



Do Courts Mind Cheating Hearts?

Legally Speaking, Does Adultery Still Matter in Divorce Proceedings?

Divorce Attorneys Question Pursuit of Cheating Spouse

(Vienna, VA)—Larry King, Jesse James, Tiger Woods, Tiki Barber, David Letterman. Every day, there seems to be a new headline about a famous (or infamous) accused cheating spouse. But while infidelity remains salacious to TMZ and scandalous to most, prominent divorce attorneys wonder whether adultery remains the right route when it comes to legal divorce filings.

“It seems to be increasingly less relevant,” says Kyung (Kathryn) Dickerson, a family law attorney and partner with SmolenPlevy in Vienna, VA, who observes that judges are disinclined to use adultery as a hammer. “They are not ruling as frequently that a spouse who cheated, and whose cheating caused the break-up of the marriage, should receive a smaller portion of the marital estate. Depending on whether the children were exposed to or affected by the adultery during the marriage, the fact that a spouse committed adultery may not have an effect on custody either.” Dickerson explains that “the argument is being made, and accepted by the courts, that there were other things wrong with the marriage, besides the adultery, that led to the break-up of the marriage.”

Dickerson says she often counsels clients to abandon plans to hire expensive private investigators to catch cheating spouses. “Why spend \$10,000 or more on a private eye when you probably won’t get a return on your investment?” Dickerson asks. More and more, divorces are granted on the grounds of couples living separate and apart for the requisite statutory period time. In Dickerson’s view, judges would rather grant divorces on those “separate and apart” grounds than brand a cheating spouse with the permanent “Scarlet Letter” of adultery, so why spend the money trying to prove infidelity? Still, Dickerson says some clients need absolute proof of adultery for religious or moral reasons in order to go through with divorce. In those cases, she agrees with the use of private investigators.

Another reason Dickerson says cheaters aren’t punished financially by the courts is because they’re not spending as much money on their affairs, or they’re splitting the costs with their paramours. “There’s less marital waste. They’re going dutch for dinner and avoiding hotel rooms in favor of their lover’s apartment,” says Dickerson. “Maybe it’s the economy, but we’re seeing more cheaters who are in the same economic class as their lover, as opposed to one being

wealthier than the other. The stereo-type of the kept woman or the kept man is increasingly a rarity.”

Dickerson makes the point that she is only questioning the benefit to a client to use adultery as legal grounds for divorce. “Adultery is still illegal in many states, and its emotional and psychological effects on spouses, children and the family can be devastating.” In fact, Dickerson says a claim of adultery may be a way to get divorce proceeding going early in the process. “It kicks opens the courthouse doors,” says Dickerson.

Once a spouse files for divorce, they can ask the court to freeze assets, set up visitation rights and spousal and/or child support payments. Dickerson says if there is sufficient evidence of adultery, it can be used effectively to file for divorce however the client should understand that there’s a good chance that the divorce won’t be granted on those grounds.

Dickerson offers these suggestions to anyone who suspects their spouse of cheating:

- Immediately stop sleeping and having sex with them. Otherwise the cheating spouse can claim the innocent spouse condoned or forgave them.
- Get checked for STDs.
- Don’t move out without consulting with an attorney. Leaving a shared household can be seen legally as abandonment.
- Contact an attorney.

Kyung (Kathryn) Dickerson can be interviewed on this and other family law issues by contacting Celina Fabrizio at celina@onthemarcmedia.com or at (614) 245-1113.