

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
EXECUTIVE COMMITTEE
MEETING MINUTES**

January 31, 2013

1. CALL TO ORDER

Chair Burks called the meeting to order at 10:00 a.m. at the Department of Rehabilitation, 721 Capitol Mall, Room 244, 2nd Floor, Sacramento, California 95814.

The off-site meeting locations for teleconference were Communities Actively Living Independent and Free, 634 South Spring Street, 2nd Floor, Los Angeles, California 90014; and Cal Insurance and Associates Inc., 2311 Taraval Street, San Francisco, California 94116.

ROLL CALL

Staff Member Jemmott called the roll.

Commissioners Present: Rocky Burks, Chair
Scott Hauge (Teleconference)
Lillibeth Navarro (Teleconference)
Betty Wilson (Teleconference)

Committee Members Absent: Representative from Senator Corbett's office

Staff Present: Stephan Castellanos, Executive Director
Angela Jemmott, Program Analyst
Lavonia Wade, Office Administrator

Also Present: Donald Parks, Applied Technology, Incorporated
(Teleconference)
David Peters, Lawyers Against Lawsuit Abuse
(Teleconference)

Staff Member Jemmott announced a quorum was present.

2. APPROVAL OF MEETING MINUTES (December 13, 2012) – ACTION

MOTION: Commissioner Navarro moved to approve the December 13, 2012, Meeting Minutes. Chair Burks seconded. Motion carried unanimously with one abstention.

3. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Donald Parks, of Applied Technology, Incorporated, stated his plans to propose language to bill information to legislators that returns to the original intent that

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Senator Burton worked toward in the past, to increase the infrastructure in the State of California to increase accessibility, and to establish an oversight entity dealing with information accessibility. Mr. Parks asked the Commission for their input. Executive Director Castellanos suggested Mr. Parks work with staff to prepare a report to present to the Executive Committee in the February meeting, when his proposal can be formally agendaized.

Action Items

- Staff is to work with Mr. Parks to prepare a report outlining his legislative proposal for Committee discussion.

4. GENERAL BUSINESS ITEMS

a. Meeting Protocols – “Voting vs. Recommendations” - Discussion

Executive Director Castellanos stated the Commission has rules to adhere to in statute and in regulation. Unlike many Commissions in California, the CCDA is made up of both appointed members and ex officio members. Commissioners are required to vote. The ex officio members participate and make advisory votes, but they are not voting members.

Commissioner Navarro requested a reading of the ex officio members for clarity. Staff Member Jemmott read the list of the ex officio members: Assembly Member Tom Ammiano, Assembly Member Connie Conway, Senator Ellen Corbett, State Architect Chet Widom, and Anthony Seferian.

Chair Burks pointed out that 7.3 in the Bylaws states the majority of appointed, voting members of the CCDA shall constitute a quorum. The CCDA was meant to be an eleven-member Commission, with seven governor appointments, two Senate appointments, and two Assembly appointments. There are currently five voting members of the Commission, six open positions, and the ex officio members. Chair Burks added that the motivation behind including 7.3 in the Bylaws was to allow ex officio members to weigh in and provide insight, professional guidance, and direction.

Commissioner Hauge stated it is unusual for organizations to take advisory votes. Commissioner Wilson agreed and stated her observation that ex officio members are usually considered as a recommendation and have a more advisory role.

Executive Director Castellanos stated that ex officio members can make motions, discuss, and vote; that is normally the case with governmental bodies with memberships on the body by right of office. Currently, they are distinguished in the Bylaws as participating but non-voting, and that is a problem that needs to be cleared up. There is a disconnect between the Bylaws, the Robert’s Rules of Order, and the statutory requirements.

Chair Burks stated this issue has been vetted with several attorneys in the past, but, since there is confusion, he recommended adding the necessary clarity to

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correct it. Executive Director Castellanos suggested doing an in-depth analysis on the statutory requirements for Commissions in California.

Commissioner Navarro asked if, when a Commission lacks appointees, the ex officio members can fill in until the appointees are in place. Executive Director Castellanos stated the ex officio members are members of the Legislature, who often delegate a member of their office to attend Commission meetings. He questioned whether delegating voting rights would be appropriate. This issue requires clarity on the duties and responsibilities of ex officio members and their delegates. He stated this is not an effort to limit anyone's opportunity for input, especially the legislative members. The role of the Commission is to advise and propose solutions to the Legislature. Their input is important to the Commission as well.

Chair Burks asked staff to prepare a draft for the next Executive Committee meeting in anticipation of a providing a complete report for the full Commission meeting in April.

