



The State Bar of California

OPEN SESSION

AGENDA ITEM

703 SEPTEMBER 2022

DATE: September 22, 2022

TO: Members, Board of Trustees

FROM: Randall Difuntorum, Program Director, Office of Professional Competence
Kelsey Lyles, Principal Program Analyst, Office of Research & Institutional Accountability

SUBJECT: Client Trust Account Protection Program Return from Public Comment and Request for Approval

EXECUTIVE SUMMARY

During its July 2022 meeting, the State Bar Board of Trustees approved a 45-day public comment circulation of proposed amended rule 1.15 of the Rules of Professional Conduct (RPC 1.15) and proposed new Rule of Court 9.8.5. The Board also reviewed and authorized a 45-day public comment circulation of Title 2, Division 1, proposed new rule 2.5 of the State Bar Rules (State Bar Rule 2.5).

These rules were issued for public comment on July 27, 2022, and the comment period ended on September 10, 2022. A total of 15 comments were received.

In response to the public comment received, staff recommends that the Board approve proposed new Rule of Court 9.8.5 and proposed amended RPC 1.15 without any further revisions. Staff is recommending revisions to State Bar Rule 2.5 in response to the public comments to clarify and narrow the requirements. With those revisions, staff is recommending that the Board adopt State Bar Rule 2.5, subject to the Supreme Court's approval of proposed new Rule of Court 9.8.5.

BACKGROUND

Proposed Rule of Court 9.8.5 grants the State Bar the authority to implement the Client Trust Account Protection Program (CTAPP). Proposed new State Bar Rule 2.5 addresses the

administrative aspects of CTAPP Phase I reporting requirements, including annual registration of accounts, annual certification of compliance with the rules governing the handling of trust funds, including RPC 1.15, completion of an annual self-assessment on client trust accounting. Proposed Rule of Court 9.8.5 also provides for enrollment as an inactive licensee for noncompliance, and assessment of noncompliance fees when applicable for failure to comply with CTAPP requirements. It is important to note that Rule of Court 9.8.5 is an enabling rule that only provides the State Bar “may impose” CTAPP requirements. Accordingly, adoption of a State Bar rule is necessary to actually impose the CTAPP requirements. The proposal to amend RPC 1.15 is a companion proposal intended to strengthen a licensee’s trust accounting duties.¹

