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Forms of Committee Presents Standard Pleading Samples to Be Used in Divorce Litigation

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FORMS COMMITTEE PRESENTS STANDARD PLEADING SAMPLES TO BE USED IN DIVORCE LITIGATION

The Forms Committee submits herewith standard pleading samples for use in divorce litigation. Separate maintenance actions would use almost the same forms. It is realized that all of the possible types of motions and orders cannot feasibly be presented in any one article; so only those causing the most trouble—and, therefore, the most controversial—are offered. Suggestions for improvement of these forms are urgently requested, and if there are other forms desired, the Committee shall attempt to draft them and publish the same at a later date.

FORMS STANDARDIZATION COMMITTEE,
ROYAL C. RUBRIGHT, Chairman,
SUB-COMMITTEE ON DISTRICT COURT FORMS,
DONALD M. LESHER, Chairman.

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER AND
STATE OF COLORADO

CIVIL ACTION NO. 2-711, DIV. 9.

<p><i>CELESTINE CORINNA HPUIWMN,</i> Plaintiff,</p> <p style="text-align: center;">vs.</p> <p><i>REGINALD PHINEHAS HPUIWMN,</i> Defendant.</p>	}	<p>COMPLAINT IN DIVORCE</p>
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1. Plaintiff and defendant were married in *Raton, New Mexico*, the first day of *April, 1948*; plaintiff has been a bona fide resident and citizen of Colorado during the year next prior to the commencement of this action, and plaintiff and defendant presently reside in the *City and County of Denver*.¹

2. The parties have two children:

Name	Date of Birth
<i>Mathilda Sophronia Hpuiwmn</i>	<i>August 15, 1948</i>
<i>Alfonso Grthvlm Hpuiwmn</i>	<i>December 25, 1951</i>

Plaintiff desires their custody.

3. Defendant has been extremely and repeatedly cruel toward plaintiff, such cruelty consisting of the infliction of mental suffering and bodily violence committed in the State of Colorado.²

¹Inapplicable if not a resident that long ~~unless~~ ^{WHEN} sought on ground of adultery or extreme cruelty committed in Colorado. If action is brought in county where defendant last resided, so state. (See Sec. 6, Ch. 56.)

²If other grounds, insert (see Chapter 56, Secs. 1 and 2).

4. Defendant has income sufficient to support plaintiff and the minor children, and to pay the costs and expenses of this action, and to pay the obligations of the parties.³

5. The parties own real property described as *Lots 1 and 2, Block 1, Douthul Heights, City and County of Denver, Colorado*, and certain personal property, which should be divided between them.⁴

WHEREFORE, plaintiff prays for a divorce, custody of the minor children, alimony, support for the children, a division of property, attorney fees and costs, and for such other and further relief as to the Court may seem proper.⁵

Plaintiff's Address:
11 Waan Avenue,
Denver 6, Colorado.

*Silvester Hasede*⁶
Attorney for Plaintiff
1st Majestic-Equitable Bldg.,
Denver 2, Colorado, DYbryt 004U.

The Summons is omitted, because it is a routine form (see Form 1, App. A, Vol. 1, C.S.A.). If complaint is served with it, the Denver District Court form of summons may be completed by adding at the end where it states "This is an action," the words "in divorce." If complaint is served later, the grounds should be typed in also, although the Committee takes no position as to the necessity of this.

If the summons is accepted voluntarily, a suggested form for acceptance of service is the following affidavit, to be typed on the reverse side of the summons.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.

I, *Reginald Phineas Hpuiwmn*, being duly sworn, state that I am of full age, am the defendant in this action, have received a copy of the summons and complaint and accept service thereof, and state that I am not now in the Military Service.

Reginald Phineas Hpuiwmn.

Subscribed and sworn to before me this 15th day of February, 1952.

Sally N. Doakes
Notary Public.

My commission expires September 20, 1953.

³ Omit if no support or alimony is requested.

⁴ Omit if property settlement is not involved.

⁵ Complaint virtually the same for separate maintenance, except grounds are broader (Sec. 25), and relief sought would be separate maintenance and maintenance instead of divorce and alimony.

⁶ The Grthvlm family, of which Celestine is the oldest daughter, has been a constant source of income to old Hasede.

(USE CAPTION)

CELESTINE CORINNA
HPUIWMN,
Plaintiff,
vs.
REGINALD PHINEHAS
HPUIWMN,
Defendant.