Commissioner Navarro asked for a follow-up on Commissioner appointments. Chair Burks stated there have been several members of the Legislature who have contacted the governor's office about this issue. He has also been in contact with the appointments office and feels the governor's office is taking this issue seriously. Commissioners Hauge and Johnson are appointed on the Senate side; Commissioner Navarro is appointed on the Assembly side. There is one business representative position open on the Assembly side. Several applicants have been interviewed for the governor's appointment positions.

Action Items

- Staff is to prepare a draft of their analysis on the statutory requirements for Commissions in California for the next Executive Committee meeting in anticipation of providing a complete report for the full Commission meeting in April.

b. Travel Policy for "Attendant Services" for disabled Commissioners or CCDA employees - Discussion

Executive Director Castellanos stated that, in an effort to determine the best way to reimburse Commissioners and others who require assistance to attend meetings, Staff Member Jemmott has researched the State Administrative Manual, other organizations, and agencies that often confront similar issues with regard to travel reimbursement. There have been a variety of requests for reimbursement in the past, and staff hopes to recommend a policy for the Commission to consider in terms of reimbursement for personal service attendants (PSA), also known as ADA Assistants.

Staff Member Jemmott stated there is no written policy established throughout all agencies. Staff informally spoke with legal representation, who counseled the

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Commission to make its own policy. CalHR had a document from 1990 that is the last written document close to addressing this issue. From that, staff drafted this recommendation: "The Executive Committee for the CCDA establishes a policy regarding attendant services for Commissioners of the Commission. Upon consulting with CalHR, it was determined that there are no rules for reimbursement for attendant care for disabled non-employees other than information located within their personnel management liaison. Therefore, it has been decided that payment will only be reimbursement for travel expenses equal to the disabled employee. The CCDA will no longer reimburse the cost of services provided. Attendant care for disabled employees is defined as individuals who are readers, interpreters, drivers, or attendants to disabled employees."

Commissioner Navarro stated the Department of Justice (DOJ) provides reasonable accommodations but does not pay for the services of an ADA Assistant. She, as a Commissioner, is reimbursed for travel expenses for the ADA Assistant, but not for their services. It is prudent for Commissioners with a disability to take their own ADA Assistants and ask for reimbursement. She related an experience where travel expenses for her ADA Assistant were not reimbursed when there were ADA Assistant services available at her destination; unfortunately, these ADA Assistants at the destination are unfamiliar with each Commissioner's needs. If the Commission will reimburse the ADA Assistant's travel expenses, that will be beneficial. ADA Assistants help the disabled Commissioner to function well, to be well as they discharge their service to the state.

Commissioner Wilson shared the ADA Assistant travel reimbursement policy for the City of Los Angeles. The ADA Assistant is contracted with the City of Los Angeles or the department in which the disabled employee works, where the ADA Assistant is paid per hour for travel. They are an independent contractor and are paid a certain amount for the services they provide, allowing the disabled person to do the essential functions of their job. There is an agreed-upon hourly rate, usually with a cap, that is reviewed by the DOJ and the city attorney in Los Angeles.

The State of California also has reimbursements for ADA Assistants. That is part of the reasonable accommodations. Commissioner Wilson agreed with the need for the Commission to establish a clear policy for ADA compliance and the essential functions of the job. She stated she will send a copy of the Personal Services Agreement for the State of California to staff for their review. She also suggested contacting the DOR for ADA Assistant travel reimbursement policy.

Commissioner Navarro stated disabled Commissioners must abide by labor laws for their ADA Assistants, such as in overtime pay. She asked if the drivers and security for public officials are considered ADA Assistants, although their services are not labeled personal care.

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Executive Director Castellanos stated staff's recommendation concerns cost of services. The notion of reimbursement equal to the rate for the disabled person means that any reimbursement that the disabled person is eligible for, an equal amount for the ADA Assistant would be provided. Accommodations, flights, and meals, if they are allowed, would still be accommodated for. Staff recommends that the Commission not pay for the ADA Assistant's time. They do not become the state's employee.

Chair Burks agreed it was not the Commission's intent to pay for ADA Assistant services. He suggested clarifying the language. He asked Commissioners Navarro and Wilson to work with staff to ensure clarity in the language to be brought back to the Executive Committee, in advance of taking it to the full Commission.

Action Items

- Staff is to clarify the language of the ADA Attendant travel reimbursement policy.
- Commissioners Navarro and Wilson are to work with staff to clarify the language of the ADA Attendant travel reimbursement policy to ensure clarity in the language to be brought back to the Executive Committee, in advance of taking it to the full Commission.

c. Select Dates for Executive Committee meetings for remainder of year - Discussion

Chair Burks led the discussion to set the meeting dates for the Executive Committee meetings for the year 2013. The Executive Committee will meet on the second Thursday of each month from 10:00 a.m. to 12:00 p.m.

