

OFFICIAL MISCONDUCT
(N.J.S.A. 2C:30-2)

The State alleges that defendant has committed official misconduct by the following indictment:

[READ INDICTMENT]

A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

- a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
- b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

So, for (defendant) to be guilty of official misconduct, the State must prove each of the following elements beyond a reasonable doubt:

- (1) That the defendant was a public servant at the relevant time(s);
- (2) That he/she committed an act relating to his office knowing that it was unauthorized **[OR committed the act in an unauthorized manner knowing that the manner was unauthorized] [OR knowingly refrained from performing a duty which is imposed upon him/her by law or which is clearly inherent in the nature of his/her office];** and
- (3) That his/her purpose in so acting **[OR refraining]** was to benefit himself/herself or another or to injure or deprive another of a benefit.

OFFICIAL MISCONDUCT

(N.J.S.A. 2C:30-2)

Page 2 of 5

First, the State must prove beyond a reasonable doubt that (defendant) was a public servant when the offense allegedly occurred. A public servant is any officer or employee of government, including any branch, subdivision, or agency of this State or any locality within it.¹

Second, the State must prove beyond a reasonable doubt that (defendant) committed an act relating to (his/her) office **[OR committed the act in an unauthorized manner] [OR refrained from performing an act required to be performed as part of his/her office]**. The "act" in question must relate to the public servant's office. The commission of the act **[OR the refraining from performing the act]** must constitute an unauthorized exercise of his/her official functions.² The public servant must know that the act **[OR refraining from performing the act]** was unauthorized or that the act **[OR refraining]** was done in an unauthorized manner. For an act to be related to a public servant's office it must be connected to his/her official duties. An act is not connected to a public servant's official duties merely because a public servant performs the act.

An act is "unauthorized" if it is committed in breach of some prescribed duty of the public servant's office. This duty must be official and non-discretionary, imposed upon the public servant by law (such as statute, municipal charter or ordinance) or clearly inherent in the nature of his/her office. The duty to act must be so clear that the public servant is on notice as to the standards that he/she must meet. In other words, the failure to act must be more than a failure to exhibit good judgment. In addition, the State must prove that (defendant) knew of the existence of his non-discretionary duty to act prior to the incident in question.³ Not every

¹ See N.J.S.A. 2C:27-1. Definitions. In Chapters 27 through 30, unless a different meaning plainly is required: b. "Government" includes any branch, subdivision or agency of the government of the State or any locality within it; g. "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.

² An "act" may be unauthorized because it is declared to be such by statute, ordinance, rule, regulation or otherwise.

³ The New Jersey Penal Code - Volume II: Commentary (2C:30-2). Subsection b, the "omission to act" element refers to a public servant who consciously refrains from performing an official non-discretionary duty, which duty is imposed upon him by law or which is clearly inherent in the nature of his office. In addition, the public servant must know of the existence of such non-discretionary duty to act. Thus, such duty must be either one that is imposed by law, or one that is unmistakably inherent in the nature of the public servant's office, i.e., the duty to act is so clear that the public servant is on notice as to the standards that he must meet. In other words, the failure to act must be more than mere breach of good judgment. Absent a duty to act, there can be no conviction.

OFFICIAL MISCONDUCT

(N.J.S.A. 2C:30-2)

Page 3 of 5

unauthorized act committed by a public servant rises to the level of official misconduct; an unauthorized act amounts to official misconduct only if the public servant knew at the time that his conduct was unauthorized and unlawful.

As to (defendant's) alleged conduct, the State must prove that there was a clear duty imposed on (defendant) to act **[OR to refrain]** as alleged. That is to say, there must have been a body of knowledge, such as applicable law, by which (defendant) could regulate and determine the legality of his/her conduct. One cannot be convicted of official misconduct if the official duties imposed are themselves unclear. So, if you conclude beyond a reasonable doubt that (defendant) was required to act **[OR to refrain]** by statute, rule, or regulation, and he/she failed to do so, this element will be satisfied.

[SELECT APPROPRIATE ALTERNATIVE]

The act(s) **[OR refraining]** in question need not be criminal in nature. Proof of a criminal act is not required to find (defendant) guilty of this offense.⁴

OR

As you know, (defendant) is charged with other criminal offenses. The State alleges that these other offenses constitute the basis for the charge of official misconduct. You must consider each charge separately, based on the evidence produced in support of that charge. The defendant may be found guilty of official misconduct, even where he/she is acquitted of the underlying criminal charge, if the State has proven his/her guilt of official misconduct beyond a reasonable doubt.

A person acts knowingly as to the nature of his/her conduct or the attendant circumstances if he/she is aware that his conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. One acts knowingly as to a result of his conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. One acts knowingly if one acts with knowledge, if one acts consciously, if one

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State v. Parker, 124 N.J. 628 (1991), cert. denied, 509 U.S. 939 (1992).

OFFICIAL MISCONDUCT

(N.J.S.A. 2C:30-2)

Page 4 of 5

comprehends his/her acts.

A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of 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.

Third, the State must prove beyond a reasonable doubt that the act **[OR refraining]** in question was done purposely to benefit either (defendant) or another, or to harm, injure or deprive another of a benefit. Benefit means a gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including a pecuniary benefit or a benefit to any other person or entity in whose welfare he is interested. Harm means loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he or she is interested. Here, the State alleges that the benefit is _____.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is the person's 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 the individual believes or hopes that they exist. One acts purposely if one acts with design, with a purpose, with a particular object, if he really means to do what he/she does.

A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of 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.

In conclusion, if the State has proven each element beyond a reasonable doubt, you must find (defendant) guilty of official misconduct. On the other hand, if the State has failed to prove any element beyond a reasonable doubt, you must find him/her not guilty.

[IF THE STATE ALLEGES THAT THE BENEFIT IS PECUNIARY, ADD]:

If the State has proved each element of the crime beyond a reasonable doubt, you must determine the fair market value of the benefit involved. The State must prove beyond a reasonable doubt that the value of the benefit involved **[IF APPROPRIATE, ADD: for each specific instance concerning which you have reached a verdict of guilty]** exceeds \$200.