



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 14–15, 2016

Title	Agenda Item Type
Forms: Disability Access Litigation	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve form DAL-002; revise forms DAL-001, DAL-005, and DAL-010	July 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	March 10, 2016
	Contact
	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends that certain statutorily mandated Disability Access Litigation forms used in construction-related accessibility claims be revised and that a verified answer form be approved for optional use. The forms are used for parties to apply for, and the court to grant, stays and mandatory evaluation conferences in this type of litigation. The forms must be changed to reflect the amendments to the Civil Code made by Assembly Bill 1521 (Assem. Comm. on Judiciary; Stats. 2015, ch.755), enacted on October 10, 2015, as urgency legislation—and thus operative on enactment—to (1) add a new category of defendants that may request a stay and early evaluation conference, (2) allow defendants to request a joint inspection, (3) provide certain information in the statutory advisory form for building owners and tenants, and (4) provide a verified answer form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Approve *Answer—Disability Access* (form DAL-002) to provide a statutorily mandated, verified answer that includes certain affirmative defenses, whether the defendant has made a request for an early evaluation conference and to meet in person at the subject premises, and whether the defendant qualifies for reduced damages;
2. Revise *Important Advisory Information for Building Owners and Tenants* (DAL-001) to provide verbatim, additional statutorily mandated information;
3. Revise *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) to add a check box in the form name for a defendant to indicate whether a joint inspection is requested and in the body of the form to provide information about the plaintiff’s status as a high-frequency litigant; and
4. Revise *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010) to add a check box in the form name to indicate whether the notice includes a joint inspection and in the body of the form to provide related information.

The new and revised forms are attached at pages 6–13.

Previous Council Action

The Judicial Council revised *Important Advisory Information for Building Owners and Tenants* (DAL-001), effective July 1, 2013, in response to legislation, to change the information attorneys are required to send to building owners and tenants with a demand letter or complaint concerning construction-related accessibility claims. The council also revised *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010), effective January 1, 2016, without prior circulation for comment, in response to urgency legislation enacted on October 10, 2015.

Rationale for Recommendation

The revisions to existing forms and the new verified answer form for use in construction-related accessibility claims respond to recent changes in the law. As noted above, the new law on construction-related disability access claims became effective October 10, 2015. To comply with this law, the council revised forms DAL-005 and DAL-010, effective January 1, 2016, without prior circulation for comment because without the revisions the forms would be incomplete or inaccurate. Comments were invited on these revisions as part of the winter comment cycle. The two additional forms, DAL-001 and DAL-002, circulated for comment in the winter cycle with a proposed effective date of July 1, 2016.

Forms DAL-005 and DAL-010

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. (Civ. Code, § 55.54(b)(2)(D).) *Defendant’s Application for Stay and Early Evaluation Conference Pursuant to Civil Code Section 55.54* (current 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.

The proposed revisions to form DAL-005 would add item 3d for the new category of defendants that can seek a stay and include all statements a defendant must declare under the statute, i.e., 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(b). (Civ. Code, § 55.54(c)(7).) Under the new law, each complaint in these cases must state whether it is filed by a high-frequency litigant and the complaint caption must state whether the action is subject to the supplemental fee for high-frequency litigants set by Government Code section 70616.5. (Code Civ. Proc., § 425.50(a)(4).) The new item 3d 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 a 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. (Civ. Code, § 55.54(d)(6).) The application form has been revised to include this optional request, at item 4e. (See revised form DAL-005.) The *Notice of Stay of Proceedings and Early Evaluation Conference* (current 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 legislation 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. (Civ. Code, § 55.54(d)(6).) It does not provide for a specific means to ask the court to be excused or participate remotely. (*Ibid.*) New item 10 on revised form DAL-010 therefore informs any plaintiff who is unable to meet at the site that he or she may move the court or apply for leave to be excused.

The titles of forms DAL-005 and DAL-010 have also been revised, effective January 1, 2016, to include the term “*Joint Inspection.*” The revised forms are titled *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010).

