

grounds and defenses

There are basically three ways that you can get a divorce in Mississippi. You and your spouse can agree that you want to be divorced and agree to all aspects of your property division and all the intricate details dealing with your continued care for your children post divorce. If you choose this route you will sign a Joint Complaint for Divorce- Irreconcilable Differences, Child Custody and Property Settlement Agreement and Final Judgment of Divorce. You will also exchange sworn Financial Declarations, which expressly lay out income, monthly expenses, assets and liabilities. The Joint Complaint is filed with the Chancery Clerk's office after paying a modest filing fee. The Complaint must be on file for at least sixty days before I can set up a meeting with the Judge to have him review and approve the Agreement, which is incorporated within the Final Judgment. If you have children, most judges will require that you also file your Financial Declarations, and some counties have a requirement that divorcing parents attend a parenting class that discusses children of divorced families. Once the Judge is satisfied that all the paperwork is in order and the children are going to be properly maintained, the Judge will sign off on the Final Judgment and I will take the document back to the Chancery Clerk's office and place the Final Judgment on file in the public record, accessible by anyone. I will give you an attested copy of your Divorce, and you should keep the original among all of your important papers, with a copy close at hand for ready reference.

The second way that you can get a divorce is if you or your spouse has a reason to get a divorce. A divorce based upon any one of the twelve statutory grounds must go to trial. Reasons for divorce in Mississippi are as follows:

First. Natural impotency.

Second. Adultery, unless it can be shown that one of the parties colluded to get a divorce based upon adultery or that after the injured party found out about the adultery, they continued to live together as husband and wife.

Third. Being sentenced to any penitentiary, and not pardoned before being sent there.

Fourth. Wilful, continued and obstinate desertion for at least one year.

Fifth. Habitual drunkenness.

Sixth. Habitual use of drugs.

Seventh. Habitual cruel and inhuman treatment.

Eighth. Insanity or idiocy at the time of marriage, if the party complaining did not know.

Ninth. Marriage to some other person at the time of the pretended marriage between the parties.

Tenth. Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy.

Eleventh. Incest.

Twelfth. Incurable insanity.

The most frequent grounds for divorce are cruelty, adultery, desertion, and habitual use of drugs and/or alcohol. Cruelty is a culmination of conduct perpetrated by one spouse against the other over a period of time that makes the marital relationship unbearable to the innocent spouse and which endangers the offended spouse's life, limb or health, or which creates a reasonable apprehension of such danger. What is cruelty in one household may not be cruelty in another. What is cruelty to one Judge may not be cruelty to another. What constitutes cruelty is open to interpretation and it is one of the most difficult grounds for divorce to prove. Cruelty can be actions or inactions. Cruelty can be characterized by emotional abuse and physical violence, neglect and non-support, drunkenness, drug addiction, refusal of sexual relations, adultery, profanity and verbal abuse. Many lawyers see cruelty as the "catch all" ground for divorce. If a person wants a divorce and the other party will not agree, cruelty is often what will be pled.

Adultery does not require proof of sexual intercourse. Adultery can be proven if it is shown that the offending party had the inclination and opportunity to consummate an adulterous relationship. You can use your imagination as to how this can be shown in court.

Abandonment is the withdrawal of marital relations for the space of one year when during that year the abandoned spouse was ready and willing to accept the abandoner back into the marital relationship. Abandonment can occur when one party actually leaves, but it can also occur under the same roof due to a withdrawal of one party from the normal functions of a marriage, like sexual relations.

If seeking a divorce on grounds, make sure you have your proof first, because once you file, you can rest assured that your spouse will probably walk a straight line. Also, before you are actually divorced, you should not do anything to give your spouse any grounds for divorce because it can and will be used against you. If you cannot prove your grounds for divorce, you can be denied a divorce in Mississippi. In other words, if your spouse does not agree to give you a divorce and you do not have a reason for divorce, you stay married.

There are various defenses to the grounds for divorce; the most obvious is a showing that the claimant did not prove the requirements for the particular ground. Some others are collusion, consent, condonation, unclean hands, provocation, reformation, lack of capacity, antenuptial knowledge, waiver, lack of jurisdiction, fraud and res judicata. Condonation is the forgiveness of a marital offense. Collusion as a defense is a little dated, as it was implemented before people could agree to get a divorce based upon irreconcilable differences. The idea was that fraud was perpetrated on the court to obtain a divorce. The current impact of this is that I will place a "no collusion" affidavit in a fault-based complaint for divorce. The unclean hands defense or "recrimination" is the idea that a person cannot gain relief in chancery court if they are guilty of misconduct themselves. People must come to court with clean hands to gain a divorce. Lack of

jurisdiction means that suit was brought without complying with the statutory requirements for divorce. Res judicata is a Latin phrase that entails one not being able to make the same claim twice to obtain a divorce. The other defenses to divorce are very technical and should be discussed with me if they are applicable or you have questions. If a person wants to be divorced from you, you cannot make that person live with you and carry on as a loving spouse. However, there are tactical advantages to defending a divorce. Often times you can gain a better monetary settlement if your spouse wants a divorce and cannot get it without your cooperation. In other words, "I will not give you a divorce, but I will certainly sell you one."

The third way that people may be divorced in Mississippi is by a combination of the first two. Parties may consent to a divorce on the ground of irreconcilable difference or they may simply not contest that their spouse has a reason to divorce them, but allow the Chancellor to decide whatever issues that they may not be able to agree upon. For example, a divorcing couple may be able to settle all of the issues between them except what, if any, alimony the husband will pay his wife. Typically the parties will enter into a written stipulation that sets out what they agree to and what they do not, which will be entered into evidence as the first order of business in the trial of the issues that remain contested. The Chancellor will decide all of the other issues, and only those issues will be subject to appeal.

prenuptial agreements

Prenuptial agreements are documents signed before marriage that set out the terms of dissolution of a marriage as a result of death or divorce. If you signed one of these, it is important for me to know. We may want to defend the terms of the agreement or we may want to see if there is any way to overcome the terms of the agreement for a number of technical reasons. The law as it relates to these agreements changes a great deal, and most Mississippians do not have prenuptial agreements.

postnuptial agreements

Postnuptial agreements are often signed when divorce is a possibility, but the parties want to attempt to make their marriage work. A postnuptial agreement contemplates reconciliation, but deals with the terms of a divorce if the marriage fails.

legal separation

There is no such thing as a legal separation in Mississippi. One is either married or not. In a contested divorce proceeding or one based upon grounds, one party or the other may ask for temporary relief, and if granted, the effective order is tantamount to a "legal separation", but neither party is free to date or conduct him or herself as a single person for any legal purpose until they are actually divorced. There is also such a thing as separate maintenance, which is alternative to divorce and entails the entry of an Order similar to one for temporary relief, which sets out the parties' respective obligations during the parties' separation. The types of issues that are addressed in a temporary order and an order for separate maintenance are child custody, visitation, child support and related matters, life insurance, health insurance, alimony, use of the marital domicile, use of personal property and vehicles, payment of debts and other issues that parties face while living separate and apart. Separate maintenance ends when the parties resume

cohabitation, and it is not uncommon for a husband who is paying separate maintenance to magically decide to come home.

