



## Supreme Court of California

JORGE E. NAVARRETE  
CLERK AND EXECUTIVE OFFICER  
OF THE SUPREME COURT

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December 20, 2023

Leah T. Wilson  
Executive Director  
State Bar of California  
180 Howard Street  
San Francisco, California 94102

**RE: S282532: Request that the Supreme Court of California Approve  
Proposed Amended Rule 9.8.5, Amended Rule 9.9, New Rule 9.32, and  
Amended Rule 9.49 of the California Rules of Court**

Dear Ms. Wilson,

The State Bar filed a request on October 31, 2023 (Request) for approval of several unrelated California Rules of Court (rules) as well as the adoption of a new rule. After careful consideration, the court filed an administrative order today denying the Request in part as to rules 9.8.5 and 9.49. The purpose of this letter is to provide the State Bar's Board of Trustees (Board) and State Bar staff with some insight into the court's concerns with the proposal to amend those rules.

### **Rule 9.8.5**

The State Bar seeks to add proposed paragraph (d) to rule 9.8.5 that would require licensees, who are exempt from the reporting requirements of the Client Trust Account Protection Program (CTAPP) pursuant to Rules of the State Bar of California (State Bar Rules), Rule 2.5(K)(2), because they were not entitled to practice law for a reason other than voluntary inactive enrollment—which primarily encompasses licensees who are suspended as part of a disciplinary proceeding—to comply with the reporting requirements prior to returning to active status. At first glance, this addition to rule 9.8.5 seems like a reasonable mechanism to address compliance by those suspended licensees. Upon further examination, however, the State Bar's request for the amendment raises the question of why State Bar Rule 2.5(K)(2), which the Board approved last year, exempts

suspended licensees given the importance of the CTAPP and the perils attributable to client trust account (CTA) mismanagement.

The court is concerned that the State Bar has not adequately considered the need for CTAPP reporting by suspended licensees, particularly since the reporting is retroactive so that a suspended licensee could report for the period before the imposition of discipline. Moreover, there would seem to be no impediment to CTAPP reporting by suspended licensees since they are not exempt from other reporting requirements such as attesting to compliance with the requirements for Minimum Continuing Legal Education (MCLE) and maintaining current contact information with the State Bar. Even if a suspended licensee does not maintain any CTAs during the suspension, the licensee would merely be required to report that fact as provided under rule 9.8.5(a)(1). Further, rule 9.8.5 does not appear to provide for any exemptions to the CTAPP reporting requirements because it requires reporting by “[a]ll licensees” and does not parse out the requirement based on a licensee’s active or inactive status. (Cal. Rules of Court, rule 9.8.5(a)(1).)

Thus, the court declines to approve proposed rule 9.8.5(d) at this time. The court urges the State Bar to examine the rationale behind the CTAPP reporting exemption for suspended licensees in State Bar Rule 2.5(K)(2) prior to submitting further revisions to rule 9.8.5.

## **Rule 9.49**

In its administrative order issued today, the court approved the adoption of new rule 9.32, which carves out the New Attorney Training (NAT) program from the Minimum Continuing Legal Education (MCLE) program. As part of the establishment of a standalone NAT program, the State Bar sought amendments to the provisional licensure program under rule 9.49 to the extent that it refers to the NAT program as part of MCLE and requires provisionally licensed lawyers to complete the NAT program “unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer.” (Cal. Rules of Court, rule 9.49(e)(1).)

The court does not believe that revisions to rule 9.49 are necessary. The application deadline for the provisional licensure program was June 1, 2022, so there will be no new applicants who would be exempt from the NAT requirements under rule 9.49(e)(1). In addition, there has been no showing that any provisionally licensed lawyers have avoided the NAT training due to an exemption. Even if any such licensees have successfully asserted an exemption under rule 9.49(e)(1), that section also requires completion of NAT within the first twelve months of licensure and that time period has already elapsed for all provisionally licensed lawyers. Accordingly, the court declines to approve the proposed revisions to rule 9.49.

## **Conclusion**

The court appreciates the considerable time and effort expended by the State Bar to submit these rule amendments for consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge Navarrete', with a stylized flourish at the end.

JORGE NAVARRETE

Clerk and

Executive Officer of the Supreme Court