



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 26, 2013

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| Title | Agenda Item Type |
| Civil Practice and Procedure: Forms and Rules for Disability Access Litigation | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Adopt Cal. Rules of Court 3.680 and 3.682; revise forms DAL-001, DAL-006, DAL-010, and DAL-012; and adopt forms DAL-015 and DAL-020. | July 1, 2013 |
| Recommended by | Date of Report |
| Civil and Small Claims Advisory Committee | March 6, 2013 |
| Hon. Dennis M. Perluss, Chair | Contact |
| | Anne M. Ronan, 415-865-8933 |
| | anne.ronan@jud.ca.gov |

Executive Summary

The Civil and Small Claims Advisory Committee recommends adopting two new disability access litigation forms for use in construction-related accessibility claims and revising three of the disability access litigation forms adopted effective January 1, 2013. The revisions are to correct statutory cross-references and to revise the directions for serving the forms to reflect the longer service time in new rules that the committee is recommending at the same time. The new forms are for parties to apply for and the court to set mandatory evaluation conferences in such actions. The committee also recommends revising the advisory form that attorneys are required to send out regarding such claims. All the forms are mandated by Senate Bill 1186 (Steinberg and Dutton; stats. 2012, ch. 383), enacted in September 2012 to promote compliance with the state's disability access laws and deter unwarranted litigation in that area.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council take the following actions, effective July 1, 2013:

1. Revise *Important Advisory Information for Building Owners and Tenants* (form DAL-001), and adopt the form for mandatory use;
2. Revise *Confidential Cover Sheet and Declaration re Documents for Stay and Early Evaluation Conference* (form DAL-006), *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010), and *Proof of Service—Disability Access Litigation* (form DAL-012);
3. Adopt new forms *Application for Mandatory Early Evaluation Conference* (form DAL-015) and *Notice of Mandatory Evaluation Conference* (form DAL-020); and
4. Adopt rules 3.680 and 3.682 of the California Rules of Court relating to service of the new forms.

The new rules and the revised and new forms are attached at pages 9–16.

Previous Council Action

In October 2009, when the provisions of Civil Code section 55.54 on applications for stays of proceedings and early evaluation conferences became operative, the statutorily required application form and notice of stay form were added to the judicial branch website. Effective January 2013, as mandated by the Legislature, the council revised the statutory application and notice forms and adopted them as *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010). At the same time, the council adopted a confidential cover sheet (form DAL-006) and a proof of service (form DAL-012)

No prior action has been taken by the council regarding mandatory evaluation conferences under § 55.545.¹ a new procedure that only became operative as of January 1, 2013.

Rationale for Recommendation

SB 1186² was enacted on September 19, 2012, to promote compliance with the state’s disability access laws and deter unwarranted litigation in that area. Among other things, the new statute imposes new pleading requirements, expands the current early evaluation conference process, creates a new alternative mandatory evaluation conference option when the other procedure is not available, reduces statutory damages, and provides other protections for specified defendants who timely correct construction-related accessibility violations of the Unruh Civil Rights Act.

The new statute affects three areas in which Judicial Council forms are required:

¹ Unless otherwise noted, all statutory references herein are to the Civil Code.

² A copy of SB 1186 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1186&search_keywords

- The statute expands the types of defendants who qualify for automatic stays and early evaluation conferences under Civil Code section 55.54. SB 1186 mandated that the council adopt forms to implement those changes by January 1, 2013. (§ 55.54(l)(1).) Because of the short time in which the council was required to act on those forms, the forms were adopted before being circulated for comment. In light of comments received post-adoption, the committee now recommends revisions to three of those forms. (See attached forms DAL-006, DAL-010, and DAL-012.)
- The statute revises the information attorneys are required to send to building owners or tenants with any demand letter or complaint concerning construction-related accessibility violations of the Unruh Civil Rights Act, and mandates that the Judicial Council revise its form for providing this information (along with its foreign-language versions of the form) by July 1, 2013. (See attached form DAL-001.)
- The statute creates a new alternative mandatory evaluation conference procedure for parties in construction-related accessibility cases who are ineligible for or choose not to seek a stay of proceedings and early evaluation procedure. (§ 55.545.) The new law mandates that the Judicial Council develop forms for a party to use to file an application for this conference and for a court to use to give notice to the parties of the date of the conference and the various items the parties are to file and serve in advance. (See attached forms DAL-015 and DAL-020, respectively.)

Revisions to Current Forms

The committee recommends revisions of four current forms for the reasons explained below.