annulment

An annulment is a decree that invalidates a marriage from its inception. The decree is based upon some defect that existed at the inception of the marriage. Situations that would constitute an annulment are rare, but they may occur if the marriage is void due to bigamy or incest. Marriages may also be annulled in the case of incurable impotency, insanity or failure to comply with the statutory provisions for marriages when a marriage was not followed by cohabitation. A marriage may be annulled if either of the parties to a marriage is incapable of getting married due to age or inability to understand or consent to a marriage, or due to a marriage procured by force or fraud. Finally, a marriage may be annulled if the wife is pregnant by another person and the husband did not know of such pregnancy. An annulment suit must be brought within six months after the ground therefore is discovered, and annulment is separate and apart from divorce and does not affect the thirteen total grounds for divorce.

chancery court

Divorce actions take place in chancery court and are heard by a chancellor. Other matters that are heard in chancery court are matters of estate when a person dies; minor's business; cases dealing with persons of unsound mind; and cases dealing with real estate. There is no jury in a divorce case and the trial is held in open court.

residence

Laws related to divorce vary greatly from state to state. Mississippi is a good place to live if you would like to stay married and your spouse has no reason to divorce you, but it is not a great place to live when it comes to payment of child support. Our child support guidelines are some of the lowest in the nation, but they do extend to age twenty-one, whereas some states stop at age eighteen. To be eligible for a divorce in Mississippi, you or your spouse must be an actual resident within this state for six months before you file. If you are a member of the armed services of the United States and are stationed in the state and residing within the state with your spouse, you will be considered a resident, provided you were here at the time of your separation. In any case where residence is acquired in this state with a purpose of securing a divorce, the court will not hear the case.

venue

Venue means the county that will hear your divorce. Venue is very important because different chancellors have different interpretations of our laws that may be beneficial or harmful to your case. Chancellors do not always follow the law to the letter, because they may not understand the law or they may know that in certain instances an appeal is impractical or too expensive. I am very familiar with all of our local chancellors, and there are some that I would prefer to hear your case than others. Some know and follow the law, but others have no real grasp of what being fair and equitable means. We have many good judges, but we also have many bad judges. We have many hard working judges, but we also have many lazy judges.

Basically, all divorce complaints, except those based solely on the ground of irreconcilable differences, must be filed in the county in which the person filing first lives if the spouse lives out of state or is absent from the state. However, if your spouse is also a resident of Mississippi, the complaint will be filed in the county in which he or she resides or may be found, or in the county where you and your spouse lived at the time of separation, so long as the person filing is still a resident of that county.

A complaint for divorce based solely on the grounds of irreconcilable differences can be filed in the county of residence of either party if both parties are residents of this state. If you or your spouse is not a resident of this state, the complaint shall be filed in the county of the person living in Mississippi.

If a divorce is initiated against you in another state, you and I will work together to find an out of state attorney to deal with the Complaint in the most advantageous way possible.

filing

There are tactical advantages for the person who files for divorce first. The legal document that starts the proceeding is the Complaint for Divorce. It covers technical matters and asks the court for anything to which you may be entitled. If you and your spouse cannot agree on something, then you must ask the court for it in the Complaint or the court cannot give it to you. Remember, you cannot get what you do not ask for, so lawyers often put way more than they could really expect to get in the Complaint. If the wording seems bizarre or as if it were written in another language, remember that it is a formal legal document and a great deal of the wording is required by old laws. If your spouse has already filed, be sure that I have a copy of the Complaint as soon as possible.

If you file first, your name will be listed on the Complaint as the Plaintiff. Your spouse will be the Defendant, but he or she may still file for relief against you in the form of a counterclaim. The cost for filing a Complaint is usually about \$90.00, and after it is filed you must have someone "serve" your spouse with process. This usually costs about \$25.00, but it could be much more expensive. The sheriff's department has people who serve papers, but we often use private process servers when we think service will be difficult or if time is of the essence.

If your spouse does not answer the Complaint within thirty days, we can have a trial without him or her. A divorce cannot be rendered without having a witness to agree or cooperate your testimony in court, unless the divorce is based upon irreconcilable differences, and in that case the divorce may be entered by me after a meeting with the Chancellor to present the divorce.

temporary hearings

A temporary hearing is usually the first formal event that takes place after a contested divorce Complaint is filed and served. A person can have a temporary hearing in divorce, child custody, separate maintenance and in certain other family law actions by serving their spouse

with a special summons along with the Complaint and prayer for temporary relief, which requires him or her to be in court at a specific time on a specific day. Although according to court rules you could have a hearing on a prayer for temporary relief within seven (7) days of service of process (when your spouse is handed the contested Complaint by the sheriff or private process server), it usually takes a good bit longer to get a setting with the Judge. Depending on where in Mississippi you live, the access to court may be limited depending on the local rules. Some chancellors will give the litigants thirty minutes to an hour per side and limit the number of witnesses that can be called; some chancellors will basically refuse to have a temporary hearing and ask the lawyers to present the case to them in summary form; and some chancellors will not limit your access to the Court at all. After testimony is taken and/or after the Judge is satisfied that he or she has heard all they need to hear, a Temporary Order will be entered that will govern until a new order is entered upon the final hearing of the case. There are a few instances that a Chancellor will entertain a request to modify the provisions of a Temporary Order, but these are few and far between. Remember, fifty percent of the married people in your county will probably get a divorce, and there are usually only one or two judges whose job it is to make decisions in these cases, not to mention the many other types of cases that chancellors hear. For this reason and because I will spend more time on your case than the Judge will, I always like to propose a settlement of the temporary issues.

discovery

Discovery is the official process of gaining information in a lawsuit. There are a number of forms of discovery, including depositions, interrogatories, request for admissions, request for production of documents, request for inspection of land, requests for mental or physical examinations, and subpoenas.

A deposition is a question and answer session that takes place under oath in the presence of a court reporter (the person whom you see operating the little typewriter-like machine in courtrooms on television). It is a discovery device used to gain information from the person being deposed. Depositions will usually take place in one of the attorney's offices at a conference table, and both you and your spouse have the right to attend with your attorney. I can ask questions of a witness under oath in a deposition if that person may know something pertinent to your case. Depositions can last thirty minutes or a full day, depending on the skill of the attorneys, the nature of the case and the complexity of the issues. Depositions are usually very expensive, so we will work closely with one another to make sure that any deposition taken is necessary. Not only do you have to pay me to be present, but you will also have to pay for the court reporter and for other related expenses. The Judge will not read your deposition before trial except in very special circumstances, but the person being deposed must still tell the truth under penalty of perjury, just as if they were testifying in open court. The penalty for perjury is very steep, so it is important to tell the truth. Depositions are used to find out information and to hold a person to their story in court. It is very common for a person's testimony in court to be compared to the story they told at their deposition.

Interrogatories and requests for admissions are written questions that you must answer within thirty to forty-five days after the lawyer receives these requests. Interrogatories are tools used to gain information and requests for admissions will narrow certain issues by having you or your spouse admit or deny certain things. Most lawyers have a bunch of form questions that they

will ask in any divorce action, and it will be up to me to make sure that the questions are designed to actually lead to information that would be useful in the divorce case. Requests for production of documents are just that, a request of one of the parties to the divorce to produce certain documents that they may have in their possession or control, like bank statements or car titles.

When the mental or physical condition (including the blood group for paternity actions) of a party or a child is in controversy, the Judge may order the party to submit to a physical or mental examination. The order may be made only upon formal request for a good reason.

