

CPLR 3116(a): Amendment

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*Modern Fibers, Inc. v. Puro*⁵⁶ held, in accordance with this section, that the defendant has priority to the extent that he may first examine the plaintiff with respect to all "material and necessary" evidence. The plaintiff may then examine the defendant. The court also noted that a defendant-by-counterclaim⁵⁷ should be accorded priority with respect to examinations concerning "matters which are material and relevant solely by reason of the allegations of the counterclaims."⁵⁸ However, since, in the instant case, certain defendants-by-counterclaim had not yet been served with process, since certain of them were objecting to the jurisdiction of the court, and since issue had not been completely joined on the counterclaims, the court held that it would be improper to provide for examinations by or of such defendants. The court's decision with respect to the priority to be accorded the defendants-by-counterclaim seems to be a logical extension of 3106(a), since the defendant in the original action becomes, in effect, the plaintiff as to the counterclaims.

CPLR 3116(a): Amendment.

CPLR 3116(a) has been amended to require that any alteration which the witness wishes to make in a deposition be placed "at the end of the deposition." This rule, as amended, makes it clear that the original deposition is not to be altered no matter how defective the witness might claim it to be. Prior to this amendment, corrections were often made by striking out the original and inserting new language between the lines or at the foot of the page in which the defective matter appeared. This procedure will no longer be acceptable. Now, the most convenient way to make the changes would be to footnote the point where a correction is desired and then at the *end* of the deposition to spell out the correction keyed to the footnotes.

For a more detailed discussion of this amendment, see Professor David D. Siegel's 1966 *Commentary* in McKinney's CPLR.

CPLR 3120: Amendment.

The rules of CPLR 3120 concerning discovery have been extended to apply to non-party witnesses as well as to parties. Before the amendment, a person seeking discovery against a non-party witness had to resort to a 3111 EBT of the non-party.

⁵⁶ 26 App. Div. 2d 527, 271 N.Y.S.2d 81 (1st Dep't 1966).

⁵⁷ If *B*, the defendant in the original action, serves a counterclaim on the plaintiff and on *C* and *D* and serves them with process they become defendants-by-counterclaim.

⁵⁸ *Modern Fibers, Inc. v. Puro*, 26 App. Div. 2d 527, 527-28, 271 N.Y.S.2d 81, 82 (1st Dep't 1966).