Action Items

- Staff is to inform Senator Corbett's office staff member of the set dates and times for the Executive Committee meetings.

d. Executive Director's Work Plan

Executive Director Castellanos reported on his activities during his first three weeks with the Commission, his thoughts about where the Commission is heading, and his future recommendations for the Commission.

Executive Director Castellanos stated he has been meeting with partners, renewing those relationships, and soliciting their input and support. He has met with State Architect Chet Widom of the Division of the State Architect (DSA), Director Tony Sauer of the California Department of Rehabilitation (DOR), and Executive Director Jim McGowan of the California Building Standards Commission (CBSC). These three agencies are mentioned in the legislation as being some of the partners of the Commission.

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In terms of policy, under regulations the state architect is responsible for making regulatory proposals to the CBSC and it is important that the CCDA work closely with him. State Architect Widom has been generous in offering his support to the Commission as it continues to grow.

The same is true of Director Sauer; the CCDA is housed in his building. Director Sauer has shared that, through the last several years of declining budgets, the DOR's disability section has been reduced in size. For him, there is a strategic opportunity to partner with this Commission to strengthen the DOR's disability section, as more external partnerships are developed with people in the industry to improve access for the disabled community.

Executive Director McGowan also has offered a great deal of support. The CBSC helped set up this Commission. They helped the CCDA through the early days and they continue to offer staff support and expertise moving forward. Executive Director Castellanos stated they discussed the reporting responsibilities to the Legislature as a result of Senate Bill (SB) 1186. The CBSC has some staff availability now, so they will partner with the CCDA in pulling together the first legislative report in April, containing useful information for the Legislature and for the public with regard to claims and lawsuits made against businesses.

Executive Director Castellanos has meetings with legislative staff and other government agencies on his calendar. He stated he looked forward to developing close working relationships with them and keeping them informed of Commission activity and direction. He has a meeting scheduled with Commissioner Hauge in San Francisco and will be contacting Commissioner Wilson in the Los Angeles mayor's office. He stated it is important for the Commission to be involved with the numerous municipalities that have had vigorous support programs to support the needs of the disabled population. He stated he will be searching for opportunities to inform the public and municipalities what this Commission does in order to obtain relevant input from the business communities and local government.

Former Commissioner Mark Martinez, the executive director of the Latino Chamber of Commerce, has offered his support. Executive Director Castellanos stated, in an effort to deal with business statewide and locally, it is important to reach out to the chambers. He stated his plan to begin discussions with the California Chamber of Commerce.

He stated the California Home Builders Association primarily deals with residential issues, but has a Code section that is important for this Commission to follow. Due to their activities in Codes, the regulatory area, and reaching out to builders, it is important to partner with them as well.

Executive Director Castellanos has met with the American Institute of Architects in California, who are already beginning to provide a good deal of support in

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working with the Legislature, the governor's office, and the design community. They play a significant role in defining the built environment. There has been a touchy relationship in the past between the disabled community and the design professionals who define the built environment. Executive Director Castellanos plans to continue to work with them through their licensing boards and professional associations to better understand the needs of the disabled community.

He stated these are the types of organizations that the Commission needs to begin to align with. There are so many organizations out there that relate to the needs of the disabled community. He stated he has been asked to speak with the California Blind Organization. He asked Commissioners to send him information on places and organizations where he can build relationships, make appearances, and attend functions on behalf of the Commission. It is important that they are aware of the activities of the Commission and how it is working to improve access for the disabled community so they can better understand how to best meet those needs as well.

In terms of the Commission itself, he stated, beyond meeting the statutory obligations, he plans to look at the operations and administrative capacity of the Commission. As the CCDA delivers the mandatory work, there need to be plans for the future. The Commission's goal is to advise the Legislature on how best to meet the needs of the disabled population in the State of California. He will focus on developing a strategic plan, identifying items that are most important, and prioritizing those items to better realize success.

Current legislation allows the Commission to raise funds. Executive Director Castellanos stated he will develop a plan to present to the Commission on how best to approach that. He stated the need for caution due to the sensitivities behind how funds are raised. The Commission must ensure it identifies and aligns with organizations that are aligned with the needs of the disabled community, the business community, and the mission of the Commission.

The Commission plays a significant role. It is important to demonstrate the Commission's effectiveness by setting goals and measuring successes, ensuring that resources and time are used wisely, and providing a benefit to the communities served.

