

**MISCONDUCT BY CORPORATE OFFICIAL**  
**(N.J.S.A. 2C:21-9a)**

Count \_\_\_\_\_ of the indictment charges the defendant with the crime of Misconduct by Corporate Official.

**(READ COUNT OF INDICTMENT)**

The statute reads in pertinent part as follows:

A person is guilty of Misconduct by Corporate Official when, being a Director of a Corporation, he knowingly and with purpose to defraud, concurs in any vote or act of the directors of such corporation, or any of them, which has the purpose of:

(a) Making a dividend except in the manner provided by the law.

**(or)**

(b) Dividing, withdrawing or in any manner paying to any stockholder any part of the capital stock of the corporation except in the manner provided by law.

**(or)**

(c) Discounting or receiving any note or other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with purpose of providing the means of making such payment.

**(or)**

(d) Receiving or discounting any note or other evidence of debt with purpose of enabling any stockholder to withdraw any part of the money paid in by him on his stock.

**(or)**

(e) Applying any portion of the funds of such corporation, directly or indirectly, to the purchase of shares of its own stock, except in the manner provided by law.

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In order for you to find the defendant guilty of the crime of Misconduct by Corporate Official, the State must prove beyond a reasonable doubt the following elements:

1. That the defendant was a Director of a Corporation.
2. That he/she knowingly with purpose to defraud did concur in any vote or act of the Directors of such Corporation or any of them, which had the purpose of:

**[CHOOSE AS APPROPRIATE]**

- (a) Making a dividend except in the manner provided by law.

**(or)**

- (b) [Dividing], [withdrawing] or [in any manner paying to any Stockholder] (**Choose appropriate**) any part of the capital stock of the corporation except in the manner provided by law.

**(or)**

- (c) [Discounting], [Receiving] (**Choose appropriate**), any note or other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with the purpose of providing the means of making such payment.

**(or)**

- (d) [Receiving] or [discounting] (**Choose appropriate**) any note or other evidence of debt with purpose of enabling any stockholder to withdraw any part of the money paid by him/her on his/her stock.

**(or)**

- (e) Applying any portion of funds of such Corporation, directly or indirectly, to the purchase of shares of its own stock, except in the manner provided by law.

First, the State must prove beyond a reasonable doubt that (**defendant**) was a Corporate Official of (**name the corporation**) and was further the/a Director of said Corporation.

“Corporation” is an entity having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or successor of persons established in accordance with legal rules into a legal or juristic person

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that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it.<sup>1</sup>

A Corporate Official or Corporate Officer is a person elected or appointed by the Board of Directors to manage the daily operations of a corporation, such as a CEO, president, secretary or treasurer.<sup>2</sup> The officers of a corporation shall consist of a president, a secretary, a treasurer, and if desired, a chairman of the Board, one or more vice-presidents, and such other officers that may be prescribed by the by-laws. Unless otherwise provided in the by-laws, the officers shall be elected by the board.<sup>3</sup>

A Director of a Corporation is one who manages, guides, or orders; a chief administrator;<sup>4</sup> a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing and exercising control over its officers.<sup>5</sup>

Second, the State must prove beyond a reasonable doubt that **(defendant)** knowingly with purpose to defraud did concur in any vote or act of the Directors of such Corporation or any of them, [with the purpose of making a dividend except in the manner provided by law]; [**or** (dividing), (withdrawing) or (in any manner paying to any stockholder) **(Choose appropriate)** any part of the capital stock of the corporation except in the manner provided by law]; [**or** (discounting), (receiving) **(Choose appropriate)** any note, or any other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with purpose of providing the means of making such payment]; [**or** (receiving) or (discounting) **(Choose appropriate)** any note or other evidence of debt with the purpose of enabling any stockholder to withdraw any part of the money paid by him/her on his/her stock]; [**or** applying any portion of funds of such corporation, directly or indirectly, to the purchase of shares of its own stock, except in the manner prescribed by law].

A person acts knowingly when he/she is aware that it is practically certain that his/her conduct will purposely defraud. A person acts knowingly with respect to the nature of his/her conduct or the attended 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 the high probability of their existence. A

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<sup>1</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(g).

<sup>2</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also "Director," N.J.S.A. 14A:1-2.1(h).

<sup>3</sup> N.J.S.A. 14A:1-2.1(h).

<sup>4</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>5</sup> N.J.S.A. 14A:1-2.1(g).

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person acts knowingly as to the result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

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 such circumstances or he/she believes or hopes that they exist.

Knowing and purpose are conditions of the mind. They cannot be seen. They can only be determined by inference from the defendant’s 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 that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. 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 conduct and from all he/she said and did at a particular time and place and from all surrounding circumstances established by the evidence.

To “defraud” means to deprive a person of property or any interest, estate, or right by deceit or artifice, to cheat.<sup>6</sup>

A “vote” means the expression of one’s preference or opinion in a meeting or election by ballot, show of hands, or other type of communication.<sup>7</sup>

**[CHARGE AS APPLICABLE]**

“Dividend” or “Making a dividend” means a portion of the company’s earnings or profits distributed pro rata to its shareholders, usually in the form of cash or additional shares.<sup>8</sup>

“Stockholder” is one who owns or holds a share or shares in a company, especially a corporation. Also termed “shareholder.”<sup>9</sup> “Shareholder” means one who is a holder of record of shares in a corporation.<sup>10</sup>

“Capital Stock of Corporation” means the total shares of stock that a corporation may issue under its charter or articles of incorporation, including both common stock and preferred

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<sup>6</sup> Black’s Law Dictionary (4<sup>th</sup> ed. 1968).

<sup>7</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(r).

<sup>8</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:7-15.

<sup>9</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(l).

<sup>10</sup> N.J.S.A. 14A:1-2.1(l).

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stock. Also termed “authorized stock,” “authorized capital stock,” “authorized stock issue,” “authorized shares;” the total par value or stated value of this stock.<sup>11</sup>

“Installment” of Capital Stock means a periodic partial payment of a debt.<sup>12</sup>

“Note” means a written promise by one party (the “maker”) to pay money to another party (the “payee”) or the bearer.<sup>13</sup>

“Stock” is the capital or principal fund raised by a corporation through subscribers’ contributions or sale of shares; a proportional part of a corporation’s capital represented by the number of equal units (shares) owned, granting the holder the right to participate in the company’s general management and to share in its net profit or earnings.<sup>14</sup>

“Shares of Stock” means an allotted portion owned by, contributed by, or due to someone.<sup>15</sup> “Shares” means the units into which proprietary interest in a corporation are divided.<sup>16</sup>

**[CHARGE IN ALL CASES]**

If you find the State has proven all of the above elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged.

If, however, you find the State has failed to prove any of the elements of the crime beyond a reasonable doubt, you must then find the defendant not guilty.

If you have found that the State has proven all of the above elements beyond a reasonable doubt then you must now determine whether the benefit derived from this act is valued at \$75,000 or more, exceeds \$1,000 but is less than \$75,000 or the benefit derived is \$1,000 or less.

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<sup>11</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>12</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>13</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>14</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>15</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009); for additional reference, see also N.J.S.A. 14A:1-2.1(m).

<sup>16</sup> N.J.S.A. 14A:1-2.1(m).