

1 **13-1638. Malicious abuse of process; "active participation" defined.**

2 In this case, _____ (*name of the plaintiff*) has claimed that
3 _____ (*name of the defendant*) actively participated in [bringing the judicial
4 proceeding] [_____ (*describe the other legal process that the plaintiff claims was*
5 *misused*)] against _____ (*name of the plaintiff*). A [person] [corporation]
6 actively participates in [bringing a judicial proceeding] [_____ (*describe the legal*
7 *process that the plaintiff claims was misused*)] if [~~his~~] [~~her~~] [~~its~~] the conduct of the [person]
8 [corporation] is the determining factor in the decision to [file the lawsuit] [_____
9 (*describe the other legal process the plaintiff claims was misused*)]. Merely providing
10 encouragement, advice, or information is not enough.

11 USE NOTES

12 This instruction defining active participation should be used any time one or more of the
13 defendants is not a party to the underlying criminal, civil, or arbitration proceeding in which the
14 plaintiff's claim of malicious abuse of process arose.

15 [Adopted by Supreme Court Order No. 09-8300-033, effective October 19, 2009; as amended by
16 Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after
17 December 31, 2025.]

18 **Committee commentary.** — A non-litigant may be liable for malicious abuse of process if the
19 non-litigant actively participated in the underlying lawsuit. *Valles v. Silverman*, 2004-NMCA-019,
20 ¶¶ 15-17, 135 N.M. 91, 84 P.3d 1056. "Active participation" requires that the conduct of the
21 defendant be the determining factor in the decision to file the lawsuit or in the decision to otherwise
22 misuse the legal process. *Id.* ¶ 17. The non-litigant must have induced another to bring the
23 proceeding or to otherwise misuse the legal process by, for example, urging or insisting that the

- 1 proceeding be brought, urging or insisting that a particular procedure be used, providing
- 2 information to a party or a prosecutor, knowing it to be false, or funding a judicial proceeding or
- 3 a legal procedure that otherwise would not have been pursued. *Id.* ¶¶ 16-17.
- 4 [Adopted by Supreme Court Order No. 09-8300-033, effective October 19, 2009.]