

# NOTICE TO THE BAR

## MODEL CIVIL JURY CHARGES UPDATE

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 the following charges, are available for downloading at <https://www.njcourts.gov/attorneys/civilcharges.html>.

### **2.25 Hostile Work Environment Claims Under the New Jersey Law Against Discrimination (Sexual and Other Harassment)** (Approved 05/2015; Revised 10/2022)

Reference to Rios v. Meda Pharmaceutical, Inc., 247 N.J. 1, 11-12 (2021) is added to footnote 3 and footnote 4. Also, a holding from the case was added to section 3.b of the charge, which provides factors for the jury to consider in deciding if plaintiff has proved whether conduct was sufficiently severe or pervasive to create a hostile work environment in violation of the New Jersey Law Against Discrimination (LAD). In Rios, the Supreme Court reversed the Appellate Division's affirmation of a trial court's grant of defendants' motion for summary judgment and remanded for trial. The Court considered remarks made by plaintiff's supervisor from the perspective of a reasonable Hispanic employee in plaintiff's position. The Court held, under all the circumstances, a rational jury could conclude the demeaning and contemptuous slurs, allegedly uttered by a direct supervisor, were sufficiently severe or pervasive to create a hostile work environment in violation of the LAD.

### **2.26 Failure to Accommodate Employee with Disability Under the New Jersey Law Against Discrimination** (Approved 02/2013; Revised 10/2022)

Reference to Richter v. Oakland Board of Education, 246 N.J. 507 (2021) is added to footnote 1. Language is also added to the charge to state that a plaintiff does not have to prove an adverse employment action separate and apart from the failure to accommodate itself to prove a failure-to-accommodate claim. In Richter, the Court held that an adverse

employment action is not a required element for a failure-to-accommodate claim under the LAD. The Court further held that plaintiff's LAD claim based on defendants' alleged failure to accommodate her pre-existing diabetic condition is not barred by the Worker's Compensation Act, and plaintiff need not filter her claim through the required showings of the "intentional wrong exception."

### **2.26A Penalizing Employee Affected by Pregnancy for Requesting or Using an Accommodation (Approved 10/2022)**

This is a new charge approved by the Committee based on the Appellate Division's request in Delanoy v. Township of Ocean, 462 N.J. Super. 78 (App. Div. 2020) and Delanoy v. Township of Ocean, 254 N.J. 384 (2021). In Delanoy, 254 N.J. 384 (2021), the Supreme Court held that the New Jersey Pregnancy Workers Fairness Act recognizes for pregnant and breastfeeding employees three distinct causes of action within N.J.S.A. 10:5-12(s): 1) unequal or unfavorable treatment; 2) failure to accommodate; and 3) unlawful penalization. The Court also explained the contours of those causes of action and the necessary considerations as to each upon remand.

### **5.10A Negligence and Ordinary Care – General (Approved before 1984; Revised 10/2022)**

Reference to Estate of Gonzalez v. City of Jersey City, 247 N.J. 551 (2021) is added to the Note to Judge. In Estate of Gonzalez, the Court held that officers responding to a one-vehicle accident on a highway bridge may be entitled, under the particular facts and circumstances of the case, to qualified immunity under certain provisions of the New Jersey Tort Claims Act (TCA) (N.J.S.A. § 59:1-1 et seq.) if the involved officers' actions were discretionary, rather than ministerial, in nature.

### **5.10B Foreseeability (As Affecting Negligence) (Approved before 1984; Revised 10/2022)**

Reference to Coleman v. Martinez, 247 N.J. 319 (2021) and an explanatory parenthetical are added to the Cases section. In Coleman, the Court agreed with the Appellate Division that, under the circumstances of the case, the victim of a violent assault by a social worker's patient may bring a negligence claim against the social worker. Salient to this case was

the fact that the social worker failed to refer the patient for immediate psychiatric assistance.

The Court noted that the social worker also increased the risk to the victim by informing the patient that the victim had reported adverse information about the patient's mental health. The Court provided guidance on the foreseeability inquiry in the context of determining whether a duty of care exists, and also in the context of proximate cause, which asks whether the actual harm suffered was a reasonable consequence of the defendant's actual act or omission.

**5.51A Legal Malpractice (Approved 06/1979; Revised 10/2022)**

The Legal Malpractice charge is significantly revised and updated to include recent case law and additional instruction on duty and negligence. The charge sets forth the standard of care for attorneys in New Jersey providing services, including attorneys holding themselves out as specialists or who have been designated by the New Jersey Supreme Court as a "certified attorney" in civil trial law, among other areas. In addition, the charge addresses the New Jersey Rules of Professional Conduct, guarantees or promises of results by attorneys, and reasonable legal strategies in the context of legal malpractice.

**5.51B Proximate Cause in Legal Malpractice Involving Inadequate or Incomplete Legal Advice (Approved 01/1997; Revised 10/2022)**

This charge is revised and updated to include recent case law and additional instruction on Proximate Cause in Legal Malpractice. The substantial factor and foreseeability inquiries in this context are defined and further developed. One *Note to Judge* is added at the beginning of the charge and addresses exceptions to the rule where the typical proximate cause charge may apply. A second *Note to Judge* is added at the end of the charge and addresses whether a plaintiff's conduct can amount to contributory negligence. Reference to Gilbert v. Stewart, 247 N.J. 421 (2021) is added to both *Notes to Judge*.

In Gilbert, plaintiff filed a legal malpractice claim against a defendant attorney for failing to advise of certain risks associated with a plea agreement to outstanding traffic tickets in municipal court. Under the circumstances presented, the Court concluded a reasonable jury could find

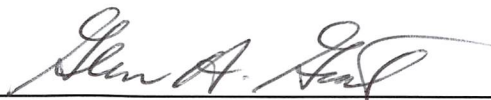
that defendant's breach of his professional duty was a substantial factor in – and thus a proximate cause of – plaintiff's harm.

**5.60A Statutory Owner - Dog Bite Liability (N.J.S.A. 4:19-16)** (Approved 12/2009; Revised 10/2022)

This charge is updated to add a new footnote 6 referencing Goldhagen v. Pasmowitz, 247 N.J. 580 (2021). This case arose from an incident where defendant's dog, boarded at a pet care facility, bit plaintiff, an independent contractor who was a groomer and kennel assistant employed at that facility, and caused the contractor a severe facial injury.

In Goldman, the Court held that the Dog Bite Statute's strict liability standard applies to the claim of an independent contractor who agrees to care for a dog, and the statute's plain language reveals no legislative intent to recognize an exception to strict liability under the Dog Bite Statute for any category of injured plaintiffs. The Court further found that the Comparative Negligence Act applied to plaintiff's strict liability claim, and plaintiff's status as a professional experienced in the care of dogs was relevant to an allocation of fault.

Questions regarding this and other 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](mailto:Kristi.Robinson@njcourts.gov).



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