



A Resource Consortium of Georgia's Bench,
State Bar, and ABA Accredited Law Schools

STAFF

Executive Director
Richard D. Reaves (706) 542-5150

Administrative Secretary
Becky Elkins (706) 542-7491

Conference Facilitators
Kathy Mitchem (706) 542-7402
Sherry Carson (706) 542-7403

Educational Program Specialist
Lynda Hanscome (706) 542-7401

A. G. Cleveland, Jr., Esq.
(9/13/17-12/4/00)

BOARD OF TRUSTEES

Chair
Edward H. Johnson
Court of Appeals Judge
Atlanta

Vice Chair
Rebecca White, Interim Dean
The University of Georgia
School of Law, Athens

Secretary/Treasurer
John Wheaton
Probate Court Judge
Leesburg

Past Chair
Lawton E. Stephens
Superior Court Judge
Athens

Liaison Member
P. Harris Hines
Supreme Court Justice
Atlanta

Gregory A. Adams
Juvenile Court Judge
Decatur

Harry J. Altman, II
Superior Court Judge
Thomasville

Thomas C. Arthur, Dean
Emory University
School of Law, Atlanta

Micheal P. Baird
Magistrate Court Judge
Jonesboro

Neal W. Dickert
Superior Court Judge
Augusta

James B. Franklin, Esq.
Past ICLE President
Statesboro

Janice Griffith, Dean
Georgia State University
College of Law, Atlanta

Maurice H. Hilliard, Jr.
Municipal Court Judge
Roswell

Bart Jackson
Superior Court Clerk
Gray

Rudolph N. Patterson, Esq.
State Bar of Georgia
Macon

C. Donald Peppers
State Court Judge
Lafayette

David L. Ratley
AOC Director
Atlanta

Michael Sabbath, Interim Dean
Mercer University
School of Law, Macon

UCCJEA KEY ISSUES

Atty. Randall Kessler

Kessler/Schwarz, PC
Family Law Attorneys

2004 Annual Winter Seminar for Superior Court Judges
January 27-30, 2004
Savannah Riverfront Marriott

OUTLINE OF UCCJEA KEY ISSUES

Presented to the Georgia Superior Court Judges (ICJE)

January, 2004

by:

RANDALL M. KESSLER ¹

KESSLER | SCHWARZ, P.C.
ATTORNEYS AT LAW

CENTENNIAL TOWER
101 MARIETTA STREET, SUITE 3500
ATLANTA, GEORGIA 30303
404.688.8810
WWW.KESSLERSCHWARZ.COM

Randall M. Kessler is the founder of Kessler & Schwarz, P.C., a sixteen person (eight lawyers, eight paralegals) domestic relations law firm in Atlanta, Georgia. Mr. Kessler is the National Chairperson for the Family Courts Committee of the Family Law Section of the American Bar Association and is the former chair of the Family Law Section of the Atlanta Bar Association. Credit is due Marvin Solomiany, a partner at Kessler & Schwarz, P.C. who wrote the original materials which Kimberli J. Reagin, an associate attorney at the firm updated and re-drafted for this specific seminar.

OUTLINE OF KEY ISSUES RELATED TO THE UCCJEA

I **APPLICABILITY** - UCCJEA is not retroactive; applies to those actions filed on or after July 1, 2001

II **SUBJECT MATTER JURISDICTION AND PERSONAL JURISDICTION**

A Subject matter jurisdiction is satisfied when a court asserts jurisdiction over a child custody dispute by claiming any of the UCCJEA jurisdictional criteria.

B Personal jurisdiction over a party or a child is not necessary to make a child custody determination.

C Even if a court has personal jurisdiction over a parent or child, the court cannot make or modify a custody order unless it has subject matter jurisdiction under the UCCJEA.

III **NOTICE**

A For persons residing in the state that is asserting jurisdiction, notice must be given pursuant to the notice requirements of that state.

B In Georgia, notice may be given by personal service or acknowledgment.

C For persons residing out of state, notice must be given in a manner calculated to give actual notice pursuant to the notice requirement of either state.

D Notice may be by publication if other means are not effective.

IV **INITIAL CHILD CUSTODY JURISDICTION**

A **Home State Jurisdiction**

 i First Priority.

 ii The state where child lived for six (6) consecutive months with (1) both parents; (2) one parent; or (3) an individual assuming the role of a parent.

B **Significant Connection Jurisdiction**

 i Second Priority; State with significant connection jurisdiction must defer to the home state.

 ii State with significant connection jurisdiction can assert jurisdiction *only* if (1) the home state declines jurisdiction or (2) there is no home state.

iii Significant connection = (1) there is a significant connection between the child and the state *and* (2) substantial evidence regarding the child's past, present or future care exists in the state.

iv Child's presence in state is not required.

C More Appropriate Forum Jurisdiction

i Third Priority.

ii Applies when courts having home state jurisdiction or significant connection jurisdiction have not exercised jurisdiction.

