

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

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 he purposely or knowingly uses, controls or operates a corporation for the furtherance or promotion of any criminal object.<sup>1</sup>

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 (**choose as appropriate**) used, controlled or operated a corporation for the furtherance or promotion of any criminal object; and
2. That the defendant acted purposely or knowingly.

First, the State must prove beyond a reasonable doubt that [**defendant**] used, controlled, or operated a corporation for the furtherance or promotion of a criminal<sup>2</sup> object.<sup>3</sup>

Second, the State must prove beyond a reasonable doubt that [**defendant**] acted purposely or knowingly.

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<sup>1</sup> This subsection c. is distinct from the balance of the prior two (2) subsections of this Statute. While subsections a. and b. criminalize violations of Corporate Law, this subsection is directed against the use of a corporation as part of a criminal enterprise. This subsection does not contain the introductory language of the other two (2) subsections and so is not limited to actions by corporate directors or officers. State v. Malik, 365 N.J. Super. 267, 278-81 (App. Div. 2003), certif. den. 180 N.J. 354 (2004). The court also rejected a vagueness challenge while finding that the title of this section fairly encompasses the substance of subsection c.

<sup>2</sup> That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Black's Law Dictionary (4<sup>th</sup> ed. 1968).

<sup>3</sup> Something sought to be attained or accomplished; an end, goal or purpose. Black's Law Dictionary (9<sup>th</sup> ed. 2009)

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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.

A person acts knowingly when he/she is aware that it is practically certain that his/her conduct will cause furtherance or promotion of any criminal object. 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 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.

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.

“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 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>4</sup>

If you find the State has proven all 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.

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<sup>4</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).

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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.