

OPEN SESSION

AGENDA ITEM

III. A.

DATE: August 17, 2018

TO: **Members, Programs Committee**

FROM: Richard Schauffler, Senior Program Analyst, Mission Advancement & Accountability Division

SUBJECT: Appendix I Review - Opportunities for Improving Governance and Service Delivery

EXECUTIVE SUMMARY

This agenda item provides draft reports on three subentities that report to the Programs Committee – the Committee of Bar Examiners, the California Board of Legal Specialization, and Council on Access and Fairness. These reports are being developed pursuant to recommendations of the 2017 Governance in the Public Interest Task Force. Reports on two additional subentities under the purview of the Programs Committee – the California Commission on Access to Justice and the Legal Services Trust Fund Commission – are not included in this agenda item. Bar staff plan to recommend at the September meeting of the Board of Trustees that reports and recommendations on these two subentities be deferred pending a reengagement with stakeholders in the fall of 2018.

BACKGROUND

The final report of the 2017 Governance in the Public Interest Task Force (Task Force) recommended that the State Bar continue its evaluation of the role played by committees, boards, and other oversight bodies (“subentities”) in the governance of the State Bar. Appendix I of the Task Force report assigned the review of five of these subentities to the Programs Committee: the Committee of Bar Examiners, the California Board of Legal Specialization, the Council on Access and Fairness, the Legal Services Trust Fund Commission, and the California Commission on Access to Justice.¹

¹ The exact count of subentities depends on how they are divided. Appendix I counted the Law School Council separately from the Committee of Bar Examiners (CBE) – even though the Law School Council is, effectively, a sub-subentity, advising the CBE – but was silent on two other subentities that advise the CBE – the Law School Assembly and Advisory Committee on California Accredited Law School Rules.

DISCUSSION

The attached draft reports are presented for discussion; final reports and recommendations will be submitted to the Board at its September meeting. These drafts, as well as those for all other subentities, will be circulated to subentity members to ensure that final reports are fully reflective of volunteer input.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 1. Successfully transition to the “new State Bar”— an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: (c) No later than September 30, 2018, determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.

RECOMMENDATION

None

ATTACHMENT(S) LIST

- A.** Draft Report on the Committee of Bar Examiners
- B.** Draft Report on the California Board of Legal Specialization
- C.** Draft Report on the Council on Access and Fairness

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The Committee of Bar Examiners (CBE or Committee) was established in 1939 by the State Bar of California to administer the Bar's program of admitting lawyers to the practice of law in California.

The 2017 Governance in the Public Interest Task Force posed several questions related to the CBE including:

- How can the CBE's relationship with the Board be strengthened for more meaningful engagement, communication, and exchange of ideas?
- Should the law school accreditation function be reviewed, and the feasibility of partnering with professional accreditation bodies for this function be explored?
- Should CBE's focus on policy and oversight be strengthened by changing the division of labor between CBE and staff for functions currently performed, including moral character reviews?

Staff secured the assistance of organizational development consultant Elise Walton, and former State Bar Executive Director Elizabeth Parker, to complete the CBE review. Ms. Walton and Ms. Parker worked closely with members of the CBE and staff over the course of several months. Their final report is provided as Attachment A.

BACKGROUND

Purpose

The CBE was established to administer the Bar's program of recommending qualified applicants to the California Supreme Court for admission to the practice law in California. This charge includes the development, administration, and grading of the bar examination; the review of moral character of Bar applicants; accreditation of law schools in California that are not accredited by the American Bar Association; and oversight of additional registered unaccredited law schools.¹

Source of Authority

The Legislature enacted Business & Professions Code Section 6046, which provides that the Bar may establish an examining committee to examine all applicants for admission to the Bar to practice law and administer the program for same.² The statute goes on to define the size and

¹ A detailed review and analysis of the work of the CBE is contained in a report commissioned by the State Bar. See Elise Walton and Elizabeth Parker, *Committee of Bar Examiners Report*, June 1, 2018, included here as Attachment A.

² A full legal analysis of the Committee of Bar Examiners' authority and its relationship to the Bar, the California Supreme Court, and the Legislature is contained in Office of General Counsel Memorandum to Erika Hiramatsu, Chair, David Torres, Vice-Chair, "Authority Over State Bar Admission Functions," from Vanessa Holton, General Counsel and Destie Overpeck, Assistant General Counsel (April 4, 2018).

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composition of any such committee. Pursuant to Section 6046, the Board established the Committee of Bar Examiners and its rules via State Bar Rules, title 4.

Board Oversight

Some of the work of the CBE is reported to the Board's Programs Committee by Bar staff; however, there does not appear to be a clear process or structure for comprehensive reporting of CBE activities.

Structure

The size and composition of the CBE are detailed in Business & Professions Code Section 6046c and 6046.5. The 19 members of the CBE are defined as follows:

- 3 public members appointed by the Speaker of the Assembly;
- 3 public members appointed by the Senate Rules Committee;
- 3 public members appointed by the Governor; and
- 10 members appointed by the California Supreme Court, specifically 9 lawyers who are currently licensed by the Bar and 1 judicial officer.

All members are appointed for 4-year terms that can be renewed up to 3 times.

SUBCOMMITTEES³

The CBE organizes its work into four subcommittees and also receives input from three advisory bodies. Membership on subcommittees rotates annually, with the exception of the chair, who serves in that function for four years.

Subcommittee on Operations & Management

The Subcommittee on Operations & Management is made up of six CBE members who review issues related to the administration of examinations, fee and deadline waivers, reported allegations of cheating, as well as the internal operations of the CBE (budget and personnel).

Subcommittee on Moral Character

The Subcommittee on Moral Character is made up of nine CBE members. This subcommittee reviews moral character applications where Bar staff have identified serious concerns related to whether an applicant is of good moral character. The Moral Character evaluation is one of several parts of the process of establishing eligibility for admission to the practice of law in California.

Subcommittee on Examinations

³ Each subentity has organized subcommittees according to its own logic and with varying degrees of formality; the formation of subcommittees and their work have not been reviewed or approved by the Board. The descriptions of subcommittees and their work is compiled from a variety of sources and is best understood as self-description.

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The Subcommittee on Examinations is made up of seven CBE members who provide oversight for the development, administration, and grading of the California Bar exam and the First-Year Law Students' Exam. This work is performed under the supervision of the Supreme Court of California.

