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California Practicum: A Guide to Coordination of Civil Actions in California

Darren L. Brooks

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California Practicum: A Guide to Coordination of Civil Actions in California

I. INTRODUCTION

The flood of litigation that clogs our court system is having detrimental effects on our adversary system.¹ To the rescue have come various methods of claim joinder such as class actions,² consolidation,³ and coordination.⁴ The various methods of joinder are generally within the volition of the parties to impose upon themselves, or upon each other, rather than being mandated by the court.⁵ However, for the party who desires the sole spotlight on the court's "center-stage," maintaining litigative autonomy is of primary importance. Such a desire will militate against seeking joinder of claims, such as a class action suit. Coordination, on the other hand, offers your client a high degree of autonomy while simultaneously combining any number of actions into one judicial district for the conven-

1. Roger J. Miner, *Federal Courts at the Crossroads*, 4 CONST. COMMENTARY 251, 255 (1987) (judges unable to direct significant attention to each case as case load increases). See, e.g., Robert H. Bork, *Dealing With the Overload in Article III Courts*, 70 F.R.D. 231, 232-33 (1976) (case overload so serious that integrity of system is threatened); *Pacific Gas & Elec. v. State Bd. of Equalization*, 27 Cal. 3d 277, 283, 611 P.2d 463, 467, 165 Cal. Rptr. 122, 126 (1980) (Mosk, J., commenting that "multiple-forum litigation is undesirable both from the viewpoint of the parties and the overburdened court system").

2. In California, see generally 48 CAL. JUR. 3D *Parties* §§ 29-44 (1979 & Supp. 1991); CAL. CIV. PROC. CODE § 382 (West 1973). In the federal context, see FED. R. CIV. P. 23; David Berger, *Litigation of a Class Action*, 18 FORUM 335 (1982).

3. See generally CAL. CIV. PROC. CODE § 1048 (West 1980); 1 CAL. JUR. 3D *Actions* §§ 1, 8-10, 63-67 (1972 & Supp. 1991).

4. The procedures for coordination are set out in CAL. CIV. PROC. CODE §§ 404-404.8 (West 1973 & Supp. 1991) and in CAL. R. CT. 1501-1550 (West 1991).

5. Some commentators believe this is the downfall of claim joinder's effect in reducing the court's caseload. AMERICAN LAW INSTITUTE, PRELIMINARY STUDY OF COMPLEX LITIGATION 5 (1987). "[C]urrently existing mechanisms for consolidating, coordinating, and resolving related actions were designed in a different age, and for much simpler litigation; they simply are not adequate for many of today's problems." *Id.* Further, most current legislation targets duplicative litigation involving twenty-five or more claimants. Richard D. Freer, *Avoiding Duplicative Litigation: Rethinking Plaintiff Autonomy and the Court's Role in Defining the Litigative Unit*, 50 U. PITT. L. REV. 809, 811 & n.12 (citing H.R. 4315, 99th Cong., 2d Sess. § 3 (1986) and H.R. 3690, 98th Cong., 1st Sess. § 4 (1983)). The true cause of court congestion, however, is the smaller cases such as *Provident Tradesmen Bank & Trust Co. v. Patterson*, 390 U.S. 102 (1986), where a single automobile accident produced four separate suits and threatened two more. *Id.* at 812.

ience of both your client and the court.⁶

This note will explain, step-by-step, how to coordinate civil actions in California.⁷ The scenario at issue concerns two or more cases which have a "common question of fact or law."⁸ An attorney's first thought may be to *consolidate* the actions; however, when these cases are pending in "horizontally" different California court districts (*i.e.*, different counties) or in "vertically" different courts (*i.e.*, Superior, Municipal, or Justice courts), the appropriate form of joinder is *coordination*.⁹ The decision to coordinate brings with it a procedural maze of rules and statutes, filled with standards unlike those for consolidation, and possibly significant changes in the presiding judge and venue.¹⁰ In the following pages, you will be guided through the maze, from the decision to coordinate to coordination's effect on the trial phase of litigation.

6. See *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1125 n.19, 751 P.2d 923, 937 n.19, 245 Cal. Rptr. 658, 672 n.19 (1988) (while coordination allows the resolution of proceedings having common issues, it also allows each individual plaintiff to remain "responsible for the proof of particular facts applicable to the particular plaintiff [unlike a class action]").

7. For suggestions regarding criminal actions see Note, *Using Equitable Powers to Coordinate Parallel Civil and Criminal Actions*, 98 HARV. L. REV. 1023 (1985). For suggestions regarding multiple actions in two or more different states, see George T. Conway III, *The Consolidation of Multistate Litigation in State Courts*, 96 YALE L. J. 1099 (1987). Various other claim joinder methods for large multiple-client cases are discussed in, Robert E. Shields, *Joinder Alternatives: Finding the Best Mechanism to Litigate Mass Toxic Tort Cases*, 24 TRIAL 54 (Oct. 1988).

8. CAL. CIV. PROC. CODE § 404 (West 1973).

9. WEIL, 3 CIVIL PROCEDURE BEFORE TRIAL ¶ 12:612 (1991) "Consolidation is limited to cases pending in the *same court*. Where cases having 'common questions' are pending in *different courts*, the procedure for combining the cases is 'coordination.'" *Id.*

Coordination originally began in 1974 as a method of joining cases pending in different counties. 1972 Cal. Stat. ch. 1162, § 2. It was amended in 1982 to allow joinder by and in the Superior Court of cases pending in both municipal and justice courts of the *same* county, using the same standards found in Civil Procedure Code section 404.1. 1982 Cal. Stat. ch. 250, § 1. While the full coordination procedure discussed in the text is now available for actions pending in the *same* county yet in vertically different courts, an alternative to coordination is provided by a process called "transfer and consolidation." See CAL. R. CT. 1520(c) (West 1991). This process utilizes the same standards for determining whether joinder and coordination procedures are appropriate. CAL. CIV. PROC. § 404 (West Supp. 1991). Essentially, transfer and consolidation is a simpler process substituting the Superior Court of the county for the Judicial Council as the administrator of whether joinder is appropriate and how the combined actions are to be brought to trial. See CAL. CIV. PROC. CODE §§ 404, 404.3(b), 404.6 (West Supp. 1991), CAL. R. CT. 1520(c) (West 1991) and WEST'S CIVIL PRACTICE FORMS § 404, forms 17-19 (Gregory L. Ogden & Daryl Fisher-Ogden 4th ed. 1988) for authority, procedure, and suggested forms to transfer and consolidate actions.

10. See *infra* notes 20-50 and accompanying text. For convenience, all references to "sections" are from the California Civil Procedure Code. References to "rules" are from the California Rules of Court.

II. THE DECISION TO COORDINATE

A. *Definition and Purpose of Coordination*

Coordination is the joinder of two or more actions having a common question of fact or law pending in different courts.¹¹ The joinder generally begins before or during the discovery stage and is effective through the final disposition of the cases.¹² Thus, coordination is distinguishable from its federal counterpart, multidistrict litigation,¹³ which combines cases in different districts for pre-trial proceedings only, after which the cases are referred back to the transferor district for trial.¹⁴

Apart from this significant difference, coordination and multidistrict litigation have important similarities. Both are supervised by a "judicial panel" whose function is to decide initially whether coordination is proper and to administer all proceedings while the actions are coordinated.¹⁵ The most significant similarity related to their respective standards for implementation¹⁶ is their purpose. "The object of [coordination] is to promote judicial efficiency and economy by

11. W. LEVIT & A. YAKUTIS, *COORDINATION OF CIVIL ACTIONS*, preface (1976) [hereinafter *COORDINATION*]; CAL. CIV. PROC. CODE § 404 (West 1973 & Supp. 1991).

12. See *infra* notes 208-211 and accompanying text.

13. See generally 32A AM. JUR. 2D *Federal Practice and Procedure* §§ 1844-49 (1982); *MANUAL FOR COMPLEX LITIGATION* (2d ed. 1985); 28 U.S.C.A. § 1407 (West 1976 & Supp. 1990) (civil actions may be coordinated or consolidated for *pretrial* proceedings) and accompanying FED. R.J.M.D.L. 1-25.

14. 32A AM. JUR. 2D *Federal Practice and Procedure* § 1844 (1982) (all actions shall be transferred back to transferor district before the end of pretrial proceedings).

15. Coordination is overseen by the Judicial Council of California in both practice and procedure. CAL. CIV. PROC. CODE § 404.7 (West 1973). Indeed, intervention of the Judicial Council is required as individual Superior courts can only combine cases for trial over which they have jurisdiction. *Cochrane v. Superior Court*, 261 Cal. App. 2d 201, 203, 67 Cal. Rptr. 675, 678 (1968). The Judicial Panel on Multidistrict Litigation oversees federal multidistrict litigation. 28 U.S.C.A. § 1407(a), (b), (f) (West 1976).

16. Comparisons of coordination and multidistrict litigation may be useful in practice since there are only five California cases ruling indirectly on the substantive aspect of coordination: *Industrial Indem. Co. v. Superior Court*, 214 Cal. App. 3d 259, 262 Cal. Rptr. 544 (1989) (parties to additional cases in coordinated proceedings are not entitled to peremptory challenge of coordination judge); *Bank of America Nat'l Trust Savings Ass'n v. Superior Court*, 200 Cal. App. 3d 1000, 246 Cal. Rptr. 521 (1988) (statutory five-year period to bring civil actions to trial applies to coordinated actions); *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 168 Cal. Rptr. 561 (1980) (abuse of discretion to transfer a case pending decision by coordination trial judge); *Pesses v. Superior Court*, 107 Cal. App. 3d 117, 165 Cal. Rptr. 680 (1980) (not abuse of discretion to retain consolidated cases for damages portion of trial despite showing of inconvenience to witnesses); *Lautrup, Inc. v. Trans-West Discount Corp.*, 64 Cal. App. 3d 316, 134 Cal. Rptr. 348 (1976) (writ of mandate proper method of review of denial of petition for coordination).

providing for the unified management of both the pretrial and trial phases of the coordinated cases.”¹⁷ The purpose of the federal multidistrict litigation statute¹⁸ is to provide centralized management of the cases, under court supervision, to assure a just and efficient resolution of the actions.¹⁹ Therefore, since coordination and multidistrict litigation have a similar method of administration and purpose, federal cases may serve as a helpful reference where California case law is silent. This Practicum, however, will focus on California cases that have specifically commented on coordination.

