

# CALIFORNIA COMMISSION ON DISABILITY ACCESS FULL COMMISSION

Teleconference Meeting Minutes  
April 19, 2023

**[Note: Agenda Item 13 and the lunch break were taken out of order. These minutes reflect these Agenda Items as listed on the agenda and not as taken in chronological order.]**

## 1. Call to Order

Chair Chris Downey welcomed everyone and called the meeting of the California Commission on Disability Access (CCDA or Commission) to order at 10:04 a.m. The meeting was on Zoom, via teleconference, and held at the Division of the State Architect, Los Angeles Regional Office, 355 South Grant Avenue, Suite 2100, Los Angeles, California 90071.

### Housekeeping

Staff Member Strother reviewed the meeting protocols.

### Roll Call

Staff Member Strother called the roll and confirmed the presence of a quorum.

#### Commissioners Present:

Chris Downey, Chair

Brian Holloway, Vice Chair

Rosilicie Ochoa Bogh, Senator, by Nicki Taylor\*<sup>1</sup>

Rob Bonta, Attorney General, by Deputy Attorney General Ben Conway<sup>1</sup>

Ida Clair, State Architect

Drake Dillard

Souraya Sue ElHessen\*

Jacqueline Jackson

Scott Lillibridge\*

Hector Ramirez\*

Sarahann Shapiro

\*Participated remotely.

<sup>1</sup> a.m. only

#### Commissioners Absent:

Juan Alanis, Assembly Member

Matt Haney, Assembly Member

Melissa Hurtado, Senator

Guy Leemhuis, Immediate Past Chair

Ashley Leon-Vazquez

#### Staff Present:

April Dawson, Executive Director

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Kamran Qazi, Legal Counsel  
Stephanie Groce, Data and Research Analyst  
Phil McPhaul, Operations Manager  
Abigail Ridge, Administrative and Legislative Analyst  
Presley Strother, Marketing and Outreach Analyst

Also Present:

Donna Duarte  
Zeenat Hassan, Disability Rights California, and CCDA Education and Outreach  
Committee Member  
Ashley Hoffman, California Chamber of Commerce  
Corrina Roy, Legislative Consultant, Office of Legislative Affairs, Department of General  
Services (DGS),  
James Vitale, Founding Executive Director, CCDA  
Bill Zellmer, Physical Access and Regulatory Affairs, Sutter Health, and CCDA Checklist  
Committee Member

**Pledge of Allegiance**

Chair Downey led the Commission in the Pledge of Allegiance.

**2. Approval of Meeting Minutes (January 25, 2023) – Action**

**Motion:** Vice Chair Holloway moved to approve the January 25, 2023, California Commission on Disability Access Full Commission Meeting Minutes as presented. Commissioner Dillard seconded. Motion carried 5 yes, 0 no, and 3 abstain, per roll call vote as follows:

The following Commissioners voted “Yes”: Commissioners Dillard, ElHessen, Jackson, and Ramirez and Vice Chair Holloway.

The following Commissioners abstained: Chair Downey and Commissioners Lillibridge and Shapiro.

**3. Comments from the Public on Issues Not on this Agenda – Discussion**

Donna Duarte spoke on behalf of deaf and disabled Californians who depend on communication accommodations when seeking medical care. The speaker shared their background and challenges experienced with the lack of timely access to medical care and accommodations.

Commissioner Ramirez asked for a discussion around the comments shared during public comment in regards to the scope of this Commission and what it can and cannot do. The experience shared by Donna Duarte showed an example of significant barriers that many Californians have with local businesses because disability access is considered physical access. This does not take into consideration the other systemic barriers that are not necessarily physical that prevent public and business entities from maximizing interactions. The challenges facing individuals who are deaf or hard of hearing are significant, especially in public settings. They suggested that the Commission go beyond what it has been doing to include other disability needs within

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the scope of its work so that other populations can benefit from the work of the Commission.

**4. New Commissioner & CBPA Appointee Sarahann Shapiro – Discussion**

**a. Rendering of Oath**

Staff Member McPhaul welcomed Sarahann Shapiro and read her biography, which was included in the meeting materials.

Executive Director Dawson led the swearing-in of office for Sarahann Shapiro. She presented Commissioner Shapiro with a CCDA pin with the CCDA logo and banner, “Creating an accessible and barrier-free California.”

Chair Downey, Commissioners, and members of the public welcomed Commissioner Shapiro to the Commission.

**5. CCDA’s New Legislative Affiliates – Discussion**

**a. Senator Rosilicie Ochoa Bogh**

**b. Assembly Member Juan Alanis**

**c. Assembly Member Matt Haney**

Staff Member McPhaul welcomed Senator Rosilicie Ochoa Bogh, Assembly Member Juan Alanis, and Assembly Member Matt Haney and read their biographies, which were included in the meeting materials.

Chair Downey welcomed Commissioners Ochoa Bogh, Alanis, and Haney on behalf of the Commission.

**6. Outstanding Questions Regarding Commissioner Ben Conway’s Prior Presentation – Update and Discussion**

**a. Bagley-Keene Open Meeting Act, Robert’s Rules of Order, and CCDA Bylaws**

Commissioner Conway stated two questions came up during his presentation at the January meeting on the Bagley-Keene Open Meeting Act and Robert’s Rules of Order that he was not prepared to answer at that time. He stated he has consulted with experts and would now like to address those questions as follows:

- Does the Bagley-Keene Open Meeting Act define the term “majority” as in majority votes?

Commissioner Conway stated it does not. The term “majority” is used in Section 11122.5 of the Government Code about meeting a quorum for a meeting but does not actually define the term “majority.”

- What are the public rights with respect to the Commission’s Subcommittee meetings?

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Commissioner Conway stated, when a Subcommittee has three or more Commission Members, then the public has the same rights at Committee meetings as it does at full Commission meetings per Section 11121(b), including the rights to notice under Section 11125, attendance under Section 11124, access to records under Section 11125.1, and comment before each agenda item under Section 11125.7.