Attorney advisory form (revise form DAL-001). SB 1186 has substantially revised the text of the written advisory that attorneys are required to send with all demand letters and complaints concerning construction-related disability access claims. The new text is stated at section 55.3(b). SB 1186 mandates that the council update the current form, *Important Information for Building Owners and Tenants* (form DAL-001), by July 1, 2013, at which time the council is also required to make it available in Spanish, Chinese, Vietnamese, and Korean. (§ 55.3(c).)

Because the statute mandates that the form shall be in substantially the same format and include all of the text stated in section 55.3(b), there is little discretion in making revisions to this form. The title of the proposed form has been changed slightly, to *Important Advisory Information for Building Owners and Tenants* [underscore added], in light of the change in the heading of the form, which now states “STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS.”³

³ It previously stated “IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS”

The other change recommended for this form is that the council adopt the advisory notice as a mandatory form. The current form was approved as an optional form, based on the statute's providing that the council was to adopt a form that "may be used" by attorneys (§ 55.3(c)) even though at the time the form was approved the statute also stated in subdivision (b) of that section that "attorneys shall provide a written advisory . . . in the form described in subdivision (c)." (See former § 55.3(b).) In SB 1186, the Legislature strengthened the language directing attorneys to use the Judicial Council form in subdivision (b), amending the statute to state, "an attorney shall provide a written advisory on the form described in subdivision (c), or, until that form is available, on a separate page or pages" (new § 55.3(b)).

Recently adopted forms (revise forms DAL-006, DAL-010, and DAL-012). Four new disability access litigation forms were adopted by the council in December and went into effect January 1, 2013:

- *Defendant's Application for Stay of Proceedings and Early Evaluation Conference* (form DAL-005)
- *Confidential Cover Sheet and Declaration re Documents for Stay and Early Evaluation Conference* (form DAL-006)
- *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010)
- *Proof of Service—Disability Access Litigation* (form DAL-012)

Because of the short time frame mandated by statute for their adoption, all were circulated for comment only after adoption. No objections or requests for modification were made regarding the application (form DAL-005). The committee recommends minor revisions to each of the others forms in light of comments received.

Service of application and notice (revise form DAL-010 and adopt proposed rules). Neither the statutory provisions on stays and early evaluation conferences under section 55.54, nor the new provision in section 55.545 for the alternative mandatory evaluation conferences without a stay mandate a particular time for serving the notices issued by the courts under those sections. The original statutory forms did, however, include an item directing the defendant to serve the application and the notice of stay of proceedings on the same day the notice was issued. (See § 55.54(c)(7).) The statute also mandates that a declaration of service be included in any forms the council develops to replace those forms. (§ 55.54(c)(8).)

The *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010) adopted by the council therefore included an item directing the defendant to serve the application and notice on the other parties, setting a deadline of five court days from issuance of the notice. (See current form DAL-010, item 8).⁴ This longer time frame was used to provide time for the defendant to receive the notice from the court and serve it. Commentators on the form, however,

⁴ The statutorily mandated "declaration of service" is included in a separate proof of service form.

and on the proposed rules circulated at the same time—rules that would require service within 5 court days following issuance of both notices of stay and early evaluation conferences issued under section 55.54 and notices of mandatory evaluation conferences issued under section 55.545—thought the time was not quite long enough. The Orange County Bar Association suggested changing the deadline to 10 calendar days rather than 5 court days following the issuance of the notice, noting that this change would provide a few additional days to help ensure that the notice would be received with enough time to serve it by the deadline, and would be easier for self-represented parties to understand. The commentator also noted that whatever time was chosen, it should be the same for both types of conferences.

The committee agreed and for those reasons has modified the proposed rules that were circulated. It recommends that the council adopt rules mandating service of the notice and application for both types of evaluation conferences 10 days after issuance of notice. (See proposed rule 3.680(a) and 3.682(a)) This change in time for service also requires a revision of the *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010), at item 8.

Commentators were asked to consider specifically whether a rule should be adopted mandating that a proof of service of the application and notice be filed with the court. The committee agreed with the two comments received on this point that such a rule should be adopted. The proposed rules require the proof to be served 15 days before the date set for the conference, to ensure that time will be sufficient for a court to process the proof and get it into the file before the conference date. (See proposed rules 3.680(b) and 3.682(b).)

Other revisions to current DAL forms (revise forms DAL-006 and DAL-012). A commentator noted that some of the statutory references in *Confidential Cover Sheet and Declaration re Documents for Stay and Early Evaluation Conference* (form DAL-006), in Instructions to Clerk box and *Proof of Service—Disability Access Litigation* (form DAL-012) at item 3(g)) were incorrect. Those references have been corrected in the revised forms recommended by the committee.

