



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 11, 2015

Title	Agenda Item Type
Civil Forms: Disability Access Litigation	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms DAL-005, DAL-010, and DAL-012	January 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee	November 30, 2015
Hon. Raymond Cadei	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise the statutorily mandated Disability Access Litigation forms used for parties to apply for and the court to grant stays and mandatory evaluation conferences in construction-related accessibility claims, and the related proof of service form. The forms must be changed to reflect the amendments to the Civil Code made by Assembly Bill 1521 (Assembly Judiciary Committee; Stats. 2015, ch.755), enacted on October 10, 2015 as urgency legislation (and thus operative on enactment) to add a new category of defendants that may request a stay and early evaluation and another procedure that may be requested at the same time. The proof of service form for construction-related accessibility claims should be revised to reflect the new names of the forms used to apply for and grant stays and mandatory evaluation conferences.

Recommendation

The Civil and Small Claims Advisory Committee recommends that that the Judicial Council revise *Defendant's Application for Stay and Early Evaluation Conference Pursuant to Civil*

Code Section 55.54 (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010) and *Proof of Service—Disability Access Litigation* (form DAL-012). The Civil and Small Claims Advisory committee will recommend to the Rules and Projects Committee that the revised forms be circulated for comment during the winter 2016 comment cycle.

The revised forms are attached at pages 6–10.

Previous Council Action

In October 2009, when the provisions of Civil Code section 55.54, on applications for stays of proceedings and early evaluation conferences became operative, the statutorily required application form and notice and stay form—the text of which was set out in the statute—were added to the judicial branch website. Effective January 2013, as mandated by the Legislature, the council revised the statutory application and notice forms and adopted them as *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference* (forms DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010). The forms were further revised, and some additional DAL forms adopted, in 2013, as the result of further legislative actions.

Rationale for Recommendation

Assembly Bill 1521 (Assembly Judiciary Committee; Stats. 2015, ch.755) (AB 1521) amended the statutory provisions concerning construction-related disability access claims. This bill was signed into law on October 10, 2015 as urgency legislation and is therefore already in effect. The new law is intended to limit the practice of high-volume lawsuits motivated by quick settlement with business owners—rather than correction of ADA violations—by placing new requirements, including substantially higher filing fees, on what the bill refers to as “high-frequency litigants.”¹ The new law also provides some additional rights to defendant businesses in cases brought by such litigants, which are now in effect.

Certain categories of defendants in construction-related disability access cases have the right to a 90-day stay upon request, and to an early evaluation conference held by the court during the stay period. The new law adds an additional category of defendants to those with the right to a stay—business defendants in cases filed by high-frequency litigants. (Civil Code §55.54(b)(2)(D).) *Defendant’s Application for Stay and Early Evaluation Conference Pursuant to Civil Code Section 55.54* (form DAL-005) is the form mandated for use by defendants to make such a request. The form contains the statutorily mandated facts that the various categories of defendants must state under penalty of perjury to receive a stay and early evaluation conference.

¹ New Code of Civil Procedure section 425.55 defines “high-frequency litigant” as (1) a plaintiff who has filed 10 or more complaints alleging a construction-related accessibility violation within the 12-month period immediately preceding the filing of the current complaint or (2) an attorney who has represented as attorney of record 10 or more high-frequency litigant plaintiffs in actions that were resolved within the 12-month period immediately preceding the filing of the current complaint, with certain exclusions (including successful cases).

The proposed revisions to form DAL-005 would add item 3.d for the new category of defendants that can seek a stay and include all statements defendants must declare under the statute: that it is a business and was served with a complaint by a high frequency litigant as defined by Code of Civil Procedure section 425.55. (Civil Code section 55.54(c)(7).) Under the new law, the complaint in these cases must state whether it is filed by a high frequency litigant and the complaint caption must state whether the action subject to the supplemental fee in for high frequency litigants set by Government Code section 70616.5(Code of Civil Procedure section 425.50(a)(4)). New item 3.d includes a statement for the defendant to check indicating that the complaint included this information.

