EVALUATION OF THE CENTERS FOR COMPLEX CIVIL LITIGATION PILOT PROGRAM

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Paula L. Hannaford-Agor, J.D.
Nicole L. Mott, Ph.D.
Timothy F. Fautsko, M.A.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

In January 2000, the Judicial Council responded to a recommendation of the Complex Litigation Task Force (task force) by establishing the Centers for Complex Litigation Pilot Program in the Superior Courts of Los Angeles, Orange, Contra Costa, Santa Clara, Alameda, and San Francisco counties. The task force recommendation was one of several proposed to improve judicial management of complex cases as a means to expedite case resolution, keeps costs reasonable, and promote effective decision making by the courts, parties and counsel. Participation in the Pilot Program required each site to commit to an individual calendar system dedicated exclusively to complex cases with a substantially reduced caseload that would permit participating judges to engage in intensive case management. Each court selected 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.

The enabling legislation for the pilot program required a report evaluating the effectiveness of the pilot program, including the number of complex cases filed, the impact of the pilot program on case and calendar management, and program impact on the trial courts, the attorneys, and the parties. The Administrative Office of the Courts (AOC) contracted with the National Center for State Courts (NCSC) to conduct the evaluation. NCSC used multiple methods to assess the effectiveness of the pilot program, including site observations, telephone interviews with judges and lawyers, and an empirical examination of key case management characteristics for complex cases in the pilot program compared to complex cases in non-pilot program courts. This executive summary summarizes the general conclusions of the evaluation, highlights its key findings, and outlines its recommendations.

General Conclusions

The recommendation to establish the Pilot Program was made in response to concerns that state court tribunals were perceived to be insensitive to the needs of business litigants. It was alleged that a lack of knowledge about substantive commercial law on the part of California superior court judges contributed to an absence of cohesive law governing business transactions, resulting in unpredictable decisions in commercial disputes and uncertainty within the business community. Interviews with judges and attorneys conducted at the inception of the Pilot Program tended to confirm these views. In particular, case assignment to a master calendar system and over-reliance on referees were identified as the two most significant factors contributing to excessive delay, expense, and litigant dissatisfaction with complex case management.

The NCSC evaluation was designed, in part, to assess how well the Pilot Program addressed these and other identified issues related to complex case management. Both interviews with judges and attorneys at the conclusion of the evaluation period and empirical analysis of data compiled about complex case management suggest that the approach adopted by the Pilot Program addressed those problems effectively. The

screening procedures employed by the pilot program courts produced a mix of cases that appear in most respects to meet the statutory definition of complexity under Rule 1800, and cases assigned to the pilot program received considerably more individual attention from pilot program judges than complex cases that were not assigned to the pilot program. The result, according to attorneys whose cases were assigned to the pilot program, was 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. These impressions were confirmed by the empirical examination of the pilot program cases that demonstrated measurably higher numbers of interim dispositions, suggesting more effective and faster case resolution, compared to non-pilot program cases.

Key Findings

Findings are presented in two areas. First, general observations are offered about how complex cases were managed in California before implementation of the pilot program, based on interviews with attorneys and judges. Second, findings related to the effectiveness of the pilot program are identified, based on comparisons between complex cases assigned to the pilot program and those managed by non-pilot program courts as well as on interviews of attorneys whose cases were assigned to the pilot program during the evaluation period.

Complex Case Management Before Implementation of the Pilot Program

Finding 1: Use of a master calendar system was viewed as the single most significant obstacle to effective complex case management in California prior to the pilot program.

Interviews with knowledgeable judges and attorneys revealed substantial dissatisfaction with the use of master calendar systems, in which civil cases are not assigned to a judge until they reach trial, for complex cases. Under a master calendar system, multiple judges hear motions, discovery disputes, and other pretrial matters in complex cases, resulting in the lack of a single point of judicial accountability for case supervision, insufficient judicial involvement in pretrial management of complex cases, and lack of judicial knowledge about and experience in specific areas of substantive law. The pilot program uses an individual calendaring system, in which an individual judge has primary responsibility for managing a particular case from initial filing to resolution. Interviews with judges and attorneys indicate strong preference for the individual calendaring system, rather than the master calendaring system used throughout much of the state, for complex litigation because it centralized judicial management in a single judicial officer, thus resulting in improved judicial supervision and comprehension of complex cases.

Finding 2: The role of referees in complex case management contributed to attorney dissatisfaction with complex case management in many areas of the state.

Another major point of dissatisfaction with complex case management before implementation of the pilot program was a widespread perception of inappropriate reliance on court-appointed referees to conduct pretrial management of complex cases, resulting in excessive costs for litigants with little benefit in terms of effective case management. Attorneys and some of the judges specifically cited the referee pay structure as problematic—referees are compensated by the amount of time spent working on a case, creating an incentive for needless delay of complex cases, as well as the failure of judges to supervise or provide effective direction to referees. Referring to the pilot programs, attorneys reported that referee appointments were reserved for more complex cases for which referee involvement was considered more appropriate, and that judicial supervision of referees was improved, resulting in more efficient case management.

Pilot Program Effectiveness

Finding 3: The pilot program served all types of complex cases.

One of the original goals in establishing the pilot program was to manage all forms of complex litigation, not merely commercial litigation. About one of every four cases handled by the pilot courts consisted of commercial litigation, over one-third of the cases consisted of complex tort actions, and the remainder could be classified in either category. The pilot program's appeal goes beyond the business community and is available to all litigants who meet the program's general eligibility criteria regarding complexity.

Finding 4: Screening procedures employed by the pilot program courts were reasonably effective at distinguishing complex cases from non-complex cases.

Half of the pilot program cases consisted of case types defined as provisionally complex under Rule 1800 – that is, they are presumed to be complex unless a judge determines otherwise after reviewing the initial pleadings. But even using other measures of complexity defined by Rule 1800 (e.g., extensive motion practice, large numbers of separately represented parties, large amounts of documentary evidence), the cases that were retained in the pilot program were significantly more complex than those excluded from the pilot program. For example, pilot program cases involved greater numbers of litigants and had significantly higher total reasons for a complexity designation than non-pilot program cases.

Finding 5: The pilot program cases had significantly more case activity than complex cases handled outside of the pilot program.

Data was collected on complex cases that were not assigned to the pilot program. It was not possible to identify a large number of cases with the same characteristics as those in the pilot program. Those that were identified for comparison purposes were somewhat less complex and newer than the pilot program cases. Nevertheless, across all categories of case activities, the pilot program cases had significantly more case activity than in the baseline cases, especially in settlement conferences and status conferences. The pilot program cases were clearly supervised more closely than those cases not assigned to the pilot program.

Finding 6: Cases assigned to the pilot program showed measurable progress toward resolution during the evaluation period.

The length of the pilot program and the evaluation did not allow for sufficient time to adequately calculate time to disposition. However, there were indications that the cases assigned to the pilot program progressed steadily toward final disposition during the evaluation period. This is an important finding insofar that both attorneys and judges complained that complex cases would "languish" without significant progress toward resolution before the implementation of the pilot program. Indeed, over 10% of pilot program cases were more than five years old at the inception of the pilot program, which lends support to the validity of this complaint, at least in some types of cases. Two thirds of the pilot program cases demonstrated measurable progress, averaging 1.6 phases during the evaluation period with phases defined as pleadings, discovery, settlement negotiations, and post-discovery/trial readiness. That is, the majority of cases that entered the pilot program during the pleading stage (e.g., identification of and notice to relevant parties) had concluded discovery and were in the midst of settlement negotiations during the evaluation period. Similarly, the majority of cases that entered the pilot program while the parties were engaged in discovery had concluded settlement negotiations and were ready for trial during this period. Almost one-third of the cases in the pilot program had been disposed by the end of the evaluation period, although the disposition rates were affected by how the cases were assigned to the pilot program at each of the sites.

Finding 7: The pilot judges limited their use of referees.

Before the pilot program, a generalized concern for attorneys was the over-reliance on referees. The pilot program judges appointed a referee for some aspect of pretrial management (usually discovery purposes) in just 20 percent of the cases, which is a significant drop in the usage of referees. Pilot program judges were significantly more likely to appoint referees in provisionally complex cases and those cases that scored high on certain indicia of complexity. Construction defect cases were most likely to have a referee appointed. The implication of the reduced rate of referee appointments is that pilot program judges were directly supervising these cases, thereby promoting greater judicial control of case management and reducing litigation costs for the parties.

Finding 8: Informal coordination was a common tool for pilot program judges.

The *Deskbook* recommends the formal coordination or consolidation of related cases. Over one-fifth of the cases involved coordination or related actions, but the majority of those cases were filed within the same court, making formal coordination procedures unnecessary. Only very small percentage of applicable cases required formal coordination under rules 404-404.10 of the California Rules of Court. The use of informal coordination for related cases filed within the same court raises a question about the suitability of existing case management technology, which is not capable of identifying and tracking the progress of related cases without the assignment of a "master" case number.

Finding 9: Case management orders were reserved for those cases that were considered highly complex.

The *Deskbook on the Management of Complex Civil Litigation* recommended that judges develop and enter a comprehensive case management order. The evaluation of the pilot program indicated that a case management order was filed in only 30 percent of the cases. Judges appeared to be filing a case management order in only those cases they considered more complex. For instance, case management orders were filed in nearly 60 percent of those cases that were provisionally complex. This suggests that a large proportion of complex cases assigned to the pilot program can be managed with established case management procedures and appropriate levels of judicial supervision.

Recommendations

The pilot program featured specialized case management for complex civil litigation, judges experienced in both substantive law and complex case management practices, reduced caseloads, and additional staffing and technological resources. Pilot program judges viewed their primary objective as identifying the key legal issues in a given case and focusing pretrial activities on resolving those issues as efficiently as possible. The general means for accomplishing this objective included active judicial oversight of case management, including the development of clear expectations for case management, and consistent enforcement of those expectations.

The most significant improvements in complex civil case management appeared to result from two specific features of the pilot program: an individual calendar system and a caseload that was sufficiently reduced to permit more intensive case management by the pilot judges. While the current pilot program shows great promise, some aspects can be modified to increase the program's effectiveness.

Recommendation 1: Specialized procedural rules for complex cases should be developed.

A defining characteristic of complex cases is the existence of multiple legal issues and large numbers of parties. The existing civil procedure provisions, however, are tailored for routine civil cases. Although the *Deskbook* assumes that judges have the authority to engage in issue-specific case management practices, the language of the statutes and rules suggest otherwise. For example, the existing summary judgment statute does not permit summary adjudication of an individual legal issue or claim of damages unless doing so completely disposes of the case, a cause of action, or an affirmative defense. Specialized rules or statutes for complex cases that enhance judicial case management powers would authorize judges to conduct case management activities more effectively than under the current Code of Civil Procedure.

Recommendation 2: A workload assessment study should be conducted to help determine the appropriate number of judges and supporting court staff.

The average caseload assigned to each judge varied considerably from judge to judge, and from site to site, and there was no consensus as to an appropriate caseload size or even how to define a "case". A workload assessment should be conducted to allow

case assignments to equalize the workload and help determine the appropriate staffing levels for courts handling complex cases.

Recommendation 3: Screening and assignment procedures should be established to ensure that complex cases are identified and referred to the appropriate court.

Most of the pilot sites had fairly effective screening and assignment procedures to identify complex cases. Los Angeles, however, had a decentralized process that interfered with prompt assignment and early case management activities. The decentralized process resulted in needless delays. The Los Angeles program should be modified to include initial identification and immediate assignment of all types of complex cases at filing based on objective criteria indicated on the Civil Case Cover Sheet. The supervising judge for complex litigation should then ensure that the case meets basic criteria for inclusion in the pilot program.

Recommendation 4: Training and staff development should be an ongoing process for judges and staff handling complex cases.

Improving morale among non-pilot program civil division judges, as well as training and development for pilot program judges and staff, would enhance the effectiveness of the program. A rotation among judges assigned to the pilot program in Orange and Los Angeles counties would help alleviate some of the frustration of civil division judges who desire the intellectual and professional challenges that characterize complex cases. A mentoring approach in the single judge courts would also improve the knowledge and experience of the civil bench in general. In addition, educational workshops on complex case management issues may be appropriate for all pilot program staff and should be offered on a regular basis.

Recommendation 5: Case management technology should be developed and used throughout the pilot program.

Case management technology that permits judges and their staffs to monitor case progress more accurately, organize court documents more coherently, and communicate with multiple attorneys would increase the efficiency of the pilot courts. Currently, only Orange County employs imaging technology on a routine basis, and none of the pilot program courts has advanced e-filing beyond an experimental basis. More frequent use of Web-based case management systems would enhance the productivity of the courts by facilitating communication with multiple parties and ensuring accurate documentation of case management activities.

Recommendation 6: Practices used in the pilot program courts should be encouraged throughout the state.

The pilot program sites were carefully chosen and quickly absorbed the major concentrations of complex civil cases within the state. Yet complex cases are filed in other courts around the state. The lessons learned by the pilot program should be made available to and used by courts throughout California. For instance, even courts that normally employ a master calendar system for civil cases should assign complex cases to an individual judge for case management purposes—and reduce that judge's caseload accordingly. The AOC should strongly encourage judges managing complex cases to attend the semi-annual meetings of the pilot program judges.

PART 1 – PROJECT BACKGROUND AND OVERVIEW

The genesis for the California Complex Civil Litigation Pilot Program (pilot program) began more than five years ago with a report of the Business Court Study Task Force (business task force) that made a series of recommendations to the Judicial Council of California concerning the need and feasibility of establishing a specialized court in California to handle business and commercial cases. The concerns in California that prompted the creation of the business task force were similar to those in other states – namely, the perception that state court tribunals had become insensitive to the needs of business litigants both in how cases were processed and in the substantive law developed by state court judges and implemented by state court juries.[1] In particular, the business task force acknowledged widespread perceptions by the business community that a lack of knowledge about business transactions and substantive commercial law among the judiciary was contributing to uncertainty within the business community, unpredictable results in commercial disputes, and an absence of cohesive law governing business transactions in California.

Unlike such task forces in many other states, however, the business task force ultimately concluded that the concept of a business court would not be supported by important constituencies within California, and it discouraged the creation of a "business" or "commercial" court on a pilot basis or otherwise.[2] According to Justice Richard Aldrich, who chaired the business task force and a successor group, the Complex Civil Litigation Task Force (complex task force), the business task force members felt that a court dedicated solely to business and commercial litigation would be perceived as elitist and might reflect a pro-business bias.[3] Instead, the business task force viewed the more salient issue as the need to develop specialized expertise among judges of the superior courts to manage complex litigation of all types – business and commercial, tort, and real property – and to equip those judges with the support staff, technology, specialized case management procedures, and training necessary to improve the quality of decision-making in complex cases. The business task force then recommended the creation of a complex task force to make specific recommendations to the Judicial Council on steps to improve the management of complex civil litigation in California.

In August 1997, the Judicial Council charged the complex task force to pick up where the business task force left off. Specifically, it instructed the new task force to prepare a manual on complex civil case management for state judges; to develop guidelines for the identification of complex cases; to recommend appropriate statutory and rule changes for complex case management; to oversee and assist in the establishment of pilot programs in urban counties; and with the Center for Judicial Education and Research (CJER), to develop specialized curricula and educational programs on effective complex case management. In fulfilling its charge, the complex

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[1] Executive Summary, Final Report of the Business Court Study Task Force (May 16, 1997).

[2] *Id.* at 5-6.

[3] Remarks of Justice Richard Aldrich delivered at the Justice Roundtable, an annual meeting of the Board of Directors and the Corporate Counsel Committees of the National Center for State Courts, in Washington, DC, November 16, 1999.

task force contributed two of the fundamental cornerstones that ultimately led to the pilot program. First, it recommended the adoption of Rule 1800 of the California Rules of Court, which defines a complex case as one "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."[4] The rule also specified certain types of cases that should be presumed complex unless a judge determines otherwise, and set out additional criteria for identifying complexity. These criteria were then added to the Civil Case Cover Sheet, which is filed with initial pleadings in all civil cases.[5]

The Complex Civil Litigation Task Force also developed the *Deskbook on the Management of Complex Civil Litigation* as a reference manual for state judges. The *Deskbook* outlines case management techniques for complex cases generally as well as practices geared for specific types of complex cases. More importantly for the subsequent direction of the pilot program, it provides what has become the principle judicial strategy for managing complex cases: early and active judicial involvement in the development and oversight of a case management plan for the orderly conduct of the litigation. Effective case management hinges on defining and clarifying the disputed issues in the case and then structuring the pretrial activities to narrow and resolve as many issues as possible. In contrast to routine civil procedures in which a bench or jury trial is the presumed disposition for the case (even though it is recognized that a trial is a rare occurrence), complex case management makes a timely and just settlement or other pretrial disposition the explicit objective of pretrial activities and embraces the use of various forms of alternative dispute resolution as an integral part of achieving that objective.

In 2000, with authorization and funding from the California legislature, the Judicial Council established the pilot program in the Superior Courts of Los Angeles, Orange, Contra Costa, Santa Clara, Alameda, and San Francisco Counties. Participation in the pilot program required each site to commit to an individual calendar system dedicated exclusively to complex cases with a substantially reduced caseload that would permit participating judges to engage in intensive case management supervision. Fourteen judges – six in Los Angeles County, four in Orange County, and one each in the other four counties – were selected 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. The $2.855 million annual appropriation by the California legislature for the pilot program provided each site with funds for additional staffing, technology, and other resources necessary to implement the program. Although some of the details differed from site to site, the overriding judicial philosophy for the program was active judicial oversight of case management including the development of clear expectations and consistent enforcement of those expectations.

[4] California Rules of Court, Rule 1800(a).

[5] California Rules of Court, Rule 982.2.

NCSC Evaluation of the Complex Civil Litigation Pilot Program

The enabling legislation for the pilot program required a report evaluating the effectiveness of the pilot program, including the number of complex cases filed, the impact of the pilot program on case and calendar management, and their impact on the trial courts, the attorneys, and the parties. The Administrative Office of the Courts (AOC) contracted with the National Center for State Courts (NCSC) to conduct this evaluation. To do so, however, the NCSC first needed to address a major methodological challenge – namely, the absence of a theoretical framework in which to consider why cases assigned to the pilot program are managed more effectively than cases assigned to non-pilot courts. One of the hallmarks of a rigorous, independent evaluation is a solid understanding of program objectives, as well as how program operations are intended to achieve those objectives. From that beginning, evaluators must identify valid and reliable measure on which to determine whether, and how well, program operations further program objectives. With respect to complex litigation a number of business and commercial courts around the country have made claims about the effectiveness of various case management techniques, but none has previously evaluated its performance empirically. One of the first major challenges for the NCSC was to develop a tentative theory of complex litigation management against which to assess the findings from the three components of the evaluation.

To do this, the NCSC reviewed the *Deskbook on the Management of Complex Litigation* and scrutinized various case management techniques employed by the pilot judges to try to identify the specific advantages they offered over case management practices for non-complex civil cases. This process led the NCSC to consider the characteristics that make cases complex and the implications those characteristics have for the effectiveness of different case management techniques. In doing so, the NCSC examined how the case management techniques employed by the pilot program judges are purported to affect the life cycle of complex civil cases compared to that of non-complex cases. The NCSC also considered how different dimensions of case complexity and specific case management techniques might affect case processing. The following section describes the tentative working theory that the NCSC developed for conducting the evaluation.

The Unique Life Cycle of Complex Cases: A Tentative Working Theory

While routine civil cases tend to have a fairly straightforward and predictable life cycle, the life cycle for complex cases appears to differ in three significant ways: the length of the pleading stage, the direction (linear or circular) of discovery and negotiations, and the use of a trial on the merits as an interim or final disposition.

In routine civil cases, the pleading stage usually lasts 30 days.[6] During that time, parties are identified and legal claims and defenses are articulated. Ninety-five percent of all civil cases have no more than two plaintiffs; seventy-five percent have no more than two defendants.[7] In fact, the typical civil case involves one plaintiff asserting a single

[6] CAL. CODE CIV. PROC. §§ 430.10-430.90.

[7] 1996 Civil Justice Survey of State Courts (data collected by the National Center for State Courts under a grant from the U.S. Department of Justice, Bureau of Justice Statistics, on civil cases from 45 courts

cause of action against one or two defendants.[8] In a complex case, however, the pleading stage lasts for a much longer period of time, often lasting four to six months. More complex cases often involve cross and third party claims, which necessarily lengthen the pleading stage as newly added parties are served, retain counsel, and file responsive pleadings. Cases involving large numbers of parties also require more time for the lawyers to organize themselves and begin preparations for the discovery and negotiation phases of litigation.

During discovery in routine civil cases, parties exchange information about their respective claims and defenses, identifying areas of agreement and disagreement about the facts and applicable law governing the case. After discovery, the parties enter a period of negotiation in which they attempt to resolve the case without judicial involvement. Approximately two-thirds of all civil cases are settled by the parties, and over 25% result in either a dismissal or a default judgment.[9] Fewer than 10% of civil cases nationally require a judicial decision on the merits (summary judgment, bench or jury trial).[10]

In complex cases, however, discovery and negotiation stages tend to progress in a circular rather than linear fashion. For example, a key case management strategy espoused by the pilot program judges is to have the parties identify which issues and claims apply to which parties and to select the most salient issues as the focus of intensive discovery and settlement negotiations. As key issues are resolved, tangential issues either become moot or are resolved with less effort in subsequent cycles of discovery and negotiation. Each cycle of discovery and negotiation provides opportunities for interim dispositions that reduce the number of remaining parties or the scope of disputed issues.

In the vast majority of routine civil cases, the period of negotiation is followed by a dismissal or settlement of the case. In rare cases, a decision on the law (summary judgment) or the facts (bench or jury trial) resolves any remaining issues.[11] Some routine cases will require a minimal amount of post-verdict or post-judgment involvement by the trial court, but for the vast majority of cases, a trial on the merits signals the end of the case for the trial court. Trials are also rare in complex civil litigation, but in contrast to routine civil litigation, a trial in complex litigation can function as an interim disposition to help parties assess the potential liability of respective defendants or gauge the potential

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representing the 75 most populous counties in the United States (*on file at the National Center for State Courts*).

