



The State Bar *of California*

**OPEN SESSION
AGENDA ITEM
MARCH 2019
PROGRAMS COMMITTEE III.D**

DATE: March 14, 2019

TO: Members, Programs Committee

FROM: Donna S. Hershkowitz, Chief of Programs
Hellen Hong, Director, Office of Access & Inclusion

SUBJECT: Council on Access and Fairness Workplan

EXECUTIVE SUMMARY

Following the Board of Trustees' (Board) adoption of strategic plan objectives related to diversity and inclusion (D&I), the Council on Access and Fairness (COAF) adopted a Work Plan for 2019. The Work Plan is focused on implementation of the priorities set by the Board. This agenda item seeks approval of the Programs Committee for the 2019 COAF Work Plan and a new charge, based on the direction set by the Board. If approved by the Programs Committee, the charge will be incorporated in the Board Book.

BACKGROUND

In May 2017, the Board adopted the current mission statement, including as part of the Bar's core mission of public protection supporting efforts for greater access to and inclusion in the legal system.

Effective January 1, 2019, the Legislature incorporated the same language into the Bar's statutory mission statement, amending Business and Professions Code section 6001.1 to provide that protection of the public includes support for greater access to and inclusion in the legal system.

At its September 2018 meeting, stemming from the review of subentities conducted pursuant to Appendix I of the 2017 Governance in the Public Interest Task Force report, the Board adopted the following recommendations to focus the work of COAF:

- Clarify Board strategy in this area to overcome historic lack of attention on part of Board and State Bar leadership, which has resulted in an amorphous and wide-ranging set of priority initiatives with few measurable results. The results of the State Bar's recent Summit on the Diversity of the Legal Profession should assist the Board in establishing this strategy; and
- Clarify charge of COAF, ensuring alignment with the State Bar's diversity and inclusion mandate and Board strategy, as reflected in the Board's strategic plan.

Following an update on the work of COAF to the Programs Committee meeting in November 2018, and an in depth planning session in January 2019 exploring options for the Bar's engagement on D&I going forward, the Board adopted D&I objectives to be added to the State Bar's 2017-2022 Strategic Plan. The proposed COAF 2019 Work Plan was developed and adopted at COAF's March 1, 2019 meeting.

DISCUSSION

The strategic plan's D&I objectives adopted by the Board in January are the first concrete objectives included in a State Bar strategic plan on this critically important topic in recent memory, if not ever. The adoption of these objectives is an important step in the Board's efforts to set priorities for this area. As noted in the final report on Appendix I submitted to the Board in September 2018, "[h]istorically, the work of COAF has been poorly connected to the Board of Trustees.... [T]he 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 State Bar."¹ The adoption of these objectives served to implement the Appendix I recommendation to develop a clear, focused strategy for the Bar's D&I work.

Adoption of a New COAF Charge

Consistent with the Board's action to focus its work, COAF is recommending the language included in Attachment A as its new charge. Staff proposes 2 revisions to the charge, reflected in Attachment B. COAF's current charge notes its establishment date. COAF felt it was important to continue to include this date in the charge to indicate the Bar's long term commitment to this critical issue. Staff's recommendation to delete is for consistency with other subentity charges.

Staff also recommends that the penultimate bullet in the charge, related to COAF training subentities and other stakeholders on D&I topics, be deleted. Although historically COAF has conducted an annual training for JNE, since the Bar intends to broaden implicit bias training to

¹ [Opportunities for Improving Governance and Service Delivery: A Report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees, and Councils \(September 2018\)](#) p. 43.

all subentities and staff, the Bar plans to transition the JNE trainings from COAF to ensure more consistent delivery. The Bar used a professional trainer to conduct implicit bias training for staff in 2018, and is planning similar training for all subentities. Ultimately, the Bar intends to deliver these trainings through e-learning modules. COAF's participation in development of the e-learning modules would certainly be welcomed.

Adoption of the 2019 COAF Work Plan

Attachment A contains, along with the charge, the Work Plan proposed by COAF. Attachment B reflects revisions proposed by staff. Staff's recommendations are intended to effectuate the intent of the Board of Trustees vis-à-vis the objectives adopted. In addition, a theme of the Appendix I recommendations adopted for all subentities was elevating the role of the subentity to a policymaking body, with staff to administer the policy created. In the past, COAF has assumed more of a service oriented role. The staff proposal seeks to focus the work on the policymaking aspects.

