

## Revival of Dormant Judgments

Under O.C.G.A. §9-12-61, there are two methods to revive a dormant judgment within three years of its dormancy, for which there are different filing fees.

1) *Action to renew dormant judgment*. This is a new action brought in the county where the defendant resides. The filing fee for an action to renew dormant judgment is \$222, plus \$35 to have the marshal serve it.

2) *Petition for scire facias*. This is a continuation of the suit in which the judgment was obtained. The filing fee for a petition for scire facias is \$10, plus \$35 to have the marshal serve it.

With a petition for scire facias, the defendant is entitled to 20 days notice of the hearing under O.C.G.A. §9-12-63. This notice must be personally served. *See Artwood v. Hirsch Bros.*, 123 Ga. 734, 51 S.E. 742 (1905). The petitioner should include either a Rule Nisi to be filled in with the date of the hearing to which the defendant must appear, to be served along with the petition, or a form writ of scire facias, which in addition to the date of the hearing also sets forth the amount of the judgment. The return of service must indicate not only that the defendant was personally served with the petition, but also was personally served with the notice of the hearing.

With an action to renew dormant judgment, substituted service (rather than personal service) would suffice, and the petitioner would be able to obtain a default judgment if there is no response by the defendant after 45 days following service.

The problem that has arisen is that some petitioners have been filing pleadings containing some of the elements of both revival methods, often without a Rule Nisi or a form Writ of Scire Facias to provide notice to the defendant of the hearing date.

Confusion also arises when the pleading is styled as a Petition for Scire Facias to Revive Dormant Judgment, but is filed with a check for a filing fee in the larger amount for a new action to revive a dormant judgment.

When a return of service is an unamended form for Sheriff's or Marshal's Entry of Service, which states that a defendant was served "personally with a copy of the within action and summons," it is not clear to the court that the defendant was served with a Rule Nisi or a form Writ of Scire Facias that gives specific notice of the date and time of the hearing.