A subpoena is an official piece of paper stamped by the chancery clerk that can require a witness to attend a deposition or a hearing in court, or it may require the person or business served with the subpoena to provide certain requested information within a specified period.

separation and reconciliation

You do not have to live in a separate household to go through a divorce. In fact, it is common for people to live in the same place up until the time of the divorce. Conversely, just because you separate does not mean you have to get a divorce. I encourage people to attempt to salvage their marriage if possible. You can always reconcile at any point, before or after a divorce. In Mississippi there is nothing special that you have to do if you want to reconcile, I can simply have the divorce case dismissed. If you get back together with your spouse after your divorce is final, you will have to be remarried to legally resume your marital relationship.

suicide and domestic violence

Suicide is the eleventh leading cause of death in the United States and the third leading cause of death for the young. Homicide is not far behind. On average, one person every eighteen minutes kills himself or herself. White males are more likely to kill themselves than any other group, and there are over four male deaths by suicide for each female death by suicide, even though there are reportedly three female attempts for each male attempt. Five million living Americans are estimated to have attempted suicide, and divorce is the leading factor linked with suicide rates above all other physical, financial and psychological factors. According to several sources, a person may be suicidal if he or she:

- Talks about ending his/her life
- Has problems eating, sleeping or completing everyday tasks
- Has severe changes in conduct
- Distances oneself from loved ones and/or social activities
- Loses interest in life
- Legally prepares for death with a will or other final arrangements
- Gives prized possessions to others
- Has attempted suicide
- Unnecessarily puts oneself in dangerous situations
- Has suffered recent losses
- Is preoccupied with death and dying
- Loses interest in his/her personal appearance

➤ Increases drug or alcohol consumption¹

According to the American Bar Association Commission on Domestic Violence, each year one million women suffer nonfatal violence by a person with whom they are intimate. By other estimates, four million women in the U.S. experience a serious assault by a lover during an average year, and almost one-third of adult women experience at least one physical assault by a partner during adulthood. Intimates perpetrate over one quarter of all annual violence against women with only five percent of all annual violence against men being perpetrated by intimates.

The most dangerous time for a divorcing woman is in the few weeks prior to or a few weeks after the divorce. Statistically, women are usually the victims. Little is known about women who kill their husbands because it happens less frequently. When this does occur, however, there is almost always a history of violence in the relationship.

Domestic violence certainly has lasting effects upon the family unit. Each year family members expose an estimated three million children to violence, and fathers who batter mothers are two times more likely to seek sole physical custody of their children than are non-violent fathers. Domestic homicide is often the culmination of an escalating history of abuse, be it verbal or physical, and eighty-eight percent of domestic violence fatalities had a documented history of physical abuse. Forty-four percent of victims of domestic homicides had prior threats by the killer to kill the victim or themselves, and thirty percent had prior police calls to the residence

If there has been any violence in your family, we need to discuss it before anything is filed. We will want to determine whether a restraining order is needed and the best way to get it. Some spouses will simply stay away if such an order has been issued, and even if your spouse will not obey the order, it will help the police deal with your spouse if the need arises.

If there are allegations about your committing domestic abuse toward your spouse or children, tell me about it so that I can be prepared to handle the situation. I do not like being surprised in court and it will make us both look ridiculous if you keep important information away from me. There is a good chance that your spouse will make a spectacle out of these allegations. If you are innocent, we need to sort out our proof to defend you. Often there is an explanation about why things happened, such as your spouse was attacking you and you shielded yourself. If you committed abuse you will need to get counseling and stop the abuse or you will find yourself in jail and I will not be representing you for very long.

Child abuse is sick. False allegations of child abuse are just as sick. Both do damage that can continue through a family for generation upon generation. Just because you are getting a divorce does not automatically mean that your spouse will mistreat your children. Keep in mind that you brought the child into this world with your spouse and your children need you both to develop into a healthy adult.

Abuse is often questionable. In some cases one person's abuse is another person's discipline. Some experts, such as a psychologist, can be helpful. Some can make the problem worse. If the police are called, be calm. Even if you called the police they may arrest you if you

¹ Please see American Association of Suicidology (www.suicidology.org)

do not act rationally in their presence. Being aggressive with the police obviously increases the likelihood you will be arrested.

restraining orders

A Restraining Order or Injunction is a court order that attempts to prohibit something from happening that may cause future harm. In a divorce case, you may need your spouse to be restrained from coming within a certain distance from you if he or she poses a threat, or it may be a mechanism to keep your assets from being unnecessarily dissipated or hidden in anticipation of your impending divorce. If you have children, it will be difficult to enforce a Restraining Order calculated to keep your spouse away from you. Typical restraining order language is found in many Temporary Orders and will enjoin each party from transferring, encumbering, concealing, selling or otherwise disposing of any and all marital and/or individual assets, except in the ordinary course of business or for ordinary and necessary living expenses, until further order of Court. It may also prohibit either party from harassing, intimidating or interfering with their spouses independence and dignity.

contempt

Failure to comply with a court order can subject you to contempt of court. If you are found to be in willful contempt of court you could go to jail. If you fail to pay your property settlement payment, child support, or alimony you could be held in contempt of court upon your spouse making proper request from the court. If you fail to allow your spouse to have the visitation outlined in your divorce decree you could be held in contempt of court. If you are held to be in contempt, not only is there a good possibility that you will go to jail, but there is also a good possibility that you will be forced to pay for your spouse's attorney's fees. The best way to avoid being held in contempt is to follow whatever order is presently governing your life to the letter. Being divorced, especially if you have children, will impose legal obligations upon you that a person who is not in your position will not have. For example, there is no legal obligation for a parent to pay for their child's college education. However, if a provision to pay for college is in your divorce order and you fail to comply, you can actually be placed in jail.

property division

Mississippi is an equitable distribution state. This means that regardless of whose name an asset is titled, the Court is charged with the duty of looking at the entire makeup of the marital estate in making a determination as to what a fair order for divorce will include. The marital estate is basically everything that is acquired, both assets and liabilities, during the course of a marriage. The marital estate may also include things that a person brought into the marriage or that were gifted or bequeathed to them during the marriage if certain criteria are met. This is the idea of "commingling" which is still being developed in the laws of our state. The factors that the court is charged to consider in making a property division are as follows:

- The direct or indirect economic contribution to the acquisition of the property made by the parties;

- The contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage;
- The contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets;
- The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise;
- The market value and the emotional value of the assets subject to distribution;
- The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or gift by or to an individual spouse;
- The tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;
- The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;
- The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and
- Any other factor which should be considered.

The first step in making a division of property is identification. Property can be real estate, a business, cars, paintings, jewelry, cash, bank accounts, retirement accounts- almost anything of monetary or emotional value. We will work together by using Financial Declarations and other worksheets to identify all of your assets.

The next step is to place a value on the assets. This could be as easy as looking at a bank statement or as complicated as hiring an expert business valuation specialist to place a market value on a spouse's share in a closely held corporation. Sometimes we will estimate values to save litigation expenses. The regular means of determining fair value of property is to make use of a capable individual trained in assessment and appraisal techniques for the property sought to be valued. Notwithstanding this, in some instances you will elect to agree to the values or equities of property to be divided without the employment of specialized appraisers in order to save time and additional expense.

After all the assets have been identified and we know what the values of the assets are, a division can be made either by agreement or court order, taking into consideration the factors listed above known as the "Ferguson Factors."

