

NOTICE TO THE BAR

MODEL CIVIL JURY CHARGES UPDATE

The Supreme Court Committee on Model Civil Jury Charges (“Committee”) 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 [Model Civil Jury Charges System | NJ Courts](#).

1.11G Preliminary Charge; Settling Defendants (Approved 11/1998; Revised 01/2025)

The Note to Judge was expanded to include Theobold v. Angelos, 40 N.J. 295 (1963), a case which addresses settlement at trial. Additionally, references to several cases addressing settling defendants were added to the bottom of the charge.

1.17 Instructions To Jury In Cases In Which One Or More Defendants Have Settled With The Plaintiff (Approved 05/1997; Revised 01/2025)

The Note to Judge was expanded to include Theobold v. Angelos, 40 N.J. 295 (1963), a case which addresses settlement at trial.

2.21 The New Jersey Law Against Discrimination (“NJLAD”) (N.J.S.A. 10:5-1 et seq.) (Approved 05/2003; Revised 01/2025)

In Crisitello v. St. Theresa Sch., 255 N.J. 200 (2023), Victoria Crisitello, art teacher and toddler room caregiver, sued the Church of St. Theresa (St. Theresa’s), school owner and operator, alleging it violated the NJLAD for discrimination based on pregnancy and marital status after it terminated her when she became pregnant while unmarried. Plaintiff’s employment agreement required employees to abide by the teachings of the Catholic Church and to not have premarital sex.

Here, the Court examined the NJLAD, its “religious tenets” exception, and the McDonnell Douglas burden-shifting framework. Deciding the case on narrow statutory grounds, the Court held that the religious tenets

exception of N.J.S.A. 10:5-12(a) is an affirmative defense available to a religious entity when confronted with a claim of employment discrimination. This exception sets forth that “it shall not be an unlawful employment practice” for a religious entity to follow the tenets of its faith “in establishing and utilizing criteria for employment.”

The Committee updated the Introductory Note to the Court to provide guidance on instructing the jury where defendant has pled an affirmative defense of the religious tenets exception.

2.25 Hostile Work Environment Claims Under the New Jersey Law Against Discrimination (Sexual and Other Harassment) (Approved 05/2015; Revised 01/2025)

In C.V. by & through C.V v. Waterford Twp. Bd. of Educ., 255 N.J. 289 (2023), the Court reversed and remanded the Appellate Division’s judgment in a case where a minor and her parents sued the Waterford Township Board of Education and Waterford Township School District for, in part, “discrimination in a ‘place of public accommodation’ ‘on account of...sex’ in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f).” A 76-year-old bus aide, responsible for ensuring the minor’s safety, repeatedly sexually assaulted the minor when she was a pre-kindergarten student in the district. The Appellate Division affirmed the trial court’s grant of summary judgment to Waterford, finding indication in the record that pedophilia, and not gender discrimination, fueled the bus aide’s conduct.

The Court, however, reversed the Appellate Division’s judgment because it conflicted with Lehmann v. Toys ‘R’ Us, Inc., 132 N.J. 587 (1993), and L.W. v. Toms River Regional Schools Bd. of Educ., 189 N.J. 381 (2007). The Court emphasized that under Lehmann, “sexual touching of areas of the body linked to sexuality happens, by definition, because of sex.”

The Committee added two footnotes referencing C.V. v. Waterford Twp. Bd. of Educ. The first footnote supports the section of the charge that discusses causation, while the second discusses harassment by specific persons such as teachers or administrators.

2.26 Failure to Accommodate Employee With Disability Under the New Jersey Law Against Discrimination (Approved 02/2013; Revised 01/2025)

In Players Place II Condo. Ass'n, Inc. v. K.P., 256 N.J. 472 (2024), the Court examined whether the trial court properly dismissed the disability discrimination claims that condominium unit owners brought after the condominium association declined their request to have an emotional support animal (ESA) based on the animal's weight. The Court also set forth a framework as to how these requests should be evaluated under the New Jersey Law Against Discrimination.

The Committee added a Note to Judge that references Players Place II Condo. Ass'n, Inc. v. K.P. and explains how the charge may be modified to address the specific facts of a failure to accommodate claim asserted against a housing provider.

