



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

**54-111 MAY 2021**

## **BOARD EXECUTIVE COMMITTEE III.A**

**DATE:** May 13, 2021

**TO:** Members, Board Executive Committee  
Members, Board of Trustees

**FROM:** Doan Nguyen, Program Manager, Office of Access & Inclusion

**SUBJECT:** Proposed Revisions to State Bar Rule 3.662 Regarding Legal Services Trust Fund Commission Term of Appointments: Return from Public Comment and Request for Approval

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### **EXECUTIVE SUMMARY**

At its March 2021 meeting, the Board Executive Committee authorized a 30-day public comment period for State Bar rule 3.662, which currently states that the Board may appoint each member on the Legal Services Trust Fund Commission (LSTFC) for up to two three-year terms. This agenda item proposes amending rule 3.662 to align the terms of members of the LSTFC with the Board's decision to change the terms for all subentities to four-year terms with the possibility of reappointment to serve as an officer.

The 30-day public comment period concluded on April 30, 2021. The State Bar received three public comments during this period: two in support and one in opposition of the proposal. Staff has reviewed the public comments received and recommends that the Board adopts rule 3.662 as modified.

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### **BACKGROUND**

In September 2018, as part of its review of governance and oversight of State Bar subentities, the Board of Trustees received a report evaluating the number, size, organizational structure, and functions performed by many of the committees, commissions, boards, and councils that support the work of the State Bar. The Board of Trustees approved seven global

recommendations related to the size, structure, and organization of all subentities. Relevant here, the Board recommended that terms for all subentity volunteers be standardized at four years with the possibility of reappointment to serve as an officer.

Implementation of recommendations regarding the LSTFC were deferred pending a stakeholder engagement process. Although this process concluded in January 2019, due to other pressing priorities at the State Bar, the proposed rule change regarding the LSTFC term of appointments was not brought to the Board earlier.

The LSTFC consists of 21 voting members, and three nonvoting judicial advisors. The Board appoints 14 of the 21 voting members, 10 of whom must be licensees of the State Bar and four of whom must be public members. The Chief Justice, as chair of the Judicial Council, appoints seven of the 21 voting members, five of whom must be members of the State Bar and two of whom must be public members, as well as the three nonvoting judges, one of whom must be an appellate justice. Two of the public members (whether appointed by the State Bar or the Judicial Council) must be or have been within five years of appointment indigent persons (known as client-eligible) as defined by Business & Professions Code section 6213(d). Historically, client-eligible appointments have been made by the State Bar.

Currently, State Bar rule 3.662 states that the Board of Trustees may appoint commissioners for a term of three years that begins and ends at the State Bar's annual meeting. The rule further allows the Board to reappoint commissioners for a second three-year term or to extend an initial or second term by one or two years to serve as chair or vice-chair.

The Board Executive Committee and Board were aware of staff's intent to proceed with this rule amendment, and approved appointments in 2019 and 2020 for four-year terms in anticipation of this rule change being pursued.

## **DISCUSSION**

### **PUBLIC COMMENTS RECEIVED**

The 30-day public comment period ran from April 1 through April 30, 2021, and the State Bar received three public comments during this period: two in support and one in opposition of the proposal. One commenter, who is a current Legal Services Trust Fund commission member, agreed with the proposal without comment. A second commenter, Salena Copeland, Executive Director of the Legal Aid Association of California (LAAC), submitted a letter of support on behalf of the organization. LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. In addition to expressing support for the proposal as it stands, LAAC requests that the Board consider permitting client-eligible members to have an extra term or, in the alternative, to waive the term limits for client-eligible members. LAAC provided the following comment: "Serving on the LSTFC is a significant amount of work and, when there is a client-eligible person who is successful and willing to keep serving, we believe it

would be detrimental to lose such a dedicated and knowledgeable person merely due to term limits.”

The third comment came from Judge Mark Juhas as Chair of the California Access to Justice Commission. Judge Juhas submitted a letter of opposition on behalf of the organization. For over 20 years, the Access Commission has worked toward achieving equal access to justice for all Californians. While the Access Commission raised various points of opposition, the primary concern focuses on how the proposed rule would reduce the experience of serving commissioners by unnecessarily reducing term length, and further, that experienced and well-informed commissioners provided integrity to the funding and policy recommendations made by the LSTFC. The Access Commission provided the following comment: “The Trust Fund Commission has a broad range of responsibilities including determining eligibility for grants for both qualified legal services providers (plus supplemental pro bono allocations) and support centers, and monitoring grantees’ compliance ... Developing competence to make decisions in these areas, which ultimately affects the delivery of legal aid services, takes time. Given the breadth of these responsibilities, it can take several years for members to obtain the knowledge and experience needed to make informed decisions and recommendations.”

The full text of LAAC and the Access Commission’s public comments are included as Attachments B and C.

#### **STAFF’S RESPONSE TO PUBLIC COMMENTS**

Staff has reviewed the public comments and reaffirms its initial recommendations without modifications for the following reasons.

To promote greater diversity and inclusion on the LSTFC, staff recommends not carving out a term limit exception for commissioners, including client-eligible members. We appreciate LAAC’s suggestions for more flexibility for client-eligible members. However, given that there are only two positions available for client-eligible members, it is important to maintain term limits to maximize the opportunity for greater representation from various constituencies. Client members offer invaluable perspectives and have strong voices on the commission. As such, the LSTFC would benefit from a broader representation of client-eligible members of the public to help shape policy and funding decisions that impact a wide variety of low-income and underserved communities. While there are no State Bar appointed seats available in the upcoming term, the Office of Access & Inclusion is already actively recruiting for the 2022–2023 term and plans to develop a robust outreach plan to target more diverse applicants, especially those from rural and isolated regions of the state such as the Inland Empire and Central California.

We also appreciate the Access Commission’s thoughtful public comments and agree that the varied expertise of LSTFC commissioners has enabled the State Bar to make informed policy decisions and provide proper oversight of public funds and staff. Such expertise has included specialized knowledge of grantmaking, banking and finance, nonprofit management, and the delivery of aid in California. Nevertheless, as we have said above, it is equally important to

balance experience and expertise with a desire for diversity on the commission and to add fresh, new perspectives. Furthermore, a single four-year term is not an insignificant amount of time. In fact, all other subentities at the State Bar, with the exception of those governed by statute, have adopted the global recommendation of a single four-year term. This includes, among others, the Committee on Professional Responsibility and Conduct (COPRAC), which, like the LSTFC, involves a highly specialized, substantive area. In addition, commission terms are staggered, and there are currently no term limits for Judicial Council appointees; together with the proposed four-year terms for State Bar appointees, these factors balance continuity, turnover, and expertise on the commission.

As noted previously, these changes will enable better coordination of the appointments process and ensure that subentity volunteers at the State Bar are treated equitably. For all of these reasons, staff maintains that the term of appointments for all members of the LSTFC should reflect the global recommendations, which set terms at four years with the possibility of reappointment to serve as an officer. Since the State Bar annual meeting no longer takes place, staff also recommends removing references to the meeting as the beginning and end dates of the term.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR**

Title 3, Division 5, Chapter 2, Rule 3.662 of the Rules of the State Bar of California

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATIONS**

**Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees amends State Bar rule 3.662, as set forth in Attachment A.

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees amends State Bar rule 3.662, as set forth in Attachment A.

### **ATTACHMENT(S) LIST**

- A.** Proposed Changes to Rule 3.662
- B.** Legal Aid Association of California's Letter of Support
- C.** California Access to Justice Commission Letter of Opposition
- D.** March 18, 2021 Memo to Board Executive Committee Re: Request to Circulate for Public Comment Proposed Revisions to State Bar Rule 3.662
- E.** November 2018 Memo to Board of Trustees Re: Changes to Subentity Governance, Structure and Composition
- F.** September 2018 Memo to Board of Trustees Re: Appendix I Subentity Review

**State Bar Rule 3.662**  
**Proposed Revisions (Redline)**

Rule 3.662 Legal Services Trust Fund Commission membership and terms

The commission consists of 21 voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.<sup>1</sup> No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the commission.

- (A) The Board of Trustees appoints fourteen voting members, ten of whom must be licensees of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of ~~four~~three years ~~that begins and ends at the State Bar annual meeting. Upon completion of an initial term, the Board may reappoint a member for a second three-year term.~~ The Board may extend ~~an initial or second term by one or two years~~ a term by an additional year to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years. (C) The Board of Trustees appoints voting members as chair and vice-chair.

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<sup>1</sup> Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.

*“The Unified Voice of Legal Services”*



April 5, 2021

Board Executive Committee  
State Bar of California  
180 Howard St.  
San Francisco, CA 94105

**Re: Proposed Revisions to State Bar Rule 3.662 Regarding Legal Services Trust Fund  
Commission Term of Appointments—SUPPORT**

To the State Bar Board Executive Committee,

I am writing on behalf of the Legal Aid Association of California (LAAC) to express our **support** for the proposed revisions to State Bar Rule 3.662 regarding the Legal Services Trust Fund Commission (LSTFC) (“the Commission”) term of appointments. We also would like to request some specific applications of the rule to client-eligible members.

**LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California.**

LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California’s unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

First, LAAC believes that having longer terms, consistent with other State Bar committees, allows for greater stability in the LSTFC and supports a deeper understanding of grant monitoring, which only comes after a few years on the Commission. For this reason, we support the proposal as it stands.

Second, we request that the Executive Committee also consider specifically permitting client-eligible members to have an extra term or, in the alternative, to waive the term limits for client-eligible members. Serving on the LSTFC is a significant amount of work and, when there a client-eligible person who is successful and willing to keep serving, we believe it would be detrimental to lose such a dedicated and knowledgeable person merely due to term limits. For this reason, we propose flexibility in allowing an extra term or a waiver of term limits for client-eligible members.

**Altogether, we support this change to Rule 3.662 and request that the Executive Committee consider our proposal regarding client-eligible members.** Thank you again for this opportunity to comment. Please do not hesitate to reach out to me with questions or comments.

Sincerely,

A handwritten signature in dark ink, reading "Salena Copeland". The signature is fluid and cursive, with the first name "Salena" and last name "Copeland" clearly distinguishable.

Salena Copeland  
Executive Director, Legal Aid Association of California (LAAC)

Zach Newman  
Senior Attorney, LAAC

ATTACHMENT C

# CALIFORNIA ACCESS TO JUSTICE COMMISSION

350 Frank Ogawa Plaza, Suite 701, Oakland, CA 94612 · (510) 893-3000

April 30, 2021

Board of Trustees  
c/o Doan T. Nguyen  
Program Manager, Office of Access & Inclusion  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Re: *Opposition to Proposed Revisions to State Bar Rule 3.662*

Dear State Bar Board of Trustees:

We write to oppose the proposed revisions to State Bar Rule 3.662.

