

803.00 ABUSE OF PROCESS.

The (*state number*) issue reads:

“Did the defendant intentionally use process to accomplish an ulterior purpose?”

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:¹

First, that process was invoked against the [plaintiff] [plaintiff's property] in the [court] [administrative] proceeding entitled [*name proceeding*]. “Process” is the means in such a proceeding by which [a person is made to do or refrain from doing certain things] [the property of a person is restrained or affected]. Process includes (*here identify the process involved as supported by the evidence, e.g., summons, subpoena, an order to show cause, a discovery request, a notice of lis pendens, temporary restraining order, or name other order or process*).

Second, that the defendant had an ulterior purpose. A purpose is ulterior when it is separate from, or collateral to, the normal and regular purpose of the process. The normal and regular purpose of (*identify process involved as supported by the evidence*) is to (*state regular purpose of process so identified*).

And Third, that, after the process was issued,² the defendant intentionally³ used the process invoked against [the plaintiff] [the plaintiff's property] to accomplish the defendant's ulterior purpose; that is, the defendant intentionally sought to use the process to gain advantage over the plaintiff as to some matter that is separate from or collateral to the proceeding.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant intentionally used process to accomplish an ulterior purpose, then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

1. *Stanback v. Stanback*, 297 N.C. 181, 200-01, 254 S.E.2d 611, 624 (1979); *Edwards v. Jenkins*, 247 N.C. 565, 567, 101 S.E.2d 410, 411 (1958); *Barnette v. Woody*, 242 N.C. 424, 430, 88 S.E.2d 223, 227 (1955); *Fin. Co. v. Lane*, 221 N.C. 189, 196-97, 19 S.E.2d 849, 853 (1942).

2. See *Chidnese v. Chidnese*, ___ N.C. App. ___, ___, 708 S.E.2d 725, 735 (N.C. Ct. App. 2011). “[T]he gravamen of a cause of action for abuse of process is the improper use of the process after it has been issued.” *Id.* (quoting *Petrou v. Hale*, 43 N.C. App. 655, 659, 260 S.E.2d 130, 133 (1979)). “As a result, '[t]here is no abuse of process where it is confined to its regular and legitimate function in relation to the cause of action stated in the complaint.’ ” *Id.* (quoting *Fin. Corp. v. Lane*, 221 N.C. 189, 196-97, 19 S.E.2d 849, 853 (1942)).

3. For an instruction on intent, see N.C.P.I.-Civil 101.46.