

Case No.

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**A STATE BAR INVESTIGATION**

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After a Decision by the State Bar Court of  
California,  
Review Department  
(State Bar Court Case No. SBC-25-PF-30950)

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**PETITION FOR REVIEW**

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## I. INTRODUCTION

The State Bar of California (“State Bar”) seeks review because the State Bar Court committed clear legal error when it quashed deposition subpoenas issued in the course of a State Bar investigation based on its determination that the State Bar is categorically prohibited from deposing an attorney whose conduct is under investigation. Such a categorical prohibition reflects an erroneous construction of controlling statutes and rules that materially restricts the State Bar’s investigative authority and is inconsistent with the governing legal framework. The State Bar Court improperly interpreted a procedural rule to restrict statutory authority given to the State Bar during investigations.

No provision of the State Bar Act, the Rules of Procedure, or applicable precedent supports such a limitation. To the contrary, the Legislature authorized the State Bar to compel any witness to appear and give testimony during investigations, and it provided contempt enforcement authority precisely to ensure that the State Bar can obtain sworn evidence necessary to determine whether reasonable cause and sufficient evidence exist to file disciplinary charges. The State Bar Court misapplied principles of statutory construction; effectively rewrote Business

and Professions Code section 6049, subdivision (b),<sup>1</sup> and rules 5.60 and 2502 of the Rules of Procedure of the State Bar;<sup>2</sup> disregarded incorporated Code of Civil Procedure deposition provisions in the Rules of Procedure; and ignored controlling case law recognizing that attorneys in disciplinary matters are witnesses from whom testimony and documents can be compelled by the State Bar in the course of its investigations.

The issue presented goes to the core of the investigative process the Legislature established. When the subject of an investigation cannot be compelled to give sworn testimony—even where written inquiry responses are incomplete, vague, or inconsistent—the State Bar cannot reliably determine whether charges should be filed, particularly in matters involving complex facts, multiple actors, or overlapping witness accounts. The rulings below impair the State Bar’s ability to conduct thorough and accurate investigations and undermine the State Bar’s duty to protect the public.

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<sup>1</sup> All further references to statutory sections are to the Business and Professions Code unless otherwise noted.

<sup>2</sup> All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

Review is necessary to restore consistency with the statutory scheme, the Rules of Procedure, and the case law governing the State Bar's broad investigative authority. Unless corrected, the decision will impede investigations, create inconsistent applications of the Rules of Procedure, and invite respondents to obstruct legitimate inquiries by avoiding sworn examination at a stage in which the Legislature empowered the State Bar to compel it.

For these reasons, and as set forth more fully below, this Court's intervention is required to correct a significant legal error and to reaffirm the State Bar's statutory authority to conduct meaningful investigations into attorney misconduct. The State Bar requests that this Court grant its petition and hold that sections 6049, subdivision (b), 6050, 6052, and rules 5.60 and 2502 authorize the State Bar to compel investigation depositions of attorneys who are the subject of a State Bar investigation.

## **II. ISSUE PRESENTED FOR REVIEW**

Did the State Bar Court err as a matter of law by interpreting section 6049, subdivision (b), and rule 2502 to categorically prohibit the State Bar, in the course of a

disciplinary investigation, from deposing an attorney who is a subject of the investigation?

### **III. FACTUAL AND PROCEDURAL BACKGROUND**

On October 7, 2025, the State Bar issued subpoenas for the depositions of four attorneys (“investigation witnesses”) under investigation by the State Bar. On October 20, 2025, the investigation witnesses filed a motion to quash the subpoenas. On November 19, 2025, the Hearing Department granted the motion and held that the State Bar may not compel deposition testimony from attorneys under investigation (“Hearing Department Order”).

On December 5, 2025, the State Bar filed a petition for interlocutory review of the Hearing Department Order. On December 23, 2025, the Review Department granted interlocutory review and ordered the investigation witnesses to respond. The investigation witnesses filed their response on January 7, 2026. On February 10, 2026, the Review Department affirmed the Hearing Department Order and concluded that section 6049, subdivision (b), rule 5.60(A), and rule 2502 permit the State Bar to compel investigative depositions only of

“witnesses,” and that “witnesses” does not include attorneys who are the subjects of investigations (“Review Department Order”).

