

NOTICE TO THE BAR

MODEL CIVIL JURY CHARGES UPDATE

The Supreme Court Committee on Model Civil Jury Charges has approved the following new and revised Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including the following charges, are available for downloading at <https://www.njcourts.gov/courts/civil/model-civil-jury-charges>.

2.21 The New Jersey Law Against Discrimination (“NJLAD”) (N.J.S.A. 10:5-1 et seq.) (Approved 05/2003; Revised 11/2022)

Reference to Meade v. Twp. of Livingston, 251 N.J. 14 (2022) is added to footnote 4 of the charge with the explanation that “unlawful employment discrimination... can be predicated on claims that a non-decisionmaker’s discriminatory views impermissibly influenced the decisionmaker to take an adverse employment action against an employee.” References to “handicap” have been updated to “disability,” and the NJLAD’s applicability as relating to disability has been updated.

3.11A Public Defamation (Approved 03/2010; Revised 11/2022)

This charge is revised to correct the inconsistency in the burden of proof for the elements of public defamation. Extensive citations to caselaw are added to footnote 1 providing additional background and explanation of the burden of proof for this cause of action.

5.20B Liability for Defects in Public Streets and Sidewalks (Approved 11/1999; Revised 11/2022)

This charge is updated to include the Court’s decision Pareja v. Princeton Int’l Properties, 246 N.J. 546 (2021). In Pareja, the Court held that the limiting principles established in the court’s precedent warranted the adoption of the ongoing storm rule. Specifically, commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm, but unusual circumstances may give rise to a duty before then. There are two exceptions that could impose a duty.

First, commercial landowners may be liable if their actions increase the risk to pedestrians and invitees on their property. Second, a commercial landowner may be liable where there was a pre-existing risk on the premises before the storm. In addition to Pareja, case law addressing liability for defects in public streets and sidewalks is also added throughout the charge.

5.20F Duty Owed – Condition of Premises (Approved 03/2000; Revised 11/2022)

This charge is updated to account for New Jersey's Comparative Negligence Act. N.J.S.A. § 2A:15-5.1 et seq. References to contributory negligence are replaced with comparative negligence where appropriate. Citations to older cases are removed and citations to more recent case law are added. In addition, the charge is updated to include a reference to Jeter v. Sam's Club, 248 N.J. 242 (2021), in which the Court carved out an exception to the mode of operation rule for the sale of grapes in closed clamshell containers.

5.76 Negligent Hiring (Approved 04/2007; Revised 11/2022)

Reference to E.S. for G.S. v. Brunswick Inv. Ltd. Partnership, 469 N.J. Super. 279, 288 (App. Div. 2021) is added in two footnotes. In this case, the Appellate Division affirmed the grant of summary judgment to defendant landlord where plaintiff tenant alleged that defendant's maintenance man sexually assaulted her minor children.

5.77 Violations of Nursing Home Statutes or Regulations – Negligence and Violations of Nursing Home Residents' Rights Claims (Approved 11/2022)

This is a new charged created in response to a request from a member of the bar for a model civil jury charge for nursing home cases. It includes references to New Jersey Nursing Home Responsibilities & Rights of Residents Act, N.J.S.A. 30:13-1 et seq.; Federal Nursing Home Reform Amendments to the Omnibus Budget Reconciliation Act of 1987 (OBRA), codified at 42 U.S.C. § 1396r et seq.; the Code of Federal Regulations; and New Jersey case law.

8.11J Model Civil Jury Charge for Allocation of Damages Against Successive Tortfeasors in Cases Where the Initial Tortfeasor Settles Before Trial (Approved 11/2022)

This is a new charge developed for allocation of damages against successive tortfeasors in cases where the initial tortfeasor settles before trial based on the Court's decision in Glassman v. Friedel, 249 N.J. 199 (2021). In Glassman, the Court agreed with the Appellate Division that the Ciluffo pro tanto credit does not further the legislative intent expressed in the Comparative Negligence Act and does not reflect developments in case law over the past four decades. In its stead, the Court set forth a procedure to apportion any damages assessed in the trial of this case and future successive-tortfeasor cases in which the plaintiff settles with the initial tortfeasors prior to trial.

8.21 Nonuse of Seatbelt Including Ultimate Outcome (Approved 12/2009; Revised 11/2022)

This charge is revised to include an extensive excerpt from Waterson v. General Motors Corp., 111 N.J. 238 (1988), in the Note to Judge. In Waterson, the Court adopted a formula for evaluating seat belt evidence and damages.

8.46 Defamation Damages (Private or Public) (Approved 06/2014; Revised 11/2022)

This charge is revised in response to the Court's referral of the charge to the Committee in Graphnet v. Retarus, 246 N.J. 440 (2021). In Graphnet, the Court considered whether a new trial on all damages is required when the jury is improperly instructed on nominal damages and a plaintiff opposes remittitur. The Court affirmed the Appellate Division's finding that remittitur was improper without plaintiff's consent. However, the Court concluded that the matter required a new trial on all damages in which the jury is properly instructed on actual and nominal damages.

8.61 Punitive Damages — Law Against Discrimination (LAD) Claims (Approved 04/2014; Revised 11/2022)

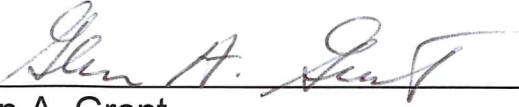
In Pritchett v. State, 248 N.J. 85 (2021), the Court reviewed the Appellate Division's instructions to the trial court for reconsideration of a

\$10 million punitive damage award against a public entity in a New Jersey Law Against Discrimination case. The Court's decision invited review of the model civil jury charge on the award of punitive damages against a public entity defendant, "if only for the purpose of adding a sentence that simply but explicitly states that the jury should not forget that an award of punitive damages comes from public funds." Pritchett, 248 N.J. at 110-111 n.5. Accordingly, this charge is revised such that reference to Pritchett is added in footnote 16, and the jury is instructed that employer defendant's financial condition and ability to pay the punitive damages award should not be charged in public entity cases.

8.63 Punitive Damages — New Jersey Conscientious Employee Protection ACT (CEPA) Claims (Approved 04/2014; Revised 11/2022)

In Pritchett v. State, 248 N.J. 85 (2021), the Court reviewed the Appellate Division's instructions to the trial court for reconsideration of a \$10 million punitive damage award against a public entity in a New Jersey Law Against Discrimination case. The Court's decision invited review of the model civil jury charge on the award of punitive damages against a public entity defendant, "if only for the purpose of adding a sentence that simply but explicitly states that the jury should not forget that an award of punitive damages comes from public funds." Pritchett, 248 N.J. at 110-111 n.5. Accordingly, this charge is revised such that reference to Pritchett is added in footnote 16, and the jury is instructed that employer defendant's financial condition and ability to pay the punitive damages award should not be charged in public entity cases.

Questions regarding this and other Model Civil Jury Charges may be directed to Kristi Jasberg Robinson, Esq., Chief, Civil Practice Liaison, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; phone (609) 815-2900 ext. 54900; e-mail Kristi.Robinson@njcourts.gov.



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