

Introduced by Senators Corbett and Harman

February 23, 2009

An act to amend Section 55.54 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as introduced, Corbett. Civil actions: disabled access.

Existing law requires a court, with respect to an action involving a construction-related accessibility claim, to issue an order that, among other things, grants a 90-day stay of the proceedings with respect to that claim, schedules an early evaluation conference, and directs the defendant to file with the court under seal and serve on the plaintiff a copy of any relevant Certified Access Specialist inspection report, which shall be subject to a protective court order, as specified, if the defendant has satisfied certain requirements relating to inspection of the site at issue. Existing law requires the early evaluation conferences be conducted by a superior court judge or commissioner, or a court early evaluation conference officer, as defined.

This bill would instead require the Certified Access Specialist inspection report to remain confidential and would allow disclosure only to the parties to the action, the parties' attorneys, and others necessary to the settlement of the case, as specified. The bill would also require the report to remain confidential throughout the stay and until the conclusion of the claim, unless there is a showing of good cause by any party.

This bill would make conforming and related technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 55.54 of the Civil Code is amended to
2 read:

3 55.54. (a) (1) An attorney who causes a summons and
4 complaint to be served in an action that includes a
5 construction-related accessibility claim, including, but not limited
6 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
7 same time, cause to be served a copy of the application form
8 specified in subdivision (c) and a copy of the following notice to
9 the defendant on separate papers that shall be served with the
10 summons and complaint:

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NOTICE TO DEFENDANT

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YOU MAY BE ENTITLED TO ASK FOR A STAY
(TEMPORARY STOPPAGE) AND EARLY EVALUATION
CONFERENCE IN THIS LAWSUIT.

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If the construction-related accessibility claim pertains to a
site that has been inspected by a Certified Access Specialist
(CAsp) and you have an inspection report for that site, you
may make an immediate request for a court stay and early
evaluation conference in the construction-related accessibility
claim by filing the attached application form with the court.
You may be entitled to the court stay and early evaluation
conference regarding the accessibility claim only if ALL of
the statements in the application form are true.

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The court will schedule the conference to be held within 50
days after you file the attached application form. The court
will also issue an immediate stay of the proceedings unless
the plaintiff has obtained a temporary restraining order in the
construction-related accessibility claim. At your option, you
may be, but need not be, represented by an attorney to file the
application to request the early evaluation conference. You
may obtain a copy of the application form, filing instructions,
and additional information about the stay and early evaluation
conference through the Judicial Council Internet Web site at
<http://www.courtinfo.ca.gov/selfhelp/>.

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You may file the application after you are served with a
summons and complaint, but no later than your first court

1 pleading or appearance in this case, which is due within 30
2 days after you receive the summons and complaint. If you do
3 not have an attorney, you will need to file the application
4 within 30 days after you receive the summons and complaint
5 to request the stay and early evaluation conference. If you do
6 not file the application, you will still need to file your reply
7 to the lawsuit within 30 days after you receive the summons
8 and complaint to contest it. You may obtain more information
9 about how to represent yourself and how to file a reply without
10 hiring an attorney at <http://www.courtinfo.ca.gov/selfhelp/>. If
11 a plaintiff representing himself or herself hires an attorney
12 after the case is filed, you will have 30 days to file an
13 application for a court stay and early evaluation conference
14 after you receive a Notice of Substitution of Counsel, unless
15 an early evaluation conference or settlement conference has
16 already been held.

17 You may file the application form without the assistance of
18 an attorney, but it may be in your best interest to immediately
19 seek the assistance of an attorney experienced in disability
20 access laws when you receive a summons and complaint. You
21 may make an offer to settle the case, and it may be in your
22 interest to put that offer in writing so that it may be considered
23 under Civil Code Section 55.55.
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25 (2) An attorney who files a Notice of Substitution of Counsel
26 to appear as counsel for a plaintiff who, acting in propria persona,
27 had previously filed a complaint in an action that includes a
28 construction-related accessibility claim, including, but not limited
29 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
30 same time, cause to be served a copy of the application form
31 specified in subdivision (c) and a copy of the notice specified in
32 paragraph (1) upon the defendant on separate pages that shall be
33 attached to the Notice of Substitution of Counsel.

