

AGENDA ITEM

MARCH 54-122

Rules of Procedure of the State Bar – Proposed Amendments to Allow Use of Subpoena Forms

DATE: February 5, 2008

TO: Members of the Board of Governors
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 Forms – Request for Adoption After Public Comment

EXECUTIVE SUMMARY

Currently, the State Bar Court and the Office of Chief Trial Counsel use different subpoena forms for their own use in State Bar discipline matters. The proposed amendments to the Rules of Procedure would allow participants in State Bar disciplinary matters to use the Judicial Council subpoena forms in the State Bar Court. The proposed amendments would also adopt the Code of Civil Procedure with respect to the timing for issuance, compliance and motions concerning subpoenas. The proposed amendments were released for a 90-day public comment period on November 9, 2007. No comments were received during the comment period which ended on February 6, 2008.

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.)

The proposed amendments were released for a 90-day public comment period on November 9, 2007. No comments were received during the comment period which ended on February 6, 2008.

FISCAL AND PERSONNEL IMPACT:

None

BOARD BOOK / ADMINISTRATIVE MANUAL IMPACT:

None

RULE AMENDMENTS IMPACT:

If approved, this item would amend rules 150, 151, 152, 153, 154, 156 and add new rule 158 to the Rules of Procedure of the State Bar of California.

PROPOSED BOARD COMMITTEE RECOMMENDATION:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight, recommends that the Board of Governors adopt 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 hereto as Appendix A, to become effective on July 1, 2008.

PROPOSED BOARD RECOMMENDATION:

RESOLVED, following public comment period and consideration of comments received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors of the State Bar hereby adopts 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 hereto as Appendix A, to become effective on July 1, 2008.

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.