

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 Model Civil Jury Charges for use by the bar and trial courts. All of these model charges are revised versions of previously approved charges. 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>.

1.11C. *Preliminary Charge (5/10)*

This charge was revised to add a reference to the use of the Internet and other electronic media to the prohibition on jurors researching the case on which they sit.

5.50E *Pre-Existing Condition – Increased Risk/Loss of Chance – Proximate Cause (5/10)*

A footnote reference was added to this existing charge citing *Gonzalez v. Silver, et al.*, 407 N.J. Super. 576, 588 (App. Div. 2009), in which the court noted: "...where a physician defendant's negligence combines with a patient-plaintiff's preexistent condition to cause harm, it is reversible error to instruct the jury on the "but for" proximate cause standard either alone or in conjunction with the substantial factor test."

5.40D-1 *Design Defect – Generally (5/10)*

A reference to *Mercer Mutual Ins. Co. v. Proudman, et al.*, 396 N.J. Super. 309, cert. denied, 194 N.J. 270 (2007) was added. That case held that generally, where a defendant in a products liability action raises the absolute defense that the danger posed by a product cannot be feasibly eliminated, thus establishing the lack of a defect, the plaintiff has the burden to establish by a preponderance of the evidence that the defendant could have eliminated the danger without impairing the usefulness of the product; when a plaintiff meets that burden, a jury question is presented whether the product is defectively designed even though the defendant has established the defense, citing *N.J.S.A. 2A:58C-3*.

Questions regarding any of these revised civil jury charges may be directed to Michelle V. Perone, 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; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

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

Dated: May 26, 2010