B. Standards for Coordination

1. The “Threshold” Standard — Section 404

In order for two cases to be *considered* for coordination they must share a common question of fact or law.²⁰ This requirement is referred to as the “threshold” standard in *Keenan v. Superior Court*,²¹ since it must be satisfied at the outset of coordination procedures. In *Keenan*, five suits were filed in two different districts by passengers or their heirs after an airplane crash.²² The claims involved wrongful death and other related tort actions, such as negligent maintenance of the aircraft, and were brought against Piper Aircraft and other defendants.²³ This is perhaps the clearest example of a case having commonality in both fact and law.

It is helpful when analyzing the question of factual similarity to ask: Do the actions relate to, or arise out of, a single transaction/event or a series of related transactions/events?²⁴ Since the single airplane crash in *Keenan* was the sole source of the litigation, the “single transaction” test was satisfied. To find legal similarity, the court compared the legal foundations set forth in the pleadings. In *Keenan*, since all of the claims alleged negligence on the part of the

17. *Citicorp N.A., Inc. v. Superior Court*, 213 Cal. App. 3d 563, 566 n.3, 261 Cal. Rptr. 668, 669 n.3 (1989).

18. 28 U.S.C.A. § 1407 (West 1976).

19. *See In Re New York City Municipal Security Litigation*, 572 F.2d 49 (2d Cir. 1978).

20. *See supra* note 11 and accompanying text.

21. *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 342, 168 Cal. Rptr. 561, 564 (1980).

22. *Id.* at 339, 168 Cal. Rptr. at 564. While the *Keenan* Court summarily determined that the threshold standard had been met, the textual analysis reveals the court’s thought process.

An additional example of legal commonality can be found in *Pesses v. Superior Court*, 107 Cal. App. 3d 117, 122, 165 Cal. Rptr. 680, 683 (1980) (court set forth four common questions of law regarding evidentiary and recovery issues).

23. *See State Farm Fire and Casualty Co. v. Keenan*, 171 Cal. App. 3d 1, 3, 216 Cal. Rptr. 318, 319 (1985).

24. *See* FED. R. CIV. PROC. 20; *Lumbermans Mut. Cas. Co. v. Borden Co.*, 241 F. Supp. 683 (S.D.N.Y. 1965) (example of common questions of law or fact).

defendants, the court found a common question of law which satisfied the threshold standard.²⁵ In practice, this standard will typically be met at the outset of litigation, since the cases' commonality will likely trigger the initial consideration of claim joinder.

2. The "One-Judge, All Purpose" Standard — Section 404.1

Section 404.1 of the California Civil Code significantly limits the scope of the appropriate application of coordination.²⁶ Section 404.1 mandates that "[c]oordination of civil actions sharing a common question of fact or law is appropriate if *one judge* hearing *all* of the *actions* for *all purposes*, . . . will promote the ends of justice."²⁷ Generally, civil trials may be divided into two stages: the liability stage and the remedy stage. Actions having a common question of fact or law are more frequently similar in the liability stage than in the remedy stage, since the remedy accorded each plaintiff is an inherent individualized concern. Coordination, however, takes little notice of litigation's bifurcatable components, as the "one judge, all purpose" standard contemplates significant commonality, not just among the various claims of an action, but across the *action* as a whole.

In *Pesses v. Superior Court*,²⁸ plaintiff Leon Pesses found himself at a significant disadvantage in proving damages due in part to this standard. The court coordinated Pesses' wrongful death case against Pacific Southwest Airlines (PSA) with identical claims of fourteen other plaintiffs.²⁹ The court ordered that the trial be held in San Diego. The initial order to coordinate focused on similarities in the liability stage of the trial, while reserving plaintiffs' rights to request retransfer on the issue of damages.³⁰ However, shortly after coordination, PSA stipulated to liability, leaving only damages at issue.³¹ Unfortunately, both Pesses and all of his witnesses testifying to damages, including two federal judges for the Central District of Califor-

25. *Keenan*, 111 Cal. App. at 342, 168 Cal. Rptr. at 564.

26. No case law or legislative history exists specifically on point with this standard. Therefore, courts will consider California Legislature's intent to be the "ordinary meaning" of the statute. *Pacific Gas & Elec. Co. v. Shasta Dam Area Pub. Util. Dist.*, 135 Cal. App. 2d 463, 468, 287 P.2d 841, 844 (1955).

27. CAL. CIV. PROC. CODE § 404.1 (West 1973) (emphasis added).

28. *Pesses v. Superior Court*, 107 Cal. App. 3d 117, 165 Cal. Rptr. 680 (1980).

29. *Id.* at 119, 165 Cal. Rptr. at 680-81.

30. *Id.* at 120, 165 Cal. Rptr. at 681.

31. *Id.*

nia, were located in Los Angeles.³² Further, Pesses was a seventy-year-old man with a business at home that could not be left unattended.³³ Despite these inconveniences, the court continued and coordinated Pesses' case for "all purposes" in San Diego. The court held that although possible,³⁴ retransfer is not automatic when common questions of law or fact cease to exist.³⁵ The "one judge, all purpose" standard is therefore a significant consideration.

Admittedly, the "one judge, all purpose" standard significantly limits the applicability of coordination, especially with respect to cases where consolidation would have been proper had the cases been pending in the same court.³⁶ However, for the attorney opposing a petition to coordinate,³⁷ the standard can be a boon since few cases contain sufficiently identical claims such that combining the actions for *all* purposes will further justice. Such concepts may cause the possibility of jury confusion at trial, especially where only one claim is common to actions containing numerous other legal issues.³⁸

3. Promoting the Ends of Justice Standard — Section 404.1

Coordination must serve to "promote the ends of justice."³⁹ Section 404.1 lists the following factors:

- (1) [W]hether the common question of fact or law is predominating and significant to the litigation;
- (2) the convenience of parties, witnesses, and counsel;
- (3) the relative development of the actions and the work product of counsel;
- (4) the efficient utilization of judicial facilities and manpower;
- (5) the calendar of the courts;
- (6) the disadvantages of duplicative and inconsistent rulings, orders, or judgments;
- (7) the likelihood of settlement of the actions without further litigation should coordination be denied.⁴⁰

Consideration of these factors involves a "weighing and balancing . . . to determine whether coordination . . . best serves the ends of justice in the particular case."⁴¹ The *Pesses* case represents the only California authority or commentary of any kind that actively balances and analyzes the factors above.⁴² As discussed earlier, even

32. *Id.* at 121, 165 Cal. Rptr. at 682.

33. *Id.*

34. *See infra* notes 171-86 and accompanying text.

35. *Pesses*, 107 Cal. App. 3d at 125, 165 Cal. Rptr. at 685.

36. CAL. CIV. PROC. CODE § 1048(a) (West 1973) (consolidation may be ordered for "any or all of the matters in issue"); 1 CAL. JUR. 2D *Actions* § 70 (1958) (consolidation available regarding the particular *claims* that share a commonality).

37. *See infra* notes 113-21 and accompanying text.

38. Interview with Rick Cupp, Jr., Law Professor, Pepperdine University, in Malibu, California (June 20, 1990).

39. CAL. CIV. PROC. CODE § 404.1 (West 1973).

40. *Id.*

41. *Pesses*, 107 Cal. App. 3d at 126, 165 Cal. Rptr. at 685.

42. *See supra* notes 28-35 and accompanying text.

though *Pesses* showed substantial inconvenience to witnesses, the court balanced the factors in favor of coordination in San Diego.

The court reached its holding by weighing the inconvenience to *Pesses* against the seven aforementioned factors.⁴³ A significant common question of law remained in the remedy stage regarding the appropriate pre-judgment interest. If the cases were retransferred and inconsistent rulings occurred, the result would be unfair to all the parties.⁴⁴ Further, the parties had invested "considerable time" in coordination and pre-trial preparation that would have gone to waste if the actions were divided (inefficient utilization of judicial facilities and manpower).⁴⁵ Finally, the court had set the trial date in San Diego for the Fall of 1980, while a trial date in Los Angeles would not have been available for three or four years (calendar of the courts and development of actions factors).⁴⁶ Ironically, these factors outweighed the inconvenience to the Los Angeles-based, federal judges whom *Pesses* would call as witnesses, even though the judges' court calendars would be disrupted.⁴⁷ Thus, one factor against coordination (*i.e.*, witness inconvenience), will not outweigh the combinations of other factors favoring coordination.

Most of the factors are express, needing no further explanation. Factor 7, however, warrants additional comments. When the "likelihood of settlement of the actions without further litigation" is greater, absent coordination, it should indicate that denial of coordination is proper.⁴⁸ This furthers coordination's purpose of "promot[ing] judicial efficiency,"⁴⁹ since denial will likely result in less litigation. Indeed, in some cases, maintaining separate actions may be advantageous to a plaintiff seeking to "spread the defendant thin" between multiple courts and judges. Such a case may move a less wealthy defendant toward the settlement table and serve as an important factor against coordination.⁵⁰

43. If the factors are mentioned at all in other legal sources, it consists only of a bare recitation of the statute. See, *e.g.*, *Industrial Indem. Co. v. Superior Court*, 214 Cal. App. 3d 259, 262 n.2, 262 Cal. Rptr. 544, 545 n.2 (1989); COORDINATION, *supra* note 11, at 1.

44. *Pesses*, 107 Cal. App. 3d at 125, 165 Cal. Rptr. at 685.

45. *Id.*

46. *Id.*

47. *Id.* at 121, 165 Cal. Rptr. at 682.

48. While never discussed, this premise is inferentially derived from a sample "Opposition to Petition for Coordination." COORDINATION, *supra* note 11, at 10.

49. See *supra* note 17 and accompanying text.

50. "A defendant who in one way or another victimizes hundreds of thousands,

C. Examples of Coordination Cases

Using the foregoing three standards, it should be possible to determine whether your case is a proper candidate for coordination. However, the following brief list of cases involving coordination will give an idea of circumstances deemed appropriate for coordination:

(1) *Pacific Gas & Electric v. State Board of Equalization*⁵¹

Three public utility companies sought an injunction to force reassessment of their real property in accordance with Proposition 13. Justice Mosk held that such relief was constitutionally inappropriate because the plaintiffs would have to seek a refund of taxes in each of over fifty counties to obtain relief. The court suggested the use of coordination actions to proceed in an "expeditious manner."⁵²

(2) *American Airlines v. County of San Diego*⁵³

Fifty-six actions, filed in various counties by four airline companies seeking property tax refunds, were coordinated in Los Angeles County.⁵⁴ Note that here, coordination transferred actions out of local counties, even though a county's proper tax assessments are intimately localized concerns.

(3) *Nicolet, Inc. v. Superior Court*⁵⁵

In what is described as "'one of the largest trials in the state's history,'"⁵⁶ five asbestos manufacturers brought suit against fifty insurance companies to resolve the defendant's refusal to cover claims by plaintiff's employees injured due to asbestos exposure. The numerous claims were coordinated for trial, thus demonstrating the great volume of actions with which the coordination procedure can operate.