D No Other State Jurisdiction /Vacuum Jurisdiction

i Very rare.

ii Court asserting vacuum jurisdiction should first analyze whether it has jurisdiction, and only after it has determined that it has jurisdiction, should a court determine the merits of the case.

MODIFICATION CHILD CUSTODY JURISDICTION

A If the decree state's law provides for exclusive continuing jurisdiction, a court in the new home state can assert jurisdiction only under two scenarios: (1) The decree state no longer has exclusive continuing jurisdiction; or (2) The state that has exclusive continuing jurisdiction declines to exercise jurisdiction because another state would be a more convenient forum to make the determination. *See* O.C.G.A. §§ 19-9-62 and 19-9-63.

B A court making an initial custody determination will retain exclusive continuing jurisdiction until one of two events has occurred:

(1) "[a] court of this state determines that neither the child nor the child's parents or any person acting as a parent has a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationship." O.C.G.A. § 19-9-62(a)(1).

or

(2) a court of this state or a court of another state seeking to exercise jurisdiction determines that "neither the child nor the child's parents or any person acting as a parent presently resides in this state." O.C.G.A. § 19-9-62(a)(2)

C In a modification proceeding, a court must determine whether an enforcement

proceeding has begun in another state. If such a proceeding has commenced, the court may (1) stay the proceeding; (2) enjoin the parties from continuing with the enforcement proceeding; or (3) proceed with the modification “under conditions it considers appropriate.” O.C.G.A. § 19-9-66(c)

VI TEMPORARY EMERGENCY JURISDICTION

- A** Two (2) requirements: (1) child must be physically present in the state; and (2) necessary in an emergency to protect child because child or a sibling or parent of child is subjected to or threatened with mistreatment or abuse. O.C.G.A. § 19-9-64(a).
- B** Proper notice and an opportunity to be heard given to the opposing party before a child custody determination is made.

VII DECLINING JURISDICTION

- A** **Grounds:** (1) Inconvenient Forum and (2) Unjustifiable Conduct.

B **Inconvenient Forum (O.C.G.A. § 19-9-67)**

- i 8 factors
- ii May be raised upon (1) a motion of a party, (2) the court’s own motion or (3) at the request of another court; but may not be raised by Guardian Ad Litem.
- iii Custody determination will proceed even though a court declines to assert jurisdiction under inconvenient forum grounds and finds that another court is a more convenient forum. Court declining to assert jurisdiction must stay the proceedings “upon condition that a child custody proceeding be promptly commenced in another state.” O.C.G.A. § 19-9-67(c).

C **Unjustifiable Conduct (O.C.G.A. § 19-9-68).**

- i If a court has jurisdiction, unless it has asserted temporary emergency jurisdiction, it must decline jurisdiction when a person seeking to assert its jurisdiction has engaged in unjustifiable conduct. O.C.G.A. § 19-9-68(a).
- ii Three (3) Exceptions: (1) parents and all persons acting as parents consent to the exercise of jurisdiction by the court; (2) no other state can assert initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction; or (3) the court of the state otherwise having jurisdiction determines that this state is the more appropriate forum.

VIII COMMUNICATION AND COOPERATION BETWEEN COURTS

- A** Courts are authorized to communicate with each other about any proceeding under the UCCJEA. O.C.G.A. § 19-9-49(a).
- B** Parties may participate in any communications between courts.
- C** If parties are not able to participate in such communications, the parties must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. -O.C.G.A. § 19-9-49(b).
- D** Courts are required to make a record of their communication and to promptly inform the parties of such communication and grant them access to same. O.C.G.A. § 19-9-49(d).

IX ENFORCEMENT PROVISIONS UNDER THE UCCJEA *(out of state Orders)*

A Registration Of An Out Of State Custody Determination

- i** Party seeking to register order must send to the superior court in the appropriate venue: (a) letter requesting registration; (b) copies of the order to be registered (including one certified copy); (c) a sworn statement that the order has not been modified; and (d) name and address of any party given custody or visitation by the order.
- ii** Once court receives the required information, the order is filed as a foreign judgment and court serves notice on any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered. O.C.G.A. § 19-9-85 (b)(1-2).
- iii** Party seeking to contest the registration must request a hearing within 20 days after service of the notice. O.C.G.A. § 19-9-85(d). If a hearing is not requested, the order is registered.
- iv** If a hearing is requested to challenge registration, the order shall be registered by the court unless one of the following is established: (1) the issuing court had no jurisdiction to enter the child custody determination; (2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having proper jurisdiction to modify same; or (3) lack of notice and opportunity to be heard to the person contesting jurisdiction provided he/she was entitled to receive notice. O.C.G.A. § 19-9-85(d)(1-3).

- B Temporary Visitation** - Courts may enforce visitation rights in two limited instances: (1) a court may provide for make-up visitation time when the visitation

contemplated and enumerated in the pertaining order has been obstructed; and (2) a courts may draft a specific visitation schedule when the order sought to be enforced does not provide for a specific visitation schedule. O.C.G.A. § 19-9-84.