Forms DAL-001 and DAL-002

The new law requires the council to revise *Important Advisory Information for Building Owners and Tenants* (DAL-001), the form used by an attorney to provide mandated information about the defendant's legal obligations and rights with the initial demand letter or complaint. The exact language to be added is contained in the legislation. (Civ. Code, § 55.3(b)(1)(A).) The form would be revised to add this information, which concerns attorney conduct, reducing damages, and information for commercial tenants.

The new law also requires the council to develop a verified answer form that could also be used as an informal response to a demand letter or for settlement discussion purposes, and to notify the defendant that the answer can be used in this way. (Civ. Code, § 55.3(b)(2).) Specifically, the answer form must include the following possible affirmative defense: that the defendant's landlord is responsible for ensuring that the property leased by the defendant is accessible to the public and facts supporting that assertion. (Civ. Code, § 55.3(b)(2).) It also requires a space for the defendant to indicate whether the defendant qualifies for reduced damages under Civil Code section 55.56(f)(1) or (f)(2). These and other required elements of the verified answer form are included in proposed, new *Answer—Disability Access* (form DAL-002). One item in the legislation concerning the answer has been modified. Civil Code section 55.3(b)(2)(A)(iii) provides that the answer should 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. Because the stay and early evaluation conference and inspection at the subject premises would have already taken place before an answer is filed, the option to request to meet for an inspection has been modified to include a check box to indicate whether such a meeting has been requested. (See form DAL-002, item 5.)

Comments, Alternatives Considered, and Policy Implications

The proposal circulated during the winter comment cycle, from December 11, 2015, to January 22, 2016. Seven commentators submitted comments; four agreed with the proposal, two agreed if modifications were made, and one did not state a position.¹ Commentators included three superior courts, operations managers from a different superior court, a county bar association, the California Chamber of Commerce, and a deputy attorney general. The most significant comments are discussed below.

The Chamber of Commerce commented on *Answer—Disability Access* (form DAL-002), noting that the check box for a defendant to indicate entitlement to reduced damages under Civil Code section 55.56(f)(1) and (2) did not properly belong as an affirmative defense. The committee agrees and has moved this statement to new item number 6.

Concerning *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010), a deputy attorney general in the civil rights enforcement section of the Office of the Attorney General suggested a modification to the statement advising the plaintiff, if he or

¹ A chart containing the full text of the comments and the committee response is attached at pages 15–23.

she is unable to meet in person for the site inspection, how to be excused from the in-person meeting. Civil Code section 550.54(d)(6) does not specify how the plaintiff should request to be excused. The form circulated with the statement that the plaintiff “may *move the court for leave* to be excused or to appear telephonically or by other means.” (Emphasis added.) The commentator stated correctly that the statute does not require a formal motion and suggested that “move the court for leave” be replaced with “request that the court allow plaintiff” where the sentence appears in item 10. The committee agrees that Civil Code section 55.54(d)(6) does not specifically require a motion and notes that it does not set out *any* procedure for seeking to be excused from the in-person site visit. It provides, in relevant part, “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 to participate by telephone or other alternative means for good cause.” To provide a way for the plaintiff to seek to be excused from an in-person site visit, the committee recommends that form DAL-010, item 10, state that a plaintiff may “move the court or apply for leave” to be excused from the site inspection or to appear telephonically or by another means.

Comments from the Superior Court of Riverside County asked a number of questions about defining and tracking high frequency litigants and the procedures for issuing notice of the early evaluation conference and joint inspection. “High frequency litigant” is defined in Code of Civil Procedure section 425.55 and includes both plaintiffs and attorneys who have represented high-frequency litigant plaintiffs. Determining whether an attorney is a high-frequency litigant “shall be made solely on the basis of the verified complaint and any other publicly available documents.” (Code of Civ. Proc., § 425.50(f).) Code of Civil Procedure section 425.50 requires a plaintiff who meets the definition of “high frequency litigant” to self-identify in the complaint. The committee is unaware of any plan to track self-represented high frequency litigants. Concerning procedures for issuance of the notice when a defendant requests an early evaluation conference and joint inspection—which the commentator asked about—the legislation does not include procedures for this, and the committee believes it should be left to local court practice. Courts presumably have procedures in place for this, as the option for an early evaluation conference has been in effect since July 1, 2013.