On February 26, 2026, the State Bar filed a request for reconsideration of the Review Department Order, asserting that it contained errors of law, including that the Review Department interpreted procedural rules in a manner that impermissibly restricted statutory authority granted under the Business and Professions Code to compel by subpoena the deposition of any person. The investigation witnesses filed an opposition on March 9, 2026. On March 18, 2026, the Review Department denied reconsideration.<sup>3</sup>

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<sup>3</sup> The Review Department’s February 10, 2026 Order denying the petition for interlocutory review of the Hearing Department’s quashing of the investigative deposition subpoena, as well as the Review Department’s March 18, 2026 Order denying reconsideration are attached to this petition.

The State Bar redacted several words on the first page of the February 10, 2026 order that identify the attorneys who are the subject of the underlying litigation and where they work, as the underlying investigation is confidential. (§ 6086.1, subd. (b)).

Given the confidential nature of the underlying proceedings, and the fact that the State Bar’s petition turns on statutory and rule interpretation and not the facts of this particular investigation, the State Bar has not submitted with the petition other documents from the underlying confidential proceedings. Should the Court request other documents, the State Bar will seek to file them under seal.

#### IV. ARGUMENT

##### A. The Legislature Granted the State Bar Broad Investigative Power to Depose Any Person During Investigations

Section 6049, subdivision (b) provides: “In the conduct of investigations, the [State Bar] may compel, by subpoena, the attendance of *witnesses* and the production of books, papers, and documents pertaining to the investigation.” (§ 6049, subd. (b), italics added.) Section 6050 more broadly refers to “any person subpoenaed,” providing: “Whenever *any person* subpoenaed to appear and give testimony or to produce books, papers or documents refuses to appear or testify before the subpoenaing body, or to answer any pertinent or proper questions, or to produce such books papers or documents, he or she is in contempt of the subpoenaing body.” (§ 6050, italics added.) And section 6052 bestows on the State Bar the power to issue subpoenas during an investigation.

When read individually and together, these provisions grant the State Bar clear power to subpoena witnesses and the right to move for contempt over any witness or person. Nothing in the statutory scheme limits “witnesses” or “person” to exclude attorneys under investigation. Any interpretation that carves out

such an exclusion rewrites the statute, narrows authority the Legislature expressly granted, and is therefore invalid.

**B. State Bar Procedural Rules May Not Substantively Limit Powers Granted by the Legislature**

The Board of Trustees (“Board”) is authorized to adopt procedural rules to carry out the State Bar Act (§ 6025), but such rules are expressly subordinate to the statutory framework (§ 6086). The Board may prescribe modes of procedure, but it may not substantively limit or alter powers the Legislature has granted. This follows the longstanding principle that administrative regulations must be consistent with, and cannot conflict with, the governing statute. (*In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56, 62, citing *Ontario Community Foundations, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816.) Accordingly, the Board cannot create rules that “abridge or enlarge” statutory authority. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 61.) Any regulation that impairs the scope of statutory authority is void. (*Ocean Park Associates v. Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1064.)

The Rules of Procedure are administrative regulations and not legislative acts. (*In the Matter of Respondent CC* (Review Dept. 2023) 6 Cal. State Bar Ct. Rptr. 36, fn. 17; *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267.)

When interpreting statutes and rules, if the statutory language is clear, then the statute controls and no further analysis is necessary. (*In the Matter of Wu, supra*, 4 Cal. State Bar Ct. Rptr. at p. 267.) It is a well-established principle of statutory construction that potentially conflicting provisions should be reconciled to effectuate the “overriding legislative purpose as gleaned from a reading of the entire act. [Citation.]” (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788.) “A construction which makes sense of an apparent inconsistency is to be preferred to one which renders statutory language useless or meaningless. [Citation.]” (*Ibid.*) Rules “may go beyond the provisions of a related statute so long as it reasonably furthers the statutory purpose. [Citations.]” (*Trans-Action Commercial Investors, Ltd. v. Jelinek* (1997) 60 Cal.App.4th 352, 364.) Rules may not deviate even from implicit or inferential legislative procedural choices reflected in a statute. (*Ibid.*)

**C. The Review Department Improperly Interpreted State Bar Procedural Rules to Substantively Limit Investigative Subpoena Power Granted by the Legislature**

The Review Department failed to interpret rules 2502 and 5.60 in harmony with the Legislature's grant of authority in sections 6049, subdivision (b), and 6052. The Review Department's reading of these rules improperly narrowed the scope of the statute and resulted in overriding explicit statutory authorization. In doing so, the Review Department improperly limited authority the Legislature granted and adopted a construction that conflicts with the State Bar Act.<sup>4</sup>

Rules 2502 and 5.60 were adopted to implement, not restrict, the Legislature's broad grant of investigative subpoena authority to the State Bar. Both rules are written consistently with the statutory scheme and recognize the State Bar's power to compel and conduct depositions during the investigation stage.