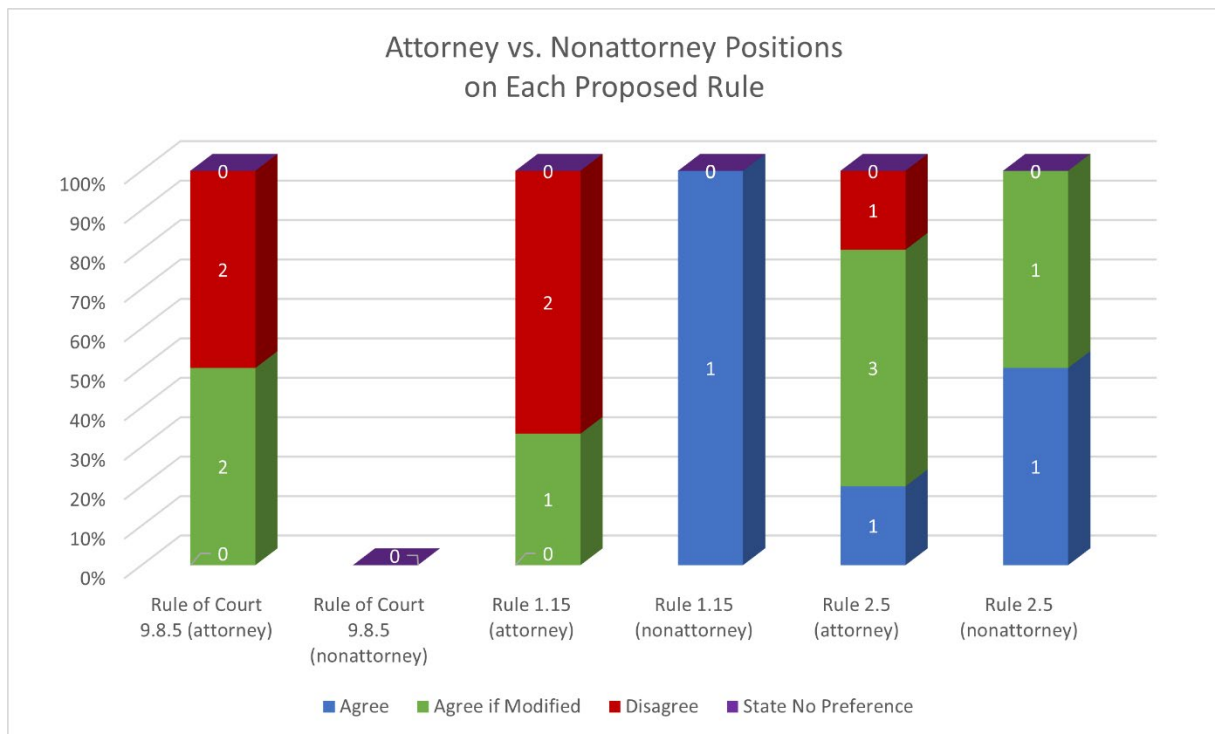
DISCUSSION

OVERVIEW OF PUBLIC COMMENTS RECEIVED

The State Bar received 15 public comments in total concerning the proposed new and amended rules for implementing Phase 1 of CTAPP.² Four comments were received regarding Rule of Court 9.8.5, four comments were received regarding Rule of Professional Conduct 1.15, and seven comments were received regarding State Bar Rule 2.5. The majority of the comments (seven) agreed with the proposals if modified, and these comments were submitted by six attorneys and one nonattorney. All five of the comments that disagreed with the proposals were submitted by attorneys. Provided below is a breakdown of the public comments received by attorneys and nonattorneys.

¹ At the meeting on July 22, 2022, the Board adopted amended rule 1.4 of the Rules of Professional Conduct to clarify the application of a lawyer’s general duty to communicate with a client. The amendment makes clear that receipt of funds on behalf of a client is a significant development that triggers a lawyer’s duty to proactively keep their client reasonably informed. The submission of this amended rule to the Supreme Court for approval would be combined with other CTAPP rule proposals in this memorandum that might be adopted by the Board.

² The 15 public comments received are available online at: <https://bit.ly/CTAPP-PC>.



The primary themes in the comments received were suggested modifications to the proposals. For State Bar Rule 2.5 and Rule of Court 9.8.5, it was suggested that respective reporting obligations of “all” licensees, compared to the obligations of those licensees who were responsible for complying with rule 1.15, should be clarified. It was also suggested that the requirements for registering trust account information should be modified to limit the risk of client harm that might arise from a wide dissemination of such information (e.g., account numbers and balances) to many firm lawyers, including new associates and contract lawyers. Additionally, it was suggested that the rules be modified to narrow the scope of lawyers who are required to report at all. Staff responses to these modifications are discussed in connection with the proposed revisions to State Bar Rule 2.5.

Some commenters expressed concerns about the concept of imposing compliance reviews and audits on some licensees and specifically criticized the proposals for not addressing how selections would be made and for making such lawyers responsible for the costs of these regulatory activities. Staff recommends that these comments should be taken under advisement for Phase 2 of CTAPP implementation because the current proposals only address Phase 1 of CTAPP, which is reporting. Although proposed Rule of Court 9.8.5 authorizes State Bar rulemaking to address the selection of licensees for an audit or a compliance review as a general matter, there is no determination made in proposed Rule of Court 9.8.5 or in proposed State Bar Rule 2.5 concerning how any selections will be made. Future implementation steps, including amendments to the State Bar Rules to implement Phase 2 of CTAPP, will address these and other Phase 2 issues. At that future time, the public comments on the procedures for compliance reviews, audits, and the handling of costs will be most relevant and helpful.

Following consideration of the public comments, staff is not recommending any changes to Rule of Court 9.8.5 or RPC 1.15. (The text of Rule of Court 9.8.5 is provided as Attachment A. The text of proposed RPC 1.15 is provided as Attachment B.) For State Bar Rule 2.5, staff recommends the clarifying revisions summarized below.

