**NOTES FOR UCCJEA PODCAST**

1. Imagine this situation (which is not at all unique):
   1. You have a *pro se* divorce action where the plaintiff has lived in Georgia for more than 6 months. But the defendant has never resided in Georgia and you have no “long arm” jurisdiction under O.C.G.A. §9-10-91(5). The parties have a child but that child is not living in Georgia and has never lived in Georgia. The Defendant has been served but made no appearance or filed any pleadings. The Plaintiff wants you to grant him custody or even visitation in this divorce action.
   2. Not to get too off point here, a Georgia court has jurisdiction to grant the divorce due to the residency of the Plaintiff but has no personal jurisdiction over the defendant. So no division of assets/debt, alimony, child support or child custody can be addressed. You have jurisdiction over the plaintiff and subject matter jurisdiction over the marriage/divorce but you cannot award anything other than a divorce.
2. Now, imagine a similar but different scenario (again, not unique):
   1. The plaintiff files for divorce *pro se* and has been a resident of Georgia for more than 6 months before filing. He and his wife have one child. They all resided in Georgia for a year before separating and the child is now 5 years old. The defendant is residing in South Carolina with family and has the child with her. There are no pending actions in South Carolina. The plaintiff wants you to grant the divorce and also grant him visitation rights with the child.
   2. Welcome to our podcast dealing with the UCCJEA.
3. Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”)
4. Codified in Georgia at O.C.G.A. §§19-9-40 through 104
5. **NOTE: DURING THIS PODCAST, I WILL REFER TO PARENTS BUT THIS STATUTE EVEN APPLIES TO “PERSONS ACTING AS A PARENT” AND TREATS SUCH A PERSON AS A PARENT UNDER THE STATUTE**
6. Modern society suggests that parents and children do not always reside in a single state for their entire lives as they might have in the past.
   1. UCCJEA is a uniform act that I believe has been adopted in 49 states, the District of Columbia, Guam and the Virgin Islands. (As of 2017, Massachusetts had not adopted)
7. The purpose of the UCCJEA is to help courts decide whether a particular court has the power (jurisdiction) to decide a custody case where more than one state is involved. The law specifies which court has the jurisdiction to decide a custody case, but has no bearing on how the custody should be decided.
   1. If you have jurisdiction over the custody case, the substantive law of that state relating to custody applies.

**“HOME STATE”**

1. One of the most vital things to understand relating to the UCCJEA is the concept of “home state.”
   1. O.C.G.A. §19-9-41(7) defines “home state”
      1. **“Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.**
   2. Breaking that definition down, the court is required to look at the six month window of time immediately before the present action was filed. During that time, look at where the child was living and where each parent (or other contestant) was living.
      1. As usual, the idea of where a child was “living” as opposed to where the child was “staying” is not clearly defined in the statute.
   3. It is entirely possible that a child and/or parents have resided in several different states during that 6 month window.
      1. So even making the factual determination as to which state might be defined as the “home state” is a task in and of itself.

**JURISDICTION TO MAKE INITIAL DETERMINATION**

1. O.C.G.A. §19-9-61: Except in emergency situations, a state has jurisdiction to make an ***initial*** child custody determination where:
   1. This state is the home state or was the home state within 6 months of the present action being filed and at least one “parent” continues to reside in this state. (§19-9-61(a)(1); **OR**
   2. When no other state has jurisdiction or has declined to exercise jurisdiction on an “more appropriate forum” basis (discussed later) **AND**
   3. There is a substantial connection between the child and at least one parent with this state and there is substantial evidence available in this cases concerning the child’s care, protection, training and personal relationships. (§19-9-61(a)(2)); **OR**
   4. No other state would have jurisdiction under the “home state” analysis

**EXCLUSIVE, CONTINUING JURISDICTION (i.e. MODIFICATION)**

1. Once a child custody order has been entered, if the court that issued that order had jurisdiction to do so, that state has exclusive, continuing jurisdiction over that custody matter until: (§19-9-62)
   1. a court of the issuing state determines that neither the child nor the child’s parents has a significant connection with this state and that substantial evidence is no longer available in the issuing state concerning the child’s care, protection, training and personal relationships, (§19-9-62(a)(1)); **OR**
   2. it is established that neither the child nor the child’s parents permanently resides in the issuing state. (§19-9-62(a)(2) and §19-9-63)
2. Translated, a court that issues an initial custody order retains the exclusive jurisdiction to modify that order unless that issuing court determines that neither the child nor the child’s parents have a substantial relationship with the issuing state. That requires a decision by the issuing state.
   1. Otherwise, a court in any state can make a finding that neither the child nor either parent continues to reside in the issuing state. If none of the three “units” reside in the issuing state, then another state can potentially modify that initial custody order. To decide whether another state has jurisdiction to modify an initial order, you revert back to the home state” determination. (§19-9-63)