Discussion

Commissioner ElHessen stated the assumption that Los Angeles County falls under different guidelines and criteria and not under the Bagley-Keene Open Meeting Act.

Commissioner Conway stated his understanding that the Bagley-Keene Open Meeting Act is specifically for things sponsored by the state.

Commissioner Clair asked about agenda items.

Commissioner Conway stated one of the exceptions for the Bagley-Keene Open Meeting Act is putting things onto the agenda and setting up meetings.

**7. CCDA Bylaw Review – Update and Discussion**

**a. Path Forward**

Executive Director Dawson stated all members of the Executive Committee volunteered to help with the biennial review of the CCDA Bylaws. The Bylaws review will be included in the agenda at the next Executive Committee meeting. The Executive Committee will recommend the changes at the next full Commission meeting and they will be voted on at a future full Commission meeting.

There was no Commissioner discussion or public comment.

**8. CCDA Subcommittee Reports – Discussion**

**a. Executive Committee**

Chair Downey, Chair of the Executive Committee, provided a brief update of the work of the Committee since the last Commission meeting:

- The Committee had productive discussions and built today's agenda.

**b. Education and Outreach**

Commissioner ElHessen, Chair of the Education and Outreach (E&O) Committee, provided a brief update of the work of the Committee since the last Commission meeting:

- The Committee continues to work with the Accessible Parking Campaign Toolkit and website accessibility compliance and education as mandated in Assembly Bill (AB) 2917.
- The Committee will be providing feedback to staff on how to target stakeholders once the toolkit is in the outreach phase.

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- The Committee is looking at how the CCDA can have its own social media presence to assist in the creation of Americans with Disabilities Act (ADA) educational modules and how to have the Listening Forums on YouTube for greater access to the public on the work of the CCDA.

**c. Checklist Committee**

Commissioner Dillard, Chair of the Checklist Committee, provided a brief update of the work of the Committee since the last Commission meeting:

- The Committee continued work on the Accessible Parking Campaign Toolkit. Quotes have been obtained to finalize the editing of the toolkit from the Department of General Services (DGS). The Division of the State Architect (DSA) staff is also assisting with the technical aspects of the editing of the toolkit. The draft toolkit is expected to be presented to the full Commission for review at the summer meeting, hopefully in time for the summer Listening Forum in San Jose.

**d. Legislative Committee**

Commissioner Lillibridge, Chair of the Legislative Committee, provided a brief update of the work of the Committee since the last Commission meeting:

- New Committee Member Dan Okenfuss, Public Policy Manager, California Foundation for Independent Living Centers, was welcomed to the Committee at the February Committee meeting. Committee Member Okenfuss was introduced to the Commission at the last Commission meeting.
- The Committee continues to monitor new legislation under the Commission's purview and the CCDA's implementation of AB 2917, which mandated the Accessible Parking Campaign Toolkit and tracking of the alleged website accessibility violations and continuing education for businesses.
- The Committee continues to work with the DGS Office of Legislative Affairs (OLA) in trying to encourage them to use the Commission as a tool to assist with technical issues as it relates to new bills that come forward.

There was no Commissioner discussion or public comment.

**9. CCDA Executive Director Report – Discussion**

**a. Administrative and Operational**

Executive Director Dawson stated the CCDA honors Rex Hime, one of the founders of the CCDA and the former CEO of the California Business Properties Association (CBPA), who passed away recently. She stated appreciation and gratitude for Mr. Hime's work and accomplishments for disability access.

Executive Director Dawson welcomed new Commissioner Shapiro, who will represent the CBPA. She was officially sworn in this morning.

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Executive Director Dawson welcomed new Assembly Members Juan Alanis and Matt Haney and Senator Rosilicie Ochoa Bogh as legislative ex-officio members to the Commission.

Executive Director Dawson thanked Senator Brian Jones, Assembly Member Brian Maienschein, and former Assembly Member Stephanie Nguyen for their years of service on the Commission. She thanked Senator Melissa Hurtado for her continued work on the Commission.

Executive Director Dawson stated a candidate is moving through the appointment process for the vacant Governor appointee seat representing the disability community's interests.

Executive Director Dawson noted that Vice Chair Holloway and Commissioner Ramirez have been reappointed to three-year terms on the Commission.

Executive Director Dawson stated the California Department of Human Resources (CalHR) is reviewing the duty statement for an SSA/AGPA position. The CCDA is converting the open AGPA position to better fit the Commission's needs for administrative support and special projects support. This person will do more contract tracking, vendor relationships, and budget tracking, and will provide administrative support to management.

Executive Director Dawson thanked Commissioner Conway for sharing his intern from the Department of Justice with the CCDA. The intern is conducting cross-checking research between CCDA Legal Portal-submitted cases and state/federal filings, which will help determine the compliance rate of inputted alleged disability access violations, as well as give a more complete picture of the alleged disability access violations in California that may not include the CCDA Legal Portal.

Executive Director Dawson reviewed a list of conferences and meetings she attended since the last Committee meeting.

Discussion

Commissioner Shapiro thanked the Commission for their warm welcome and stated she looks forward to working with Commissioners, Executive Director Dawson, and her team.

Public Comment

No public comment.

**10. CCDA Strategic Goal: Accessible Parking Campaign – Discussion**

Executive Director Dawson stated the Construction Industry Workgroup and the ADA Coordinator, Business Owner, and Operator Workgroups developed two drafts that would educate their stakeholders about the importance of ensuring accessible parking and educating them on their responsibilities of maintaining accessible parking.

Executive Director Dawson stated staff submitted the draft toolkit to the DGS Office of Public Affairs (OPA) and the DSA for their review. Recommendations received are

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currently being added into the draft toolkits. Commissioner Clair is kindly providing technical assistance for the DSA edits at no cost.

Executive Director Dawson stated, in order to finalize the project and incorporate the edits, staff has secured quotes through Interdepartmental Services within the DGS to finalize the toolkit from the Real Estate Services Division and Graphic Design.