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 and to add the new answer form to their case management systems. Adding “*Joint Inspection*” to the titles of forms DAL-005 and DAL-010—which was done when these forms became effective on January 1, 2016, and is not proposed to be changed—with a check box to indicate whether it applies, should assist courts in quickly determining if a joint inspection has been requested or granted. For cases that proceed to the answer stage, *Answer—Disability Access* (form DAL-002) may improve the adequacy and quality of answers. Courts that maintain supplies of forms will incur the costs of replacing old forms with the revised forms.

Attachments and Links

5. Judicial Council forms DAL-001, DAL-002, DAL-005, and DAL-010, at pages 7–14
6. Chart of comments, at pages 15–23
7. Assembly Bill 1521, available at:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1521

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. People with visual impairments can get assistance in viewing this form through the judicial branch website, at www.courts.ca.gov.

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of people with disabilities to access public places.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect, at www.dgs.ca.gov/dsa. Information is also available from the California Commission on Disability Access at www.cdda.ca.guide.htm.

YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING. You will have the right if you are later sued to fully present an explanation of why you believe you have not in fact violated disability access laws or have corrected the violation or violations giving rise to the claim.

You have the right to seek assistance or advice about this demand letter or court complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

If a court complaint has been served on you, you will get a separate advisory notice with the complaint advising you of special options and procedures available to you under certain conditions.

ADDITIONAL THINGS YOU SHOULD KNOW: ATTORNEY MISCONDUCT. Except for limited circumstances, state law generally requires that a prelitigation demand letter from an attorney MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR AN OFFER OR AGREEMENT TO ACCEPT MONEY. Moreover, a demand letter from an attorney MUST INCLUDE THE ATTORNEY'S STATE BAR LICENSE NUMBER.

If you believe the attorney who provided you with this notice and prelitigation demand letter is not complying with state law, you may send a copy of the demand letter you received from the attorney to the State Bar of California by facsimile transmission to 1-415-538-2171, or by mail to the State Bar of California, 180 Howard Street, San Francisco, CA 94105, Attention: Professional Competence.

**STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT
ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS**

REDUCING YOUR DAMAGES. If you are a small business owner and correct all of the construction-related violations that are the basis of the complaint against you within 30 days of being served with the complaint, you may qualify for reduced damages. You may wish to consult an attorney to obtain legal advice. You may also wish to contact the California Commission on Disability Access for additional information about the rights and obligations of business owners.

COMMERCIAL TENANT. If you are a commercial tenant, you may not be responsible for ensuring that some or all portions of the premises you lease for your business, including common areas such as parking lots, are accessible to the public because those areas may be the responsibility of your landlord. You may want to refer to your lease agreement and consult with an attorney or contact your landlord, to determine if your landlord is responsible for maintaining and improving some or all of the areas you lease.

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):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
ANSWER—DISABILITY ACCESS	CASE NUMBER:

This form may be filed with the court and served on the plaintiff as an answer to the complaint, or it may be used as an informal response to a demand letter or for settlement discussion purposes.

1. Defendant(s) (Each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next three boxes, a, b, or c:**

- a. Defendant generally denies each statement of the complaint.
- b. Defendant denies that plaintiff has demonstrated that he or she was denied full and equal access to the place of public accommodation on a particular occasion. (See Civ. Code, § 55.56.)
- c. Defendant admits that all of the statements of the complaint are true EXCEPT:
 - (1) Defendant claims the following statements of the complaint are false. (State paragraph numbers from the complaint or explain below.) Explanation is on Attachment 2c(1). (You may use form MC-025 for this purpose.)

- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them. (State paragraph numbers from the complaint or explain below.)
 - Explanation is on Attachment 2c(2). (You may use form MC-025 for this purpose.)

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked below, you must state brief facts to support it in item 4.)

- a. Defendant is not liable because the facility is not open to the public.
- b. Defendant is not liable because defendant's landlord is responsible for ensuring that some or all of the property leased by the defendant, including the areas at issue in the complaint, are accessible to the public. (Give the name and contact information of defendant's landlord in item 4.)
- c. Other affirmative defenses. (Specify and state facts in support in item 4.)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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4. FACTS SUPPORTING AFFIRMATIVE DEFENSES (**NOTE:** For each box checked in item 3, you must state brief facts to support the defense. Include letters a, b, c, and d from item 3 to make clear which affirmative defense(s) you are supporting.)
- Supporting facts are on Attachment 4. (You may use form MC-025 for this purpose.)

