



Navigating California courts' complex-case departments

Various California counties have different procedures for litigating complex cases

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Complex litigation is, as a general proposition, rich with opportunity and fraught with risk. Class and other cases worthy of the designation “complex” often have large amounts in controversy, involve issues of importance to many people and society as a whole, may involve requests for broad injunctive relief – in short, the stakes are high.

Corporations respond to complex litigation as one would expect. The lawyers who occupy the space of major litigation on the corporate side are generally well-resourced, skilled and are often highly aggressive. Plaintiffs’ trial lawyers who succeed in complex litigation must be even more prepared, knowledgeable of the rules and tactical in litigating cases than in many other cases to avoid being disadvantaged by the various requirements and idiosyncrasies of complex judges in the seven complex departments that have been established around the state.

As a general proposition, to successfully litigate complex cases in California, one not only has to master the complex legal aspects of the cases themselves, one also has to master the local and even “local-local” rules of the courts. Beyond that, each judge’s previous rulings on motions relating to class member contact information, trial plans, class certification, class notice, preliminary and final approval, and attorneys’ fees should be at least cursorily reviewed. The Court’s established attitude regarding discovery issues also should be gleaned from past rulings.

In summary, with designation of your matter as “complex” and transfer to the complex litigation department, comes increased judicial oversight that can be used to your advantage – or by adversaries to your detriment if you are unprepared.

Background

Any case can be a “complex” case if it “requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.” (Cal. Rules of Court, rule 3.400, subd. (a).) In determining whether an action is a complex case under the rules, the court must consider, among other things, whether the action is likely to involve (1) numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve; (2) management of a large number of witnesses or a substantial amount of documentary evidence; (3) management of a large number of separately represented parties; (4) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or (5) substantial postjudgment judicial supervision. (*Id.* subd. (b).)

Certain actions are “provisionally” complex if they involve (1) antitrust or trade regulation claims; (2) construction defect claims involving many parties or structures; (3) securities claims or investment losses involving many parties; (4) environmental or toxic tort claims involving many parties; (5) claims involving

mass torts; (6) claims involving class actions; or (7) insurance coverage claims arising out of any of the claims listed above. (Cal. Rules of Court, rule 3.400, subd. (b).) However, “an action is not provisionally complex if the court has significant experience in resolving like claims involving similar facts and the management of those claims has become routine.” (*Id.* subd. (d).) In fact, a “court may declare by local rule that certain types of cases are or are not provisionally complex.” (*Ibid.*)

With each complex case comes a set of judicial standards defined by the Judicial Council – Standard for Judicial Administration 3.10. For instance in complex cases, “judicial management should begin early and be applied continuously and actively, based on knowledge of the circumstances of each case.” (Standard for Judicial Administration 3.10, subd. (a).) Likewise, complex cases “should be assigned to one judge for all purposes.” (*Id.* subd. (b).) If such an assignment is not possible, a single judge should be assigned to hear law and motion matters and discovery matters. (*Ibid.*) Notably, “[c]ommissioners should not be employed in any phase of complex litigation, except under the judge’s direct supervision to assist in the management of the case.” (*Id.* subd. (c).)

The idea is that final resolution be expedited as much as possible. Consequently, the standard states that litigants’ parties involved in complex cases should be required to minimize evidentiary disputes and to organize efficiently their exhibits and other evidence before trial, that judges involved in complex litigation



should be sensitive to dilatory or abusive litigation tactics and should be prepared to invoke disciplinary procedures for violations; that judges should be given research attorney and administrative staff assistance when possible; and that time limits should be regularly used to expedite major phases of the litigation. (Standard for Judicial Administration 3.10.) Awareness of these standards can often be useful in the midst of a dispute.