Commissioner Questions and Discussion

Commissioner Navarro stated she is optimistic about where the Commission is headed and likes the idea of a strategic planning session. She asked Executive Director Castellanos for his thoughts on how to approach this.

Executive Director Castellanos stated staff will put together a work plan on how to do this to present in a future Executive Committee meeting. None of the staff are facilitators of this type, so a facilitator will need to be identified who has a

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good understanding of the issues of the Commission to help set goals and develop priorities. He stated it is wise to spend time in planning, finding the right person, and setting a date for the best participation. He hoped to have more Commissioners on board by that time, and stated the more Commissioners there are, the more voices are heard, and the better the plan will be. He stated, possibly by the third Commission meeting, staff will be ready to hold a strategic planning session with the entire Commission to come up with a product that can guide the future workings of the Commission.

Commissioner Wilson suggested asking the chair to set up an ad hoc Committee to work by teleconference for the planning stage. She also suggested that interns do not cost any money and can be very helpful in strategic planning, especially those who have majors in political science.

Commissioner Hauge asked if the Commission is allowed to spend the money it raises. Executive Director Castellanos stated he will do more research on that issue. He will work with the DOF to get answers to the questions about fundraising authority, presenting plans, and receiving approval to expend money. He will report his findings to the Executive Committee in the future.

Commissioner Navarro stated there was an article in the L.A. Times reporting that the city plan to build additional curb cuts was frozen due to the lobbying of a strong local group of people. She suggested the Commission reach out to them. Chair Burks asked her to forward the article to staff.

Chair Burks expressed his appreciation and respect for Executive Director Castellanos and the acknowledgement that Executive Director Castellanos has given Staff Members Jemmott and Wade, who have done a stellar job in the absence of an executive director. He stated he is optimistic that, with the Commission's staff team working collaboratively, the Commission will be able to address the daunting issues it faces. He agreed with the idea of prioritizing in light of the statutory requirements and stated Commissioners and staff will work together to accomplish their goals. He stated he appreciated the executive director's initial assessment. Commissioner Wilson echoed the sentiments of the chair and was pleased he accepted the position of executive director of the CCDA.

Executive Director Castellanos stated he is fortunate to come into a situation where there are two staff members who are experienced, knowledgeable, and committed to this Commission. He stated they are a good team.

Action Items

- Staff is to prepare a work plan on how to do a strategic planning session to present in a future Executive Committee meeting.

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- Staff is to work with the DOF to get answers to the questions about fundraising authority, presenting plans, and receiving approval to expend money to present in a future Executive Committee meeting.
- Commissioner Navarro is to forward the L.A. Times article to staff.

e. New Structure of Standing Committees - Discussion

Chair Burks stated the Commission's statutory function has been consolidated by SB 1186. Consequently, the Committees will be consolidated to the Executive Committee, an Education and Outreach Committee, and a Legal or Enforcement Committee. The Executive Committee will be comprised of members appointed to the other two Committees.

Commissioner Navarro stated it would be helpful to have a job description for each Committee. Chair Burks stated the function of each Committee is based upon the statutory requirements. He stated this will be put into a list.

Executive Director Castellanos suggested that the Executive Committee focus on the strategic planning, to map that effort out and make recommendations to the full Commission about how to move forward. Chair Burks recommended making a Strategic Planning Subcommittee inside of the Executive Committee in an ad hoc capacity. Commissioner Wilson agreed with setting up an ad hoc Strategic Planning Subcommittee.

Chair Burks stated he will work with the executive director and will contact each Commissioner regarding their individual strengths to provide guidance and direction to each Committee.

Action Items

- Chair Burks is to work with the executive director to appoint Commissioners to Committees.

f. Status of Demand Letters/Filings - Discussion

Executive Director Castellanos stated Staff Member Wade has been collecting the demand letters and filings from around the state, which have been coming in on a steady basis, and provided some samples for Executive Director Castellanos's review. He stated he will analyze the samples before the next Executive Committee meeting to provide a profile of what has been coming in. Staff Member Wade added she has received 225 documents to date.

Executive Director Castellanos stated the documents will be categorized and identified by problem and what the plaintiff is asking for in the complaint. Staff is also working with the State Bar on some of their efforts in this area, along with others in the state through the courts. He stated he was uncertain if, through the Bar, everyone has been made aware of the requirements; and he was concerned

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that not all documents are being sent to the Commission. Staff Member Wade agreed and stated the majority of the documents are from Southern California.