Subcommittee on Educational Standards

The Subcommittee on Educational Standards is made up of eight CBE members who provide oversight to the process of accrediting California law schools that are not accredited by the ABA. All California-accredited law schools operate from a fixed-facility campus and are authorized to award a Juris Doctor (JD) degree that qualifies graduates to take the California Bar Examination. In addition, this subcommittee regulates the registered, unaccredited law schools under the authority granted to the Bar by Business & Professions Code Section 6046.7 in 2007.

California's unaccredited law schools operate either from a fixed-facility campus, by correspondence, or online.

Advisory Bodies

In addition to its four subcommittees, the CBE also draws on the input of three advisory bodies.

Law School Assembly

The Law School Assembly (LSA) was created by the Board of Trustees in 1986. Its function is to provide a forum for disseminating information from the CBE to the law schools, providing feedback from the law schools to the CBE, and for the discussion of any matters that are within the functions of the council or the CBE. In addition, the Assembly elects the Law School Council (see below). The LSA is composed of one representative, to be selected by the school, from each school providing resident instruction in law in the State of California, whether ABA approved, California accredited, or registered (unaccredited); the members of the CBE; and such persons as the Board of Trustees may appoint as liaison members to the assembly. The Law School Assembly generally meets once each year if there are matters of mutual interest to discuss; its most recent meeting was June 21, 2018.

Law School Council

The Law School Council considers matters related to the content and format of the Bar examination, coordinating curricula related to bar tested subjects, and aspects of law school education relevant to licensure. The Council consists of 14 members: ten are law school deans who are elected by their category of school – i.e., ABA accredited, State Bar accredited, or unaccredited – and appointed by the Board of Trustees; three are members of the Committee of Bar Examiners appointed by the CBE Chair; and one is a member of the Board of Trustees.

Advisory Committee on California Accredited Law School Rules (RAC)

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The Advisory Committee on California Accredited Law School Rules (RAC) advises the Committee of Bar Examiners on matters relating to the promulgation of new rules, guidelines and amendments to the Accredited Law School Rules and the Guidelines for Accredited Law School Rules. The Advisory Committee may also develop related proposals for consideration by the CBE. The RAC consists of six members, three selected by the deans of the California-accredited law schools and three appointed by the Chair of the CBE. Persons selected from the law schools must be individuals with California Accredited Law Schools (CALS) experience, including current and previous CALS deans, associate deans or senior faculty.

Staffing

The work of the Office of Admissions supports the CBE; this office is staffed by 60 full-time equivalent employees⁴ located in both the Los Angeles and San Francisco offices of the Bar. These staff manage the day-to-day operations of the program as well as calendared events such as the twice yearly administration of the bar examination in over two dozen locations throughout the state.

The work of staff in the Office of Admissions is organized into functional areas that mirror those of the CBE's subcommittees: Admissions, Moral Character, Operations & Management, and Educational Standards.

Admissions

Staff organize, coordinate, and administer the meetings of the Law School Council, Law School Assembly, the RAC, and the meetings of the CBE as a whole, as well as for its four standing subcommittees.

Education Standards

The day-to-day operations of the accreditation process are handled by staff, including general oversight of and collaboration with law schools of all types.

Examinations

Staff manage the development of items and essay topics for examinations as well as the grading of all examinations. This work includes the acquisition and use of items from the Multistate Bar Exam, as well as contracting with and supervising the work of proctors and about 90 independent contractor graders. Finally, staff review and administer the requested testing accommodations for applicants with disabilities.

Operations and Management

Staff develop and manage the CBE budget. In addition, these staff function as the point of intake, processing all applications for all examinations.

Moral Character

⁴ Authorized and filled positions; does not include vacancies.

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Staff review moral character applications including records and documents submitted by applicants; almost 7,000 applications were received in 2017. Staff assess each application and classify it according to documented business rules. The most problematic cases are referred to the CBE's Subcommittee on Moral Character for informal conferences. In 2017, the number of applications that resulted in an informal conference was 182 (less than 3%).

WORK OF THE SUBENTITY

Work Performed by the Committee of Bar Examiners

Most of the work of the CBE is conducted by its subcommittees as described above. For a detailed discussion of the work of the CBE, see Attachment A.

The CBE meets approximately 7 times per year for 1-2 days per meeting. Additional meetings of its subcommittees are held as well, usually in conjunction with the meeting of the CBE as a whole. Additional meetings are required as part of site visits to law schools related to the accreditation process and for moral character review interviews.

COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS

Attachment A provides a detailed comparison of the CBE with other jurisdictions. The key findings from Attachment A relate to:

- Size: Most state bar examiner entities are half as big as the CBE; the size of such entities is not correlated to size of state;
- Terms of Members: Most state bars enforce term limits to infuse new ideas and expertise;
- Exam Development: Most states limit the use of original, state-specific content;
- Accreditation: California is one of five states that permit accreditation of non-ABA-accredited law schools;⁵ and
- Moral character: The absence of standards and clear definitions regarding moral character is a problem shared by most other jurisdictions. The process of inquiring about moral character varies markedly across states in terms of when the inquiry occurs, the substance of the inquiry, and who conducts the inquiry. The appeals process for applicants rejected on the basis of moral character is similarly lacking in standards and uniformity.

⁵ Of the other four, two allow schools accredited by a regional accreditation provider (New England Association of Schools and Colleges), one uses the state's Board of Bar Examiners, and the other does not accredit the non-ABA schools at all.

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OPPORTUNITIES FOR IMPROVING GOVERNANCE AND SERVICE DELIVERY

Returning to the elements of successful governance discussed in the introduction to this report reveals a number of opportunities for organizational restructuring to improve the efficacy of this work.

Role Definition: The CBE has exhibited some confusion over its role, related to both its authority and independence (see below). For example, at times the CBE has exhibited a belief that State Bar staff work for the CBE and not the Bar, as well as the belief that the CBE exercises budget authority over the Office of Admissions' budget, neither of which is accurate.

Accountability & Transparency: The bar examination data is consistently reported, although perhaps under-analyzed. As described in Attachment A, CBE's moral character decision rules seem to lack the appropriate level of transparency.

Clear Lines of Authority: In September 2017, the CBE inquired with the Office of General Counsel (OGC) of the State Bar as to its authority. The questions posed (What can CBE decide on its own? What is reported to the Board of Trustees? What must be approved by the Board? What requires Legislative approval or must be reported to the Legislature? What requires Supreme Court approval?) reflect the confusion at that time as to the authority of the CBE. This confusion came to a head during last year's studies of the Bar examination, with the CBE expressing concern that it, not the Board of Trustees, should be responsible for analyses, recommendations' development, and reporting. OGC's response to the CBE indicated, in essence, that the CBE derives its authority from the State Bar subject to ultimate authority of the Supreme Court.

