

For a checklist for each of the management steps in complex cases, see Appendix A.

§ 1.02 Identifying Complex Cases

As part of a complete non-substantive reorganization of the California Rules of Court, effective January 1, 2007, the complex case rules are renumbered from Rules 1800–1830 to Rules 3.400–3.402 and Rule 3.751.

A complex case is defined by California Rules of Court, Rule 3.400(a) (renumbered from Rule 1800(a) effective Jan. 1, 2007) as “an action that 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.” California Rules of Court, Rule 3.400(b) (renumbered from Rule 1800 effective Jan. 1, 2007) supplements the definition with a set of factors as follows:

“[W]hether 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.”

Only a judge can decide whether a particular action is a complex case under the definition and factors. To assist the court and supplement local calendar management procedures, subdivision (c) of Cal. Rules of Ct., Rule 3.400 (renumbered from Rule 1800 effective Jan. 1, 2007) provides a short list of actions that are “*provisionally*” complex—that is, actions that should be treated as complex by the court until a judge has the opportunity to decide whether the action meets the definition in subdivision (a). The list of provisionally complex cases in subdivision (c) is as follows:

- (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.
- (7) Insurance coverage claims arising out of any of the claims listed in (c)(1)–(6).

California Rules of Court, Rules 3.402 and 3.403 (renumbered from Rules 1811 and 1812 effective Jan. 1, 2007) [see Appendix C1] require in each case that the court make a specific determination of whether a *provisionally* designated case is *actually complex* under the definition in Cal. Rules of Ct., Rule 3.400(a) (renumbered from Rule 1800 effective Jan. 1, 2007). Rule 3.402 (renumbered from Rule 1811 effective Jan. 1, 2007) also provides a mechanism for defendants to challenge a plaintiff’s designation of a case as complex or not complex by filing a complex counter designation. In making the determination of whether a case is complex, the court will apply the definition in subdivision (a) and the factors in subdivision (b) without reference to the provisional list in subdivision (c). It is expected, for instance, that many labor and employment cases will be determined to be complex because they

meet the definition is subdivision (a) and the factors in subdivision (b), even though not listed in subdivision (c). Although also not specifically listed, it is expected that many intellectual property cases will also be determined to be complex [see § 3.40 et seq.].

For further discussion of early identification of a complex case, see § 2.02; for the text of Cal. Rule of Ct., Rule 3.400 (renumbered from Rule 1800 effective Jan. 1, 2007) see Appendix C1; for discussion of each of the specialized areas in the context of complex civil litigation, see Chapter 3.

§ 1.03 Judicial Supervision

Time pressures may lead some judges to think that they cannot afford to devote time to civil case management. But judges experienced with complex litigation have found that an investment of time in case management starting at the early stages of the litigation leads to earlier dispositions, less wasteful activity, reduced litigation expense, shorter trials, and in the long run, economies of judicial time and a lessening of judicial burdens. Judicial supervision is needed from start to finish, but it is most productive early in the litigation process.

Experience establishes that complex cases are more justly and efficiently managed by a single judge assigned for all purposes (both pretrial and trial). If that is not possible, then at a minimum, a single judge should be assigned to hear all law and motion and discovery matters. For further discussion of assignment to a single judge, see § 2.03.

The judge's role in developing and monitoring an effective plan for the orderly conduct of pretrial and trial proceedings is crucial. The plan should prescribe a series of procedural steps, with firm dates, giving direction and order to the case as it progresses through pretrial proceedings to summary disposition or trial. Interim time limits and deadlines will often be necessary for effective case management. In litigation involving experienced attorneys working cooperatively, the judge may not need to control the case's progress as closely as in other cases, as long as he or she is readily available in the event that a dispute cannot be resolved by agreement among counsel. For further discussion of the case management plan, see § 2.30[1].

In complex cases, the judge may find it useful to appoint a referee to hear and determine discovery motions and other matters concerned with highly specialized issues. The court may order a reference for discovery purposes without the consent of the parties pursuant to Code of Civil Procedure Section 639(a)(5), although the court should first determine whether the parties would agree on a reference. There may be reasons *not* to make a general reference of all discovery matters to a referee in complex cases. Discovery disputes and the conduct and disagreements among counsel that lead up to discovery disputes can introduce significant delay into the progress of a complex case. Many experienced judges have found that the best way to avoid discovery disputes is for the judge, and not a subordinate judicial officer, to remain the focal point of pretrial proceedings. For further discussion of reference in complex cases, see § 2.05; for discussion of discovery in complex cases generally, see § 2.50 et seq.

For more detailed discussion of judicial supervision in complex cases, see § 2.01 et seq. For a checklist for effective judicial supervision of complex cases from the beginning of the case, see Appendix A, checklist A1.

§ 1.04 Initial Conference and Case Management Orders

The first step in establishing control of the litigation is the scheduling of the initial case management