

Victim Compensation and Government Claims Board

Persons Erroneously Convicted of Felonies Regulations

RESPONSES TO COMMENTS

February 3, 2010 – February 17, 2010

PROPOSED REG	COMMENTS & PROPOSED REVISIONS	DEPARTMENT RESPONSE
N/A	<p>On page 5 of the Responses to Comments, the issue at hand concerns subpeonas [sic] and Section 634(c)(4). The department response is that Cal. Admin. Code, Title 2, Section 615.1 exempts the Board from the formal provisions of the APA (Govt. Sections 11500-11529) and therefore Gov. Code, Section 11450.20(a) does not apply. We would like clarification on the exemption under Section 615.1 since it appears not to include Section 11450.</p>	<p>The Board's authority to <u>permissively issue</u> subpoenas is found in Government Code section 13910 that states, in part, that the Board's executive officer, or his or her designee, . . . <u>may</u> administer oaths, certify to all official acts, and <u>issue subpoenas</u> for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.</p> <p>The Board is also provided authority to <u>permissively issue</u> subpoenas in Government Code section 11450.05(b). This section authorizes agencies to issue subpoenas in adjudicative proceedings <u>that are not required to be conducted under Chapter 5</u> (commencing with Government Code section 11500). Government Code sections 11500 et seq. pertain to adjudicative proceedings that are heard by administrative law judges on the staff of the Office of Administrative Hearings. Board hearings are conducted by Board hearing officers.</p> <p>Government Code section 11450.20(a) <u>requires</u> that subpoenas and subpoenas duces tecum be issued by the agency or presiding officer at the request of a party, or by the attorney of record for a party. Government Code section 11450.05(a) defines this requirement and makes it applicable to adjudicative proceedings required to be conducted under Chapter 5 (commencing with Government Code section 11500). As explained above, Board hearings are not conducted by administrative law judges on the staff of the Office of Administrative Hearings.</p> <p>California Code of Regulations, Title 2, section 615.1, states that in hearings conducted by the Board:</p>

(a) The formal hearing provisions of the Administrative Procedure Act (Gov. Code, §§ 11500-11529) do not apply.

(b) The alternative dispute procedures of the Administrative Procedure Act (Gov. Code, §§ 11420.10-11420.30) do not apply.

(c) The declaratory decision provisions of the Administrative Procedure Act (Gov. Code, §§ 11465.10-11465.70) do not apply.

Because the Board is exempt from the formal hearing provisions of the Administrative Procedure Act, the alternative dispute procedures of the Administrative Procedure Act, and the declaratory decision provisions of the Administrative Procedure Act, the Board may, but is not required to, issue subpoenas.

Although the Board does not currently issue subpoenas, alternative means are available to obtain evidence in support of a claim. Such evidence includes, but is not limited to, depositions, interrogatories, requests for admissions, hearsay and other evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that might make improper the admission of the evidence over objection in a civil trial.¹

¹ Gov. Code, § 13959.