Impartial, Consistent, and Fair Decision-Making: This issue arises most clearly with respect to moral character reviews. Statements of CBE members indicate problems of subjectivity and bias; unfounded belief in their power to assess candor and remorse; and the use of ad hoc criteria as indicators of successful rehabilitation. Another deficiency along this dimension can be seen in the accreditation process where the lack of familiarity with the accreditation function and standards has created a potential for the inconsistent application of rules and guidelines.

Engagement: As a whole CBE members are highly engaged in their work. The law schools that seek to collaborate with the CBE on policy issues are less consistently engaged, and ABA-accredited schools least of all, except on issues related to the bar examination. A recent survey of all California law school deans conducted by the State Bar showed that less than half feel that the current mechanisms for engagement (the Law School Assembly, the Law School Council, and the Advisory Committee on California Accredited Law School Rules (RAC)) are

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“useful.” Results were consistent across all three bodies from all types of law schools, with ABA-accredited law schools rating these somewhat lower than the others.

Size: The report of the Bar’s consultants (Attachment A) includes a comparative analysis of the size of entities in other states that indicates an average size of 9 and most common size of 7. When the size of subentities is defined by considerations other than their function, as is the case with CBE, they are almost always too large. Size then dictates a proliferation of subcommittees and a division of labor not based on efficiency or effectiveness but on ensuring that all members have a role to play. The result of that process is a division of labor in which members are doing administrative and other work better performed by staff. A large size almost always means a high rate of absenteeism from meeting to meeting, making continuity and full participation of all members impossible.

The consultants’ detailed proposals and discussion regarding improvement of the working relationship between the Board and the CBE and for improving the services of the CBE are contained in Attachment A.

Table 1 below provides a detailed overview of recommendations from Bar staff, based on review of the consultants’ report and discussions with the CBE. These recommendations pertain to key functions of the CBE and proposed roles, the division of labor among staff, the CBE and the Board, and recommends new forms of law school engagement as it pertains to the policy and other work associated with those functions.

- The first column of the table describes a current function (and its related tasks) of the CBE;
- The second column proposes who should be responsible for the function and/or related tasks going forward;
- The third column indicates whether the proposal represents new work or a change from the current division of labor between the CBE and Bar staff;
- The fourth column indicates how law schools will be engaged in the work, where appropriate; and
- The fifth column describes the role of the Board of Trustees.

Key recommendations of Bar staff contained in Table 1 are:

Moral Character

- Reviews
 - Staff, not the CBE, to conduct informal conferences with applicants, in order to overcome subjective and inconsistent decision-making and lack of transparency.

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Educational Standards

- Accreditation of law schools
 - Outsource entirely or transition to staff-led process, to increase professionalism, consistency, and transparency; and
 - If staff-led, CBE to function as an appellate body.

Law School Engagement

- New forms of communication and collaboration with law schools
 - E-newsletter: to regularly inform law schools of information with direct relevance to their work with the State Bar;
 - Working groups: to engage law schools in policy review, revision, and development, short-term working groups will be established to benefit from the perspectives of law schools on such matters as testing accommodations, moral character review, and bar examination studies (standards, content validation, job analysis) conducted by the Bar.

RESPONSE AND INPUT FROM THE CBE

The Committee of Bar Examiners was engaged in the Appendix I review process in several ways. First, during the fall of 2017, the consultants conducted several interviews for discovery, including one-on-one discussions with each of the CBE members on CBE governance (note: three members were not able to schedule a one hour meeting). Subsequently, in early 2017, the chair and the Bar's executive director appointed a working group to review design recommendations for CBE consideration. This group met 4 times to revise and refine ideas and proposals and their work was reviewed at a meeting with the full CBE in February 2018. Based on this input and other research, the consultants summarized recommendations in a Work Draft Report submitted June 1, and the full CBE reviewed the report at its June meeting.

Specific issues raised by members of the CBE include the following:

Moral Character

The CBE believes that experienced CBE members are in a better position to make moral character determinations based on their professional and life experience.

Educational Standards

CBE members expressed doubt that an outside accreditation vendor could be found who would use a process appropriate for the California-accredited law schools. The concern was expressed that such an accreditation process might impose costs on these schools that would be passed on to students, and thus contradict their business purpose as a lower cost option for obtaining a law degree. The CBE does not believe there are any problems with how the accreditation function is currently performed.

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Operations & Management

The CBE expressed concern that having budget oversight done by staff would make the CBE and thus the Bar less transparent.

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Table 1. Staff Recommended Roles for Improving Governance & Service Delivery

I. Exam Development	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Develop questions	EDG Team			
2. Review of questions	CBE			Review results
3. Evaluate grading	CBE	New		Review results
4. Sampling plan	Staff & psychometrician	New		Review as part of 7-year bar exam study.
5. Challenges to exam questions	CBE			
6. Set exam fee	CBE			Review changes.
II. Testing Accommodations	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Policy Development	Staff & CBE		Serve on working groups to develop policies	Review & approve proposed policy changes
2. Review petitions	Staff (with consultant)			
3. Review appeals	CBE			
III. Moral Character	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Policy Development	Staff & CBE		Serve on working groups to develop policies	Review & approve proposed policy changes
2. Reviews & Informal Conferences	Staff	Change		
3. Review appeals	CBE			

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Note: EDG stands for Examination Development and Grading.

