

**ADDITIONAL CHARGE
WHEN BOTH SECOND DEGREE MURDER AND
FIRST DEGREE MURDER ARE CHARGED FOR A
KILLING IN THE COURSE AND FURTHERANCE OF
A DESIGNATED FELONY**

You will note that I have submitted for your consideration both Murder in the First Degree and Murder in the Second Degree regarding the death of (*specify*), and that both crimes involve a death caused in the course of and in furtherance of the commission or attempted commission of the crime of (*specify crime*) [*or of immediate flight therefrom*]. These crimes share certain elements. There are, however, two significant differences between them.

For Murder in the Second Degree, the People must prove beyond a reasonable doubt that the defendant caused the death of (*specify*) in the course of and in furtherance of the commission or attempted commission of the crime of (*specify crime*) [*or of immediate flight therefrom*] and that (*victim*) was a non-participant in the crime. However, for Murder in the Second Degree, the People need not prove that the death was caused intentionally. Nor need they prove that the defendant was the actual killer [*or commanded the killer to cause the victim's death*].

As for Murder in the Second Degree, for Murder in the First Degree the People must prove beyond a reasonable doubt that the defendant caused the death of (*specify*) in the course of and in furtherance of the commission or attempted commission of the crime of (*specify crime*) [*or of immediate flight therefrom*] and that (*victim*) was a non-participant in the crime. However, for Murder in the First Degree, the People must prove beyond a reasonable doubt two additional elements:

(1) that the defendant caused the death of the victim by personally causing the victim's death [*or by commanding another person to cause the death of the victim*]; and

(2) that the defendant did so with the specific intent to cause

the victim's death.¹

¹ See Penal Law §125.27(1)(a)(vii).