



## **SHOULD I STAY OR SHOULD I GO?**

Early Considerations about Separation and Divorce in Mississippi



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## Don't Go

One of the biggest lessons I have learned in over ten years of practicing divorce law is that I do not want to be divorced. Divorce will make you sad, lonely, poor, anxious, and it will rob you of the finite time that your children will be children. Few things in this life are as wasteful as divorce. Divorces are extreme misuses of energy and resources. There are no winners in divorce-only losers. Let me say that again. It does not matter how smart or crafty I may be because there are no winners in divorce- only losers.

Before you leave, consider your children and their deep desire to have both of their parents in the same home. They love you both with a crazy love. A divorce will have a generationally negative impact on your family. I'm serious. Try to work it out, if at first for no other reason but for your children. There are numerous resources available to help you with your marriage. Take a trip, go to a marriage conference, seek individual counseling, deal with your addiction or mental health issue, do not enable your spouse's addiction or mental health issues, seek marriage counseling, go to anger management, set boundaries with your parents or in-laws, get involved in a local church, join a small group, go on a mission trip, serve the community together, change jobs, get on your knees and pray like you have never prayed before because avoiding your divorce is no more difficult than going through a divorce. Either way- you are on the foothills of the Himalayan Mountains looking up. You are at base camp and you are going to summit an obstacle one way or another. Why not first try to summit the mountain of reconciliation? Do not throw away your life without an effort.

One thing you may fail to realize if considering divorce is that two people can live together more efficiently than apart. Think about it. You are going to have to pay for two places to live, two sets of utility and grocery bills, there will be increased demands on your time and energy and more distractions than you can currently imagine. Divorces are not fruitful endeavors. Your resources and productivity are about to decrease. It does not matter who you think you are, where you live, what you have

*Darling you got to let me know  
Should I stay or should I go?  
If you say that you are mine  
I'll be here 'til the end of time  
So you got to let me know  
Should I stay or should I go?*

*Always tease tease tease  
You're happy when I'm on my knees  
One day is fine, next day is black  
So if you want me off your back  
Well come on and let me know  
Should I stay or should I go?*

*Should I stay or should I go now?  
Should I stay or should I go now?  
If I go there will be trouble  
An' if I stay it will be double  
So come on and let me know!*

*This indecision's bugging me  
If you don't want me, set me free  
Exactly whom I'm supposed to be  
Don't you know which clothes even fit me?  
Come on and let me know  
Should I cool it or should I blow?*

*Should I stay or should I go now?  
Should I stay or should I go now?  
If I go there will be trouble  
And if I stay it will be double  
So you gotta let me know  
Should I cool it or should I go?*

*Should I stay or should I go now?  
If I go there will be trouble  
And if I stay it will be double  
So you gotta let me know  
Should I stay or should I go?*

*The Clash (1981)*

accomplished or your last name. Things are going to be different. There is no way around it unless you can avoid divorce altogether.

If you are in danger, forget everything I just said. Go now. Contact my office immediately. Get to a safe place, phone law enforcement, tell only your most trusted friends and family members where you are and just go as fast as your body will take you. Domestic violence is real and deadly. I have had one client murdered and I do not want another.<sup>1</sup> A death due to domestic violence is much more generationally impactful than divorce. I know from experience. While the legal system is imperfect at best, there are dozens of tools available to protect victims of domestic violence. If you are the victim of domestic violence, the law will favor you in a custody dispute. There is nothing to think about. It is going to be okay. Go!

## *First Thing's First*

According to Mississippi law, it takes 365 days to abandon a marriage. In my over ten years of law practice, I can count on one hand how many cases I have handled that involve legitimate abandonment. Abandonment does not always mean a physical separation. Old reported opinions talk about how two people can live under the same roof and remain oceans apart emotionally. Refusal to have sexual relations can also be abandonment, but again, it takes an entire year in Mississippi to abandon your marriage physically or emotionally. Leaving the home is usually not a legal abandonment. So with everything else you read cast in the shadow of my disdain for divorce, it is okay to leave if that is what you want to do, you just need to take care of some things before you go.