C Expedited Enforcement Hearings

- i Timing: Enforcement hearing within twenty-four (24) hours of service
- ii Standard: Order granting the relief sought unless the Respondent establishes one of the following defenses: (1) the issuing court did not jurisdiction to make the Order; (2) the Respondent did not receive notice in accordance with the standards of the UCCJEA; and (3) the Order has been vacated, stayed or modified. If the Order has been registered, only the third defense is available. O.C.G.A. § 19-9-90.

D Warrant To Take Physical Custody of Child

- i Purpose: To prevent a parent from fleeing the jurisdiction of the court where enforcement is sought.
- ii Grounds: Child is imminently likely to suffer serious physical harm or be removed from the state. O.C.G.A. § 19-9-91(a).
- iii Procedure: Petitioner is required to file a verified application and provide specific testimony to the Court.
- iv Standard: Child will suffer serious physical harm or be removed from the state.
- v Timing: Petition must be heard on the next judicial day after the warrant is executed, unless that date is not possible. O.C.G.A. § 19-9-91(b).

E Civil Enforcement Of Custody Orders

- i District attorney has discretionary authority to take any lawful action to locate a child, obtain the return of a child, or enforce a child custody determination. O.C.G.A. § 19-9-95.
- ii O.C.G.A. § 19-9-96 allows law enforcement officials to take any lawful action reasonably necessary to locate a child or a party and to assist the district attorney's office with the undertakings allowed by O.C.G.A. § 19-9-95.

**A PRACTICAL GUIDE TO THE UNIFORM CHILD CUSTODY AND
JURISDICTION ENFORCEMENT ACT (UCCJEA) IN GEORGIA**

PRESENTED TO THE GEORGIA SUPERIOR COURT JUDGES (ICJE)

January, 2004

presented by:

RANDALL M. KESSLER ¹

KESSLER|SCHWARZ, P.C.
ATTORNEYS AT LAW

CENTENNIAL TOWER
101 MARIETTA STREET, SUITE 3500
ATLANTA, GEORGIA 30303
404.688.8810
WWW.KESSLERSCHWARZ.COM

¹*The presenter, Randall M. Kessler is the founder of Kessler & Schwarz, P.C., a sixteen person (eight lawyers, eight paralegals) domestic relations law firm in Atlanta, Georgia. Mr. Kessler is the National Chairperson for the Family Courts Committee of the Family Law Section of the American Bar Association and is the former chair of the Family Law Section of the Atlanta Bar Association. Marvin Solomiany, a partner at Kessler & Schwarz, P.C. wrote the original materials which Kimberli J. Reagin, an associate attorney at the firm updated and re-wrote for this specific seminar.*

A PRACTICAL GUIDE TO THE UNIFORM CHILD CUSTODY AND JURISDICTION ENFORCEMENT ACT (UCCJEA) IN GEORGIA

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA or “the Act”), which was enacted on April 27, 2001 and which is embodied in O.C.G.A. §§ 19-9-40 through 19-9-104, represents an updated and improved version of its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA).. The UCCJEA now governs the manner in which Georgia courts will address interstate child custody disputes and replaces the UCCJA which was enacted in Georgia in 1978.² The purpose of the UCCJEA is to reduce and resolve interstate conflicts of child custody determinations and to facilitate the determination of which state is the most appropriate forum in which to litigate an interstate child custody dispute.

I OVERVIEW

The UCCJEA clarifies two major areas of child custody jurisdictional disputes by: (1) prioritizing which state should have jurisdiction to resolve the dispute; and (2) defining original, continuing, and modification jurisdiction of child custody determinations. The UCCJEA defines criteria by which a state can assert jurisdiction over an initial child custody dispute for the purpose of discouraging other states from taking jurisdiction, as follows: (1) Home State Jurisdiction; (2) Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction; and (4) No Other State Jurisdiction /Vacuum Jurisdiction. The UCCJEA prioritizes these criteria to discourage multiple states from taking jurisdiction at the same time. The UCCJEA also

²O.C.G.A. § 19-9-41(4) defines “child custody proceeding” as a “proceeding in which legal custody, physical custody, or visitation with respect to a child is in issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from family violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this article.”

distinguishes between the proper method for a state to assert jurisdiction, depending on whether the case involves an initial custody determination or whether the case involves a modification of a previous custody Order. The UCCJEA clarifies which state will assume jurisdiction over a subsequent modification action by providing the State making the initial custody determination with “exclusive continuing jurisdiction.”

II APPLICABILITY

The preliminary question relating to the UCCJEA in Georgia is which actions are subject to the UCCJEA as opposed to the UCCJA. As enumerated in O.C.G.A. § 19-9-102, a motion or other request for relief under the UCCJEA “which was commenced before the effective date of this article is governed by the law in effect at the time the motion or other request was made.” In other words, an application of the UCCJEA is not retroactive and the UCCJA will still apply for those actions filed before July 1, 2001 (the effective date of the UCCJEA).