34 (b) (1) Notwithstanding any other provision of law, upon being
35 served with a summons and complaint asserting a
36 construction-related accessibility claim, including, but not limited
37 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
38 defendant may file a request for a court stay and early evaluation
39 conference in the proceedings of that claim prior to or simultaneous
40 with the qualified defendant's responsive pleading or other initial

1 appearance in the action that includes the claim. If the qualified
2 defendant filed a timely request for stay and early evaluation
3 conference before a responsive pleading was due, the period for
4 filing a responsive pleading shall be tolled until the stay is lifted.
5 Any responsive pleading filed simultaneously with a request for
6 stay and early evaluation conference may be amended without
7 prejudice, and the period for filing that amendment shall be tolled
8 until the stay is lifted.

9 (2) Notwithstanding any other provision of law, if the plaintiff
10 had acted in propia persona in filing a complaint that includes a
11 construction-related accessibility claim, including, but not limited
12 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
13 defendant who is served with a Notice of Substitution of Counsel
14 shall have 30 days to file an application for a stay and an early
15 evaluation conference. The application may be filed prior to or
16 after the defendant's filing of a responsive pleading or other initial
17 appearance in the action that includes the claim, except that an
18 application may not be filed in a claim in which an early evaluation
19 conference or settlement conference has already been held on the
20 claim.

21 (c) (1) An application for an early evaluation conference and
22 stay shall include a signed declaration that declares both of the
23 following:

24 (A) The site identified in the complaint has been
25 CASp-inspected or is CASp determination pending and, if the site
26 is CASp-inspected, there have been no modifications completed
27 or commenced since the date of inspection that may impact
28 compliance with construction-related accessibility standards to the
29 best of the defendant's knowledge.

30 (B) An inspection report pertaining to the site has been issued
31 by a CASp. The inspection report shall be provided to the court
32 and the plaintiff at least 15 days prior to the court date set for the
33 early evaluation conference.

34 (2) The following provisional request ~~form~~ and notice forms
35 may be used and filed by a qualified defendant until a ~~form~~ is forms
36 *are* adopted by the Judicial Council for ~~that purpose~~ *those purposes*
37 pursuant to subdivision (k):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF: _____ DEFENDANT: _____	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	
CASE NUMBER: _____	

(Information about this application and the filing instructions may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.)

- Defendant (name) _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
- The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).
- The claim concerns a site that (check the box if the statement is true):
 - _____ Has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending and, if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - _____ An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.
(Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
- I am requesting the court to:
 - Stay the proceedings relating to the construction-related accessibility claim.
 - Schedule an Early Evaluation Conference.
 - Order Defendant to file a copy of the Certified Access Specialist (CASp) report with the court under seal and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date, which shall be subject to a protective order.
 - Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(5)(A)-(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

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)

(TITLE OF DECLARANT)

DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS
(Construction-related Accessibility Claim) Provisional Form

Stay of Proceeding

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.

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:

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

5. The defendant that requested the conference and stay of proceedings must file with the court under seal and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference, which shall be subject to a protective order to maintain its confidentiality.

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7. A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceeding and Early Evaluation Conference.

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 <http://www.courtinfo.ca.gov/selfhelp/>.

Requests 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 www.courtinfo.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

_____ On the Plaintiff's attorney

_____ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the Court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

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

Dated: _____

Type or Print Name

Signature

Address of named person

1 (3) The provisional ~~form~~ *forms* and any replacement Judicial
2 Council ~~form~~ *forms* shall ~~also provide space for the court's order~~
3 ~~pursuant to subdivision (d)~~, *include* the defendant's declaration of
4 proof of service of the application, ~~and the notice of the court's~~
5 ~~order, and the court's order pursuant to subdivision (d)~~.