Executive Director Dawson stated the goal is to finalize the stakeholder edits before the July Listening Forum. The workgroups and stakeholder groups will review it to ensure the edits reflect the voice of the workgroups, the DSA, and the OPA, and the Division Deputy Director will then sign off. The final draft is expected to be presented to the Commission for approval at a future meeting. The toolkit is on track to be completed by the end of the year.

Discussion

Chair Downey asked about multilingual translation of the toolkit.

Executive Director Dawson stated the plan is to make the toolkit available in multiple languages both in print and on the website. These quotes are also currently being secured.

Public Comment

No public comment.

**11. Listening Forums – Discussion**

**a. Timeline**

Executive Director Dawson stated, now that some of the COVID-19 restrictions have been lifted, staff is planning to have several regional Listening Forums throughout the state in 2023 to bring the disability and business communities together to discuss ideas for meaningful change related to business access, demystify assumptions, share challenges, work on solutions, and learn what was working in different communities.

Executive Director Dawson stated the first Listening Forum will be held on August 31<sup>st</sup> at the San Jose City Hall in the city of San Jose. Staff is working with the San Jose Disability Officer and other community members from the city of San Jose and Santa Clara County. She stated she was excited to provide an opportunity for local government and the disability and business communities to strengthen their relationships with each other through the Listening Forum, and that the CCDA will have the opportunity to listen and come up with ways to support those communities in the work that it does.

Executive Director Dawson stated time will be made during the Listening Forum to share information about the CCDA and its work and to share resources such as the Accessible Parking Toolkit, etc.

Executive Director Dawson stated she continues working on other Listening Forums to be held across the state this year, including the Santa Rosa region, the Los Angeles area, and the Central Valley.

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Executive Director Dawson stated San Jose was selected for the first Listening Forum because the majority of the top ten disability access violations reported in the CCDA's 2021 Annual Report to the Legislature took place in the San Jose area or on the Peninsula. This is an example of how the CCDA is using data to get the tools to the stakeholders that the data shows need it the most.

Discussion

Commissioner ElHessen asked how the CCDA is reaching out to ensure public engagement and participation in the business and disability communities.

Executive Director Dawson stated outreach will be done through the CBPA and other business- and disability-related entities. Business-related outreach material will be created as handouts for Commissions to disseminate to their contacts in the San Jose area.

Chair Downey asked if the Listening Forums will be on Zoom for members of the public who are unable to attend in person.

Executive Director Dawson stated the Listening Forums will be in a hybrid format for both in-person and remote participation.

**12. Sit Down with Commissioner Lillibridge – Discussion**

Staff Member McPhaul stated each full Commission meeting will feature a Commissioner. He thanked Commissioner Lillibridge for being willing to be interviewed and staff member Ridge for being the interviewer. He showed a brief video interview with Commissioner Lillibridge on his background, daily work, and work with the Commission.

**[Note: Agenda Item 13 was taken out of order and was heard after Agenda Item 6.]**

**13. The Legal Landscape of Alleged Construction Related Disability Claims: Panel Discussion – Discussion**

**Members of the Panel:**

- Zeenat Hassan, Staff Attorney II, Civil Rights Practice Group, Disability Rights California; CCDA Public Member
- Ashley Hoffman, Policy Advocate, California Chamber of Commerce

Executive Director Dawson stated the Commission will hear a discussion on how the legal landscape of alleged construction-related disability claims plays out for stakeholders and how the CCDA can be a bridge to ensure that all communities come together and that CCDA programming and community discussions are relevant.

Staff Member McPhaul welcomed the Panel Members and read their biographies, which were included in the meeting materials.

Executive Director asked a series of questions to facilitate the Panel discussion:



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1. For both parties involved, litigation can be costly and time-consuming. A dispute can be settled or resolved without going to court by sending a demand letter to the opposing party. How has the current landscape of civil rights remediation impacted your work and stakeholders?

Zeenat Hassan, Staff Attorney II, Civil Rights Practice Group, Disability Rights California, and CCDA Public Member, stated a good demand letter can resolve disputes but whether it does is another story. The goal of a demand letter is to be the start of a collaborative process to resolve the problem without litigation. A demand letter often leads to a risk assessment to determine what needs to be done; however, a demand letter is only as strong as the enforcement mechanism behind it. The impact of the landscape on work is that it can be overwhelming to see how inaccessible virtually every aspect of society is. The ADA has been in law for over 30 years and California State Sanctions are even older, but it is still common for individuals to encounter multiple barriers daily.

Ashley Hoffman, Policy Advocate, California Chamber of Commerce (CalChamber), stated the CalChamber has always taken receiving a demand letter seriously. The preference is to fix the issue or settle outside of court to save resources for everyone.

Ms. Hoffman stated demand letters are a good method of resolution; however, it is difficult to differentiate in the legal landscape between individuals who ignore demand letters (bad actors) and individuals who may genuinely not know that they have an accessibility issue and want to make it right or come to a resolution (good actors). While it is important to have enforcements in place so bad actors do not get away, it is also important not to penalize good actors.

Ms. Hoffman stated CalChamber does not receive clear demand letters from high-frequency litigants prior to being served with a complaint, but is already in litigation when first learning of an alleged issue. In these situations, CalChamber will often try to take advantage of the court's Alternative Dispute Resolution (ADR) program if the plaintiff is willing to go into that mediator-type process. The ADR program has largely been successful.

2. How is access impeded in the current legal landscape of alleged construction-related disability claims?

Ms. Hoffman stated much of the focus in this issue area is on high-frequency litigants and litigation against small businesses. Unfortunately, rows of small businesses sometimes being hit at the same time can cause frustration in business owners that takes away from the conversation about the importance of accessibility and ensuring that small businesses are in compliance. Lobbyists continue to struggle with the dichotomy of these two issues.

Ms. Hassan stated access can be impeded due to the many parameters that the Legislature adopted to try to get after the bad actors, which have not been effective and have caused the unintended consequence of disincentivizing enforcement of the law. She provided the example that the Civil Code currently requires that, when an attorney sends a demand letter – which is more like a notice, since the Civil Code also limits the

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ability to make a demand – their bar number is included along with instructions to the recipient of the letter on how to file a bar complaint against the sender if the sender made any mistakes and did not fully comply with the requirements of the Civil Code.

