

FORTUNE TELLING
(B Misdemeanor)
PENAL LAW 165.35
(Committed on or after Sept. 1, 1967)

The _____ count is Fortune Telling.

Under our law, a person is guilty of Fortune Telling when, for a fee or compensation which he or she directly or indirectly solicits or receives, that person claims or pretends to tell fortunes [*or* holds himself or herself out as being able, by claimed or pretended use of occult powers, to answer questions (*or* give advice on personal matters) (*or* exorcise, influence or affect evil spirits or curses)].

[*NOTE: Where appropriate, add:*

This charge does not apply to a person who engages in such conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.¹]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both [each] of the following two [three] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), claimed or pretended to tell fortunes [*or* held himself/herself out as being able, by claimed or pretended use of occult powers, to answer questions (*or* give advice on personal matters) (*or* exorcise, influence or affect evil spirits or curses)]; and
2. That the defendant directly or indirectly solicited or received a fee or compensation for such conduct.

¹See Penal Law § 165.35.

[NOTE: Where in issue, add:

and

3. That the defendant did not engage in such conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.]

Therefore, if you find that the People have proven beyond a reasonable doubt both [each] of those elements, you must find the defendant guilty of Fortune Telling as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both [any one or more] of those elements, you must find the defendant not guilty of Fortune Telling as charged in the _____ count.