(4) *Cartwright v. Swoap*⁵⁷

Ninety-six petitioners, applicants or recipients of public assistance, sought mandamus to command entry of final decisions in delayed hearings. The court of appeal held that such a writ had already been entered against defendant's predecessor and thus, plaintiffs should join together to seek enforcement of the writ. The court suggested the use of coordination.⁵⁸

It is interesting to note that in each case discussed above, very little diversity in legal claims, if any, exists between the actions joined for coordination. This gives credence to the idea that in coordinating actions, it would not be proper to combine a collage of various legal issues simply because one common question of law exists between

has, after all, no constitutional right to be subjected to only one lawsuit." *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 968, 124 Cal. Rptr. 376, 381-82 (1975).

51. *Pacific Gas & Elec. v. State Bd. of Equalization*, 27 Cal. 3d 277, 611 P.2d 643, 165 Cal. Rptr. 122 (1980).

52. *Id.* at 283, 611 P.2d at 647, 162 Cal. Rptr. at 126.

53. *American Airlines v. County of San Diego*, 220 Cal. App. 3d 164, 269 Cal. Rptr. 372 (1990).

54. *Id.* at 165-66, 220 Cal. Rptr. at 372.

55. 179 Cal. App. 3d 7, 224 Cal. Rptr. 408 (1986), *vacated on other grounds*, 227 Cal. Rptr. 391, 719 P.2d 987 (1986) (unpublished in California Appellate Reports).

56. *Id.* at 410 (citing Maher, *Asbestos Extravaganza*, 5 STATE BAR J. 61 (1985)).

57. *Cartwright v. Swoap*, 40 Cal. App. 3d 567, 115 Cal. Rptr. 402 (1974).

58. *Id.* at 572, 115 Cal. Rptr. at 405. *See also supra* notes 21-47 and accompanying text for discussion of two airline crash proceedings. The California Supreme Court has also commented on mass tort claims, stating that "class actions [are] rarely . . . appropriate for resolution [of such claims] . . . [T]hat is not to say [that] some of the benefits of the class action device cannot be implemented by other means, such as coordination proceedings." *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1125 n.19, 751 P.2d 923, 958 n.19, 245 Cal. Rptr. 658, 672 n.19 (1988).

them. Contrary to this idea, however, is the plain language of section 404.⁵⁹ Still, it is hard to envision the coordination of two actions having more than two or three factually unrelated claims meeting the "Ends of Justice" standard⁶⁰ while sharing only one similar legal claim.

III. THE PROCEDURE TO COORDINATE

The statutory authority for coordination is set out in sections 404-404.8 of the California Civil Procedure Code.⁶¹ Additionally, rules regarding coordination were adopted by the Judicial Council of California under California Rules of Court 1501-1550.⁶² Whereas the basic statutes and rules are easy enough to comprehend, "problems occur in routine coordination proceedings . . . with respect to management of paperwork detail."⁶³ The remainder of this note will reorganize the applicable law, integrating case law where it exists, and provide sample forms to help the attorney navigate through the coordination procedure.

59. See *supra* notes 20-38 and accompanying text.

60. See *supra* notes 39-50 and accompanying text.

61. See CAL. CIV. PROC. CODE §§ 404-404.8 (West 1973 & Supp. 1990).

62. The court rules were designed to "provide by rule the practice and procedure for coordination of civil actions in convenient courts, including provisions for giving notice and presenting evidence." CAL. CIV. PROC. CODE § 404.7 (West 1973). They were adopted pursuant to authority granted in section 404.7 and the California Constitution. See *id.*; CAL. CONST. art. 6, § 6. Coordination procedures became effective on January 1, 1974.

Other court rules and manner of proceedings may be applicable as the assigned coordination judge may designate pursuant to Rule 1504(b)-(c). Local court rules will be specified at the beginning of a coordination proceeding and may supercede any local rules of court set out in the order appointing the assigned judge. CAL. R. CT. 1504(c). Regarding other procedural and substantive choice of law issues, the law that would otherwise apply to civil actions in the absence of coordination is applicable. CAL. R. CT. 1504(a). However, if such law conflicts with Rules 1501-1550, the Rules will prevail. *Id.*; CAL. CIV. PROC. CODE § 404.7 (West 1973) (authority granted to Judicial Council to enact rules superceding "any other provision of law"); *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 341, 168 Cal. Rptr. 561, 563 (1980) (the grant of power to the Judicial Council to formulate rules removes any restraints of statutory consistency).

63. COORDINATION, *supra* note 11, at iii. See CAL. CIV. PROC. CODE § 404 (West 1973). Regarding any of the set time periods for service, filing etc., a motion for shortening or extending the time period is available. See CAL. R. CT. 1503. The motion should be submitted to an assigned judge, or if one is not yet assigned, to the Chairman of the Judicial Council. *Id.* No stipulation by the parties will allow an extension without judicial approval. *Id.*

A. Initiating Coordination

The presiding judge or "all the parties plaintiff or defendant" to an action may initiate a petition for coordination.⁶⁴ The purpose of the petition is to request the Judicial Council to assign a coordination motion judge to decide whether coordination is appropriate (*i.e.*, whether the three standards above are met).⁶⁵ The petition may be submitted to the Judicial Council either directly or indirectly.⁶⁶

1. The Direct Petition

The petition for coordination may be submitted without approval of the presiding judge by sending the petition directly to the Chairman of the Judicial Council⁶⁷ at the following address:

Chairman, Judicial Council of California
Administrative Office of the Courts
Attn: Coordination Attorney
303 2nd Street, South Tower
San Francisco, CA 94107⁶⁸

The submission should be made in duplicate and only to the San Francisco office of the Judicial Council.⁶⁹ This direct petition procedure is also available to the presiding judge.⁷⁰

2. The Indirect Petition

The indirect initiation of coordination begins with a motion to the presiding judge to commence coordination proceedings.⁷¹ Newly revised Rule 1520 no longer requires the motion to set forth a draft of the petition to coordinate, however, it may be helpful to do so any-

64. CAL. CIV. PROC. CODE § 404 (West 1973). See also CAL. R. CT. 1521.

65. See CAL. R. CT. 1521(a). The "petition for coordination" is "any petition, motion, application, or request for coordination of actions submitted to the Chairman of the Judicial Council or to a coordination trial judge [regarding add-on cases] pursuant to Rule 1544." CAL. R. CT. 1501(n). The "coordination motion judge" is the "assigned judge designated . . . to determine whether coordination is appropriate." CAL. R. CT. 1501(g). One should distinguish this from the "coordination trial judge" who is the "assigned judge designated . . . to hear and determine coordinated actions." CAL. R. CT. 1501(i) (emphasis added).

66. Submission of a request for coordination may take place "any time after filing of the complaint." CAL. R. CT. 1521(a).

67. CAL. R. CT. 1511.

68. The "coordination attorney" is an attorney who is appointed by the Judicial Council Chairman to perform administrative functions such as assigning the coordination motion judge and various administrative duties laid out in Rule 1550. See CAL. R. CT. 1501(f).

69. CAL. R. CT. 1511. See CAL. R. CT. 1520(b) for a thirty day stay to seek coordination.

70. CAL. CIV. PROC. CODE § 404 (West 1973 & Supp. 1990).

71. CAL. R. CT. 1520(a). Motions should be made "in the manner provided by law for motions in civil actions generally." *Id.*

way.⁷² The presiding judge is then given the initial opportunity to decide whether the coordination is proper. The benefit obtained by the preliminary motion is a chance to circumvent the common question of fact or law (threshold) standard and have a better opportunity to obtain a stay from the presiding judge in all related actions pending in that court, not exceeding 30 days, in order to prepare the final petition, give notice to all parties, and transmit the request to the Judicial Council.⁷³ Beyond this, no provision expressly grants authority to the presiding judge to prevent obtaining coordination if the threshold standard is met. Further, the decision as to whether coordination is appropriate is within the express power of the coordination motion judge.⁷⁴ Therefore, the presiding judge's ruling on the motion should be limited to whether "oppression or delay" is the true motive of the petition, whether the petition is "technically sufficient," or whether the petition sufficiently justifies coordination despite not satisfying the threshold standard.⁷⁵ Even if deleterious motives are found to exist, there is no provision preventing a direct petition to the Judicial Council if all the standards are met.⁷⁶

In Appendix A, there is set forth a sample motion to the presiding judge (without the attached "draft" petition for coordination) for commencement of coordination proceedings. The sample motion is accompanied by sample orders denying and granting the motion as they should appear, in substance, under the rules.

If the presiding judge grants permission to petition the Judicial Council, the petitioner should draft the order, serve and file it in his/her action, and transmit a copy to the Judicial Council pursuant to Rule 1520(b). The order granting the motion and transmitting the request to the Judicial Council should include an order to fulfill the filing and service requirements of Rules 1521(b), 1522 and 1523, discussed below.

3. The Requirements for the Petition to Coordinate

Whether the direct or indirect route is chosen, at some point a final petition to coordinate must be prepared and transmitted to the Judi-

72. Compare CAL. R. CT. 1520(b) with CAL. R. CT. 1521(b).

73. CAL. R. CT. 1520(b), 1514(e).

74. See *supra* note 65.

75. COORDINATION, *supra* note 11, at 2.

76. The revised Rule 1520, effective January 1, 1983, indicates that if the section 404 common question of fact or law test is not met, a direct petition is not allowed without permission from the presiding judge. See CAL. R. CT. 1520(b).

cial Council. The purpose of the petition is to request that a judge be assigned by the Judicial Council to determine whether coordination of certain actions is appropriate.⁷⁷ Appendix B sets out a sample "Petition to Coordinate." Under Rule 1521 the petition shall state whether a hearing is requested⁷⁸ and shall be supported by points and authorities and affidavits showing:

- (1) The name of each petitioner, or, when the petition is submitted by a presiding or sole judge, the name of each real party in interest, and the name and address of his attorney of record, if any;
- (2) The names of the parties to all included actions,⁷⁹ and the name and address of each party's attorney of record, if any;
- (3) The complete title of each included action, together with the title of the court in which such action is pending and the number of such action;
- (4) The complete title of any other action known to the petitioner to be pending in a court of this state that shares a common question of fact or law with the included actions, and a statement of the reasons for not including such other action in the petition for coordination.⁸⁰
- (5) The status of each included action, including the status of any pretrial or discovery motions or orders in that action, if known to petitioner;⁸¹
- (6) The facts relied upon to show that each included action meets the coordination standards specified in Section 404.18² of the Code of Civil Procedure; [and]
- (7) Any facts relied upon in support of a request that a particular site or sites be selected for a hearing⁸³ upon the petition for coordination.⁸⁴

An alternative to proof by affidavit of any fact regarding only (2), (3), (6), or (7) above is allowed under Rule 1521(c). The alternative procedure requires attaching a certified or endorsed copy of the pleadings from each included action.⁸⁵ The petitioning attorney must "specify with particularity the portions of the pleading that are relied

77. See CAL. R. CT. 1521. The petition to coordinate is also used to "add-on" a case discovered after the coordination trial judge is selected. See *infra* notes 187-99 and accompanying text.