Executive Director Castellanos stated staff is reaching out in an effort to learn if there is no activity or if there is a lack of understanding about the submittal requirements. It is important to have a fair representative sample of what is happening throughout California so staff can begin to take a look at where the issues are and provide recommendations.

Commissioner Navarro asked if Disability Rights California and Disability Rights Legal Center can assist in surveying. Executive Director Castellanos emphasized the need to do outreach to learn the depth of knowledge and understanding about the reporting responsibility. He added that those organizations may be of some help with outreach in terms of making sure attorneys and others are clear on that understanding.

Chair Burks asked David Peters, since he has been working closely with Commission staff, what his observations have been subsequent to the passage of SB 1186.

Public Comment

David Peters, of Lawyers Against Lawsuit Abuse, stated he provided his standard top-40 list of conditions that lead to these claims to this Commission. He added that he has been asked for top-10 lists repeatedly, but did not feel the facts lend themselves to that. The greater question is whether there has been much of a difference since the passage of SB 1186. He stated he did not know the answer to that because he saw the first case filed since January 1st only yesterday, but acknowledged that there has been a general increase in filings and filers throughout the state. He stated he has seen some positive benefits and gave an example of prevailing at trial last year on a matter where he thinks SB 1186 helped.

Chair Burks thanked Mr. Peters for his top-40 list and stated it will be helpful to compare against the analysis and findings of the filings being submitted to the Commission. He appreciated the opportunity to collaborate with Mr. Peters. Chair Burks added that the Commission will follow up with Mr. Peters once the current material has been gathered and analyzed.

Action Items

- Staff is to analyze the sample demand letters/filings to provide a profile of what has been coming in to present in a future Executive Committee meeting.

g. Development of Outreach Groups/Expanding Stakeholder Lists - Discussion

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Staff Member Jemmott asked Commissioners to send any names they would like to add to the outreach groups and stakeholders lists to staff. Chair Burks asked staff to send a memo to all Commissions and ad hoc members reminding them of the importance of developing this outreach list.

Action Items

- Commissioners are to send names of outreach groups and stakeholders to staff.

h. Costs for Meetings – “Creating Sponsor Meetings” - Discussion

Chair Burks stated the DOF needs to provide clarity on this issue. Executive Director Castellanos agreed. He stated this issue will be included in the long list of items to discuss with the DOF.

Chair Burks stated, until the Commission has spending authority, the Commission can obtain sponsorships, but they need to be in kind. In other words, there will be no transfer of funds, but people can sponsor meeting locations, supplies, and materials on an interim basis.

Commissioner Navarro asked if a check can be made out to the CCDA earmarked for a particular use, such as a meeting. Chair Burks stated, if the donor designates the money for a particular use, the Commission is required to use it for that designated purpose. Currently the Commission does not have spending authority so the money would go into the General Fund, which is in violation of the wishes of the donor. There needs to be clarity on the spending authority.

Action Items

- Staff is to discuss this issue with the DOF.

5. DISABLED ACCESS LEGISLATIVE AND REGULATORY DEVELOPMENTS

a. Impact of SB 56 and AB 73 on CCDA

Staff Member Jemmott stated SB 56 is not longer an issue.

Chair Burks postponed this agenda item until the next Executive Committee meeting.

Action Items

- No action items.

6. BUDGET UPDATE

a. Monthly Report

Executive Director Castellanos stated there has been very little change in the Status Report on the budget. The Commission is on target with the budget in terms of expenses against the budget. The CCDA is in the governor’s budget

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again. The CCDA budget has been modestly increased in the current budget from \$402,000 in Fiscal Year (FY) 2012/2013 to \$415,000 in FY 2013/2014.

The Commission submitted a Budget Change Proposal last year that was not accepted. Expenses are expected to go up somewhat next year because of the office space relocation that is planned for next month. Staff will report in the future how the added expenses impact the Commission and what steps might have to be taken going forward. An important thing about having a strategic plan and identifying where the Commission is in terms of the statutory requirements is that it will allow the opportunity to assess the current operating requirements, given the Commission's responsibilities laid out in the law, and to determine whether or not they align with the budget. Executive Director Castellanos stated the Commission needs to ensure that the change can be met under the current budget.

Action Items

- No action items

7. FUTURE AGENDA ITEMS

Chair Burks stated the Commission will retrench, stay focused on the statutory obligations and responsibilities, set up the necessary tasks to move forward, and begin work on the report to be presented to the Legislature.

8. ADJOURN

MOTION: Commissioner Navarro moved to adjourn the January 31, 2013, Executive Committee meeting. Chair Burks seconded. Motion carried unanimously.

Chair Burks adjourned the meeting at 12:03 p.m.