6 (d) Upon the filing of an application for stay and early evaluation
7 conference by a qualified defendant, the court shall immediately
8 issue an order that does all of the following:

9 (1) Grants a 90-day stay of the proceedings with respect to the
10 construction-related accessibility claim, unless the plaintiff has
11 obtained temporary injunctive relief that is still in place for the
12 construction-related accessibility claim.

13 (2) Schedules a mandatory early evaluation conference for a
14 date as soon as possible from the date of the order, but in no event
15 later than 50 days after issuance of the order, and in no event earlier
16 than 21 days after the filing of the request.

17 (3) Directs the parties, and any other person whose authority is
18 required to negotiate and enter into settlement, to appear in person
19 at the time set for the conference. Appearance by counsel shall not
20 satisfy the requirement that the parties or those with negotiation
21 and settlement authority personally appear, provided, however,
22 that the court may allow a party who is unable to attend in person
23 due to his or her disability to participate in the hearing by telephone
24 or other alternative means or through a representative authorized
25 to settle the case.

26 (4) Directs the defendant to file with the court ~~under seal~~ and
27 serve on the plaintiff a copy of any relevant CASp inspection report
28 at least 15 days before the date of the conference, ~~which shall be~~
29 ~~subject to a protective court order maintaining the confidentiality~~
30 ~~of the report~~. *The CASp inspection report is confidential and is*
31 *available only as set forth in paragraph (5) of this subdivision or*
32 *in paragraph (4) of subdivision (e).*

33 (5) *Directs the parties that the CASp inspection report may be*
34 *disclosed only to the court, the parties to the action, the parties'*
35 *attorneys, those individuals employed or retained by the attorneys*
36 *to assist in the litigation, and insurance representatives or others*
37 *necessary to the settlement of the case.*

38 ~~(5)~~

39 (6) Directs the plaintiff to file with the court and serve on the
40 defendant at least 15 days before the date of the conference a

1 statement that includes, to the extent reasonably known, for use
2 solely for the purpose of the early evaluation conference, all of the
3 following:

4 (A) An itemized list of specific conditions on the subject
5 premises that are the basis of the claimed violations of
6 construction-related accessibility standards in the plaintiff's
7 complaint.

8 (B) The amount of damages claimed.

9 (C) The amount of attorney's fees and costs incurred to date, if
10 any, that are being claimed.

11 (D) Any demand for settlement of the case in its entirety.

12 (e) (1) A party failing to comply with any court order may be
13 subject to court sanction at the court's discretion.

14 (2) The court shall lift the stay when the defendant has failed
15 to file and serve the CASp inspection report prior to the early
16 evaluation conference and has failed also to produce the report at
17 the time of the early evaluation conference, unless the defendant
18 shows good cause for that failure.

19 (3) The court may lift the stay at the conclusion of the early
20 evaluation conference upon a showing of good cause by the
21 plaintiff. Good cause may include the defendant's failure to make
22 reasonably timely progress toward completion of corrections noted
23 by a CASp.

24 ~~(4) The court may lift the seal and protective order on a CASp~~
25 ~~inspection report filed and served pursuant to subdivision (d) at~~
26 ~~the conclusion of the stay or a later time upon CASp inspection~~
27 ~~report shall remain confidential throughout the stay and shall~~
28 ~~continue to be confidential for the duration of the litigation, until~~
29 ~~the conclusion of the claim, whether by dismissal, settlement, or~~
30 ~~final judgment, unless there is a showing of good cause by any~~
31 ~~party. Good cause may include the defendant's failure to make~~
32 ~~reasonably timely progress toward completion of corrections noted~~
33 ~~by a CASp. Any protective order or court seal imposed pursuant~~
34 ~~to subdivision (d) The confidentiality of the inspection report shall~~
35 ~~terminate upon the conclusion of the claim, unless the owner of~~
36 ~~the report obtains a court order pursuant to the California Rules~~
37 ~~of Court to seal the record.~~

38 (f) All discussions at the early evaluation conference shall be
39 subject to Section 1152 of the Evidence Code. It is the intent of

1 the Legislature that the purpose of the evaluation conference shall
2 include, but not be limited to, evaluation of all of the following:

3 (1) Whether the defendant is entitled to the 90-day stay for some
4 or all of the identified issues in the case, as a qualified defendant.

