

FILED

2015 OCT 29 PM 12:16

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
Ana Valencia
DEPUTY

1 VANESSA HOLTON, State Bar No. 111613
2 LAWRENCE C. YEE, State Bar No. 84208
3 DANIELLE A. LEE, State Bar No. 223675
4 **OFFICE OF GENERAL COUNSEL**
5 **THE STATE BAR OF CALIFORNIA**
6 180 Howard Street
7 San Francisco, CA 94105-1639
8 Tel: (415) 538-2517
9 Fax: (415) 538-2321
10 E-mail: danielle.lee@calbar.ca.gov

11 Attorneys for Non-Party Witness
12 **THE STATE BAR OF CALIFORNIA**
13
14 **Exempt from Filing Fees Pursuant to**
15 **Government Code Section 6103**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF STANISLAUS**

13
14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 v.

18 FRANK CLIFFORD CARSON, et al.,

19 Defendants.

Case No. 1490969

**DECLARATION OF DANIELLE LEE IN
SUPPORT OF NON-PARTY WITNESS THE
STATE BAR OF CALIFORNIA'S MOTION TO
QUASH SUBPOENA DUCES TECUM OR IN
THE ALTERNATIVE REQUEST FOR
PROTECTIVE ORDER AND REQUEST FOR
CONTINUANCE**

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

FILE BY FAX
PER CRC 2.303

22 I, Danielle Lee, declare:

23 1. I am an attorney licensed to practice before all the courts in the State of California
24 and am employed as an Assistant General Counsel in the Office of General Counsel of The State
25 Bar of California. I have personal knowledge of the matters stated herein and if called as a
26 witness, I could and would competently testify thereto. As to those matters stated on
27 information and belief, I believe them to be true.
28

1 2. On October 20, 2015, The State Bar of California received a subpoena duces
2 tecum from defendant Baljit Singh Athwal in this pending criminal matter entitled *People of the*
3 *State of California v. Frank Clifford Carson*, Stanislaus County Superior Court, Case No.
4 1490969. The subpoena requested production of the following:

- 5 • Copies of complaints made by the Stanislaus County District Attorney, or any of
6 its employees, to the California State Bar regarding attorney Frank Clifford
7 Carson, CA St. Bar no. 136261, and all communications received from the
8 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.

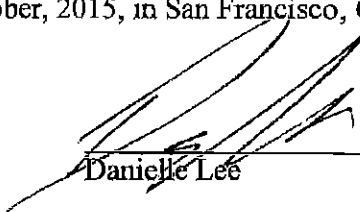
9 A true and correct copy of that subpoena is attached hereto as Exhibit 1.

10 3. On October 21, 2015, I called Martha Magana, counsel for Defendant Baljit Singh
11 Athwal, and spoke with her regarding the State Bar's objections to producing any nonpublic
12 privileged and confidential material. I explained that I intended to file a motion to quash . Ms.
13 Magana agreed to defer compliance with the subpoena until such time as the motion to quash
14 could be briefed and adjudicated. I additionally provided Ms. Magana an objection letter
15 outlining the authority for the State Bar's objections to the subpoena. Attached as Exhibit 2 is a
16 true and correct copy of the letter.

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

19 Executed this 29th day of October, 2015, in San Francisco, California.

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Danielle Lee

EXHIBIT 1

Rec'd in person
10/20/15 TLM
@ ~ 12:00 Noon

CR-125/JV-526

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MARTHA CARLTON-MAGANA 70391 1012 ELEVENTH STREET, SUITE 103 MODESTO, CA 95354		FOR COURT USE ONLY
TELEPHONE NO.: 209.524.5616 FAX NO. (Optional):		
E-MAIL ADDRESS (Optional):	ATTORNEY FOR (Name): BALJIT SINGH ATHWAL	Bdr comp
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS		
STREET ADDRESS: 1115 H STREET MAILING ADDRESS: CITY AND ZIP CODE: MODESTO, CA 95354 BRANCH NAME: DEPARTMENT 26		
CASE NAME: PEOPLE V. FRANK CLIFFORD CARSON et. al.		
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: Subpoena/Subpoena Duces Tecum		CASE NUMBER: 1490969

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

- To: (name or business) THE STATE BAR OF CALIFORNIA
- You must follow the court order(s) checked below:
 - Attend the hearing.
 - Attend the hearing and bring all items checked in c. below.
 - Provide a copy of these items to the court. (Do not use this form to obtain Juvenile Court records):
 - (1) _____
 - (2) _____
 - (3) _____
 - If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."
 - If someone else is responsible for maintaining the items checked in c. above, that person (the Custodian of Records) must also attend the hearing.
 - If this box is checked and you deliver all items listed above to the court within 5 days of service of this order, you do not have to attend court if you follow the instructions in item 5.

