

## CPLR 504: Amendment

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and the Surrogate's Court Act<sup>41</sup> provision which duplicates it, may be violative of the New York Constitution. They purport to require, before supreme court transfer to the surrogate, an order of the surrogate in effect consenting to receive the case. Article 6, Section 19(a) of the New York Constitution appears to give the supreme court the power to make such a transfer without any prior permission of the surrogate. This would cause CPLR 325(d) and its requirement of preliminary permission to fall. Indeed, a reported case already indicates as much.<sup>42</sup>

#### ARTICLE 5 — VENUE

##### *CPLR 504: Amendment.*

This section, as amended, provides that in actions brought against a school district or a district corporation, venue is properly placed in the county in which the school district or district corporation is situated, or if situated in more than one county, in either county.

#### ARTICLE 11 — POOR PERSONS

##### *CPLR 1101(c): Amendment.*

Prior to the amendment, this section provided that notice of a motion to proceed as a poor person "shall be served on all parties." The amendment further requires that notice be given to the county attorney of the county in which the action is triable or to the director of finance if the action is triable in New York City.

##### *CPLR 1102(b): Amendment.*

This section provides that a poor person, whether on appeal or in a proceeding other than an appeal, may be furnished, without fee, a transcript of the minutes of the trial or proceeding made and certified by the court stenographer. The court stenographer will also make and certify an additional transcript, without fee, to be filed with the court clerk if the poor person is on appeal. In both instances, the expense of such transcripts shall be payable to the stenographer out of the court fund, upon the certificate of the judge presiding at the trial or hearing.

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<sup>41</sup> N.Y. Surr. Ct. Act § 40(9).

<sup>42</sup> *In re Breen's Will*, 45 Misc. 2d 374, 256 N.Y.S.2d 770 (Surr. Ct. Richmond County 1965).