

# CHINN & ASSOCIATES, PLLC

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**Attorneys and Counselors at Law**



**WARNING**

This Notebook contains privileged information, which may not be disclosed to anyone or used as evidence without expressed, written permission of the client receiving same.



## **FIRM GOALS**

The Law Firm of Chinn & Associates is committed to excellence. Our goal is to deliver the best possible legal service in a cost-effective manner. We are dedicated to maintaining the highest standards of legal training, integrity, personal performance and customer service.

# INTRODUCTION

This is your "Domestic Relations Notebook." This notebook is created and designed by Chinn & Associates exclusively for you as a client of the firm. It informs you about the firm, the legal system, and your case. This notebook is not intended to replace the personal advice of your lawyer. Moreover, in many places it gives only a layman's explanation of complicated legal concepts. Please refer to it as often as possible to keep yourself informed about what is happening in your case.

# Chinn & Associates: An "AV" Rated Firm

The firm was established on July 1, 1988 when Mark A. Chinn left his employment with a Jackson law firm and opened a solo practice at 860 East River Place near downtown Jackson. Today, the firm is composed of Mark A. Chinn and his associate, Matthew Thompson, a graduate of the Mississippi College School of Law. The attorneys are supported by Certified Paralegal Chad King.

Over the years since his graduation from Law School in 1978, Mark Chinn has enjoyed a broad base of legal experience, from criminal law, to wills and estates, commercial law, business law, lobbying, domestic relations, and personal injury. As the firm has grown and matured, it maintains the experience and ability to handle almost every kind of legal problem conceivable while concentrating the majority of its activity in the litigation area. Divorce, of course, makes up the majority of the practice.

In 1994, the firm was awarded an "AV" rating by Martindale-Hubbell. This represents the highest rating possible for competence and integrity. A copy of the rating follows.

## **CUSTOMER SERVICE**

We want our clients to feel special when they come to our office and when they talk with us on the phone or go to court. As a part of our commitment to service, we have adopted the American Bar Association's Declaration of Commitment which follows.

# WHAT IS A LAWYER?

According to the Mississippi Rules of Professional Conduct, a lawyer "is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."

According to Blacks Law Dictionary, a lawyer is "any person who, for fee or reward, prosecutes or defends causes in courts of record or other judicial tribunals of the United States, or of any of the states, or whose business it is to give legal advise in relation to any cause or matter whatever."

Chinn & Associates believes that a lawyer should be a consummate professional. The lawyer must understand that he or she has an obligation to their clients, to the courts, to society, to his or her family and to the maintenance of high moral and ethical standards, all while rendering cost-effective legal service. Clients of Chinn & Associates can know that they have retained lawyers who will vigorously defend their interests and protect their confidences while maintaining the highest level of commitment to all of the obligations imposed upon the lawyer as a professional.



# STAFF

Our legal staff is composed of attorneys, paralegals, legal assistants and secretaries.

The attorneys are: Mark A. Chinn and Matthew Thompson.

Legal assistants perform many of the same functions as paralegals, as well as secretarial work. Chad King is our Legal Services Manager. Mary Anne Lefoldt is our Client Accountant. Peggy Earwood is our Accounting Department Supervisor. Judy Smith is the Executive Assistant.

**Senior Attorney** • The senior attorney at Chinn & Associates is Mark A. Chinn. He is the owner of the firm and has supervisory responsibility over all matters. All decisions are ultimately made by him.

**Associate Attorneys** • Chinn & Associates currently has one associate: Matthew Thompson. The associate attorneys are fully licensed and qualified lawyers who have authority to perform all legal functions under the supervision of the senior attorney. In other cases, the associates may be the attorneys who perform most of the work on a case. In many cases, it is the associate who will be assigned tasks such as research, preparation of "discovery," preparation of "pleadings," and attendance at procedural hearings and depositions.

**Paralegal** • This position includes typing, reception of clients and calls, preparation of notices and non-substantive correspondence, maintenance of files, and preparation of standard documents for review by the attorneys.

# MARK A. CHINN

Chinn & Associates, PLLC

(601) 366-4410, Fax (601) 366-4010

P.O. Box 13483, Jackson, Mississippi

mark@chinnandassociates.com

Mark Chinn operates Chinn & Associates, the largest divorce firm in Mississippi. He has received the following distinctions in the field of family law:

- Mid South Super Lawyers. Mark is one of only 15 lawyers selected out of all the lawyers in Tennessee, Arkansas, and Mississippi to be a Mid-South Super Lawyer in Family Law.
- The Best Lawyers in America
- Bar Register of Preeminent Lawyers
- Outstanding Lawyers of America Mark is one of the one hundred attorneys that were selected from Mississippi for membership.

He is the author of two ABA books, *How to Build and Manage a Family Law Practice* and *The Constructive Divorce*. He is also author of a chapter entitled, "Marketing is Not a Dirty Word," in *How to Capture and Keep Clients*, published by the American Bar Association General Practice Solo Section in 2005 and "The Exit Interview" in *101 Practical Solutions for the Family Lawyer* published by the Family Law Section. These publications are available through the American Bar Association at 312-988-6085 or [www.ababooks.org](http://www.ababooks.org).

Mark has been featured in the National *Lawyer's Weekly* Magazine for delivering world-class service. He has been a frequent speaker for the American Bar Association Family Law Section and the Mississippi Bar on issues of family law practice management and delivering world-class service.

Mark was the recipient in 1996 of the Award of Merit for distinguished service to the Bar and the public and was enrolled as a Fellow of the Mississippi Bar Foundation in 1997. Mark has been Chairman of the Family Law Section of the

Mississippi Bar twice and is a member of the governing council of the Family Law Section of the American Bar Association. His other work with the Mississippi Bar has included: Chairman in 1995-96 of the Solo and Small Firm Practice Committee, and past service on the Ethics, Client Relations, Women in the Profession, and Fee Dispute Resolution Committees.

Mark was Chairman of the Lamar Order of the University of Mississippi School of Law Alumni Association in 2002. He was President of the Hinds County Bar Association for 1998-99 and is a Master of the Bench in the Charles Clark American Inn of Court. He was elected Vice Chair of the Supreme Court's Gender Fairness Task Force and was appointed by the Governor of Mississippi to the Children's Justice Task Force.

Community activities include: Chairman of the Jackson Urban League Board of Directors (1995-2000); Chairman of the Tenth Jubilee! Jam in May 1996 which featured the Olympic Torch; Jubilee! Jam Foundation Board, Arts Alliance Board, Opera Board and Leadership Jackson.

Mark and his wife of thirty years, Cathy, have four daughters. Mark is a Black belt in Karate and kick boxing and a veteran of the 20 years of Rugby, and a private pilot and when Mark is not sitting on the side of a soccer field or basketball court watching his daughters play, he enjoys golf and weightlifting and piano lessons.

Mark received his undergraduate degree from Iowa State University in 1975 and his Law Degree from the University of Mississippi in 1978. He is admitted to practice in all courts in Mississippi, the Fifth and Seventh Circuits and the United States Supreme Court.

## **Matthew Thompson**

William Matthew Thompson, Sr., joined the firm in October 2005. Prior to this, Matthew was a clerk with the firm for over two years while he earned his Doctor of Jurisprudence from Mississippi College School of Law. Matthew earned his undergraduate degree from Mississippi State University. Matthew is a native of Greenwood and Madison, Mississippi. Matthew is married to Karen and they have two children, Will and Claire.

## **Peggy Earwood**

Peggy Earwood has been with Chinn & Associates since October of 1996. She is a graduate of the University of Mississippi where she earned her BBA in General Business. Since then, she has pursued post graduate studies with Belhaven College in Intermediate Accounting. At the firm, Peggy is responsible for all of the bookkeeping for the firm as well as client billings. She is married to Mike Earwood and they have three children and two grandchildren.

## Mary Anne Lefoldt

Mary Anne Lefoldt joined Chinn & Associates in May of 1997. She handles asset work-up for the clients and creates budgets and other financial disclosures used for the division of property. Mary Anne received her B.S. degree in Accounting from Mississippi State University. She has been involved in many community activities. She is past Chairman of the Cancer League Gala and is presently serving as President of the Advisory Board for the McClean Fletcher Grief Center for Children. She was recently named one of the Goodwill Volunteers of the Year for 2006. She is married to Larry Lefoldt and they have three daughters as well as twin grandchildren.

## Chad King

Chad King joined Chinn & Associates in November of 1999. He serves as Legal Services Administrator and Head Paralegal, specializing in trial assistance and legal forms management. He assisted in innovating a paperless office utilizing the most technologically advanced equipment such as scanners and digital imagery. Chad recently received his

Associates Degree in Paralegal Technology, and is an Adjunct Professor in Paralegal Studies at Hinds Community College. Chad attained the Certified Paralegal designation in January of 2008.

## **Judy G. Smith**

Judy G. Smith joined Chinn & Associates in January 2002 as a Customer Service Specialist. In 2003, Mark added to her responsibilities the position of Executive Assistant. She is responsible for Mark's calendar, travel arrangements, as well as assisting Mark in his daily business agendas. As customer service specialist, Judy ensures that those who come into contact with the office by telephone or in person feel comfortable, welcomed, and are treated professionally. Those who visit our office are greeted in a friendly and courteous manner, and most of all with respect. Judy's passion in life, her love of people, is fulfilled by her interaction with those she meets daily. As one of our clients said, "Judy does a great job with personal service to your clients. She really made me feel comfortable in an otherwise uncomfortable situation." Judy received her B.S.E. from Delta State University.



