

IN THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY**ROBERT BUTLER AND ANN BUTLER,****Plaintiffs,****vs.****BUCHANAN, BIBLER, GABOR, AND
MEIS; THE ESTATE OF GREGG A.
BUCHANAN; SCOTT G. BUCHANAN;
MICHAEL E. GABOR; TODD R.
BUCHANAN; CONRAD F. MEIS, and A.
DAVID BIBLER, JD, CPA,****Defendants.****LAW NO. LACV027131****FINAL JURY INSTRUCTIONS****INSTRUCTION NO 1**

Members of the Jury: This is an alleged legal malpractice case for damages and a claim for breach of fiduciary duty. Plaintiffs Robert and Ann Butler allege that Defendant A. David Bibler did not meet the standard of care for a tax lawyer and that this alleged negligence caused damages to the Plaintiffs.

Plaintiffs further allege that Defendants Buchanan, Bibler, Gabor & Meis, The Estate of Gregg A. Buchanan, Scott Buchanan, Michael Gabor, Todd Buchanan and Conrad Meis are responsible for the alleged negligence of Defendant A. David Bibler because they are partners of A. David Bibler in a law firm.

The Defendants deny that they were negligent and deny that any alleged negligence was the cause of damages to Plaintiffs. They also assert the defenses of comparative fault and failure to mitigate damages.

Do not consider this summary as proof of any claim. Decide the facts from evidence and apply the law which I will now give you.

INSTRUCTION NO 2

My duty is to tell you what the law is. Your duty is to accept and apply this law. You must consider all of the instructions together because no one instruction includes all of the applicable law. The order in which I give these instructions is not important. Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO 3

Iowa law provides that a partner in a partnership may be held liable for acts and omissions of the other partners in a partnership. In this case A. David Bibler's partners in their law firm partnership have been named as additional defendants. For purposes of these instructions, the defendants although named individually, shall be treated as a single defendant.

INSTRUCTION NO 4

As set forth in the preliminary instructions, whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 5

Certain Testimony has been read into evidence from a deposition. As indicated in the preliminary instructions, a deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 6

The defendant served on the plaintiffs written requests for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the plaintiffs.

INSTRUCTION NO. 7

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 8

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 10

You have heard evidence claiming a party made statements before this trial while under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if that party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that party's testimony during the trial but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 11

The plaintiffs must prove all of the following propositions on their claim of legal malpractice:

1. An attorney-client relationship existed between the parties for the disputed matter.
2. The defendant was negligent by violating the standard of care in one or more of the following ways:
 - a. Failing to prepare plaintiffs' tax returns by the due date.
 - b. Failing to advise the plaintiffs of civil consequences of failing to file taxes in a timely manner.
3. The negligence was a cause of the plaintiffs' damage.
4. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proven all of these propositions, then you will consider the defenses of comparative fault and failure to mitigate damages as explained in Instruction Nos. 28 and 29.

INSTRUCTION NO. 12

An attorney-client relationship is created when:

1. A person seeks advice or assistance from an attorney.
2. The advice or assistance sought pertains to matters within the attorney's professional competence.
3. The attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance. This may be established by proof of detrimental reliance. Detrimental reliance occurs when a person seeking advice or assistance reasonably relies on the attorney to provide such legal services and the attorney, being aware of such reliance, does nothing to negate it.

INSTRUCTION NO. 13

An attorney must use the degree of skill, care and learning ordinarily possessed and exercised by other attorneys in similar circumstances.

A violation of this duty is negligence.

INSTRUCTION NO. 14

Taxpayers have a non-delegable duty to file their tax returns on time.

INSTRUCTION NO. 15

A taxpayer is obligated to pay the full amount of tax when the tax return is filed.

INSTRUCTION NO. 16

In Iowa, a lawyer is ethically obligated to do the following:

1. Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required.
2. Reasonably consult with the client about the means by which the client's objectives are to be accomplished.
3. Keep the client reasonably informed about the status of the matter.

You may consider this obligation in determining whether or not the defendant breached the standard of care, but you are not required to do so.

INSTRUCTION NO. 17

In Iowa, a lawyer has an ethical obligation not to file a tax return which is materially incomplete and inaccurate.

You may consider this obligation in determining whether or not the defendant met the standard of care, but you are not required to do so.

