

## CPLR 1102(d): Statute Affords Relief from Expense of Service of Summons by Publication in Divorce Action

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## ARTICLE 11 — POOR PERSONS

*CPLR 1102(d): Statute affords relief from expense of service of summons by publication in divorce action.*

CPLR 1102(d) provides in part that "a poor person shall not be liable for the payment of any costs or fees. . . ." In *Jeffreys v. Jeffreys*,<sup>45</sup> a divorce action, the supreme court, Kings County, found that the "poor persons" statute affords relief from the expense of service of summons by publication.

In this case, since the plaintiff failed to give notice to the City of the application to proceed as a poor person,<sup>46</sup> the court directed that the Corporation Counsel be served with notice of the application to direct the Treasurer of the City of New York to pay the costs of publication. The City appeared and consented to the motion. The court stated that in the future all applications to proceed as a poor person should be made on notice to the City, and all applications requiring the City to pay the costs of publication should also be made on notice.

The court reasoned that since only stenographic transcripts are automatically furnished by statute upon notice of application to proceed as a poor person,<sup>47</sup> application for this further subsidy should be on notice.

## ARTICLE 14 — ACTIONS BETWEEN JOINT TORT-FEASORS

*CPLR 1401: Court distinguishes true joint tort-feasors from successive tort-feasors.*

In *Kotler v. Monticello Hospital*,<sup>48</sup> a medical malpractice action, plaintiff brought suit against defendants (hospital and physicians) for aggravation of injuries sustained in an automobile accident. Defendants moved for summary judgment on the ground that the plaintiff had been fully compensated for his injuries and had issued a satisfaction of judgment therefor. The court denied the motion.

Plaintiff originally sued and obtained judgment in a personal injury action against the automobile negligence defendants. Subsequent to the commencement of the present action, plaintiff executed a satisfaction of judgment discharging those defendants at one half the adjudicated damages. In support of the motion for summary

<sup>45</sup> 57 Misc. 2d 416, 292 N.Y.S.2d 767 (Sup. Ct. Kings County 1968).

<sup>46</sup> See 7B MCKINNEY'S CPLR 1101, supp. commentary 86 (1966).

<sup>47</sup> See 2 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶1101.13 (1967).

<sup>48</sup> 56 Misc. 2d 742, 290 N.Y.S.2d 385. (Sup. Ct. Queens County 1968).