New Forms for Mandatory Evaluation Conferences

In addition to expanding the types of defendants who might seek a stay and early evaluation conference under section 55.54, SB 1186 provides for a new procedure to allow parties in construction-related disability access cases who are ineligible for a stay under section 55.54, or who choose not to request one, to obtain a similar evaluation conference, preceded by a similar exchange of information. (See § 54.545.) This conference may be requested by any party to the case. If the defendant does not seek a conference within 30 days or with his or her responsive pleading, the plaintiff has 15 days in which to ask for one. The only requirement is that the case involve a construction-related accessibility claim. Upon receipt of a request, the court must set a hearing between 120 and 180 days of the date the request was filed and direct the parties to file and serve certain information 30 days in advance of the hearing.

The new statute mandates that the Judicial Council adopt forms for the party's application and the court's notice of the mandatory evaluation conference. (§ 55.545(j)(1).) The recommended application and notice forms are modeled on, but simpler than, the forms used for the stay and early evaluation conference procedure.

The proposed new *Application for Mandatory Evaluation Conference* (form DAL-015) has only four items:

- The identity of the party making the request;
- A statement that the case has a qualifying claim;
- An acknowledgement that the applicant is not seeking a stay (and a reference to the form to use to do so if a stay is sought); and
- A description of what is being requested (so the applicant will know what is expected).

Two comments were received regarding this form. One requested that the application be approved as an optional, rather than a mandatory, form, noting that courts were trying to reduce hearings. The committee notes, however, that the statute, not the Judicial Council, mandates that the court hold these evaluation conferences upon request of a party (§ 55.545(c)) and the statute mandates that the parties use the Judicial Council form once adopted (§55.545(j)(1)). The other comment suggested several minor modifications to this form, all of which have been incorporated.

The proposed new *Notice of Mandatory Evaluation Conference* (form DAL-020) is also straightforward, and includes items to accomplish the following:

- Set the date, time, and place of conference;
- Direct the parties to personally appear at the conference;
- Direct the plaintiff to serve and file the required statement regarding damages, etc. 30 days in advance of the conference;
- Direct the defendant to serve and file a statement regarding any remediation or planned remediation of alleged violations in a similar time frame; and
- Direct the requesting party to serve the application and notice on the other parties and to file a proof of that service.

The primary comments received on this form —comments that were the same as for service of the notice for stay and early evaluation —related to the time frame for serving it on the other parties. One commentator also requested that parties be required to file a proof of service by a certain time before the conference. Item 7 on the attached form has been modified to reflect the suggested change to a 10-day period for service and a requirement that a proof of that service be completed. In addition, items 5 and 6 have been modified to expressly state that the parties must “serve and file” various other documents, in order for the direction to clearly come within the provisions of California Rules of Court, rule 1.21, requiring that a proof of service of those documents be filed with the court.

Comments, Alternatives Considered, and Policy Implications

Because SB 1186 mandates that the council adopt the forms addressed in these recommendations, the committee did not consider the alternative of taking no action. The committee did consider not recommending rules providing a particular time frame for service of the notice and application but concluded that because the statute mandates that a proof of service be included in the forms, time for such service should be clearly set out.

Three comments were received regarding the forms adopted effective January 1, 2013, from Disability Rights California, the Orange County Bar Association, and the Superior Court of San Diego County, all agreeing with the forms with some modifications requested.⁵ The same three commentators plus the Superior Court of Los Angeles County commented on the July 2013 form proposals and proposed rules.⁶ The committee considered each of the comments received, incorporated many of the suggestions into the recommended forms as discussed above, and responded to each on the comments chart. The committee disagreed with a few substantive comments, as described below.

Disability Rights California requested a rule to require filing of a proof of service of all mandated documents relating to the evaluation conferences, not just the notice and application forms. Item 5 on form DAL-010 and items 5 and 6 on form DAL-020 direct the parties to serve and file various documents, with different deadlines, as mandated by statute. The committee considered this suggestion but disagreed that a separate rule mandating filing of a proof of service is necessary, in light of California Rules of Court, rule 1.21, which defines the term “serve and file” as including filing of a proof of service. The committee did modify the language in the notice forms so that it is clear that a party is to “serve and file” any required documents.

That same commentator responded to a request for specific comment on whether the attorney advisory (form DAL-001) should be recommended as a mandatory or optional form, stating that the form should not be mandatory. The commentator proffered no reason for why it should be optional, however. In light of the statutory mandate discussed above that an attorney use the Judicial Council form once revised, the committee recommends that the form be adopted as mandatory.

