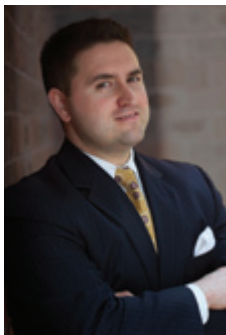


New Jersey's Official Misconduct Statute In A Nutshell

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We have all heard the news stories—"Director of Hoboken Parking Utility Pleads Guilty to Official Misconduct"; "Former Denville police officer pleads guilty to misconduct"; "The half-brother of Trenton Mayor Tony Mack has pleaded guilty to two counts of official misconduct"; and "Former Dover police dispatcher pleads guilty to official misconduct." But, I bet you don't know the serious consequences that accompany New Jersey's Official Misconduct statute.

Under New Jersey's Official Misconduct law, N.J.S.A. 2C:30-2, a public servant can be prosecuted for acts committed in their official capacity and, if convicted, imprisoned for up to ten years.

A public servant includes any officer or employee of government including legislators and judges as well as any person participating as a juror, advisor, consultant or otherwise, in performing a government function; it does not include a witness. The test is whether the person is performing a "government function."

Under New Jersey Official Misconduct law the public servant's action or omission must be coupled "with a purpose to obtain a benefit for himself or another" or a purpose to injure another or deprive another of a benefit.

The required “purpose” element can be of two types: (1) where a defendant’s purpose is to obtain a benefit for him/her or another; and (2) where a public servant seeks to injure some person or deprive them of a gain or advantage – by being denied or impeded in the exercise of some right or privilege (in other words being vindictive).

To sustain a conviction the State must prove that the public servant’s act was unauthorized or committed in an unauthorized manner. The State must also demonstrate that the public servant knew that the act was unauthorized or knew that he/she acted in an unauthorized manner. Note: This law does not extend to purely private wrongdoing by one who happens to be a public servant.



In sum, under New Jersey Official Misconduct law the state must prove the following five elements:

1. The defendant was a public servant;
2. The defendant acted with purpose to gain a benefit or to injure or deprive another of a benefit;
3. The criminal act committed by the defendant related to the public servant’s (defendant’s) office or position;
4. The act must be unauthorized; and
5. The defendant knew that the act was unauthorized.

Here is the scary part–Official Misconduct is a crime of the *second degree*. As a result, the official faces up to 10 years in state prison if

the benefit involved exceeded \$200 in value. If the benefit is less than \$200 in value it is a crime of the third degree and the official faces a term of imprisonment up to 5 years.

If the purpose is to injure another it will be a crime of the second degree no matter how slight the injury.

And, unlike many other “non-violent” crimes, pursuant to N.J.S.A. 2C:43-6.5, a person convicted of Official Misconduct:

“shall be sentenced to a mandatory minimum term of imprisonment without eligibility for parole as follows: for a crime of the fourth degree, the mandatory minimum term shall be one year; for a crime of the third degree, two years; for a crime of the second degree, five years; and for a crime of the first degree, 10 years; unless the provisions of any other law provide for a higher mandatory minimum term.”

In other words, if you are convicted of Official Misconduct, stipulated or “stip” time applies, i.e., parole ineligibility.