

No. 419

COSTS—FORMA PAUPERIS—DIVORCE, action in forma pauperis for—SHERIFFS—SERVICE OF PAPERS

Held: A sheriff who receives papers filed out by a woman plaintiff in forma pauperis in a divorce action is required to serve such papers without payment in advance of the costs of such service.

May 25, 1942.

Mr. Leonard Schulz
County Attorney
Beaverhead County
Dillon, Montana

Dear Mr. Schulz:

You have requested an opinion on the following problem:

The plaintiff in a divorce action lives in X County, where she has filed a divorce action in forma pauperis. The papers required in the cause have been sent to the sheriff of Y County for service.

Can the sheriff of Y County be required to serve the papers without payment in advance of the costs of such service?

Section 9120, Revised Codes of Montana, 1935, provides in part:

“ . . . In no case shall the officer receiving papers for service be required to serve the same, unless the person in whose behalf the service is made, his agent, or attorney, first pay the cost of the service upon a demand therefor by the officer . . . ”

Section 5780, Revised Codes of Montana, 1935, provides:

“Any woman suing for a divorce, who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.”

The provisions of Section 9809, Revised Codes of Montana, 1935, are mandatory:

"Poor person may sue without costs. Any person may commence and prosecute an action in any of the courts of this state who will file an affidavit stating that he has a good cause of action, that he is unable to pay the costs, or procure security to secure the same; then it is hereby made the duty of the officers of the courts to issue all writs and serve the same, and perform all services in the action, without demanding or receiving their fees in advance."

Section 9120, *supra*, is a part of Chapter 31, Code of Civil Procedure, Revised Codes of Montana, 1935, which chapter is titled "Manner of Commencing Actions." The section is a general one, dealing generally with the duty of a sheriff in serving papers sent to him by mail. Section 5780, *supra*, is a part of Chapter 6, Civil Codes, Revised Codes of Montana, 1935, which chapter is titled "Divorce." Section 5780, *supra*, is a special section and deals specially with a woman who sues for a divorce and shows she is poor and unable to pay the expenses of suit.

Our Supreme Court has held many times that, where one act deals with a subject generally and another with part of the same subject, the two must be read together and harmonized if possible—but, to the extent of any necessary repugnancy between them, the special statute prevails. (*Stadler v. City of Helena*, 46 Mont. 128, 127 Pac. 454; *Daley v. Torrey*, 71 Mont. 513, 230 Pac. 782; *Franzke v. Fergus County*, 76 Mont. 150, 245 Pac. 962; *In re Stevenson's Estate*, 87 Mont. 486, 289 Pac. 566; *Langston v. Currie*, 95 Mont. 57, 26 Pac. (2nd) 160; *Durland v. Prickett*, 98 Mont. 399, 39 Pac. (2nd) 652; *In re Wilson Estate*, 102 Mont. 178, 56 Pac. (2nd) 733; *Story Gold Dredging Company v. Wilson*, 106, Mont. 166, 76 Pac. (2nd) 73.)

Therefore, it is my opinion a sheriff who receives papers filed by a woman plaintiff in *forma pauperis* in a divorce action is required to serve such papers without payment in advance of the costs of such service.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General