

First Supplement to Memorandum 70-115

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

At the November 1970 meeting, the Commission considered part of Memorandum 70-115, presenting last-minute changes and queries on the Commission's recommendation relating to counterclaims, cross-complaints, and joinder of causes.

The Commission voted to adopt the changed language of Section 428.30 as it appears on page 7 of the memorandum. The Commission did not, at that time, consider the remainder of the memorandum. Because of the press of time on the printing schedule for the recommendation, we may have to return the galley proofs to the printer prior to the December meeting. If we do this, we plan to make the following revisions in the galley proofs. If any Commissioner has any reservations, objections, or clarifications concerning the proposed revisions, please write immediately so that the revisions may be reconsidered.

Section 428.10--Permissive cross-complaint. Although the staff does not believe that the two subdivisions of this section could reasonably be construed to limit each other's operation, it is better to be safe than to risk confusion. Therefore, the staff proposes to add to the Comment to Section 428.10 the clarifying paragraph set out on page 3 of Memorandum 70-115.

Section 428.70--Rights of "third-party defendants." This is another section which the staff believes to be clear and self-contained on its face. Because, however, Professor McCarthy feels that the situation to

which it is addressed is not quite so obvious, the staff proposes to add to the Comment the illustration appearing on page 8 of Memorandum 70-115.

Additional revisions in the Comments can be made by legislative committee reports during the session.

Respectfully submitted,

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