MOTION FOR TEMPORARY
ALIMONY, SUPPORT FOR
MINOR CHILDREN,
ATTORNEY FEES AND
COURT COSTS.⁷

Plaintiff moves that the Court enter an order granting her temporary alimony, support for the minor children of the parties, attorney fees, and court costs, defendant having sufficient income and property to pay therefor and plaintiff having insufficient funds for said purposes.

Address of Plaintiff:
11 Waan Avenue,
Denver 6, Colorado.

Silvester Hasede
Attorney for Plaintiff
1st Majestic-Equitable Bldg.,
Denver 2, Colorado, Dybryt 004U.

(USE CAPTION)

CELESTINE CORINNA HPUIWMN,
Plaintiff,
vs.
REGINALD PHINEHAS HPUIWMN,⁹
Defendant.

MOTION FOR
TEMPORARY
RESTRAINING
ORDER.⁸

Plaintiff moves that the Court issue a temporary restraining order without notice to the defendant on the matters and for the reasons stated herein.

1. The defendant has committed physical violence against plaintiff on several occasions.

2. As a result of the bodily violence and abusive treatment by defendant, plaintiff is in fear both for herself and for their minor children of further physical violence by defendant.

⁷ This could have been filed at any time after the complaint, but in this instance it was filed at the same time. Notice for hearing is omitted, but it was served at this time also.

⁸ Mrs. Hpuiwmn wanted her husband out of the house, and was afraid he would hide his stocks and bonds. She didn't want him to molest her (even though she wanted to be free to pick on him at will). So motion for temporary restraining order was filed with her complaint and order obtained the same day. It could have been done later.

⁹ If a Bank or other person is to be restrained, join them as parties in the original complaint; set forth details covering them in Motion.

3. Plaintiff believes that unless restrained by this Court defendant will destroy, harm, or otherwise dispose of her possessions in the family home at *11 Waan Avenue, Denver, Colorado*, and fears that defendant will remove therefrom not only her possessions but also the family furniture and furnishings now present therein.

4. Defendant has in his possession or under his control certain securities, safety deposit boxes, bank accounts, and other personal property, and also has an interest in a business known as *Hpuiwmn and Uktlus*, and plaintiff fears that unless restrained by this Court defendant will dispose of or place beyond the reach of this Court said property.¹⁰

5. Defendant could find a place to live elsewhere, but plaintiff believes he will refuse to leave the home of the parties unless ordered by this Court so to do.

WHEREFORE, plaintiff moves that, until the further order of this Court:

1. Defendant be restrained from talking to, communicating with, or otherwise molesting plaintiff, or from interfering, in any way, with plaintiff's custody of the minor children, *Mathilda Sophronie Hpuiwmn* and *Alfonso Grthelm Hpuiwmn*.

2. Defendant be restrained from disposing of or removing any of his property or effects except money for current expenses, and from entering any safety deposit box in any bank, safe deposit company, or depository.

3. Defendant be restrained from destroying, removing, or injuring any property belonging to the plaintiff, and from destroying, removing, or injuring any household goods, furnishings, or furniture in the residence of the parties at *11 Waan Avenue, Denver, Colorado*.

4. Defendant be required to remove himself from the family residence at *11 Waan Avenue, Denver, Colorado*, by 6 p.m. on the day next following the day he is served with restraining order, and that he be restrained thereafter from entering, loitering, or remaining near said premises.

Silvester Hasede,
Attorney for Plaintiff,
1st Majestic-Equitable Bldg.,
Denver 2, Colorado, DYbryt 004U.

Plaintiff's Address:
11 Waan Avenue,
Denver, Colorado.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } SS.

¹⁰ It is suggested that real estate not be included here; lis pendens can be recorded and protect any right plaintiff may have therein.

The undersigned, being duly sworn, says that the facts set forth in the above motion are true.

Celestine Corinna Hpuiwmn.

Subscribed and sworn to before me this 15th day of February, 1952.

Ima DeMopublican
Clerk of the District Court.
By *Q. D. Istrictcap*
Deputy Clerk.

ORDER.¹¹

The above motion is granted, and the Clerk is hereby ordered to issue a Temporary Restraining Order to the defendant in the manner and form as shown on the Temporary Restraining Order attached hereto and incorporated herein by reference.

Done in Open Court this 15th day of February, 1952.

BY THE COURT,
*Zadok Zedekiah*¹²
Judge.