Implementation Requirements, Costs, and Operational Impacts

The revisions of the attorney advisory notice (form DAL-001) should have no impact on the courts and is legislatively mandated to go into effect by July 1, 2013. Similarly, the revisions to the confidential cover sheet (form DAL-006) and the proof of service form (form DAL-012) should have no impact on the courts because those forms are completed by the parties.

⁵ A summary of the comments regarding the forms adopted effective January 1, 2013, and the committee’s responses are in comment chart W13-02—January Forms, attached at pages 20–22.

⁶ A summary of the comments received on the forms and rules proposed with a July 1, 2013, effective date and the committee’s responses are in comment chart W13-01—July Forms and Rules, attached at pages 17–19.

The adoption of rules changing the deadline for service currently reflected in the notice of stay and early evaluation conference (form DAL-010) and resulting revision to that form may have a one-time impact on courts with computerized case management systems, as well as requiring some additional training of clerks and judicial officers.

Adoption of the proposed application and notice forms for the mandatory evaluation conferences (forms DAL-015 and DAL-020) is mandated by statute, but the date of adoption of the forms is not. Implementation of both forms will require training for clerks and judges, although such training will be required whether or not the new forms are adopted because the new procedures have been in place since January 1, 2013.

Implementation of the proposed notice form will have a further impact on courts that issue notices and orders via computerized case management systems. However, notices that comply with the new law will have to be generated in any case, and forms may help the courts do this. In any event, adoption of the notice forms are mandated by statute.

Attachments

1. Cal. Rules of Court, rules 3.680 and 3.682 at page 9.
2. Forms DAL-001, DAL-006, DAL-010, DAL-012, DAL-015, and DAL-020 at pages 10–16.
3. Comment Chart W13-01—July Forms and Rule at pages 17–19.
4. Comment Chart W13-02—January Forms at pages 20–22.
5. Senate Bill 1186 may be found at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1186&search_keywords

Rules 3.680 and 3.682 of the California Rules of Court are adopted, effective July 1, 2013, to read:

1 **Title 3. Civil Rules**

2
3 **Division 6. Proceedings**

4
5 **Chapter 4. Special Proceedings on Construction-Related Accessibility Claims**

6
7 **Rule 3.680. Service of Notice of Stay and Early Evaluation Conference**

8
9 **(a) Service of Application and Notice**

10
11 The defendant who requested a stay and early evaluation conference on a construction-
12 related claim under Civil Code section 55.54 must, within 10 days of issuance of the notice,
13 serve on all other parties the application for stay and any *Notice of Stay of Proceedings and*
14 *Early Evaluation Conference* (form DAL-010) issued by the court.

15
16 **(b) Filing Proof of Service**

17
18 A proof of service must be filed with the court 15 days before the date set for the early
19 evaluation conference. *Proof of Service–Disability Access Litigation* (form DAL-012) may
20 be used to show service of the documents.

21
22 **Rule 3.682 Notice of Mandatory Evaluation Conferences**

23
24 **(a) Service of Application and Notice**

25
26 The party who requested a mandatory evaluation conference on a construction-related
27 accessibility claim under Civil Code section 55.545 must, within 10 days of issuance of the
28 notice, serve on all other parties the application and any *Notice of Mandatory Evaluation*
29 *Conference* (form DAL-020) issued by the court.

30
31 **(b) Filing Proof of Service**

32
33 A proof of service must be filed with the court 15 days before the date set for the early
34 evaluation conference. *Proof of Service–Disability Access Litigation* (form DAL-012) may
35 be used to show service of the documents.

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.gov/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: If the document accompanying this notice is a demand letter from a lawyer and not a formal court complaint, the lawyer is generally required by law to provide a copy of the letter to the State Bar of California, until January 1, 2016, in order that the State Bar may determine whether the demand letter complies with legal requirements, INCLUDING THAT THE DEMAND LETTER MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR AN OFFER OR AGREEMENT TO ACCEPT MONEY. Any demand letter or court complaint must list the lawyer's State Bar license number on the document.

You are encouraged, but are not required, to provide the State Bar with a copy of the demand letter so the State Bar is aware that you received this demand letter and may determine whether it is in compliance with specified legal requirements. A copy of the letter can be sent to the State Bar by facsimile transmission to 415-538-2171, or by mail to the State Bar of California, 180 Howard Street, San Francisco, California 94105, Attention: Professional Competence.