Do not hide assets. These assets are usually found; and if they are found, you will look like a criminal to the court. The Chancellor will then have difficulty believing what you say about anything.

debts

The court can divide assets and the court can divide debts. However, a Mississippi Chancery Court order will not supercede whatever contract you signed with your creditor. For example, if the Court orders your wife to pay for the furniture that she bought in both of your names on credit at Miskelly's which is now in her new apartment and being used for her and her new boyfriend to watch Friends reruns and for who knows what else, and she fails to make timely payments, your credit will be affected. Now the court can hold her in contempt of court for failing to make payments in a timely manner and can even require her to take steps to reduce the likelihood that your good credit will be affected in the future, but her past actions and delinquencies will still be reflected on your credit report and there is a possibility that you could actually be sued because of her debt. We will do everything we can to get debts out of your name at the time of the divorce by closing accounts and paying off balances or refinancing various assets, but sometimes due to a family's financial circumstances this is virtually impossible.

credit

I suggest that you close joint accounts and notify banks, charge cards, and others in writing that you are no longer responsible for your spouse's expenses. You may want the company to reopen an account in your own name. At the bank you may want to divide joint accounts or put them in your name or possibly withdraw funds to protect yourself from possibly becoming placed in a hardship because you are not the primary breadwinner in your home. This may make the Chancellor upset with you, but it is often easier to give money back than to go through the proper legal channels to get it back. If you are the person who supports the family, do not simply stop paying for the family living expenses until such time as an agreement can be worked out or the court makes a specific finding as to what your responsibilities will be.

Be mindful of your debt level. Be responsible with your money. Some people get into a lot of debt shortly before their marriage falls apart or shortly thereafter. Also, after the divorce do not think that you can live the life of Riley just because you are now footloose and fancy free. If you have a lot of debt, you need to take steps to correct this problem as soon as possible. There will be less money than you may think to go around after you and your spouse separate. Think about it, it is impossible for two people to live separately for the same amount of money that it costs to live together. Make a budget and stick to it.

life insurance

Sometimes it is a good idea to get life insurance after a divorce or in contemplation of a divorce if you do not already have it. Life insurance can be used to secure the payment of a financial obligation imposed upon your former spouse, or it may be used to insure that your children are provided for in the event of your death. If you are contemplating divorce, you may want to review your existing life insurance policies and update the beneficiaries. You should also be aware that the cash value of life insurance is an asset that is subject to being divided if it falls into the category of marital property or if it has lost its individual characteristics due to commingling. If you do not have a life insurance agent, please let me know and I will get you set up with someone.

bankruptcy

Burdened by high interest payments, many divorcees turn to the bankruptcy courts to alleviate the strain of their debts. I put standard language in my divorce agreements that is calculated to protect you in the event that your spouse files bankruptcy, but I do not specifically handle these types of cases, and federal law trumps state law and your divorce decree in matters of bankruptcy. Also, as stated above, if your spouse files bankruptcy on a joint debt that he or she is responsible to pay according to your divorce decree, the creditor can still sue you for this debt and you can be held responsible. If you are concerned about the possibility of your spouse filing bankruptcy or you feel overburdened by your own debt, please let me know and I will help set you up with a professional to assist you.

taxes

Taxes are one of life's certainties. I do not do tax work nor give tax advice. I can make some general observations that you should be ready to address with your CPA or tax attorney. I am not a CPA and I am not a tax attorney.

If you have children and you are the custodian of your children and your divorce decree does not state otherwise, you are entitled to claim your children as dependents on your tax returns. Many divorce agreements address who claims the children as dependents, and there is an IRS form accessible on the Internet which both you and your spouse may complete and send back to the IRS to effectuate your agreement.

Property settlements related to a divorce are typically not taxable, but income that is received from alimony or from an interest in a business will be taxable under most circumstances and you will need to make quarterly tax payments. Child support is not taxable to the receiving spouse and is not deductible for the paying spouse. Also, inform your employer of your divorce so that your withholdings can be adjusted and you are not burdened with a high tax payment at the end of the year.

It is important to know the tax basis of the property that you receive in the division of your assets. The basis is generally the cost of acquiring, and in some cases developing, a capital asset. If the asset has appreciated, the person who receives that asset will be responsible for tax on the appreciation when the asset is sold. Depreciation is deducting a portion of the basis of an asset. If an asset has been depreciated to a low basis, the sale of that asset can have very adverse tax consequences. This commonly occurs with rental property and business equipment.

If your divorce decree provides that you and your former spouse will sell your jointly owned residence, you will each be responsible for reporting your portion of any capital gain. Capital gain is the profit resulting from the sale of capital investments, such as the marital real estate. There are new tax laws regarding sale of capital investments, so you should definitely consult with your tax advisor if this is applicable to you.

Beware of signing joint tax returns with your estranged spouse. Although your agreement may provide for them to be responsible for any taxes, the IRS may hold you responsible in an audit.

If you have moved you need to file the correct form to notify the IRS. Without that, the notices will be sent to your old address and you may not receive them. The IRS will hold you responsible for missed deadlines.

wills

Once you have decided that divorce is inevitable, depending on your old will's provisions, you may need to destroy it. It is established law that a person cannot disinherit his or her spouse completely, so a new will while you are separated but still married may be something to consider. There are ways to minimize what your spouse can take from your estate if that is your objective. After the divorce is final, I suggest that you revisit your will to make sure that you have your estate set up exactly like you want it to be. I can help you with your simple estate issues, but if you have more complicated requirements, we will need to have you visit with a specialist.

If your Temporary Order does not preclude it, you may want to review your insurance policies, retirement funds or other elements of your separate estates that can be allocated or reallocated to beneficiaries to ensure consistency with your wishes. Further, if acquiring new bank accounts, savings accounts, certificates of deposit, stock accounts or making other designations of ownership of property, you should consider titling in joint tenancy so if you die during the period of separation, your property would pass outside your estate and beyond the reach of your now estranged spouse.

The dissolution of marriage will NOT automatically revoke any bequests made to your former spouse in a Last Will and Testament. Depending on your financial situation, I may include a waiver of right to inherit in your Property Settlement Agreement

It is possible to limit or eliminate your ex-spouse's control over the assets you are leaving your children. This can be accomplished by the creation of a simple testamentary trust which names a trusted person as the trustee of funds being left to the children during their minority. The goal is to avoid the guardianship estate that would more than likely be controlled by your ex-spouse. I also recommend that you put a provision in your will to make it clear that if your former spouse is determined to be incapable of discharging his or her duties as a parent, that a friend or family member will step into that role as the children's legal guardian.

alimony

Alimony is alive and well in Mississippi. There are multiple types of alimony, each with its own characteristics, and there are also forms of alimony known as "hybrid" alimony where the drafting attorney carves out each aspect of the alimony definition. The types of alimony recognized by our courts are permanent periodic alimony, lump sum alimony, rehabilitative alimony and reimbursement alimony. The characteristics of alimony include whether it is paid in one lump sum or installments, whether it is modifiable, whether it ceases upon the remarriage

of the receiving spouse, whether it ceases upon the death of the paying spouse, whether it ceases upon the death of the receiving spouse and any other factor that may be applicable to your situation.

Payments from one spouse to another are deductible for tax purposes from the paying spouse's income and includable in the income of the receiving spouse if they are required under the divorce or separation instrument, a joint tax return is not filed, payments are in cash (which includes checks or money orders), payments are not designated in the divorce instrument specifically as being not alimony, the spouses are not members of the same household, payments are not required after the death of the recipient spouse and the payment is not designated as child support. You should discuss the tax implications of your divorce with your tax attorney or your CPA.

