



In Legal Terms: Divorce in Mississippi

Liz Gill: Welcome to In Legal Terms from MPB Radio, the show all about legal rights I'm Liz Gill and I'm with Professor Richard Gershon with the University of Mississippi school of law, hello Professor Gershon.

Professor: Good Morning Liz. We have a security guard on campus who served two terms in Iraq and talks about being over there in 100-degree heat and being able to fight in those conditions. We are being asked to stay home and I think we can do this as part of our service, and I hope everyone is paying attention and taking care of ourselves.

Liz: I am part of generation X, known as the slacker generation. This is our time to shine. We can sit on the couch and watch Netflix as long as our country needs us to stay away from people, which is a joke because I'm in the studio and Professor Gershon is joining us from the empty university of Mississippi school of Law and we have attorney Craig Robertson who is joining us on the phone.

Professor: Its always great to have Craig on the show. He has been on the show before and he is a wonderful guest and Craig you've got a new podcast. Would you like to tell us a little bit about that and how we can listen?

Craig: Yeah guys thanks for having me on the show this morning. I'm a generation Xer also and I am sitting in my office as well. We are taking lots of precautions and our general interactions with the public. Yeah, speaking of Netflix, I've got another way for folks to engage themselves in interesting content while the world is on lockdown. We've got a new podcast. It's all about Mississippi family law and it's really a podcast about people's stories. That's what we do as family law attorneys. We work in people's stories. We tell their stories. We communicate their stories and help them write a new story. That is what our podcasts are about. We interviewed lots of counselors, we got former Chancery Judge Singletary who did an interview with us. We've done episodes with Jim Koerber from Hattiesburg who is a Certified evaluation specialist accountant who helps us on divorce cases. The best Episodes are always those that are story driven, where we tell the stories of people who have walked through life transitions.

Professor: Sounds great. I can't wait to listen. Jim Koerber is a wonderful person. I know Jim very well. I know it's going to be great and we are so lucky to have you on the show. We are

going to be talking about divorce, but we can't ignore the corona virus. How will clients meet you during this time and what precautions are you taking?

Craig: Well the precautions we've taken is basically to just limit our contact with the general public. We are a small office anyways. We only have 4 or 5 people. We have some of our team who have childcare issues but thankfully a couple years ago we went totally online. Our full system is in the cloud. I can work from anywhere in the world just like I'm sitting at my desk with the technology available and it hasn't always been that way, with the last 10 years or so we have been able to do that. But already, yesterday I've been doing my meetings by phone, facetime, whatever means the client is comfortable with and so far, so good. A lot of our work is desk related work, well the daily work is, a lot of the court houses are making different decisions. I got a notice this morning that hinds county has cleared their docket and so we are just kind of taking it day by day with actual court appearances. Our assumption is that in the near future, not too many of those will be discontinued.

Liz: Craig, what does clear the docket mean?

Craig: Cleared the docket, so basically the Judge has a role of cases that they deal with on any given day and that is called the docket and so I tell my clients when we go to court its like calling role. There might be one thing on the docket or there might be 11. So, the docket is their list of activity he will be engaging in in a particular day.

Liz: And if someone was on the docket, would they be notified if they were cleared?

Craig: Well if they have an attorney, they absolutely should have notified their clients that the docket has changed, and we have great attorneys in Mississippi and that is one of our jobs, communicating with our clients so that would be the source. But if the litigant is prose, meaning they did not have an attorney, they might not find out that the docket had cleared until they showed up which happens. Depending on the size of the court's docket.

Professor: I do hope you can come back when we have a full show and we are past our current situation. What do you want your clients to do? What should they prepare when they want to get a divorce and they come to you, especially during these times when they have to come electronically. What kind of information should they have to make your job easier and theirs?

