

CALIFORNIA GAMBLING CONTROL COMMISSION
INITIAL STATEMENT OF REASONS
CGCC-GCA-2022-06-R

HEARING DATE: **None Scheduled**

SUBJECT MATTER OF PROPOSED REGULATIONS: Subpoenas

SECTIONS AFFECTED: California Code of Regulations, Title 4, Division 18:
Sections 12014, 12052, 12060, and 12118

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the Gambling Control Act (Act).¹ The Commission is authorized to adopt regulations governing applications for licenses, permits, registrations, findings of suitability, or other approvals,² including in connection with the consideration of an application at an evidentiary hearing.³

The Commission’s regulations provide comprehensive procedures for evidentiary and non-evidentiary hearings and related topics. At a Commission meeting, the Commission may, among other actions, issue or deny a license, temporary license, interim license, registration, permit, finding of suitability, renewal, or other approval; or it may elect to hold an evidentiary hearing if issues are identified that require additional information or consideration related to an applicant’s suitability for licensure. For evidentiary hearings on applications, the regulations require the hearing to be conducted as a Gambling Control Act hearing (GCA hearing), unless the Commission determines the hearing should be conducted as an Administrative Procedure Act hearing (APA hearing).

This proposed regulatory action adds requirements to the service of subpoenas and will clarify discovery related procedures available to parties to a GCA hearing. They include:

1. Clarifying that all subpoenas and subpoenas duces tecum must be served in the manner provided by Government Code section 11450.20 and requiring that a copy be served on the presiding officer.
2. Allowing the presiding officer to order, on their own motion, to enforce, modify, or quash a subpoena or subpoena duces tecum.

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

² Business and Professions Code section 19824, subdivision (a)

³ Business and Professions Code section 19870

3. Clarifying the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, and that discovery is not permitted upon a member of the Commission or an advisor of the Commission.

PROBLEM ADDRESSED:

The evolution of GCA hearings has required that clarifications be made to the Commission's regulations to ensure that the presiding officer receives a copy of any subpoena or subpoena duces tecum and can order, on their own motion, to enforce, modify, or quash a subpoena or subpoena duces tecum. Clarification that the existing regulations provide the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing is needed to avoid parties propounding civil-litigation type discovery on each other, and to clarify that discovery is not permitted upon a member of the Commission or an advisor of the Commission except in limited circumstances. Without regulations to properly administer these provisions, the statute lacks the necessary clarity and specificity.

PURPOSE:

This proposed action has been prepared to clarify procedures related to GCA hearings in order to increase administrative economy.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

This proposed action will avoid needless consumption of time to deal with unwarranted subpoena and subpoenas duces tecum. In addition, it makes additional clarifications regarding the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, which will avoid discovery disputes and clarify that discovery is not permitted upon a member of the Commission or an advisor of the Commission except in limited circumstances.

PROPOSED ACTION:

This proposed action will make changes within the California Code of Regulations, Title 4, Division 18 as follows:

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Amend 12014. Subpeonas.

Section 12014 provides to the Commission's guidelines for subpoenas and subpoenas duces tecum.

Subsection (a) provides that the issuance and enforcement of a subpoena or subpoena duces tecum in any adjudicative proceeding held pursuant to the Act for which a notice of hearing has been issued will be in accordance with Article 11 (commencing with section 11450.05) and Article 12 (commencing with section 11455.10), respectively, of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Further, the issuance of a subpoena or subpoena duces tecum may be on the form entitled "Subpoena," CGCC-CH1-02 (New 05/20), or in a manner that otherwise complies with Article 11 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Lastly, all subpoenas and subpoenas duces tecum must be served at

least 30 days prior to the date specified for commencement of the hearing in the notice of hearing, or the date specified in the subpoena for the appearance of a witness or the production of records.

Subsection (a) has been revised to provide updates to the requirements of how a subpoena and/or subpoena duces tecum is served. Specifically, it requires service pursuant to Government Code section 11450.20 with a copy to the presiding officer. The added requirement clarifies the manner of service and requires that a copy be provided to the presiding officer when an attorney for a party issues a subpoena pursuant to Government Code section 11450.20 so that the presiding officer is aware of it. This amendment is necessary to ensure proper procedural protections are in place to preserve the integrity of the evidentiary hearing proceedings by enabling the presiding officer to timely exercise its authority under this provision.