For over 20 years, the California Access to Justice Commission has worked toward achieving equal access to justice for all Californians. We appreciate the State Bar's efforts to standardize the terms of volunteers serving on committees, commissions, boards, and councils governed by the State Bar. However, we are hopeful that the State Bar will be thoughtful in implementing staff recommendations related to the Trust Fund Commission, which deals with important access to justice functions in the State. The proposed change would unnecessarily reduce the terms of those serving on the Legal Services Trust Fund and unintentionally undermine the important work of the Trust Fund Commission. For the reasons set forth below, we oppose the proposed changes regarding Legal Services Trust Fund Commission term of appointments.

## 1. The Global Recommendations Adopted By The State Bar Should Be Open To Appropriate Exceptions

As part of its governance review, the Board of Trustees previously approved general recommendations related to the size, structure, and organization of bodies within the State Bar. Although not specifically tailored to the history and needs of the Trust Fund Commission, the general recommendation includes that terms for volunteers be standardized at four years with the possibility of reappointment of an additional year to serve as an officer.

The State Bar's effort to standardize the terms of appointments should be open to appropriate exceptions. The guidelines were not intended to be rigid or inflexible. The history, purpose, and experience of the Legal Services Trust Fund Commission justifies an exception.

## 2. Retaining The Ability to Appoint Commissioners For Up To Two Three-Year Terms Is Important To The Proper And Fair Administration Of Access To Justice Funding

Currently and for more than a decade, State Bar Rule 3.662 provides that the Board of Trustees may appoint members to the Legal Services Trust Fund Commission for up to two three-year terms. The rule further allows the Board to extend an initial or second term by one or two years to allow a Commissioner to serve as chair or vice-chair. This term of appointments has worked well.

Importantly, the Trust Fund Commission administers grant programs that fund nonprofit civil legal aid organizations, including Interest on Lawyers' Trust Account (IOLTA) grants, the Equal Access Fund, and the Justice Gap Fund along with other important grants. This civil legal aid funding is critical to the delivery of legal services throughout the State. The knowledge and experience of appointed Commissioners, particularly those with experience addressing the

*The California Access to Justice Commission is an independent nonprofit California public benefit corporation.*

## CALIFORNIA ACCESS TO JUSTICE COMMISSION

needs of low-income, self-represented litigants; operating legal services programs; and community economic development, can be valuable in the operation of the Trust Fund Commission and the administration of legal services funding. The participation of Commissioners who have served long enough to develop knowledge and experience on these and related topics has been a benefit, even if that requires longer terms. The State Bar has often appointed Commissioners for two three-year terms, and the Access to Justice Commission believes that this has aided the work of the Trust Fund Commission in important ways.

The impact of the proposed rule would be to reduce the experience of serving Commissioners by unnecessarily reducing term length. As a consequence, Commissioners will have less time to accumulate a knowledge base for assisting and overseeing the State Bar staff. The Trust Fund Commission has a broad range of responsibilities including determining eligibility for grants for both qualified legal services providers (plus supplemental pro bono allocations) and support centers, and monitoring grantees' compliance with applicable Bar rules and standards and the multi-faceted ABA Standards for the Provision of Civil Aid. When necessary, the Trust Fund Commission also is responsible for terminating funding and reconsidering appeals of its decisions, and it responds to complaints that grantees fail to meet Trust Fund requirements. For many who are appointed to the Trust Fund Commission, these are new and specialized topics. Developing competence to make decisions in these areas, which ultimately affects the delivery of legal aid services, takes time. Given the breadth of these responsibilities, it can take several years for members to obtain the knowledge and experience needed to make informed decisions and recommendations.

As part of the Board of Trustees Appendix I review, the Bar engaged stakeholders in a discussion about the role and future of the Trust Fund Commission. The consensus was that a well-informed and experienced Trust Fund Commission advanced civil justice in California and provided integrity to the funding and policy recommendations made by the Commission. In addition, the Trust Fund Commission currently is involved in reviewing and making recommendations to the Board of Trustees regarding codification of complicated rules and operating guidelines. This process also benefits from experienced Commission members who understand the complexities of the rules and the nuanced implications on grantees based on their tenure and experience on the Trust Fund Commission. Losing this experience at the pivotal moment when the Board of Trustees is relying on the Commission to inform rules governing IOLTA would be a significant disadvantage.

The Access to Justice Commission believes it would be unhelpful to reduce the term length of Commissioners, reducing the experience of Commissioners and diminishing their ability to assist and oversee the State Bar staff regarding the operation of the Trust Fund Commission's programs.

### **3. Asserted Benefits Of The Proposed Rule Change Deserve Less Weight**

While there would be significant detriments from the proposed rule change, the asserted benefits seem all but illusory. Although the change would follow the generalized recommendation and may have some improvements for coordination of appointments, the rule change would undermine, not promote access to justice in California.

Without the rule change, existing Rule 3.662 preserves the Board's ability to replace Commissioners whose continued service would not provide benefits because of their accumulated knowledge. Each member appointed by the Board now serves at the pleasure of the Board, and it will remain within the Board's discretion when and if to appoint Commissioners to second three-year terms.

**CALIFORNIA ACCESS TO JUSTICE COMMISSION**

The Access Commission thanks the State Bar for its openness to making appropriate exceptions to the general recommendation for a standardized four-year term length. The Access Commission respectfully suggests that the history and experience of the Legal Services Trust Fund Commission justifies retaining the current rule for appointment terms. We therefore oppose the proposed revisions to State Bar Rule 3.662.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark Juhas', with a long horizontal flourish extending to the right.

Judge Mark Juhas

Chair



# The State Bar *of California*

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**OPEN SESSION  
AGENDA ITEM  
MARCH 2021  
BOARD EXECUTIVE COMMITTEE III.G**

**Date:** March 18, 2021

**To:** Members, Board Executive Committee

**From:** Doan Nguyen, Program Manager, Office of Access & Inclusion

**Subject:** Proposed Revisions to State Bar Rule 3.662 Regarding Legal Services Trust Fund  
Commission Term of Appointments: Request to Circulate for Public Comment

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## **EXECUTIVE SUMMARY**

Currently, State Bar Rule 3.662 states that the Board of Trustees may appoint each member on the Legal Services Trust Fund Commission (LSTFC) for up to two three-year terms. This agenda item proposes amending Rule 3.662 to align the terms of members of the LSTFC with the Board's decision to change the terms for all subentities to four-year terms with the possibility of reappointment to serve as an officer. The agenda item requests approval to circulate this proposed rule change for a public comment period of 30 days.

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## **BACKGROUND**

In September 2018, as part of its review of governance and oversight of State Bar subentities, the Board of Trustees received a report evaluating the number, size, organizational structure, and functions performed by many of the committees, commissions, boards, and councils that support the work of the State Bar. The Board of Trustees approved seven global recommendations related to the size, structure, and organization of all subentities. Relevant here, the Board recommended that terms for all subentity volunteers be standardized at four years with the possibility of reappointment to serve as an officer.

Implementation of recommendations regarding the LSTFC were deferred pending a stakeholder engagement process. Although this process concluded in January 2019, due to other pressing priorities at the State Bar, the proposed rule change regarding the LSTFC term of appointments was not brought to the Board earlier.

The LSTFC consists of 24 members. The Board appoints 14 members, and the Chief Justice, as chair of the Judicial Council, appoints the remaining 10 members. Currently, State Bar Rule 3.662 states that the Board of Trustees may appoint commissioners for a term of three years that begins and ends at the State Bar annual meeting. The rule further allows the Board to reappoint commissioners for a second three-year term or to extend an initial or second term by one or two years to serve as chair or vice-chair.

The Board Executive Committee and Board were aware of staff's intent to proceed with this rule amendment, and approved appointments in 2019 and 2020 for four-year terms in anticipation of this rule change being pursued.

## **DISCUSSION**

The term of appointments for members of the LSTFC should reflect the global recommendations, which set terms at four years with the possibility of reappointment to serve as an officer. Since the State Bar annual meeting no longer takes place, staff also recommends removing references to the meeting as the beginning and end dates of the term. These changes will enable better coordination of the appointments process and ensure that subentity volunteers at the State Bar are treated equitably.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR**

Title 3, Division 5, Chapter 2, Rule 3.662 of the Rules of the State Bar of California

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATIONS**

**Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board Executive Committee direct staff to circulate for a 30-day public comment period proposed changes to State Bar Rule 3.662, as set forth in Attachment A.

**ATTACHMENT(S) LIST**

- A. Proposed Changes to Rule 3.662

**State Bar Rule 3.662**  
**Proposed Revisions (Redline)**

Rule 3.662 Legal Services Trust Fund Commission membership and terms

The commission consists of twenty-one voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.<sup>1</sup> No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the commission.

- (A) The Board of Trustees appoints 14 voting members, 10 of whom must be licensees of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of ~~four~~three years~~that begins and ends at the State Bar annual meeting. Upon completion of an initial term, the Board may reappoint a member for a second three-year term.~~ The Board may extend ~~an initial or second term by one or two years~~a term by an additional year to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years. (C) The Board of Trustees appoints voting members as chair and vice-chair.

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<sup>1</sup> Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.

**OPEN SESSION  
AGENDA ITEM**

**704 NOVEMBER 2018**

**DATE:** November 16, 2018

**TO:** **Members, Board of Trustees**

**FROM:** Leah Wilson, Executive Director  
Donna Hershkowitz, Chief of Programs  
Dag MacLeod, Chief of Mission Advancement and Accountability

**SUBJECT:** Changes to Sub-entity Governance, Structure and Composition:  
Implementation Plans

**EXECUTIVE SUMMARY**

This agenda item reports back on the status of implementation plans for subentities as directed by the Board of Trustees at its September 13, 2018, meeting. The implementation plans are organized into two major groups: global recommendations that relate to all subentities, and specific recommendations that are unique to individual subentities.

**BACKGROUND**

In September 2018, the Board of Trustees received a report evaluating the number, size, organizational structure, and functions performed by many of the committees, commissions, boards, and councils that support the work of the State Bar, also known as the “subentities.” Staff produced that report at the direction of the 2017 Governance in the Public Interest Task Force in an effort to streamline the organization of these subentities and align their work more closely with the Bar.

The September report to the Board found that the State Bar uses a much larger number of subentities than other, comparable organizations; that the number of volunteers serving on these subentities is much larger than the number of volunteers who serve on subentities of other, comparable organizations; that the functions performed by some of the subentities may be more appropriately performed by the Board of Trustees or Bar staff; that the qualifications for serving as a subentity volunteer are not always clearly documented, and; that there are uneven policies in place regarding volunteer orientation and training.

To overcome these challenges, the Board approved seven global recommendations related to the size, structure, and organization of all subentities and it approved an

additional nine recommendations specific to individual subentities. Bar staff were directed to return to the Board with implementation plans for these recommendations.

## DISCUSSION

### *Global Recommendations*

Global recommendations approved by the Board are listed in the table, below, taken from the September 2018 report.