5 (2) The current condition of the site and the status of any plan
6 of corrections, including whether the qualified defendant has
7 corrected or is willing to correct the alleged violations, and the
8 timeline for doing so.

9 (3) Whether the case, including any claim for damages or
10 injunctive relief, can be settled in whole or in part.

11 (4) Whether the parties should share other information that may
12 facilitate early evaluation and resolution of the dispute.

13 (g) Nothing in this section precludes any party from making an
14 offer to compromise pursuant to Section 998 of the Code of Civil
15 Procedure.

16 (h) The court may schedule additional conferences and may
17 extend the 90-day stay for good cause shown, but not to exceed
18 one additional 90-day extension.

19 (i) Early evaluation conferences shall be conducted by a superior
20 court judge or commissioner, or a court early evaluation conference
21 officer. A commissioner shall not be qualified to conduct early
22 evaluation conferences pursuant to this subdivision unless he or
23 she has received training regarding disability access requirements
24 imposed by the Americans with Disabilities Act of 1990 (Public
25 Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern
26 access to public facilities, and federal and state regulations adopted
27 pursuant to those laws. For purposes of this subdivision, a “court
28 early evaluation conference officer” means an attorney employed
29 by the court who has received training regarding disability access
30 requirements imposed by the Americans with Disabilities Act of
31 1990, state laws that govern access to public facilities, and federal
32 and state regulations adopted pursuant to those laws. Attorneys
33 serving in this capacity may also be utilized by the court for other
34 purposes not related to these proceedings.

35 (j) Nothing in this part shall be deemed to make any inspection
36 report, opinion, statement, or other finding or conclusion of a CASp
37 binding on the court, or to abrogate in any manner the ultimate
38 authority of the court to make all appropriate findings of fact and
39 law. The CASp inspection report and any opinion, statement,

1 finding, or conclusion therein shall be given the weight the trier
2 of fact finds that it deserves.

3 (k) Nothing in this part shall be construed to invalidate or limit
4 any California construction-related accessibility standard that
5 provides greater or equal protection for the rights of individuals
6 with disabilities than is afforded by the Americans with Disabilities
7 Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the
8 federal regulations adopted pursuant to that act.

9 (l) (1) The Judicial Council shall prepare and post on its Internet
10 Web site instructions and a form for a qualified defendant to use
11 to file an application for stay and early evaluation conference as
12 provided in subdivisions (b) and (c), and a form for the court's
13 notice of stay and early evaluation conference. Until those forms
14 are adopted, the Judicial Council shall post on its Internet Web
15 site the provisional forms set forth in subdivision (c).

16 (2) The Judicial Council shall also prepare and post on its
17 Internet Web site instructions and ~~a cover page~~ *cover pages* to
18 assist plaintiffs and defendants, respectively, to comply with their
19 filing responsibilities under subdivision (d). The ~~cover page~~ *pages*
20 shall also provide for the party's declaration of proof of service of
21 the pertinent document served under the court order.

22 (m) The stay provisions shall not apply to any
23 construction-related accessibility claim in which the plaintiff has
24 been granted temporary injunctive relief that remains in place.

25 (n) This section shall not apply to any action brought by the
26 Attorney General, or by any district attorney, city attorney, or
27 county counsel.

28 (o) This part shall apply only to claims filed on or after January
29 1, 2009. Nothing in this part is intended to affect litigation filed
30 before that date.

31 (p) Nothing in this part is intended to affect existing law
32 regarding class action requirements.