DIVORCE--FROM BED AND BOARD--ISSUE OF INDIGNITIES.[1]

The (*state number*) issue reads:

"Did the defendant, without provocation, offer such indignities to the person of the plaintiff as to render *his* condition intolerable and life burdensome?"

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 offered indignities to the person of the plaintiff. Indignities to the person amount to a kind of mental cruelty. Actual physical violence, or the threat of it, is not required. The acts need not endanger life or health. The fundamental characteristic of indignities is that they must consist of a course of conduct that would seriously annoy a person of ordinary sense and temper. The indignities must be repeated or continued over a period of time so that they may appear to have been offered willfully and intentionally,[2] or at least

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[1]N.C.G.S. § 50-7(4).

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

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consciously, to the annoyance of the plaintiff.[3]

Second, that the defendant's indignities rendered the plaintiff's condition intolerable and life burdensome. Whether the indignities of one spouse render the other spouse's condition intolerable and life burdensome depends upon the facts and circumstances in each case. Factors you may consider include, among other things, the status of the parties and their sensibilities, social position, refinement, intelligence, temperament, state of health, habits and feelings, as well as the character and nature of the indignities alleged.[4]

And Third, that the plaintiff did not engage in conduct which

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[3]*Miller v. Miller*, 78 N.C. 102 (1878). For cases illustrative of indignities, see *Pearce v. Pearce*, 226 N.C. 307, 37 S.E.2d 904 (1946) (adulterous behavior of husband, disavowal of affection for wife, ejection of wife from bed and exclusion from marital home); *Sanders v. Sanders*, 157 N.C. 229, 72 S.E. 876 (1911) (long course of neglect, cruelty, humiliation and insult of wife); *Green v. Green*, 131 N.C. 533, 42 S.E. 954 (1902) (foul and injurious accusations against wife, refusal to bed with her and denial that they were married); *Scoggins v. Scoggins*, 85 N.C. 348 (1881) (drunken husband cursed wife and drove her from the home and away from bedside of dying child); *Vandiver v. Vandiver*, 50 N.C. App. 319, 274 S.E.2d 243, *cert. denied*, 302 N.C. 634, 280 S.E.2d 449 (1981) (husband moved to basement of home, withdrew from family, viewed hard core pornographic materials in basement, permitted his minor children to see these materials and asked wife to indulge in several unnatural sexual desires before leaving home for good).

[4]*Sanders v. Sanders*, 157 N.C. 229, 72 S.E. 876 (1911).

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provoked the defendant to offer indignities to *his* person.[5] What constitutes provocation depends on the facts and circumstances of each case. Ordinarily, provocation does not exist unless the conduct of the plaintiff has been such as would likely render it impossible for the defendant to continue the marital relationship with safety, health and self-respect.[6]

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 defendant, without provocation, offered such indignities to the person of the plaintiff as to render *his* condition intolerable and life burdensome, 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.

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[5]The burden of proof is on the plaintiff to show that the defendant's conduct was not caused by the plaintiff's acts. *Perkins v. Perkins*, 85 N.C. App. 660, 355 S.E.2d 848, *cert. denied*, 320 N.C. 633, 360 S.E.2d 92 (1987). What must be proven, however, is not the negation of every possible justification for the defendant's conduct. Instead, the plaintiff must prove only that he or she did not engage in conduct that provoked or justified the defendant's conduct. *Morris v. Morris*, 46 N.C. App. 701, 266 S.E.2d 381, *aff'd*, 301 N.C. 525, 272 S.E.2d 1 (1980). *Pearce v. Pearce*, 225 N.C. 571, 35 S.E.2d 636 (1945); *Garsed v. Garsed*, 170 N.C. 672, 87 S.E. 45 (1915); *Puett v. Puett*, 75 N.C. App. 554, 331 S.E.2d 287 (1985).

[6]*See Caddell v. Caddell*, 236 N.C. 686, 73 S.E.2d 923 (1953).