



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 40-1 MARCH 2024**

**DATE:** March 21, 2024

**TO:** Members, Board of Trustees

**FROM:** Leah T. Wilson, Executive Director

**SUBJECT:** Client Trust Account Protection Program: A First Look at Second Year Data

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### **EXECUTIVE SUMMARY**

This agenda item presents a first look at data from the second year of the Client Trust Account Protection Program (CTAPP).

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### **BACKGROUND**

Effective 2023, California attorneys are required to report client trust account information to the State Bar annually pursuant to the Client Trust Account Protection Program. Although tools for doing so are somewhat limited, this reporting allows the State Bar to proactively monitor accounts and identify risks.

### **DISCUSSION**

Approximately 203,000 attorneys were required to support CTAPP reporting this billing cycle. As of the close of the cycle, 86 percent of licensees had complied; at the same point last year, 94 percent had. This difference is due in part to problems with the underlying reporting platform, as well as to some confusion on the part of licensees about the annual nature of the reporting requirements. Staff delayed the imposition of penalties this cycle due to these challenges.

Although compliance numbers were down as compared to last year, there was a marked increase in the number of client trust accounts reported. At the close of the 2023 cycle 75,242 attorneys reported at least one account, while at the close of 2024, 116,465 had.

Banks are required to report information about certain types of client trust accounts (IOLTA or pooled accounts) to the State Bar. As a result, variances between attorney and bank-reported data can be identified for these account types. In the 2024 cycle, 10,406 IOLTA accounts were reported by banks but not by attorneys. This is a decline from the over 15,000 “mismatches” identified in 2023. Staff’s ability to follow up on these variances is limited by the fact that while banks report IOLTA information to the State Bar with some personal identifiers, that reporting does not include bar numbers. With respect to non-IOLTA (or individual client trust accounts), the State Bar is even more hamstrung, as banks are not required to report any information about these types of accounts. Significant underreporting of non-IOLTA accounts is likely occurring, based on patterns observed on the IOLTA side.

The average daily balance of the 47,920 IOLTA accounts reported by banks in the 2024 cycle totaled \$7.66 billion. Attorneys reported 10,406 individual client trust accounts, with an average daily balance of \$3.24 billion.

Analysis of CTAPP data extends beyond dollars and reconciliation. Key risk-related findings so far include the fact that attorneys with two or more IOLTA accounts are likely to receive more complaints and more bank reportable actions.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **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**