[8] *Id.*

[9] 1992 Civil Justice Survey of State Courts, (data collected by the National Center for State Courts under a grant from the U.S. Department of Justice, Bureau of Justice Statistics, on civil cases from 45 courts representing the 75 most populous counties in the United States, *on file at the National Center for State Courts*).

[10] *Id.*

[11] The 1992 Civil Justice Survey of State Courts found that civil cases resulted in a summary judgment in 3.7% of cases and in bench and jury trials in 2.6%. *Id.*

range of damage awards.[12] This information can then be used in subsequent settlement negotiations. Even if repeated cycles through discovery and negotiation are ultimately unsuccessful at disposing of all the parties and disputed issues, the process tends to whittle down the number of parties and hone the disputed issues so that by the time the case goes to trial, it is no more complex than other routine civil cases.

It was recognized from the very beginning of the evaluation that the time frame established for the evaluation would be insufficient to use filing-to-disposition time, a commonly used measure of case processing efficiency, as a measure in the evaluation. A 1992 national study of civil litigation found that civil cases with 7 or more parties[13] had an average filing-to-disposition time of 33 months, and 20% of those cases had a filing-to-disposition time of more than 49 months.[14] Given an evaluation period of only 33 months, and realistically fewer than 20 months in which to collect data, it was understood that only a small proportion of the cases assigned to the pilot program would be completely disposed during the evaluation period, making it difficult to assess this commonly used measure of case management efficiency in cases assigned to the pilot program. It was necessary, therefore, to identify some interim measures to assess case efficiency. Using this tentative theory of complex litigation, the NCSC chose to examine the number of interim dispositions and the number of parties disposed over the course of the evaluation period instead.

One difficulty associated with an examination of complex litigation is that case complexity has at least three different dimensions. Some cases are *legally* complex – that is, the applicable law governing the case is particularly complex and requires a great deal of judicial training and experience to master. These types of cases are often characterized by numerous motions and arguments presented in briefs and in-court hearings on the applicable law. Once the legal complexity is mastered, however, neither the facts of the case nor the logistics of its management are necessarily more complex than in non-complex civil cases. Cases that are characterized by legal complexity may require specialized training for the trial judge on substantive law, but do not necessarily require other types of case management techniques unless other dimensions of complexity are present in the case.

Other cases are characterized by *evidentiary* complexity – the nature of the evidence requires specialized expertise, such as scientific, engineering, financial, or economic evidence and expert testimony. These cases likewise require judicial training, but in a professional discipline other than law. They often involve large volumes of evidence that require considerable time and attention to review and fully comprehend.

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[12] *See generally* JUDICIAL COUNCIL OF CALIFORNIA, DESKBOOK ON THE MANAGEMENT OF COMPLEX CIVIL LITIGATION (2000) [hereinafter DESKBOOK]; NATIONAL CENTER FOR STATE COURTS, MANAGING MASS TORT CASES: A RESOURCE BOOK FOR STATE TRIAL COURT JUDGES (1995); FEDERAL JUDICIAL CENTER, MANUAL ON COMPLEX LITIGATION (3d ed. 1995).

[13] The presence of multiple parties is one indicia of complexity identified by Rule 1800 and is frequently utilized by the pilot program courts as eligibility criteria for assignment to the pilot program.

[14] Civil Justice Survey of State Courts, 1992 (data collected by the National Center for State Courts under a grant from the U.S. Department of Justice, Bureau of Justice Statistics, on file at the National Center for State Courts).

Like legal complexity, evidentiary complexity often requires specialized judicial training, although a popular approach that many of the California superior courts used before the pilot program was to appoint a referee with specific knowledge about the subject matter of the case.

Many complex cases are *logistically* complex in that they involve large numbers of parties represented by many attorneys and frequently large volumes of evidence. In some cases, the logistical complexity involves coordinating case management for several cases with similar or identical factual claims. Much of the difficulty in these cases is coordinating the activities of many people and ensuring that all of them have access to the same information about case events and court decisions. A popular technique for managing logistically complex cases is appointing one or two attorneys to serve as liaison counsel for each side of the case or cases, who are responsible for disseminating information to the parties and communicating with the court. Information technology, such as Internet list-servs and secured Web sites, can facilitate this function.

Different types of cases involve different types of complexity and in different combinations. Some cases may involve only one dimension of complexity, whereas other cases may involve two or even all three dimensions. Because caseload composition – the type and proportion of different types of cases – can differ substantially among complex litigation courts, the NCSC believed that it was important to control for the type of complexity inherent in each case when evaluating the effectiveness of the pilot programs.

The assignment of a single judge to supervise all aspects of complex cases is the cornerstone of case management strategies for the pilot program courts.[15] Its objective is to enhance the progress of case resolution through closer and more efficient judicial supervision. Having one judge handle all case activity improves the judge's understanding of the legal and factual issues of the case, permits more informed decision making about the prioritization of pretrial activities including discovery, facilitates smoother working relationships with counsel, and encourages more consistent oversight and enforcement of case management deadlines – all of which is intended to result in earlier resolution of cases. In other words, frequent judicial involvement encourages the parties to continue successive iterations of the discovery and negotiation phase of the complex case life cycle, which promotes incremental case resolution in most instances and, for those cases in which a trial on the merits is necessary, ensures that the disputed issues of the case are fairly well developed before the trial begins.

This understanding of how judicial involvement facilitates case resolution led the NCSC to an expectation of how the pilot program courts work and possible measures of how well they might perform. A direct correlation was expected between the number of times the pilot judge becomes formally involved in the case (e.g., case management conferences, status conferences, settlement conferences) and the number of interim dispositions (e.g., settlements, dismissals) that would occur over time. Similarly, there

[15] *See generally* JUDICIAL COUNCIL OF CALIFORNIA, DESKBOOK ON THE MANAGEMENT OF COMPLEX CIVIL LITIGATION (2000); NATIONAL CENTER FOR STATE COURTS, MANAGING MASS TORT CASES: A RESOURCE BOOK FOR STATE TRIAL COURT JUDGES (1995); FEDERAL JUDICIAL CENTER, MANUAL ON COMPLEX LITIGATION (3d ed. 1995).

would be an indirect relationship between the amount of judicial involvement in the case and the number of parties who were still actively involved in the case.[16]

Components of the NCSC Evaluation

To provide the broadest possible assessment of the Complex Civil Litigation Pilot Program, the NCSC used multiple methodological approaches including site observations, telephone interviews with judges and lawyers, and an empirical examination of key case management characteristics for complex cases in the pilot program compared to complex cases in non-pilot program courts. The first approach was purely a descriptive documentation of the policies, procedures and court resources that each court employed to manage its complex litigation caseload. This component of the evaluation is discussed in Part 2. A second approach consisted of in-depth telephone interviews with pilot program judges and attorneys to ascertain their opinions about the management of complex litigation in California both before and after the implementation of the pilot program. This component is discussed in Part 3. The final approach, discussed in Part 4, was an empirical examination of key case management characteristics for complex cases assigned to the pilot program that was compared to similar characteristics in complex cases managed by non-pilot courts. Part 5 includes conclusions from the evaluation and recommendations for the future operation of the courts handling complex litigation.

[16] Some types of cases may be more intractable than others, requiring a proportionately greater number of case events to achieve a similar number of interim dispositions and removal of parties from active involvement in the case.

PART 2 – PILOT PROGRAM DOCUMENTATION

NCSC conducted a series of site visits to each of the pilot program sites to document the pilot program through direct observation and interviews with the pilot program judges, pilot program staff and other key superior court officials.[17] The program documentation focused on several key areas: case assignment policies, staffing, specialized procedures for complex litigation, and the impact of the pilot program, if any, on non-pilot program operations. To complement the second round of attorney interviews, discussed in Part 3, these interviews also solicited the views on qualitative aspects of the pilot program including the judges' views about optimal case management techniques and suggestions for change. Because the majority of those questions focused on how pilot program judges approached the task of complex case management and their assessments of how well those approaches worked, judges' responses to those questions have been integrated with the pilot program documentation. Judges' suggestions about how to improve the pilot program have been incorporated into the evaluation conclusion and recommendations in Part 5 as appropriate.

Documentation of the pilot program was extremely important because the degree of program variation from site to site was one of the more challenging aspects of this evaluation. The basic criteria for obtaining state funding for the pilot program was a commitment by each site to dedicate one or more judges to the exclusive management of complex cases. Decisions about staffing levels and other resources for the pilot program (e.g., facilities and technological support) as well as the development of local rules and practices for managing complex cases were largely at the discretion of the pilot judges themselves. Although institutional and environmental constraints such as existing state statutes, court rules, and the existing infrastructure and culture of the superior court in each jurisdiction resulted in many similarities among key program characteristics, there were also some important differences among the various pilot programs. The NCSC believed that it was important to document these program characteristics, not only as a record of the pilot program, but also to inform the evaluation team about the possible sources of site-specific variations in other components of the evaluation.

An Overview of the Pilot Programs

To gather information about each site's complex program, a member of the NCSC evaluation team conducted individual and group interviews with judges and court staff, observed court proceedings, and reviewed case processing procedures during a series of on-site visits during the week of July 18, 2002.

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[17] The NCSC deliberately waited until the very end of the evaluation period (July 2002) to compile the program documentation because many of the program characteristics were likely to change, and in fact did change, over the course of the pilot program in response to the actual case management needs of complex cases. For example, several pilot courts began with an expectation that they would conduct a significant numbers of trials, an assumption that later proved incorrect in most sites. To ensure confidentiality of individual comments, this report uses the generic term "court officials" to refer to any of the individuals interviewed in conjunction with the site visits.

This part provides a subjective description of the six pilot courts, with a focus on case assignment policies, program staffing, use of technology, specialized procedures for complex litigation, judicial philosophy about complex case management techniques and procedures, and the perceived impact of the pilot program on non-pilot court operations. Following the individual site descriptions is a summary of recommendations that judges and court staff from all of the pilot sites expressed during the site visits.

Case Assignment Procedures

The six pilot courts tend to identify and assign cases in a similar manner, using objective procedures and criteria to screen cases and determine eligibility. The pilot judges in the single judge sites, and the supervising judges in Los Angeles and Orange Counties, review cases before accepting them into the program. By local practice in Los Angeles County, superior court judges sitting on the civil bench can opt to retain complex cases that might otherwise be assigned to the pilot program. Decisions to accept other complex cases are based on perceived need and complexity.

Program Staffing

Program staffing for each of the pilot program courts had only minor differences. Typically, pilot program staff consisted of five to seven individuals including one or more clerks, a court reporter, a bailiff, and one or more research attorneys. See Table 2.1. Pilot program staff were not shared with non-complex civil divisions. Generally the judges' senior clerk was the lynchpin for pilot program operations. This individual, according to those interviewed, was usually at the "heart of the action" and simply made things work for the judge both in and out of the courtroom. In the words of one judge, "I couldn't do all this without her."

Table 2.1:
Program Staffing Matrix (per judge)

Position	*Counties*					
	Orange	**San Francisco**	**Alameda**	**Los Angeles**	**Contra Costa**	**Santa Clara**
Court Clerk	2	2	2	2	1	1
Court Reporter	1	1	1	1	1	1
Bailiff	1	1	1		1	1
Research Attorney	1	2**	1	1	1	1
Case Manager					1	
Records Clerk					1	
Intern		1				
Technology Support	1*					

* Shared by all pilot judges

** One position vacant at the time of the site visit

There were some minor differences in staffing among the various programs. Research attorneys in particular were used differently, depending on the personality and judicial style of the pilot program judges. Their responsibilities ranged from assisting courtroom clerks, providing legal research support, and checking case law to coordinating mediation for parties and acting as judges *pro tempore*. Staff in the pilot program courts seemed to communicate well and more often than not their interactions were described as communicative and team-oriented. Both of the large multi-judge courts expressed a need for "floater clerks" to back up their divisions when additional support staff was needed on very large cases or when staff were on leave.

The need for formal training was not a major concern for most of the judges and court staff interviewed. Judges believed that the semi-annual meetings sponsored by the AOC were beneficial for education, information sharing, and assisting judges in solving common problems. The vast majority of those interviewed agreed that these important semi-annual meetings should be continued by the AOC, although several judges thought it would be beneficial to sponsor additional AOC/Center for Judicial Education and Research courses on specific topics such as determination of insurance coverage and management of large construction liability cases.

Technology

Each pilot court purchased different technology equipment to expedite case processing. Some of these expenditures have been allocated to in-court technology, such as smart boards, data ports, and computers. One court contracted with a firm specializing in electronic presentations to provide these services on a rental basis. This court is

piloting electronic filing and had already run successful tests to make sure the system can accept a large amount of data in a short period of time.

Although only a couple of the more "computer friendly" judges have experimented with Web-based case management for a handful of cases, all of the judges recognize the benefits of these systems for communicating with attorneys, especially in multiparty suits, and view these systems as the next logical step in technology to support the management of complex litigation for all of the pilot program sites. Indeed, these technologies should be integrated with superior courts' Web sites. Most of those interviewed also recognized the benefit of using document imaging as their primary case processing system. And, as an extension of the use of imaging, individuals from each court stated that they expected in the future to be able to have litigants' attorneys electronically file documents.

Complex Case Management

The judicial philosophy concerning complex case management was consistent throughout all of the pilot sites. The pilot judges viewed their role as proactive managers of the cases filed in their courts whose primary objective is to help the parties identify the key areas of dispute and conduct a sufficient investigation into those areas to make informed judgments, facilitate negotiations among the parties, and make dispositive rulings as necessary to resolve the suit. To effectuate this role, they relied on a combination of substantive knowledge about complex litigation, case management skills including scheduling date-certain case events such as status conferences, hearings, and trials, and a consistent, even-handed approach when dealing with counsel for the parties. As a rule, the pilot program judges disfavored the use of referees except for the limited purposes of managing discovery, usually in construction defect cases. All of these techniques were credited with providing attorneys with solid expectations about the judges' approach to cases, thus enhancing the attorneys' incentives to move the cases toward resolution. The small number of cases that actually went to trial in the six complex litigation courts tends to substantiate the effectiveness of this approach.

Effects on Non-Pilot Court Operations

In general, the establishment of the pilot program was perceived as having a positive effect on the operation of the civil court system, although some concern was expressed regarding the ability of judges assigned to the regular civil bench to challenge their skills by hearing more interesting, complex cases.

One area that may need review is the method by which complex cases in Los Angeles County are screened in the judicial districts outside of the downtown courthouse as well as the discretionary retention of complex cases by superior court judges in those districts. The practice is ingrained in the organizational culture of that court system, but as a practical matter, transferring cases from those districts to the pilot program often takes several months, which undermines the objective of early judicial involvement in case management activities.

It is the belief of many judges working in the pilot courts that an undocumented benefit of the program is fewer appeals of complex cases. Moreover, when cases are appealed, the pilot judges reported that those cases are better organized, and have clearer

and more concise orders and supporting documentation. As a result, appellate judges spend less time finding documents and rulings, and making decisions whether to affirm or overturn the cases.

Individual Programs

The pilot program courts were similar in many respects, but individual courts demonstrated subtle differences in procedures, staffing, and judicial philosophy. The following sections detail program characteristics for each pilot site.

Contra Costa County (Martinez)

Contra Costa County, with the city of Martinez as the county seat, is one of nine counties in the San Francisco-Oakland Bay Area. Six judges are assigned to the civil division of the Superior Court of Contra Costa County, one of whom manages all of the complex litigation cases. The NCSC conducted interviews with Judge David Flinn, the pilot court judge; Judge Garrett Grant, the Presiding Judge of the Superior Court of Contra Costa County; and Mr. Ken Torre, the Executive Officer of the Superior Court of Contra Costa County.

Contra Costa employs a three-step process for assigning cases to the pilot program. Initially, newly filed civil cases are identified by court staff in the intake section of the clerk's office using the "Rule of 7" – a local screening criteria requiring that a case have seven or more parties and be designated as complex on the Civil Case Cover Sheet[18] by the plaintiff's lawyers or counter-designated by a defendant's attorney.[19] If a case meets these initial criteria, it is referred to the presiding judge of the superior court for review. The presiding judge examines the initial pleadings and makes a decision either to forward the case to the pilot judge for his review, or to send the case back to the clerk's office for reassignment to the regular civil case calendars of the other civil division judges. The pilot judge also has an opportunity to review the case before accepting it into the pilot program. If, in his judgment, the case does not fit the criteria for inclusion in the pilot program, or if a peremptory challenge has been filed,[20] the pilot judge will send the case back to the presiding judge for reconsideration or for reassignment to another judge in the civil division. At any given time, approximately 180 to 200 cases are active in the pilot program in Contra Costa. Most of these cases were transferred from other judges within the civil division or retained by the pilot program judge.

Staff support for the pilot judge consists of 6 individuals – a courtroom clerk, court reporter, bailiff, research attorney, case manager, and records clerk – who work

[18] Form 982.2(b)(1) has been adopted for statewide use by the Judicial Council of California. The Civil Case Cover Sheet provides basic information about the case at filing including whether the case meets any of the criteria for management as a complex case under Rule 1800.

[19] Some cases have fewer than seven parties, but were accepted into the pilot program because they involved dimensions of complexity other than large numbers of parties.

[20] Cal. Code Civ. Proc. §170.6.

together as a team to calendar, call, and hear cases. The judge does appoint referees[21] to hear certain issues, primarily in construction defect cases.[22] More often than not, referees are appointed at the request of both parties and are primarily used to settle cases. After the referee negotiates a settlement, the case is referred to the pilot judge for approval and closure of the case. Court officials estimate that most complex litigation cases with referees are disposed within two years of filing.

The pilot judge did not express a need for additional training and believed that the semi-annual conference held with other complex litigation judges from the six pilot courts was sufficient to exchange information and learn from others involved in complex litigation.

Although pilot program funds have been used to purchase video recorders, DVD players, personal computers, a white board, and remote data access for counsel in the courtroom, these tools are not used extensively. Court officials involved in the pilot program would like to pursue electronic filing, document imaging, and case-based Web sites to manage complex cases. At the time of the on-site visit, court officials were in the process of converting their case processing system.

Although the complex litigation court in Contra Costa County exhibited many benefits, it has increased the workload of the other judges hearing civil cases in the Superior Court. As a result of complex cases only being heard by one judge, court officials stated the other judges hearing civil cases are overloaded, which affects court staff morale. In addition, court officials reported that some of the non-pilot judges assigned to the civil division are concerned about being precluded from hearing these more interesting and legally challenging cases.

Santa Clara County (San Jose)

The pilot program is located within the Superior Court of Santa Clara County in the downtown section of San Jose. Twenty-one judges are assigned to the court's civil division, one of whom reviews and hears all complex litigation cases as part of the pilot program. The NCSC conducted interviews with Judge Jack Komar, the pilot court judge; and Judge Richard Turrone, the Presiding Judge of the Superior Court of Santa Clara County.

The pilot program in Santa Clara County employs a one-step assignment process, which was the most common process among the pilot sites. Plaintiffs' attorneys indicate that a case is complex on the civil case cover sheet at the time of filing or a defense attorney submits a counter-designation. Court clerks initially assign the case to the pilot judge, who determines if the case is actually complex. If it is not, it will be sent to the presiding judge for reassignment. Court officials estimate that 8% to 10% of cases are returned for reassignment. Approximately 170 complex cases are active in the court on an annual basis.

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[21] *See generally* CAL. CODE CIV. PROC. §§ 638-645.2 for rules governing the appointment of referees. In complex litigation cases, referees are used primarily for management of discovery.

[22] It is important to note that due to the proximity of the naval base in Martinez, California and resulting building projects, in recent years the court has experienced more construction defect cases.

Staff support for the pilot judge consists of four individuals – a courtroom clerk who is a trained paralegal and also serves as the case coordinator, a research attorney, a court reporter, and a bailiff. Those interviewed believed that working as a team is what makes the pilot program effective and efficient.

The pilot judge and court staff in Santa Clara County did not report a need for specific training in complex case management. They believe that best teacher in complex litigation is experience in the courtroom as well as the judges' participation in the semi-annual meetings of complex litigation judges from the pilot courts.

To reach the stage in a case where a settlement is possible, the pilot judge reported that he manages his cases using established timelines and case management conferences. For example, within 110 days from the date of assignment, a case management conference is held. According to the pilot judge, these techniques provide a sense of predictability and continuity in the process for attorneys and their clients. In short, attorneys know what is expected of them and what to expect from the court when they come into the pilot program, which promotes settlements.

In the area of technology, court officials expressed an interest in improving case processing through document imaging and electronic filing systems. The pilot judge has established case-based Web sites for certain cases. Due to the improved communication capabilities, he can more effectively control the pace of litigation and can provide notice to parties regarding various actions in a case. The judge would like to expand the use of technology by posting tentative decisions on case-based Web sites. For in-court purposes, the pilot judge also uses a smart board system,[23] touch screens and other electronic enhancements, some of which are provided by the lawyers, to process information more effectively during trial.

San Francisco County

More than 20 judges are assigned to the civil division of the Superior Court of San Francisco County, one of whom was selected to manage all of the complex cases through the pilot program. The NCSC conducted interviews with Judge Stuart Pollak, the pilot court judge from the inception of the pilot program in January 2000 through January 2002; Judge Richard Kramer, pilot program judge; Gordon Park-Li, Executive Officer for the Superior Court of San Francisco County; Judge Ronald Quidachay, Presiding Judge for the Superior Court of San Francisco County; and Elena Simonian, court administrator. These court officials estimated that the number of active complex litigation cases in the pilot program averages 100 cases.

The pilot program in San Francisco County also uses a one-step process for case assignment purposes. Complex cases are initially identified and assigned to the pilot program after being designated complex on the Civil Case Cover Sheet, and the pilot program judge reviews the case to determine its acceptability into the program. It was reported that some attorneys try to get non-complex cases assigned to the pilot program in order to obtain the special attention they believe their cases deserve or to expedite advancement through the civil litigation system. Those cases and others that are

[23] A smart board system is a form of demonstration technology that facilitates viewing of documents, illustrations, and other exhibits during in-court proceedings.

erroneously assigned to the pilot program are quickly identified and sent to the presiding judge for reassignment to the regular civil division of the superior court.