## CONFIDENTIALITY

Clients often ask if their communications are confidential. The answer is "yes." The attorney-client privilege is the oldest known to law. The Rules of Professional Conduct states that a lawyer shall not reveal any information relating to a client. There are few exceptions. You can be assured that all confidential matters, which you disclose, will be kept confidential. However, if there is something that you are particularly concerned must be kept confidential, please let the lawyer know.

# THE INITIAL INTERVIEW

The initial interview can last anywhere from ten (10) minutes to two (2) hours. We generally try to keep it to one (1) hour. The initial interview has the following purposes:

1. To determine the legal problem and the scope of work.
2. To find out the basic facts necessary to begin work.
3. To establish the financial terms of the representation.
4. To provide initial advice, warnings and counsel.

In almost every case, you will be asked for basic personal data so we can set up a file and prepare a "New Matter Report." You will also be asked a series of standard questions from what we call our "Divorce Client Questionnaire." A copy of that may be found at the back of this notebook.

The "Divorce Client Questionnaire" is very important. The first page contains information we need to prepare most divorce documents. The following pages provide us with necessary financial information. Please make sure that we are provided with accurate and detailed financial information. Accurate and complete information is critical. The last pages contain information about the grounds for divorce, your desired outcome and a checklist of warnings and other advice.

Finally, we will ask you to sign an attorney-client contract. This is necessary to set forth our understanding of the work to be performed and the amount and method of payment.

# WHO WILL WORK FOR ME

When you hire Chinn & Associates, you hire the whole firm. All work will be supervised by Mark Chinn. This will be the case even if your primary contact with the firm is through an associate. By the same token, all of the individuals in the firm may work on your case, even though your primary contact is with Mark Chinn. We find that the most cost-effective and efficient legal product is provided when duties are distributed to those persons best equipped to do the task at the least expense. Therefore, when you hire Chinn & Associates, you can expect to have work performed by the whole team.

Paralegals will be assigned non-lawyer tasks such as client contact; scheduling motions, hearings and depositions; preparing drafts of pleadings and agreements for lawyer review; and file upkeep and maintenance.

If there are certain things that you would prefer handled by a specific individual, please express that wish to Mark Chinn so it may be discussed and implemented if possible.

# COMMUNICATION MECHANICS

In this section we will advise you how to achieve the best communication with Chinn & Associates.

**Office Hours** • Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. (We are generally there before and after those hours, but we are not generally there at lunch from 12:00 noon until 1:00 p.m.)

**Holidays** • The office is usually closed on Federal holidays when the courts are closed.

## Telephone

Office: 601-366-4410

Fax: 601-366-4010

Mark Chinn at home: 601-957-3906

If you call during office hours, please state with whom you would like to speak. If the attorney you would like to speak to is not available, we suggest you either talk to Chad King, our Paralegal, or leave your name and telephone number with a brief message as to what you are calling about, as well as instructions as to when and how it would be best for the attorney to return your call.

On occasion, answers to your questions can be obtained by asking the paralegals the question and having them call you back with the answer after they have spoken with a lawyer. This will increase the speed of

response to you and will save everyone time and you money. If you leave a message for a lawyer, the lawyer's goal is to return your call within 24 hours. If you need an answer sooner than that, please leave that message. If you are in an emergency situation, please leave that message.

**Calls at Home or After Hours** • You may call the lawyers at home if you need assistance. We want to talk to you whenever you need help.

**Answering Service** • We utilize an answering service whenever we are not in the office. Your call will be answered and you may leave a message. It is best to leave a detailed message stating what you need and when you need a response.

**Correspondence** • Please address all correspondence to the post office box: Post Office Box 13483, Jackson, Mississippi, 39236. We pick up the mail every day at 10:00 a.m. at Lefleur Station.

**Appointments** • You are always welcome to drop by the office at any time to consult. However, our schedules are very structured each day and we may be out of the office or engaged with something else when you come by. It is best to make an appointment. To do so, simply call and ask the person answering the phone to schedule the appointment. You also might want to say why you need the appointment so the proper time can be allocated and the proper preparations can be made.

# PAYING THE LAWYER

**The Contract** • During the initial client interview you will be given a contract to sign. A copy of the standard form is included in this notebook. The contract sets forth our understanding in writing so everyone will have a clear understanding. It says what kind of work we are going to do and how you will be charged.

**Method of Charging** • There are many different ways lawyers can charge. For example, there is the "flat fee" where one charge is given for all of the work, no matter how much or little time it takes. There is a "unit system" where the lawyer charges fixed amounts for specific legal tasks. This is the way auto mechanics charge. And there is the "hourly billing" system. This is where the lawyer charges for each hour of time actually expended in doing the work. There are other methods and combinations of methods. There is no "one right way" to charge. At Chinn & Associates, we feel the fairest way to charge is to tie it primarily to the time we actually spend. While there may be "value" elements to our charges, our final bills will basically be a reflection of what it actually took to do the job in your case. We feel that is fairest to you and to us.

**Expenses** • We charge for all actual expenses incurred by us such as filing fees, deposition expenses, medical report fees and travel. In addition, each client is assessed a standard percentage expense charge to cover costs such as copying, telephone and supplies.

**Court Costs** • Some of the common costs you might see in a divorce case are as follows:

Complaint for Divorce           \$92.00

Motion for Modification       \$85.00

Motion for Contempt           \$85.00

Joint Complaint for Divorce   \$37.00

**Depositions** • A deposition costs money in the hiring of a court reporter and paying for a copy of the deposition. These are expensive. A simple, one-hour deposition can cost several hundred dollars for the transcript alone! That does not include attorney time. Therefore, we schedule only those depositions we need.

**Service of Process** • The law requires some things to be personally handed to another person. Complaints for Divorce and other lawsuits are such things. We usually employ a "process server" for that purpose. The cost is generally \$25.00 for local service.

**Timely Payment** • We are a small firm and we depend upon timely payment of the entire bill. We discourage payment of the bill in installments. If you want to pay less than the entire bill, please call to discuss that with Mark Chinn. Prompt receipt by us of our monthly charges helps us ensure maintenance of a first rate legal office.

# VALUE PRICING

Chinn & Associates has implemented unique, customer friendly pricing for our services. The basic feature of our pricing is that we work carefully with our clients to arrive at a customized prize for specific services. Before the representation begins, our clients know the amount they will owe and the maximum amount of resources they will have to dedicate to the matter. This method of pricing is relatively unique to divorce practice and is designed to foster extreme customer satisfaction.

## **Traditional Fees**

Most lawyers charge for their services by the hour. What this typically means is that the lawyers keep track of the time they spend on the case and then send the client a bill for the service, based upon the time spent. Lawyers keep track of their time in intervals, such as quarter hour or tenth of an hour. When they bill the client, they typically put the date the work was completed, a description of the work and a statement of the time. A bill might look like this:

6/9/06	Telephone conference with client	0.25	
6/10/06	Receive and review correspondence from opposing counsel and telephone call with client	0.50	
6/20/06	Receive and review interrogatories, correspondence to client; prepare Motion to compel	1.50	
	Total Time	2.25	X \$300 per hour=\$675

Often, attorneys request an initial “retainer” from the client. This “retainer” is placed in a client funds account and the attorneys charge for their time against the retainer until it is exhausted. Once the retainer is exhausted, clients might be asked to replenish the retainer or pay the remaining monthly bills from the attorney upon receipt. On occasion, clients misunderstand that the “retainer” is not the total cost of the case, but only an initial deposit.

While Chinn & Associates has employed this method in the past, we believe a better method of pricing exists in the form of what we call “Value Pricing.”

### **The Change to Value Pricing**

Chinn & Associates made the decision to change because charging by the hour focuses the lawyers thoughts on time and procedure instead of mission and results. After nearly thirty years of experience with clients with legal problems, we believe that clients care about how they are

served and about the results that are being achieved rather than what amount of time was spent. As a matter of fact, many people, both in and outside of the legal profession, believe that the billable hour method creates incentives for delay, unnecessary procedure, and increased expense. Chinn & Associates eschews such a method and believes the value pricing method is the method of the future from a client satisfaction standpoint.

**The positive attributes of the value pricing method include:**

**Customized Price** • Chinn & Associates works with each client to carefully determine the options available, and the costs and benefits of each course, and works with the client to develop a clear mission. Once the mission is developed, the price is developed in careful consultation with the client, to make sure the price fits the client's mission, the value to the client, and the resources necessary to complete the project successfully.

**Certainty** • Chinn & Associates will customize a price for specific work which specifically lists the price for the work.

Clients are Not Mislead. Our experience has proven that neither clients nor attorneys fully grasp what the final cost of a case might be when the hourly billing method is used. Thus, even though an attorney might warn

a client that the cost is unpredictable, the client is misled into thinking the cost is manageable because the initial retainer is often low compared to the final cost of the case. For example, attorneys charging under the hourly billing method might ask for a retainer of \$3,500 but the total cost of the case when it is finished could be more than ten times that amount. Each hourly-based bill the client receives can become somewhat of a shock or a surprise.

