

Memorandum 70-110

Subject: Study 71 - Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions

Attached is the statute portion of the recommendation on various aspects of pleading. We made a number of revisions in the statute and comments, and we think that the major ones should be reviewed by the Commission. We noted below those pages that have significant changes. We also note additions and revisions you may wish to note in the Comments. Exhibit I attached is a letter approving the recommendation.

Page 4 - last sentence added to comment.

Page 6 - last sentence and citation to § 426.40(d) added to comment.

7 - section revised in accordance with decision at last meeting. In addition, last sentence added to subdivision (b). This additional sentence retains a provision formerly contained in Section 378 and also found in the Rule upon which the section is based.

8 - comment completely rewritten.

9 - section revised to conform to decisions at last meeting. Also last sentence added to subdivision (b). Comment revised.

10 - comment completely rewritten.

13 - comment revised.

18 - last paragraph added to comment.

19-22 - completely rewritten comments. IMPORTANT POLICY QUESTION
See Exhibit II

25-27 - comment revised.

44 - Text revised to conform to decision at last meeting.

45 - text of section and comment revised to conform to decisions at last meeting.

46 - minor editorial revisions in comment.

- 47-48 - comment revised and expanded.
- 49-51 - comment revised and expanded.
- 52 - section revised to conform to decisions at meeting.
- 52-55 - comment revised and expanded.
- 56-57 - section revised to conform to changes made at last meeting;
comment revised and expanded.
- 58 - section and text of comment new. Section approved at last meeting.
- 60 - Subdivision (b) of statute section revised to conform to decisions at last meeting.
- 61 - minor editorial revision in comment.
- 62 - minor editorial revision in comment.
- 66 - section adopted at last meeting.
- 77 - minor editorial revisions in comment.
- 78 - Section 430.40 revised to conform to decisions at last meeting. Comments to both Section 430.40 and 430.50 revised.
- 87 - Comment to Section 431.70 slightly revised.
Section 432.10 is new and not previously considered by the Commission.

The remainder of the statute consisted mostly of conforming amendments. We did not reproduce these in the attached statute because we did not have the time to do so. However, we have reproduced on pages A-D (which follow page 87) those sections in the remaining portion of the statute that have changes.

- A - time changed to 30 days from 10 days and comment revised
- B - approved at last meeting; "or a statute" added in last portion of subdivision (b). Comment prepared.
- D - revised to reflect decision at last meeting. Staff believes that more problems created by giving Judicial Council authority to advance date of act than are solved.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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October 13, 1970

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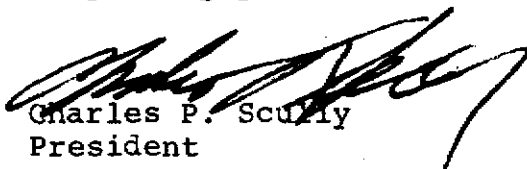
Re: Simplification of Code of Civil Procedure

Dear Mr. DeMouilly:

Subsequent to your letter of July 29, 1970, the subject matter was referred to the Committee on Administration of Justice of The Bar Association of San Francisco, and their report favoring the simplification was submitted to the Board of Directors at their regular meeting on Friday, October 9, 1970, and unanimously approved.

I am advising you to this effect, and if there is anything further that we can do to assist, please contact us.

Very truly yours,


Charles P. Scully
President

CPS:amr

ES	
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AA	

EXHIBIT II

Sections 383 and 384

At the October 8 and 9 meeting, the Commission approved Section 384 in the following form:

384. Except as otherwise provided in Section 389, All it is not necessary that all persons holding as tenants in common, joint tenants, or coparceners ; -or-any-number--less-than-all; -may-jointly-or-severally commence-or-defend join or be joined as parties in any civil action or proceeding for the enforcement or protection of the rights of such party persons .

The Commission also directed the staff to determine whether Section 383 should be treated in a similar fashion. The staff has reexamined both Sections 383 and 384 and believes that both sections should be entirely repealed. We have proceeded ahead and done this and substantially revised the Comments to both these sections accordingly. As now indicated in the Comments to these sections, both sections provide exceptions to old common law rules of compulsory joinder that prohibited less than all of the persons described from being joined in one action. It is the staff's belief that it is both unnecessary and undesirable to continue these separate exception statements. The rules governing compulsory joinder are now stated in Section 389. This section should be given exclusive effect. If joinder is not required under that section, then it should not be required at all. The staff believes that the Commission's recommendation as presently drafted will be given that effect, and we have strengthened the Comments to Sections 383 and 384 to help in this regard. Thus, Section 389 should be considered as supplanting any common law rules that differ or conflict with the rules stated in that section. The retention of specific exceptions to the old common law rules would actually weaken the effect of Section 389 because it would afford some support for the argument that common law rules were still

generally applicable except insofar as some specific exception thereto could be found. The staff believes that prior cases dealing with compulsory joinder should serve as guides only to the extent that their results conform to those standards set forth in Section 389 and that the best way of achieving this end is the way as provided in the recommendation.