

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 revised Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including these revised charges, are available for downloading from the Judiciary's web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

4.10 J Bilateral Contracts Implied Terms — Covenant of Good Faith and Fair Dealing (Approved 9/2009; Revised 12/2011)

A second paragraph was added to footnote number eight referencing *Wood v. New Jersey Manufacturers Insurance Co.*, 206 N.J. 562 (2011) and *Rova Farms Resort, Inc. v. Investors Insurance Co. of America*, 65 N.J. 474 (1974) regarding a declaratory judgment action. The Appellate Division did not reach the issue of the right to a jury trial, leaving it on remand to the discretion of the trial court. The Supreme Court granted certification limited to the question of whether an insured's claims of bad faith are to be decided by a judge or jury. The Supreme Court found that regardless of the label that the Plaintiff put on the action, *Rova Farms* bad faith claim was a breach of contract claim and, thus, it was an action at law triable to a jury.

4.43 Consumer Fraud Act (Approved 5/1998; Revised 12/2011)

This charge was rewritten to read more fluidly as the language has been simplified by excluding introductory words. This charge was revised as follows:

- Note to Judge has been modified to state that there are some relatively recent cases which suggest that jury trials are available of right in cases instituted by a private litigant, referring to *Zorba Contractors, Inc.* The lengthy discussion about analogies between this statute and the NJLAD as surplusage, has been excluded. A third paragraph has been added since collective experience is that these cases are most often tried with juries.
- Introduction section: footnote number one has been rewritten to tell the trial judge that he or she does not have to read non-applicable statutory sections. Also, footnote number two has been added, allowing the trial judge to use the names of litigants.
- In First Alternative section: footnote number five referring to "fraud" and related terms, has been clarified.
- Third Alternative section: the original footnote number ten, for the same proposition set forth in footnote eight, has been eliminated.
- Administrative Rules of the Division of Consumer Affairs section, at the bottom of the first page: the cite *Wanetick* has been eliminated.

7.30 Comparative Negligence (Auto) — All Issues (Approved 6/1989; Revised 12/2011)

The charge numbers referencing the charges in the Suggested Checklist have been corrected.

8.60 Punitive Damages Actions — General (Approved 3/2000; Revised 12/2011)

This charge was rewritten to read more fluidly as the language has been simplified by excluding introductory words. This charge was revised as follows:

- Sub-title sections have been added throughout the charge.
- Title section: pre-10/27/95 litigation has been eliminated. Also, footnote number one has been rewritten and reflects the Committee's belief that the jury should not be told about punitive damages at the outset.
- Note to Judge section: footnote number two now makes clear that the cap on punitive damages does not apply to LAD or CEPA cases.
- General Charge section: footnote number three has been added which informs the trial court that it may use the names of litigants, if it wishes. The collective "his/her/its" is now used.
- Conclusion section: the footnote number nine has been added regarding *Rusak v. Ryan Automotive, L.L.C.*

8.61 Punitive Damages — Law Against Discrimination (LAD) Claims (Approved 11/1999; Revised 12/2011)

This charge was rewritten to read more fluidly as the language has been simplified by excluding introductory words. This charge was revised as follows:

- Sub-title sections have been changed throughout the charge.
- Note to Judge section: was rewritten and refers to the General Charge 8.60, rather than repeating it verbatim.
- Title section: footnote number one has been clarified.
- Intent section: footnote number two has been rewritten which informs the court that it may use the names of the litigants, rather than their status. Throughout the paragraph, the expression "*discriminatory or harassing conduct*" has been used, rather than "misconduct". Footnote number four has been added regarding *N.J.S.A. 2A:15-5.12(a)*. Also, footnote number five was added regarding *N.J.S.A. 2A:15-5.12(b)*.
- Conclusion section: the footnote number 14 has been added regarding *Rusak v. Ryan Automotive, L.L.C.*

8.62 Punitive Damages Actions — Products Liability (Approved 1/1997; Revised 12/2011)

This charge was rewritten to read more fluidly as the language has been simplified by excluding introductory words. This charge was revised as follows:

- Sub-title sections have been added throughout the charge.
- Title section: pre-10/27/95 litigation has been eliminated. Also, footnote number one has been rewritten and reflects the Committee's belief that the jury should not be told about punitive damages at the outset.
- Note to Judge section: was rewritten and refers to the General Charge 8.60, rather than repeating it verbatim.
- General Charge section: footnote number two has been rewritten which informs the court that it may use the names of the litigants, rather than their status.
- Conclusion section: the footnote number eight has been added regarding *Rusak v. Ryan Automotive, L.L.C.*

8.63 Punitive Damages — New Jersey Conscientious Employee Protection Act (CEPA) Claims (Approved 3/2010; Revised 12/2011)

This charge was rewritten to read more fluidly as the language has been simplified by excluding introductory words. This charge was revised as follows:

- Sub-title sections have been changed throughout the charge.
- Note to Judge section: was rewritten and refers to the General Charge 8.60, rather than repeating it verbatim.
- Title section: footnote number one has been clarified.
- Intent section: footnote number two has been rewritten which informs the court that it may use the names of the litigants, rather than their status. Throughout the paragraph, the expression "*retaliatory conduct*" has been used, rather than "misconduct". Footnote number four has been added regarding *N.J.S.A. 2A:15-5.12(a)*. Also, footnote number five was added regarding *N.J.S.A. 2A:15-5.12(b)*.
- Conclusion section: the footnote number 14 has been added regarding *Rusak v. Ryan Automotive, L.L.C.*

Questions regarding any of these revised civil jury charges may be directed to Leslie Santora, 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; e-mail leslie.santora@judiciary.state.nj.us.

/s/ Glenn A. Grant

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