

# Frequent ADA litigant faces attempt to shut him down

KELLY JOHNSON / STAFF WRITER

A Carmichael attorney who has filed more than 100 disability-access lawsuits since August 2003, mostly against small local stores and restaurants, might face a legal challenge of his own this year — a lawsuit that would seek to have him declared a “vexatious litigant.”

That outcome could prevent the attorney, Scott N. Johnson, from filing any more disability lawsuits without getting a court’s permission first.

Robert Lorbeer, a Sacramento attorney who represents a landlord Johnson has sued twice, said he and another attorney intend to sue Johnson in

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plaintiff files more

lawsuits:

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litigious litigant” who had participated in a

“pattern of abusive litigation, bordering on extortionate shysterism.” Molski has filed more than 400 lawsuits alleging violations of the Americans With Disabilities Act.

The decision by senior U.S. District Judge Edward Rafeedie attracted attention as a rare judicial limit on serial access filers, who sue businesses for infractions of ADA law and typically settle for payments. Rafeedie told the parties in the Molski lawsuit that if they want to file

more access lawsuits, they will need court permission first.

Johnson represents himself in most of the lawsuits he files. He is one of Greater Sacramento’s most active access litigants. A Sacramento County resident for more than 30 years, Johnson is quadriplegic, uses a service animal and electric wheelchair, and drives a van with hand controls, according to his lawsuits. He did not return calls from the Business Journal

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seeking his comments for this story.

Advocates for people with disabilities say they want businesses to observe access laws, and are suspicious of legal restraints that interfere with that effort. The federal disability law passed in 1990, they point out, so businesses have had 15 years to comply.

**Suing liquor stores, ethnic restaurants:** Between August 2003 and April 2005 Johnson filed 108 disability-access cases, according to research by attorney Catherine Corfee of Corfee Stone & Associates in Carmichael. Corfee has represented five businesses sued by Johnson.

The suits primarily target mom-and-pop shops and restaurants and their landlords. Sometimes he sues two or three places on the same day, she said, and alleges similar problems and injuries from business to business.

Johnson has sued at least 13 liquor and food stores, 10 Asian restaurants, nine Mexican restaurants, eight doughnut shops and seven delis, Corfee found. In two especially active months, he filed 22 cases last December and 15 last month.

Lorbeer said he is preparing his suit against Johnson and didn't estimate when he would file. He represents 5910 Auburn Boulevard General Partnership, which



Catherine Corfee

Johnson has sued along with two of its tenants: a sign store and a family market.

**Shops get wary:** Unfortunately, the ADA filings make shop and restaurant owners leery of customers with disabilities, said one local store owner sued by Johnson.

Shane Singh agreed. He is an attorney with Kring & Chung in Sacramento who has represented several clients sued by Johnson. A disabled person might meet suspicion and fear when he enters the restaurant, Singh said, missing out on the usual greeting and proper service. Singh said most Sacramento-area businesses substantially comply with access laws, especially businesses in newer buildings.

The lawsuits typically alarm small businesses; most have never faced a lawsuit before, Corfee said. Spending a few thousand dollars on litigation can hurt. Sometimes they don't know they have been mentioned in a lawsuit, at least at first.

Gene Stinson owns Dog Show Specialties, a Richards Boulevard store that sells dog and cat products. It was named in one of Johnson's April lawsuits, although Stinson said he hadn't known.

Lorbeer and Corfee question Johnson's claims of injuries and embarrassment over alleged access problems. Language in the suits are similar. "It's pretty much boilerplate," Lorbeer said.

Corfee, reiterating what judge Rafeedie said in his Molski decision, said a reasonable person injured by an architectural barrier would avoid it in the future. She said Johnson repeatedly claims similar

injuries.

The 223 complaints filed in 2004 by the Frankovich Group, the law firm that represented Molski, are almost identical, Rafeedie wrote. Seventy percent or 156 of the claims were filed on Moski's behalf.

**Seeking settlements and corrections:** Lorbeer and Corfee contend that Johnson's lawsuits are really about the settlements he can get. But he does require fixes to access problems, Singh said.

If Johnson really wanted access, Corfee said, he'd write certified letters to the tenants and landlords instead of complaining orally to the tenants.

Johnson doesn't ask for a lot of money, Corfee and Singh said, but it adds up. If Johnson settled all 22 cases he filed last December at, say, \$5,000 each, that would total \$110,000. The 15 cases filed in April would total \$75,000.

Corfee believes Rafeedie was the first judge in California, in a published decision, to say that a disabled person was a vexatious litigant with an attorney who had engaged in predatory litigation. That was in March. Since then a judge in the Southern District has made a similar decision in a separate case.

Corfee said she's surprised and disturbed to see serial filers still filing so frequently in light of the Molski ruling.

**Bills to change state law go nowhere:** Some defense attorneys, business owners and legislators want a state law that would require potential plaintiffs to notify a busi-

ness owner and allow time for fixing the problem before suing. Bills to do this haven't gone anywhere.

Assemblyman Tim Leslie, a Tahoe City Republican, introduced Assembly Bill 20. It would have allowed plaintiffs to sue only for injunctive relief and attorney fees — not damages — for technical access violations in which no one was denied access.

For example, the law requires one sign for bathrooms that shows gender and the international disabled marker, said Kevin O'Neill, Leslie's legislative director. But at the Capitol that information is provided on two separate signs, which doesn't comply.

In response to concerns by the disabled community that AB 20 would erode their rights, Leslie took the bill off the table. It will be reworked, then return.

Senate Bill 855 by state Sen. Charles Poochigian, a Fresno Republican, would have required prior notification before a lawsuit could be filed, but that bill died in committee May 3. He has called it an effort to curb vexatious access lawsuits.

"Abuse of the ADA is becoming more widespread," Poochigian writes on his Web site. "Organizations that represent business property owners in California report accumulating a list of over 12,000 ADA lawsuits filed in California courts alone in recent years."

Leslie's pending legislation would designate July as access awareness month. Brochures would be distributed urging businesses to satisfy access laws, and list places to get more information.