The development of complex-litigation departments in California

In 1996, the Business Court Task Force, appointed by then-Chief Justice Malcolm M. Lucas, conducted an exhaustive national and state-wide review in which it solicited opinions from business leaders, judges, and attorneys on the desirability of creating specialized courts for business cases. At the end of its study, the task force recommended against creating such courts. The task force did, however, identify several reasons to develop complex litigation departments in trial courts. The reasons included enhancing responsiveness to the public by handling a broader range of disputes and improving public perception by authorizing specific departments within the court to handle complex cases affecting all segments of society. The idea was that specific complex litigation departments, as part of the broader trial court system in a county, can expand or contract to respond to periodic fluctuations in caseloads, including emergencies. Moreover, complex litigation departments would have expertise through training and the use of a complex litigation manual, as well as the streamlined procedures (through statutory and rule amendments) and human and technological resources.

Accordingly, then-Chief Justice Ronald M. George appointed the Complex Civil Litigation Task Force and charged it with identifying ways trial courts could manage complex cases more efficiently and effectively. In October 1999, after extensive study, the task force

recommended, and the Judicial Council approved, several courses of action including distributing the *Deskbook on the Management of Complex Civil Litigation* to all judges; forwarding the special judicial education curriculum Complex Civil Case Management, with suggested policies for faculty, attendees, and course prerequisites, to the Board of Governors of the Center for Judicial Education and Research (CJER); referring to the CJER Board of Governors proposed amendments to the California Standards of Judicial Administration; adopting new California Rules of Court; amending relevant rules and seeking conforming legislation; and charging the Civil and Small Claims Advisory Committee with ongoing responsibility for recommending improvements to complex civil litigation programs and for updating the *Deskbook on the Management of Complex Civil Litigation*.

The Complex Civil Litigation Program began as a pilot program in 2000. In order to participate, the court would be required to commit to an individual calendar system dedicated exclusively to complex cases with a substantially reduced caseload that would permit participating judges to participate in the pilot program based on their training, experience, interest in business and complex litigation, and commitment to engaging in ongoing judicial education.

In California, six courts initially entered the pilot program: the Superior Courts of Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara Counties. A seventh county – San Mateo – joined the program in 2006. Alameda, San Francisco, and Santa Clara Counties each have two judges dedicated to the program;¹ Contra Costa and San Mateo have one; Los Angeles County presently has six; and Orange County has four with one position open. These courts have used their grant funds to hire additional research attorneys and court staff and to improve technology, among other uses. Several courts have held bench-bar symposiums to educate users about areas

of the program such as discovery, case management, alternative dispute resolution, substantive legal areas, and use of technology. Program judges meet twice yearly to exchange information and participate in continuing education.

In August 2003 the Judicial Council received the National Center for State Courts' report *Evaluation of the Centers for Complex Litigation Pilot Program* and forwarded it to the Legislature and Governor. The report concluded that the complex departments have achieved the program's goals: improved judicial comprehension of legal and evidentiary issues, fewer instances of excessive or inappropriate referee appointments, closer judicial supervision of and insistence on case management requirements, including referee decisions.² The study found a measurably higher number of interim dispositions, suggesting more effective and faster case resolution compared to non-pilot program cases.

Tips on successfully litigating a complex case

As the National Center for State Courts' report demonstrated, litigating complex cases in complex departments is a more effective way to litigate complex cases, particularly if you master the following tips.

• Research the judges

As noted above, judges within complex departments are obligated to augment their judicial expertise through training and education. Consequently, you are guaranteed that any judge in a complex department will have the intellect necessary to oversee and supervise your case effectively. However, that does not mean that the judges will nonetheless not evince certain predilections or idiosyncrasies with regard to class certification or the structure of settlements, or fees. In other words, some judges call them as they see them, while others have somewhat larger or smaller strike zones.

Luckily, with complex litigation comes electronic filing, and with electronic filing comes the ability to research



the judge and discover any particular idiosyncrasies he or she might have with regard to discovery, class certification, settlement and trial. Each complex department, however, employs a different back-end for its filing system. Accordingly, some court's filing systems are more amenable to searching. For instance, Santa Clara County's electronic filing system publishes a searchable calendar that enables you to find the cases in which – as an example – motions for class certification were heard.³ Once you have the case number, you can look up the docket for that case to pull up and review the order on the motion. While the Alameda County Superior Court does not publish such a searchable calendar, it does publish a list of each complex case that has been filed, as well as each department's calendar, which together, could be mined for useful information. With other courts, you either have to know the case number or case name; moreover, while some courts make case dockets and documents available for free, others, like Orange County and Los Angeles County, charge fees in order to view documents.

