

## NOTICE TO THE BAR

### MODEL CIVIL JURY CHARGE UPDATE

The Supreme Court Committee on Model Civil Jury Charges has approved the following Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including these new charges, are available for downloading from the Judiciary's web site at <http://www.njcourts.gov/civil/civindx.html>.

#### **1.18 WITNESS – FAILURE OF A PARTY TO PRODUCE; ADVERSE INFERENCE (Approved 05/1970; Revised 10/2016)**

This charge is amended in light of the Supreme Court's decision in Torres v. Pabon, 225 N.J. 167 (2016), in which the Court found that the trial court erred in improperly granting requests for the adverse inference charge to be read regarding both the defendant and an expert witness.

#### **1.25 OPTIONAL CHARGE CONCERNING VIDEO RECORDED TESTIMONY (04/2016)**

This new charge is created for use in cases in which video recorded deposition testimony is presented at trial.

#### **2.25 HOSTILE WORK ENVIRONMENT CLAIMS UNDER THE NEW JERSEY LAW AGAINST DISCRIMINATION (SEXUAL AND OTHER HARASSMENT) (Approved 05/2015, Revised 03/2016)**

This charge is amended in light of the Supreme Court's decision in Aguas v. State, 220 N.J. 494 (2015), to include factors that may be considered relating to a defendant employer's affirmative defense against a claim of vicarious liability for emotional distress damages in a hostile work environment sexual harassment case. In that case, the Court held that the defendant employer may assert as an affirmative defense that it exercised reasonable care to prevent and promptly correct the improper behavior and that the plaintiff-employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or avoid harm otherwise, provided that the employer has not taken an adverse employment action against the plaintiff-employee.

#### **5.10J EVIDENCE OF AND *PER SE* NEGLIGENCE (04/2016)**

This new charge is created based on the charge dealing with evidence of negligence and negligence *per se* in the automobile accident context, modified so that it may be used in other contexts. A section for case law has been created, and relevant case law has been added.

**5.20F DUTY OWED – CONDITION OF PREMISES (Approved 03/2000, Revised 04/2016)**

This charge is amended in accordance with the Supreme Court’s decision in Prioleau v. Kentucky Fried Chicken, Inc., 223 N.J. 245 (2015) and the Appellate Division’s decision in Walker v. Costco Wholesale Warehouse, 445 N.J. Super. 111 (App. Div. 2016). The redrafted charge adds a new section MCJC 5.20F(11) titled “Mode of Operation Rule,” and renumbers the subsequent sections of the charge accordingly.

**6.10 PROXIMATE CAUSE — GENERAL CHARGE TO BE GIVEN IN ALL CASES (Approved 5/98, Revised 01/2017)**

This charge is revised slightly to provide clarity in matters where a defendant alleges a plaintiff is comparatively negligent.

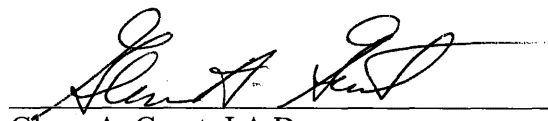
**6.11 PROXIMATE CAUSE – ROUTINE TORT CASE WHERE NO ISSUES OF CONCURRENT OR INTERVENING CAUSES, OR FORESEEABILITY OF INJURY OR HARM (Approved 08/1999; Revised 04/2016)**

This charge is revised to set forth a Note to Judge discussing the mutual exclusivity of the use of the “but for” and “substantial factor” tests, and the circumstances in which each test is appropriate, in light of Komlodi v. Picciano, 217 N.J. 387 (2014). It includes an instruction to use MCJC 6.12 for the “substantial factor” test where concurrent causes potentially producing the harm are present.

**8.20 MEDICAL EXPENSES (AUTO) (Approved 12/96; Revised 01/2017)**

This charge is amended to eliminate confusion regarding medical expenses. The charge currently instructs the jury not to speculate about plaintiff’s medical expenses. The revision further directs the jury that they are not to include medical expenses as part of a damages award.

Questions regarding these 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) 292-8470; e-mail [Kristi.Robinson@njcourts.gov](mailto:Kristi.Robinson@njcourts.gov).

  
Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Court

Dated: March 24, 2017