CELESTINE CORINNA
HPUIWMN,
Plaintiff,
vs.
REGINALD PHINEHAS
HPUIWMN,
Defendant.

TEMPORARY RESTRAINING
ORDER.

THE PEOPLE OF THE STATE OF COLORADO:
To *Reginald Phinehas Hpuiwmn*, Defendant:

GREETING:

It satisfactorily appearing to the Court, from plaintiff's motion on file herein, that sufficient grounds exist therefor:

IT IS ORDERED that until the further order of said Court, you and each of your servants, agents, attorneys, employees, and all persons acting under the control, authority, or direction of you, do absolutely refrain from and desist from:

1. Talking to, communicating with, or otherwise molesting plaintiff, or interfering, in any way, with plaintiff's custody of the minor children, *Mathilda Sophronia Hpuiwmn* and *Alfonso Grthvlm Hpuiwmn*.

¹¹ This order could be attached directly to the motion for temporary restraining order.

¹² It will be noted that his honor, Judge Zedekiah, formerly sat in Division 7, but was transferred to Division 9 when the General Assembly increased the number of Denver District Judges.

2. Disposing of or removing any of your property or effects except money for current expenses, and entering any safety deposit box in any bank, safe deposit company, or depository.¹³

3. Destroying, removing, or injuring any property belonging to the plaintiff, and destroying, removing, or injuring any household goods, furnishings, or furniture in the residence of the parties at 11 Waan Avenue, Denver, Colorado.

IT IS FURTHER ORDERED that you will remove yourself from the family residence at 11 Waan Avenue, Denver, Colorado, by 6 p.m. on the day following the day you are served with this restraining order, and you are restrained thereafter from entering, loitering or remaining near said premises.

WITNESS the Honorable *Zadok Zedekiah*, one of the Judges of the District Court of the *Second* Judicial District of the State of Colorado, with the seal thereof affixed, at my office, in the *City and County of Denver*, this *15th* day of *February*, 1952.

Ima DeMopublican

Clerk.

By *Q. D. Istrictcap*

Deputy.

(SEAL)

STATE OF COLORADO }
CITY AND COUNTY OF DENVER }^{ss.}

I do hereby certify that I delivered to the said defendant a copy of the within restraining order this *16th* day of *February*, 1952.

Juan F. Mersbuys,
Manager of Safety and Excise and
Ex-Officio Sheriff of the City
and County of Denver

By *I. Will Ketchum*

Deputy Sheriff.

(SEAL)

(USE CAPTION)
CELESTINE CORINNA HPUIWMN,
Plaintiff,
vs.
REGINALD PHINEHAS HPUIWMN,
Defendant.

MOTION FOR
CITATION FOR
CONTEMPT OF
COURT.¹⁴

¹³ If other person is to be restrained, bond must be posted as to such person. This is not necessary, however, as to parties to the divorce. An additional order should be entered for each such other person. In the event that any bank or other depository is to be affected by orders of the divorce Court, such persons should be named as original parties and brought within the jurisdiction of the Court.

¹⁴ Had the bank been joined as a party and restrained from permitting Reginald access to the safety box, it probably would not have been necessary to cite Reginald for contempt.

The plaintiff represents:

That on *February 15, 1952*, a temporary restraining order was issued by this Court, restraining defendant, among other things, from talking to, communicating with, or otherwise molesting plaintiff and from disposing of or removing any of his property or effects and from entering any safety deposit box in any bank.

That defendant was personally served with said temporary restraining order on *February 16, 1952*.

That defendant has disobeyed said order in the following particulars:

1. On *February 18, 1952*, defendant talked to plaintiff on the telephone at her residence, *11 Waan Avenue, Denver, Colorado*, from *9:15 to 9:26 P.M.*

2. On *February 19, 1952*, defendant entered his safety deposit box at the *Second National Bank, Denver, Colorado*, and removed therefrom certain securities.

WHEREFORE, plaintiff moves that the Court issue an order to the Clerk to cite and give notice to the said defendant to be and appear before the Court at a date and time to be stated in said order, to show cause, if any he has, why he should not be punished for contempt, for neglect and refusal to comply with the order of the Court heretofore entered herein, in the particulars referred to in plaintiff's above motion, and why, to vindicate the dignity of the Court, a fine or imprisonment should not be imposed upon him.

