

APPENDIX A

DIVISION IV. SUBPOENAS AND DISCOVERY

RULE 150. INVESTIGATION SUBPOENAS

- (a) Motion to Quash. Upon the service of an investigation subpoena pursuant to Business and Professions Code section 6049(b), the member who is the target of the investigation, or any other person or entity served with the subpoena, may file a motion to quash the subpoena pursuant to Business and Professions Code Section 6051.1 and this rule.
- (1) The motion shall be filed in accordance with the Code of Civil Procedure ~~within five (5) court days after receipt of actual notice or service of written notice if required by these rules whichever is earlier~~ and shall be served ~~by overnight mail~~ on the State Bar investigator, deputy trial counsel or other authorized agent requesting the records, as designated in the subpoena, or if no such person is designated, on the Chief Trial Counsel.
 - (2) The motion must be supported by one or more declarations based on personal knowledge and filed together with the motion.
 - ~~(3) The proceedings on the motion shall be governed by rule 156.~~
- (b) Trust Account Financial Records. The sole ground on which a motion to quash a trust account financial records subpoena may be made or granted shall be that the records sought by the subpoena are not trust account financial records which member must maintain in accordance with the Rules of Professional Conduct.
- (c) Other Financial Records. If the challenged subpoena seeks financial records other than trust account financial records, and if a motion to quash the subpoena under this rule is made, the records sought shall not be examined by any party until after the motion has been ruled upon. A motion to quash a subpoena for financial records other than trust account financial records may be granted on any of the following grounds:
- (1) That the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of such subpoenas;
 - (2) That the subpoena does not describe with particularity the records sought by the subpoena;
 - (3) That the subpoena was not served in the manner required by Business and Professions Code section 6069(b) on the member or members whose financial records are sought by the subpoena, and on any other "customer" as defined in Government Code section 7465(d), ~~no less than twenty (20) days prior to the date set for the production of records in response to the subpoena;~~ or

- (4) That the scope of the records sought by the subpoena is not consistent with the scope and requirements of the investigation in connection with which the subpoena was issued.
- (d) Non-Financial Records. If the challenged subpoena seeks documents other than financial records, a motion to quash the subpoena may be made or granted on any of the following grounds:
- (1) That the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of such subpoenas;
 - (2) That the subpoena does not describe with particularity the records sought by the subpoena; or
 - (3) That the subpoena was not properly served pursuant to Code of Civil Procedure section 1987; or
 - (4) That the scope of the records sought by the subpoena is not consistent with the scope and requirements of the investigation in connection with which the subpoena was issued.

RULE 151. ISSUANCE OF DISCOVERY SUBPOENAS BY PARTIES IN STATE BAR COURT PROCEEDINGS

- (a) In the course of discovery, any party may issue subpoenas as provided by Business and Professions Code section 6049(c) and 6085, and in accordance with the provisions of Code of Civil Procedure section 1985. Alternatively, any party may compel another party to testify at a deposition, with or without production of documents, by serving a notice to appear pursuant to Code of Civil Procedure section 1987.
- (b) Discovery subpoenas issued by any party subject to applicable provisions of the Business and Professions Code and to all provisions of Chapter 2 of Title III of Part IV of the Code of Civil Procedure (beginning with section 1985), except those pertaining to bench warrants and concealed witnesses, and except as modified or limited by these rules.
- ~~(e) Subpoena forms may be obtained from the Clerk. Upon request, the Clerk shall issue subpoenas on behalf of parties appearing in propria persona who are not entitled to practice law in California.~~
- (c) ~~(d)~~ The party initiating a deposition shall, subject to possible later reimbursement of costs under rules 280-284, (1) serve a copy of the subpoena on the persons or entities required; (2) obtain proper proof of such service; and (3) pay applicable witness fees or expenses.
- (d) ~~(e)~~ A deposition subpoena duces tecum shall describe the requested records with particularity and shall comply with rule 153, 154, or 155, as applicable.