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<sup>4</sup> This error is contrary to well-established State Bar Court precedent requiring procedural rules to be interpreted consistently with the statutory scheme. (See *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9; *In the Matter of MacKenzie*, supra, 5 Cal. State Bar Ct. Rptr. at p. 62; *In the Matter of MacKenzie* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 529, 533; *In the Matter of Bhardwaj* (Review Dept. 2023) 6 Cal. State Bar Ct. Rptr. 24, 33; *In the Matter of Member W* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 535, 538.)

Moreover, as procedural rules, rules 2502 and 5.60 must be construed in harmony with the overarching statutory framework and must avoid any conflict with them. (*Wells v. Marina City Properties, Inc.*, *supra*, 29 Cal.3d at p. 788; *In the Matter of MacKenzie*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 62.) The Review Department, however, read these rules in isolation and then used that reading to override clear statutory language. The result is an interpretation that conflicts with the Business and Professions Code, which imposes no limitation on who may be subpoenaed, and grants broad deposition and contempt authority to the State Bar.

The Legislature granted the State Bar broad discretion during investigations to conduct inspection, inquiry, and examination of all relevant persons (including attorneys under investigation), instruments and documents—including through its subpoena power. This broad authority is essential to the statutory requirement that the State Bar have reasonable cause and sufficient evidence before filing disciplinary charges. (Rules 2401, 2604.) A rule cannot be interpreted to restrict the very authority the statute requires the State Bar to exercise.

**1. The Review Department’s Narrow Reading of Rule 2502 Conflicts with the Rule’s Text, Structure, and Incorporated Statutory Provisions**

The plain language of rule 2502 refers to *witnesses*, without any limitation on that word.<sup>5</sup> In attorney discipline matters, an attorney may be called as a witness. (*Black v. State Bar* (1972) 7 Cal.3d 676, 686.)<sup>6</sup> Rule 2502 further incorporates Code of Civil Procedure sections 2025.220 through 2025.480—provisions that

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<sup>5</sup> Rule 2502 provides: “In the course of an investigation, pursuant to Business and Professions Code section 6049, subdivision (b), the Office of Chief Trial Counsel may compel by subpoena the appearance of a witness at a deposition. The deposition shall be conducted in accordance with Code of Civil Procedure sections 2025.220 through 2025.480, inclusive. The Office of Chief Trial Counsel shall serve a copy of the notice of deposition upon each attorney whose conduct is being investigated. Such attorneys shall have the right to appear and participate at the deposition and such attorneys and the Office of Chief Trial Counsel shall have the right to seek protective orders from the State Bar Court pursuant to Code of Civil Procedure section 2025.420, subdivision (b)(1) through subdivision (b)(5), inclusive, and subdivision (b)(8) through (b)(14), inclusive.”

<sup>6</sup> Although the Review Department Order characterizes the State Bar’s definition of “witness” as overbroad because the Rules do not define the term, that absence means the word carries its ordinary legal meaning—a person who gives testimony under oath. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 377 [Legislature’s intent best deciphered by giving words their plain meaning]; Black’s Law. Dict. (12th ed. 2024) [defining “witness” as someone who gives testimony under oath].) Nothing in the State Bar Act or Rules supports narrowing the plain meaning to exclude the individual with the most direct knowledge of the underlying facts regarding their own conduct.

plainly contemplate depositions of *any person*, including parties. (Code Civ. Proc., §§ 205.220; 2025.250, subd. (a), 2025.260, subd. (a), 2025.280.)

The Review Department failed to begin with the controlling statutory scheme before examining the text of rule 2502. (*Wells v. Marina City Properties, Inc.*, *supra*, 29 Cal.3d at p. 788.) Had it done so, it would have recognized that sections 6049, subdivision (b), 6050, and 6052 authorize the State Bar to use deposition subpoenas during investigations and to pursue a person's contempt for failing to testify. Rule 2502 must be read consistently with this statutory authority.

The Review Department's conclusion that rule 2502 excludes attorneys under investigation creates a limitation nowhere found in the Business and Professions Code or the incorporated Code of Civil Procedure provisions. Because this interpretation restricts statutory authority granted by the Legislature, it is void. (*Ocean Park Associates v. Santa Monica Rent Control Bd.*, *supra*, 114 Cal.App.4th at p. 1064; *Martinez v. Combs*, *supra*, 49 Cal.4th at p. 61.)