Plaintiff's Address:
*11 Waan Avenue,
Denver 6, Colorado.*

*Silvester Hasede
Attorney for Plaintiff
1st Majestic-Equitable Bldg.
Denver 2, Colorado, DYbryt 004U.*

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.

The undersigned being duly sworn, says that the facts set forth in the above motion are true.

Celestine Corinna Hpuiwmn

Subscribed and sworn to before me this *20th* day of *February, 1952*.

*Sally N. Doakes
Notary Public.*

My commission expires *September 20, 1953*.

(USE CAPTION)

CELESTINE CORINNA HPUIWMN,
 Plaintiff,
 vs.
 REGINALD PHINEHAS HPUIWMN,
 Defendant.

ORDER FOR
 CITATION.

It is hereby ordered that the Clerk issue forthwith a citation to the defendant, *Reginald Phinehas Hpuiwmn*, to be and appear before this Court on the 25th day of February, 1952, at the hour of 9:30 o'clock A.M., to show cause, if any he may have, why he should not be punished for contempt for neglect and refusal to comply with the order of the Court heretofore entered herein, in the particulars referred to in plaintiff's motion for citation for contempt of Court incorporated herein by reference, and why, to vindicate the dignity of the Court, a fine or imprisonment should not be imposed upon him.

DONE IN OPEN COURT, this 20th day of February, 1952.

BY THE COURT:
 Zadok Zedekiah
 Judge.

(USE CAPTION)

CELESTINE CORINNA HPUIWMN,
 Plaintiff,
 vs.
 REGINALD PHINEHAS HPUIWMN,
 Defendant.

CITATION.

THE PEOPLE OF THE STATE OF COLORADO, TO THE
 SHERIFF OF THE CITY AND COUNTY OF DENVER,

Greeting:

WHEREAS, In a certain cause in said Court now pending, wherein *Celestine Corinna Hpuiwmn* is plaintiff, and *Reginald Phinehas Hpuiwmn* is defendant, a certain order was entered of record, whereby defendant was restrained from talking to, communicating with, or otherwise molesting plaintiff, and from disposing of, or removing any of his property or effects and from entering any safety deposit box in any bank.

AND, WHEREAS, It appears to the Court that the defendant, *Reginald Phinehas Hpuiwmn*, has failed to comply with said order in the particulars referred to in plaintiff's motion, incorporated herein by reference and attached hereto.

THESE ARE THEREFORE TO COMMAND YOU, That you cite and give notice to the said defendant, *Reginald Phinehas Hpuiwmn*, to be and appear before the Hon. *Zadok Zedekiah* in

the 9th Division of this Court on the 25th day of February, 1952, at the hour of 9:30 o'clock A.M., to show cause, if any he have, why he should not be punished for contempt, for neglect and refusal to comply with the order of the Court heretofore entered herein, and why, to vindicate the dignity of the Court, a fine and imprisonment should not be imposed upon him.

WITNESS, *Ima DeMopublican*, Clerk of said Court, this 20th day of February, 1952.

(SEAL)

Ima DeMopublican
Clerk.
By *Q. D. Istricap*
Deputy Clerk.

CITY AND COUNTY OF DENVER }
STATE OF COLORADO } ss.

I DO HEREBY CERTIFY, That I have duly executed the within writ this 21st day of February, 1952, by handing to and leaving with *Reginald Phinehas Hpuiwmn* a copy of this citation, together with a copy of motion for citation for contempt of court and order for citation, at *Denver*, Colorado.

(SEAL)

Juan F. Mersbuys,
Manager of Safety and Excise and
Ex-Officio Sheriff of the City
and County of Denver.
By *I. Will Ketchum*
Deputy Sheriff.

The Court's order at the contempt hearing is omitted to avoid the necessity of entering into personalities.

(USE CAPTION)

CELESTINE CORINNA
HPUIWMN,

vs.

REGINALD PHINEHAS
HPUIWMN,

Plaintiff,

Defendant.

ANSWER AND
COUNTERCLAIM.¹⁵

FIRST DEFENSE.

1. Defendant admits the averments of paragraphs 1, 2, and 5, except as set forth below.
2. Defendant denies the averments of paragraphs 3 and 4,

¹⁵ Sec. 7 uses the word "Cross-complaint," but it is believed that Sec. 5 (1) as amended in 1945 making the Rules applicable to Divorce, etc. controls, and that the preferred word now is "counterclaim" (Rule 13).

and that part of 5 averring that the property should be divided between them.

