

## Georgia Family Law- Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP– March 31, 2021

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### **Custody Determination -Jurisdiction**

#### Initial Custody Determination

##### **O.C.G.A. 19-9-61 (2010)**

**19-9-61.** Jurisdiction requirements for initial child custody determinations; physical presence alone insufficient

(a) Except as otherwise provided in Code Section 19-9-64, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Code Section 19-9-67 or 19-9-68 and:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Code Section 19-9-67 or 19-9-68; or

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3) of this subsection.

(b) Subsection (a) of this Code section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

#### Temporary Emergency Jurisdiction

##### **O.C.G.A. 19-9-64 (2010)**

**19-9-64.** Temporary emergency jurisdiction; continuing effect; communicating with other courts

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this article and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63, a child custody determination made under this Code section remains in effect until an order is obtained from a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63, a child custody determination made under this Code section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this article, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Code Sections 19-9-61 and 19-9-63, any order issued by a court of this state under this Code section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Code Sections 19-9-61 through 19-9-63. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this Code section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Code Sections 19-9-61 through 19-9-63, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this Code section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

## **Custody Determination — Service/Notification Requirements**

### **GA Code § 19-9-65 (2018)**

(a) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of Code Section 19-9-47 must be given to all persons entitled to notice under the law of this state as in a child custody proceeding between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This article does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this article are governed by the law of this state as in child custody proceedings between residents of this state.

### **GA Code § 19-9-66 (2018)**

(a) Except as otherwise provided in Code Section 19-9-64, a court of this state may not exercise its jurisdiction under this part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article; unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Code Section 19-9-67.

(b) Except as otherwise provided in Code Section 19-9-64, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Code Section 19-9-69. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this article, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this article does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate. GA Code § 19-9-70 (2018)

(a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Code Section 19-9-47 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this Code section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this Code section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

## **Paternity and Child Support Proceeding —Jurisdiction**

### **GA Code § 19-6-26 (2018)**

(b) A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a child support order if the court has subject matter and personal jurisdiction to make such a child support order, and no previous support order has been entered by a court of competent jurisdiction with respect to the child or children named in the support order.

(c) A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a modification of a child support order issued by a court of this state if the child or children named in the child support order or any party to the action resides in this state.

(d) A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a modification of a foreign child support order if:

(1) The court has subject matter and personal jurisdiction over the nonmoving party; and

(2) The court of the state issuing the order sought to be modified no longer has continuing, exclusive jurisdiction to modify said order as defined in the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 173813, as amended.

(3) The parties file a written consent allowing the court to assume continuing, exclusive jurisdiction. This Code section shall be interpreted to effectuate the provisions of Article 3 of Chapter 11 of this title.

(e) Jurisdiction within this state to enforce, by a contempt proceeding or otherwise, a child support order entered by or registered with a court of this state shall be vested concurrently in the court issuing such order, in the court in the county where the person owing the duty of support may be found or is employed, and for in rem proceedings only, in the court in the county where property may be found which is subject to seizure, sale, foreclosure, or other process for application toward the support obligation.

### **Paternity and Child Support Proceeding — Service/Notification Requirements**

#### **GA Code § 19-6-28 (2018)**

(a) In addition to other powers specified in this chapter, the court shall have the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and, in particular, shall have the power to punish the respondent who violates any order of the court to the same extent as is provided by law for contempt of the court in any other action or proceeding cognizable by the court. Any proceeding for compliance pursuant to this authority shall be a part of the underlying action, and a motion for such enforcement shall not constitute the filing of a new action or require the payment of a new filing fee.

(b) In any proceeding to enforce a temporary or permanent grant of alimony or child support by attachment for contempt, the petitioner may serve the motion and rule nisi by mailing a copy of the motion and rule nisi by first-class mail, postage prepaid, to the respondent at the respondent's last known address together with two copies of a notice and acknowledgment conforming substantially to the form specified in subsection (c) of this Code section and a return envelope, postage prepaid, addressed to the sender. If service is perfected by acknowledgment of service in this manner, the petitioner shall file with the court the acknowledgment of the respondent; and such filing shall constitute a return of service. If no acknowledgment of service under this subsection is received by the petitioner within ten days after the date of such mailing, the petitioner shall notify the clerk of court and deposit the costs of service and service of such summons shall be made as provided in Code Section 9-11-4. The costs of such service shall be charged by the clerk of court to the respondent unless the respondent after motion and hearing establishes to the court that there is good reason why such person should not be so charged. A child support contempt motion shall be served upon a respondent with a notice that contains a date certain for hearing which shall be no later than 30 days from the date of service of the motion, unless good cause for a later date is found by the court, in which event the time for a hearing may be extended for up to 30 days.

