

## New York Divorce and Family Law Blog

### [Why is Perjury Condoned in New York Divorces?](#)

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The absence of no fault divorce in New York has many unintended and unfortunate consequences. Perhaps the single most disturbing consequence is that divorce courts are forced to accept as true, testimony known to be false. That is, as one trial judge, recently pointed out, “it forces judges and special referees who preside over these cases to in effect turn a blind eye — or at least a myopic one — to what is technically perjury.”

In the case of [Andrew T. v. Yanna T.](#), the husband was granted an uncontested divorce from his wife on the ground of constructive abandonment- simply stated, the wife’s unjustified refusal to engage in sex for one year preceding the commencement of the divorce. Problems arose because before the divorce was granted the Wife gave birth to a child, which had to be conceived during the period when the parties were allegedly not having sex; the husband claimed he was the father.

Had the case been brought in any other state, a no-fault ground could have been alleged with no fault being assigned. But because New York does not recognize no-fault divorce, litigants are forced to assign blame and, most often, allege that they have been constructively abandoned by their spouse. As noted by the Court, herein is the problem:

. . .when the ground is utilized there is quite often a wide discrepancy between what is said to obtain the divorce and what really has taken place between the parties in the privacy of the marital bedroom. . . .

Although perjury of any kind is not to be condoned, the context in which it arises must be taken into consideration. The sad truth is that New York's insistence on fault-based divorce ends up promoting a disregard for the truth by "fostering and encouraging the embellishment of a spouse's wrongdoing as to grounds, often with immeasurable effects upon a divorcing household.

The problem takes us down a slippery slope. How can a court condone permitting perjury to make out marital fault in divorce but not in other circumstances? Why is it ok to lie about a constructive abandonment, but not the family finances?

The fix is easy. The legislature should recognize a no fault grounds for divorce and then there will be no need for courts to ever condone perjury.