## *Divorce is a Chess Match, Not a Football Game*

We southerners love football. My family and I find irresistible a beautiful fall afternoon of friends, family, food and cheering on our team to victory.<sup>2</sup> In football, like life, emotions run high and the athletes rely on ability and coaching and they must react, not think. There is drama in football and momentum can swing on a single play. Divorce is like football but to be successful, the “players” must think, not react. When you react through a divorce you make mistakes. One stupid mistake can drastically change your life. The decision to follow her home, drive after a couple of drinks, grab her by the arm so she will “just stop and listen”, send a message on Facebook to that old high school sweetheart... Do I need to continue? You have to move through the process of divorce with precision and think about what you are doing before you act. The purpose of this writing is to help you to THINK not react.

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<sup>1</sup> *Read Complicated Compound Bereavement. The Mississippi Lawyer (2003)*

<sup>2</sup> *I am a Mississippi State fan and we do not win that much but I thought saying “cheering on our team to victory” sounded better than watch our team get clobbered.*

## *Divorce is a Process, Not an Event*

How long did you know your spouse before you got married? How long did you date? How long have you been married? Based on your answers to those questions, it would be illogical to think you can just twitch your nose, waive a magic wand and get a divorce. The way your divorce is handled will impact the rest of your life. Do not be in a hurry. If divorce is done wrong, it will be much more difficult to repair than it would have been to just do it right the first time. A lot of people can relate to the process of building a home. You want so badly to save money and for the process to go quickly that you cut corners. Imagine the difficulty of making major foundation repairs after you have been living in a home for several years as opposed to simply doing it correctly from the start. A poorly planned and executed divorce is like building a home without digging out the Yazoo clay.

## *Make a Plan*

Would you build a house without a set of plans? Does a college football coach show up unprepared on Saturday afternoons?<sup>3</sup> No, during a construction project, the builder spends as much or more time planning than they do in actual construction. Before they turn over the first rock on the building site, they have been working for months with civil engineers, architects, landscape designers, city planners, investors, subcontractors, bankers and other professionals involved in getting a building project off the ground. Coaches and players study film and practice their game plan for at least a week before taking the field on Saturday for sixty minutes- not to mention the years of training and countless hours in preparation. Evidence is the key to any legal matter. Divorce court is the world's most prolific example of "He said She said." People that effectively promote their position do so with tangible evidence and third party testimony. Now is the time to make a plan and begin gathering evidence. For example, you may gather cards, letters and emails from your spouse. It would be difficult for your spouse to tell a judge how terrible you are if six months earlier they wrote you a long email praising all of your virtues. You may decide to study cell phone records or place a GPS tracker on a family vehicle. Maybe you should take photographs of things around the house. Get the idea?

*You are on the foothills of the Himalayan Mountains looking up - M. Craig Robertson*

## *Seek Wise Counsel*

Know your limitations. You are not going to be thinking as clearly as usual if you are facing the decision of whether or not to leave your home. Please talk to people you trust who can give you third party insight. Start with a friend or family member, set an appointment with your pastor, seek individual counseling and call my office and set an appointment. Gather as much information as you can. It is also

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<sup>3</sup> Again, Mississippi State usually excluded.

a good idea to call your doctor's office and get a complete physical. Would the fact that you have cancer change the way your divorce is handled? Seeking outside help is a no brainer.

## *Figure out the Money*

It is very common for one spouse to have more information about the family finances than the other. Now is the time to get educated as much as possible about the family money. Having lawyers blindly conduct discovery (formal information gathering) is expensive and time consuming and quite frankly, inefficient. You will also want to make sure that you inventory your valuables. This can be done in about ten minutes with the camera on your cell phone. The following is a non-exhaustive list of the type of documents that should be inconspicuously located and copied or scanned, if possible:

- ⇒ Tax returns
- ⇒ Social Security Earnings Statements
- ⇒ Employment contracts
- ⇒ Paycheck stubs
- ⇒ Retirement/Pension account information
- ⇒ Banking account statements
- ⇒ Financial statements
- ⇒ Property appraisals
- ⇒ Credit card statements
- ⇒ Mortgage information
- ⇒ Business contracts
- ⇒ Student loan documents
- ⇒ Anything else that may possibly be helpful

## *Make a Budget*

The most important form used in a Mississippi divorce court is a personal financial statement called the UCCR 8.05 or "8.05." Setting a budget is simply good family planning even if the possibility of divorce is remote. You can look at one on our website or on the Mississippi Supreme Court's website under the Uniform Chancery Court Rules. You will hear people talk about the 8.05 over and over again if you get a divorce. Start making a realistic inventory of your assets, liabilities, monthly budget and income available to service the monthly expenses. Go back through credit card statements, bank statements and cash receipts to determine the manner in which your family spends money. You also need to think about how that budget will change when you or your spouse leaves the home. What will be the expenses over the next six months? What will be the expenses after the divorce is final?

## *Gather Resources*

If you have \$100,000.00 sitting in a joint bank account, do you think it would be smart to place some or all of those funds in an account in your own name if considering leaving the marital home? Conversely,

do you need to freeze credit cards or stop lines of credit to protect the bottom line? Wasteful dissipation of marital assets is a sin in divorce court. It should be. Be careful. These types of actions will enrage your spouse and fuel the fire in the short term. I am not promoting squandering family money or impoverishing the other parent of your children. I am suggesting that you need to preserve marital assets and secure resources for the immediate future. Do not pull money out of accounts so that checks bounce or automatic withdrawals do not get serviced, but secure and protect the resources of your family, whatever that looks like for you.

## Protect Your Privacy

You need a confidential way to communicate. Open a new email account with Yahoo, Google, Hotmail or some other free email service. My

*For I can do everything through Christ who gives me strength Philippians 4:13*

office sends documents and information to clients almost exclusively over the Internet. You may also want to redirect regular mail to a post office box or to the home of a friend or family member. You may need to further consider getting a separate cellular telephone such as a prepaid "GoPhone." These are inexpensive ways to protect much needed privacy during times of family conflict. Also, take the time to change the passwords on everything that you have password protected. Finally, monitor the information that you put out over the Internet. Yes, go ahead and remove the pictures from your sister's bachelorette party from your MySpace page and the snapshots from your high school reunion from Facebook. Finally, think about changing the beneficiaries of your life insurance policies and your retirement accounts and consider any short-term estate planning that should be done.

## Document Your Story

Take some time to find a quiet place and do whatever it is that relaxes you and write out a concise chronology, in date order, of occurrences that you want to remember, including your current goals for the immediate future. For me, that would be a glass of red wine and my computer. For you, that may be a cup of coffee and a legal pad (I like coffee and legal pads too). Whatever it is, you are going to have to tell your story to a lawyer or mediator or judge, so you may as well go ahead and get your thoughts organized. Take time for reflection and document your story.

## Dating

You cannot date. The attention of a new person are pain killers for your broken heart. You cannot date. It will make you feel better, but it does nothing to treat the source of the pain. You cannot date. Dating will do more to increase the emotional component of a divorce than anything else. You cannot date. There is no such thing as a legal separation in Mississippi and adultery while sharing the same bed with your spouse is for the most part the same thing as adultery after a physical separation. You cannot date.

Nobody in the midst of a divorce or separation is ready to date. You cannot date. Dating will change the dynamic of a custody or visitation dispute. You cannot date.

## *Be Healthy*

I never had a single incident of sleeplessness until I was a first year law student at Ole Miss. Suddenly, the stress of school coupled with the significant financial and emotional investment I made in an effort to pursue a legal career turned me into an insomniac. Maybe this is happening to you for the first time as well. The stress of a divorce takes a toll on the healthiest of people. Sleeplessness, weight loss, anxiety, depression and chemical abuse are the rule, not the exception when it comes to the pressure of a failed or failing marriage. As I said before, now is a great time to get a complete physical. Now is also a great time to take corrective measures in your diet, alcohol consumption, exercise routine (or lack of exercise routine) and life choices that impact your health. You know when you are on an airplane traveling with a child and the flight attendant gives instructions about what to do in the event that the aircraft loses cabin pressure? You place the oxygen mask on yourself before you attempt to help the child. Divorce works the same way. You have to take care of your physical and mental health before you can help anyone else.