Ms. Hassan stated this is a harsh requirement related to construction-related accessibility claims that does not exist in any other realm of civil litigation and can have a chilling effect on attorneys who otherwise might want to pick an occasional access case to help promote accessibility in their community. At the same time, DRC is still hearing about those bad actors who do not comply with the law. This begs the question of what the point of these requirements is if the bad actors are still acting badly and a chilling effect has been put on the good actors who want to take on more of these cases.

Ms. Hassan stated it is good to incentivize fixing the problem, but awarding noncompliant businesses in this way sends a message that is discouraging to the disability community and empowering to noncompliant businesses. The message is to not worry about proactively making the business accessible because, if caught, the system has ways to make it easier. It also impacts the ability for the plaintiff's attorney to get paid for their work. If the plaintiff's attorney cannot recover their fees as a prevailing party in litigation, the attorney either must do the work pro bono or charge their client a fee. Many members of the disability community do not have the money available.

Ms. Hassan stated laws are structured as a reflection of values. Laws currently reflect a reluctance to hold businesses accountable for violating the ADA. A lot of that reluctance comes from the desire to be empathetic to small business owners, especially immigrants and individuals with limited resources. Weakening the enforcement of accessibility laws does not do anything to address the power imbalance that exists within the legal system. It does not give under-resourced businesses more resources to work with, protect them from being sued in the future, or promote access. The only individuals who benefit from weak compliance of the law are bad actors who do not want to comply and do not want to be held accountable either.

Ms. Hoffman agreed and stated it is a tough balance to deter the bad actor without harming the good actor.

3. How do we keep access at the forefront of the conversation around alleged construction-related disability claims?

Ms. Hassan stated the best way to keep the focus on access is to talk about access rather than all the negative things about litigation. This does not mean the way the legal system handles construction-related accessibility claims should not be discussed. Changes to the legal system as a whole should not be conflated with promoting access in the built environment. They are related but different issues.

Ms. Hassan stated one thing to do to promote access is to promote compliance. Information and resources are available for small businesses, but if it is not actually getting to the people who need it, that breakdown in the system must be identified in order to focus solutions towards correcting it.

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Ms. Hassan stated another thing to do to promote access is to improve enforcement. Even if every business knew about the ADA requirements, there would still be a certain amount of noncompliance due to individuals who take the incorrect positions that business owners should not have to make their businesses accessible, that, if the government wants accessibility, it should pay for it, or that it is an individual problem that every disabled person must figure out for themselves. For that small group of individuals who have that attitude, no amount of proactive compliance information will change their minds. Strong enforcement mechanisms need to be put into place. She stated she would also like to see DAs and attorneys taking a more active role that they are statutorily given under the Civil Code by going after repeat offenders and bad actors who violate the ADA repeatedly.

Ms. Hoffman stated she strongly agreed with the first point about learning more about why compliance and information is potentially not working, especially for small businesses. There seems to be a breakdown on the local government side in that they are not providing information to the business community and ensuring that individuals understand their legal obligations.

Ms. Hoffman stated, regarding enforcement, there are discussions in the Legislature about striking the balance between how to ensure that accessibility is truly the goal, while acknowledging that there are firms that send testers out to businesses and to websites. She suggested the role that the CCDA can play is figuring out if local governments are complying with this, if there is a breakdown somewhere between local government and small business owners, and what is happening there.

4. Where is the Civil Code lacking (or not) in guidance about pursuing statutory damages for construction-related accessibility claims?

Ms. Hoffman stated she is not an expert on the Civil Code but stated CalChamber sees many high-frequency litigation cases with a flat \$4,000 in damages per alleged violation. It never seems that accessibility is at the core of these lawsuits. They had a number in mind that they wanted in order to settle. It would be helpful to find a way to determine the damages issue and to differentiate between a claim that is not willful versus one where maybe a demand letter was ignored or it is clear that they knew what their responsibilities were. It is important to put accessibility at the forefront of the issue as opposed to focusing on the litigation and getting bogged down in that.

Ms. Hassan disagreed that the Civil Code is lacking in guidance on statutory damages and the Legislature has imposed additional parameters through the Construction-Related Accessibility Standards Compliance Act (CRASCA). The Civil Code still provides leeway for judges and juries to make a damages award that they feel is appropriate under the circumstances. This is not an ambiguity; it is an intentionally broad range to give courts the discretion to provide individualized relief to plaintiffs based on what happened in their particular cases. She stated she is hesitant to get any further clarification from the Legislature because that will likely lower damages for plaintiffs.

Ms. Hassan stated there seems to be the sentiment among policy makers and members of the community that, if a person with a disability is well-intentioned, they should be

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willing to bring a lawsuit without expecting anything in return except removal of the access barrier. She agreed that removal of the access barrier is important, but to say that there should be no expectation of damages out of it if rights have been violated is unreasonable and insulting. People experience many types of harm when they are barred from accessing a public space. Damages are how the legal system provides a remedy for those harms.

5. Specially, how could the CCDA provide the space to bridge the gap?

Ms. Hassan stated a good role for the CCDA to play is to be a source of reliable data to inform policy choices. The CCDA already collects a lot of data that it puts into an Annual Report to the Legislature. It would require additional resources to get down to the level of specificity around the range of damages that come out of these cases and the number of cases that include accessibility barriers. If the Legislature revises the remedy provisions of the civil rights laws, the CCDA should have good data to back that up.

Ms. Hassan stated the CCDA can bridge the gap on other policy issues as well. A common theme heard in accessibility litigation is innocent business owners, many of whom are immigrants with limited English proficiency, are being extorted for money through pre-litigation demand letters and they are paying thousands of dollars to settle because they are afraid of going to court. This is heard so often that it is taken as fact.

Ms. Hassan stated there are many assumptions to unpack there that the CCDA can play a role in helping clarify. For example, when saying that business owners are innocent, does that mean that they are in full compliance with accessibility laws or that they are nice people who did not intend to violate the ADA? Those are two different things. Similarly, when saying that business owners are being extorted for money or getting shakedowns to pay these money damages, is that meant in the literal sense that someone is committing a crime of extortion under the Penal Code or does it mean that business owners are feeling pressured to settle because they do not know what else to do? Those are also two different things.

