

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### W13-01

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Title	Action Requested
Civil Practice and Procedure: Disability Access Litigation Forms for Attorney Advisory and New Alternative Evaluation Conference	Review and submit comments by January 25, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form DAL-001, and adopt forms, DAL-015 and DAL-020; adopt Cal. Rules of Court, rules 3.680 and 3.682.	July 1, 2013
	Contact
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Proposed by	
Civil and Small Claims Advisory Committee Hon. Dennis Perluss, Chair	

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### Executive Summary

Senate Bill 1186 (Steinberg and Dutton; Stats. 2012, ch. 383) (SB 1186) 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 revises the notice that attorneys are required to send out with any demand letter or complaint concerning construction-related accessibility violations of the Unruh Civil Rights Act, and creates a new alternative mandatory evaluation conference option for parties in actions on such claims. The new law mandates that the council revise the existing attorney advisory form and develop new forms for parties to apply for and courts to give notice of the new mandatory evaluation conferences. This proposal also includes rules for service of the notices for the current and new evaluation conferences.

SB 1186 also expanded the categories of defendants who can request the automatic stay and early evaluation conference already provided for by statute. (See Civ. Code § 55.54.) The new law mandated that revised forms for *that* procedure be adopted by January 1, 2013. Hence those forms were adopted by the Judicial Council at its December 2012 meeting and are being circulated for comment separately, following adoption.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## The Proposal

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

1. Revise *Important Advisory Information for Building Owners and Tenants* (form DAL-001);
2. Adopt new *Application for Mandatory Early Evaluation Conference* (form DAL-015) and *Notice of Mandatory Evaluation Conference* (forms DAL-015 and DAL-020); and
3. Adopt new California Rules of Court, rules 3.680 and 3.682, providing for service of the notice of hearings under Civil Code, sections 55.54 and 55.545 within five court days of the issuance by the court.

### Attorney advisory (form DAL-001)

SB 1186 has substantially revised the text of the written advisory that attorneys are required to send with all demand letter and complaints concerning construction-related disability access claims. The new text is set forth at section 55.3(b).<sup>1</sup> 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 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 set forth 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”<sup>2</sup>

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 the statute also stated in subdivision (b) of that section that “attorneys shall provide a written advisory . . . in the form described in subdivision (c).” (§ 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” (§ 55.5(b)).

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<sup>1</sup> Unless otherwise noted, all statutory references hereafter are to the Civil Code.

<sup>2</sup> It previously stated “IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS”

Because some ambiguity remains on this point, however, due to the Legislature's retaining the language in subdivision (c) that the form *may* be used by attorney, the committee is seeking specific comment on whether the form should be recommended as a mandatory or optional form, an issue of particular concern to members of the bar.

### **Forms for mandatory evaluation conference (DAL-015 and DAL-020)**

In addition to expanding the types of defendants who might seek a stay and early evaluation conference under section 55.54 (for which the council is adopting a separate set of forms), SB 1186 adds a new procedure to allow parties in disability access cases who are not eligible for a stay under that section, or who choose not to request one, to obtain a similar evaluation conference, preceded by a similar exchange of information. (See § 54.545.) This new procedure—which the statute refers to as a “mandatory evaluation conference”—is to go into effect January 1, 2013. This conference may be requested by any party to the case. If defendant does not seek one within 30 days or with his or her responsive pleading, 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 is to 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 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 new application form and new notice form are modeled on, but simpler than, the statutory forms used for the stay and early evaluation conference procedure.

The proposed *Application for Mandatory Early Evaluation Conference* (form DAL-015) contains the following four items:

- Identity of party making the request;
- Statement that the case has a qualifying claim;
- Acknowledgment that the applicant is not seeking a stay (with a reference to the form to use if a stay is sought); and
- Description of what is being requested (so requesting party will know what is expected).

The proposed *Notice of Mandatory Evaluation Conference* (DAL-020) is similarly straightforward, and includes the following items:

- Sets the date, time, and place of hearing;
- Directs that the parties must personally appear;
- Directs the plaintiff to file and serve the required statement re damages, etc., 30 days in advance of the hearing;
- Directs the defendant to file and serve statement about any remediation or planned remediation of alleged violations in a similar time frame; and,
- Directs the requesting party to serve notice on the other parties within five court days.

All but the last are expressly mandated in the text of the statute. (§ 55.545(c).)

### **Rules for service of notice**

Neither the previous statutory provisions on stays and early evaluation conferences under section 55.54, the amendments to those provisions in SB 1186, or the new provision in section 55.545 mandate a particular time for serving the notices issued by the courts under those sections. The provisional forms in the body of the original statute did include an item directing the defendant to serve the application and the notice of stay of proceeding, and to do so on the same day the notice was issued. (See forms at § 55.54(c)(7).) That statute also mandates that a declaration of service be included in any forms the council develop to replace those forms. (§ 55.57(c)(8).) In developing replacement forms, the Civil and Small Claims Advisory Committee proposed a different time frame for service, five court days from issuance of the notice, to provide for prompt service but also to allow time for receipt of the notice following issuance.

