800.20 ALIENATION OF AFFECTION.

The (*state number*) issue reads:

"Did the defendant[1] maliciously and wrongfully cause alienation of a genuine marital relationship between the plaintiff and the plaintiff's spouse?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:[2]

First, that the plaintiff and the plaintiff's spouse were married and that a genuine marital relationship existed between them.

A genuine marital relationship is one where some degree of love and affection exists between the spouses. Love and affection may be demonstrated by [society] [assistance] [companionship] [comfort] [sexual relationship] [favorable mental attitude] between the spouses.[3] The marital relationship need not be a perfect one nor one free of discord, but must be characterized by some degree of love and affection.

Second, that the genuine marital relationship between the plaintiff and the plaintiff's spouse was alienated. Alienation means the destruction or diminution of the love and affection of one person for another.[4] The plaintiff must prove by the greater weight of the evidence that the love and affection of the plaintiff's spouse for plaintiff was diminished or destroyed.[5]

And third, that the wrongful and malicious acts of the defendant were the proximate cause of the alienation of the genuine marital relationship between the plaintiff and the plaintiff's spouse.[6]

Conduct is malicious when it is intended to, or is recklessly indifferent to the likelihood that it will, destroy or diminish a genuine marital relationship.[7] Malice may be shown by evidence that the defendant knew of the marriage between the plaintiff and the plaintiff's spouse and acted

intentionally in a way that would probably affect the marriage.[8] [A defendant engaging in sexual intercourse with the plaintiff's spouse is malicious.[9]]

Conduct is wrongful when it amounts to an unjustified or unexcused invasion of a genuine marital relationship. [The consent of the plaintiff's spouse to the conduct of the defendant is no justification or excuse.][10] [A parent's advice to [his] [her] child concerning the child's marital relationship is not, without more, wrongful conduct. To be wrongful, such advice must be given in bad faith or for an improper motive.][11]

[You must find that at least one of the defendant's malicious and wrongful acts took place in the State of North Carolina.[12]]

A proximate cause is a cause that in a natural and continuous sequence produces alienation of a genuine marital relationship and is a cause that a reasonable and prudent person in the same or similar circumstances could have foreseen would probably produce such alienation.

There may be more than one proximate cause of the alienation of a genuine marital relationship. The plaintiff is not required to prove that the defendant's conduct was the sole proximate cause of the alienation of the genuine marital relationship between the plaintiff and the plaintiff's spouse [or that the defendant's conduct resulted in [adultery] [a separation] [divorce]].

Rather, the plaintiff must prove by the greater weight of the evidence that, even though there may have been other contributing causes, the defendant's conduct was the controlling or effective proximate cause of the alienation of the genuine marital relationship between the plaintiff and the plaintiff's spouse.[13]

[The malicious and wrongful conduct of the defendant must consist of [an act] [acts] occurring prior to the physical separation of the plaintiff and the plaintiff's spouse with the intent on the part of either the plaintiff or the plaintiff's spouse that the physical separation remain permanent.[14]

This means that a determination that the malicious and wrongful conduct of the defendant was the controlling or effective proximate cause of the alienation of the genuine marital relationship between the plaintiff and the plaintiff's spouse may not be based upon any act[s] of the defendant which occurred after the plaintiff and the plaintiff's spouse physically separated with the intent on the part of either the plaintiff or the plaintiff's spouse that the physical separation remain permanent.]

[Evidence of conduct of the defendant occurring after the plaintiff and the plaintiff's spouse physically separated with the intent on the part of either the plaintiff or the plaintiff's spouse that the physical separation remain permanent may only be considered for the purpose of corroborating or supporting any evidence of malicious and wrongful conduct on the part of the defendant occurring before the plaintiff and the plaintiff's spouse physically separated.[15]]

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff and the plaintiff's spouse were married and that a genuine marital relationship existed between them, that this genuine marital relationship was alienated, and that the effective or controlling proximate cause of the alienation of that genuine marital relationship was malicious and wrongful conduct on the part of the defendant [which occurred prior to the physical separation of the plaintiff and the plaintiff's spouse with the intent on the part of either the plaintiff or the plaintiff's spouse that the physical separation remain permanent], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. "A person may commence a cause of action for alienation of affection . . . against a natural person only." N.C.G.S. § 52-13(c) (2009).

2. *See* N.C.G.S. § 52-13(a); *Nunn v. Allen*, 154 N.C. App. 523, 533, 574 S.E.2d 35, 41 (2002).

