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Special Issues Relating to Personal Jurisdiction in Civil Cases

Presented By

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**AN OUTLINE FOR STATE COURT JUDGES:
BASICS OF PERSONAL JURISDICTION IN GEORGIA LAW**

I. General Principles of Georgia Law Governing Personal Jurisdiction Over Parties in Civil Actions

A. The Foundations of Personal Jurisdiction

1. Basic Concepts, Basic Issues: Reviewing the Federal Limitations on the Exercise of Personal Jurisdiction in Georgia Courts [Appendix 1]
2. Glisson Coker, Inc. v. Coker, 260 Ga.App. 270 (2003)
3. Williamson v. Basenback, 298 Ga. App. 567 (2009)

B. Waiver of Objections to Personal Jurisdiction

1. OCGA § 15-1-2: Waiver of Objections to Jurisdiction Generally
2. OCGA § 9-11-12 (h) (1) (B)
3. OCGA § 9-10-92: Nonwaiver by Appearance to Contest Long Arm Jurisdiction
4. Ivey v. Bicknell, 294 Ga. App. 297 (2008)
5. Homeowners Mortgage of America, Inc. v. Chase Home Finance, LLC., 294 Ga. App. 153 (2008)
6. Jacques v. Murray, 290 Ga. App. 334 (2008)

C. Immunity from the Exercise of Personal Jurisdiction

1. OCGA § 24-10-1
2. Thornton v. American Writing Machine, Co., 83 Ga. 288 (1889)
3. McPherson v. McPherson, 238 Ga. 271 (1977)
4. Payton v. Green, 179 Ga.App. 438 (1986)
5. Loiten v. Loiten, 2007 WL 4200758 (Ga.App.)
6. OCGA § 17-13-45

7. White v. Henry, 232 Ga. 64 (1974)

8. Dixon v. Cole, 277 Ga. 353 (2003)

9. OCGA § 9-10-92

**D. Motions to Dismiss for Lack of Personal Jurisdiction:
Procedural Aspects**

1. OCGA § 9-11-12(b)(2)

2. Beasley v. Beasley, 260 Ga. 419 (1990)

**II. The Traditional Bases of Personal Jurisdiction: Presence and Its
Corollaries**

**A. Personal Jurisdiction Based Upon Service of Process Within the
State of Georgia**

1. Extent of Sovereignty and Jurisdiction Generally

a. OCGA § 50-2-20

2. Jurisdiction Extends to all Persons Within State Limits

a. OCGA § 50-2-21

3. Actions Against Nonresident Found in State

a. OCGA § 9-10-33

4. Humphrey v. Langford, 246 Ga. 732 (1980)

5. Allstate Insurance Company v. Klein, 262 Ga. 599 (1992)

B. The Presence of Property in the Forum State

1. Application of the Principle of Minimum Contacts to Actions in
Rem and Quasi in Rem [Appendix 2]

2. Abernathy v. Abernathy, 267 Ga. 815 (1997)

C. Consent to the Exercise of Personal Jurisdiction

1. Prior Contractual Consent to Personal Jurisdiction and Selection of
Forum

- a. Panhandle Fire Protection v. Batson Cook Co., 2007 WL 3203072 (Ga.App.)
 - b. Rice v. Champion Bldgs., Inc., 2007 WL 2822426 (Ga.App.)
 - c. OFC Capital v. Colonial Distributors, Inc., 285 Ga.App. 815 (2007)
 - d. Euler-Siac S. P. A. v. Drama Marble Co., Inc., 274 Ga.App. 252 (2005)
2. Express Consent
- a. Securities Dealers
 - i. OCGA § 10-5-3
 - b. Charitable Organizations and Paid Solicitors
 - i. OCGA § 43-17-5
 - c. Real Estate Appraisers
 - i. OCGA § 43-39A-9(a) and (b)
 - d. Foreign Electric Cooperative
 - i. OCGA § 46-3-459 [Cf §§ 46-3-240-242 (Electric Cooperative)]
 - e. Foreign Corporation Authorized to do Business in Georgia
 - i. OCGA § 14-2-1510 [Cf. §§ 14-2-501-504 (Domestic Corporations)]
 - f. Surviving Foreign Corporation in Merger
 - i. OCGA § 14-2-1107
 - g. Custodians of Property Under the Georgia Transfers to Minors Act
 - i. OCGA § 44-5-112
3. Implied Consent