**Table 1: Global Subentity Recommendations**

	Proposed Responsible	Change from Current?	Proposed Subentity Role	Proposed Board of Trustees Role
1. Institute formal orientation for all volunteers to the work of the State Bar	State Bar staff	<i>New</i>		Approve the content of Bar orientation
2. Institute and enforce term limits for all volunteers, ensure appointments made timely	Staff Bar staff, appointing authorities, & Board	Yes	Implement	Approve policy
3. Institute conflict of interest policy for volunteers	State Bar staff	<i>New</i>	Implement once approved	Approve policy
4. Formalize desired qualifications for volunteers, by subentity	State Bar staff and Subentity	<i>New</i>	Collaborate with staff to develop	Approve proposed qualifications
5. Establish standard subentity size of 7 or fewer volunteers and process for justification of additional based on workload and need for representation	State Bar staff	<i>New</i>	Collaborate with staff to develop	Approve proposed sizes of subentities
6. Institute sunset review of all subentities every 5 years	Staff Bar staff	<i>New</i>	Participate in review	Review & approve results of reviews
7. Eliminate subentity nominations committees.	State Bar staff	<i>New</i>		Review nominees and approve

#### 1. Institute Formal Orientation for All Volunteers to the Work of the State Bar

Staff evaluated the orientation of volunteers in two broad categories: legal compliance issues related to volunteers and orientation necessary to align the work of volunteers with the mission, organization, and operations of the State Bar. On the basis of this analytic frame, a standardized orientation package will be developed that includes both legal compliance documents and foundational information on the Bar. The standard

information will then be supplemented with subentity specific information, such as the subentity's charter and, where unique, specific duties of the members of the subentity.

The materials that will comprise the standardized orientation package include:

*Compliance*

- Fair Political Practices Commission - Form 700 Statement of Economic Interests
- State Bar Rule 2201 – Assignment of Conflict Counsel
- Bagley-Keene Open Meeting Act
- California Public Records Act Overview
- Ethics and Communications Overview
- Conflicts of Interest & Fiduciary Duties
  - Additional Conflict information as needed for individual subentities

*Orientation & Education*

- Welcome letter from the Executive Director & Chair of the Board of Trustees
- Subentity Charter
- State Bar Strategic Plan
- Organization Chart – Board of Trustees, Board Committees, Subentities
- Organization Chart – State Bar
- Subentity Roster & Contact Information
- Expense Report Instructions and Form

*Staff will report back to the Board in early 2019 with a final, standardized, legal compliance / orientation package to be provided to all subentity members. In addition to this package, all subentity members will receive training on implicit bias/impartial decision-making. At that time, staff will also report back on the plan for ensuring that all volunteers receive this training.*

## 2. Institute and Enforce Term Limits for All Volunteers – Ensure Appointments Made Timely

The terms of volunteers and sizes of the subentities under consideration are currently established through a number of different authorities. Attachment A provides detail related to the rules and statutes governing the subentities under consideration here.

- State Bar Rules specify the terms of member of the California Board of Legal Specialization, and the Client Security Fund Commission;
- Business & Professions Code Section 6046 in conjunction with California Rule of Court 9.4(a) establishes terms for members of the Committee of Bar Examiners;
- Business & Professions Code Section 6231(b) defines the terms of members of the Lawyer Assistance Program Oversight Committee;
- The State Bar's Board of Trustees Policy Manual, more commonly known as the Board Book establishes the terms of the members of the Council on Access and Fairness.

Terms of members of subentities are generally either 3 or 4 years with varying degrees of specificity related to whether members may serve additional terms.

Bar staff will need to collect additional data from all subentity members regarding the number of terms that they have served in order to enforce existing limits. Clearer documentation of terms and term limits will also be provided in the subentity charters contained in the compliance / orientation package provided to volunteers at the beginning of their terms.

Ensuring the timely appointment of subentity members will require a thorough re-working of the current recruitment process. Bar staff have begun evaluating recruitment material posted on the Bar's web site and the recruitment process with an eye toward:

- Providing a single location where succinct descriptions of the work that each of the subentities does can be found;
- Creating a single, standardized application form that allows applicants to indicate their interest in more than one subentity and allows the Bar to track basic information on the qualifications and representativeness of applicant pool;
- Allowing for on-going, continual recruitment throughout the year;
- Conducting out-reach to ensure that the applicant pool is reflective of the rich diversity of the state.

To coordinate the appointment process and rationalize the flow of work required to evaluate and appoint applicants, all terms should be standardized to four years with the possibility of reappointment to serve as an officer of a subentity. These terms should also be staggered across all subentities, not only within subentities, so that appointments are not all concentrated at one or two points in time.

*Staff will report back to the Board on the status of this recommendation in early 2019 with an analysis of the status of the terms of existing subentity members, a proposal for an appointment schedule that will stagger terms to create a steady stream of appointments, and draft language to modify statute, Rule of Court, or Board Book, as needed.*

### 3. Institute Conflict of Interest Policy for Volunteers

*Conflict of interest documentation will be provided to all volunteers as part of the compliance and orientation package provided to them when they are appointed to serve on a subentity. See Number 1, above.*

### 4. Formalize Desired Qualifications for Volunteers by Subentity

In partnership with assigned staff from the Bar, each subentity will be charged with developing a list of desirable qualifications for serving on the subentity along with a brief narrative that describes the work of the subentity, not to exceed, in total, two pages. Each subentity will be responsible for providing a draft of this document to staff in early 2019 for incorporation into recruitment materials to be used by the State Bar.

*Staff will report back to the Board with the final lists of proposed desired qualifications for serving on each subentity in early 2019.*

5. Establish Standard Subentity Size of 7 or Fewer Volunteers and Establish a Process for Justification of Additional Based on Workload and Need for Representation

**Table 2: Recommendations for Subentity Size**

Subentity	Size Established in Statute, Rule, Board Book	Recommended Size and Notes
California Board of Legal Specialization	15	<ul style="list-style-type: none"> <li>• Reduce to 7</li> <li>• Reduction to be achieved through attrition</li> </ul>
Client Security Fund Commission	7	<ul style="list-style-type: none"> <li>• Reduce to 5</li> <li>• Reduction in workload due to restriction of work to appellate function justifies reduction below 7</li> <li>• Reduction to be achieved through attrition</li> </ul>
Committee of Bar Examiners	19	<ul style="list-style-type: none"> <li>• Reduce to 9</li> <li>• Larger size justified by wide range of topics for which CBE is responsible</li> <li>• Combine multiple subcommittees into a single subcommittee that acts on time-sensitive matters (e.g., moral character appeals, exam petitions) between meetings</li> </ul>
Council on Access and Fairness	25	<ul style="list-style-type: none"> <li>• Reduce to 10</li> <li>• Additional members justified to ensure sufficient diversity of representation</li> </ul>
Lawyer Assistance Program Oversight Committee	12	<ul style="list-style-type: none"> <li>• Reduce to 7</li> <li>• Current size is 5 – to reach 7 need to reappoint two members</li> </ul>

In addition to the specific recommendations for subentity size contained in Table 2, above, a process for justifying and approving subentities that have more than 7 members will need to be developed. This process will run concurrent with the finalization of the Board Book revisions. Section 4 of the revised Board Book is currently omitted pending finalization of recommendations related to subentities. The revised Section 4 of the Board Book will also address questions of the size and terms of subentities not covered in the Appendix I review, for example, the Commission on Judicial Nominees Evaluation, and the Committee on Professional Responsibility and Conduct.

*When the recommendations contained in this report are finalized, Section 4 of the Board Book will be modified to reflect these changes. The final version of the Board Book, including the updated Section 4, will be brought through the Board Executive*

*Committee to the full Board at its January, 2019 meeting including a description of a process whereby subentities larger than 7 members (or smaller than 7) may be justified.*

#### 6. Institute Sunset Review of All Subentities Every 5 Years

*The process for sunset reviews of all subentities will also be included in the amended Section 4 of the revised Board Book and brought to the full Board through the Board Executive Committee at its January, 2019 meeting.*

#### 7. Eliminate Subentities Nominations Committees

Subentity nominations committees serve a function that will be replaced by the enforcement of term limits and the restructuring of the subentity recruitment and appointment process (see Number 2, above). Nominations and appointment to leadership positions in subentities will be addressed in the revised Section 4 of the Board Book and brought to the Executive Committee and full Board for review in early 2019.

*Bar staff will communicate with all subentities by the end of 2018 that nominations subcommittees will no longer operate. Board Book guidelines for the operation of subentities contained in Section 4 will reflect this change and be included in the revised version of the Board Book to be approved by the Board Executive Committee and the full Board at its January 2019 meeting.*

#### Additional Consideration Not Contained in Board Recommendations

A common feature of subentity work that was not considered in the Appendix I subentity review presented to the Board in September was the practice of holding subentity meetings on Saturdays. This practice adds to the cost of staffing subentities as Bar staff incur overtime for Saturday work and facilities must be opened for these weekend meetings. In addition, the Saturday meetings make it difficult for staff to maintain a reasonable work-life balance.

*The Board should establish a policy that weekend meetings, except where absolutely necessary, will not be scheduled.*

### *Subentity Specific Recommendations*

Attachment B sets forth at a high level the actions that will be taken to implement the recommendations adopted by the Board as to each sub-entity. These implementation plans identify the directive adopted by the Board, the actions that will need to be taken to implement the directive, the organizational unit responsible, and a time line for commencement and/or conclusion. To the extent rule revisions are needed to implement a change, the timeline anticipates a global package of rule revisions will be presented to the Board in January 2019 with a request to circulate for public comment; the Board will then be able to adopt related rule changes at its May 2019 meeting. For changes requiring legislation, the implementation plans anticipate all statutory changes will be made during the 2019 legislative session. Details on the needed changes to statutes and rules are provided in Attachment C.

**California Board of Legal Specialization.** This implementation plan anticipates completion of all directives by the end of November, 2019. The plan anticipates that the Bar will be in a position to transition the work of the 11 Advisory Commissions (totaling 99 volunteers) to CBLS, staff, and others in May 2019.

**Client Security Fund Commission.** This plan anticipates implementation of the key directive – to have staff rather than the Commission responsible for issuing of tentative decisions – in December 2018. The final item for implementation would be a rule change which is anticipated to be accomplished in May 2019.

**Committee of Bar Examiners.** This implementation plan anticipates completion of all directives by the end of the 2019 calendar year. The plan contemplates the hiring of one additional staff person to, among other things, allow for the transition of informal moral character conferences from the Committee to staff.

**Committee on Mandatory Fee Arbitration.** This implementation plan anticipates the sunseting of the Committee in June 2019. Completion dates could not be estimated with sufficient certainty at this time for the development of e-learning modules to deliver training to local arbitration programs. It is anticipated this will be completed in 2019. Until such time, members of the Committee have graciously indicated a willingness to continue to volunteer to provide in person trainings.

