

What's the Deal with Adultery in Maryland?

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Adultery is a misdemeanor in Maryland, punishable by a \$10 fine. It's doubtful that a prosecutor would ever prosecute that crime, but it may have a consequence in a divorce case.

So what's the big deal? There are two areas where an allegation of adultery has a role in the family law arena. First of all, there are the emotional or psychological considerations. The one who has committed adultery may be embarrassed and may not want those allegations to appear in a pleading that is filed in Court. These pleadings are public record, and, even if no one in the press is interested, children, grandchildren, friends and neighbors may, at some time in the future, access those pleadings.

The "innocent" spouse may believe that he/she has a "leg up," and use the possibility of relying upon those formal allegations in negotiations. The allegation of adultery, however, does not have the same stigma that it did when I began practicing law, many years ago.

The "legal" consequences of an allegation of adultery is that, should the case be litigated, the Court is to consider fault as one factor of many in determining both an award of alimony and a division of the marital property. Generally adultery that occurs subsequent to a separation, but while the parties are still legally married, is not nearly as concerning as an adulterous relationship that caused or contributed to the separation.

Since even if proven to be true, the allegation of fault is only one of many factors to be considered. And, since that Court has great discretion in making those decisions, the impact of the fault grounds can be significant or minimal. There's a risk, and that's the concern/consequence that the parties and their counsel must consider.