

UNAUTHORIZED PRACTICE OF LAW
(FOURTH & THIRD DEGREE)
(N.J.S.A. 2C:21-22)

Count ____ of the indictment charges the defendant with the offense of the unauthorized practice of law. **(Read the count from the indictment)**. The statute upon which this charge is based reads in pertinent part:

A person is guilty of a crime...if the person knowingly engages in the unauthorized practice of law.

In order for you to find the defendant guilty of the unauthorized practice of law the State must prove beyond a reasonable doubt each of the following four elements:

- (1) The defendant engaged in the practice of law;
- (2) The defendant knew he/she was engaged in the practice of law;
- (3) The defendant's conduct was not authorized by law;
- (4) The defendant knew that his/her conduct was not authorized by law.

The first element that the State must prove is that the defendant was engaged in the practice of law. A person is considered to be practicing law when that person's conduct whenever and wherever it takes place is of such a nature that legal knowledge, training, skill and ability are required. This definition of the practice of law is not limited to the conduct of cases in court.¹ In this case the State specifically contends that defendant engaged in the practice of law (**state specific allegations made by State**). You may not find that the defendant engaged in the practice of law in some manner other than that as specifically alleged by the State. You must consider whether the State has proven the specific conduct charged beyond a reasonable doubt and whether such conduct constitutes the practice of law as I have just defined it for you. [**If appropriate charge:** Defendant alleges_____].

The second element that the State must prove beyond a reasonable doubt is that the defendant knew he/she was engaged in the practice of law. 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.

¹ State v. Rogers, 308 N.J. Super. 59, 66 (App. Div.), certif. denied, 156 N.J. 385 (1998).

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Knowledge is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible to 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 inferences 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.

The third element that the State must prove beyond a reasonable doubt is that the defendant's conduct was not authorized by law. An individual is authorized to practice law if that individual has obtained a license to practice law issued by the Supreme Court of New Jersey and is in good standing at the time of the conduct alleged by the State,² or if that individual's conduct fits within the scope of a recognized exception authorizing the practice of law without a license.³

The fourth element that the State must prove beyond a reasonable doubt is that the defendant knew that his/her conduct was not authorized by law. I have already defined knowingly and knowledge for you.

If the State has proven each of these four elements beyond a reasonable doubt you must find the defendant guilty of the crime of the unauthorized practice of law. If the State has failed to prove any of these elements beyond a reasonable doubt you must find the defendant not guilty.

[Now give the following Third Degree charge if appropriate]

If the State has proven beyond a reasonable doubt the four elements of the unauthorized practice of law you must consider if an additional element has been proven beyond a reasonable doubt: that defendant [**charge as appropriate**]:

- (1) Created or reinforced a false impression that the person is licensed to engage in the practice of law; or
- (2) Derived a benefit; or
- (3) In fact caused injury to another.⁴

[Choose as Appropriate]

² Boston University v. U.M.D.N.J., 176 N.J. 141 (2003).

³ See end note.

⁴ N.J.S.A. 2C:21-22b.

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You must decide whether the State has proven beyond a reasonable doubt the additional element that the defendant created or reinforced the impression that he/she was licensed to engage in the practice of law, that the impression was untrue, and that defendant did so knowingly. I have already defined knowingly for you.

[OR]

Benefit derived means the loss resulting from the offense or any gain or advantage to the actor, or co-conspirators, or any person in whom the actor is interested, whether the loss, gain or advantage takes the form of money, property, commercial interests or anything else the primary significance of which is economic gain.⁵ I have already defined knowingly for you. You must decide whether the State has proven beyond a reasonable doubt the additional element that the defendant knowingly derived a benefit from engaging in the unauthorized practice of law.

[OR]

For present purposes, injury to another is defined as any ascertainable loss of monies or property, real or personal, as a result of any action or inaction by a person who knowingly engaged in the unauthorized practice of law. Proof that the injury was suffered is sufficient; it is not necessary that the injury be knowingly caused.⁶ You must decide whether the State has proven beyond a reasonable doubt the additional element that defendant caused injury to another by knowingly engaging in the unauthorized practice of law.

[RESUME CHARGE]

If the State has proved the additional element charged, as well as that defendant engaged in the unauthorized practice of law, beyond a reasonable doubt, then you must find the defendant guilty of the unauthorized practice of law while having [choose appropriate alternative]. However, if you find beyond a reasonable doubt that defendant engaged in the unauthorized practice of law, but that the State has failed to prove beyond a reasonable doubt the additional element of [**choose appropriate alternative**], you must find defendant guilty, instead, only of unauthorized practice of law. Of course, keep in mind, as I told you previously, that if you find the State has failed to prove beyond a reasonable doubt any of the elements of the crime of the unauthorized practice of law, you must find defendant not guilty.

