

OFFICIAL MISCONDUCT
Penal Law § 195.00
(Committed on or after November 1, 1990)

The (specify) count is Official Misconduct.

Under our law, a public servant is guilty of Official Misconduct when, with intent to obtain a benefit or deprive another person of a benefit,

Select appropriate alternative:

he or she commits an act relating to his or her office but constituting an unauthorized exercise of his or her official functions, knowing that such act is unauthorized

or

he or she knowingly refrains from performing a duty which is imposed upon him or her by law or is clearly inherent in the nature of his or her office.

The following terms used in that definition have a special meaning:

PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee.¹

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.²

¹See, Penal Law §10.00(15). The term “public servant” includes a person who has been elected or designated to become a public servant.

² Penal Law § 10.00(17).

INTENT means conscious objective or purpose.³ Thus, a public servant acts with intent to obtain a benefit or deprive another person of a benefit, when that person's conscious objective or purpose is to do so.

[A public servant KNOWINGLY refrains from performing a duty which is imposed upon him or her by law or is clearly inherent in the nature of his or her office, when that public servant is aware that he or she is refraining from performing such a duty.⁴]

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, each of the following three elements:

1. That on or about (date), the defendant, (defendant's name), was a public servant;

Select appropriate second element:

2. That, on or about that date in the county of (county), the defendant committed an act relating to his/her office but constituting an unauthorized exercise of his/her official functions, knowing that such act was unauthorized

or

2. That, on or about that date in the county of (county), the defendant knowingly refrained from performing a duty which was imposed upon him/her by law or was clearly inherent in the nature of his/her office; and

³ See, Penal Law § 15.05(1).

⁴ See, Penal Law § 15.05(2).

3. That the defendant did so with the intent to obtain a benefit or deprive another person of a benefit.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.