The proposed rules would require service within that time frame—five court days following issuance of notice by the court—for notices of stay and early evaluation conference issued under section 55.54 and for notices of mandatory evaluation conferences issued under section 55.545. See proposed rules 3.680 and 3.682.

### **Alternatives Considered**

The committee considered adding the request for the new mandatory evaluation conference to the *Defendant's Application for Stay and Early Evaluation Conference*, form DAL-005, but concluded that the addition would make that form overly complicated, particularly because the request for this procedure, unlike the application for the stay and early evaluation conference, does not need to be based on statements verified by the party. In addition, because the notice forms are set up to be issued as ministerial actions by clerks, the committee concluded that separate application forms for each procedure were more appropriate. Hence, the new application form and new notice form were developed.

The committee also considered recommending alternative timing for the adoption of these forms, with either a January 1, 2013 effective date (which would leave no time for circulation for comment before adoption) or January 1, 2014 effective date (which would leave time for the traditional spring comment cycle). While the statute mandates adoption of these forms, it does not include a deadline for the council's doing so. Until such time as the Judicial Council adopts the forms, parties and courts may individually craft applications and orders to comply with the new procedure. (§ 55.545(j)(1).) The committee concluded that because the law providing the new procedures will go into effect January 1, 2013, the new forms should be adopted as soon as practicable to facilitate the courts' and parties' compliance, but at the same time wanted to assure sufficient time to first circulate the forms for comment from courts, the bar, and the public.

The committee also considered the alternative of not recommending any rules on time of service, but concluded that, because the statute contemplates service but does not provide for a time frame for such service, a rule would provide clarity and certainty for parties and the courts.

## 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.

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 will be in place by 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. Notices that comply with the new law will have to be generated in any case, however, and the forms may help the courts do this.

The proposed rules on service by the parties should have no operational impact on the court.

### Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the revised advisory notice, form DAL-001, be adopted as a mandatory form or remain an optional one?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal.Rules of Court, proposed rules 3.680 and 3.682, at page 6.
2. Forms DAL-001, DAL-015, and DAL-020, at pages 7–9.
3. SB 1186 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB1186&search\\_keywords=](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 would be adopted, effective July 1, 2013, to read:

1 **Title 3. Civil Rules**

2 **Division 6. Proceedings**

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

4  
5 **Rule 3.680 Notice of Stay and Early Evaluation Conference**

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

10  
11 **Rule 3.682 Notice of Mandatory Evaluation Conferences**

12 The party who requested a mandatory evaluation conference on a construction-related  
13 accessibility claims under Civil Code section 55.545 must, within five court days of issuance of  
14 the notice, serve on all other parties the application and any *Notice of Mandatory Evaluation*  
15 *Conference* (form DAL-020) issued by the court.

## STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS

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This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the judicial branch website. The website is located at [www.courts.ca.gov](http://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 persons 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](http://www.dgs.ca.gov). Information is also available from the California Commission on Disability Access at [www.cdda.ca.gov/guide.htm](http://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 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 also provide a copy of it 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.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number if attorney, and address):</i>  <hr/> <p style="text-align: center;">TELEPHONE NO.: <span style="margin-left: 200px;">FAX NO.:</span>                  E-MAIL ADDRESS:                  ATTORNEY FOR <i>(Name):</i></p>	FOR COURT USE ONLY  <b>DRAFT                  11/27/12                  Not approved                  by Judicial                  Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
<b>APPLICATION FOR MANDATORY EVALUATION CONFERENCE                  UNDER CODE OF CIVIL PROCEDURE SECTION 55.545</b>	CASE NUMBER:

*(Information about this application and the filing instructions may be obtained at [www.courts.ca.gov/selfhelp](http://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 not eligible 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;
  - b. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.545(d)(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) 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):  TELEPHONE NO.: _____ FAX NO. : _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY  <p style="text-align: center;"><b>DRAFT</b> <b>11/27/12</b> <b>Not approved</b> <b>by Judicial</b> <b>Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
<b>NOTICE OF MANDATORY EVALUATION CONFERENCE</b>	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:
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- 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 file with the court and serve on all parties 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 file with the court and serve on all parties 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 5 court days of the date that the court issues this notice. The requesting party may file *Proof of Service—Disability Access Litigation* (form DAL-012) with the court 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.htm](http://www.courts.ca.gov/selfhelp.htm)*



#### 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 [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm) for *Request for Accommodations by Persons with Disabilities and Order* (form MC-410). (Civil Code section 54.8.)