3. Defendant is without knowledge or information sufficient to form a belief as to the averment in paragraph 2 that plaintiff desires the custody of the children therein named.

SECOND DEFENSE.

1. Plaintiff has been guilty of acts set forth in 1935 C.S.A., Chapter 56, Section 1, Third and Seventh, which acts constitute grounds for defendant to divorce plaintiff.

2. Plaintiff has, by her subsequent conduct, condoned any of defendant's acts constituting cruelty, which acts defendant denies.

COUNTERCLAIM.¹⁶

1. Same as paragraph 1 of complaint.

2. Same as paragraph 2 of complaint, except that defendant desires the custody of the children therein named.

3. Plaintiff has been guilty of acts set forth in C.S.A., Chap. 56, Sec. 1, Third and Seventh.¹⁷

4. Same as paragraph 5 of complaint.

WHEREFORE, defendant prays that plaintiff's complaint be dismissed at plaintiff's costs, for a divorce, custody of the minor children, a division of property, and for such other and further relief as to the Court may seem proper.

Defendant's Address:

*Graswid Wehr's
Rest Home,
Denver, Colorado.*

*Actspard, Dimorzgo, Hort, Hrmok,
Lgndah and Pbddson
By F. Lunkeynum Berten
Attorneys for Defendant,
Court House Square Bldg.,
Denver 2, Colorado, ZEckendorf 0008.*

Hpuiwmn calmed down, and, rather than face a contest and possible denial of divorce to both parties (Chap. 56, Sec. 7), he allowed Celestine to proceed to a non-contested decree. The form of decree to be used in event of a jury or court trial of a contested divorce is omitted, because that decree could be similar to any civil trial verdict and judgment, with findings for or against each party.

¹⁶ Request for jury trial is omitted, but would be identical to that of other civil actions.

¹⁷ Vagueness is sometimes preferred to stating adultery, drunkenness or drug addiction. Statutory words could be used instead of merely the reference to the Statute.

(USE CAPTION)

CELESTINE CORINNA HPUIWMN,
 Plaintiff,
 vs.
 REGINALD PHINEHAS HPUIWMN,
 Defendant.

INTERLOCUTORY
 DECREE IN
 DIVORCE.¹⁸

THIS CAUSE, coming on to be heard on this 20th day of March, 1952, upon its merits, the plaintiff being represented by *Silvester Hasede*, attorney of record, and the defendant appearing by *F. Lunkeynum Berten*, attorney of record, and the Court having examined the full record herein, finds that it has jurisdiction herein; and having heard the evidence and the statements of counsel, the Court now being fully advised;

DOTH FIND that a divorce should be granted to the plaintiff herein upon the statutory grounds of *extreme and repeated acts of cruelty*; therefore,

IT IS ORDERED, ADJUDGED and DECREED by the Court, that an absolute divorce should be granted to the plaintiff, and an Interlocutory Decree of Divorce is hereby entered, dissolving the marriage of plaintiff and defendant six months after the date of this Interlocutory Decree.

IT IS EXPRESSLY DECREED by the Court that during such six months period after the signing of this Interlocutory Decree the parties hereto shall not be divorced; shall still be husband and wife, and neither party shall be competent to contract another marriage anywhere during such period, and the Court during all of said period does hereby retain jurisdiction of the parties and the subject matter of this cause and upon motion of either party, or upon its motion, for good cause shown, after a hearing, may set aside this Interlocutory Decree.

It is Further ORDERED, ADJUDGED and DECREED by the COURT that defendant shall pay into the Registry of the District Court on the 1st and 15th day of each month, commencing April 1, 1952, and continuing until further order of this Court,

¹⁸ The decree herewith submitted is identical to the printed form used by the Denver District Court. It is believed by the committee, however, that the following form would be sufficient in most instances:

"THIS MATTER, coming on to be heard:

THE COURT DOTH FIND:

That a divorce should be granted to the plaintiff upon the grounds of extreme and repeated acts of cruelty; therefore, IT IS ORDERED:

That an Interlocutory Decree of Divorce is hereby entered in favor of the plaintiff, dissolving the marriage of plaintiff and defendant six months after the date of this Interlocutory Decree.

The Court FURTHER DECREES that after six months from the date hereof this Interlocutory Decree shall be and become a Final Decree of Divorce and the parties shall then be divorced, unless this Interlocutory Decree shall have been set aside, or an appeal has been taken, or a writ of error has been issued.