Permanent periodic alimony is paid from one party to the other until their death or remarriage. This form of alimony is taxable as income to the receiving spouse, usually the wife, and is modifiable after the divorce if there is an unforeseen and material change in circumstances. If you are open to liability to pay alimony, we will avoid this type at all costs- as you may find yourself living in an assisted living facility using your social security check to pay your former wife of thirty years ago her \$200.00 per month. Also, if we hope that you gain alimony, we will consider the likelihood that you may remarry in the near future coupled with the tax implications of the permanent alimony. Ideally, if we are hoping to receive alimony we will try to put multiple types of alimony in the Property Settlement Agreement to cover our bases, but a Judge will rarely be as creative with the definitions of alimony to accomplish our goals. The factors to determine whether you may be entitled to permanent periodic alimony are called the *Armstrong* factors:

- The income and expenses of the parties;
- The earning capacities of the parties;
- The needs of each party;
- The obligations and assets of each party;
- The length of the marriage;
- The presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care;
- The age of the parties;
- The standard of living of the parties, both during the marriage and at the time of the support determination;
- The tax consequences of the spousal support order;
- Fault or misconduct;
- Wasteful dissipation of assets by either party; or
- Any other factor deemed by the court to be "just and equitable" in connection with the setting of spousal support.

Lump sum alimony is a different animal altogether. As the name implies, it is often paid as one lump sum, usually to balance the equities in a property division. Lump sum alimony is typically not modifiable and typically survives the death or remarriage of either party. Sometimes a lump sum payment is not possible, so the rules are often bent to create lump sum

“installment” alimony, which is paid out over time. Lump sum alimony is typically not taxable to the receiving spouse and therefore is not deductible from the income of the paying spouse, but this is the alimony that is often tweaked for taxability purposes by either making it continue or cease upon the death of the receiving spouse. The factors to be considered for lump sum alimony are:

- Whether the spouse seeking lump sum alimony made a substantial contribution to the potential payor’s accumulation of wealth;
- Length of marriage;
- Disparity between the parties’ separate estates; and
- Whether the spouse seeking lump sum alimony would lack financial security in the absence of an award of lump sum alimony.

Rehabilitative alimony provides for a party who is trying to become self-supporting and prevents that party from becoming destitute while searching for a means of income for a fixed period of time. This could be a payment to a spouse who wants or needs to go back to college. Reimbursement alimony is a form of alimony that specifically repays a spouse for a contribution to the marriage that allowed the other spouse to further their career or personal goals in some way. A good example of when this would be applicable is in the case of a doctor’s wife who worked and took care of the children while her husband attended medical school. Reimbursement alimony may be appropriate in this instance.

medical insurance

Medical insurance coverage is extremely expensive but almost mandatory in our society of outrageous medical costs. If your spouse or children are covered by your insurance, keep them insured until such time as I tell you that you may drop them from coverage. We would never drop someone from insurance coverage without notifying them, and if you drop them from your coverage and there are significant outstanding expenses, it would be likely that the Judge may assess these against you. Even after the divorce, the employed spouse may be required to keep the spouse and children covered. It is not uncommon for an employed spouse to keep their unemployed spouse on their medical insurance for a certain period of time after the divorce, but this depends on many factors similar to the various alimony factors listed above. Maintaining medical insurance is also often viewed as an additional child support expense. It is very common for one party to be assessed with the responsibility of covering the children under their health insurance, with each party dividing the deductible and other uncovered expenses. It is also common for one party to be asked to reimburse the spouse who is covering the children with insurance for a percentage of the additional costs for maintaining the children on a health insurance policy.

You should have the right to apply for health benefits through your former spouse’s current place of employment. Pursuant to COBRA legislation, non-employees/spouses may be eligible after the divorce is final for certain insurance coverage, but it is often extremely expensive. The insurance can continue up to 36 months, depending on your circumstances. You must apply for this within 60 days of the date that the dissolution was final. Only if you file within that time period will you be eligible for COBRA coverage. Please check with your

former spouse or through their employer immediately, as federal statutes and deadlines may change.

children and child custody

Children are probably affected more than anyone else by divorce. It is important for you and your spouse to present a unified front. Upon contemplation of separation, you and your spouse need to work out the immediate issues concerning the children. The most obvious decision is with whom your children are going to live. Child custody issues are the most heated and emotional forms of litigation, and they should be avoided if possible. If a custody dispute is not avoidable, a simple cost benefit analysis goes completely out the window. I would never advise someone to spend \$2.00 in hopes to receive \$1.00, but it is impossible to put a dollar figure on what you believe is in the best interest of your children. Get ready to spend some serious money on attorney's fees and litigation costs. When divorce or a separation is on the horizon, tell your children together, and anticipate and be prepared to answer the questions that the children may have. If you can avoid litigation, it would certainly save you many sleepless nights and years of potential conflict with your child's other parent. Remember the story of King Solomon? He announced that he would divide a baby subject to dispute between two supposed parents. The real mother begged the wise king not to hurt the child. There are many forms of alternate dispute resolution options available to modern parents that we can explore to avoid custody disputes.

If a custody dispute is unavoidable, we may need to retain the services of an expert psychologist or counselor who is trained to conduct custody evaluations. Psychologists can be very helpful, but they can also be very confusing. It is generally not a bad idea to visit with a mental health professional when faced with divorce. They can also be helpful to your children, regardless of whether or not custody is disputed. Many of our state school systems have programs for children of divorced families. One such program is called Banana Splits. These are excellent ways for your children to interact with other kids of divorced parents.

There are two types of custody in Mississippi- legal and physical. Legal custody is the cerebral form of custody. It entails the decision-making responsibilities in parenting. It involves your children's health, education, extracurricular activities, religious training and every other decision that a parent makes. If your child was in a terrible accident and was placed on life support, the person with legal custody would make the decision as to whether or not your child would be kept on the breathing machine. Physical custody simply entails with whom the child lives. When weighing custody cases, the best interest of the children is controlling; the Judge is also to consider the following issues known as the *Albright* factors:

- The age, health and sex of the child;
- Continuity of care;
- The parenting skills of each parent and his or her willingness and capacity to provide primary child care;
- Employment of each parent and the responsibilities of that employment;
- The physical and mental health of the parents;
- The emotional ties between parent and child;
- The moral fitness of the parents;

- The home, school and community record of the child;
- The preference of a child of the age sufficient to express a preference by law;
- The stability of the home environment; and
- Other factors relevant to the parent-child relationship.

Our laws specifically state that there is no advantage given to the mother over the father in child custody situations, but in reality, the mother will usually have the advantage. The paramount consideration is the best interests of the child, and the Judge can award both parents with physical and legal custody or either parent with one or the other form of custody. An award of joint legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and to confer with one another in the exercise of decision-making rights, responsibilities and authority. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent. The school may attempt to deny you this information, and if they do, let me know immediately.

It is important for you to keep the lines of communication open with your spouse or former spouse. Do not argue in front of your children and do not use your children as messengers or spies. You are your children's parent, not their friend. Act like it. Do not tell your children to keep secrets from their other parent, and do not criticize your former spouse in the presence of your children. It is also a very bad idea to compare your children to their other parent in a negative way. Do the best that you can to make transitions of custody smooth and conflict free. Talk about adult things with your ex-spouse outside the presence of your children. I have found that e-mail is a great way for divorcees to communicate with former spouses. You can both have a record of exactly what was said and they can be easily printed to prove that you said what you say you did.

I encourage my clients to allow open and liberal visitation over and above what the divorce decree or separation agreement provides. It is healthy for your former spouse to be an active part of the lives of their children. I encourage non-custodial parents to get involved in the children's extracurricular activities. If you are the non-custodial parent, do not miss visitation with your children and give religious attention to all of your financial obligations. Treat visitation and child support as the two most important obligations that you have. Pay your child support first and your other bills second. Whatever amount of child support you are ordered to pay will not be enough to raise your children, so pay child support timely each month.