PROPOSED NEW STATE BAR RULE 2.5

State Bar Rule 2.5 is intended to implement the Phase 1 CTAPP reporting requirements outlined in the first phase of the program. (See Board agenda items [705 March 2022](#) and [703 July 2022](#).) The text of rule 2.5 is provided as Attachment C.) As Rule of Court 9.8.5 is the enabling rule that authorizes the State Bar's establishment of CTAPP, the Rule of Court must be made effective by order of the Supreme Court as a condition to the Board's adoption of State Bar Rule 2.5. Accordingly, staff's recommendation and the proposed Board resolutions provide that the Board's adoption of State Bar Rule 2.5 would be action taken subject to Supreme Court's approval of Rule of Court 9.8.5 without any material changes being made to the Rule of Court. Taking action in this manner positions the State Bar to launch CTAPP for the upcoming 2023 license renewal process that begins on December 1, 2022.

The recommended revisions to State Bar Rule 2.5 include the following.

- **Reporting by Firms:** As revised, the rule now expressly states that a lawyer may comply with the requirement to register trust account information by having their firm submit the trust account registration information on behalf of the lawyer (see the last sentence of paragraph (B)(2)). This is supported by adding a definition of the term "firm" (see new paragraph (A)(4)). The definition of "firm" is substantially the same as its definition in the Rules of Professional Conduct.³ If a firm elects to submit information on behalf of the firm's lawyers, the risk associated with sharing sensitive trust account information with all firm lawyers (such as new associates and contract lawyers) is eliminated. However, this revision makes clear that the firm must identify each licensee who is covered by the firm's submission of account information on behalf of the firm's lawyers.
- **Clarifying Registration of Trust Account Information Where a Licensee Changes Firms During the Reportable Time Period:** As revised, the rule now affirmatively states that a licensee is not required to register a trust account controlled by a firm with which the licensee no longer practices (see the last sentence of paragraph (D)).
- **Clarifying the Definition of Who Must Report:** The rule now specifies that a "responsible" licensee encompasses only those lawyers who are responsible for complying with any of the requirements or prohibitions in RPC 1.15 (see revised paragraph (A)(1)). It should be noted that such requirements and prohibitions are not

³ The terminology rule, rule 1.0.1(c) of the Rules of Professional Conduct, provides that the term "firm" means "a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization."

limited to recordkeeping duties. This is because there are lawyers who are responsible for discharging key compliance requirements under RPC 1.15 that are not accounting activities. This includes duties to inform clients that funds have been received, identify and resolve disputes concerning trust funds, and comply with client disclosure requirements applicable to the handling of certain flat-fee payments. The definition of a “responsible” licensee recognizes that a firm accountant or bookkeeper is not likely to have primary responsibility for discharging these non-recordkeeping duties. However, the revised definition of a “responsible” licensee also is intended to make clear that a lawyer who has no responsibilities to comply with any of the requirements or prohibitions in RPC 1.15 is outside of the definition and can report “no” to the State Bar’s question of whether they were responsible for trust funds in the reportable time frame (see paragraph (E)).

The policy option of limiting any of CTAPP reporting to only those lawyers who personally participate in recordkeeping, who are trust account signatories, or who personally intake or disburse trust funds, was considered to be too narrow for monitoring purposes under the concept of proactive trust accounting regulation that seeks to promote full compliance with all of the duties in RPC 1.15.

- **Exemptions for Two Categories of Licensees:** Regarding licensee status, the rule as revised narrows the scope of licensees covered by Phase 1 CTAPP reporting by exempting two categories of licensees: (1) a licensee who was not on active status for the entirety of the reportable time period; and (2) a licensee who is not entitled to practice law at the time of the reporting deadline for any reason other than voluntary inactive enrollment (see paragraph (K)). The first category of exempt licensees is likely to be lawyers who would answer “no” to the threshold question of whether they were responsible for trust funds in the reportable time period, as such conduct is typically a practice of law activity for which active status is necessary. The second category of exempt licensees involves licensees who were likely the subject of a regulatory or disciplinary matter with the State Bar. For example, in the case of disciplined lawyers who are not entitled to practice, they will likely be engaged with the State Bar in the probation monitoring system, and the generalized proactive reporting and monitoring in Phase 1 of CTAPP is not necessary.

With these narrowing and clarifying revisions,⁴ staff recommends that the Board adopt proposed State Bar Rule 2.5 with the understanding that adoption of the rule is subject to the Supreme Court’s action to approve proposed Rule of Court 9.8.5 without any material changes. If the Supreme Court does make material changes to proposed new Rule of Court 9.8.5, then staff would need to assess those changes and prepare conforming amendments to proposed State Bar Rule 2.5 for the Board’s consideration.

⁴ Staff believes that additional public comment is not required for these revisions. Under State Bar Rule 1.10, public comment is not required “to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal.”

