

#71

1/4/72

Memorandum 72-7

Subject: Study 71 - Pleading

The 1971 pleading statute, enacted on Commission recommendation, increased the time to file an answer or demurrer to an amended complaint from 10 to 30 days (Code of Civil Procedure Section 471.5). (This conformed to the time to file an answer or demurrer to the original complaint.) However, Section 472 of the Code of Civil Procedure was not amended to conform to the change. Section 472 requires an answer or demurrer to an amended complaint to be filed within 10 days. Several persons have called my attention to the fact that no conforming amendment was made to Section 472.

Attached is a draft of a bill to amend Sections 471.5 and 472 to eliminate the inconsistency. This bill should be approved by the Commission so that it can be enacted before July 1, 1972, the date when the 1971 pleading statute becomes operative.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

An act to amend Sections 471.5 and 472 of the Code of Civil Procedure, relating to pleading, and declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

Section 1. Section 471.5 of the Code of Civil Procedure is amended to read:

471.5. (a) If the complaint is amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments or amended complaint must be served upon the defendants affected thereby. The defendant shall answer the amendments, or the complaint as amended, within 30 days after service thereof, or such other time as the court may direct, and judgment by default may be entered upon failure to answer, as in other cases. For the purposes of this subdivision, "complaint" includes a cross-complaint, and "defendant" includes a person against whom a cross-complaint is filed.

(b) If a pleading other than a complaint or cross-complaint is amended, the adverse party has 10 days after service thereof, or such other time as the court may direct, in which to respond to the amended pleading.

Sec. 2. Section 472 of the Code of Civil Procedure is amended to read:

472. Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, or entered in the docket, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, ~~,-who-may-have-10-days-thereafter-in-which-to-answer-or-demar-to-the-amended-pleading~~ ; provided, that in justice courts when the pleading is oral, the amendment may be oral, the substance thereof being entered in the docket, and the time in which the adverse party shall have 10 days from must respond thereto shall be computed from the date of notice of such amendment ~~in-which-to-answer-or-demar-thereto~~ .

Sec. 3. This act shall become operative on July 1, 1972.

Sec. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Chapter 244 of the Statutes of 1971 added Section 471.5 to the Code of Civil Procedure. Section 471.5 is the same as former Section 432 of the Code of Civil Procedure, which was repealed by Chapter 244, except that the time to answer an amended complaint was increased from 10 to 30 days. No conforming amendment was made to Section 472 of the Code of Civil Procedure. Section 471.5 will become operative on July 1, 1972. Unless the inconsistency between Section 471.5 and 472 is eliminated, confusion and uncertainty will exist. In order to avoid this confusion and uncertainty, it is necessary that this act become operative on the same date that Chapter 244 of the Statutes of 1971 becomes operative.