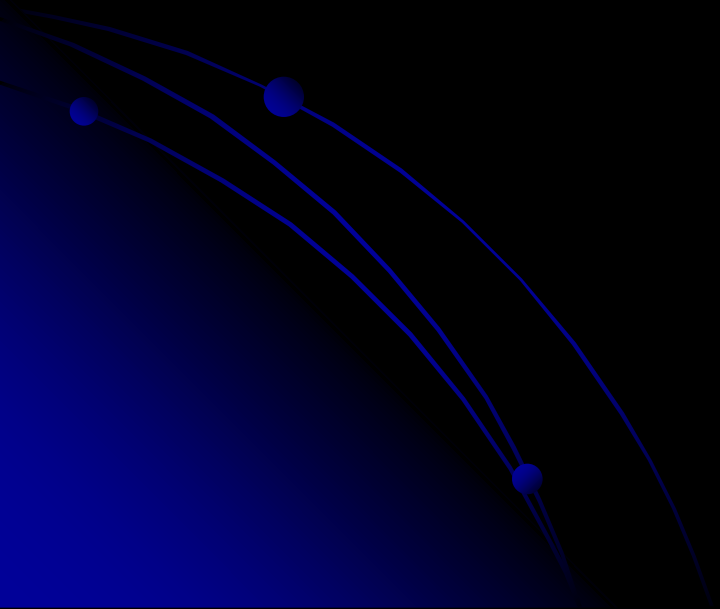
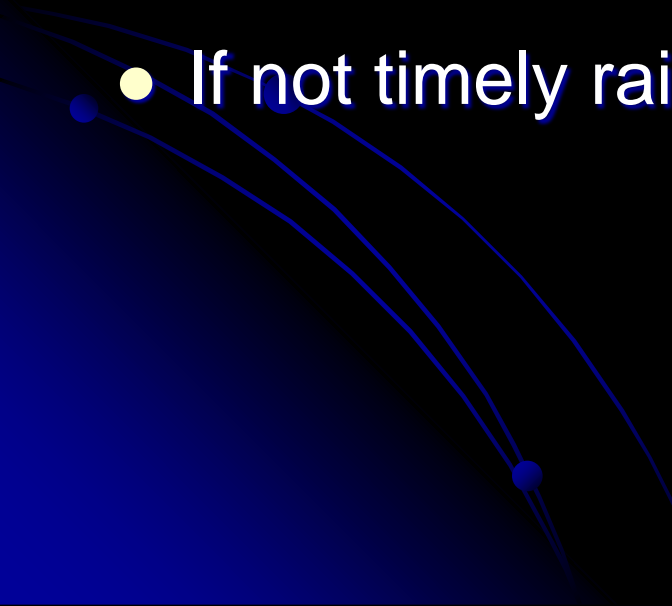


PERSONAL JURISDICTION AND THE INTERNET



General Background

- NC Rule 12(b)(2) applies
 - May be raised (at pleader's option) in pre-answer motion or as part of responsive pleading
 - If not timely raised, then waived.
- 

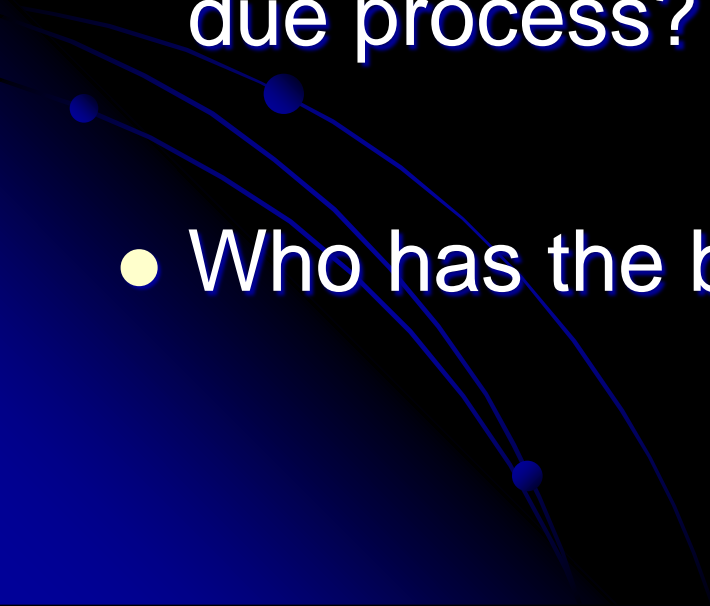
General Background

- Doing anything other than requesting an extension of time constitutes general appearance and waiver of personal jurisdiction defense. *Judkins v. Judkins*, 113 N.C. App. 734, 441 S.E. 2d 139 (1994)
- But once motion raised, D may make a general appearance and otherwise defend on the merits. *Lynch v. Lynch*, 302 N.C. 189, 274 S.E.2d 212 (1981)