3. An alienation of affection claim "is comprised of wrongful acts which deprive a married person of the affections of his or her spouse—love, society, companionship and comfort of the other spouse. . . . The gist of the tort is an interference with one spouse's mental attitude toward the other, and the conjugal kindness of the marital relation. . . ." *Darnell v. Rupplin*, 91 N.C. App. 349, 350, 371 S.E.2d 743, 744 (1988) (citation omitted); *see also Sebastian v. Kluttz*, 6 N.C. App. 201, 206, 170 S.E.2d 104, 106 (1969) (finding that alienation claim protects against harm to "legally protected marital interests," including "the affections, society and companionship of the other spouse, sexual relations and the exclusive enjoyment thereof").

4. *Nunn v. Allen*, 154 N.C. App. 523, 533, 574 S.E.2d 35, 41 (2002) ("In terms of proving that alienation of affection occurred, [a] plaintiff need only show that his spouse's affection for him was 'diminished or destroyed.'").

5. *Nunn v. Allen*, 154 N.C. App. 523, 533, 574 S.E.2d 35, 42 (2002) (citation omitted).

6. *Nunn v. Allen*, 154 N.C. App. 523, 533, 574 S.E.2d 35, 42 (2002); *Bishop v. Glazener*, 245 N.C. 592, 596, 96 S.E.2d 870, 873 (1957) ("The wrongful and malicious conduct of the defendant need not be the sole cause of the alienation of affections. It suffices . . . if the wrongful and malicious conduct of the defendant is the controlling or effective cause of the alienation, even though there were other causes, which might have contributed to the alienation." (citations omitted)); *Heist v. Heist*, 46 N.C. App. 521, 523-24, 265 S.E.2d 434, 436 (1980) (quoting *Bishop*, 245 N.C. at 596, 96 S.E. at 873).

7. *See Nunn v. Allen*, 154 N.C. App. 523, 539, 574 S.E.2d 35, 45–46 (2002) (approving this instruction); *Sebastian*, 6 N.C. App. at 206, 170 S.E.2d at 106; *Darnell*, 91 N.C. App. at 350, 371 S.E.2d at 745.

8. *Nunn v. Allen*, 154 N.C. App. 523, 533, 574 S.E.2d 35, 42 (2002); *see also* Suzanne Reynolds, *1 Lee's North Carolina Family Law* § 5.46(A), 396 (5th ed. 2009) ("Since the tort requires proof of intent, . . . the defendant may successfully defend by establishing that he or she did not know the person was married.").

9. *Beavers v. McMican*, 385 N.C. 629, 635, 898 S.E.2d 690, 696 (2024).

10. *Scott v. Kiker*, 59 N.C. App. 458, 464, 297 S.E.2d 142, 147 (1982); *Sebastian v. Kluttz*, 6 N.C. App. 201, 208, 170 S.E.2d 104, 108 (1969).

11. *Bishop v. Glazener,* 245 N.C. 592, 597, 96 S.E.2d 870, 874 (1957).

12. After noting that alienation of affections is a "transitory tort," the North Carolina Court of Appeals explained that

> the substantive law applicable to a transitory tort is the law of the state where the tortious injury occurred . . . not the locus of the plaintiff's residence or marriage. Accordingly, where the defendant's involvement with the plaintiff's spouse spans multiple states, for North Carolina substantive law to apply, a plaintiff must show that the tortious injury occurred in North Carolina.

Jones v. Skelley, 195 N.C. App. 500, 506, 673 S.E.2d 385, 389-90 (2009) (internal citations, quotation marks, brackets and ellipses omitted); *see also Hayes v. Waltz*, 246 N.C. App.438, 443, 784 S.E.2d 607 (2016). If there is a question as to where the tortious injury

occurred, "the issue is generally one for the jury." *Jones v. Skelley*, 195 N.C. App. at 507; 673 S.E.2d at 390.

13. *Clark v. Clark*, 280 N.C. App. 403, 422, 867 S.E.2d 704, 719 (2021) ("[I]t is well established that while the defendant's conduct must proximately cause the alienation of affections, this does not mean that the defendant's acts must be the sole cause of the alienation, as long as they were the controlling or effective cause" (internal quotation brackets, quotation marks, and citation omitted)); *see also Darnell v. Rupplin,* 91 N.C. App. 349, 350, 371 S.E.2d 743, 744 (1988) (citation omitted) ("In order for liability to arise for alienation of affections there must be active and affirmative conduct. Inaction is not enough . . . . There must be some act on the part of the defendant intended to induce or accomplish the result. One does not become liable for alienation of affections, without any initiative or encouragement, merely by becoming the object of the affections that are transferred from a spouse.").

14. N.C.G.S. § 52-13.

15. *See Beavers v. McMican*, 385 N.C. 629, 635, 898 S.E.2d 690, 696 (2024); *see also Pharr v. Beck*, 147 N.C. App. 268, 273, 554 S.E.2d 851, 855 (2001) (finding in an alienation of affection action that "post-separation conduct is admissible only to the extent that it corroborates pre-separation activities resulting in the alienation of affection").