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Demystifying complex-case coordination

HOW TO HAVE YOUR CASE DESIGNATED AS “COMPLEX” OR FORM A JUDICIAL COUNCIL COORDINATED PROCEEDING

The courtrooms of Central Civil West (“CCW”) currently at 6th and S. Commonwealth will soon relocate to the recently vacated courts of the Spring Street Federal Courthouse. While many practitioners are aware that CCW serves as the home for Los Angeles County’s complex actions, not many are familiar with the procedures necessary to designate a case “complex” or form a Judicial Council Coordinated Proceeding (“JCCP”).

What is a complex case?

A “complex case” is a civil 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.” (Cal. Rules of Court, rule, 3.400(c).) A complex case typically implicates complicated legal or factual issues that can be highly technical and involve numerous parties and/or claims. Pursuant to the Complex Civil Litigation Pilot Program established by the Judicial Council, CCW was designated as the branch responsible for managing Los Angeles Superior Court’s Complex Civil Litigation Program.

In addition to hearing all cases deemed Complex, the Complex judges of CCW also handle the vast majority of all Los Angeles County wage and hour, pharmaceutical, and medical device cases, as well as all personal injury asbestos cases, all class actions filed after June 1, 2012, and all Judicial Council Coordinated Proceedings (“JCCP”) under California Code of Civil Procedure section 404 and California Rules of Court, rule 3.520 *et seq.* The JCCPs heard at CCW include, to name a few, Wright Hip System Cases (JCCP 4710); Johnson & Johnson Talcum Powder Cases (JCCP 4872); Risperdal and Invega Product Liability Cases (JCCP 4775); Transvaginal Mesh Product Cases (JCCP

4733); Southern California Gas Leak Cases (JCCP 4861); Yaz, Yasmin and Ocella Contraceptive Cases (JCCP 4608); and Ford Motor Warranty Cases (JCCP 4856).

The benefits of hands-on court management in complex cases

The Complex Civil Litigation Program was designed to remedy the court backlogs caused by numerous complex, multi-party, and/or mass actions. The Complex Program expedites cases, keeps costs reasonable, and promotes an effective decision making process for cases that require more intensive court management. In so doing, the court has “broad discretion to fashion suitable methods of practice in order to manage complex litigation.” (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 295, citing *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) For instance, the court may provide the parties with immediate access if they cannot resolve a dispute by agreement. It is not uncommon for a Complex judge to provide telephonic rulings while the parties are in the middle of a deposition, or to resolve a pending discovery dispute during an informal telephonic conference.

How to designate a case “complex”

Any party filing a new lawsuit in Los Angeles County may request a complex assignment by designating the case as “provisionally complex” on the Civil Cover Sheet Addendum and Statement of Location (form LACIV109) that must be filed with any new complaint. Parties already assigned to an Independent Calendar Court may request reassignment by filing a Complex Civil Case Questionnaire (form LACIV211). The Assistant Supervising Judge, Civil Complex, pre-screens the LACIV109 and LACIV211 forms to determine whether a complex designation is appropriate. (Super. Ct. L.A. County, Local Rules, rule

3.3(k).) The additional fee for designating a case complex is \$1,000. (Gov. Code, § 70616.)

The benefits of coordinating complex cases

“Coordination” refers to the process of bringing together cases pending in different counties that share a common question of fact or law before one judge for efficient case management. (See Cal. Rules of Court, rule 3.501-3.550; Code Civ. Proc., § 404-404.9.) When counsel determines that actions pending in different counties (1) are complex, and (2) share a common question of fact or law, a petition for coordination may (and in some cases should) be submitted to the Chairperson of the Judicial Council of California. (Code Civ. Proc., § 404.) While a petition may be submitted by (a) the presiding judge of any court, (b) any party, after obtaining permission from the presiding judge, or (c) all parties on one side of an action, (Code Civ. Proc., § 404), this article exclusively discusses the procedures mandated when a petition is filed by all parties on one side of an action.

Coordination, whether of overlapping class actions or of mass pharmaceutical actions, comes with great advantages, including the ability to control discovery more effectively and avoid conflicting rulings on key legal issues, as well as maintaining the court’s flexibility on handling all, or only some, aspects of the coordinated cases. Moreover, coordination ensures that early legal rulings are consistent and made by the judge most familiar with the complexities of the litigation.