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(e) ~~(f)~~ The party serving a deposition subpoena duces tecum may request the subpoenaed part to provide an additional unsealed copy of the requested records, provided that:

- (1) Notice of the request shall be given to all other parties;
- (2) If a timely motion to quash the subpoena is filed, the subpoenaing party shall not inspect, copy, or use the records except as permitted by court order; and,
- (3) Within five (5) days after receiving the additional unsealed copy, or, if a motion to quash is filed, after the service of an order on a motion to quash permitting examination of the records the party that served the subpoena shall provide all other parties with accurate copies of the records, or with a reasonable opportunity to inspect and copy them.

RULE 152. ISSUANCE OF TRIAL SUBPOENAS BY PARTIES IN STATE BAR COURT PROCEEDINGS

(a) A party may issue trial subpoenas as provided by Business and Professions Code sections 6049(c) and 6085, in accordance with the provisions of Code of Civil Procedure section 1985. Alternatively, any party to a proceeding may compel another party to testify or produce documents at trial by serving a notice to appear pursuant to Code of Civil Procedure section 1987.

(b) Trial subpoenas are subject to the Business and Professions Code and to all provisions of Chapter 2 of Title III of Part IV of the Code of Civil Procedure (beginning with section 1985), except those pertaining to bench warrants and concealed witnesses, and except as modified or limited by these rules.

~~(c) Subpoena forms may be obtained from the Clerk. Upon request, the Clerk shall issue subpoenas on behalf of parties appearing in propria persona who are not entitled to practice law in California.~~

(c) ~~(d)~~ The party initiating a trial subpoenas shall, subject to possible later reimbursement of costs under rules 280-284, (1) serve a copy of the subpoena on the persons or entities required; (2) obtain proper proof of such service; and (3) pay applicable witness fees or expenses.

(d) ~~(e)~~ A trial subpoena duces tecum shall describe the requested records with particularity, and shall comply with rule 153, 154, or 155, as applicable.

(e) ~~(f)~~ The party serving a trial subpoena duces tecum may request the subpoenaed party to provide an additional unsealed copy of the requested records, provided that:

- (1) Notice of the request shall be given to all other parties;

- (2) If a timely motion to quash the subpoena is filed, the subpoenaing party shall not inspect, copy, or use the records except as permitted by court order; and
- (3) Within five (5) days after receiving the additional unsealed copy, or, if a motion to quash is filed, after the service of an order on a motion to quash permitting examination of the records, the party that served the subpoena shall provide all of the records, or with a reasonable opportunity to inspect and copy them.

RULE 153. SUBPOENAS FOR TRUST ACCOUNT FINANCIAL RECORDS.

- (a) This rule governs discovery or trial subpoenas issued by the Office of the Chief Trial Counsel, after initiation of State Bar Court proceedings, which require financial institutions to produce trust account financial records of a member under Business and Professions Code sections 6049 and 6069(a).
- (b) The State Bar shall serve the subpoena on the financial institution in the manner required by the Code of Civil Procedure and shall serve the member or members whose financial records are sought in the manner specified in rule 61. ~~The subpoena shall be served no later than ten (10) days before the financial institution is scheduled to produce records in response to the subpoena.~~ The subpoena shall designate the name, business address and business telephone number of the State Bar investigator, deputy trial counsel or other authorized agent requesting the records.
- (c) In accordance with the Code of Civil Procedure ~~Within five (5) court days after actual or written notice of a subpoena under these rules, whichever is earlier,~~ any person or entity served with the subpoena or a copy thereof may file a motion with the State Bar Court to quash the subpoena. The motion shall be served by overnight mail on all parties to the proceeding.
- (d) The sole ground on which a motion to quash a subpoena under this rule may be made or granted shall be that the records sought by the subpoena do not pertain to trust accounts which the member must maintain in accordance with the Rules of Professional Conduct.
- (e) The motion must be supported by one or more declarations based on personal knowledge, filed and served with the motion.

RULE 154. SUBPOENAS FOR OTHER FINANCIAL RECORDS

- (a) This rule governs discovery and trial subpoenas requiring financial institutions to produce financial records other than trust account financial records of a member.
- (b) ~~(4)~~The subpoena shall be served on the customer whose financial records are sought pursuant to Business and Professions Code section 6069(b), on the financial entity subpoenaed, pursuant to the Code of Civil Procedure, and, to the extent not included in the foregoing, on all other parties to the proceeding in the manner specified in rule 61.