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Table 1. Staff Recommended Roles for Improving Governance & Service Delivery *(continued)*

IV. Eligibility & Enforcement of Exam Rules	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
	1. Policy development	Staff & CBE	Inform via law school assembly & e-newsletter	Review & approve proposed policy changes
	2. Enforcement	Staff for initial decisions	Change	
	3. Appeals	CBE		
V. Exam Analysis & Review	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
	1. Standard setting study	Staff (with consultant)	Serve on working group	Review and submit results to Supreme Court and Legislature
	2. Content validation study	Staff (with consultant)	Serve on working group	Review and submit results to Supreme Court and Legislature
	3. Job analysis	Staff (with consultant)	Serve on working group	Review and submit results to Supreme Court and Legislature
VI. Budget	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
	1. Budget development & management	Staff	Change	Approve annual budget and amendments
VII. Personnel	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
	1. Personnel	Staff		

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Table 1. Staff Recommended Roles for Improving Governance & Service Delivery *(continued)*

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VIII. Trends in Licensing & Certification	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Trends study	Staff & CBE	New	Inform via law school assembly & e-newsletter, serve on working group	Review results, consider for 7-year study design
IX. Engagement with Law Schools	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1.Communicate & collaborate	Staff	Change	Inform via e-newsletter, discuss in Law School Assembly, serve on working groups	
X. Law School Accreditation	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Law school accreditation	Outsource	Change	Serve on working groups on accreditation policy	Review & approve proposed policy changes
	OR			
1. Law school accreditation	Staff	Change	Serve on working groups on accreditation policy	Review & approve proposed policy changes
2. Site Visits/Major Changes	Outsource	Change		
	OR			
2. Site Visits/Major Changes	Staff	Change		
3.Appeals of accreditation	Outsource	Change		
	OR			
3.Appeals of staff accreditation	CBE	Change		
4. Policy Development	Staff or CBE			Review & approve proposed policy changes

ATTACHMENT B

INTRODUCTION

The California Board of Legal Specialization (CBLS) was established by the State Bar to administer the program of certification in legal specialization mandated by the California Supreme Court in 1996. The purpose of the program is twofold: certification provides attorneys with credentials that attest to their competence in specific areas of legal practice; certification also provides consumers with an independent verification of an attorney's qualifications in those areas of law. The certification program consists of two components: direct certification by the State Bar and private certification by accredited certification organizations.

Following initial certification, the CBLS manages a program of recertification to ensure that legal specialists seeking to retain that designation continue to meet all the requirements for the designated specialty.

The central questions posed by the 2017 Governance in the Public Interest Task Force in Appendix I and by the Bar's review of this subentity are:

- Should certification in a legal specialization be characterized as a public protection function that increases attorney competence, or as an associational activity that benefits attorneys in the marketing of their law practices?
- Should the function of certification be outsourced to accredited providers of certification?
- Could the certification of legal specializations be streamlined by redesigning the work and altering the division of labor among Bar staff, subject matter experts, and paid consultants?

In addition to the fundamental question of whether certification is more associational or regulatory in nature, the size of the certification program appears to call review. In addition to the 15-member Board, the CBLS conducts its work using 99 volunteers. These volunteers comprise nearly one-third of the State Bar's total volunteers.

BACKGROUND

Purpose

The CBLS administers the State Bar program for certifying legal specialists in 11 areas of law, with the assistance of Specialty Advisory Commissions. The CBLS recommends program rules and provides policies and guidelines for certification of specialists; develops legal education criteria; develops and administers testing for each specialization; reviews applications for certification; makes recommendations to the Board of Trustees for consideration of new specialties; develops outreach efforts to increase awareness of the program; and recommends program updates as the needs of the public require.

Lawyers can become certified legal specialists if they pass an examination and then apply for certification, which requires that they demonstrate a high level of experience in specific tasks, complete at least 45 hours of continuing legal education in the area of specialization during the compliance period, and receive favorable evaluation of their legal work in that area from judges and attorneys.

Source of authority

California Rules of Court, rule 9.35, requires the State Bar to establish and administer a program for certifying legal specialists, and additionally allows the State Bar to provide certification through the CBLS “or any other entity approved by the State Bar to designate specialists.”¹

Board oversight

The Board of Trustees (Board) oversees the work of the CBLS in several ways. The Board appoints CBLS members, approves CBLS standards and rules, and receives and reviews an annual report on CBLS activities that includes budget and fiscal matters as well as program accomplishments and goals for the following year. The Board approves areas of specialization and the use of specific private certification providers upon recommendation by the CBLS.

CBLS Structure²

The CBLS consists of 15 members: 12 lawyers, at least 10 of whom must be certified specialists, and 3 non-lawyer public members. Members are appointed by the Board of Trustees and serve four-year terms. A member may serve an additional year as a chair, vice chair, or immediate past chair (Rule 3.93).

SPECIALTY ADVISORY COMMISSIONS STRUCTURE

The CBLS fulfills its duties to certify specialists in specific legal fields by utilizing 11 specialty advisory commissions, one commission for each of the legal specialty certification areas:

- Admiralty and Maritime Law
- Appellate Law
- Bankruptcy Law
- Criminal Law
- Estate Planning, Trust, and Probate Law
- Family Law
- Franchise & Distribution Law
- Immigration and Nationality Law
- Legal Malpractice Law
- Taxation Law
- Workers’ Compensation Law

¹ Rule 9.35 of the California Rules of Court, http://www.courts.ca.gov/documents/title_9.pdf (as of July 24, 2018).

² Each subentity has organized subcommittees according to its own logic and with varying degrees of formality; the formation of subcommittees and their work have not been reviewed or approved by the Board. The descriptions of subcommittees and their work are compiled from a variety of sources and are best understood as self-description.

Currently, about 5,150 attorneys are certified through the CBLS.

These specialty advisory commissions recommend and implement standards for certification in each specialty; they also develop and grade certification examinations with the assistance of professional consultants. The specialty advisory commissions recommend successful candidates or propose denials to the CBLS, which approves final action regarding the applicant's certification decision.

Pursuant to Bar rule 3.92, each specialty advisory commission consists of an even number of attorney members, but no more than eight, and one non-attorney member. One of the attorney members need not be a certified specialist. Each member serves a term of four years. One of the principal functions of the CBLS is to appoint members to the specialty advisory commissions (prior to 2017, members were appointed by the Board of Trustees).

ACCREDITED CERTIFICATION PROVIDERS

In addition to those certified specialties provided through the CBLS itself, the CBLS recognizes 11 specializations provided by organizations that meet the California legal certification standards for legal education, legal practice and task proficiency, experience, and professional references.³ With approval from the Board of Trustees, the CBLS recognizes certification in nine specializations for which the CBLS itself does not provide certification and in another two that overlap with certification provided by the CBLS: Bankruptcy and Legal Malpractice.⁴

This method of certification is used for the following areas of legal practice, with the name of the accredited provider in parentheses:

- Business Bankruptcy (American Board of Certification)
- Civil Trial Advocacy (National Board of Trial Advocacy)
- Consumer Bankruptcy (American Board of Certification)
- Creditors' Rights (American Board of Certification)
- Criminal Law Trial Advocacy (National Board of Trial Advocacy)
- Elder Law (National Elder Law Foundation)
- Family Law Trial Advocacy (National Board of Trial Advocacy)
- Juvenile Law - Child Welfare (National Association of Counsel for Children)
- Legal Professional Liability (American Board of Professional Liability Attorneys)
- Medical Professional Liability (American Board of Professional Liability Attorneys)
- Social Security Disability (National Board of Trial Advocacy)

To become a certification provider in California, CBLS evaluates the providers to ensure that they meet California standards regarding required CLE, practice and tasks, and professional references. Providers are reviewed annually, their tests are reviewed every three years, and any major changes to their programs require prior review by CBLS.