- a. General Appearance
 - i. Jones v. Van Horn, 283 Ga.App. 144 (2006)
- b. The Georgia Nonresident Motorist Act
 - i. OCGA §§ 40-12-1 and 40-1-1 (36)
 - ii. Enjoyment of a “Right or Privilege” by the Nonresident: Myers v. Katz, 67 Ga.App. 640 (1942)
 - iii. Operation of a Motor Vehicle “Anywhere Within the Territorial Limits” of Georgia: Cabe v. Edwards, 107 Ga.App. 551 (1963)
 - iv. Relationship of Owner and Operator:
 - (i) Operator without Permission: Hanft v. Albright, 132 Ga.App. 263 (1974)
 - (ii) Family Purpose Doctrine: McCard v. Wright, 170 Ga.App. 567 (1984)
- c. Residency and Multiple Residence Considerations
 - i. Nonresident: OCGA § 40-1-1 (36)
 - ii. Nonresident at Time of Injury, Resident at Time of Service: Brown v. Meyer, 222 Ga.App. 133 (1996)
 - iii. Resident at Time of Injury, Nonresident at Time of Service: Bailey v. Hall, 199 Ga.App. 602 (1991)
 - iv. Foreign Corporation Doing Business and Having Agent in Georgia: Hirsch v. Shepherd Lumber Co., 194 Ga. 113 (1942)
 - v. Nonresident with Temporary Abode in Georgia: Evans v. Brooks, 93 Ga.App. 352 (1956)
 - vi. Multiple Residences: Thompson v. Abbott, 226 Ga. 353 (1970)

III. The Exercise of Personal Jurisdiction over Parties not Served Within the State of Georgia

A. Georgia Long Arm Statute: OCGA §§ 9-10-90 Through 9-10-92

1. General Considerations:
 - a. “Long Arm, Short Reach: The Dilemma of Georgia’s Long Arm Statute,” *The Verdict: Journal of the Georgia Trial Lawyers Association* at p. 21 (December 1989) (E.R. Lanier)
 - b. Hoesch America, Inc. v. Dai Yang Metal Company, Ltd., 217 Ga.App. 845 (1995)
2. Defining “Nonresident”
 - a. OCGA § 9-10-90
 - b. Andrews v. Stark, 264 Ga.App. 792 (2003)
3. Subjection to the Long Arm Statute Through the Agency of Others
 - a. OCGA § 10-1-704
 - b. Catholic Stewardship Consultants, Inc. v. Ruotolo Associates, Inc., 270 Ga.App. 751 (2004)
4. Specific Jurisdiction in the Georgia Long Arm Statute
 - a. Specific Jurisdiction: The Requirement of Connection Between Plaintiffs Claim and Defendant’s Contact [E. R. Lanier]
 - b. Pratt & Whitney Canada v. Sanders, 218 Ga.App. 1 (1995)
 - c. Mitsubishi Motors Corporation v. Colemon, 290 Ga. App. 86 (2008)
5. Necessity of Service of Process under the Georgia Long Arm Statute: Haamid v. First Franklin Financial Corp., 2009 WL 2569249 (August 21, 2009)
6. Meshing Statutory Authorization and Constitutional Limitation
 - a. Shellenberger v. Tanner, 138 Ga.App. 399 (1976)
 - b. Vibratech, Inc. v. Frost, 291 Ga. App. 133 (2008)
7. Bases for the Exercise of Personal Jurisdiction Under the Georgia Long Arm Statute