Finally, with regard to judicial diversity, staff understands the Board direction to be that the Judicial Council take the lead on judicial diversity efforts going forward. The State Bar, through the good work of COAF, will partner with the Judicial Council, but in a supportive role. COAF is extraordinarily concerned that the Judicial Council will not devote the attention to this work that it deserves, and is thus proposing more of a shared leadership model, or even a model in which COAF takes the lead or acts independently from the Judicial Council. The proposed staff revisions captured in Attachment B reflects State Bar leadership's understanding of the role the Judicial Council intends to take in this arena, as well as the direction from the Board.

Recommendations for Amendments to the Diversity and Inclusion Objectives

In developing its proposed Work Plan, COAF identified a few ways in which they felt the D&I objectives could be improved. They proposed the following revisions:

Objective h: Identify ~~means of existing law school programs~~ and identify means of supporting, growing, or adding ~~existing law school~~ such programs or school programs to improve retention by December 31, 2019.

Objective I: No later than December 31, 2019, analyze available data to identify the particular obstacles to diverse attorneys' entry into particular practice areas, retention, and advancement in the legal profession.

Objective o: Partner with the Judicial Council to ~~complete~~ create a current version of the Judicial Diversity Toolkit and share leadership on judicial diversity efforts."

Staff agrees with the recommended changes to objective I and h, and will propose those to the full Board at the May Board meeting.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to justice for all California residents and improvements to the state's justice system.

Objective: g. Work with the California Accredited Law Schools and registered schools to develop enhanced demographic reporting requirements by December 31, 2019.

Objective: h. Identify means of supporting existing law school programs to improve retention by December 31, 2019.

Objective: i. No later than December 31, 2019, identify ways that diversity and inclusion principles can be institutionalized in Bar exam development and grading analyses and implement these practices no later than December 31, 2020.

Objective: j. Assuming positive results from the Productive Mindset Intervention, expand implementation by February 2020.

Objective: k. Continue development and implementation of initiative to collect demographic data about licensed attorneys through all stages of their career through 2019.

Objective: l. No later than December 31, 2019, analyze available data to identify the particular obstacles to diverse attorneys' entry into, retention, and advancement in the legal profession.

Objective: m. By December 31, 2020, modify the Elimination of Bias curriculum contained in the Minimum Continuing Legal Education requirements to consider the creation of sub-topics, and expanding the number of required hours.

Objective: n. Develop and publish an annual report card on the state of the profession by January 31, 2020, and annually thereafter.

Objective: o. Partner with the Judicial Council to complete the Judicial Diversity Toolkit.

RECOMMENDATIONS

It is recommended that the Programs Committee approve the following resolution:

RESOLVED, that the Programs Committee adopt the Council on Access and Fairness charge, with staff recommended revisions, contained in a Attachment B.; and it is

FURTHER RESOLVED, that the Programs Committee adopt the Council on Access and Fairness 2019 Work Plan, with staff recommended revisions, contained in Attachment B.

ATTACHMENTS LIST

- A.** COAF Recommended Council on Access and Fairness 2019 Work Plan
- B.** Proposed Staff Revision to Council on Access and Fairness 2019 Work Plan



The State Bar *of California*

Council on Access and Fairness 2019 Work Plan

Charge:

Established in November 2006, the Council on Access & Fairness is composed of ten members appointed by the Board of Trustees. The charge of the Council is as follows:

- Assist and advise the Board of Trustees in defining and advancing the State Bar's diversity and inclusion strategies and goals.
- Study, recommend, and help devise curricula designed to educate California attorneys on diversity and inclusion principles.
- Promote programs and strategies to improve diversity initiatives impacting the pipeline, particularly at California law schools, for the bar exam and within the legal profession.
- Evaluate the state of diversity and inclusion in the profession annually.
- Identify barriers to entry into, and retention and advancement in the legal profession, and propose solutions to address barriers.
- Explore, promote, encourage, and partner in collaborative efforts to increase diversity and inclusion in the profession and in the judiciary.
- Comment and advise, when requested by the Board of Trustees or the Executive Director, on barriers directly related to access opportunities within the profession for attorneys from diverse backgrounds.
- When requested by the Board of Trustees, train subentities and other stakeholders on diversity and inclusion topics.
- Serve as a representative of the State Bar, as requested by the Board of Trustees, on issues of diversity and inclusion.

