1 **PLEADINGS**

Chapter VII

2 **PLEADINGS AND COMMENCEMENT OF ACTIONS**

- O.C.G.A. §9-11-7
- (a)Pleadings. There shall be a complaint and an answer; a third-party complaint, if a person who is not an original party is summoned under Code Section 9-11-14; and a third-party answer, if a third-party complaint is served. There may be a reply to a counterclaim denominated as such and an answer to a cross-claim, if the answer contains a cross-claim.

3 **PLEADINGS AND COMMENCEMENT OF ACTIONS**

- O.C.G.A. §9-11-7
- (a)Pleadings. …No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.
-

4 **PRACTICE TIP:**

- Technically, motions are not pleadings

5 **MOTIONS AND OTHER *PAPERS***

- O.C.G.A. §9-11-7
- (b)Motions and other papers.
  - (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall:

6 **MOTIONS AND OTHER *PAPERS***

- O.C.G.A. §9-11-7
- Motions shall:

- state with particularity the grounds therefor, and
- shall set forth the relief or order sought.
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- The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

7 **MOTIONS**

- O.C.G.A. §9-11-7
- (b)Motions and other papers.
  - (2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by this chapter.
-

8 **MOTIONS**

- O.C.G.A. §9-11-7
- (c)Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

9 **Difference from FRE 7**

- Answers to counterclaims and cross-claims are not mandatory unless court ordered under O.C.G.A. §9-11-7

10 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8
- (2)Form of complaint, generally; action for malpractice.
- An original complaint shall contain facts upon which the court's venue depends;
- and any pleading which sets forth a claim for relief, whether an original claim, counterclaim, a cross-claim, or a third-party claim, shall contain:

11 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8
- (A) A short and plain statement of the claims showing that the pleader is entitled to relief; and

12 **GENERAL RULES OF PLEADING**

- (B) A demand for judgment for the relief to which the pleader deems himself entitled;

13 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(a)
- Defines "Action for Medical Malpractice"

14 **GENERAL RULES OF PLEADING**

- provided, however, that in actions for medical malpractice, as defined in this Code section, in which a claim for unliquidated damages is made for $10,000.00 or less, the pleadings shall contain a demand for judgment in a sum certain; and, in actions for medical malpractice in which a claim for unliquidated damages is made for a sum exceeding $10,000.00, the demand for judgment shall state that the pleader "demands judgment in excess of $10,000.00," and no further monetary amount shall be stated.

15 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(a)
- Relief in the alternative or of several different types may be demanded.

16 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(a)
- (3)Sanctions. If the provisions of subparagraph (B) of paragraph (2)

of this subsection are violated, the court in which the action is pending shall, upon a proper motion, strike the improper portion of the demand for judgment and may impose such other sanctions, including disciplinary action against the attorney, found in Code Section 9-11-37 as are appropriate.

17 **ANSWER**

[WOW, IT'S ABOUT TIME...]

18 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(b)
- (b)Defenses; form of denials. A party shall state in short and plain terms
  - his defenses to each claim asserted and
  - shall admit or deny the averments upon which the adverse party relies.
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19 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(b)
- If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state, and this has the effect of a denial.

-

20 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(b)
- Denials shall fairly meet the substance of the averments denied.

When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder.

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21 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(b)
- Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits;

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22 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(b)
- but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Code Section 9-11-11.

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23 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(c)
- (c)Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively:
  - accord and satisfaction,
  - arbitration and award,
  - discharge in bankruptcy,
  - duress,

24 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(c)
- estoppel,
- failure of consideration,
- fraud,
- illegality,
- injury by fellow servant,
- laches,

25 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(c)
- license,
- payment,
- release,
- res judicata,

26 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(c)
- statute of frauds,
- statute of limitations, and
- waiver.