FISCAL/PERSONNEL IMPACT

If proposed Rule of Court 9.8.5 is approved by the Supreme Court and 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 and Accountability Division (MAAD), and the soon 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 as well as 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 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.

RULES OF COURT, RULES OF PROFESSIONAL CONDUCT, AND RULES OF THE STATE BAR

This agenda item requests Board adoption of proposed new Rule of Court 9.8.5, amended RPC 1.15, and new State Bar Rule 2.5.

Regarding the operative date of the proposed new Rule of Court 9.8.5 and proposed amended RPC 1.15, it is anticipated that the State Bar's petition memorandum would respectfully request that if the Supreme Court acts to approve these rules, they be made operative forthwith. This would position the State Bar to launch the Phase 1 reporting of CTAPP with the upcoming 2023 licensee renewal process. In addition, as discussed above, the Board's action approving State Bar Rule 2.5 would be effective upon Supreme Court approval of Rule of Court 9.8.5 provided the Supreme Court does not make any material changes to Rule of Court 9.8.5.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 3. Protect the Public by Regulating the Legal Profession

d. 1. Implement the Client Trust Account Protection Program.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action on proposed new Rule of Court 9.8.5 and proposed amended rule 1.15 of the Rules of Professional Conduct, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, following consideration of public comments received, adopts proposed new Rule of Court 9.8.5 as set forth in Attachment A, and adopts proposed amended rule 1.15 of the Rules of Professional Conduct as set forth in Attachment B and directs staff to submit these proposed rules to the Supreme Court of California with a recommendation that they be approved.

Should the Board of Trustees concur in the proposed action on Title 2, Division 1, proposed new rule 2.5 of the State Bar Rules, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, following consideration of public comments received, adopts Title 2, Division 1, proposed new rule 2.5 of the State Bar Rules as set forth Attachment C; and it is

FURTHER RESOLVED, that the approval of Title 2, Division 1, proposed new rule 2.5 of the State Bar Rules is subject to the California Supreme Court's approval of proposed new Rule of Court 9.8.5 without any material revisions; and it is

FURTHER RESOLVED, that the effective date of Title 2, Division 1, proposed new rule 2.5 of the State Bar Rules would be the effective date of proposed new Rule of Court 9.8.5 if the California Supreme Court approves proposed new Rule of Court 9.8.5 without any material changes.

ATTACHMENTS LIST

- A.** Proposed New Rule 9.8.5 of the California Rules of Court, clean version
- B.** Proposed Amended Rule 1.15 of the Rules of Professional Conduct, clean version and redline/strikeout version showing changes to the current rule
- C.** Proposed New Rule 2.5, Title 2, Division 1, of the State Bar Rules, clean version and redline version showing changes to the public comment version

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 an online form using a secure system provided 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 Amended Rule 1.15 of the Rules of Professional Conduct
(Clean Version)

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

- (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 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.

Proposed New Rule 2.5, Title 2, Division 1, of the State Bar Rules
(Clean Version)

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

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

(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) a licensee who: (i) 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; and (ii) has responsibility for complying with any of the requirements or prohibitions in rule 1.15 of the Rules of Professional Conduct— such requirements and prohibitions are not limited to recordkeeping duties and include, for example, the responsibility 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; or
 - (b) 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: (a) an IOLTA account under Business and Professions Code section 6211, subdivision (a) where the interest is paid to the State Bar; and (b) 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 a survey about client trust accounting duties and practices and includes, but is not limited to, questions and affirmations 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) A “firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department,

division or office of a corporation, of a government organization, or of another organization.

- (5) 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

Unless a licensee is exempt under paragraph (K), a licensee must annually comply with the following reporting requirements:

- (1) Annual Trust Account Certification—A licensee must annually (a) report whether or not, at any time during the reportable time period, they were a licensee 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 a licensee responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct, then those licensees must also 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—A licensee who was 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. A licensee will be considered in compliance with this subparagraph if the licensee’s firm submits account registration information on behalf of one or more licensees affiliated with the firm that identifies the licensee as one on whose behalf the registration information is submitted; and
- (3) Annual Self-Assessment—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 complete an annual self-assessment and report the completion of the self-assessment in a manner prescribed by the State Bar for such reporting.

(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 a licensee 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 also is required even if a licensee is not responsible for funds held in the trust account at the time of reporting so long as the licensee remains in practice with the firm that controls the trust account. A licensee is not required to register a trust account controlled by a firm with which the licensee no longer practices.