• **Determine early if your case is complex**

Though it is possible that a court might sua sponte designate a case as complex, the need for the complex designation is less triggered by the nature of the case (i.e. a class action) than it is by counsel checking the box on the civil cover sheet indicating that the case should be designated complex. (See California Rules of Court, rule 3.401.) In other words, if you want to have your case designated complex, check the box and provide the reason or reasons that the case warrants “exceptional judicial management.”

In some counties – San Mateo, Contra Costa, Santa Clara, Los Angeles – the presiding judge designates a case complex; in Alameda County, the judges in the complex departments to whom the case would be assigned if the case were designated complex decide whether a case should be designated complex. In

San Francisco, Department 304 makes that determination. In fact, in San Francisco County, checking the box on the civil cover sheet is insufficient. Rather, pursuant to a general order, a party desiring that a case be designated complex must also file an Application for Approval of Complex Designation as early as is feasible setting forth with specificity the reasons that the case should be assigned to the complex litigation department. A copy of the Application, together with a copy of the complaint and the civil case cover sheet must be delivered to Department 304 promptly upon filing. Until the Court issues an order designating the case complex, it remains in its otherwise assigned department.

No matter what you do, though, the court may still not designate your case to be complex and reassign it to the complex department. For instance, Rutter reports that only about 30 percent of the class actions filed in Los Angeles County are accepted into that court's complex litigation program. (Cal. Prac. Guide Civ. Pro. Before Trial, § 14:83.1.) The rest are assigned at random to the other judges in the downtown courthouse. But if this should happen to you, that does not foreclose the issue. After all, nothing prevents either side from asking the assigned judge to designate the action as complex under Rule 3.400 and treating it accordingly. (*Ibid.*; see also Cal. Rules Court, rule 3.403, subd. (b).)

• **Research local rules and complex department guidelines**

It is well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) Courts have the power to fashion a new procedure in a complex litigation case to manage and control the case before them. (*Fire Ins. Exchange v. Super. Ct.* (2004) 116 Cal.App.4th 446, 452.) And though the California Rules of Court specifically pre-empt all local rules relating to pleadings, demurrers, ex parte applications, motions,

discovery, provisional remedies, and the form and format of papers, rules and procedures adopted under the auspices of complex case management are not. (*Volkswagen of America, Inc. v. Super. Ct.* (2001) 94 Cal.App.4th 695, 704-05; accord *Hernandez v. Super. Ct.* (2003) 112 Cal.App.4th 285, 294.)

Accordingly, the single most important thing that any attorney who wishes to be successful as a complex litigant must do is thoroughly read the local rules as well as any complex department's and even judge-level published and “unpublished” local-local rules and standing orders. In other words, do your research and gather as much information as possible. Each complex department – and sometimes each judge within a complex department – will have its own specific idiosyncrasies. For instance, in Alameda County, case management statements for complex cases are due five court days prior to the case management conference. (Super Ct. Alameda County, Local Rules, rule 3.260(f).) In Judge Munter's chambers in San Francisco County, however, such statements are due three court days prior. In Santa Clara County, 15 calendar days; Orange and San Mateo counties, five court days.

The way cases are managed also varies. For instance, in Santa Clara County, a copy of the guidelines published by the Complex Civil Litigation Department must be served along with the summons and the complaint.⁴ The same is true for Orange County.⁵ San Francisco and Alameda, however, do not have any such guidelines, while Contra Costa has a “Handy Guide to Department 17.”⁶

Once a case is filed, in Los Angeles County, cases are commonly stayed, pending the first case-management conference after a case has been designated complex. In other complex departments, there is no such stay. Moreover, in Los Angeles County, all class actions must be filed in the Central District rather than any other district of that court. (Super Ct. Los Angeles County, rule 2.0(b). And



unlike other jurisdictions with complex departments, in Los Angeles County, the judge to whom a case is originally assigned has the option of keeping a case even after it has been designated complex. (Super Ct. Los Angeles County, rule 3.3(k)(3).)

