

**CALIFORNIA COMMISSION ON DISABILITY ACCESS  
CIVIL ENFORCEMENT COMMITTEE  
MEETING MINUTES**

**March 2, 2012**

**1. CALL TO ORDER**

Chair Dean called the meeting to order at 10:00 a.m. at the Department of Rehabilitation, 721 Capitol Mall, Room 169, Sacramento, California 95814.

The off-site meeting location for teleconference was the City of Los Angeles, Department on Disability, 201 N. Figueroa Street, Suite 100, Los Angeles, California 90012.

**ROLL CALL**

Staff Member Jemmott called the roll.

*Commissioners Present:*

Michael Dean, Chair  
Mitchell Pomerantz, Vice Chair  
(Teleconference)  
Anthony Seferian

*Staff Present:*

James V. Vitale, Executive Director  
Angela Jemmott, Program Analyst  
Lavonia Wade, Office Administrator

*Also Present:*

Dave Peters, Lawyers Against Lawsuit Abuse  
(Teleconference)  
Tom Scott, Executive Director, California  
Citizens Against Lawsuit Abuse

Staff Member Jemmott stated that a quorum was present.

**2. APPROVAL OF MEETING MINUTES (NOVEMBER 22, 2011) - ACTION**

**MOTION:** Commissioner Seferian moved to approve the November 22, 2011, Meeting Minutes. Vice Chair Pomerantz abstained as he was not in attendance. Motion carried unanimously.

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

No public comment.

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**4. GENERAL BUSINESS ITEMS**

- a. Nature of Public Meetings/Hearings**
- b. Number and Locations of Public Meetings/Hearings**
- c. Bagley-Keene Ramifications of Workshop Format**
- d. Outreach and Publicizing**

Chair Dean stated the full Commission approved this Committee's proposed goals as reported at the January 30, 2012, full Commission meeting. He stated the first goal he wanted to discuss was to hold several public meetings or hearings, possibly during the second half of this year or the first half of next year, to gather necessary facts in order to make a recommendation to the Commission for the report that is due to the Legislature between 2013 and 2014.

Chair Dean suggested the hearings could be formatted by inviting the public to come and speak on litigation issues. He also stated a workshop format was suggested as an alternative.

Vice Chair Pomerantz stated his concern that a series of sessions intended for fact-finding may stray off-topic. He emphasized the need for these hearings to be very tightly controlled.

Chair Dean agreed, and stated the hearings can be controlled, to a great extent, by framing the issues that this Committee will hear, such as proposals from the business community that will be acceptable to both the disability and business communities. He mentioned that an internship program was suggested at the last Committee meeting to do research to assist in gathering data.

Commissioner Seferian stated it is important to gather practical experiences through these types of hearings, supplemented with data gathering. He mentioned, as discussed in the last Committee meeting, possibly sending a survey to judges, and also determining what actual data is available from the courthouses.

Chair Dean asked Vice Chair Pomerantz if it is acceptable for the Committee to tentatively agree to holding hearings, recognizing the need to define the scope of the testimony to be heard at these hearings in order to keep it under control.

Vice Chair Pomerantz asked for more information about the aforementioned workshop format for these hearings.

Executive Director Vitale stated the Committee can hold a facilitated workshop with all participants and the facilitator in one conference room. As the participants discuss items of major concern, these issues will be collected and displayed so that everyone in attendance can identify the focus points. After the focus points are established, the methods and means of potential resolution of the issues will be discussed.

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By the end of the workshop, there will be a position statement that is agreed on by all stakeholders that (a) identifies the issue, (b) discusses the findings regarding potential resolutions, and (c) details the direction to follow that the group has agreed upon.

Executive Director Vitale stated this can be readily facilitated for eighty to one hundred people at one time. If these issues draw forward hundreds, or even thousands, of people, it will become unwieldy. He suggested a way to shorten the process and, at the same time, handle the potential numbers of interested stakeholders, is through use of Internet survey sites where data can be collected. He has identified essentially four separate issues and groups associated with this whole matter, beginning with the law.