(c) The form for notice and acknowledgment under subsection (b) of this Code section shall be substantially as follows:

IN THE SUPERIOR COURT OF COUNTY

STATE OF GEORGIA

Plaintiff v. Defendant

Civil action

File no.

RULE NISI NOTICE AND

ACKNOWLEDGMENT

To: (insert the name and address of the person to be served)



The enclosed motion and rule nisi are served pursuant to Official Code of Georgia Annotated Section 19-6-28.

You must complete the acknowledgment part of this form and mail one copy of the completed form to the sender within ten days of the date of mailing to you, which date is set out below.

You must sign and date the acknowledgment. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return this form to the sender within ten days, you or the party on whose behalf you are being served will be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law unless good and sufficient cause is shown to the contrary.

If you do complete and mail this form, you or the party on whose behalf you are being served must appear and show cause why you should not be attached for contempt at the time required by the enclosed rule nisi.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt will have been mailed on the date set out below.

Signature

Date of mailing

**ACKNOWLEDGMENT OF RECEIPT  
OF SUMMONS AND COMPLAINT**

I declare, under penalty of perjury, that I received a copy of the motion and of the rule nisi in the above-captioned manner at (insert address). Signature

Printed name of signer

Authority to receive

service of process

Date of mailing

(d) Service in accordance with subsections (b) and (c) of this Code section is in addition to any other method of service provided by law.

**Child Abuse/Neglect Proceeding —Jurisdiction**

**C.G.A. § 15-11-150**

Although dependency actions are generally initiated by the Division of Family and Children Services, "any person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful may make a petition alleging dependency."

**GA Code § 15-11-10 (2018)**

Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action:

(1) Concerning any child who:

(A) Is alleged to be a delinquent child;

(B) Is alleged to be a child in need of services;

(C) Is alleged to be a dependent child;

- (D) Is alleged to be in need of treatment or commitment as a mentally ill or developmentally disabled child;
- (E) Has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the purpose of completing, effectuating, and enforcing such supervision or a probation begun either prior to such child's seventeenth birthday if the order is entered as a disposition for an adjudication for delinquency or prior to such child's eighteenth birthday if the order is entered for an adjudication for a child in need of services;
- (F) Has remained in foster care after such child's eighteenth birthday or who is receiving independent living services from DFCS after such child's eighteenth birthday; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of such child and the services being provided to such child as a result of such child's independent living plan or status as a child in foster care; or
- (G) Requires a comprehensive services plan in accordance with Code Section 15-11-658;
- (2) Concerning any individual under the age of 17 years alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630; or
- (3) Involving any proceedings:
  - (A) For obtaining judicial consent to the marriage, employment, or enlistment in the armed services of any child if such consent is required by law;
  - (B) For permanent guardianship brought pursuant to the provisions of Article 3 of this chapter;
  - (C) Under Chapter 4B of Title 49, the Interstate Compact for Juveniles, or any comparable law, enacted or adopted in this state;
  - (D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 4 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship and the rights of a biological father who is not the legal father of the child as set forth in Chapters 6 through 9 of Title 19;
  - (E) For emancipation brought pursuant to the provisions of Article 10 of this chapter;
  - (F) Under Article 8 of this chapter, relating to prior notice to a parent, guardian, or legal custodian relative to an unemancipated minor's decision to seek an abortion; or
  - (G) Brought by a local board of education pursuant to Code Section 20-2-766.1, relating to court orders requiring that a parent, guardian, or legal custodian attend a conference or participate in programs or treatment to improve a student's behavior.

## **Child Abuse/Neglect Proceeding — Service/Notification Requirements**

### **GA Code § 15-11-152 (2018)**

A petition alleging dependency shall be verified and may rely on information and belief and shall set forth plainly and with particularity:

- (1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought;
- (2) The name, date of birth, and residence address of the child named in the petition;
- (3) The name and residence address of the parent, guardian, or legal custodian of the child named in the petition; or, if such child's parent, guardian, or legal custodian does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court;
- (4) Whether the child named in the petition is in protective custody and, if so, the place of his or her foster care and the time such child was taken into protective custody; and

(5) Whether any of the information required by this Code section is unknown. GA Code § 15-11-161 (2018)

(a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 72 hours before the adjudication hearing.

(b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least five days before the adjudication hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested.

(c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least five days before the adjudication hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested.

(d) If, after due diligence, a party to be served with a summons cannot be found and such party's address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication. The adjudication hearing shall not be earlier than five days after the date of the last publication.

(1) Service by publication shall be made once a week for four consecutive weeks in the official organ of the county where the petition alleging dependency has been filed. Service shall be deemed complete upon the date of the last publication.

