

NOTICE TO THE BAR

UPDATES TO THE MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges 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 these new and revised charges, are available for downloading from the Judiciary's web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

1.18 Witness – Failure of a Party to Produce; Adverse Inference (Approved 05/1970; Revised 12/2014)

This charge is revised to ensure that it complies with *State v. Hill*, 199 N.J. 545 (2009) per the instruction of the New Jersey Supreme Court in *Washington v. Perez*, 219 N.J. 338 (2014). Section A of the prior charge was deleted and the remaining sections of the charge were renumbered. A Note to the Judge was inserted to explain that the charge should rarely be given in the context of a personal injury trial to address the absence of an expert witness and to specify procedures related to its use.

2.35 Past Emotional Distress in an Employment Law Case (03/2014)

2.36 Past and Future Emotional Distress in an Employment Law Case (12/2014)

These charges were created in light of the New Jersey Supreme Court's decision in *Battaglia v. United Parcel Service, Inc.*, 214 N.J. 518 (2013), in which the Court held it was error to consider life expectancy in connection with emotional distress damages where the plaintiff did not offer any expert testimony as to the permanency of the emotional distress. Model Civil Jury Charge 2.35 is for use where plaintiff has not offered expert testimony and is claiming damages for past emotional distress through the time of trial. Model Civil Jury Charge 2.36 is for use where plaintiff has offered expert testimony and is claiming both past and future emotional distress.

5.20F Duty Owed – Condition of Premises (Approved 03/2000; Revised 12/2014)

This charge was revised to include an introductory Note to the Judge giving a general statement of the law regarding premises liability and to update citations to relevant caselaw. The licensee portion of the charge was revised to include a more thorough definition of "licensee" as well as provide more guidance regarding the duties of an owner to a licensee.

8.45 Breach of Contract (Approved 06/1993; Revised 12/2014)

This charge is revised to add clarifying language related to the concepts of *Hadley v. Baxendale*, 9 Ex. 341 (1854). A sentence was added to specify that damages must be a reasonably certain consequence of the breach.

Questions regarding any of 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@judiciary.state.nj.us.

/s/ Glenn A. Grant

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

Dated: February 5, 2015