

1486 FRAUDULENT WRITINGS: OBTAINING A SIGNATURE BY MEANS OF DECEIT — § 943.39(2)**Statutory Definition of the Crime**

Subsection 943.39(2) of the Wisconsin Criminal Code is violated by one who, with intent to injure or defraud, and by means of deceit, obtains a signature to a writing by which legal rights or obligations are created or transferred.¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant obtained a signature to a writing by means of deceit.

["By means of deceit" requires that the defendant obtained a signature by (making a false statement) (giving a false impression).]²

2. The writing was one by which legal rights or obligations are created or transferred.³

3. The defendant acted with intent to (injure) (defraud).⁴

["Intent to injure" means that the defendant intended to cause harm of any kind.]

["Intent to defraud" means that the defendant intended to obtain property that (he) (she) was not entitled to receive.]⁵

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1486 was approved by the Committee in October 2000.

This instruction is drafted for violations of sub. (2) of § 943.39. For violations of sub. (1) of that statute, see Wis JI-Criminal 1485, Fraudulent Writings: Falsifying a Corporate Record. There is no uniform instruction for violations of § 943.39(3), which prohibits making a false written statement with knowledge that it is false and with intent that it shall ultimately appear to have been signed under oath.

1. The instruction uses the phrase "writing by which legal rights or obligations are created or transferred" in place of the statute's "writing which is the subject of forgery under s. 943.38(1)." The phrase used is the most general part of the definition of writings that can be the subject of forgery under § 943.38(1). The other options: "any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights" [sub. (1)(a)]; "a public record or a certified or authenticated copy thereof" [sub. (1)(b)]; "an official authentication or certification of a copy of a public record" [sub. (1)(c)]; and "an official return or certificate entitled to be received as evidence of its contents" [sub. (1)(d)].

2. The definition of "by means of deceit" was developed by the Committee after research indicated that there is no direct Wisconsin authority interpreting the term as used in § 943.39(2). The statute was created in the 1956 Criminal Code revision, recodifying the offense previously found in § 343.25. The revision substituted "by means of deceit" for "by privy or false token" that formerly appeared in § 343.25.

The term "deceit" is used in at least one other Criminal Code statute – § 940.31(1)(c), Kidnapping by deceit. State v. Dalton, 98 Wis.2d 725, 298 N.W.2d 398 (Ct. App. 1980). Dalton appealed his conviction, claiming that he could not be convicted absent proof of express or implied misrepresentations. The court rejected his argument, holding that the use of "deceit," without further statutory definition show legislative intent to avoid limiting it to express or implied misrepresentations. Rather, the legislature

intended to proscribe "wily and cunning stratagems that are contrived to delude the victim and conceal the violator's intent to effectuate the crime" of kidnapping. 98 Wis.2d 725, 741.

At common law, "deceit" was generally used as an equivalent of "fraud" and typically had the following elements: a false representation; made with intent to induce another to act; relied on by another person; to the damage of that person. In general, see Wis JI-Civil 2401 and cases cited therein. Also see 37 Am.Jur.2d Fraud and Deceit (1968). As to the false representation aspect, the common law typically included not only false statements but also the suppression of facts by one who had a duty to disclose them. The elements of the common law concept overlap with or are covered by other elements of the crime defined in § 943.39(2): "made with intent to induce another to act" is covered by the intent to injure or defraud element; "relied on by another person" is covered by the requirement that a signature be obtained "by means of" deceit; "to the damage of that person" is covered by the statute's recognition that obtaining a signature on the required type of document is criminal conduct.

This leaves little more than using a false representation or other deceptive practice. The Committee concluded the two alternatives in parentheses adequately cover the likely application of "by means of deceit." Garner, A Dictionary of Modern Legal Usage, 2d Edition (Oxford University Press 1995), defines deceit as the "act of giving a false impression."

3. The instruction uses the phrase "writing by which legal rights or obligations are created or transferred" in place of the statute's "writing which is the subject of forgery under s. 943.38(1)." The phrase used is the most general part of the definition of writings that can be the subject of forgery under § 943.38(1). The other options are set forth in note 1, supra.

This element does not require proof of a forgery; it requires only that the writing be one which, if falsely made, could be the basis for a forgery prosecution under § 943.38(1). State v. Weister, 125 Wis.2d 54, 58, 370 N.W.2d 278 (Ct. App. 1985). Weister involved obtaining a Shopko employee's signature on refund slips relating to shoplifted merchandise.

4. The offense is defined as engaging in one of the prohibited acts "with intent to injure or defraud." The instruction puts the alternative intents in parentheses on the assumption that one or the other is likely to apply. However, the Committee concluded that it would be permissible to instruct on both types of intent and that jury agreement on the intent involved would not be required. The Wisconsin Supreme Court has reached that conclusion with offenses under § 948.07, Child enticement. State v. Derango, 2000 WI 89, 236 Wis.2d 721, 613 N.W.2d 833.

5. The definition of "intent to defraud" is based on the one used in Wis JI-Criminal 1491, Forgery (By Making Or Altering A Check). See footnote 5 in that instruction, indicating that intent to defraud is "a term whose meaning varies according to the context in which it is used."