



The State Bar *of California*

**OPEN SESSION
AGENDA ITEM
5.5 MAY 2026
BOARD OF TRUSTEES**

DATE: May 14, 2026

TO: Members, Board of Trustees Sitting as the Regulation and Discipline Committee

FROM: George S. Cardona, Chief Trial Counsel

SUBJECT: Proposed Amendments to Rules of Procedure of the State Bar, Rules 5.60 and 2502, to Clarify the Definition of Witness: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

The Office of Chief Trial Counsel (OCTC) requests authorization to circulate for a 45-day public comment period proposed amendments to State Bar Rules of Procedure, rules 5.60 and 2502, to clarify that the term “witness” as used in these rules does not categorically exclude attorneys who are the subject of a disciplinary investigation, and that these attorneys may, like other witnesses, be the subject of investigatory subpoenas compelling their testimony or production of records. OCTC proposes the amendments in light of a recent opinion from the State Bar Court’s Review Department, which held that, based on the current language of these rules, OCTC lacks authority to compel the attendance of the attorney who is the subject of the investigation because the term “witness” as used in these rules is not intended to include the attorney. OCTC has filed a petition for review of this decision, and the State Bar is simultaneously pursuing statutory amendments to make clear that OCTC’s ability to take investigative depositions extends to attorney respondents, and not just other witnesses.

RECOMMENDED ACTION

Approve for circulation for a 45-day public comment period the proposed amendments to Rules of Procedure of the State Bar, rules 5.60 and 2502, set forth in Attachments A (redline) and B (clean).

DISCUSSION

The relevant statutes Business and Professions Code sections 6049(b), 6050, and 6052 grant the chief trial counsel broad authority to conduct disciplinary investigations. This reflects the overall

goal of ensuring that allegations of attorney misconduct can be fully investigated to enable the OCTC to determine whether the filing of disciplinary charges is appropriate to further the State Bar's mission of protecting the public and maintaining public confidence in the legal profession. See Rules of Procedure of the State Bar of California, rule 2401: "The purpose of an investigation is to determine whether there is reasonable cause to believe 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."

Among the investigative powers granted to OCTC by these statutes is to "compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation" (Bus. & Prof. Code § 6049(b)). The State Bar's Rules of Procedure mirror the statutes, recognizing that in the course of disciplinary investigations, OCTC "may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation." Rule 5.60; see also rule 2502 ("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."). Notably, neither the statute nor the rules limit the scope of the witnesses whose testimony or production of documents may be compelled. More specifically, neither the statute nor rules exclude from the scope of OCTC's investigatory subpoena power the attorneys who are the subject of the disciplinary investigation.

On February 10, 2026, the State Bar Court Review Department issued an opinion upholding an earlier Hearing Department order quashing investigatory subpoenas for testimony from attorneys who were the subject of an OCTC disciplinary investigation. The Review Department's opinion was based on its interpretation of rules 5.60 and 2502, which it found reflected an intention by the Board of Trustees to prohibit the use of investigatory subpoenas to compel testimony from attorneys who are the subject of the disciplinary investigation. On April 2, 2026, the State Bar filed a petition for review in the California Supreme Court arguing that the Review Department "improperly interpreted a procedural rule to restrict statutory authority given to the State Bar during investigations." A copy of the State Bar's petition for review is attached as Attachment C. A redacted copy of the Review Department's February 10, 2026, opinion is attached to the petition as an exhibit.¹

As explained in the State Bar's petition for review, the ability to subpoena attorneys under investigation is essential in certain cases for OCTC to conduct a thorough investigation and make the required determination whether there is sufficient evidence to support disciplinary charges. The statutory requirement that attorneys cooperate with disciplinary investigations (see Bus. & Prof. Code § 6068(i)) is not a substitute because, while OCTC can pursue discipline based on a refusal to cooperate, this will not provide OCTC with the information sought. In contrast, a refusal to comply with an investigatory subpoena permits OCTC to seek to compel compliance through contempt proceedings. Moreover, written inquiry letters cannot, and were never intended to, substitute for sworn examination, particularly where credibility assessments,

¹ Because the matter remains under investigation, prior to the filing of public charges, the State Bar Court proceedings remain confidential. The redacted copy of the opinion attached to the publicly filed petition for review redacts information regarding the identity of the attorneys under investigation.

factual disputes, evolving explanations, multiple accused bad actors, or complex timelines require examination under oath. Similarly, post-charging discovery under the applicable rules of procedure (rules 5.61 and 5.66) is distinct from and cannot substitute for the ability to issue investigative subpoenas, which serve a distinctly different purpose, allowing OCTC to gather information prior to charging for the purposes of determining whether public discipline charges are appropriate.

At its February 2026 meeting, the Board of Trustees adopted as one of its 2026 legislative priorities the pursuit of statutory amendments to “clarify that OCTC’s ability to take investigative depositions extends to attorney respondents, and not just other witnesses.” The staff report explained this legislative priority as follows:

Existing law currently provides that in the conduct of investigations, OCTC may compel the attendance of witnesses and compel the production of documents. Staff propose to amend existing law to clarify that “witnesses” includes the attorney who is the subject of the investigation. The Review Department of the State Bar Court recently issued an opinion holding that, based on the language of certain State Bar rules, OCTC lacks authority to compel the attendance of the attorney who is the subject of the investigation because the term “witness” as used in these rules is not intended to include the attorney. OCTC will likely pursue amendments to the rules, but statutory clarification is recommended.

In accordance with this legislative priority, the State Bar is pursuing amendments to Business and Professions Code section 6049(b) to clarify that “witness” includes “the attorney who is the subject of the investigation.”

In accordance with the discussion above and the Board’s previous adoption of a related legislative priority, OCTC proposes amendments to rules 5.60 and 2502 to clarify that, for purposes of these rules, the term “witness” means “any person or entity, including an attorney whose conduct is being investigated.” A redline of the two rules showing the proposed amendments is in Attachment A. A clean version of the two rules including the proposed amendments is in Attachment B. OCTC requests that the Board sitting as the Regulation and Discipline Committee approve the circulation of these proposed amendments for a 45-day public comment period.

PREVIOUS ACTION

Board of Trustees Meeting, February 26–27, 2026, [Agenda Item 6.14](#), Discussion and Adoption of 2026 Legislative Priorities

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

Title 5, Division 2, Chapter 3, Rule 5.60, Investigation Subpoenas

Title 5, Title III, Division II, Chapter 5, Rule 2502, Investigation Depositions

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- d. 2. Develop strategies to effectively investigate and prosecute attorneys who commit misconduct, regardless of the nature of their practice, including attorneys in large organizations and firms.

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur, it is:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, proposed amendments to rules 5.60 and 2502 of Title 5 of the State Bar Rules as set forth in Attachments A (redline) and B (clean).

ATTACHMENTS LIST

- A.** Proposed Amendments to Rules 5.60 and 2502 (Redline)
- B.** Proposed Amendments to Rules 5.60 and 2502 (Clean)
- C.** State Bar's Petition for Review, *In the Matter of a State Bar Investigation*, SBC-25-PF-30950 (filed April 2, 2026)