The judge's staff is similar to other pilot courts with the exception of having two research attorneys. Court staff include a court reporter, two court clerks, two legal research attorneys (one position was vacant at the time of the on-site visit), a bailiff, and occasionally an intern. Because processing complex cases is so labor-intensive, court officials believed that teamwork by the pilot program staff is what makes the program work in San Francisco County. Additional training for the judge and court staff was not considered necessary by court officials.

The major benefit of the pilot program, according to those interviewed, is the assignment of an experienced judge who is dedicated to hear the majority of complex cases. Court officials specifically cited judicial experience in complex litigation, attorney education about case processing requirements, and individual judicial attention to cases as the reasons for timely management, earlier case settlements and fewer appeals. The use of *hands-on* management also was credited with fostering respect for the judge and his expectations in a case, control of continuances by the court, and proactive communication from the pilot judge to the parties' lawyers.

Specific case management techniques include holding an initial case management conference as soon as possible after the assignment date, usually around 30 days. Thereafter, the pilot judge holds a series of subsequent case management conferences, helping to control every phase of the case from filing to settlement or trial. The current pilot judge does not regularly use referees, although the previous pilot judge generally discussed this option with attorneys at the initial case management conference and often appointed mediators for settlement conferences in larger, more complex cases. To improve the conduct of complex trials, when they occur, the pilot judge frequently bifurcates trial issues (e.g., key legal and factual issues to be resolved). He also uses this approach as a method of organizing case management and discovery, so those issues can be tried sooner.

Court officials expressed the need for an imaging system[24] that would facilitate the identification of documents, complement electronic filing capabilities, and encourage the use of Web sites to manage individual cases, all of which are expected to reduce delays in case processing. The Court uses e-mail to send information to parties on hearing dates as well as to provide notice to the attorneys about the need for a hearing on a specific issue in a case.

One unmeasured benefit identified by court officials was the effect of the pilot program on the California Court of Appeal due to the manner in which appeals from the pilot program are prepared, packaged and sent for review. It was the consensus of those interviewed that the Court of Appeal had an easier time reviewing and deciding cases that came from one judge experienced in complex litigation, rather than from many judges inexperienced in complex litigation that were working in a civil court of general jurisdiction.

[24] Imaging technology is used to produce an electronic image of paper documents, which are then available for viewing on computer terminals at any location to which access is permitted.

Alameda County (Oakland)

The pilot program court for the Superior Court of California, County of Alameda is located in Oakland and is served by one judge who has an active caseload of 90 to 120 cases. In comparison, it was estimated that a judge hearing regular civil cases in Alameda County has an active caseload of approximately 350. The NCSC visited the pilot program on the afternoon of July 19, 2002, and conducted interviews with Judge Ronald Sabraw, the pilot program judge; Judge Harry Sheppard, the Presiding Judge of the Superior Court of Alameda County; and Mr. Arthur Sims, Executive Officer.

As in other pilot program courts, cases are initially identified as complex by the plaintiff's attorney or a defense attorney through use of the civil case cover sheet filed in the clerk's office. Sixty days after filing, the pilot judge holds a hearing to determine whether the case is eligible for inclusion. These determination hearings are scheduled on the same calendar with law and motion hearings, which in Alameda County are conducted by the pilot program research attorney under the supervision of the pilot program judge. The presiding judge of the superior court does not get involved in the assignment process unless a motion to disqualify the pilot judge is filed.

Once a case is accepted into the program and the determination hearing held, a case management conference is held within 30 to 60 days. At this conference, timelines and deadlines are set for filing of answers and cross complaints. The parties are also advised that if the case goes to trial for an extended period of time, the trial may be conducted by another judge.

Court staffing is similar to other pilot courts. Staffing includes a research assistant, a court reporter, a bailiff and two courtroom clerks who work in close proximity and effectively as a team. In the area of training, it was suggested that training in management of large construction defect cases and disputes over insurance coverage would be useful. It would also be beneficial to have an annual conference of complex litigation courts to be attended by judges, research assistants and courtroom clerks.

Court officials reported that the pilot judge's temperament and case management skills, and the expertise of his court staff, were essential to the success of the pilot program. The pilot judge reported that he relies heavily upon the research attorneys to explain case processing and courtroom procedures to attorneys and to warn the attorneys about *ex parte* communication. The research attorneys encourage and coordinate mediation hearings and are the central point of communication between the court and counsel for most cases.

In the area of technology, the Superior Court of Alameda is equipped with dataports for PC's in the courtroom and at times uses a smart board to display bar-coded exhibits and other evidence. Although all court cases in Alameda County are imaged, court officials want to start managing cases through the use of case-based Web sites and electronic filing.

Orange County (Santa Ana)

Orange County has an estimated population of 2,950,000, 34 cities, and covers a 798 square mile area. Over the years the county has experience rapid rates of growth with homes being built in large tracts or subdivisions. This population expansion and the

location of companies offering technological services gives rise to many complex civil cases, especially construction defect cases, filed in the Superior Court of Orange County. There are 27 superior court judges assigned to work in the regular civil division of the Court. Five fulltime judges are assigned to the pilot program. Most of the asbestos cases are collected in one judge's inventory, which also includes a variety of other case types. The NCSC conducted a group interview with all of the pilot court judges except one (who was unavailable), as well as individual interviews with Judge C. Robert Jameson, the supervising judge for the pilot program; Mary Lou des Rochers, Executive Director, Management Services for the Superior Court of Orange County; and Vicki Brizuela, the Clerk of the Complex Civil Litigation Pilot Program.

All operations of the pilot program were recently relocated to the county's Civil Complex Center. This recent move to a building dedicated to complex litigation has not only provided adequate courtroom space to hear complex cases, but it has also increased the spirit and morale of judges and court staff. Court officials estimated judges in the pilot program carried an average caseload of approximately 210 active cases at any given time.

Each judge has a five-member staff that includes a court reporter, bailiff, clerk, assistant clerk and research assistant. The court is technologically advanced and self-contained, so the pilot program has a full time staff member to provide technological support to judges and court staff. Because the pilot program in Orange County includes a large number of construction defect cases, the use of referees and mediators to assist with certain issues is prevalent. Further, in order to better manage cases, judges use their research attorneys as judges *pro tempore* for some status conferences. According to court officials, this special use of research attorneys not only helps keep cases moving, but also provides a sense of teamwork within the pilot program.

The pilot program in Orange County uses a two-step assignment process. Cases that are initially identified as complex based on the Civil Case Cover Sheet are randomly assigned to the pilot judges, but will be reassigned if there is a successful challenge to the judge. Cases that do not meet the eligibility criteria for the pilot program are forwarded to the presiding judge for reassignment to the regular civil division. The supervising judge will also accept cases transferred from judges in the civil division that were not immediately recognized as complex at the time of filing.

The first case management conference is usually held 60 to 90 days after assignment to the pilot program, and follow-up conferences are usually held every 30 to 60 days thereafter. Unlike many of the pilot program sites where judges are extremely proactive in case management activities, the judges in Orange County place the responsibility on attorneys to make motions at case management conferences to move the case forward. At the request of lawyers, referees are appointed and frequently used in construction defect cases to achieve settlement. While most complex cases settle, one of the pilot judges is in trial for an estimated 200 days per year, an unusual amount of time when compared to the number of courtroom trials days experienced by other pilot judges.

Orange County has the most sophisticated use of case management technology among the pilot sites. Document imaging is used to record and track all filings in complex cases. Some judges notify attorneys of case events via e-mail, which is

followed by a hard copy that is mailed to the parties. All program judges post tentative decisions for law and motion matters on the court's website. Most judges in the pilot program still work from files during hearings, and at times make notes on the calendar which are then entered into the court's imaging-based case processing system when the minute order is prepared. Some judges do not request files for specified hearing types, relying instead on the imaging system or copies from it.

For trial purposes, the court has contracted with an outside vendor to provide technological support and a presentation system in the courtroom. The system includes components such as a server that can read presentation software, a VCR, evidence exhibit capabilities, and large screen projection system. During hearings and trials, the court is able to provide attorneys with a more up-to-date system to present and share case information with judges, court staff, attorneys, and jurors. The system, which is permanently located in the courtroom, is the only one permitted to be used for evidence presentation purposes. The cost of the system, $550 per day, is shared by all parties to an action who use the equipment. This rental requirement has caused minor concern for law firms that have their own in courtroom computer equipment, but the pilot judges believe that having the same equipment available to all parties justifies the cost to individual parties. An evaluation of this approach for providing presentation systems is scheduled to be conducted.

In the area of training, court officials stated that court staff were quite professional, had good morale, and did not need specific training. On the other hand, some judges stated even though they attended AOC-sponsored civil litigation training courses, they would like additional education on class action wage and salary suits, construction defect cases and additional training on dealing with multi-party complex consumer cases brought under §17200 of the Business and Professions Code.

Los Angeles County

Los Angeles County has a population of over 9.8 million people, larger than the population of 42 states. The Superior Court of Los Angeles County consists of twelve judicial districts and 59 court buildings located throughout the county. Based on this population and the amount of business transacted in the county, the Civil Division of the Superior Court of Los Angeles County is one of the largest and busiest in the country. Approximately 50 judges work in the regular civil division of the Superior Court and six judges are assigned to the pilot program, which is located on separate floors in a large county building northwest of downtown. The NCSC conducted interviews with Judge Carolyn Kuhl, the supervising judge of the pilot program; Judge Gary Klausner, supervising judge for the Civil Division; and, in a group setting, with all of the participating pilot program judges.

Because of the decentralized nature of the Superior Court of Los Angeles County, the case assignment process for the pilot program in Los Angeles differs dramatically from the other pilot sites. All class action cases are filed in the downtown Los Angeles division. They are initially identified as complex based on information on the Civil Case Cover Sheet and are immediately assigned to the pilot program. Complex cases filed in one of the other 12 judicial districts in the county are assigned to a civil court judge who reviews the case approximately 30 to 60 days after filing and has the discretion to either

retain the case in the district or refer it to the pilot program for case management purposes. Court officials estimated that two-thirds of the cases referred to the pilot program from the judicial districts are ultimately determined to be complex. Those cases that are determined to be not complex are sent back to the judicial districts for reassignment on the regular civil docket.

The supervising judge for the pilot program reviews new cases referred from the regular civil departments for eligibility in the pilot program and coordinates the case assignments of five other judges working in the court. The assistant assignment judge reviews the class action cases. Cases are assigned to judges on a rotating basis. When a judge appears to have too many active cases assigned or too many cases going to trial, they may request to be taken off of the assignment wheel for a time in order to balance the workload, which averages 40 to 60 active case groupings at any given time.[25] As an example of the unique methods used by the Court to balance caseload and assignment, the supervising judge described six complex case groupings involving insurance claims on earthquake damage that included nearly 2,000 separate cases. Cases were assigned to each of the six judges based on the litigants' insurance carriers. Each of five judges was assigned all those cases filed against one of the five major carriers, while the sixth took a mix of other, non-major carrier suits.

Three to five weeks after a complex case has been accepted and assigned, the first case management conference is held. The six pilot judges have developed and use standard forms, such as a case management order and trial readiness orders, for case management purposes. The pilot judges in Los Angeles use the case management conferences in a unique manner, giving lawyers "homework assignments" including expectations to report progress and completion of tasks to the court.

The pilot program relies on the superior court's existing Sustain case processing system to process and track actions in cases. As papers are filed in the clerk's office, papers are entered into the file jackets in chronological order. This practice poses problems for the pilot judges and court staff when filing information needs to be located in the courtroom during hearings or trials. Court officials believe this "hunt for papers" can be alleviated by the use of imaging and eventually through electronic filing.

Each judge has a 4-member staff consisting of a research attorney, court reporter, judicial clerk, and courtroom assistant/calendar specialist. As a matter of practice, the pilot judges do not favor the use of referees to resolve issues or to help settle cases, which they believe hinders their ability to control the pace of litigation, encourages the use of continuances, and increases the cost of discovery to parties. Their preferred style is proactive management of cases and judicial control of timelines, which promote a sense of certainty and predictability for lawyers. The judges also encouraged the use of mediation. According to those interviewed, it is this combination of techniques that results in settlement for the vast majority of complex litigation cases.

[25] Complex cases in the Superior Court of Los Angeles County are identified for case management purposes as groups of related cases. Consequently, the number of individual cases that may be related to the group is much larger.

The number of weeks in trial for the pilot judges in Los Angeles averages two to three weeks per year. Judges in Los Angeles reported that the pilot program has resulted in fewer appeals being filed. They also believe that appeals are packaged more uniformly and provide appellate judges information in a more understandable and organized form, thus saving decision-making time and money.

In the area of training, judges stated that there was benefit to the semi-annual meetings that had been held for complex litigation judges and for the most part they were self-trained. They acknowledged that judges that are new to the pilot program bench need a thorough orientation to the pilot programs and training in the various techniques that have been developed by other complex litigation judges to manage cases. It was also recognized that court staff had a difficult job processing and keeping track of the many filings and timeframes associated with complex cases and needed more training in organization, time management and computer skills.

Common Concerns and Recommendations

A portion of the interviews conducted during the site visits solicited opinions from the pilot judges, presiding judges, executive officers, and key pilot program staff about how to improve various aspects of the pilot program. From these discussions, several common areas of concern were raised. There was unanimous consensus among the pilot judges that many of the existing rules of civil procedure hamper their ability to manage complex cases effectively. Rules governing demurrers, discovery, and summary judgment were specifically singled out. The rules governing summary judgment, for example, specify that judges may grant a motion for summary judgment if the evidence shows that there is *no triable issue as to any material fact* and that the moving party is entitled to judgment as a matter of law.[26] The rules do not give judges the discretion to grant partial summary judgment with respect to specific issues. The pilot judges agreed that the ability to grant partial summary judgment would be a valuable tool in complex case management for disposing of non-meritorious and peripheral issues and focusing the parties on key issues of the suit. Similar points were raised about rules pertaining to demurrers and discovery, especially in multiple party cases. The pilot judges believe that complex cases could be more easily and effectively managed if they had the ability to make rulings as to the timing and priority of pleadings and discovery for specific parties and issues.

A second concern raised in several of the sites was uncertainty about the optimal caseload size for judges managing complex civil litigation. The Los Angeles County site had the lowest average caseload with 40 to 50 active cases per judge. The reported caseload in San Francisco and Alameda Counties (80 to 100) was approximately half that in Santa Clara, Contra Costa, and Orange Counties (170 to 215), although not all of the pilot programs defined a "case" in precisely the same manner.[27] All of the sites had

[26] CAL. CODE CIV. PROC. § 437(c).

[27] Among the individuals interviewed during the NCSC site visits, the term "case" was used interchangeably to indicate a case with a uniquely assigned case number, a formally consolidated case in which several uniquely-identified cases had been aggregated for case management purposes, an informally consolidated case involving several uniquely-identified cases with common parties and underlying factual

similar caseload compositions,[28] staffing and other resources. Several of the judges expressed interest in participating in a workload assessment that would determine an appropriate caseload size and help each of the pilot sites make the most efficient use of resources without compromising the quality of judicial decision making and management that has become the hallmark of the pilot programs.

The final issue was the future direction of technological support for the pilot programs. Although several of the courts invested substantially in courtroom technology, actual bench or jury trials in complex cases are rare occurrences. The vast majority of cases are disposed through settlement negotiations. The more pressing need is for case management technology that will permit the pilot judges and their staff to monitor case progress more accurately, organize court documents (motions, briefs, documentary evidence) more coherently, and communicate with multiple attorneys and parties more effectively. Only Orange County currently employs imaging technology on a routine basis and none of the pilot courts have advanced e-filing beyond an experimental and small-scale basis, but both of these technologies would enhance the productivity of the pilot courts. More aggressive use of Web-based case management systems would likewise be a benefit in complex case management.

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allegations and causes of action, and collections of uniquely-identified cases involving similar parties or causes of action (e.g., the "clergy" cases filed against the Los Angeles Diocese).

[28] Orange and Contra Costa Counties had larger concentrations of construction defect cases than the other sites. In most other respects, however, all of the sites had similar ratios of provisionally and non-provisionally complex cases.

PART 3 – INTERVIEWS WITH JUDGES AND ATTORNEYS

The second methodological approach employed in the evaluation consisted of two rounds of in-depth telephone interviews with pilot program judges and attorneys.[29] The first round of interviews were conducted between April and July 2000 – after the implementation of the pilot program in most courts, but well before the judges and attorneys had become deeply involved in cases assigned to the program.[30] The second round of interviews was conducted with attorneys who had recent experience in cases assigned to the pilot program.[31] These interviews, which took place in April through July, 2002, focused on the major issues that had been identified in the first round of interviews to determine the extent to which the pilot program had addressed them. The interviewers also solicited the judges' and attorneys' suggestions for ways to improve the handling of complex cases in California courts. The second round of interviews with pilot program judges was conducted as part of the pilot program documentation in conjunction with the site visits in July 2002. Because so many of the questions in the second round of interviews dealt with how pilot program judges actually approached the task of complex case management in their respective courts, their responses were incorporated in the discussion in Part 2 of this report.

The NCSC considered this subjective component of the evaluation to be critical from the very beginning of the project. First, it was important to help the NCSC identify specific issues and opinions about complex case management practices in California before the existence of the pilot program. This information was used not only as a baseline with which to compare interview responses before and after implementation of the pilot program, but also to develop tentative theories about complex civil litigation and measures for the empirical component of the evaluation. The first round of interviews also documented the pilot program judges' initial expectations about various case management techniques they planned to utilize in their respective courts for comparison with what was actually done. Finally, the second round of interviews with attorneys provided valuable insights about the pilot program performance – in essence, putting much needed flesh on the bones of the pilot program documentation and empirical examination.

There was tremendous consensus in the first round of interviews that the master calendar system and, to slightly lesser extent, inappropriate appointment of referees were the two most significant problems associated with complex case processing in California

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[29] The NCSC also attempted to interview litigants in complex cases to assess their views, but was unable to identify a sufficient number of litigants to participate in the interviews. See Appendix A for a detailed discussion.

[30] The judges interviewed for this task were all of the judges participating in the pilot program at that time. The attorneys interviewed included individuals referred by the pilot program judges and key leaders from the Association of Business Trial Lawyers, the Association of Defense Counsel, the American Board of Trial Advocates, Consumer Attorneys of California, Trials Lawyers for Public Justice, and the American Corporate Counsel Association. Most of the interviewed attorneys had substantial experience in complex litigation and a sizable proportion had litigated at least one complex case before the referring pilot program judge.

[31] Second interviews were also conducted with the pilot judges during on-site visits, which are reported in Part 2.

prior to implementation of the pilot program. The master calendar system was criticized for involving too many judges with too little experience in the pretrial phase of complex case management, thus introducing unpredictability in decision making and diffusing judicial accountability for effective case management. Dissatisfaction with referee appointments focused on the compensation structure for referees, which was alleged to contribute to case delay and excessive costs, particularly in combination with inadequate judicial supervision of and direction for referee activities. The second round of interviews revealed that both of these issues were addressed satisfactorily by the pilot program. The overwhelming consensus of attorneys in the second round of interviews was that the pilot judges understood the legal and evidentiary issues, managed the cases expeditiously, and restricted referee appointments to appropriate cases.

Both rounds of interviews with attorneys posed some methodological difficulties that may limit the generalizations that can be drawn. See Appendix A for a detailed discussion of methodological limitations. Nevertheless, there was sufficient consistency in the responses that the NCSC believes that they are a valid reflection of the general views of those attorneys who are familiar with the issues and problems related to complex litigation management. The following discussion summarizes the protocols developed for conducting both sets of interviews, a general description of the judges and lawyers who participated in those interviews, and findings and conclusions from this component of the evaluation.

First-Round Interviews with Judges and Attorneys

In preparation for the first round of interviews, the NCSC developed protocols based on a series of preliminary interviews with a few key judges and lawyers familiar with complex litigation management in California and with the development of the Complex Civil Litigation Pilot Program. These preliminary interviews helped identify key issues related to complex litigation management on which to focus the first round of interviews. Among the issues identified were the appropriate scope of judicial management and oversight of complex cases; the appropriate role of quasi-judicial officers (e.g., referees) in complex case management; the implications of the court calendar system (master calendar versus individual calendar) on the predictability of case outcomes (e.g., consistency of rulings on similar issues among judges); and the length and expense of litigating complex cases. The interview protocols attempted to gauge judge and attorney agreement or disagreement with these identified areas of concern and solicited concrete examples based on the respondents' experiences in complex litigation. *See* Judge Protocol and Attorney Protocol, at Appendix C.

All of the judges who were originally assigned to the pilot program were interviewed, and were asked about their views of the judicial management of complex litigation in their respective counties. The attorneys were asked to give their opinions on court and judicial performance in complex cases overall and in complex cases they recently litigated. Both judges and attorneys had the opportunity to comment on the role of referees and Alternative Dispute Resolution (ADR), and their overall expectations about the pilot program. Lastly, the attorneys and judges were asked to state whether they agreed or disagreed with several statements on a scale of 1 to 10. These statements

dealt with the management of complex cases, the role of special masters, and judicial competency in complex case management.

Most of the interviewed judges were from Orange and Los Angeles Counties, and the attorney population fell along similar lines. See Table 3.1. Interviewers did not specifically ask attorneys if they typically represented plaintiffs or defendants, and less than half of the interviewed attorneys provided this detail. Of the attorneys who divulged their practice type, over two-thirds were plaintiff attorneys and slightly under a third were defendant attorneys.

Table 3.1:
Pre-Program Interviews

County	Judges	Attorneys
Alameda	1	1
Contra Costa	1	9
Los Angeles	6	16
Orange	4	28
San Francisco	1	6
Santa Clara	1	3
San Diego	-	1
Total	14	64

Interviewers asked the attorneys about their complex law practices, and three areas emerged as the most common practice types. Construction defect was the most common practice area (37% of interviewed attorneys), followed by insurance coverage (16%) and class action lawsuits (11%). Most construction defect attorneys were located in Orange County, while the majority of attorneys specializing in insurance coverage cases tended to practice in Los Angeles. The other areas of complex law specialization included business litigation, patent and technology cases, eminent domain, and unfair competition cases. The majority of attorneys practicing in eminent domain law resided in Orange County, while most patent and technology specialists practiced in Northern California. It was not clear from the interviews whether these practice concentrations resulted from specific clusters of specializing attorneys or whether the method of interview referrals caused these practice groupings to occur.

