

LEGAL MALPRACTICE

A. GENERAL DUTY OWING

An action brought against an attorney alleging negligence in the practice of law is referred to as a malpractice action. The plaintiff contends that the attorney did not comply with the appropriate standard of care which the law imposes and contends that as a result the attorney committed malpractice leading to the plaintiff suffering injury for which damages are being sought.

The standard of care imposed by law against the attorney and their conduct is measured as follows:

A person who is engaged in the practice of law represents that he/she has the degree of knowledge and skill ordinarily possessed and used by others engaged in the general practice of law (or a specialist, as the case may be). The required knowledge and skill must be judged by the standard legal practice at the time the attorney represented the client. An attorney who undertakes to attend to the legal needs of a client represents also that he/she will use such knowledge, skill and care which attorneys of ordinary ability and skill possess and exercise. The law imposes upon an attorney the duty or obligation to have or to use that degree of knowledge and skill which attorneys of ordinary ability and skill possess and then exercise in the representation of a client, such as the person suing the attorney. The standard by which to judge the attorney (a general practitioner or specialist) in his/her representation of the plaintiff in the case.

The law does not require the attorney guarantee a favorable result. The law recognizes that the practice of law according to standard legal practice will not necessarily prevent a poor result. If the attorney has brought and applied the required knowledge and skill he/she is not liable because a favorable result was not achieved. The attorney is not an insurer, nor is he/she liable for every error in judgment/mistake. On the one hand, he/she is not held to be accountable for consequences of every act which may be held to be an error by a court. On the other hand, he or she is not immune from responsibility if the attorney fails to employ in the work undertaken the degree of reasonable knowledge and skill exercised by attorneys of ordinary ability and skill. Where, according to standard legal practice, the work involves matters to be subjected to the judgment of the attorney the attorney must be allowed to exercise that judgment. He or she cannot be held liable if in the exercise of that judgment, he/she has, nevertheless, made a mistake or an error on judgment. Where a judgment must be exercised, the law does not require for the attorney infallible judgment. But an attorney who departs from the standard legal practice cannot excuse himself/herself from the consequences by saying it was an exercise of their judgment. If the exercise of an attorney's judgment causes him/her to do that which standard legal practice forbids the attorney would be guilty of malpractice. Similarly, an attorney whose judgment causes him/her to omit doing something which in the circumstances is required by standard legal practice is also guilty of malpractice.

Thus, the obligation or duty of care which the law imposes upon the defendant attorney is to bring her/his client that degree of knowledge and skill which ordinarily possessed and

exercised in similar situation by attorneys for ordinary skill and ability. The attorney is obliged to use his/her knowledge, skill and judgment in an effort to perform the works he/she undertakes according to standard legal practice.

B. SPECIALIST, DUTY OF

A specialist in a given area of law is one who devotes special study and attention to the practice of a particular field of law. An attorney who holds himself/herself out as a specialist in a particular field of law represents that, with regard to his/her specialty, he/she and will employ not merely the knowledge and skill of a general practitioner but that he/she has or will employ that special degree of knowledge and skill (ordinarily and normally) possessed and used by the average specialist in his/her field. Accordingly, when an attorney holds himself/herself out as a specialist and undertakes as such work for a client, the law imposes the duty upon that attorney to have and to use that degree of knowledge and skill which is (normally and ordinarily) possessed and used by the average attorney who specializes in the practice of that particular field of law.