Craig: Yeah, so we have developed some simple intake information, basically we need to know the client's story and so that starts with basic biographical information. Who are they, who are their children, where do they live, what do they do for a living and then we dig into financial information? That is basically the biggest part of a divorce, the reorganization of a family's finances. After we have gotten the background information and we have gotten an overview of the financial situation, that's when I advise a client about what their next step might be. Sometimes we allow the client to tell me their story and based on their story and their objectives. Sometimes the next step for a client is to not do anything and sometimes we need to take aggressive steps. The current climate that we are in now, I mean we don't know what

tomorrow will bring and we don't know what our court systems will bring. We see lots of people who have had their financial circumstances change very rapidly. We have retirement account balances that are going down sharply. Interest rates are dropping so issues are circling around that. Some of the pressing issues are visitation relation issues. For example, my child traveled internationally so an understandable concern for people parenting and not living in the same homes would be these visitation issues and exposure to the virus.

Professor: It's really a pressing time. I know people need lawyers like you more than ever. Let's talk a little about that. Let's say someone wants to get a divorce but their spouse doesn't want that divorce, is there anything they can do?

Craig: Yes. Mississippi is a very unique place. There are three major components to any divorce in Mississippi. Number one you have the divorce itself. Number 2, you have issues concerning children. Number 3, you have property distribution which includes alimony. So, the first component of a divorce case in Mississippi is the divorce itself. You can get a divorce basically two ways. You can get a divorce if you have a legally recognizable reason or if you agree. Now there are several legally recognized reasons for divorce although there are hundreds of reasons to get a divorce. But in Mississippi we are still a place where you have to either have the agreement of your spouse or be able to prove you have a legally recognizable reason. Now but that seems like that might be moving towards a change with the same sex marriage decision so there are some challenges to the law how it is written now. In other words, if there is a freedom to associate, there should be a freedom to disassociate. That's the basic argument. That might be changing in the next free years but right now you have to have an agreement or legal reason to get a divorce. Sometimes people who don't want to be married anymore have to stay married because they don't have a legally recognized reason and their spouse won't agree.

Professor: That's so interesting and Liz I think we have a caller.

Liz: We do! We are going to go to Biloxi and Craig from Biloxi has called in. Thanks for calling into our show In Legal Terms. Go ahead.

Caller: Okay so how do I find out where divorce records are. I got married in MS years ago and I lost track of my wife and I got hold of her one time and she said she's divorced but I don't have record of that. How do I find that?

Craig: So you would find that in the chancery court of the county where that divorce might of happened and so you can look up the number to the particular courthouse where that might have taken place and talk to the chancery clerk and give some simple background information and they can point you in the right direction.

Caller: That divorce could have happened anywhere in the US.

Craig: That would make it a little difficult. If you know where it happened in a particular county, then that would be relatively easy to find.

Caller: Should I do another divorce proceeding myself? I got married in married and I accidentally ran into her in Florida and she was with someone else. I don't know what her legal status is, but she said she was divorced. I would like to have some paper saying that its legal.

Craig: Well then that might be something you consider doing. Following through with your own independent divorce proceedings based on abandonment in Mississippi. That a way you have a clear understanding of the divorce being final. People say things all the time so you could be divorce or you may not be.

Caller: Okay

Liz: So, there are 82 counties in MS so Craig you said he'd need to contact Chancery court?

Craig: Right, so the chancery court is where they deal with divorce and family law issues and deals with issues involving children and lunacy issues. That's the court I work in most of the time. The circuit court is the court of general jurisdiction and that's where criminal matters and personal injury matters and contract disputes and things like that.

Professor: Yeah, the information on his website is great. Its Robertson.ms and they have their podcast there and all their services and some really good information generally about what to think about in a divorce and divorce situation. Including things like child support, business owner divorce, stay at home mom divorce. So, lots of different circumstances he deals with and his partner Michelle Easterling.

Craig: Yeah, its Matt Easterling and thank you for mentioning the website. That's one of the things we pride ourselves in doing is providing lots of information to the general public about the work that we do. I've made a couple little videos, 3- or 4-minute videos that explain the divorce in MS. I do encourage people who are considering a divorce, or their spouse is considering a divorce to talk to an attorney who works in their jurisdiction, their tow, and have a consultation with them. Some attorney's charge for consultation, we charge for consultation, but some attorneys don't charge. That's really the best place to start. Just sitting down with the attorney is not going to be a financial endeavor but it's just 2, 3, 400\$ to do a consultation with an attorney. It's possible to proceed with a divorce without an attorney in MS but I just would never recommend it.

