

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH SUB-COMMITTEE  
MEETING MINUTES**

**August 25, 2015**

**1. CALL TO ORDER**

Chair Laurie Cohen Yoo welcomed everyone and called the meeting of the Research Committee of the California Commission on Disability Access (CCDA or Commission) to order at 10:00 a.m. at the Westfield Corp. 2049 Century Park East, 41<sup>st</sup> Floor, Los Angeles, CA 90067.

The off-site meeting locations for teleconference were the San Francisco Independent Living Center, 825 Howard Street, San Francisco, CA 94103; and the Department of Rehabilitation, 721 Capitol Mall, Room 601, Sacramento, California 95814.

**ROLL CALL**

*Commissioners Present:*

Laurie Cohen Yoo, Chair  
Steve Dolim (via teleconference)  
Chris Downey (via teleconference)  
Celia McGuinness (via teleconference)

*Staff Present:*

Angela Jemmott, Executive Director  
Addison Embrey, Program Analyst  
Brandon Estes, Program Analyst  
Fajola Jackson, Office Administrator

*Also Present:*

Kurt Cooknick, Director of Regulatory Affairs, American Institute of Architects, California Council (AIACC) (via teleconference)

Chair Yoo called the roll.

**2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA**

There were no questions or comments from the public.

**3. VISION OF DELIVERABLE - UPDATE**

- i) New Template for Case Management

Chair Yoo stated that the intent of the meeting was to focus on the new template for addressing reporting of disability access cases.

Commissioner Dolim reviewed the information contained in the current version:

- The source of the data

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH COMMITTEE  
AUGUST 25, 2015, MEETING MINUTES**

- The date of the alleged violation
- The court where the complaint was filed (Federal or State)
- The identification of the plaintiff's attorney
- Information on the defendant
- The location type
- The type of violation

Executive Director Jemmott stated that CCDA has always been mandated by legislation to collect the "Top Ten" violations and the court where the complaint was filed. However, CCDA has been receiving an increasing number of information requests from the public and from legislation that have resulted in a deeper level of analysis.

Chair Yoo confirmed with Executive Director Jemmott that the plaintiff's attorney is mandated to turn over to CCDA a copy of the complaint or a copy of the demand letter. Executive Director Jemmott stated that CCDA culls from that whatever information it can.

Executive Director Jemmott further explained that CCDA is now attempting to ensure consistent data – not the interpretation of an analyst, law clerk, or volunteer from the Department of Rehabilitation. CCDA is contemplating sending the form to the plaintiff's attorney at the outset. This could result in a win-win situation: the attorney submits only the necessary information and CCDA receives the information in a concise form.

Commissioner Dolim asked if the present mandate of the Top Ten is sunsetting. Executive Director Jemmott responded that potentially it could in January 2016. However, currently two bills, SB 251 and AB 1521, are challenging that notion – many people are interested in CCDA continuing this research.

- AB 1521 focuses on frequent litigants and as such, looks at additional research tools that CCDA should be collecting. At present it does not include additional funding for this added research.
- SB 251 concerns a tax credit and the information currently being collected by CCDA.

Commissioner McGuinness noted that the determination of "frequent litigant" would be a requirement for the plaintiff to self-identify in the context of the complaint.

Executive Director Jemmott stressed that this data will need to be analyzed, and CCDA is the only body in a position to do that.

Commissioners Dolim and McGuinness felt that when any pending legislation asks for more information, the increase in staffing/budgeting must be a part of it.

Chair Yoo stated that if this data is managed in an electronic database, the information can be pulled up easily. If it is managed through hardcopy data entry, it would be more efficient for frequent litigant information to be identified on the form.

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH COMMITTEE  
AUGUST 25, 2015, MEETING MINUTES**

Commissioner Downey posed the question of whether CCDA should be in the business of suggesting the things we should be looking for to those proposing the legislation.

Commissioner Dolim noted that SB 251 focuses on the mechanical side of disability violation: its criteria applying to the Certified Access Specialist program (CAsp) report; its timing; its content; its posting of notices on the website. AB 1521 focuses on the litigant side: the nature of who is filing, the frequency, etc.

Commissioner Downey commented that the commissioners have discussed lawsuit results and outcomes. However, none of the criteria that Commissioner Dolim just mentioned involves outcomes. The Commissioners discussed the issue of discerning outcomes from the public records when the claims have been concluded.