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|--|--|
| <p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number of attorney, and address):</p> <p>TELEPHONE NO.: _____ FAX NO.: _____</p> <p>E-MAIL ADDRESS: _____</p> <p>ATTORNEY FOR (Name): _____</p> | <p><i>FOR COURT USE ONLY</i></p> <p>DRAFT 03.07.13 Not approved by Judicial Council</p> |
| <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS: _____</p> <p>MAILING ADDRESS: _____</p> <p>CITY AND ZIP CODE: _____</p> <p>BRANCH NAME: _____</p> | |
| <p>CONFIDENTIAL COVER SHEET AND DECLARATION RE DOCUMENTS FOR STAY AND EARLY EVALUATION CONFERENCE</p> | <p>CASE NUMBER: _____</p> |

This Confidential Cover Sheet and Declaration should be affixed to the first page of any of the documents listed below. It may not be used with other documents.

INSTRUCTIONS TO CLERK: Certain supporting documents to be filed along with or following an *Application for Stay of Proceedings and Early Evaluation Conference* are to be kept confidential, as provided by Civil Code sections 55.54(c)(6) and (d)(4)(A) and (5). Such document are not to be made part of the public record except to the extent provided in Civil Code section 55.54(e)(4).

Attached hereto is a true and correct copy of one or more of the following documents (*check all that apply*):

1. Report issued by a Certified Access Specialist on a site that is the subject of this litigation. (*This document may become publicly accessible at some point, under Civil Code section 55.54(e)(4).*)
2. Wage report forms filed by defendant with the Employment Development Department.
3. State or federal income tax returns filed by 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)

| | |
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| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): <hr/> <p style="text-align: center;">TELEPHONE NO.: FAX NO.:</p> <p style="text-align: center;">E-MAIL ADDRESS :</p> <p style="text-align: center;">ATTORNEY FOR (Name):</p> | FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">03.07.13</h2> <h3 style="margin: 0;">Not approved by Judicial Council</h3> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PLAINTIFF: DEFENDANT: | |
| NOTICE OF STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE (DISABILITY ACCESS LITIGATION) | CASE NUMBER: |

Stay of Proceeding

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.

Notice of Early Evaluation Conference

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

b. The conference will be held at the court address shown above at 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: | CASE NUMBER: |
| DEFENDANT: | |

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:
- 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;
 - The amount of damages claimed;
 - The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
 - Any demand for settlement of the case in its entirety.
8. 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*. 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 <http://www.courts.ca.gov/forms.htm> for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civil Code section 54.8.)

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| ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number if attorney, and address):</i> TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS : _____ ATTORNEY FOR <i>(Name):</i> _____ | FOR COURT USE ONLY DRAFT 03/07/13 Not approved by Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS CITY AND ZIP CODE: BRANCH NAME: | |
| PLAINTIFF: DEFENDANT: | CASE NUMBER: |
| <p style="text-align: center;">PROOF OF SERVICE—DISABILITY ACCESS LITIGATION</p> <p>Check method of service (only one):</p> <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail | JUDGE: DEPT.: |

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

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:

3. I served the following documents *(check the applicable boxes)*:
 - a. *Defendant's Application for Stay of Proceedings and Early Evaluation Conference* (form DAL-005)
 - b. *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010)
 - c. *Application for Mandatory Evaluation Conference* (form DAL-015)
 - d. *Notice of Mandatory Evaluation Conference* (form DAL-020)
 - e. Inspection report by Certified Access Specialist *(name):* _____ regarding the site in this action (See Civ. Code, § 55.54(d)(4)(A).)
 - f. Evidence showing correction of violation giving rise to construction-related claims or plans for remediation (See Civ. Code, § 55.54(d)(4)(B) or (C) or § 55.545(c)(3).)
 - g. Plaintiff's statement of issues, damages, attorney's fees, and any settlement demand. (See Civ. Code, § 55.54(d)(6) or § 55.545(c)(2).)
 - h. Other *(describe)*:

4. **By Mail.** I am a resident of or employed in the county where the mailing occurred. I served a copy of the document or documents by mailing them, in a sealed envelope with first-class postage fully prepaid, as follows:
 - a. I deposited the envelope with the United States Postal Service.
 - b. I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
 - c. Date of deposit: _____
 - d. Place of deposit *(city and state)*: _____
 - e. Addressed as follows *(name and address)*: _____

5. **By Personal Service.** I served a copy of the document or documents by personally delivering copies as shown below:
 - a. Name of person served: _____
 - b. Address of person served: _____
 - c. On *(date)*: _____
 - d. At *(time)*: _____

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

Date:

_____ _____

(TYPE OR PRINT NAME) (SIGNATURE)

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number if attorney, and address):</i> TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR <i>(Name)</i> : _____ | FOR COURT USE ONLY <p style="text-align: center;">DRAFT 03/07/13 Not approved by Judicial Council</p> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PLAINTIFF: _____ DEFENDANT: _____ | |
| APPLICATION FOR MANDATORY EVALUATION CONFERENCE UNDER CODE OF CIVIL PROCEDURE SECTION 55.545 | CASE NUMBER: _____ |