None

## **ATTACHMENT LIST**

A. Presentation: A First Look at Second Data at Second Year Data



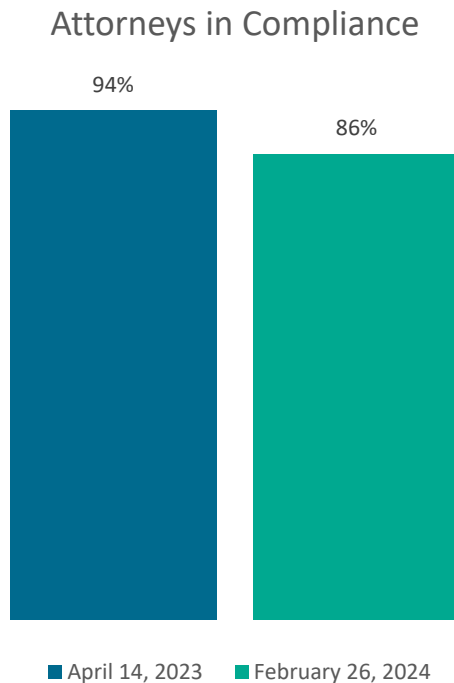
The State Bar *of California*

ATTACHMENT A

# Client Trust Account Protection Program: A First Look at Second Year Data

Board of Trustees Meeting, March 21–22, 2024

# Compliance with CTAPP Reporting

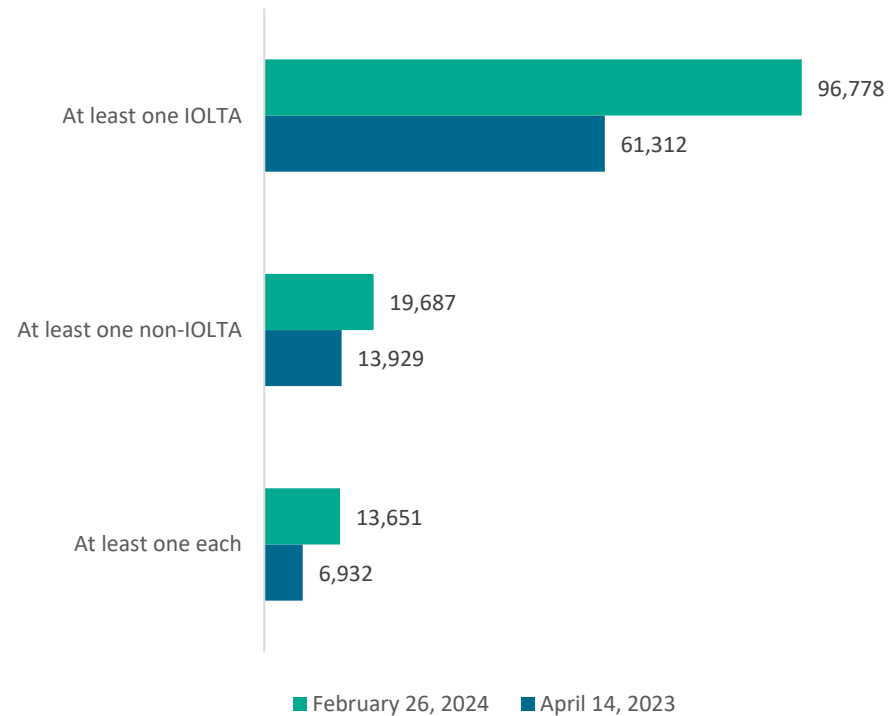


Note: For Year 1 of CTAPP two extra months were given to provide initial data.

- Approximately 203,600 attorneys were required to complete CTAPP reporting. Compared to the approximately 202,400 of the previous billing cycle.
- As of the close of the 2024 cycle, 86% had done so. At the same time in 2023, 94% had done.
- Lower compliance levels are in part due to confusion that reporting is annual and not one-time.
- In addition, significant State Bar technology problems hindered timely reporting.



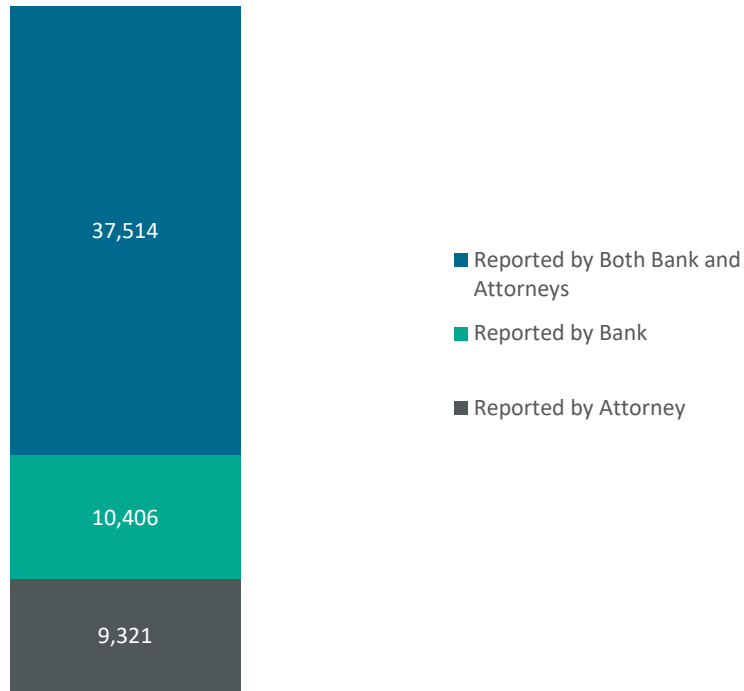
# Attorneys Reported IOLTA and non-IOLTAs



- There is a marked increase in the number of accounts reported in the current billing year.
- In 2023, 75,242 attorneys had reported at least one trust account. In 2024 that number increased to 116,465.
- Most attorneys who reported maintaining an IOLTA or non-IOLTA account reported at least one IOLTA.