With value pricing the charges to the client are clear. This gives clients the opportunity to better assess-at the outset-if the matter is worth the resources that will have to be applied.

**Goal Orientation** • Prices are customized with results in mind, not time and procedures. These prices, along with the “caps” create strong incentive to the Chinn & Associates team to act with a clear mission in mind and to get results expeditiously and efficiently.

**The Cap** • Chinn & Associates places a cap on the total amount of charges under the contract. The client will never receive a bill for services which is unexpected or beyond the amount set forth in the contract.



**COURTS, CLERKS,  
LAWYERS & JUDGES**

Fortitude

# THE COURT SYSTEM

**Chancery Court** • Your domestic case will be heard in the Chancery Court system of the State of Mississippi. A judge called the "Chancellor" will hear it. There will be no jury. The Chancery Court also handles matters pertaining to land, wills and estates, and children's matters.

**Other Courts** • In the United States, there are many courts. There are State Courts and Federal Courts. The Federal Courts are composed of local "District Courts," followed by appeals courts called "The Circuit Courts of Appeal," followed by the "United States Supreme Court." Your case will not be heard in any of these courts.

In addition to the Chancery Court, there are other state, city and Justice Courts in Mississippi. None of those Courts will have anything to do with your case, except the Mississippi Supreme Court, and the Court of Appeals to which your case could ultimately be appealed.

**Chancery Clerk** • There is a Chancery Clerk in each county. The Chancery Clerk is normally located in the County Courthouse. The clerk keeps a file on all cases, in which all court documents are recorded and kept. Everything that is used in court will be "filed" with the clerk.

## THE OTHER LAWYER AND THE HANDLING OF THE CASE

Many clients get caught up in "whom" the other lawyer is. We recommend that clients not listen to gossip and that they refrain from trying to figure out the other lawyer.

Many times the other lawyer will be an acquaintance or even a friend of someone at Chinn & Associates. This occurs often in a small town like Jackson. We usually regard that as a "plus" for everyone concerned. It can usually mean that the focus will be on a civil resolution of your case and not on something else. If you ever have a question about such things, please ask.

**Civility** • At Chinn & Associates, we believe that lawyers have an obligation to treat other lawyers, parties and persons with courtesy and civility. Expect that. Moreover, we reserve the right to agree to continuances or to take other non-substantive actions to demonstrate personal courtesy and civility. Such courtesy will never be extended to your substantive detriment. If you have a question regarding this, please ask.

# THE JUDICIAL PROCESS

**The Complaint** • The judicial process is started when someone (the "Plaintiff") "files" a document known as a "complaint" with the clerk of the court. The complaint is a written document, which sets forth who the people are in the lawsuit (the "Parties") and what one person wants from the other (the "Claim"). The person being sued is the "Defendant."

**Service of Process** • All complaints must be handed ("served") to the person against whom the complaint is filed (the "Defendant"). Usually a sheriff or constable or other person will simply hand the complaint to the person being sued. The sheriff or process server will then return a copy of the lawsuit to the clerk with a written statement that they handed the complaint to the person served.

**Answer** • Most complaints must be "answered" by the person sued. The answer must be in writing and must admit or deny each statement made in the Complaint. The "answer" must be sent to the attorney or person who filed the complaint and to the clerk of the court where the lawsuit is filed.

**Counter-Claim** • Sometimes the person being sued wants to "sue back." To do this, all they need do is incorporate the counter-suit in the answer. The original Plaintiff becomes a Counter-Defendant and must answer the

suit filed against him or her.

**Discovery** • After the complaint, answer and counter-claims are filed, the next part of the process is a period called "discovery." This time period can vary greatly in length. The purpose of discovery is to allow each party to find out what they want to know about the other side. Discovery has the following elements:

- I. **Interrogatories** • Interrogatories are written questions which one side asks the other. They are generally questions about what witnesses you have, or documents, or what proof you have of certain points. They are also used to find out what financial assets a party has.
- II. **Request for Documents** • Each side requests documents from the other.
- III. **Request for Admissions** • Each side can set forth certain facts and ask the other side to admit or deny them.
- IV. **Depositions** • A deposition takes place where the lawyers ask questions of a party or witness in the presence of a court reporter that takes down everything that is said. When a deposition is scheduled in your case, you have a right to, and are expected to attend.
- V. **Subpoenas** • The law gives people involved in lawsuits the power to

compel persons and witnesses to appear for depositions or to produce documents or other evidence. If a party wants to find something out from a person who will not, or cannot cooperate, then that person can be made to appear and answer questions. Banks and companies can be required to produce banking or employment records which they cannot voluntarily produce because of privacy restrictions.

**VI. Responding to Discovery** • The attorneys and paralegals of Chinn & Associates will work with you in responding to discovery requests to you. Most often, paralegals will handle initial drafts of responses. These responses are generally due in 30 days. Attorneys will meet with you on the day before a deposition to familiarize you with the deposition process.

**Attorney Cooperation** • It is expected that attorneys will cooperate with each other whenever possible. This saves time and expense. It is not a sign of weakness by either side. Sometimes, of course, cooperation is not possible, and motions must be filed with the Court to resolve differences.

**Motions** • Attorneys file "motions" with the court when they cannot "cooperate." Motions are generally technical in nature and will involve discussions ("arguments") between the attorneys in the presence of the judge. Most of the time, clients do not have to be present for "hearings" on motions. Also, judges do not generally allow clients to appear in the

judge's chambers where such motions are often heard.

**Trial** • A divorce trial can last anywhere from one half day to two or three days. At a trial, each side puts on their witnesses and introduces their documents. Each lawyer has the right to question ("cross examine") the other person and their witnesses. At the end, the Chancellor usually makes the decision right then and there. But do not be too concerned about trial because most cases do not go to trial. Most of the time, they are settled.

**Appeal** • If a person is unhappy with part or all of a Chancellor's decision, they have the right to ask the Supreme Court of Mississippi to take a second look at the Chancellor's decision. Appeals are expensive and will take at least two (2) years. If a person wants to appeal, they must decide to do so within thirty (30) days of the Chancellor's decision. They must pay for all of the trial testimony to be typed by the court reporter. This can cost thousands of dollars. After the trial testimony is typed (the "record"), the lawyers for each side write legal arguments ("briefs") stating why their side should win. The Supreme Court Judges read all of this and then make a decision. Again, this is expensive and takes an average of two (2) years.



# DO I HAVE TO DIVORCE? WHAT ARE MY OPTIONS?

No! Many times a client will come in and tell us how her husband wanted a divorce, but she didn't really think she did. She is often amazed when we say, "You don't have to get a divorce if you don't want to." If you don't want a divorce, you have options. Some of them are:

**Support** • If you have children, you can file a "custody and support action" asking the court to give you custody of the children and a monthly award of money for the support of the children. Divorce is not involved. **Separate Maintenance.** If your spouse has left the household and refuses to return, or, you had no choice but to leave, then you can file an action for separate maintenance asking the court to provide you with financial aid from your spouse for both you and the children. Again, this does not involve divorce. To obtain separate maintenance, you must be willing to testify that you would "take your spouse back" without qualification or condition.

**Separation** • If you don't want to file any type of lawsuit, you can simply exist separated from your spouse without doing anything. If you want to do that in an attempt to save your marriage or otherwise, please do so only after consultation with your lawyer. There are risks!

**Legal Separation** • Countless people and clients ask us about a "legal separation." There is no such thing in Mississippi. (There is, however, such a thing in Louisiana, which might account for the confusion). "Separation" in Mississippi simply means, "leaving the marriage."

# WAYS TO DIVORCE

There are many ways to start and end up with a divorce. We will talk first about the most common and finish with some of the lesser known. We will also provide a brief layman's description of each.

## IRRECONCILABLE DIFFERENCES

1. Irreconcilable differences divorces (sometimes called, "No Fault Divorces"), are authorized by a Mississippi State Statute '93-5-2. This statute was passed by the Mississippi Legislature in 1976 to afford people who wanted a divorce an opportunity to obtain a divorce without any allegation of fault by either party.
2. The Irreconcilable Differences Divorce Statute allows for a divorce by agreement of the parties. Agreement of the parties is essential, as no irreconcilable differences divorce can be forced upon either party. The statute requires the parties to agree as to the obtaining of a divorce and to custody and support of the children, settlement of any property rights between the parties, payment of debts, distribution of personal possessions, payment of alimony, and all other things and matters and issues between the parties. Without such an agreement, the Final Decree of Divorce cannot be obtained.

