

CPLR 1102: The State Is Responsible for Indigents' Publication Costs in Matrimonial Actions

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counterclaim against all parties, and CPLR 3019(b), which allows defendants to cross-claim against each other with absolute freedom.⁶⁵

ARTICLE 11 — POOR PERSONS

CPLR 1102: The state is responsible for indigents' publication costs in matrimonial actions.

The Appellate Division, First Department, recently held⁶⁶ that New York City was not required to pay the costs of service by publication for an indigent plaintiff in a divorce proceeding. The Appellate Division, Second Department, adopted this holding in *Jeffreys v. Jeffreys*.⁶⁷ It viewed the absence of any statutory authorization for a city to pay such costs as the decisive factor: "The fact that payment by the City for service by publication may fit a logical framework cannot substitute for the required statutory authorization for such payment by the City. . . ."⁶⁸

It is refreshing to note that this long-neglected area of law is beginning to receive appropriate attention. However, the needs of the indigent, not whether the city or the state should pay certain fees, should be the primary concern.

CPLR 1102(b): Poor persons held not entitled to free use of a stenographer for depositions before trial.

In recent years, the legislative and judicial branches of government have become mindful of the differential treatment afforded economic groups under our system of justice. The judiciary has attempted to lessen the problems indigents face in reaching the courts.⁶⁹ However,

⁶⁵ See 7B MCKINNEY'S CPLR 1009, *supp.* commentary at 102 (1964).

⁶⁶ *Jackson v. Jackson*, 37 App. Div. 2d 953, 326 N.Y.S.2d 224 (1st Dep't 1971), *discussed in The Quarterly Survey*, 46 ST. JOHN'S L. REV. 768, 779 (1972). *But see* McCandless v. McCandless, 38 App. Div. 2d 171, 327 N.Y.S.2d 896 (4th Dep't 1972) (directing county to pay indigent's publication costs). *Boddie v. Connecticut*, 401 U.S. 371 (1971), mandated the removal of such monetary bars to matrimonial relief for the indigent.

⁶⁷ 38 App. Div. 2d 431, 330 N.Y.S.2d 550 (2d Dep't 1972), *rev'g* 58 Misc. 2d 1045, 296 N.Y.S.2d 74 (Sup. Ct. Kings County 1968), *discussed in The Quarterly Survey*, 44 ST. JOHN'S L. REV. 135, 139 (1969). *See also The Quarterly Survey*, 46 ST. JOHN'S L. REV. 147, 158 (1971).

⁶⁸ 38 App. Div. 2d at 434, 330 N.Y.S.2d at 554. Citing article XVII, section 1, of the State Constitution, which provides that care of the indigent is the responsibility of the state and such of its subdivisions as the Legislature may determine, the court held further that "[u]ntil the Legislature determines that the aspect of aid to the needy here under consideration shall be provided by the City as a subdivision of the State, the obligation to pay such expenses remains with the State." *Id.* at 435, 330 N.Y.S.2d at 555.

⁶⁹ *See, e.g., Boddie v. Connecticut*, 401 U.S. 371 (1971); *Jeffreys v. Jeffreys*, 38 App. Div. 2d 431, 330 N.Y.S.2d 550 (2d Dep't 1972); *Hotel Martha Washington Management Co. v. Swinick*, 66 Misc. 2d 833, 322 N.Y.S.2d 139 (App. T. 1st Dep't 1971); *Dorsey v. City of New York*, 66 Misc. 2d 464, 321 N.Y.S.2d 129 (Sup. Ct. N.Y. County 1971). *See also The*