The Review Department also misinterpreted rule 2502's notice requirement. The rule distinguishes between a "witness at

a deposition” and “each attorney whose conduct is being investigated” solely for the purpose of ensuring notice and participation rights. It does not create a categorical prohibition against deposing an attorney who is the subject of an investigation.<sup>7</sup> The notice provision functions as a due process safeguard, not a substantive limitation on the State Bar’s authority. Transforming a procedural notice requirement into a blanket exclusion rewrites the rule and conflicts with the statutory scheme.

Rule 2502 refers to Business and Professions Code section 6049, subdivision (b), and incorporates certain Code of Civil Procedure sections governing depositions of “any person,” including parties. Nothing in the rule or statutes exclude attorneys under investigation. Rule 2502 implements statutory

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<sup>7</sup> For example, in the current investigation proceeding, multiple attorneys who worked at the same firm are under investigation. If the State Bar seeks to depose one of those attorneys, rule 2502 requires the State Bar to serve notice on each attorney whose conduct is being investigated. This ensures that all subject attorneys are aware of the deposition and have the opportunity to appear and participate. Likewise, if the State Bar deposes a third-party witness, the rule mandates notice to each attorney under investigation. This safeguard does not imply that the attorney being deposed cannot be the subject of a deposition subpoena.

authority and adds procedural protections; it does not restrict. The Review Department's interpretation rewrites the rule by converting a notice requirement into a substantive prohibition, contrary to the statutory scheme and principles of interpretation.

## **2. The Review Department's Interpretation Improperly Nullifies Rule 5.60 and the State Bar's Statutory Subpoena Power**

By holding that the State Bar cannot depose attorneys under investigation, the Review Department effectively nullifies rule 5.60.<sup>8</sup> If "witness" excludes attorneys under investigation under rule 2502, then OCTC's subpoena power is limited in the investigation phase to third parties only because rule 5.60 also uses the term "witnesses." The Review Department's interpretation of rule 2502 strips the State Bar of a critical investigative tool, undermines the Legislature's intent to grant the State Bar robust investigation authority, and reduces rule 5.60 to a hollow provision with no practical effect.

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<sup>8</sup> Rule 5.60(A) provides: "In the conduct of investigations the Office of Chief Trial Counsel may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation under Business and Professions Code §§ 6049(b) and 6069."

Rule 5.60 exists to implement the Legislature’s grant of investigative subpoena authority under sections 6049, subdivision (b), and 6052. By adopting this rule, the Board confirmed that the State Bar possesses deposition subpoena authority at the investigation stage.<sup>9</sup> The Review Department’s interpretation ignores rule 5.60’s function within the statutory and regulatory framework and improperly limits the State Bar’s authority in direct conflict with the Legislature’s statutory command. Moreover, the conclusion that the State Bar lacks authority to depose the subject attorney contradicts with section 6050, which grants contempt powers to enforce investigative subpoenas. The Legislature would not have granted enforcement power absent underlying subpoena authority to compel testimony from the most central witness: the attorney who is the subject of the investigation.

The Review Department’s interpretation also creates uncertainty regarding the State Bar’s authority to subpoena documents from attorneys under investigation. If “witness”

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<sup>9</sup> The rule also provides protections because any person served with an investigation subpoena may move to quash the subpoena under section 6051.1. (Rule 5.60(B).)

excludes the subject attorney for purposes of rule 2502, and if that definition extends to rule 5.60, the State Bar could be stripped of the ability to subpoena records from an attorney under investigation. (Rule 5.60 (E), (F), (G).) Such a result is incompatible with the statutory scheme and undermines the investigative functions necessary to protect the public.

### **3. The Review Department’s Civil/Criminal Analogy Ignores the Legislature’s Grant of Investigative Power to the State Bar**

In affirming the Hearing Department, the Review Department reasoned that “in civil and criminal matters, prosecuting authorities are not permitted to depose a defendant prior to the commencement of litigation.” Relying on this analogy, the Review Department concluded that investigative depositions of respondent-attorneys are categorically impermissible until after formal charges are filed.

The Review Department’s conclusion is legally incorrect and fundamentally misunderstands the structure of the State Bar Act. The Legislature expressly granted the State Bar broad investigative authority—far broader than that available to civil litigants or criminal prosecutors—and empowered it to compel testimony and documents during investigations. (§ 6049, subd.