27 **GENERAL RULES OF PLEADING**

- O.C.G.A. §9-11-8(c)
- (c)Affirmative defenses.
- When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

28 **AFFIRMATIVE DEFENSES**

- FAILURE TO ASSERT AFFIRMATIVE DEFENSES CAN RESULT IN WAIVER

[That's why they're affirmative defenses]

29 **O.C.G.A. §9-11-8(d)**

- (d)Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.
- Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.
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30 **O.C.G.A. §9-11-8(e)**

- (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

31 **O.C.G.A. §9-11-8(e) Alternative Pleading**

- (2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses.
- When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.

32 **O.C.G.A. §9-11-8(e)**

- A party may also state as many separate claims or defenses as he has, regardless of consistency and whether based on legal or on equitable grounds or on both.
- All statements shall be made subject to the obligations set forth in Code Section 9-11-11.

33 **O.C.G.A. §9-11-8(f)**

- (f)Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

[One of the "mercy statutes"]

34 **PRACTICE TIP**

- Courts generally read pleadings broadly so as to uphold a complaint or defense unless specificity is required by statute
- [Such as with affirmative defenses]

35 **O.C.G.A. §9-11-8(a)(2)**

- Requires pleading "facts upon which the court's venue depends"
- Thus, more than bare allegations of proper venue are required

36 **O.C.G.A. §9-11-8(a)(2)**

- *Chung v. Hair Trend USA, Inc.,* 322 Ga. App. 429 (2013)
- "Where facts of venue are not alleged, dismissal of the complaint is proper."

37 **PRACTICE TIP**

- Appropriate response to a failure to give a "short, plain statement of the claim" is a motion for more definite statement rather than a motion to dismiss.
- *Bush v. Bank of New York Mellon*, 313 Ga. App. 84 (2011)
- [Maybe another "mercy rule"?]

38 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (a)Capacity. It is not necessary to aver the capacity of a party to bring or defend an action, the authority of a party to bring or defend an action in a representative capacity, or the legal existence of an organized association of persons that is made a party.

39 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- When a party desires to raise an issue as to the legal existence of any party, the capacity of any party to bring or defend an action, or the authority of a party to bring or defend an action in a representative capacity, he shall do so by specific negative

averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

40 **HOW DOES A MINOR BRING AN ACTION?**

- By "parent as next friend" or through legal guardian if no parent available or willing
- Court can appoint a *guardian ad litem* for litigation

41 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (b)Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstance constituting fraud or mistake shall be stated with particularity.
- Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

42 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (c)Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred.
- A denial of performance or occurrence shall be made specifically and with particularity.

43 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (d)Official document or act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

44 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (e)Judgment. In pleading a judgment or decision of a domestic or foreign court, of a judicial or quasi-judicial tribunal, or of a board or

officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

45 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (f)Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

46 **PLEADING SPECIAL MATTERS**

- O.C.G.A. §9-11-9
- (g)Special damage. When items of special damage are claimed, they shall be specifically stated.

47 **ATTACKING POORLY PLED MATTERS**

- *Moultrie v. Atlanta Federal Savings & Loan Association*, 148 Ga. App. 650 (1979)
- Motion for more definite statement is disfavored
- Motion for more definite statement is favored over dismissal with respect to special matters

48 **OTHER PLEADING STATUTES**

- O.C.G.A. §9-11-9.1
- Professional malpractice actions
- Expert affidavit required to be filed with complaint setting forth at least one act of malpractice
-

49 **OTHER PLEADING STATUTES**

1
- O.C.G.A. §9-11-9.1
- (g) The professions to which this Code section shall apply are:
  - (1) Architects;
  - (2) Attorneys at law;
  - (3) Audiologists;

- (4) Certified public accountants;
- (5) Chiropractors;
- (6) Clinical social workers;
- (7) Dentists;
- (8) Dietitians;
- (9) Land surveyors;
- (10) Marriage and family therapists;
- (11) Medical doctors;
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- (12) Nurses;
- (13) Occupational therapists;
- (14) Optometrists;
- (15) Osteopathic physicians;
- (16) Pharmacists;
- (17) Physical therapists;
- (18) Physicians' assistants;
- (19) Podiatrists;
- (20) Professional counselors;
- (21) Professional engineers;
- (22) Psychologists;
- (23) Radiological technicians;
- (24) Respiratory therapists;
- (25) Speech-language pathologists; or
- (26) Veterinarians.
-

50 **O.C.G.A. §9-11-10**

- (a)Caption; names of parties. Every pleading shall contain a caption setting forth the name of the court and county, the title of the action, the file number, and a designation as in subsection (a) of Code Section 9-11-7.