**Council on Access and Fairness.** This implementation plan anticipates completion of all directives by March 2019. The plan begins with a joint meeting of the Programs Committee and Council leadership at the upcoming Board meeting.

**Lawyer Assistance Program.** At the September 2018 meeting, the Board of Trustees narrowed the options presented by staff from three (3) to two (2), and requested that staff present implementation plans for both of those options. Option 2 would have the State Bar continue to operate the LAP as related to the Alternative Discipline Program and moral character referrals, but no longer operate the remainder, sometimes referred to as self-referrals, support, or voluntary, LAP. Option 3 would transfer all LAP functions out of the Bar.

Staff believe there is value in having the State Bar continue to handle ADP and moral character referrals and that these responsibilities align well with the regulatory mission of the Bar. Staff therefore recommend adoption of Option 2.

Both Options could be accomplished in two different ways: (a) the State Bar would still be statutorily required to provide the services/program, but would contract with an outside entity to deliver those services; or (b) the State Bar would no longer be statutorily required to provide the services and the functions would be contracted out to another entity. The implementation plan does not identify the better of these two methods at this time, but proposes that staff return to the Board by March 2019 with a recommendation, after having had an opportunity to further engage with stakeholders regarding both approaches.

As much of the LAP and the LAP Oversight Committee are creatures of statute, statutory change will be necessary to implement either of these options. Assuming that occurs in 2019, the implementation plans anticipate completion of all directives by January 2020, including the elimination of the Oversight Committee.

**Input of the LAP Oversight Committee.** The LAP Oversight Committee strongly believes that the Board erred in selecting Option 2 or 3. Option 1, which would have had the Bar retain LAP in its entirety, and clarify the charge and responsibility of the Oversight Committee, was the unanimously preferred option of the LAP Oversight Committee. A letter from the LAP Oversight Committee is provided here as Attachment D.

The Oversight Committee believes Board members do not possess the necessary expertise to understand the implications of the decision to contract out all or part of LAP. For example, they question how the Board would oversee the entity providing the service. The Oversight Committee believes that the LAP is making great strides with its recent outreach efforts, and if the Board allowed more time for these efforts to unfold, any concern about underutilization would be minimized or eliminated. The Committee was also concerned that an outside entity would not be willing to continue these outreach efforts and ensure that the attorney and law student population is aware of the availability of these services.

As between Options 2 and 3, the Oversight Committee unanimously concluded that Option 2 is preferred.

## **FISCAL/PERSONNEL IMPACT**

The fiscal impact of the Options regarding the Lawyer Assistance Program is set forth below:

- Option 2:
  - Staff estimates that ADP and moral character referrals comprise 62% of the LAP caseload. The remaining 38% are the voluntary LAP / self-referrals / Support LAP clients.
  - The current LAP budget is \$2.1 million, including staff. An assumption is made that if the Bar retains 62% of the cases, it should retain 62% of the budget. The result is that the Bar would retain \$1.3 million of the annual

budgeted amount, and approximately \$800,000 would be made available to the entity with whom the Bar contracts.

- LAP currently has 8 staff. If 62% of the staff were retained to support the caseload retained, 5 staff would remain with LAP. The Bar would seek to find a different placement for 3 staff.
  - If the Bar contracts out the delivery of services (but the function remains the Bar's responsibility), it is assumed that the \$3.4 million in reserves that the program is expected to end this year with would remain with the Bar. If however, the Bar contracts out the whole function of this part of the program, some part of the \$3.4 million in reserves would be transferred to the new entity to assist with start up costs.
  - Because of the anticipated reduction in LAP staff under this Option, an additional \$157,000 would need to be absorbed by the General Fund to address overhead costs currently charged to LAP.
- Option 3:
    - The entire caseload would transfer to another entity, so all of the existing \$2.1 million budget would be made available to the entity with whom the Bar contracts.
    - The Bar would seek to find a different placement for all 8 LAP staff.
    - If the Bar contracts out the delivery of services (but the function remains the Bar's responsibility) the \$3.4 million in reserves would remain with the Bar. If the Bar contracts out all LAP functions, the reserves would be transferred to the new entity.
    - Because of the reduction of 8 LAP staff under this Option, an additional 415,000 would need to be absorbed by the General Fund to address overhead costs currently charged to LAP.

## **RULE AMENDMENTS**

See Attachment C

## **BOARD BOOK AMENDMENTS**

See Attachment C

## **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.

## **RECOMMENDATION**

RESOLVED: The Board of Trustees directs Bar staff to move forward with the implementation of Option 2 on the Lawyer Assistance Program (LAP), specifically directing Bar staff to restructure the LAP so that the Bar retains the Alternative Discipline Program and moral character referrals but no longer operate the self-referral / support component of the LAP.

**ATTACHMENT(S) LIST**

- A. Statutes and Rules Governing Terms and Size of Subentities
- B. Subentity Implementation Plans
- C. Statutes and Rules Implicated in Implementation of Subentity Recommendations
- D. Letter from the Lawyer Assistance Program Oversight Committee

## ATTACHMENT A – STATUTES AND RULES GOVERNING TERMS AND SIZE OF SUBENTITIES

Entity	Applicable Rules	Rules re term limits <sup>1</sup>	Rules re number of members <sup>2</sup>
California Board of Legal Specialization	State Bar Rules	State Bar Rule 3.93 (A) provides that each board and commission member is appointed for a term of four (4) years. A member whose four-year term is expiring may serve an additional year as chair, vice-chair or immediate past chair. An immediate past chair may also serve an additional year.	State Bar Rule 3.90 (B) provides that the board consists of twelve (12) attorney members, up to two of whom need not be certified specialists, and three (3) non-attorneys.
Client Security Fund Commission	State Bar Rules	State Bar Rule 3.421(A) provides that members serve at the pleasure of the BOT or until expiration of a term set by the BOT. There is no specific rule that sets the terms of CSF. The general rule re three year terms, except to permit service as Chair, Vice-Chair or Chair-Elect in a fourth year, or Chair in a fifth year, therefore applies.	State Bar Rule 3.421 (A) provides that the BOT appoints seven (7) members. Four (4) at most may be present or former members of the Bar or admitted to practice before any court in the United States.
Committee of Bar Examiners	Business and Professions Code; California Rules of Court	Business and Professions Code 6046.5 and Cal Rules of Court 9.4(a), provide that the term of members is four (4) years. The Court may reappoint an attorney or judicial officer examiner to serve no more than three additional full terms.	Business and Professions Code Section 6046 provides that the CBE shall consist of nineteen (19) members, 10 of whom shall be members of the State Bar or judges of courts of record in this state and nine of whom shall be public members who have never been members of the State Bar or admitted to practice before any court in the United States. Per Ruler 9.4 (a) at least one of the ten examiners appointed by the California Supreme Court must be a judicial officer in this state, and the balance must be members of the State Bar.

<sup>1</sup> The Board Book, Section 5, Tab 5.1, Article 1, Section 5 (Term of Membership) provides: “The term of office for all members of standing, special and section executive committees shall be three years; said terms to be staggered. Members serve no more than three years, except to permit service as Chair, Vice-Chair or Chair-Elect in a fourth year, or Chair in a fifth year.” (Emphasis added.) Numerous exceptions are listed. See also Board Book, Section 5, Tab 5.1, Article 4, Section 2 (Term, Maximum). Numerous exceptions are listed here as well.

<sup>2</sup> The Board Book, Section 5, Tab 5.1, Article 1, Section 7 (Size of Committee) provides: The membership of each committee shall be limited to the number that will enable it to perform its work promptly and thoroughly. The board, in determining the size of a committee, shall take into consideration (a) the scope, nature, and quantity of work which it must perform; (b) the time within which the work must be performed; and (c) the expense incident to the performance of the work.” In other words, there is no specific size required by this section, and it is up to the BOT to decide the size of the committee if not dictated by some other rule.

Entity	Applicable Rules	Rules re term limits <sup>1</sup>	Rules re number of members <sup>2</sup>
Council on Access and Fairness	Board Book	Three (3) years based on general rule in Board Book.	Board Book, Section 5, Tab 5.1, Article 4, Section 10 provides that the Council is composed of twenty-five (25) attorney and public members appointed by the BOT.
Lawyer Assistance Program Oversight Committee	Business and Professions Code, State Bar Rules, Title 3	Business and Professions Code section 6231(b) provides that committee members shall serve a term of four (4) years, and may be reappointed as many times as are desired.	Business and Professions Code section 6231(a) provides that LAPOC shall consist of 12 members. State Bar Rule 3.241 also provides for twelve members, six of whom are appointed by the BOT as required by B&P Code Section 6231.

Directives	Actions	Responsible	Implementation Dates	
			Start	Complete
Continue certifying in a defined set of specialty areas and recognize private organizations to certify in additional areas	Identify whether certification is appropriate in key practice areas that promote access and are otherwise most essential for consumer protection. If so recommend new areas of certification.	CBLS	Jan-19	Ongoing
Evaluate rigor & validity of exams	Contract with a psychometrician to evaluate the examination content and grading and propose changes as needed (see reference to grading in CBE implementation plan)	Admissions	May-19	Sep-19
	Revise existing grading process		Jul-19	Nov-19

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Reduce the role, size, and meetings  
of the Advisory Commissions

Transition work of Advisory Commissions to CBLS, staff, consultants, and subject matter experts (as detailed below)	Admissions	Nov-18	May-19
Modify State Bar Rules to delete references to the Advisory Commissions; update references to reflect transition to staff, CBLS or subject matter working groups	OGC		May-19
Advisory Commission members to complete first draft of questions for 2019 exam	Advisory Comm'n		Oct-18
Hire consultants to conduct pre-testing of 2019 exam questions	Admissions	Dec-18	Jan-19
Identify subject matter experts (e.g. LEDG team or EDG team members) to revise questions after pre-testing and assemble 2019 exams	Admissions	Jan-19	Ongoing
Hire consultants for exam development and grading	Admissions		As needed
Pre-test of portion questions from exam bank		Dec-18	Jan-19
Transition to online/remote grading through use of AIMS	Admissions		Nov-19
Transition evaluation of applications for certification to staff, including developing process for subject matter working group review for applications seeking to meet task and experience requirements through alternative means, with new process implemented upon rule change.		Dec-18	Jun-19
Form subject matter specific working groups as necessary to update task and experience standards for certification (starting with worker's compensation and family law)		Jun-19	periodic cycling back to each specialty

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Authority granted to CSF counsel to issue Tentative Decisions on CSF applications.	Revise CSF rules, policies and procedures to reflect change in division of labor. Circulate for public comment and then adoption by the BOT	CSF / OGC	Nov-18	May-19
	Secure delegation of authority of CSF Commission to delegate authority to CSF staff to issue Tentative Decisions in lieu of the Commission pending rule change			Dec-18
	CSF staff to begin issuing tentative decisions directly; Commission to begin as appellate body			Dec-18