(b.) Rules 5.60 and 2502 were adopted to implement that statutory authority and apply precisely at the stage the Review Department characterized as pre-litigation. The Review Department's analogy to civil and criminal procedure thus ignores the unique statutory scheme governing attorney discipline and collapses an administrative investigation into an inapt civil-litigation framework.

State Bar disciplinary proceedings, including the State Bar's investigative authority, are sui generis. (*In re Rose* (2000) 22 Cal.4th 430, 439–440.) “The purpose of an investigation is to determine whether there is reasonable cause to believe that an attorney of the State Bar has violated a provision of the State Bar Act or the Rules of Professional Conduct and if there is sufficient evidence to support the allegations of misconduct.” (Rule 2401; see also rule 2604 [reasonable cause needed to file charges].) To make this determination, the Legislature authorized the State Bar to compel sworn testimony and production of documents *before* disciplinary charges are filed. The State Bar's unique investigative authority under the statutory scheme is not comparable to any restrictions on depositions in criminal and civil matters. Treating State Bar investigations as “pre-litigation”

for purposes of restricting deposition authority reverses the statutory structure and undermines the Legislature’s design. The Review Department Order improperly limits the State Bar’s ability to fully investigate alleged violations before filing charges.

The Review Department’s analogy also does not withstand scrutiny when considering the limited judicial oversight contemplated during State Bar investigations. (See *In the Matter of Respondent Q* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 18, 22 [less court oversight during investigation phase].) The Rules of Procedure authorize motions to quash State Bar investigation subpoenas. (Rule 5.60(B); *In the Matter of Member W, supra*, 3 Cal. State Bar Ct. Rptr. at p. 538 [State Bar empowered to determine how to effectuate § 6049, subd. (b), and attorney may move to quash].) This Court has recognized that attorneys under investigation may challenge subpoena validity before the State Bar Court. (*Jacobs v. State Bar* (1977) 20 Cal.3d 191, 195–198.) The existence of judicial review of subpoenas does not narrow the authority conferred by statute, rather, it confirms that investigative subpoenas—including deposition subpoenas—are expected and contemplated at this stage.

The Review Department’s reliance on criminal principles is equally misplaced. Criminal defendants cannot be compelled to testify, however, respondent-attorneys in disciplinary matters may be compelled to testify and are, most assuredly, considered witnesses in their cases. (*Black v. State Bar, supra*, 7 Cal.3d at pp. 686, 688; *In re Utz* (1989) 48 Cal.3d 468, 479 [attorneys in State Bar disciplinary matters do not possess same immunity from being called to testify as criminal defendants].) This Court long ago made clear that disciplinary proceedings are “not governed by the rules of procedure governing civil or criminal litigation. [Citations.]” (*Emslie v. State Bar* (1974) 11 Cal.3d 210, 225–226; see also *In re Rose, supra*, 22 Cal.4th at p. 440 [ordinary criminal procedural safeguards do not apply in State Bar proceedings].) The Review Department’s analogy is thus out of step with settled California law governing the State Bar’s unique disciplinary function.

**4. The Review Department Incorrectly Concluded That Investigative Depositions Would Circumvent Discovery Rules**

The Review Department also concluded that allowing investigative depositions of respondent-attorneys would “nullify” the discovery limits that apply after disciplinary charges are

filed, reasoning that OCTC could avoid the good cause requirement under rules 5.61 and 5.66 by conducting depositions before charges are filed. This analysis both misconstrues the statutory framework and ignores rule 5.60.

Rule 5.60 expressly authorizes the State Bar to issue deposition subpoenas before charges are filed, and exists precisely because the Legislature intended the State Bar's investigative tools to be broader than its formal discovery tools after filing. Investigative depositions do not "circumvent" the discovery rules; they serve a distinct statutory function rooted in section 6049, subdivision (b), and empower the State Bar to determine whether to bring charges.<sup>10</sup> Thorough investigation benefits not only the public but also respondent-attorneys because disciplinary investigations remain confidential until formal charges are filed, (§ 6086.1, subd. (b)), thereby ensuring that attorneys are not subjected to public allegations unless and

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<sup>10</sup> The State Bar Court's ruling invites an absurd and unintended consequence: significant misconduct may surface for the first time during a discovery deposition *after* formal charges have been filed. This again frustrates the Legislature's design because it allows misconduct to remain undiscovered during the investigation stage.

until the State Bar determines that reasonable cause and sufficient evidence exist to file charges.