3. The procedure is to file a Joint Complaint for Divorce in the Chancery Court where either party resides, or, to serve a Complaint for Divorce where the Defendant resides. If a Joint Complaint is filed, then the parties are obviously in agreement and may proceed. On the other hand if the Complaint is served upon the opposing party, no divorce can be obtained without that party ultimately entering into an agreement for divorce. In either case, after sixty (60) days has run from the date of the filing of the Joint Complaint, or, the service of the Complaint on the other party, the Final Decree of Divorce may be presented to the court. At the time of presentation of the Final Decree of Divorce, the parties must have executed the agreement set forth above. In addition, some courts require the parties to execute a financial statement for submission to the court.
4. During the sixty (60) day waiting period, a divorce on the grounds of irreconcilable differences may not be obtained. The Legislature designed this waiting period to insure that people really want to obtain divorces. Any party may stop the divorce process not only within the sixty (60) day period but also during the period after the running of the sixty (60) days before the filing of the Final Decree of Divorce. It must be noted that the divorce is not automatically final

sixty (60) days after the filing of the Divorce. As a matter of fact it normally takes one (1) to two (2) weeks after the running of the sixty (60) days for the attorney to arrange an appointment with the Chancellor to sign the Final Decree. This depends on the Court schedules and the Court dockets, as well as the schedules of the attorneys. Every divorce client should be aware that there will be some delay following the running of the sixty (60) days. A divorce exactly at the end of sixty (60) days should not be expected.

5. In addition to proceeding by Joint Complaint, attorneys frequently build into every fault complaint an alternative allegation of a divorce on the grounds of irreconcilable differences. This allows the parties to reach an agreement after the fault complaint is filed and then decide to proceed on the grounds of irreconcilable differences. If that is the case, then the process is the same.
6. If the parties can agree that they want a divorce, but they cannot agree on all of the child custody or financial matters, they can jointly ask the court for a divorce on irreconcilable differences but have a trial on issues they cannot agree on. This option is new to Mississippi Law.

## FAULT GROUNDS

1. **Habitual Cruel and Inhuman Treatment** • This is stated as a ground for divorce in most cases. While it can be a "catch all" ground for divorce for people who don't have a good reason for divorce, it really is not very easy to prove. Cruel and inhuman treatment is conduct endangering life, limb or health, or creating reasonable apprehension of danger, or unnatural conduct making the marriage revolting. Physical beatings can constitute cruelty. However, personal violence is not necessary, but without personal violence, the conduct must be such as to impair or endanger health or create reasonable apprehension of bodily harm. Though personal violence is not necessary, it is not enough to show that continued marriage is merely "undesirable" or "unpleasant." Cruelty without personal violence can take many forms. Badgering, threatening, continual accusations of adultery, demeaning conduct, continual unwarranted criticism and nagging can constitute cruelty. Abhorrent sexual advances or refusal of affection can constitute cruelty. Many times, this type of cruelty is more supportable if the conduct causes the person to seek medical assistance for "nerves" or ulcers, or psychological counseling. There is no real way to pin cruelty down. It depends on the facts of each

particular case.

2. **Adultery** • Adultery is unforgiven ("uncondoned") sexual intercourse with a person other than the spouse during marriage. People often ask what proof is required. Obviously, circumstantial proof is all we have most of the time. It has been said that the circumstance must show the "inclination and the opportunity." If a private investigator is involved, you'll often see testimony that the two individuals pulled up to a motel room or apartment in their cars, entered the room, turned the lights out, and then emerged from the room some time later. That's circumstantial, but most people would accept the probable conclusion of adultery. Love letters and testimony of inappropriate advances toward each other are also often a part of this kind of proof. Adultery must not be forgiven. If a person knows of adultery and "resumes the marital relationship" the adultery can be considered to have been "forgiven," unless it happens again.
3. **Habitual Drunkenness** • Habitual drunkenness is the third most common ground for divorce. Again, there is no way to say what constitutes drunkenness and what doesn't. We look at the amount and frequency of consumption, and the conduct while drinking. Does the person become violent, or does he withdraw and become reclusive?

Have there been DUI's or accidents? Does he miss work or lose friends?  
Has there been treatment for the alcoholism, which has failed?

4. **Desertion** • This is a very misunderstood ground, because most people don't realize that the desertion must last for a whole year. It must be willful, obstinate and continuous. And the one who seeks a divorce must be ready and willing to take "the deserter" back at all times without qualification. With these elements, it is rare.
5. **Penitentiary** • A divorce can be obtained from a person who has been sentenced to the penitentiary and not pardoned before being sent there.
7. **Drugs** • A divorce can be obtained for the excessive use of opium, morphine or other like drug.
8. **Other grounds for divorce are:**
  - a. Natural impotency
  - b. Insanity or idiocy at the time of marriage if the complaining party did not know about it.
  - c. Marriage to some other person at the time of the pretended marriage between the parties.
  - d. Pregnancy of the wife by another at the time of marriage if the husband did not know.

- e. Marriage to a relative.
- f. Incurable Insanity.

### **ALTERNATIVE GROUNDS**

The rules of procedure allow parties to seek what we call "alternative grounds of relief." This means you can ask for several different things even if they don't seem to go together. Therefore, divorce complaints will often contain requests for divorce on fault grounds such as cruelty, or a request for a divorce on the ground of irreconcilable differences, or no divorce at all and an award of separate maintenance. This allows people to ask for whatever relief is possible, given the circumstances.

## THE TEMPORARY HEARING

In most cases, many months pass between the time of the filing of the complaint for the divorce and the ultimate resolution of the case through trial or settlement. To take care of the important needs of the parties between the time of the filing of the divorce and the final resolution of the case, the courts permit a "temporary hearing." A temporary hearing can usually be obtained within ten days to three weeks from the date of the filing of the complaint. Its purpose is to take care of the financial and custody issues pending the divorce. Technically, fault grounds and proof as to wrongdoing should not come into play at the temporary hearing.

The temporary hearing takes place in the courtroom before a judge. Testimony usually consists of both parties and perhaps one other witness. The temporary hearing is not designed to last a long time. On the contrary, it should take only half an hour to an hour. Of course, if custody of children is involved, temporary hearings can last longer.

In Hinds County, temporary hearings are held every Monday afternoon at 1:30. They are usually heard by one judge who is designated to hear such cases. As many as fifteen temporary hearings are scheduled every

Monday afternoon at 1:30 and it is the job of the court to somehow dispose of all of those cases that afternoon. The majority of the cases settle and only two to four cases are actually heard by the judge. If your temporary hearing is in Hinds County, you can expect to meet with Chinn & Associates at approximately 12:30 in the afternoon for some brief trial preparation and then travel to the court around 1:00 for the hearing. Once at the courthouse, you will travel to the third floor to Judge Patricia Wise's courtroom where you will find many clients and lawyers milling about. We will take our seat and wait our turn on the docket.

Other counties will be just a little bit different. But, the process is essentially the same.

The proof at the temporary hearing should be relatively simple, particularly when custody of the children is not an issue. If you are the one seeking support, our first objective will be to prove the income of the person from whom we want support. That will consist of putting that person on the stand and asking about his employment, and putting proof of wages or other income into evidence. After that, you will take the stand and testify as to your income, if any, your debts, needs and expenses. It is essential for each party at the temporary hearing to prepare an accurate statement of financial condition, which includes

income from all sources, debts, and monthly expenses. Several days prior to the trial, we will ask you to prepare your financial statement so that we have it fully prepared by the time of the hearing. With regard to your monthly expenses, you should sit down with your checkbook, credit cards, and other expense items and figure out what you spend annually in each expense category, and then divide it by twelve to achieve an average. That number should then be placed on the budget. The more you work from actual records in an attempt to give an accurate number, the better you will do in court. Be careful not to put expenses in two places. For example, if you list your car loan as a debt, don't list it again as a car payment. Please don't exaggerate expenses either, as that will come back to haunt you. A typical financial statement follows.

Many times we walk away from the temporary hearing and my client will say, "So am I divorced now?" The answer is, "No!" We just had a temporary hearing, which is designed solely to take care of the minimum needs of the parties pending a final resolution of the case. The divorce trial, if need be, lies ahead.

# WHAT DO I ASK FOR?

A divorce should resolve all of the personal and property rights between the parties. Some of the many types of relief sought are:

1. Custody of children.
2. Visitation with the children if the other party is to have custody.
3. Use of the house and maintenance of insurance and repairs.
4. Use of a car and maintenance of insurance and repairs.
5. Monthly alimony.
6. Lump sum alimony.
7. Payment of certain debts.
8. Portion of pension funds, stock or savings plans.
9. All or part of savings, checking, and credit union accounts.
10. All or part of stocks, bonds, etc.
11. All or part of income tax refunds.
12. Life Insurance policies.
13. Division of personal property.
14. Payment of Health Insurance or medical bills.
15. Payment for college education.

# CHILD CUSTODY

**The Statute** • There is a state law, which lists and explains the different types of custody. It is set forth below *in toto*:

§93-5-24 Types of custody awarded by court; joint custody; access to information pertaining to child by non-custodial parent.