Ms. Hassan stated it is important to get to the facts with reliable data about whether this is a systemic issue and, if so, how broad it is. This is important in telling the story of whether the ADA is being misused or if businesses are scared because they have been allowed to be noncompliant for such a long time. Being held accountable can be scary but it helps expose some of the imbalances of power that can exist in the legal system. Policies need to be based on facts, not fearmongering. The CCDA is the right entity to gather many of those facts.

Ms. Hoffman stated local governments are required to provide information to business owners. She stated she had previously suggested investigating local government processes to see if there is a breakdown there. She also suggested finding a way to either shed light on who the high-frequency litigants are and what their tactics are, or for the government to contain some of those law firms. She stated it would be helpful for the CCDA to convene meetings with disability groups and employers more regularly to share perspectives on problems and solutions.

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6. How do we achieve accessibility compliance without pitting communities against one another?

Ms. Hoffman suggested that the CCDA provide a space for the different communities to talk about issues outside of the court setting or the Legislature arena. It would be helpful for each side to express their challenges and for the group to discuss collaborative solutions.

Ms. Hassan agreed that individuals get caught up in the legislative process and do not always have the space to talk about big-picture/long-term collaborative solutions. There are two things that would be helpful to fight back against the tendency to pit communities against each other. One is to reconsider the ways that accessibility litigation is discussed, particularly the plaintiffs and especially the high-frequency litigants. Not everyone is respectful. There often is a subtext that is sometimes said aloud making disparaging comments about whether a plaintiff deserves the money that they got and wondering why people with disabilities do not spend their time getting a real job instead of filing all these lawsuits. Those types of comments reflect ableist beliefs that the ADA is designed to target. It is similar to what plaintiffs in other types of civil rights cases experience. She analogized it to the kind of criticism people of color get when they are questioned about whether the racism they experienced really harmed them as much as they say it did, or the misogyny that women face when they bring sex discrimination claims. It centers around the idea that some people deserve to have their civil rights enforced and some people do not. Everyone would benefit from being self-reflective and critical about how people on both sides of litigation are spoken of.

Ms. Hassan stated another way to fight back against the tendency to pit communities against each other is to be aware that individuals with ulterior motives may try to drive a wedge between communities. There is a small but not insignificant portion of business interests who talk a good game about access but clearly put their resources and put forth policies toward a deregulatory tort agenda with the focus to reduce liability for businesses even when that liability is based on enforcement of civil rights laws. It is frustrating and disheartening when people with those goals convince small immigrant businesses that their interests are more closely aligned with this deregulatory agenda than they are with the people in the neighborhood who want to patronize the business but cannot because it is not accessible.

Ms. Hassan stated one of the ways to fight back against that manipulation and help bridge gaps is what Ms. Hoffman suggested – putting resources into a collaborative process that gives people the resources they need and promoting access, such as developing a fund to cover the cost of a Certified Access Specialist (CAsp) inspection and barrier removal for businesses that cannot afford to do it on their own. Other ways are to require landlords to get a CAsp inspection and provide a copy of it before they enter into a lease agreement, and to do a deep dive into why some businesses still do not know about the ADA despite all the information and resources that are available.

Ms. Hassan stated there may be an opportunity for collaboration between regional and statewide chambers of commerce who maintain close relationships with businesses. Hosting CCDA forums and focusing on ways to put forth a collaborative program that

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addresses the need and promotes access rather than tinkering with the litigation mechanism will be more successful in the long-term.

Discussion

Commissioner Ramirez stated the ADA passed 30 years ago and yet this continues to be a system-wide issue. The individuals who are impacted the most from not having access to businesses and services are communities of color, the equity-seeking populations. They agreed with coming together to discuss solutions in addition to solutions already being implemented. They asked how business owners can ensure that their spaces are accessible.

Commissioner ElHessen echoed Commissioner Ramirez's comments. She stated she faces ableism regularly. In trying to advocate for her constituents and the disability community, she stated it is frustrating to navigate the system and receive pushback from having her voice heard in a public space. She stated her role as a Commissioner is to learn how to partner together in education and outreach to increase awareness and knowledge, and the disability and business communities are open to receiving feedback and suggestions for access for people with disabilities across the board.

Ms. Hassan highlighted that, when talking about high-frequency litigants, under the Civil Code for these types of cases, a high-frequency litigant is anyone who files possibly 10 accessibility-related lawsuits within a 12-year period. It is important to note that there are enough accessibility barriers for everyone to be a high-frequency litigant.

Ms. Hoffman agreed with Commissioner Ramirez that businesses treating someone differently based on race or gender would be unacceptable and that the disability community has the same rights but that is often ignored. She agreed with bringing people together to discuss challenges and solutions but stated that is important to do outside of the legislative process. She gave the example of, when a bill is being considered, the CCDA diffusing the legislative process and ensuring genuine conversations by not getting trapped in the timeline and the contentious arena of the Legislature as a way to inform collaborative legislation to address issues.

Commissioner Conway asked the Panel Members about data points that would be helpful to include in the CCDA Annual Report to the Legislature.

Ms. Hassan suggested getting a better picture of how these cases are resolved once they are filed, such as the average settlement amount or the number of cases that included barrier removal. This data would inform the feeling that is getting a lot of media traction that there is one big law firm that files large numbers of these cases and allegedly settles for money with no barrier remediation. Unless that level of detailed reporting is part of the CCDA data collection and report, it is not known if that is true or if it is extrapolation based on a relatively small number of anecdotal stories.

Ms. Hoffman agreed. She also suggested doing case studies on some of these cases that are brought by attorneys who are not with that one big law firm so people can see that ADA litigation is not just being addressed by one law firm that does not seem to focus on accessibility but that these are legitimate cases that are being brought by people who have accessibility barriers. She stated this will shed light on what the true

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bulk of the cases look like, why accessibility is so important, and that accessibility should be the focus, not getting distracted by big law firms that do not care about accessibility.