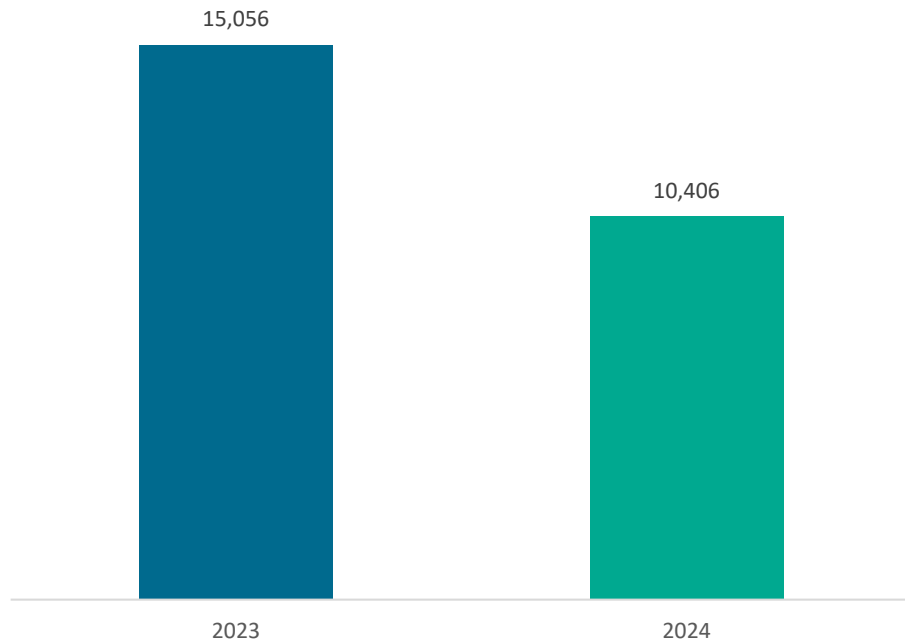
# IOLTA Account Reconciliation



- Banks are required to report IOLTA information to the State Bar enabling reconciliation of attorney reporting,
- 37,514 IOLTAs were reconciled this cycle.
- 10,406 IOLTAs were reported by banks but not by attorneys.
- 9,321 IOLTAs reported by attorneys but not the banks. These types of errors are likely the result of data entry issues and accounts no longer reported by banks due to mergers.



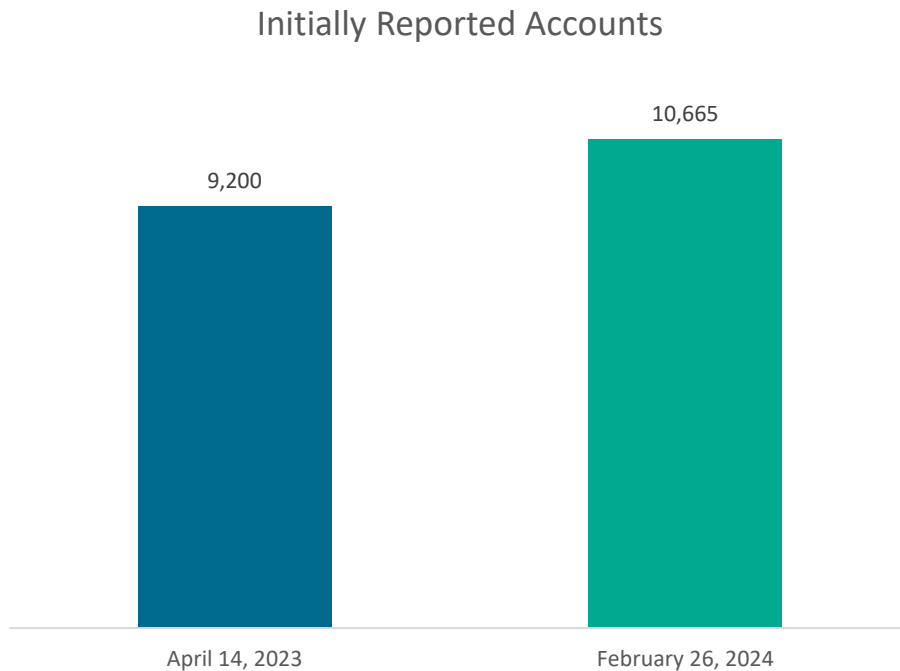
# Number of IOLTAs Not Reported By Attorneys



- Mismatches between bank and attorney reporting can be identified.
  - Because banks do not report the attorney account holder name or bar number, identifying who the unreported IOLTAs belong to is challenging and sometimes not possible.
- During Year 1, the State Bar was able to identify approximately 4,500 attorneys with unreported IOLTAs, out of 15,056 mismatches.
- This year 10,406 mismatches have been identified. Manual work to identify associated attorneys is underway.