Overall, the moral of this story is that as stated at the outset, complex litigation is not just complex, it is also complicated. It is imperative that you check each court's Web site and review the information published by the complex departments as well as any local rules applicable to complex cases.

• **Use the case management conferences to educate**

Complex cases are assigned to individual judges. The investment you put into that relationship early on will eventually pay off as the case progresses. Accordingly, carefully draft your complaint to set out the basis and justification behind your case. Use the initial case management conference statement to set out your theories of the case and the facts that support those theories. Don't save the best for last. And act professionally at all times. Complex assignments are limited calendar assignments and the judge will remember the case and who you are in subsequent appearances, not only in the case at the bar, but in future complex cases. After all, you'll likely be the only case in the courtroom at the time of your appearance, so there won't be much to hide behind.

• **Use discovery conferences effectively**

Most likely, as a litigant, you will inevitably face a moment during the case where you would like to throw up your hands and say to defense counsel, "let's just have the judge decide this – we're going to file a motion." In complex litigation, however, such "threats" are likely moot because the courts have largely imposed a prohibition on any discovery motion until after the parties have held a face-to-face conference with the judge regarding the issue. That is the procedure adopted by the Santa Clara court and by Judge Munter in San Francisco. Judge

Web sites for California Complex-Litigation Departments

- **Alameda**
<http://apps.alameda.courts.ca.gov/domainweb/html/complitbody.html>
- **Contra Costa**
<http://www.cc-courts.org/index.cfm?fuseaction=Page.viewPage&pagelid=6682>
- **Orange**
<http://www.occourts.org/directory/civil/complex-civil/>
- **San Francisco**
<http://www.sfsuperiorcourt.org/index.aspx?page=141>
- **San Mateo**
http://www.sanmateocourt.org/court_divisions/civil/complex_civil_litigation.php
- **Santa Clara**
<http://www.scefiling.org/>

Brick in Alameda County requires a party to e-mail a three-page letter to the court regarding any discovery dispute before the court will authorize any discovery motion. In Orange County, the parties are to meet and confer in person regarding *any* motion and file with the court at least three calendar days before the hearing, a statement entitled "Meet and Confer" summarizing the issues remaining in dispute and the respective positions taken. In Contra Costa County, the parties are encouraged to conduct conference calls with the court. In Los Angeles, the parties can enter into a form stipulation requiring that discovery disputes be resolved through informal discovery conferences prior to the filing of any motion to compel.⁷

• **Use the model protective order when necessary**

The Santa Clara and San Mateo complex departments have published model protective orders for use in complex – but really in any – cases. If you ever get into a dispute with opposing counsel regarding a protective order, it is often easiest to refer to these models, which have already been vetted by complex department judges and assign the burdens and procedures appropriately. At the very least, you should use these

models as a template for the protective orders in your case. Santa Clara provides two models, one for a single level of confidentiality,⁸ and one for a double level of confidentiality (i.e., confidential and highly confidential).⁹ The Los Angeles County Superior Court does as well.¹⁰

• **Ensure that motions comply with the court's requirements**

In California, the courts play a critical role as a fiduciary of the class in reviewing and approving any settlement in a class action. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30 [courts have "fiduciary responsibility as guardians of the rights of the absentee class member"].) Accordingly, it is imperative that when you present a settlement to the court, you provide it with all the information that the Court wants in order to effectuate its review. For instance, if the settlement is a claims-made settlement, counsel should set forth in a motion for preliminary approval any information required to be furnished by class members in order to obtain recovery and an estimate of the anticipated claims rate. If the settlement is a coupon settlement, counsel should note the specific terms and conditions of the use of the coupon and whether the coupon is transferable.