Coordination is appropriate if one judge hearing all of the actions for all purposes will “promote the ends of justice.” In determining whether coordination is appropriate, the court will consider the following factors: (1) whether the common question of fact or law is

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predominating and significant to the litigation; (2) the convenience of parties, witnesses, and counsel; (3) the relative development of the actions and the work product of counsel; (4) the efficient utilization of judicial facilities and manpower; (5) the calendar of the courts; (6) the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and (7) the likelihood of settlement of the actions without further litigation should coordination be denied. (Code Civ. Proc., § 404.1.)

How to petition for a coordinated proceeding

The decision to coordinate brings with it a procedural labyrinth of rules and statutes governed by Code of Civil Procedure sections 404 through 404.9 and California Rules of Court, rule 3.520 *et seq.*, which can be broken down into the following five steps:

Prepare your “Petition for Coordination and Request for Stay.”

A petition for coordination asks the Chair of the Judicial Council to assign a judge to determine whether coordination is appropriate. (Cal. Rules of Court, rule 3.521(a).) A petition should include a request to stay the proceedings of all actions being considered for coordination. (See Cal. Rules of Court, rule 3.515(a).) The request for stay must establish that a stay is necessary and appropriate to effectuate the purposes of coordination. (Cal. Rules of Court, rule 3.515(b); see Rule 3.515(i) [“in the absence of a stay order, a court receiving an order assigning a coordination motion judge may continue to exercise jurisdiction over the included action for purposes of all pretrial and discovery proceedings, but no trial may be commenced and no judgment may be entered in that action unless trial of the action had commenced before the assignment of the coordination motion judge.”].)

Drafting Tip: Limit the scope of your request. Expressly limit your coordination request to pre-trial purposes only. Under the Class Action Fairness Act of 2005 (CAFA), “mass actions” – cases in which monetary relief claims of 100 or more

persons are *proposed to be tried jointly* on the ground that the plaintiffs’ claims involve common questions of law or fact – may be removed from state court. (28 U.S.C. § 1332; *Corber v. Xanodyne Pharms., Inc.* (9th Cir. 2014) 771 F.3d 1218, 1220.) CAFA provides that removable “mass actions” do not include any civil actions in which “the claims have been consolidated or coordinated solely for pretrial proceedings.” (28 U.S.C. § 1332.) A district court in California found that removal under CAFA was improper where the petition for coordination unequivocally stated that coordination was sought only for pre-trial purposes and not for a joint trial. (*Aiona v. Bayer Healthcare Pharms., Inc.* (N.D.Cal. Jan. 20, 2015, No. C-14-4745 EMC) 2015 U.S.Dist.LEXIS 6332, at *12-14.) In reality, JCCPs are not designed, nor do parties ever intend, to have 100 or more cases tried together, but counsel should use caution when phrasing the scope of the petition so as to avoid this potential trap often relied upon by sophisticated defense counsel.

Drafting Tip: Recommend a coordination site. While not required, counsel is advised to also include in the petition recommendations for where the petition should be heard and where the cases should be coordinated. If a petition is granted, the coordination motion judge must recommend to the Chair of the Judicial Council a particular superior court for the site of the coordination. In making this recommendation, the court will consider several factors that should be addressed in the petition: (1) the number of included actions in particular locations; (2) whether the litigation is at an advanced stage in a particular court; (3) the efficient use of court facilities and judicial resources; (4) the locations of witnesses and evidence; (5) the convenience of the parties and witnesses; (6) the parties’ principal places of business; (7) the office locations of counsel for the parties; and (8) the ease of travel to and availability of accommodations in particular locations. (Cal. Rules of Court, rule 3.530.)

Pursuant to California Rules of Court, rule 3.521(a), the petition must state whether a hearing is requested and

must be supported by a memorandum and declarations showing:

The name of each petitioner and the name and address of each party’s attorney of record (if any). (Cal. Rules of Court, rule 3.521(a)(1).)

The names of the parties to all included actions, and the name of each party’s attorney of record (if any). (Cal. Rules of Court, rule 3.521(a)(2).) If the submitting party is a plaintiff, whether the party’s attorney has served the summons and complaint on all parties in all included actions in which the attorney has appeared. (Cal. Rules of Court, rule 3.521(a)(3).)

The complete case title, case number, and complaint filing date for each included action, as well as the title of the court in which each action is pending. (Cal. Rules of Court, rule 3.521(a)(4).) The complete case title and case number of any other action known to the petitioner to be pending in a California Superior Court that shares a common question of fact or law with the included actions, and a statement of the reasons for not including the action in the petition for coordination or a statement that the petitioner knows of no other actions sharing a common question of fact of law. (Cal. Rules of Court, rule 3.521(a)(5).)