Second-Round Interviews with Attorneys

To develop protocols for the second round of interviews, the NCSC identified key issues from the first round of interviews and formulated questions designed to determine how well the pilot program addressed those issues. The procedure for selecting attorneys to participate in the second round of interviews was very different from that for the first

round of interviews. To survey attorneys who had first-hand experience with the pilot program, the NCSC used the database of complex cases that was compiled as part of the empirical evaluation (see Part 4) and selected 100 disposed cases.[32] A weighted sampling technique was used. All 20 completely disposed cases that were initially filed after the inception of the pilot program were selected. The NCSC then randomly selected 40 cases retained by the pilot program judges at the beginning of the pilot program and 40 cases transferred from non-pilot judges at the beginning of the pilot program. Participating pilot sites were asked to provide the names and contact information of the lead attorneys on each side of the case.

Due to sampling and response rate issues, NCSC staff ultimately conducted interviews with 36 attorneys (an overall response rate of 21%). Of the original sample of attorneys, the NCSC had the most success identifying, locating and securing the cooperation of attorneys from cases filed in Contra Costa County (34% response rate). The response rate for attorneys in Orange County were the second highest at 18%, followed by Los Angeles (13%) and San Francisco (8%). Consequently, attorneys in Orange and Contra Costa Counties account for nearly 90% of the interviews. See Table 3.2.

Table 3.2:
Post-Program Interviews

Counties	Attorneys
Orange	17
Contra Costa	15
Los Angeles	3
San Francisco	1
Total	36

As noted above, the NCSC staff also conducted a second round of interviews with pilot program judges in conjunction with site visits to document how the pilot program was implemented in each court. Individual interviews took place with the pilot program judge in the Superior Courts of Alameda, Contra Costa, San Francisco, and Santa Clara Counties, and with the supervising judges of the pilot programs in the Superior Courts of Los Angeles and Orange Counties. Group interviews were conducted with the remaining pilot program judges in Los Angeles and Orange Counties. Summaries of those interviews have been incorporated into Part 2 of this report.

[32] The sample was drawn only from disposed cases for two reasons: to ensure that the attorneys experienced the Pilot Program through the end of the case, and to increase the likelihood of candid answers from the attorneys about their experience under the Pilot Program, which might be compromised if cases were still under active supervision by the pilot program judges.

Findings

From the first round of interviews, the NCSC found that the master calendar system of case assignment and the role of referees in complex case management both contributed to attorney dissatisfaction with complex case management in many areas of the state. The following section describes these issues in detail.

Master Calendar versus Individual Calendar Systems

In the first round of interviews, use of a master calendar system was identified as the single most significant obstacle to effective complex case management in California, from which all other issues and problems arose. Under a master calendar system, civil cases are not assigned to a judge until they reach trial. Thus, during the pretrial phase, all motions and other pre-trial matters are randomly assigned to a fixed panel of judges designated to hear specific discovery and law and motion issues. No single judge has primary responsibility for managing these cases from initial filing to resolution. Instead, multiple judges hear motions, discovery disputes, and other pretrial matters.

A variety of issues were reported to result from the use of the master calendar system. These include the lack of a single point of judicial accountability for case supervision, insufficient judicial involvement in pretrial management (e.g., identifying and resolving key legal issues and creating a discovery plan) of complex cases, and lack of judicial knowledge about and experience in specific areas of substantive law. In the first round of interviews, the master calendar system was also criticized for involving judges who lack either the experience or skills to engage in effective case supervision.

The pilot program, of course, mandates the use of an individual calendar system.[33] Thus, on the surface, it appears to solve the problems associated with master calendar systems. Nevertheless, it is useful to discuss the alleged shortcomings of the master calendar system and to examine the extent to which an individual calendar system actually addresses those problems.

In the first round of interviews, judges and attorneys were asked whether they agreed with the statement that too many judges in their respective courts are involved in the pretrial management of complex litigation. Most judges thought that the lack of single judicial assignment in the master calendar system presented a serious problem in complex case management. Of the ten non-Orange County judges, all either agreed or strongly agreed with the statement that too many judges are involved in the pre-trial management of complex litigation. However, the Orange County judges, reflecting their experience with a single judge assignment system, disagreed strongly with the statement that too many judges were involved in complex cases.

[33] Issues associated with the master calendar system did not, for the most part, apply to the Orange County Superior Court, which instituted a single assignment complex court panel in 1991. For this reason, Orange County has been analyzed separately in the section dealing with the general opinions of attorneys and judges. In addition, despite the prevalence of a master calendar system, some complex cases were assigned to a single judge in the non-Orange county trial courts. In order to take into account instances where complex cases were assigned to one judge, questions about recently litigated cases have been separated into two sets: those whose cases were assigned to one judge and those whose cases were managed under a master calendar system. This section also distinguishes general from case specific opinions where appropriate.

Similarly, the majority of attorneys outside of Orange County thought that the master calendar system presented serious problems for competent complex case management. Nearly 62% of the interviewed attorneys either agreed or strongly agreed with the statement that too many judges were drawn into the pre-trial aspects of complex litigation. Some attorneys argued that this system forces the parties to educate new judges about a case's particulars throughout the lifetime of the case, needlessly prolonging complex cases. Other attorneys stated that the master calendar system brought about inconsistencies, disorganization, and confusion in the processing of complex cases. One attorney described the system as an "inane" way to process complex cases.

Not all attorneys outside Orange County, however, felt negatively about the master calendar system. Some commented that their cases were so complicated that it did not matter whether one or several judges handled the case. Other attorneys stated that a master calendar system sometimes worked to their advantage because eventually they would be assigned a judge better qualified at handling complex cases. This is perhaps a cynical view that reiterates a general consensus that most civil division judges are not particularly well-qualified to manage complex litigation, so random assignment to multiple judges throughout the pendency of the case can only improve the odds of appearing before a qualified judge at least once.

Among the attorneys in Orange County, most expressed approval for the Orange County's system of single assignment. One attorney called the Superior Court of Orange County a "gem" and contrasted it to Los Angeles where judges often allow attorneys to "churn cases" and keep them "going in all directions." Another Orange County attorney commented that cases litigated in Orange County were treated as the federal courts handle them. Seventy-two percent (72%) of the Orange County attorneys disagreed with the statement that too many judges were involved in complex litigation.

Another major criticism of the master calendar system by judges and attorneys was that it interferes with the ability of judges to engage in substantial pretrial management and supervision of complex cases. Among the non-Orange County judges, most believed that judges generally did not spend nearly enough time on complex case management before implementation of the pilot program. The civil calendars, which generally consisted of 300 to 400 general civil cases, precluded judges from spending significant amounts of time on complex litigation. Indeed, because accountability for case management is diffused among multiple judges in a master calendar system, judges had little incentive to become involved in pretrial activities beyond those specifically requested by the parties (e.g., discovery motions).

As an indicator of the comparative benefits of an individual calendar system, the judges in the Superior Court of Orange County had more positive views on the levels of judicial involvement. The judges in Orange County commented that they had the time and resources to give these cases sufficient attention. But one of the judges argued that the amount of judicial involvement in pretrial management was related more to the type of case than to overwhelming caseloads or general lack of resources. According to this judge, construction defect cases require little attention because the attorneys who handle these types of cases generally have been working with each other for an extended period of time. In other types of complex cases – business litigation, for example – the attorneys

may not have known or worked with each other previously, necessitating more judicial involvement and supervision.

In both rounds of interviews, attorneys were asked to comment about several aspects of judicial involvement in cases that they had recently litigated, such as status conferences, court accessibility, and judicial enforcement of established case management deadlines. In the first round of interviews, attorneys whose cases were managed under a master calendar system expressed neutral or negative views regarding the levels of judicial involvement for each of these components.[34] Only 27% indicated that judges frequently held status conferences to keep up with these cases, while the remaining attorneys stated that judges would sometimes (40%) or never (33%) hold status conferences.

Attorneys in the second round of interviews, in contrast, reported much higher levels of judicial supervision of complex cases. These attorneys had cases recently resolved through the pilot program. All but two of the attorneys indicated having status conferences at least once every four months, and all reported having at least one status conference at some time during the pendency of the case. Half had conferences every three months, and over one-quarter (28%) had conferences every two months. Another 13% had status conferences on a monthly basis.

Similar contrasts could be found in attorney views about the degree of court accessibility in the first round and second round interviews. In the first round of interviews, slightly over half (53%) reported that the courts were not accessible in complex cases that they had recently litigated. Among the remaining attorneys, only 18% reported that courts were regularly accessible and 23% indicated that they were somewhat accessible. Among attorneys in the second round of interviews, over 90% reported that the judge was accessible and helpful, with 76% indicating that the judges were very accessible and helpful. Only two attorneys reported that the judge was not very accessible and helpful. When asked whether the judge required compliance with case management deadlines, over half (53%) of the attorneys from the first round of interviews claimed that the judges rarely if ever enforced case management deadlines compared to only 12% of attorneys in the second round of interviews.

During the preliminary interviews,[35] the master calendar system – and, to a lesser extent, the individual calendar system – was faulted for assigning complex case responsibility to judges who lack expertise in substantive law and case management techniques. Moreover, many lawyers criticized judges for lacking interest in business or commercial litigation and for being unwilling to spend the necessary time and attention on complex cases. In the first round of interviews, attorneys were asked to give their

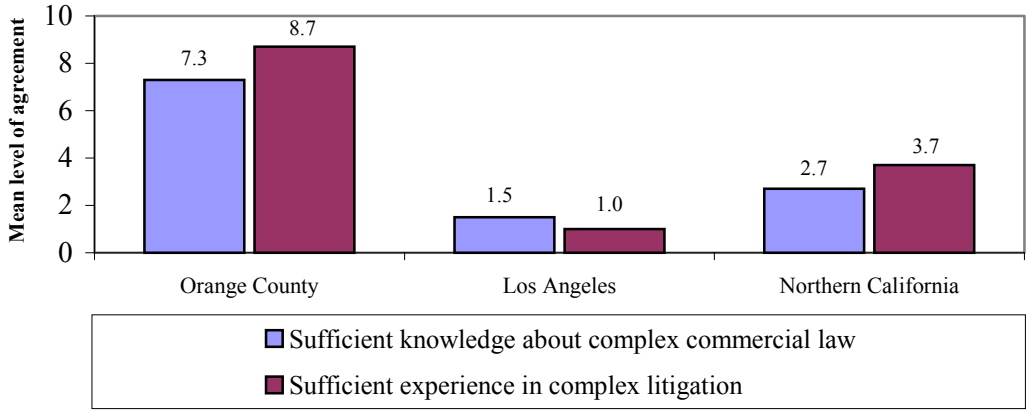
[34] In comparison, attorneys in the first round of interviews whose cases were assigned to a single judge for pretrial management had more positive views about the level of judicial involvement. Ninety percent (90%) of the attorneys reported that the judge regularly (45%) or sometimes (45%) held status conferences, and only 11% said that status conferences were never held. Similar reports were given about court accessibility. Over half reported that the courts were very accessible (51%) and that the judge enforced case management deadlines (55%).

[35] Recall that the NCSC conducted a number of preliminary interviews to develop the protocols for the first round of interviews.

opinions on the matter of judicial competency in complex litigation in their respective courts. The pilot program judges were also asked to assess the level of competence in complex case management of their judicial colleagues in their respective jurisdictions.

There was a striking difference of opinion between the Orange County judges and non-Orange County judges, due presumably to the different calendar systems for complex litigation. The Orange County judges strongly agreed that their judicial colleagues had sufficient knowledge about complex commercial law and sufficient experience in complex litigation, while the Los Angeles and northern California judges disagreed.[36] See Figure 3.1.[37] Although attorney opinions on this topic also varied a great deal, the geographic difference was much less dramatic. See Figure 3.2. In fact, there was no significant difference in attorney opinions with respect to judges' substantive knowledge and a much less pronounced difference with respect to judges' experience in complex case management.[38]

Figure 3.1: Judges' Assessment of Judicial Competence in Complex Litigation

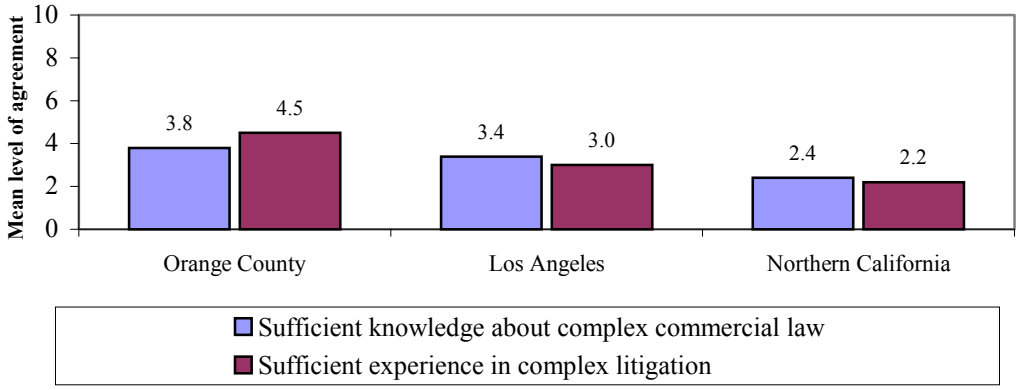


[36] It is not clear whether the Orange County judges were rating all Superior Court judges or only those assigned the complex litigation calendar.

[37] Knowledge of law $\underline{F}$ (2, 10) = 7.093, $\underline{p}$ = .012; Experience in complex litigation $\underline{F}$ (2, 11) = 31.167, $\underline{p}$ < .001.

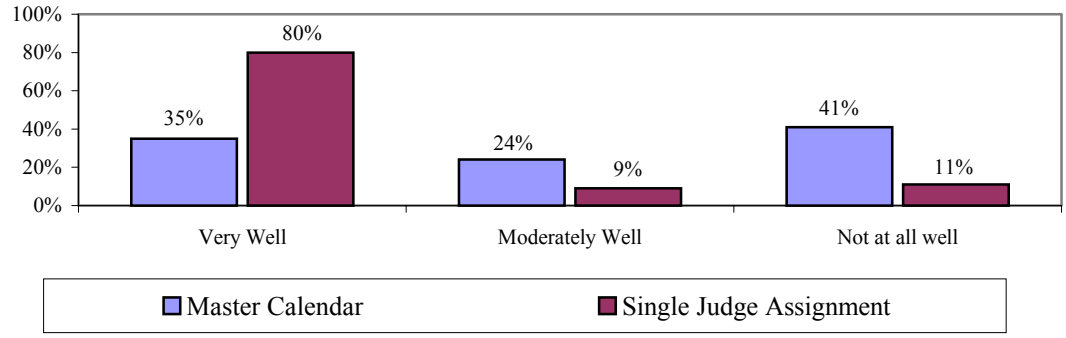
[38] Knowledge of law $\underline{F}$ (2, 60) = 1.699, $\underline{ns}$; Experience in complex litigation $\underline{F}$ (2, 61) = 4.460, $\underline{p}$ < .016.

Figure 3.2: Attorneys' Assesment of Judicial Competence in Complex Litigation



When attorneys were asked about judicial knowledge of the facts and law in a recently litigated case, however, there was a strong correlation between attorney ratings of judicial understanding and the calendar system under which the case was managed. See Figure 3.3. For cases assigned to a single judge, the vast majority of attorneys (80%) reported that the judge understood the case very well and only 11% indicated dissatisfaction with judicial comprehension. For cases managed under a master calendar system, however, over 40% reported that the judges involved in those cases had little or no understanding and only a third reported good judicial comprehension of the case.

Figure 3.3: Attorney Ratings: How well did the judge(s) understand the case?



Did implementation of the pilot program continue the high regard for judicial competence that was found for cases assigned to an individual calendar? The answer is a resounding "yes". In the second round of interviews, 95% of attorneys rated judicial understanding of the issues as well, and 80% rated it very well. In fact, only two attorneys rated judicial competence as average or lower. There was no appreciable

difference among the sites for this measure.[39] The judge's prior case experience was the reason most commonly cited by attorneys for these ratings. Another 11% credited the fact that the judge had sufficient time to manage the case, which in turn provided opportunities for the pilot judges to focus the parties on key issues in dispute. For example, 88% of the attorneys reported that the judge was helpful with clarifying the issues of the case, and 76% said the judge was very helpful.

Delay in case processing and resolution was reported as a serious problem in complex litigation in the first round of interviews. Use of a master calendar system and over-reliance on referees were cited as the most prominent factors contributing to delay in complex cases. Judges and attorneys reported that as a result of the referee appointment system, judges often gave their complex cases less attention and rarely attempted to impose tight deadlines or manage these cases in a way that discouraged delay. Instead of closely supervising these cases, judges were reported to delegate case management duties to referees. Referees were reported to have little incentive to handle cases expeditiously because their compensation was based on the amount of time they spend managing the parties through discovery. Furthermore, referees could not afford to alienate the parties by appearing to favor either side. These factors combine to produce significant delay, and it was reportedly not uncommon for cases to languish for years before finally being resolved.

Delay is also prevalent when complex cases reach the trial stage. A sizable number of attorneys (38%) indicated that their most recently litigated complex case went to trial, and delay was an issue in 44% of these cases.[40] According to attorneys in the first round of interviews, many judges fail to supervise and adequately tackle complicated legal issues before trial and these unresolved legal and factual issues cause significant postponements. One attorney remarked about a judge who put off resolving issues until the case actually went to trial. This attorney claimed that the "judge literally went into the case blind" and had to delay the case on numerous occasions in order to resolve a variety of legal issues. Other attorneys complained about the postponements arising from evidentiary issues that should have been decided before trial.

In contrast to attorneys in the first round interviews, those that participated in the second round of interviews overwhelmingly (97%) reported that the case was managed expeditiously, and apparently without sacrificing time for conducting meaningful discovery. Interestingly, the attorneys were split in terms the degree of judicial involvement in pilot program cases compared to complex cases not assigned to the pilot program. Just over half (53%) said there was more judicial involvement in pilot program cases, but another 43% said it was about the same as other cases. One respondent thought there was less judicial involvement in his pilot program case that in non-program cases.

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[39] Chi-Square (d.f. 4) = 6.531, *ns*.

[40] The proportion of attorneys who reported trial experience is extremely high given the low trial rates in civil litigation. Presumably this occurred because these attorneys were initially identified by the pilot judges as those who were known to have substantial experience in complex litigation. It is reasonable to assume that the pilot judges identified those attorneys with whom they had the most interaction in complex cases – namely, those whose cases proceeded to trial.

The Role of Referees in Complex Litigation

Another area of concern identified in the first round of interviews was the role of referees in complex litigation. Some judges and attorneys thought highly of the referees, while others possessed a dim view.

Judicial preferences and case type influenced the utilization of referees among the pilot judges in the first round of interviews. Some judges tended to appoint referees in a large proportion of their complex cases, while others used them sparingly. Several of the pilot judges indicated that referee use depended upon the case type (e.g., more frequently in construction defect cases, but rarely in eminent domain or trade secrets cases). The role of the referee, according to the pilot judges, was to oversee discovery and manage the routine aspects of complex case management. Referees also helped judges resolve technical issues in construction defect cases. Many construction defect cases involved engineering issues dealing with building quality, and referees were often needed to help the court decide these matters effectively.

Another possible difference in judges' reliance on referees may have been individual preferences for engaging in detailed supervision of pretrial case management. Although the first-round interview questions did not specifically focus on this topic, there was a clear difference of opinion among many of the judges interviewed concerning their interest and willingness to become involved in resolving discovery disputes or in organizing large volumes of evidence and testimony. Some judges expressed the belief that these types of activities were quintessentially judicial in nature and should not be delegated. Others believed that detailed case management was best left to the parties with the assistance of a referee.

The judges in the first-round of interviews held a variety of opinions about referees. Some judges thought that referees brought an important level of management and knowledge expertise to complex case litigation. One judge commented that their court was "very lucky" to have referees with the knowledge and capability to help in the management of complex cases. Others argued that referees were crucial in preventing the court from getting too involved in time-consuming discovery disputes. But other, judges expressed reservations about employing referees. For example, they objected to the delay associated with using referees. Nearly one-third of the judges thought that referees lacked incentives to encourage early case resolution. They specifically cited referee pay structure, in which compensation is based on the amount of time spent working on a case, as an incentive for needless delay of complex cases. The judges also cited the referees' need for maintaining the goodwill of all parties as another problem in complex litigation. If a referee ruled against one party too frequently, that party would be unlikely to use that particular referee in the future. According to the judges, fear of losing future business often resulted in drawn-out discovery and a propensity to shy away from immediate resolution of otherwise solvable disputes.

Finally, some judges indicated that they did not often have time to adequately supervise the referee's work. Approximately two-thirds of the judges agreed with the following statement: "Some judges lack the time and resources to adequately supervise the work of referees." Lastly, judges expressed concerns about delegating what they considered a public responsibility into the private arena.

The attorneys in the first round of interviews indicated that referees were used frequently in complex cases they handled. Approximately two-thirds of the attorneys specified that a referee was assigned in complex cases they had recently litigated. According to the attorneys, the parties made the referee selection in 80% of the complex caseloads. A minority of complex cases involved referees chosen by the judge from a list of names submitted by the parties. Only on a very few occasions did the judge choose a referee without input from the parties involved in the case. Referees tended to manage only discovery or discovery and mediation. There were few instances in which a referee was appointed only to mediate a case.

The attorneys in the first round of interviews likewise held a range of differing views regarding the role for referees. They claimed a variety of benefits from utilizing referees, one of the most important of which was the time referees are able to devote to complex case discovery. According to the attorneys, complex cases are often characterized by a large amount of detailed discovery that courts simply do not have time to oversee. The attorneys argued that referees are advantageous because they have the "time, motivation, and resources" to delve into the "minutia" of complex case discovery. The attorneys also commented that the informal and expeditious nature of referee oversight provides another advantage for using these private judges. Finally, many attorneys claimed that referees bring a high degree of informality to discovery disputes; they often settle conflicts between parties over the phone and they usually are amenable to hearing discovery conflicts without the need for extended notice. In contrast, discovery disputes brought before the court require more extensive briefing and usually are not heard until several months after filing. Several attorneys mentioned that referees are also sought for their expertise in insurance coverage and construction defect issues. Lastly, some attorneys argued that referees played a key role in bringing complex cases to settlement. The referees had the time and resources to engage in settlement options that the trial judges lacked.

