

# Bad Behavior In Marriage: The Arnold Factor In Divorce Proceedings

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With all the news of Maria Shriver and Arnold Schwarzenegger's marriage and infidelities, emotions are running high and there has been a lot of discussion about Mr. Schwarzenegger being a "bad guy."

There is no doubt that what Mr. Schwarzenegger did, by his own admission, is wrong. There is no way to sugar-coat this. Not only did he break his marriage vows, but he did so with an employee, in his home, and he kept the child a secret. There are so many levels to this duplicitous behavior that it would take pages to analyze and to discuss the level of his deception. However, as a matrimonial lawyer, the issue that is glaring is the issue of marital fault.

In New Jersey, as in many states, marital fault is not a factor in determining a resolution or outcome of a divorce. In New Jersey, when distributing property, the Court shall consider many issues – fault is not one of them.

The Court would consider:

- The duration of the marriage;
- The age and physical and emotional health of the parties;
- The income or property brought into the marriage;
- Standard of living established during the marriage;
- Written agreements made by the parties before or during the marriage;
- The economic circumstances of each marriage at the time that the property is being divided;
- Income and earning capacity of each party of the marriage;
- The contribution by each party to the education and training of the other;
- The contribution of each party to the acquisition of the assets;
- The tax consequences of the distribution to each party;
- The value of the property; and other factors.

Fault, however, is a factor that is not one to be considered; nor is fault a factor to be considered in the assessment of alimony.

Now, of course there are circumstances where there will be a consequence to egregious behavior. For example, there is a reported case wherein the husband acted so egregiously toward the wife that the issue of alimony was impacted.

However, in “No Fault” States, like New Jersey, all of Mr. Schwarzenegger’s bad behavior will not be punished, nor will he be accountable in a divorce court. He is accountable maybe to his own conscience, maybe to his children, maybe to his friends and family, and maybe to his maker – but in a Court of Law, there will be no impact upon the divorce settlement.

This is disturbing, to say the very least, to many people. There is a sense when people come to this place that there should be fault. As if it is a crime if somebody cheats, steals or does something horrific to the other – that is just not the way it is.