



The State Bar of California

OPEN SESSION AGENDA ITEM 703 JULY 2022

DATE: July 21, 2022

TO: Members, Board of Trustees

FROM: Randall Difuntorum, Program Director, Office of Professional Competence
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SUBJECT: Client Trust Account Protection Program Proposed Rules Return from Public Comment, Request for Adoption and Public Comment Authorization

EXECUTIVE SUMMARY

During its March 2022 meeting, the State Bar Board of Trustees approved a 60-day public comment period to gather input on proposed new Rule of Court 9.8.5 and proposed amended Rules of Professional Conduct 1.15 and 1.4. Proposed Rule of Court 9.8.5 grants the State Bar the authority to implement the Client Trust Account Protection Program (CTAPP) and the proposed amendments to rules 1.15 and 1.4 to clarify the duties regarding safekeeping of client funds and communication regarding receipt of client funds. The rules were issued for public comment on March 29, 2022, and the comment period ended on May 28, 2022. A total of 457 comments were received.

In response to the public comments received, staff recommends nonsubstantive revisions to proposed Rule of Professional Conduct 1.4 and substantive revisions to proposed Rule of Professional Conduct 1.15 and Rule of Court 9.8.5, as discussed below. Should the Board of Trustees approve these recommended revisions, State Bar staff requests that the Board adopt proposed rule 1.4 for submission to the Supreme Court for approval and authorize proposed rules 1.15 and 9.8.5 for an additional 45-day public comment circulation.

In addition, staff has prepared a new State Bar rule, rule 2.5, to implement the CTAPP reporting requirements outlined in the first phase of the program. Staff requests that the Board authorize a 45-day public comment circulation of this proposed rule, with the understanding that this

State Bar rule would only be considered for adoption by the Board if the Supreme Court ultimately approves the CTAPP enabling rule, proposed Rule of Court 9.8.5.

BACKGROUND

As issued for public comment at the Board's March 2022 meeting, the new proposed Rule of Court 9.8.5 would grant the State Bar of California the authority to implement the key elements of the CTAPP, including annual reporting requirements.

Public comment was also authorized on amendments to Rules of Professional Conduct 1.15 and 1.4, which strengthen and clarify attorney duties for the handling of entrusted funds and property and for communicating with clients, respectively.

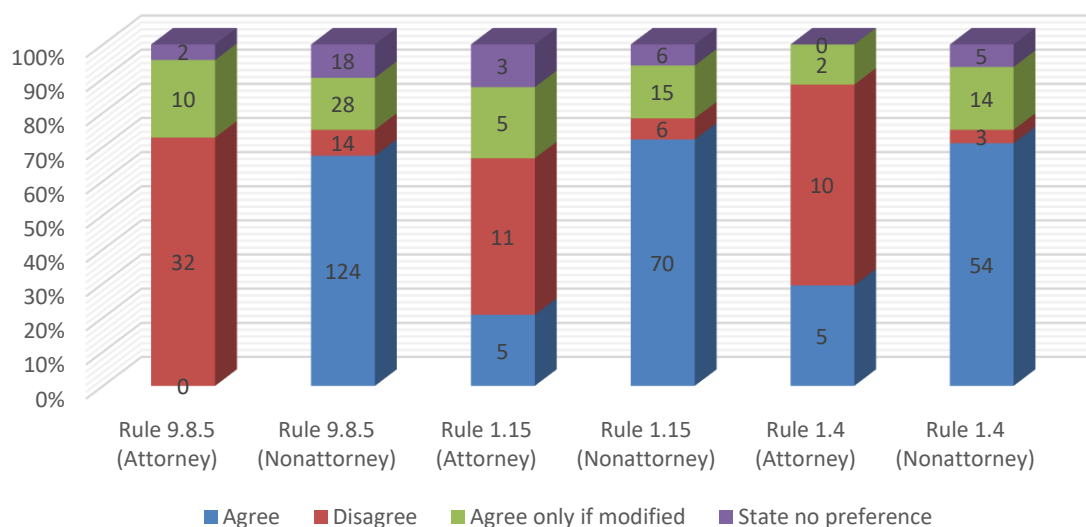
The majority of the public comments received during the 60-day public comment period were in support of the proposed rules. After consideration of the comments, each of the proposed rules were revised. In addition, staff drafted a new State Bar rule 2.5 which addresses the administrative aspects of CTAPP Phase I reporting requirements, including annual registration of accounts, annual certification of compliance with Rule of Professional Conduct 1.15, completion of a self-assessment on client trust accounting, enrollment as an active licensee for noncompliance, and noncompliance fees.

DISCUSSION

OVERVIEW OF PUBLIC COMMENTS RECEIVED

The State Bar received 457 public comments in total concerning the proposed new and amended rules. Of these comments, 230 were received regarding Rule of Court 9.8.5, 127 were received regarding Rule of Professional Conduct 1.15, and 100 were received regarding Rule of Professional Conduct 1.4. The majority of the commenters agreed with the proposed new and amended rules. Comments in support of the proposed rules were submitted primarily by nonattorney commenters. The commenters that disagreed with the proposed changes were mostly attorneys. Provided below is a breakdown of the public comments received by attorneys and nonattorneys. (The data below only reflects the positions of those who indicated whether they are attorneys or nonattorneys and omits the position of those who did not.)