³ California does not *require* that these providers are ABA-accredited, but they *are* so accredited.

⁴ Despite sharing the name, the two varieties of Legal Malpractice specialization are different because the CBLS program contains a larger ethics component.

Currently, about 350 attorneys are certified through these providers in California, some of whom hold dual certification with a CBLS program.

Staffing of the CBLS

The CBLS is staffed by six full-time employees of the Bar's Office of Admissions. Bar staff support the CBLS and its Specialty Advisory Commissions and manage the day-to-day operations of the program.

Meetings of the CBLS

A total of four face-to-face meetings are held annually by the CBLS. Meetings are held in Bar offices in Los Angeles and San Francisco. The eleven Specialty Advisory Commissions meet at State Bar offices in San Francisco and Los Angeles throughout the year as needed. The number of meetings (two to six) is loosely correlated to the size of the specialty. Specialty Advisory Commissions meet in person or via teleconference. In recent years, meetings are increasingly taking place via teleconference or videoconference as the State Bar's resources in this area continue to improve.

WORK OF THE CALIFORNIA BOARD OF LEGAL SPECIALIZATION

Work Performed by the Board

The CBLS provides oversight to the legal specialization program, which includes recommending program rules to the Board of Trustees for consideration, including proposed updates to certification as the practice of law changes. The CBLS also creates policy to be implemented by staff in a number of areas including examination administration, testing accommodations, guidelines for approving regulatory applications to seek approval to offer continuing education (much the way MCLE is approved), application processing procedures, examination development, and outreach to attorneys and the public about the program. The CBLS receives appeals including denial of testing accommodations, examination failure, notice of violation of examination rules, denial of certification, and requests to toll status. It also reviews and approves or denies applications for certification and recertification of individual attorneys.

This program is entirely self-funded through the fees charged to applicants seeking certification or recertification, providers of CLE, and private providers of certification. In 2016, revenues from the certification program were over \$2 million while the program's expenses were just under \$900,000. For 2017, expenses outstripped revenue by far with only about \$600,000 in revenue and over \$2 million in revenue.⁵

Work Performed by the Staff

Bar staff manage the day-to-day operations of the program, including:

- processing applications and attendance fees;

⁵ The apparent decline in revenue is a temporary and planned result due to a one-time annual fee holiday approved by the Board of Trustees as a planned expenditure of separate program fund reserves.

- reviewing applications for certification and recertification for completeness before review by CBLs;
- managing the process of developing and administering examinations for each specialization in collaboration with professional consultants and the Specialty Advisory Commissions;
- reviewing applications from providers seeking to offer legal specialist education; and
- overseeing certified legal specialists' educational compliance reporting.

COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS

The ABA lists 49 legal specializations recognized in one or more states across the country. In addition, the ABA has documented several ways that legal specialization is recognized and administered by state bars.⁶

- 16 states do not provide any certification program, but allow lawyers to advertise that they are certified, usually requiring identification of the certification provider and often requiring a disclaimer that the state does not vet these providers;
- 15 states recognize specialization from ABA-accredited and/or other private certifiers. (Six of these states originally offered state-sponsored certification, but switched to private certifiers);
- 11 states provide direct legal specialization through their state bar organizations and the recognition (approval or accreditation) of private certification organizations;
- 5 states prohibit claims to specialization entirely (the position reflected in the ABA Model Rules of Professional Conduct until 1992).⁷

Clearly no consensus exists among states on the value to the public or the Bar of providing direct or private certification. This may be due to seeing specialization as a form of advertising for attorneys, a view that is reinforced by some of the writing on this topic from the ABA and some certification providers, which cite benefits like “professional pride” and “being able to command higher fees” as reasons for becoming certified, along with producing a revenue stream for bar associations, followed by only distant mention of the value of certification to the consumers of legal services.⁸

Support for the consumer protection value of certification, however, can be seen in one of the most common sources of opposition to legal specialization certification: the general resistance to further regulation of the profession and the desire among some attorneys to be able to claim

⁶ See the ABA Center for Professional Responsibility directory of state programs at https://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers/find_a_certification_program.html (as of June 22, 2018).

⁷ ABA Standing Committee on Specialization, “A Concise Guide to Lawyers Specialty Certification,” p5, at https://www.americanbar.org/content/dam/aba/migrated/2011_build/specialization/june2007_concise_guide_final.authcheckdam.pdf (as of June 11, 2018).

⁸ See, for example “Lawyer Specialty Certification: Competency and Marketing,” https://www.americanbar.org/groups/bar_services/publications/bar_leader/2009_10/july_august/certification.html (as of June 11, 2018).

expertise through means that require no verification, including membership in sections or inclusion in lists of “super” or “best” lawyers.

Regardless of these views, in California the Supreme Court established this program with the goal of encouraging attorney competence, preventing disciplinary issues, and creating more informed choices for consumers of legal services. For that reason, it is worthwhile to examine the extent to which California lawyers are making use of this program.

Ideally, one would seek to compare the number of legal specialists in a given specialty to the total number of lawyers who concentrate their practice in that area of law. Unfortunately, there is no way to identify that total universe of lawyers. The only proxy is to examine the relationship between number of members of a Section now housed in the California Lawyers Association and the number of certified legal specialists in that area. The alignment of sections to specializations is not exact, but those Sections that do align with legal specializations are shown in Table 1 below.⁹

Because not every attorney who specializes in an area is a member of that Section, it is safe to assume that the universe of those lawyers in any given field is greater than the number of members of the respective Section. Nonetheless, it is useful to examine the prevalence of certified legal specialists by field. The Sections represent a known body of lawyers in specific fields; the legal specialists as a percentage of those Section members is a representation of the extent to which all those in a field have taken advantage of legal specialization certification. As a result of these limitations, the percentages shown are certainly an overstatement of the percentage of lawyers in a field who are certified as legal specialists.

