

NOTICE TO THE BAR

MODEL CIVIL JURY CHARGE UPDATE

The Supreme Court Committee on Model Civil Jury Charges has approved the addition, revision or removal of the following 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 from the Judiciary's website at <http://www.njcourts.gov/attorneys/civilcharges.html>.

1.11 Preliminary Charges (Approved 11/1998; Revised 06/2018)

C. Jurors Not to Visit Accident Scene or Do Investigations, or Conduct Any Independent Research of Any Nature, Including Use of the Internet or Other Electronic Media

This charge is revised to include additional social media/networking platforms, as well as a general reference prohibiting the use of any and all social media/networking websites and applications, to research or discuss the case.

1.11 Preliminary Charges (Approved 11/1998; Revised 06/2018)

G. Settling Defendants

A Note to Judge is added to this charge in light of the trial court's published opinion in *Hernandez v. Chekenian*, 447 N.J. Super. 355 (Law Div. 2016). *Hernandez* addresses the appropriateness of using these charges in a situation in which a jury never sees the settling defendant. Reference is also made to *Shankman v. State, et al.*, 184 N.J. 187 (2005), which discusses whether evidence of settlements are admissible.

1.11 Preliminary Charges (Approved 04/2018)

J. Official Interpreters

This new charge is created for use just before a witness testifies through an interpreter.

1.17 Instructions to Jury in Cases in which One or More Defendants Have Settled with the Plaintiff (Approved 11/1998; Revised 06/2018)

A Note to Judge is added to this charge in light of the trial court's published opinion in *Hernandez v. Chekenian*, 447 N.J. Super. 355 (Law Div. 2016). *Hernandez* addresses the appropriateness of using these charges in a situation in which a jury never sees the settling

defendant. Reference to *Shankman v. State et al.*, 184 N.J. 187 (2005), which discusses whether evidence of settlements are admissible, was also added under the list of cases.

2.26 Failure to Accommodate Employee with Disability under the New Jersey Law Against Discrimination (Approved 2/2013; Revised 02/2018)

Alternative language regarding the fifth element of the prima facie case (that the defendant denied an accommodation) was added for cases in which the plaintiff alleges the defendant failed to engage in an informal interactive process with the plaintiff to determine an appropriate accommodation.

4.22A Breach of Implied Warranty of Fitness for Particular Purpose under U.C.C. (Formerly 4.22) (Approved before 1984)

This charge, formerly designated as 4.22, is redesignated as 4.22A due to the addition of Model Civil Jury Charge 4.22B, as noted below.

4.22B Breach of Implied Warranty of Merchantability under U.C.C. (Approved 06/2018)

This new charge is created for use with claims of implied warranty of merchantability under the Uniform Commercial Code.

5.10G Sudden Emergency (Approved pre-1983; Removed 04/2018)

This charge is being removed as it is outdated and concerns a very narrow area of the law that is typically not addressed and for which the applicable case law is very clear.

5.33 Limitation on Lawsuit Option (Formerly 5.33B) (Approved 11/2000; Revised 04/2018)

This charge, formerly designated as 5.33B, is redesignated as 5.33 due to the removal of Model Civil Jury Charge 5.33A, as set forth below. Additionally, a footnote was added acknowledging the former charge, 5.33A, and noting that if an individual were to be covered under an insurance policy issued before March 22, 1999, he or she would be subject to the former verbal threshold statute, L.1988, c.119 (effective January 1, 1989).

5.33A Verbal Threshold (Type 6, 7, 8 or 9 Injuries) (Approved 02/1998; Removed 04/2018)

This charge is being removed as it sets forth the old law with regard to the verbal threshold and would only apply in instances where an individual is covered under an insurance policy issued before March 22, 1999 (the effective date of the current statute). Given the amount of time that

has passed since the current statute was enacted (19 years) and the infrequency in which Model Civil Jury Charge 5.33A is likely to be used, if at all, 5.33A is eliminated and 5.33B is redesignated as 5.33. To the extent an individual is covered under a policy issued before March 22, 1999, he or she will be subject to the former verbal threshold statute, L.1988, c.119 (effective January 1, 1989).

5.50E Pre-Existing Condition – Increased Risk/Loss of Chance – Proximate Cause
(Approved 10/2014; Revised 04/2018)

This charge is revised to explain what constitutes a “substantial factor” in producing a plaintiff’s ultimate harm or injury. It does not specify a percentage increase in the risk of harm to be considered a “substantial factor.” However, cases referencing specific percentage increases in the risk of harm considered to be substantial are cited in order to provide attorneys with the opportunity to advocate that a specific percentage should be given to a jury in certain cases.

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) 815-2900 ext. 54900; e-mail Kristi.Robinson@njcourts.gov.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", written over a horizontal line.

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

Dated: August 22, 2018