The new law also provides that when issuing the stay and setting the early evaluation conference, the court should, if defendant requests it, direct the parties to meet in person at the subject premises, no later than 30 days after the issuance of the order, for a joint inspection of the property. (Civil Code section 55.54(d)(6).) The application form has been revised to include this optional request, at item 4(e). See form DAL-005. The *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010) has also been revised, with a new section “Notice of Joint Inspection,” and new items 8, 9, and 10. Because the court is to direct a joint inspection only if specifically requested to do so, items 8 and 9 on form DAL-010 have check boxes in front of them, which can be checked by the clerk if the request has been made on form DAL-005.

The new law provides that the court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or, for good cause, to participate by telephone or other alternative means. (Civil Code section 55.54(d)(6).) New item 10 on form DAL-010 therefore informs any plaintiff who is unable to meet at the site that he or she may move the court for leave to be excused.

The title of the two forms have also been revised, to include the term “joint inspection.” The revised forms are titled *Defendant’s Application for Stay of Proceedings, Joint Inspection, and Early Evaluation Conference* (forms DAL-005) and *Notice of Stay of Proceedings, Joint Inspection, and Early Evaluation Conference* (form DAL-010). To reflect these changed titles, another form, *Proof of Service—Disability Access Litigation* (form DAL-012), has been revised to add “Joint Inspection” to the titles of the two revised forms.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal has not circulated for comment because the new law is already in effect, allowing a business served with a complaint by a high frequency litigant to request a stay and early evaluation conference and for all defendants to request an inspection of the property. Revising these forms effective January 1, 2016 will allow defendants to take action consistent with this new law.

However, the Civil and Small Claims Advisory Committee (CSCAC) has included these forms in a proposal that the committee has recommended be circulated for public comment during the winter comment cycle from December 11, 2015 to January 22, 2016. Following circulation, the CSCAC will consider the comments and recommend any appropriate revisions to these forms effective July 1, 2016.

Alternatives

The CSCAC considered not including a request for joint inspection in *Defendant's Application for Stay and Early Evaluation Conference Pursuant to Civil Code Section 55.54* (form DAL-005) and instead including that request in a new verified answer form to be developed for adoption effective July 1, 2016. This is what is contemplated by the new law: Civil Code section 55.3 (b)(2)(A)(iii) provides that the verified answer include "A request to meet in person at the subject premises, if the defendant qualifies for an early evaluation conference pursuant to Section 55.54." To request a joint inspection at the time of filing the answer, however, is too late. A defendant is entitled to a joint inspection only if it is eligible for a stay and the joint inspection must be held within 30 days of issuance of the stay. The answer will not be filed until after the stay is over, and thus is too late to request the joint inspection. The CSCAC therefore, decided to include the request for joint inspection in the stay form (DAL-005).

The CSCAC also discussed limiting the request for joint inspection to only cases filed by high frequency litigants. This appears to be what is provided in the new Advisory Notice information (which is not a council form). But new section 55.54(d)(6) provides that on the filing of an application for stay and early evaluation conference by a defendant, the court shall issue an order directing the parties to meet at the premises for a joint inspection. It does not limit a joint inspection to cases filed by high frequency litigants.

Because some of the form changes necessitated by the new law are not required to be in effect until July 1, 2016, the CSCAC considered waiting to revise the three forms in this proposal. (The forms would be circulated and the public comments considered before the forms were effective.) The CSCAC declined to wait until July 1, 2016 because that would leave defendants in cases filed by high frequency litigants no means to ask for a stay and would leave all defendants without a means to request a joint inspection to which they are entitled and which the Legislature concluded were rights that should be granted urgently.

Implementation Requirements, Costs, and Operational Impacts

The legislative changes to the disability access litigation procedures will require courts to implement some training in the new procedures for considering requests for a joint inspection. Adding "joint inspection" to the title of DAL-005 and DAL-010, with a check box to indicate whether it applies, should assist courts in quickly determining if a joint inspection has been requested or granted. Courts that maintain supplies of forms will incur the costs of replacing old forms with the revised forms.