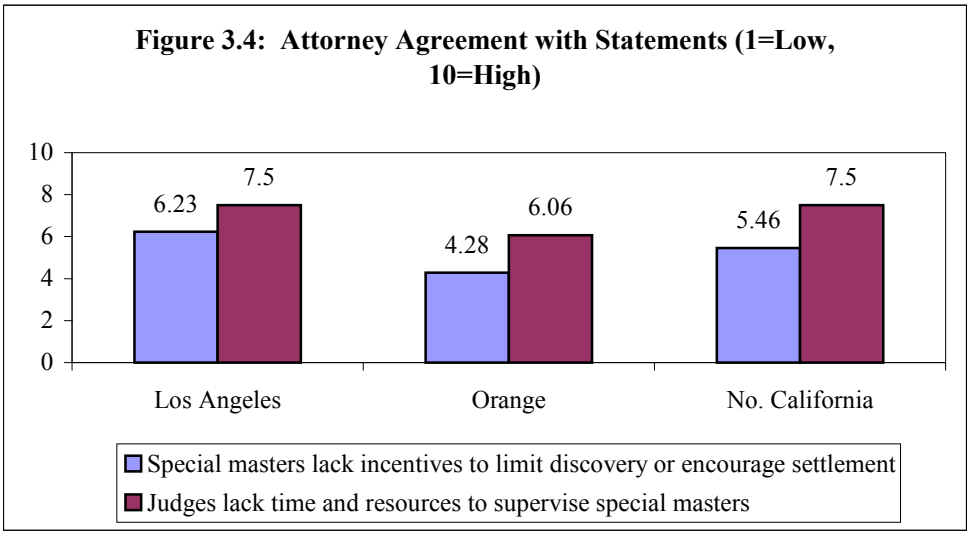
The attorneys also expressed a variety of reservations about referees. One prominent complaint involved the amount of time referees spend resolving discovery and other pretrial related disputes. Almost half (44%) of the attorneys thought that referees lack incentives to limit discovery or to encourage early case settlement. According to one attorney, it was not uncommon for referees to prolong pretrial proceedings needlessly so that hearings, which normally took half an hour, would last up to 4 or 5 hours. The attorneys cited the referee compensation system as a key factor contributing to this pretrial delay problem. Another issue concerned the inclination among many referees to "split the baby", a phrase describing occasions when a referee refuses to consistently rule in a party's favor, even when one party acts unreasonably or is legally wrong. Rather than doing so, referees were reported to issue favorable findings for one party and then rule for the other party on the next occasion. Another attorney claimed that referees would "split the difference" –making compromise rulings that favored neither party – as a way to maintain good relations with both parties to insure future business.

Attorneys also claimed that over-reliance on referees contributes to the lack of judicial involvement in complex cases. Seventy-one percent of the attorneys indicated that judges did not have the time or resources to adequately supervise the work of referees. The attorneys commented that this situation often results in judges who lack any

understanding of the case and who are unable to impose their own decisions on these cases. A final cited drawback was the expense of employing referees. Special masters are expensive; according to some attorneys, it is common to pay referees $300-$400 an hour.

There were some site differences in attorney views of the use of referees, with attorneys in Orange County having somewhat more favorable views than in the other sites. See Figure 3.4. Attorneys practicing in Los Angeles and in the four Northern California sites were more likely to agree with statements that referees lack incentives to limit discovery and encourage settlement than attorneys practicing in Orange County.[41] Attorneys in all jurisdictions agreed that judges lack the time and resources to supervise referees effectively, although this was not quite as pronounced in Orange County compared to the other sites. Attitudes toward the use of referees in complex litigation may be a reflection of local legal culture. It is also likely to be a byproduct of the master calendar system that would encourage excessive or inappropriate use of referees in certain types of cases. That is, judges may be more inclined to appoint a referee to manage discovery and other pretrial matters to compensate for the relative lack of judicial oversight that is possible in the framework of a master calendar system. In contrast, an individual calendar system provides a framework in which the assistance of a referee may be less necessary and the activities of the referee can be more closely supervised.

Figure 3.4: Attorney Agreement with Statements (1=Low, 10=High)



In the second round of interviews, attorneys reported a decrease in the proportion of cases for which referees were appointed, although these cases still comprised more than half (53%) of the total sample. Moreover, these appointments occurred exclusively in the Orange and Contra Costa County sites.[42] In two-thirds of these cases (63%), the

[41] $F(2, 75) = 3.083$, $p = .052$.

[42] This was consistent with the data collected in the empirical examination. *See* Part 4. Note, however, that only four of the pilot sites were represented in the second round of attorney interviews, and in two of the

role of the referee was to manage the discovery process. In the remaining third (32%), the referee oversaw settlement negotiations.

Attorneys in the second round of interviews reiterated many of the previous observations about the advantages and disadvantages of referees. Cost was the most frequently cited disadvantage (28%),[43] followed by the observation that decisions by the referee are not final and can be appealed to the judge (17%). Other reported disadvantages were that the referees are too busy and cause delays, that people with the authority to settle the case do not always attend settlement negotiations because the judge is not there (6%), that the referee does not enforce deadlines (6%), and that referees take more time than a judge (6%). Compared to the first round of interviews, however, these types of disadvantages seem to be a much less prevalent concern by the attorneys. It is important to note also that 28% of the attorneys reported no disadvantages to having a referee assigned to the case.

Disadvantages notwithstanding, a substantial majority (72%) of the attorneys felt that the appointment of a referee was appropriate and rated their satisfaction with the referee at an 8 or higher on a 10-point scale. See Table 3.3.[44] Only two reported ratings at a 5 or below. These high ranks may be a reflection of more effective judicial supervision over the activities of referees, may indicate that their use was limited to appropriate cases, or be a more general approval for the use of referees in complex cases in Orange and Contra Costa Counties.

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sites this representation was marginal, at best. Site differences, therefore, might also be a function of the small sample size rather than an actual difference in court practices.

[43] In 79% of cases, the parties paid the referee fees, whereas in 11% of cases, the court paid for the service and the remaining 10% the services were paid by the county or were reported as being provided for free.

[44] Note that Table 3.3 excludes responses from attorneys whose cases did not involve a referee appointment as well as those that did not respond to the question.

Table 3.3:
Attorney Satisfaction with Referee

Score	N	%	Cum %
1	0	0.0%	0.0%
2	0	0.0%	0.0%
3	1	5.6%	5.6%
4	0	0.0%	5.6%
5	1	5.6%	11.1%
6	2	11.1%	22.2%
7	1	5.6%	27.8%
8	9	50.0%	77.8%
9	3	16.7%	94.4%
10	1	5.6%	100.0%
Total	18	100.0%	

Use of Alternative Dispute Resolution (ADR)

One of the most dramatic differences between complex case management under the pilot program and routine civil case management is the underlying assumption of how cases will ultimately be disposed. Routine civil litigation proceeds as if the case will ultimately go to trial, even though less than 5% of cases actually do so. In contrast, the assumption in the pilot program is that cases will eventually settle. As a consequence, all types of alternative dispute resolution are considered an integral tool of complex case management. In the preliminary interviews, the courts were criticized for repeatedly sending complex cases to alternative dispute resolution, even when doing so is unlikely to produce significant results.[45] In the first round of interviews, nearly two-thirds of the judges and over half the attorneys (57%) agreed that courts overuse alternative dispute resolution to avoid trials in general. But a different picture emerged when the judges and attorneys were asked about their own practices. Most of the pilot judges indicated that alternative dispute resolution is essential for case settlement. Attorneys, too, thought that it is a key component in their complex casework. Seventy-two percent (72%) of the attorneys stated that they had used alternative dispute resolution in their recently litigated complex cases, and 74% thought that it was helpful in getting those cases to reach settlement. In the second round of interviews, 28% of attorneys reported that some type of alternative dispute resolution was ordered in their cases. Over 70% thought the process was helpful with 42% reporting that it was very helpful. Only one respondent thought it was not helpful and another was indifferent.

[45] This was particularly a problem under the master calendar system where significant disruptions would occur in trial calendars if a complex case actually went to trial.

Attorney Comparisons of Case Processing Characteristics

In addition to comparing attorney responses in the first and second rounds of interviews, the NCSC also asked attorneys in the second round of interviews to comment on their experience with cases in the pilot program compared to recent complex cases that were not assigned to the pilot program. In general, responses to these questions were mixed at every stage of the litigation process. See Table 3.4. Although only a handful of attorneys reported that cases assigned to the pilot program were managed less efficiently than cases assigned to non-pilot courts, nearly two-thirds (63%) did not report an appreciable difference.

Table 3.4:
Compared to non-pilot cases, attorneys rated cases assigned to pilot program as…

Trial Stage	N	More efficient	Same	Less efficient
Pleadings	33	30%	61%	6%
Settlement Negotiations	30	33%	57%	10%
Trial	6	67%	17%	17%
Overall Assessment	**32**	**31%**	**63%**	**6%**

The attorney assessments of discovery illustrate some of the nuances involved in these determinations. The timeframe for discovery was 1 to 2 years in most cases (37%) and was less than 1 year in another 26% of cases. Attorneys reported that the pilot judge used the statutorily set time frame in 15% of cases, did not set a specific time in 15% of cases, and consulted with the attorneys to set the time frame in 4% of cases. All of the respondents said the discovery time frame was adequate, accurate, and helpful, and almost all (97%) said the information gleaned from discovery was sufficient to make informed decisions about settlement alternatives. When asked to describe what the pilot program judge did differently to facilitate discovery, the most common response (39%) was "nothing." However, 19% said the judge was more involved in the process, and another 15% said the judge set a discovery plan. See Table 3.5.

Table 3.5:

Compared to non-pilot cases, what did the judge do differently to facilitate the discovery process?

	N	%
Nothing	10	38.5
Was more involved	5	19.2
Set a discovery plan	4	15.4
Appointed referee/discovery referee	3	11.5
Did not micromanage the case	2	7.7
Was more lenient with deadlines	1	3.8
Made advisory rulings early in the process	1	3.8
Total	26	100.0

Nevertheless, the attorneys were divided on their ratings of the case management techniques employed during discovery. 70% said the case management techniques expedited a resolution and 67% said they improved quality, but only half said they reduced costs.

Conclusions from Interviews

In the first round of interviews with attorneys and judges, two key areas emerged as crucial to understanding the problems associated with complex case processing in California prior to implementation of the pilot program. The first was the master calendar system, which was criticized for involving too many judges with too little experience in the pretrial phase of complex case management, thus introducing unpredictability in decision making and diffusing judicial accountability for effective case management. Attorneys who routinely handled complex cases in individual calendar courts had remarkably more positive responses to all of the questions in the first round of interviews.

The second key area of concern raised in the first round of interviews involved the use of referees to manage discovery and other pretrial matters. According to the respondents, compensation structure for referees contributed substantially to case delay because it was believed to encourage masters to spend inordinate amounts of time on various pretrial matters at hourly rates of $300 and higher. While many respondents expressed reservations about referees, others thought they provided a crucial component to discovery management – namely, the time and expertise to manage the minutia of complex case discovery and an informal means to resolve discovery and other pretrial disputes.

The second round of interviews revealed that virtually all of the issues raised by the master calendar system were addressed satisfactorily by the pilot program. Cases

assigned to the pilot program received individual attention from judges who are, by all accounts, experienced, knowledgeable, and genuinely interested in complex litigation. Moreover, these judges have a caseload that is sufficiently reduced to permit them the relative luxury to engage in substantial supervision and involvement in pretrial case management activities. The overwhelming consensus of attorneys in the second round of interviews was that the pilot judges understood the legal and evidentiary issues, set reasonable time limits on discovery, were accessible and helpful in keeping the cases moving forward toward resolution, enforced case deadlines, and managed the cases expeditiously.

With respect to issues concerning excessive or inappropriate use of referees, there was also improvement over the first round of interviews. The proportion of attorneys reporting the use of a referee reduced substantially from 80% in the first round interviews to 53% in the second round interviews. Moreover, the general consensus was that appointment of a referee was appropriate, and the participation of a referee did not tend to diminish the effectiveness of judicial case management. Methodological concerns suggest caution in relying too heavily on these findings, however. The sample is fairly small and a significant proportion of attorneys participating in the second round interviews were from Orange County, where attorney views of referees were generally more favorable than in other jurisdictions. See Appendix A.

Attorneys in the second round of interviews also reported fairly high ratings for judicial case management techniques. Curiously, only about half of these attorneys reported that specific aspects of case processing were significantly improved compared to complex cases assigned to non-pilot courts. Again, the apparent improvement may be a function of the change to an individual calendar system under the supervision of a judge experienced in complex litigation management, rather than an inherent improvement in case management techniques. Part 4 turns to the question of whether it is possible to discern an improvement in case processing through empirical rather than subjective measures.

PART 4 – EMPIRICAL EXAMINATION OF CASE CHARACTERISTICS IN THE COMPLEX CIVIL LITIGATION PILOT PROGRAM

The final methodological approach employed in this evaluation was an empirical examination of key case management characteristics for complex cases assigned to the pilot program that was compared to complex cases managed by non-pilot program courts. To conduct this portion of the evaluation, the NCSC analyzed data that were collected by the pilot program courts and by the California Administrative Office of the Courts. See Appendix C for the data collection instruments. Data were collected on the pilot program cases from August 2000 through December 2001. The pilot program courts were instructed to complete Data Form 1 for every case that was assigned to the pilot program within 30 days of assignment. Data Form 1 documented basic case information such as case number, the judge to which the case was assigned, the original filing date (if known), the method of assignment to the pilot program (new case, retained by the pilot judge, transferred from a non-pilot judge), the assignment date to the pilot program, the case type, indicia from the Civil Case Cover Sheet about its anticipated level of complexity, and whether the case had been officially designated as complex.

If the assigned case was retained in the pilot program – that is, a subsequent review of the case did not indicate that the case should be transferred to a non-pilot court, the pilot program courts were instructed to complete Data Form 2 within 30 days of the initial case management conference. Data Form 2 documented various case management procedures employed by the pilot courts, such as the existence of related cases, case coordination procedures, the appointment of lead counsel in cases with large numbers of attorneys representing the parties, the appointment of referees for discovery, mediation, or settlement purposes, and the number of named parties to the case at that time.

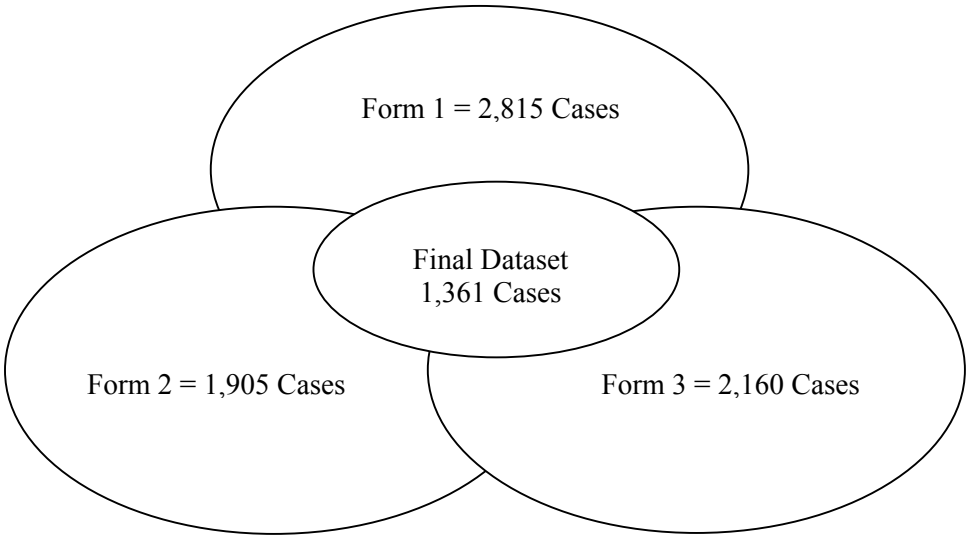
Thereafter, the pilot program courts were instructed to complete Data Form 3 on a monthly basis until the case was completely disposed. Data Form 3 served as a monthly progress report, documenting the current stage of litigation (e.g., pleadings, discovery, settlement negotiations, pretrial, trial, post-verdict/post-judgment), the number and nature of various "case events" (e.g., case management conferences, status conferences, hearings, trials), the number and nature of formal dispositions in the case (e.g., settlements, voluntary or involuntary dismissals, summary judgments, default judgments, jury verdicts and judgments), and the effect of those dispositions on the number of parties. If no Data Form 3 was received for a case, the NCSC evaluation team assumed that no official action in the case took place during that month.

Over the course of the evaluation period, the NCSC evaluation team received 2,815 Data Form 1s, 1,905 Data Form 2s, and 6,340 Data Form 3s from 2,160 individual cases.[46] The data from the three types of data instruments were aggregated into a single database for analysis purposes, which consisted of data on 1,361 cases in which the pilot

[46] It was clear from the report dates recorded on the data collection forms and by the number of forms received by the NCSC that many of the pilot courts fell behind on their data collection activities over the course of the evaluation period, which became particularly problematic in calculating filing-to-disposition times. A thorough discussion of the complications related to data collection is included in Appendix A.

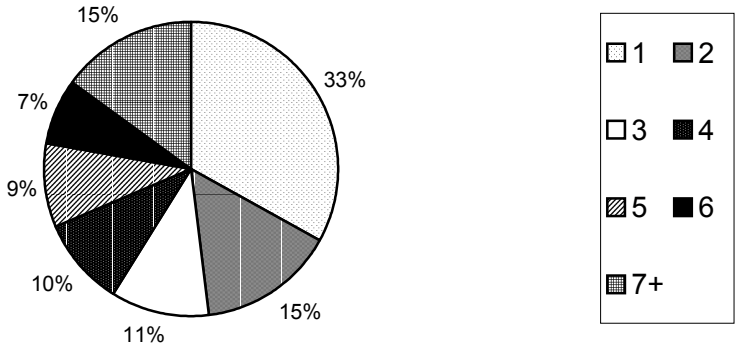
program court provided a Data Form 1, a Data Form 2 and at least one Data Form 3. Figure 4.1 illustrates the final composition of the pilot dataset.

Figure 4.1: Composition of Final Pilot Project Data Set



Each case in the final dataset had a minimum of one Data Form 3, but the majority of cases had at least two, and over 15% reported seven or more. See Figure 4.2. The most Data Form 3s received on any one case was 22.

Figure 4.2: Pilot Data: Frequency of Data Form 3s Per Case



Based on average caseload estimates reported by court officials,[47] the total average caseload should have consisted of approximately 1,020 to 1,290 cases. Given a margin for clearance rates as disposed cases are removed and new cases are assigned to the pilot program,[48] the NCSC anticipated that the dataset would consist of 1,700 to 2,100 cases. The number of cases per site indicates that several of the pilot courts failed to collect information on a sizeable portion of their caseload.[49]

[47] *See* Part 2.

[48] Assuming that the average assignment-to-disposition time for these cases is 24 months (a relatively aggressive estimate), the pilot program courts would have cleared between 43 and 54 cases per month over the 16-month data collection period.

[49] Recall from Part 2 that court officials estimated that the average number of active cases assigned to the Pilot Program at any given time was 100 cases in San Francisco, and between 90 and 120 cases in Alameda.

Table 4.1:
Distribution of Pilot Program Cases, by Site

County	n	%
Los Angeles*	356	26.2
Orange**	593	43.6
Contra Costa	224	16.5
Santa Clara	115	8.4
Alameda	31	2.3
San Francisco	42	3.1
TOTAL	**1,361**	**100**

* Based on data from 6 judges in pilot program
** Based on data from 4 judges in pilot program

To compile a comparable dataset about complex cases from non-pilot courts, the NCSC proposed a weighted sampling approach in which data from complex cases were collected in approximately the same geographic area and with the same case type distribution that was found in early analyses of the pilot program data. The NCSC also wanted to capture complex cases from both individual calendar and master calendar courts. Both the NCSC and the California Administrative Office of the Courts recognized from the beginning of the evaluation that developing a baseline for this type of evaluation would be extremely difficult in terms of securing a comparable sample of complex cases. In particular, it was anticipated that it would be difficult to identify complex cases in non-pilot courts using the standard case management systems currently in place in the superior courts.

The Superior Court of San Diego County was specifically targeted as a potential source of baseline data because it operates a complex litigation docket that resembles the pilot program in place in Orange County, ensuring that a sufficient volume of complex cases would be easy to identify. The AOC staff surveyed other counties in California to determine if they could contribute complex cases to the baseline and if those cases could be easily identified (e.g., by case type or because of specialized treatment by the court). Finally, the NCSC took a random sample of non-pilot cases from the AOC-maintained list of coordinated cases, which by definition are complex cases sharing a common question of law or fact.

These efforts yielded a baseline dataset of 137 complex cases from 19 separate counties. Almost half of the cases were drawn from the Superior Court of San Diego County (47.4%). Non-pilot program cases from the Superior Court of Alameda County accounted for 16.8% of the sample. The remaining counties each contributed fewer than 10 cases each to the dataset.

The baseline dataset consisted of information extracted from case records designed to mirror the type of data elements provided in the pilot dataset. Because there was only one opportunity to extract data (instead of the monthly progress reports in the

pilot program dataset), the baseline data collection form captured case events and interim and final dispositions from the initial filing date through June 2002.

In addition to differences in the geographic distribution of cases, there were also significant differences in the caseload composition of the baseline and pilot datasets. See Table 4.2. Nearly three-quarters (72.3%) of the baseline dataset consists of case types defined as "provisionally complex,"[50] but only half of the cases in the pilot program dataset (50.8%) fell into this category. The pilot program dataset has a much greater concentration of non-provisionally complex cases such as breach of contract/warranty cases, business tort, eminent domain, and other civil case types.[51]

[50] Provisionally complex cases under Rule 1800 (b) include antitrust or trade regulation claims; construction defect claims involving many parties or structures; securities claims or investment losses involving many parties; environmental or toxic tort claims involving many parties; claims involving mass torts; claims involving class actions; and insurance coverage claims arising out of any of these claims. CAL. RULES OF COURT, Rule 1800 (b).

