FORTUNE TELLING Penal Law § 165.35 (Committed on or after Sept. 1, 1967)

The (*specify*) count is Fortune Telling.

Under our law, a person is guilty of Fortune Telling when, for a fee or compensation which he or she directly or indirectly solicits or receives, that person claims or pretends to tell fortunes [or holds himself or herself out as being able, by claimed or pretended use of occult powers, to answer questions (or give advice on personal matters) (or exorcise, influence or affect evil spirits or curses)].

[NOTE: Where appropriate, add:

This charge does not apply to a person who engages in such conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.¹]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both [each] of the following two [three] elements:

- 1. That on or about <u>(date)</u>, in the county of <u>(county)</u>, the defendant, <u>(defendant's name)</u>, claimed or pretended to tell fortunes [or held himself/herself out as being able, by claimed or pretended use of occult powers, to answer questions (or give advice on personal matters) (or exorcise, influence or affect evil spirits or curses)]; and
- 2. That the defendant directly or indirectly solicited or received a fee or compensation for such conduct.

[NOTE: Where in issue, add:

¹See Penal Law § 165.35.

and

3. That the defendant did not engage in such conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.]

If you find the People have proven beyond a reasonable doubt (each / both) of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt (either one / any one) or more of those elements, you must find the defendant not guilty of this crime.