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

1. Plaintiff Defendant *(name)*: _____ requests a
 Mandatory Evaluation Conference under Civil Code Section 55.545.
2. The complaint in this case alleges a construction-related accessibility claim.
3. The applicant is ineligible for, or is choosing not to seek, a stay under Civil Code section 55.54. *(To seek such a stay, defendant must use form DAL-005.)*
4. The applicant is requesting the court to:
 - a. Schedule a Mandatory Evaluation Conference under Civil Code section 55.545(c);
 - b. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.545(c)(2) at least 30 days before the date of the Mandatory Evaluation Conference; and
 - c. Order defendant to file with the court and serve on plaintiff the statement required by Civil Code section 55.545(c)(3) at least 30 days before the date of the Mandatory Evaluation Conference.

Date:

 (TYPE OR PRINT NAME)



 (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): <hr/> <p style="text-align: center;">TELEPHONE NO.: FAX NO. :</p> <p style="text-align: center;">E-MAIL ADDRESS:</p> <p style="text-align: center;">ATTORNEY FOR (Name):</p> | FOR COURT USE ONLY DRAFT 03/07/13 Not approved by Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PLAINTIFF: DEFENDANT: | |
| NOTICE OF MANDATORY EVALUATION CONFERENCE | CASE NUMBER: |

1. This action includes a construction-related accessibility claim under Civil Code section 55.52(a)(1) or other provision of law.
2. A party has requested a Mandatory Evaluation Conference under Civil Code section 55.545.
3. The mandatory evaluation conference is scheduled as follows:

| | | | |
|----------|-------|--------|-------|
| a. Date: | Time: | Dept.: | Room: |
|----------|-------|--------|-------|

b. The conference will be held at the court address shown above, or at:

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 plaintiff must serve and file at least 30 days before the date set for the mandatory evaluation conference a statement containing, 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.
6. The defendant must serve and file at least 30 days before the date for the mandatory evaluation conference a statement describing any remedial action or remedial correction plan undertaken or to be undertaken by defendant to correct alleged construction-related accessibility violations.
7. A copy of this notice must be served by the requesting party on all other parties by hand delivery or mail to the other party's attorney or to the party if without an attorney, within 10 days of the date that the court issues this notice. The requesting party must serve 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 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 five days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms.htm for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

W13-01—July Forms and Rules

Civil Forms: Disability Access Litigation Forms for Attorney Advisory and New Alternative Evaluation Conference (*adopt Cal. Rules of Court, rules 3.680 and 3.682; revise form DAL-001, and adopt forms DAL-015 and DAL-020*)

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

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|--|---|
| 1. | Disability Rights California Sacramento, California By Sean Rashkis, Attorney | AM | <p><u>Forms</u></p> <p>In reviewing the draft Application for Mandatory Evaluation Conference under Code of Civil Procedure Section 55.545, DAL-015, number 4(a) should be amended to say “Schedule a Mandatory Evaluation Conference outlining the responsibilities of each party at said conference pursuant to Civil Code section 55.545(c)(1).” Since the conference has strict guidelines for both parties outlined in statute, it is important to direct the parties to those responsibilities as soon as possible. Thus, including the Civil Code section in the application is a good first step to directing the parties to the requirements of the mandatory evaluation conference.</p> <p>Under number 4(b) the correct Civil Code section is 55.545(c)(2). The current draft lists section 55.545(d)(2).</p> <p>Under number 4(c) the correct Civil Code section is 55.545(c)(3). The current draft lists section 55.545(c).</p> <p>The Notice of Mandatory Evaluation Conference appears fine as drafted.</p> <p><u>5 Court Days for Serving Notice-Proposed Cal. Rules of Court rules 3.680 and 3.682</u></p> <p>The Judicial Council's proposed 5 court days for service of notice on the opposing party seems reasonable. Understandably there may be</p> | <p>The committee notes the commentator’s general agreement with the proposal.</p> <p>The committee notes that a reference to the statutory provision is included in item 1, but has modified the form to include another reference in item 4(a). The filing requirements that will be imposed on both sides are also described, at items 4(b) and (c).</p> <p>This reference has been corrected.</p> <p>This reference has been corrected.</p> <p>The committee notes the commentator’s agreement with the form.</p> <p>Revisions to rule 1.100 are beyond the scope of this proposal, should one be necessary in order to address the type of accommodation described.</p> |

W13-01—July Forms and Rules

Civil Forms: Disability Access Litigation Forms for Attorney Advisory and New Alternative Evaluation Conference (adopt Cal. Rules of Court, rules 3.680 and 3.682; revise form DAL-001, and adopt forms DAL-015 and DAL-020)