He suggested asking the business community participants if they understand the requirements of the law; if they understand that, as a business, they have a responsibility; if they have met that responsibility; and if not, why not. He suggested asking attorneys how many are involved in litigation with regard to accessibility issues, how many have obtained settlements, and how many of those settlements were mediated or court settlements. He stated he has heard that the majority of these cases are not adjudicated, but are mediated cases where there is no guarantee that the barrier removal will take place.

Commissioner Pomerantz stated his acceptance of this approach because of the accessibility of the Internet and the volume of information that can be collected without the necessity of conducting hearings. He stated he has some experience with the survey approach, cautioned the need to be careful with Internet surveys, and offered his assistance.

Executive Director Vitale said surveys are the most cost-effective format for the collection of information. These surveys can be sent to chambers of commerce, bars, courts, stakeholder groups, and building officials with a timeline placed on them; additionally, several survey engines display the responses in graph form. This will give the Legislature concise statistics in an efficient format.

**Public Comment**

- Tom Scott, Executive Director of California Citizens Against Lawsuit Abuse (CALA), stated his concerns about the timeline for the legislative report. He is not in support of workshops. He stated the mandate of Senate Bill 1608 was to collect data, to research the issue of the civil litigation problem in the state, and then to present a report back to the Legislature. It was not to bring all the parties together to try to figure out a solution.
- Mr. Scott is familiar with Internet surveys and has worked with the National Federation of Independent Business (NFIB) in the State of California; he said the NFIB had only eighty-eight responses to their survey.

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- **Public Comment**

- Dave Peters, Lawyers Against Lawsuit Abuse, brought up the point that, under current California law, it is acceptable to bring a lawsuit solely for financial damages. There is nothing under California law that requires that change be sought in order to bring a lawsuit. He commented that, in terms of the surveys, this Committee needs to articulate the standard required, as there is confusion in light of Civil Code 52a. He stressed the necessity of a Checklist as that standard.

Vice Chair Pomerantz asked Mr. Scott for his recommendations on how to fulfill the mandate, since he seemed to be against workshops and had concerns about surveys.

- Mr. Scott stated he feels a combination of factors is necessary to fully study the problem. He confirmed he does not agree with holding workshops; he stated he is not against surveys, but has concerns regarding who is being targeted and what kind of response will be forthcoming. He pointed out the difficulty involved in gathering email addresses for a potentially massive audience, as well as the fact that many business owners do not have Internet services. He stated his belief that many lawsuits target minority business owners, and therefore suggested the surveys be put out in multiple languages. Mr. Scott emphasized he is not against surveys, but recommends they be considered a part of a whole, along with public hearings and data collection.
- Mr. Peters stated the overwhelming majority of people he works with are not tied into the Internet or associations. He is not against going to the associations to get information, but is concerned that this will be the sole means of gathering information about these suits. He suggested, with regard to the surveys and hearings, this Committee create a very specific list of the exact questions that it would like answers to. After the Committee creates that list, the way to find the answers may become clear. He offered his assistance in suggesting some ways to collect the targeted information necessary to find those answers.

Executive Director Vitale stated he feels the issues are resolvable. The single biggest element that has been overlooked for the past twenty years is communication. If there had been ongoing, continuous communication with businesses, then there could be no denial of awareness of what it is they are mandated to do. The common connection that all businesses in California have is an annual notice for a business license renewal. That envelope becomes the vehicle whereby communication is made to all 3.5 million businesses in California, on an ongoing basis, each and every year. Therefore, they cannot deny that they have received knowledge of the responsibility and the requirement.

Executive Director Vitale said if there were a minimal fee, such as five dollars, for every business in California in addition to their licensing fee, that would create a

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pool of approximately fifteen million dollars. That pool could be used to support the activities of the Code enforcement officers in each of the jurisdictional agencies throughout the state. Executive Director Vitale suggested allowing a twenty-four- to thirty-six-month grace period in which all businesses throughout the state would have to show that they are presently accessible and, if not, what their plan is to arrive at accessibility.