1. Custody may be awarded as follows according to the best interests of the child:
  - a. Physical and legal custody to both parents jointly pursuant to subsections 2 through 7.
  - b. Physical custody to both parents jointly pursuant to subsections 2 through 7 and legal custody to either parent.
  - c. Legal custody to both parents jointly pursuant to subsections 2 through 7 and physical custody to either parent.
  - d. Physical and legal custody to either parent.
  - e. Upon a finding by the court that both of the parents of the child have abandoned or deserted such child or that both such parents are mentally, morally or otherwise unfit to rear and train the child the court may award physical and

legal custody to:

- i. The person in whose home the child has been living in a wholesome and stable environment; or,
  - ii. Physical and legal custody to any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child. In making an order for custody to either parent or to both parents jointly, the court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.
2. Joint custody may be awarded where irreconcilable differences are the ground for divorce, in the discretion of the court, upon application of both parents.
  3. In other cases, joint custody may be awarded, in the discretion of the court, upon application of one (1) or both parents.
  4. There shall be a presumption that joint custody is in the best interests of a minor child where both parents have agreed to an award of joint custody.
  5. An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education and

welfare of the minor child, and unless allocated, apportioned or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

- a. For the purposes of this section, "joint custody" means joint physical and legal custody.
- b. For the purposes of this section, "physical custody" means those periods of time in which a child resides with or is under the care and supervision of one of the parents.
- c. For the purposes of this section, "joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.
- d. For the purposes of this section, "legal custody" means the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child.
- e. For the purposes of this section, "joint legal custody" means that the parents or parties share the decision-making

rights, the responsibilities and the authority relating to 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.

6. Any order for joint custody may be modified or terminated upon the petition of both parents or upon the petition of one (1) parent showing that a material change in circumstances has occurred.
7. 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.

**Joint Custody** • Joint custody should occur only in special circumstances. It requires parents to work well with each other and cooperate. It is often not workable unless the parents live very close to each other. It is also difficult to achieve with school age children, as they usually do better when one place is considered home base. Many individual Judges discourage joint custody.

**The Man and Custody** • From a legal standpoint, men and women stand on equal footing in seeking custody. Practical experience, of course, tends to favor "Mama."

**The Children's "Right to Choose"** • The Court's primary obligation is to focus its inquiry on what is best for the children in determining custody. When children reach the age of twelve (12) and desire to express a preference, the Court may take that request into consideration, but only as one factor among others in considering the best interests of the children. Occasionally the court will consider the wishes of children under twelve.

**Will the Children be Involved.** Courts and lawyers are protective of children in divorce proceedings. The younger the children, the more this is true. Many times the court will require, or the lawyers will agree, that a child be interviewed by the Judge in the Judge's office ("chambers") instead of placed on the stand in open court. Sometimes, the parents are excluded so the children will not be afraid to talk.

# CHILD SUPPORT

What is it? The Court can award child support to be paid to the parent that has the primary responsibility to care for the children. This usually takes the form of a cash award, which is to be paid each month. It can also include payment of day care, maintenance of health insurance, purchases of clothing and payment of medical bills.

How much? The legislature has passed a law setting forth guidelines for awarding support. These guidelines call for a percentage of the "net monthly take home pay" after mandatory deductions (e.g. Federal and state taxes and social security) as follows:

One child: 14%

Two children: 20%

Three children: 22%

Four children: 24%

Five or more: 26%

The Mississippi Supreme Court has said that the percentages must only serve as guidelines and not rules. The court must always look to the best

interests of the children and the circumstances of the parties.

It is our practical experience that lawyers and judges look at the percentages before making decisions.

**Private School** • The local courts will generally not require payment of private school tuition and fees unless the person was already doing it before the divorce proceeding began. Even then, the payment of such expenses is totally dependent on the Judge and the case.

**Medical** • Courts are very concerned about health insurance and medical bills. They will generally require that medical insurance be maintained, particularly if it is provided by an employer. Payment of deductible and medical bills, which are not covered, varies, depending on the circumstances.

If a person seeks reimbursement for medical bills, the bills must be first submitted to the other person. We recommend this be done in writing.

**Particular medical, i.e., orthodontics, psychological, etc.** • In the past Courts have been somewhat reluctant to order payment of what might be considered "discretionary" medical bills such as orthodontics and

psychological counseling. The Supreme Court has said that the term "medical" expenses do not include orthodontics unless it can be established that the orthodontics are, "medically necessary."

**Escalation Clauses** • Child support needs are subject to change, especially as the child gets older. The Mississippi Supreme Court has specifically endorsed the use of escalation clauses, which automatically increase child support without the necessity of going back to Court.

The Mississippi Supreme Court in *Tedford v. Dempsey*, 437 So.2d 410 (Miss. 1983) dictates that escalation clauses should be tied to: (1) the inflation rate, (2) the non-custodial parent's increase or decrease in income, (3) the child's expenses, and (4) the custodial parent's ability to pay and the needs of the child. It is important that escalation clauses are tied to the child's needs and the non-custodial parent's ability to pay.

To insure enforceability of escalation clauses, they must be drafted very carefully. They must specify with certainty the particular cost of living or consumer price index which is to be utilized, show the applicable ratio, calculate the base figure as of the date of the judgment of divorce, establish frequency of adjustments (nothing less than yearly), and establish an effective date of each adjustment (for example, the

anniversary of the date of the judgment of divorce). Our court encourages the use of escalation clauses and with careful drafting, they provide additional support for the minor child without the necessity of going back to Court to obtain more assistance as the needs of the child increase.

**To Whom is Support Paid?** • In general, child support payments must be made directly to the custodial parent. They should always be paid by check so payments can be proved. The person receiving support should keep records of exactly how much is received and when.

A man paying child support cannot make the payments to the children. He cannot buy other things or make other expenditures for the children and then deduct them from the support. And, he cannot ask for an accounting of how the support is spent. Many men complain about that, but that's the way it is.

# ALIMONY

There are three kinds of alimony: "periodic", "lump sum", and "rehabilitative."

**PERIODIC ALIMONY** is a monthly payment, which continues until the receiver either, remarries or dies. It is deductible to the payer and must be included in the receiver's income for tax purposes. Periodic alimony can be changed ("modified") at a later date by either party if there is a "material change in circumstances."

Periodic alimony is awarded to the non-offending spouse to help support him or her. In determining whether to award alimony, the Court will weigh the following factors:

- The health and earning capacity of the offending spouse;
- The health and earning capacity of the non-offending spouse;
- The entire sources of income of both parties; and,
- Such other facts as might be pertinent.

In general, it can be said that the non-offending spouse is entitled to be maintained in the life style to which she was accustomed during the marriage, to the extent of the offending party's ability to pay it, while at the same time supporting him or herself. Obviously, one of the hard truths of divorce is that there often is not enough money to support two

households after divorce at the same level as one household during marriage.

**REHABILITATIVE ALIMONY** is a recent addition. It is similar to periodic alimony in that it is paid monthly and is subject to change, but it is payable only for a limited amount of time. It is designed to "help someone get back on their feet."

**LUMP SUM ALIMONY** is an award of a fixed amount of money or property. Although lump sum alimony can be paid in monthly installments, it is generally not so paid and there are IRS rules, which can make monthly installments unattractive. Lump sum alimony is not deductible to the payer, nor can it be included in the receiver's income for tax purposes. Lump sum alimony is not subject to change at a later date due to a change in circumstances.

In determining an award of lump sum alimony, the Court may take the following factors into consideration:

- The contribution to the accumulation of total wealth of the payer, either by quitting a job to become a homemaker, or by assisting in the business, or by putting the payer through school;
- The length of the marriage;
- The separate income or estate of the receiver; and,

- Whether or not the receiver would have financial security without it.

Lump sum alimony comes into play mostly when assets have been accumulated in just one spouse's name. It is designed to equitably split the assets of parties where they are not already in joint names. In doing so, the courts recognize both financial and non-financial contributions. The Supreme Court has said that the value of a housewife's contributions is undisputed and presumed to be equal to that of the man.

The Supreme Court has approved awards of 10% to 50% of the man's separate estate to the woman. It has said that those percentages are not to be considered guidelines. Fifty percent or more is possible, but not guaranteed, as it might be in a state with community property laws such as Louisiana or California.

**PENSION FUNDS** are divisible in divorce actions. Although the Supreme Court has said that Mississippi is not a community property state where such funds must be divided 50/50, a spouse is entitled to a percentage of the other's pension fund with proof of some contribution to its accumulation. Contributions by a woman are presumed to be equal to that of a man.

Military pension funds are subject to division. There are specific federal laws, which are applicable. The military gives specific rights to spouses who have been married for long periods of time prior to divorce.

# VISITATION

**HOW MUCH?** Most courts have developed standard schedules of visitation to be applied in the average case. They do this so there will be little argument about it. You will find a standard visitation set forth below. This standard provision can be modified to suit the particular case.

## STANDARD VISITATION GUIDELINES

- a. HUSBAND shall have the right to visit with the minor children on the first and third weekends of each month from 5:00 p.m. on Friday until 5:00 p.m. the next Sunday;
- b. During summer holidays, at least two weeks, to be set by written agreement of the parties, and, if agreement cannot be reached, then said period shall begin at 8:00 a.m. on the Saturday of the weekend prior to July 4;
- c. The birthdays of the children in the odd numbered years and HUSBAND's birthday every year;
- d. Father's day every year;
- e. One week beginning on the first day of the regularly scheduled

school Christmas holidays, through and including Christmas Eve day at 8:00 p.m. during odd years and the week from Christmas Day at 9:00 a.m. through and including New Year's Eve at 6:00 p.m. during even numbered years;

- f. Regularly scheduled Thanksgiving school holidays and weekends during even numbered years and regularly scheduled school spring holiday weeks during odd numbered years; and,
- g. All reasonable times agreed upon by both parties.

