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2015 OCT 29 PM 12:14

CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS

*Ana Valencia*

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12 THE STATE BAR OF CALIFORNIA

13 Exempt from Filing Fees Pursuant to  
14 Government Code Section 6103

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF STANISLAUS

17 THE PEOPLE OF THE STATE OF  
18 CALIFORNIA,

19 Plaintiffs,

20 v.

21 FRANK CLIFFORD CARSON,

22 Defendant.

Case No. 1490969

NON-PARTY WITNESS THE STATE BAR  
OF CALIFORNIA'S NOTICE OF MOTION  
AND MOTION TO QUASH SUBPOENA  
DUCES TECUM OR, IN THE  
ALTERNATIVE, REQUEST FOR  
PROTECTIVE ORDER; MEMORANDUM  
OF POINTS AND AUTHORITIES AND  
DECLARATION OF DANIELLE LEE IN  
SUPPORT THEREOF

Date: TBD  
Time: 9:00 a.m.  
Dept.: 26  
Judge: Hon. Barbara Zuniga  
Est. Time: 30 minutes

23 TO: DEFENDANT AND HIS ATTORNEYS OF RECORD

24 PLEASE TAKE NOTICE that on \_\_\_\_\_ at \_\_\_\_\_, or as soon thereafter  
25 as the matter may be heard in Department 26 of the above-mentioned Court located at 1130 12<sup>TH</sup>  
26 Street, Suite C, Modesto, CA 95354, non-party The State Bar of California ("State Bar") will and  
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FILE BY FAX  
PER CRC 2.303

1 hereby does move this Court for an Order quashing defendant Baljit Singh Athwal's ("Athwal")  
2 subpoena for the production of State Bar records on the grounds that (1) the subpoena is  
3 unreasonably burdensome and overly broad; and (2) the subpoena requests records and  
4 information that may contain privileged and confidential information. In the alternative, the  
5 State Bar also requests a in camera review prior to requiring production of any of the  
6 documents, and a protective order allowing the State Bar to produce these documents under seal  
7 and prohibiting them from public disclosure. This motion is based upon the following  
8 memorandum of points and authorities, the supporting declaration, any additional briefing  
9 required by this Court or filed in reply, as well as the arguments of counsel at the hearing.

10 Dated: October 29, 2015

OFFICE OF GENERAL COUNSEL

11  
12 By 

13 DANIELLE A. LEE

14 ATTORNEYS FOR NON-PARTY  
15 THE STATE BAR OF CALIFORNIA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

Non-party the State Bar submits the following in support of its Motion to Quash Defendant Baljit Singh Athwal’s subpoena for the production of State Bar records regarding Co-Defendant Frank Clifford Carson.

The State Bar’s Motion is made on the following grounds: (1) the subpoena is unreasonably burdensome and overly broad in that it requests records that may reference Mr. Carson spanning a lengthy time period; and (2) the records are privileged, confidential and protected by a right of privacy.

**I. INTRODUCTION AND SUMMARY OF FACTS.**

On Tuesday, October 20, 2015, the State Bar received a subpoena duces tecum in this matter for the production of business records on Wednesday, October 28, 2015 in Department 26 of the Stanislaus County Superior Court. The subpoena was issued by counsel for Defendant Baljit Sing Athwal and requests the following documents:

- 1. Copies of complaints made by the Stanislaus County District Attorney, or any of its employees, to the California State Bar regarding attorney Frank Clifford Carson, CA St. Bar no. 136261, and all communications received from the Stanislaus County District Attorney’s Office regarding those complaints. The applicable period of this request is complaints filed between January 1, 1990 and October 1, 2015.

The subpoena does not contain any allegations that the documents are material to the issues involved in Carson’s criminal case by any reason. See Declaration of Danielle Lee in Support of State Bar’s Motion to Quash, or, in the Alternative, Motion for a Protective Order, hereinafter “Lee Decl.” at ¶2, Exhibit 1. An informal inquiry into the case revealed the nature of the homicide and conspiracy charges, and that Mr. Athwal and Mr. Carson are codefendants in this case. The relevance of the documents responsive to the subpoena appear to be to support an allegation of bias against the District Attorney and law enforcement in this case.

On October 21, 2015, counsel for the State Bar telephoned counsel for Mr. Athwal informing defense counsel of the State Bar’s intention to file a motion to quash. Counsel for Mr. Athwal agreed to defer compliance on the subpoena until such times as the Court could adjudicate the

1 motion to quash. Additionally, counsel for the State Bar provided counsel for Mr. Athwal  
2 provided an objection letter as a follow-up to the conversation that took place on October 21,  
3 2015. Lee Decl., at ¶¶3-4, Exhibit 2.

