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## Adultery & Alimony: A Legal Update

By Susan Reach Winters, Esq., & Lisa DiPasqua, Esq.

**D**o you think that your spouse's indiscretions should be considered by a judge when awarding alimony? The New Jersey Supreme Court is examining this very issue in *Mani v. Mani*. The Court will decide whether marital fault is a viable factor in alimony awards and, if so, whether divorcing parties should be obligated to prove the extent to which each of them contributed to the demise of the marriage.

Brenda and James Mani were married for 27 years. During the marriage they operated a busy boardwalk concession stand together in Seaside Heights. Brenda received an inheritance during

the marriage that grew to over a million dollars, and in 1993, they jointly decided to retire. When the Manis divorced, the court awarded Brenda to pay James \$610 per week in alimony. The Appellate Division later reduced James's alimony award because he admitted to having an extramarital affair.

New Jersey law permits judges to consider marital fault when awarding alimony to a dependent spouse. In practice, however, marital fault is not taken into consideration unless it is egregious. Rather, the general considerations in awarding spousal support are the needs of the requesting party,

the other party's ability to pay and the standard of living during the marriage.

Proponents of considering marital fault argue that a spouse should be penalized (or not rewarded as the case may be) for causing the breakdown of the marriage. Opponents argue that if judges consider marital fault, it will cause more contemptuous litigation by inviting more spouses to charge fault while forcing others to prove innocence.

Whatever the Court decides in *Mani*, it is clear that the issue of adultery's effect upon alimony will be discussed for years to come. Budd Larner, P.C. [www.buddlarner.com](http://www.buddlarner.com) (973) 379.4800

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