The Legislature provided robust investigative authority at the front end, coupled with more structured discovery once litigation commences. There is no conflict between pre-charge investigative subpoenas and post-charge discovery restrictions because they arise at different stages, are governed by different rules, and serve different purposes. The Review Department’s interpretation collapses these distinct phases and improperly narrows the investigatory powers the Legislature expressly provided.<sup>11</sup>

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<sup>11</sup> Rule 5.61 applies after the filing of disciplinary charges, and requires at that stage a prior court order to issue discovery subpoenas or to compel another party to testify at a deposition. This rule takes into consideration that the State Bar has had sufficient opportunity and ability to fully investigate—including deposing the attorney under investigation during the investigation phase—before filing charges. Deposing a targeted attorney during the investigation stage does not “nullify” rule 5.61 as the Court states. A deposition of the targeted attorney in the investigation stage aligns with the statutory scheme and the rules because the State Bar must have reasonable cause to believe there has been a violation and sufficient evidence before filing charges. (Rules 2401, 2604.) A deposition can ensure that the State Bar is filing charges only when it has reasonable cause and sufficient evidence.

## **5. The Legislature Did Not Confine Investigations to Written Inquiry Letters**

The Review Department found that letters of inquiry under rule 2409<sup>12</sup> and the duty of attorneys to cooperate in disciplinary investigations under section 6068, subdivision (i),<sup>13</sup> provide an “adequate mechanism” for the State Bar to use during investigations. This conclusion again disregards the statutory framework. Rule 2409 is only one investigative tool and does not limit the Legislature’s grant of authority to compel sworn testimony through deposition subpoenas. Written inquiry letters cannot—and were never intended to—substitute for sworn examination, particularly where credibility assessments, factual disputes, evolving explanations, multiple accused bad actors, or complex timelines require examination under oath. Nothing in the State Bar Act suggests that investigative authority is

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<sup>12</sup> Rule 2409 provides that the State Bar must notify an attorney under investigation of the allegations forming the basis of the complaint. The attorney must then respond with a written explanation.

<sup>13</sup> Section 6068, subdivision (i) provides that an attorney has a duty to “cooperate and participate in any disciplinary investigation . . . against himself or herself.”

confined to written questions.<sup>14</sup> The Review Department's reasoning improperly imposes a limitation not found in the Business and Professions Code or Rules of Procedure.

Furthermore, an attorney's duty to cooperate under section 6068, subdivision (i) does not narrow the State Bar's statutory authority to obtain testimony; it supplements rather than supplants the State Bar's investigative powers.

## **V. CONCLUSION**

The Review Department's interpretation of section 6049, subdivision (b) and rule 2502 wrongly limits the authority the Legislature gave to the State Bar to depose witnesses during investigations. The Review Department's interpretation of rule 2502 overrides clear statutory language and adopts a restriction that does appear in the statutory framework. The Review

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<sup>14</sup> Rule 2409 and section 6068, subdivision (i), are not adequate investigation mechanisms because attorneys often provide incomplete, evasive, or carefully limited written explanations. The Review Department's approach invites gamesmanship: an attorney may submit a technically compliant but materially hollow written explanation. In these situations, without sworn testimony, the State Bar is severely limited in determining what actually occurred and whether formal charges should be filed. The State Bar Court's interpretation provides an avenue for attorneys to avoid transparency during disciplinary investigations.

Department committed an error of law that undermines the integrity and function of the disciplinary system. The Legislature conferred broad investigative powers—including the authority to compel sworn testimony from any witness—to ensure that the State Bar can determine whether reasonable cause and sufficient evidence exist to bring disciplinary charges. The rulings below invert that structure, impair meaningful investigation, and create an unjustified and categorical bar to deposing the very attorneys whose conduct is under review.

Because these errors conflict with the statutory scheme, established precedent, and the purpose of attorney discipline, this Court's intervention is necessary. Correcting the Review Department's decision will restore uniformity, protect the integrity of investigations, and ensure that the State Bar can fully carry out its public-protection mandate.

For these reasons, the State Bar respectfully requests that this Court grant review and hold that sections 6049, subdivision (b), 6050, and 6052, and rules 5.60 and 2502 authorize the State Bar to compel investigative depositions of attorneys who are the subjects of disciplinary investigations, and reverse the Review Department's contrary conclusion.