5. A request for an early evaluation conference and to meet in person with plaintiff at the subject premises has been filed or is being filed concurrently with this answer, on *Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005).
6. Defendant qualifies for reduced damages. (See *Civ. Code*, § 55.56(f)(1) or (2).)
7. Number of pages attached: _____

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

_____	▶ _____
(TYPE OR PRINT NAME)	(SIGNATURE OF DEFENDANT OR ATTORNEY)
_____	▶ _____
(TYPE OR PRINT NAME)	(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. 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 OF DEFENDANT)

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):	FOR COURT USE ONLY
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 checked="" 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(b), asserting a construction-related accessibility claim including, but not limited to, a claim brought under Civil Code section 51, 54, 54.1, or 55.
 - (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. 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
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; and
 - 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 or apply 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.)

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Chamber of Commerce By Jennifer Barrera Policy Advocate California Chamber of Commerce and Civil Justice Association of California Sacramento, CA	NI	<p>Answer-Disability Access (form DAL-002) re: Reduction of Damages: Pursuant to AB 1521 that was enacted on October 10, 2015, the Judicial Council has proposed to revise form DAL-002 to list affirmative defenses, including that “the defendant qualifies for reduced damages under Civil Code section 55.56(f)(1) or (f)(2).” We disagree with the Judicial Council’s proposal to characterize the opportunity for reduced damages as an “affirmative defense.” Moreover, such a characterization is not supported by the actual language of the statute.</p> <p>The term “affirmative defense” has specific meaning within the legal context. Specifically, aside from subject matter jurisdiction or failure to state facts sufficient for a cause of action, a party that fails to plead an affirmative defense in a demurrer or answer risks waiver of that defense. <i>See</i> Code of Civil Procedure Section 430.80; <i>Vitkiewicz v. Valverde</i>, 202 Cal.App.4th 1306, 1314 (2012); <i>Mission Housing Development v. City and County of San Francisco</i>, 59 Cal.App.4th 55, 75 (1998).</p> <p>Nowhere within AB 1521 is the opportunity for reduced damages, as provided by Civil Code Section 55.56 (f)(1)-(f)(2) referenced, labeled, or identified as an “affirmative defense.” In fact, the amended language of AB 1521 on August 17, 2015, demonstrates that the legislation actually intended for the reduction of damages to not be an affirmative defense. Specifically, in the version of AB 1521 prior to August 17,</p>	The committee agrees with the commentator and has moved the statement concerning reduced damages, which is required by AB 1521, to a separate item, as suggested.

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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			<p>2015 (section 55.3(b)(2)(A)(ii)(I)), the bill included reduction of damages under the list of potential affirmative defenses a defendant could plead in the form answer.</p> <p>However, on August 17, 2015, the reduction of damages was specifically stricken from that section of AB 1521 identifying affirmative defenses, and moved to section 55.3(b)(2)(A)(iv), regarding pertinent information regarding damages. The reduction of damages is simply a separate category of information on the form answer, similar to the request for an inspection on the property as set forth in section 55.3(b)(2)(A)(iii). It is not an affirmative defense. Notably, the Senate Judiciary Committee Analysis dated August 24, 2015, supports this position, as it identifies that the form answer provides an opportunity for a defendant to list affirmative defenses and set forth information regarding reduction of damages.</p> <p>Neither the actual language of AB 1521 nor the legislative analysis of this bill identifies or includes reduction of damages as an affirmative defense, and neither should form DAL-002. CalChamber and the other associations respectfully request the Judicial Council to revise DAL-002 to remove “Defendant qualifies for reduced damages,” from “Section 3. AFFIRMATIVE DEFENSES,” and simply create a new section for this category, similar to Section 5 of the form answer, regarding a</p>	