- a. OCGA 9-10-91(1): Transaction of any Business Within the State
 - i. Innovative Clinical & Consulting Services, LLC, v. First National Bank of Ames, Iowa, 279 Ga. 672 (2005)
 - ii. First National Bank of Ames, Iowa, v. Innovative Clinical & Consulting Services, LLC, 280 Ga.App. 337 (2006)
 - iii. Aero Toy Store, LLC, v. Grieves, 279 Ga.App. 515 (2006)
 - iv. Gateway Atlanta Apartments, Inc. v. Harris, 290 Ga. App. 772 (2008)
 - v. Home Depot Supply, Inc. v. Hunter Management, LLC, 289 Ga. App. 286 (2008)
 - vi. ATCO Sign & Lighting Co., LLC v. Stamm Manufacturing Co., 298 Ga. App. 528 (2009)
 - vii. Standard Building Co., Inc., v. Wallen Concept Glazing, Inc., 298 Ga. App. 443 (2009)
- b. OCGA §§ 9-10-91(2) and (3): Nonresident's Commission of a Tort
 - i. Defamation
 - (i) Worthy v. Eller, 265 Ga.App. 487 (2004)
 - ii. Fraud/Misrepresentation
 - (i) Mitchell v. Gilwil Group, Inc., 261 Ga.App. 882 (2003)
 - iii. Stream of Commerce
 - (i) Continental Research Corporation v. Reeves, 204 Ga.App. 120 (1992)
 - iv. Waiver of Objections to Personal Jurisdiction under Tort Provisions of the Long Arm Statute
 - (i) Gary v. Hobson, 208 Ga.App. 781 (1993)

- c. OCGA 9-10-91(4): Owner, Use or Possession of Real Property Situated within the State
 - i. Interests in Real Property which Invoke the Statute
 - (ii) Nonresident Record Title Holder: Cox v. Long, 143 Ga.App. 182 (1977)
 - (iii) Devisee's Interest in Real Property: Moore v. Moore, 255 Ga. 308 (1985)
 - (iv) Ownership of Interest in Corporate Owner of Real Property: International Capital Realty Investment Company v. West, 234 Ga.App. 725 (1998)
 - (v) Power of Sale as Interest in Real Property: Porter v. Mid-State Homes, Inc., 133 Ga.App. 706 (1975)
 - i. Requirement of Connexity between Claim and Real Property in Georgia: Past Ownership
 - (vi) Murray v. Reese, 210 Ga.App. 352 (1993)
 - (vii) Forrister v. Manis Lumber Company, 232 Ga.App. 370 (1998)
- d. OCGA § 9-10-91(5): Domestic Relations
 - i. General Consideration: "The Georgia Domestic Relations Long-Arm Statute: Any Questions?" [E.R. Lanier]
 - (i) Walters v. Walters, 586 S.E.2d 663 (2003)
 - (ii) Cooke v. Cooke, 277 Ga. 731 (2004)
 - ii. Claims assertable under OCGA § 9-10-91(5)
 - (i) Modifications of Georgia Divorce Decree: Smith v. Smith, 254 Ga. 450 (1985)
 - (ii) Chung-A-On v. Drury, 276 Ga. 558 (2003)
 - iii. Time Since Entry of Original Decree as a Factor in the Assertion of Claims under OCGA § 9-10-91(5)

(i) Paul v. Paul, 264 Ga. 434 (1994)

iv. Compliance with Prior Decree as Defense to Action

(i) Straus v. Straus, 260 Ga. 327 (1990)

B. Extraterritorial Personal Jurisdiction over Defendants in Actions to Determine Paternity or Child Support; the Family Violence Act; the Uniform Child Custody Jurisdiction Enforcement Act

1. Service Outside the State in Paternity Actions

a. OCGA § 19-7-41

b. Bell v. Arnold, 248 Ga. 9 (1981)

c. Department of Human Resources v. Estes, 208 Ga.App. 872 (1993)

2. Uniform Interstate Family Support Act

a. OCGA § 19-11-110: Jurisdiction

b. OCGA § 19-11-133: Personal Jurisdiction

c. OCGA § 19-11-170: Enforcement and Modification of Support Order after Registration

d. Kean v. Marshall, 294 Ga. App. 459 (2008)

3. Family Violence Act: Jurisdiction of Superior Court

a. OCGA § 19-13-2

b. Anderson v. Deas, 279 Ga.App. 892 (2006)

4. Uniform Child Custody Jurisdiction Enforcement Act

a. Daniels v. Barnes, 289 Ga. App. 897 (2008)