Executive Director Vitale added that if the structure of the aforementioned Huber bill, which says that litigants can receive a \$4,000 remuneration, were expanded to say that remuneration was based upon the owner also showing proof of barrier removal, then the disabled community would have the barriers removed. The remuneration would not change, but there would now be something to show for it. Barrier removal is permanent, one-time-only, and tax deductible. The cost for achieving accessibility rarely exceeds \$1,500 to \$2,500 for the majority of businesses, which is far less than the \$4,000 stated in the Huber bill. Removal of barriers means more business, which leads to more money, which leads to more tax base; everyone benefits in a circumstance like this. Once this baseline is achieved, the issue is resolved for future generations.

Executive Director Vitale said the number of CASps needs to increase to serve the 3.5 million businesses, 50 counties, 545 jurisdictional agencies, and county and city building departments in California. A grace period to allow businesses and CASps to work will bring resolution to this issue in a relatively short period of time. By the time the new Code goes into effect in 2014, everyone will understand what the requirements are, the requirements will be in line with the 2010 ADA standards, and the Checklist will fall into line with that. The use of an electronic platform, as discussed in the Checklist Committee, then makes it easy for the inspectors in the field to build a database of information, which then goes into a Cloud environment. This will minimize the likelihood of certain individuals taking advantage of the law, as is prevalent today. If an issue is raised in the future and the court has to be brought in, they can go directly to that database and find the necessary documentation.

Executive Director Vitale said he envisions a summit in which the authors of the ten bills currently before the Legislature sit down together with a neutral party and recognize there is a resolution to this. This resolution does not necessarily require doing surveys or anything else as outlined previously. The Commission is dealing with givens, and those givens, in turn, can be converted into a reality that would be bipartisan, on which everyone would agree. It would benefit the entire state for years to come.

This will require a buy-in from all stakeholders. If the stakeholders saw that, at the end of a three-year window, they could see a tremendous gain in terms of overall statewide accessibility, as opposed to the twenty-two years that they

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have been waiting for it, the advocacy community would embrace that kind of opportunity. At the same time, everyone has to work together to do it.

Vice Chair Pomerantz stated, although Executive Director Vitale's proposal is meritorious, he is not optimistic that the advocates will act rationally, based on what he has seen the last few months, because they do not believe that there is any room for compromise or a grace period. He also is not optimistic that the disability community is going to be comfortable with the two- to three-year grace period.

Chair Dean recommended moving toward a survey approach, as opposed to hearings. He suggested working on an initial draft of a proposed survey to put out for comment from certain organizations. Next, the survey should be sent to as many people and groups as possible. Then, the results of the survey will be reported in a public meeting. The initial step is to create a survey.

Vice Chair Pomerantz agreed with this strategy, but questioned the Committee's capability to get this survey out and collate the data response in a timely manner, given current staffing.

Chair Dean asked Executive Director Vitale if he has compiled a sufficient database of organizations. He feels there will be a tremendous response, as this is an emotional subject and people will want to participate.

Executive Director Vitale said while there are many businesses in California, the organizations that serve those businesses are fewer. Going to those organizations minimizes the number of contacts and relies on them to distribute materials to their members. The names and email addresses of 545 different stakeholder groups and individuals, all the building departments, counties, and jurisdictions throughout the State of California, are currently in the database.

Executive Director Vitale suggested showing the Legislature that competing associations and parties are willing to voluntarily work together on these issues, and recommending they cease submission of these bills and transfer the monies, which would have been used in pursuing the bills, to the CCDA to assist in expanding staff in order to follow through with this program. The governor has requested a creative resolution such as this one, which will require minimal time. While this is a major issue, it can be resolved through cooperative communication on the part of all parties. Executive Director Vitale believes it is possible to form a commission of concerned stakeholders to work this through.

Vice Chair Pomerantz questioned whether there is sufficient space and staff to collate data from these surveys if the survey goes out in the next three to six months.