Resolving Motion

- Typically resolved on dueling affidavits w/o live testimony
- Trial court's findings binding on appeal if supported by competent evidence
- Judge need not make findings of fact unless requested by a party; proper facts will be presumed on appeal if supported by the evidence
- Although rare, judge can defer ruling on motion until trial (Rule 12(d)).

Personal Jurisdiction Focus

- Has process been served properly?
 - May the Court assert jurisdiction consistent with the long-arm statute and due process?
 - Who has the burden of proof?
- 

Personal Jurisdiction Burden of Proof

- Once raised by D, plaintiff has burden to establish jurisdiction. *Brown v. Refuel America, Inc.*, ___ N.C. App. ___, 652 S.E.2d 389 (2007).
- If complaint alleges sufficient facts to establish jurisdiction, they are deemed true even if unverified.
- But if D files affidavit or other competent evidence rebutting allegations of jurisdiction, P must come forward with evidence.

Personal Jurisdiction (The Standard)

- Does transaction fall within reach of long-arm statute? *NCGS §1-75.4*
- If so, is exercise of jurisdiction consistent with due process (i.e. minimum contacts)?
- Almost always collapses into a due process analysis.


Due Process and Internet Activity

- The Issue: Just how much activity is enough?
- *Dailey v. Popma*, 662 S.E.2d 12 (N.C. Ct. App. 2008)

Dailey v. Popma

- D, Georgia resident, posted defamatory statements about P (NC resident) on internet bulletin board.
 - P committed embezzlement and theft;
 - Is a cheat and a liar;
 - Is going to be wearing an orange jumpsuit;
 - Is a crook;
 - Is an a**hole;
 - Is a devious con man;
 - Is a scumbag; and
 - Is the “equivalent” of a molester of boys

Dailey v. Popma

- D moved to dismiss for lack of jurisdiction, claiming insufficient contacts with NC
 - Trial judge grants motion (but makes no findings)
 - Held: Affirmed
- 

Dailey v. Popma

- Complaint alleged D was “engaged in substantial activities” in NC, including a conspiracy w/ NC resident to defame P.
- D filed affidavit, stating he had sold NC home in 2005, had not been present in NC since that time, and was not engaged in any activity in NC when served with complaint.
- D did admit participating in BB discussions, but denied any discussions with co-defendant regarding Internet postings.
- P did not submit additional evidence.

Dailey v. Popma

- COA Test: Whether D through his internet activities, manifested an intent to target and focus on North Carolina citizens
- Not enough that some BB participants were North Carolinians.
- Nor was it enough that D's postings affected P in North Carolina.
- Because P did not meet burden to show materials were posted with intent to direct content to NC, and presented no other evidence linking D to NC, dismissal was appropriate

Blumenthal v. Drudge, 992 F. Supp. 44
(D. DC 1998).

- Defamation case involving statements on a website published by Matt Drudge of The Drudge Report.
- Claim was that Blumenthal (a high level Clinton official) regularly beat his wife.

Blumenthal v. Drudge

- DC Court held it had jurisdiction over D (a California resident) based on the following:
 - Injury occurred in the District of Columbia;
 - D personally emailed his column to a list of DC email addresses;
 - D solicited contributions and collected money from DC Columbia residents;
 - Drudge traveled to DC twice to promote his column; and
 - D.C. residents supplied D with fodder for his business -- news and gossip.

Personal Jurisdiction and Internet Commerce

- Jurisdiction will turn on the interactive nature of the commercial site.
- Trial court should examine level of interactivity and commercial nature of the exchange of information that occurs on the Web site.
- But if D has no other connections to NC, the mere posting of an informational or “passive” website will likely be insufficient to confer jurisdiction.
- *Havey v. Valentine*, 172 N.C. App. 812, 616 S.E.2d 642 (2005).