N.C.P.I.—Civil—800.70
INVASION OF PRIVACY—OFFENSIVE INTRUSION
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800.70 INVASION OF PRIVACY—OFFENSIVE INTRUSION[1]

The *(state number)* issue reads:

"Did the defendant intrude offensively upon the privacy of the plaintiff?"[2]

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:

First, that the defendant intruded upon the privacy of the plaintiff.[3] Such an intrusion occurs when the solitude, seclusion, private affairs or personal concerns of a person are invaded.[4] The invasion may be physical[5] or mental.[6]

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1 Although frequently brought in the same action, *e.g.*, *Keyzer v. Amerlink, Ltd.*, 173 N.C. App. 284, 618 S.E.2d 768 (2005), *aff'd per curiam,* 360 N.C. 397, 627 S.E.2d 462 (2006), the tort of intrusion "does not duplicate trespass since trespass requires proof of an unauthorized entry on land possessed by another and [the intrusion] tort does not." *Miller v. Brooks*, 123 N.C. App. 20, 26, 472 S.E.2d 350, 354 (1996).

2 Offensive intrusion is one of four generally established invasion of privacy torts. North Carolina has not yet recognized invasion of privacy torts for public disclosure of private facts about the plaintiff, *see Hall v. Post*, 323 N.C. 259, 265–70, 372 S.E.2d 711, 714–17 (1988); *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 28–29, 588 S.E.2d 20, 27 (2003), or for publicity that places the plaintiff in a false light in the public eye, *see Renwick v. News and Observer Pub. Co.*, 310 N.C. 312, 321, 312 S.E.2d 405, 410 (1983); *Broughton,* 161 N.C. App. at 28-29, 588 S.E. 2d at 27.

If the claim is for the fourth recognized type of invasion of privacy, that of "appropriation, for the defendant's advantage, of the plaintiff's name or likeness[,]" *Broughton,* 161 N.C. App. at 28, 588 S.E. 2d at 27 (citation omitted), use N.C.P.I. Civil—800.75 ("Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use").

3 *See Miller*, 123 N.C. App. at 26, 472 S.E.2d at 354 ("[O]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.").

4 *Id.* at 25–26, 472 S.E.2d at 354. According to the Restatement (Second) of Torts, "[t]here is no liability for the examination of a public record concerning the plaintiff, or of documents that the plaintiff is required to keep and make available for public inspection." Restatement (Second) of Torts § 652B, cmt. c. *See Tillett v. Onslow Mem. Hosp., Inc*. __ N.C. App __, __, 715 S.E.2d 538, 541 (2011) (holding that the accessing, viewing, disclosing or

Second, that the defendant's intrusion was intentional. An act is intentional when it is done knowingly, or with purpose, or with reckless indifference to its consequences.[7]

And Third, that a reasonable person, under the same or similar circumstances, would be highly offended by such intrusion.[8]

Finally, as to the *(state number)* issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the

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publishing autopsy photographs cannot be considered an intrusion upon a plaintiff's seclusion because autopsy photographs, by statute, are readily accessible by any person for inspection and examination).

5 *See Keyzer,* 173 N.C. App. at 288, 618 S.E.2d at 771 ("The kinds of intrusions that have been recognized under this tort include physically invading a person's home or other private place, eavesdropping by wiretapping or microphones, peering through windows, persistent telephoning, unauthorized prying into a bank account, and opening personal mail of another."(citations and quotations omitted)); *French v. U.S.*, 55 F. Supp. 2d 379, 382–83 (W.D.N.C. 1999) (obtaining medical records); *Broughton*, 161 N.C. App. at 29, 588 S.E.2d at 27 (stating that there generally "must be a physical or sensory intrusion or an unauthorized prying into confidential personal records to support a claim for invasion of privacy by intrusion."(citation omitted)).

6 *Anderson v. Farr Assocs., Inc.*, No. Civ.A. 2:97CV238, 1997 WL 896407, at *4 (M.D.N.C. Dec. 12, 1997) (finding allegations that defendants intentionally forced employee "to participate in group sessions and evaluations which resulted in his disclosure of deeply personal information" and "that such intrusion was highly offensive and was intentional" were adequate "to state a claim for invasion of privacy by intrusion into seclusion").

7 *See supra* note 3.

8 *See Miller*, 123 N.C. App. at 26, 472 S.E.2d at 354 (holding that defendants' acts of installing a hidden video camera in plaintiff's bedroom and intercepting plaintiff's mail were sufficient to sustain a claim). The *Miller* court noted that the "[p]laintiff had every reasonable expectation of privacy in his mail and in his home and bedroom," and that "[a] jury could conclude that these invasions would be highly offensive to a reasonable person." *Id.; see also Toomer v. Garrett*, 155 N.C. App. 462, 480, 574 S.E.2d 76, 90 (2002) ("The unauthorized examination of the contents of one's personnel file, especially where it includes sensitive information such as medical diagnoses and financial information . . . would be highly offensive to a reasonable person."). *But cf. Smith v. Jack Eckerd Corp.*, 101 N.C. App. 566, 568–69, 400 S.E.2d 99, 99–100 (1991) (holding that after a store alarm sounded as plaintiff exited and was requested to step through the exit four times as the alarm went off each time and her person and pocketbook were searched with a scanner was not "so highly offensive to the reasonable person" as to constitute the tort).

defendant intruded offensively upon the privacy of the plaintiff, 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.