4 **II. NATURE OF THE STATE BAR.**

5 The State Bar is a constitutional agency established in the judicial branch of state  
6 government. Cal. Const. Art. VI, § 9. It is a public corporation established to assist the  
7 California Supreme Court in attorney admission and discipline matters. Cal. Stats. 1927, Ch. 34,  
8 Cal. State Bar Act, codified at Bus. & Prof. Code, §§ 6001 et seq.; *In re Attorney Discipline*  
9 *System* (1998) 19 Cal.4th 582, 611 [79 Cal.Rptr.2d 836, 967 P.2d 49]; *Saleeby v. State Bar*  
10 (1985) 39 Cal.3d 547, 557 [216 Cal.Rptr. 367, 702 P.2d 525]. The Supreme Court has expressly  
11 acknowledged the State Bar's assistance in this area as an integral part of the Supreme Court's  
12 judicial function. *Obrien v. Jones* (2000) 23 Cal.4th 40, 48 [96 Cal.Rptr.2d 205, 999 P.2d 95]; *In*  
13 *Re Rose* (2000) 22 Cal.4th 430, 446, n. 8 [93 Cal.Rptr.2d 298, 993 P.2d 956].

14 **III. ARGUMENT.**

15 This Court may make an order quashing a subpoena duces tecum on a showing of good  
16 cause for nonproduction. Code of Civ. Proc., §1987.1. The issuance of a subpoena duces tecum  
17 does not authorize legal access to records by the party who obtained the subpoena until the court  
18 has decided that the party is legally entitled to receive them. *See e.g., People v. Hammon* (1997)  
19 15 Cal.4th 1117.<sup>1</sup>

20 Preliminarily, the State Bar objects to the subpoena as being overbroad, vague and  
21 ambiguous, and unduly burdensome with regard to the fifteen year time span of documents  
22 responsive to the subpoena. Publicly available information on this case suggests that one or all of  
23 the Defendants will be arguing that the District Attorney and law enforcement are biased against  
24 Co-Defendant Carson. However, to require the State Bar to review every investigative  
25 documents related to Mr. Carson would be unduly burdensome to the State Bar. To the extent  
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27 <sup>1</sup> The State Bar is not arguing that Athwal's subpoena seeks psychiatric records, merely that  
28 Athwal is not entitled to the records absent a court order if their discoverability is contested.

1 that Athwal seeks any records that have not yet resulted in public discipline, the State Bar makes  
2 the following objections and seeks an order to quash the subpoena. In the alternative, the State  
3 Bar seeks a protective order and in camera inspection prior to production of any nonpublic  
4 documents and an order of confidentiality prohibiting those documents from being made a part  
5 of any public record.

6 **A. State Law Requires the State Bar to Object to Business Records Production.**

7 ***1. Disciplinary Investigation Information is Privileged and Confidential.***

8 As to records, if any, which the State Bar possesses regarding Mr. Carson not yet  
9 resulting in public discipline, the State Bar must, and therefore does, object to the production of  
10 business records, if any exist, based on unique State Bar proceeding confidentiality and privilege,  
11 official information privilege, constitutional privacy privilege, and attorney-client and qualified  
12 work product privileges. Bus. & Prof. Code, §§ 6086.1 and 6094; California Evid. Code § 1040;  
13 Rules 2301 and 2302(a) of the Rules of Procedure of the State Bar; *Chronicle Publishing*  
14 *Company v. Superior Court* (1960) 54 Cal.2d 548; the Art. I, sec. 1, Cal. Const., and the  
15 attorney-client and qualified work product privileges.

16 Communications from complainants, informants and witnesses made to the State Bar in  
17 the course of State Bar investigations or proceedings are privileged. Bus. & Prof. Code § 6094.  
18 Likewise, all disciplinary investigations are confidential unless and until formal charges are filed  
19 against an attorney. Bus. & Prof. Code § 6086.1, subd. (b). This confidentiality prohibits public  
20 disclosure of any and all information that is not part of any formal disciplinary proceedings  
21 before the State Bar Court, which encompasses any and all records before a Notice to Show  
22 Cause issues.

