

# **DIVORCE BASICS 101**

**MATTHEW THOMPSON  
THOMPSON LAW FIRM, PLLC  
[WWW.BOWTIELAWYER.MS](http://WWW.BOWTIELAWYER.MS)**

---

# COMMON FAMILY LAW MATTERS

- Divorce
  - Child Custody (Paternity, Modification)
  - Child Support (Modification/Contempt)
  - TPR/Adoption
-

# CHANCERY COURT CASES

- According to the Mississippi Supreme Court Annual Report 2017, there have been more Chancery filings than Circuit civil, Circuit criminal and County filings every years since 2010.
  - For 2017
    - Chancery filings 59,221
    - Circuit (civil) 19,328
    - Circuit (criminal disposed) 21,182
    - County filings 29,417
-

# MISSISSIPPI DIVORCE

- Fault Based
  - Grounds
    - Adultery
    - Habitual Cruel and Inhuman Treatment
    - Habitual drug use
    - Habitual drunkenness
    - As well as other grounds...
  - Irreconcilable Differences
    - Both parties
    - Joint Complaint
    - 60 days
    - Child Custody/Property Settlement Agreement
    - Final Judgment of Divorce
-

# FAULT BASED DIVORCE

- Complaint for Divorce
    - Rule 4 Summons
    - Rule 81 Summons (Temporary Hearing)
  - Temporary Hearing
  - Discovery
    - Interrogatories, Requests for Production of Documents, Requests for Admissions,, Subpoenas
  - Depositions
  - Mediation
  - Trial
-

# COMPLAINT FOR DIVORCE

- Residence Requirements - Mississippi Code §93-5-5
  - The jurisdiction of the chancery court in suits for divorce shall be confined to the following cases:
  - (a) Where one (1) of the parties has been an actual bona fide resident within this state for six (6) months next preceding the commencement of the suit. If a member of the armed services of the United States is stationed in the state and residing within the state with his spouse, such person and his spouse shall be considered actual bona fide residents of the state for the purposes of this section, provided they were residing within the state at the time of the separation of the parties.
  - (b) In any case where the proof shows that a residence was acquired in this state with a purpose of securing a divorce, the court shall not take jurisdiction thereof, but dismiss the bill at the cost of complainant.

# PRACTICE TIP

- Conduct of Divorce Proceedings – Mississippi Code §93-5-7
- The proceedings to obtain a divorce shall be by complaint in chancery, and shall be conducted as other suits in chancery, except that;
  - (1) the defendant shall not be required to answer on oath;
  - (2) no judgment by default may be granted but a divorce may be granted on the ground of irreconcilable differences in termtime or vacation;
  - (3) admissions made in the answer shall not be taken as evidence;
  - (4) the clerk shall not set down on the issue docket any divorce case unless upon the request of one (1) of the parties;
  - (5) the plaintiff may allege only the statutory language as cause for divorce in a separate paragraph in the complaint; provided, however, the defendant shall be entitled to discover any matter, not privileged, which is relevant to the issues raised by the claims or defenses of the other;
  - (6) the court shall have full power in its discretion to grant continuances in such cases without the compliance by the parties with any of the requirements of law respecting continuances in other cases; and
  - **(7) in all cases, except complaints seeking a divorce on the ground of irreconcilable differences, the complaint must be accompanied with an affidavit of plaintiff that it is not filed by collusion with the defendant for the purpose of obtaining a divorce, but that the cause or causes for divorce stated in the complaint are true as stated.**

# SUMMONS

- Rule 4 Summons
    - Form 1A (if process server) Form 1AA (if Sheriff)
    - You have 30 days to answer the complaint. You must file your response.
    - Personal Service – someone over 18 and not a party to the action and/or Sheriff
    - By Mail – Form 1B
    - Publication – Form 1C (after diligent search/inquiry)
    - Certified Mail (out of State) “Restricted Delivery” Complete as of the date of delivery by the return receipt or by the returned envelope marked refused.
  - Rule 81 Summons
    - Form 1D
    - You have to appear at a hearing. No Answer required.
-

- Every Judge is different
  - Hearing
  - Conference
  - Meeting at the bench
- Grounds for divorce are not admissible
- Relief Requested
  - Temporary exclusive use of the marital home
  - Temporary custody (legal and physical)
  - Temporary child support
  - Marital Debts
  - Vehicles
  - TRO for accumulation/dissipation of marital assets

## **TEMPORARY HEARINGS**

- Interrogatories (Rule 33)
  - Not to exceed thirty
  - Must be answered under oath
  - Within thirty (30) days
- Requests for Production of Documents (Rule 34)
  - Within thirty (30) days
  - No limit (other than within the scope of discovery)
  - Inspection/Production
- Requests for Admissions (Rule 36)
  - Simple statements to admit or deny
  - Within thirty (30) days
  - If not answered, deemed admitted

## DISCOVERY

# SO WHAT IF THEY DON'T ANSWER?

- STEP 1

- Uniform Chancery Court Rule 1.10
- Good Faith Letter

- STEP 2

- Motion to Compel
- Attorney's Fees

\*\* Requests for Admissions not included

*File a Notice Deeming Requests for Admissions Admitted*

---

- Bifurcation
  - On Motion or on Court's direction
- Grounds for Divorce
- Custody
  - Albright Factors
- Equitable Distribution
  - Ferguson Factors
- Alimony
  - Armstrong Factors

**TRIAL**

# RULE 81 PROCEDURE

- File your Complaint or Petition
    - Civil Coversheet
    - Filing Fee
  - Get date from the Court Administrator
    - Check on Return Dates
  - Issue Rule 81 Summons
    - 3 copies
  - Serve Defendant/Respondent with original Summons and copy of the filed Complaint/Petition
-

# THINGS YOU DIDN'T LEARN IN LAW SCHOOL

- Notice of Service of Discovery
  - Rule 8.05 Financial Statement
    - Certificate of Compliance
  - Subpoena for Records
  - Subpoena for Witness
  - MEC Guidelines and Procedures
  - Local Rules
    - PSA filed
    - Presentation of ID Divorce
  - Final Judgment of Divorce (maiden name restoration)
-