Mr. Cooknick commented that gathering information is one thing, but taking action on it may be beyond the scope of the CCDA and its staff. He had always hoped for more technical expertise from the CCDA, to give businesses in California guidance in making corrections to their access deficiencies.

Commissioner McGuinness felt that the overarching mandate of the CCDA is to create and facilitate access. Figuring out why access is not happening would be the best use of the CCDA's time, as opposed to gathering information that might be interesting but does not create access. Time spent collecting the outcome of lawsuits does not help us discern why there isn't access.

Commissioner Dolim pointed out that some of the questions that come forward, as evidenced by the legislative focus on frequent filers, may hint at a questioning of motives. He agreed that the Commission's focus should be providing guidance to enhance accessibility.

Executive Director Jemmott stated that she had sat in on a number of hearings at which CCDA-supplied data had been used by both legislators and the public. Reporters and public members do call the CCDA, wanting to glean from data collection what is actually happening in the state. There is no other body that can provide this information.

She continued that the CCDA will potentially be collecting data through 2019 if one or the other of these two bills passes. The issue is not whether people have a right to sue; it is to fulfill the mandate to collect data using sound research. The present meeting was intended to finalize the software tools and costs necessary to collect the data so that it can be readily available on the website to anyone.

Mr. Cooknick commented that he is always deeply suspicious of data because of how it is used and misused. There should be an expressed expectation about what the CCDA wants from the data it has collected from others.

Commissioner Dolim asked what tidbit of information may be missing in order to facilitate and improve accessibility to the public.

Chair Yoo felt that the committee should focus on the audience for this information: members of the disabled community as well as members of the business community.

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH COMMITTEE  
AUGUST 25, 2015, MEETING MINUTES**

The Commission could be able to determine not only the Top Ten, but also particular problems in certain locales. The data then becomes an educational tool.

Executive Director Jemmott pointed out that currently, people have opinions based on their area of expertise or region of residence. There is no across-the-board data to give substance to people's thoughts.

Mr. Cooknick asked what more could be included to make the data significant in improving access in California.

Commissioner Dolim felt that the inclusion of data on whether structures are old or new would allow better comprehension of noncompliance.

Mr. Cooknick commented that part of the accessibility problem is construction done using requirements from past years. A building may have remained untouched from the time it was built, or it may have been bootleg-modified by a previous owner or current owner. However, having a building analysis done may prove a financial hardship for a current owner.

Chair Yoo said that the committee's wish list may be going beyond what we are actually capable of obtaining. This type of information probably is not readily available to plaintiffs' counsels when they file complaints. Chair Yoo did not feel that the CCDA has the ability to require them to take on that research.

Commissioner Dolim and Chair Yoo agreed that the Commission should maintain a wish list at all times so that when the legislature asks questions, Commissioners can answer that providing additional data can be done provided that staff and budget are increased.

Commissioner Dolim noted that the U.S. Green Building Council has a tremendous inventory on older buildings and present construction, generated by energy requirements based on vintage. The data already exists as collected by that body.

Chair Yoo steered the committee back to focusing on the form itself.

Executive Director Jemmott said that staff would insert the language of the statutes/laws/regulations at the top of the form before presenting it at tomorrow's meeting.

Commissioner McGuinness did not think the CCDA had the authority to ask for this form in lieu of the complaint; they would have to ask the Legislature for authority. This was a matter for the CCDA Legislative Committee.

The Commissioners discussed item #2 and decided to remove it, as this data is automatically collected electronically and can be tracked.

The Commissioners discussed item #3. They decided to rephrase it: *"Does the alleged violation within the built environment take place in a Title II or a Title III, or both Title II and III ownership?"* They decided to move the item to the position of #1, and to

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH COMMITTEE  
AUGUST 25, 2015, MEETING MINUTES**

indicate that if the violation is clearly Title II only, the plaintiff or attorney can stop here.

The Commissioners discussed item #4 and decided to remove #4(b). To the new item #1, under "*Complaint* and *Amended Complaint*" they added "*Filing Date*", and under "*Demand Letter*" they added "*Mailing Date*".

To item #4a the Commissioners added an "s": "*Date(s) of alleged violation(s):*" Commissioner Dolim sought to add the resolution date and the outcome, if the Commission could obtain legislative cooperation. Commissioner McGuinness raised concern about whom the burden would be placed upon to report.

The Commissioners decided to insert an "*Other*" box for item #6 – there may be negligence claims, tort claims, unfair business practices, and so on.