3. Court Hearing Date: _____ The court hearing will be at (name and address of court):
Date: 10/28/15 Time: 10:00 am Stanislaus County Superior Court Dept. 26
Dept.: 26 Rm.: Ste. C 1130 12th St Ste C, Modesto, CA 95354

Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.

4. The person who has required you to attend court or provide documents is:
Name: MARTHA CARLTON-MAGANA Phone No.: 209.524.5616
Address: 1012 ELEVENTH STREET, SUITE 103
Number, Street, Apt. No.
MODESTO, CA 95354
City
Date: 10/16/2015 Signature: [Signature]
State: _____ Zip: _____
Name and Title: _____

FOR COURT USE ONLY

CASE NAME: PEOPLE V. FRANK CLIFFORD CARSON et al.,	CASE NUMBER: 1490969
--	--------------------------------

- 5 a. Put all items checked in item 2c and your completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
- b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
- (1) Case name
 - (2) Case number
 - (3) Your name
 - (4) Hearing date, time, and department
- c. Seal and mail the envelope to the Court Clerk at the address listed in item 3 or The court address in the caption on page 1. You must mail these documents to the court within five days of service of this order.
- d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*. Do not include a copy of the documents.

— The server fills out the section below. —

Proof of Service of CR-125/JV-525

1. I personally served a copy of this subpoena on:
- Date: _____ Time: _____ a.m. _____ p.m.
- Name of the person served: _____
- At this address: _____
- After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on (date): _____
- Mailed from (city): _____
2. I received this order for service on (date): _____ and was not able to serve (name of person) _____ after (number of attempts) _____ attempt(s) because:
- a. The person is not known at this address.
 - b. The person moved and the forwarding address is not known.
 - c. There is no such address.
 - d. The address is in a different county.
 - e. I was not able to serve by the hearing date.
 - f. Other (explain): _____
3. Server's name: _____ Phone no. _____
4. The server (check one):
- a. is a registered process server.
 - b. is not a registered process server.
 - c. is a sheriff, marshal, or constable.
 - d. works for a registered process server.
 - e. is exempt from registration under Business and Professions Code section 22350(b).
5. Server's address: _____
- If server is a registered process server:
- County of registration: _____ Registration no.: _____

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: _____

 TYPE OR PRINT NAME OF SERVER

 SIGNATURE OF SERVER

PROVIDE THESE ITEMS

I. Copies of all 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.

EXHIBIT 2



**THE STATE BAR
OF CALIFORNIA**

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

Danielle A. Lee
Assistant General Counsel

TEL (415) 538-2517 • FAX (415) 538-2321

October 28, 2015

By UPS or Overnight Mail

Martha Magana, Esq.
1012 Eleventh Street, Suite 103
Modesto, CA 95354

Re: *People v. Frank Clifford Carson*, 10490969
Subpoena Duces Tecum for Production of Business Records
(Records of Frank Clifford Carson, SBN 136261)

Dear Ms. Magana:

This letter responds to your subpoena duces tecum in the above-referenced matter, which you issued on October 16, 2015, and which was personally served at the State Bar's San Francisco Office on October 20, 2015, and follows our conversation the following day. Thank you for speaking with me on the matter. As I mentioned to you on the phone, the State Bar is obligated to object to any alleged documents responsive to the subpoena that are covered by various confidentiality and privileges. Thank you for relieving the State Bar of the obligation to appear on October 28, 2015. You indicated that the case is currently in preliminary hearing, and that it was expected to last several weeks, such that you anticipate that there will be time for briefing and hearing prior to the conclusion of the hearing. We have contacted the Court to obtain a hearing date and was advised by the Clerk that the Judge would like to determine the hearing date at a later time, after the Motion is filed.

The purpose of this letter, therefore, is to outline the authorities in support of State Bar's objections to your subpoena. The substance of the motion will be the same arguments outlined below.

Subpoena Requests

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.*

Based on my review of your subpoena, and my conversations with you, it is my understanding that your subpoena actually seeks any complaints filed by the Stanislaus County District Attorney, as well as law enforcement who work in conjunction with the District Attorney. In particular, you seek the entire complaint and/or investigation file, including but not limited to

material submitted by the District Attorney and law enforcement in support of the complaint. With that understanding in mind, this letter constitutes the State Bar's objections and response to your subpoena.

Subpoena Compliance

Please find attached a courtesy copy of Mr. Carson's profile located on the State Bar's website. As you can see, Mr. Carson has no public record of discipline.

Subpoena Objections

The purpose of the remainder of this letter is to outline the State Bar's objections in order to preserve them in an abundance of caution, and to give you notice of the motion to quash. The substance of my motion will be the same arguments I outline here.

