

“UCCJEA Basics”

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Kessler, Schwarz & Solomiany, P.C. provides legal representation in all areas of family law, such as divorce, child custody, child support, modification, paternity/legitimation, contempt and pre/post nuptial agreements. We look forward to answering your legal questions and to the possibility of representing you.



History

- 1968: UCCJA approved - National Conf. of Commissioners on Uniform State laws.
- 1978 UCCJA passed into law in Georgia.
- 1997 UCCJEA approved by the NCCUSL to align state and federal law and to prioritize home state jurisdiction, to avoid jurisdiction, and to avoid child snatching.

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All states bordering Georgia, even S.C. now

The 3 main areas it covers

- 1. Original/Initial Jurisdiction***
- 2. Modification Jurisdiction***
- 3. Enforcement (Includes Emerg. Juris.)***



Part 1. Original Jurisdiction

UCCJA

Home state

Significant connection

**Emergency jurisdiction
forum**

Vacuum jurisdiction

No prioritization!!!!!!

JEA

Home state

Significant connection

More appropriate

Vacuum jurisdiction

Prioritized!!!!!!!!!!!!

Note - Emergency jurisdiction is NOT one of the four bases for jurisdiction.



Let's examine how a State acquires Initial Jurisdiction

We will go through the 4 bases for initial jurisdiction then we will discuss how a State may decline jurisdiction.



In order of priority:

1. Home state jurisdiction 19-9-61

A. state where everyone lives, or

B. state where child & a parent have been for 6 mos.

Tidbit: (Need not be a parent, can be a person acting as a parent@)



Next in order of priority:

**2. Significant connection-
if there is a connection &**

A. NO home state exists OR,

B. home state declines jurisdiction

(Declining Juris. to be discussed)



3. More Appropriate Forum-

If no Home State or Significant Connection State, GA may handle case as the Most Appropriate Forum@.

Also, if a state with home state or significant connection declines jurisdiction, that may leave GA as the Most Appropriate Forum@.



Last in order of priority:

4. Vacuum- (Traveling Circus??)



Physical presence of child is not required.

No other state has jurisdiction.



***What if Georgia (or another State) has
Initial Jurisdiction, but you want to
move the case to another state (or to
GA)?.....***

Declining jurisdiction

2 available grounds:

Inconvenient Forum, or

Unjustifiable Conduct

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Declining jurisdiction

*2 grounds to Decline Jurisdiction:
Inconvenient Forum, or
Unjustifiable Conduct*



1. Inconvenient Forum 19-9-67

Factors for court to consider include:

Family violence

How long child gone from state

Distance between states

Which state can handle it faster

Finances of the parties, etc.



Jurisdiction can only be declined (or stayed) on condition that another case be commenced promptly.



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2. Unjustifiable conduct. 19-9-68

***Court must decline jurisdiction if Plaintiff has engaged in unjustifiable conduct:
removing/secreting/hiding/restraining child***

Exceptions: domestic violence victim is fleeing

Temporary emergency jurisdiction (coming up)

Everyone agrees to keep it here.



Attorney=s Fees 19-9-68(c)

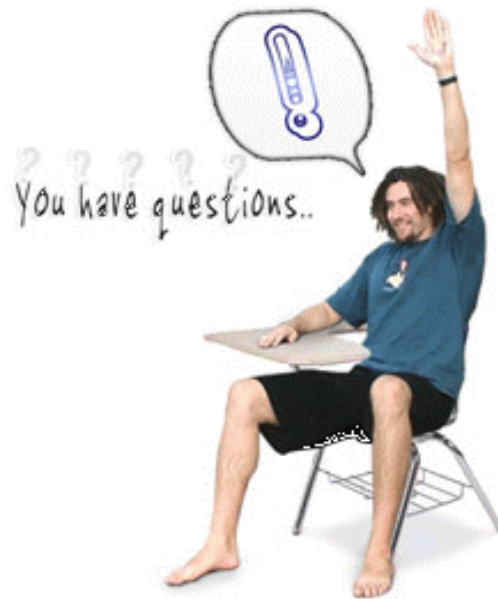


If Court declines jurisdiction because of unjustifiable conduct, fees & costs shall be assessed.