Done in open Court this 20th day of March, 1952."

*the sum of \$100.00, payable \$50.00 to plaintiff for temporary alimony and \$25.00 to plaintiff for the support of each child, and also, on or before March 25, 1952, defendant shall pay into the Registry of the District Court the sum of \$163.00, payable \$13.00 to plaintiff for her Court costs to date and \$150.00 to plaintiff on account of plaintiff's attorney fees, which \$150.00 plaintiff has assigned to her attorney Silvester Hasede, and which the Clerk is to pay directly to said attorney.*¹⁹

It is Further ORDERED, ADJUDGED and DECREED by the Court that the sole care, custody and control of the minor children, *Mathilda Sophronia Hpuiwmn and Alfonso Grtholm Hpuiwmn*, is hereby awarded to the plaintiff as a suitable person to have such care and custody until the further order of the Court, with the defendant to have reasonable visitation rights.²⁰

The Court FURTHER DECREES that after six months from the date hereof this Interlocutory Decree shall be and become a Final Decree of Divorce and the parties shall then be divorced, unless this Interlocutory Decree shall have been set aside, or an appeal has been taken, or a writ of error has been issued.

Done in open Court this 20th day of March, 1952.

BY THE COURT,
Zadok Zedekiah,
Judge.

APPROVED AS TO FORM:

F. Lunkeynum Berten,
Attorney for Defendant.

¹⁹In this case, the parties had not arrived at a settlement. Calling it "temporary alimony" looks like no settlement. If there were an agreement and the parties wanted part or all of it enforceable by the Court in this same action, the entire agreement or pertinent portions could be extracted or paraphrased and included as part of the Court order at this stage in the decree, being sure that the order included as a preface a remark such as: "The Court finds that the parties have arrived at an agreement as to alimony, support, division of property, and other matters, which agreement has been admitted into evidence as exhibit "A" and which is approved by the Court, and the parties are hereby ordered to carry out the following provisions thereof: Then set out the entire agreement or the portions desired in the order, but don't do it just by reference. Spell it out in the body of the decree.

Sometimes, even where there is an agreement, the parties do not want it put in the decree for income tax reasons, desire to avoid later modification or enlargement, keeping it off record, etc.

²⁰It is hoped the Hpuiwmns are able to work this out. If not, the Court later will have to spell out in detail when the father can see the children, whether or not he can take them out of the house, who will feed them, and so on, ad infinitum.

(USE CAPTION)

CELESTINE CORINNA HPUIWMN,
 Plaintiff,
 vs.
 REGINALD PHINEHAS HPUIWMN,
 Defendant.

FINAL DECREE
 IN DIVORCE ²¹

On this day, it appearing to the Court that an Interlocutory Decree of Divorce was entered herein on the *20th* day of *March, 1952*, which decreed that six (6) months after the entry of the said Interlocutory Decree, it shall be and become a Final Decree of Divorce, unless such Interlocutory Decree has been duly set aside, or an appeal has been taken, or a writ of error has been issued.

And it further appearing to the Court that no appeal has been taken and no writ of error has been issued by the Supreme Court, and that the said Interlocutory Decree has not been set aside:

IT IS ORDERED, ADJUDGED and DECREED by the Court, that more than six (6) months' time has elapsed since the entry of said Interlocutory Decree, and that said Interlocutory Decree has become and now is a Final Decree of Divorce, made and entered upon the terms and conditions contained in the Interlocutory Decree, or any modification or change thereof subsequently made by the Court.²²

Done in open Court this *21st* day of *September, 1952*.

BY THE COURT:

Zadok Zedekiah (SEAL)
 Judge.

When the decree became final, Mrs. Hpuiwmn moved for permanent alimony, support, division of property, and, at their insistence, for attorney fees. We omit the form of the motion, but include the order entered:

²¹ Some courts require a motion for final decree which could be substantially as follows: "Plaintiff moves for entry of final decree in accordance with the terms of the interlocutory decree entered herein on March 20, 1952." Other courts enter the final decree as a matter of course. It will be noted that in *Hpuiwmn v. Hpuiwmn*, no action was taken by the parties during the six months' period to alter the provisions of the interlocutory decree.

²² The Hpuiwmns had not agreed on final settlement. Had they done so, part or all of their agreement could have been made a part of the final decree, in the same way as discussed in Note No. 19.

(USE CAPTION)

CELESTINE CORINNA
HPUIWMN,

Plaintiff,

vs.