Preliminarily, the State Bar objects to your subpoena as overly broad, vague and ambiguous, especially with respect to the fifteen year time span, making it unduly burdensome upon third party The State Bar of California.

State Law Requires the State Bar to Object to Business Records Production.

Disciplinary Investigation Information is Privileged and Confidential.

As to allegations of misconduct, if any, that the State Bar has received against Mr. Carson that did not result in public discipline, the State Bar must and therefore objects to the production of business records, if any exist, based on unique State Bar proceeding confidentiality and privilege, official information privilege, constitutional privacy privilege, and attorney client and qualified work product privileges. Bus. & Prof. Code, §§ 6086.1 and 6094; California Evid. Code § 1040; Rules 2301 and 2302(a) of the Rules of Procedure of the State Bar; Rule 20 of the Rules of Procedure for Client Security Fund Matters; *Chronicle Publishing Company v. Superior Court* (1960) 54 Cal.2d 548; the California Constitution, Article 1, Section 1, and the attorney-client and qualified work product privileges.

Communications from complainants, informants and witnesses made to the State Bar in the course of State Bar investigations or proceedings are privileged. Bus. & Prof. Code § 6094. Likewise, all disciplinary investigations are confidential unless and until formal charges are filed against an attorney. Bus. & Prof. Code § 6086.1, subd. (b). This confidentiality prohibits public disclosure of any and all information that is not part of any formal disciplinary proceedings before the State Bar Court, which encompasses any and all records before a Notice to Show Cause issues. The State Bar's Board of Trustees ("Board") adopts and formulates the State Bar's Rules of Procedure. Bus. & Prof. Code §§ 6025 and 6086. The Board has adopted rules governing State Bar records and information confidentiality. State Bar Rules of Procedure 2301 and 2302(a). All of the Chief Trial Counsel Office's files and records are confidential. Rule of Procedure § 2301. Information concerning inquiries complaints or investigations is confidential. Rule of Procedure § 2302(a).

The State Bar Must Exercise Its Statutory Official Information Privilege.

The State Bar possesses statutory official information privilege. Evid. Code § 1040. Official information means information that a public employee acquires in confidence during the course of his duties not disclosed to the public prior to the time privilege is claimed. Evid. Code § 1040(a). The State Bar has statutory privilege to refuse to disclose official information and to prevent another from disclosing the same, if Congressional law or state statute forbids disclosure or preserving confidentiality outweighs the necessity of disclosure in the interest of justice. Evid. Code § 1040(b) Public interest dictates the information remain confidential. The State Bar's interest as a party in the outcome does not factor into the public interest.

Complaints against attorneys made to the State Bar -- including preliminary investigation information -- that do not otherwise result in discipline, as well as information that the State Bar does not use as part of a hearing or other public disciplinary proceeding, meet all requirements for being "official information." The State Bar maintains the legal privilege and statute requires the State Bar to refuse to disclose such information. Evid. Code § 1040(b)(1), and the Bus. & Prof. Code § 6094. Rule 4.4. Assuming, *arguendo*, disclosure serves subject litigation interests, the State Bar contends that the overall public interest in maintaining State Bar attorney disciplinary process integrity and efficiency outweighs such private needs. Evid. Code § 1040(b)(1), and the Bus. & Prof. Code § 6094.

The California Supreme Court Has Upheld the Bar's Privilege in the Public Interest

The California Supreme Court has held that where no discipline has been imposed against an attorney, the public interest requires that the State Bar maintain confidential its disciplinary files and information. Any such information, if it exists, remains privileged and confidential. In *Chronicle Publishing Company v. Superior Court* (1960) 54 Cal.2d 548, Victor E. Cappa, an attorney at law, brought a libel action against the Chronicle Publishing Company alleging the publication of a false and libelous article and resultant injury to Cappa's professional reputation. The Chronicle -- as part of its defense -- noticed a written interrogatories deposition of the State Bar and its Secretary seeking confidential information concerning Cappa's disciplinary "history" as part of its defense. The State Bar obtained an order excluding inquiry into its confidential files and the Chronicle sought mandamus. The Court made a number of observations about the State Bar disciplinary process nature and function that point to this confidentiality claim's continued viability under Evid. Code § 1040 and the State Bar Rules of Procedure:¹

¹ The Court's analysis of the evidentiary privilege was based upon Code of Civil Procedure section 1881, subdivision 5. Section 1881 was repealed by Statutes 1965, Chapter 299, Section 72. However, the provisions of Code of Civil Procedure Section 1881, subdivision 5 are now embodied in Evidence Code sections 1040-1042 (see Law Revision Commission Comment, Code Civ. Proc. § 1881 (Deerings 1973.))