⁵ N.J.S.A. 2C:21-8.1.

⁶ For the purposes of this section the phrase "in fact" indicates strict liability. N.J.S.A. 2C:21-22c.

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NOTE

The practice of law can take so many forms that it is impossible to render an all inclusive definition, and there are many exceptions to the general prohibition on the unlicensed practice of law. Each matter must be handled on a case by case basis, with the jury instructed to view the conduct of the defendant and then determine if such conduct constitutes the unauthorized practice of law. The following is a list of some, but by no means all, of the possible scenarios in which an unlicensed individual can "practice law" without violating this criminal statute.

It is important to note that these exceptions authorizing the unlicensed practice of law often involve very limited circumstances, which must be clearly defined for the jury. An excellent source regarding these exceptions can be found at Chapter 39 of Michels, New Jersey Attorney Ethics (Gann 2013). When charging exceptions, the court must instruct the jury, as always, that the burden remains on the State to prove beyond a reasonable doubt that defendant's conduct was not authorized by law and that defendant knew that his/her conduct was not authorized by law.

1. Pro Se. R.1:21-1(a) In re Baker, 8 N.J. 321, 339 (1951) N.J. Comm. on Unauth. Pract. Op. 21 (Dec. 22, 1977), Unauth. Pract. Op. 13 (Jan. 9, 1975).
2. Pro Hac Vice. R.1:21-2.
3. Real party in action or guardian of that party. R.1:21-1(a).
4. Law school graduates. R.1:21-3(a).
5. Third year law students. R.1:21-3(b).
6. Out of State attorneys employed by legal assistance programs. R.1:21-1(e) R.1:21-3(c).
7. Appearance by a non attorney in a contested case before the Office of Administrative Law or an administrative agency. R.1:21-1(f).
8. Persons admitted to practice as an attorney in a foreign country rendering limited legal services in this State. R.1:21-9.
9. Out-of-state attorneys who are not suspended in their home jurisdiction practicing on a pro-bono basis following a major disaster. R.1:21-10.
10. In house counsel R.1:27-2.
11. Preparation of residential sales contracts and leases by real estate brokers. New Jersey State Bar Association v. New Jersey Association of Realtor Boards, 93 N.J. 470, 475-76 (1983).
12. Re-negotiation of a mortgage by those who are certified or duly licensed by certain government agencies. N. J. Advisory Comm. 716 and N. J. Comm. on Unauth. Pract. Op. 45 (joint op.) (June 26, 2009).
13. Preparation of estate tax return allowing certified public accountants licensed in New Jersey to file New Jersey Inheritance

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- Tax returns. In Application of New Jersey Soc. of CPA's, 102 N.J. 231, 241-42 (1986).
14. Out of state attorneys representing a party in an American Arbitration Association proceeding in New Jersey. Unauth. Pract. Comm. Op. 28 (December 19, 1994).
 15. Preparation of Corporate Organizational Documents. N.J. Comm. On Unauth. Pract. Op. 47 (June 13, 2011).
 16. Employee Benefit Planning. N. J. Comm. on Unauth. Pract. Op. 22 (Mar. 22, 1979).
 17. Marketing of Legal Forms. N. J. Comm. on Unauth. Pract. Op. 20 (Oct. 6, 1977).
 18. A nonlawyer engaged in the practice of another profession may apply his or her general knowledge about the law to a problem arising in his or her field without violating the rule prohibiting unauthorized practice of law. Auerbacher v. Wood, 142 N.J. Eq. 484, 485-86 (E. & A. 1948).
 19. Through the Media. N. J. Comm. On Unauth. Pract. Op.4 (Apr. 8, 1971).
 20. Activities of Collection Agencies. Unauth. Pract. Comm. Op. 8 (Feb. 10, 1972).
 21. Out-of-State Attorneys in New Jersey. RPC 5.5, et. seq.
 22. Out-of-State Bond Counsel. In re Opinion 33, 160 N.J. 63, 80 (1999).
 23. Out-of-State attorneys appearing before Federal agencies. Unauth. Pract. Comm. Op. 27 (Mar. 1, 1993).
 24. Paralegals. In re Opinion No. 24, 128 N.J. 114, 123 (1992).
 25. Licensed Public Adjusters involving matters of property damage. Unauth. Pract. Comm. Op. 30 (Jan. 19, 1998).
 26. "South Jersey Practice." In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law, 139 N.J. 323 (1995).