

Carmichael Attorney Targets Frivolous ADA Lawsuits

By Thomas J. Sullivan

SACRAMENTO REGION, CA (MPG) - A Carmichael attorney, Catherine Corfee of the Corfee Stone Law Corp. (Corfee Stone) is cautioning local businesses on Fair Oaks Blvd., and Sacramento County to be especially alert to an individual who is known throughout California for filing frequent ADA lawsuits against small businesses for the purpose of recovering attorney's fees.

Signed into law in July 1990 by President George H.W. Bush, the Americans with Disability Act (ADA) aims to make buildings and transportation accessible for those with disabilities and to protect them from discrimination in employment. Store owners and restaurants can often face a fine of \$4,000 for each individual ADA violation.

According to Corfee, the plaintiff, Brian Whitaker, a quadriplegic who uses a wheelchair, has filed more than 1,000 ADA lawsuits across California since the COVID-19 pandemic began last year, according to published news reports.

In his recent filings, Whitaker alleges that he was "barred from full and equal access to the business, was denied access because of insufficient ADA parking, a non-ADA dining table, and/or the sales counter was too high."

Attorney Dennis Price, of the San Diego law firm Potter Handy, which has a specialized division called the Center for Disability Access and which has represented Mr. Whitaker, did not respond to the Messenger's request for comment.

In her blog, Corfee outlines steps which local

business owners and restaurants should be taking to protect themselves against serial ADA filings by individuals such as Whitaker, who in her opinion, "seek only money and never return to patronize the business they may sue."

"As of January 20, 2022, our law firm tracked plaintiff Brian Whitaker's recent ADA complaints which have been filed against businesses in Fair Oaks, and Sacramento," Corfee said. "Many of these targeted businesses are located on Fair Oaks Blvd."

If a business is mailed a notice of an ADA complaint in any form they should take action quickly and promptly seek legal counsel before responding, Corfee said.

"If a defendant does not respond to the ADA complaint, the plaintiff such as Whitaker, who alleges an ADA violation against a business owner, can obtain a default judgment and possibly attorney's fees," she said. The likely cost for legal defense in an ADA case when not taken in time, could drain a business financially.

Corfee, a graduate of UC Berkeley and the McGeorge School of Law, has been in professional legal practice since 1991. She has practiced ADA and California disability access law since 1985 and has published case law on the subject. She also worked for two prior United States Magistrate judges in the Eastern District Court of California.

"Most everyone chooses to settle with Mr. Whitaker because of the expensive cost of litigating," she said.

Many ADA cases can become a "game" for attorney's fees as the disabled person's attorney tries to



Catherine Corfee has practiced ADA and California disability access law since 1985. Photo provided by Catherine Corfee

protract litigation to earn more money in fees to later reclaim such in a settlement, a motion, and/or at trial.

Her firm has lowered its price to file a motion to dismiss an ADA claim when the defendant makes the perfect ADA changes and implements an ADA policy and procedure, she said.

"The only remedy under the ADA is "injunctive relief," Corfee explains, which is a "fix-it order" plus attorneys' fees and costs. "The best thing a business can do is to fix (cited ADA discrepancies) perfectly, and in advance of a lawsuit," she said.

"We can also prepare for

our business clients ADA policy and procedural manuals, much like an employee handbook," she said.

Corfee said she recommends the retention of an ADA compliance expert, such as a Certified Access Specialist (CASp), to physically inspect a business or commercial facility to provide specific access recommendations.

In Corfee's opinion, business owners should also think twice, however, about hiring just any random CASp.

While a CASp may be an expert on the ADA access standards, they are often not attorneys who are licensed to

read and fully keep up with the many court decisions interpreting the ADA and California Building Codes," she said.

"They should also hire an experienced CASp who will not "throw the book at them and overwhelm them with too many codes to fix," she said.

Corfee recommended her clients hire an ADA attorney to oversee the CASp so that his or her report is not discoverable by the plaintiff.

"If they get a hold of a CASp report of "all" potential ADA violations, then they can use it against the defendant and amend the lawsuit to add more barriers," she said.

"Having an attorney direct the CASp makes his report "privileged" pursuant to the attorney-consultant privilege is recommended," she said.

Corfee offers four helpful tips which business owners should follow to ensure ADA compliance or properly respond to a filed complaint.

Tips include:

1. Retain a CASp who has litigation experience, been deposed and who has filed declarations in courts or as an expert.
2. Retain a good ADA attorney who cares about winning, more than collecting your money and ensure the attorney directs the CASp, so that the CASp's report is privileged per the attorney-consultant privilege, and provides solutions, rather than just identifies ADA violations.
3. Take steps to fix the ADA matter within 120 days or within 180 days if a building permit is needed. "If the business does have a CASp inspection, and fixes the most important

barriers in 120 days, or a disabled plaintiff does sue, a business may not be found presumptively not liable for statutory damages," Corfee said.

4. Have the CASp return before 120 days to write the A+ report demonstrating the business owner has perfect ADA compliance, and save all receipts, bids, payments made, as there are tax credits available for completed ADA work.

"At Corfee Stone, we feel that we know the best CASps, and can offer excellent alternative solutions to help business owners minimize their legal expenses when they have to make specific ADA improvements," she said.

Corfee said she prefers to perform her own physical site inspections and share her knowledge of the California building code.

"Many ADA attorneys rely solely on their (designated) CASp and do not know the codes themselves, as I do," she said.

Clients who hire her law firm can count on her expertise and experience to develop a keen strategy to leverage settlements.

Visit the Corfee Stone Law Corp. on the web at: corfeestonelaw.com

Local business owners with specific questions regarding the Americans with Disability Act (ADA) or compliance with law can call Catherine Corfee directly at (916) 487-5441, or by cell phone at (916) 812-7322 between 10 a.m. and 5 p.m. to schedule a minimum one-hour business consultation. She is also available by email at corfee.catherine@gmail.com or corfee.assistant@gmail.com ★