

FAMILY MATTERS[®]

Trend of the Law: ADULTERY

By Phoebe P. Hall, Attorney, Mediator and Former Judge

Most people enter marriage with high hopes and great expectations. They believe in, and want, monogamy for themselves and their families. They do not think that adultery will ever happen in their marriage.

If this is true, why then do we have the shocking estimates that 60% of married men and 40% of married women have committed adultery? What is it about marriage, about people, and about society today that causes so many people to break their own basic beliefs and intentions?

Today's society pushes people toward affairs. TV and movies glamorize them. Public figures and corporate executives engage in them with impunity. Opportunities abound. Society accepts it.

Adultery today hurts as much as it ever did. Learning

that a partner has been unfaithful can be a devastating blow. Sometimes it is a sign that the marriage already was irretrievably broken. Sometimes it is a cause of the breakdown. Some couples can reconcile their marriages and get past the infidelity; others cannot. Adultery is the only



Different judges view it differently.

ground for which Virginia law provides an immediate divorce without an extended waiting period. It also can be a factor in spousal support and in the division of marital property. There is much confusion about how courts view adultery and its impact. The reality is that different

judges view it differently. The trend is not to "punish the wrongdoer", but fault can be a factor in the court's decision if the particular judge sees it that way. At a minimum, it puts the offender in a less favorable light. Issues arise in divorce cases about when and whether the wronged party should allege adultery and whether the committing party should admit it or should take the Fifth Amendment. There are issues of proof and about how much weight a judge should give to the fact of adultery if and when proven. Adultery often adds an emotional overlay that makes it difficult to resolve matters by agreement. Individuals must grapple with the meaning of the adultery in their lives, and society needs to grapple with the way it fails to support marriages and fosters or encourages the breakdown of the institution of marriage.

Inside this issue:	
Where Do People Find Evidence?	2
What Can Happen?	2
How Much Difference Does Adultery Make Legally?	2
Wills and Estates	3
What Courts Focus On	3
Getting Help	3
What about Dating?	3
Surviving Infidelity	4

- Special points of interest:**
- ♦ *Serving Richmond for over 30 years*
 - ♦ *Convenient offices in Chesterfield & Henrico*
 - ♦ *Offering prompt and affordable services*
 - ♦ *Friendly and experienced staff*
 - ♦ *Client centered options*
 - ♦ *Contested and uncontested matters and mediation*

Important News at Hall and Hall

Our law firm is dedicated to family law matters, and we are called upon by people from all walks of life to counsel them about courses of action they are contemplating, situations they are facing or to provide ongoing representation.

Our services include:

- Wills and estates
- Separation
- Divorce
- Mediation
- Custody and visitation
- Child support
- Spousal support
- Equitable distribution

We help with:

- Prenuptial agreements
- Property settlement agreements
- Negotiations
- Litigation
- Uncontested matters
- Contested matters

We seek to provide what our clients need and want.

Where Do People Find Evidence?

- * Cell phone records
- * E-mails
- * Credit card statements
- * Medical or counseling records
- * Surveillance by private detectives
- * Contact with paramour's spouse
- * Statement by a paramour
- * Admissions by the person committing adultery
- * Many other sources



What Can Happen?

- * Divorce suit can be filed
- * Names, dates, and times get spelled out
- * Interrogatories can be required to be answered under oath
- * Documents can be required to be produced (and destruction of documents could be a crime)
- * People can be subpoenaed to court or depositions
- * 5th Amendment can be relied on but with consequences
- * Illegally recorded telephone conversations can be excluded from evidence
- * Children can get caught in the middle
- * Case can drag on for long time if parties don't settle.
- * Things you say or do can be testified to



How Much Difference Does Adultery Make Legally

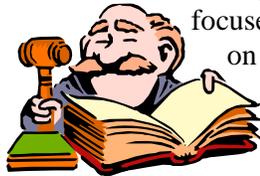
- * Adultery has more emotional impact than legal impact
- * Courts tend to look with disfavor on adultery, but a person does not lose all rights because of committing adultery
- * Some judges take it more seriously than others
- * Adultery usually has more impact when committed by the person seeking support or property division than when by the payor
- * Custody is based on the best interest of the children and not the fault of the parties, but where a person shows more interest in their social life than their kids it can have an impact
- * Courts will prohibit having the children overnight in the presence of someone a spouse is dating
- * Adultery can prejudice a judge against the offender and can make the other party less willing to settle
- * Where adultery is proven divorce can be entered sooner

Wills and Estates By Franklin P. Hall, Esquire

- ★ Husbands and wives each need their own will.
- ★ Trusts are usually needed for minor children, and a Trustee needs to be chosen.
- ★ An Executor must be chosen. This is the person who administers the estate until everything is settled.
- ★ You can't wait until you need a will to write it because then it's too late. Get a will made.
- ★ Whether you are happily married, separated or divorce, or never married, you still need to arrange through your will how your property will pass on your death. You worked too hard for what you have acquired not to provide carefully for your loved ones.

