

To get a divorce you must have a reason. Some reasons for divorce don't require proof that your spouse was at fault. Other reasons, such as adultery, do require proof of fault. In most states, you may choose to have either a no-fault or a fault-based divorce. In some states, you can only get a no-fault divorce.

In Mississippi adultery is defined as “voluntary sexual intercourse of a married person with a person other than the offender’s spouse” One act of adultery is a ground for divorce. Adultery can be directly established in court by the spouse admitting to adultery, by the testimony of the paramour, or other direct evidence including audio and video recordings, testimony of friends, family, medical professionals, and/or private investigators, pictures, etc. However, adultery can also be established in Mississippi by clear and convincing circumstantial evidence showing: (a) a spouse’s generally adulterous nature, including infatuation with another person or a proclivity to adultery, and, (b) a reasonable opportunity to satisfy the infatuation or proclivity.

Circumstantial evidence of adultery could include: overnight stays with a suspected paramour, giving or receiving gifts to a paramour, physical affection or admissions of affection towards another, frequent phone calls, text messages, cards, or other correspondence to the suspected paramour, and other secretive behavior relating to the paramour.

- 'Condonation is a defense available to a claim of adultery in Mississippi. Under the defense of condonation, a spouse who resumes a sexual relationship after learning of the other’s adulterous affair has forgiven, or “condoned” the adultery. Condonation may bar the divorce based on adultery.'

## Choosing Between No-Fault and Fault-Based Divorce

A spouse may choose a fault-based reason for divorce even when no-fault divorce is an option. Often no-fault divorce laws require the couple to be separated for a longer time period than when a fault-based reason is given for seeking a divorce. In some states, a spouse who proves the other's fault may receive a greater share of the marital property or more alimony. Marital property is property that both spouses have rights to.

## Proof of Adultery

You must have proof to get a divorce based on adultery. A feeling or a belief that your spouse

committed adultery isn't enough proof. Adultery can be difficult to prove and requires supporting evidence from an additional person. It's usually not enough for both spouses to admit that one committed adultery. Adultery must be independently proven as fact.

Usually there's no direct proof of adultery, such as eyewitness accounts or photographs, so adultery has to be proven with circumstantial evidence. Circumstantial evidence is indirect evidence based on implications. Adultery may be proven indirectly by showing an opportunity, such as the spouse was in the company of someone else where sexual intercourse could have occurred, and an inclination to commit adultery, such as the spouse and other person were likely to participate in sexual relations under the given circumstances.

To prove adultery, you either need an eyewitness, which is very unlikely, or circumstantial evidence that logically leads to the conclusion of adultery and is inconsistent with the normal behavior you would expect from an innocent spouse. To prove adultery using circumstantial evidence, you would need to show both an inclination and the chance to commit adultery. Proof that two people are inclined to commit adultery may consist of such things as their public displays of affection or their love letters. Proof of opportunity may consist of travel or hotel records.

If your spouse has found someone else and you think the marriage is over, you may want to consult a divorce attorney before you confront your spouse. Your lawyer can advise you on what you should do to get the evidence of adultery that you may need if you decide to file for divorce based on the grounds of adultery.

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