78. The wording of Rule 1521 makes a request for a hearing optional in order to deny coordination or, if opposition is voiced by any other party, to grant coordination. CAL. R. CT. 1521.

79. An "included action" is "any action or proceeding included in a petition for coordination" or the actions sought to be combined for trial. CAL. R. CT. 1501(k).

80. See also *Trotsky v. Los Angeles Fed. Sav. and Loan Ass'n*, 48 Cal. App. 3d 134, 151, 121 Cal. Rptr. 637, 647-48 (1975) (noting availability of coordinating class actions involving similar issues, and party's responsibility, if seeking coordination, to disclose such similar actions if they have actual knowledge of them).

81. "The imminence of a trial in any action otherwise appropriate for coordination may be a ground for summary denial of a petition in whole or in part." CAL. R. CT. 1521(d). Further, if an included action has already completed its discovery stage and the threat of inconsistent judgments is low, denial of the petition is likely since coordination would not "further the ends of justice." CAL. R. CT. 1541(b).

82. See *supra* notes 20-50 and accompanying text.

83. "[T]he coordination judge is not to be constrained by the preexisting law [regarding venue]" in the selection of the site for trial. *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 341-42, 168 Cal. Rptr. 561, 563-64 (1980). See *infra* notes 200-05 and accompanying text.

84. This list of requirements, set out in California Rule of Court 1521(a), should be used as a checklist.

85. CAL. R. CT. 1521(c).

upon to show" the facts allowed to be omitted from the affidavits.⁸⁶

4. Notice of Submission of Petition for Coordination

Rule 1522 details the requirements of a separate document entitled the "Notice of Submission of Petition for Coordination" which is required to be attached to each petition for coordination.⁸⁷ One "Notice," tailored substantively for the action in which it is filed, should be attached for *each* included action along with proof of filing of the notice and petition in each action.⁸⁸ *Each* Notice shall include the following:

- (1) The title of the court in which the notice is to be filed.
- (2) The title and number of the included action pending in that court.
- (3) The date the petition for coordination was submitted.
- (4) The name and address of petitioner's attorney of record.
- (5) The title and number of the included action to which petitioner is a party.
- (6) The title of the court in which that action is pending.
- (7) A statement notifying that if a party receiving the notice intends to oppose the petition to coordinate, that party must serve and submit written opposition not later than 45 days after this notice is served on him/her.⁸⁹

Appendix C contains a sample "Notice of Submission of Petition for Coordination."

5. Filing and Service Requirements

Rule 1522, as discussed above, requires that a copy of the Petition and a copy of each Notice be filed in each included action.⁹⁰ Rule 1523, however, only requires service of the Notice that was filed in each included action *without* the Petition or its supporting docu-

86. *Id.*

87. CAL. R. CT. 1522.

88. *See* CAL. R. CT. 1522-23(a).

89. CAL. R. CT. 1522-23(b). An eighth component of the Notice, discussed *infra* under "Filing and Service Requirements," is required should the petitioner choose to serve a copy of the petition on each party to the included actions. CAL. R. CT. 1523(b).

An important note should be made at this point: whenever a time period is triggered by service of a document in coordination proceedings, the "mail service" statute will be applicable. CAL. CIV. PROC. CODE § 1013 ("Mail Service" statute). Therefore, if petitioner gives service to a party by mail, respondent will have five additional days to reply (*i.e.*, 50, not 45, days to submit a written opposition to coordination). *Citicorp N.A., Inc. v. Superior Court*, 213 Cal. App. 3d 563, 567-68, 261 Cal. Rptr. 668, 670-71 (1989).

90. *See supra* notes 87-88. Additionally, one should treat the Judicial Council as a quasi-party to the proceedings by filing, in their office, copies of all papers ordering, denying, or determining coordination in the proceedings. *See* CAL. R. CT. 1511. If any paper is required to be served upon an assigned judge and one has not been designated, that copy should be transmitted to the Chairman of the Judicial Council. CAL. R. CT. 1501(q).

ments.⁹¹ In this case, the petitioner must include an eighth requirement in the Notice: a statement informing the party served that a copy of the petition may be obtained from the petitioner if he/she requests such in writing, within five days after service of the Notice.⁹² Without this statement in the Notice, the petitioner is responsible for service of the Notice and petition to *all* parties.⁹³ Conceivably, this process of service is allowed due to the fact that serving the petition is expensive and somewhat unnecessary since the petition has already been filed in the parties' actions and thus is available for copying at the court records office.

Service and proof thereof shall be as provided for in civil actions generally.⁹⁴ Further, a failure to serve any party with any paper required to be served by the Rules of Court will *not* preclude coordination, but will give such party a basis for appropriate relief.⁹⁵

6. Checklist for Beginning the Coordination Procedure

- Motion to Presiding Judge (Optional).
- Motion for 30-Day Stay to Presiding Judge (Optional).
- Petition for Coordination.
- Supporting Affidavits and Points and Authorities.
- Notice of Submission of Petition for Coordination.
- Proof of Filing a Copy of the Notice and Petition with Supporting Documents in each Individual Action.
- Proof of Prior Service of Each Notice Filed to Each Party Appearing in the Included Actions (Service of the Petition is Optional).

Once these papers are prepared, filed, and served, the petition, along with all supporting documents, is transmitted to the Judicial Council, and a judge is required to be assigned to determine the appropriateness of coordination.⁹⁶ In the assignment order, the Judicial Council will assign to the Coordination proceeding a special title and number and indicate the address of the court in which subsequent documents for the coordination motion judge should be filed.⁹⁷ A copy of the order will be served upon each party and sent to each

91. CAL. R. CT. 1523(a) & (b).

92. CAL. R. CT. 1523(b). "The petitioner shall immediately furnish copies of the petition for coordination and supporting documents to each party who makes a timely request, in writing, for such papers." *Id.* See Appendix D for sample request for a copy of the petition.

93. See CAL. R. CT. 1523(a). If the petition and its supporting documents must be served, service must occur at least five days prior to any hearing upon the matter. CAL. R. CT. 1521.

94. CAL. R. CT. 1510, 1501(p) & (q).

95. *Id.*

96. CAL. CIV. PROC. CODE § 404.

97. CAL. R. CT. 1524. The "special title and number" assigned should be used in all subsequent papers in the proceeding. CAL. R. CT. 1550(b).

court in which an action is pending.⁹⁸

A sample order used by the Judicial Council to assign the coordination motion judge can be found in Appendix E. The court receiving a copy of this order may, in the absence of a stay order, retain jurisdiction over the included action for all of the pre-trial and discovery proceedings.⁹⁹ However, the court is enjoined from commencing trial or entering judgment on the action unless the trial had commenced before the assignment of the coordination motion judge.¹⁰⁰ Therefore, receipt of the order acts as an automatic stay of trial in the included actions,¹⁰¹ but if the trial has already commenced, or there is a danger of commencement, it will be necessary to seek a stay order from the coordination motion judge.

B. Seeking a Stay Order Pending Ruling on Petition

The coordination motion judge is given authority to "stay any action being considered for, or affecting an action being considered for, coordination."¹⁰² Any party to the included actions may serve and submit a motion for stay at any time prior to the determination of the petition for coordination.¹⁰³ If the original petitioner's thirty day stay to prepare the petition has expired or was denied, it is advisable to seek a stay order from the coordination motion judge. While the petitioner may first motion for a stay at this stage (after the assignment of the motion judge), the opportunity exists to add a motion for stay into the original petition for coordination.¹⁰⁴

A simple application for stay is set out in Appendix F. The application must:

- (1) List all known related cases pending in any California court;
- (2) State whether or not the stay order should apply to any of such cases;
- (3) Be supported by a memorandum of points and authorities and by affidavits establishing the facts relied upon to show that a stay order is necessary and

98. CAL. R. CT. 1524.

99. CAL. R. CT. 1514(d).

100. *Id.*

101. COORDINATION, *supra* note 11, at 15. Note that the automatic stay will not toll the time within which civil actions must be brought to trial under the Code of Civil Procedure section 583.110. See *Bank of America Nat'l Trust & Sav. Ass'n v. Superior Court*, 200 Cal. App. 3d 1000, 1009-10, 246 Cal. Rptr. 521, 525-26 (1988).

102. CAL. CIV. PROC. CODE § 404.5. The time during which such stay is effective is not included in computing the time within which a civil action must be brought to trial under the Code of Civil Procedure section 583.110. CAL. R. CT. 1514(f).

103. CAL. R. CT. 1514(a).

104. *Id.* An example of the addition to the petition for coordination of a request for stay can be found in COORDINATION, *supra* note 11, at 17.

appropriate to effectuate the purposes of coordination.¹⁰⁵

Opposition to a request for stay may be voiced by serving and submitting such, with accompanying points and authorities and affidavits, within ten days after service of the application.¹⁰⁶ Timely filing of opposition will prevent a stay longer than thirty days unless a hearing is conducted.¹⁰⁷

Hearings are conducted within the discretion of the coordination motion judge, who is also responsible for preparing and serving notice of the hearing.¹⁰⁸ It is helpful, for the purpose of preparing a points and authorities, to consider the factors which must be considered by the judge at the hearing:

- (1) Whether the stay will promote the ends of justice;
- (2) The imminence of any trial or proceeding that might materially affect the status of the action to be stayed;
- (3) Whether a final judgement in that action would have a res judicata or collateral estoppel effect with regard to any common issue of the included actions.¹⁰⁹

If the stay is granted after a hearing, unlike the automatic stay following assignment of the motion judge, the stay order suspends all proceedings in the action to which it applies.¹¹⁰ If a stay is granted without a hearing and without timely written objection, any party to an affected action may file a request for a hearing to determine whether the stay should continue.¹¹¹ The initial stay will terminate on the thirtieth day following submission of such a request.¹¹²

Since the stay contemplated here operates to halt proceedings pending the motion judge's decision on coordination, the stay will automatically *terminate* on the tenth day following denial of coordination.¹¹³ However, if coordination is granted, all proceedings in all included actions are automatically and permanently stayed except as

105. CAL. R. CT. 1514(a). Since the coordination motion judge has authority to stay actions, parties affected by a stay (but not necessarily included in the petition to coordinate) are required to be served with a copy of the application and the supporting documents, to which such parties may voice opposition. *Id.*

106. *Id.* It may be implied from Rule 1514(a) that service of the application is not required upon parties of included actions. Such parties could conceivably voice opposition at any time, including at the hearing on the application. However, Rule 1510 requires service of all papers on all parties unless otherwise provided in the Rules. CAL. R. CT. 1510. Nothing requires that exemption from the requirement of service be expressly provided. Opposition papers should set forth the reasons why the stay should not issue, "all known related cases pending in any California court and . . . state whether the stay order should extend to [any of the related cases]." CAL. R. CT. 1514(a).