**CAN I RESTRICT VISITATION?** The Supreme Court has said many times that visitation with the non-custodial parent should be overnight and without restriction of any kind, except in extreme cases where the life or health of the children are in danger. Local courts do not look kindly upon attempts to restrict visitation. The Courts feel that the children's relationship with both parents should be encouraged. In some isolated cases where sufficient proof is elicited, the Courts may impose a restriction upon the visiting parent that they not consume alcohol or drugs during visitation. In addition, the Court may order parents not to have girlfriends or boyfriends stay overnight when the parent has the children.

**GETTING ALONG** • The Courts expect parents to put their differences aside when it comes to the children. They expect parents to act civilly and to facilitate good, healthy visitation. They also expect parents to do nothing to unfairly hurt the children's image of the other parent. To put it simply, Judges know they can't be there to enforce civility so they expect the parents to voluntarily act with decency when it comes to the children.

**CAN YOU MAKE HIM OR HER VISIT?** Sometimes the person with visitation rights doesn't exercise them. People call us and complain but we know of no rule requiring a parent to visit. If it happens repeatedly, the remedy may be to file a request to modify visitation to limit it in accord with the visitation actually exercised and to insert some court ordered protection from abusive or inconsiderate practices.

# THE DEPOSITION

A deposition is a sworn statement of a party or witness to a court proceeding. The deposition will take place in a lawyer's office or other suitable place. A court reporter, which is a person that is trained to record testimony, will be at the deposition. The court reporter administers an oath to the person testifying, before he begins to testify. At the conclusion of the deposition, the court reporter will transcribe, or type, the testimony so that it can be read.

Depositions may be taken without a court reporter present. In that case, the person taking the deposition simply uses a tape recorder and has someone in his office type the transcript. Depositions may also be taken by use of a video camera. The method by which the deposition is taken depends on the circumstances and the lawyers involved.

The attorney who has sought the deposition will question the deponent first. Thereafter, the other lawyer has the opportunity to ask questions.

There are two (2) basic purposes for taking depositions. The first purpose is to find out what a person is going to say. The second purpose is to hold the person to it. In other words, if a person testifies to something different in court than he/she has in his/her deposition, then the

deposition can be used to "impeach" or discredit the witness and make his testimony less credible.

Depositions are very rarely significant events in a legal proceeding. If your deposition is being taken, there is nothing to be nervous about, as nothing will happen at the deposition other than to give testimony. Of course, sometimes, depositions can be significant. The deposition may reveal facts which the parties didn't know about and which turn the tide of the litigation. However, this is very rare.

If another party is taking your deposition, then the opposing counsel will ask you questions. Most of the time, opposing counsel is quite courteous to the person questioned. The attorney will often introduce himself/herself and give an explanation of what he/she is about to do. He/She may advise you that if you want to take a break at any time that you should feel free to do so and that if you don't understand any questions you should tell him/her.

When another lawyer is taking your deposition there are simple rules, which should be kept in mind:

1. Never answer any question that is not asked. Only answer exactly what you are asked.
2. As a caveat to rule number one, do not be evasive or difficult in

the deposition. This will work against the witness.

3. If you don't understand a question, say you don't understand.
4. If you don't hear a question or don't fully understand it, ask the lawyer to repeat the question.
5. If you're not sure what to say, don't say anything.
6. If you don't know, say, "I don't know."
7. If you don't remember clearly, say, "I don't remember clearly."
8. Lawyers sometimes ask questions which are too general. For example, a lawyer might ask a question, which would be answered one way at a particular time and another way at another time. Therefore, make sure that you understand exactly what, when, and how you are being asked. If a general question is asked, you might ask, "During what period of time?"
9. Never let the other lawyer upset you. Remain in control at all times.
10. If you are uncertain of yourself and are having difficulty in the deposition, ask for a recess to go to the bathroom or get a drink of water. You may do this as many times as you like and at any time.
11. If you are unsure of what to do, ask your lawyer.

The deposition is not like a trial, and there is a good chance that your lawyer will not object or do anything to obstruct the other lawyer. As a matter of fact, the deposition might be quite a friendly event and you might wonder why your lawyer is being courteous to the other lawyer. Of course, the purpose of litigation is to resolve disputes in a civil and professional manner. Depositions are not trials and lawyers in this area allow the other lawyer freedom to ask questions without interruptions.

If an objection is made, it will be to the form of the question. The objection is made for technical reasons, and does not ordinarily mean that the question cannot be asked. The other lawyer may ask the person to answer the question or may restate the question. Your lawyer will say that you can either answer or not answer the question. If your lawyer objects, do not answer the question until you get instruction from your lawyer. Often times, when a lawyer does not want you to answer the question, the objection will be as follows: "I object to the question and instruct the witness not to answer."

If another lawyer is taking your deposition, it is quite likely your own lawyer will not ask you any questions whatsoever. There is no need for your attorney to elaborate or expose facts to the other side. Of course, sometimes answers need to be clarified and your lawyer may decide to

ask you questions in order to do so.

Since the purpose of depositions is generally to discover what the other knows or intends to present in evidence, it is very rare that your lawyer will schedule the deposition of your own witnesses. First of all, there is generally no reason to expose what your witnesses will say. Second, depositions are expensive and you don't want to go to the expense of a deposition, which the other side should pay for. Of course, if you know of a witness that may be leaving the state or may otherwise be unable to come to trial for some reason, such as illness, school, or otherwise, you should tell your lawyer as soon as possible. Your lawyer can then make a determination as to whether the witness's deposition should be taken to preserve his testimony for trial or other purposes.

One exception to the rule that you don't take your own witnesses' deposition involves a physician. Appearance by a physician at trial is the exception. It is too expensive for the client and too time consuming for a physician to require a physician to appear at trial. Usually, both sides will arrange to have depositions taken of physicians and other similar personnel for use at trial as needed. This is very expensive, but it is much less expensive than having the physician go to trial. Physicians generally will not go to trial because of their schedules.

If the deposition of the opposing party or opposing witnesses is being taken, your attorney can use your help in preparing to take the deposition. List things that you would like to know or would like your attorney to ask, and give the list to your attorney. Your attorney will review these notes in attempting to come up with the best plan for taking the deposition. Prior to the taking of the deposition, your attorney should give you a note pad and a pen so that you can take notes. During the deposition it is entirely appropriate for you to write messages to your attorney and pass them to him to assist him in asking proper questions. Constructive assistance by clients is invaluable in effective representation. After all, you know your case better than anyone; it is your lawyer's job to present it, and he can benefit from your knowledge. After the court reporter is through transcribing the deposition, she will make it available for reading and signing. You will have the opportunity to read your deposition and make sure that it is properly transcribed, or to clarify something that needs clarification. This is called "reading and signing."

Once the deposition is transcribed, read, and signed, it will be made available to the parties. The original deposition is the most expensive,

and that will be paid for and retained by the party who scheduled the deposition. Other persons if needed can obtain copies of the deposition. Copies are generally less expensive than the original, but still cost as much as \$3.00 per page. Your attorney may or may not elect to retain copies of deposition, depending upon the need to have the deposition in preparation for trial and your budget. You may freely discuss this decision with your attorney.

Prior to any hearing, trial, or other event where you might have to give testimony, it is often wise to ask your attorney for a copy of any deposition which you have given in the past. You can review the deposition and be completely clear on what you have said in the past. This will refresh your memory as to some details in the past. This will refresh your memory as to some details, which you might have forgotten, and will give you confidence that you will not put yourself in any position where you are saying different things.

# PREPARING FOR A DEPOSITION, HEARING OR TRIAL

Prior to any deposition, hearing, or trial, your lawyer will schedule a time to meet with you for preparation. If for some reason you get close to such an event and have not heard from your lawyer, give your lawyer a call and ask if such a preparation session needs to be scheduled. Also, ask your lawyer what you need to bring to assist him or her in preparing you for the event.

During the preparation conference, you will be told exactly what will take place, what you need to know, and what you need to do. You can be confident that you will be informed as to what you're going to have to do. If at any time you do not feel confident as to that, call your lawyer and let him or her know. It is extremely important that both you and the lawyer are on the same page in relation to the amount of preparation that is necessary.

Your dress for judicial proceedings should be conservative. You should not dress too elegantly, nor should you dress in "knock around clothes." I like to tell people to wear "school clothes." For men, this means slacks, coat and tie. For women, it means a nice dress, or skirt and jacket combination. Pants suits, eveningwear, and "low cut" clothes are strongly discouraged.

Colors of dress are also very important. Bright colors and "frilly" designs are inappropriate. Colors should be conservative, such as blue, green, or brown. For example, women should avoid red and men should avoid wearing sporty jackets.

When testifying, you should look directly at the judge or jury. In other words, you should look at the person who has to make the decision. It is appropriate to look at the person who is asking the question while they are asking the question and then to the person that you should be talking to while you are answering. Some lawyers instruct their clients to never look at the opposing counsel, and while that can be effective; I do not regard it as natural. Again, a witness should look at the person to whom they are talking or listening.

When seated at the witness chair, the witness should sit upright and with a classic style. For example, women should sit with their knees carefully placed together and perhaps at a slant, with their hands on their lap. Men should sit upright. Legs may be crossed, but it is important that legs are not crossed in a "rakish" fashion. One should not look too comfortable or cavalier on the witness stand.

