

NOTICE TO THE BAR

UPDATES TO MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges (Committee) has approved the following list of Model Civil Jury Charges for use by the bar and trial courts. Two model charges are new and sixteen are revised versions of previously approved charges. All approved Model Civil Jury Charges, including these new and revised charges, are available for downloading from the Judiciary's Internet web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

2.22A *Law Against Discrimination (LAD) Individual Liability Claims (Approved 3/10)*

This new charge has been added regarding individual liability under LAD citing *Cicchetti v. Morris County Sheriff's Office*, 194 N.J. 563 (2008); *Tarr v. Ciasulli*, 181 N.J. 70 (2004); *Hurley v. Atlantic City Police Dep't*, 174 F.3d 95 (3d Cir. 1999), *cert. denied*, 528 U.S. 1074, 120 S.Ct. 786, 145 L.Ed. 2d 663 (2000).

2.32 *New Jersey Conscientious Employee Protection Act (CEPA) (N.J.S.A. 34:19-1 et seq.) (3/10)*

This charge was revised to add a section to the CEPA charge concerning the fact that the law is unsettled regarding individual liability under CEPA.

3.11A *Public Defamation (3/10)*

This charge was rewritten to read more fluidly and a reference to *Berkery v. Kinney*, 397 N.J. Super. 222 (App. Div. 2007), *certif. denied*, 194 N.J. 445 (2008) has been added noting that once a person becomes a public figure, even if he/she subsequently adopts a private lifestyle, he/she remains a public figure thereafter for purposes of later commentary or treatment of that commentary.

3.11B *Private Defamation (3/10)*

This charge was rewritten to read more fluidly.

4.43 *Consumer Fraud Act (3/10)*

A cite to *Lee v. First Union National Bank*, 199 N.J. 251, 261 (2009) has been added to make clear that neither securities nor the sale of securities "services" are included in the definition of "merchandise" under the Act.

5.10H *Standards of Construction, Custom and Usage in Industry or Trade (3/10)*

A footnote reference was added to this existing charge citing *Costa v. Gaccione*, 408 N.J. Super. 362 (App. Div. 2009), which holds that an Occupational Safety & Health Administration (OSHA) violation is treated similarly to a violation of an industry standard. Thus, compliance with an OSHA regulation does not in and of itself preclude a finding of negligence, and, conversely, non-compliance with an OSHA regulation does not, as such, preclude a finding that there was no negligence.

5.33A *Verbal Threshold (Type 6, 7, 8 or 9 Injuries) (3/10)*

A reference to *Bolz v. Bolz, et al.*, 400 N.J. Super. 154 (App. Div. 2008) has been added to make clear that in cases with two or more defendants, some of whom have available the limitation on lawsuit option defense and others who do not, the judge needs to charge two specific interrogatories as to each defendant and the jury must answer these before determining whether or not plaintiff satisfied the applicable threshold.

5.33B *Limitation on Lawsuit Option (3/10)*

A reference to *Bolz v. Bolz, et al.*, 400 N.J. Super. 154 (App. Div. 2008) has been added. See discussion under charge 5.33A above.

5.40A *Products Liability – Introduction: Caveats to Judges (3/10)*

A footnote reference to *Boyle v. Ford Motor Company*, 399 N.J. Super. 18, 24 (App. Div. 2008), *certif. denied*, 196 N.J. 597 (2008) has been added to the existing charge making clear that the duty to make/sell a product that is reasonably safe may apply to a defendant independent contractor such as the manufacturer of a component part of a product or even a re-builder where the part or product was built accordingly to plans and specifications of the general manufacturer.

5.40D-2 *Design Defect — Introductory Statement to Jury (All Cases) (3/10)*

A footnote reference to *Boyle v. Ford Motor Company*, 399 N.J. Super. 18 (App. Div.), *certif. denied*, 196 N.J. 597 (2008) has been added to the existing charge. See discussion under charge 5.40A above.

5.71 *Tavern Keepers Serving Minors and Intoxicated Persons (3/10)*

A typographical error in the cite *Rappaport v. Nichols*, 31 N.J. 188 (1959) has been corrected and a reference added to *Mazzacano v. Estate of Kinnerman*, 197 N.J. 307 (2009) in which the Court held that self-service constitutes the service of alcohol under the *Licensed Alcoholic Beverage Service Fair Liability Act* (the “Dram Shop Act”), N.J.S.A. 2A:22A-1 to -7.

8.41 *Conversion (3/10)*

A footnote reference to *Chicago Title Ins. Co. v. Ellis*, 409 N.J. Super. 444 (App. Div.), *certif. denied*, 200 N.J. 506 (2009) has been added to the existing charge making clear that the tort of conversion can be applied to money rather than chattels.

8.43 *Wrongful Death (3/10)*

This charge was rewritten to provide additional clarity and to update case law, including citing *Johnson v. Dobrosky*, 187 N.J. 594, 606 (2006) (quoting Stewart M. Speiser, *Recovery for Wrongful Death & Injury*, §6:26 (4th ed. 2005)) and holding that the decedent’s welfare fraud conviction should not have been admissible in a wrongful death case.

- 8.46** ***Defamation Damages (Private or Public) (3/10)***
This defamation damages charge was rewritten to read more fluidly.
- 8.60** ***Punitive Damages Actions — Filed On OR After 10/27/95 (Other Than Products Liability Actions) (3/10)***
Footnotes have been rewritten to provide additional clarity to the charge, citing *Tarr v. Ciasulli*, 390 N.J. Super. 557 (App. Div. 2007), *aff'd*, 194 N.J. 212, 224 (2008), which found that the *New Jersey Punitive Damages Act*, N.J.S.A. 2A:15-15-5.9, *et al.* does not permit counsel to urge the jury to increase a punitive damage award in order to enhance the general “deterrence of others.” Accordingly, the language in the original charge which allowed punitive damages to be awarded as a “deterrence to others” was deleted.
- 8.61** ***Punitive Damages — Law Against Discrimination (LAD) Claims (3/10)***
To provide additional clarity to the charge, footnotes have been rewritten citing *Tarr v. Ciasulli*, 390 N.J. Super. 557 (App. Div. 2007), *aff'd*, 194 N.J. 212, 224 (2008). See discussion under charge 8.60 above.
- 8.63** ***Punitive Damages — New Jersey Conscientious Employee Protection Act (CEPA) Claims (Approved 3/10)***
This new CEPA punitive damages charge has been added.
- 8.70** ***Tort Claims Act Threshold for Recovery of Damages for Pain and Suffering (3/10)***
A reference to *Bolz v. Bolz, et al.*, 400 N.J. Super. 154 (App. Div. 2008) has been added to make clear that when both private and public entity defendants are sued, the jury should answer two specific interrogatories as to each defendant. Once those interrogatories are answered, the jury should determine whether the plaintiff has established a substantial permanent injury caused by a public defendant.

Questions regarding any of these new or revised civil jury charges may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

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