

WHEN CAN YOU SEEK DIVORCE BECAUSE OF "FAULT"?

[By Lynnore K. Seaton](#)

February 5, 2010

Tricia Walsh-Smith, the now infamous "You-Tube" divorcee, who posted videos on the internet airing sordid details from her marriage, lost in her recent divorce trial after a judge found her behavior to be "cruel and inhuman" and granted her husband a divorce on that basis. While there are many questions as to whether her conduct actually rose to such a level, the biggest question is why the videos were considered in the first place – they were filmed six months after the couple separated.

The Smith divorce took place in New York, the only state that still requires fault grounds in order to obtain a divorce. Pennsylvania also grants divorces under fault grounds, but the strong preference is for "no-fault" divorces – divorces granted without the necessity of proving fault by the husband or wife. Still, fault claims arise in the Commonwealth, so the question can become, what exactly is "fault" and what does it mean to the divorcing parties?

In Pennsylvania, a plaintiff can obtain a divorce on fault grounds if two things can be proven: that the plaintiff is the "innocent and injured" party and that the defendant is guilty of any one of seven categories of marital misconduct: desertion, adultery, cruel and barbarous treatment, indignities, bigamy, imprisonment for a crime for two or more years or confinement to a mental institution. While these fault grounds remain a part of Pennsylvania law, they are seldom relied upon due to the "no-fault" provisions of the divorce code, which allows parties to end their marriage without showing misconduct by either party.

If the Smith divorce took place in Pennsylvania, Ms. Walsh-Smith's behavior would have most likely been classified as "indignities." Indignities are when the defendant acts in a way as to render the innocent and injured spouse's condition intolerable and his life burdensome. The three elements required to make out a case of indignities are: (1) a course of conduct, as opposed to a single incident, which is (2) inconsistent with the marital relationship and (3) renders the condition of burdensome. What constitutes indignities in any particular case depends upon all of the circumstances, including the position in life, character, and disposition of the parties. Indignities have been described as a course of behavior that is humiliating, degrading and inconsistent with the husband-wife relationship and behavior that a person of "ordinary sensibility and delicacy of feeling" would find burdensome and intolerable.

Fault grounds become even more complicated by the fact that there are numerous defenses, including plaintiff's condonation, consent, provocation and participation. Even if the defendant is found guilty of fault, the plaintiff must also be "innocent" of fault. If the court finds both parties are guilty of fault, a divorce will not be granted under fault grounds.

In Pennsylvania, courts may not look at fault when making decisions on the division of marital property. Fault does become a factor when the "at-fault" spouse is seeking spousal support from the other prior to the divorce. Marital misconduct, even after separation, may be used as an entitlement defense to paying support if it can be proven with clear and convincing evidence. Additionally, fault is one of 17 factors the court must consider when determining if alimony is necessary and in determining the amount and duration of alimony payments.

Given the complications involved, especially in comparison to the benefits, one can see why fault claims are used less and less frequently in Pennsylvania. Additionally, the use of fault can fuel more emotions in an already extremely emotionally charged situation, so it may be quicker and less painful in the long run to file for a no-fault divorce, despite the clear presence of fault. Meanwhile, the Walsh-Smith saga continues. Her new attorneys filed an appeal on June 5, 2009, which is ongoing. On October 5, 2009, Ms. Walsh-Smith released another video which hurls more insults at her ex-husband.

© 2010 McNees Wallace & Nurick LLC

This document is presented with the understanding that the publisher does not render specific legal, accounting or other professional service to the reader. Due to the rapidly changing nature of the law, information contained in this publication may become outdated. Anyone using this material must always research original sources of authority and update this information to ensure accuracy and applicability to specific legal matters. In no event will the authors, the reviewers or the publisher be liable for any damage, whether direct, indirect or consequential, claimed to result from the use of this material.