III SUBJECT MATTER JURISDICTION, PERSONAL JURISDICTION & NOTICE

Since an application of the UCCJEA involves litigants of different states, issues that arise immediately upon filing of an interstate custody action are the means by which to give the opposing party proper notice and the method by which to ensure that both personal and subject matter jurisdiction can be asserted in the court where jurisdiction is sought.

A Subject Matter Jurisdiction

Judgments which are rendered in a court lacking subject matter jurisdiction are null and void, and parties cannot consent to subject matter jurisdiction. Subject matter jurisdiction is satisfied when a court asserts jurisdiction over a child custody dispute by claiming any of the UCCJEA jurisdictional criteria. Even if a court has personal jurisdiction over a parent or child,

the court cannot make or modify a custody order unless it has subject matter jurisdiction under the UCCJEA. *See Hoff, Patricia M., The ABC's of the UCCJEA: Interstate-Child-Custody Practice Under the New Act*, 32 Fam. L.Q. 267 (1998).

B Personal Jurisdiction

Generally, the due process clause of the United States Constitution requires that a party have minimum contacts with the State issuing the judgment. Asserting personal jurisdiction in a custody dispute could be problematic since an out of state parent may have absolutely no connection to the state asserting jurisdiction and effectuating personal service over the non-resident parent in the state of Georgia may not be possible. In addition, the Georgia Domestic Relations Long Arm Statute (O.C.G.A. § 9-10-91) does not apply to custody disputes.

The potential problems of attempting to assert personal jurisdiction over a non-resident Defendant are resolved by the UCCJEA. O.C.G.A. § 19-9-61(c) states that “[p]hysical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.” Nonetheless, subject matter jurisdiction is still necessary to apply the UCCJEA even if a court has personal jurisdiction over the parties. *See Hoff, supra* at 281.

C Notice

In order to satisfy the Due Process Clause of the United States Constitution, all relevant parties must be given notice of the proceeding. For persons residing in the state that is asserting jurisdiction, notice must be given pursuant to the notice requirements of that state. In Georgia, notice may be given by personal service or acknowledgment. *See* O.C.G.A. § 9-11-4. For persons residing out of state, notice must be given in a manner calculated to give actual notice pursuant to the notice requirement of either state. O.C.G.A. § 19-9-47 provides that “[n]otice

required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective” (emphasis supplied).

IV INITIAL CHILD CUSTODY JURISDICTION CRITERIA

An initial custody determination must be made by a court having one of the UCCJEA’s four jurisdictional criteria which are prioritized in the following order: (1) Home State Jurisdiction; (2) Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction; and (4) No Other State Jurisdiction /Vacuum Jurisdiction.

A Home State Jurisdiction

In an initial custody determination, the UCCJEA affords priority to home state jurisdiction; thereby conforming the UCCJEA to the Parental Kidnaping Prevention Act (PKPA).³ *See Hoff, supra* at 279. Therefore, if the child involved in the custody dispute has a home state, only that home state may make the initial custody determination, unless the home state declines to assert jurisdiction over the child custody dispute. *See Zorza, supra* at 917. The UCCJEA defines a home state, in essence, as the state where the child lived for six (6) consecutive months with (1) both parents; (2) one parent; or (3) an individual assuming the role

³Congress enacted the PKPA in December, 1980 because many custody decisions were not recognized or honored by courts of other states. The PKPA required every state in the nation to give full faith and credit to those Orders which complied with due process (i.e., giving reasonable notice and opportunity to be heard to all contestants, parents and any other person having physical custody of the child) and the PKPA’s jurisdictional requirements. Zorza, Joan, *The UCCJEA: What Is It and How Does It Affect Battered Women in Child-Custody Disputes*, 27 Fordham Urb. L.J. 909, 911-913 (2000).

of a parent.⁴ The six (6) month period must have been prior to the commencement of the action, and it includes periods of temporary absence by the child from his/her home state. *See Stoner, Kelly, "The Uniform Child Custody Jurisdiction & Enforcement Act,"* 75 N. Dak. L. Rev 301, 306-308 (1999). In addition, a child's home state keeps its status for six (6) months after a child relocates to another state, provided that a parent or person acting as a parent remains in the home state. *See Zorza, supra* at 916.

B Significant Connection Jurisdiction

The UCCJEA requires that a state with significant connection jurisdiction defer to the home state of the child. *See Hoff, supra* at 279. Thus, a state attempting to exercise significant connection jurisdiction can assert jurisdiction only if (1) the home state declines jurisdiction or (2) there is no home state. Further, a state has a significant connection if (1) there is a significant connection between the child and the state and (2) substantial evidence regarding the child's past, present or future care exists in the state. *See Stoner, supra* at 313. The child's presence is not required for significant connection jurisdiction.

Even though the UCCJEA prioritizes the home state over significant connection, concurrent jurisdiction is still possible if there is no home state. For instance, more than one state can claim a significant connection to the child because, under the UCCJEA, "significant connection" includes the past, present, and future care of the child. Thus, it is likely that both states of the parents seeking custody will be able to claim significant connection jurisdiction.