Dated: April 2, 2026

Respectfully submitted,

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By: /s/ SUMMER A. SHELTON  
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By: /s/ BRADY R. DEWAR  
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**WORD COUNT CERTIFICATE**

I hereby certify that this brief contains 4,649 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: April 2, 2026

/S/ BRADY R. DEWAR  
BRADY R. DEWAR

**FILED** MZ

March 18, 2026

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

**En Banc**

In the Matter of	)	SBC-25-PF-30950
	)	
A STATE BAR INVESTIGATION,	)	ORDER
	)	
_____	)	

On February 26, 2026, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a request for reconsideration of this court's February 10, 2026 order denying its petition for interlocutory review, asserting that the order contained errors of law. On March 9, 2026, petitioners filed an opposition.

Having considered the request, the court finds that OCTC has failed to (1) show errors of fact or law in our prior order, or (2) present new or different facts, circumstances, or law warranting reconsideration. (See Rules Proc. of State Bar, rules 5.115(B), 5.158.) Accordingly, OCTC's request for reconsideration is denied.



\_\_\_\_\_  
Presiding Judge



the State Bar of California<sup>1</sup> authorize depositions of witnesses during investigations and not an attorney whose conduct is being investigated.

After full briefing, the hearing judge granted the attorneys' motion to quash on November 19, 2025. The judge concluded that, under the plain text and structure of the governing statutes and rules, OCTC "is not permitted to compel deposition testimony from the attorneys under investigation," explaining that rule 2502's operative language unambiguously distinguishes "witnesses" from "each attorney whose conduct is being investigated" and that reading "witness" to include the targeted attorney would be inconsistent with the procedural framework, including rule 5.61(A)'s leave of court requirement for taking depositions post-NDC.

OCTC filed its petition for interlocutory review on December 5, 2025. The attorneys filed a response on January 7, 2026.

### **Standard of Review**

The Review Department may reverse a hearing judge's order on a motion to quash only for error of law, abuse of discretion, or lack of substantial evidence. (Rules 5.63(F) and 5.150(K); see also *In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91, 101.)

### **Discussion**

The framework governing OCTC's authority to take investigation depositions is set forth in section 6049, subdivision (b), of the Business and Professions Code,<sup>2</sup> rule 5.60(A), and rule 2502.

Section 6049, subdivision (b), is the source of OCTC's subpoena authority during investigations. It provides:

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<sup>1</sup> Unless otherwise stated, all further references to "rules" are to this source.

<sup>2</sup> All further references to "sections" are to the Business and Professions Code.

In the conduct of investigations, the chief trial counsel or his or her designee, may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation.<sup>3</sup>

Rule 5.60(A) implements this statutory authority using virtually identical language, and adds a cross-reference to sections 6049, subdivision (b), and 6069 (authorizing subpoena of attorney's financial records).

Rule 2502 addresses the procedure for investigation depositions specifically. This rule provides:

In the course of an investigation, pursuant to Business and Professions Code section 6049, subdivision (b), the Office of Chief Trial Counsel may compel by subpoena the appearance of a witness at a deposition. The deposition shall be conducted in accordance with Code of Civil Procedure sections 2025.220 through 2025.480, inclusive. The Office of Chief Trial Counsel shall serve a copy of the notice of deposition upon each attorney whose conduct is being investigated. Such attorneys shall have the right to appear and participate at the deposition and such attorneys and the Office of Chief Trial Counsel shall have the right to seek protective orders from the State Bar Court pursuant to Code of Civil Procedure section 2025.420, subdivision (b)(1) through subdivision (b)(5), inclusive, and subdivision (b)(8) through (b)(14), inclusive.

Although the rules are not legislative enactments, they are also interpreted under settled principles of statutory construction. (*In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267.) Interpretation begins with the text and, where the language is clear and unambiguous, the inquiry ends there. In such circumstances, the plain meaning controls, and the court may not expand a statute's or rule's meaning beyond its clear interpretation. (*Ibid.*)

Applying these principles, the court agrees with the hearing judge that, as applied to the issue presented, section 6049, subdivision (b), rule 5.60(A), and rule 2502 are clear and unambiguous. By their plain language, they authorize OCTC to compel investigative depositions of witnesses, not of the attorney who is the subject of the investigation. Nothing in the text of these provisions supports OCTC's claim that the term "witness" carries a boundless meaning that

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<sup>3</sup> Section 6052 authorizes OCTC to issue subpoenas pursuant to section 6049.

would include an attorney who is subject to a State Bar investigation. Rule 5.4 defines “attorney” and “respondent,” but not “witness,” and neither definition includes or incorporates the term “witness.” Nor does section 6049, subdivision (b), expressly authorize depositions of an attorney under investigation. The court finds no support for such a sweeping definition. Where the statutory and rule framework is silent, this court will not infer powers that have not been expressly conferred.