[51] As discussed in Part 1, different types of cases involve different dimensions of complexity and may require different types of case management techniques for effective judicial oversight and management. Nevertheless, it is not clear that case types defined as provisionally complex are inherently more complex and difficult to manage than other types of complex cases. Consequently, the results of statistical comparisons of the baseline and pilot program datasets should be interpreted cautiously.

Table 4.2:
Case Type Distribution

Provisionally Complex Cases	Baseline Cases		Pilot Program Cases	
	n	**%**	**n**	**%**
Construction defect	67	48.9	358	26.3
Class action	25	18.2	223	16.4
Toxic tort/Environmental	2	1.5	47	3.5
Insurance claims rising from complex cases	0	0.0	30	2.2
Securities litigation	4	2.9	16	1.2
Mass torts (asbestos)	1	0.7	10	0.7
Antitrust/Trade regulation	0	0.0	7	0.5
Subtotal -- Provisionally Complex Cases	**99**	**72.3**	**691**	**50.8**
Non-provisionally Complex Cases				
Breach of contract/warranty	9	6.6	147	10.8
Business tort	4	2.9	78	5.7
Insurance coverage	1	0.7	59	4.3
Eminent domain	0	0.0	55	4.0
Other non-PI/PD/WD	1	0.7	30	2.2
Product liability	2	1.5	25	1.8
Fraud	2	1.5	23	1.7
Other real property	0	0.0	22	1.6
Other PI/PD/WD	6	4.4	18	1.3
Professional negligence	2	1.5	15	1.1
Writ of mandamus	0	0.0	13	1.0
Medical malpractice	3	2.2	13	1.0
All other civil	8	5.8	162	11.9
Unknown	0	0.0	10	0.7
Subtotal -- Non-Provisionally Complex Cases	**38**	**27.7**	**670**	**49.2**
TOTAL -- ALL CASES	**137**	**100**	**1361**	**100**

One of the original goals in establishing the pilot program was to manage all forms of complex litigation, not merely commercial litigation.[52] Looking at the breakdown of case types, it appears that the pilot program has also been successful at meeting this objective. Although one-quarter of the cases can be fairly characterized as commercial litigation (e.g., securities, antitrust, breach of contract/warranty, and business tort), over one-third (37.4%) of the cases consist of complex tort actions,[53] and the

[52] *See* Part 1.

[53] Complex tort cases include construction defect, toxic tort/environmental, mass torts, product liability, fraud, medical malpractice, professional negligence, and other personal injury/personal damage/wrongful death cases.

remainder could fall into either category. In short, the pilot program has not become a "boutique" court reserved for the business community, but is available to all litigants who meet the program's general eligibility criteria regarding complexity.

Complex Cases Assigned to the Pilot Program

What kinds of cases were ultimately assigned to and accepted into the pilot program? As a general rule, it appears that the various screening procedures employed by the pilot program courts were reasonably effective at distinguishing complex cases from non-complex cases. Half of the final dataset consisted of provisionally complex cases, which by definition are presumed to be complex unless a judge determines otherwise after reviewing the initial pleadings. But even by other recognized measures of complexity, the cases that were retained in the pilot program were fairly complex. For example, over 80% of the cases in the pilot program dataset had been formally determined to be complex. See Table 4.3. Only eight cases were retained in the pilot program despite a formal determination that they were not complex.

Table 4.3
Complexity Determination

		Cases Determined Complex	Cases Determined Not Complex	Complexity Determination Unknown	Total
Provisionally Complex	Yes	551	4	124	679
	No	578	4	100	682
	Total	1,129	8	224	1,361

Moreover, compared to cases that were excluded from the dataset because of incomplete case information – that is, Data Forms 2 or 3 that were never submitted – cases in the dataset were significantly more likely to be provisionally complex under Rule 1800,[54] were more likely to be formally determined to be complex,[55] and indicated a significantly higher total number of factors related to complexity on the Civil Case Cover Sheet .[56] This suggests that many of the cases that were ultimately excluded from the dataset were determined to be not complex and were reassigned to the respective courts' civil division calendars.

A formal determination of complexity was not known for the remaining portion of the dataset ("unknown"), in all likelihood because a complexity determination hearing

[54] M (Excluded cases) = .44, M (Included cases) = .54, F (1, 2149) = 20.541, p < .001.

[55] M (Excluded cases) = .74, M (Included cases) = .99, F (1, 1515) = 135.613, p < .001.

[56] M (Excluded cases) = 2.16, M (Included cases) = 2.72, F (1, 2135) = 34.782, p < .001.

had not yet been held when this piece of information was collected. Several characteristics of those cases suggest that they were somewhat less complex than those that were officially designated as complex. For example, one characteristic of complexity is the total number of factors related to complexity – and the breakdown of those factors –indicated on the Civil Case Cover Sheet. See Table 4.4. Cases in which the complexity determination was unknown indicated fewer total factors related to complexity on the Civil Case Cover Sheet. Specifically, they were significantly less likely to involve large numbers of separately represented parties, extensive motion practice, large amounts of documentary evidence, and large numbers of witnesses. They were also marginally less likely to be provisionally complex under Rule 1800. Although there was no statistically measurable difference in the maximum number of plaintiffs, cases for which the complexity determination was unknown also had significantly fewer defendants.[57]

Table 4.4:
Indicia of Complexity

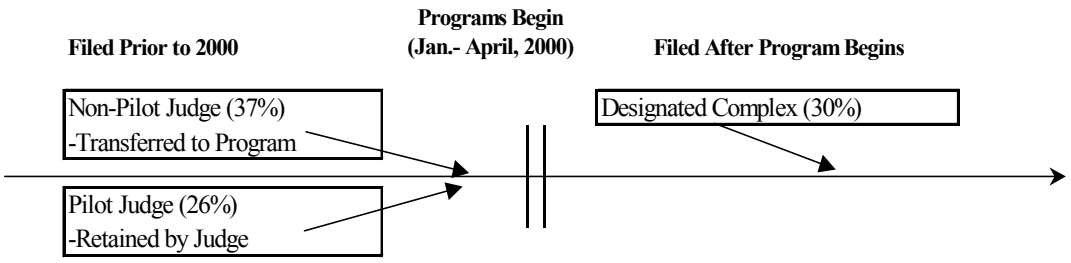
	Cases Determined to be Complex	Complexity Determination Unknown	F	p-value
Total factors related to complexity	2.86	2.28	25.477 *	0.000
Large number of separate represented parties	58%	45%	13.505 *	0.000
Extensive motion practice raising difficult issues	65%	50%	17.881 *	0.000
Substantial amount of documentary evidence	67%	57%	8.893 *	0.003
Large number of witnesses	45%	29%	18.48	0.000
Coordination and related actions	21%	23%	0.505	0.478
Substantial post-disposition judicial supervision	9%	8%	0.615	0.433
Maximum number of plaintiffs (truncated)	37.47	17.18	0.033	0.856
Maximum number of defendants (truncated)	17.26	11.689	5.478 *	0.020
Provisional complexity	51%	45%	3.213 **	0.073

*Significant at $\alpha = .05$
**Significant at $\alpha = .10$

One interesting feature of the pilot program caseload is how these cases were assigned to the program and the relative age of the caseload. There were three primary methods through which cases could be assigned to the pilot program in each court, which account for 92% of all cases: transfer from another civil division judge (37%), retained by the pilot judge (26%), or assigned to the program at filing (30%). See Figure 4.3.

[57] The statistics for the maximum number of plaintiffs and defendants are based on truncated samples, thus controlling for highly skewed means due to the handful of cases in which the number of plaintiffs or defendants exceeded 1,000.

Figure 4.3: Timeline for Pilot Cases



But there were significant variations among the sites, which corresponded to unique local conditions at the inception of each pilot program. See Table 4.5. Orange County, which operated a complex civil calendar before the inception of the pilot program, had the highest proportion of cases retained by the pilot judges. Los Angeles, San Francisco and Contra Costa Counties, all of which apparently had substantial complex caseloads prior to the inception of the pilot program, had the highest percentage of transferred cases from other judges from the civil divisions of their respective courts.[58]

Table 4.5:
Method of Entry to the Pilot Program, by Site

Site	n	Transfer from another judge (%)	Retained by Pilot Judge (%)	Newly assigned case (%)	Other/unknown method of entry (%)
Los Angeles	356	64.0	2.8	30.1	3.1
Orange	593	17.4	48.9	32.0	1.7
Santa Clara	31	3.2	0.0	87.1	9.7
Alameda	42	11.9	7.1	73.8	7.2
Contra Costa	224	42.4	11.6	4.9	41.1
San Francisco	115	55.7	11.3	27.0	6.0

[58] In Los Angeles, all cases except class action cases originally filed at Central Civil are technically "transferred" from other judges in the civil division insofar that those judges have the discretion to retain them for case management purposes if they so choose. For cases filed after April 1, 2000, however, the transferring judge served primarily as a screening mechanism and did not typically engage in pretrial case management activities. For the purposes of this evaluation, therefore, cases filed after April 1, 2000 that were transferred to the pilot program within 120 days of filing were coded as newly assigned cases.

The distinction among the various methods of entry to the program is important for analytical reasons. Preexisting cases that were assigned to the pilot program after its inception could have been at any stage in the litigation – pleadings, discovery, settlement negotiations, pretrial, or even post-judgment supervision – when they entered the program. The effect of the program, therefore, could be minimal or substantial depending on the amount of pretrial management that had already taken place. Similarly, most of the pilot judges received a substantially reduced caseload after the inception of the pilot program, giving them the opportunity to dedicate significantly more time and attention to their preexisting complex cases.[59] Finally, we know that the assignment policies differ somewhat from site to site.[60] Therefore, cases in some courts may experience a slight delay before substantive case management activities can typically occur.[61] All of these factors affect the relative age of the caseloads in each of the sites. See Table 4.6. Although less than 5% of the cases were more than 5 years old when the pilot program was initiated, more than half the caseload did preexist the program.

[59] Judges from the complex litigation division of the Superior Court o f Orange County, which was the precursor to the pilot program in that site, already had a reduced caseload compared to their colleagues in the civil division. That caseload does not appear to have changed substantially since the inception of the program.

[60] See Part 2.

[61] In Los Angeles, for example, the average amount of time between filing and assignment to the pilot program was 72 days. In addition, 78 cases were transferred from other civil division judges after the inception of the pilot program in Los Angeles County. On average it took 195 days – over 6 months – from the original filing date to the transfer date to the pilot program. One case took almost 16 months to transfer.

Table 4.6:
Number of Cases Filed, by Year of Filing

Year	n	%	Cumulative %	
1976	1	0.1	0.1	
1983	1	0.1	0.1	
1986	1	0.1	0.2	
1988	1	0.1	0.3	
1990	2	0.1	0.4	
1991	2	0.1	0.6	
1992	3	0.2	0.8	
1993	6	0.4	1.3	
1994	16	1.2	2.4	
1995	24	1.8	4.2	
1996	44	3.3	7.5	
1997	78	5.8	13.2	
1998	212	15.7	28.9	
1999	291	21.5	50.5	Program Inititation
2000	476	35.2	85.7	
2001	193	14.3	100.0	
Total	1,351	100.0		

Complex Civil Case Management Practices

The *Deskbook on the Management of Complex Civil Litigation*, which was originally envisioned as the primary reference guide for the pilot program, makes a number of procedural recommendations concerning judicial management of complex litigation.[62] What do the data reveal about the frequency with which those recommendations are followed?

[62] These include case management orders, initial case management conferences and subsequent status conferences, and the appointment of referees to oversee discovery. *See generally* JUDICIAL COUNCIL OF CALIFORNIA, DESKBOOK ON THE MANAGEMENT OF COMPLEX CIVIL LITIGATION §§ 2.20-2.56 (2000).

Case Management Orders

One of the most heavily emphasized recommendations in the *Deskbook on the Management of Complex Civil Litigation* is that judges develop and enter a comprehensive case management order for "the just, speedy, and economical determination of the litigation."[63] Interestingly, a case management order was only filed in 30% of the cases. As a general rule, the pilot judges appear to have reserved the use of case management orders for the more complex cases on their calendars. For example, provisionally complex cases were significantly more likely to have a case management order filed (59%) than non-provisionally complex cases (46%).[64] Also, the average number of complexity measures indicated on the Civil Case Cover Sheet was significantly larger for cases with a case management order (3.1) than those without an order (2.5).[65] This suggests that a large proportion of complex cases assigned to the pilot program do not necessarily require specialized case management procedures *per se*, but instead can be successfully managed using the established case management procedures for civil litigation with appropriate levels of judicial supervision.

Coordination and Consolidation

Another recommendation is for the formal coordination or consolidation of related cases.[66] Over one-fifth (21.4%) of the cases involved coordination or related actions, but the majority of those related cases (68.2%) were filed within the same court, making formal coordination procedures unnecessary.[67] Only 15% of those cases were actually sought to be formally coordinated under Rules 404-404.10 of the California Rules of Court. Informal coordination appears to be a common tool for the pilot judges, but it does raise a question about the suitability of existing case management technology to identify and track the progress of related cases. Anecdotal reports from the courts suggested that this was an ongoing challenge. The NCSC was unable to identify "clusters" of related cases in the dataset unless they had been formally coordinated, and so could not examine the effectiveness of the pilot program when large numbers of related cases were only informally coordinated.

Appointment of Referees

The first round of interviews[68] with judges and attorneys identified over-reliance on referees for discovery and other pretrial case management activities as a concern for both judges and lawyers. Overall, the pilot program judges appointed a referee for some

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[63] *Id.* at § 2.30[1].

[64] $F(2,1358) = 9.856$, $p < .001$.

[65] $F(2, 1358) = 17.790$, $p < .001$.

[66] Coordination can be done either formally pursuant to CAL. CODE CIV. PROC. §§ 404-404.10 or informally by agreement of the parties, counsel, and as necessary, other judges. Consolidation, in contrast, refers to the formal merging of cases into a single master case for trial purposes. DESKBOOK, *supra* note 12, at § 2.61[3][b].

[67] Other related cases were filed in Superior Court in other counties in California (6.9%), other state courts (6.8%), and other federal courts (2.7%).

[68] See discussion *supra*, at pp. 32-36.

aspect of pretrial management in 20% of the cases, usually for discovery purposes. Compared to the 80% of attorneys who reported the appointment of a referee in their complex cases in the first round of interviews, this is a significant drop in usage. Across all of the sites, pilot program judges were significantly more likely to appoint referees in provisionally complex cases (73%) compared to non-provisionally complex cases (44%)[69] and in cases exhibiting a larger average number of complexity indicators on the Civil Case Cover Sheet (3.10 compared to 2.68).[70] Construction defect cases were most likely to have a referee appointed.[71]

There were, however, striking differences across sites concerning the appointment of referees. See Table 4.7. The pilot program judges in Orange and Contra Costa Counties had the highest proportion of referee appointments, both over 25% of their cases. In contrast, the pilot program judge in San Francisco appointed referees in less than 15% of his cases, and the pilot program judges in the remaining three sites did so in less than 10% of their cases.

Table 4.7:
Cases with Referee Appointment

Site	n	%
Orange	165	27.8
Contra Costa	60	26.8
Santa Clara	2	12.2
Los Angeles	30	8.4
San Francisco	14	6.5
Alameda	2	4.8

There is some correlation, of course, between the frequency of referee appointments and the average active caseload size per judge. The delegation of certain judicial management duties can free up judges to manage a greater number of cases. But the correlation is not a perfect one. Although the pilot program in the Superior Court of Orange County had the highest average rate of referee appointments, court officials there reported that the active caseload averaged only 80 to 100 cases per judge, the second lowest among the six sites. The pilot program in the Superior Court of Santa Clara, which had the second highest average caseload, had the second lowest rate of referee

[69] F (1,1359) = 74.696, p < .001.

[70] F (1, 1359) = 15.136, p < .001.

[71] Chi Square = 242.031, p < .001.

appointments. Apparently, local court culture continues to play a major role in the referee appointment rate.

Status Conferences and Other Case Management Events

One measure of productivity that was captured in the dataset was the number of case management activities or "events" that took place during the pendency of the suit.[72] The importance of this information is rooted in the tentative hypothesis that frequent judicial involvement in case management keeps the momentum for moving through iterations of the complex civil case life cycle – discovery, settlement negotiations, and interim dispositions on discrete issues or parties – until the case is completely resolved. The NCSC expected to find a positive correlation between the number of case events, the number of interim dispositions, and the number of parties dismissed from the suit. By extension, a direct relationship between the number of case events and both the proportion of cases completely disposed and the amount of time from filing to disposition was also expected.

On a global level, the data do appear to support the theory that cases assigned to the pilot program progress steadily toward final disposition. See Table 4.8. In each monthly report, court staff indicated the current stage of litigation for the case. From this information, The NCSC expected to see the aggregate caseload move gradually from the beginning stages of litigation to more advance stages of litigation during the evaluation period, which indeed occurred. Of the 897 cases for which there is more than one Data Form 3,[73] nearly two-thirds (64.9%) reported some progress during the evaluation period. For example, of the 363 cases that began the evaluation period in the pleading phase of litigation, 286 (79%) had progressed beyond this phase by the end of the evaluation Almost one-third (32%) had completed discovery and were in the trial readiness/pretrial phase of litigation. On average, these cases progressed 1.6 phases during the evaluation period, with phases being pleadings, discovery, settlement negotiations, and post-discovery/trial readiness.

[72] Ongoing discussions with pilot judges and court staff during the evaluation period confirmed that much of the case activity that takes place in complex case management is relatively informal (e.g., telephone calls, e-mail correspondence, tentative settlement agreements concerning specific issues or parties) and may not be memorialized as part of the formal case record. These types of events, although obviously an important part of complex case management, could not be captured in the data collection instruments because the court clerks assigned to the pilot programs, who were responsible for completing the monthly data forms, often are not aware when these events occur. The NCSC strongly suspects, therefore, that the dataset significantly underreports the amount of case activity that took place during the data collection period.

[73] Two or more Data Form 3s were needed to establish any change in case status.

Table 4.8:
Case Status Progress

	Earliest Case Status Reported (% of cases)	Latest Case Status Reported (% of cases)
Pleadings	40.5	8.6
Discovery	35.3	25.0
Settlement Negotiations	15.4	19.3
Post-discovery/Trial readiness	2.9	17.8
Pretrial	3.6	16.5
Trial	1.1	1.8
Post-disposition	1.2	11.0
n=897	100.0	100.0

Within individual cases, the amount of actual case activity appears modest, with status conferences comprising the bulk of these activities. See Table 4.9. These various case events led to a total of 1,445 interim dispositions (average 1.06 per case), collectively disposing of 26,925 parties, during the evaluation period.[74] See Table 4.10.

Table 4.9:
Case Activity

	Total	Average per case
Case Management Conferences	509	1.59
Settlement Conferences	415	1.54
Status Conferences	2,247	3.05
Pretrial Conferences	135	0.83
Other Case Activity	1,291	2.71
Total Case Activity	**4,597**	**4.15**

[74] There was a marginal correlation between the total number of case events and the total number of interim dispositions. Pearson's correlation coefficient = .06, p = .052.

Table 4.10:
Interim Dispositions

	Total	Average per case	Plaintiffs Disposed	Defendants Disposed
Involuntary Dismissal	34	0.02	1,086	1,111
Voluntary Dismissal	267	0.20	1,127	1,529
Settlement	923	0.68	4,178	6,597
Default Judgment	34	0.02	25	119
Summary Judgment	69	0.05	2,067	92
Court Trial	4	0.00	11	8
Jury Trial	15	0.01	9	31
Other Disposition	99	0.07	6,152	2,783
Total Interim Dispositions	**1,445**	**1.06**	**14,655**	**12,270**

Of the 1,361 cases in the dataset, 414 (32.3%) were reported as completely disposed by the end of the evaluation period. Again, this disposition rate varied considerably from site to site. See Table 4.11. This variation is most likely related to how the majority of cases were assigned to the pilot program in each of those sites. Cases that were retained by the pilot judges had the highest disposition rate at 41.9%, cases that were transferred from other civil judges had the second highest rate at 34.2%, and newly assigned cases had the lowest rate at 24.5%.[75]

[75] Chi Square = 28.231, $p < .001$.

Table 4.11:
Disposed Cases, by Site

	Completely Disposed (%)
Contra Costa	43.2
San Francisco	37.6
Orange	34.9
Santa Clara	24.0
Los Angeles	22.0
Alameda	22.0

The average filing-to-disposition period for disposed cases was 24 months, but it should be noted that many of the pilot program cases had been filed before the inception of the pilot program and were later transferred to the pilot program from another civil division judge or were retained by the pilot program judges after the inception of the pilot program.[76] The filing-to-disposition time by itself, therefore, does not accurately capture the effect of the pilot program. From the time cases were assigned to the pilot program, disposition times range from 12 months for newly assigned cases (filing-to-disposition) to 17 months for cases retained by the pilot judges (program inception to disposition). Transferred cases fell in the middle with 15 months (transfer to disposition). This is, of course, a preliminary estimate of disposition time as only one-third of the cases were complete disposed. A longer evaluation period would be necessary to make a more reliable estimate of average filing-to-disposition times.

Comparison with Baseline Dataset

How do these various measures compare against similar measures in complex cases that were not assigned to the pilot program? The baseline dataset consisted of 137 complex cases filed in non-pilot courts. It is important to note, however, that the cases in the baseline dataset appear to be somewhat less complex along a number of different measures than the pilot program dataset. For example, the average number of reasons identified for a complexity designation was 1.95 in the baseline dataset compared to 2.14 in the pilot program dataset. Cases in the baseline dataset also had fewer parties than the pilot program dataset.[77] See Table 4.12. The baseline cases are also considerably newer

[76] Estimates of filing-to-disposition times are necessarily longer than actual disposition times due to delays in collecting a large portion of the data. See Appendix A.

[77] The data collection forms only allowed for a 3-digit number to enter the number of plaintiffs and defendants in the case. Therefore, in many cases "999" was entered. However, some court personnel hand entered the actual number in the margins of the data collection sheets (e.g., "2532" plaintiffs). To ensure

than the pilot program cases. Only 25% of the baseline cases were filed prior to 2000, compared to 50% of the pilot program cases. The oldest case in the baseline sample was filed in 1996, compared to 1976 for the pilot program dataset.

