



DATE: October 23, 2007

TO: Members of the Board Committee on Regulation
Admissions & Discipline Oversight

FROM: Colin Wong, Chief Administrative Officer of the State Bar Court

SUBJECT: Proposed Amendments to the Rules of Procedure of the State Bar of California to Allow Use of Judicial Council Subpoena Forms – Request for Authority to Release for Public Comment

ISSUE

The issue presented by this agenda item is whether the Board Committee on Regulation, Admissions and Disciplinary Oversight (“RAD Committee”) should release proposed amendments to the Rules of Procedure of the State Bar of California (“Rules of Procedure”), in the forms attached hereto, for a 90-day public comment period.

The proposed amendments to the Rules of Procedure by the State Bar Court, if ultimately adopted, would modify the Rules of Procedure so that the California Code of Civil Procedure would govern the procedures and timing for issuance, compliance and motions concerning subpoenas. Specifically, the proposed amendments would be as follows:

1. California Judicial Council Subpoena forms would be approved for use in State Bar Court proceedings;
2. Reference to time periods for service of subpoenas, production of documents and time for appearance at deposition or trial contained in the Rules of Procedure will be deleted;
3. Reference to time periods for motions to quash and subsequent filings relating to such motions contained in the Rules of Procedure will be deleted.
4. Any other Rules of Procedure that are currently in conflict with the Code of Civil Procedure will be amended.

RECOMMENDATION

The State Bar Court recommends that the RAD Committee authorize the release of the proposed amendments to the Rules of Procedure, in the form attached hereto as Appendix A for a 90-day public comment period.

BACKGROUND

There are currently two subpoena forms that are in use by the State Bar Court. The first is a subpoena for appearance and the second is a subpoena duces tecum for appearance and for documents. Both subpoenas were last revised in October 1987, prior to the establishment of the professional State Bar Court.

The Office of the Chief Trial Counsel uses three different subpoena forms that they created for their own use. The first is a trial subpoena for either personal appearance, production of records or both. The second is a deposition subpoena for either personal appearance, production of records or both. The last is an investigation subpoena for documents only.

The California Judicial Council has prepared five different subpoena forms which are used in civil matters. In addition, a separate form for notifying a consumer that their records are being sought may be required when using certain subpoena forms. These forms are listed below:

1. Form SUBP-001 (Civil Subpoena for Personal Appearance at Trial or Hearing, attached as Attachment 1.)
2. Form SUBP-002 (Civil Subpoena [Duces Tecum] for Personal Appearance and Production of Documents and Things at Trial or Hearing, attached as Attachment 2.)
3. Form SUBP-010 (Deposition Subpoena for Production of Business Records, attached as Attachment 3.)
4. Form SUBP-015 (Deposition Subpoena for Personal Appearance, attached as Attachment 4.)
5. Form SUBP-020 (Deposition Subpoena for Personal Appearance and Production of Documents and Things, attached as Attachment 5.)

6. Form SUBP-025 (Notice to Consumer or Employee and Objection, attached as Attachment 6.)

DISCUSSION

Rule 151(a) of the Rules of Procedure allows any party to issue subpoenas as provided by Business and Professions Code section 6049(c) and 6085, and Code of Civil Procedure sections 1985 and 1987. Consistent with these provisions, both the State Bar Court and the Office of Chief Trial Counsel created their own subpoena forms. The State Bar Court believes that by adopting the judicial council forms and the Code of Civil Procedure, the subpoena process will be simplified and more uniform. Accordingly, in order to use the forms and adopt the Code of Civil Procedure with respect to subpoenas, the Rules of Procedure require amendment. Set forth below is a review of each form and any potential issue that might arise from using the form.

In all the subpoenas, there is a reference to “The People of the State of California.” The proposed amendment to rule 151 would add that this reference also includes the State Bar of California. In addition, in Form SUBP-001, there is also a box entitled “Request for Accommodations.” This box sets forth the process for requesting accommodations for participating in the court process. Pursuant to Administrative Advisory 07-05, the State Bar has its own procedure for requesting accommodations. Therefore, the proposed amendment to rule 151 would also provide that requests for accommodations means a request pursuant to the State Bar’s request for accommodations procedure.

Form SUBP-010 (Deposition Subpoena for Production of Business Records) requires that records are to be produced not sooner than 20 days after the issuance of the subpoena or 15 days after service of the subpoena, whichever is later. This is in conflict with rules 153(b); 154(b)(2) and 155(c) which state that a subpoena shall be served no later than 10 days prior to production. The proposed amendments to rules 153 (b); 154(b)(2) and 155(c) will delete the conflicting language contained in the Rules of Procedure.

Form SUBP-025 (Notice to Consumer or Employee and Objection) Code of Civil Procedure section 1987.1 only provides that a motion to quash/modify the subpoena may be made upon motion reasonably made by the witness. However, Form SUBP-025 also states that a motion must be made at least five days before the production date. This is in conflict with the Rules of Procedure which require five court days after service. (rules 150 for OCTC only and 151(f)(2) [discovery subpoena]; 152(f)(2) [trial subpoena]; 153(c) [trust account financial records]; 154(c) [other financial records]; 155(d) [other discovery and trial subpoenas]. Furthermore, the general procedure, but not the timing, for filing motions to quash is governed by rule 156. The proposed amendments

153(b)(c); 154(b)(1) and (2); 154(c)(1); 155(c); 155(d)(1) and 156(a) will either delete or amend the conflicting language to conform with the Code of Civil Procedure. In addition, new rule 158 would allow the use of Judicial Council subpoena forms in State Bar Court proceedings.

PROPOSED RESOLUTION

If you agree that the proposed amendments to rules 150, 151, 152, 153, 154, 156 and new rule 158 should be released for a 90-day public comment period, your adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight authorizes staff to make available for public comment for a period of 90 days, the proposed amendments to rules 150, 151, 152, 153, 154, 156 and new rule 158 of the Rules of Procedure of the State Bar of California, in the form attached as Appendix A; and it is

FURTHER RESOLVED, this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.