The structure of rule 2502 reinforces this conclusion. The rule authorizes OCTC to take the deposition of a “witness” and then, in a separate clause, expressly refers to “each attorney whose conduct is being investigated.” This separation reflects the rule’s recognition of two distinct categories: (1) witnesses—presumably third parties with relevant knowledge—and (2) attorneys under investigation—the subjects of the inquiry. The rule’s textual structure treats “witnesses” and “attorneys under investigation” as distinct categories, signaling that the term “witnesses” does not subsume the target attorney absent an explicit grant.

OCTC argues that because the rules do not expressly exclude attorneys, the term “witness” should be construed broadly to include them. The court disagrees. Compelling an attorney to submit to a sworn deposition before charges are filed is highly atypical in California legal practice. While State Bar Court proceedings are *sui generis*, neither civil nor criminal (*Yokozeki v. State Bar* (1974) 11 Cal.3d 436, 447), the court observes that, in civil and criminal matters, prosecuting authorities are not permitted to depose a defendant prior to the commencement of litigation. Interpreting the rules to authorize such a practice would confer extraordinary power on OCTC, and we decline to imply such authority from silence or general language absent an express and unambiguous grant. (See *Jurcoane v. Superior Court* (2001) 93 Cal.App.4th 886, 894 [statutes should not be read to omit express language or include omitted language].) Indeed, when the rules grant unusual investigative powers regarding attorneys, they

do so explicitly. (See, e.g., rule 2409 [authorizing letters of inquiry].) The absence of any comparable express authorization to depose the attorney under investigation strongly indicates that no such power exists.

OCTC's construction would also undermine the rules governing discovery in disciplinary proceedings. Once an NDC is filed, discovery is limited to that permitted by rule 5.65, and no other discovery is allowed absent a court order based on good cause. (Rules 5.61(A), (B); 5.66(A).) Permitting OCTC to depose the targeted attorney during the investigative stage would effectively nullify these limits entirely. OCTC could avoid the good-cause requirement by conducting depositions pre-NDC, particularly in cases—such as here—where it appears it has already decided to bring charges. The rules cannot reasonably be interpreted to permit parties to circumvent their own express discovery restrictions.

OCTC argues that prohibiting pre-NDC respondent depositions impairs its ability to investigate attorney discipline cases. We are not persuaded. The rules provide an adequate mechanism tailored to attorneys under investigation—letters of inquiry and the statutory duty to cooperate (section 6068, subd. (i)), including the obligation to provide a written response (rule 2409(c)). Post-NDC, OCTC may seek an order authorizing a respondent's deposition upon a showing of good cause.

We are likewise unpersuaded by OCTC's remaining arguments, including that the hearing judge committed error of law by citing an obsolete rule and a repealed statute, as such references in the order were not material to the judge's core holding. Nor does this ruling call into question OCTC's general investigative authority under section 6044 and rules 2101 and 2401. Rather, we hold only that the statutes and rules conferring that authority do not extend to compelling investigation depositions of attorneys who are themselves under investigation.

### **Conclusion**

OCTC has not demonstrated the hearing judge's abuse of discretion or error of law. Accordingly, the petition for interlocutory review is denied, and the November 19, 2025 order granting the motion to quash investigative deposition subpoenas is affirmed.

A handwritten signature in blue ink, appearing to read "R. Horn", is written above a horizontal line.

Presiding Judge

## DECLARATION OF SERVICE

I, Jenny Batdorj, hereby certify that I electronically filed and served the attached **Petition for Review** with the Clerk of the California Supreme Court and to Christine Rosskopf (crosskopf@rosinglaw.com), Susan Margolis (susan@margolisandmargolis.com), and Kevin Gerry (kevingerry@earthlink.net), counsel for the attorneys under investigation (and who filed the motions to quash the subpoenas at issue in this petition) via this Court's TrueFiling system, and on the Clerk of the State Bar Court via email to kathy.sher@statebarcourt.ca.gov, on April 2, 2026.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, this 2nd day of April, 2026.

/s/ Jenny Batdorj  
Jenny Batdorj