Attorney vs. Nonattorney Positions on Each Proposed Rule



Comments in support of the proposed rules generally observed that these efforts are a reasonable way to protect the public, would hold attorneys to a higher standard, and would increase accountability and transparency to the benefit of clients. Further, they stated that these changes provide better guidance to attorneys, will help reduce attorney-client disputes, and that the additional oversight may reduce misappropriations of client funds. Several commenters expressed that these rules would have been beneficial to them in their past legal matters.

The commenters who disagreed with the proposed rule or agreed only if modified indicated that the CTAPP: (1) is overly burdensome for attorneys who are largely compliant; (2) will raise the costs of practicing law and, in turn, raise fees to clients and discourage the practice of law in California; and (3) will not advance client protection from intentional theft. Some commenters opined that the CTAPP is an overreaction to the audit report on closed discipline cases against Thomas Girardi and that the State Bar should focus its resources on investigating lawyers who are accused of misconduct.

Following consideration of the public comments, staff prepared proposed revisions of each of the proposed rules. These revisions are summarized below.

RULE OF COURT 9.8.5

A total of 230 comments were received regarding proposed Rule of Court 9.8.5.¹ Of these, 125 commenters agreed with the proposed rule, 38 agreed only if modified, 47 disagreed with the proposed rule, and 20 commenters stated no preference. The comments in support of the

¹ The public comments received on proposed Rule of Court 9.8.5 are available online at <https://bit.ly/CTAPP-PC>.

proposed rule were submitted by nonattorney commenters with attorney commenters largely disagreeing with the proposed rule.

Staff propose the following revisions to proposed Rule of Court 9.8.5. (The clean and redline text of Rule of Court 9.8.5 is provided as Attachment A.)

1. For subdivisions (a)(1) through (a)(5), adding title captions to help distinguish among these enumerated requirements;
2. In subdivision (a)(1), adding the phrase “at any time during the prior year” and replacing the present tense verb “are” with the past tense verb “were” in two instances to clarify that the annual reporting and registration requirements are applicable if a licensee was responsible for trust funds at any time during the reportable year;
3. In subdivision (a)(1), clarifying that this subdivision includes two separate annual requirements—annual reporting of whether or not a licensee was responsible for any entrusted funds at any time during the prior year, and, if so, an annual certification of a licensee’s knowledge about, and compliance with, applicable trust accounting rules and statutes;
4. Consistent with the changes to subdivision (a)(1), subdivision (a)(2), clarifying that trust account registration is an annual requirement for any licensee who was responsible for trust funds at any time in the reportable time period by adding the phrase “at any time during the prior year,” replacing the present tense verb “are” with the past tense verb “were,” and adding the term “annually” before “register”;
5. In subdivision (a)(2), replacing phrase “responsible for a client trust account” with “responsible for client funds and funds entrusted by others” to be consistent with the revised language in subdivision (a)(1);
6. In subdivision (a)(2), replacing “in an online form using a secure system provided by the State Bar for such reporting” with “in a manner prescribed by the State Bar for such reporting”;
7. In subdivision (a)(3), clarifying that the annual self-assessment is a requirement for any licensee who was responsible for trust funds at any time in the reportable time period by adding the phrase “at any time during the prior year” and replacing present tense verb “are” with the past tense verb “were”;
8. In subdivision (a)(3), specifying that the required self-assessment would be on the subject of client trust accounting duties and practices;
9. In subdivision (a)(4), clarifying that a licensee’s completed compliance review must be submitted to the State Bar;

10. In subdivision (a)(5), replacing the reference to an “audit” with an “investigative audit” to distinguish this audit process from the compliance review that might be required under subdivision (a)(4);
11. In subdivision (b), specifying that the authorization for the Board to adopt rules and regulations for the implementation of the CTAPP includes adopting a rule or regulation that defines a licensee who is responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct; and
12. Adding a new subdivision (d) providing that the State Bar has the authority to set and collect appropriate fees and penalties.

RULE 1.15

A total of 127 comments were received regarding the proposed revisions to Rule of Professional Conduct 1.15.² Of these, 76 commenters agreed with the proposed revisions, 21 agreed only if modified, 21 disagreed with the proposed revisions, and nine commenters stated no preference. The comments in support of the proposed rule were submitted primarily by nonattorney commenters with most of the attorney commenters disagreeing with the proposed rule. However, a minority of the attorney commenters indicated that they agreed with the proposed rule or agreed if modified.

Staff propose the following revisions to Rule of Professional Conduct 1.15. (The clean and redline text of rule 1.15 is provided as Attachment B.)

1. In paragraph (f), adding language to address the burden of proof for rebutting a presumed violation of a lawyer’s duty to promptly distribute funds. The added language specifies that a presumed violation may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds as required;
2. In paragraph (f), deleting the concept that a rebuttable presumption does not arise if there is “a request from the client or other person” that the funds or property continue to be held by the lawyer,” and adding the concept that the presumption does not arise where “the lawyer, and the client or other person agree in writing” that the funds or property “will” continue to be held by the lawyer;
3. In paragraph (g), clarifying that the concept of “undisputed funds or property” does not treat such funds or property as an indivisible whole. Instead, there can be a portion of funds or property that is undisputed where other portions are subject to a dispute that must be resolved to determine the entitlement of the client or other person to those other portions;

² The public comments received on proposed rule 1.15 of the Rules of Professional Conduct are available online at <https://bit.ly/CTAPP-PC>.