That=s Initial Jurisdiction!

Questions?



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***Next up,
Modification Jurisdiction***

***But first, an important
concept we must learn
and get used to.....
Drum roll, please.....***

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ECJ
THIS IS THE MOST IMPORTANT CONCEPT

Exclusive
Continuing Jurisdiction

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What is ECJ?

O.C.G.A. Section 19-9-62(a)

Once a State makes an Initial Custody Determination, that State becomes the ADecree State@.



The Decree State maintains jurisdiction (ECJ) over custody until it loses it in 1 of 2 ways. If everyone leaves Decree State; or, If there is no longer a significant connection with Decree state and substantial evidence is no longer available in the state

< (even if a parent still lives in Decree state).

< (only the Decree state can make this decision)



Part 2 - Modification Jurisdiction

When can Georgia Modify a Foreign Decree?

19-9-63

A Decree@ state has lost ECJ (or never had it)

<States like GA did not have ECJ until UCCJEA adopted.

AND,

Must meet one of the criterion for initial jurisdiction:

Home State; Significant Connection; More Appropriate Forum; or Vacuum:

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Modification jurisdiction & ECJ

First inquiry: Does ADecree@ state have ECJ (under JEA or otherwise)?

B If no, Georgia can likely take jurisdiction, if it has initial jurisdiction.

B If yes, we must see if ADecree@ state has lost



Remember - 2 Ways to lose ECJ

Either state decides no one lives in the decree state (19-9-62(a)2); or,

ADecree@state determines it no longer has a significant connection & no substantial evidence available in the state 19-9-62(a)1

(example: A non-custodial parent may still be in the state)

<Reminder, be sure Decree State has ECJ.



That=s it!

That was the big stuff.

Original Jurisdiction & Modification

Jurisdiction are the biggies.

***Time permitting we will cover enforcement
and temporary jurisdiction***



How about a few hypotheticals?

In each case, assume all states have ECJ.



Parents divorce in CA. Father moves to GA with Children. Mother wants to Change Custody. Where does she file?

***CA - Then CA may decline jurisdiction if...
It determines no significant connection with CA, and no substantial evidence in CA***



Parents divorce in CA. Father wins custody. Both parties move to GA. Mother wants to Change Custody. Where should she file?

GA - CA has lost ECJ, so GA has Home State Jurisdiction, (just as if this is an Initial Custody Determination).



***Parents divorce in CA. Father
moves to GA without Children.
Father wants to Change Custody.
Where to file?***

***CA - CA has ECJ and has not lost it.
So far, so good!***

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Divorce in GA. Mom moves to OH with kids; Dad moves to TX. Where does Dad file for Custody?

OH - has home state now, or most appropriate forum. GA has lost ECJ. If Dad moves Back to GA? Where does he file?

OH - Once GA lost ECJ, it does not get it back.



Parents divorce in GA. Father wins custody. Both parties move to CA. After One year in CA, Father moves back (to GA) with kids. Mother wants to Change Custody. Where to file?

Trick Question - we must know how long Father has been in GA. If less than 6 months, CA has home state jurisdiction, but can decline it based on unjustifiable conduct or inconvenient forum.

(End of Hypotheticals)

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***Part 3 - Enforcement
(Orig. & Modif. were parts 1 & 2)***

***Georgia can enforce another jurisdiction=s
Order, even if without jurisdiction to
modify.***

***Even Temporary Orders of another state
may be enforced.***



5 mechanisms we will touch on:

- 1. Registration***
- 2. Temporary visitation***
- 3. Expedited enforcement of custody***
- 4. Warrant to take physical custody***
- 5. Civil enforcement***



1. Registration 19-9-85

This is easier than domestication:

How to do it:

Letter to the Court with a certified copy of the original Order.