INSTRUCTION NO. 18

You are to determine the standard of care required from the opinions of the experts who have testified. Furthermore, you are to determine whether the alleged failure to meet the standard of care, if any, was the cause of Plaintiffs' claimed damages from the opinions of the experts who have testified in this case.

INSTRUCTION NO. 19

An attorney's conduct in representing a client is to be judged in the light of all the surrounding circumstances existing prior to and during the course of that representation, and not according to any hindsight gained after the lawsuit or after legal matters have been concluded. In legal malpractice cases, the law does not impose an implied guaranty of results.

INSTRUCTION NO. 20

If an attorney acts in good faith and in an honest belief that acts and advice are well-founded and in the best interest of the client, the attorney is not negligent merely because the attorney makes a mistake during the representation of the client. Any such error does not in and of itself constitute negligence. For an attorney to be found negligent, it must be shown by a preponderance of the evidence that the attorney failed to use the degree of skill, care and learning ordinarily possessed and exercised by other attorneys in similar circumstances. This is the standard by which an attorney is to be judged.

INSTRUCTION NO. 21

There can be more than one cause of damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a cause.

INSTRUCTION NO. 22

To prove damages, the plaintiffs must prove with substantial evidence that loss would not have occurred absent the defendant's conduct.

Concerning damages, plaintiffs are only entitled to recover the amount of loss actually sustained as a proximate result of the defendant's conduct. Speculation or conjecture is not sufficient to prove that no losses would have occurred absent the defendant's conduct.

INSTRUCTION NO. 23

If plaintiffs claim the defendant did not communicate information to them, they have the burden of proving that, had the information been communicated, they would have taken different action that resulted in no loss.

If plaintiffs failed to prove they would have taken action that would have resulted in no loss, you must find that they are not entitled to recover any damages.

INSTRUCTION NO. 24

In these instructions I will be using the term "fault." Fault means one or more acts or omissions which constitutes negligence, unreasonable failure to avoid penalties, and unreasonable failure to mitigate damages.

INSTRUCTION NO. 25

The legal requirements of cause in fact and proximate cause apply both to fault as the basis for liability and to contributory fault.

INSTRUCTION NO. 26

As to the claim for legal malpractice, damages may be the fault of more than one person. In comparing fault, on the claim of legal malpractice, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the plaintiffs and the defendant and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

The defense of comparative fault does not apply to the claim for breach of fiduciary duty.

INSTRUCTION NO. 27

This instruction only applies to the claim of legal malpractice.

After you have compared the conduct of all parties, if you find the plaintiffs were at fault and the plaintiffs' fault was more than 50% of the total fault, the plaintiffs cannot recover damages.

However, if you find the plaintiffs' fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiffs' fault.

INSTRUCTION NO. 28

This instruction only applies to the claim of legal malpractice.

The defendant claims the plaintiffs were at fault in one or more of the following particular(s):

Failing to provide good records; Failing to timely provide information needed to prepare complete and accurate tax returns; Failing to follow advice; Failing to make estimated tax payments; Failing to make extension payments; Failing to pursue an offer and compromise

These grounds of fault have been explained to you in other instructions.

The defendant must prove both of the following propositions:

1. The plaintiffs were at fault. In order to prove fault, the defendant must prove plaintiffs were negligent.
2. The plaintiffs' fault was a cause of the plaintiffs' damage.

If the defendant has failed to prove either of these propositions, the defendant has not proved this defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault against the plaintiffs and include the plaintiffs' fault in the total percentage of fault found by you answering the questions and the applicable verdict.

INSTRUCTION NO. 29

This instruction applies to both the claim of legal malpractice and the claim of breach of fiduciary duty, but is treated differently under each claim. Please note the differences below.

Defendant claims plaintiffs were at fault for failing to mitigate their damages by not exercising ordinary care to avoid or reduce their damages.

Plaintiffs have a duty to exercise ordinary care to reduce, minimize or limit their damages. However, plaintiffs have no duty to do something that is unreasonable under the circumstances.

To prove the claim of failure to mitigate, defendant must prove all of the following:

1. There was something plaintiffs could do to mitigate their damages;
2. Requiring plaintiffs to do so was reasonable under the circumstances;
3. Plaintiffs acted unreasonable in failing to undertake the mitigating activity; and
4. Plaintiffs' failure to undertake the mitigating activity caused an identifiable portion of their damages.