Your children will play you against your former spouse. Be the adult. Do not attempt to separate siblings and maintain family traditions. Nurture your child, but do not be overprotective.

If you are in a relationship with a new person, do not introduce your children to this person until after the divorce and after they have adjusted to the separation. If the divorce is pending, the Chancellor will have a field day on you if you have made your children witnesses to your adultery. Do not spend the night with your lover when the children are in your custody until

you are married. You live in Mississippi, the center of the Bible belt. Remember, the Chancellor could care less about you, but he does value your innocent children.

Many of the ideas in this section are based on experience, but some came from various readings and speaking with different counselors. I highly suggest that you read *Making Divorce Easier on Your Child* by Nicholas Long and Rex Forehand. Many of the ideas in this section came from that book.

visitation

There are as many different visitation schedules as there are people with children who get divorced. There is such a thing as standard visitation, but what the “standard” is depends on the county, the lawyers and the judges. I can write a visitation schedule almost anyway conceivable. Most custody situations entail one party having physical custody and the other party having visitation. A typical visitation schedule is every other weekend from 6:00 p.m. on Friday to 6:00 p.m. on Sunday. Some lawyers write in terms of first, third and fifth weekends, and mid-week visitation is often included. I like the every other weekend scenario better because I think it is easier to remember. A good way to give the non-custodial parent more time with the children is to move the return time to the following Monday morning and/or pushing the commencement time back to Thursday. Some parents try “week on/week off” visitation schedules, but it takes a very special couple to make this work. Holidays are usually shared from even to odd years, and there is usually a provision for an extended time for visitation during the summer. Below you will find a standard provision for custody and visitation.

The parties agree that they shall share legal custody of their minor child, but the Wife will have the primary physical custody, subject only to the Husband’s visitation with the minor child every other weekend beginning at 6:00 p.m. on Friday and ending at 8:00 a.m. on the following Monday. The Husband shall also have the right to have visitation for one night during the week that he does not have weekend visitation, as mutually agreeable between the parties, but in the event they cannot agree, on Wednesdays beginning at 5:00 p.m. and ending at 8:00 a.m. the following day.

The Husband shall have additional visitation regardless of otherwise scheduled custody/visitation, as follows:

- (a) Four (4) full weeks in the summer, being designated as the second and third weeks in June and the second and third weeks in July, unless the parties agree otherwise;
- (b) During the Christmas Holidays in even-numbered years, beginning the day the child is let out from school and ending at 3:00 p.m. on Christmas Day (December 25th), while the Wife will always have the right to have the child with her during the aforementioned times in odd-numbered years; during the Christmas Holidays in odd-numbered years, beginning at 3:00 p.m. on Christmas Day and ending at 6:00 p.m. on New Year's Day, while the Wife will

- always have the right to have the child with her during the aforementioned times in even-numbered years;
- (c) During the Thanksgiving Holidays in odd-numbered years, beginning at 6:00 p.m. on the Wednesday immediately preceding Thanksgiving Day and ending at 6:00 p.m. on the following Sunday, while the Wife will always have the right to have the child with her during the Thanksgiving Holidays in even-numbered years;
 - (d) During the Easter Holidays in odd-numbered years, beginning at 6:00 p.m. on Good Friday and ending at 6:00 p.m. on Easter Sunday, while the Wife will always have the right to have the child with her during the Easter Holidays in even-numbered years;
 - (e) On Memorial Day weekend in odd-numbered years, beginning at 6:00 p.m. on Friday and ending on Memorial Day at 6:00 p.m., while the Wife will always have the right to have the child with her on Memorial Day weekend in even-numbered years;
 - (f) On Labor Day weekend in even-numbered years, beginning at 6:00 p.m. on Friday and ending on Labor Day at 6:00 p.m., while Wife will always have the right to have the child with her on Labor day weekend in odd-numbered years;
 - (g) On Independence Day (July 4th) in odd-numbered years, beginning at 9:00 a.m. and ending at 9:00 p.m., while the Wife will always have the right to have the child with her on Independence Day in even-numbered years;
 - (h) On Father's Day weekend each and every year, beginning at 6:00 p.m. on Friday and ending at 6:00 p.m. on Father's Day, while Wife will always have the right to have the child with her on Mother's Day weekend each and every year;
 - (i) At such other times agreed upon by the parties, and while the Husband will not make unrealistic requests for additional time with the child, the Wife will also not unreasonably withhold additional time from the Husband;
 - (j) The Husband and the Wife shall exert every reasonable effort to maintain open communication between the child and the other parent and to foster a feeling of affection between said child and the parent, and the parties shall make reasonable efforts to consult with each other with regard to the child's education, illnesses, operations, and other matters of similar importance affecting said child, whose well-being, education and development shall at all times be the paramount consideration of both parents. Neither Husband nor Wife shall do anything that may estrange or alienate the minor child from the other party or to injure the minor child's opinion as to his parents, or which may hamper the free and natural development of the child's love and respect for both parents. Each party shall make a reasonable and diligent effort to keep the other parent informed of the child's school programs and sporting events

so as to afford the other parent an opportunity to attend and participate. Each party shall have access to the school and medical records of the child; and

- (k) Neither party shall permit the child to be exposed to the use of illegal drugs, excessive alcohol consumption, overnight visitation by a member of the opposite sex not related by blood or marriage or other immoral conduct.

relocation

In today's mobile society, relocation is a reality. However in Mississippi, there is nothing you can do to prevent your former spouse from relocating with your children if you do not have custody. Also, moving, even a long distance away, has not been held as a reason to change custody from one parent to the other. It certainly will mandate that you and your ex-spouse take another look at your visitation schedule, but it will not automatically change custody nor will it be an automatic reason that the Chancellor would change custody. If you move, you must notify me, the Clerk of the Chancery Court and your spouse within five days of your relocation. If the current visitation schedule becomes unworkable because of relocation, the Judge will certainly modify it if you and your ex-spouse cannot agree to a change. Also, if transportation for visitation is not addressed in the divorce decree, it is likely that the party creating the increased burden will be responsible for the associated increase in expenses. One way to deal with a geographic separation from your children is to have increased time during the holidays and the children's spring and summer vacations. If you have joint physical custody, the court will have to reweigh the *Albright* factors discussed above before making a new custody determination.

child support

As in most states, Mississippi has child support guidelines that are used to determine the amount of child support that the non-custodial parent will pay to the custodial parent. The duty to pay child support continues until the emancipation of the child. The court may determine that emancipation has occurred and no other support obligation exists when the child: (a) attains the age of twenty-one, or (b) marries, or (c) discontinues full-time enrollment in school and obtains full-time employment prior to attaining the age of twenty-one, or (d) voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements and obtains full-time employment prior to attaining the age of twenty-one. Mississippi's child support guidelines are some of the lowest in the nation.

If you make between \$5,000.00 and \$50,000.00 per year, the court will apply a strict formula to determine the amount of child support you or your spouse will be obligated to pay. These payments are typically made on a monthly basis, usually on the first or the fifteenth day of the month. These guidelines will be presumed applicable in child support awards:

Number Of Children Due Support	Percentage Of Adjusted Gross Income That Should Be Awarded For Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

The guidelines apply unless the Judge makes a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case. The term "adjusted gross income" in reality means one's net income. The way that the figure is derived is by taking the gross income from all potential sources that may reasonably be expected to be available to the non-custodial parent including, but not limited to, wages and salary income; income from self employment; income from commissions; income from investments, including dividends, interest income and income on any trust account or property; non-custodial parent's portion of any joint income of both parents; workers' compensation, disability, unemployment, annuity and retirement benefits, including an individual retirement account (IRA); any other payments made by any person, private entity, federal or state government or any unit of local government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits derived from a second household, such as income of the absent parent's current spouse.