W16-03**Civil Forms: Disability Access Litigation** (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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			request for an early evaluation conference/in-person inspection.	
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	The JRS would like to note that the Civil and Small Claims Advisory Committee did exceptional work in amending the existing forms and creating the optional verified answer form. This proposal will require some training for court staff, but because the number of these case types is minimal, it is not expected that there will be a significant impact on trial court operations.	The committee appreciates the comment.
3.	Orange County Bar Association By Todd G. Friedland President Newport Beach, CA	AM	The Proposal adequately addresses the stated purpose. No additional affirmative defenses should be added to the new form answer (DAL-002). One modification proposed is to the footer of DAL-002: correct DAL-002 so that it references the correct form number at the bottom left of the form (the footer currently suggests the form is DAL-013 but the form is actually DAL-002).	This correction has been made.
4.	Anthony Seferian Deputy Attorney General Civil Rights Enforcement Section California Office of the Attorney General	AM	Summary: The commenter agrees with the proposed revisions but suggests two modifications for consistency with the relevant statutory provisions: (1) In form DAL-005, paragraph 3(d) (on page 2), the Code of Civil Procedure citation next to box 2 should be “425.55(b)” (rather than “425.55(6)”). (2) In form DAL-010, paragraph 10 (on page 2) the phrase “move the court for” should be	This change has been made. The committee discussed the suggestion and decided to change the language to “move the court

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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			<p>changed to “request that the court allow plaintiff.”</p> <p>Comments and Alternative Language:</p> <p>1. Proposed Form DAL-005 In form DAL-005, paragraph 3(d) (on page 2), the Code of Civil Procedure citation next to box 2 should be “425.55(b)” (rather than “425.55(6)”).</p> <p>Proposed Alternative Language:</p> <p>3. The claim concerns a site that meets one of the following sets of requirements (<i>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.</i>)</p> <p>***</p> <p>d. <input type="checkbox"/> Case Filed by High-Frequency Litigant</p> <p>(1) <input type="checkbox"/> Site is owned or occupied by a defendant that is a business.</p> <p>(2) <input type="checkbox"/> The complaint was filed by, or on behalf of a “high-frequency litigant,” as defined in Code of Civil Procedure section 425.55(6b), asserting a construction-related accessibility claim including, but not limited to a claim brought under Civil Code sections 51, 54, 54.1 or 55.</p> <p>(3) <input type="checkbox"/> The complaint includes a statement that it</p>	<p>or apply for.”</p> <p>As noted above, this change has been made.</p> <p>The reference to Code of Civil Procedure section 425.55, subsection (6), has been corrected to subsection (b).</p>

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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			<p>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.”</p> <p>2. Proposed Form DAL-010 As amended by AB 1521, the relevant statute states: “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 to participate by telephone or other alternative means for good cause.” (Civ. Code, § 55.54, subd. (d)(6).)</p> <p>The proposed form revision states that the plaintiff has to “move” the court, implying that a formal motion is required. The statute does not require a formal motion for plaintiff to be excused. For that reason, the commenter suggests that “move the court for leave” in paragraph 10 (on page 2) of form DAL-010 be modified to “request that the court allow plaintiff,” as below.</p> <p>Proposed Alternative Language:</p> <p>Notice of Joint Inspection <i>(only applies if boxes are checked)</i></p> <p>8. <input type="checkbox"/> A defendant has requested a meeting with plaintiff to jointly inspect the site that is the subject of the construction-related accessibility</p>	<p>The committee agrees that Civil Code section 55.54(d)(6) does not specifically require a motion, but notes that the statute does not set out <i>any</i> procedure for seeking to be excused from the in-person site visit. It provides, in relevant part, “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 to participate by telephone or other alternative means for good cause.” To provide a way for the plaintiff to seek to be excused from an in-person site visit, the committee recommends the following language for DAL-010: “move the court or apply for leave.”</p>

