

GENERAL ORDER No. 56

AMERICANS WITH DISABILITIES ACT ACCESS LITIGATION

In any action which asserts denial of a right of access protected by Titles II or III of the Americans with Disabilities Act, 42 USC §§ 12131-89, pursuant to Federal Rule of Civil Procedure 16, the Court ORDERS that the following shall apply:

1. Pursuant to Federal Rule of Civil Procedure 4(m), plaintiff shall forthwith complete service on all necessary defendants. A plaintiff who is unable to complete service on all necessary defendants within 63 days may, prior to the expiration of that period, file a Motion For Administrative Relief pursuant to Civil Local Rule 7-11 requesting an extension of the schedule required by this Order.
2. Initial disclosures required by Federal Rule of Civil Procedure 26(a) shall be completed no later than 7 days prior to the joint inspection and review required by ¶3. For example, in a Title III action, if defendant intends to dispute liability based on the construction or alteration history of the subject premises, defendant shall disclose all information in defendant's possession or control regarding the construction or alteration history of the subject premises. In a Title II action, if defendant intends to dispute liability based on overall programmatic compliance, a transition plan, or a self-evaluation plan, defendant shall disclose all information in defendant's possession or control regarding such programmatic compliance, transition plan, or self-evaluation plan. If plaintiff claims damages under California law, plaintiff shall include in the initial disclosures the damages computation required by Rule 26(a)(1)(A)(iii), but need not include attorney's fees and costs. All other discovery and proceedings are STAYED unless the assigned judge orders otherwise. Notwithstanding any other provision of this General Order, any dispute concerning the adequacy of the Rule 26(a) disclosures may be submitted to the court under Civil Local Rule 7.
3. No later than 105 days after filing the complaint, the parties and their counsel, accompanied by their experts if the parties so elect, shall meet in person at the subject premises. If plaintiff alleges only programmatic or policy violations, the parties and their counsel may meet in person at any mutually agreeable location. They shall jointly inspect the portions of the subject premises, and shall review any programmatic or policy issues, which are claimed to violate the Americans with Disabilities Act.
4. At the joint inspection and review required under ¶3, or within 28 days thereafter, the parties, and their experts if the parties so elect, shall meet in person and confer regarding settlement of the action. The meet and confer obligation cannot be satisfied by telephone or by exchanging letters. At the conference, the parties shall discuss all claimed access violations. Plaintiff shall specify all claimed access violations and the corrective actions requested of defendant. With respect to each claimed violation, defendant shall specify whether defendant is willing to undertake the requested corrective actions or has an alternate proposal. If defendant claims any proposed corrective action is not readily achievable under Title III or otherwise required by law, defendant shall specify the factual basis for this claim.
5. This General Order does not require any party to engage an expert. In simpler cases it may be possible for parties to reach agreement regarding corrective actions without engaging

experts, or without the preparation of written expert reports. If written expert reports are prepared, they shall be exchanged. In a case which the parties conclude would benefit from expert assistance, the Court encourages the parties to jointly engage an expert.

6. If the parties reach a tentative agreement on injunctive relief, plaintiff shall forthwith provide defendant with a statement of costs and attorney's fees incurred to date, and make a demand for settlement of the case in its entirety (including any additional damages not included in the Rule 26(a) disclosures). Plaintiff should not require execution of a formal agreement regarding injunctive relief as a precondition to providing defendant with the statement of costs and attorney's fees, and additional damages. If requested by defendant, plaintiff should provide documentation and support for its attorney's fees similar to what an attorney would provide in a billing statement to a client.

7. If within 42 days from the joint site inspection and review, the parties cannot reach an agreement on injunctive relief, or cannot settle the damages and fees claims, plaintiff shall file a "Notice of Need for Mediation" in the form set forth on the Court's ADR Internet site, cand.uscourts.gov/adr and on the ECF website, cand.uscourts.gov/ecf. The matter will then be automatically referred to mediation and the ADR Program will arrange for a mediation session to be scheduled as soon as feasible, and in no event later than 90 days from the date the Notice of Need for Mediation is filed, unless otherwise ordered by the assigned judge. The mediator shall have the authority to preside over settlement negotiations that address all issues presented by this matter, including requests for injunctive relief, damages and attorney's fees. Should a settlement be reached, the mediator shall ensure that the parties make a written or audio record of the essential terms of the settlement sufficient to permit any party to move to enforce the settlement should it not be consummated according to its terms. Should any settlement be conditioned upon future conduct such as remediation, the assigned judge will retain jurisdiction to enforce that component of the settlement.

8. If the case does not resolve at mediation within 7 days of the mediator's filing of a Certification of ADR Session reporting that the mediation process is concluded, plaintiff shall file a Motion for Administrative Relief pursuant to Civil Local Rule 7-11 requesting a Case Management Conference.

9. Any party who wishes to be relieved of any requirement of this order or to adjust the schedule set forth herein may file a Motion for Administrative Relief pursuant to Civil Local Rule 7-11.

ADOPTED: June 21, 2005
AMENDED: February 17, 2009
AMENDED: November 5, 2009
AMENDED: May 29, 2012

DATE: April 17, 2013 *nunc pro tunc* May 29, 2012

FOR THE COURT:



CLAUDIA WILKEN
CHIEF JUDGE