

**FILING/RECORDING LIEN AGAINST PUBLIC OFFICIAL WITH INTENT TO
HARASS, DEFRAUD, RETALIATE, IMPEDE PERFORMANCE**¹
N.J.S.A. 2C:21-42²

The defendant is charged in Count ____ of the indictment with Filing/ Recording of a Retaliatory Lien Against a Public Official.³

The pertinent part of the statute on which the indictment is based reads as follows:

A person commits a crime . . . if he/she

[CHOOSE AS APPROPRIATE:

files or records **OR** directs another to file or record]

any

[CHOOSE AS APPROPRIATE:

document, lien, encumbrance, or court action]

[CHOOSE AS APPROPRIATE:

in any public record **OR** in any private record which is generally available to the public],

against the real or personal property of a

[CHOOSE AS APPROPRIATE:

current or former public servant, the public servant's immediate family or estate, a current or former federal officer or employee, or the officer's or employee's immediate family or estate],

on account of the performance or non-performance of that

[CHOOSE AS APPROPRIATE:

public servant's, officer's, or employee's] official duties

¹ The Court should be aware that a separate Model Jury Charge exists for this statute when the conduct alleges that the filing was done with knowledge of the filing's falsity. That separate charge is identical to the instant one except for the fourth element.

² The law became effective May 11, 2015 and applies to documents filed on or after that date. See L. 2015, c. 59, § 10.

³ The Court should be aware that the law's scope is broad both as to the type of document which is filed (*viz.*, document, lien, encumbrance, or court action) as well as to the category of individuals against whom the document is filed (*viz.*, current or former public servant, the public servant's immediate family or estate, a current or former federal officer or employee, or the officer's or employee's immediate family or estate). The Court should modify the name of the alleged crime as appropriate to be consistent with the indictment.

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knowing or having reason to know that such [**CHOOSE AS
APPROPRIATE:** document, lien, encumbrance, or court action]

is false or contains any materially false, fictitious or fraudulent statement
or representations.

In order to find the defendant guilty, the State must prove beyond a reasonable doubt the
following four elements.

1. The defendant knowingly [**CHOOSE AS APPROPRIATE:** filed or recorded **OR** directed another to file or record] a [**CHOOSE AS APPROPRIATE:** document, lien, encumbrance, or court action in a [**CHOOSE AS APPROPRIATE:** public record **OR** a private record which is generally available to the public].
2. The filed [**CHOOSE AS APPROPRIATE:** document, lien, encumbrance, or court action] was against the real or personal property of a [**CHOOSE AS APPROPRIATE:** current public servant, former public servant, public servant's immediate family member, public servant's estate, current federal officer, former federal officer, current federal officer's immediate family, former federal officer's immediate family, current federal employee, former federal employee, federal employee's immediate family or estate].
3. The defendant [**CHOOSE AS APPROPRIATE:** filed or recorded **OR** directed another to file or record] the [**CHOOSE AS APPROPRIATE:** document, lien, encumbrance, or court action] on account of the performance or non-performance of that [**CHOOSE AS APPROPRIATE:** public servant, officer, or employee's official duties.
4. The fourth element the State must prove beyond a reasonable doubt is that the filing was done with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of the official duties of that [**CHOOSE AS APPROPRIATE:** public servant, officer, or employee.

The first element the State must prove beyond a reasonable doubt is that the defendant knowingly [**CHOOSE AS APPROPRIATE:** filed or recorded **OR** directed another to file or record] a [**CHOOSE AS APPROPRIATE:** document, lien, encumbrance, or court action] in [**CHOOSE AS APPROPRIATE:** a public record **OR** a private record which is generally available to the public].

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A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. “Knowingly,” “with knowledge,” or equivalent terms have the same meaning.⁴

A lien is defined as a charge upon real or personal property for the satisfaction of some debt or duty. A lien is a generic term that includes any claim, encumbrance, or charge on property for payment of some debt, obligation or duty whether acquired by contract or by operation of law.⁵

A public record is a written memorial made by a public officer who is authorized by law to make it.⁶

Here, the State alleges that S____, in evidence, was a **[CHOOSE AS APPROPRIATE: document, lien, encumbrance, or court action]** which was filed in a **[CHOOSE AS APPROPRIATE: public record OR a private record which is generally available to the public]**. The State further alleges that it was knowingly filed by **[CHOOSE AS APPROPRIATE: the defendant OR under the direction of the defendant]**. [If appropriate: The defendant contends _____].

The second element the State must prove beyond a reasonable doubt is that the **[CHOOSE AS APPROPRIATE: document, lien, encumbrance, or court action]** was against the real or personal property of a **[CHOOSE AS APPROPRIATE: current public servant, former public servant, public servant’s immediate family member, public servant’s estate, current federal officer, former federal officer, current federal officer’s immediate family, former federal officer’s immediate family, current federal employee, former federal employee, federal employee’s immediate family or estate]**.

Property means anything of value, including real estate, tangible and intangible personal property, and other interests in or claims to wealth.⁷

⁴ N.J.S.A. 2C:2-2(b)(2).

⁵ Princeton Office v. Plymouth Park, 218 N.J. 52 (2014).

⁶ Mason v. City of Hoboken, 196 N.J. 51, 67 (2008); *quoting*, Nero v Hyland, 76 N.J. 213, 222 (1978).

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Public servant means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses.⁸

The third element the State must prove beyond a reasonable doubt is that the defendant [CHOOSE AS APPROPRIATE: filed or recorded OR directed another to file or record] the [CHOOSE AS APPROPRIATE: document, lien, encumbrance, or court action] on account of the performance or non-performance of that [CHOOSE AS APPROPRIATE] public servant, officer, or employee's official duties.

Here, the State alleges that the [CHOOSE AS APPROPRIATE] document, lien, encumbrance, or court action] was filed because of the [performance or non-performance] of _____'s official duties. [If appropriate: The defendant contends _____].

The fourth element the State must prove beyond a reasonable doubt is that the filing was done with the intent to harass, hinder, defraud, retaliate against, or in any way impede the performance of the official duties of that [CHOOSE AS APPROPRIATE] public servant, officer, or employee.

"Intent" means a purpose to do something, a resolution to do a particular act or accomplish a certain thing. A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. "With purpose," "designed," "with design," or equivalent terms have the same meaning.⁹

Knowingly and purposely are states of mind and cannot be seen and can only be determined by inference from conduct, words, or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that he/she knowingly or purposely did something. His/Her knowledge or purpose may be gathered from his/her acts and his/her conduct and from all he/she said and did at the particular time and place and from all the surrounding circumstances reflected in the testimony and evidence adduced at the trial.

⁷ N.J.S.A. 2C:20-1(g). This is admittedly a small portion of the longer definition in this subsection; other portions of the definition can be added in if needed.

⁸ See N.J.S.A. 2C: 27-1(g).

⁹ N.J.S.A. 2C:2-2(b)(1).

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If you find that the State has proven each and every one of the four elements beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has failed to prove any of the elements beyond a reasonable doubt, then you must find the defendant not guilty.