If the defendant has proved all of these numbered propositions, then defendant has proved this defense, and as to the claim of legal malpractice, you shall assign a percentage of fault to the plaintiffs for the time period after the failure to mitigate. This amount will be used in answering the special interrogatory in the verdict.

If the defendant has proved all of these numbered propositions, then you shall reduce any amount of damage you award for the claim of breach of fiduciary duty by the amount you determine the plaintiffs failed to mitigate their damages.

If the defendant has failed to prove one or more of these numbered propositions, then defendant has not proved plaintiffs failed to mitigate their damages.

INSTRUCTION NO. 30

A party is required to exercise reasonable care for their own welfare. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid penalties, then they are under a duty to take such action.

In this case defendant claims that plaintiffs unreasonably failed to take action to avoid penalties by:

- a. Failing to pay tax estimates;
- b. Failing to timely provide information needed to prepare complete and accurate tax returns;
- c. Failing to take action to file their tax returns; and
- d. Failing to pursue offer in compromise.

INSTRUCTION NO. 31

The plaintiffs must prove all of the following propositions for their claim of breach of fiduciary duty:

1. During 2010-2016 a fiduciary relationship existed between the plaintiffs and the defendant.
2. The defendant breached a fiduciary duty.
3. The breach of the fiduciary duty was a cause of damage to the plaintiffs.
4. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs cannot recover damages. If the plaintiffs have proved all of these propositions, the plaintiffs are entitled to recover damages in some amount.

INSTRUCTION NO. 32

Concerning proposition no. 1 of Instruction No. 31, a fiduciary relationship is a relationship of trust and confidence on a subject between two persons. One of the persons is under a duty to act for or give advice to the other on that subject.

Confidence is placed on one side, and domination and influence result on the other.

An attorney is a fiduciary for the scope of the attorney-client relationship.

INSTRUCTION NO. 33

Concerning proposition no. 2 of Instruction No. 31, a fiduciary has a duty to disclose all material facts in dealing with the other party to permit the other party to make an intelligent, knowing decision in such dealings. A fact is material if a reasonable person would consider it to be important in making a decision. A failure to perform the duty is a breach of fiduciary duty.

INSTRUCTION NO. 34

A tax practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States, must advise the client of the consequences as provided under the Internal Revenue Code and regulations of such noncompliance, error, or omission.

INSTRUCTION NO. 35

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 36

I am giving you two verdict forms and related questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdicts and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 12:51 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdicts and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdicts and answers to questions and appropriately signed it, tell the Court Attendant.

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DAVID BIBLER, JD, CPA,

Defendants.

LAW NO. LACV027131

VERDICT FORMS

VERDICT FORM NO. 1 as to Plaintiffs claim of legal malpractice:

We find the following verdict on the questions submitted to us:

Question No. 1: Was the defendant at fault?

Answer "yes" or "no."

ANSWER: yes

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was the fault of the defendant a cause of any item of damage to the plaintiffs?

Answer "yes" or "no."

ANSWER: NO

[If your answer is "no," do not answer any further questions.]

Question No. 3: Were the plaintiffs at fault?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer Questions No. 4 or 5.]

Question No. 4: Was the plaintiffs' fault a cause of any damage to the plaintiffs?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer Question No. 5.]

Question No. 5: Using 100% as the total combined fault of plaintiffs and defendant which was a cause of plaintiffs' damage what percentage of such combined fault do you

assign to the plaintiffs and what percentage of such combined fault do you assign to the defendant?

ANSWER: Plaintiff Ann Butler _____ %
Plaintiff Robert Butler _____ %
Defendant David Bibler _____ %
TOTAL 100%

[If you find plaintiffs to be more than 50% at fault, do not answer Question No. 6.]

Question No. 6: State the amount of damages sustained by the plaintiffs by defendant's fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiffs' fault. If the plaintiffs have failed to prove any item of damage, or have failed to prove that any item of damage was caused by defendant's fault, enter 0 for that item.

