

# Chancery Quarterly

## Eleventh Chancery Court District, Subdistrict 1



### FROM THE DESK OF THE CHANCELLOR

Dear Constituents:

We have just completed an exciting year and are embarking upon another. My staff and I are very grateful for the opportunity to serve you.

I would like to thank the Chancery Clerks and the County Boards of Supervisors in the Eleventh Chancery Court District for their past and continued support. The attorneys, who practice before this court, have

demonstrated a high degree of competence and professionalism, and for that I am grateful. Also, I extend a very special thanks to my constituents for your continued support and encouragement.

The challenges facing us this year are great. The greatest of which is how to keep the Court available to you and meet your needs in a timely fashion. With dwindling resources and expanding needs, all of the entities within our district must continue to work together, to maximize the resources that are available to us.

Thanks to the Mississippi Supreme Court and the Madison County Chancery Clerk, Madison County has become the pilot county for electronic filing. We are anxiously awaiting its full integration.

The Court has modified its hearing schedule. The Court will no longer have exparte` each day. Beginning in January 2009, exparte` will be held on Thursdays from 9:00 a.m. to 11:30 a.m., in Holmes or Yazoo County, depending on the county where the Court is sitting. The Court will also entertain exparte` matters on Friday mornings from 8:00 to 8:50 in Madison County when the Court is in session. All other days when the Court is in session, the court proceedings will commence at 9:00 a.m. As, in the past, the court administrator will continue to schedule the Court's calendar.

My first commitment has always been, and will continue to be to you, the citizens of the Eleventh Chancery Court District. Therefore, if my staff and I can assist you with access to the Court, please call.

Janace Harvey-Goree, Chancellor



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## AN OVERVIEW OF DIVORCE LAW IN MISSISSIPPI

There is an African proverb that says “the ruin of a nation begins in the home of its people.” The family is one of the threads that knit our society together. All too often, the thread is torn asunder by divorce. This quarterly will seek to assist you with understanding the legal mechanics of divorce.

Divorce or dissolution of the marriage, as it is increasingly becoming known, is a creature of statute. There is no inalienable right to a divorce. Original

jurisdiction to grant divorces in Mississippi was vested in the State Legislature, which in turn, granted the chancery courts authority to hear divorce cases. The chancery judge, therefore, may exercise only such authority in the awarding of a divorce as she has been granted by the legislature.

Miss. Code Ann. §§ 93-5-5 et seq. is the primary statute that governs divorce proceedings in this state. Under this statute, the parties seeking a divorce may pursue a fault or “no fault” divorce. A “no fault” divorce is granted on the ground of irreconcilable differences. A fault divorce may be granted on any one or combination of the following twelve (12) grounds:

- Natural impotency;
- Being sentenced to any penitentiary, and not pardoned before being sent there;
- Uncondoned adultery;
- Willful, continued and obstinate desertion for the space of one year;



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**AN OVERVIEW OF DIVORCE LAW IN MISSISSIPPI ...continues**

- Habitual drunkenness;
- Habitual and excessive use of opium, morphine or other like drugs;
- Habitual cruel and inhuman treatment;
- Insanity or Idiocy at the time of marriage if the party complaining did not know of such infirmity;
- Marriage to some other person at the time of the pretended marriage between the parties;
- Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy;
- Relationship within the prohibited degrees of kindred; and
- incurable insanity.

There are twelve (12) common defenses to divorce in Mississippi. They are condonation, collusion, connivance, recrimination, provocation, antenuptial knowledge, lack of jurisdiction (residency and personal), fraud, action pending in another jurisdiction, plea in abatement,

and death prior to final judgment.

The party seeking the divorce must produce sufficient evidence to establish he/she is entitled to a divorce. For example, Mississippi recognizes being sentenced to any penitentiary, and not pardoned before being sent there as a ground for divorce. Consequently, to be awarded a divorce on that ground, one must prove the offending spouse has been convicted of a felony, sentenced to a penitentiary, and has not been pardoned before going there. Divorces on the grounds of adultery and habitual cruel and inhuman treatment are the most frequently sought.

Just as the party seeking a divorce has the burden of proving his grounds for divorce, the party against whom the divorce is sought has the burden of proving any affirmative defenses he/she raises against the party seeking the divorce. For an example, if the party against whom the divorce is sought raises the affirmative defense of "condonation," he/she must show that the party seeking the divorce forgave him/her of the marital wrong



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## AN OVERVIEW OF DIVORCE LAW IN MISSISSIPPI ....continued

complained of. The condonation may be expressed or implied. A return to the marital residence does not constitute a condonation of past marital sins, nor does it act as a bar to a divorce being granted. Condonation is conditioned on the offending spouse's mending his/her ways. If the offending party resumes the prior course of conduct, then the grounds for divorce may be revived. *Ashburn v. Ashburn*, 970 So. 2d 204 (Miss. Ct. App. 2007).

An irreconcilable difference divorce is the so called thirteenth (13<sup>th</sup>) ground for divorce. It requires that both parties agree to the divorce. This does not mean that both parties want a divorce; it simply means that neither party will contest the granting of it. An irreconcilable difference complaint for divorce must remain on file for at least sixty (60) days, before it may be heard. A written custody, support and property agreement is also required. However, if the parties cannot agree on the issues of custody, support, and property division, they may consent to the court deciding the same. In order to have the court decide the contested issues, the parties must submit a written statement enumerating those issues, and consenting to the court deciding them.

Marriage and family play a vital role in our society. Our state legislature does not take the dissolution of a marriage lightly. It is not a gift to be bestowed by the chancellor based upon a perception the parties are just not getting along. It is a statutory act and the statutes must be strictly followed as they are departures from the common law. *Massingill v. Massingill*, 594 So. 2d 1173 (Miss. 1992).



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**Eleventh Chancery Court District**

**Subdistrict 1**

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