

**UNAUTHORIZED PRACTICE OF IMMIGRATION LAW**  
**(N.J.S.A. 2C:21-31b)**

Count \_\_\_\_ of the indictment charges the defendant with the unauthorized practice of immigration law. The statute upon which this charge is based reads as follows:

Any immigration consultant not licensed as an attorney or counselor at law who: (1) engages in this State in the practice of law; or (2) holds himself out to the public, either alone or together with, by or through another person, whether such person is licensed as an attorney or counselor at law or not, as engaging in or entitled to engage in the practice of law, or as rendering legal service or advice, or as furnishing attorneys or counsel, in any immigration or naturalization matter; or (3) assumes, uses, or advertises the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language, is guilty of a crime.

In order for you to find the defendant guilty of this crime, the State must prove beyond a reasonable doubt that: (1) the defendant was an “immigration consultant,” (2) the defendant was not licensed as an attorney, and (3) the defendant either (i) engaged in the practice of law in New Jersey, (ii) publicly held himself/herself out as engaging in or entitled to engage in the practice of law, rendering legal advice or furnishing counsel in an immigration or naturalization matter, or (iii) assumed, used or advertised the title of lawyer or attorney.

1. The first element which the State must prove beyond a reasonable doubt is that the defendant was an immigration consultant. The law defines an “immigration consultant” as “any person rendering services for a fee, including the completion of forms and applications, to another person in furtherance of that person’s desire to determine or modify his status in an immigration or naturalization matter under federal law.”<sup>1</sup> An “immigration or naturalization matter” means “any matter which involves any law, action, filing or proceeding related to a person’s immigration or citizenship status in the United States.”<sup>2</sup>

2. The second element which the State must prove beyond a reasonable doubt is that the defendant was not licensed as an attorney or counselor at law. An attorney or counselor at law is defined as “any person who is a member in good standing of the bar of the highest court of any State, possession, territory, commonwealth, or the District of Columbia, and is not under any

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<sup>1</sup> N.J.S.A. 2C:21-31a(1).

<sup>2</sup> N.J.S.A. 2C:21-31a(2).

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order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him/her in the practice of law.”<sup>3</sup>

3. The third element which the State must prove beyond a reasonable doubt is that the defendant:

**[CHOOSE ONE OR MORE AS APPROPRIATE]**

1. knowingly engaged in this State in the practice of law;

**OR**

2. knowingly held himself/herself out to the public, either alone or together with, by or through another person, whether such other person is licensed as an attorney or counselor at law or not, as engaging in or entitled to engage in the practice of law, or as rendering legal service or advice, or as furnishing attorneys or counsel, in any immigration or naturalization matter;

**OR**

3. knowingly assumed or advertised the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language.

In determining whether the defendant knowingly engaged in the practice of law or held himself/herself out as engaging in or entitled to engage in the practice of law, you should bear in mind that while the “practice of law” does not lend itself to precise definition,<sup>4</sup> it is not limited to litigation of cases in court. The practice of law is engaged in whenever and wherever legal knowledge, training, skill and ability are required.<sup>5</sup> It includes the drafting of pleadings and other legal documents, paralegals’ work and providing legal advice.<sup>6</sup>

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.

Knowledge is a condition of the mind which cannot be seen and can only be determined

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<sup>3</sup> 8 C.F.R. sec. 1.1(f).

<sup>4</sup> In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law, 139 N.J. 323, 341 (1995).

<sup>5</sup> State v. Rogers, 308 N.J. Super. 59,66 (App. Div. 1998), certif. den. 156 N.J. 385 (1998).

<sup>6</sup> Id., 308 N.J. Super. at 67-69.

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by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said 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 of the surrounding circumstances.

**[AFFIRMATIVE DEFENSE - N.J.S.A. 2C:21-31d]**

**[CHARGE IF APPLICABLE]**

The defendant alleges that he/she acted as an accredited representative of \_\_\_\_\_, an organization authorized by the Board of Immigration Appeals to provide immigration services.<sup>7</sup> Federal law authorizes individuals accredited by the Board of Immigration Appeals to provide “immigration services,” which include practice before the Immigration and Naturalization Service, the Board of Immigration and Appeals and/or the Immigration Court, to individuals who request such representation.<sup>8</sup> The term “practice” means “the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the [Immigration and Naturalization] Service, or the Board [of Immigration Appeals].”<sup>9</sup> Therefore, in order for you to find the defendant guilty, the State must also prove beyond a reasonable doubt that the defendant was not an accredited representative who was authorized under federal law to provide immigration services.

**[CHARGE IN ALL CASES]**

If you find that the State has proven every element of the crime beyond a reasonable doubt, then you must find the defendant guilty. If you find that the State has not proven every element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

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<sup>7</sup> N.J.S.A. 2C:21-31d; C.F.R. sec. 292.2(a) and (d).

<sup>8</sup> 8 C.F.R. secs. 292.1(a)(4), 292.2(a). See also 8 C.F.R. sec. 1.1(c), (e) and (l) (definitions of “Service,” “Board” and “immigration judge”). The Board of Immigration Appeals maintains an alphabetical roster of recognized organizations and their accredited representatives. 8 C.F.R. sec. 292.2(e).

<sup>9</sup> 8 C.F.R. sec. 1.1(i). See also, 8 C.F.R. sec. 1.1(k) (defining “preparation”) and sec. 1.1(m) (defining “representation”).