

**COUNCIL ON ACCESS AND FAIRNESS (COAF)  
MEETING SUMMARY AND ACTION ITEMS**

Friday, May 29, 2020

10:00 a.m. - 4:00 p.m.

State Bar of California

**Zoom Meeting**

**I. CHAIR'S REPORT**

**A. Roll Call**

**Members**

Chair Judge Brenda Harbin-Forte  
Vice-Chair Esther Kim  
Heather Anderson  
Ryan Harrison  
Geneviève Jones-Wright  
Judge Kristin Rosi  
Donna Schuele  
Sal Torres

**Board of Trustees Liaisons**

Hailyn Chen  
Jose Cisneros

**Liaison**

Patricia Lee

**Staff**

Erica Carroll  
Brady Dewar  
Elizabeth Hom  
Christine Holmes  
Amy Nunez  
Doan Nguyen  
Ron Pi

**OPEN SESSION**

**I. CHAIR'S REPORT**

**A. Roll Call**

Chair Judge Brenda Harbin-Forte called the meeting to order at 10:05am and welcomed attendees. Roll call was taken and a quorum was established.

**B. Call for Public Comment**

Judge Brenda Harbin-Forte inquired if there was any member of the public wishing to make a public comment. No member of the public came forward.

**II. CONSENT**

**A. Approval of Meeting Summary and Action Items from February 14, 2020**

Elizabeth Hom, Acting Program Manager, noted a correction on page two of the meeting summary and action items. In the summary of the Presentation on California Justice Gap Study, "students of color" should be

“lawyers of color.” COAF briefly discussed reflecting excused absences in the meeting summary and action items but determined not to make any changes at this time. The Council approved by roll call vote (Judge Esther Kim moved, Judge Kristen Rosi seconded) the Meeting Summary and Action Items from the February 14, 2020 meeting with the correction on page two.

### **III. STATE BAR REPORTS**

#### **A. Discussion regarding Bar Exam Differential Item Functioning Report**

Ron Pi, Principal Analyst in the Office of Research Institution and Analysis (ORIA), provided a summary of the Bar Exam Differential Item Functioning (DIF) Report. The study focused on first time exam takers. Ron explained the DIF occurs when test takers of approximately comparable knowledge and skill in different groups perform in substantially different ways on a test question. The study raised no major areas of concern for the California Bar Exam with respect to DIF, though several recommendations were identified including:

- Conduct a bias and sensitivity review of the items flagged by the DIF study to inform future item development;
- Incorporate bias and sensitivity reviews into the examination review process prior to the administration of new forms;
- Use the results of the DIF study to inform the future design of the exam with respect to item type selection; and
- Review the scoring process and any rubrics or methods for choosing, training, or assigning graders.

#### **B. Discussion regarding Department of Consumer Affairs Report, “Review of the California Bar Examination Administration and Associated Components”**

Amy Nunez, Director of the Office of Admissions, provided an overview of the scope of the Department of Consumer Affairs (DCA) Report and the resulting recommendations. DCA concluded that the State Bar meets the standards in all evaluation areas and provided recommendations for improvement. The evaluation areas and recommendations of the report included:

- Exam Administration
  - DCA recommends a shift to computer-based testing and to eliminate MBE from the 2-day exam.
- Grading Process
  - DCA’s recommendations include: (1) removing educators from the grading process, even as observers; (2) graders should include entry level attorneys; (3) rotate graders to ensure diverse perspectives; (4) scoring rubric has clear link between weighting of questions and minimum competence; (5) clarification of

weights on essay questions; (6) evaluation of scaling techniques to equate exams; and (7) remove Phase III of grading.

- Test Security
  - DCA recommends the State Bar reconsider a non-intervention response to flagrant cheating.
- Communication with Candidates and Other Stakeholders
  - DCA's recommendation includes: (1) State Bar staff do not share topics of the essay questions and (2) the examination outline, based on practice analysis, is made available to candidate preparing to take the exam.

COAF asked for clarification on the effects of removing Phase III of the grading process. The length of time for the grading process would be reduced by a week. According to the Research Solutions Group report, the overall passage rates would be reduced by approximately 0.1% with no disparate impact on any gender or racial ethnic group. The full RSG report will be provided to COAF. COAF disagreed with the recommendation to eliminate Phase III; however, the decision was already made by the Board of Trustees.

The Board approved the recommendation to establish a Blue Ribbon Commission on the Future of California Bar Exam in partnership with the California Supreme Court. The charge of this Commission would include review of the results of the California Attorney Practice Analysis (CAPA) and the recommendations of the CAPA Working Group and the results of the 2020 National Conference of Bar Examiners job analysis and next steps related to MBE content or format. The Commission would also develop recommendations for the California Supreme Court and the State Bar of California. This would include working with COAF to convene a panel to review questions flagged for DIF in the 2020 differential item function analysis and developing guidelines for minimizing the risk of future differential item functioning.