For items #5 and 6, the Commissioners decided to add "*Complaint filed in:*" and "*Complaint filed as...*"

The Commissioners agreed to add boxes to item #7, to replace having the attorney or plaintiff use circles.

The Commissioners discussed the value of item #9. Executive Director Jemmott explained that inclusion of the zip code could show whether someone is a serial filer going to many locations. Commissioner McGuinness responded that many cases occur when someone travels for business. Executive Director Jemmott stated that it would take additional analysis to determine whether someone was indeed a serial filer.

Chair Yoo viewed the item's value simply as showing whether people are addressing violations in their immediate neighborhoods or on a broader scale.

Commissioner Dolim noted that the data could show whether it is the first time someone has encountered a facility, or whether it is part of their daily routine with multiple encounters.

Commissioner Downey doubted that conclusions could realistically be drawn from the data.

The Commissioners agreed to eliminate the item.

Regarding item #10, Executive Director Jemmott explained that the reason for requesting the defendant's contact information was for staff to be able to research more thoroughly by data on CASp and so on.

Chair Yoo felt that the contact information would realistically be the address via the Agent for Service of Process. Commissioner McGuinness wanted to include the words "*...if available*" at the end of the sentence. Commissioner Dolim noted that with the passage of SB 251, the Department of State Architect will be keeping records on CASp.

The Commissioners agreed to add "*...if available*" to the end of item #10.

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH COMMITTEE  
AUGUST 25, 2015, MEETING MINUTES**

Regarding item #11, Commissioner McGuinness stated that she had pulled the language out of the ADA statute; she felt that plaintiffs' attorneys would understand it.

Regarding item #12, Executive Director Jemmott expressed concern about the new version of the list. Staff would have to go back to 2012 to change the collection process if the violation types are changed, creating a major workload issue.

Commissioner McGuinness stated that her changes were extensive: she had fixed some gaps and duplications, as well as wording that was not consistent with the code or the way that plaintiffs' lawyers and experts speak. Chair Yoo added that the new groupings were logical and would be helpful in data analysis.

Executive Director Jemmott noted that the original form had been vetted with the Department of Justice and the ADA manual. She felt that the new changes were excellent; her challenge was the lack of necessary manpower for changing the cases already researched going back to 2012.

Commissioner McGuinness suggested starting with the new list and having two sets of data. If time or possibly volunteers allow, we can slowly work backward. She advocated for the new list as producing better data over the long term, looking forward to 2019.

Executive Director Jemmott stated that, much as she liked the new list, collecting the new information and posting it will necessitate stopping what she already has, and telling the Legislature that she can only post from this moment on.

Commissioner McGuinness stated that some of the new list is conceptually different – it includes items missing from the previous list.

Executive Director Jemmott suggested that any new areas that were missing be added in; then she would not have to change old data. She explained that the current data system is not very automated: data is input manually into an Excel spreadsheet.

Executive Director Jemmott stated that over the past two-three years, over 7,000 complaints have been filed. Commissioner McGuinness noted that if we ultimately go to a digital system, the data will have to be input manually out of Excel anyway.

The Commissioners discussed the Excel database with Executive Director Jemmott. Commissioner Dolim felt that macros will allow Excel to populate groups of columns automatically – the output could be changed to allow meaningful groupings. Chair Yoo suggested attempting to match up the new list with the existing numbers, seeing which ones would be additional – experimenting to see if this is a viable solution.

Chair Yoo suggested presenting the form tomorrow, with the understanding that it is subject to change because the Commission is seeking to streamline it in a way that maintains consistency of the data.

Commissioner McGuinness shared the concern that this form as submitted to CCDA may be adversely used in a lawsuit. She desired the form to be used purely administratively

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
RESEARCH COMMITTEE  
AUGUST 25, 2015, MEETING MINUTES**

and not as evidence. She requested ideas from the other Commissioners on how to prevent this.

Chair Yoo responded that if the data is publicly available, we do not want to set limitations on it. However, we do not want it to become a litigation tool, because people filling it out would be using that slant. The form should be an honest reflection of what is in the complaint.

Executive Director Jemmott stated that this issue would be part of tomorrow's presentation: the CCDA would recommend that somewhere in the legislation it should be stipulated that the document was to be used administratively only.

**4. ADJOURN**

There being no further business, Chair Yoo adjourned the meeting at 12:08 p.m.