Attachments and Links

1. Judicial Council forms DAL-005, DAL-010, and DAL-012 at pages 6-10
2. Assembly Bill 1521, available at
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1521

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
DEFENDANT'S APPLICATION PURSUANT TO CIVIL CODE SECTION 55.54 FOR <input type="checkbox"/> STAY AND EARLY EVALUATION CONFERENCE <input type="checkbox"/> JOINT INSPECTION	CASE NUMBER:

(Information about this application and filing instructions may be obtained at www.courts.ca.gov/selfhelp.htm.)

1. Defendant (name): _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code section 55.52(a)(1).
3. The claim concerns a site that meets one of the following sets of requirements (All items in one of a, b, c, or d must be checked for the court to order a stay and early evaluation conference. Check a box if the statement is true.):
 - a. **CASp-Inspected Site**
 - (1) Site has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending, and if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - (2) An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.
 - b. **New Construction**
 - (1) Site has had new construction or improvements on or after January 1, 2008, approved pursuant to the local building permit and inspection process;
 - (2) To the best of defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and
 - (3) All violations have been corrected, or will be corrected within **60** days of defendant's being served with the complaint.
 - c. **Small Business**
 - (1) Site is owned or occupied by a defendant that is a small business that has employed an average of 25 or fewer employees over the past three years and meets the gross receipts eligibility criteria provided in Civil Code section 55.56(2)(f);
 - (2) All violations have been corrected, or will be corrected within **30** days of being served with the complaint; and
 - (3) Evidence showing that all violations have been corrected (check one) is attached will be filed with the court within **10** days of the court order setting an early evaluation conference.
 - (4) I am filing the following with the court along with this application (The documents should be filed separately attached to a Confidential Cover Sheet and Declaration (form DAL-006).):
 - Proof of the number of defendant's employees as shown by wage reports forms filed with the Employment Development Department over the past three years or for existence of the business if less than three years; and
 - Proof of defendant's average gross receipts as shown by federal or state tax documents for the three years before this application or for existence of the business if less than three years.

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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3. d. **Case Filed by High-Frequency Litigant**

- (1) Site is owned or occupied by a defendant that is a business;
- (2) The complaint was filed by, or on behalf of, a "high-frequency litigant," as defined in Code of Civil Procedure section 425.55(6), asserting a construction-related accessibility claim including, but not limited to, a claim brought under Civil Code section 51, 54, 54.1, or 55; and
- (3) The complaint includes a statement that it was filed by or on behalf of a high-frequency litigant, or a statement in the caption that "action subject to the supplemental fee in Government Code section 70616.5."

4. Defendant requests that the court

- a. Stay the proceedings relating to the construction-related accessibility claim.
- b. Schedule an early evaluation conference.
- c. Order defendant to
 - (1) File a confidential copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the plaintiff at least **15** days before the date of the early evaluation conference, which shall be kept confidential as set forth in Civil Code section 55.54(d)(4); or
 - (2) File with the court and serve on plaintiff evidence showing correction of all violations within **10** days of completion of the correction or, if seeking relief as a small business, within **10** days after issuance of a court order granting a stay.
- d. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.54(d)(6) at least **15** days before the date of the early evaluation conference.
- e. (*Check only if requesting a joint site inspection*) Order plaintiff and plaintiff's counsel, if any, to meet in person with defendant within 30 days, at the site that is the subject of this action, for a joint inspection to review any issues that plaintiff claims are a violation of construction-related accessibility standards.


Date: _____

_____ (TYPE OR PRINT NAME OF DECLARANT)  _____ (SIGNATURE OF DECLARANT)

DECLARATION OF DEFENDANT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ (TYPE OR PRINT NAME OF DECLARANT)  _____ (SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address): STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 11/20/15 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE OF <input type="checkbox"/> STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE <input type="checkbox"/> JOINT INSPECTION (Disability Access Litigation)	CASE NUMBER:

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

1. This action includes a construction-related accessibility claim under Civil Code section 55.52(a)(1) or other provision of law.