REGINALD PHINEHAS
HPUIWMN,

Defendant.

ORDER FOR ALIMONY,
SUPPORT, DIVISION OF
PROPERTY AND OTHER
MATTERS ²³

THIS MATTER having come on to be heard this 29th day of September, 1952:

THE COURT DOTH FIND:

1. That Final Decree of Divorce was entered in this matter September 21, 1952.
2. That at this date both parties are in good bodily health.
3. That plaintiff is not and never has been employed and has no income and defendant during the past year has drawn an average of \$425.00 a month from the partnership business of *Hpuiwmn and Uktlus*.
4. That the parties at this time own the following property:

The residence in which plaintiff and the two children live at *11 Waan Avenue, Denver, Colorado*, legally described as *Lots 1 and 2, Block 1, Dousthul Heights, City and County of Denver*, of a current market value of \$10,000.00, encumbered by a deed of trust securing a note in the present balance of \$2,500.00, payable to the *Only State Bank of Montclair*, on which payments in the amount of \$40.00 a month (including interest, taxes and insurance) are due on the first of each month. This property was purchased December 1, 1951, and the purchase money was contributed one-half by plaintiff's and one-half by defendant's family as a Christmas gift to the two of them. Title is held in joint tenancy.

500 Shares of *Denargo Oil Co. of Toronto*, common stock of a value of \$500.00, purchased in August of 1951 with funds from the former joint bank account of the parties.

A joint Savings Account in the *2nd National Bank of Denver*, balance of \$242.00 representing gifts from the family of each.

Defendant's checking account in the same bank, balance of \$319.00.

Plaintiff's checking account in the same bank, balance of \$28.00.

²³ It is recognized that because this order is based almost completely on the peculiarity of the particular facts, it will vary greatly in each case.

A 1946 Chevrolet Club Coupe, property of defendant before marriage, with title now in plaintiff's name, needed by defendant in his business and by the plaintiff to assist in caring for the children, of a current market value of \$700.00.

An interest in the above partnership business, at a book value of \$9,726.41, built up from a \$50.00 investment from a joint checking account in February of 1949. Both plaintiff and defendant are listed as partners, in the same amount, but defendant devotes full time to it and plaintiff has never been active. The other partners will approve an assignment of plaintiff's interest to defendant, but will dissolve the partnership if plaintiff is to remain a partner.

6—\$100.00 maturity value Co-ownership U. S. Savings Bonds of a redemption value of \$450.00, purchased from funds from a joint checking account in November, 1951.

\$10,000.00 straight life policy with the NMYRON Insurance Company and \$10,000.00 straight life policy with National Service Life Insurance Company, on defendant's life, on which yearly premiums of \$225.00 and \$114.00 respectively are payable in June of each year, and on which plaintiff is primary and the children named in the complaint herein are secondary beneficiaries.

6. That at this time there are, in addition to the note and deed of trust in the house, unpaid bills for personal family expenses of the parties incurred before this action was instituted in a total amount of \$56.00, as shown by Plaintiff's Exhibits "D," "E," "F," and "G."

7. That plaintiff's attorney has performed services for plaintiff of a reasonable value of \$250.00, of which amount \$150.00 has been paid pursuant to previous order, leaving an unpaid balance of \$100.00; it has been stipulated that the amount found due, if any, from defendant to plaintiff for plaintiff's attorney fees shall be paid directly to said attorney and not to plaintiff.

8. That \$200.00 per month is a reasonable sum for the support of plaintiff and of the children named in the complaint, inclusive of payments on the note to the *Only State Bank of Montclair*.

IT IS ORDERED:

1. That defendant shall pay into the Registry of the District Court, on the *1st and 15th* of each month, commencing *October 1, 1952*, and continuing until further order of this Court, the sum of *\$100.00*, payable *\$50.00* to plaintiff for alimony and *\$25.00* to plaintiff for the support of each child.

2. That defendant shall pay unto said Registry, on or before

October 10, 1952, the sum of \$100.00, payable to *Silvester Hasede*, in full the balance of plaintiff's attorney fees.

3. That defendant shall, on or before *October 10, 1952*, pay the \$56.00 in outstanding bills above referred to and file receipts therefor with the Clerk of the District Court.

