

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Hon. Dennis M. Perluss, Chair, Complex Litigation Subcommittee
Susan R. Goins, Counsel, Complex Litigation Subcommittee,
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DATE: August 18, 2006

SUBJECT: Complex Civil Cases: Judicial Determination of Complexity
(amend Cal. Rules of Court, rule 3.403) (Action Required)¹

Issue Statement

Rule 3.400² of the California Rules of Court defines a complex case, lists certain factors that are present in complex cases, and names certain types of cases (e.g., construction defect claims, toxic or environmental torts, and mass torts) that are considered provisionally complex. The *Civil Case Cover Sheet* (form CM-010) allows a party to designate a case as complex and also to indicate if it has one or more of the complex case factors that are listed in rule 3.400(b), or is one of the provisionally complex case types listed in rule 3.400(c). If a party designates a case as complex, rule 3.403(a) requires a court to decide “as soon as reasonably practicable, with or without a hearing, whether the action is a complex case.”

In practice, if a case is one of the provisionally complex case types listed in rule 3.400(c), but is not designated complex by a party, often there is no judicial determination of its complexity or the determination is not timely.

¹ At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, rule 1812 has been renumbered as rule 3.403, and new format conventions have been adopted. Hence, the proposed amendments to rule 1812 are shown throughout this proposal as amendments to rule 3.403, which will become effective January 1, 2007.

² Effective January 1, 2007 (current rule 1800).

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007, amend rule 3.403 to require a judicial determination of complexity if a case has been identified as a provisionally complex case type.

The text of rule 3.403 is attached at page 4.

Rationale for Recommendation

Complex cases are those that require “exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.” (Cal. Rules of Court, rule 3.400(a).) Judges in the complex litigation program have reported that some provisionally complex case types never receive judicial determinations of complexity, or do not receive the determination until long after the complaints and responsive pleadings have been filed and the cases have proceeded. Early judicial management of complex cases is likely to promote earlier dispositions, less wasteful activity, reduced litigation costs, shorter trials, and improved decision making. (*Deskbook on the Management of Complex Civil Litigation* (LexisNexis, Matthew Bender 2005) page 1–1, § 1.01.)

Amending rule 3.403 to require a determination of complexity “as soon as reasonably practicable” in any case that is a provisionally complex case type would result in earlier judicial management of those cases that are determined to be complex. Courts could continue to adopt and use local practices to facilitate that determination, as long as they do not conflict with the rule.

Alternative Actions Considered

Rule 3.403 could remain unchanged, but it would likely result in some complex cases not receiving the benefits of complex case management that they should receive.

Comments From Interested Parties

The proposal was circulated for public comment during the Spring 2006 comment cycle, from April 24 to June 23, 2006. Twelve individuals or entities submitted comments. Commentators included a judge, a court executive officer, court managers and supervisors, the State Bar of California Committee on Administration of Justice, local bar associations, and a lawyers’ organization. All but two commentators approved the amendment without modifications. The executive officer and chief of Staff Counsel Services for the Superior Court of San Bernardino County disagreed with a provision of the rule that allows a court on its own motion to decide that an action is complex or that one previously declared to be complex is not complex. This subdivision of the rule was not proposed for amendment, however, and has been in effect since the rule was first adopted in 2000. Therefore, no changes have been made to the proposal that circulated.

This comment will be referred to the Complex Litigation Subcommittee for consideration. A chart summarizing the comments and the committee's responses is attached at pages 5–7.

Implementation Requirements and Costs

The advisory committee has identified no obstacles to implementing the amended rule. Application of the amended rule may result in more complex cases being identified at an early stage and assigned for complex case management, a result that was intended when the rule was first adopted in 2000.

Attachments

Rule 3.403 of the California Rules of Court is amended, effective January 1, 2007, to read:¹

1 **Rule 3.403. Action by court**

2

3 **(a) Decision on complex designation**

4

5 Except as provided in rule 3.402, if a *Civil Case Cover Sheet* (form CM-010)
6 ~~designating that has been filed and served~~ designates an action as a complex
7 ~~case has been filed and served~~ or checks a case type described as
8 provisionally complex civil litigation, the court must decide as soon as
9 reasonably practicable, with or without a hearing, whether the action is a
10 complex case.

11

12 **(b) Court's continuing power**

13

14 With or without a hearing, the court may decide on its own motion, or on a
15 noticed motion by any party, that a civil action is a complex case or that an
16 action previously declared to be a complex case is not a complex case.

¹ These recommended amendments have been made to the version of this rule adopted by the Judicial Council at its June 30, 2006, business meeting and reflect the text that will be in effect on January 1, 2007. Any amendments adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Debra J. Albin-Riley Chair, Los Angeles Co. Bar Ass'n. P.O. Box 55020 Los Angeles, CA 90055-2020	A	Y	No specific comment.	No response required.
2.	Ms. Janet Garcia Manager, Planning & Research Unit Superior Court of Los Angeles County 111 North Hill Street Los Angeles, CA 90012	A	Y	No specific comment.	No response required.
3.	Ms. Angie Gonzalez Supervisor I Superior Court of Stanislaus County 800 11th Street Modesto, CA 95353	A	N	No specific comment.	No response required.
4.	Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County 800 South Victoria Avenue Ventura, CA 93009	A	Y	No specific comment.	No response required.
5.	Hon. Thomas W. Kelly Supervising Civil Judge Superior Court of Butte County 655 Oleander Chico, CA 95926	A	N	No specific comment.	No response required.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
6.	Ms. Tressa S. Kentner Court Executive Officer Superior Court of San Bernardino County 172 W. 3rd Street, 2nd Floor San Bernardino, CA 92415-0302	N	N	Disagree with the provision that the change in case status can be made on the court's own motion without a hearing.	This comment refers to an existing subdivision that was not proposed for amendment and therefore is not within the scope of this proposal. It refers to subdivision (b), which allows a court to decide that an action is complex or that one previously declared to be complex is not. This comment will be referred to the advisory committee for consideration.
7.	Ms. Kathy Maderos Supervisor II Superior Court of Stanislaus County 800 11 th Street Modesto, CA 95353	A	N	No specific comment.	No response required.
8.	Mr. Wayne Maire President California Defense Counsel 925 L Street, Suite 1250 Sacramento, CA 95814	A	Y	No specific comment.	No response required.
9.	Ms. Julie M. McCoy President, Orange County Bar Ass'n. P.O. Box 17777 Irvine, CA 92623-7777	A	Y	No specific comment.	No response required.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
10.	Ms. Debra Meyers Chief of Staff Counsel Services Superior Court of San Bernardino County 172 W. 3rd Street, 2nd Floor San Bernardino, CA 92415-0302	D	N	Disagree with the provision that the change in case status can be made on the court's own motion without a hearing.	This comment refers to an existing subdivision that was not proposed for amendment and therefore is not within the scope of this proposal. It refers to subdivision (b), which allows a court to decide that an action is complex or that one previously declared to be complex is not. This comment will be referred to the advisory committee for consideration.
11.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of Solano County 600 Union Avenue Fairfield, CA 94533-5000	A	N	No specific comment.	No response required.
12.	State Bar of California Committee on Administration of Justice 180 Howard Street San Francisco, CA 94105-1639	A	Y	No specific comment.	No response required.