STRATEGIC PLAN GOAL & OBJECTIVE	WORK PLAN	DEADLINE	TO BOARD COMMITTEE (Y/N) / DATE
Goal 4, objective h: Identify means of supporting existing law school programs to improve retention by December 31, 2019.	<ul style="list-style-type: none"> • Review and identify promising programs. • Recommend effective programs for broad implementation. • Participate in the Law School Assembly. 		
Goal 4, objective i: No later than December 31, 2019, identify ways that diversity and inclusion principles can be institutionalized in Bar exam development and grading analyses and implement these practices no later than December 31, 2020.	<ul style="list-style-type: none"> • Recommend/develop State Bar rule to codify diversity and inclusion principles in bar exam development. • Examine previous bar exam questions. • Provide implicit bias training for bar exam readers and pre-testers. • Educate and outreach to affinity bar associations to recruit bar graders and pre-testers. 		
Goal 4, objective j: Assuming positive results from the Productive Mindset Intervention, expand implementation by February 2020.	<ul style="list-style-type: none"> • Outreach to law students and bar applicants to participate. • Invite researchers to present to COAF to better understand research. • Develop intervention for non-first time test takers. • Development of communications strategy to participate in intervention. 		
Goal 4, objective k: Continue development and implementation of initiative to collect demographic data about licensed attorneys through all stages of their career through 2019.	<ul style="list-style-type: none"> • Based on initial data, make recommendation for actions that State Bar can take to address issues identified in findings. • Develop initiatives to address findings. • Based on initial findings, refine survey questions. • Survey diversity and inclusion programs at law firms and government agencies; provide best practices to those groups. 		

<p>Goal 4, objective l: No later than December 31, 2019, analyze available data to identify the particular obstacles to diverse attorneys' entry into, retention, and advancement in the legal profession.</p>	<ul style="list-style-type: none"> • Review data and compare to national data. 		
<p>Goal 4, objective m: By December 31, 2020, modify the Elimination of Bias curriculum contained in the Minimum Continuing Legal Education requirements to consider the creation of sub-topics, and expanding the number of required hours.</p>	<ul style="list-style-type: none"> • Review Elimination of Bias (EOB) Minimum Continuing Legal Education (MCLE) requirements and recommend creation of additional sub-topics. • Invite Robert White, California Minority Counsel Program (CMCP), to make presentation to COAF. • Schedule presentation of new attorney EOB training module so COAF can evaluate whether to do a similar mandatory training for all attorneys. • Identify subtopics that could be mandated to advance goals of D&I (e.g. hiring, promotion, cultural competency). 		
<p>Goal 4, objective n: Develop and publish an annual report card on the state of the profession by January 31, 2020, and annually thereafter.</p>	<ul style="list-style-type: none"> • Create subcommittee to develop parameters for the annual report card and present to COAF for feedback. • Develop communications and outreach strategy for report card(s), include e.g. possible call to action and live presentation to legislature. • Develop self-study MCLE based on report card findings and recommendations for further action. 		
<p>Goal 4, objective o: Partner with the Judicial Council to complete the Judicial Diversity Toolkit.</p>	<ul style="list-style-type: none"> • Work with Judicial Council in implementing judicial diversity efforts. • Work with Judicial Council on programs for attorneys to become judges. • Propose to partner with Judicial Council and the courts on programs for attorneys interested in judicial positions. 		



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- Promote programs and strategies to improve diversity initiatives impacting the pipeline, particularly at California law schools, for the bar exam and within the legal profession.
- Evaluate the state of diversity and inclusion in the profession annually.
- Identify barriers to entry into, and retention and advancement in the legal profession, and propose solutions to address barriers.
- Explore, promote, encourage, and partner in collaborative efforts to increase diversity and inclusion in the profession and in the judiciary.
- Comment and advise, when requested by the Board of Trustees or the Executive Director, on barriers directly related to access opportunities within the profession for attorneys from diverse backgrounds.
- ~~When requested by the Board of Trustees, train subentities and other stakeholders on diversity and inclusion topics.~~
- Serve as a representative of the State Bar, as requested by the Board of Trustees, on issues of diversity and inclusion.