Commissioner Shapiro stated she generally refers to high-frequency litigants as those persons who send out able-bodied people to search for locations with potential disability access issues, then arrange for disabled people to visit the business only after the tester has identified it as potentially having a problem. One of the difficulties that small businesses have with statutory damages is that many high-frequency litigants file suits that involve a violation of the technical standards, which do not actually rise to the level of a barrier. Those suits potentially attract and multiply the damages that these businesses suffer. She asked for suggestions on how to assist in limiting or even eliminating these lawsuits that involve violations of technical standards that do not present or create a barrier for access.

Ms. Hassan respectfully disagreed that that should be a goal. The use of testers has a long history within civil rights law that is not unique to construction-related accessibility claims because it is often recognized as being one of the feasible ways to identify many of these discriminatory incidences. This is not necessarily a practice that needs to be shut down across the board.

Ms. Hassan also disagreed with the distinction between technical standards and access barriers because they are related. She gave the example of the technical standards for a doorway of a business. Being off by a small measurement may seem like a pointless technical standard but, for a person who uses a wheelchair, that small measurement is the difference between that person entering the business or not.

Ms. Hoffman suggested not focusing on the initial alleged violation but what happens afterwards, on firms that are not concerned about fixes but are focused more on getting the money of the settlement value. She stated, when she thinks of high-frequency litigants, she thinks of the problematic entities – not necessarily that they are filing a lot of lawsuits, but what their whole motivation is and how to get at that issue. She suggested thinking about the term high-frequency litigant and who that encompasses.

Commissioner Clair agreed with talking together and finding solutions outside of the legislative arena. She stated the law clarifies that the \$4,000 was per occasion and not violation. She asked why discussions continue about damages amounting per the Unruh Civil Rights Act at \$4,000 per violation when technically a construction-related accessibility claim should be per occasion. Settlements of statutory damages that are based on technical violations per violation is frustrating. She asked how to ensure that attorneys are available for those who are seeking litigation, especially on the business side, who really understand disability access laws.

Ms. Hoffman asked if there is a rule for litigation covered by insurance where the insurance company makes a referral to an attorney – if there is a rule to develop a robust list to ensure businesses are paired with the right attorney who is knowledgeable in disability access laws. She suggested partnering with the State Bar to determine whether there is a better way of compiling a list or better advertising attorneys who specialize in these issue areas.

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Ms. Hassan stated the imbalance of power seen in construction-related accessibility cases permeates the legal system and Commissioner Clair touched on one of the issues – not everyone has access to an attorney and, even when they do, the attorney may not be as familiar with disability access law. She suggested putting out more resources and being mindful that, if the problem is a systemic problem, then the solution needs to be systemic as well. It does not promote access to focus resources only on how to get businesses better defense against ADA violation claims. That is only one small part of a much bigger compliance picture that needs to take place in order to address systemic issues.

Commissioner Ramirez agreed with Ms. Hoffman that it is even more difficult for people with disabilities who come from equity seeking populations to find an attorney to help with disability access. In conversations around equity, given the fact that people of color are significantly discriminated against more while trying to get access than anything else, it is important when looking at data points to ensure that those individuals of color have equity competent legal access when engaging business partners. There is already a systemic inequity problem. Focusing on who has the better tools to fight is not necessarily promoting accessibility or the mission the CCDA is trying to accomplish. That is one of the data points that is necessary – to see the ethnicity, gender, socioeconomic, disability, status, and location in California of people who are experiencing disability discrimination when accessing business partners.

Commissioner Ramirez recommended ensuring adequately tracking that data because those systems are not currently in place. It is important as this topography of data-informed process develops to have a robust analysis of the people who are bringing forth the issue or are being impacted by the issue for a broader view to provide a system solution to this issue.

Commissioner Ramirez stated their main question is about the benefit of having more information about individuals who are not necessarily going to court but are the people who are being impacted and bringing forth these claims. More information will lead to a better understanding of how communities of color are experiencing barriers to access with businesses so that more system solutions can be provided rather than chipping away at people's rights.

Ms. Hassan stated the good place to get the non-litigant experience on how a lack of access impacts the broader disability community would be from independent living centers. They see a lot of these types of complaints that do not end up in the courts. She stated, although data is good, under-resourced, overworked communities cannot continue to provide this data, especially when, historically, nothing responsive has been done with the data they provide. She reemphasized the need to bring all parties together to discuss solutions.

Ms. Hoffman agreed. She stated the importance of learning about the barriers seen in disadvantaged communities that are unable to find attorneys and what the state can do to help, such as setting up a fund for CASp inspections or to help business owners get in contact with an attorney.

Executive Director Dawson thanked the Panel Members for their presentations.



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Public Comment

No public comment.

**[Note: The Lunch Break was taken out of order and was taken after Agenda Item 7.]**

**Lunch Break**

**14. Legislative Bill Reporting – Update and Discussion**

Corrina Roy, Legislative Consultant, OLA, DGS, noted that Senate Bill (SB) 747 should be SB 748 on the agenda. She summarized the CCDA Legislative Status Report on the bills staff is tracking, which was included in the meeting materials.

**a. Assembly Bill 222: Civil Rights Department: Californians with disabilities workgroup.**

This bill is being heard in the Assembly Appropriations Committee today.

**b. Assembly Bill 410: Shared mobility devices.**

This bill will be heard in the Assembly Floor Consent Calendar on April 20<sup>th</sup>.

**c. Assembly Bill 950: Accessibility: internet websites.**

This bill is set for hearing in the Assembly Judiciary Committee on April 25<sup>th</sup>.

**d. Assembly Bill 1404: Disability access: internet website-related accessibility claims.**

This bill is set for hearing in the Assembly Judiciary Committee on April 25<sup>th</sup>.

**e. Senate Bill 585: Disability access: construction-related accessibility claims: statutory damages: attorney's fees and costs.**

This bill is set for hearing in the Senate Judiciary Committee on May 2<sup>nd</sup>.

