

## ATTACHMENT C

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."<sup>1</sup> 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.<sup>2</sup>

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.

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

<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup>

#### 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.

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<sup>3</sup> 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.

<sup>4</sup> 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.

### **SUBCOMMITTEES<sup>5</sup>**

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).

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<sup>5</sup> 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.<sup>6</sup> 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

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<sup>6</sup> 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.