- | | |
|--|----------|
| 1. Federal Failure to File Penalties for Robert Butler (2010) | \$ _____ |
| 2. Federal Failure to File Penalties for Robert Butler (2011) | \$ _____ |
| 3. Federal Failure to File Penalties for Robert Butler (2012) | \$ _____ |
| 4. Federal Failure to File Penalties for Robert Butler (2013) | \$ _____ |
| 5. Federal Failure to File Penalties for Robert Butler (2014) | \$ _____ |
| 6. Federal Failure to File Penalties for Robert Butler (2015) | \$ _____ |
| 7. Federal Failure to File Penalties for Ann Butler (2011) | \$ _____ |
| 8. Attorney Fees paid to the Buchanan Law Firm | \$ _____ |
| 9. Attorney Fees paid to the Monroe Law Firm | \$ _____ |
| 10. Federal Failure to Pay Penalties for Robert Butler (2010) | \$ _____ |
| 11. Federal Failure to Pay Penalties for Robert Butler (2011) | \$ _____ |
| 12. Federal Failure to Pay Penalties for Ann Butler (2011) | \$ _____ |
| 13. Interest on Federal Failure to File Penalties for Robert Butler (2010) | \$ _____ |
| 14. Interest on Federal Failure to File Penalties for Robert Butler (2011) | \$ _____ |
| 15. Interest on Federal Failure to File Penalties for Robert Butler (2012) | \$ _____ |
| 16. Interest on Federal Failure to File Penalties for Robert Butler (2013) | \$ _____ |
| 17. Interest on Federal Failure to File Penalties for Robert Butler (2014) | \$ _____ |
| 18. Interest on Federal Failure to File Penalties for Robert Butler (2015) | \$ _____ |
| 19. Interest on Federal Failure to Pay Penalties for Robert Butler (2010) | \$ _____ |
| 20. Interest on Federal Failure to Pay Penalties for Robert Butler (2011) | \$ _____ |
| 21. Interest of Federal Failure to Pay Penalties for Ann Butler (2011) | \$ _____ |

TOTAL (add the separate items of damage) \$ _____


Foreperson*

[the plaintiffs cannot recover duplicate damages. In the event you award damages under one verdict form, they cannot be duplicated under the other verdict form]

* (to be signed by the presiding juror only if the verdict is unanimous)

Juror **_____
Juror **_____
Juror **_____
Juror **_____
Juror **_____
Juror **_____
Juror **

*** (after six or more hours of deliberation, to be signed by all jurors agreeing to the verdict)*

VERDICT FORM NO. 2 as to Plaintiffs' claim of breach of fiduciary duty:

As to this Verdict Form and the claim of breach of fiduciary duty, the damages you may consider are those items of damage identified in Question No. 6 in Verdict No. 1 (they are set forth in detail above).

We find the following verdict on the questions submitted to us:

Question No. 1: Did a fiduciary relationship exist during 2010-2016 between the plaintiffs and the defendant?

Answer "yes" or "no."

ANSWER: yes

[If your answer is "no," do not answer any further questions.]

Question No. 2: Did the defendant breach a fiduciary duty to the plaintiffs?

Answer "yes" or "no."

ANSWER: NO

[If your answer is "no", do not answer any further questions.]

Question No. 3: Did the defendant's breach of fiduciary duty to the plaintiffs cause damage to the plaintiffs?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer any further questions.]

Question No. 4: Did the plaintiffs fail to mitigate their damages?

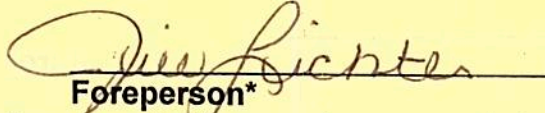
Answer "yes" or "no."

ANSWER: _____

[If your answers to Questions 1 – 4 above are "yes," then proceed to Answer Question No. 5.]

Question No. 5: State the amount that the plaintiffs failed to mitigate their damages:
\$ _____.

Question No. 6: State the amount of damages sustained by the plaintiffs by defendant's breach of fiduciary duty for which the plaintiffs did not fail to mitigate their damages: \$ _____.


Foreperson*

[the plaintiffs cannot recover duplicate damages. In the event you award damages under one verdict form, they cannot be duplicated under the other verdict form]

** (to be signed by the presiding juror only if the verdict is unanimous)*

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

*** (after six or more hours of deliberation, to be signed by all jurors agreeing to the verdict)*