Rule 9.9.5. Attorney Fingerprinting

(a) Subsequent arrest notification

(1) The State Bar must enter into a contract with the California Department of Justice for subsequent arrest notification services for attorneys whose license is on active status with the State Bar ("active licensed attorneys") and attorneys permitted to practice in the State of California pursuant to rules 9.44, 9.45, and 9.46 of the California Rules of Court ("special admissions attorneys").

(2) The State Bar must consider those active licensed attorneys and special admissions attorneys for whom it is already receiving subsequent arrest notification services as having satisfied the fingerprinting requirement of this rule and thereby exempt. The State Bar must adopt a procedure for notification of all attorneys as to whether they have been deemed to have already satisfied the requirement.

(b) Active licensed attorneys

Each active licensed attorney, with the exception of those attorneys specifically exempt under (a)(2) of this rule, must, pursuant to the procedure identified by the State Bar, be fingerprinted for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests from the Department of Justice and the Federal Bureau of Investigation. These fingerprints will be retained by the Department of Justice for the limited purpose of subsequent arrest notification.

(c) Inactive licensed attorneys

An attorney whose license is on inactive status with the State Bar ("inactive licensed attorneys"), with the exception of those attorneys specifically exempt under (a)(2) of this rule, must, pursuant to the procedure identified by the State Bar, be fingerprinted prior to being placed on active status for the purposes described in (b) of this rule.

(d) Active licensed attorneys in foreign countries

Active licensed attorneys who are residing outside the United States and required to submit fingerprints under this rule should have their fingerprints taken by a licensed fingerprinting service agency and submit the hard copy fingerprint card to the State Bar. If fingerprinting services are not provided in the jurisdiction where the attorney is physically located, or the attorney is able to provide evidence that

he/she is unable to access or afford such services, the attorney must notify the State Bar pursuant to the procedure identified by the State Bar. The attorney will be exempt from providing fingerprints until he or she returns to the United States for a period of not less than 60 days.

(e) Special admissions attorneys

Attorneys permitted to practice in the State of California pursuant to rules 9.44, 9.45, and 9.46 of the California Rules of Court, with the exception of those attorneys specifically exempt under (a)(2) of this rule, must, pursuant to the procedure identified by the State Bar, be fingerprinted for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests from the Department of Justice and the Federal Bureau of Investigation. These fingerprints will be retained by the Department of Justice for the limited purpose of subsequent arrest notification.

(f) Implementation schedule and penalty for noncompliance

(1) The State Bar must develop a schedule for implementation that requires all attorneys subject to fingerprinting under (b) of this rule to be fingerprinted by December 1, 2019. The State Bar must develop a schedule for implementation that requires all special admissions attorneys subject to fingerprinting under (e) of this rule to be fingerprinted by the renewal of their application to practice law in the State of California.

(2) The State Bar has ongoing authority to require submission of fingerprints after December 1, 2019 for attorneys for whom it is not receiving subsequent arrest notification services and for attorneys transferring to active status. Failure to be fingerprinted if required by this rule may result in involuntary inactive enrollment pursuant to Business and Professions Code section 6054, subdivision (d).

(3) The State Bar has ongoing authority to require submission of fingerprints after December 1, 2019, for special admissions attorneys for whom it is not receiving subsequent arrest notification services. Failure to be fingerprinted if required may result in a State Bar determination that the attorney cease providing legal services in California.

(g) Information obtained by fingerprint submission; disclosure limitations

Any information obtained by the State Bar as a result of fingerprint submission under this rule must be kept confidential and used solely for State Bar licensing and regulatory purposes.

(h) Fingerprint submission and processing costs

(1) Except as described in (h)(2), all costs incurred for the processing of fingerprints for the State Bar, including print furnishing and encoding, as required by Business and Professions Code section 6054, must be borne by the licensed attorney or special admissions attorney.

(2) The State Bar must develop procedures for granting waivers of the processing costs of running Department of Justice and Federal Bureau of Investigation background checks for licensed attorneys with demonstrable financial hardship.

(i) Attorneys who are physically unable to be fingerprinted

(1) If the Department of Justice makes a determination pursuant to Penal Code section 11105.7 that any attorney required to be fingerprinted under this rule is presently unable to provide legible fingerprints, the attorney will be deemed to have complied with the fingerprinting requirements of this rule.

(2) Attorneys required to be fingerprinted under this rule may also submit notification to the State Bar that they are unable to submit fingerprints due to disability, illness, accident, or other circumstances beyond their control. The State Bar must evaluate the notification and may require additional evidence. If the State Bar determines that the attorney is unable to submit fingerprints based on the information provided, the attorney will be deemed to have complied with the fingerprinting requirements of this rule.

(3) A determination of deemed compliance under (i)(1) and (i)(2) will apply only to those attorneys who are unable to supply legible fingerprints due to disability, illness, accident, or other circumstances beyond their control and will not apply to attorneys who are unable to provide fingerprints because of actions they have taken to avoid submitting their fingerprints.