**f. Senate Bill 748: Disability access and information: local government: notice.**

This bill was heard in the Senate Judiciary Committee on April 18<sup>th</sup>.

Discussion

Commissioner Ramirez asked if any elected officials have planned on becoming a champion to possibly look at expanding the scope of work done by this Commission.

Executive Director Dawson stated there is no current legislation on the table discussion to expand the CCDA's purview beyond business access compliance.

Commissioner ElHessen stated her assumption that the CCDA is part of the Californians with Disabilities Workgroup for AB 222.

Executive Director Dawson stated AB 222 would establish the workgroup but it does not yet exist.

Public Comment

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No public comment.

**15. Website Accessibility and CCDA – Discussion**

**a. Methods to Incorporate in CCDA’s Project Planning**

Executive Director Dawson stated there is a lack of official guidance from the Department of Justice (DOJ) related to website accessibility. This is causing confusion in the business community that is trying to figure out how the law applies, what constitutes an alleged disability access violation related to websites, what a fully accessible website looks like, and what the best standards are to use. AB 2917, Disability Access: Internet Websites, Parking Lots, and Exterior Paths of Travel, mandates the CCDA to expand the data collected in the CCDA Legal Portal to include alleged access violation data related to websites for businesses and to create a toolkit and/or educational modules on business owners’ responsibilities for website accessibility compliance.

Executive Director Dawson stated the CCDA would like to act as a venue to facilitate a discussion between the business and disability communities in order to produce the best toolkits and educational modules to educate them.

Discussion

Executive Director Dawson asked a series of questions to facilitate the discussion:

1. Given that there is a lot of confusion and lack of guidance for businesses on the best practices for website accessibility, what approach should the CCDA consider as it creates a Website Accessibility Toolkit?

Commissioner Ramirez suggested considering a state-level guidance framework around emerging technology, such as artificial intelligence (AI), as new accessibility options are becoming possible but may require a higher level of expertise.

Commissioner ElHessen suggested vetting online business website accessibility vendors that often fall short on many issues of accessibility. She suggested putting “recommended by the CCDA” for good online vendors that have the latest accessibility features for business websites.

Executive Director Dawson questioned whether the CCDA had the technical staff to properly approve vendors.

Chair Downey suggested certifying individuals to be eCASps.

Commissioner Shapiro stated the ADA and its applicability in the website space has generally been held to apply only to those websites that are tied to a physical location where individuals can physically go to that space. It is important that the CCDA focuses on this area. It is important to focus on results, such as that accessibility exists in a manner that allows a person regardless of their ability or disability to enjoy the offerings of the website and the ability to use that service. There needs to be consideration of what the CCDA can do to help in its tools to instruct, educate, and promote accessible small businesses and to ensure they can answer questions. The CCDA can connect people in industries who are providing services with the sorts of information a disabled

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person would want and need. She suggested that the toolkit have an education checklist to ensure they always have a person at every shift to answer the telephone who can answer vital questions that disabled persons need information on.

Commissioner Shapiro stated having standards that are private incorporated into state laws and regulations makes everyone nervous because the CCDA does not want to be put in a position where it says a particular group has a power over that standard that then changes. She doubted that the CCDA can develop a standard that is more useful than whether a person of whatever ability or disability can access and enjoy more services. That might be something for a working group to look at – if there is a way to adopt standards that are in an appropriate public regulatory commission rather than coming from a private source.

2. What is the most beneficial way to market a toolkit or present modules to your stakeholders?

Commissioner ElHessen stated one of the venues being discussed is social media sites but also connecting with associations that relate to the audience the CCDA is targeting.

Vice Chair Holloway stated checklists have historically been made for businesses with a physical presence. There are many businesses that have no physical presence when talking about ADA-compliant websites. Social media is one way to get to these virtual businesses along with businesses that also have a physical presence. He suggested doing social media and the news media to let people know that there are requirements to comply with.

Commissioner Clair stated district courts have interpreted website accessibility differently in the sense of whether a physical location is required. The DOJ says that a physical location is not required in that if something is be sold over the internet it should be accessible. She clarified the difference between guidance and regulations. The DOJ does not establish regulatory requirements for website accessibility but they have issued guidance by way of the Website Content Accessibility Guidelines and the Section 508 standards that are used by the federal government. She cautioned that guidelines are being developed, keeping in check of the direction that the DOJ is going and which standard they may eventually adopt to provide regulatory requirements for website accessibility. If anything is created independent of that process, as many stakeholders must be involved as possible in that development.

3. For those of you who are business owners, do you have ideas for best practices and guidelines for website accessibility that you are currently using and that you would like to share?

Commissioner Shapiro used a hotel business as an example and stated the most effective methodology has been to develop a script and information that goes through appropriate questions and gives the person calling the opportunity to volunteer information about their situation and to ensure that they know what rooms and features are available and can instantly check through bookings to verify availability.

Chair Downey asked if best practices have been established in writing those scripts and who those experts are.

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4. What challenges do you face either as a business owner or person with a disability related to website accessibility standards?

Commissioner Ramirez stated, as a member of the disability community, there is no continuity of access – people never know what to expect. Also, there is a lot of misinformation or no information at cities and counties. As a business owner, they would like to be assured that they are able to provide accessible services by having official clear guidance.

Commissioner Jackson stated the need for a knowledgeable staff and scripted assistance to prevent conflicting information from different employees.

Public Comment

James Vitale, American Institute of Architects (AIA), LEEDAP, CASp, RCI, and Founding Executive Director of the CCDA, speaking as an individual, stated he has been an expert witness in court representing both plaintiffs and defendants, including serial litigants. He stated he knows of the law firms in California that have made millions of dollars off the disabilities of individuals throughout the state because of a loophole that was created in 1959 called the Unruh Act. It unfortunately created what he termed a “bounty” because it gave the legal community the opportunity to go out and raise all this money. That is neither here nor there.