## *Legal Issues*

Leaving the marital home creates immediate legal issues. It is usually best if you can stay, but be prepared to deal with the following if you or your spouse leaves:

- ⇒ Who will have custody of the children?
- ⇒ What will the parenting plan look like?
- ⇒ What are financial obligations for the children?
- ⇒ Who will pay for the home?
- ⇒ Who will pay the rest of the bills?
- ⇒ Who will service our debt?
- ⇒ Who will have possession of the stuff?
- ⇒ How will I pay for legal fees?

The best way to handle these issues and any other legal dispute is by agreement, but making an agreement requires information about your rights duties and responsibilities during separation. Robertson + Associates can provide that information.

## *Children*

Judges do not care about you, but they care about your children. Your children need two parents in their life. Mothers and fathers bring different skill sets to the parenting table, and no matter how hard you try, you cannot provide everything your child needs emotionally, physically and spiritually by yourself. It is not about you, it is about them. If you put your children's needs before your own, you will



make good decisions. Your children's identity is a reflection of you and the choices you make. Custody should not be a competition; it should be the most important parenting decision that you will ever make. Parents working together always make better custody decisions than judges.

If I were getting a divorce, it would not be in my children's best interest for them to be with me full time. I work too much and

they are little girls who need their mother more than they need me during the school week. My wife is better at getting them ready for school, making sure they are dressed and ready, taking them where they need to go and feeding them physically and spiritually. We chose for her to be a stay-at-home mom for a reason. That is not to say that I do not love my children more than life because I do. That is not to say that my personal brand of parenting does not enrich their lives (and mine) because it does. I never fully comprehended God's love for His children before we had Mollie Ann and Emma. A good parent takes a selfless attitude, even in a divorce.

Your kids need a predictable schedule. They need to know where they are going to sleep each night. Going back and forth several times throughout the week should be the exception, not the rule. You do not want your kids to be little nomads. Think about it- weekends and vacations are fun time. The week is work. I strongly encourage you to read *The Truth About Children and Divorce* by Robert E. Emery, PhD. The following is his Children's Bill of Rights found at [www.emeryondivorce.com](http://www.emeryondivorce.com):

Every child whose parents divorce has:

- ⇒ The right to love and be loved by both of your parents without feeling guilt or disapproval
- ⇒ The right to be protected from your parents' anger with each other
- ⇒ The right to be kept out of the middle of your parents' conflict, including the right not to pick sides, carry messages, or hear complaints about the other parent
- ⇒ The right not to have to choose one of your parents over the other
- ⇒ The right not to have to be responsible for the burden of either of your parents' emotional problems
- ⇒ The right to know well in advance about important changes that will affect your life; for example, when one of your parents is going to move or get remarried
- ⇒ The right to reasonable financial support during your childhood and through your college years.
- ⇒ The right to have feelings, to express your feelings, and to have both parents listen to how you feel
- ⇒ The right to have a life that is as close as possible to what it would have been if your parents stayed together
- ⇒ The right to be a kid

## *Robertson + Associates*

Robertson + Associates is a different type of family law firm. Everyone on our team is young and energetic. We are results oriented. We encourage settlement. We always think mediation is a good idea. We pray with and for our clients. We identify goals early and develop a flexible plan to meet those goals. Divorce is unhappy, but we have satisfied clients because we provide the basic, professional services of information and accessibility. Most of what happens in a divorce is out of your control, but when it comes to managing your actions and the relationship shared with your counsel, you have a choice. The single best investment you can make if faced with the question “Should I Stay or Should I Go” is to have an initial consultation with a professional at Robertson + Associates.