⁴O.C.G.A. § 19-9-41(7) defines "home state" as "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 terms 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."

When this conflict arises, the conflict is resolved in favor of the first filed proceeding. However, since the UCCJEA imposes a requirement that courts where proceedings are pending must communicate with each other, the court where the first proceeding was filed might defer to the other court. Concurrent jurisdiction may also arise in those cases when there is no home state, no state has exclusive continuing jurisdiction (explained below) and more than one state has significant connections. Nelson, *supra* at 252.

C More Appropriate Forum Jurisdiction

A jurisdiction that is neither regarded as the child's "home state" nor has significant connections to the child will be able to assert jurisdiction under the UCCJEA only if courts having home state jurisdiction or significant connection jurisdiction have declined to exercise jurisdiction. See Zorza, *supra* at 916. This determination may be based on inconvenient forum or misconduct grounds (explained below).

D No Other State Jurisdiction /Vacuum Jurisdiction

If no court has asserted jurisdiction under (1) home state jurisdiction, (2) significant connection jurisdiction, or (3) more appropriate forum principles, a court will be able to assert vacuum jurisdiction. A court asserting vacuum jurisdiction should not consider the merits of the case when determining whether to exercise jurisdiction. Rather, a court should first analyze whether it has jurisdiction, and only after the court has determined that it has jurisdiction, should a court determine the merits of the case. Hoff, *supra* at 280. Asserting jurisdiction under this criterion is extremely rare.

V MODIFICATION CHILD CUSTODY JURISDICTION

In addition to prioritizing the criteria under which a court can make an initial custody

determination, the UCCJEA also dictates the exact criteria to be applied when a court seeks to modify an initial custody order of another state.

In order to discern which state is able to modify a custody order, one must determine if the decree state's law provides for exclusive continuing jurisdiction. Hoff, *supra* at 182. If so, a court in the new home state can assert jurisdiction only under two scenarios: (1) The decree state no longer has exclusive continuing jurisdiction; or (2) The state that has exclusive continuing jurisdiction declines to exercise jurisdiction because another state would be a more convenient forum to make the determination. See O.C.G.A. §§ 19-9-62 and 19-9-63.⁵

A court making an initial custody determination will retain exclusive continuing jurisdiction until one of two events has occurred:

(1) “[a] court of this state determines that neither the child nor the child’s parents or any person acting as a parent has a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationship.” O.C.G.A. § 19-9-62(a)(1) (emphasis supplied)

or

(2) a court of this state or a court of another state seeking to exercise jurisdiction determines that “neither the child nor the child’s parents or any person acting as a parent presently resides in this state.” O.C.G.A. § 19-9-62(a)(2) (emphasis supplied).⁶

These two statutes distinguish between which courts have the authority to determine whether exclusive continuing jurisdiction still exists. Whereas only the court exercising

⁵Obviously, the state seeking to assert jurisdiction to modify the existing order would have to establish jurisdiction under the other jurisdictional criteria of the UCCJEA.

⁶O.C.G.A. § 19-9-41(13) defines ‘person acting as a parent’ as “a person, other than a parent, who: (A) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and (B) Has been awarded legal custody by a court or claims a right to legal custody under the laws of this state.”

continuing exclusive jurisdiction can determine whether a significant connection and substantial evidence exists in its state, a court of another state can make the determination as to whether the child or the child's parents (or any other person acting as a parent) no longer reside in the state previously exercising exclusive continuing jurisdiction.

O.C.G.A. § 19-9-66(c) requires a court, in a proceeding to modify a child custody determination, to determine whether an enforcement proceeding has begun in another state. If such a proceeding has commenced, the court may (1) stay the proceeding; (2) enjoin the parties from continuing with the enforcement proceeding; or (3) proceed with the modification "under conditions it considers appropriate."

A comment to the UCCJEA suggests that a parent seeking to modify a custody order must obtain an order from the original decree state which declares that the original state no longer has jurisdiction. UCCJEA 102 comment, 9 U.L.A. 252-253. This requirement essentially eliminates the possibility that a court which seeks to modify a custody decree could circumvent the court which has exclusive continuing jurisdiction since the original court must issue an Order releasing its exclusive continuing jurisdiction before the other court can assume jurisdiction (although, the new state could, as mentioned above, make a determination that no party, child or person acting as a parent still resides in the former state). In addition, this Comment indicates that exclusive continuing jurisdiction is not reestablished if the non-custodial parent returns to the state after the child, the parents, and all persons acting as parents leave the state. Further, O.C.G.A. § 19-9-62(b) provides that once a state has lost exclusive continuing jurisdiction, it can modify its previous custody order only if it can reassert jurisdiction by making an initial determination consistent with O.C.G.A. § 19-9-61 (i.e., (1) Home State Jurisdiction; (2)

Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction; or (4) No Other State Jurisdiction /Vacuum Jurisdiction).