Then we must subtract taxes, social security contributions; mandatory retirement and disability contributions; if the non-custodial parent is subject to an existing court order for another child or children, subtract the amount of that court-ordered support; if the absent parent is also the parent of another child or other children are residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children. We then compute the total annual amount of adjusted gross income and divide this amount by twelve to obtain the monthly amount of adjusted gross income.

Upon determining adjusted gross income, multiply the monthly amount of adjusted gross income by the appropriate percentage designated above to arrive at the amount of the monthly child support award.

In cases in which the adjusted gross income as defined in this section is more than \$50,000.00 or less than \$5,000.00, the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.

There are other forms of child support that the Court can and will apply over and above the child support guidelines. These include things like health insurance and uncovered medical expenses, life insurance and college education. There is not a strict formula to determine which one of these additional expenses, if any, the Court will order be paid. Most chancellors agree that the non-custodial parent will have some obligation for health insurance and uncovered expenses, and if either one of the parents has a college education and they are relatively close to their child and the child is nearing college age, this is another common expense that the Judge may require a non-custodial parent to pay or share with the custodial parent.

Expenses for private school, weddings, automobiles and other expenses that you may have heard being included in a Property Settlement Agreement are probably there because the husband was trying to purchase his divorce, conceded because he knew he would be paying for these things anyway or simply was being generous. There are few, if any, chancellors who would actually make those types of awards.

modification

There are certain aspects to a divorce that are always modifiable. They are permanent periodic alimony, child custody, visitation and child support. For the most part, there must have been a material change in circumstances since the entry of the last Order, usually the Final Judgment, unless there have been other modification actions that were not contemplated at the time of the last Order. For child custody there is the additional requirement that the change in circumstances be such that it has had an adverse affect on the children and that a modification of custody would be in the children's best interest. For visitation, there is the additional requirement that the current visitation schedule is not working. For there to be an increase in child support, usually a showing that the children's expenses have increased and the paying parent's income is now greater will merit a serious consideration by the Judge. Child support decreases are uncommon, but possible.

There is a misconception among Mississippians that a child may choose the parent with whom he or she wishes to live upon reaching the age of twelve. This is simply not the case. There must be a showing of material changes in circumstances since the last Order which have had an adverse affect on the child and that their best interest, coupled with the parental selection. While our law on this topic is well settled, many chancellors believe that if a child has made a choice, it should be honored. This is not the law.

records

Keeping good records is essential to post divorce life. You need to keep tabs of child support, alimony and related expenses received and paid. You need to copiously keep a diary that marks significant events, especially if you are having problems with your ex-spouse. Keep copies of medical expenses for your children in a neat and organized place in the event that we later need to file a Contempt action to get the money you are owed. If you think in terms of gathering evidence for a possible future court date, you will be in a much better position to promulgate or defend your cause.

change of wife's name

In Mississippi, a woman may go back to using her maiden name at any time. However, sometimes it is hard to convince the Social Security Administration that she has legally returned to her maiden name. A woman can have the court order the restoration of her maiden name in the Final Decree, even if she is not the plaintiff. I suggest that you go back to your maiden name only when there are no children, or go back to a former married name when there are children of that former marriage. If you want to do this, let me know.

telephone

You have the right to have unhampered telephone contact with your children when they are in your former spouse's custody, but do not abuse this right. Speaking to your children every other day or so will not be overly invasive to the custodial parent. If you are having trouble talking to your children, you need to document, document, document. Keep a phone log of your attempts to speak to the children that we can use if we have to go to court to ask that he or she be held in contempt for keeping the kids from you.

In Mississippi, you have the right to legally record any conversation that you are a party to or from the home telephone if you are residing there. Using telephone recordings are welcomed by our chancellors because it is a chance for them to hear something other than what he said/she said.

alienation of affection

Alienation of affection is a lawsuit in which one party claims that the defendant deprived them of the affection of their spouse. This almost always arises against a party to a marriage's girlfriend or boyfriend- called a paramour. These cases are very popular in Mississippi, and we are one of the few states in the country that still recognizes them as a viable cause of action.

Not every situation merits an alienation of affection lawsuit. You must really consider the strength of your marriage before your spouse's affair and whether or not the paramour actually has enough money to make your case worthwhile. I usually take these cases on a reduced hourly rate plus contingency fee basis if on the plaintiff's side, and with my normal hourly rate if on the defensive.

The classic example of this type of case is when the wealthy doctor woos his young, married nurse away with lavish gifts and promises of the good life. If the nurse and her husband had a relatively good marriage before Dr. Feelgood came into the picture, the husband may have a very viable case for alienation of affection.

aids and other medical issues

I recommend you have a complete physical examination as soon as possible. As a result of such an examination, you may discover that you have a medical condition that would normally not have been diagnosed, requiring an expensive series of treatments. The cost of these treatments will be part of your case. If you have cancer or other medical problems, it can dramatically affect your case.

Your examination should include an HIV test. If you suspect your spouse may have been exposed to AIDS virus or a sexually transmitted disease, you must have yourself tested. The most frequent avenue of exposure is sexual contact. However, that is not the only means of contracting AIDS; exposure to blood is also a risk. Therefore, spouses of physicians, dentists, undertakers, or any medical workers have a special concern. Consult your physician and let me know the results of any tests.

It is important that you look after your own health and well-being during and following a divorce. Your life is about to change forever. Go to the doctor and get a check up. Eat healthy foods and do not drown your emotions in drugs, alcohol or anything else. Get involved in a church. Your children deserve it and you need it. Keep up with your friends; they can help you through it. I am your lawyer, not your counselor. Friends can give you for free for what I charge \$220.00 per hour.

dating

Do not date. You are married. Your spouse can use it against you. If you are divorced, moving in with your lover could cause problems with custody, visitation, or alimony. If you do date, be prepared to face the problems that may arise. Tell me about it, because if I am surprised by it in court, it will hurt your case. If you date, do not throw it in your spouse's face. This will make bad feelings worse and is proof against you at trial (confession). Avoid dating at social events where your spouse will be. Remember, it will be hard to explain why you "did not pay" or "cannot afford" it if you took your date on an expensive trip or to a swanky event.

Do not lie about dating. Although judges do not like people "fooling around," they are not usually too angry when they hear about it. Judges are much more likely to get mad if you lie to them. Lying under oath can result in your going to jail for perjury.

private investigators

Private investigators are professionals that are paid to investigate and testify. They can be the key to success or an expensive dead end. It is important to give them all the help that you can. The more information you give them the less they have to find out and the less it will cost you.

You may be on the other end. Your spouse may have hired an investigator to follow you. If you are not doing anything wrong, do not worry.

computers

The Internet is the singles' club of the new century. It is also a haven for pornography. Does your spouse spend a good bit of time on the computer? Do you know what sites he or she is visiting? Do you know to whom he or she is speaking?