Professor: Please ask Matt to forgive me. He is one of our grads and I know that, there is also a Michelle Easterling who practices law, but I knew it was Matt and I'm sorry to have made that mistake.

Craig: It's all good, Matt is doing a mediation today so he is probably not listening so he will never know.

Professor: That's good! So, in the time that we have left, so how does property division take place?

Craig: Well everybody during the course of their marriage accumulates property whether its physical property, personal property, retirement property, whether it's a home, most Mississippians their biggest assets are going to be their home or possibly their retirement account. So, with regular to division of property, the first step is to identify marital property and basically marital property is anything that people have accumulated during the course of their marriage based on their energy. So, there are marital property vs non marital property. Marital property is gained through one's energy through the process of their marriage. Not marital property comes into a marriage either at the beginning of the marriage or by gift or inheritance by one of the parties in the marriage. Now nonmarital property can change into marital property if certain conditions exist like family use of a home, comingling, which would be putting not marital property and marital property together. So, step one is to identify marital property, step two is to value property. A home can be appraised, you can look in an account statement for a retirement account. For a vehicle you can look in different websites like a Kelly blue book, admins to obtain the value of a vehicle. So, step one is to identify, step two is value, and step three is divide. In Mississippi we don't do equal division, we do equitable division and equitable does not always mean equal so those are the steps for property distribution. Property distribution is relatively straight forward. Most circumstances, people can expect to receive 40 to 60 percent of the marital estate depending on the dynamics of the situation. What gets difficult is alimony because unlike child support where we have some guidelines, we don't have those same sorts of guidelines in alimony. So that is a little bit more difficult to determine. That's where an experienced attorney can really help out in Mississippi and who is possibly face property distribution and alimony.

Professor: Is alimony determined before child support is determined or afterwards because that can make a difference for someone if child support does have guidelines and your income would go down if you have to pay alimony on top of child support. So, do they calculate alimony first?

Craig: Well it is all calculated temerariouly. Obviously not all divorce has children but for child support there are pretty straight forward for guidelines. One child is 14% of after tax income, for two children its 20% for after tax income, and for three children its 22% and it goes up from there, so when I say after tax income, that is income from all sources minus state and federal taxes minus social security, Medicare and then the remaining amount from which child support is calculated. There is also mandatory insurance and retirement that may come into consideration, but most attorneys and judges, the child support calculations are very straight forward. You have to also look at people living expenses and what is the most important documents in a divorce are the financial declaration which we call the 8.05, named from the uniform chancery court rule 8.05, which requires litigants in a divorce to exchange financial information. So, it really is case specific in regard to the particular needs of a family.

Professor: That makes sense so it kind of concerns me a bit that the calculation of child support depends on taxable income because alimony use to be a deductible amount prior to 2019 but

anyone who is getting divorce now, that alimony would come out and not reduce their taxable income. So, seems like they would potentially be paying more child support than they had previously even if they are paying alimony.

Craig: That's the biggest change that has happened, other than the Obergefell case, the biggest change in Mississippi family law has been where the tax consequences of alimony are now straight forward. The payor does not get a deduction and the recipient does not include alimony for income tax purposes. Use to that would be the source of a lot of negotiation because it makes a big difference depending on the income level.

Liz: Craig Robertson, we have loved having you on our show. We will make sure everyone knows that your podcast is Robertson and Easterling. We will have a link to your podcast on this show. We will also have a link to MS bar's page on what are the grounds for divorce in Mississippi. Their main website is msbar.org. This has been, In Legal Terms we kind of call this family law month. One March third we had Professor Deborah Bell explaining laws on child custody, on March tenth Professor Richard Gershon talked about taxes in divorce and on March 24th we are scheduled to have attorney Tina Seymour Demoran explaining restraining orders. Craig, thank you so much for being on our show.

Craig: Thank you very much. Thanks for having me today!