

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

**November 22, 2011**

**1. CALL TO ORDER**

Chair Dean called the meeting to order at 10:00 a.m. at Department of Rehabilitation, 721 Capitol Mall, Room 242, Sacramento, California 95814.

**ROLL CALL**

Staff Member Angela Jemmott called the roll.

*Commissioners Present:*

Michael Dean, Chair  
Anthony Seferian

*Commissioners Absent:*

Mitchell Pomerantz

*CCDA Staff Present:*

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

*Also Present:*

Steve Dolim, Certified Access Specialist Institute  
(CASI)  
Dave Peters, Lawyers Against Lawsuit Abuse  
(Teleconference)  
Katherine Pettibone, Civil Justice Association of  
California (Teleconference)  
Tom Scott, California Citizens Against Lawsuit  
Abuse  
Jeff Shea, Attorney, state trial courts  
(Teleconference)

Staff Member Jemmott stated that a quorum was present.

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

There was no public comment.

**3. GENERAL BUSINESS ITEMS**

**a) Civil Enforcement Committee Objectives**

At the request of Commission Chair Johnson, Committee Chair Dean read the Civil Enforcement Committee's specific charge from Government Code 8299.07. It states that the Committee shall study the operation of Section 55.54 of the Civil Code (which essentially allows an initial stay and early evaluation of a claim if a defendant

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has had a CASp report previously prepared or is in the process of having a CASp inspection).

**b) Appointment of Vice Chair**

**MOTION:** Chair Dean moved to elect Commissioner Pomerantz as Vice Chair of the Civil Enforcement Committee. Commissioner Seferian seconded. Motion carried unanimously.

**c) Protocol for Appointing Non-Commission Members to the Committee**

This protocol is slated to be approved by the full Commission in January. It states that public members can participate on CCDA committees, but the number on each committee cannot exceed four unless good cause is shown.

In addition, participants will be equally represented by members with disabilities and members from the business community.

To serve on a committee, a member of the public can submit a Letter of Request for Appointment together with a Statement of Qualifications and Experience to the CCDA Executive Director. The committee will then tentatively appoint the person pending concurrence of the Commission Chair.

Executive Director James Vitale suggested beginning solicitation now for committee members. Staff can post committee openings on the CCDA website, and committee members can conduct personal outreach for potential new members.

**Public Comment**

- Tom Scott, California Citizens Against Lawsuit Abuse, suggested including a specific "job description" in the outreach for new committee members. He asked if public members have the same voting rights as Commissioners; Executive Director Vitale responded that their capacity is advisory only.
- Steve Dolim, Certified Access Specialist Institute (CASI), commented that he would place the CCDA membership outreach verbiage on the CASI website as well.

**d) Achievement of Committee Objectives**

Chair Dean stated that the committee would need to prepare a report for the Commission before they prepared their own report for the Legislature. He suggested having at least two public hearings for the purpose of fact-finding, in both northern and southern California, so that the committee could address its charge.

Commissioner Seferian agreed, and added that he and Chair Dean could conduct some fact-finding themselves. They could contact the Judicial Council and individual county clerks regarding information those entities may be gathering on implementation of Section 55.54 of the Civil Code. They could also speak with individual judges regarding their opinions on the effectiveness of the sections.

**e) Committee Internships**

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Chair Dean brought forward Executive Director Vitale's idea of contacting law schools regarding the development of an internship. An intern could help with the kind of research discussed above.

Executive Director Vitale stated that a stakeholder group had indicated a willingness to provide staff, at no cost to CCDA, to assist in the collection of data to be compiled as a semester class project by local northern California law schools.

Jeff Shea, an attorney with the state trial courts, offered to contact a colleague who knows how local courts are collecting data under the various trial management systems.

Chair Dean added that an issue for the disabled community is what specific directives are given to judges, with regards to direct application and implementation of the law – the consensus of the courts – as it affects cases

Mr. Shea stated that in training he is involved with in the state trial courts, he could address these issues (although in a little less detail).

