

5058 Witnesses, Notices to Attend, and Subpoenas

(a)

A party shall arrange for its witnesses to participate in the hearing.

(b)

An administrative law judge may issue a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum on his or her own motion, and shall do so upon the proper application of a party.

(c)

An application for a notice to attend or a subpoena shall include the name of the witness and a showing of the need therefor. An application for a notice to attend shall also include the address of the witness.

(d)

An application for a notice to attend and produce or for a subpoena duces tecum shall give the name of the witness, shall specify the documents or things desired to be produced and show the materiality thereof to the issues involved in the proceeding, and shall state that, to the best of the applicant's knowledge, the witness has such documents or things in his or her possession or under his or her control. An application for a notice to attend and produce shall also give the address of the witness, and, if it seeks personal records, shall give the name and address of the consumer. An application for a subpoena duces tecum shall be filed by affidavit.

(e)

The agency shall assist a party in preparing an application for a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum.

(f)

A notice to attend and produce or a subpoena duces tecum which seeks personal records of a consumer shall include a statement that the consumer has the right to object thereto by making an application for a protective order, including an application to quash, at the hearing.

(g)

A party shall arrange for the delivery of a subpoena or subpoena duces tecum issued to it. Except as provided in Government Code sections 68097.1 through 68097.8, delivery of a subpoena or subpoena duces tecum is made by delivering a paper copy to the witness in person a reasonable time before the hearing. A paper copy of any application for subpoena duces tecum shall be delivered with a subpoena duces tecum. Any natural person may deliver a subpoena or a subpoena duces tecum. A party shall send to the consumer, a reasonable time before the hearing, a copy of any subpoena duces tecum issued to it which seeks personal records of the consumer, along with a copy of any application for such a subpoena duces tecum. A party shall file an affidavit showing that any subpoena or subpoena duces tecum issued to it, along with any application for any such subpoena duces tecum, was delivered to the witness, and, if applicable, sent to the consumer.

(h)

The agency shall send a notice to attend or a notice to attend and produce to the witness. The agency shall send to the consumer, a reasonable time before the hearing, a copy of any notice to attend and produce which seeks personal records

of the consumer.

(i)

When a witness does not comply with a notice to attend or a notice to attend and produce, an administrative law judge may issue a subpoena or a subpoena duces tecum to compel compliance, on his or her own motion or upon the application of a party.

(j)

A witness who complies with a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum, is entitled to the fees and mileage set forth in Section 68093 of the Government Code provided a written demand therefor is submitted to the administrative law judge at the hearing or filed not later than 10 days after the date on which the witness participated in the hearing. If not so claimed within that time, no fees or mileage shall be allowed.

(k)

A notice to attend and produce or a subpoena duces tecum for a hearing scheduled as an electronic hearing for a witness shall direct the witness to file the documents or things sought a reasonable time before the hearing.

(l)

Unless the subpoena duces tecum or the notice to attend and produce provides to the contrary, a custodian of documents that are the subject of a subpoena duces tecum or of a notice to attend and produce may comply by filing the documents or things a reasonable time before the hearing, together with a statement authenticating them.

(m)

Any interested person may object to the terms of a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum by making an

application for a protective order, including an application to quash, at the hearing. An administrative law judge shall resolve the objection and may make other orders that are appropriate to protect from any unreasonable or oppressive demand, including any violation of the right to privacy. Documents or things that are the subject of a subpoena duces tecum or of a notice to attend and produce shall be made available at the hearing, notwithstanding the intention of an interested person to so object, so as not to delay the hearing in the event an administrative law judge overrules the objection in whole or in part.

(n)

Subpoenas and subpoenas duces tecum shall be enforced in accordance with rule 5070.