Directive	Actions	Responsible	Start	Complete
<b>Consideration and Final Decision on objections (appeals) to Tentative Decisions remains with the CSF Commission.</b>	Continuation of existing processes unchanged; including CSF receives and processes any objections to Tentative Decisions, conducts legal analysis, schedules for review at Commission meeting; prepares administrative record; prepare final decisions	CSF Counsel/CSF Staff		Ongoing
	Prepare written Final Decisions of Commission.	CSF Counsel/CSF Staff		Ongoing

Directive	Actions	Responsible	Implementation Dates	
			Start	Deadline
Develop sampling plan	Determine how other bar jurisdictions do sampling plans ☐	Admissions	Nov-18	May-19
	Contract with psychometrician to recommend sampling plan methodology	Admissions / ORIA	May-19	Aug-19
	Revise all material to reflect new policies		Jan-19	Nov-19
Evaluate Grading Process	Compare California grading process to other jurisdictions	Admissions	Nov-19	May-19
	Contract with psychometrician to assist in the evaluation, including numbers of graders needed, numbers of reads required and score bands for which reads are required	Admissions / ORIA	May-19	Sep-19
	Revise existing grading process (apply also to FLSX and LSX)		Jul-19	Nov-19
	Revise all material to reflect new policies	Admissions	Jul-19	Nov-19

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**Staff to Handle Moral Character  
Conferences; CBE Appeals**

Develop internal practices for transition to staff led informal conferences	Admissions	Dec-18	Jan-19
Revise State Bar rules which provide for CBE to conduct informal conferences	OGC	Nov-18	May-19
Begin staff conducting of informal conferences (using existing guidelines / decisional law to guide determinations)	Admissions		Jun-19
Develop specific, clearly articulated standards/guidelines for consistent determinations	Admissions / OGC / CBE / Working Group	Mar-19	Dec-19
* Form ad hoc working group of CBE, Deans, others to assist in development of guidelines	Admissions	Feb-19	Dec-19
Create and maintain decisional law library to ensure appropriate consistency	Admissions	Jan-19	Mar-19
Train staff to conduct informal conferences	Admissions/HR	Feb-19	May-19
Recruit Staff	Admissions/HR	Jan-19	
Revise all material to reflect new policies: handbook, website, internal manuals etc.	Admissions		Dec-19

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**CBE to Evaluate Trends in Licensing & Certification**

Revise CBE charge to include this responsibility	Admissions		Jan-19
Identify and share appropriate training & conference opportunities; listservs; professional journals, etc for CBE members to keep abreast of trends	Admissions		Ongoing
review and discuss trends in licensing and certification and best practices	Admissions		Ongoing

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**Cease CBE involvement in Admissions  
Budget development and management**

Cease incl budget item CBE agendas -Continue to provide exam cost-analysis regularly; supply add'l info necessary when evaluating sufficiency of exam fees.	Admissions	Oct-18	Ongoing
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**Staff to Handle Enforcement of Exam Rules;  
CBE Appeals**

Create protocols to transition decisions on petitions for exams and eligibility to staff	Admissions	Dec-18	Jan-19
Revise rules to eliminate references to CBE and subcommittees to consider and affirm Ch. 6 notices and determine sanctions; and to specify appeals process	Admissions / CBE	Nov-18	May-19
Create decisional law library for chapter 6 violations	Admissions	Jan-19	Mar-19

Revise all material to reflect new policies:  
handbook, etc.

Jul-19

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Transition from standing committee to staff-driven program	CMFA to continue through the end of June 2019 for the specific purposes of:			
	* Review/update/amend the Arbitrator Handbook	CMFA		Jun-19
	* Review/update/amend the MFA Program Handbook	CMFA		Jun-19
	* Update MFA program materials, including sample fee agreements, to comply w/ the new Rules of Professional Responsibility	CMFA / COPRAC / MFA		Feb-19
	Review/revise staff roles & responsibilities, procedures in light of MFA program to transition to Office of Professional Competence (OPC)	OPC/MFA	Nov-18	Feb-19
	Staff to assume responsibility for reviewing local program rules for conformity w/ State Bar standards for arbitration programs	MFA/OPC	Nov-18	Ongoing
	Appoint PA and APAs for 2019	BOT	Nov-18	Nov-18
	Update requirements for COPRAC appointments to ensure that two or more COPRAC slots are filled by MFA experts	OPC/MFA	Nov-18	Sep-19
	Enhance reporting to the Board through the Regulation and Discipline Committee by identifying the data and statistics that would serve to ensure effective oversight by the Board as well as the frequency of reporting	MFA in collaboration with ORIA	Jan-19	Ongoing

Evaluate staffing needs

Chief of Programs

Ongoing

Ongoing

<b>Implement distance learning</b>				
SOW/secure vendor	OPC	2019	TBD	
Identify small working group of CMFA to assist in the development of e-learning curriculum	MFA staff / CMFA working group	Jan-19	TBD	
Develop 2 E-learning courses to replace current in-person trainings (Basic & Advanced Arbitrator Trainings)	CMFA working group / OPC / MFA	2019	TBD	
Develop 1 E-learning course on Administrator training to replace on demand staff training for each new local program administrator	CMFA working group / OPC / MFA	2019	TBD	
Continue to deliver in-person (Basic/Advanced) Arbitrator trainings, until online modules are available for use	CMFA and/or Volunteers	Nov-18	TBD	
<b>Support for local programs</b>				
Develop and disseminate communication materials to local programs State Bar continued support for MFA program and local programs	MFA / Communications	Dec-18	Feb-19	
Conduct 2 webinars to solicit input from local programs on how the State Bar can support their programs; and to share information on the new construct of the MFA program	MFA / OPC / PA	Jan-19	Mar-19	

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
<b>Clarify Board strategy on diversity to focus work of COAF</b>	Joint Meeting with Programs Committee to develop direction on COAF focus areas and begin planning for BOT Strategic Planning session in Jan 2019	OA&I		Nov-18
	Based on input from Joint Meeting with Programs Committee, revise COAF charge	COAF / OA&I	Nov-18	Dec-18
	Develop panel presentation on key diversity and inclusion focus areas and strategies for BOT Planning Session for the purpose of developing strategic direction and new strategic plan objectives	OA&I / MAA / COAF	Dec-18	Jan-19
<b>Assess the impact of State Bar work on diversity and inclusion</b>				
	Develop measures of program effectiveness; institute regular data collection; memorialize plan to meet the access, fairness, and diversity goals in B&P 6001.3 and issue report to Legislature	COAF / OA&I		Mar-19

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Retain the portion of the program serving those referred as part of the Alternative Discipline Program or moral character determinations.	Seek statutory change to implement the BOT's determination for direction of the program.	MAA		Sep-19
	Determine number and classification of positions to continue with LAP seek to find appropriate State Bar placement for staff in eliminated positions.	Executive Leadership		Dec-19
	Upon implementation of statutory changes eliminate the LAP Oversight Committee	BOT		Dec-19
	Determine if LAP should remain separate unit or merge with Probation	Chief of Programs		Dec-19

## Option 2: Retain Disciplinary and Moral Character Referrals Only

Transfer the function of managing the self-referrals (non-ADP, non-moral character) to a separate entity outside the State Bar.

Preliminary efforts to identify existing outside entities that could be appropriate to handle self-referrals related to substance use and mental health and can provide clinical services

LAP

Jan-19

\*Option (a): State Bar continues to be statutorily required to provide these services, but State Bar contracts out for delivery of the services. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc.

\*Option (b): State Bar no longer statutorily required to provide the services; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used appropriately

Engage with stakeholders to develop a recommendation as to Option A v. Option B. Bring recommendation to BOT for final decision.

LAP

Mar-19

Upon adoption of legislative changes, issue RFP to formally solicit contracting entity or separate non-profit based on decision adopted by RAD

LAP / OGC /  
Procurement

Oct-19

Award contract and implement

LAP / OGC /  
BOT

Jan-20

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Separate all LAP functions from the State Bar, retaining no portion of the program	Seek statutory change to implement the BOT's determination for direction of the program.	MAA		Sep-19
	Identify appropriate State Bar placement for all LAP staff	Executive Leadership		Dec-19
	Upon implementation of statutory changes eliminate the LAP Oversight Committee	BOT		Dec-19
	Preliminary efforts to identify existing outside entities that could be appropriate to handle the work currently performed by LAP related to substance use and mental health and can provide clinical services *Option (a): State Bar continues to be statutorily required to have a program, but State Bar contracts out for the program. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc. *Option (b): State Bar no longer statutorily required to have a Lawyer Assistance Program; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used	LAP		Jan-19
	Engage with stakeholders to develop a recommendation as to Option A v. Option B. Bring recommendation to BOT for final decision	LAP		Mar-19
	Upon adoption of legislative changes, issue RFP to formally solicit contracting entity or separate non-profit based on decision adopted by BOT	LAP / OGC / Procurement		Oct-19
	Award contract and implement	LAP / OGC		Jan-20

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

### COMMITTEE OF BAR EXAMINERS

Established pursuant to B&P Code sections 6046 and 6046.5.