107. CAL. R. CT. 1514(b).

108. CAL. R. CT. 1514(a)-(b).

109. CAL. R. CT. 1514(e).

110. CAL. R. CT. 1514(c). The stay order may be limited, however, to specified portions of an action, as the motion judge shall specify. *Id.*

111. CAL. R. CT. 1514(b).

112. *Id.*

113. CAL. R. CT. 1529(d).

the coordination *trial* judge shall allow.¹¹⁴

C. *Opposing a Petition for Coordination*

A party receiving service of the Notice of Submission of Petition for Coordination may serve and submit opposition to coordinate at any time within forty-five days after service of the Notice of Submission.¹¹⁵ The opposing party may file points and authorities and affidavits in support thereof.¹¹⁶ All opposition papers should be transmitted to the Judicial Council in San Francisco as well as to the coordination motion judge at the assigned address.¹¹⁷ In addition, the opposition should be served on all parties to all included actions.¹¹⁸ A sample Opposition to the Petition for Coordination is set out in Appendix G.

When writing the opposition, the petition to coordinate should be attacked on as many grounds as possible including:

- (1) The threshold standard — do the cases share a common question of fact or law?¹¹⁹
- (2) The one judge, all purpose standard — will one judge hearing all the actions for all purposes promote the ends of justice?¹²⁰
- (3) The ends of justice standard¹²¹
- (4) Are the cases pending before *different* courts?¹²²

114. *Id.* The original court in which a “permanently” stayed action is pending may still accept and file papers accompanied by proof of duplicate filing to the coordination motion judge and may continue any proceedings regarding severable claims not ordered coordinated. CAL. R. CT. 1529(b).

An important note from case law should be mentioned at this point. Upon a grant of coordination, the automatic stay of all included actions is effective *only* until assignment of the coordination trial judge. *Bank of America v. Superior Court*, 200 Cal. App. 3d 1000, 1009, 246 Cal. Rptr. 521, 526 (1988). Thus, the time within which civil actions must be brought to trial would no longer be tolled. *See supra* note 101. The rule announced in *Bank of America* is arguably an erroneous one as the court was under the mistaken belief that a coordination trial judge could not issue a stay in a coordinated action, thus making stays, in their view, inappropriate after the assignment of the trial judge. *Bank of America*, 200 Cal. App. 3d at 1011-12, 246 Cal. Rptr. 521, 527. The express authority of the trial judge to stay included actions is given in Rule 1541 in his/her ability to continue a stay for an undefined period of time after the grant of coordination is given in Rule 1529(b).

115. *See supra* note 89 and accompanying text. *See also* CAL. R. CT. 1525 (giving opposing party five extra days where notice is made by mail).

116. CAL. R. CT. 1525.

117. CAL. R. CT. 1510, 1511. *See also supra* note 96 and accompanying text.

118. CAL. R. CT. 1510, 1511.

119. *See supra* notes 20-25 and accompanying text.

120. *See supra* notes 26-38 and accompanying text.

121. *See supra* notes 39-50 and accompanying text.

122. If not, consolidation is the proper method of joinder. *See supra* notes 8-9 and accompanying text.

(5) Is your included action imminently ready for trial?¹²³

An additional ground against coordination, not set out in the rules or statutes, may be established by analyzing the conduct which led to the filing of the various law suits. If the conduct occurring in the different jurisdictions is sufficiently distinct, it could be argued that no common question of fact exists because although the offending party committed the same offense, each occurred under different circumstances. Like in a product liability action, the offender should be held accountable for his conduct in the jurisdiction where it occurred and should not be given the benefit of a coordinated trial.

D. Supporting a Petition to Coordinate

A party receiving service of the Notice of Submission of Petition for Coordination may serve and submit a written response in support of the petition anytime within thirty days after service of the notice.¹²⁴ Appendix H sets out a sample statement in support of the Petition for Coordination. Service requirements are the same as those for the opposition to coordinate.¹²⁵

IV. THE COORDINATION HEARINGS AND POST-HEARING PROCEDURE

A. When is a Hearing Required?

While Rule 1521(d) provides that summary denial may occur in whole or in part if any of the included actions will imminently go to trial, Rule 1527(a) provides that “no petition for coordination shall be denied, unless a hearing has been held.”¹²⁶ Further, a grant of coordination cannot be issued over the objection of any party unless a hearing is held.¹²⁷ In any other case, a hearing on the petition is within the discretion of the assigned motion judge.¹²⁸

B. The Hearing

If the motion judge decides a hearing is appropriate, he will determine the time, place and issues to be resolved.¹²⁹ The petitioner

123. See CAL. R. CT. 1521(d) (may be “a grounds for summary denial of a petition” to coordinate).

124. CAL. R. CT. 1526.

125. See *supra* notes 115-16 and accompanying text. The benefit gained by voicing support may be to strengthen the weight of the petition. More immediately, it will enable the supporting party to appear at the hearing on the petition which otherwise would not be allowed. CAL. R. CT. 1513.

126. CAL. R. CT. 1527(a) (emphasis added).

127. *Id.*

128. CAL. R. CT. 1527(b).

129. *Id.* The motion judge may also conduct special hearings on specific issues that may dispose of a petition to coordinate without conducting a full hearing on all issues raised by the petition or opposition. CAL. R. CT. 1528.

must give notice of this hearing to all parties included in the action.¹³⁰ However, even though all parties are given notice, Rule 1513 stipulates that only those "who have submitted a petition, motion or application, or a written response or opposition to such petition, motion or application, shall be permitted to appear at the hearing."¹³¹ An example of such notice is set out in Appendix I.

At the hearing, all factual matters regarding the petition to coordinate and any other motion should be presented by using answers to interrogatories, affidavits, requests for admissions, depositions, or matters judicially noticed (*i.e.*, written evidence).¹³² Oral testimony is not permitted except as to matters in dispute from the written evidence and as the motion judge allows.¹³³

If coordination is granted, the order to coordinate will be issued and reported to the Judicial Council.¹³⁴ If more than one reviewing court would otherwise have jurisdiction, the order will designate the appropriate reviewing court for *subsequent* decisions made during the coordination proceedings.¹³⁵

A copy of the order, whether granting or denying coordination must be served upon each party appearing in an included action.¹³⁶ Further, petitioner should submit a copy to the Judicial Council¹³⁷

130. See CAL. R. CT. 1510, 1527(b). The motion judge may order the petitioner to promptly serve any other party he may deem appropriate to receive notice of the hearing. CAL. R. CT. 1527(b).

131. CAL. R. CT. 1513. For good cause shown, the motion judge can allow other parties to attend the hearing. *Id.*

132. *Id.*

133. *Id.*

134. CAL. CIV. PROC. CODE § 404.3(a) (West Supp. 1990). Note that the motion judge can grant *in part* a petition to coordinate as to those cases whose joinder satisfies the standards in sections 404-404.1. See CAL. R. CT. 1529(b) (claims not coordinated remain in jurisdiction of originating court). For an example of an order granting the petition to coordinate, see *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 340, 168 Cal. Rptr. 561, 562-63 (1980). In that example, the order nominates the coordination trial judge's name which, as discussed below, is an exclusive function of the Chairman of the Judicial Council. See *infra* note 139 and accompanying text. Therefore, the order in *Keenan* must simply be *suggesting* the choice of the parties for trial judge.

135. CAL. CIV. PROC. CODE § 404.2 (West 1973). The reviewing court selected must "promote the ends of justice" under the various factors listed in section 404.1. *Id.* The reviewing court identified in the order is not necessarily the appropriate reviewing court for decisions made at the hearing on the petition. Decisions made during the hearing are challenged using a petition for a writ to the appellate court having jurisdiction over the district where the hearing takes place. See CAL. R. CT. 20, 1505; CAL. CIV. PROC. CODE § 404.6 (West Supp. 1990) (writ of mandate is appropriate method of review and must be filed within twenty days after challenged order is entered).

136. CAL. R. CT. 1529(a).

137. CAL. R. CT. 1511.

and file the order in each included action.¹³⁸ Following the service and filing of an order denying coordination, the authority of the coordination motion judge terminates.¹³⁹

C. Post-Hearing Procedures

When coordination is ordered, the Chairman of the Judicial Council will issue an assigning order designating a coordination trial judge "to hear and determine the actions in the site or sites" the trial judge selects.¹⁴⁰ The court will file this order in each coordinated action and transmit a copy to each party therein.¹⁴¹ The order will set forth the address where all papers to be submitted to the trial judge shall be transmitted.¹⁴²

1. Challenging the Choice of Trial Judge

Although some case law authorizes a nomination procedure during the coordination hearing whereby parties can suggest a particular judge to the Judicial Council,¹⁴³ no provision binds the Chairman to select any particular party's judge of choice.¹⁴⁴ Therefore, procedures are available to challenge the Chairman's choice of trial judge.¹⁴⁵

The challenging party should submit the motion to disqualify pur-

138. CAL. R. CT. 1529(a).

139. CAL. R. CT. 1529(c). If for any reason there is a delay in the motion judge's determination of the petition for a period of ninety days after his assignment, the judge must report to the Chairman of the Judicial Council in writing:

- (1) the present status of the coordination proceeding;
- (2) any factors or circumstances that may have caused undue or unanticipated delay in the determination of the issue whether coordination is appropriate; and
- (3) any stay orders that are in effect.

Id.

The authority of the motion judge will continue until the assignment of a trial judge following a grant of coordination. However, that authority is limited to orders made "for good cause, as the ends of justice may require." CAL. R. CT. 1529(c). "Good cause" requires a "showing of an urgent need for judicial action to preserve the rights of a party pending assignment of a coordination trial judge." *Id.*

140. CAL. CIV. PROC. CODE § 404.3(a) (West Supp. 1991). See CAL. R. CT. 1540. For examples of an order assigning the trial judge, see COORDINATION, *supra* note 11, at 19-21.