Subsection (b) provides that any motion made pursuant to subdivision (a) of section 11450.30 of the Government Code must be filed with the presiding officer no later than 15 days prior to the date specified for appearance or for the production of records. The party bringing the motion must serve copies of the motion on all parties and persons who are required by law to receive notice of the subpoena. Any response to the motion must be filed with the presiding officer and served no later than 5 days before the motion is scheduled to be heard. Upon a timely motion of a party or a witness, after notice to the parties and an opportunity to be heard, upon a showing of good cause, the presiding officer may order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.

Because Section 12060, subsection (g), is being added, which delineates the methods of discovery between the applicant and complainant to a GCA hearing, and that discovery is not permitted upon a Commission member or an advisor of the Commission, this provision, has been revised to provide that the presiding officer may also, on their own motion (*suo moto*), order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.

Amend 12052. Commission Meeting; General Procedures; Scope; Notice; Rescheduling of Meeting.

Section 12052 provides information on how the Commission issues notices for the consideration of applications.

Subsection (c) provides what the Commission will include in a notice for any license, permit, finding of suitability, renewal, or other approval. Subparagraph (B) of paragraph (2) provides that if the application is to be scheduled at an evidentiary hearing, information must be provided regarding the date, time, and location of the pre-hearing conference. This section is modified to update a reference due to a provision being moved. This is a non-substantive change.

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS

Amend 12060. GCA Hearings.

Section 12060 provides the specifics of a GCA hearing.

Subsection (f) specifies that the complainant will provide to the applicant, at least 45 calendar days prior to the GCA hearing, and the applicant must provide to the complainant, at least 30 calendar days prior to the GCA hearing, a list of items.

- Subparagraph (4) provides other written comments and writings must be provided. This provision is amended to include “other items” that contain relevant evidence. This provision is necessary in ensuring that all items tangible and intangible are covered in the pre-GCA hearing disclosures.

New subsection (g) provides that the exclusive right to and method of discovery between the applicant and complainant during a GCA hearing is as provided in subsection (f). Additionally, it provides that discovery is not permitted upon a member of the Commission or an advisor of the Commission except in limited circumstances. This is necessary to ensure the parties are made aware that all civil-litigation type discovery is not authorized. This amendment is consistent with Government Code section 11507.5 as applied to APA hearings. This limitation also clarifies that a party may still subpoena a Commission member or advisor of the Commission for a GCA hearing if the information to be gained is direct personal factual information related to material issues and not available through any other source. This clarification is necessary to ensure that applicants are not denied access to information in support of their application at the hearing.

Subsection (l), renumbered to subsection (m), provides that the complainant and applicant will have the right to call and examine witnesses under oath, introduce evidence, and cross-examine witnesses. This section is modified to update a reference due to a provision being moved. This is a non-substantive change.

Existing subsections (g) through (n) are renumbered to subsections (h) through (o). These are non-substantive changes.

CHAPTER 2 LICENSES AND WORK PERMITS

ARTICLE 1. INITIAL AND RENEWAL LICENSES AND WORK PERMITS

Amend 12118. Objection to Local Work Permits.

Section 12118 provides a series of general provisions that apply to the Commission’s ability to object to the issuance of a work permit by a local jurisdiction.

Subsection (c) provides the manner in which the Executive Director will schedule a GCA hearing. Subparagraph (3) is modified to update a reference due to a provision being renumbered. This is a non-substantive change.

REQUIRED DETERMINATIONS:

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon: None.

BUSINESS IMPACT:

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony: This proposed action imposes no mandatory requirement on businesses. It does not remove or significantly alter any existing process.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed action does not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the definition of a small business as defined by the federal Small Business Administration was utilized.

The basis for this determination is that this proposed action imposes no mandatory requirement on businesses or individuals which requires monetary expenditures. Further, it does not significantly change the Commission's current practices and procedures. The proposed action does not remove or significantly alter any existing process.

HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of controlled gambling.

WORKER SAFETY:

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

STATE'S ENVIRONMENT:

It has been determined that the proposed action will not affect the State's environment because it has no relevance on environmental issues.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed. No reasonable alternative would be as effective as and less burdensome to affected private persons than the proposed action, nor would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected: No reasonable alternative has been developed or otherwise identified and brought to the attention of the Commission.