51 **O.C.G.A. §9-11-10**

- In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

52 **O.C.G.A. §9-11-10**

- A party whose name is not known may be designated by any name; and, when his true name is discovered, the pleading may be amended accordingly.
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53 **O.C.G.A. §9-11-10**

- (b)Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings.

54 **O.C.G.A. §9-11-10**

- Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.
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55 **O.C.G.A. §9-11-10**

- (c)Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion.

56 **O.C.G.A. §9-11-10**

- (c)Adoption by reference; exhibits.
- A copy of any written instrument which is an exhibit to a pleading

is a part thereof for all purposes.

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- SERIOUSLY???
-

57 **O.C.G.A. §9-11-11**

- (a) Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated.

58 **O.C.G.A. §9-11-11**

- The signature of an attorney constitutes a certificate by him that he has read the pleading and that it is not interposed for delay.

59 **O.C.G.A. §9-11-11**

- A party who is not represented by an attorney shall sign his pleading and state his address.

60 **O.C.G.A. §9-11-11**

- (b) Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

61 **O.C.G.A. §9-11-11**

- (c) The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished.

62 **ANSWER**

O.C.G.A. §9-11-12

IMPORTANT!!!

63 **(a)When answer presented.**

A defendant shall serve his answer within

30 days

after the service of the summons and complaint upon him,

unless otherwise provided by statute.

64 **ANSWER MUST BE <u>FILED</u> WITHIN 30 DAYS**

-
- Mailing on the 30th day is insufficient!!!
- *Cavender v. Taylor,* 285 Ga. 724 (2009)

65 **CROSSCLAIM OR COUNTERCLAIM**

- A cross-claim or counterclaim shall not require an answer, unless one is required by order of the court, and shall automatically stand denied.
-

66 **O.C.G.A. §9-11-12(b)**

- (b)How defenses and objections presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, <u>shall be asserted in the responsive pleading</u> thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion in writing:

67 **O.C.G.A. §9-11-12(b)**

- 1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure to state a claim upon which relief can be granted;
- (7) Failure to join a party under Code Section 9-11-19.

68 **O.C.G.A. §9-11-12(b)**

- A motion making any of these defenses <u>shall be made before or at the time of pleading</u> if a further pleading is permitted.

69 **O.C.G.A. §9-11-12(b)**

- No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

70 **O.C.G.A. §9-11-12(b)**

- If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

71 **O.C.G.A. §9-11-12(b)**

- If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Code Section 9-11-56,
- and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Code Section 9-11-56.

72 **O.C.G.A. §9-11-12(b)**

- (c)Motion for judgment on the pleadings. <u>After the pleadings are closed</u> but within such time as not to delay the trial, any party may move for judgment on the pleadings.
- If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Code Section 9-11-56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Code Section 9-11-56.
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73 **O.C.G.A. §9-11-12(b)**

- (d)Preliminary hearings.

- The defenses specifically enumerated in paragraphs (1) through (7) of subsection (b) of this Code section, whether made in a pleading or by motion, and the motion for judgment mentioned in subsection (c) of this Code section shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.

74 **O.C.G.A. §9-11-12(b)**

- 1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure to state a claim upon which relief can be granted;
- (7) Failure to join a party under Code Section 9-11-19.

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76 **O.C.G.A. §9-11-12(e)**

- (e)Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a proper responsive pleading, he shall nevertheless answer or respond to the best of his ability, and he may move for a more definite statement.

77 **O.C.G.A. §9-11-12(e)**

- The motion shall point out the defects complained of and the details desired.
- If the motion is granted and the order of the court is not obeyed within 15 days after notice of the order, or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

78 **O.C.G.A. §9-11-12(f)**

- (f)Motion to strike.