141. CAL. R. CT. 1540.

142. *Id.* Every paper subsequently filed in a coordinated action must include proof of submission of a copy to the trial judge at the designated address. *Id.*

143. See *supra* note 134.

144. The coordination attorney is required to keep a list of judges, both active and retired, available for assignment to coordination proceedings. CAL. R. CT. 1550. See CAL. R. CT. 1501(f) (defining coordination attorney). It may be helpful to contact the coordination attorney at the Judicial Council for help in determining your suggestion for trial judge.

145. CAL. R. CT. 1515. These same procedures may be used to challenge the selection of the motion judge as well. *Id.*

suant to the Code of Civil Procedure section 170.6 and in writing to the *challenged judge* within twenty days after service of the assigning order.¹⁴⁶ Peremptory challenges available to any side of a coordinated action may be filed by any party of that coordinated action.¹⁴⁷ A "side" means all parties, plaintiff or defendant, to the coordinated actions or all parties who have substantively similar interests in the issues, as determined by the assigned judge.¹⁴⁸ Since "any one party can exercise the sole peremptory challenge to the assigned trial judge which is available to [that party's] 'side,' . . . consultations among all similarly situated parties is very important."¹⁴⁹ However, parties to actions "added-on"¹⁵⁰ after coordination is ordered are not entitled to challenge the selection of the trial judge.¹⁵¹

2. Powers of the Coordination Trial Judge

Immediately upon the trial judge's assignment, he/she may exercise all the powers available to a judge presiding over the actions before coordination.¹⁵² The trial judge is required to take "an active role in managing all steps of the pretrial, discovery, and trial proceedings to expedite the just determination of the coordinated actions without delay."¹⁵³ To do so, the trial judge may:

- (1) order any coordinated action transferred to another court or remand any action under Rule 1543;
- (2) schedule and conduct hearings, conferences, and a trial or trials at any site within this state he deems appropriate;
- (3) order any issue or defense to be tried separately and prior to the trial of the remaining issues when it appears the disposition of any of the coordinated actions might thereby be expedited.¹⁵⁴

146. *Id.*

147. See CAL. R. CT. 1515; CAL. CIV. PROC. CODE § 170.6 (West 1982 and Supp. 1991).

148. CAL. R. CT. 1501(r), 1515.

149. Citicorp North America, Inc. v. Superior Court, 213 Cal. App. 3d 563, 568, 261 Cal. Rptr. 668, 671-72 (1989) ("Th[e] need for interaction among litigants is unique to coordination proceedings"). *Id.* at 568-69, 261 Cal. Rptr. at 672.

150. See *infra* notes 187-99 and accompanying text.

151. Industrial Indem. Co. v. Superior Court, 214 Cal. App. 3d 259, 263, 262 Cal. Rptr. 544, 546 (1989) (limiting the right to peremptorily challenge judge in a coordination proceeding to parties in the coordination proceeding who submit a motion or affidavit of prejudice within twenty days of the service of the order assigning the coordination trial judge).

152. CAL. R. CT. 1540.

153. CAL. R. CT. 1541(b).

154. *Id.* See *infra* notes 161-64 and accompanying text for additional powers. The trial judge may exercise his/her powers upon all coordinated actions at any time until the judgment in the action is final. CAL. R. CT. 1545. "[A] judgment is final when it is no longer subject to appeal." *Id.*

3. Duties of the Coordination Trial Judge

Preferably, within thirty days following the assignment order, Rule 1541 mandates that a preliminary trial conference should be held.¹⁵⁵ The trial judge should issue an order to hold the conference¹⁵⁶ and give notice to all parties in the included actions.¹⁵⁷ The order will designate the issues to be discussed.¹⁵⁸ All persons appearing should be prepared to discuss those issues.¹⁵⁹

Attorney's for the parties may serve and submit a proposed agenda for the conference and propose the form of the order calling the conference, at any time after the trial judge is assigned.¹⁶⁰ At the conference the trial judge may:

- (1) appoint liaison counsel under Rule 1506;¹⁶¹
- (2) establish a timetable for filing motions other than discovery motions;
- (3) establish a schedule for discovery;
- (4) provide a method and schedule for the submission of preliminary legal questions that might serve to expedite the disposition of the coordinated actions;
- (5) in class actions, establish a schedule, if practical, for the prompt determination of matters pertinent to the class action issue;
- (6) establish a central depository(s) to receive and maintain for inspection by the parties evidentiary material and specified documents that are not required by [the] rules to be served upon all parties;
- (7) schedule further pretrial conferences if appropriate;¹⁶²
- (8) exercise any power listed above under "Powers of the Coordination Trial Judge"¹⁶³; and
- (9) "Give direction to the clerk concerning opening a master file for all subsequent filings, or otherwise managing paperwork detail."¹⁶⁴

4. Liaison Counsel

The trial judge may appoint a "liaison counsel" at the preliminary conference or any time thereafter.¹⁶⁵ The liaison counsel is chosen from the attorneys of record for the parties in the included actions,¹⁶⁶ to represent all parties on a side. The liaison counsel has powers and duties as follows:

155. CAL. R. CT. 1541(a).

156. A sample order can be found in COORDINATION, *supra* note 11, at 24-25.

157. See CAL. R. CT. 1541(a). A sample notice of order setting preliminary conference can be found in COORDINATION, *supra* note 11, at 23-24.

158. CAL. R. CT. 1541(a).

159. *Id.*

160. *Id.*

161. See *infra* notes 165-70 and accompanying text.

162. CAL. R. CT. 1541(a)(1)-(7).

163. See *supra* notes 152-54 and accompanying text.

164. COORDINATION, *supra* note 11, at 22.

165. CAL. R. CT. 1506(a), 1541(a)(1). Rule 1506(a) allows liaison counsel to be assigned by the motion judge as well. Liaison counsel selected by the motion judge will serve as such only until the petition is ruled upon, unless otherwise stipulated to or directed by an assigned judge. CAL. R. CT. 1506(a). Liaison counsel can also be removed, for good cause shown, on the motion of any party or the motion judge. *Id.*

166. CAL. R. CT. 1501(1).

- (1) to receive on behalf of and promptly distribute to the parties for whom he acts notices and other documents from the court;
- (2) to act as spokesman for the side which he represents at all proceedings set on notice before trial subject to the right of each party to present individual or divergent positions; [and]
- (3) to call meetings of counsel for the purpose of proposing joint action.¹⁶⁷

The judge may request the parties to select one or more liaison counselors, but may appoint the attorney of his/her choice if the parties are unable to agree.¹⁶⁸ After the assignment, papers served on the liaison counsel will be deemed served on all parties whom he represents.¹⁶⁹ However, represented parties may request, in writing, a "special notice" which will require service to that party of all papers served on the liaison.¹⁷⁰

5. Transferring Actions

Another power of the judge is to transfer coordination actions.¹⁷¹ "Transfer" means "to remove a coordinated action or severable claim in that action from the court in which it is pending to any other court."¹⁷² A "transfer" does not, however, remove the action or claim from the coordination proceeding.¹⁷³

Transfer may be ordered on the motion of the trial judge or by any party to a coordinated action.¹⁷⁴ Any other party may object to the transfer, over which no transfer may be issued without a hearing.¹⁷⁵

A hearing on the issue of transfer can be held only upon ten days written notice after service to all parties in the action sought to be transferred.¹⁷⁶ The following factors should be used to analyze whether a transfer is proper:

- (1) the convenience of parties, witnesses, and counsel;
- (2) the relative development of the actions and work product of counsel;

167. *Id.* The third power here contemplates the power to order bifurcated trials. See COORDINATION, *supra* note 11, at 29.

168. CAL. R. CT. 1506(a).

169. CAL. R. CT. 1510.

170. CAL. R. CT. 1506(b) (the assigned judge may, however, reject the request for "special notice").

171. CAL. R. CT. 1541(b)(1).

172. CAL. R. CT. 1501(s). The term "transfer" includes the term "retransfer." *Id.* The transfer may be for all purposes or specialized purposes. CAL. R. CT. 1543(a).

173. CAL. R. CT. 1501(s). Further, there is no automatic retransfer of actions if the common question of fact or law upon which the actions were coordinated ceases to exist. *Pesses v. Superior Court*, 107 Cal. App. 3d 117, 125-26, 165 Cal. Rptr. 680, 685 (1980).

174. CAL. R. CT. 1543(a).

175. *Id.*

176. *Id.*

- (3) the efficient utilization of judicial facilities and manpower;
- (4) the calendar of the courts; and
- (5) any other relevant factor.¹⁷⁷

If transfer is ordered, the order will designate the transferee court and a copy will be filed in each coordinated action.¹⁷⁸ The clerk of the transferor court will immediately prepare and send to the transferee court a certified copy of the order of transfer and the pleadings and proceedings in the transferred action. Thereafter, the clerk will execute service.¹⁷⁹ The transferee court will file the action, treating it as if it had been filed in that court.¹⁸⁰ Thus, no fees will be required.¹⁸¹ The transferee court may then exercise jurisdiction over the action pursuant to the scope of the trial judge's order.¹⁸²

6. Remanding Actions

While *transferring* a case to another court does not remove it from the coordinated proceedings, a *remand* of the case will.¹⁸³ Remand essentially "undoes" the order to coordinate with respect to the remanded action or claim. The trial judge has the authority to remand at anytime any action or severable claim or issue to its originating court, on his or her own motion, or upon the motion of any party, after a hearing.¹⁸⁴ Remand may also be accomplished by stipulation of all parties to the coordination proceedings.¹⁸⁵ However, if any party objects to the remand, the action or claim may not be remanded unless evidence received at the remand hearing "demonstrates a material change in the circumstances . . . relevant to the criteria for coordination as stated in Code of Civil Procedure section 404.1."¹⁸⁶

177. *Id.* Significantly missing from these factors that closely track those for the "ends of justice" standard, is the danger of inconsistent or duplicative rulings, orders, or judgments. This suggests that the transferee judge maintains communications with the trial judge as a matter of course to avoid this danger. Otherwise, the order to transfer would simply "undo" the motion judge's order to coordinate and work against the "one judge - all purpose" standard. See *supra* notes 26-38 and accompanying text. A "remand" is the appropriate method of removing an action from the coordinated proceedings. See *infra* notes 183-86 and accompanying text. For an analysis of a denial of remand using the factors for transferring actions, see *Pesses v. Superior Court*, 107 Cal. App. 3d 117, 165 Cal. Rptr. 680 (1980).