Executive Director Vitale commended his staff on their level of dedication to their duties and responsibilities and their willingness to participate in this legacy. He

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believes it is possible to continue to operate with the current facilities, and is willing to reduce office space to make room for further staff.

Executive Director Vitale stated the area of collection is a function of methods and means. Whether those methods and means involve electronic surveys, face-to-face surveys, workshops, or any other means, the Commission is allowed to collect that information in any way deemed necessary to come up with the body of information that will support these findings.

Chair Dean asked Mr. Peters about the statistics his organization gathered.

**Public Comment**

Mr. Peters stated that between 25,000 and 35,000 ADA accessibility lawsuits have been filed in the State of California to date, and feels this is a significantly-understated figure. His organization did another search last year to determine the number of federal and state lawsuits. They saw a declining number of federal suits and an increasing number of state suits, and he believes that trend will continue. He estimated they looked at about 2,000 lawsuits in 2011; the six or seven biggest filers in state outnumbered the total filings in federal.

Mr. Peters stated his organization researches federal and state courts in different ways. With federal courts, they primarily look at case category 446, which is a new, pure federal ADA category that was developed around 2006. Case category 440 includes all civil rights, but there are still many attorneys that file cases that should be 446 under 440 instead. Case category 443 is accommodations. His organization often looks by filer on the federal side to try to exclude the cases that most people do not think of as traditional ADA access lawsuits against businesses.

Mr. Peters stated his organization uses a number of different searches and search engines when researching state courts. They typically investigate by filer, as there are some attorneys and some claimants that file these lawsuits exclusively or almost exclusively. Then there are others who file other types of cases; his company goes through them and makes educated guesses, but his organization has countless images of the lawsuits that were filed, so they actually have the images to back up their findings.

**Public Comment**

Mr. Scott emphasized the need to reach minority communities. He suggested maximizing the Commission's impact by including a media component where the members of this Committee actively seek interviews as diverse as possible to try to get the word out as to what it is trying to do.

Executive Director Vitale stated the recognition of the issue is out there in the press and the business community. It is now necessary for the issue to come to the attention of the highest level of government, so the governor will see the

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magnitude of the issue and ask what resources are necessary to resolve it. Executive Director Vitale believes the minimal dollars necessary to support the activities of CCDA, versus the short- and long-term benefits to the state in terms of potential dollar loss by exposure to suits, more than justifies the dollars needed to make all this come together.

Executive Director Vitale pointed out that media coverage thus far has been one-sided and sensationalist. It should, instead, acknowledge the issue and the responsible parties who are willing to find a resolution. This will aid the business community in gaining open access, which will in turn generate more revenue.

**Public Comment**

Mr. Scott stated CALA wants compliance without lawsuits, which he believes is possible. Every small business that closes because of a lawsuit impacts the state by lessening tax and business revenue. CALA continually strives to raise the issue of legal reform to the level of tax and regulation, to bring this issue to the governor's attention. Mr. Scott said he tells his clients that the lawsuit is just one-fourth of what they will be dealing with. Hiring a lawyer, hiring a CASp, and compliance are the other factors.

Chair Dean asked the Committee if they were in agreement with the survey approach.

Commissioner Seferian agreed but suggested the need to have at least one public hearing, as it is important to get comments from people who are impacted. He suggested making a separate judicial survey.

Chair Dean stated he will send an email to the Commission Chair informing her of the survey approach, which differs from the meetings/hearings approach that was reported at the full Commission.

Executive Director Vitale volunteered to put together a working draft of the survey that can serve as a starting point for the Commission. He also announced that he will be attending a workshop to train for presentations before the press.

**5. FUTURE CIVIL ENFORCEMENT COMMITTEE MEETINGS**

Chair Dean scheduled the next Civil Enforcement Committee meeting for Thursday, April 19, 2012, at 10:00 a.m.

**6. FUTURE AGENDA ITEMS**

Chair Dean stated future agenda items will be to advance the final draft of the survey and to address the outreach to organizations.

**7. ADJOURN**

Chair Dean adjourned the meeting at 11:37 a.m.