<Letter must request registration and

<Must confirm that the Order has not been modified, vacated, or stayed.

Court serves notice on all with custody rights.

To oppose, request hearing within 20 days



****Problem - The Clerk's office is not used to this and may be confused***
The only three bases to contest registration:

- 1. The issuing Court lacked jurisdiction***
- 2. Order was vacated, stayed, or modified.***
- 3. The person contesting it was entitled to notice of the proceedings and did not receive proper notice.***

Lawyer Tip: Register Order as soon as Client comes to GA.



2. Temporary Visitation



2 ways to enforce custody rights even without jurisdiction to modify

A. Draft specific Schedule (i.e. in case order simply says ADad gets reasonable visitation@).

B. Provide Make Up Time



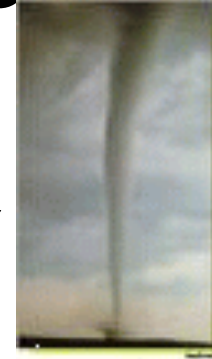
Another tidbit

If GA or another state finds family violence, GA can order supervised visitation, even if it doesn't have jurisdiction to modify.



3. Expedited enforcement of custody

Aturbo habeas@ or Ablitz@



Hearing must be held on the next day of after service!! 19-9-88(d)
If there is a modification pending elsewhere, the Courts must communicate.



****Two more interesting points:***

1. Under 19-9-90 (b). The Court shall award fees, cost, and expenses, and may seek the help of law enforcement.

2. For the first time, the privilege/inference has been codified.

19-9-90(C): if a party takes the Fifth Amendment, adverse inference may be drawn.



4. Warrant to take phys. custody; (19-9-91)

If child about to suffer serious physical harm or to be removed from the state, Petitioner may file a verified application for a warrant.

5. Civil Enforcement; 19-9-95

D.A. may take any lawful action to locate or obtain a child or to enforce a custody order in certain instances.

(1) There is an existing custody determination

(2) Requested by a court with pending case

(3) Belief that criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.



5. Civil Enforcement: 19-9-95

D.A. may take any lawful action to locate or obtain a child or to enforce a custody order in certain instances.

- (1) There is an existing custody determination***
- (2) Requested by a court with pending case***
- (3) Belief that criminal statute has been violated; or***
- (4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.***



***A district attorney acts for Court,
not for either party.***

Discretionary with D.A.

***This lets the D.A. cross from criminal into
civil matters.***

Expect resistance from D.A.

End of Part 3 -Enforcement



Miscellaneous

Temporary Emergency Jurisdiction (19-9-64)

2 Requirements:

The child is present here.

There is a threat to child, sibling or parent



Remember -Emergency is not an initial criterion anymore like it was under UCCJA

Temporary Orders may only last long enough to allow Court with proper jurisdiction to take over, but the time period must be specified.



Jurisdiction and Notice

The statute confers subject matter jurisdiction so the real question is personal jurisdiction.

What if Defendant is not in Georgia and never was?

Due process? fairness? Not to worry.

Personal jurisdiction issue will not stop the case from proceeding.

Aphysical presence of or personal jurisdiction over a party or child is not necessary@. 19-9-6(c)



Limited immunity

Notice. Georgia law or law of state where service is to be made. Publication as last resort. 19-9-47

Electronic communications, depositions by telephone, audio visual or other electronic means now authorized by statute.

Jurisdiction gets priority on calendar. 19-9-46

Communications between Courts must be recorded, except -scheduling.. (19- 9-49)

Adoption not covered

2 more slides



Remember the rule about all contestable issues must be resolved before a divorce can be granted (including custody)?.....

19-9-67(d) says that the Court may keep the divorce and send the custody portion elsewhere.



THE END!