178. CAL. R. CT. 1543(b). An example of an order to transfer can be found in COORDINATION, *supra* note 11, at 25-26.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* Provisions are made in Rule 1543(b) for transfer of any other papers the new judge requires to hear the transferred case.

183. CAL. R. CT. 1501(o). If the remanded action/claim had already been transferred, the order to remand shall include a retransfer to the initial transferor court. *Id.*

184. CAL. R. CT. 1542.

185. *Id.*

186. *Id.* See also *supra* notes 26-50 and accompanying text.

7. Adding-On Cases

An "add-on case" is an action that is proposed for coordination with other actions *already* coordinated.¹⁸⁷ The authority for this is set out in Code of Civil Procedure section 404.4.¹⁸⁸

The request to add-on a case may be made by motion of the trial judge or any party to the coordinated actions upon affidavits showing that joinder would satisfy the coordination standards.¹⁸⁹ The request may also be made by either *all parties* plaintiff or *all parties* defendant to the proposed add-on case in the form of a petition to coordinate submitted to the trial judge, instead of the Judicial Council.¹⁹⁰ The petition must be served upon all parties to the add-on action and coordinated cases.¹⁹¹ A motion for stay of the add-on case may be made to the coordination trial judge.¹⁹²

Opposition to the add-on case may be served and submitted within ten days after service of the petition.¹⁹³ Points and authorities and affidavits are required to support the opposition and should be served and submitted within fifteen days of filing the notice of opposition.¹⁹⁴ Failure to file the points and authorities and affidavits in opposition may constitute grounds for granting the petition to add-on the case.¹⁹⁵

In the same manner that a motion judge may hold a hearing on a petition to coordinate, the trial judge may order a hearing regarding the add-on case.¹⁹⁶ The trial judge may allow any party to serve and submit additional written materials in response to the request to add-on.¹⁹⁷ In considering the request, the court will consider:

- (1) the relative development of the actions;
- (2) the work product of counsel; and
- (3) any other relevant matter.¹⁹⁸

An order granting or denying the request to add-on will have the same result as would an initial grant or denial of coordination.¹⁹⁹

187. CAL. R. CT. 1501(b).

188. CAL. CIV. PROC. CODE § 404.4 (West 1973).

189. *Id.* See *supra* notes 20-50 and accompanying text for coordination standards.

190. *Id.*; CAL. R. CT. 1544(a). A copy must still be sent to the Judicial Council. *Id.*

191. CAL. R. CT. 1510.

192. CAL. R. CT. 1544(b). See *supra* notes 102-14 and accompanying text.

193. CAL. R. CT. 1544(a).

194. *Id.*

195. *Id.*

196. CAL. R. CT. 1544(b). See *supra* notes 126-39 and accompanying text.

197. CAL. R. CT. 1544(b).

198. *Id.*

199. CAL. R. CT. 1544(c). See *supra* notes 114 & 134-39 and accompanying text.

V. TRIAL OF THE COORDINATED ACTIONS

A. Venue Selection

The trial judge has the authority to select any court within California²⁰⁰ as the site or sites where the coordinated actions will be heard and determined.²⁰¹ When considering which site is appropriate the trial judge should consider:

- (1) the convenience of parties, witnesses, and counsel;
- (2) the relative development of the actions;
- (3) the work product of counsel;
- (4) the efficient utilization of judicial facilities and manpower; and
- (5) the calendar of the courts.²⁰²

A coordination is not constrained by venue law²⁰³ in the selection of the trial location.²⁰⁴ Therefore, consideration of the county in which certain events occurred and the residence of parties should not be determinative.²⁰⁵

B. Termination of Actions

Once the trial location is selected, the trial judge has complete authority to conduct the trial as he/she deems appropriate.²⁰⁶ The trial judge may terminate any coordinated action by settlement, dismissal with prejudice, summary judgement, final judgement, or, as discussed earlier, by remanding to another court for final determination.²⁰⁷ All proceedings will continue to be determined by the trial judge until judgement becomes final in the action at issue.²⁰⁸ If ancillary proceedings are required, the trial judge will specify the court in which they should be heard and determined.²⁰⁹ A judgment is not final until it is no longer appealable.²¹⁰ Therefore, the powers of the trial judge with respect to an action will not terminate until that time.²¹¹

200. See CAL. R. CT. 1541(b)(2).

201. CAL. CIV. PROC. CODE § 404.3(a) (West Supp. 1990).

202. *Id.*

203. CAL. CIV. PROC. CODE §§ 392-401 (West 1973).

204. *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 341, 168 Cal. Rptr. 561, 563 (1980). "[The] place of trial must be determined by the coordination judge unfettered by the narrow perspective of the venue statutes." *Id.* at 342, 168 Cal. Rptr. at 564.

205. *Id.* at 341, 168 Cal. Rptr. at 563. When coordination is of actions pending in vertically different courts in the same county, the site for trial will generally be that county since one cannot help but consider where the events leading to trial occurred. See, e.g., *Pesses v. Superior Court*, 107 Cal. App. 3d 117, 165 Cal. Rptr. 680 (1980) (venue law would have placed the trial in Los Angeles but the trial judge determined, under coordination provisions, that San Diego was the appropriate site for the trial).

206. See CAL. R. CT. 1501(i), 1541, 1545.

207. CAL. R. CT. 1545. See also *supra* notes 171-86 and accompanying text.

208. CAL. R. CT. 1545.

209. *Id.*

210. *Id.*

211. *Id.* Any proceedings after the coordinated action has been terminated will be held in the court in which the action was pending prior to coordination. *Id.*

When the trial judge dismisses or otherwise terminates an action, a certified copy of the order²¹² will be transmitted to:

- (1) the clerk of the action's originating court, who will promptly enter judgment and serve notice of that entry upon all parties to that action;²¹³
- (2) the appropriate clerks in each of the other coordinated actions;²¹⁴ and
- (3) the Chairman of the Judicial Council.²¹⁵

C. *Review of the Coordinated Orders*

If review is sought of an order made during coordination proceedings, the appropriate method is to file a writ of mandate.²¹⁶ The writ should be filed with the court identified in the motion judge's order granting coordination²¹⁷ within twenty days after service of a written notice of entry of the challenged order.²¹⁸

VI. CONCLUSION

This note has defined and explained the process of coordination in California, differentiating it from its counterpart consolidation. Effectively, coordination is simply a more paperwork-intensive "consolidation" of actions pending in different courts rather than actions pending in the jurisdiction of a single court, for which, consolidation itself is appropriate.

Generally, the procedure will be easy. A petition to coordinate is submitted to the Chairman of the Judicial Council who assigns a motion judge to determine whether coordination is proper. If coordination is ordered, the Judicial Council will assign a trial judge to join the various actions into one court for adjudication. The coordinated actions are then treated as though they were consolidated even though the actions originated in different counties or lower courts.

Use the numbered lists, found throughout this text, as checklists, when preparing the various documents required at each stage of coor-

212. The order should contain the original caption of the action before it was coordinated. *Id.*

213. *Id.*

214. *Id.*

215. CAL. R. CT. 1511.

216. CAL. CIV. PROC. CODE § 404.6 (West Supp. 1990). See, e.g., *Rebeiro v. Nor-Cal Integrated Ceilings*, 135 Cal. App. 3d 522, 187 Cal. Rptr. 256 (1982) (example of writ taken from entry of summary judgment in a coordinated proceeding).

217. CAL. CIV. PROC. CODE § 404.2 (West 1973).

218. CAL. CIV. PROC. CODE § 404.6 (West Supp. 1990).

dination. Using careful attention to detail, the attorney will be able to cut through the procedural monster that is Coordination.

DARREN L. BROOKS

APPENDIX A*

PRELIMINARY MOTION TO PRESIDING JUDGE**
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

_____)	
)	
_____	)	NO. _____
Plaintiffs,)	
vs.	)	MOTION TO COMMENCE
_____	)	COORDINATION PROCEEDINGS
Defendants.)	
)	
_____)	

Notice is hereby given that on _____, 19____, at _____ o'clock or as soon thereafter as the matter may be heard, at the courthouse, _____, the undersigned will apply to the presiding judge for an order that a request be transmitted to the Chairman of the Judicial Council for the assignment of a judge to determine whether the coordination of this action with certain other actions included in the petition for coordination is appropriate.

The motion will be made on the grounds stated in the petition for coordination and the memorandum of points and authorities filed herewith.

Dated: _____

Attorney for _____

* All sample forms are adopted from those appearing in WEST'S CIVIL PRACTICES FORMS §§ 404 - 404.5 (G. Ogden & D. Fisher-Ogden 4th ed. 1988) unless otherwise indicated.

** COORDINATION, *supra* note 11, at 2.

ORDER DENYING THE MOTION
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

)	
)	
	)	NO. _____
Plaintiffs,)	
vs.	)	ORDER
)	
)	
Defendants.)	
)	
)	

The motion of _____ for an order that this Court transmit a request to the Chairman of the Judicial Council that a judge be assigned to determine whether the coordination of the above entitled action with the actions now pending in other courts of this state, namely, [specify] is appropriate, having come on for hearing before the undersigned on _____, 19____, upon notice duly and regularly given and _____ being represented by _____, its counsel and the matter having been argued and submitted and good cause appearing therefor,

It is hereby ordered that such motion be and the same is hereby denied. (It is further ordered that the stay heretofore granted to _____ is hereby dissolved.)

Dated: _____.

 Judge of the Superior Court

ORDER GRANTING THE MOTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

_____)	
)	
_____	)	NO. _____
Plaintiffs,)	
vs.	)	ORDER
_____)	
Defendants.)	
)	
_____)	

The motion of _____ for an order that this Court transmit a request to the Chairman of the Judicial Council that a judge be assigned to determine whether the coordination of the above entitled action with the actions now pending in other courts of this state, namely, [specify] is appropriate, having come on for hearing before the undersigned on _____, 19____, upon notice duly and regularly given, and _____ being represented by _____, its counsel, and _____ the matter having been argued and submitted and good cause appearing therefor,

It is hereby ordered that such motion be and the same is hereby granted. A copy of this order will be transmitted to the Chairman of the Judicial Council requesting that a judge be assigned to determine whether the above entitled action should be coordinated with the following pending actions: [specify].

It is further ordered that _____, moving party, comply with all of the provisions of Rule 1521(b) of the Rules of Court and that a Petition for Coordination be filed and that copies thereof be served as required by the Rules of Court and proof of service be made and filed, in accordance with Rule 1521.

It is further ordered that a Notice of Submission of a Petition for Coordination be prepared by said _____ and filed and served as provided in Rules 1522 and 1523.