- Upon motion made by a party within 30 days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

79 **O.C.G.A. §9-11-12(g)**

- (g)Consolidation of defenses in motion. A party who makes a motion under this Code section may join with it any other motions provided for in this Code section and then available to him.

80 **O.C.G.A. §9-11-12(g)**

- If a party makes a motion under this Code section but omits therefrom any defense or objection then available to him which this Code section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph (2) of subsection (h) of this Code section on any of the grounds there stated.

81 **OUCH!**

[That's going to leave a mark]

82 **(h)Waiver or preservation of certain defenses.**

- (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived:
  - (A) If omitted from a motion in the circumstances described in subsection (g) of this Code section; or
  - (B) If it is neither made by motion under this Code section nor included in a responsive pleading, as originally filed.

83 **(h)Waiver or preservation of**

certain defenses.

- (2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Code Section 9-11-19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under subsection (a) of Code Section 9-11-7, or by motion for judgment on the pleadings, or at the trial on the merits.

84 **(h)Waiver or preservation of certain defenses.**

- (3) Whenever it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

85 **SUBJECT MATTER JURISDICTION**

- "Like matter, it can never be created or destroyed- it just exists or it does not…"

86 **O.C.G.A. §9-11-12(i)**

- (i)Officer's defense of service. The officer making service of process and the principal officer in charge of service made by a deputy need not be made a party to any action or motion where the defense or defenses under paragraph (2), (4), or (5) of subsection (b) of this Code section are asserted by motion or by answer.

87 **O.C.G.A. §9-11-12(i)**

- Any party to the action may give notice of the objection to the service, made pursuant to such paragraphs, to the officer making the service and to the principal officer in case of service made by a deputy, and the court shall afford the officer or officers opportunity to defend the service, in which case the decision on the question of service shall be conclusive on the officer and on his principal in case of service by a deputy.

88 **O.C.G.A. §9-11-12(i) Stay of Discovery**

- (1) If a party files a motion to dismiss before or at the time of filing an answer and pursuant to the provisions of this Code section, discovery shall be stayed for 90 days after the filing of such motion or until the ruling of the court on such motion, whichever is sooner. The court shall decide the motion to dismiss within the 90 days provided in this paragraph.

89 **O.C.G.A. §9-11-12(i) Stay of Discovery**

- (2) The discovery period and all discovery deadlines shall be extended for a period equal to the duration of the stay imposed by this subsection.
- (3) The court may upon its own motion or upon motion of a party terminate or modify the stay imposed by this subsection but shall not extend such stay.

90 **O.C.G.A. §9-11-12(i) Stay of Discovery**

- (4) If a motion to dismiss raises defenses set forth in paragraph (2), (3), (5), or (7) of subsection (b) of this Code section or if any party needs discovery in order to identify persons who may be joined as parties, limited discovery needed to respond to such defenses or identify such persons shall be permitted until the court rules on such motion.

91 **O.C.G.A. §9-11-12(i) Stay of Discovery**

- (5) The provisions of this subsection do not change the power of the court to stay discovery.

92 **DIFFERENCE FROM FEDERAL RULES**

Under the 2025 version of O.C.G.A. § 9-11-12(a): defendant has 30 days to serve an answer after service of the summons and complaint upon defendant.

This timeline is extended if one of the following situations arises: Either (A) the court denies the motion or postpones its decision until trial, then the defendant has 15 days to serve an answer after receiving notice of court's action, or (B) the court grants a motion for a more definite statement, then defendant has 15 days to serve an answer after the definite statement is served**.**

93 **AMENDED COMPLAINT**

- Does not require a response unless ordered
- O.C.G.A. §9-11-15(a)

94 ☐ **CORPORATE COUNSEL RULE**

- Corporations (and LLCs) must ALWAYS be represented by counsel!

- *Eckles v. Atlanta Technology Group,* 267 Ga. 801 (1997)

95 ☐ **QUESTIONS?**