

DIVORCE--ABSOLUTE--ISSUE OF ONE YEAR'S SEPARATION.¹

The (*state number*) issue reads:

"Is the plaintiff entitled to a divorce from the defendant based upon a one-year separation?"

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 plaintiff and the defendant were lawfully married to each other.

(All of the evidence tends to show that the plaintiff and defendant were married on the (*state date of marriage*).)

Second, that the plaintiff or the defendant has resided in North Carolina for a period of six months before (*state date action was commenced*). (In order to be a resident for six months, a person, during that period, must not only reside here but also have the intention² of making North Carolina his permanent home, to which, whenever absent, he intends to return and from which he has no present intention of moving.)

And Third, that the plaintiff and the defendant lived separate and apart for an uninterrupted period of one year before (*state date action was commenced*) and their physical separation

¹N.C.G.S. § 50-6.

²For an instruction on intent, see N.C.P.I.--Civil 101.46.

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was accompanied by an intention on the part of at least one of
them to make their separation permanent.

(Separation means ceasing to live together as husband and
wife. In determining whether and when the parties separated, you
should consider all the facts and circumstances of the parties'
relationship, including whether a reasonable person, under the
same or similar circumstances, would conclude that the parties had
ceased to live together as husband and wife.³ The separation need
not be with the consent of both parties. There must be a period
of at least one year prior to (*state date action was commenced*)
that one of the parties had an intent to remain permanently
separated.⁴) (The one year period of separation is interrupted if
the parties resume marital relations, that is, they voluntarily
renew their husband and wife relationship. In determining whether
and when the parties resume living together as man and wife, you
should consider all the facts and circumstances of the parties'
relationship, including whether a reasonable person, under the
same or similar circumstances, would conclude that the parties had
resumed their marital relationship. Isolated incidents of sexual

³*Wen Chouh Lin v. Lin*, 108 N.C. App. 772, 425 S.E.2d 9 (1993).

⁴*Adams v. Adams*, 92 N.C. App. 274, 374 S.E.2d 450 (1988); *Bruce v. Bruce*,
79 N.C. App. 579, 339 S.E.2d 855, cert. denied, 317 N.C. 701, 347 S.E.2d 36
(1986).

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intercourse between the parties do not constitute a resumption of
marital relations.)⁵

Finally, as to this (*state number*) issue on which the
plaintiff has the burden of proof, if you find, by the greater
weight of the evidence, that the plaintiff is entitled to a
divorce from the defendant based upon a one year separation, 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, it would be your
duty to answer this issue "No" in favor of the defendant.

⁵N.C.G.S. §§ 50-6 and 52-10.2.