Directives	Statute or Rules Implicated
Develop sampling plan	None
Evaluate grading process	None
Staff to handle moral character conference; CBE appeals	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.40 (Moral Character Determination) sets forth that an applicant must be of good moral character as determined by the Committee. The determination may be made by the Committee or staff.</p> <p>State Bar Rule 4.43 (A) (2) (Abandonment of Application for Determination of Moral Character) provides that an application for moral character is deemed abandoned if the applicant fails to provide additional information requested by the Committee within ninety days of the request.</p> <p>State Bar Rule 4.44 (A) (Withdrawal of Application for Determination of Moral Character) sets forth that the applicant may withdraw an application any time before being notified that the Committee is unable to make a determination without further inquiry and analysis. It also states that following such a notice, withdrawal requires the Committee's consent.</p> <p>State Bar Rule 4.45 (Notice regarding status of Application for Determination of Moral Character) provides that within 180 days of receiving a completed application, the Committee will notify an applicant regarding whether the determination is positive or requires further consideration. It further sets forth the Committee's procedures after receiving the additional information.</p> <p>State Bar Rule 4.46 (Informal conference) sets</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>forth the informal conference procedures that are conducted by the Committee.</p> <p>State Bar Rule 4.47 (Appeal of adverse determination of moral character) provides that an applicant notified of an adverse moral character determination must appeal to the State Bar Court. The appeals will first go the Committee under the new procedure.</p> <p>State Bar Rule 4.48 (Agreement of Abeyance) provides that the Committee and an applicant may suspend processing of an application for determination of moral character by an agreement of abeyance.</p> <p>State Bar Rule 4.49 (New application following adverse determination of moral character) sets forth that the Committee may permit an application who has received an adverse moral character determination to file another application two years from the date of the previous determination.</p> <p>State Bar Rule 4.50 (Suspension of positive determination of moral character) provides that the Committee may notify an applicant that it has suspended a positive determination if it receives information that reasonably calls the applicant's character into question.</p>
CBE to evaluate trends in licensing & certification	None
Cease CBE involvement in Admissions budget development and management	None
Staff to handle enforcement of exam rules; CBE appeals	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.70 (Conduct required at examinations) states that conduct that violates the security or administration of an examination may be reported to the Committee.</p> <p>State Bar Rule 4.71 (Reports of conduct violations) sets forth that a subcommittee</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>designated by the Committee considers the Chapter 6 Notices (cheating citations) that have been issued to applicants during or following an examination. It also states that the Committee may establish guidelines and sanctions for the processing of conduct violations.</p> <p>State Bar Rule 4.72 (Request for an administrative hearing on conduct violation) sets forth the procedure for requesting an administrative hearing regarding the subcommittee's finding and appointment of three Committee members to preside over the hearing.</p> <p>State Bar Rule 4.73 (Procedure for an administration hearing on conduct violation) provides that the Committee may establish procedures for conducting administrative hearing on conduct violations and sets forth various procedures.</p> <p>State Bar Rule 4.74 (Review of Findings and Recommendations) provides that the Committee may review and/or adopt the Findings and Recommendations on conduct violations.</p>
Staff handles testing accommodation requests; CBE appeals	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.80 (Eligibility) provides that applicants with disabilities must establish to the satisfaction of the Committee the existence of a disability. This rule should be clarified to conform to current practice which is that staff handles the testing accommodation requests.</p> <p>State Bar Rule 4.81 (Testing accommodations in general) refers to the Committee processing the petitions for testing accommodations. This rule should be clarified to conform to current practice which is that staff handles the testing accommodation requests.</p> <p>State Bar Rule 4.82 (D) (Definitions) provides that a reasonable testing accommodation may not impose an undue burden on the Committee.</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>State Bar Rule 4.84 (D) (When to file a petition for testing accommodation) provides that the Committee may determine that the changing nature of a disability requires that the applicant file a new petition nearer the examination date. This rule should be clarified to conform to current practice which is that staff handles the testing accommodation requests.</p> <p>State Bar Rule 4.88 (Committee response to Petition for Testing Accommodation) sets forth how the petition will be handled. Because this is handled by staff, the title of this section should be revised.</p>
Other rules which may need to be amended to conform with these directives by referring to the State Bar in addition to/or instead of the Committee.	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.3 (L) and (M) (Definitions) refer to receipt of a document sent by the Committee and receipt of a document sent to the Committee.</p> <p>State Bar Rule 4.5 (A) and (D) (Submissions) refers to documents filed with the Committee and information needed by the Committee.</p> <p>State Bar Rule 4.6 (Investigation and hearing) allows the Committee to receive evidence in conducting an investigation or hearing; administer oaths and affirmations; and compel by subpoena the attendance of witnesses and production of documents.</p> <p>State Bar Rule 4.7 (Statistics) provides that the Committee may publish statistics for each examination.</p> <p>State Bar Rule 4.8 (Extensions of time) provides that the time limits for Committee actions are not jurisdictional and may be extended for good cause.</p> <p>State Bar Rule 4.56 (First-Year Law Students' Examination) includes a phrase that the test centers in California are designated by the</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>Committee.</p> <p>State Bar Rule 4.60 (California Bar Exam) includes a phrase that the test centers in California are designated by the Committee.</p>
Law School Accreditation and Law School Engagement	The rules and statutes relating to law school accreditation and law school engagement that require amendment will be presented to the Board of Trustees in January with the recommendations related to those topics that were previously deferred.

### **CALIFORNIA BOARD OF LEGAL SPECIALIZATION**

Established pursuant to Rules of Court, rule 9.35 and State Bar Rules 3.90, et seq.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
Continue certifying in a defined set of specialty areas and recognize private organizations to certify in additional areas	New standards will need to be approved. Pursuant to State Bar Rule 3.90, the standards are recommended by the CBLS and approved by the Board of Trustees.
Evaluate rigor & validity of exams	None
Reduce the role, size, and meetings of the Advisory Commissions	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 3.92 (Advisory commissions) sets forth that the Board of Trustees appoints an advisory commission of no more than 8 members to recommend and apply certification standards for each area of legal specialization.</p> <p>State Bar Rule 3.39 (Terms) refers to commission members' terms.</p> <p>State Bar Rule 3.94 (Meetings) refers to the meetings of the advisory commissions.</p> <p>State Bar Rule 3.85 (Conflicts of Interest) includes conflict of interest rules for commission members.</p> <p>State Bar Rule 3.117 (References) provides that a commission may seek additional references.</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>State Bar Rules 3.121 (Commission action on application), 3.122 (Informal Conference), and 3.123 (Board action on application) set forth rules regarding the certification process and the role of the Commission.</p> <p>The standards will need to be modified where they refer to the Commission.</p>
Change Board size, composition and role	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 3.90 (California Board of Legal Specialization) sets forth that Board consists of 12 attorney members and 3 non-attorneys.</p> <p>State Bar Rule 3.114 (Education) referenced “Board-approved education” and Board’s granting of specialty education credit.</p> <p>State Bar Rule 3.115 (Practice and task requirements) refers to the Board’s acceptance or rejection of an applicant’s computation of tasks.</p> <p>State Bar Rule 3.116 (Examination) states the Board determines the scope, format, topics, grading process, and passing score of the examination. It also provides that the Board may approve for a period of no more than two years satisfactory completion of one or more alternative tasks in lieu of a written examination.</p> <p>State Bar Rule 3.118 (Waivers and modifications) provides that the Board may waive or permit modification of a certification requirement.</p> <p>State Bar Rule 3.123 (Board action on application) sets forth the Board’s responsibilities regarding granting or denying a certification.</p> <p>State Bar Rule 3.124 (Suspension or revocation of certification) provides when the Board may suspend or revoke a certification and the procedure.</p>

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### **COMMITTEE ON MANDATORY FEE ARBITRATION**

Established pursuant to BOT Resolutions in September 1982, as a special committee, and in November 1984, as a standing committee, with the charge of the committee further defined by the BOT in July 1992.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
Transition from standing committee to staff-driven program.	State Bar Rule 3.537 (C) mentions a committee, i.e., it disqualifies members of the Committee on Mandatory Fee Arbitration from representing a party in a State Bar fee arbitration.
Update requirements for COPRAC appointments to ensure that two or more COPRAC slots are filled by MFA experts.	The charge and composition of COPRAC is currently set forth in the Board Book, Section 5, Tab 5.1, Article 2. Membership of the committee is addressed in Section 2 (a).
Implement Distance Learning	None
Support for Local Programs	None

### **COUNCIL ON ACCESS AND FAIRNESS**

Established pursuant to Board of Governor's Resolution March 1982, July 1992, January 2002, November 2006.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
Clarify Board strategy on diversity to focus work of COAF.	COAF is not mentioned in any statute or State Bar Rule.
Assess the impact of State Bar work on diversity and inclusion.	

### **CLIENT SECURITY FUND**

Established pursuant to Business and Professions Code Section 6140.5,<sup>1</sup> State Bar Rules, Title 3, Division 4, Chapter 12, Rule 3.420, *et seq.*

<sup>1</sup> B&P Code Section 6140.5 notes, *inter alia*, that the BOT may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
<p>Authority granted to CSF counsel to issue Tentative Decisions on CSF applications.</p>	<p><u>State Bar Rules:</u></p> <ol style="list-style-type: none"> <li>1. Rule 3.421 (Client Security Fund Commission) Amend wording which states that the Commission has sole authority to determine whether to grant an application;</li> <li>2. Rule 3.430(D) (General requirements for reimbursement) Amend wording which states that the Commission has sole discretion to deny or limit reimbursement;</li> <li>3. Rule 3.432(B) (Required status of attorney) Amend to allow Fund Counsel to waive criteria, in addition to the Commission, for reimbursement pursuant to guidelines for waivers to be established by the Commission;</li> <li>4. Rule 3.435 (Factors that may limit reimbursement) Amend wording which states that the Commission may deny reimbursement for various reasons to state that the Commission and staff may do so;</li> <li>5. Rule 3.436(B) Amend wording which states that the Commission may consider various factors to determine whether a loan or investment meets the requirements of the rule to state that the Commission and staff may do so;</li> <li>6. Rule 3.441(B), (C), (D), (E) (Review of Applications) Amend to allow Fund Counsel to issue tentative decisions, to consolidate applications in the same</li> </ol>

However, it does not address how the work is to be performed, stating only that payments from the fund “shall be subject to the regulations and conditions that board shall prescribe.”

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>manner as the Commission may, to separate respondents contained in a single application in the same manner as the Commission may;</p> <p>7. Rule 3.441(F) (Review of Applications) Amend to allow Fund Counsel to waive rule requirements in the interest of justice and for good cause.</p>
Consideration and Final Decision on objections (appeals) to Tentative Decisions remains with the CSF Commission.	None

### **LAWYER ASSISTANCE PROGRAM OVERSIGHT COMMITTEE**

Established pursuant to B&P Code Section 6230, et seq. and State Bar Rules 3.240, et seq.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
<p>1. Evaluate separation of voluntary referrals and retention of disciplinary and moral character referrals.</p> <p>Sub-options:</p> <p>a. State Bar continues to be statutorily required to provide these services, but State Bar contracts out for delivery of the services. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc.</p> <p>b. State Bar no longer statutorily required to provide the services; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used appropriately.</p>	<p>The following B&amp;P Code sections will need to be deleted or amended:</p> <ol style="list-style-type: none"> <li>1. B&amp;P Code section 6140.9, addressing the portion of the licensing fee that supports LAP, will need to be amended to reflect distribution to another entity and may need to address contractual requirements for performance measures.</li> <li>2. B&amp;P Code section 6231(a), which references a committee, its composition, and requires the committee to oversee operation of the program, will need to be deleted.</li> <li>3. B&amp;P Code section 6231(b), which references the terms of the committee members (4 years), will need to be deleted.</li> <li>4. B&amp;P Code section 6231(c), which</li> </ol>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

