

13-1639. Misuse of process; lack of probable cause.¹

A misuse of the legal process occurs when a defendant [begins a judicial proceeding] [actively participates in beginning a judicial proceeding] without probable cause.

Probable cause is a reasonable belief, founded on known facts established after a reasonable pre-filing investigation, that the claims made could be established to the satisfaction of [a court or a jury] [an arbitrator].

Alternative 1 (the court determines lack of probable cause)

[This court has determined that the judicial proceeding _____
(name the proceeding and the parties) was brought without probable cause.]²

Alternative 2 (dispute of fact about the existence of probable cause)

[It is your role to resolve the disputes of fact between the parties.³ In this case, _____ (name of the plaintiff) says _____ (describe the plaintiff's factual allegations). _____ (Name of the defendant) denies what _____ (name of the plaintiff) says, and _____ (name of the defendant) says _____ (describe the defendant's position).]

If you find that _____ (name of the plaintiff) has proved [his] [her] [its] version of the facts, then the judicial proceeding was brought without probable cause.]

USE NOTES

1. This instruction should be used when the misuse of process claimed is the filing of a complaint, thereby initiating a judicial proceeding, without probable cause. The term "judicial proceeding" includes civil lawsuits, criminal prosecutions, and arbitration proceedings.

2. If there is no genuine issue of material fact, the court should instruct the jury that the court has determined, as a matter of law, that the judicial proceeding was initiated without probable cause.

3. If there is a genuine issue of material fact, a special verdict form should be used. The special verdict form should ask the jury to make findings of fact, leaving the decision to the court on whether the facts found by the jury constitute probable cause. The verdict form should also guide the jury on whether and when it should go on to consider the defendant's motive.

[Adopted by Supreme Court Order No. 09-8300-033, effective October 19, 2009.]