



The State Bar *of California*

Client Trust Account Protection Program

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Board of Trustees Meeting July 21, 2022

Presentation Overview

1. Provide an overview of public comment findings
2. Discuss proposed revision to and adoption of Rule 1.4
3. Discuss proposed revisions to and circulation of new Rule of Court 9.8.5 and State Bar Rule 1.15
4. Discuss proposed new State Bar Rule 2.5 and request for public comment
5. Review resolutions for Board approval



CTAPP Return from Public Comment



Overview of Public Comments Received

The State Bar received 457 public comments in total concerning the proposed new and amended rules. The majority of commenters agreed with the proposed new and amended rules.

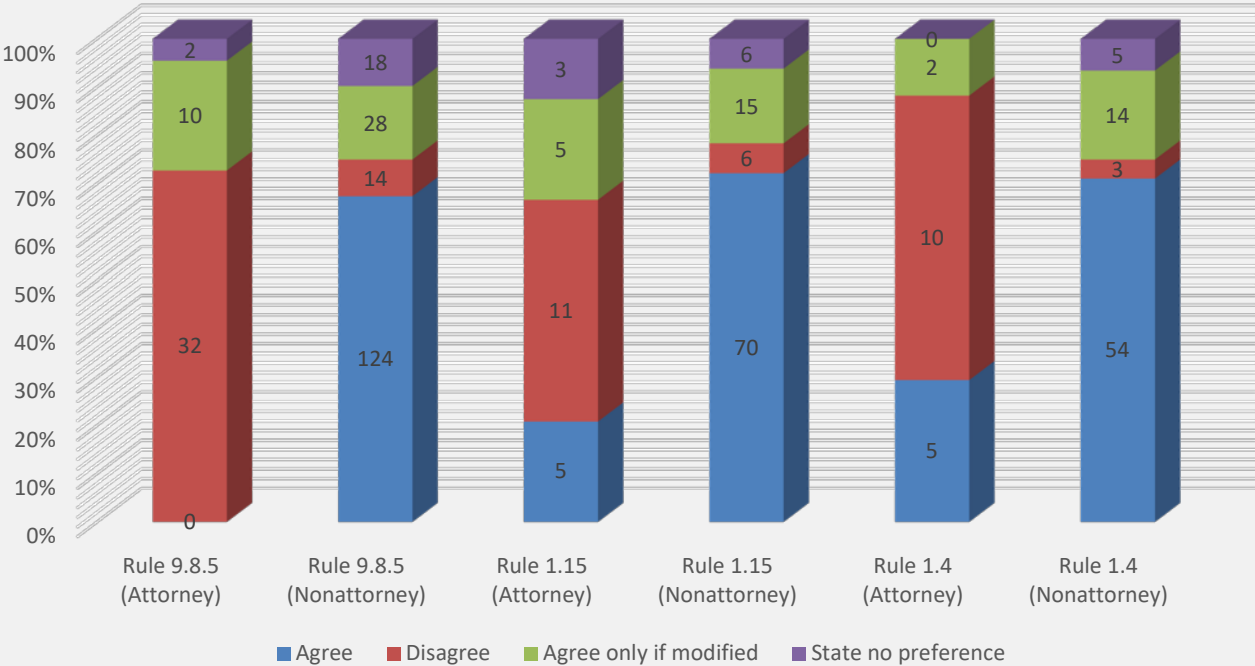
- 230 comments were received regarding Rule of Court 9.8.5
 - 183 nonattorneys, 44 attorneys, 3 unidentified
- 127 comments were received regarding Rule of Professional Conduct 1.15
 - 96 nonattorneys, 28 attorneys, 3 unidentified
- 100 comments were received regarding Rule of Professional Conduct 1.4
 - 77 nonattorneys, 20 attorneys, 3 unidentified



Public Comment Positions on Rules

Comments in support of the proposed rules were submitted primarily by nonattorney commenters.

Attorney vs. Nonattorney Positions on Each Proposed Rule



Summary of Opposing Positions

- CTAPP will be overly burdensome for attorneys who are largely compliant.
- The program may raise the costs of practicing law and, in turn, raise fees to clients and discourage the practice of law in California.
- The program will not protect clients from intentional theft.



Summary of Support Positions

- CTAPP is a reasonable way to protect the public and would hold attorneys to a higher standard.
- The program would increase accountability and transparency to the benefit of clients.
- The program would provide better guidance to attorneys, may help reduce attorney-client disputes, and reduce misappropriations of client funds through increased oversight.
- Several commenters expressed these rules would have been beneficial to them in their past legal matters.



Rule Revisions



Proposed Revision to Rule 1.4, Comment [1]

Rule 1.4 governs client communications and refers to “significant developments” in a client’s representation as the trigger for a lawyer’s duty to proactively communicate with a client

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.



Proposed Revisions to New Rule of Court 9.8.5

Proposed new rule 9.8.5 will serve as an enabling rule for the State Bar to establish CTAPP

Staff propose some clarifying amendments and substantive edits, including:

- 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
- Adding a new subdivision (d) providing that the State Bar has the authority to set and collect appropriate fees and penalties.



Proposed Revisions to Rule 1.15

Rule 1.15 governs the handling of entrusted funds and property

Staff propose several clarifying amendments and substantive edits, including:

- Adding language to address the burden of proof for rebutting a presumed violation of a lawyer's duty to promptly distribute funds
- Clarifying that the concept of "undisputed funds or property" does not treat such funds or property as an indivisible whole
- Deleting the concept that a rebuttable presumption does not arise if there is "a request from the client or other person" that funds continue to be held and adding that the presumption does not arise where "the lawyer, and the client or other person agree in writing" that funds will continue to be held by the lawyer.



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

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
- Reinstatement following noncompliance



Resolutions



Adoption of Rule 1.4

RESOLVED, that the Regulation and Discipline Committee recommends that, following consideration of public comments received, the Board of Trustees 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;



Authorization of Public Comment

FURTHER RESOLVED, that the Regulation and Discipline Committee authorizes a 45-day public comment circulation of proposed amended rule 1.15 of the Rules of Professional Conduct, and proposed new Rule of Court 9.8.5; and it is

FURTHER RESOLVED, that the Regulation and Discipline Committee authorizes a 45-day public comment circulation of proposed new State Bar rule 2.5.