# Non-IOLTA Accounts



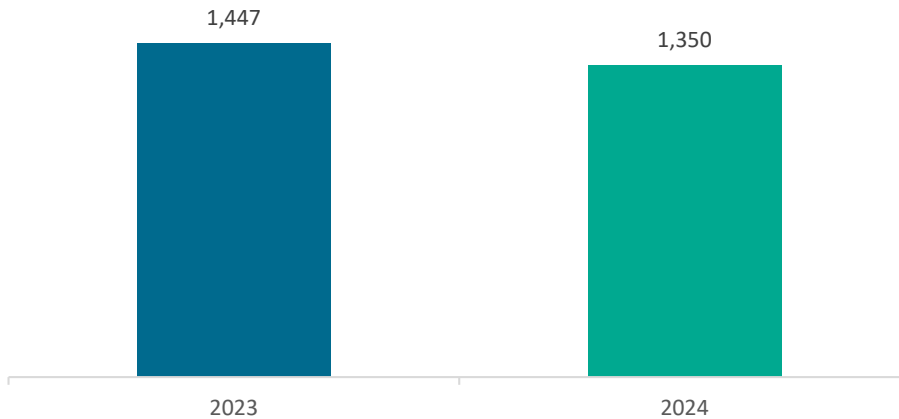
- Currently, banks do not report information about non-IOLTAs to the State Bar. Therefore, the Bar has no way to independently verify the existence of non-IOLTAs.
- Attorneys reported 16% more accounts in Year 2 of CTAPP than in Year 1.
- However, it is very likely thousands of non-IOLTAs continue to be unreported by attorneys (as is the case with IOLTA accounts).



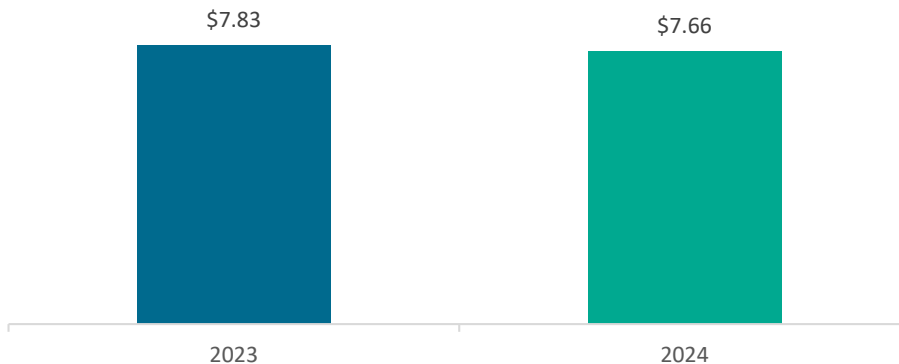


# Trends in IOLTA Accounts

Number of IOLTA Accounts with Balances  
Greater than \$1M



Average Daily Balance  
(in billions)



- Bank reporting shows the number of IOLTAs for the Year 2 reporting period has decreased to 47,920 from the 48,569 of Year 1. A 1% decrease.
- There was a 7% decrease in the number of IOLTAs reported by the banks with average daily balances over \$1M.
- There was a 2% decrease in the overall average daily balance of all 47,920 California IOLTAs reported by the banks.



# Evaluating Risk of CTA Mismanagement

- Attorneys with 2 or more IOLTA accounts are more likely to receive more complaints (any type) and more bank reportable action complaints
- Complaint risk has a negative relationship with firm size - solo and very small firm attorneys receive more complaints (all types) and more bank reportable actions
- Personal Injury, Wills & Probate, Elder Law, Family Law, Debtor & Creditor, Bankruptcy, and Medical Malpractice are the practice areas most likely to receive bank reportable actions



# Why Bank Reporting is Essential

By reviewing bank-reported IOLTAs that were not reported by an attorney, the State Bar discovered:

- An active IOLTA held by an attorney suspended since 2015. The attorney opened the account after being suspended. Despite the suspension, the attorney continued to practice law and hold client funds.
- 100 deceased attorneys with \$5.8 million in their IOLTAs. In some cases, these attorneys have been deceased for 5 – 10 years.
- An attorney who has been accused of misappropriating millions of dollars from non-IOLTAs and who did not register any non-IOLTAs with the State Bar failed to register one of his IOLTAs. The State Bar cannot confirm the existence of any currently open non-IOLTAs since the banks do not report these accounts to the Bar.

Approximately 10,000 attorney-unreported IOLTAs remain to be researched.

