

## DRL § 211: Amendment Spurs Conflict

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## DOMESTIC RELATIONS LAW

*DRL § 211: Amendment spurs conflict.*

Domestic Relations Law section 211 was amended in 1968 to add a provision governing temporary alimony and counsel fees.<sup>83</sup> The language of the amendment has caused conflicting decisions in two recent supreme court cases.

In *Morrison v. Morrison*,<sup>84</sup> the Supreme Court, Queens County, held that under the new amendment an application for temporary alimony and counsel fees is to be made to the court and thus awarded the relief requested, despite the pendency of the conciliation proceedings. The court cited the amendment to section 211 and Article 11-B in support of its holding.

In *Krakower v. Krakower*,<sup>85</sup> the Supreme Court, New York County, took issue with the *Morrison* holding and also with the Nassau County rules which similarly provide that such application is to be made to the court. The court drew upon the legislative intent behind the enactment of Articles 11-A and 11-B, which provide for conciliation procedures, and specifically section 215-e of the DRL, in holding that the application must be made to the conciliation commissioner.

It would seem that the clear mandate of DRL 215-e, requiring that the application be made to the conciliation commissioner, has not been affected by the amendment of DRL 211. It is submitted that the amendment as it is presently worded merely allows a petition for temporary alimony and counsel fees to be served with the summons and complaint.<sup>86</sup>

## GENERAL MUNICIPAL LAW

*GML § 50-e: Service upon Superintendent of Schools not sufficient against Board of Education.*

General Municipal Law section 50-e provides that, in a suit against a public corporation, notice of claim must be served within

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<sup>83</sup> The amendment to section 211 added, in part, the following language: . . . provided, however, a notice of petition and petition to the court for temporary alimony, child support and counsel fees, based on financial ability and need only, may be served with such summons or any time prior to the termination of such conciliation proceedings.

<sup>84</sup> 160 N.Y.L.J. 18 (Sup. Ct. Queens County Sept. 17, 1968).

<sup>85</sup> 58 Misc. 2d 345, 295 N.Y.S.2d 298 (Sup. Ct. N.Y. County 1968).

<sup>86</sup> See N.Y. Sess. Laws 1968, Leg. Mem. at 2309, where the statement in support of the amendment to DRL 211 noted:

The bill would authorize service of motion papers for temporary alimony, child support and counsel fees, based on financial ability and need only, simultaneously with the service of a summons, or at any time prior to the termination of conciliation proceedings.