**EMERGENCY JURISDICTION**

1. O.C.G.A. §19-9-64 allows for a court to exercise emergency jurisdiction in certain circumstances.
   1. “Emergency” is defined in §19-9-64(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.”
2. If you exercise emergency jurisdiction over a custody matter, look to §19-9-64:
   1. if there is no previous custody order and no proceedings have been commenced before you enter your order, your order remains in effect until such time as a proceeding is initiated by a court with “home state” jurisdiction;
      1. If the parties do not commence a “permanent” action in the court with “home state” jurisdiction, you can include a provision in your emergency order that it will become a final order. If you do so, your state becomes the “HOME STATE.”
   2. If there is an existing custody order or proceeding, the emergency order you issue must be limited in time. You must specify in the order the amount of time that the order is applicable. The statute suggests that the amount of time should be reflective of the amount of time that is reasonable for the parties to seek relief from the court that has issued an order or where a proceeding is pending.
      1. If you learn that there is a proceeding pending in another state, a court-to-court communication must occur. Based upon that communication, the duration and terms of your emergency order will be determined or modified by you.

**INCONVENIENT FORUM**

1. There is one area of UCCJEA law that is occasionally misunderstood—the provisions relating to inconvenient forum.
2. The state with jurisdiction must determine it is an inconvenient forum. It is not proper for a state to make a finding that the other state is an inconvenient forum.
   1. For example, a Georgia court could not find that Alabama is an inconvenient forum. The Alabama court would have to make a finding that it is an inconvenient forum and have Georgia hear the case. A state cannot “take” jurisdiction from another state under the inconvenient forum provisions. But a state can “give” jurisdiction to another state under the inconvenient forum statute.

**COMMUNICATION BETWEEN COURTS**

1. O.C.G.A. §19-9-49 is the statute dealing with communication between the courts
   1. Parties have to have opportunity to present facts and legal arguments before a decision on jurisdiction is made.
      1. As a practical matter, you will need to facts of who lived where, what prior orders (if any) have been entered, etc. before proceeding
   2. The communication is to be recorded (which I have not done as I should have in past cases)
   3. The parties should be given the opportunity to be present for the communication session between the two courts.

**OTHER ISSUES DISCUSSED IN THE PODCAST**

1. Art. VI, Sec. II, Para. I specifically gives Georgia courts jurisdiction over a defendant IN A DIVORCE CASE, with venue lying in the county of the residence of the plaintiff, when the **defendant has moved from that same county within six months from the date of the filing of the divorce action and said county was the site of the marital domicile at the time of the separation of the parties.**
2. The fact that a party to the original action may have moved to another state after the initial order was entered is of no consequence—the issuing court retains the authority to enforce its order via contempt. O.C.G.A. § 9-10-91(6); *Barker v. Barker*, 294 Ga. 572 (2014). “It has long been the rule in this state, as in other jurisdictions, that an application for contempt must be filed in the court which rendered the order or judgment in question. In divorce cases, this means that, generally speaking, a contempt application must be filed in the superior court which entered the divorce decree.” *Crutchfield v. Lawson*, 294 Ga. 407, 409 (2014). “Every court has power to compel obedience to its judgments, orders, and processes.” *Jacob v. Koslow*, 282 Ga. 51, 52 (2007). HOWEVER, this does not mean that the issuing court has **exclusive** subject matter jurisdiction. “[W]here a superior court other than the superior court rendering the original divorce decree acquires jurisdiction and venue to modify that decree, it likewise possesses the jurisdiction and venue to entertain a counterclaim alleging the plaintiff is in contempt of the original decree.” *Buckholts v. Buckholts*, 251 Ga. 58, 61 (1983).
3. O.C.G.A. §9-10-91(6) is the portion of the long arm statute that allows a Georgia court who issued an order to retain jurisdiction over a party to that action for modification and contempt.
4. The parties can waive venue but they cannot waive jurisdiction. Even if the parties want Georgia to hear the case where the UCCJEA applies, we cannot do so unless all the parties have departed the issuing state or we conduct this conference.**[[1]](#endnote-1)**

**THE UCCJEA FLOW CHART**

1. Quick **flow chart** that was originally prepared by the National Center for State Courts (and others) is really helpful
   1. Is there an emergency which necessitates a court assume act immediately? (§19-9-64)
   2. Is there an existing custody order and/or custody proceeding in another state? (§19-9-62) If so, does this state have jurisdiction to modify any such order? (§19-9-63)
   3. If there is no emergency or existing order/proceeding, does this state have initial custody jurisdiction? (§19-9-61)
   4. If this state has jurisdiction to enter an initial custody order or to modify an existing order, should the judge decline to exercise that jurisdiction? (§19-9-67)
   5. Additional considerations?

1. The general rule is that jurisdiction can never be waived but venue can be waived by failing to raise objection. *Bonner v. Bonner*, 272 Ga. 545 (2000). [↑](#endnote-ref-1)