

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

Friday, December 4, 2020

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

State Bar of California

**Zoom Meeting**

***OPEN SESSION***

Vice Chair Ryan Harrison called the meeting to order at 10:04 am. Roll call was taken and quorum was established.

**I. ROLL CALL**

**Members**

Vice Chair Ryan Harrison  
Heather Anderson  
Judge Kristin Rosi  
Sal Torres  
Novella Coleman  
Sarah Good  
Michael Rhoads  
Chalak Richards  
Stephanie Chu Santoro

**Board of Trustees**

Sean SeLeague  
Jose Cisneros  
Sonia Delen  
Mark Toney

**Organization Liaisons**

Pat Lee  
Judge Erica Yew

**Staff**

Christal Bundang  
Erica Carroll  
Lisa Chavez  
Brady Dewar  
Andrea Fitantes  
Lissette Garcia  
Suzanne Grandt  
Donna Hershkowitz  
Elizabeth Hom  
Christine Holmes  
Gagandeep Kaur  
Dag MacLeod  
Chris McConkey  
Judi McManigal  
Doan Nguyen

**II. CALL FOR PUBLIC COMMENT**

Vice Chair Ryan Harrison invited members of the public to make public comment. Mark Toney introduced himself as a new member of the Board of Trustees. Leann Pacheco of the Legal Aid Association of California also introduced herself.

**III. CHAIR'S REPORT**

Vice Chair Ryan Harrison welcomed everyone on behalf of Chair Judge Esther Kim to the first meeting of the new COAF term and facilitated introductions.

#### **IV. CONSENT**

##### **A. Approval of Meeting Summary and Action Items from August 28, 2020 Meeting**

The Council approved by unanimous roll call vote (Sal Torres moved, Chalak Richards seconded) the Meeting Summary and Action Items from the meeting held August 28, 2020.

#### **V. STATE BAR REPORTS**

##### **A. Update on Office of Access & Inclusion (OA&I) Staffing**

Andrea Fitanides, Director of the Office of Access & Inclusion, introduced herself as the new Director of OA&I. She also introduced two new Senior Program Analysts in OA&I, Christopher McConkey and Judi McManigal. Andrea thanked those who applied to the Blue Ribbon Commission on the Future of the Bar Exam. The goal is to have two COAF members on that Commission.

##### **B. Update on Attorney Discipline System**

Sean SeLegue, Chair of the Board of Trustees, introduced himself and shared that he is only the second openly LGBT member of the Board of Trustees, and is concerned about diversity and the disproportionate disparity in discipline against black male attorneys in California. He reported that the State Bar will not look into complaints that are more than 5 years old that did not result in investigation.

The Board of Trustees has chartered the Ad Hoc Commission on the Discipline System to examine the current discipline system. This kind of comprehensive investigation with external examination has not been done in 30 years and is an important component of the review process. Mr. SeLegue expects that the Commission will look at:

- recidivism and how to prevent it—how to best support attorneys in the rehabilitation of their practices;
- proactive measures—how to best support attorneys early on in order to avoid discipline before it happens; and
- analysis of enforcement priorities.

Mr. SeLegue thanked Council members for their service on COAF.

Dag MacLeod, Chief of Mission Advancement & Accountability, reported that there is disproportionate discipline against black male attorneys not in large firms. A study conducted by Professor George Farkis at the University of California at Irvine looked back at 30 years of attorney discipline. The report found that African American males are more likely to be put on probation and more likely to be disbarred. Multiple regression analysis found, controlling for other factors (e.g. prior

complaints, whether represented by counsel, type of complaint), that the statistically significant results on race disappeared, thus further evaluation of these factors is essential to understanding how to make the discipline system more equitable. Subsequent evaluation by Professor Christopher Robertson found that there is opportunity to improve the discipline system by:

- examining the disproportionate reporting about banking matters;
- considering various proactive measures for trust account issues, as these may later lead to discipline issues; and
- increasing representation of those in discipline proceedings.

