



The State Bar of California

OPEN SESSION AGENDA ITEM 50-9 NOVEMBER 2022

DATE: November 17, 2022

TO: Members, Board of Trustees

FROM: Steven J. Moawad, Special Counsel, Regulation Division

SUBJECT: Client Trust Account Protection Program: Request for Adoption of State Bar Rule 2.5

EXECUTIVE SUMMARY

Rule of Court 9.8.5 authorizes the Client Trust Account Protection Program (CTAPP), and State Bar Rule 2.5 is the implementing rule for that program. This agenda item requests that the Board readopt State Bar Rule 2.5 following the Supreme Court's adoption of Rule of Court 9.8.5, as amended by the Court, effective January 1, 2023.

BACKGROUND

On October 24, 2022, the Supreme Court adopted Rule of Court 9.8.5, as amended by the Court, for the State Bar's establishment of CTAPP. At the September 22, 2022, Board [meeting](#), the Board adopted State Bar Rule 2.5 as the implementation rule for CTAPP, contingent on Rule of Court 9.8.5 being adopted without material changes.

DISCUSSION

In its October 24, 2022, [order](#), the Supreme Court modified Rule of Court 9.8.5 to require, rather than authorize, that the State Bar implement CTAPP requirements pertaining to annual reporting, trust account registration, and certification. As modified under rule 9.8.5, the self-assessment, compliance review, and additional actions (such as an investigative audit) remain as regulatory activities the State Bar may impose under CTAPP. While staff believes that this is not a material change, readoption of State Bar Rule 2.5 is requested to remove any possible doubts about the validity of the adoption of the rule.

Staff further recommends that the effective date of State Bar Rule 2.5 be January 1, 2023. While licensees may voluntarily provide some of the CTAPP-required information beginning in December 2022, all licensees must comply with the CTAPP reporting requirements by February 1, 2023, as provided by State Bar Rule 2.5.

FISCAL/PERSONNEL IMPACT

See Board agenda item [703 September 2022](#), at page six. Readoption of State Bar Rule 2.5 will not change the previously described fiscal and personnel impact.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Rule 2.5, Title 2, Division 1, of the rules of the State Bar.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, following consideration of the California Supreme Court's adoption of Rule of Court 9.8.5, adopts Title 2, Division 1, proposed new rule 2.5 of the State Bar Rules as set forth Attachment A to be effective on January 1, 2023.

ATTACHMENT LIST

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

**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.