There are programs that you can buy to monitor your spouse's suspicious activities on the home computer. If you can secure the hard drive, we can work with forensic computer analysts to find out if anything suspicious is to be found. If you use the computer a good bit, remember there is no such thing as deleting anything from your computer until the information is replaced or overwritten. Just because you think you deleted something does not mean that someone who knows what he or she is doing could not uncover it. Not only will you want to empty your recycle bin and delete all the temporary Internet files, you will also want to look at deleting the files known as "cookies." The best way to avoid getting caught using the computer to your detriment is to avoid it like the plague.

one attorney for you both

One attorney cannot represent both parties to a divorce. If you did not employ the lawyer, he does not represent you. A divorce involves serious legal issues and you need to be represented by your own attorney, even if he or she only spends an hour or two with you to go over and explain the proposed settlement agreement to you.

property settlement agreement

The property settlement agreement, or PSA, is the nuts and bolts of your divorce. It is the negotiated instrument that contains all of the provisions for the custody and support of your children, alimony, division of assets and payment of debts. Most divorces end with the execution of a PSA. The Judge will not take the time to work out all of the details that have been developed in our typical Property Settlement Agreements, which is why settlement is almost always better than a trial.

negotiations with your spouse

If you can work out a satisfactory settlement with your spouse you will have a victory. Even if you win at trial, there is a significant cost in money and emotion. In trying to work something out with your spouse, the following are some useful pointers to remember:

- Meet on neutral ground- Not at his office or at her mother's home, but some place where both parties will feel comfortable.
- Set aside time- A reasonable amount of time should be set aside to deal with the issues. If you leave to answer a telephone call just as you almost have things worked out, you may find that things have fallen apart when you get back. On the other hand, do not leave the meeting time open-ended. A meeting without a deadline will drag on and issues will not get resolved.
- Set an agenda- Decide what will be dealt with at the meeting. "This week we will decide on custody and child support; next week we will decide on the house."
- Do not bog down- Try to talk about what you agree on. No matter how bad it is, there are some things you agree on ("the marriage stinks" or "the kid is cute"). If you hit a point that gives you trouble, move on to something else and come back to the problem after you have resolved some other issues.
- Reschedule as needed- If things start to turn nasty, if someone gets angry, or if you think you are losing everything, reschedule the meeting for another time. It is important that both of you feel that the agreement is a good thing.

- Keep the kids out of it- Your children do not need to be involved in this. Do not have them around. They will interrupt you, and it will upset them.
- Start talking early- Divorces usually settle early on when both parties feel guilty and are not locked into a position, or divorces settle after much litigation when the parties are too exhausted to fight anymore. Sometimes you can get more with guilt than you can get at a trial.
- If you and your spouse work out something and you make notes, do not sign the notes. This could be considered to be an agreement. If it is not in the correct legal language, you may be bound by something other than what you thought you agreed to.

mediation and alternatives to trial

Normally the parties will try to settle their case. If that does not work, the attorneys will normally try to settle the case. These approaches are dynamic and can both go on at the same time. Sometimes despite the best efforts of everyone, the case will not settle. Before going to trial, there are alternatives.

Mediation is negotiations with a neutral party assisting the negotiations. The mediator is not an advocate for either spouse. The mediator facilitates the process and does not “take sides” or make decisions for you. They merely facilitate settlement. I recommend this and urge you to ask me more about it for your specific case. Even if your spouse is opposed to mediation, the court can still order it.

facts

I must have all the facts to represent you properly. Tell me everything you know: “My husband took a trip out of town. Here is a copy of the ticket.” Tell me what you suspect: “I bet he met his girlfriend down there.” Something that may not seem important to you may be critical to your case. If the other side knows something that I do not, the information could be used against you, and I would be unprepared and unable to defend you against it. However, if you give me the information, no matter how bad it may appear, then I can take the proper steps to prepare a defense to avert what could otherwise turn out to be a disaster.

Except when talking to your witnesses, try not to discuss your case with anyone unless you have my permission. One of the best ways for the opposition to trip you up is to get a statement from you before trial that does not coincide exactly with your testimony at trial. When you do say something, be careful what you say. Anything you say may get played back to you on the stand. If you say something petty or wrong, it may hurt your case. Do not say anything you would not want the judge to hear.

Do not sign anything involving this case unless you have approval from me. You may be signing something that could harm you later on.

Furnish me immediately with the names, addresses, and telephone numbers of any and all witnesses, and tell me what they know. Advise me immediately if you hear of anything that might affect your case. Never lie or withhold any information from your attorney.

confidentiality

Anything you tell any member of my office is strictly confidential and will not be disclosed without your permission. However, I will not allow you to lie under oath nor allow you to plan to commit a crime. If someone outside of my office overhears or reads communications, the privilege is lost as to those communications.

If you communicate with us by a method that allows access to that communication, you may well have lost the privileged nature of the communication. If you email me, do not leave a copy of the email on your computer so others can read it. Remember that merely hitting the delete key will not delete the email. Intercepting other persons wire communication can constitute a serious crime.

All papers filed in your case and all testimony in your case are theoretically matters of public record, and the public has a right to see or hear it. However, the only people you are likely to see at court are the other people who are getting divorced themselves that day, and they are far more concerned with their own problems than with your case.

evidence

If you have not done so already, start looking for evidence. Check desk drawers, safety-deposit boxes, bank boxes, or other places where documents might be hidden. This is a good time to visit with your family banker, stockbroker, or accountant to discuss the family financial situation, although you may not want to tell them about the divorce.

You need to supply me with copies of the following documents:

Prenuptial agreement;

Income tax returns;

Financial statements (these are most often filed when borrowing money and are very important);

Employment contracts or any explanations of benefits from you or your spouse's work;

Canceled checks and charge records;

Retirement plans, including IRAs;

Deeds;

Real estate tax bills or appraisals;

Insurance policies including life insurance, medical insurance, health insurance, or homeowner's insurance;

Bank accounts and bank statements;

Safety-deposit boxes (you will want the bank to verify and inventory if possible);

Securities;

Partnership agreements, corporations, or other documents showing any business interests;

Any inheritance or trust interests;

Wills by you or your spouse;

Any written agreements or notes between you and your spouse; and

Any evidence you have such as photographs or letters.

witnesses

To establish something in court, you must have legally admissible proof. Most proof comes from witnesses. If you are proceeding on grounds, you need to have corroboration (support) of your proof, even if your spouse is not disputing the grounds. Corroboration usually means one or two other witnesses. In a contested case you may need more than two witnesses. We can issue a subpoena for witnesses or documents if you request it and give us the necessary information well in advance. A subpoena can help a witness get off work to appear in court. If the witnesses do not appear in court, you can sometimes have the case put off until you can get them to appear in court.

An expert witness is a witness who has such training or expertise that the witness' opinion is valuable to the court. Psychologists, accountants, and doctors are often expert witnesses. Expert witnesses must be paid for the time they spend in preparation and at trial.

changes

If you and your spouse or ex-spouse agree to change the terms of a court order, you must change it with a new order. If your spouse says, "You don't have to pay alimony for the next year if you will take the children to Disneyland this summer," you must get it in writing and entered in court for it to be binding on your spouse and to protect yourself from contempt.

social security

If you and your former spouse were married for longer than ten (10) years and paid into the Social Security Trust Funds, you may be entitled to spouse's or survivor benefits on your former spouse's account upon reaching age 62, regardless of whether your former spouse has

retired at that time. These benefits are provided by the federal government and are not usually addressed in a divorce decree.

The Social Security Administration advises contacting it three months in advance of your anticipated eligibility date. For survivor benefits, this could be as early as three months before turning age 60; for spouse's benefits, three months before turning age 62.

When applying for Social Security benefits, you should have your Social Security Number, Birth Certificate, Marriage Certificate and Final Decree, showing your marriage termination date.

Social Security laws are constantly changing, and your future benefits may be affected by those changes. To be sure of the exact benefits to which you are entitled, and your earliest eligibility to receive the benefits, contact the Social Security Administration directly and contact them now.