4.43 Consumer Fraud Act (Approved 05/1998; Revised 01/2025)

In Robey v. SPARC Grp. LLC, 256 N.J. 541 (2024), plaintiffs, a class of shoppers at a retail clothing store, alleged that the store violated the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227, the Truth in Consumer-Contract, Warranty and Notice Act (TCCWNA), N.J.S.A. 56:12-14 to -18, and various common law contract rights by engaging in a practice of "illusory discounts." One issue the Court examined was whether plaintiffs had sufficiently pled that they sustained an ascertainable loss under the CFA. A plaintiff can establish an ascertainable loss by demonstrating either an out-of-pocket loss or a deprivation of the benefit of one's bargain. The Court did not find either type of ascertainable loss applicable in the matter because plaintiffs purchased non-defective, conforming goods with no objective, measurable disparity between the product they reasonably thought they were buying and what they ultimately received. Plaintiffs could not establish their CFA, TCCWNA, and common law causes of action and were without claims entitling them to equitable relief.

The Committee expanded a footnote to address Robey v. SPARC Grp. LLC and ascertainable losses.

5.10H Agency (Approved 04/2002; Revised 01/2025)

In Pantano v. New York Shipping Ass'n, 254 N.J. 101 (2023), a personal injury case, the Court addressed the application of the multi-factor test set forth in Galvao v. G.R. Robert Construction Co., 179 N.J. 462, 471-73 (2004) which is used to determine whether a worker who negligently causes a plaintiff's jobsite injury is a so-called "borrowed employee" of the plaintiff's own employer. In Pantano, the Court asked the Committee to consider whether a specific model charge, with perhaps a recommended verdict form, be developed to assist jurors in applying the Galvao factors.

The Committee added a new subsection C to provide guidance to jurors on borrowed employees.

5.20A Dangerous Condition Of Public Property (Approved 02/1996; Revised 01/2025)

Reference to Est. of Massi v. Barr, 479 N.J. Super. 144 (App. Div. 2024) is added to Footnote 3 of the charge. This Tort Claims Act case arose from a now-deceased plaintiff's bicycle accident on a two-lane public road. The accident occurred on a stretch of the road that was chronically pitted with potholes. According to the deposition testimony of a local public safety director, potholes at that location had to be patched and re-patched "hundreds" of times in the five years before the accident. Several citizens periodically reported the road's poor condition before the accident. The road had no full-sized shoulders or designated bike lanes.

The opinion clarified and extended the principles of Polzo v. County of Essex, 196 N.J. 569 (2008) ("Polzo I") and Polzo v. County of Essex, 209 N.J. 51 (2012) ("Polzo II"), concerning roadway surface conditions that endanger the safety of bicyclists on public roads. Addressing a bicycle accident on a road's potholed shoulder, the Court held in Polzo II that the public entity defendant had no duty to maintain the shoulder to an extent safe for bicyclists. The Court distinguished that no-duty-to-bicyclists situation from a roadway condition that also happens to be unsafe for motorized vehicles.

The Appellate Division in Est. of Massi v. Barr applied the rationale of Polzo II to the bicycle accident that occurred in a vehicular lane, and to a record with an un rebutted expert opinion that the road surface was unsafe

for both motorcycles and bicycles. It concluded that a public entity that is palpably unreasonable in failing to correct such a known dangerous road condition may be liable to a bicyclist who is injured because of that danger.

In doing so, the Appellate Division recognized that a plaintiff operating a two-wheeled vehicle must use due care when confronting a visibly hazardous potholed surface. These principles are consistent with New Jersey Department of Transportation regulations concerning the safety of roadway surfaces.

5.20B Liability For Defects In Public Streets And Sidewalks
(Approved 11/99; Revised 01/2025)

Reference to Padilla v. Young II An, 257 N.J. 540 (2024), is added to Footnote 5 of the charge. In this appeal, the Court considered whether owners of vacant commercial lots have a common law duty to maintain the public sidewalks abutting those lots in reasonably good condition. Considerations of fairness led the Court to hold that all commercial landowners -- including owners of vacant commercial lots -- have a duty to maintain the public sidewalks abutting their property in reasonably good condition and are liable to pedestrians injured as a result of their negligent failure to do so.

5.51B Proximate Cause in Legal Malpractice Involving Inadequate or Incomplete Legal Advice (Approved 01/1997; Revised 01/2025)

Morris Props., Inc. v. Wheeler, 476 N.J. Super. 448 (App. Div. 2023), involved a legal malpractice matter where a corporate plaintiff and its president sued a law firm and two lawyers associated with the firm. The Appellate Division affirmed the trial court's grant of summary judgment to defendants. The Appellate Division found that plaintiffs had not established proximate cause as a matter of law and that expert testimony was needed to prove proximate causation and damages.

The Committee added a footnote directing readers to this case for a discussion on the role of expert testimony in establishing proximate causation where legal malpractice is involved.

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.

/s/ Glenn A. Grant

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Dated: January 21, 2025