VI TEMPORARY EMERGENCY JURISDICTION

The UCCJEA requires that two conditions be met for a court to be able to assert jurisdiction on an emergency basis: (1) the child must be physically present in the state; and (2) “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.” O.C.G.A. § 19-9-64(a). Thus, a state may issue a temporary custody order even though that state may be neither the “home state” of the child nor have significant connections to the case, since the purpose of allowing the court to claim emergency jurisdiction is to protect the child until a court that has jurisdiction under the other criteria is able to enter an order. “The UCCJEA provides for temporary emergency jurisdiction that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found, or if found, declines to take jurisdiction.” Summary, supra.

Emergency jurisdiction should be exercised only to protect a child on a temporary basis and should not be used as another ground for jurisdiction. To further decrease the possibility of “concurrent jurisdiction,” the UCCJEA requires that when a custody action has been initiated in another state, or an order has been entered in another state claiming jurisdiction, the court exercising temporary emergency jurisdiction “shall immediately communicate with the other court.” O.C.G.A. § 19-9-64(d).

The duration of the Order issued by a court asserting temporary emergency jurisdiction depends on whether custody has been previously litigated or is presently being litigated in another state. Hoff, *supra* at 284. If there is no prior custody order and no other proceeding has

been commenced under the different jurisdictional criteria of the UCCJEA (i.e., “initial custody determination,” “exclusive continuing jurisdiction” and “modification jurisdiction”), the temporary emergency order becomes a final order if it “so provides and this state becomes the home state of the child.” O.C.G.A. § 19-9-64(b).

If there is a previous order or a custody proceeding has been commenced in a court asserting jurisdiction under the different jurisdictional criteria of the UCCJEA (i.e., “initial custody determination,” “exclusive continuing jurisdiction” and “modification jurisdiction”), the order issued by the court asserting temporary emergency jurisdiction must specify a time period that the court considers sufficient to allow the person seeking an order to obtain an order from the state having jurisdiction. In addition, the temporary emergency order will remain in effect until a subsequent order is obtained from the other state asserting jurisdiction within the time frame specified in the order or the period expires. *See* O.C.G.A. § 19-9-64(c). The UCCJEA does not specify a particular length of time that the temporary emergency order should last. Thus, the duration of the order is one of several issues to be discussed when the emergency court communicates with the sister state court. *See Hoff, supra* at 284.

An underlying issue present in the situation when a court asserts temporary emergency jurisdiction revolves around whether the factual findings by said court will be given full faith and credit by a court which may assume subsequent jurisdiction as contemplated by the UCCJEA. Because the UCCJEA requires that notice and an opportunity to be heard be given to all participants, even when making temporary emergency orders, the findings made by that court are entitled to full faith and credit. “Thus, a temporary emergency jurisdiction can make a final ruling as to the underlying abuse. It will also halt the practice of re-litigating the abuse finding

on the theory that the allegation was only made for tactical advantage or to alienate the child from the other parent.” *Zorza, supra* at 918.

Even though the UCCJEA allows for a court to assert emergency jurisdiction, the UCCJEA still requires that proper notice and an opportunity to be heard is given to the opposing party before a child custody determination is made. O.C.G.A. § 19-9-65 makes this requirement clear by stating that “[b]efore a child custody determination is made under this article, notice 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 laws 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.” By requiring that proper notice be given to all participants, an order issued by a court asserting emergency jurisdiction under the UCCJEA will comport to the notice requirements of the PKPA and be given full faith and credit by other states. The UCCJEA allows a court to take whatever steps are necessary to protect the child, regardless of whether another action is pending in another state, and without taking jurisdiction away from a court that has a stronger basis for asserting jurisdiction under the criteria enumerated in the Act.

VII DECLINING JURISDICTION

The UCCJEA allows a court with initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction to decline to assert jurisdiction under either of the following grounds: (1) Inconvenient Forum (O.C.G.A. § 19-9-67); or (2) Unjustifiable Conduct (O.C.G.A. § 19-9-68).

A Inconvenient Forum

A court can decline to assert jurisdiction at any time by determining that it is an inconvenient forum and that a court of another state is a more appropriate forum. O.C.G.A. § 19-9-67(a). The issue of inconvenient forum can be raised upon a motion of a party, the court's own motion or at the request of another court. A Guardian Ad Litem may not raise the issue of inconvenient forum. Nelson, *supra* at 252. By allowing another court to assert inconvenient forum, the UCCJEA allows the court asserting temporary emergency jurisdiction to attempt to persuade the court having jurisdiction to decline jurisdiction.

Perhaps most important, the UCCJEA ensures that the custody litigation proceeds even if a court declines to assert jurisdiction under inconvenient forum grounds and finds that another court is a more convenient forum. O.C.G.A. § 19-9-67(c) requires that a court declining to assert jurisdiction to stay the proceedings "upon condition that a child custody proceeding be promptly commenced in another state" (naturally, in the state it finds to be the more appropriate forum).