(2) When served by publication, the notice shall contain the names of the parties, except that the anonymity of a child shall be preserved by the use of appropriate initials, and the date the petition alleging dependency was filed. The notice shall indicate the general nature of the allegations and where a copy of the petition alleging dependency can be obtained and require the party to be served by publication to appear before the court at the time fixed to answer the allegations of the petition alleging dependency.

(3) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition alleging dependency to the last known address of the party being served by publication.

(e) Service of the summons may be made by any suitable person under the direction of the court.

(f) The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

## **Divorce and Legal Separation —Jurisdiction**

### **GA Code § 9-10-91 (2018)**

A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or administrator, as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he or she were a resident of this state, if in person or through an agent, he or she:

(1) Transacts any business within this state;

(2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;

- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (4) Owns, uses, or possesses any real property situated within this state;
- (5) With respect to proceedings for divorce, separate maintenance, annulment, or other domestic relations action or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph shall not change the residency requirement for filing an action for divorce; or
- (6) Has been subject to the exercise of jurisdiction of a court of this state which has resulted in an order of alimony, child custody, child support, equitable apportionment of debt, or equitable division of property if the action involves modification of such order and the moving party resides in this state or if the action involves enforcement of such order notwithstanding the domicile of the moving party.

## **Divorce and Legal Separation — Service/Notification Requirements**

### **GA Code § 9-11-4 (2017)**

(c) Summons -- By whom served. Process shall be served by:

- (1) The sheriff of the county where the action is brought or where the defendant is found or by such sheriff's deputy;
- (2) The marshal or sheriff of the court or by such official's deputy;
- (3) Any citizen of the United States specially appointed by the court for that purpose;
- (4) A person who is not a party, not younger than 18 years of age, and has been appointed by the court to serve process or as a permanent process server; or
- (5) A certified process server as provided in Code Section 9-11-4.1.

Where the service of process is made outside of the United States, after an order of publication, it may be served either by any citizen of the United States or by any resident of the country, territory, colony, or province who is specially appointed by the court for that purpose. When service is to be made within this state, the person making such service shall make the service within five days from the time of receiving the summons and complaint; but failure to make service within the five-day period will not invalidate a later service.

## **Adoption Proceeding — Jurisdiction**

### **GA Code § 19-8-2 (2018)**

(a) The superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption.

## **Adoption Proceeding — Service/Notification Requirements**

### **GA Code § 19-8-2 (2018)**

(b) All petitions for adoption under this article shall be filed in the county in which any petitioner resides, except that:

(1) Upon good cause being shown, the court may, in its discretion, allow such petition to be filed in the court of the county:

(A) Of the child's domicile;

- (B) In which is located any child-placing agency having legal custody of the child;
- (C) Where the child was born if such petition is filed within one year of the child's birth; or
- (D) In which is located the office of the department having legal custody of the child;
- (2) Any individual who is a resident of any United States army post or military reservation within this state may file such petition in any county adjacent to the United States army post or military reservation; and
- (3) When a child has been placed for adoption with an individual who is a resident of another state in compliance with Chapter 4 of Title 39, relating to the Interstate Compact on the Placement of Children, such petition shall be filed in:
  - (A) The court of the county where the child was born;
  - (B) The court of the county in which is located any child-placing agency having legal custody of the child; or
  - (C) Superior Court of Fulton County.

## **Domestic Violence —Jurisdiction**

### **GA Code § 19-13-2 (2018)**

- (a) Except for proceedings involving a nonresident respondent, the superior court of the county where the respondent resides shall have jurisdiction over all proceedings under this article.
- (b) For proceedings under this article involving a nonresident respondent, the superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred shall have jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of Code Section 9-10-91.

## **Domestic Violence— Service/Notification Requirements**

### **GA Code § 19-13-3 (2018)**

- (a) A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.
- (b) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from violence. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner and such order shall remain in effect until the court issues an order dismissing such order or a hearing as set forth in subsection (c) of this Code section occurs, whichever occurs first.
- (c) Within ten days of the filing of the petition under this article or as soon as practical thereafter, but not later than 30 days after the filing of the petition, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. If a hearing is not held within 30 days of the filing of the petition, the petition shall stand dismissed unless the parties otherwise agree.
- (d) Family violence shelter or social service agency staff members designated by the court may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk of the court may provide forms for petitions and pleadings to victims of family violence and to any other person designated by the superior

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court pursuant to this Code section as authorized to advise victims on filling out and filing such petitions and pleadings. The clerk shall not be required to provide assistance to persons in completing such forms or in presenting their case to the court. Any assistance provided pursuant to this Code section shall be performed without cost to the petitioners. The performance of such assistance shall not constitute the practice of law as defined in Code Section 15-19-51.

(e) If the court finds a party is avoiding service to delay a hearing, the court may delay dismissal of the petition for an additional 30 days.

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