

RESOLUTION 06-02-2015

DIGEST

Civil Procedure: Complaints and Answers in Intervention

Amends Code of Civil Procedure section 387 to permit an intervener seeking affirmative or defensive relief to identify its pleading as a “complaint-in-intervention” or “answer-in-intervention” respectively.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Code of Civil Procedure section 387 to read as follows:

§387

1 (a) Upon timely application, any person, who has an interest in the matter in litigation, or
2 in the success of either of the parties, or an interest against both, may intervene in the action or
3 proceeding. An intervention takes place when a third person is permitted to become a party to an
4 action or proceeding between other persons, either by joining the plaintiff in claiming what is
5 sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff,
6 or by demanding anything adversely to both the plaintiff and the defendant, and is made by
7 complaint, answer, or both, setting forth the grounds upon which the intervention rests, filed by
8 leave of the court and served upon the parties to the action or proceeding who have not appeared
9 in the same manner as upon the commencement of an original action, and upon the attorneys of
10 the parties who have appeared, or upon the party if he has appeared without an attorney, in the
11 manner provided for service of summons or in the manner provided by Chapter 5 (commencing
12 with Section 1010) Title 14 of Part 2. A party served with a complaint or answer in intervention
13 may within 30 days after service move, demur, or otherwise plead to the complaint or answer in
14 the same manner as to an original complaint or answer.

15 (b) If any provision of law confers an unconditional right to intervene or if the person
16 seeking intervention claims an interest relating to the property to transaction which is the subject
17 of the action and that person is so situated that the disposition of the action may as a practical
18 matter impair or impede that person's ability to protect that interest, unless that person's interest
19 is adequately represented by existing parties, the court shall, upon timely application, permit that
20 person to intervene.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Existing California law allows a third party to intervene into an action to (a) join in the claims asserted by the plaintiff, (b) join a defendant in an effort to defeat a complaint, or (c) demand anything adverse to both plaintiff and defendant. Code Civ. Proc. §387(a). However, regardless of whether the pleading is really a complaint seeking affirmative relief, an answer

setting forth affirmative defenses, or includes both claims and defenses, the document filed is simply referred to as a “Complaint in Intervention.” Affirmative claims are asserted by a party through either a document bearing the title “complaint” or “cross-complaint.” See Code Civ. Proc. §411.10 and §428.10, et seq. Meanwhile, defenses are asserted through a document bearing the title “answer.” See Code Civ. Proc. §430.30(b). These documents are each viewed as separate pleadings allowed in civil actions (see Code Civ. Proc. §422.10) and governed by separate pleading rules. However, pleadings filed in intervention, both complaints and answers are confusingly titled a “Complaint in Intervention,” even if the document seeks no affirmative relief and merely asserts defenses to an asserted claim. See *Drinkhouse v. Van Ness* (1927) 202 Cal. 359, 371-372; *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal. App. 3d 873, 885. Making matters worse, when an intervenor seeks both affirmative relief and desires to assert defenses to claims, it can result in a party either (a) filing two separate complaints in intervention, one to assert affirmative claims and one to assert defenses, or (b) parties combining multiple pleadings into one document, which both asserts and defends against claims. See *Marc Bellaire, Inc. v. Fleischman* (1960) 185 Cal. App. 2d 591, 594; *Traweek v. Draper* (1956) 143 Cal. App. 2d 119, 120. Because a “Complaint in Intervention” can take either an affirmative or defensive role, it has led to confusion when it comes to reviewing court dockets, determining a party’s rights compared to other parties in the action, and even whether the action as a whole has been dismissed, where the plaintiff’s claims have been disposed of. See *Klinghoffer v. Barasch* (1970) 4 Cal. App. 3d 258; *Bogardus v. Santa Ana Walnut Growers Assoc.* (1940) 41 Cal. App. 2d 939, 951-952.

The Solution: This resolution removes one obstacle to increased efficiency by clearly listing on an intervening pleading whether it asserts affirmative relief as a “Complaint,” or a defensive position as an “Answer.” Pleadings filed by non-intervening parties already clearly indicate whether a document is a “Complaint” or “Answer,” and there is no reason why pleadings filed by intervenors should be different. This resolution would allow parties to properly title their intervening pleadings as either a “Complaint in Intervention” or an “Answer in Intervention.” This change is in line with existing case law, which uses the term “Answer in Intervention” to refer to defensive pleadings filed by intervenors. See *People v. Rath Packing Co.* (1978) 85 Cal. App. 3d 308, 317; *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal. App. 3d 879, 886.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Jason E. Turner

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 387 to permit an intervener seeking affirmative or defensive relief to identify its pleading as a “complaint-in-intervention” or “answer-in-intervention” respectively. This resolution should be approved in principle because it will eliminate confusion regarding the party with which the intervener aligns itself and provide more clarity in the pleadings.

Code of Civil Procedure section 387 permits a third party to intervene in pending litigation by either joining the claims asserted by the plaintiff, join the defenses asserted by the defendant or take a position adverse to both plaintiff and defendant. (Code Civ. Proc., § 387, subd. (a).) Under current law, when the intervening party files the initial pleading to join the litigation, the intervener files a “Complaint in Intervention,” even if the intervener’s interests are more closely aligned with those of the defendant, regardless of whether the intervener seeks affirmative relief, asserts independent claims or includes both claims and defenses.

Since an intervener’s pleadings are always entitled “complaint,” it creates confusion as to the posture of the intervener. An intervener should be permitted to file a “complaint-in-intervention,” “answer-in-intervention,” or other pleading identifying its position so all parties to the action will understand where the intervener’s interests lie.