**Public Comment**

- Katherine Pettibone, Civil Justice Association of California Legislative Director, commented that the two hearings may end up being quite long. She also commented that for the judges the committee intended to contact, it might be worth formatting a questionnaire and sending it to the judges association.
- Mr. Scott commented that it would be great to use interns. Also, he agreed with Ms. Pettibone regarding the hearings – considering the magnitude of the problem as he perceived it, two hearings may not be sufficient. All of the various regions of California are getting hit with ADA lawsuits, as addressed by the Governor with 1608.

Although we're talking about state court, a huge percentage of these lawsuits are filed in federal court; this should be researched. Mr. Scott also asked how we got into this situation. What role do city and county building inspectors play?

Chair Dean commented that it would indeed be a good idea to get information on federal court filings (a possible task for interns). Executive Director Vitale noted that the only party that realizes a financial benefit in federal court is the attorneys who are involved in the filing on behalf of the disabled individual. Damages are rarely, if ever, paid to the individual.

Mr. Scott noted that much of this discussion is focused on the private sector, but the public sector may also be relevant: it is as big, if not bigger, in terms of taxpayer impact.

- Dave Peters, Lawyers Against Lawsuit Abuse, pointed out that you can assert state law and federal claims side by side in both state and federal courts, and that is in fact what's happening. Litigants in federal courts are recovering state law financial damage amounts.

Chair Dean established that Executive Director Vitale will pursue the task of developing an internship program.

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Chair Dean and Executive Director Vitale discussed scheduling and arranging the hearings. Executive Director Vitale strongly recommended the use of an experienced facilitator and a format called a charette, which involves subgroups compiling key elements which they share with the whole group.

Mr. Scott pointed out the importance of widely promoting and publicizing the hearings including through the media. He concurred with Executive Director Vitale that there may be facilities throughout the state that would be free for an event such as this. CCDA budget could be maximized by having committee meetings immediately after the hearings when the committee members are already present.

Executive Director Vitale noted that there are many kinds of organizations throughout the state whose general membership meetings he could visit to request their participation in this outreach. Bar associations, Chambers of Commerce, the Hotel and Lobby Association, the California Restaurant Association, etc. could start to compile their thoughts in response to Executive Director Vitale's announcement of the upcoming hearings.

Chair Dean stated that the committee would report back to the Chair, as required, outlining the points discussed today. At the upcoming Commission meeting the committee would request authority to proceed in a specific way.

**4. FUTURE CIVIL ENFORCEMENT COMMITTEE MEETINGS**

Chair Dean suggested scheduling another meeting after the next Commission meeting on January 23, so the committee would have a handle on future tasks. The committee decided on January 31 from 10:00 a.m. - noon.

**5. FUTURE AGENDA ITEMS**

Chair Dean noted that future agenda items will be generated by what happens at the next Commission meeting.

**Public Comment**

- Mr. Dolim commented that the role of the Civil Enforcement Committee is focused on a very long-term objective: to get to the root of the enforcement and lawsuit problems discussed today. Short-term, there are disparate levels of CASp reports being prepared. On that more immediate front, is this committee moving toward some standard, minimum level?

Executive Director Vitale responded that simultaneous efforts are in progress in the Checklist Committee, CASp & Education Committee, and Accessibility Enhancement Committee. Their work products will come to the Civil Enforcement Committee for evaluation.

Mr. Dolim asked specifically about the anecdotal information passed on by the CASI people that there is some CASp individual who is selling the window signs without completing the report. Mr. Dolim noted that the DSA has chosen not to be the reporting agency.

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Chair Dean said that the matter should be brought to the CASp & Education Committee. Executive Director Vitale pointed out that since there is now mandatory utilization of these voluntarily certified individuals, CCDA will have to make some recommendations as to what can and should be done to resolve outstanding issues such as this.

- Mr. Shea asked about the role of the Accessibility Enhancement Committee; Executive Director Vitale replied that it is to be a resource for obtaining current information coming out of the Access Board, as well as recent court cases and findings.

**6. ADJOURN**

Chair Dean adjourned the meeting at 11:08 a.m.