James Vitale stated, in his role as a CASp, he has attended the National ADA Symposium for almost 20 years. This is the most important thing that has been developed nationally. Prior to the COVID-19 pandemic, approximately 1,000 people from all 50 states and foreign countries in businesses attended the Symposium. It is one of the greatest events for ADA Coordinators for training so that, when they answer the telephone, they know where to direct people to give them the access they need. Also, Cal State Northridge is at the forefront of training with regards to disabilities. Every year, they hold a conference and a three-day workshop. This is a good opportunity for people to learn about new technology to assist with disabilities.

James Vitale stated each type of business has its own unique language. Also, many targets are people who do not speak English or belong to a chamber of commerce. He suggested starting with the California League of Cities to reach those people and then going to the chambers of commerce to make them aware of requirements.

5. From your perspective, what are some of the accessibility features that are standard that business owners need to be aware of? How can the CCDA assist the business community in offering resources?

Commissioner Ramirez stated the need to ensure that websites are responsive to assistive technology, such as AI or machine learning accessibility software, have live closed captioning interfaces available, and have the ability for ASL to be incorporated in the language abilities; to encourage language engines to be compliant with the ADA standards already in place; and to inform some of the new technologies being utilized for websites such as virtual environment platforms. It is important to use plain language to keep from being overly complicated.

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Commissioner Ramirez stated the need to ensure that the bandwidth required by the website or applications is low in order to run it on laptops, tablets, and smartphones.

Commissioner Conway stated issues seem to come up during the research and planning phases of a website. The CCDA can take a leadership role in encouraging a robust research and development phase and providing linkages to targeted focus groups to test websites.

Commissioner Shapiro stated one of the struggles is the resources available for businesses, particularly small businesses, for beta testing, for example. She asked if there is value in working with a technology company, such as Apple, which has a robust accessibility feature on their devices, to create a system where it would not matter who developed the website, since the accessibility features of the technology would allow the website to be accessible. It is important to keep the standards accessible for small businesses to be compliant.

Public Comment

James Vitale stated there are several tests that a business owner can do, such as a Web Content Accessibility Guidelines (WCAG) Survey of their website, which is free, to see where noncompliance presently exists. Ability First holds free conferences across the United States.

**16. Financial Review – Discussion**

**a. Review Summary – Quarterly Review**

Executive Director Dawson reviewed the Expenditure Authority Report for the 2<sup>nd</sup> quarter provided by the Accounting and Budget staff of the DGS.

- The budget authority for Salaries, Wages, and Benefits is \$799,000.
  - The year-to-date expenditures plus encumbrances is \$270,984.
- The budget authority for Operating Expenditures and Equipment is \$735,000.
  - The year-to-date expenditures plus encumbrances is \$221,621.
- The total expenditure authority for the 2022-23 fiscal year is \$1,534,000.
  - The total year-to-date expenditures is \$492,605.

Executive Director Dawson stated the Accounting and Budget team stated the report is on par with where the CCDA was last year. They expect that the CCDA will not go over budget.

There was no Commissioner discussion or public comment.

**17. Revenue Reporting: Use of HFL – Action**

**a. Plan for Use**

Executive Director Dawson stated there is \$152,000 in the High Frequency Litigant (HFL) Fund. An additional \$45,000 is anticipated but is not yet made official. The

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purpose of the HFL Fund is to increase disability access compliance across California, particularly to businesses, and to prevent high-frequency litigation. The HFL Fund comes from fees paid related to high-frequency litigation. The funds need to be encumbered by June 30, 2024, and they need to be spent by June 30, 2026. She reviewed the HFL Fund Spending Proposal, which was included in the meeting materials.

Executive Director Dawson stated, upon Commission approval, she will work with accounting and vendors to encumber the funds by the June 30, 2024, deadline. If for some reason the funds are not encumbered by the deadline, she stated she will come back at the January 2024 meeting with an additional funding request.

Discussion

Commissioner Dillard stated the AIA Conference will be in San Francisco. Although the focus will be on the legal aspect, it provides an opportunity to outreach to the architects in attendance.

Chair Downey agreed that it is important to reach out the architect community.

Public Comment

No public comment.

**Motion:** Vice Chair Holloway moved to approve the High Frequency Litigant Fund Spending Proposal as presented. Commissioner Shapiro seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Commissioners voted "Yes": Commissioners Dillard, ElHessen, Jackson, Lillibridge, Ramirez, and Shapiro, Vice Chair Holloway, and Chair Downey.

**18. Deliverable: Business Checklist (Educational Listing) Pursuant to Government Code 14985.6 – Action**

Executive Director Dawson provided an overview of the goal, deliverables, target audiences, and document details of the AB 2917: Top 10 Listing to California Businesses document, which was included in the meeting materials.

Discussion

Commissioner ElHessen suggested including restrooms in the common violation list.

Commission Clair agreed that, although restrooms are not part of the top ten disability access violations, restrooms are included in gas stations, restaurants, etc., and should be at least mentioned as part of the public accommodation package.

Public Comment

No public comment.

**Motion:** Commissioner Jackson moved to approve the AB 2917: Top 10 Listing to California Businesses project as presented. Commissioner

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Dillard seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Commissioners voted “Yes”: Commissioners Dillard, ElHessen, Jackson, Lillibridge, Ramirez, and Shapiro, Vice Chair Holloway, and Chair Downey.

**19. Future Agenda Items – Discussion**

Chair Downey asked Commissioners for suggestions for the next agenda.

Commissioner Dillard suggested hearing other points of view from experts on topics brought up at meetings to better inform Commissioners.

Commissioner Ramirez stated the burden of accessibility oftentimes varies and with it the necessity for information on enforceability. The health care issue example brought up in public comment is a significant one. The landscape has changed significantly due to the shortage of providers and expertise. This is an opportunity to engage health care partners about how needs have changed.

**20. Adjourn**

**Motion:** Commissioner Shapiro moved to adjourn the April 19, 2023, California Commission on Disability Access Full Commission meeting. Commissioner Jackson seconded. Motion carried 8 yes, 0 no, and 0 abstain, per roll call vote as follows:

The following Commissioners voted “Yes”: Commissioners Dillard, ElHessen, Jackson, Lillibridge, Ramirez, and Shapiro, Vice Chair Holloway, and Chair Downey.