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

| | Commentator | Position | Comment | Committee Response |
|----|--------------------------------------|----------|---|---|
| | | | <p>occasions where a party, due to a medical condition or disability, may need more than 5 days to serve notice on the other party. A request for an extension of time to serve notice beyond 5 court days as an accommodation should be available through the clerk's office as an accommodation request. While California Rules of Court Rule 1.100 addresses disability accommodations with the Court, it is unclear whether a disability accommodation to the amount of time for service of notice under proposed rules 3.680 and 3.682 would be based on Rule 1.100. Disability Rights California requests clarification from the Judicial Council on this matter.</p> <p><u>Advisory Information for Building Owners and Tenants</u></p> <p>Disability Rights California suggests that the advisory information for Building Owners and Tenants provided by the Judicial Council should not be mandatory. Disability Rights California requests the Judicial Council revise the advisory information to reflect that Legal Services attorneys are statutorily exempt from the obligation to file the demand letter with the State Bar pursuant to California Civil Code § 55.32(h).</p> | <p>The committee will consider this question, including possible reference to the Access and Fairness Advisory Committee, as time and resources allow.</p> <p>The Judicial Council does not have discretion to change the text of the advisory, the content of which is statutorily mandated.</p> |
| 2. | Superior Court of Los Angeles County | A | The Application for Mandatory Early Evaluation Conference should not be a mandatory form. Our courts are looking for ways to reduce hearings. We should not be | The committee notes that the mandatory early evaluation conferences are mandated by statute (Civ. Code § 55.545(c)) not by the Judicial Council. Statute also mandates that the council |

W13-01—July Forms and Rules

Civil Forms: Disability Access Litigation Forms for Attorney Advisory and New Alternative Evaluation Conference (adopt Cal. Rules of Court, rules 3.680 and 3.682; revise form DAL-001, and adopt forms DAL-015 and DAL-020)

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

| | Commentator | Position | Comment | Committee Response |
|----|--|-----------------|--|--|
| | | | increasing the number of hearings. The parties are protected by the ability to seek an early evaluation conference. The imposition of a binding hearing does not provide any further protection. | develop the application form and that the parties use it. (Civ. Code §55.545(j)(1).) |
| 3. | Orange County Bar Association Newport Beach, California By: Wayne R. Gross | AM | <p>As to the proposed deadline for serving notice in proposed new California Rules of Court Rules 3.680 (relating to a Notice of Stay/Early Evaluation Conferences) and 3.682 (relating to Notice of Mandatory Conferences), 10 calendar days is preferable to the 5 court days because 10 calendar days (i) is more consistent with the remainder of the statutory scheme (e.g., referencing a stay of 90 “days”, an early evaluation conference being set within 50 to 70 “days” of an Application being filed, and a mandatory evaluation conference (where applicable) being set within 120 to 180 “days” of the date of a “request for application”); and (ii) court days can be confusing not just for lawyers but for pro-per defendants (of which there are many, as this statute imposes potential liability on not just property owners, but tenants.)</p> <p>Whatever time period is chosen, uniformity would be promoted by use of the same time period in proposed rules 3.680 and 3.682.</p> | The committee agrees with the suggestion to make the deadline for service 15 days after the notice is issued and has modified the rules to reflect this. |
| 4. | Superior Court of San Diego County By: Mike Roddy Court Executive Officer | A | No additional comments. | The committee notes the commentator’s agreement with the proposal. |

W13-02---- January Forms

Civil Forms: Application for and Notice of Stay and Early Evaluation Conferences in Construction Related Accessibility Claims (*adopt forms DAL-005, DAL-006, and DAL-010; and approve form DAL-012*)

