

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. _____

Fraudulent Intent

Fraudulent intent is one of the essential elements of the offenses with which the defendant is charged. Fraudulent intent is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of fraudulent intent. Good faith constitutes a complete defense to one charged with an offense of which fraudulent intent is an essential element. One who acts with honest intention is not chargeable with fraudulent intent. One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though such opinion is erroneous and such belief is a mistaken belief. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent. In order to establish fraudulent intent on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

Source: United States v. Ammons, 464 F.2d 414,417 (8th Cir. 1972)

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Action on Advice of Counsel

The defendant claims that he is not guilty of willful wrongdoing because he acted on the basis of advice from his attorney.

If the defendant before taking any action sought the advice of an attorney whom he considered competent, in good faith and for the purpose of securing advice on the lawfulness of his possible future conduct, and made a full and accurate report to his attorney of all material facts of which he has the means of knowledge, and acted strictly in accordance with the advice of his attorney given following his full report, then the defendant would not be willfully doing wrong in doing something the law forbids, as that term is used in these instructions.

Whether the defendant acted in good faith for the purpose of seeking guidance as to questions about which he was in doubt, and whether he made a full and complete report to his attorney, and whether he acted strictly in accordance with the advice received, are questions for you to determine.

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The law imposes no duty upon an attorney to investigate the truth of representations made to him by his client. You are further instructed that the law does not require that an alien actually work for the company or employer who sponsored his labor certification. All the law requires is that the alien, in good faith, seek the employment after the visa is granted. Further, is not the attorney's responsibility to insure that the aliens seek the employment or that the employer hire the alien.

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Good Faith Belief in Truth of Statement

On the other hand, if the evidence in the case leaves the jury with a reasonable doubt whether the accused in good faith believed the statement to be true at the time it was made, then the jury should acquit the accused.

Source: 2 Devitt & Blackmar - FJP&I 3rd Ed., §47.13

Good Faith Defense to Charge
of Intent to Defraud

~~Obsoleted~~

Good faith is a complete defense to the charges in the indictment since good faith on the part of the Defendant is inconsistent with intent to defraud or willfulness which is an essential part of the charges. The burden of proof is not on the Defendant to prove his good faith, of course, since he has no burden to prove anything. The Government must establish beyond a reasonable doubt that the Defendant acted with specific intent to defraud as charged in the indictment.

One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken; and, similarly, evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent.

~~On the other hand, an honest belief on the part of the Defendant that a particular business venture was sound and would ultimately succeed would not, in and of itself, constitute "good faith" as used in these instructions if, in carrying out that venture, the Defendant knowingly made false or fraudulent representations to others with the specific intent to deceive them.~~



~~SPECIAL INSTRUCTION NO. 13~~

~~GOOD FAITH DEFENSE TO CHARGE OF
INTENT TO DEFRAUD~~

~~ANNOTATIONS AND COMMENTS~~

Source ; ~~United States v. Goss, 650 F.2d 1336 (5th Cir. 1981), failure to give this instruction as a theory-of-defense charge, when requested to do so, is error if there is any evidentiary foundation to support the Defendant's claim. Note, however, that there must be some evidentiary basis for the request. If the usual instructions are given defining willfulness and intent to defraud, that will ordinarily suffice in the absence of evidence of good faith. United States v. Boswell, 565 F.2d 1338 (5th Cir. 1978); United States v. England, 480 F.2d 1266 (5th Cir. 1973); United States v. Williams, 728 F.2d 1402, (11th Cir. 1984).~~