4. Replacing the reference to unresolved “issues” with a reference to unresolved “disputes” in the first sentence of paragraph (g) and in the second sentence of Comment [6];
5. In paragraph (g), streamlining the language of the second sentence that identifies examples of disputes that require a resolution in order to determine entitlement to funds or property, adding a reference to a bank’s “fees” in connection with the identification of a bank’s policies for clearing a check or draft as one example of a potential issue that might delay prompt distribution of entrusted funds, and moving this sentence to become a new Comment [7];
6. In Comment [4], clarifying that a fee or expense that is not intended to fall under paragraph (d)(7) is a fee or expense that the client “has agreed to pay in advance.” Regarding the reference to a client file or other property, conforming to revisions made to paragraph (f), which state that the presumption does not arise where “the lawyer, and the client or other person has agreed in writing that the lawyer will keep or maintain” such other property;
7. Adding a new Comment [5] explaining that if a presumed violation is rebutted, then a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption; and
8. In Comment [6], clarifying that the duty to take steps to resolve issues of entitlement to trust funds or property is a generalized obligation and not one that is dependent upon paragraph (f)’s provision for a presumed violation.

RULE 1.4

A total of 100 comments were received regarding the proposed revisions to Rule of Professional Conduct 1.4.³ Of these, 60 commenters agreed with the proposed revisions, 19 agreed only if modified, 16 disagreed with the proposed revisions, and 5 commenters stated no preference. The comments in support of the proposed rule were submitted primarily by nonattorney commenters. Most of the attorney commenters disagreed with the proposed rule, although there were some who agreed or agreed if modified.

Staff proposes that Comment [1] be revised to clarify that not every receipt of funds or property is a significant development by adding the qualifier “ordinarily” to this language. In addition, the reference to the duties in rule 1.15 of the Rules of Professional Conduct is modified to avoid implying that the “ordinarily” qualifier applies to those duties. (The clean and redline text of rule 1.4 is provided as Attachment C.)

³ The public comments received on proposed rule 1.4 of the Rules of Professional Conduct are available online at: <https://bit.ly/CTAPP-PC>.

PROPOSED NEW STATE BAR RULE 2.5

Staff has prepared a proposed new State Bar rule, rule 2.5, to implement the CTAPP reporting requirements outlined in the first phase of the program. (The text of rule 2.5 is provided as Attachment D.) It is important to note that Rule of Court 9.8.5 is an enabling rule, which only provides that the State Bar “may impose” CTAPP requirements. Accordingly, adoption of a State Bar rule is necessary to actually impose the CTAPP requirements.

New State Bar rule 2.5 addresses the following issues for the administration of the first phase of the CTAPP program.

- Definition of a licensee who is responsible for client funds and funds entrusted by others under the provisions of rule 1.15.
- Definition of a trust account.
- Definition of an annual self-assessment.
- Definition of the reportable time period.
- CTAPP reporting requirements and deadline.
- Notice of noncompliance.
- Enrollment as an inactive licensee for noncompliance.
- Noncompliance fees.⁴
- Reinstatement following noncompliance.

Staff requests that the Board authorize a 45-day public comment circulation of this proposed rule, including the proposed noncompliance fees, with the understanding that this State Bar rule would only be considered for adoption by the Board if the Supreme Court ultimately approves the CTAPP enabling rule, proposed Rule of Court 9.8.5.

FISCAL/PERSONNEL IMPACT

If proposed Rule of Court 9.8.5 is ultimately approved by the Supreme Court, and thereafter, proposed State Bar rule 2.5 is adopted by the Board, then an increased workload for State Bar staff is anticipated. These changes would likely impact the Office of Information Technology (IT) and the Mission Advancement & Accountability Division (MAAD), and the to-be-established Division of Regulation. For example, it is anticipated that IT and MAAD would work together to implement the trust account registration system, the client trust accounting self-assessment as a survey accessible through a licensee’s My State Bar Profile, and to manage and analyze the data collected. Similarly, it is anticipated that the Division of Regulation would process a licensee’s noncompliance with CTAPP requirements by enrolling licensees as inactive and later transferring licensees back to active status once compliance is completed and noncompliance fees are paid. It is anticipated that the staff and resource needs associated with implementing

⁴ It is anticipated that the CTAPP noncompliance fees will mirror the types of noncompliance fees and fee amounts used for MCLE noncompliance. See MCLE rules 2.71 and 2.93. See also State Bar Rules [Appendix A \(Schedule of Charges and Deadlines\)](#). If proposed Rule of Court 9.8.5 is approved by the Supreme Court, staff will recommend appropriate changes to the Schedule of Charges and Deadlines to implement the CTAPP fees.

the registration, certification of compliance, and self-assessment aspects of the CTAPP can be addressed through the existing budget. Additional resources will be needed to advance other aspects of CTAPP, namely compliance reviews and audits.

The amount of noncompliance fees that might be collected is not known at this time, but this revenue would offset some CTAPP-related costs.

AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

This agenda item requests Board adoption of proposed amended rule 1.4 of the California Rules of Professional Conduct.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Updates are being made to this section of the agenda item template to reflect the 2022–2027 Strategic Plan.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, following consideration of public comments received, adopts proposed amended rule 1.4 of the Rules of Professional Conduct as set forth in Attachment C, and directs staff to submit the rule to the Supreme Court of California with a recommendation that the proposed rule be approved; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes a 45-day public comment circulation of proposed amended rule 1.15 of the Rules of Professional Conduct, proposed new Rule of Court 9.8.5, and proposed new State Bar rule 2.5.

ATTACHMENTS LIST

- A.** Proposed New Rule of Court 9.8.5, Clean and Redline
- B.** Proposed Amended Rule 1.15 of the Rules of Professional Conduct, Clean and Redlines
- C.** Proposed Amended Rule 1.4 of the Rules of Professional Conduct, Clean and Redlines
- D.** Proposed New Rule 2.5 of the State Bar Rules, Clean

Proposed New Rule 9.8.5 of the California Rules of Court
(Clean Version)

Rule 9.8.5 State Bar Client Trust Account Protection Program

(a) Client trust account protection program requirements

The State Bar of California must establish and administer a Client Trust Account Protection Program for the protection of client funds held in trust by a licensee that facilitates the State Bar's detection and deterrence of client trust accounting misconduct. Among the requirements that the State Bar may impose under this program are the following:

- (1) Annual Trust Account Certification - All licensees must annually (a) report whether or not, at any time during the prior year, they were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct and (b) if they were responsible, certify that they are knowledgeable about, and in compliance with, applicable rules and statutes governing client trust accounts and the safekeeping of funds entrusted by clients and others;
- (2) Annual Trust Account Registration - All licensees who were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must, annually, register each and every trust account in which the licensee held such funds at any time during the prior year by identifying account numbers and financial institutions in a manner prescribed by the State Bar for such reporting;
- (3) Annual Self-Assessment - All licensees who were responsible, at any time during the prior year, for a client trust account under the provisions of rule 1.15 of the Rules of Professional Conduct must complete an annual self-assessment on client trust accounting duties and practices;
- (4) Compliance Review - If selected by the State Bar, a licensee must complete and submit to the State Bar a client trust accounting compliance review to be conducted by a certified public accountant at the licensee's expense; and
- (5) Additional Actions - If selected by the State Bar, an additional action or actions based on the results of a compliance review may include an investigative audit, a notice of mandatory corrective action, and a referral for disciplinary action.

(b) Authorization for the Board of Trustees of the State Bar to adopt rules and regulations

The Board of Trustees of the State Bar is authorized to formulate and adopt such rules and regulations as it deems necessary and appropriate to comply with this rule, including a rule or

regulation that defines a licensee who is responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct.

(c) Failure to comply with program

A licensee who fails to satisfy the requirements of this program must be enrolled as an inactive licensee of the State Bar under the rules to be adopted by the Board of Trustees of the State Bar. Inactive enrollment imposed for noncompliance with the requirements of this program is cumulative and does not preclude a disciplinary proceeding or other actions for violations of the State Bar Act, the Rules of Professional Conduct, or other applicable laws.

(d) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

Proposed New Rule 9.8.5 of the California Rules of Court
(Redline Comparison to the Version Circulated for Public Comment)

Rule 9.8.5 State Bar Client Trust Account Protection Program

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The State Bar of California must establish and administer a Client Trust Account Protection Program for the protection of client funds held in trust by a licensee that facilitates the State Bar's detection and deterrence of client trust accounting misconduct. Among the requirements that the State Bar may impose under this program are the following:

- (1) Annual Trust Account Certification - All licensees must annually (a) report whether or not, at any time during the prior year, they ~~are~~ were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct; and (b) if they ~~are~~ were responsible ~~then they must~~, certify that they are knowledgeable about, and in compliance with, applicable rules and statutes governing client trust accounts and the safekeeping of funds entrusted by clients and others;
- (2) Annual Trust Account Registration - All licensees who ~~are~~ were responsible for a client ~~trust account~~ funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must annually register each and every trust account ~~for in~~ which ~~they the licensee are responsible~~ held such funds at any time during the prior year by identifying account numbers and financial institutions in a manner prescribed ~~an online form on a secure system provided~~ by the State Bar for such reporting;
- (3) Annual Self-Assessment - All licensees who ~~are~~ were responsible, at any time during the prior year, for a client trust account under the provisions of rule 1.15 of the Rules of Professional Conduct must complete an annual self-assessment on client trust accounting duties and practices;
- (4) Compliance Review - If selected by the State Bar, a licensee must complete and submit to the State Bar a client trust accounting compliance review to be conducted by a certified public accountant at the licensee's expense; and
- (5) Additional Actions - If selected by the State Bar, an additional action or actions based on the results of a compliance review may include an investigative audit, a notice of mandatory corrective action, and a referral for disciplinary action.

(b) Authorization for the Board of Trustees of the State Bar to adopt rules and regulations

The Board of Trustees of the State Bar is authorized to formulate and adopt such rules and regulations as it deems necessary and appropriate to comply with this rule, including a rule or

regulation that defines a licensee who is responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct.