When speaking, speak clearly and into a microphone if provided. Make sure that all questions are answered audibly and that questions are answered in a respectful fashion. For example, a witness should say, "Yes, sir" instead of "Uh-huh."

A witness should take care at all times not to become upset by an opposing counsel. In almost all cases, a witness should avoid getting angry at opposing counsel. Often times that is exactly what opposing counsel is trying to achieve. Opposing counsel should be treated with respect, but not deference. Opposing counsel should be responded to, but should not be patronized. You may be courteous with opposing counsel, but you should not be friendly. You may be firm with opposing counsel when needed, but never angry.

In the courtroom, try to remain calm and dignified. If you are listening to someone else testify and you find his or her testimony to be unbelievable, do not react. Sometimes witnesses will scoff, laugh, or make sarcastic remarks when the other side is testifying and such conduct often results in an admonition from the judge. If a witness is testifying to something that is not true, simply jot down the untruth and pass it to your lawyer. Again, do not react.

When being questioned by another lawyer, make sure you answer only what is asked, without being evasive or sarcastic. In other words, don't try to be "too cute" with an attempt to answer only what is asked. A good example of this is when you call someone's house and ask if someone is there and the person on the other end of the phone says, "Yes" but does not then get the person for you to talk to him or her. Get the point?

If you don't understand a question, tell the person questioning you that

you do not understand the question. If you do not know what the person is talking about, tell him that. If you do not remember, state that you do not remember. Precision on the witness stand is extremely important. You should concentrate and be extremely careful with your answers. Think before you answer. If your lawyer objects, stop speaking until instructed by the court or your lawyer to continue responding.

Never argue with the judge or opposing counsel. Never talk back to the judge and never address the judge directly except in looking at the judge while answering questions.

If an opposing lawyer asks you about a document, ask to see the document before responding. Once you are handed the document, read it carefully before responding. Do not assume anything. Be careful about everything. At the conclusion of any hearing, please show little or no reaction to any decision. It is inappropriate to celebrate another's defeat and it is inappropriate to show much distress over having something decided against you. Once the hearing is over, the parties should quietly pack up their things and proceed with dignity out of the courthouse. Celebrating or other shows of emotion should take place in the attorney's office or other place out of the sight of other persons. Often times, your attorney will have you wait in the courtroom until the other side has had an opportunity to clear the courtroom and perhaps get on the elevator. This is done to relieve any stress between the parties.



# THINGS TO DO AND THINK ABOUT

1. Divorce is tough. Divorce is a bad experience. I often have said it is the second worst thing a person can go through, but my preacher recently said it is the worst thing. One of the important things for you to realize is that it is bad. But it will get better.
2. Communication with your spouse. If communication by phone, letter or in person with your spouse is upsetting - which it often is - stop it. Your spouse knows how to get to you. Often times your spouse wants to keep you "off balance." If you're having trouble, just stop talking. If he/she calls, tell him/her all communication should take place between the lawyers. If he/she writes, send the letter back unopened.
3. Keep a diary. Keep a diary of things that happen, your thoughts and things said. Keep track of everything! Believe me, it will be of help some day.

# THE ATTACK ON YOUR LAWYER

Your spouse will perceive your lawyer as a threat. This is natural, but unnecessary. You and your spouse are better off going through divorce with attorneys.

Nevertheless, your spouse will probably try to undermine your relationship with your attorney. He will say any one or more of the following:

- "Your attorney is charging too much!"
- "Your attorney doesn't know what he is doing."
- "Your attorney has a bad reputation."

I've had people tell my clients that I was "after them." I've even had an opposing party say that I slept with my clients, which was interesting since my client was a man!

Another tactic is to try and convince you or scare you into believing you will be better off without legal advice!

The key is to be aware that this is standard conduct by the other spouse. Don't be fooled by it.

## TOUGH TIMES WITH YOUR LAWYER

Above all, trust your lawyer. Your lawyer is personally, morally, legally, and ethically obligated to be loyal to you. We will be. Don't give in to the temptation to doubt your lawyer. Such doubt while you are going through this most difficult time is a killer. And your spouse will prey on that loss of confidence.

Many people are not "themselves" during a divorce. Their head is foggy and their moods depressed. They don't know who to trust and they are angry. Many times they want to do things or act in ways that are detrimental to themselves. These things can produce conflict with your lawyer as well as other people around you. Try to be patient and understand that your lawyer is working for you and you must trust that.

The simple lesson is that you should recognize ahead of time that some friction with your lawyer along the way is possible and a natural part of this unpleasant process.

## THE VALUE OF FRIENDS AND FAMILY

Litigation is an extremely stressful experience. It is very likely that you have never experienced litigation before and may never experience it again. Therefore, it is crucial that you involve your family and friends in the experience to provide you with emotional and moral support. Any time you have a hearing or trial, ask several friends to come with you. They should be close friends who are willing to hear about your difficulties and who are willing to be put through the inconvenience that follows from trial work. While it is inconvenient to them and perhaps embarrassing to you, the assistance of several friends and family members at a hearing is invaluable.

# TALKING ABOUT YOUR CASE

When going through a monumental event in life such as litigation, it is tempting to talk to your family and friends. While some consoling is appropriate, it is best that you keep conversation about your litigation to a minimum.

Children should not be involved in discussions about a divorce. Parents should take care not to discuss the divorce with their children and certainly to try not to involve their children on one side or the other. There are situations where children should be brought into the litigation, but this should be kept to an absolute minimum. Psychologists say that your children will resent you if you try to involve them too much in the conflict between you and your spouse.

While friends are willing to show support, parties have a tendency to focus conversations on their litigation. This is not good for the friendship or the litigation. Too much conversation can lead to trouble, such as the leakage of important trial strategies to the other side.

In addition, one should always keep in mind that a friend may either intentionally or unwittingly communicate with other persons or even the other side about communications they have had with you. You can never be certain, and for that reason you should keep quiet as much as possible.

# PROFESSIONAL ASSISTANCE

**Counseling** • Divorce is one of the worst things that a person can go through. We recommend to every client that they seek professional counseling of some kind. We feel that counselors can provide you with a good ear and can warn you about some of the emotions you will go through and prepare you for it all. In addition, we normally recommend counseling in cruelty and custody situations to provide expert testimony.

**Accountant** • When the situation calls for it and the client can afford it, we like to retain an accountant to assist us with financial matters. This is particularly true when the value of a business is involved or where the other party derives her/his income from a sole proprietorship.

**Private Investigators** • Private investigators play a role in divorce cases. Obviously, this is particularly true where adultery is suspected.

**Tax Attorneys** • Particularly where pension funds are involved, we like to seek the advice of a tax attorney. If we think that is necessary, we'll consult with you about it.

## MEDICAL EXAM

It is a good idea to schedule a medical examination as soon as you can.

The medical exam is important for both your personal health and your case.

Some studies show that as many as 80% of spouses commit adultery. If your spouse has fooled around (whether you know it or not), you have been exposed to a potential for sexually transmitted diseases. Not only is STD possible, it can be considered likely. So please have yourself tested.

A physical is also important to your case. If your health is not good or if you have some disability, such conditions must be considered in your divorce. For example, if you settle your case thinking you are healthy, but in fact you are not, you may make a serious mistake in settling your case.

So please get a comprehensive medical exam and share any remarkable occurrences or findings with your lawyer.

## SOME WARNINGS

**Abuse** • If you are the subject of abuse, we recommend you call the police immediately. Depending on the jurisdiction, we find that law enforcement authorities will respond to domestic violence calls. If you have been physically assaulted, you may file an affidavit with the local authorities and the assaulter may be arrested.

In extreme cases, you can ask for a restraining order in the Chancery Court. This can be done as a part of a divorce proceeding or it can be done in a separate proceeding called a Complaint for Protection from Spouse Abuse.

A "peace bond" is something that can be obtained from the local Justice Court. This is a procedure where you appear before the Judge and detail the violence or harassment to which you are subjected. The Judge may then set the matter for hearing and order the violator to post a money bond conditioned upon compliance with the Order. You can do this procedure without a lawyer.

**Condonation** • Condonation is the legal term for forgiveness of a fault ground for divorce. Condonation is the resumption of the marital relation with forgiveness of the fault. Condonation can simply mean having sexual

intercourse with the offender. For example, if you learn your spouse is guilty of adultery and you thereafter have sexual intercourse with him, the Court may find that you have condoned ("forgiven") the adultery and deny you a divorce on that ground.

If an offense such as adultery takes place again after the condonation, then the ground for divorce is revived.

**Dating** • Dating of any kind should be avoided until a divorce is finally obtained. This is true even where the parties have reached an agreement and intend to obtain a divorce on the ground of Irreconcilable Differences. If a person must socialize, we usually recommend that it be done in a group where you are not "coupled" with someone. This should avoid misunderstanding.

**Kitchen Table Advice** • Often time's friends and relatives give a lot of "legal" advice to persons going through divorce. You will hear horror stories of how someone in your situation really got a bad deal or you may have someone tell you how much money you should get. We have one comment: DO NOT LISTEN TO ANY OF IT!