What Courts Focus On

When there has been adultery, clients often think that this should be the focus and central piece of their divorce case. They do not understand that the legal divorce is



focused primarily on matters unrelated to fault. Judges are

primarily interested in deciding custody based on the child's best interest and determining property and support based on financial facts. While fault can be a small factor, it is not the court's primary focus in most cases.

Emotionally, a person whose spouse has been unfaithful has a

huge job working through their own emotional response, but that does not mean this will be the legal focus of the judge's decision-making process. The legal divorce happens differently from the emotional divorce. The court's focus is different from what the parties focus on as they work through their divorce.

Getting Help

When your marriage is at risk because of adultery, do not just listen to well-meaning friends and relatives. Seek professional help. Talk over the situation and its effect on your marriage with a good therapist. Find out about

your legal rights and about the various ways of approaching the process of separation and divorce from an experienced family law attorney. Learn about the options open to you in dealing with such matters. We offer consultations,

ZsmartSM Divorce, and help in various ways with contested and uncontested matters.



What about Dating?

We are often asked by our clients "Can I date" during separation but before a divorce decree is entered. Dating is not legally prohibited (although adultery is) during separation but be cautious:

- ★ Don't rush into dating
- ★ Be discreet; don't flaunt it
- ★ Choose carefully who you become involved with
- ★ Consider if anybody with any sense would want to date you during this messy time.
- ★ Expect hostilities and legal fees to increase if you date
- ★ Expect to be the subject of investigation
- ★ Expect it to be harder to reach an agreement
- ★ Decide if it's really worth it

Law Offices of
Hall and Hall, P.L.C.
The Family Law Firm of Virginia
Divorce Solutions

1401 Huguenot Road, Suite 100
Midlothian, Virginia 23113

&
4323 Cox Road, Suite 100
Glen Allen, Virginia 23060

Phone: (804) 897-1515
Fax: (804) 897-2499

Franklin P. Hall, Esquire
Phoebe P. Hall, Esquire
Tracy H. Spencer, Esquire
Natasha A. Ries, Law Clerk
Deborah A. Allen, Paralegal
Sheri P. Cogle, Paralegal

**Pass This Along
To A Friend!**

We're on the Web!
www.divorceandbeyond.com

Serving you with offices in Chesterfield and Henrico

The content of this newsletter is for informational purposes only. The information contained herein is not intended to constitute legal advice. You should consult an attorney for advice regarding your particular legal situation.

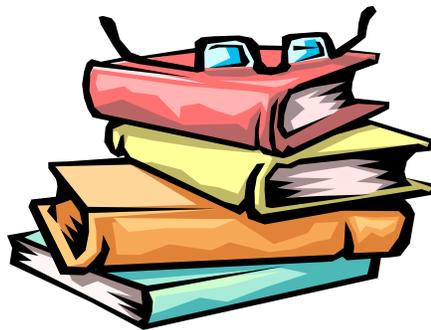
Surviving Infidelity

by Tracy H. Spencer, Esquire

How would you handle it if you found out that your spouse was having an affair? Would you be angry, hurt, confused, all of the above? You are not alone.

There are many resources out there to help you through this ordeal. Talk with a counselor, your minister, priest or rabbi. Read books such as [After the Affair](#) by Janis A. Spring, [Surviving Infidelity: Making Decisions, Recovering from the Pain](#) by Rona Subtonik and Gloria Harris, and [Straight Talk](#)

[About Betrayal: A Self-Help Guide for Couples](#) by Donna R. Bellafore. Visit websites such as www.marriagebuilders.com, www.survive-divorce.com, and www.survivinginfidelity.com.



If you and your spouse are to overcome the infidelity, you will have to deal with issues such as trust, communication, and honesty. It will take a lot of work and open communication.

Can your marriage survive infidelity? That is a question only you and your spouse can answer. If you have questions about your legal rights, schedule an appointment to meet with one of our attorneys at Hall & Hall, PLC. Call us at (804) 897-1515.