23 The State Bar Board of Trustees ("Board") adopts and formulates the State Bar's Rules of  
24 Procedures. Bus. & Prof. Code §§ 6025 and 6086. The Board has adopted rules governing State  
25 Bar records and information confidentiality. Rule of Procedure § 2301. All of the Chief Trial  
26 Counsel Office's files and records are confidential. State Bar Rules of Procedure 2301 and  
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1 noticed a written interrogatories deposition of the State Bar and its Secretary seeking confidential  
2 information concerning Cappa's disciplinary "history" as part of its defense. The State Bar  
3 obtained an order excluding inquiry into its confidential files and the Chronicle sought  
4 mandamus. The Court made a number of observations about the State Bar disciplinary process  
5 nature and function that point to this confidentiality claim's continued viability under evidence  
6 Code § 1040 and the State Bar Rules of Procedure:<sup>2</sup>

- 7 • The State Bar accepts any and all complaints (many of which have absolutely no factual  
8 basis whatsoever).
- 9 • The State Bar has rule-making authority regarding the privileged and confidential nature  
10 of the records.
- 11 • Preliminary investigation shall not be made public, and all board files, records and  
12 proceedings are confidential, and no information concerning them can be given  
13 without Board order or unless the accused attorney is disciplined.<sup>3</sup>
- 14 • Both the public and State Bar members benefit from disciplinary proceedings  
15 privilege.
- 16 • The Board reserves the right to release its information in the public interest.
- 17 • This limitation in no way affects the right of the Board to make its information  
18 privileged.

19 *Chronicle*, 54 Cal.2d at p. 567-573; Bus & Prof. Code §§ 6086, 6025. The Court found that the  
20 privilege belongs to the State Bar. *Chronicle* at p. 573. The Court emphasized that disciplinary  
21 process integrity and informant protection is at issue when questioning opening State Bar  
22 disciplinary files. The "shielding" of an affected attorney's information disclosure was of  
23 secondary importance.

24 <sup>2</sup> The Court's analysis of the evidentiary privilege was based upon Code of Civil Procedure  
25 section 1881, subdivision 5. Section 1881 was repealed by Statutes 1965, Chapter 299, Section  
26 72. However, the provisions of Code of Civil Procedure Section 1881, subdivision 5 are now  
27 embodied in Evidence Code sections 1040-1042 (see Law Revision Commission Comment,  
28 Code Civ. Proc. § 1881 (Deerings 1973)).

<sup>3</sup> *Chronicle* specifically considered the provisions of former rule 8, the provisions of which are  
now embodied in Rules 2301 et seq. of the Rules of Procedure of the State Bar. *Chronicle* at pp.  
571-572; emp. added.





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5. *The State Bar's Records Constitute Attorney-Work Product Privilege.*

Finally, the State Bar's attorney work-product privilege protects information sought under the subpoena. Cal. Civ. Proc. Code, § 2018, subd. (a). The work product doctrine is designed "(i) to preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of such cases and (ii) to prevent an attorney from taking undue advantage of his adversary's industry or efforts." *Id.*

The State Bar's qualified work-product privilege protects any information or evidence that the State Bar may have collected in connection with or in preparation for any non-public regulatory proceeding. Counsel for neither side in this matter is entitled to discovery from the State Bar, a disinterested third-party to these proceedings. Counsel is not entitled to take advantage of any of the State Bar's work-product that, if it exists, may have been developed for exclusive use in its own proceedings. Cal. Civ. Proc. Code § 2018.

**IV. CONCLUSION.**

In conclusion, the State Bar is not a party to this action and has no interest in the proceedings now pending before the Superior Court. As to any records regarding Mr. Carson that have not yet resulted in public discipline, the State Bar maintains an absolute statutory obligation to protect its confidential information from unwarranted public disclosure. Like the policy interests evident in California's statutory scheme prohibiting disclosure, the State Bar seeks to prevent disclosure of official information that otherwise threatens the California attorney disciplinary processes, as well as the California constitutional right to privacy.

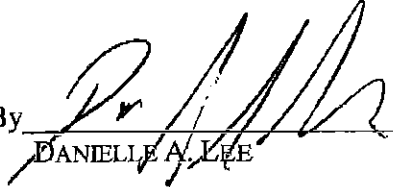
California evidentiary rules and privileges comprise a comprehensive statutory scheme that preserves and maintains attorney discipline process integrity. Accordingly, any disciplinary information and/or documents that are not public record are privileged and confidential and not subject to disclosure.

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Should the Court order any records produced, the State Bar request that this Court conduct an in camera review of the documents, and, even then, only subject to a protective order prohibiting them from public disclosure.

Dated: October 29, 2015

OFFICE OF GENERAL COUNSEL

By  \_\_\_\_\_  
DANIELLE A. LEE

ATTORNEYS FOR NON-PARTY  
THE STATE BAR OF CALIFORNIA