(c) Failure to comply with program

A licensee who fails to satisfy the requirements of this program must be enrolled as an inactive licensee of the State Bar under the rules to be adopted by the Board of Trustees of the State Bar. Inactive enrollment imposed for noncompliance with the requirements of this program is cumulative and does not preclude a disciplinary proceeding or other actions for violations of the State Bar Act, the Rules of Professional Conduct, or other applicable laws.

(d) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons*

(Clean Version)

- (a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial* relationship between the client or the client’s business and the other jurisdiction.
- (b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer’s or law firm’s operating account, provided:
 - (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
 - (2) if the flat fee exceeds \$1,000.00, the client’s agreement to deposit the flat fee in the lawyer’s operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.
- (c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:
 - (1) funds reasonably* sufficient to pay bank charges; and
 - (2) funds belonging in part to a client or other person* and in part presently or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm’s interest in that portion becomes fixed. However, if a client or other person* disputes the lawyer or law firm’s right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (d) A lawyer shall:
 - (1) absent good cause, notify a client or other person* no later than 14 days of the receipt of funds, securities, or other property in which the lawyer knows* or reasonably should know* the client or other person* has an interest;

- (2) identify and label securities and properties of a client or other person* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
 - (3) maintain complete records of all funds, securities, and other property of a client or other person* coming into the possession of the lawyer or law firm*;
 - (4) promptly account in writing* to the client or other person* for whom the lawyer holds funds or property;
 - (5) preserve records of all funds and property held by a lawyer or law firm* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
 - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
 - (7) promptly distribute any undisputed funds or property in the possession of the lawyer or law firm* that the client or other person* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms* in accordance with subparagraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.
- (f) For purposes of determining a lawyer’s compliance with paragraph (d)(7), unless the lawyer, and the client or other person* agree in writing that the funds or property will continue to be held by the lawyer, there shall be a rebuttable presumption affecting the burden of proof as defined in Evidence Code sections 605 and 606 that a violation of paragraph (d)(7) has occurred if the lawyer, absent good cause, fails to distribute undisputed funds or property within 45-days of the date when the funds become undisputed as defined by paragraph (g). This rebuttable presumption may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds within 45 days of the date when the funds or property became undisputed as defined in paragraph (g).
- (g) As used in this rule, “undisputed funds or property” refers to funds or property, or a portion of any such funds or property, in the possession of a lawyer or law firm* where the lawyer knows* or reasonably should know* that the ownership interest of the client or other person* in the funds or property, or any portion thereof, has become fixed and there are no unresolved disputes as to the client’s or other person’s* entitlement to receive the funds or property.

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what “records” shall be maintained by lawyers and law firms* in accordance with paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
 - (a) a written* ledger for each client or other person* on whose behalf funds are held that sets forth:
 - (i) the name of such client or other person;*
 - (ii) the date, amount and source of all funds received on behalf of such client or other person;*
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;* and
 - (iv) the current balance for such client or other person;*
 - (b) a written* journal for each bank account that sets forth:
 - (i) the name of such account;
 - (ii) the date, amount and client affected by each debit and credit; and
 - (iii) the current balance in such account;
 - (c) all bank statements and cancelled checks for each bank account; and
 - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written* journal that specifies:
 - (a) each item of security and property held;
 - (b) the person* on whose behalf the security or property is held;
 - (c) the date of receipt of the security or property;
 - (d) the date of distribution of the security or property; and
 - (e) person* to whom the security or property was distributed.

Comment

[1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person* other than a client in situations where client funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person* and whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. (See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665].) However, civil liability by itself does not establish a violation of this rule. (Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] [“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”] with *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] [lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds].)

[2] As used in this rule, “advances for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see rule 1.5(d) and (e). Subject to rule 1.5, a lawyer or law firm* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written* disclosure and the client’s agreement in a writing* signed by the client as provided in paragraph (b), a lawyer must deposit a flat fee paid in advance of legal services in the lawyer’s trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer’s obligations under paragraph (d) or the lawyer’s burden to establish that the fee has been earned.

[4] Subparagraph (d)(7) is not intended to apply to a fee or expense the client has agreed to pay in advance, or the client file, or any other property that the client or other person* has agreed in writing that the lawyer will keep or maintain. Regarding a lawyer’s refund of a fee or expense paid in advance, see rule 1.16(e)(2). Regarding the release of a client’s file to the client, see rule 1.16(e)(1).

[5] Upon rebuttal by proof by a preponderance of the evidence of the rebuttable presumption set forth in paragraph (f), a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption.

[6] Whether or not the rebuttable presumption in paragraph (f) applies, a lawyer must still comply with all other applicable provisions of this rule. This includes a lawyer’s duty to take diligent steps to initiate and complete the resolution of disputes concerning a client’s or other person’s* entitlement to funds or property received by a lawyer.

[7] Under paragraph (g), possible disputes requiring resolution may include, but are not limited to, disputes concerning entitlement to funds arising from: medical liens; statutory liens;

prior attorney liens; costs or expenses; attorney fees; a bank's policies and fees for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff's execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.

Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons*

(Redline Comparison to the Current Rule)

- (a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial* relationship between the client or the client’s business and the other jurisdiction.
- (b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer’s or law firm’s operating account, provided:
 - (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
 - (2) if the flat fee exceeds \$1,000.00, the client’s agreement to deposit the flat fee in the lawyer’s operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.
- (c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:
 - (1) funds reasonably* sufficient to pay bank charges; and
 - (2) funds belonging in part to a client or other person* and in part presently or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm’s interest in that portion becomes fixed. However, if a client or other person* disputes the lawyer or law firm’s right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (d) A lawyer shall:
 - (1) ~~promptly~~absent good cause, notify a client or other person* no later than 14 days of the receipt of funds, securities, or other property in which the lawyer knows* or reasonably should know* the client or other person* has an interest;
 - (2) identify and label securities and properties of a client or other person* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

- (3) maintain complete records of all funds, securities, and other property of a client or other person* coming into the possession of the lawyer or law firm*;
 - (4) promptly account in writing* to the client or other person* for whom the lawyer holds funds or property;
 - (5) preserve records of all funds and property held by a lawyer or law firm* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
 - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
 - (7) promptly distribute, ~~as requested by the client or other person,*~~ any undisputed funds or property in the possession of the lawyer or law firm* that the client or other person* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms* in accordance with subparagraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.
- (f) For purposes of determining a lawyer’s compliance with paragraph (d)(7), unless the lawyer, and the client or other person* agree in writing that the funds or property will continue to be held by the lawyer, there shall be a rebuttable presumption affecting the burden of proof as defined in Evidence Code sections 605 and 606 that a violation of paragraph (d)(7) has occurred if the lawyer, absent good cause, fails to distribute undisputed funds or property within 45-days of the date when the funds become undisputed as defined by paragraph (g). This rebuttable presumption may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds within 45 days of the date when the funds or property became undisputed as defined in paragraph (g).
- (g) As used in this rule, “undisputed funds or property” refers to funds or property, or a portion of any such funds or property, in the possession of a lawyer or law firm* where the lawyer knows* or reasonably should know* that the ownership interest of the client or other person* in the funds or property, or any portion thereof, has become fixed and there are no unresolved disputes as to the client’s or other person’s* entitlement to receive the funds or property.

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what “records” shall be maintained by lawyers and law firms* in accordance with paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
 - (a) a written* ledger for each client or other person* on whose behalf funds are held that sets forth:
 - (i) the name of such client or other person;*
 - (ii) the date, amount and source of all funds received on behalf of such client or other person;*
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;* and
 - (iv) the current balance for such client or other person;*
 - (b) a written* journal for each bank account that sets forth:
 - (i) the name of such account;
 - (ii) the date, amount and client affected by each debit and credit; and
 - (iii) the current balance in such account;
 - (c) all bank statements and cancelled checks for each bank account; and
 - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written* journal that specifies:
 - (a) each item of security and property held;
 - (b) the person* on whose behalf the security or property is held;
 - (c) the date of receipt of the security or property;
 - (d) the date of distribution of the security or property; and
 - (e) person* to whom the security or property was distributed.

Comment

[1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person* other than a client in situations where client funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person* and

whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. (See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665].) However, civil liability by itself does not establish a violation of this rule. (Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] [“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”] with *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] [lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds].)

[2] As used in this rule, “advances for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see rule 1.5(d) and (e). Subject to rule 1.5, a lawyer or law firm* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written* disclosure and the client’s agreement in a writing* signed by the client as provided in paragraph (b), a lawyer must deposit a flat fee paid in advance of legal services in the lawyer’s trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer’s obligations under paragraph (d) or the lawyer’s burden to establish that the fee has been earned.

[4] Subparagraph (d)(7) is not intended to apply to a fee or expense the client has agreed to pay in advance, or the client file, or any other property that the client or other person* has agreed in writing that the lawyer will keep or maintain. Regarding a lawyer’s refund of a fee or expense paid in advance, see rule 1.16(e)(2). Regarding the release of a client’s file to the client, see rule 1.16(e)(1).

[5] Upon rebuttal by proof by a preponderance of the evidence of the rebuttable presumption set forth in paragraph (f), a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption.

[6] Whether or not the rebuttable presumption in paragraph (f) applies, a lawyer must still comply will all other applicable provisions of this rule. This includes a lawyer’s duty to take diligent steps to initiate and complete the resolution of disputes concerning a client’s or other person’s* entitlement to funds or property received by a lawyer.

[7] Under paragraph (g), possible disputes requiring resolution may include, but are not limited to, disputes concerning entitlement to funds arising from: medical liens; statutory liens; prior attorney liens; costs or expenses; attorney fees; a bank’s policies and fees for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff’s execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.

Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons*

(Redline Comparison to the Version Circulated for Public Comment)

- (a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial* relationship between the client or the client’s business and the other jurisdiction.
- (b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer’s or law firm’s operating account, provided:
 - (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
 - (2) if the flat fee exceeds \$1,000.00, the client’s agreement to deposit the flat fee in the lawyer’s operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.
- (c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:
 - (1) funds reasonably* sufficient to pay bank charges; and
 - (2) funds belonging in part to a client or other person* and in part presently or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm’s interest in that portion becomes fixed. However, if a client or other person* disputes the lawyer or law firm’s right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (d) A lawyer shall:
 - (1) absent good cause, notify a client or other person* no later than 14 days of the receipt of funds, securities, or other property in which the lawyer knows* or reasonably should know* the client or other person* has an interest;
 - (2) identify and label securities and properties of a client or other person* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