Lisa Chavez, Director of the Office of Research and Institutional Accountability, provided an update on her work with the Office of the Chief Trial Counsel, and the efforts made to address disparities in the discipline system:

- *Dismiss and archive 5 years of closed complaints.* Attorney discipline is correlated with the number of prior investigations. Black male attorneys receive a disproportionate number of complaints. The State Bar recommended that staff be prevented from viewing closed complaints that were 5+ years old when evaluating/investigating a new complaint. The State Bar has archived 400 complaints so far.
- *Reportable action bank matters.* Black male attorneys are more likely to have a larger number of complaints. The State Bar looked at lowering the funds threshold that would trigger investigation. This did not decrease the number of complaints, thus the State Bar recommends that the threshold not change, but the focus instead should be on providing enhanced resources when complaints are filed.
- *Self-assessment.* The Office of Professional Competence is developing a self-assessment tool that will enable attorneys to gauge how well they are complying with client trust account issues. The tool will be incorporated into the current learning management system.
- *Respondent representation.* Representation is a significant predictor of attorney discipline. Black attorneys are twice as likely to lack representation by counsel in these matters. A personalized letter encouraging representation will be included with notifications of investigation. This letter will be distributed at random in order to analyze impact over the next 5 months. Results will be reported quarterly to the Board of Trustees.
- *Examine dismissed complaints.* Discipline is related to the volume of prior complaints. The majority of complaints are dismissed at intake. The State Bar evaluated closed complaints to see if there are proactive measures that can be taken to identify trends and assist attorneys. The State Bar will explore detailed allegations to inform interventions to pilot test.

Lisa provided an update on the Ad Hoc Commission on Discipline System. The Commission will consist of a broad base of stakeholders both inside and outside the

State Bar, and is charged with taking a comprehensive look at the overall attorney discipline system. The Commission will: (1) recommend changes to enhance access to the complaint system, (2) improve the use of technology, (3) take inventory of changes, (4) evaluate impact to guide intended impact, (5) commission new studies, and (6) recommend additional or revised reforms to reduce discipline disparities. The Commission is appointed by the Board of Trustees and will report to the Board. A webpage with the link to the application to serve on the Ad Hoc Commission will launch next week.

## **VI. TRAINING**

### **A. Proposition 209 and Related Restrictions on Diversity Activities**

Brady Dewar, Assistant General Counsel in the Office of General Counsel (OGC), introduced Gagandeep Kaur, Assistant General Counsel, and provided a training on Proposition 209 (Prop 209). Passed by California voters in 1996, Prop 209 mandates that “[t]he State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

In practice, Prop 209 is not implicated by typical COAF activities, but may be relevant when COAF considers and recommends policies and practices, most often in the context of public employment. The courts recognize a distinction between impermissible diversity activities that advantage one group over another and permissible activities that aim to broaden access for all. The OGC is available to discuss any questions or potential issues that COAF may have.

### **B. Bagley-Keene Act Requirements**

Suzanne Grandt, Assistant General Counsel in the OGC, provided a training on the Bagley-Keene Open Meetings Act and its requirements. The State Bar and all of its meetings are subject to the Bagley-Keene Act. This does not include matters such as the Judicial Nominees Evaluation Commission or the State Bar Court. It does include the following bodies:

- Every state board, commission, or similar multimember body created by statute or executive order
- Board, commission, committee, or multimember body that exercises authority delegated by a state body
- Advisory boards, advisory committees/subcommittees, advisory commissions, or similar multimember bodies of 3 or more persons, created by formal action of a state body or member thereof
- Official representatives of state bodies serving on other boards or commissions that are supported, in whole or in part, by funds provided by the state body.

The Act is intended to promote transparency and information regarding governmental operations. A “meeting” is not just a formal meeting but includes any congregation of a majority of the members of a body at the same time and place to hear, discuss or deliberate upon any item within the jurisdiction of the body. “Meetings” include phone calls, emails, and serial communications between members. “Meetings” can also include social media, if members are expressing an opinion about a meeting or an issue under the members’ jurisdiction.

All meetings must adhere to the meetings rules regarding notice, agenda, public comment, and ADA compliance. COAF members are requested to keep these principles in mind and to contact staff with any questions or concerns.

## **VII. DISCUSSION AND ACTION ITEMS**

### **A. Review of COAF Work Plan, approved May 14, 2020**

The work plan was shared and was discussed further in the individual work plan discussions below.

### **B. Update on Diversity Summit Planning for 2020 (Goal 4, Objective L)**

Program Supervisor Elizabeth Hom provided an update. The private sector Diversity Summit was held September 11. The nonprofit sector is scheduled for December 11 from 1:30-4:00 pm, partnering with the Legal Aid Association of California (LAAC). The State Bar will present the Diversity Report Card, and LAAC will report on its 2020 recruitment and retention study. Worksafe, a State Bar grantee, will provide training on creating safe work spaces for legal aid staff, including policies with a race equity lens. The government sector Summit will be held in early 2021.

