

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Max Rodden](#) is a North Carolina Bar Board Certified Family Law Specialist and has been practicing family law since 1991. He represents clients in all aspects of family law, and has extensive trial experience at all levels of North Carolina courts including district, superior, special proceedings, juvenile, small claims, administrative proceedings, the Court of Appeals and the Supreme Court.

Spousal Abandonment in North Carolina

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Spousal abandonment occurs when one spouse ends the marital cohabitation without justification or provocation, without the consent of the other party, and without any intent to resume the marital relationship. Even though the concept of abandonment appears in court papers as a basis for claims or defenses in spousal support claims and divorce from bed and board claims, I find that whether one spouse has abandoned the other is rarely litigated in courts. One of the main reasons why is because abandonment in and of itself is typically not an independent claim. Instead, the concept of abandonment arises in the context of other recognized legal claims that can be made.

Abandonment is one of the grounds for a claim for divorce from bed and board. Divorce from bed and board is a judicial separation, which is a declaration by a court that certain rights and obligations between spouses no longer exist and can involve awarding exclusive possession of the marital residence to one of the spouses. Divorce from bed and board claims could be the topic of an entirely separate article. I do not find them to be common. Most spouses separate as a result of the decision by one or both spouses and do not need court intervention. Whether a divorce from bed and board claim should be filed depends on the circumstances of each case and is a judgment call made by the spouse and his or her attorney. Even when divorce from bed and board claims are filed, they usually do not go to trial, usually because the marital separation occurs after the claim is filed and before a trial becomes necessary.

Abandonment is a type of marital misconduct in the spousal support context. Whether the judge considers abandonment and almost all other types of marital misconduct for spousal support purposes is in the judge's discretion. Adultery is the only type of marital misconduct that removes the judge's discretion as far as entitlement to alimony. Therefore, I find that except for adultery, abandonment and other types of marital misconduct, really do not become relevant in spousal support cases. Abandonment is not usually a consideration in the spousal support context also because of the important financial considerations in spousal support cases. Determining the amount and duration of spousal support involves careful examination and consideration of the financial circumstances of both parties, including income, expenses, assets, and debts, earning capacity, and health of the parties. I find that unless adultery is involved, financial circumstances dominate the discussions, negotiations, and trial time in spousal support cases.

The elements of the abandonment definition preclude its application in both the divorce from bed and board and spousal support context in a lot of cases. Abandonment does not exist if a spouse was justified in leaving the marriage. A separation that occurs with the consent of both parties does not involve abandonment.

Another form of abandonment, called constructive abandonment, also exists. Constructive abandonment does not involve the actual ending of the marital cohabitation.

Constructive abandonment can arise from substantial acts or omissions on the part of one of the spouses while the spouses are still living together. As with actual abandonment, I do not find constructive abandonment to be a commonly significant consideration in the negotiation and litigation of divorce cases.

When spouses raise a concern about abandonment, attorneys cannot accurately tell them that abandonment as a legal concept no longer exists but should counsel the client about whether it has any practical application in each particular case.

Abandonment does come into play when you have supporting spouses who willfully abandon a dependent spouse without providing adequate support. This type of abandonment is subject to criminal charges. Similarly, parents who willfully neglect or refuse to provide adequate support for his or her child are also subject to criminal charges. Therefore, attorneys should consider carefully with his or her client whether there are criminal implications to the conduct of either party. In my practice, I have not been aware of a criminal charge instituted by a district attorney's office for abandonment in the last twenty years.

Under North Carolina law, a spouse who is found to have abandoned a deceased spouse loses rights that otherwise exist between spouses when one of them dies. A detailed explanation of those rights is beyond the scope of this article, but surviving spouses automatically have rights to the property of each other which are lost by a spouse who abandons the other one. As a family law attorney who does not handle the administration of estates for deceased persons, I do not know how often the issue of abandonment arises in that context.

Therefore, when new clients often ask about their exposure to a claim for abandonment, that is, whether he or she is likely to get in trouble for abandonment, I am compelled to respond that the concept exists and outline the foregoing legal principles. However, throughout the history of my practice, it has usually not applied for one reason or another or has no quantifiable impact on the case.

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