

Proposed Amendments to Rules 5.60 and 2502 (clean) Rule 5.60**Investigation Subpoenas**

(A) **Issuing a Subpoena.** 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. For purposes of this rule, “witness” means any person or entity, including an attorney whose conduct is being investigated.

(B) **Motion to Quash.** Any person or entity who is served with an investigation subpoena may move to quash the subpoena under Business and Professions Code § 6051.1 and this rule.

(C) **Service of a Motion to Quash.** The motion must be filed with the State Bar Court and must be served on the designated State Bar investigator, deputy trial counsel, or other authorized agent requesting the records. If the subpoena does not designate a party for service, the motion must be served on the Chief Trial Counsel.

(D) **Permissible Grounds for a Motion to Quash.** The motion must be supported by one or more declarations based on personal knowledge and filed with the motion.

(E) **Trust Account Financial Records.** The sole basis for a motion to quash a trust account financial records subpoena is that the records sought are not trust account financial records that the attorney must maintain under the Rules of Professional Conduct.

(F) **Other Financial Records.** If the challenged subpoena seeks financial records other than trust account financial records, and if a party makes a motion to quash the subpoena under this rule, the records sought cannot be examined by any party until the Court rules on the motion. Grounds for a motion to quash are:

- (1) the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of financial record subpoenas;
- (2) the subpoena does not describe the records sought with particularity;
- (3) the subpoena was not properly served under Business and Professions Code § 6069(b); or
- (4) the scope of the records the subpoena seeks is not consistent with the scope and requirements of the investigation.

(G) **Non-Financial Records.** For a subpoena that seeks documents other than financial records, grounds for a motion to quash are:

- (1) the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of subpoenas;
- (2) the subpoena does not describe the records sought with particularity;
- (3) the subpoena was not properly served under Code of Civil Procedure § 1987; or
- (4) the scope of the records the subpoena seeks is not consistent with the scope and requirements of the investigation.

(H) **Court Records.** If a subpoena is issued to obtain public records from any court, the Office of Chief Trial Counsel need not serve the subpoena on the target of an investigation or on other parties to a State Bar Court proceeding.

Rule 2502. INVESTIGATION DEPOSITIONS

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. For purposes of this rule, “witness” means any person or entity, including an attorney whose conduct is being investigated. 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.