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

Senior Program Analyst Christal Bundang provided an update on the working group’s survey of law schools. The purpose of the survey is to: (1) learn about existing efforts to recruit and retain diverse law students in California’s law schools, (2) develop a resource to summarize current efforts and highlight best practices, and (3) support the overarching goal to achieve a diverse statewide attorney population that reflects California’s population.

Christal received 32 surveys back as of December 1, a 60% reply rate so far. The deadline has been extended to December 11, 2020. Next steps will be to review and analyze survey responses, in tandem with attrition data from the Annual Report and 509 Report. The working group will provide an update at next COAF meeting.

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

Program Supervisor Doan Nguyen provided an update. This working group will participate with the larger working group studying the Bar Exam Differential Item Functioning (DIF) Report. That working group will include members from the Committee of Bar Examiners and two COAF members. The first meeting is scheduled for Friday, December 18, 2020.

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

Program Supervisor Elizabeth Hom provided an update. CSBARS is proposing revisions to the law school accreditation rules. Elizabeth thanked Judge Kristin Rosi and former COAF member Donna Schuele for providing insights during this process. Feedback from CSBARS was very positive. The Board of Trustees approved the Committee of Bar Examiner's request to put out the proposed rules for 60 day public comment. The period closes in January 2021.

**F. Update on Modification of Elimination of Bias MCLE Rules and Implicit Bias MCLE (Goal 4, Objective M)**

Senior Program Analyst Erica Carroll provided an update. At its September 2020 meeting, the Board of Trustees approved COAF's recommendations to increase the elimination of bias requirement from one hour to two, to add implicit bias as a curriculum requirement, and to prescribe requirements for instructors. The revised rules will become effective January 1, 2022, with the first reporting period in February 2023.

The working group has also proposed a one-hour, free MCLE on implicit bias. This was approved by the Board of Trustees in March 2020 and is under development. The working group is partnering with a content expert and an e-learning course designer. Targeted completion is February 2021. The next step will be to develop learning outcomes.

**G. Update on Early Pipeline to the Profession Outreach Materials Development (Goal 4, Objective L)**

- i. Update on ["Want to be a Lawyer" brochure](#)  
Judge Kristin Rosi provided an update. The working group partnered with State Bar staff to update the brochure. There are both paper and online versions. The updated version shares what individuals can do with a law degree in more contemporary ways. It provides tips for those in high school, community college, and those who did not graduate from high school, addressing traditional and non-traditional avenues to get into law.
- ii. Update on Attorney Video Project  
Program Supervisor Elizabeth Hom provided an update. She thanked Ryan Harrison and Heather Anderson for their work in creating a video featuring

David Kelly, Chief Legal Officer of the Golden State Warriors. The video is 25 minutes; the Office of Communications will create snippets of the video to use on social media.

**H. Update on Judicial Council Requests for Assistance on Judicial Diversity Initiatives (Goal 4, Objective O)**

No update on this item. Elizabeth Hom noted that the Judicial Council leads judicial diversity efforts, and the State Bar is prepared to collaborate upon their request.

**VIII. LIAISON REPORTS**

**A. California Lawyers Association (CLA) Report on Diversity and Inclusion Initiatives**

There was no report.

**B. California Leadership Access Workforce (California LAW) Report on Diversity and Inclusion Initiatives**

Liaison Pat Lee reported on California LAW's early education pipeline efforts. Their Pathway to Law Summit will be in February 2021. It will provide professional development for teachers, council members and members of the community. Sessions will cover how to get students ready for their next steps on the education path, and how to get students to become more involved in civic engagement, public policy and the community. There will also be awards; Pat will forward the awards nominations process to Elizabeth Hom to share. The annual Civics Law Academy will be held in March 2021.

**C. Judicial Council Report on Diversity and Inclusion Initiatives**

Liaison Judge Erica Yew reported that the "Pathways to Judicial Diversity" toolkit is available. There will be presentations to judicial and bar associations throughout the state. Judge Yew specifically noted disparity within the Latinx population. All are welcome to join presentations on Pathways to the Bench coming in Spring 2021 as well as other trainings that will be held.

**IX. ADJOURN**

There being no other business, the meeting was adjourned at 3:54 p.m.