Notice of Early Evaluation Conference

2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code section 55.54.
3. The early evaluation conference is scheduled as follows:

a. Date:	Time:	Dept.:	Room:
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- b. The conference will be held at the court address shown above the following address:

4. The plaintiff and defendant must attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant who requested the conference and stay of proceedings must serve on all parties and file with the court the following:
 - a. (For a defendant applying under **CASp-Inspected Site** section) A copy of the CASp report for the site that is the subject of the construction-related accessibility claim. Defendant must serve and file the report at least **15** days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code section 55.54(d)(4).
 - b. (For a defendant applying under **New Construction** section) Evidence showing the correction of all violations giving rise to the construction-related accessibility claim within **60** days of the service of the complaint. Defendant must serve and file the evidence within **10** days following completion of the corrections.
 - c. (For a defendant applying under **Small Business** section) Evidence, if not previously served and filed, showing the correction within **30** days of the service of the complaint of all violations giving rise to the construction-related accessibility claims. Defendant must serve and file the evidence within **10** days of issuance of this order.
6. The CASp report must be marked "CONFIDENTIAL" and may be disclosed only to the court, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case. (File the court's copy attached to Confidential Cover Sheet and Declaration (form DAL-006).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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7. The plaintiff must at least 15 days before the date set for the early evaluation conference serve and file a statement of, to the extent known, all of the following:
- a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint.
 - b. The amount of damages claimed.
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed.
 - d. Any demand for settlement of the case in its entirety.

Notice of Joint Inspection
(only applies if boxes are checked)

8. A defendant has requested a meeting with plaintiff to jointly inspect the site that is the subject of the construction-related accessibility claim.
9. Plaintiff and plaintiff's counsel, if any, must, within 30 days of the date this notice is issued, meet in person with defendant at the site to jointly inspect the premises and review any programmatic or policy issues that are claimed to constitute a violation of a construction-related accessibility standard. (See Civ. Code, § 55.54(d)(6).)
10. If plaintiff is unable to meet in person at the site, he or she may move the court for leave to be excused or to appear telephonically or by other means. (See Civ. Code, § 55.54(d)(6).)

Service of Notice

11. A copy of this notice and defendant's application must be served on the plaintiff by hand-delivering it or mailing it to the address listed on the complaint of plaintiff's attorney or plaintiff, if without an attorney, within 10 days of date that the court issues the *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection*. Defendant must file proof of service with the court at least 15 days before the date of the conference. *Proof of Service—Disability Access Litigation* (form DAL-012) may be used to show service of the documents.

Date: _____ Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at www.courts.ca.gov/selfhelp.



Request for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

ATTORNEY (Name, State Bar number, and address): STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	DRAFT 10/15/15 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	CASE NUMBER:
PROOF OF SERVICE—DISABILITY ACCESS LITIGATION Check method of service (only one): <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail	JUDGE: DEPT.:

(This proof of service may only be used to show service of documents in cases with construction-related accessibility claims, as listed below. Do NOT use it to show service of a summons and complaint, or to show electronic service.)

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:
3. I served the following documents *(check the applicable boxes)*:
 - a. Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection (form DAL-005)
 - b. Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection (form DAL-010)
 - c. Application for Mandatory Evaluation Conference (form DAL-015)
 - d. Notice of Mandatory Evaluation Conference (form DAL-020)
 - e. Inspection report by Certified Access Specialist the site in this action (See Civ. Code, § 55.54(d)(4)(A).) regarding
 - f. Evidence showing correction of violation giving rise to construction-related claims or plans for remediation (See Civ. Code, § 55.54(d)(4)(B) or (C) or § 55.545(c)(3).)
 - g. Plaintiff's statement of issues, damages, attorney's fees, and any settlement demand. (See Civ. Code, § 55.54(d)(6) or § 55.545(c)(2).)
 - h. Other *(describe)*:
4. **By Mail.** I am a resident of or employed in the county where the mailing occurred. I served a copy of the document or documents by mailing them, in a sealed envelope with first-class postage fully prepaid, as follows:
 - a. I deposited the envelope with the United States Postal Service.
 - b. I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
 - c. Date of deposit: _____
 - d. Place of deposit *(city and state)*: _____
 - e. Addressed as follows *(name and address)*: _____
5. **By Personal Service.** I served a copy of the document or documents by personally delivering copies as shown below:
 - a. Name of person served: _____
 - b. Address of person served: _____
 - c. On *(date)*: _____
 - d. At *(time)*: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: _____

_____ (TYPE OR PRINT NAME) ▶ _____ (SIGNATURE)