<p>Under this option, the LAP Oversight Committee would be eliminated.</p>	<p>references the adoption of rules and regulations by the committee, will need to be deleted.</p> <ol style="list-style-type: none"> <li>5. B&amp;P Code section 6232(a), which references the adoption of rules and regulations by the committee, will need to be amended.</li> <li>6. B&amp;P Code section 6232(d), which pertains to voluntary referrals will need to be deleted.</li> <li>7. B&amp;P Code section 6234, which pertains to confidentiality, references a subcommittee. It will need to be amended.</li> <li>8. B&amp;P Code section 6235(a) allows the State Bar to charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program. Depending on sub-option selected, it may need to be eliminated or amended to state that some of the funding from administrative fees will be distributed to the entity performing these services or provide that such entity may charge administrative fees.</li> <li>9. B&amp;P Code section 6236, which pertains to outreach activities to members and the legal community, may need to be deleted, depending on the option selected.</li> <li>10. B&amp;P Code section 6238, which references a report to the BOT and the Legislature to be filed annually, will need to be updated to reflect what the State Bar would be reporting to the Legislature.</li> </ol> <p>The following State Bar Rules will need to be</p>
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## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>deleted or revised:</p> <ol style="list-style-type: none"> <li>1. State Bar Rule 3.241 provides for a committee of twelve (12) members, six of whom are appointed by the BOT as required by B&amp;P Code section 6231. The rule will need to be deleted.</li> <li>2. Rule 3.242 sets forth the duties of the oversight committee. The rule will need to be deleted.</li> <li>3. State Bar Rules 3.245 and 3.246 pertain to participation in an orientation and assessment in order to participate in the voluntary LAP Program, as well as the application process for that program. References to the voluntary program will need to be eliminated.</li> <li>4. State Bar Rule 3.247 references “Support LAP.” This rule will need to be deleted.</li> <li>5. State Bar Rule 3.248 references “Monitored LAP.” Need to remove the “monitored” label and the entire program will be known as LAP.</li> <li>6. State Bar Rule 3.249 pertains to completion of LAP. Need to reevaluate criteria if we move to a drug court model.</li> <li>7. State Bar Rule 3.252 describing the committee’s role in the financial assistance program will need to be revised.</li> </ol> <p>Will need new rules that set forth the requirements for a separate entity outside the State Bar that would (1) manage self-referrals as a contractor subject to administration by the State Bar, or (2) take over the program subject to performance standards established by the State Bar.</p>
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## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

<p>2. Separate the entire LAP from the State Bar.</p> <p>Sub-options:</p> <ol style="list-style-type: none"> <li>State Bar continues to be statutorily required to have a program, but State Bar contracts out for the program. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc.</li> <li>State Bar no longer statutorily required to have a Lawyer Assistance Program; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used appropriately.</li> </ol> <p>Under this option, the LAP Oversight Committee would be eliminated.</p>	<p>LAP is reference is B&amp;P Code Sections 6230-6238. Depending upon the sub-option that is chosen, some or all of those sections will need to be deleted or amended, including the following:</p> <ol style="list-style-type: none"> <li>The program is established by B&amp;P Code section 6230. Amend to describe the separation of the program from the State Bar depending upon the sub-option selected.</li> <li>B&amp;P Code section 6231(a), which references a committee, its composition, and requires the committee to oversee operation of the program, should be deleted.</li> <li>B&amp;P Code section 6231(b), which references the terms of the committee members (4 years), should be deleted.</li> <li>B&amp;P Code section 6231(c), which references the adoption of rules and regulations by the committee, should be deleted.</li> <li>B&amp;P Code sections 6232(a), which pertains to criteria for participation in LAP, references the adoption of rules and regulations by a committee. It will need to be amended.</li> <li>B&amp;P Code Section 6234, which pertains to confidentiality, references a committee. It will need to be amended.</li> <li>B&amp;P Code section 6235(a) allows the State Bar to charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program. Depending on sub-option selected, it may need to</li> </ol>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>be eliminated or amended to state that some of the funding from administrative fees will be distributed to the entity performing these services or provide that such entity may charge administrative fees.</p> <p>8. B&amp;P Code section 6238, which references a report to the BOT and the Legislature to be filed annually, will need to be updated to reflect what the State Bar would be reporting to the Legislature.</p> <p>LAP is covered by State Bar Rules, Title 3 (Programs and Services), Division 2 (Attorney Members), Chapter 5 (Lawyer Assistance Program), Rules 3.240-3.252.</p> <p>Those State Bar Rules will need to be deleted or revised if we separate LAP from the State Bar, including the following:</p> <ol style="list-style-type: none"> <li>1. State Bar Rule 3.421 provides for a committee of twelve (12) members, six of whom are appointed by the BOT as required by B&amp;P Code section 6231. The rule will need to be deleted.</li> <li>2. Rule 3.242 sets forth the duties of the oversight committee. The rule will need to be deleted.</li> <li>3. Rules 3.244, 3.245 and 3.246 pertain to eligibility, orientation and assessment, and application to the program. Determine whether these same rules will apply or create new criteria depending upon where the LAP goes.</li> <li>4. State Bar Rule 3.249 pertains to completion of LAP. May need to reevaluate criteria depending upon where LAP goes. Another organization may have different criteria.</li> </ol>
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Attachment C – Statutes and Rules Implicated in  
Implementation of Subentity Recommendations

	Will need new rules that set forth the requirements for an organization outside the State Bar to (1) perform the services pursuant to State Bar requirements, or (2) administer the program subject to performance measures established by the State Bar.
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November 9, 2018

*Via Messenger*

Board of Trustees  
State Bar of California  
845 S. Figueroa Street  
Los Angeles, California 90017

**Re: Request for Reconsideration**

Dear Board of Trustees:

On behalf of the all members of the Lawyer Assistance Program (LAP) Oversight Committee, I address this letter to you and ask for your open mindedness.

The future structure of the Lawyer Assistance Program was voted upon at the last Board of Trustees (“BOT”) meeting. There were three options and the Board of Trustees chose to reject Option 1. Instead, the BOT requested further information about potential implementation plans for both Option 2 and Option 3. We ask that you reconsider retaining the full Lawyer Assistance Program within the State Bar (Option 1).

Simply put, Option 2 separated the “voluntary” referrals from the LAP program housed within the State Bar while retaining the disciplinary and moral character referrals and Option 3 separates the entire Lawyer Assistance Program from the State Bar.

The Oversight Committee was asked to assist in developing high-level implementation plans for Option 2 and Option 3. In good faith, the Oversight Committee provided input, in several phone calls with staff and in a specially-set meeting, for the sole purpose of discussing these implementation plans. The Oversight Committee’s input on Options 2 and 3 will be presented to you by staff.

To be very clear – The people involved in this good faith effort include licensed clinical mental health professionals, lawyers, people in recovery, judicial officers, and the preeminent authority on lawyer assistance programs (Patrick Krill). The Oversight Committee came to the conclusion that the any separation of the Lawyer Assistance Program from the State Bar is fraught with more problems than continuing the program in its present form.

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Furthermore, the Oversight Committee took seriously the task to develop and recommend a plan of action reflecting either Option 2 or 3 and made a good faith effort to make a recommendation between the two options.

The Oversight Committee does **NOT** support separation of the Lawyer Assistance Program (“LAP”) from the State Bar in any form.

Option 1 is best for LAP, for the lawyers of California and for the protection of the public. Retain the Lawyer Assistance Program within the State Bar and clarify the charge and responsibility of the Oversight Committee and do so in good faith.

**As such, the Oversight Committee is requesting that the Board of Trustees reconsider their decision.**

#### **Option 1 – Is the Expert’s Choice**

The State Bar engaged the services of Patrick Krill, the premier expert on substance use and mental health disorders among the lawyer population, to provide an opinion on LAP’s separation from the State Bar. The proposed scope of work on the Appendix I Review was 100 hours and the overall purpose and goal of the work was “to arrive at an informed, considered and actionable determination regarding whether the LAP should be retained within the State Bar. The LAP and State Bar budgeted over \$150,000.00 for Mr. Krill’s work. After interviewing the Oversight Committee members, surveying and analyzing approaches of other states, and consulting, interviewing LAP directors of other states, and taking into consideration the program’s faults such as “under utilization,” Krill’s opinion is as follows: *“LAP would be best served by remaining as part of the State Bar for the time being.”*

#### **Option 1-Is the Clinical Staff’s Choice**

The LAP’s clinical staff are advocating for the LAP (in its entirety) to remain as is within the State Bar, in order to allow access to services for disciplined attorneys, non-disciplined attorneys, Committee of Bar Examiners referrals and law students. They strongly believe that the services the LAP offers protects the public and serves the mission of the State Bar of California.

Clinical staff noted that even outsourcing part of the services of the LAP is problematic, because many interventions occur prior to the onset of formal disciplinary action. Staff believes that the relationships formed at the early stages with participants promotes rehabilitation. Furthermore, outsourcing is not as flexible or individualized as the LAP. Outsourced monitoring programs today are very rigid and require participants to keep

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random drug testing in place even after it has been established that the participant does not have a substance use diagnosis.

Clinical staff recommends Option 1.

### **The Judiciary Reliance on LAP Licensed Professionals**

The judiciary has made it clear that they require licensed clinical professionals involved in the disciplinary process. The judiciary relies on the clinical expertise of the licensed professionals of the LAP.

### **Changes Implemented by the Oversight Committee Have Increased Voluntary Participation and Participant Confidence in the LAP.**

As a direct result of the LAP's strategic plan, outreach efforts have increased voluntary participation in the LAP. In March 2018, the LAP finally, after years of asking for approval to have such a position, hired a person to perform Education and Outreach. In a three-month span, this staff member has performed 12 presentations, reaching 994 law students and lawyers. During the months of these outreach efforts, 68 potential participants called and 52 became participants; a higher rate of retention than during the previous time period last year.

Staff has also relayed increased confidence in the LAP by participants, in particular, regarding the Clinical Review Team model. The Clinical Review Team model was implemented by LAP after the old model of an Evaluation Committee was eliminated. As a direct result of these changes, participants noted that they felt the Clinical Review Team model was a better process and more functional. Thus, since the Appendix I Review has been performed and as a direct result of implementations made by the Oversight Committee, the LAP has performed better.

The program is "ahead of the curve" dealing with the ugly stigma of drug and alcohol abuse and recovery. The American Bar Association would applaud our new initiatives dealing with privacy, education and outreach. LAP now has its own stand alone offices apart from the State Bar offices.

The Education and Outreach coordinator has had very positive reactions from the students and the law schools. The outlook is extremely good in educating students early on the services of LAP and that help is there for them.

All of this is important to consider as a key reason for reconsideration. The Oversight Committee has for years asked for an Education and Outreach person to do the things now being done. Proper utilization is also a function of the Board of Trustees and

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Executive Management cooperating in good faith to get things reasonably requested to promote the program.

### **Elimination of Option 1 Will Destroy LAP Operations**

Operation of the LAP relies on staff institutional knowledge and morale. The impact on staff cannot be ignored. The uncertainty of the future of the LAP has destroyed staff morale. Under either Option 2 or Option 3, staff will either be reclassified from their current job classifications, for some from Clinical Rehabilitation Coordinator to a general Analyst, or some staff may leave LAP all together. This will damage the operations of LAP. Clinical Rehabilitation Coordinators are licensed clinicians who work with monitored participants. Their role is not to merely check boxes and push paper. They must evaluate the participants through their participation in the program and through their conversations. This is a specialized job. New staff would have to be hired and trained and trained by persons potentially new to the LAP. This will affect the services that LAP does provide and will affect those services to the detriment of the participants and ultimately the public.