(E) Reporting that is Required by a Licensee Who is Not Responsible for Client Funds and Funds Entrusted by Others under the Provisions of Rule 1.15 of the Rules of Professional Conduct

Under paragraph (B)(1), a licensee who is not exempt under paragraph (K) must report whether or not, at any time during the reportable time period, they were a licensee who was responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct. To comply with paragraph (B)(1), a licensee who was not responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must submit a report indicating that fact.

(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.

(K) Licensees Who are Exempt from Compliance with this Rule

The following category of licensees are exempt from compliance with the reporting requirements in paragraph (B):

- (1) A licensee who was not on active status for the entirety of the reportable time period; or
- (2) A licensee who is not entitled to practice law at the time of the reporting deadline for any reason other than voluntary inactive enrollment.

Proposed New Rule 2.5, Title 2, Division 1, of the State Bar Rules

(Redline Comparison to Public Comment Version)

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

As authorized by [California](#) Rule of Court, [rule](#) 9.8.5, a licensee must comply with certain annual reporting requirements under the Client Trust Account Protection Program ([CTAPP](#)).

(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:
 - [\(a\)](#) a licensee who: [\(i\)](#) 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;~~ [and \(ii\) has responsibility for complying with any of the requirements or prohibitions in rule 1.15 of the Rules of Professional Conduct— such requirements and prohibitions are not limited to recordkeeping duties and include, for example, the responsibility](#) 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;~~ [or](#)
 - [\(b\)](#) 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)~~ [\(a\)](#) an IOLTA account under Business and Professions Code section 6211, subdivision (a) where the interest is paid to the State Bar; and ~~(ii)~~ [\(b\)](#) 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~~ [a](#) survey ~~containing questions~~ about client trust accounting duties and practices and includes, but is not limited to, questions [and affirmations](#) 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.
- [\(4\)](#) [A “firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or](#)

lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

- (5) ~~(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~~rule 2.11 of the State Bar Rules.

(B) CTAPP Reporting Requirements

~~A~~Unless 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 exempt under paragraph (K), a~~ licensee must annually comply with the following reporting requirements:

- (1) Annual Trust Account ~~Certification—All licensees~~Certification—A licensee must annually (~~ia~~) report whether or not, at any time during the reportable time period, they were a licensee responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct and (~~ib~~) if they were a licensee responsible, for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct, then those licensees must also 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~~Registration—A licensee who was 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. A licensee will be considered in compliance with this subparagraph if the licensee’s firm submits account registration information on behalf of one or more licensees affiliated with the firm that identifies the licensee as one on whose behalf the registration information is submitted; and~~
- (3) Annual ~~Self-Assessment—All licensees who were~~Self-Assessment—A licensee responsible,~~at any time during the reportable time period, for a client trust account~~ for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must complete an annual self-assessment~~—~~and report the completion of the self-assessment in a manner prescribed by the State Bar for such reporting.

(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~~ 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 a licensee 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~~ is required even if a licensee is not responsible for ~~trust~~ funds held in the trust account at the time of reporting, ~~so long as the licensee remains in practice with the firm that controls the trust account.~~ A licensee is not required to register a trust account controlled by a firm with which the licensee no longer practices.

(E) Reporting that is Required ~~for All Licensees~~ by a Licensee Who is Not Responsible for Client Funds and Funds Entrusted by Others under the Provisions of Rule 1.15 of the Rules of Professional Conduct

Under paragraph (B)(1), ~~all licensees~~ a licensee who is not exempt under paragraph (K) must report whether or not, at any time during the reportable time period, they were a licensee who was 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~~ To comply with paragraph (B)(1), a licensee who was not responsible for ~~such client~~ funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct 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~~ complete annual trust account certification, registration, or self-assessment requirements under paragraph (B); or
- (2) ~~Pay~~ 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~~ Inactive for ~~noncompliance~~ 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~~ Following ~~noncompliance~~ 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.

(K) Licensees Who are Exempt from Compliance with this Rule

The following category of licensees are exempt from compliance with the reporting requirements in paragraph (B):

- (1) A licensee who was not on active status for the entirety of the reportable time period; or
- (2) A licensee who is not entitled to practice law at the time of the reporting deadline for any reason other than voluntary inactive enrollment.