In deciding whether to decline jurisdiction on the basis of inconvenient forum, the court must consider all the relevant factors, including: (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; (2) the length of time the child has resided outside of the state; (3) the distance between the inconvenient forum court and the more appropriate forum court; (4) the relative financial circumstances of the parties; (5) any agreement of the parties as to which state should assume jurisdiction; (6) the nature and location of the evidence needed to resolve the case, including the testimony of the child; (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) how familiar each court is with the

facts and issues in the pending litigation. O.C.G.A. § 19-9-67(b)(1-8).

B Unjustifiable Conduct

The UCCJEA requires that if a court has jurisdiction, unless it has asserted temporary emergency jurisdiction, it must decline that jurisdiction when a person seeking to assert its jurisdiction has engaged in unjustifiable conduct. O.C.G.A. § 19-9-68(a) (emphasis supplied). The three (3) exceptions to this rule are: (1) the parents and all persons acting as parents consent to the exercise of jurisdiction by the court; (2) no other state can assert initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction; or (3) the court of the state otherwise having jurisdiction determines that this state is the more appropriate forum (i.e., the other court declines jurisdiction for inconvenient forum reasons). O.C.G.A. § 19-9-68 (a)(1-3).

In order to prevent the person from further engaging in acts of “unjustifiable conduct,” the UCCJEA provides that a court declining to assert jurisdiction under this section can retain jurisdiction until jurisdiction is assumed by another court. Further, the court may “fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct.” O.C.G.A. § 19-9-68(b). In order to further discourage a party from engaging in unjustifiable conduct, the UCCJEA requires that the court assess against the party seeking to invoke its jurisdiction “necessary and reasonable expenses unless the party from whom fees are sought establishes that such an award would be clearly inappropriate. O.C.G.A. § 19-9-68(c).⁷

The term “unjustifiable conduct” is not defined in the UCCJEA’s list of definitions. Nonetheless, “[i]t is unjustifiable for parents or their surrogates, to act in a reprehensible manner,

⁷Necessary and reasonable expenses include costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

such as by removing, secreting, retaining, or restraining a child. In contrast, domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is illegal.” Hoff, *supra* at 286.⁸

VIII COMMUNICATION AND COOPERATION BETWEEN COURTS

A primary purpose of the UCCJEA is to avoid multiple states asserting jurisdiction over a child custody proceeding. Because the UCCJEA prioritizes the criteria that can be asserted during an initial custody determination, and because it differentiates between initial and modification jurisdiction, the UCCJEA reduces the need for courts of different states to communicate with each other. “The times when communication will be required will likely occur when there is no home state, no state with exclusive continuing jurisdiction, more than one significant connection state or, in cases involving temporary emergency jurisdiction.” Zorza, *supra* at 921.

Nonetheless, the UCCJEA clearly promotes communication between courts by authorizing courts to communicate with each other about any proceeding under the UCCJEA. O.C.G.A. § 19-9-49(a). In addition, courts will allow the parties to participate in any

⁸The comment to the statute elaborates on the applicability of this principle to situations involving domestic violence by stating as follows:

A technical or illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has engaged in unjustifiable conduct and the new state must decline to exercise jurisdiction under this section.

communications between them. If the parties are not able to participate in such communications, then the parties must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. O.C.G.A. § 19-9-49(b).⁹

The UCCJEA facilitates the participation of out of state litigants and witnesses in a custody determination. For example, the Act allows the taking of testimony in another state when a party, child, or witnesses are located out of state. As a practical alternative to ordering a party to appear with or without the child, “ a court may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in the state.” Hoff, *supra* at 287. As the Comment states, the “ability to participate in the proceedings without actually going back to the other state will be especially welcome to victims of domestic violence or child abuse who fear returning to the jurisdiction where the abuser resides.” *Id.*

Last, the UCCJEA authorizes courts to seek assistance, or give assistance to a court of another state. *See* O.C.G.A. § 19-9-51. This authorization is consistent with the UCCJEA’s aim of providing a prompt resolution to the custody proceeding. Specifically, a court can request a court of another state to hold an evidentiary hearing, order a person to produce or give evidence, forward a certified copy of the transcript of the record of the hearing, order a custody evaluation, or order a party or any person having physical custody of the child to appear in the proceeding with or without the child. *Id.*

⁹In addition, courts are required to make a record of their communication and to promptly inform the parties of such communication and grant them access to same. O.C.G.A. § 19-9-49(d).

IX ENFORCEMENT PROCEDURES

For a custody order to be entitled to enforcement, the court issuing the order must have exercised jurisdiction in “substantial conformity” with the Act, or such determination was made under factual circumstances meeting the jurisdictional standards of the Act. *See* O.C.G.A. § 19-9-83(a). In other words, “[t]o encourage swift enforcement, the drafters limited the scope of inquiry to whether the decree court had jurisdiction and complied with due process in rendering the original custody decree.”¹⁰ Levy, David H. and McCarthy, Nanetta A., *A Critique of the Proposed Uniform Custody Jurisdiction and Enforcement Act*, 15 J. Am. Acad. Matrimonial Law 149 (1998). The purpose of these enforcement procedures is to ensure the prompt and easy enforcement of custody and visitation orders in order to avoid the need once again to undergo an extensive inquiry into the merits of the particular custody determination.