- (3) maintain complete records of all funds, securities, and other property of a client or other person* coming into the possession of the lawyer or law firm*;
 - (4) promptly account in writing* to the client or other person* for whom the lawyer holds funds or property;
 - (5) preserve records of all funds and property held by a lawyer or law firm* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
 - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
 - (7) promptly distribute any undisputed funds or property in the possession of the lawyer or law firm* that the client or other person* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms* in accordance with subparagraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.
- (f) For purposes of determining a lawyer’s compliance with paragraph (d)(7), ~~absent a request from~~ unless the lawyer, and the client or other person* agree in writing that the funds or property will continue to be held by the lawyer, ~~it there~~ shall ~~constitute~~ be a rebuttable presumption affecting the burden of proof as defined in Evidence Code sections 605 and 606 that a presumed-violation for a of paragraph (d)(7) has occurred if the lawyer, absent good cause, ~~to fail~~ fails to distribute undisputed funds or property within 45-days of the date when the funds become undisputed as defined by paragraph (g). ~~A “presumed violation” means that there is a~~ This rebuttable presumption affecting the burden of may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds within 45 days of the date when the funds or property became undisputed as defined in ~~Evidence Code sections 605 and 606.~~ paragraph (g).
- (g) As used in this rule, “undisputed funds or property” refers to funds or property, or a portion of any such funds or property, in the possession of a lawyer or law firm* where the lawyer knows* or reasonably should know* that the ownership interest of the client or other person* in the funds or property, or any portion thereof, has become fixed and there are no unresolved ~~issues~~ disputes as to the client’s or other person’s* entitlement to receive the funds or property. ~~Possible issues concerning the entitlement to the funds or property may include, but are not limited to, resolution of entitlement issues arising from: medical liens; statutory liens; prior attorney liens; disputed costs or expenses; disputed attorney fees; a bank’s policies for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff’s execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.~~

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what “records” shall be maintained by lawyers and law firms* in accordance with paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
 - (a) a written* ledger for each client or other person* on whose behalf funds are held that sets forth:
 - (i) the name of such client or other person*;
 - (ii) the date, amount and source of all funds received on behalf of such client or other person*;
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person* and
 - (iv) the current balance for such client or other person*;
 - (b) a written* journal for each bank account that sets forth:
 - (i) the name of such account;
 - (ii) the date, amount and client affected by each debit and credit; and
 - (iii) the current balance in such account;
 - (c) all bank statements and cancelled checks for each bank account; and
 - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written* journal that specifies:
 - (a) each item of security and property held;
 - (b) the person* on whose behalf the security or property is held;
 - (c) the date of receipt of the security or property;
 - (d) the date of distribution of the security or property; and
 - (e) person* to whom the security or property was distributed.

Comment

[1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person* other than a client in situations where client funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person* and whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. (See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665].) However, civil liability by itself does not establish a violation of this rule. (Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] [“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”] with *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] [lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds].)

[2] As used in this rule, “advances for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see rule 1.5(d) and (e). Subject to rule 1.5, a lawyer or law firm* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written* disclosure and the client’s agreement in a writing* signed by the client as provided in paragraph (b), a lawyer must deposit a flat fee paid in advance of legal services in the lawyer’s trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer’s obligations under paragraph (d) or the lawyer’s burden to establish that the fee has been earned.

[4] Subparagraph (d)(7) is not intended to apply to a fee or expense ~~paid~~the client has agreed to pay in advance, or the client file, or any other property that the client ~~has asked~~or other person* has agreed in writing that the lawyer ~~to will~~ keep or maintain. Regarding a lawyer’s refund of a fee or expense paid in advance, see rule 1.16(e)(2). Regarding the release of a client’s file to the client, see rule 1.16(e)(1).

[5] ~~Although~~Upon rebuttal by proof by a preponderance of the evidence of the rebuttable presumption set forth in paragraph (f) ~~(f)-might~~, a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption.

[6] Whether or not ~~apply~~the rebuttable presumption in ~~every situation~~paragraph (f) applies, a lawyer must still comply with all other applicable provisions of this rule. This includes a lawyer’s duty to take diligent steps to initiate and complete the resolution of ~~issues~~disputes concerning a client’s or other person’s* entitlement to funds or property received by a lawyer.

[7] Under paragraph (g), possible disputes requiring resolution may include, but are not limited to, disputes concerning entitlement to funds arising from: medical liens; statutory liens; prior attorney liens; costs or expenses; attorney fees; a bank's policies and fees for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff's execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.

Rule 1.4 Communication with Clients

(Clean Version)

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent* is required by these rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances. For example, a lawyer's receipt of funds on behalf of a client requires communication with the client pursuant to rule 1.15, paragraphs (d)(1) and (d)(4) and ordinarily is also a significant development requiring communication with the client pursuant to this rule.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation. (See rule 1.16(e)(1).)

[4] This rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

Rule 1.4 Communication with Clients

(Redline Comparison to the Current Rule)

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent* is required by these rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances. [For example, a lawyer's receipt of funds on behalf of a client requires communication with the client pursuant to rule 1.15, paragraphs \(d\)\(1\) and \(d\)\(4\) and ordinarily is also a significant development requiring communication with the client pursuant to this rule.](#)

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation. (See rule 1.16(e)(1).)