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

| | Commentator | Position | Comment | Committee Response |
|----|--|-----------------|---|---|
| 1. | Disability Rights California Sacramento, California By: Sean Rashkis Attorney | AM | <p><u>Forms</u></p> <p>The draft defendant's application for stay and early evaluation conference, DAL-005, DAL-006, and notice of stay of proceedings, DAL-010, look appropriate.</p> <p>For the proof of service, DAL-012, number 3(g) cites incorrect statutes. The statutes should be Civil Code section 55.54(d)(6) or section 55.545(c)(2). The current draft incorrectly lists sections 55.54(d)(5) and 55.545(c)(3).</p> <p>The confidential cover sheet cites incorrect statutes under the "Instructions to Clerk" section. The statutes should be Civil Code section 55.54(c)(6) and 55.54(d)(4)(A) and (5). The current draft lists section 55.54(b)(2)(C)(6) and 55.54(d)(4)-(5).</p> <p>Disability Rights California requests that the instructions to the clerk section be further clarified in order to prevent confusion over what documents are to remain confidential. Therefore, Disability Rights California suggests the Judicial Council use the following language in the instructions to the clerk section: "Documents are to be kept confidential pursuant to Civil Code sections 55.54(c)(6) and 55.54(d)(4)(A) and (5) but may be served upon and/or released to specified parties upon court order or upon conclusion of the case pursuant to Civil Code sections 55.54(d)(4)(A) and (5), and 55.54(e)(4)".</p> | <p>The committee notes the commentator's general agreement with the new forms.</p> <p>The proposed revisions have been made.</p> <p>The proposed revisions to the statutory references have been made.</p> <p>The committee has considered but declines to make this revision to the form. The committee notes that the instructions on the form are to the court clerk and correctly reflect the statutory provisions regarding the confidentiality of documents in the court records, and the one provision under which such confidentiality may cease (§55.54(e)(4), which provides that one type of confidential document (CASp reports) may be made public upon a court order or at the end of the case).</p> <p>Section 55.54(d)(4)(A) describes to whom parties—not the court—may give CASp reports.</p> |

W13-02----- January Forms

Civil Forms: Application for and Notice of Stay and Early Evaluation Conferences in Construction Related Accessibility Claims (*adopt forms DAL-005, DAL-006, and DAL-010; and approve form DAL-012*)

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

| | Commentator | Position | Comment | Committee Response |
|----|--|----------|---|--|
| | | | <p><u>Proof of Service Filed with the Court</u> Disability Rights California believes there should be a rule adopted mandating that a proof of service be filed with the court and that such filing be done sufficiently in advance of the early evaluation conference so plaintiffs can check with the court to confirm receipt of all documents filed by the defendant. Disability Rights California suggests a proof of service should be filed no later than 5 court days before the early evaluation conference.</p> | <p>That provision is stated in the notice to the parties, form DAL-012, at item 6.</p> <p>In addition, the requested instruction is overbroad in that there is no provision that other documents filed with this cover sheet, such as a party's business records and tax filings, are to be served or released to other parties.</p> <p>The proposed rule addresses proof of service of the notice and application only, not all other documents. The parties are required by statute and directed in the notice to serve and file other documents at various times. See form DAL-010 at item 5. The language has been modified to clarify that the direction is explicitly to "serve and file", which is defined in rule 1.21(b) to require the filing of a proof of service.</p> |
| 2. | Orange County Bar Association Newport Beach, California By: Wayne R. Gross | AM | <p>1. Do the new forms appropriately address the stated purpose? Yes, so long as modifications were made in accordance with the following comments.</p> <p>2. Does five court days following issuance of the notice of stay of proceedings (see form DAL-010, item 8) provide sufficient time for a defendant to receive and serve the papers? 10 calendar days is preferable because it (i) is more consistent with the remainder of the statutory</p> | <p>1. The committee notes the commentator's general agreement with the new forms.</p> <p>2. The committee agrees with the suggestion to make the deadline for service 10 days after the notice is issued., and that the time frame should be the same for both types of conference.</p> |

W13-02----- January Forms

Civil Forms: Application for and Notice of Stay and Early Evaluation Conferences in Construction Related Accessibility Claims (*adopt forms DAL-005, DAL-006, and DAL-010; and approve form DAL-012*)

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

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|--|--|
| | | | <p>scheme (e.g., referencing a stay of 90 “days”, an early evaluation conference being set within 50 to 70 “days” of an Application being filed, and a mandatory evaluation conference (where applicable) being set within 120 to 180 “days” of the date of a “request for application”); and (ii) court days can be confusing not just for lawyers but for pro-per defendants (of which there are many, as this statute imposes potential liability on not just property owners but tenants.)</p> <p>Whatever time period is chosen, uniformity would be promoted by use of the same time period in proposed rules 3.680 (relating to service of Notice of Stay/Early Evaluation Conferences) and 3.682 (relating to Notice of Mandatory Conferences.)</p> <p>3. Should a rule be adopted mandating that a proof of service of the application and notices (forms DAL-005 and DAL-010) be filed with the court? If so, how long before the early evaluation conference should such filing be required? Yes, a rule will promote judicial efficiency by assisting the court in its scheduling of matters. The Rule should provide that Proof of Service should be filed at least fifteen calendar days before the early evaluation conference.</p> | <p>3. The committee agrees, and has modified the recommended rule to reflect this.</p> |
| 3. | Superior Court of San Diego County By: Mike Roddy Court Executive Officer | A | No additional comments. | The committee notes the commentator’s agreement with the proposal. |