- The State Bar accepts any and all complaints (many of which have absolutely no factual basis whatsoever).
- The State Bar has rule-making authority regarding the privileged and confidential nature of the records
- Preliminary investigations shall not be made public, and all board files, records and proceedings are confidential, and no information concerning them can be given without Board order or unless the accused attorney is disciplined.²
- Both the public and State Bar members benefit from disciplinary proceedings privilege.
- The Board reserves the right to release its information in the public interest.
- This limitation in nowise [sic] affects the Board's right to make its information privileged.

Chronicle, 54 Cal.2d at p. 570-573 (emphasis added); Bus & Prof. Code §§ 6086, 6025. The Court found that the privilege belongs to the State Bar. *Chronicle* at p. 573. The Court emphasized that disciplinary process integrity and informant protection is at issue when questioning opening State Bar disciplinary files. The "shielding" of an affected attorney's information disclosure was of secondary importance.

Thus, regardless of whatever benefit a third party could gain by releasing portions of State Bar disciplinary information, it cannot outweigh the importance of preserving disciplinary system integrity. That integrity maintained by encouraging the public to come forward with impunity to reveal all information they may have regarding Bar members' alleged dishonest or incompetent practices.

Complaining Witness and Respondents Have a State Constitutional Right To Privacy

Finally, State Bar disclosure of the information could violate the respondent's or complaining witnesses' (if any) state constitutional right to privacy. Article I, section 1 of the California Constitution. In *White v. Davis* (1975) 13 Cal.3d 757, 765, the California Supreme Court held that the constitutional provision was self-executing, and hence conferred upon all Californians a judicial right of action. *Id.* at p. 775. The Court went on to delineate the four principle "mischiefs" for which the privacy provision was enacted. *Id.* One of these "mischiefs" is "... improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party. . . ." *Id.* A California Court of Appeal

² *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.

has subsequently held that a student's complaint stated a cause of action for constitutional invasion of privacy where a university transmitted the student's transcript to the State Scholarship and Loan Commission without the student's consent. *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825, 830-832.

The type of information sought by the instant subpoena includes information that, if it exists at all, would have been provided in confidence to the State Bar for a specific purpose, i.e., for investigation and prosecution of possible disciplinary offenses. California constitutional privacy prohibits the State Bar's disclosure of any such information for an unrelated purpose as an invasion of privacy. To the extent any such information exists, disciplinary and investigatory-related information also often encompass highly personal information, the public disclosure of which could cause harm to the respondent's or complaining witness involved.

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.

The State Bar is not a party to this action and has no legal interest in the instant proceedings. The State Bar maintains a 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 regulatory processes, as well as the California constitutional right to privacy.

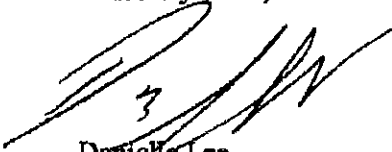
In conclusion, California evidentiary rules and privileges comprise a comprehensive statutory scheme that preserves and maintains attorney discipline process integrity. It is the State Bar of California's position that any information and/or documents that are not public record as part of any formal disciplinary proceeding otherwise remain privileged and confidential, and are, therefore, not subject to disclosure.

This letter constitutes the State Bar's formal objections and responses to your above-referenced subpoena. See *Monarch Healthcare v. Super. Ct.* (2000) 78 Cal. App. 4th 1282. I believe that the

Martha Magana, Esq.
October 28, 2015
Page 6

court will be able to come to a fair decision after hearing argument on the appropriate authorities and responsive arguments from you with regard to relevance.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Danielle Lee', with a stylized flourish at the end.

Danielle Lee
Assistant General Counsel

DAL/dal
enclosure

Wednesday, October 28, 2015

ATTORNEY SEARCH**Frank Clifford Carson - #136261****Current Status: Active**

This member is active and may practice law in California.

See below for more details.

Profile Information*The following information is from the official records of The State Bar of California.*

Bar Number:	136261		
Address:	811 15th St Modesto, CA 95354-1113 Map it	Phone Number:	(209) 549-0984
		Fax Number:	(209) 522-4024
		e-mail:	frankccarson@comcast.net
County:	Stanislaus	Undergraduate School:	No Information Available;
District:	District 5		
Sections:	None	Law School:	Lincoln Univ; CA
Certified Legal Specialty:	Criminal Law (State Bar of California)		

Status History

Effective Date	Status Change
Present	Active
12/7/1988	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law**Disciplinary and Related Actions**

<http://members.calbar.ca.gov/fal/Member/Detail/136261>

Overview of the attorney discipline system.

This member has no public record of discipline.

Administrative Actions

This member has no public record of administrative actions.

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