Table 4.12:
The Number of Litigants

	Baseline		Pilot Program	
	Mean (Median)	Maximum	Mean (Median)	Maximum
Plaintiffs	6.6 (1.0)	139	9.4 (2.0)	800*
Defendants	10.1 (4.0)	82	12.9 (6.0)	799*

*The maximum was 2,532 for plaintiffs and 1,000 for defendants. Any case with 999 litigants or more listed for either number of plaintiffs or defendants was not included in the numbers reported in the table.

The baseline data do not include information about filing-to-disposition periods. Moreover, the uncertainty involved in calculating these measures in the pilot program data make it inappropriate to attempt a comparison with the baseline. The comparison of baseline and pilot program case events and dispositions was also troublesome in that the baseline sample captured information for the entire lifetime of the case whereas the pilot program sample only captured information about case events and dispositions that occurred after the case was assigned to the pilot program. Nevertheless, some general conclusions can be drawn. See Table 4.13. Across all categories of case activities, the pilot program cases had significantly more case activity than in the baseline cases, especially in settlement conferences and status conferences. The suspicion that the pilot program dataset underreports the amount of actual case activity[78] that occurred makes this difference particularly remarkable.

consistency in the summary statistics, we analyzed only those cases with fewer than 999 plaintiffs or defendants. However, without discounting the cases with large numbers of litigants, there were 76 cases in the pilot program with "999" plaintiffs and 51 cases with "999" defendants. Four additional cases reported litigant numbers higher than 999, ranging from 1000 to 2532. In sum, approximately 6% of the cases involved 999 or more defendants. Approximately 4% of the cases involved 999 or more plaintiffs.

[78] See Appendix A.

Table 4.13:
Percent of Cases in which Event Occurred

	Baseline - Master Calendar		Baseline - Individual Calendar		Pilot	
	Disposed		Disposed		Disposed	
	No	Yes	No	Yes	No	Yes
Case Management Conference	50.0	42.1	95.0	82.1	72.4	79.7
Settlement Conference	6.0	11.1	12.5	14.3	66.0	87.0
Status Conference	26.0	31.6	57.5	32.1	98.3	97.4
Pretrial Conference	46.0	68.4	22.5	25.0	38.4	73.5
Other Case Activity (e.g., hearings)	76.0	78.9	77.5	35.7	94.3	98.1

Conclusions

This portion of the evaluation was the most difficult of all of the evaluation components for several reasons. One difficulty was that, other than utilizing an individual calendar for assignment of complex cases, the pilot sites were not required to implement similar procedures and practices as part of the pilot program. Each site could use its funding for a variety of purposes including increased staffing, facilities, technology, and education. See Part 2 for a description of the specific features of each site. In effect, each site implemented its own unique pilot program, making it difficult to compare aggregate case characteristics against a baseline.

A second difficulty was the very short time frame allotted for the evaluation – a total of only 33 months, with realistically less than 20 months in which to collect data. A national study of civil litigation, conducted in 1992, found that civil case with 7 or more parties[79] had an average filing-to-disposition time of 33 months, and 20% of those cases had filing-to-disposition times of more than 49 months.[80] The NCSC recognized at the very beginning of the evaluation that only a small proportion of the cases assigned to the pilot program would be completely disposed during the evaluation period, making it difficult to assess whether this commonly used measure of case management efficiency would improve compared to non-pilot complex cases.

Finally, the nature of the pilot program suggested that a more global approach to the evaluation would be more appropriate than an in-depth analysis of specific details of the pilot program. For example, the caseload composition, the level and types of complexity, the relative age of cases, and the types and frequency of case management techniques that would be employed were all unknown at the outset of the pilot program.

[79] The "Rule of 7" is an indicia of complexity used by at least one of the pilot program sites.

[80] Civil Justice Survey of State Courts, 1992 (data collected by the National Center for State Courts under a grant from the U.S. Department of Justice, Bureau of Justice Statistics, on file at the National Center for State Courts).

The Administrative Office of the Courts and the NCSC agreed at the beginning of the evaluation to focus on more general performance measures, rather than the effectiveness of specific case management practices.[81]

Nevertheless, a few conclusions can be made with reasonable certainty. First, it is apparent that the cases that were assigned to the pilot program meet the general criteria for inclusion in the program. Not only were the majority of cases formally determined to be complex, they also met the criteria for complexity along a number of different measures including provisional complexity, the number of complexity indicators on the Civil Case Cover Sheet, and the number of parties. A small proportion of cases that had not been formally determined to be complex at the time of data collection appeared to be somewhat less complex than the designated cases, but nonetheless were more complex than cases that were excluded from the dataset.

Substantial differences were noted among the sites in terms of how cases were assigned to the pilot program. The Superior Court of Orange County had the greatest proportion of cases retained by the pilot judges, which ostensibly were a remnant of that court's previous complex litigation docket. The Superior Courts in Los Angeles, San Francisco and Contra Costa had the greatest proportion of cases transferred from other civil division judges, while the majority of cases in Alameda and Santa Clara were new cases filed after the inception of the pilot program. These differences in how cases came into the pilot program have a dramatic effect on other measures of effectiveness, especially disposition rates.

The NCSC examined how closely the cases adhered to the case management recommendations outlined in the *Deskbook on the Management of Complex Civil Litigation* and found that they were followed selectively, but appropriately in most cases. A case management order was used in only one-third of the cases, but these were generally filed in more complex cases. Coordination of related cases was done informally as related cases tended to be filed in the same court, rather than in other courts, which would require more formal coordination. The rate of referee appointments appears greatly reduced from those reported during the first round of interviews, and the appointments that were made appear to be based on high levels of complexity, especially in construction defect cases. Nevertheless, there are still local variations in referee appointment rates that cannot be explained solely on objective case characteristics. The decision to appoint a referee still appears to be a feature of local court culture.

A comparison of case activity does reveal significantly greater case activity in the pilot program cases compared to baseline cases, even taking into account that the pilot program cases only include information on case events that took place during the evaluation period. It is unquestionable that the pilot program cases are subject to significantly closer judicial supervision than the baseline cases. The short time frame allotted for the evaluation and the small proportion of fully disposed cases in the dataset made it difficult to assess the overall impact of increased judicial supervision on the overall filing-to-disposition rate, but preliminary data suggest that the judicial management techniques employed by the pilot program judges significantly decrease the

[81] Geographic considerations also argued against a focus on pilot program minutiae.

amount of time needed to dispose complex cases. The Administrative Office of the Courts should continue to monitor filing-to-disposition times for cases assigned to the pilot program to verify the filing-to-disposition rate based on a larger proportion of newly filed cases, rather than on the older transferred and retained cases that made up the bulk of fully disposed cases in the evaluation dataset.

PART 5 – CONCLUSIONS AND RECOMMENDATIONS

The impetus for the creation of the pilot program began with recognition of several pervasive problems associated with the management of complex civil litigation in the superior courts throughout California. Of particular concern were courts that assigned complex cases on a master calendar system, in which judicial responsibility for case management was diffused among a relatively large number of judges. Moreover, large caseload assignments prevented judges in both individual and master calendar systems from dedicating adequate time and attention to complex cases, and few judges had sufficient training or experience in complex case management. Frequent use of court-appointed referees for discovery and settlement purposes did not provide a satisfactory remedy in most jurisdictions. There were widespread perceptions that the compensation system for referees provided perverse incentives to prolong discovery rather than seek a speedy and just resolution to complex cases. The costs associated with referee appointments, as well as the lack of effective judicial oversight of referee activities, contributed to litigant and attorney dissatisfaction.

The remedy proposed by the pilot program for these various ills was a specialized case management system for complex civil litigation that featured judges experienced in both substantive law and complex case management practices, a substantially reduced caseload that permitted judges to focus exclusively on complex cases, and additional staffing and technological resources for case management purposes. The pilot program judges viewed their primary objective as identifying the key legal issues in a given case and focusing litigant pretrial activities (e.g., discovery and settlement negotiations) on resolving those issues as efficiently as possible. Although some of the pilot program details differed from court to court, the general means for accomplishing this objective was active judicial oversight of case management including the development of clear expectations for case management and consistent enforcement of those expectations.

Interviews with attorneys who participated in the pilot program suggest that this approach effectively addresses the major problems associated with complex litigation management. The attorneys reported that judges had better understanding of the legal and evidentiary issues and more effective management of pilot program cases compared to their assessments in the first round of interviews. Theyalso reported improved use of referee appointments – that is, fewer instances of excessive or inappropriate referee appointments and better judicial supervision of referee activities.

Many of these impressions were confirmed with an empirical examination of the pilot program cases. The cases managed under the pilot program were appropriately characterized as complex by a number of different criteria. Indeed, the pilot program cases were significantly more complex using these measures than a sample of complex cases that were not assigned to the pilot program, which was compiled for baseline comparison purposes. The data revealed an increase in the percentage of cases in which various case management activities took place, resulting in a commensurate increase in interim dispositions, compared to the baseline cases. This is particularly remarkable given the difference in the average level of complexity between the pilot and baseline

datasets. Moreover, the pilot program dataset only recorded information on case events and dispositions that occurred during the pilot program, rather than during the entire pendency of the case as was the case for the baseline dataset.

The data also confirm a slight reduction in the referee appointment rate compared to the baseline cases, which suggests more direct judicial attention to cases as well as lower litigation costs for parties. But this reduction was concentrated in four of the courts: Los Angeles, Alameda, San Francisco, and Santa Clara. The pilot program courts in Orange and Contra Costa Counties continued to appoint referees at approximately the same rates as the baseline cases.

The most significant improvements in complex civil case management appear to result from two specific features of the pilot program: an individual calendar system and a caseload that is sufficiently reduced to permit more intensive case management by the pilot judges. Each site varied in terms of program staffing and resource allocation, average caseload size, and preferred case management practices, but these did not appear to make a significant difference in overall performance in cases. Differences in case processing times, which are necessarily preliminary estimates due to the short timeframe for the evaluation, were related to how each case was assigned to the pilot program (retained, transferred, or newly filed) rather than to its treatment once assigned to the program.

Preliminary data suggest that the judicial management techniques employed by the pilot program judges significantly decrease the amount of time needed to dispose complex cases. The Administrative Office of the Courts should continue to monitor filing-to-disposition times for cases assigned to the pilot program to verify the filing-to-disposition rate based on a larger proportion of newly filed cases, rather than on the older transferred and retained cases that made up the bulk of fully disposed cases in the evaluation dataset.

Program Recommendations

As a general observation, the pilot program appears to address most of the problems associated with complex case management fairly well. There are, however, some aspects of the pilot program that could be modified to improve its effectiveness.

Specialized Procedures for Complex Litigation Management

One of these is the development of specialized procedural rules for complex cases. A defining characteristic of complex cases is the existence of multiple legal issues and dozens, or even hundreds, of parties. The primary objective of judicial involvement in these cases is to identify which issues apply to which parties and to select the most salient issues as the focus of intensive discovery and settlement negotiations. As key issues are resolved, tangential issues either become moot or are resolved with less effort.

The existing civil procedure provisions, however, are tailored for routine civil cases, which typically involve a single cause of action and no more than 5 parties. The *Deskbook on the Management of Complex Civil Litigation* assumes that judges have the authority to engage in issue-specific case management practices. Although many of the pilot program judges report that they were moderately successful at securing the consent

of the parties to specialized case management procedures, the judges claim that the statutes themselves do not permit this level of judicial discretion *sua sponte*. For example, the existing summary judgment statute does not permit summary adjudication of an individual legal issue or claim of damages unless doing so completely disposes of the case, a cause of action, or an affirmative defense. Similarly, the statutes do not grant judges the discretion to reorder trial preferences for litigants. Specialized rules or statutes for complex cases that enhance judicial case management powers, especially in the conduct of discovery and settlement activities and summary adjudication of issues, would authorize judges to conduct case management activities more effectively than under the current Code of Civil Procedure.

Workload Assessment

One of the striking differences among the various pilot program courts was the average caseload assigned to each judge, which varied considerably from judge to judge and from site to site. There was no consensus as to an appropriate caseload size, and the various performance measures examined in the course of the evaluation did not indicate an optimal caseload size. This disparity could be resolved through a workload assessment study, which would help determine the appropriate number of judges and supporting court staff given variations in case complexity. Currently, all complex cases are treated and counted equally, regardless of their case type, the number of parties, or other indicia of case complexity. A workload assessment study for complex litigation would allow case assignments to equalize the workload and help determine the appropriate staffing levels for courts handling complex cases.

Case Screening and Assignment Policies

Most of the pilot sites have developed fairly effective screening and assignment procedures to ensure that complex cases are identified and referred to the pilot program courts in a reasonably expeditious fashion. Los Angeles, however, has a decentralized process that interferes with prompt assignment and early case management activities. Although complex cases filed downtown are immediately assigned to the pilot program, cases filed in the other judicial districts are reviewed by a civil division judge who has discretion to refer the case to the pilot program or to retain the case at the judicial district. Even the most quickly assigned cases take an average of 72 days to transfer. In other cases, the average delay is over 6 months. The assignment process in all of the Los Angeles districts should include initial identification and immediate assignment of complex cases at filing based on objective criteria indicated on the Civil Case Cover Sheet, with review by the supervising judge for complex litigation to ensure that the case meets basic criteria for inclusion in the pilot program. Cases that do not meet these criteria can then be referred back to the judicial districts for routine case management.

Judicial Assignment, Training, and Staff Development

Other needs associated with the pilot program include improving morale among non-pilot program civil division judges as well as training and development for pilot program judges and staff. A rotation among judges assigned to the pilot program in Orange and Los Angeles Counties would help alleviate frustration of civil division judges who want the intellectual and professional challenges that characterize complex cases. Assigning one new judge in a program ordinarily staffed by four to six judges would not

unduly disrupt program management, and would offer civil division judges the possibility of future involvement in the pilot program. A mentoring approach would effectively address this issue in the single judge programs. One judge could be used primarily to process cases, hear motions and hold case management conferences, while the other judge could be used for settlement conferences, to preside over long trials, and to manage complex cases if the primary judge is disqualified for some reason. The other benefit of this type of system is the fact that if one of the judges leaves the bench for whatever reason, a judicial officer trained and knowledgeable in complex litigation is ready to assume the role as primary judicial officer in the single judge complex court.

Training was not a cited as a critical need by the pilot program courts, but several of the judges identified the semi-annual meeting of pilot judges as an excellent way to exchange information and ideas about managing complex cases. Other judges expressed a desire for training on specific substantive topics such as determination of insurance coverage, class action wage and hour suits, and construction defect suits. Given the team atmosphere in which each of the sites operate, educational workshops on complex case management issues may be appropriate for all pilot program staff. The workshops could be conducted jointly with the semi-annual judicial meetings.

Technological Support

Several of the courts invested substantially in courtroom technology. However, actual bench or jury trials are rare occurrences, so the more pressing need is for case management technology that permits judges and their staff to monitor case progress more accurately, organize court documents more coherently, and communicate with multiple attorneys more effectively. Only Orange County currently employs imaging technology on a routine basis and none of the pilot program courts have advanced e-filing beyond an experimental and small-scale basis, but both of these technologies would enhance their productivity. More frequent use of Web-based case management systems would likewise be a benefit in complex case management.

Future Expansion of the Pilot Program

Notwithstanding the apparent success of the pilot program, it is not clear that expansion of the program to additional courts would be advisable at this time. It appears that the existing pilot program sites were well chosen insofar that they quickly absorbed the major concentrations of complex civil cases within the state. Only the Superior Court of San Diego County, which also operates a complex litigation docket similar to the program that previously existed in the Superior Court of Orange County, has a substantial complex civil caseload. Indeed, in gathering data for the baseline sample, it was difficult to identify complex cases that were not already assigned to one of the pilot program courts.

Complex civil cases are filed in other courts around the state, of course, and the lessons learned through the pilot programs about effective complex case management should be made available to and used by those courts. Even courts that normally employ a master calendar system for civil cases should assign complex cases to an individual judge for case management purposes – and reduce that judge's caseload accordingly to permit the judge to exercise appropriate judicial oversight. The AOC should strongly encourage judges managing complex cases to attend the semi-annual meetings of the

pilot program judges. The ability to interact with peers that are experienced in complex case management can only enhance their ability to manage these cases without significant costs to the pilot programs themselves.

APPENDIX A – METHODOLOGICAL CONSIDERATIONS

Two of the three components of the NCSC evaluation involved substantial data collection and analysis efforts. Part 3 of the evaluation discusses the survey data collected through telephone interviews with judges and attorneys about their respective views about complex litigation management in California both before and after implementation of the pilot program. Part 4 discusses objective characteristics (case type, number of litigants, case management procedures, number and types of case events, filing to disposition times) of cases assigned to pilot program, and similar information about non-pilot program cases. From these analyses, the NCSC makes several conclusions about the effectiveness of the pilot program overall. Nevertheless, the approaches employed in both components posed some methodological difficulties that may limit the generalizations that can be drawn. This Appendix outlines the major data limitations of the evaluation and discusses the implications for its overall reliability.

Methodological Issues in Part 3 of the Evaluation

Originally, the evaluation plan included interviews with parties in complex cases as well as with the pilot program judges and attorneys, but this plan was abandoned due to the relative difficulty of interviewing the parties in complex litigation cases.[82] Unfortunately, none of the anticipated sources provided a sufficient number of litigant referrals to include their responses in this evaluation. Attorneys expressed concern over violating the pledge of confidentiality between attorney and client. Moreover, most attorneys reported that even if they could freely provide names, their clients' knowledge of complex case management techniques would be limited, particularly in multiparty cases. Although representatives of the American Corporate Counsel Association expressed willingness to forward us litigant referrals, they failed to provide us with names of corporate litigants other than in-house counsel for some of the represented litigants. The Chamber of Commerce was only willing to provide referrals to members of its Legal Affairs Committee, composed mainly of attorneys.

Although the sampling protocols for the two rounds of interviews differed dramatically, both resulted in complications concerning responses rates. In the first round of interviews, the pilot program judges were asked to provide the names and contact information of attorneys who had recently litigated complex cases in their courtrooms. Ten of the 14 judges participating in the pilot program were located in either Orange County (4) or Los Angeles (6). Consequently the vast majority of attorneys who were interviewed were located in those two counties. The overrepresentation of Orange and Los Angeles Counties precludes drawing broad inferences about the litigation of complex cases throughout the state, but rather limits the findings to Los Angeles and Orange Counties, and to a lesser degree, Santa Clara, Contra Costa, San Francisco, and Alameda Counties.

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[82] The NCSC anticipated conducting interviews with litigants referred by the interviewed attorneys, the American Corporate Counsel Association, the California Chamber of Commerce, and other sources.

The NCSC employed a very different sampling approach in the second round of interviews, but still encountered difficulties related to the geographic representativeness of the interview population. To identify attorneys for the second round of interviews, the NCSC attempted to contact the lead attorneys from a random sample of disposed cases that were assigned to pilot program. The sample of cases was drawn from the database of pilot program cases in January 2002, which at that time consisted of 317 disposed cases.[83] Because several of the pilot sites had fallen behind in their data collection efforts (see discussion of methodological issues related to the empirical study, below), the sample of cases that was randomly drawn for the second set of interviews consisted of 37 cases (13%) from Los Angeles County, 73 cases (26%) from Contra Costa County, 154 cases (54%) from Orange County, and 19 cases (7%) from San Francisco County. The dataset at that time did not include any cases from Alameda or Santa Clara Counties. Consequently, no attorneys with cases in those counties were included in the second round of interviews.

A second difficulty involved identifying and securing the cooperation of attorneys to participate in the second round of interviews.[84] Using the sampling procedure, a total sample of 200 attorneys was expected. In attempting to contact these attorneys, however, the NCSC encountered several problems. Many of the pilot sites did not have complete or accurate attorney contact information for the selected cases. In approximately one-third of the cases, the NCSC was unable to identify attorneys who were sufficiently familiar with the case to conduct the interview. Moreover, a total of thirteen attorneys were listed as the primary contact for more than one of case in the random sample, accounting for 37 cases, thus reducing the total number of identified attorneys in our sample to 118.

Securing the cooperation of the attorneys was also problematic. Ten percent (10%) of the attorneys could not be contacted, despite numerous attempts to do so. The NCSC also encountered a great deal of resistance from attorneys who did not immediately understand that these interviews were part of an official evaluation that was being conducted under the authority of the California AOC and with the full knowledge and consent of the pilot sites.[85] Many attorneys were surprised, and even offended, that their names and contact information had been obtained from court records. Other attorneys were reluctant to participate due to concerns that the information sought in the interviews was protected by attorney-client privilege. Some attorneys, especially in

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[83] Of the 317 cases, 34 were individual cases that were coordinated under a master case or otherwise related to other cases in the sample. To avoid duplication of cases, only the master cases were included in the dataset from which the sample was drawn.

[84] For the first round of interviews, the NCSC was able to tell prospective interviewees that a particular judge had recommended that we speak with him or her about their knowledge of complex litigation management in California, which tended to increase their willingness to participate in the interviews.

[85] To address concerns in the second round of interviews, the AOC and the participating pilot sites sent letters to all of the attorneys for whom we had mailing addresses assuring them that the evaluation was sanctioned by the AOC and encouraging the attorneys to cooperate in the interviews. NCSC staff also faxed copies of the interview questions to the attorneys before each interview so they could see that we were only seeking information about the management of their respective cases, and not privileged information. Nevertheless, these efforts did not improve the response rate of attorneys appreciably.

jurisdictions that employed an individual calendar system for complex cases, were unaware that their cases had been assigned to a pilot program, and thus did not understand the significance of their participation in the interviews. Overall, nearly one third (31.3%) of the attorneys refused to participate in the survey for one reason or another.

Analysis of the first round of interviews was also complicated by differences in the complex case management practices in each of the respective pilot sites before the inception of the pilot program. For most of the sites, the pilot program was the first time a specialized docket had been dedicated exclusively for complex cases. The Superior Court of Orange County, however, had been operating a complex litigation calendar since 1991. A designated panel of judges have exclusive jurisdiction over the complex caseload and have established specific procedures for handling complex cases. As a result, the Orange County site did not radically change its operations with the inception of the pilot program. Indeed, many of the procedures that have been adopted for the pilot program are based on the Orange County model. This situation made evaluating attorneys' and judges' views difficult because many of the issues and problems associated with complex civil litigation had been effectively resolved in Orange County.