W16-03**Civil Forms: Disability Access Litigation** (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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			<p>claim.</p> <p>9. <input type="checkbox"/> 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 Civil Code, section 55.54(d)(6).)</p> <p>10. If plaintiff is unable to meet in person at the site, he or she may move the court for leave <u>request that the court allow plaintiff</u> to be excused or to appear telephonically or by other means. (See Civil Code, section 55.54(d)(6).)</p>	
5.	Superior Court of Los Angeles County	A	<p>As to Form DAL-002 we suggest that the third box (3.c) include not only the affirmative defense of reduced damages under Civil Code Section 55.56(f)(1), but also add the affirmative defense of reduced damages under Civil Code Section 55.56(f)(2). We suggest that the citation should be changed to read "See Civil Code Sections 55.56(f)(1) and 55.56(f)(2)."</p> <p>Additionally, there appears a proofreading problem in that the bottom left margin of the form identifies it as "DAL-013" instead of "DAL-002."</p>	In response to a comment from the California Chamber of Commerce, the committee determined that a statement that defendant qualifies for reduced damages does not belong as an affirmative defense. This item, therefore, has been moved. The reference to reduced damages on form DAL-002 was intended to include Civil Code section 55.56(f)(2), as well as (f)(1); it was inadvertently omitted and has been added.
6.	Superior Court of Orange County Civil Operations Managers	A	No specific comment	No response required.
7.	Superior Court of Riverside County By Marita Ford	A	<ul style="list-style-type: none"> High frequency litigants – will a list be initiated and tracked similar to the vexatious 	<ul style="list-style-type: none"> Code of Civil Procedure section 425.50(f) provides that "The determination whether an

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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	Senior Management Analyst		<p>litigants?</p> <ul style="list-style-type: none"> • How will high frequency litigants be determined? • What is the time frame for establishing a list? • Early evaluation conference – will this be received and forwarded to the judicial officer then returned for issuance? • Will these on-site visitation of the premises require the issuance of a subpoena? • Development of action/minute codes along 	<p>attorney is a high-frequency litigant shall be made solely on the basis of the verified complaint and any other publicly available documents.” The committee is unaware of any plan to track self-represented high frequency litigants.</p> <ul style="list-style-type: none"> • “High frequency litigant” is defined in Code of Civil Procedure section 425.55; section 425.50 requires a plaintiff who meets the definition of “high frequency litigant” to self-identify in the complaint. • The committee is unaware of any plan to establish a list. • This appears to be a matter of local court procedures, presumably based on ones already in place to handle the process, which has been in effect since July 1, 2013. • Civil Code section 55.54 provides that upon the filing of a request for a stay and early evaluation conference, the court shall issue an order that, among other things, if the defendant requests, orders the parties to meet in person for a joint inspection. (See 55.54(d)(6).) Therefore the existing order developed to implement section 55.54 has been amended to include an order to appear at the site inspection. • The committee notes the expected training

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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			<p>with staff training. Proposed 2 months appears too short.</p> <ul style="list-style-type: none"> • Where will these be heard? • Limited and unlimited? • What about claims filed in small claims. Will this eliminate or restrict those filings? 	<p>time, but has no option to change the recommended time frame for adoption of the new and amended forms. AB 1521 made the additional provisions relating to claims for violation of construction-related accessibility standards effective January 1 and July 1, 2016.</p> <ul style="list-style-type: none"> • There is no requirement in the statute for a hearing on the request for stay and early evaluation conference. The committee is not aware of any need to change the process that the court has used in handling these requests in the past. • The statute regarding to claims for violation of construction-related accessibility standards, Civil Code section 55.51 et seq., does not distinguish between limited and unlimited cases. • AB 1521 only amends existing law to add a new category of defendants who may seek a stay and early evaluation conference, the potential for a site inspection, and some new and revised forms. It does not change the statute otherwise, so should have no impact on whether or not such claims are filed in small claims court of how they should be handled if they are.
8.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	In answer to the request for specific responses, our court provides the following:	The committee thanks the commentator for the responses to specific questions.

W16-03

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			<p>Q: Would the proposal provide cost savings? No.</p> <p>Q: What are implementations requirements for courts? Training staff and adding filings to case management system.</p> <p>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>Q: How well would this proposal work in courts of different sizes? Greater impact on larger courts based on number of staff and filings.</p> <p>Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? Yes.</p> <p>Q: Does the proposal appropriately address the state purpose? Yes.</p> <p>Q: Should Answer – Disability Access (DAL-002) include additional affirmative defenses? (There is a check box for additional defenses not listed.) Item 3d “Other affirmative defenses” appears to be sufficient.</p>	