Staff requested volunteers to form a working group to prepare for the panel and Heather Anderson, Geneviève Jones-Wright, and Sal Torres volunteered.

Public comment was received via the chat function from Ira Spiro, Dean, Peoples College of Law, who noted that receiving bar exam results one week earlier was not worth the change if it means that a few additional people might not pass.

#### **IV. TRAINING**

##### **A. Overview of Prop. 209 and Related Restrictions on Diversity Activities**

Brady Dewar, Assistant General Counsel in the Office of General Counsel, provided an overview of Proposition 209 which limits California government agencies' ability to consider race and other categories in hiring, contracting, and education. Proposition 209 is only implicated when the state government is operating public employment, public education, or public contracting. In practice, this means Proposition 209 is not implicated by many COAF activities. However, it may be relevant when COAF considers policies and practices of state agencies, including the State Bar. Brady provided an overview of impermissible and permissible activities and concluded by noting a measure to repeal Proposition 209 may appear on the November 2020 ballot. The Office of General Counsel will advise COAF of the effects of any changes in the law.

## **VI. DISCUSSION AND ACTION ITEMS**

### **A. Update on Diversity Report (Strategic Plan, Goal 4, Objective i, and Goal 4, Objective n)**

Christine Holmes, Senior Program Analyst, provided a brief update on the status of the State Bar's first annual Diversity Report Card. State Bar staff have been working with graphic designer over the last several months on drafts of the report card. As mentioned previously, the report card is data heavy with less narrative. Once published, the State Bar will send out a press release.

### **B. Update on Diversity Summit Planning for 2020**

Elizabeth Hom updated COAF regarding the plan to pilot a virtual Diversity Summit for the private sector sometime between late August and mid-September. During the Summit participants will be asked if COVID-19 is impacting their diversity and inclusion work. Staff will reach out to the working group members to gather input regarding possible speakers and invitees and will schedule more in-depth planning calls after the diversity report is published. If the pilot goes well, the State Bar hopes to conduct a diversity summit for both the government and nonprofit sectors.

### **C. Update on Plan to Address Law School Retention (Goal 4, Objective h)**

Elizabeth Hom provided an update that after the last COAF meeting, the BOT approved the proposed work plan activities on March 12. According to the work plan, the law school retention working group was supposed to participate in the law school assembly and follow up with law schools with notable high and low attrition rates.

Due to the impact of COVID-19, the law school assembly was not held in May as initially scheduled. Staff is in contact with the Office of Admissions regarding updates for the rescheduled event. In preparation for following up with the law schools, staff reviewed additional research for context to best frame potential questions. Staff will be coordinating with the working group to draft proposed questions for the law schools and reevaluate the work plan if any updates are needed, considering the pandemic.

**D. Update on Efforts to Institutionalize Diversity and Inclusion Goals in Bar Exam Question Development and Grading (Goal 4, Objective i)**

Doan Nguyen, Acting Program Manager, provided an update on behalf of working group. Due to the COVID-19 pandemic, the calibration sessions for the graders were done remotely.

The working group's recommendation to add demographic questions on the grader application will be rolled out in July. In response to the recommendation from COAF, all graders must now attend implicit bias training.

COAF requested more information on the implicit bias training including how long it is and what is covered. Staff will report back to COAF with the requested information.

**E. Update on Request from Committee on State Bar Accredited and Registered Schools (CSBARS) for Feedback on Proposed Rules Revisions (Goals 4, Objective h)**

COAF member Judge Kristin Rosi presented on behalf of the working group. Judge Rosi briefly explained the role of the Committee of State Bar Accredited and Registered Schools (CSBARS). CSBARS advises the State Bar of California's Committee of Bar Examiners on matters relating to the promulgation of new rules, guidelines, and amendments to the rules and guidelines for California-accredited Law Schools, and for Unaccredited Law Schools, as well as other issues related to legal education. CSBARS requested that COAF provide feedback on the new section in the accreditation rules related to diversity and inclusion. Rossi noted this was the first rules revisions in about forty years.

Judge Rosi along with fellow COAF member Donna Schuele and State Bar staff Elizabeth Hom reviewed the accreditation rules and language from five professional and institutional accreditors and reviewed and suggested proposed language for the Accredited Law School Rules. The working group participated in the CSBARS' Rule meeting at the end of April and the feedback to suggested language was positive. Another draft of the diversity and inclusion rule will be shared with the working group for review before the CSBARS' June meeting.