A final issue that affected analysis of the interview data was the lack of a clear geographic distinction between attorneys whose experience in complex litigation occurred under a master calendar system and those whose experience occurred under a single judge assignment system. Although the Superior Court of Orange County has operated a complex litigation program since 1991, about one-third of the Orange County attorneys reported that their most recent complex case had been managed under a master calendar system.[86] Many of the attorneys in jurisdictions that traditionally operate under a master calendar system had cases that were assigned to a single judge for pretrial management purposes. This situation complicated the analysis insofar as the general views of attorneys about complex litigation management may have reflected attitudes and opinions about the calendar system in their respective jurisdiction, but their most recently litigated case experiences may reflect the inherent advantages or disadvantages of the other system. For analysis and reporting purposes, therefore, the NCSC distinguished wherever possible between Orange County and non-Orange County data, and between master calendar system data and single judge assignment calendar data.

Methodological Issues in Part 4 of the Evaluation

Data collection for Part 4 of the evaluation required the pilot program staff to follow fairly precise protocols concerning the timely completion of data collection instruments for each of the cases assigned to the pilot programs. There was substantial evidence that these protocols were not uniformly followed by all of the pilot program courts, raising questions about the completeness and accuracy of the resulting dataset. For example, pilot program staff were instructed to complete and submit a Data Form 3 documenting any case activity (hearings, case management or status conferences,

[86] These attorneys may have litigated their cases in a California superior court other than Orange County or their most recent complex case may not have satisfied the criteria for eligibility for the Orange County complex litigation program.

dispositive rulings) for the previous month for every case assigned to the pilot program until the case was fully disposed. One-third of the cases in the final dataset consisted of only a single Data Form 3.

There are two possible conclusions that may be drawn from this. One is that there was only one month during the entire data collection period in which any official activity took place in those cases.[87] This is a plausible interpretation given that ongoing discussions with pilot program judges and court staff during the evaluation period confirmed that much of the case activity that takes place in complex case management is relatively informal (e.g., telephone calls, e-mail correspondence, tentative settlement agreements concerning specific issues or parties) and may not be memorialized as part of the formal case record. These types of events, although obviously an important part of complex case management, could not be captured in the data collection instruments because the court clerks, who were responsible for completing the monthly data forms, often were not aware when these events occur. It is highly likely, therefore, that the dataset significantly underreports the amount of case activity that took place during the data collection period. A second possibility is that pilot program staff did not complete data collection for a sizeable portion of their cases, especially as many of the sites did not collect data until very late in the evaluation period. The truth is likely to be a combination of these two possibilities.

Another problem arose as a result of the delay in completing monthly reports by several of the courts. Each Data Form 3 included a "report date" in which the pilot program court staff were instructed to enter the date that the report was completed. Timely completion of those monthly reports would have provided a reasonably accurate estimate of the litigation stage for each of the cases (e.g., pleadings, discovery, settlement negotiations, pretrial, trial, post-judgment), including the month in which the case was completely disposed. Because several of the courts did not collect the data on a monthly basis, but instead completed all of the Data Form 3s in December 2001,[88] the report date cannot be used as a reliable proxy for estimating litigation stages and final disposition dates. Calculations of filing-to-disposition periods are likely to be significantly inflated – that is, the actual filing-to-disposition periods are shorter than the data suggest – and the evaluation findings should be viewed with this in mind.

Implications for the Evaluation

Each of these methodological issues limits the conclusions that can be drawn from any individual component of the evaluation. In spite of these constraints, the NCSC found a great deal of consistency between the program characteristics (especially the underlying philosophy of complex case management espoused by the pilot program judges), the responses of attorneys to the first and second round of interviews, and the empirical information collected from cases assigned to the pilot program. The fact that all of the evaluation components paint a consistent picture about the overall effectiveness

[87] Approximately half (49%) of these cases were completely disposed at the time the data were collected.

[88] One-third of the Data Form 3s (33.4%) had a final report date of either November 30, 2001 or December 31, 2001.

of the pilot program provides an additional level of confidence in the overall assessment of the pilot program that might not otherwise be appropriate.

APPENDIX B – STATUTE 68617

68617. On or before October 30, 2002, the Judicial Council shall submit a report to the Legislature and the Governor regarding the effectiveness of the Centers for Complex Litigation established pursuant to the Budget Act of 1999. The report shall examine, among other things, the number of complex cases filed, the impact of the centers on case and calendar management, and the impact on the trial courts, the attorneys, and the parties, and shall make recommendations to the Legislature and the Governor.

APPENDIX C – ATTORNEY INTERVIEW PROTOCOL #1

Good morning/good afternoon. My name is _____. The National Center for State Courts has been contracted by the California Administrative Office of the Courts to conduct an evaluation of how the California courts manage complex litigation cases. Judge _____ of the [County] Superior Court gave us your name and number, and said that your opinion on this topic would be valuable. Do have some time to discuss this with me right now? It should take 15 to 20 minutes. [If not, offer to reschedule to a more convenient time].

1. Before we begin, can you tell me about the types of complex cases that you typically litigate in the Superior Court? Are you normally involved in litigation only in _____ County? Or do you handle cases in other parts of California too?

We've already talked to a number of Superior Court judges in connection with this evaluation and we think that we have a reasonably good idea of how the judges view their ability to manage complex litigation. We'd like to hear your views concerning the issues that they identified.

2. From your perspective as a trial attorney, what factors or characteristics make a complex case "complex"? [prompts: # of parties, # of related claims, volume of documents or witnesses, length of discovery, sophisticated nature of the evidence or testimony, complex legal issues] Is there any single factor or characteristic that is most important?

3. Think about the complex case that most recently concluded (by any disposition – settlement, summary judgment, trial).
   a. How was that case managed by the court?
   b. Was it assigned to a single judge or assigned to the master calendar?
   c. If the case actually went to trial, was the trial judge the same as the judge who handled the pretrial management of the case?
   d. If you found yourself dealing with more than one judge over the course of the litigation, what impact (if any) did that have on your ability to move the case forward to a resolution?
   e. How did the management of this case compare to other complex cases that you have filed in the Superior Court?

4. If the case was assigned to a single judge, how often did you meet with him or her for status conferences or other meetings?

   a. How well did the judge understand the legal and factual issues of those cases? Were there any particular factors that contributed to the judges' ability to understand those issues (e.g., prior experience in complex civil litigation, sufficient time and attention to the details of the case)?

   b. How accessible was the judge for resolving discovery disputes or other problems as the case progressed? How helpful was the judge in this regard?

   c. Would the judge lean on the parties to meet case management deadlines? Or would the judge let the parties set and manage their own deadlines as they saw fit?

   d. How easy or difficult was it to find out how the judge might view any particular issue? [prior rulings on similar issues, word of mouth in the legal community, discussions during status conferences or other meetings with the court]

   e. In your opinion, did the judge manage that case in a reasonably expeditious fashion? Did the judge allow sufficient time for the parties to complete discovery and prepare for trial?

   f. How did the level of judicial involvement in this case compare to other complex cases?

5. Was a discovery referee or special master appointed in the case?

   a. If so, how was the selection made? [mutually agreed upon by the parties, selected by the judge from a slate of nominees by the parties, randomly selected by the judge, recommended by the judge]

   b. What was his or her role? [helped parties develop a case management plan, managed the discovery process, acted as a mediator or otherwise facilitated settlement negotiations]

6. Are special masters or discovery referees typically appointed to assist in the management of complex cases?

   a. If so, how are those selections typically made?

   b. What are the benefits of special masters or discovery referees? What are the drawbacks?

   c. What is overall opinion about the special masters?

7. Did the court order the parties to engage in any form of ADR in that case? If so, how helpful was that process?

8. Did the case ultimately go to trial?

   a. What was the schedule for trying the case (e.g., half-day trials, 4-day trial weeks)?

   b. Did the judge make any other accommodations (e.g., bifurcated trial, use of technology, facility changes) based on the complexity of the case?

   c. How well did those accommodations work for your ability to present evidence and testimony in a coherent manner?

   d. Did you encounter any delays due to legal issues that were not resolved prior to trial? If so, please describe those problems.

9. If you could make three changes to the way that the California Superior Courts manage their complex litigation calendars, what would they be?

10. In preliminary discussions about the management of complex litigation in California before the implementation of the pilot program, judges and attorneys identified several areas of concern. Please indicate whether you agree or disagree with the following statements on a scale of 1 to 10 (1 = strongly disagree; 10 = strongly agree).

    a. The existing body of substantive caselaw in complex litigation is insufficient for attorneys to advise their clients about the probable legal consequences of certain commercial transactions.

    b. Too many different judges are involved in the pretrial management of complex litigation, often making inconsistent rulings and thus thwarting settlement opportunities.

    c. The referees and special masters who are appointed to help manage complex cases lack sufficient financial incentives to limit discovery or encourage early settlement of these cases.

    d. Some judges lack the time and resources to adequately supervise the work of court-appointed referees and special masters.

    e. Some judges do not have sufficient knowledge about complex commercial law to decide such cases fairly and accurately.

    f. Some judges do not have sufficient experience in complex litigation to manage their caseloads in an efficient and effective manner.

    g. Some judges envision a future for themselves in the private judging industry and thus lack incentives to place effective limits on the activities and expenses of referees and special masters.

h. Lack of direct communication between trial counsel and the judge creates confusion about court orders and prevents counsel from accurately predicting judicial decisions on key issues.

i. Some judges are so concerned about the impact that a complex case will have on their trial calendars that they will order the parties to engage in additional settlement negotiations or ADR, even when the likelihood of success is extremely low.

11. Are you aware that California has begun a Complex Litigation Pilot Program in several courtrooms around the state?

    a. If so, are you familiar with the specifics of that program?

    b. What do you expect the pilot program to accomplish? What would you hope to see it accomplish?

12. Our next task in this evaluation will be to interview litigants about their experiences with complex litigation in the California courts. Are the specific individuals – clients or other individuals that you know– that you would recommend that we contact for their views? Please provide names and telephone numbers. Can we use your name when we contact them?

APPENDIX C - ATTORNEY INTERVIEW PROTOCOL #2

Scheduled interview date: ___ ___ / ___ ___ / ___ ___ ___ ___
M M D D Y Y Y Y

Scheduled interview time: ___ ___ : ___ ___ a.m. / p.m.
H H M M (circle one)

OPEN-ENDED QUESTIONS

Good morning/good afternoon, my name is _____, and I'm calling from the National Center for State Courts in Williamsburg, Virginia. We're working with the California Administrative Office of the Courts on an evaluation of the California Complex Litigation Pilot Program. We received your name and phone number from the pilot program and are calling to interview you as part of our evaluation. We are not seeking privileged information of any kind, and we will not ask you to disclose attorney-client work product of any kind during this interview. Do you have some time to answer a few questions about this right now (it should take about 30 minutes)?

[If yes: *Okay, thank you.*] [Proceed to # 1 below]

[If no:] *Can we reschedule to a more convenient time?*

a. New date/time: ___ ___ / ___ ___ / ___ ___ ___ ___
M M D D Y Y Y Y

___ ___ : ___ ___ a.m. / p.m.
H H M M (circle one)

[Read the following questions verbatim:]

13. To begin, I'd like to confirm some background information about the case that you participated in [from the California pilot program]. The case that we'd like to discuss with you is [confirm the following information]:

a. Case Name: _____
_____

b. Docket #: _____

c. Case type: _____

14. When was this case first filed?

___ ___ / ___ ___ / ___ ___ ___ ___
M M D D Y Y Y Y

According to our records the case reached a final disposition on:

___ ___ / ___ ___ / ___ ___ ___ ___
M M D D Y Y Y Y

15. What made this case complex?

16. Do you normally practice in complex litigation, or was this case an exception for you?

[Circle one]

NORMALLY PRACTICE EXCEPTION

17. Do you normally practice in this particular field of law?

[Circle one]

YES NO → [ask for normal field of practice]

18. Now I have a few questions to ask about the judge assigned to this case…

a. How often did the trial judge schedule status conferences or other meetings? Did you attend all (or most) of those meetings? If not, why not?

b. How well did the judge understand the legal and factual issues of this case?

c. Were there any particular factors that contributed to the judges' ability to understand the legal and factual issues of this case (e.g., prior experience in complex civil litigation, sufficient time and attention to the details of the case)?

d. How accessible and how helpful was the judge for resolving discovery disputes or other problems as this case progressed?

e. How helpful was the judge at clarifying the primary issues in the case and developing procedures to handle them?

f. To what extent did the judge enforce management deadlines?

DEADLINE PRESSURE NO PRESSURE

g. In your opinion, did the judge manage the case in a reasonably expeditious fashion? Did the judge allow sufficient time for the parties to complete discovery and prepare for trial?

h. How did the level of judicial involvement in this case compare to other complex cases in which you've been involved?

i. How satisfied were you overall with the judge assigned to your case?

19. Was a discovery referee or special master appointed in the case?

[If No: Skip to # 8 below]

[If Yes: proceed directly below…]

[Note: If there was a discovery referee and a special master, and they were two different people, ask the following questions once for each:]

a. How was the selection of the discovery referee [or special master] made?

[Prompts: mutually agreed upon by the parties, selected by the judge from a slate of nominees by the parties, randomly selected by the judge, recommended by the judge]

b. Please describe the role of the discovery referee [or special master].

[Prompts: helped parties develop a case management plan, managed the discovery process, acted as a mediator or otherwise facilitated settlement negotiations]

c. What were the disadvantages of having a discovery referee [or special master] in this case?

d. Who paid the discovery referee [or special master] in this case?

e. Do you believe that it was appropriate or inappropriate to appoint a discovery referee [or special master] in the case?

[Circle one]

APPROPRIATE INAPPROPRIATE

f. Were you satisfied with the work of the discovery referee or special master? Why or why not?

[Circle one]

SATISFIED UNSATISFIED

g. On a scale of 1 – 10, with 1 = "very unsatisfied" and 10 = "very satisfied," please rate your overall level of satisfaction with the discovery referee [or special master] assigned to your case.

[Circle one number below.]

1	2	3	4	5	6	7	8	9	10
Very Unsatisfied									Very Satisfied

20. Did the court order the parties to engage in any form of ADR in this case?

[If No: Skip to # 9 below]

[If Yes:]

i. How helpful was that process, and what in particular made it helpful or unhelpful?

21. Please describe the parties and claims in this case.

i. How long did it take to identify all parties and claims in the case?

ii. How many parties were identified?

[Prompts]:

- Was it run more or less efficiently than in other cases?

- How did the pleading stage of this case differ from that of other (i.e., less complex) cases?

- How did the pleading stage of this case differ from cases not part of the pilot program?

22. Please describe the discovery process in this case.

a. What (if anything) did the trial judge in this case do differently than other trial judges to facilitate the discovery process?

b. What time frame was established for discovery?

c. Was that time frame adequate?

d. Did the process produce sufficient information? Was the information accurate? Was it helpful?

23. Please describe any settlement negotiations that took place in this case.

a. To what extent was the trial judge involved in settlement negotiations?

Not at all involved in settlement negotiations

Aware of negotiations, but not actively involved

Actively involved in negotiations

b. Were the necessary people present at these negotiations?

[Prompts]:

- How many meetings/negotiations took place?

- How long did they last?

- Was it run more or less efficiently than in other cases?

- Were there more, less, or about the same number of parties involved than in other cases?

- How satisfied were the various parties with the outcome(s) of these negotiations?

- How did the settlement negotiations that took place in this case differ from those of other (i.e., less complex) cases?

- How did the settlement negotiations that took place in this case differ from those in cases not part of the pilot program?

24. How did the pilot program affect settlement negotiations, settlement agreements, or other case dispositions?

25. Our records indicate that there [CONFIRM RECORD: was / was not] a trial in this case.

    a. Please describe the trial.

[Prompts]:

- How long did the trial last?

- Was it a bench trial or a jury trial?

- What was the outcome of the trial?

- Is it under appeal?

- Was it run more or less efficiently than in other cases?

- Were there more, less, or about the same number of parties involved as in other cases that go to trial?

- How satisfied were the various parties with the outcome(s) of the trial?

- How did the trial in this case differ from that of other (i.e., less complex) cases?

- How did the trial in this case differ from trials not part of the pilot program?

26. Did the judge make any special accommodations based on the complexity of the case (e.g., bifurcated trial, use of technology, facility changes)?

[If applicable:]

a. How well did those accommodations work for your ability to present evidence and testimony in a coherent manner?

27. Did you encounter any problems or delays due to legal issues that were not resolved prior to trial?

[If No: Skip to # 16 below]

[If Yes:]

i. Please describe those problems.

28. Would you recommend any changes or ways to improve the pilot program, and, if so, what would you recommend?

29. Describe your overall impression of the California Complex Litigation Pilot Program and your main reason (or reasons) for this impression.

i. How would you compare the overall management of this case to other complex cases that you have filed in the Superior Court that are not part of this pilot program?

ii. Is your overall impression of this pilot program favorable or unfavorable?

[Circle one]

UNFAVORABLE FAVORABLE

iii. Do you believe that there is a need for such a program at all?

[Circle one]

YES NO

30. Based on your experience with the California Complex Litigation Pilot Program, which of the following recommendations would you make for the program's future?

a. KEEP THE PROGRAM AS IS/MAKE NO CHANGES TO THE EXISTING PILOT PROGRAM

b. REFORM THE EXISTING PILOT PROGRAM BUT DO NOT ELIMINATE IT COMPLETELY [EXPLAIN BELOW]

c. ELIMINATE THE PROGRAM COMPLETELY

d. OTHER: [EXPLAIN BELOW]

[If applicable:]

EXPLANATION:

That concludes the interview. Thank you very much for your participation in this evaluation. If you would like additional information about this project, or if you would like to receive information about the results of our evaluation, I can now provide you with information on how to contact the California Administrative Office of the Courts:

455 Golden Gate Ave.

San Francisco, CA 94102-3660

Phone: 415-865-4200

APPENDIX C - JUDGES QUESTIONNAIRE

1. From your perspective as a trial judge, which aspects of complex case management are the most difficult? Which aspects are the least difficult? Please explain. What changes, if any, do you make to your case management process to address those difficulties?

2. Some judges describe their complex litigation caseloads as being inordinately time-consuming and disruptive to their general civil calendar. Others say that the ability to delegate significant case management responsibilities to a referee or special master made their complex litigation cases less time-consuming than their general civil calendar cases. Before the implementation of the Complex Litigation Pilot Program, what was your experience in this regard? Please give specific examples.

3. Compared to the general civil cases on your calendar, did you find that the complex cases on your calendar were more likely or less likely to adhere to the case management schedule? Why or why not?

4. Alternative Dispute Resolution (ADR) techniques are often, but not always, very effective for resolving cases without going to trial. In managing complex cases, have you had circumstances in which you thought that ADR would not be helpful in resolving the case? If so, what did you do?

5. When your complex cases do go to trial, what if anything do you change about your trial schedule or procedures to minimize the disruptive effect on your calendar? [For example, half-day trials, four-day trial weeks, bifurcated trials, etc.]

6. Before the implementation of the Complex Litigation Pilot Program, in what percentage of complex cases did you appoint a referee or special master? [If less than 100 percent], were you more likely to appoint a special master for a particular type of case? If so, what type of case(s) and why?

7. In cases in which you appointed a special master, for what types of activities did you grant him or her a great deal of discretion to manage the case (e.g., scheduling matters, discovery matters, settlement negotiations)? What types of activities did you prefer to supervise more closely or handle yourself?

8. How are legal staff (research attorneys, law students, etc) used in your court. How much do you rely on legal staff to manage your caseloads? How many legal staff do you use? Are they permanent or temporary?

9. Have you attempted to impose uniformity in terms of motions, discovery orders, and general steps as to how to handle these cases? If so, how? Has this uniformity helped in case processing?

10. What additional resources have the complex court provided?

11. In preliminary discussions about the management of complex litigation in California before the implementation of the pilot program, critics of the courts voiced a number of complaints. Please indicate whether you agree or disagree with the following complaints on a scale of 1 to 10 (1 = strongly disagree; 10 = strongly agree).

    a. The existing body of substantive caselaw in complex litigation is insufficient for attorneys to advise their clients about the probable legal consequences of certain commercial transactions.

    b. Too many different judges are involved in the pretrial management of complex litigation, often making inconsistent rulings and thus thwarting settlement opportunities.

    c. The referees and special masters who are appointed to help manage complex cases lack sufficient financial incentives to limit discovery or encourage early settlement of these cases.

    d. Some judges lack the time and resources to adequately supervise the work of court-appointed referees and special masters.

    e. Some judges do not have sufficient knowledge about complex commercial law to decide such cases fairly and accurately.

    j. Some judges do not have sufficient experience in complex litigation to manage their caseloads in an efficient and effective manner.

    k. Some judges envision a future for themselves in the private judging industry and thus lack incentives to place effective limits on the activities and expenses of referees and special masters.

    l. Lack of direct communication between trial counsel and the judge creates confusion about court orders and prevents counsel from accurately predicting judicial decisions on key issues.

    m. Some judges are so concerned about the impact that a complex case will have on their trial calendars that they will order the parties to engage in additional settlement negotiations or ADR, even when the likelihood of success is extremely low.

12. We've discussed a number of issues related to the management of complex litigation. What are your expectations about the Complex Litigation Pilot Program?

13. Before this appointment to the Complex Litigation Pilot Program, what was your professional background and previous experience in complex litigation?

14. Our next task in this evaluation will be to interview attorneys and litigants about their experiences with complex litigation in the California courts. Are the specific individuals – attorneys or litigants – that you would recommend that we contact for their views? Please provide names and telephone numbers. Can we use your name when we contact them?

National Center for State Courts
Evaluation of the Centers for Complex Civil Litigation

Errata

p. 8 "Vicki Brizuela" should be "Vicky Brizuela."

p. 53 The reference to the number of cases per judge in the Superior Court of Orange County is inaccurate. Eliminate the words "Although" and "court officials there reported that the active caseload averaged only 80 to 100 cases per judge, the second lowest among the six sites" in the following sentence: "Although the pilot program in the Superior Court of Orange County had the highest average rate of referee appointments, court officials there reported that the active caseload averaged only 80 to 100 cases per judge, the second lowest among the six sites."