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~~(2) Service shall be completed at least ten (10) days prior to the date set for compliance with the subpoena.~~

(c)(1) In accordance with the Code of Civil Procedure ~~Within five (5) court days after service of a copy of a subpoena under this rule~~, any person or entity served with the subpoena may file a motion with the State Bar Court to quash the subpoena.

~~(2) The motion shall be served by overnight mail on all parties to the proceeding.~~

~~(2) (3)~~ The motion may be granted based on the grounds applicable in civil actions under California law.

~~(3) (4)~~ The motion must be supported by one or more declarations based on personal knowledge, filed and served with the motion.

RULE 155. OTHER DISCOVERY AND TRIAL SUBPOENAS.

(a) This rule governs all discovery and trial subpoenas, except subpoenas requiring financial institutions to produce financial records.

(b) A copy of any subpoenas governed by this rule shall be served on the person or entity subpoenaed as provided in the Code of Civil Procedure, and, in the case of a subpoena duces tecum, on all other parties to the proceeding, as provided in the rule for service of subsequent pleadings (rule 61). Respondents shall serve any customer involved pursuant to Chapter 2 (commencing with section 1985 of Title III of Part IV of the Code of Civil Procedure).

~~(e) Service of a subpoena duces tecum shall be completed at least ten (10) days prior to the date set for compliance with the subpoena.~~

~~(d)~~(c) (1) In accordance with the Code of Civil Procedure ~~Within five (5) court days after service of a subpoena under this rule~~, any person or entity served with the subpoena may file a motion with the State Bar Court to quash the subpoena.

~~(2) The motion shall be served by overnight mail on all parties.~~

~~(2) (3)~~ The motion may be granted based on the grounds applicable in civil actions under California law.

~~(3) (4)~~ The motion must be supported by one or more declarations based on personal knowledge, filed and served with the motion.

RULE 156. PROCEEDINGS ON MOTIONS TO QUASH SUBPOENAS

- (a) ~~Written opposition to a~~ A motion to quash a subpoena shall be filed and served in accordance with the Code of Civil Procedure. ~~within five (5) court days after service of the motion, and in any event prior to the commencement of any hearing on the motion, provided that the Court may other otherwise.~~
- (b) (1) A motion to quash an investigation subpoena shall be decided by a hearing judge assigned for that purpose. A motion to quash a discovery or trial subpoena, shall be decided by the judge assigned to the proceeding.
- (2) The Court may hold a hearing on the motion. If a hearing is held, it shall be set on an expedited basis.
- (3) The order on the motion shall include findings concerning any factual issues presented by the motion, and shall state the reasons for the order.
- (c) If the motion to quash seeks a stay of compliance with the subpoena pending ruling on the motion to quash, the Court may grant a stay, upon a showing of good cause, without awaiting the filing of a response to the motion.
- (d) A party may seek review of the order of the hearing judge under rule 300. The order will be reversed only if the hearing judge's factual findings are not supported by substantial evidence, or for error of law or abuse of discretion.

RULE 157. SUBPOENAS FOR COURT RECORDS

Notwithstanding rules 150-155, a party issuing a subpoena to obtain public records from any court need not serve the subpoena on the target of the investigation or on the other parties to the State Bar Court proceeding.

RULE 158. APPROVED SUBPOENA FORMS

- (a) Subpoena forms approved by the Judicial Council of California, wherever applicable, may be used by parties whenever discovery is permitted, as limited or modified by these rules.
- (b) Subpoena forms may be obtained from the Clerk. Upon request, the Clerk shall issue subpoenas on behalf of parties appearing in propria persona who are not entitled to practice law in California.
- (c) Definitions and use of terms

As used in the Judicial Council Subpoena forms, unless the context or subject matter otherwise requires:

- (1) “The People of the State of California” includes the State Bar of California.

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(2) “Superior Court of California” includes the State Bar of California for the limited purpose of issuing subpoenas.

(3) “Requests for Accommodations” means a request for accommodations pursuant to the State Bar of California’s Accommodations Request Procedure.