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6/18/70

First Supplement to Memorandum 70-66

Subject: Study 71 - Joinder of Parties

The Commission has determined to revise the law relating to cross-complaints and counterclaims and joinder of causes of action and related provisions. In connection with joinder of causes of action, the Commission has determined to substitute the substance of Rule 19 of the Federal Rules of Civil Procedure for Code of Civil Procedure Section 389. (See Memorandum 70-66.)

Attached as Exhibit I is a resolution proposed to the Conference of State Bar Delegates relating to joinder of parties. The resolution would amend Sections 378, 379, 379a, 379b, and 379c to adopt rules along the lines of Rule 20 of the Federal Rules of Civil Procedure. The staff believes that the changes proposed in this resolution are within the scope of our revisions relating to joinder of causes of action; we believe that it is important to make clear the parties who can be joined as plaintiffs and as defendants at the same time we allow unlimited joinder of causes of action against any party to the action. Accordingly, we recommend that the substance of the changes proposed by the Bar Association of San Francisco be incorporated into our statute.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

RESOLUTION PROPOSED BY
THE BAR ASSOCIATION OF SAN FRANCISCO

RESOLVED that the Conference of Delegates recommends to the Board of Governors of the State Bar of California that the State Bar sponsor legislation to amend Sections 378, 379, 379a, 379b and 379c of the Code of Civil Procedure to read as follows:

1 Section 378.---(Plaintiffs;--Joinder;--order-for-separate-trials)
2 All persons may be joined in one action as plaintiffs who have
3 an interest in the subject of the action or in whom any right to
4 relief in respect to or arising out of the same transaction or
5 series of transactions is alleged to exist;--whether jointly;
6 severally or in the alternative;--where if such persons brought
7 separate actions any question of law or fact would arise which
8 are common to all the parties to the action;--provided;--that if
9 upon the application of any party it shall appear that such
10 joinder may embarrass or delay the trial of the action;--the court
11 may order separate trials or make such other order as may be ex-
12 pedient;--and judgment may be given for such one or more of the
13 plaintiffs as may be found to be entitled to relief;--for the re-
14 lief to which he or they may be entitled.---(Enacted 1872.---As
15 amended Stats. 1927;--c. 386;--p. 631;--Section 1.)

16 C.C.P. Section 378. (Permissive Joinder of Plaintiffs)
17 All persons may join in one action as plaintiffs if they assert
18 any right to relief jointly, severally, or in the alternative in
19 respect of or arising out of the same transaction, occurrence,
20 or series of transactions or occurrences and if any question of
21 law or fact common to all these persons will arise in the action.
22 It shall not be necessary that each plaintiff shall be interested
23 as to all relief prayed for.

24 Section 379.---(Defendants;--joinder;--landlord-and-tenant)
25 WHO MAY BE JOINED AS DEFENDANTS.---Any person may be made a de-
26 fendant who has or claims an interest in the controversy adverse
27 to the plaintiff;--or who is a necessary party to a complete de-
28 termination or settlement of the question involved therein.---And
29 in an action to determine the title or right of possession to real
30 property which;--at the time of the commencement of the action;--is
31 in the possession of a tenant;--the landlord may be joined as a
32 party defendant.---(Enacted 1872.)

33 C.C.P. Section 379. (Permissive Joinder of Defendants)
34 All persons may be joined in one action as defendants if there
35 is asserted against them jointly, severally, or in the alterna-
36 tive, any right to relief in respect of or arising out of the
37 same transaction, occurrence, or series of transactions or oc-
38 currences and if any question of law or fact common to all these
39 persons will arise in the action. It shall not be necessary that
40 each defendant shall be interested as to all relief prayed for.

41 ~~Section-379a.--(Defendants;-joinder;-judgment)~~
42 ~~All-persons-may-be-joined-as-defendants-against-whom-the-right~~
43 ~~to-any-relief-is-alleged-to-exist;-whether-jointly,-severally-or~~
44 ~~in-the-alternative;-and-judgment-may-be-given-against-such-one~~
45 ~~or-more-of-the-defendants-as-may-be-found-to-be-liable,-according~~
46 ~~to-their-respective-liabilities.--(Added-Stats.-1927,-c.-259,~~
47 ~~p.-477;-Section-1.)~~

48 ~~Section-379a~~ ^{ca} Section 379.1 (Defendants; joinder; doubt as to
49 defendant liable)
50 Where the plaintiff is in doubt as to the person from whom he is
51 entitled to redress, he may join two or more defendants, with
52 the intent that the question as to which, if any, of the defen-
53 dants is liable, and to what extent, may be determined between
54 the parties. (Added Stats. 1927, c. 387, p. 631, Section 1.)

55 ~~Section-379b.--(Defendants;-joinder;-interest;-order-preventing~~
56 ~~embarrassment)~~
57 ~~It-shall-not-be-necessary-that-each-defendant-shall-be-interested~~
58 ~~as-to-all-relief-prayed-for;-or-as-to-every-cause-of-action-in-~~
59 ~~cluded-in-any-proceeding-against-him;-but-the-court-may-make-such~~
60 ~~order-as-may-appear-just-to-prevent-any-defendant-from-being-em-~~
61 ~~barrassed-or-put-to-expense-by-being-required-to-attend-any-pro-~~
62 ~~ceedings-in-which-he-may-have-no-interest.--(Added-Stats.-1927;~~
63 ~~c.-260;-p.-478;-Section-1.)~~

64 C.C.P. Section 379.2. (Orders Relating to Joinder of Parties.)
65 It shall not be necessary that each party shall be interested as
66 to every cause of action in one action. Notwithstanding com-
67 pliance with the provisions of CCP 378, 379 and 379.1, the court
68 may make such orders as may appear just to prevent any party from
69 being embarrassed or put to undue expense, and may order separate
70 trials or make such other order as the interests of justice may
71 require.

(Proposed new language underlined; language to be deleted stricken)

STATEMENT OF REASONS

These new provisions for joinder of parties are proposed along the lines of FRCP 20. New CCP 378 (relating to joinder of plaintiffs) is merely a rewriting and clarification of the former CCP 378; new CCP 379 (relating to the joinder of defendants) is revised to provide the same substantive test for joinder of defendants and for joinder of plaintiffs. CCP 379 is only renumbered as 379.1. New CCP 379.2 allows for judicial discretion in severing parties for trial.

Faced with the present bewildering array of overlapping and contradictory statutory provisions relating to joinder of parties, at least one court has fallen back upon Chadbourn, Grossman & Van Alstyne to create a test independent of the statute:

" . . . the holdings seem to demand that there be some sort of factual nexus connecting or associating the claim pleaded against the several defendants." Hoag v. Super. Court, 207 CA2d 611 (1962).

What was not cited in Hoag was the recommendation of Chadbourn, et al. that, "it would seem to be desirable to amend the provisions governing joinder of defendants so that whatever requirements are intended will be expressed and not hidden in the implications of decisional law", Chadbourn, Grossman & Van Alstyne, Calif. Pleading, Sec. 618, pp. 535-536. That comment was made almost 10 years ago.

At issue here is the basic policy of a legal system in defining the maximum limits of size for a given lawsuit. The present statutory rules are impossible for the practicing attorney to follow without unnecessary guesswork and extensive legal research. The Code of Civil Procedure should be a clear and concise guide for the attorney drafting pleadings and planning litigation.