Table 1. Certified Legal Specialists by Field, 2017

Specialization	Section Members	Certified Legal Specialists	Percentage
Trusts & Estates	6,462	1,019	16%
Family Law	3,921	1,423	36%
Taxation	3,179	324	10%
Workers Compensation	3,048	1,073	35%

Taking a broader view, Table 2 below compares the total number of certified legal specialists in all 22 recognized legal specializations. The number of attorneys who take advantage of this program is small. Nationally, the profile is similar to California, also shown in Table 2. The national profile includes all 49 specialties recognized by the ABA; the California profile includes all 22 specialties recognized by the State Bar.

Table 2. Percentage of Active Attorneys Certified as Legal Specialists, 2012

⁹ State Bar of California, “2017 Annual Report of the California Board of Legal Specialization,” p5. Section membership numbers provided by State Bar staff.

	California Active Lawyers	Certified Legal Specialists	Percentage	National Active Lawyers	Certified Legal Specialists	Percentage
All Specializations	168,746	5,521	3%	1,335,963	39,690	3%

From 1996 to 2012, the ABA reports that the number of new applications for certification as a legal specialist nationwide dropped 27 percent, from 2,323 new applications to 1,701.¹⁰ In contrast to the national trend, the number of attorneys taking legal specialization certification examinations in California has increased by 40 percent over the last five examination cycles, rising from 673 in 2009 to 941 in 2017.

OPPORTUNITIES FOR IMPROVING GOVERNANCE AND SERVICE DELIVERY

Returning to the elements of successful governance discussed in the introduction to this report reveals a number of opportunities for organizational restructuring to improve the efficacy of this work.

Role Definition: The fundamental question for CBLS is the role of certification of legal specialists in a regulatory agency, that is, whether certification is a regulatory activity or a personal benefit to individual lawyers who choose to obtain it. The future direction of certified legal specialization rests on the answer to the question of whether this is properly regarded as a public protection function, trade association benefit, or both.

Accountability & Transparency: The program tracks relevant measures of its work (applicants, test takers, pass rates) and reports regularly to the Board.

Clear Lines of Authority: The authority of the Board in authorizing the recognition of specific legal specializations is clear. The Board's authority in approving the use of specific private certification providers is also well understood by CBLS, as is the authority of the Board to confer individual certifications upon the recommendation of the CBLS.

Impartial, Consistent, and Fair Decision-Making: No issues related to decision-making have arisen during this review process.

Engagement: Only a small percentage of licensed attorneys in California take advantage of this program. If the public protection function of this program is to be taken seriously, a focused strategy for seeking a higher level of engagement needs to be developed. A similar effort will be required to ensure that the consumers of legal services understand the meaning and value of legal specialist certification.

¹⁰ American Bar Association, 2013 National Roundtable on Lawyer Specialty Certification, "Lawyer Specialty Certification by the Numbers, 1996-2012," https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2012_national_certification_census.authcheckdam.pdf (as of June 11, 2018).

Size: As noted at the outset, the number of volunteers (15 members of the CBLS and 99 members of the 11 Specialty Advisory Commissions) is excessive. Clear opportunities exist for staff to both outsource certain functions and in-source others, and some of this streamlining is already underway. Specifically, if the Bar continues to directly administer a legal specialization function, the exam development and grading process should be fully professionalized, akin to the process for the California Bar examination, resulting in the need for far fewer CBLS and Specialty Advisory Commission volunteers.

Options identified by the Task Force on Governance in the Public Interest and this review suggest three possible approaches for consideration:

Option 1: Retain within the Bar and Streamline

- Continue certifying in a defined set of specialty areas and recognize private organizations to certify in additional areas;
- Streamline the process by reducing the role, size, and meetings of the 11 Specialty Advisory Commissions by:
 - continuing the use of a short-term examination development team and the development of an inventory of exam questions for future use;
 - hiring consultants to grade examinations and using remote grading technology;
 - updating practice standards using short-term working groups of subject matter experts;
 - automating test administration through the new Admissions Information Management System (AIMS).

Option 2: Contract out the Entire Function

- Expand the use of private ABA-accredited vendors to administer certification;
- Eliminate the Board and Specialty Advisory Commissions and retain staff to manage vendors and Board reporting.

Option 3: Eliminate Certification of Legal Specialization

- If the Board determines that certification of a legal specialization is an associational activity that primarily benefits lawyers in the marketing of their services, eliminate this function from the Bar entirely.

ISSUES RAISED BY THE CBLS

The CBLS discussed Appendix I with Bar staff and management at its meetings in April and July. At those meetings, the CBLS expressed the following concerns:

- California's standards for certification and its high-profile program influence both the ABA standards and the practices of private providers, thus increasing

public protection across the country. If California ceases program operations, providers could weaken their standards.

- Private providers may not prioritize the areas of law or requirements that consumers need most.
- The number of specialization areas and thus the number of certified legal specialists would decline sharply if this function were outsourced entirely to private providers.
- The program is solvent and growing and operates without General Fund monies and thus provides a valuable service to consumers of legal services without burdening licensees or other areas of the Bar.
- Since only 2 of the 11 legal specialty areas would be covered by private providers as currently organized, the CBLS believes that the number of certified legal specialists would drop from the current 5,500 to only a few hundred.

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The Council on Access and Fairness (COAF or the Council) was created by the Board of Trustees in 2006 to advise the Board on strategies for increasing diversity and inclusion in the legal profession. COAF serves as a liaison between the State Bar and diverse stakeholders and constituencies. COAF also seeks to develop programmatic activities designed to encourage and support people from diverse backgrounds to enter into and advance within the legal profession.

The 2017 Governance in the Public Interest Task Force and subsequent discussions by the Board have posed several questions with respect to governance for COAF and the subentities most closely related to its mission: the California Commission on Access to Justice (CCAJ) and the Legal Services Trust Fund Commission (LSTFC). These include:

- Should COAF be merged into or become a subcommittee of the California Commission on Access to Justice?
- How can the Board best become engaged with COAF and align its strategies with respect to improving diversity and inclusion?
- How can the Bar's diversity and inclusion goals be incorporated into all aspects of the Bar's work?

The separation of the State Bar Sections and the creation of the California Lawyers Association raised still more pointed questions about the role of these particular subentities in the new Bar. Given the renewed emphasis on the State Bar's public protection mission, where exactly should this important work be housed and how would it fit within the more narrowly tailored regulatory focus of the Bar?

