

# To Lie Or Not to Lie In Divorce Matters

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Although lying may appear to be rampant in our society, in divorce matters, lying is unacceptable.

The legal system is based on everyone, lawyers and litigants alike, telling the truth. Litigants take oaths to tell the truth. Lawyers take oaths to tell the truth and to uphold a code of ethics which directs lawyers to show “candor to the tribunal” and not make misrepresentations. Lying is never acceptable.

In 2004, a book called “The Cheating Culture” was published, where the author posited that stress from economic inequality has corroded moral values resulting in a “winner take all” philosophy such that people cheat, i.e., lie in all areas of life—sports, business, law, academics, journalism, entertainment and medicine. What is upsetting about this book and events which continue to catch our attention with the 24-hour news cycle, is that lying can be seen as a way to use the legal system to one’s advantage to “get it over” on the other side.

All too often, litigants going through divorce, where emotions run high and can overtake good judgment and common sense, will lie to their lawyers, to their spouse, as well as the court. A not infrequent example is when a client comes in and tells a lawyer that he has cash which he does not want his spouse to know about. Once that revelation is made, a lawyer must tell the client that he must reveal this asset or the lawyer cannot represent him. A lawyer cannot assist a client in committing perjury (lying to the court when he reveals his assets). Either the client agrees to reveal the cash or, he does not hire that lawyer, goes to another lawyer, and does not reveal the cash. This scenario perpetrates a lie upon the court and the spouse. Since the existence of cash is often very difficult to prove without spending a large amount of money on a forensic accountant, the litigant who is willing to lie about possessing cash (or lie by omission) is able to reap the benefit of the lie.

Recently, I began thinking about the frequency of lying we see around us which the media is all too ready to report. Some people get away with it, while others are penalized. In divorce matters, lying is never acceptable, but in society, it happens so often that the act of lying has become part of our culture.

Take, for example, the case of Jussie Smollett. Jussie Smollett allegedly staged an attack by two men to appear that he was the victim of an anti-gay and racist assault because he was unhappy with his salary on the show "Empire." Within two months, all charges he made were dismissed because they were untrue. He lost his job on "Empire," and the city of Chicago is suing him for reimbursement of \$130,000 for the overtime spent investigating the false charges.

Then, there is Michael Cohen who was caught lying to Congress about a real estate deal President Trump and his company pursued while Trump was campaigning for the Republican nomination.

And, most recently, the college admissions scandals exposed people with money and power who bought their children's admission to prestigious schools based on illegal payments and fraudulent resumes of the student.

Who can forget the sad story of Tawana Brawley, who falsely accused three policemen and a prosecutor of raping her and smearing racial slurs on her body? Only when a Grand Jury found that she may have staged the appearance of an attack did the public view of Brawley and her adviser, Al Sharpton, change. The prosecutor, Steven Pagones, filed a defamation lawsuit against her, Sharpton, and her attorneys, which resulted in a \$345,000 verdict against Sharpton and his advisers, and a \$185,000 verdict against Brawley. Brawley is paying off the debt by her wages being garnished.

Also, the young woman who falsely accused members of the Duke lacrosse team of assault, which resulted in three boys leaving Duke, and the overzealous prosecutor who was running for reelection being disbarred for making false statements before a judge and withholding exculpatory evidence from the other side.

All of these news stories are about people who hoped to gain an advantage in the legal system or hoped to absolve themselves of their misdeeds by lying. When viewed through the lens of a court, liars will suffer consequences. In a divorce matter, the same is true.

The failure to tell the truth in a divorce case results in one spouse failing to deal fairly with the other. In theory, the dissolution of a marriage should be equitable and fair. Litigants should expect to have a fair and equitable outcome, and to be treated with civility by the court and with honesty by their spouses. Although our society shines a light on sensational stories of liars, and the consequences they face, litigants going through a divorce should never consider lying as a benefit to their cases. The court and the lawyers in a divorce matter need to be ethical and remind their clients that only the truth will make for a fair resolution of their case, and a civilized dissolution of their marriage.

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