A Registration Of An Out Of State Custody Determination

O.C.G.A. § 19-9-85 sets forth the necessary requirements and procedures to register an out of state custody determination. A party may seek the registration of an order, with or without a simultaneous request for enforcement. Essentially, an individual seeking to register an order must send to the superior court in the appropriate venue: (1) a letter requesting registration; (2) copies of the order to be registered (including one certified copy); (3) a sworn statement that the order has not been modified; and (4) the name and address of any party given custody or visitation by the order.

Once the superior court receives the required information, the order is filed as a foreign

¹⁰An order entered by a state assuming jurisdiction because of significant connection would not be entitled to enforcement under the UCCJEA if there was a home state at the time said Order was entered. Hoff, *supra* at 289.

judgment, and the court serves notice on any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

O.C.G.A. § 19-9-85 (b)(1-2). A person seeking to contest the registration must request a hearing within twenty (20) days after service of the notice. O.C.G.A. § 19-9-85(d). If a hearing is not requested, the order is registered.

If a hearing is requested to challenge the validity of the registration, the order shall be registered by the court unless one of the following is established: (1) the issuing court had no jurisdiction to enter the child custody determination; (2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having proper jurisdiction to modify same; or (3) lack of notice and opportunity to be heard to the person contesting jurisdiction provided he/she was entitled to receive notice. O.C.G.A. § 19-9-85(d)(1-3).

B Temporary Visitation

The UCCJEA allows courts to enforce visitation rights in two limited instances without violating the PKPA:¹¹ (1) a court may provide for make-up visitation time when the visitation contemplated and enumerated in the pertaining order has been obstructed; and (2) a court may draft a specific visitation schedule when the order sought to be enforced does not provide for a specific visitation schedule. O.C.G.A. § 19-9-84.¹²

¹¹Absent appropriate jurisdiction, the PKPA prohibits a court from modifying another state's custody determination by requiring that a court enforce another state's custody determination *according to the express terms of said order*). *Zorza, supra* at 933.

¹²“Judges who are asked to grant temporary visitation orders under this section are cautioned against making wholesale changes in sister state orders. The authority granted by this section is limited to making temporary orders to enforce visitation. The enforcement court may communicate with the decree court before entering orders, and there is always the possibility the decree court will defer jurisdiction to the enforcement court on inconvenient forum grounds.”

C Expedited Enforcement Hearings

The UCCJEA permits expedited enforcement hearings to ensure the prompt enforcement of custody determinations. This remedy provides for an enforcement hearing within twenty-four (24) hours of service which will result in an order granting the relief sought unless the Respondent establishes one of the following defenses available under the Act: (1) the issuing court did not jurisdiction to make the Order; (2) the Respondent did not receive notice in accordance with the standards of the UCCJEA; and (3) the Order has been vacated, stayed or modified. If the Order has been registered, only the third defense is available. O.C.G.A. § 19-9-90.

D Warrant To Take Physical Custody of Child

To prevent a parent from fleeing the jurisdiction of the court where enforcement is sought, the UCCJEA allows for the issuance of a warrant to take physical custody of a child upon a finding that the “child is imminently likely to suffer serious physical harm or be removed from the state.” O.C.G.A § 19-9-91(a). In order to obtain a warrant, the Petitioner is required to file a verified application and provide specific testimony to the Court.¹³ Once the court determines that the child will suffer serious physical harm or be removed from the state, a warrant will issue authorizing the immediate taking custody of the child. The petition must be heard on the next judicial day after the warrant is executed, unless that date is not possible. O.C.G.A. § 19-9-91(b).

Hoff, *supra* at 293.

¹³The comment to this Section suggests that the taking of testimony from the Petitioner may be accomplished either in person, by telephone or by another locally accepted means.

E Civil Enforcement Of Custody Orders

Under O.C.G.A. § 19-9-95, the district attorney has discretionary authority to take any lawful action to locate a child, obtain the return of a child, or enforce a child custody determination. The district attorney is not required to fulfill the responsibilities afforded him/her under this section. O.C.G.A. § 19-9-96 allows law enforcement officials to take any lawful action reasonably necessary to locate a child or a party and to assist the district attorney's office with the undertakings allowed by O.C.G.A. § 19-9-95.

X CONCLUSION

The enactment of the UCCJEA is still a relatively recent shift in Georgia law. There are few appealed cases in Georgia and not all fifty states have adopted it. However, the UCCJEA has clearly eliminated much confusion and many potential conflicts in custodial disputes (such as the possibility which existed under the UCCJA that two states could legitimately claim jurisdiction since there was no prioritization of the bases for jurisdiction). As the law develops, the UCCJEA will become entrenched in our minds and practices. Good luck as you utilize the UCCJEA to conquer the jurisdictional issues you will face in child custody cases.