Judge Rosi also noted that one registered religious law school is exempt from California's anti-discrimination laws. COAF expressed disappointment that even one school would be exempt from following California's anti-discrimination laws. COAF discussed this issue further and potential courses of action. COAF further noted its concern that this type of discrimination is not sanctioned by the State Bar.

**F. Update on Modification of Elimination of Bias (EOB) MCLE Rules (Goal 4, Objective m)**

Erica Carroll, Senior Program Analyst, provided an update for the working group. The proposed MCLE rules changes include increasing EOB from one to two hours, an implicit bias component, and new education/experience and content requirements for MCLE providers. The proposed changes were presented to the Board of Trustees in March and approved for public comment. The original deadline for public comment was May 1, but due to the COVID-19 pandemic, the deadline was extended to June 30.

A total of 19 comments have been received so far. Legal Aid Association of California and California Commission on Access to Justice submitted letters in support of the proposed rules changes. Fifty-eight percent of the responses received disagreed with the proposal citing a preference to choose courses in their chosen practice areas, disagreement about the evidence that supports prioritizing implicit bias, and existing courses were not useful and the State Bar should focus on promoting pro bono and volunteer work instead of increasing MCLE hours. Once the comment period ends in June, the working group which includes COAF members Judge Esther Kim and Connie Broussard will review the responses and will prepare for next COAF meeting.

Carroll also provided an update that the Board of Trustees approved a one-hour e-learning course focused on EOB to be developed by the State Bar. The working group is in the process of finding experts to help develop training. Board of Trustee liaison, Hailyn Chen, recommended Joelle Emerson, the CEO Paradigm Strategy Inc.

**G. Update on Judicial Diversity Toolkit (Goal 4, Objective o) and Other Judicial Diversity Initiatives**

Elizabeth Hom shared an update on the Judicial Diversity Toolkit from Cathy Ongiri who is now the lead staff for Judicial Council's Committee on Providing Access and Fairness. The Committee recently presented on diversity on the bench and the Judicial Diversity Toolkit for the Santa Clara County Superior Court bench officers and members from the assigned judges' program. The Committee will also conduct a virtual presentation on judicial diversity to the Judicial Nominees Evaluation Commission on August 21. They plan to resume additional trainings in person once it is safe to do so.

Judge Brenda Harbin-Forte also updated COAF that the report of the 2016 Judicial Diversity Summit's activities and recommendations will be finalized and presented to the Board of Trustees in July for approval and filing. State Bar staff will recommend the Board refer the report to COAF for review and to make any appropriate recommendations to the Board.

**H. Update on Request to Board of Trustees to Revise 2020 COAF Work Plan**

Judge Brenda Harbin-Forte provided an update regarding COAF's presentation to the Board of Trustees in May regarding proposed revisions to COAF's workplan to include

eight additional activities. The Board approved adding the new activities to the workplan. Judge Brenda Harbin-Forte thanked the Board liaisons for their work and support. COAF thanked Judge Brenda Harbin-Forte for her determination, in particular to expand the scope of work to begin at the high school level.

Judge Brenda Harbin-Forte and COAF member Ryan Harrison provided an update on their efforts toward a video campaign with diverse general counsels to encourage high school and college aged students to consider the legal profession. David Kelly, general counsel for the Golden State Warriors, agreed to work with COAF on this project. Staff reminded COAF that any memorandums of understanding will need to be reviewed by the State Bar Office of General Counsel.

Staff requested volunteers to serve on a working group for the video project with Judge Brenda Harbin-Forte and Harrison. Heather Anderson volunteered to join the working group.

Judge Brenda Harbin-Forte also shared that David Kelly agreed to be featured in the updated “Want to be Lawyer?” brochure which is one of the newly approved activities in COAF’s workplan. The updated brochure is scheduled to be completed by the end of August.

Staff requested volunteers to serve on a working group for the brochure project. Judge Esther Kim, Kristen Rosi and Sal Torres volunteered.

Torres also inquired about creating presentation materials for high school and college visits. State Bar staff will work with COAF to develop materials.

**I. Discussion on Additional Diversity and Inclusion Initiatives**

Elizabeth Hom noted that the recommendations to address key findings of the Disparities in the Discipline System Study will be presented to the Board of Trustees in July. Hom requested volunteers for a working group to provide feedback on the recommendations. Ryan Harrison and Kristen Rosi volunteered.

Judge Brenda Harbin-Forte invited reciprocal liaison, Patricia Lee, to share information about California LAW’s diversity and inclusion efforts. Lee described California LAW’s work in this area and noted she will review COAF workplan to ensure that the groups efforts complement each other.

**VII. ADJOURN**

There being no other business, the meeting was adjourned at 1:39 p.m.