The status of each included action, including the status of any pretrial or discovery motions or orders in that action, if known. (Cal. Rules of Court, rule 3.521(a)(6).)

The facts relied on to show that each included action meets the coordination standard specified in Code of Civil Procedure section 404.1 (Cal. Rules of Court, rule 3.521(a)(7) [whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the actions without further litigation should coordination be denied].)

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The facts relied on in support of a request that a particular site or sites be selected for a hearing on the petition for coordination (Cal. Rules of Court, rule 3.521(a)(8).)

Submit your petition to the Chairperson of the Judicial Council of California. (Cal. Rules of Court, rule 3.521(a).)

Chair, Judicial Council of California
Appellate Court Services
Civil Case Coordination
455 Golden Gate Avenue
San Francisco, CA 94102
E-mail: coordination@jud.ca.gov

File and serve a Notice of Submission of Petition in the originating court of each included action. The notice must include:

(a) the title of the court in which the notice is to be filed, (b) the title and case number of each included action that is pending in that court, (c) the date that the petition was submitted to the Chair of the Judicial Council, (d) the name and address of the petitioner's attorney of record, (e) the title and case number of each included action to which the petitioner is a party and the title of the court in which each action is pending, and (f) the statement that any written opposition to the petition must be submitted and served at least nine court days before the hearing date. (Cal. Rules of Court, rule 3.522(a).)

Serve each party in each included action.

The petitioner must serve the notice of submission of petition for coordination that was filed in each included action, the petition for coordination, and all supporting documents on each party appearing in each included action. (Cal. Rules of Court, rule 3.523.)

Submit the Notice of Submission and proof of filing in each included action to the Judicial Council within five court days of submitting the petition for coordination. (Cal. Rules of Court, rules 3.521(b); 3.522(b); 3.523.)

The petition was filed. Now what?

Wait for the order assigning the coordination motion judge who will determine whether coordination is appropriate. Once the order is received, the petitioner must serve the order on

each party appearing in an included action and send it to each court in which an included action is pending with directions to the clerk to file the order in the included action. (Cal. Rules of Court, rule 3.524(b).) Within thirty days of the order, the assigned coordination motion judge must set a hearing date on the petition. (Cal. Rules of Court, rule 3.527(a).)

Establish a leadership structure

Once coordination is granted, a leadership structure must be established and approved by the court. Plaintiff's leadership is responsible for advancing the common interests of the plaintiffs. This responsibility includes prosecuting the common issues against the defendants; conducting all discovery as to common liability; scheduling and coordinating depositions; acting on behalf of plaintiffs at pretrial conferences and hearings; hiring expert witnesses on common issues as they deem necessary; briefing and arguing motions for the plaintiffs; filing opposing briefs and arguing motions in proceedings initiated by other parties (except as to matters specifically directed to individual plaintiffs and their counsel); negotiating and entering into stipulations with defendants' counsel with respect to pretrial matters; selecting and trying bellwether cases; and negotiating global resolution of the litigation.

Present the court with a plan

The purpose of the initial case management conference is to establish a case management plan for the litigation. Before appearing at the first hearing, it is important to consider, and be prepared to discuss with the court, such matters as the master docket and case file, the court's preference for an electronic service provider, pre-trial and initial discovery plans, proposed procedures for adding newly filed cases to the proceeding, master pleadings, and court procedures governing filings. Ultimately, the case management plan (i.e., the procedures for handling these various matters) will need to be agreed to by the parties and approved by the court by way of multiple case management orders.

Be mindful of litigation in other jurisdictions

It is common to find that other jurisdictions are litigating similar cases as those pending in a California coordinated proceeding. While it is important that counsel stay apprised of the other litigation, it is equally vital that counsel be aware that, in light of the unique legal principles and coordination procedures of California jurisprudence, the JCCP should move independent of the other jurisdictions towards trial or ultimate resolution.

Conclusion

While the decision to coordinate brings with it a procedural maze of rules and statutes, the benefits of coordination far outweigh the initial paperwork-intensive work-up. Use the text above as a checklist when preparing the various documents required for forming and leading a JCCP. Careful attention to the details in the drafting of the petition and early proactive case management orders will enhance counsel's credibility with the court, and effectively streamline the litigation.

[Note: Sample petitions and case management orders are available upon request to the authors at zukin@kiesel.law and palmer@kiesel.law.]

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