# TELEPHONE NUMBERS YOU CAN USE

Adult and Adolescent Survivors of Abuse	601-372-4823
Alcoholics Anonymous	601-371-3006
Child Abuse Hotline	1-800-222-8000
Child Abuse/Exchange Club Parent Child Center	601-366-0025
Children's Advocacy Center	601-969-7111
Consumer Credit Counseling Service	601-352-7784
Contact Crisis Intervention	601-936-8990
Family Services Counseling	601-352-7784
First Call for Help	601-352-4357
Gas hookups, Mississippi Valley Gas Company	601-961-6600
Mental Health Association	601-982-4003
Mobile Medic Ambulance	911 or 944-1111
Narcotics Anonymous	601-949-9499
National Council on Alcoholism of Central MS	601-366-6880
Power hookups, MP&L	601-969-2522
South Central Bell phone hookup	601-557-6500
Dept. of Human Services/Child Support Enforcement	601-354-6000



# ENTRY OF DIVORCE

## Exit Interview

Once the divorce is entered we will ask you to come in for an “exit interview.” At that interview we will give you advice on what your legal options and responsibilities are in the future. Some of that advice is written in the following pages.

## MODIFICATION

Divorce agreements or orders can be modified later if there is a "material change in circumstances." It is hard to define what such a change might be except to say that if years pass and the cost of raising children increases, or a party's income goes up or down substantially, a change may be in order. You should plan to consult with Chinn & Associates every six (6) months or so after your divorce, or, in every case where a major event takes place (illness, increase in other party's wages, major child expense), to determine if a modification is appropriate. To be sure, if you are obligated to make payments pursuant to an order, and you find yourself unable or less able to make the payments, consult Chinn & Associates immediately regarding a modification. Failure to do so could have extreme consequences.

# CONTEMPT

If a party fails to comply with an order of the Court, they can be held in contempt. A contempt order can be enforced by confinement in jail until the offending party complies with the order. For example, if a man falls behind in the payment of child support, the woman can file a motion to find him in contempt. At a hearing the court will inquire as to whether or not there has been a failure to comply with the Order. If there has, then the violator must show that it was impossible to comply or he may be sent to jail until he does. The moral of the story is that any person who finds they may be in contempt or non-compliance with an order should consult immediately with Chinn& Associates about a possible Motion to Modify before a contempt motion is filed against them. Timing in this regard is essential.

# LEGAL TIPS FOR THE NEWLY DIVORCED

1. Make sure you have the original deeds, notes, car titles and other documents which should be in your possession, and place them in a safe deposit box.
2. If you move to a new state, your prior decree is enforceable under the full faith and credit provisions of the U.S. Constitution.
3. In Mississippi, partial custody/visitation cannot be denied because support payments are not being made and, conversely, support payments cannot be withheld because of a denial of visitation.
4. Divorce decrees are generally enforceable by contempt proceedings, attachment of property, or garnishment.
5. "Child snatching" is punishable in virtually every state and rarely does the party taking the child ever obtain legal custody.
6. Custody and child support are sometimes capable of being modified following a final decree.
7. Beneficiaries of insurance policies should be checked and changed where needed. If minor children receive life insurance proceeds, the other parent will be trustee for such funds unless special provisions are made.

8. Alimony for the support of an ex-spouse is generally tax-deductible, while child support is not.
9. If you have a joint passport, have a new one or ones issued for yourself and your children.
10. You may have liability for some charges made on joint credit cards; so all credit cards should be closed.
11. Contempt of court for failure to make court ordered support payments or failure to permit court-ordered visitation may involve being jailed. Play by the rules!
12. Contract rights of third parties are not usually affected by a decree of divorce, so if you were obligated to a bank, finance company, etc. before the divorce, you are still obligated even though your ex-spouse has been ordered to pay some.
13. A live-in boyfriend or girlfriend may be grounds for a change in custody or visitation.
14. A live-in boyfriend or girlfriend may be grounds for the termination of permanent alimony payments.
15. In the event of death of the custodial parent, the other parent usually gets custody, will provisions to the contrary, notwithstanding.

16. Without a will, property, which you want to go to your children, could be controlled by your ex-spouse.
17. In Mississippi, grandparents can sometimes get visitation rights with their grandchildren, in addition to the visitation given the non-custodial parent.
18. A wide variety of social services are available to a custodial parent receiving inadequate support payments.
19. The wishes of a child of reasonable age are often considered by the court in determining which parent the child will live with. More emphasis will be placed on the request of a child 12 or older.
20. All alimony and support payments should be by check, or a signed, dated receipt should be obtained. The receiving party should keep a very accurate record of all payments received.
21. Gifts and money provided to children directly do not count as child support under most court orders.
22. Child support payments generally do not cease during visitation periods even though such periods may be lengthy, although payments may be reduced somewhat.
23. Any deviation from the terms of a court decree agreed upon by you and your ex-spouse should be reduced to writing and signed by both parties.

# HELPFUL HINTS TO THE NEWLY SEPARATED OR DIVORCED

1. Take a short inexpensive vacation, if possible.
2. Treat yourself to an inexpensive gift.
3. If you have not found a new apartment or home, fill out a change of address card at the post office; fill in general delivery. The post office will hold your mail for thirty days, which will give you time to relocate.
4. Let your children know that you have not divorced them.
5. Do not talk badly about you ex-spouse to your children. You will only hurt your children and confuse them even more. They will also resent you for it.
6. You will think that a lot of friends have left you, but they haven't and those who you feel remain should be told how important their friendship is to you. It is a strange quirk of human nature why some of your friends have dropped out, and the reasons range from their being threatened by your divorce and your new "freedom" to a feeling of inadequacy because they simply do not know how to help you through this period. Life seems very black when this happens, but

things will get better sooner than you think. You have a clean slate now.

7. Make sure your will is revised. If you don't have a will, now is the time to make one.
8. Change beneficiaries on insurance policies if needed.
9. Both of you should obey the property settlement agreement and/or divorce decree. Going back to court is a waste of emotion, time and money.
10. Do not use the children as weapons. The non-custodial parent should see the children regularly and on time and the custodial parent should have the children dressed properly and have an overnight bag packed sufficiently. If anyone has a point to prove, it should not be at the expense of the children.
11. Keep good records of alimony and/or child support payments for tax purposes. Always pay by check. Never give cash.
12. Have locks changed on prior marital residence if ex-spouse still has a key. Don't look for trouble.
13. If you are having a particularly difficult time adjusting as a newly divorced person, do not hesitate to seek help. Churches offer counseling, as do psychologists, psychiatrists, and support groups.

# PLACES TO TAKE YOUR CHILDREN ON VISITATION DAYS\*

- ZOO
- PARK
- MOVIES
- AMUSEMENT PARK
- MUSEUM
- CIRCUS
- ICE SKATING
- ROLLER SKATING
- KITE FLYING
- RAFTING ON A RIVER
- HISTORIC SITES
- BEACHES & LAKES
- BUTTERFLY CATCHING
- FISHING
- NATURE HIKES
- SYMPHONY
- CHILDREN'S CONCERTS
- HORSEBACK RIDING
- SKIING
- LIBRARY
- CITY AQUARIUM
- PLANETARIUM
- BICYCLING/JOGGING
- SPORTING EVENTS  
(BASEBALL, FOOTBALL,  
HOCKEY, etc.)

ASK THE KID(S) WHAT THEY WOULD LIKE TO DO

\* Don't fall into the "Santa Claus syndrome." You probably feel guilty about your children's new situation, but don't make visitation days Christmas. It will only confuse your children. You are still their parent. Just treat your children well and love them.

# A WOMAN'S GUIDE TO ESTABLISHING A GOOD CREDIT RATING

1. Open a checking account in your own name.
2. Open a savings account in your own name at the same bank.
3. Make a short-term loan from the bank (to be repaid in 60-90 days).
4. Repay the bank on time or even a week or two early (absolutely no exceptions).
5. Apply for a department store credit card after repaying the bank loan.
6. Apply for an oil company credit card if you need one.
7. Be patient. If you are refused, find out the reason and try to meet the company's credit requirements. If your income is too low, ask your attorney to provide a letter verifying alimony and child support.
8. If you have satisfied all the requirements and still have not received the card, send them another application by certified mail.
9. You cannot do much more without legal help. If you still have not received the card, consult your attorney regarding further action.

# ESTABLISHING CREDIT

The Consumer Credit Protection Act of 1968 ("Truth on Lending Act") prohibits the denial of a consumer credit card because a woman is single or divorced. The Equal Credit Opportunity Act insures that all credit applicants will be considered on the basis of their actual qualifications for credit and not personal characteristics as to sex or marital status.

It is illegal for creditors to:

1. Ask your sex (except on a loan to buy or build a home.) You do not have to use Miss, Mrs. or Ms. with the application;
2. Ask or assume anything about child-bearing plans or method of birth control;
3. "Score" age in a "credit scoring" system any differently if under or over 62;
4. Ask for a co-signature or any information about ex-spouse if an applicant is credit worthy.
5. Require an applicant to reapply on an existing account or change the terms of credit if an applicant becomes divorced. (There must be some sign that credit worthiness has changed.);
6. Refuse to grant a loan if an applicant is credit worthy.
7. Lend money on different terms from those granted another person with similar income, expenses, credit history and collateral.

They may ask if you are married, unmarried (single, divorced or widowed) or separated, but they cannot deny credit because of it.