5.51B PROXIMATE CAUSE IN LEGAL MALPRACTICE INVOLVING INADEQUATE OR INCOMPLETE LEGAL ADVICE (Approved 01/1997; Revised 01/2025)

NOTE TO JUDGE

"The issue of causation is ordinarily left to a factfinder[,]" but a court can remove the issue of causation "in the highly extraordinary case in which reasonable minds could not differ on whether that issue has been established." Townsdend v. Pierre, 221 N.J. 36, 59, 60 (2015).

The Supreme Court has noted in many instances that the substantial factor test is well-suited for legal malpractice cases when the legal malpractice is a concurrent cause of harm. Therefore, this charge includes substantial factor as part of the jury instruction, but trial courts should consider exceptions to the rule where the typical proximate cause charge may apply. See, e.g., Gilbert v. Stewart, 247 N.J. 421 (2021); Conklin v. Hannoch Weisman, 145 N.J. 395 (1996).

In this case, to satisfy plaintiff's burden on proximate cause, plaintiff must show that the lawyer's negligence or deviation from the standard of care was a substantial factor in bringing about plaintiff's injuries, losses, or harms. To be a substantial factor, the defendant's deviation must play a role that is both relevant and significant in bringing about the ultimate injury. To find proximate cause, it is not necessary that the negligence of the defendant be the sole cause, or even the primary cause, of the plaintiff's harm or injury because the law recognizes that in the case of legal malpractice there may be a number of factors that led to the

plaintiff's harm. In other words, you the jury can find that a defendant's deviation or negligence is a substantial factor even though it is not the predominant cause of the injury. However, if the deviation was only remotely or insignificantly related to the ultimate harm or injury, the deviation does not constitute a substantial factor.[1]

In addition to substantial factor, plaintiff must also show that it was foreseeable that defendant's conduct would cause some harm.[2] For purposes of proximate cause, foreseeability means whether a reasonably prudent, similarly situated attorney would anticipate a risk that the attorney's conduct would cause injury or harm to the attorney's client.[3] For the harm to be considered foreseeable, it is not necessary that the precise harm that occurred here was foreseeable by the defendant. Rather if some harm from the defendant's negligence was within the realm of reasonable foreseeability, then the harm is considered foreseeable. If an injury or loss is not a foreseeable consequence of a lawyer's negligence or

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[1] For a discussion on the role of expert testimony in establishing proximate causation, see Morris Props., Inc. v. Wheeler, 476 N.J. Super. 448 (App. Div. 2023).

[2] In certain cases, foreseeability will not be an issue in the case. In such cases, trial courts may omit the paragraph on foreseeability to avoid inserting an issue into the case.

[3] Komlodi v. Picciano, 217 N.J. 387, 417 (2014); Gilbert v. Stewart, 247 N.J. 421 (2014).

deviation from the standard of care, then a plaintiff cannot prevail on plaintiff's claim.[4]

In sum, in order to find proximate cause, you must find that the negligence of the defendant *[in providing inadequate or incomplete legal advice/taking or failing to take certain action]* was a substantial factor in bringing about the harm that occurred and that some harm to the plaintiff was foreseeable from the defendant's negligence.

NOTE TO JUDGE

In Conklin, 145 N.J. at 407, 412, and Gilbert, 247 N.J. at 445-47, the Supreme Court addressed whether a plaintiff's conduct can amount to contributory negligence. The Court explained that when a lawyer's duty encompasses the protection of the client from self-inflicted harm, the ultimate infliction of that harm is not contributory negligence. In other words, if it is a foreseeable risk that a client will or might engage in "self-damage" due to the attorney's deviation from the standard of care, the attorney has a duty to prevent said self-damaging conduct. That said, there can be instances where a client cannot be deterred from taking a course of action, and in such a situation, proximate cause will not arise. Ultimately, the Supreme Court has instructed that proximate cause is a fact sensitive inquiry, and the substantial factor test should guide juries in evaluating proximate cause in legal malpractice settings.

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[4] Conklin v. Hannoch Weisman, 145 N.J. 395, 418-22 (1996). The trial court should be aware that, in certain factual circumstances, foreseeability might be a "red herring," 145 N.J. at 420, and the language regarding foreseeability would be eliminated.