[4] This rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

Rule 1.4 Communication with Clients

(Redline Comparison to the Version Circulated for Public Comment)

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent* is required by these rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances. For example, a lawyer's receipt of funds on behalf of a client ~~is~~requires communication with the client pursuant to rule 1.15, paragraphs (d)(1) and (d)(4) and ordinarily is also a significant development requiring communication with the client pursuant to ~~rule 1.15, paragraphs (d)(1) and (d)(4);~~this rule.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation. (See rule 1.16(e)(1).)

[4] This rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES
DIVISION 1. LICENSEE RECORD

**Rule 2.5 Client Trust Account Protection Program Annual Reporting, Account
Registration and Self-Assessment Completion Requirements**

As authorized by Rule of Court 9.8.5, a licensee must comply with certain annual reporting requirements under the Client Trust Account Protection Program.

(A) Definitions

- (1) A licensee “responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct” is a licensee who represents a client in a matter in which funds have been received by the licensee or licensee’s firm on behalf of the client during the reportable time period. This definition includes, for example, a trial attorney in a civil litigation matter who advised a client about their claim and was responsible for giving notice to the client that funds were received on behalf of the client under rule 1.15(d)(1) of the Rules of Professional Conduct. This definition also includes a licensee who acted as a signatory on a trust account or a licensee who exercised managerial or primary administrative oversight for a trust account.
- (2) A “trust account” is the bank account or accounts opened to comply with rule 1.15(a) of the Rules of Professional Conduct and includes: (i) an IOLTA account under Business and Professions Code section 6211, subdivision (a) where the interest is paid to the State Bar; and (ii) any interest bearing bank trust deposit accounts, or dividend-paying trust investment accounts established under Business and Professions Code section 6211, subdivision (b) where the interest is payable to a client.
- (3) An “annual self-assessment” is an online survey containing questions about client trust accounting duties and practices and includes, but is not limited to, questions regarding a licensee’s trust account recordkeeping under rule 1.15(d)(3) of the Rules of Professional Conduct and the recordkeeping standards adopted by the Board under rule 1.15(e) of the Rules of Professional Conduct.
- (4) The “reportable time period” for the information to be annually reported under paragraph (B) of this rule is the calendar year immediately preceding a licensee’s due date for paying their annual license fees under Title 2, Division 2, Rule 2.11 of the State Bar Rules.

(B) CTAPP Reporting Requirements

A licensee responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must annually comply with the following reporting requirements:

- (1) Annual Trust Account Certification—All licensees must annually (i) report whether or not, at any time during the reportable time period, they were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct and (ii) if they were responsible, certify that they are knowledgeable about, and in compliance with, applicable rules and statutes governing a trust account and the safekeeping of funds entrusted by clients and others;
- (2) Annual Trust Account Registration—All licensees who were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must, annually, register each and every trust account in which the licensee held such funds at any time during the reportable time period by identifying account numbers and financial institutions in a manner prescribed by the State Bar for such reporting; and
- (3) Annual Self-Assessment—All licensees who were responsible, at any time during the reportable time period, for a client trust account under the provisions of rule 1.15 of the Rules of Professional Conduct must complete an annual self-assessment.

(C) CTAPP Reporting Deadline

The deadline for submitting the information to be annually reported under paragraph (B) of this rule is the licensee's due date for paying their annual license fees under Title 2, Division 2, Rule 2.11 of the State Bar Rules.

(D) CTAPP Reporting Required Even if a Licensee is Not Responsible for Trust Funds at the Time of Reporting

The annual reports required under paragraph (B)(1) and paragraph (B)(3) of this rule must be submitted when a licensee, at any time during the reportable time period, has been responsible for client funds or funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct, and this includes circumstances where the licensee at the time of submitting their report is no longer responsible for client funds or funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct. The registration of a trust account under paragraph (B)(2) of this rule is also required even if a licensee is not responsible for trust funds at the time of reporting, so long as the licensee remains in practice with the firm that controls the trust account.

(E) Reporting that is Required for All Licensees

Under paragraph (B)(1), all licensees must report whether or not, at any time during the reportable time period, they were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct. This means that a licensee who was not responsible for such funds must submit a report indicating that fact. If a licensee was responsible for such funds, a report must be submitted and additional requirements are applicable for those licensees as indicated in paragraphs (B)(1) through (B)(3).

(F) Noncompliance

Noncompliance with the requirements of this rule is failure to:

- (1) Complete annual trust account certification, registration, or self-assessment requirements under paragraph (B); or
- (2) Pay fees for noncompliance.

(G) Notice of CTAPP Reporting Noncompliance

A licensee who is sent a notice of noncompliance with any reporting required by this rule must comply as instructed in the notice or be involuntarily enrolled as inactive. An inactive licensee is not eligible to practice law.

(H) Enrollment as inactive for noncompliance

A licensee who fails to comply with a notice of CTAPP reporting noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

(I) Reinstatement following noncompliance

Enrollment as inactive for CTAPP reporting noncompliance terminates when a licensee submits proof of compliance and pays noncompliance and reinstatement fees.

(J) Fees for Noncompliance

Fees for noncompliance with any of the requirements in paragraph (B), including a reinstatement fee to terminate CTAPP inactive enrollment, are set forth in the Schedule of Charges and Deadlines.