4. That the real property herein involved shall be disposed of by separate order entered herein.²⁴

5. That Defendant is the owner of both plaintiff's and defendant's interest in the partnership business, *Hpwiumn and Uktlus*, and plaintiff will execute the necessary instruments to assign to defendant whatever interest she may hold. Defendant shall reimburse plaintiff for any income tax liability there may be in plaintiff in connection with her previous position as a partner in said business.

6. That the remaining property of the parties shall be divided as follows:

(a) Each party is the owner of his or her individual checking account.

(b) The Chevrolet automobile is the property of the defendant.

(c) Plaintiff is the owner of the Denargo Oil Company of Toronto common stock and of the joint savings account in the 2nd National Bank of Denver.

(d) Each party is the owner of three (3) of the \$100.00 U. S. Savings Bonds.

7. That Defendant shall maintain in full force and effect and free of any liens and encumbrances the life insurance policy with the NMYRON Insurance Company, paying the premiums as they fall due, with plaintiff as the primary beneficiary on \$5,000.00, and each child on \$2,500.00 thereof, with the children as secondary beneficiaries on all of said insurance. In event of plaintiff's death or remarriage before defendant's death, defendant may substitute the children as primary beneficiaries on plaintiff's \$5,000.00. As each child attains the age of 21, defendant may delete said child as a beneficiary. Present mode of settlement will be altered to provide for lump sum settlement on the death of the insured. The policy will be deposited with the Clerk of the District Court, and the premium receipts will be similarly deposited as received.

The other policy is the property of defendant.

IT IS FURTHER ORDERED that motion for new trial is dispensed with, and 60 days is allowed to either party for Reporter's Transcript.

Done in Open Court this *29th* day of *September, 1952*.

BY THE COURT:

Zadok Zedekiah,
Judge.

²⁴ Separate order is used to dispose of the real property to prevent the necessity of recording a long instrument, only a small portion of which is pertinent.

Approved as to Form :

Silvester Hasede
 Attorney for Plaintiff,
 1st Majestic-Equitable Bldg.,
 Denver 2, Colorado—DYbryt 004U.
Actspard, Dimorzzo, Hort, Hrmok, Lgndah and Pbddson,
 By *F. Lunkeynum Berten,*
 Attorneys for Defendant,
 Court House Square Building,
 Denver 2, Colorado—ZEckendorf 0008.

(USE CAPTION)

CELESTINE CORINNA HPUIWMN,
 Plaintiff,
 vs.
 REGINALD PHINEHAS HPUIWMN,
 Defendant.

ORDER FOR
 DISTRIBUTION OF
 REAL PROPERTY

THIS MATTER having come on to be heard this 29th day of September, 1952:

THE COURT DOTH ORDER:

That *Celestine Corinna Hpuiwmn* is the owner of *Lots 1 and 2, Block 1, Dousthul Heights*, in the *City and County of Denver*, State of Colorado, subject to encumbrances of record, and that *Reginald Phinehas Hpuiwmn* has no right, title, or interest in or to the said property.²⁵

That *Celestine Corinna Hpuiwmn* make all payments on the existing promissory note to the *Only State Bank of Montclair*, secured by Deed of Trust encumbering said real property,²⁶ and that said Deed of Trust shall be released before said *Celestine Corinna Hpuiwmn* convey her interest in said real property.

Done in open Court this 29th day of September, 1952.

BY THE COURT:

Zadok Zedekiah,
 Judge.

²⁵ Although it is customary for a divorce decree to direct one of the parties to convey to the other, or, if he fails to so convey, to appoint a commissioner to act in his stead, it will be noted that the form herewith submitted omits such conveyance. Authority for such procedure may be found in Sec. 279, Patton on Titles, where, among other things, it is said: "The effect of such a decree is in all respects equivalent to a deed executed by the party whom the decree divests of title and in favor of the party thereby invested, except that the latter takes title subject to the contingency of its reversion in case of a reversal of the decree."

Sec. 8, Ch. 56, 1935 C.S.A., provides: ". . . when a divorce has been granted the court . . . may decree a division of property . . ."

See: 84 Colo. 429, 73 Colo. 337, 74 Colo. 231.

See also: 176 P. (2) 363, 148 P. (2) 369, 76 ALR 296, 64 ALR 1392, 124 U. S. 74 (31 L. Ed. 344), 108 N. E. 796, 144 N. W. 139.

²⁶ Because his interest in the real estate is extinguished, the defendant is protected, as a matter of law, from the plaintiff's non-payment, by his right to bid at any foreclosure sale.