STRATEGIC PLAN GOAL & OBJECTIVE	WORK PLAN	DEADLINE	TO BOARD COMMITTEE (Y/N) / DATE
Goal 4, objective h: Identify means of supporting existing law school programs to improve retention by December 31, 2019.	<ul style="list-style-type: none"> Review and identify promising programs. Recommend effective programs for broad implementation. Participate in the Law School Assembly. 	<u>12/31/2019</u> <u>12/31/2019</u> <u>May 2019</u>	<u>No</u>
Goal 4, objective i: No later than December 31, 2019, identify ways that diversity and inclusion principles can be institutionalized in Bar exam development and grading analyses and implement these practices no later than December 31, 2020.	<ul style="list-style-type: none"> Recommend/develop State Bar rule to codify diversity and inclusion principles in bar exam development. Examine previous bar exam questions. Provide implicit bias training for bar exam readers and pre-testers. <u>Work with the Office of Admissions and e</u>Educate and outreach to diverse-affinity bar associations <u>as appropriate in order to become-recruit</u> graders and pre-testers. 	<u>12/31/2019</u> <u>June 2019</u> <u>Ongoing</u>	<u>Yes / Early 2020</u>
Goal 4, objective j: Assuming positive results from the Productive Mindset Intervention, expand implementation by February 2020.	<ul style="list-style-type: none"> <u>Provide guidance to State Bar on methods to o</u>Outreach to law students and bar applicants to participate. Invite researchers to present to COAF to better understand research. Develop intervention for non-first time test takers. Development of communications strategy to participate in intervention. 	<u>Ongoing</u> <u>09/2019</u> <u>Ongoing</u>	<u>No</u>
Goal 4, objective k: Continue development and implementation of initiative to collect demographic data about licensed attorneys through all stages of their career through 2019.	<ul style="list-style-type: none"> Based on initial data, make recommendation for actions that State Bar can take to address issues identified in findings. Develop initiatives to address findings. Based on initial findings, refine survey questions. 		

<u>(This is a staff effort; delete from COAF work plan)</u>	<ul style="list-style-type: none"> <u>Survey diversity and inclusion programs at law firms and government agencies; provide best practices to those groups.</u> 		
Goal 4, objective l: No later than December 31, 2019, analyze available data to identify the particular obstacles to diverse attorneys' entry into, retention, and advancement in the legal profession.	<ul style="list-style-type: none"> <u>Review data and compare to national data.</u> <u>Make recommendations for actions the State Bar can take to address issues identified in the findings</u> <u>Recommend refinements to survey questions</u> <u>Identify diversity and inclusion programs at law firms and government agencies; develop and disseminate best practices</u> 	<u>12/31/2019</u> <u>12/31/2019</u> <u>12/31/2019</u>	<u>Yes (in 2020 work plan)</u> <u>No</u> <u>No</u>
Goal 4, objective m: By December 31, 2020, modify the Elimination of Bias curriculum contained in the Minimum Continuing Legal Education requirements to consider the creation of sub-topics, and expanding the number of required hours.	<ul style="list-style-type: none"> Review Elimination of Bias (EOB) Minimum Continuing Legal Education (MCLE) requirements and recommend creation of additional sub-topics. Invite Robert White, California Minority Counsel Program (CMCP), to make presentation to COAF. Schedule presentation of<u>View</u> new attorney EOB training module so COAF can evaluate whether to do a similar mandatory training for all attorneys. Identify subtopics that could be mandated to advance goals of D&I (e.g. hiring, promotion, cultural competency). 	<u>12/31/2019</u> <u>9/2019</u> <u>6/2019</u> <u>12/31/2019</u>	<u>Yes/Mid 2020</u> <u>No</u> <u>No</u> <u>Yes/Mid 2020</u>
Goal 4, objective n: Develop and publish an annual report card on the state of the profession by January 31, 2020, and annually thereafter.	<ul style="list-style-type: none"> Create subcommittee to develop parameters for the annual report card and present to COAF for feedback. Develop communications and outreach strategy for report card(s), include e.g. possible call to action and live presentation to legislature. Develop self-study MCLE based on report card findings and recommendations for further action. 	<u>06/2019</u> <u>01/31/2020</u> <u>01/31/2020</u>	<u>No</u> <u>No</u> <u>No</u>
Goal 4, objective o: Partner with the	<ul style="list-style-type: none"> <u>Provide assistance and support to the</u> Work with 	<u>Ongoing</u>	<u>No</u>

Judicial Council to complete the Judicial Diversity Toolkit.	<p>Judicial Council in implementing judicial diversity efforts.</p> <ul style="list-style-type: none"> • <u>Explore Judicial Council interest in conducting regional workshops / summits / meetings for attorneys interested in exploring judicial positions</u> • <u>Work with Judicial Council on programs for attorneys to become judges.</u> • <u>Propose to partner with Judicial Council and the courts on programs for attorneys interested in judicial positions.</u> 	<u>6/2019</u>	
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