In restructuring the Bar, the mission of COAF and the other related subentities was embraced as integral to the Bar's mission. This commitment is reflected in the Bar's Strategic Goal 4: "Support access to justice for all California residents and improvements to the state's justice system."¹ More recently, the California State Legislature has reaffirmed the importance of issues of diversity and inclusion, clarifying the centrality of these concepts to the Bar's public protection mission.²

Historically, the work of COAF has been poorly connected to the Board of Trustees. COAF has provided annual reports of its work to the Board and requested input from the Board on the development of its annual strategic plan. But the Board has rarely engaged fully with the issues that COAF addresses or thought deeply about how best to achieve the goals of this program and fully integrate them into the Bar.

¹ State Bar of California, *2017-2022 Strategic Plan*, <http://board.calbar.ca.gov/Goals.aspx> (as of August 9, 2018).

² Assembly Bill 3249 (State Bar Act) 2017-18.

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BACKGROUND

Purpose

COAF is composed of lawyers, judges and members of the public advising the State Bar's Board of Trustees on strategies to advance the goal of diversity in the legal profession, encouraging people of diverse backgrounds to enter, remain, and advance in the legal profession.

Source of authority

The Council was created by resolution of the Board at its November 2006 meeting. At that time, the Board voted to sunset five committees that worked on access, diversity, and fairness and to create COAF.³ COAF was directed to "regularly convene stakeholder forums to solicit input from all interested parties as to the priorities and the future work of the council."⁴

Board Oversight

COAF reports to the Board annually regarding year-end accomplishments, using its strategic plan objectives as the framework for that report.

In addition, COAF seeks Board approval of its Strategic Plan each year, to keep the Board informed as to its projected initiatives and activities. If emerging issues warrant significant revision to the plan, COAF returns to the Board to seek approval to modify its Strategic Plan before moving ahead.

Structure

COAF consists of 25 attorney and public members who are appointed by the Board of Trustees. The precise number of attorney and public non-attorney members is not specified in the resolution that founded COAF, although the original Mission Statement of COAF stated that members should reflect "diverse constituencies" and went on to list race, ethnicity, national origin, gender, age, sexual orientation, disability, as well as position along the education pipeline; representation was also sought from judges. Geographic location, and type and size of law practice were also to be considered. Members serve a three-year term.

In addition to the 25 regular members of the Council, there are four organizational liaisons, one each from the American Bar Association, Judicial Council of California, the Institute for Inclusion in the Legal System (a national organization that promotes diversity in the legal profession), and California LAW, Inc. (a non-profit that works closely with community colleges and law schools to promote diversity along the pathway to law). Liaison members attend meetings at their own expense.

³ The following committees were eliminated: Ethnic Minority Relations Committee, Committee on Legal Professionals with Disabilities, Committee on Senior Lawyers, Committee on Sexual Orientation and Gender Identify Discrimination, and Women in the Law.

⁴ State Bar of California, Board of Governors Meeting Minutes, November 17, 2006, p.11.

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COAF program staff note that some former COAF members continue to serve informally as “advisors” and are kept informed of COAF activities. These advisors receive no financial support for their participation.

A total of 4 in-person meetings are held annually by COAF. The Council and its committees also hold meetings via conference call as needed.

SUBCOMMITTEES⁵

COAF is organized into four standing committees that are intended to mirror the diversity pipeline concept in the education system:

Early Education Committee

The Early Education Committee seeks to initiate diversity pipeline work early in schools, up to and including high schools. This includes work in support of California Partnership High School Law Academies.

College/Law School Committee

The College/Law School Committee participates in work promoting and expanding the Pathway to Law Program in community colleges, four-year colleges, and law schools, and also focuses on monitoring and evaluating Bar examination passage rates and providing support for applicants of diverse backgrounds who take the Bar examination.

Legal Profession Committee

The Legal Profession Committee focuses on diversity in recruitment, employment, retention, and advancement in the legal profession and seeks to ensure that those who enter the legal profession are successful. This work includes mentoring and eliminating bias in the workplace. COAF members also seek to encourage attorneys from diverse backgrounds to engage with the Bar in the governance, policy, and programmatic work of the Bar. COAF also develops and presents training programs on the elimination of bias and on implicit bias for legal professionals.

Judicial Committee

The Judicial Committee seeks to increase judicial diversity by increasing diversity in the judicial applicant pool. This committee provides information on the judicial appointments process to qualified potential applicants. In addition, COAF promotes mentoring programs on the appointment process for applicants, which provide one-on-one review of draft applications and advice on the interview process. COAF also convenes a statewide summit on the status of judicial diversity every 5 years (the most recent of which was held in 2016).

⁵ Each subentity has organized subcommittees according to its own logic and with varying degrees of formality; the formation of subcommittees and their work have not been reviewed or approved by the Board. The descriptions of subcommittees and their work is compiled from a variety of sources and is best understood as self-description.

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Staffing

The diversity and inclusion work of COAF has historically been supported by one full-time employee of the State Bar.

WORK OF THE COUNCIL ON ACCESS AND FAIRNESS

Work Performed by the Council

The work of COAF is accomplished through its standing committees as described above. COAF as a whole also engages in annual strategic planning to define its goals and measures of success for the areas of work outlined above.

Work Performed by Staff

Staff manage the day-to-day operations of the Bar's diversity and inclusion program, including

- Coordination of COAF efforts to implement the COAF strategic plan;
- Support for the California Partnership High School Law Academies, including training, developing resources (e.g., mentoring handbooks, public relations kits, negotiating free online legal research service, conducting an essay contest);
- Support for Pathway to Law programs at community colleges, four-year colleges, and law schools (e.g., transitioning program support to California LAW, Inc., marketing the program statewide, convening a statewide meeting);
- Elimination of bias programming, including statewide distribution of a State Bar video on elimination of bias and COAF focus group reports on successful in-house diversity programming in a variety of practice settings;
- Organizing and presenting judicial appointments and mentoring workshops; and
- Fundraising from outside entities as well as Bar licensees.

Program staff represent the State Bar and participate in a variety of diversity and inclusion efforts by national organizations, including the ABA Diversity and Inclusion Center, the ABA Advisory Council on Diversity and Inclusion, and the National Association of Bar Executives Diversity Committee.

COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS

Direct comparison of the work of COAF with other jurisdictions is difficult because such a broad array of programs and initiatives are included as part of COAF's work. Most state bars seek to address diversity and inclusion through a committee or task force, but the substance of that work and the resources devoted to it are difficult to discern. However, these bodies typically include in their programs the following kinds of activities (in order of prevalence, high to low):

- Continuing Legal Education courses;
- Social/networking events;
- Mentoring programs;
- Pipeline programs;

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- Judicial diversity programs;
- Conferences/summits;
- Bar staff training;
- Committee/volunteer training;
- Board training; and
- Legal employer outreach.

The activities of COAF align with the kinds of activities that most of these programs sponsor.

It is worth noting that some of the work of COAF is also the subject of work by other stakeholders. Diversity in law schools, for example, is sought and supported by individual schools as well as by the Law School Admission Council, a nonprofit organization that provides information and resources for increasing diversity in law school admissions. The ABA's Office of Diversity & Inclusion does the same for both law schools and law firms and the legal profession generally.

A common weakness of most of these programs is the failure to collect data to measure progress in achieving greater diversity; only 35 percent of the 74 bar associations responding to the most recent published survey indicate that they collect such data.⁶ COAF is beginning to address this issue in its strategic planning by identifying metrics that will be used to measure success for each of its activities. To date, however, little to no data is available on the results of the Bar's pipeline work, and demographic data on the attorney population is not systematically collected. In addition, no explicit diversity goals have been established, making it impossible to assess the efficacy of diversity work or hold the Bar accountable for its efforts in this area.

OPPORTUNITIES FOR IMPROVING GOVERNANCE AND SERVICE DELIVERY

Returning to the elements of successful governance discussed in the introduction to this report reveals a number of opportunities for organizational restructuring to improve the efficacy of this work.

Role Definition: While the purpose and objectives of COAF were articulated in its founding document, changes over time may necessitate revisiting these goals. For example, while the Pipeline Project work on judicial diversity is described in the COAF founding document along with reference to "advancement in the legal profession," this work sits uncomfortably with the Bar given its regulatory authority over attorneys. Periodic reassessment of goals might involve revisiting this work and seeking to determine whether the diversity of the judiciary and the judicial pipeline would be more appropriate to a different organization, possibly the Judicial Council. Role definition may also be a challenge for COAF insofar as there are numerous stakeholders working to

⁶ National Association of Bar Executives, *2015 Diversity Survey*, compiled by the National Association of Bar Executives Diversity Committee and the ABA Division of Bar Services, December 2015.

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improve diversity with whom COAF could coordinate—high schools, colleges, law schools and law firms, for example. The Board of Trustees has not engaged in a meaningful way with the work of COAF to maximize the value of this work;

Accountability and Transparency: The absence of metrics, discussed above, is a barrier to accountability and transparency. Without clear definitions of the meaning of diversity, the collection of relevant data for this purpose, and appropriate outcome measures, progress cannot be measured, nor can the effectiveness of specific programmatic activities. Moreover, the relatively pro forma engagement by the Board of Trustees has meant that the Board is not taking responsibility to become informed and provide leadership in this area;

Clear Lines of Authority: The founding document of COAF makes clear that COAF is to serve as advisor to the Board. While COAF has reported via its strategic plan annually, the Board has not provided strategic direction that COAF and related subentities would be charged with implementing;

Impartial, Consistent, and Fair Decision-Making: This does not appear to be a problem area for COAF, in part because the body does not conduct transactional or adjudicative business in the way that other subentities (e.g., the Client Security Fund) do;

Engagement: This is also an area in which COAF appears well governed. COAF has developed and maintains relations with affinity Bars across California as well as with community colleges, four-year colleges, and law schools, participating in the current forms of pipeline activity.

Overcoming these challenges will require a multi-pronged approach. It will be essential to define goals more explicitly, collect data more consistently, and to track progress in the area of diversity and inclusion. The work on diversity and inclusion must be embedded into the work of the Bar, by establishing clear lines of authority and reporting to the Board of Trustees. The Appendix I review process seeks to strengthen and specify the vision of COAF that was written into its founding document, which defined COAF as “the primary advisor to the State Bar Board of Governors on issues related to diversity in the profession.”

Further support for integrating the work on diversity and inclusion more tightly into the Bar comes in the form of Assembly Bill 3249 (State Bar Act) 2017-18 which provides two key provisions related to the centrality of increasing diversity and inclusion in the legal profession. First, AB 3249 clarifies that the highest priority of the Bar, “protection of the public ... includes support for greater access to, and inclusion in, the legal system.” Second, the bill requires the Bar to implement a plan to accomplish that goal and mandates biannual reports to the Legislature reporting on “activities undertaken to support the plan, their outcomes, and their

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effectiveness.” Successful compliance with this mandate will require close alignment between the Board and its diversity and inclusion and access to justice programs.

Option 1: Retain as is with clarified charge

- Clarify Board strategy in this area to overcome historic lack of attention on part of Board and Bar leadership, which has resulted in an amorphous and wide-ranging set of priority initiatives with few measurable results;
- Clarify charge of COAF and ensure alignment with the Bar’s diversity and inclusion mandate and Board strategy; and
- Review and revise the COAF Strategic Plan to align with the Board strategy.

Option 2, which the Board may want to consider at a future date, is outlined below. Implementation of this option would need to be postponed due to the relationship between these recommendations and another subentity – the California Commission on Access to Justice (CCAJ). The likelihood that recommendations related to the CCAJ will be delayed pending additional stakeholder engagement would delay the implementation of recommendations regarding COAF until the conclusion of that work. Information regarding Option 2 is provided, nonetheless, to stimulate thinking even if this action cannot be taken at this time.

Option 2: Clarify charge and merge with California Commission on Access to Justice.

- Given the relationship between diversity and inclusion in the legal profession and improving access to justice, merge COAF and CCAJ into a single subentity with a clearly articulated division of labor;
- Creating a single subentity with redefined membership criteria would simplify administration and ensure that the activities of both are complementary and coordinated;
- A merger would help ensure that the racial and ethnic dimensions of the access gap are made visible and are addressed.

CONCERNS OF COAF

COAF members discussed the Appendix I review with Bar staff and management at its meetings in May, June, and August. COAF expressed concern that if it were to merge with CCAJ, doing so might dilute its efforts to focus on the primary goal of increasing diversity in the legal profession as well as dilute the CCAJ mission.

The Council also noted that since CCAJ members are chosen by a wide variety of appointing authorities, a merger could further dilute the focus on diversity and inclusion.

COAF members also believe that their work on diversity on the bench is within their charge and should be emphasized since other stakeholders are, in their view, not placing sufficient emphasis on this area.