It is further ordered that all proceedings in the above entitled ac-

tion be stayed forthwith until _____, 19 ____, in order to permit compliance with this order.

Dated: _____.

Judge of the Superior Court

APPENDIX B

PETITION FOR COORDINATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

)
)
) NO. _____
 Plaintiffs,)
 vs.) PETITION FOR COORDINATION
)
 Defendants.)
)
)

To: _____, Chairman of the Judicial Council,
State of California.

Petitioner, _____ hereby requests that a judge
be assigned to determine whether coordination of the above entitled
action with the actions hereinafter designated is appropriate. At-
tached to this petition is the affidavit of _____
[add others if desirable], and petitioner's Memorandum of Points and
Authorities.

1. Petitioner requests that said petition be set for hearing pursuant
to Rule 1521(a) of the Rules of Court. [Optional.]

2. Petitioner is _____, whose address is
_____. [If more than one, list each with name
and address.]

3. The name and address of the attorney for [each] petitioner is:
_____.

4. Petitioner is informed and believes and upon such information
and belief states that the names of each party in all of the actions re-
quested to be coordinated and the names and addresses of the attor-
neys of each said parties is (as follows): (or as set forth on Exhibit A
attached hereto and incorporated by references.)

5. Petitioner is informed and believes and upon such information
and belief states that the complete title of each included action, to-
gether with the title of the court and the number of such action is (as

follows): (or is set forth in Exhibit B which is attached hereto and incorporated by reference.)

6. Petitioner is informed and believes and upon such information and belief states that the status of each of said included actions indicated (in Exhibit B) (above) including pending pretrial or discovery motions is (as follows): (set forth in Exhibit C which is attached hereto and incorporated by reference.)

7. Petitioner relies upon the following facts to show that each included action meets the coordination standards specified in California Code of Civil Procedure section 404.1. [Set forth simply but completely the facts supporting petition as per code section.]

8. Petitioner requests that the hearing of this petition for coordination be set at _____ for the reasons that _____.

Respectfully submitted,

Petitioner

Attorney for Petitioner

APPENDIX C

NOTICE OF SUBMISSION OF PETITION FOR COORDINATION
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

_____)	
)	
_____	)	NO. _____
Plaintiffs,)	
vs.	)	NOTICE OF SUBMISSION OF
_____	)	PETITION FOR COORDINATION
Defendants.)	
)	
_____)	

To: _____

Notice is hereby given that on _____, 19 ____, the _____ in the above entitled action submitted a Petition for Coordination of the above entitled action with the actions indicated on Exhibit A, attached hereto and made a part of this Notice by incorporation, of which you are either a party or an attorney for a party.

The name of the petitioner's attorney of record and his address is:

The action, in which you are a party or the attorney for a party, sought to be included in such coordination is (or as indicated on Exhibit A), which action is pending in the _____ Court, _____, California.

Also attached to this Notice of Submission of a Petition for Coordination you must serve and submit a Notice of Opposition thereto not later than 45 days after the service upon you of this Notice, per Rule 1523 of the Rules of Court.

The Petition for Coordination has been filed with the Chairman of the Judicial Council of the State of California and your Notice of Opposition must be filed with him and conform to the provisions of Rule 1525 of Rules of Court.

Dated: _____

Petitioner

By _____
His Attorney

APPENDIX D

REQUEST FOR COPY OF PETITION AND
THE SUPPORTING DOCUMENTS

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

_____)	
_____)	
_____,)	NO. _____
Plaintiffs,)	
vs. _____)	REQUEST FOR COPY OF
_____)	PETITION FOR COORDINATION
Defendants.)	
_____)	
_____)	

To: _____, Attorney For Petitioner

Pursuant to Rule 1523(b) of the Rules of Court, request is hereby made that you furnish forthwith a copy of the Petition for Coordination and all supporting documents, affidavits, memoranda of points and authorities and exhibits. This request is made on behalf of _____ who is the _____ in Action Number _____, in the _____ Court of the State of California in and for the County of _____, which is entitled _____ v. _____ and which is one of the actions you have requested to be included in said coordination.

Said papers shall be delivered to _____ whose address is _____.

Dated: _____

 Attorney for _____ in Action
 Number _____
 _____ v. _____ Court,
 County of _____, California

APPENDIX E

ORDER ASSIGNING COORDINATION MOTION JUDGE*

CHAIRMAN, JUDICIAL COUNCIL OF CALIFORNIA

State Building, Rm. 3154, 350 McAllister St., San Francisco 91402

Coordination Proceeding) JUDICIAL COUNCIL
Special Title) COORDINATION PROCEEDING
(Rule 1550(b))) NO. _____
) ORDER ASSIGNING COORDINATION
(Special Title)) MOTION JUDGE.
)
_____)

THE HONORABLE (Judge's full name) , Judge of the
 (name of the court) , is hereby assigned pursuant to the Code
of Civil Procedure section 404 and Rule 1524, California Rules of
Court, to sit as coordination motion judge to determine whether coordi-
nation of the included actions enumerated below is appropriate.
Pursuant to section 404.5 and Rule 1514, pending any determination
whether coordination is appropriate, the coordination motion judge
may stay any action being considered for, or affecting any action be-
ing considered for, consideration.

INCLUDED ACTIONS

COURT	NUMBER	SHORT TITLE
(ACTIONS LISTED)		

Pursuant to Rule 1524, the clerk of each court in which an included
action is pending is directed to file this order in the included action.

Pursuant to Rules 1501(q) and 1524, all documents required to be
submitted to the coordination motion judge shall be transmitted to
him at the court address designated below.

(Name and address of coordination motion judge)

Pursuant to Rule 1511, a copy of every Notice of Opposition, Appli-
cation for Stay Order, Stay Order, Notice of Hearing on the Petition,
and Order Granting or Denying Coordination shall be transmitted to
the Chairman of the Judicial Council at the following address:

Chairman of Judicial Council of California

* COORDINATION, *supra* note 11, at 8. See also *id.* at 9 for alternative form of order where there are three or fewer included actions; *Keenan*, 111 Cal. App. 3d at 339, 168 Cal. Rptr. at 562 (setting out the assignment of coordination motion judge applicable in that case).

Administrative Office of the Courts
Attn: Coordination Attorney
State Building Rm. 3154, 350 McAllister St.
San Francisco, California 94102

Dated: _____

Chairman, Judicial Council of
California

APPENDIX F

APPLICATION FOR STAY ORDER

JUDICIAL COUNCIL FOR THE STATE OF CALIFORNIA

IN THE MATTER OF THE PETITION)
FOR COORDINATION OF)
_____ v. _____, (etc.))
[List all cases by names, numbers)
and counties])

_____,)
Plaintiffs,)
vs.)
_____,)
Defendants.)

_____)

NO. _____
APPLICATION FOR STAY
ORDER

To: _____, Assigned Judge in the above entitled
actions _____, being the _____ in Ac-
tion No. _____, entitled _____ v.
_____, now pending in the _____

Court of the State of California for the County of
_____ hereby makes application for an order staying
all proceedings in said action pending determination whether coordi-
nation of said action with the actions indicated on Exhibit A, at-
tached hereto and incorporated by reference, which heretofore have
been ordered coordinated for trial, is appropriate.

Said application is made pursuant to the provisions of section 404.5
of the California Code of Civil Procedure and is supported by the af-
fidavit of _____ which establishes the facts relied
upon for this application, such facts conforming to the requirements
of California Code of Civil Procedure section 404 and 404.1. Attached
hereto are applicant's Points and Authorities in support of such
application.

It is necessary that all further proceedings in the action above re-
ferred to be stayed, pending determination of applicant's request for
such case to be added on to those already determined to be properly
coordinated, heretofore indicated in Exhibit A, because
_____.

The following are all of the cases known by the undersigned to be pending in any court of this state: [*List by county, case number, title and parties*].

The requested stay orders should apply to [all] [the following specified cases: _____] for the reason that a judgment in any such case might be res judicata or collateral estoppel in the cases requested to be coordinated.

Dated: _____

Attorney for Applicant

APPENDIX G

NOTICE OF OPPOSITION TO PETITION FOR COORDINATION
AND REQUEST FOR HEARING

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

_____)	
_____)	
_____,)	NO. _____
Plaintiffs,)	
vs. _____)	NOTICE OF OPPOSITION TO
_____)	PETITION FOR COORDINATION
Defendants.)	AND REQUEST FOR HEARING
_____)	
_____)	

To: _____ Petitioner and to _____ his attorney

You and each of you will please take notice that _____ who is the _____ (in the above entitled action) (in Action No. _____, entitled _____ v. _____, pending in the _____ Court of the State of California for the County of _____) hereby objects to and opposes said Petition for Coordination heretofore filed by you with the Chairman of the Judicial Council.

Said opposition is made upon the grounds that *[attack each of the standards for coordination]*.

Request is hereby made that this Notice of Opposition be set for a hearing at the earliest convenience of the Court.

Dated: _____

Attorney for _____

APPENDIX H
STATEMENT IN SUPPORT OF PETITION
FOR COORDINATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

_____))
_____))
_____,) NO. _____
Plaintiffs,)
vs.) STATEMENT IN SUPPORT OF
_____,) PETITION FOR COORDINATION
Defendants.)
_____))
_____))

To: _____ Chairman of the Judicial Council,
State of California and to _____ Petitioner (and
to _____)

This statement is made in support of the Petition for Coordination
filed by _____ in the above entitled action, by
_____ who is the _____ in Action No.
_____, entitled _____ v. _____, now
pending in the _____ Court of the State of California for
the County of _____.

It appears that the issue of fact (or of law) stated in said petition
are of prime importance to this party in his action as the same issues
of fact (or law) are involved in said action. It is vital that uniformity
of decisions of law in this state be attained as said actions are pending
in different courts and multiple appeals could be avoided by such single
determination.

[Add additional supporting facts].

Respectfully submitted,

By _____
His Attorney

APPENDIX I
NOTICE OF HEARING ON PETITION
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF _____

)
)
)
_____,) NO. _____
Plaintiffs,)
vs.) NOTICE OF HEARING
)
_____,)
Defendants.)
)
)
_____)

To: _____ Plaintiff, and _____ his Attorney

You and each of you is hereby notified that on _____, 19____, at the hour of _____M., in the courtroom of Department _____ of the above entitled court in the County Courthouse, _____ Street, City of _____, California, a hearing will be held on Defendant's Petition for Coordination.

Said petition is based upon the included action sharing common question of fact [law]; the provision of section 404 and following sections of the Code of Civil Procedure; all the papers, records, and documents on file herein; and the evidence, oral and documentary, to be presented at the hearing on said petition.

Dated: _____

Attorney for Defendant