____ (*insert description of position of adverse party, e.g., that the personal representative did not believe the plaintiff was entitled to money because the plaintiff had abandoned her child*);]

[That _____ (*name of attorney*) represented the adverse party and was not working in the best interests of _____ (*name of Plaintiff*); and]

[_____ (*insert any other applicable factor*).]

USE NOTES

This instruction should be used in a legal malpractice case in which an attorney represented a personal representative in a wrongful death case, and the plaintiff alleges that the plaintiff is a statutory beneficiary in the wrongful death case who, as a result of the attorney's negligence, received less than the plaintiff was entitled to. The bracketed section should be included if the attorney claims that the attorney ended the attorney's duty to the statutory beneficiary by providing adequate notice. Each of the five factors in the bracketed section should be included if appropriate. Normally, adequate disclosure will include, at a minimum, each of the factors. *See Spencer v. Barber*, 2013-NMSC-010, ¶ 34, 299 P.3d 388. If additional factors are warranted, they may be included in the final bracketed sentence.

If there is a dispute as to whether the defendant attorney represented the personal representative in the underlying wrongful death case, the parties should also include UJI 13-2402 NMRA (attorney-client relationship) to allow the jury to decide whether such a relationship existed. If there is a dispute as to whether the plaintiff was a statutory beneficiary in the underlying wrongful death case, an instruction specific to the relevant portion of the wrongful death statute and the facts in dispute will need to be prepared.

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