In this context, the Los Angeles Superior Court has published specific guidelines and a summary of the relevant authority for motions for preliminary and final approval.¹¹ Judge Brick in Alameda also has similar guidelines that he provides parties at the appropriate juncture.¹² Judge Freedman also in Alameda, provides a model notice of a proposed settlement as well as separately recommended language to include in class notices,¹³ and it would probably also be befitting to review the form and substance of the model notices provided by the Federal Judicial Council.¹⁴

• **Play nicely with opposing counsel**

Some opposing counsel can be infuriating. A successful complex litigant must keep his or her emotions in check. Judges in complex departments simply do not tolerate uncivil behavior. Indeed, Orange County's complex department guidelines specifically incorporate (and republish) the California Attorney Guidelines of Civility and Professionalism. San Mateo County has a standing order regarding conduct at depositions.¹⁵

• **Pay the complex fee**

In today's tight economic circumstances, court budgets are strapped and complex litigation departments are among the first that might likely get chopped. So pay your \$550 complex fee. As courts face greater and greater pressure to cut costs and services, the fee helps. In fact, some clerk's offices have tried to exact the fee from each plaintiff

named in a class action. The Legislature, though, in 2011 clarified that only a single fee may be collected on behalf of all plaintiffs regardless of how many are named in the complaint. (See Stats.2011, c. 419 (S.B. 384), § 5 [amending Gov. Code, § 70616, effective January 1, 2012, but stating that "[t]he amendments made to this section during the 2011-12 Regular Session of the Legislature do not constitute a change in, but are declaratory of, existing law"].)



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Endnotes

¹ Effective January 3, 2012, Judge Robert B. Freedman in Alameda will be exchanging assignments with Judge

Wynne S. Carvill. All new filed odd numbered complex cases will be assigned to Judge Carvill.

² The report is available at <http://www.courts.ca.gov/documents/compcivilpub.pdf>.

³ The calendar is available at <http://www.sceffiling.org/calendar/docalendar.jsp>.

⁴ The Santa Clara Guidelines are available at http://www.sceffiling.org/Guidelines_2011_07_28.pdf

⁵ The Orange County Guidelines are available at <http://www.occourts.org/directory/civil/complex-civil/department-guidelines.pdf>

⁶ Available at http://www.cc-courts.org/_data/n_0003/resources/live/handyGuideToDept17.pdf

⁷ The form stipulation is available at <http://www.lasuperiorcourt.org/civil/pdf/VELSDiscoveryResolution.pdf>. The form request or response to a request for an informal discovery conference is available at <http://www.lasuperiorcourt.org/civil/pdf/VELSInformalDiscoveryConference.pdf>

⁸ Available at http://www.sanmateocourt.org/documents/complex_civil_litigation/spo_single.pdf.

⁹ Available at http://www.sanmateocourt.org/documents/complex_civil_litigation/spo_double.pdf

¹⁰The Los Angeles County model protective orders for both confidential designations, and confidential and highly confidential designations, are available at <http://www.lasuperiorcourt.org/civil/ModelProtectiveOrders.htm>.

¹¹The guidelines are available at <http://www.lasuperiorcourt.org/civil/pdf/PrelimFinalApproval.pdf>

¹²A version of Judge Brick's guidelines as of February 18, 2009, were published by Kimberley Kralowec on her UCL Practitioner blog at http://www.17200blog.com/orders/Judge_Brick_Guidelines_for_Counsel_re_Class_Settlement_Applications_2-18-2009.pdf

¹³The sample notice is available at <http://www.alameda.courts.ca.gov/dept20/Notice%20to%20Class%20of%20Proposed%20Settlement.pdf>. The recommended language is available at <http://www.alameda.courts.ca.gov/dept20/Recommended%20Court%20Contact%20Information.pdf>

¹⁴The model notices are available at <http://www.fjc.gov/public/home.nsf/pages/376>.

¹⁵Available at http://www.sanmateocourt.org/documents/complex_civil_litigation/standingorder_discovery.pdf.