### **What Happens If the Legislature or the Governor Does Not Approve These Changes?**

The LAP and the Oversight Committee are statutorily created and thus the implementation of Option 2 or 3 will require not only approval with the Legislature but also the Governor's signature. Furthermore, the earliest any proposed legislative changes would be even presented to the Legislature is February 2019. Even with a clean and clear passing through the Legislature and the Governor's signature, the earliest any changes to the LAP could be implemented is the summer of 2019. So, in the meantime, from November 2018 to the summer of 2019, for seven months, what happens to the LAP? Who will oversee the implementation of the strategic plan? Who will monitor the progress of the LAP's Education and Outreach efforts? Presumably, the Oversight Committee will perform these duties; however, the BOT's decision to freeze appointments to the LAP severely prejudices the program.

The Oversight Committee can't do its business and complete its tasks with reduced numbers and with reduced outreach and connection to other bodies and those that have appointment powers. This effectively reduces the voice of the LAP and the contributions to the evolution of the program. This prejudices those bodies that have appointments that should have been made, and the ripple effects of that loss of communication and working together affect the ability to go out and serve members and the public in prevention and recovery.

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The BOT should allow the Oversight Committee to run the LAP, and approvals should not be unreasonably withheld and that all pending proposals of the Oversight Committee are approved at this time.

**Leave it to the experts. The oversight Committee is comprised of experienced experts in the field(s) necessary to run the LAP. They are charged with the oversight of the LAP. Organization, administration, program content and outreach are included. The Board of Trustees does not claim such expertise. The Board of Trustees is charged with reviewing and approving the Oversight Committee's actions and recommendations. This can be a very productive and symbiotic relationship if allowed to perform as envisioned. We wish to prove this through a good working relationship with the Board. Please let us do that. Please approve Option 1 at this time; and revisit in one year.**

This letter is an effort to recognize all the various points of views that came up during the discussions to try to develop an implementation plan for either Option 2 or 3. Separation of the LAP from the State Bar is not supported in any form.

**And so, with all due respect and humility, Oversight Committee is requesting that the Board of Trustees reconsider their vote on Option 1 and approve Option 1.**

The Lawyers Assistance Program Oversight Committee



Stewart Hsieh  
Chair

cc: The Oversight Committee Members  
Leah Wilson, Executive Director, State Bar of California

**OPEN SESSION**  
**AGENDA ITEM**

**702 SEPTEMBER 2018**

**DATE:** September 13, 2018

**TO:** **Members, Board of Trustees**

**FROM:** Richard Schauffler, Senior Program Analyst, Office of Research & Institutional Accountability

**SUBJECT:** Appendix I Sub-Entity Review: Report and Recommendations

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**EXECUTIVE SUMMARY**

As directed by the Board of Trustees, Bar staff have been working to evaluate various committees, commissions, board and councils that work under the umbrella of the Bar: the subentities. The review of the work of the subentities is guided by Appendix I of the 2017 Governance in the Public Interest Task Force Report. This agenda item provides a final report and recommendations on the following subentities for the Board's consideration: Committee of Bar Examiners; California Board of Legal Specialization; Council on Access and Fairness; Client Security Fund Commission; Lawyer Assistance Program Oversight Committee; and Committee on Mandatory Fee Arbitration.

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**BACKGROUND**

In its 2017 Report, the State Bar's Governance in the Public Interest Task Force began a review of the various committees, commissions, boards, and councils that operate under the organizational umbrella of the Bar "to assess whether the structure of the subentities aligns with assigned tasks and appropriate oversight mechanisms are in place."<sup>1</sup> That review, contained in Appendix I of the Report, posed a number of additional questions related to each of the individual subentities.

At its November 2017 meeting, the Board of Trustees directed Bar staff and a number of Board Committees "to complete the subentity review pursuant to Appendix I" by August 31, 2018. Bar staff then identified a list of common elements regarding each of the subentities to be considered in the review including the following questions:

- What is the legal foundation for the subentity?
- How does the Board exercise oversight of the subentity?
- What is the subentity's organizational structure?
- What is the division of labor between the subentity and Bar staff?

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<sup>1</sup> Governance in the Public Interest Task Force Report, 2017, p. 31.

- How does the subentity compare to like entities in other states or other sector?

At its July meeting, the Board of Trustees reviewed and discussed the conceptual framework for this review. The key elements are:

- 1) Role definition
- 2) Accountability and transparency
- 3) Clear lines of authority
- 4) Impartial, fair, and consistent decision-making
- 5) Engagement
- 6) Size

The final report, “Opportunities for Improving Governance and Service Delivery,” (see Attachment A) utilizes this framework to examine the various subentities of the State Bar, and the outcome of this analysis is the specific set of recommendations presented below for each subentity.

## DISCUSSION

The State Bar has been engaged in a collaborative and inclusive process to review the subentities of the State Bar and evaluate them in the context of the 2017 Governance in the Public Interest Task Force Report and the framework described above. Beginning in 2017 and continuing throughout 2018, State Bar staff have engaged the volunteers and staff of the subentities in conversation regarding challenges to effective governance and organizational performance and sought ideas for improving service delivery as well. Through in-person and virtual meetings, conference calls, presentations, and discussion, State Bar staff have sought to ensure that subentities were informed about and participating in the review.

A starting point for this review has been the fact that the State Bar uses more volunteers (307) in more subentities than any other California regulatory body. This fact is not explained by the State Bar’s mission or the number of licensees; other California regulatory bodies have missions equally broad and one has over twice as many licensees. In staff’s view, the Bar’s use of volunteers to perform regulatory functions is a vestige of its trade associational past, when it actively sought the engagement of large number of members to build and maintain the Bar.

The recommendations put forward by State Bar staff are aimed at addressing the central question of the circumstances under which it is appropriate for a regulatory agency to use volunteers. The anticipated changes required to implement these recommendations are outlined in Attachments B and C. Once the Board has determined its response to these recommendations, State Bar staff will consult with its key stakeholders in the Legislature and Supreme Court and prepare and present to the Board at its November meeting a detailed implementation plan, including required Rule and statutory changes timeline and transition plan for each recommendation that is adopted. No changes will take place until the Board has reviewed and approved the implementation plan for each recommendation.

## FISCAL/PERSONNEL IMPACT

A detailed overview of the estimated fiscal impact of staff’s recommendations is provided in Attachment B. These recommendations impact General and other Funds, FTEs and the Inter-fund allocation. In general, where separation or elimination of a program is recommended (voluntary LAP and CBLS), there is a net reduction in FTEs and operating costs in these funds and in increase in General Fund costs resulting from the inability to spread indirect charges as extensively to these other funds.

Given the state bar's evidenced commitment to its staff, it is unlikely that the separation or elimination of programs will actually result in any reduction in FTEs. Instead, akin to the situation that occurred with the transfer of the Sections to a standalone entity, State Bar staff in these functions would likely transfer to other positions in the State Bar.

## **RULE AMENDMENTS**

Individual subentity recommendations may require Rule and/or statute changes. Attachment C describes possible Rule and statutory changes that could be required to effectuate the recommendations at issue. Once the Board has approved/modified/rejected the recommendations proposed in this agenda item, staff will prepare a detailed implementation plan, including timeline, transition plan, and required Rule and statutory changes for consideration at the November Board meeting.

Proposed staff global recommendations for the work of all subentities of the State Bar may require Rule or statute changes. Attachment D summarizes those changes for each recommendation. Once the Board has approved/modified/rejected the recommendations proposed in this agenda item, staff will prepare a detailed implementation plan, including timeline, transition plan, and required Rule and statutory changes for consideration at the November Board meeting.

## **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: 1c. Determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.

## **RECOMMENDATION**

**It is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that that the Board of Trustees approves the proposed staff recommendations for Exam Development work of the Committee of Bar Examiners summarized in Table 5, p. 24 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for Moral Character work of the Committee of Bar Examiners, summarized in Table 5, p. 24 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for Budget work of the Committee of Bar Examiners, summarized in Table 5, p. 25 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for Trends in Licensing & Certification work of the Committee of Bar Examiners, summarized in Table 5, p. 24-25 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for the work of the California Board of Legal Specialization, summarized as Option 3 on p. 41 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A) 1; and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for the work of the Council on Access and Fairness, summarized as Option 1 on p. 48-49 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for the work of the Client Security Fund Commission, summarized as Option 2 on p. 56 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for the work of the Lawyer Assistance Program Oversight Committee, summarized as Option 2 on p. 68 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff recommendation for the work of the Committee on Mandatory Fee Arbitration, summarized as Option 1 on p. 79 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the proposed staff global recommendations for the work of all subentities of the State Bar, summarized in Table 2 on p. 12 of the *Opportunities for Improving Governance and Service Delivery* report (Attachment A).

#### ATTACHMENT(S) LIST

- A. "Opportunities for Improving Governance and Service Delivery: A Report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees, and Councils," September 13, 2018.
- B. Fiscal/Personnel Impact of Recommendations for Improving Governance and Service Delivery
- C. Statute and Rule Changes Required to Implement Staff Recommendations for Improving Governance and Service Delivery
- D. Statute and Rule Changes Required to Implement Staff Global Recommendations for Improving Governance & Service Delivery

**Attachment A. Opportunities for Improving Governance and Improving Service  
Delivery: A Report and Recommendations Regarding the State Bar of California's  
Boards, Commissions, Committees, and Councils**



# The State Bar of California

## **Opportunities for Improving Governance and Service Delivery**

**A Report and Recommendations Regarding  
the State Bar of California's  
Boards, Commissions, Committees, and Councils**

**September 13, 2018**

**Prepared By**  
**Office of Research and Institutional Accountability**  
Richard Schauffler, Senior Program Analyst

## ACKNOWLEDGEMENTS

We are grateful for the willingness of the many volunteers serving as members of the State Bar subentities reviewed in this report to share their experience and knowledge. Their perspective on the work they do for the public on behalf of the State Bar has been invaluable to our effort.

We would like to acknowledge the extensive assistance of the many State Bar staff who work with the subentities reviewed in this report and staff of the Office of General Counsel. Documenting the history, evolution, and current operations of these subentities and reimagining their future would not have been possible without their expertise. Naturally, any errors in the information presented in this report are the sole responsibility of its authors.

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## OPPORTUNITIES FOR IMPROVING GOVERNANCE AND SERVICE DELIVERY

### INTRODUCTION

In its 2017 Report, the State Bar’s Governance in the Public Interest Task Force (Task Force) began a review of the various committees, commissions, boards, and councils that operate under the organizational umbrella of the State Bar “to assess whether the structure of the subentities aligns with assigned tasks and appropriate oversight mechanisms are in place.”<sup>1</sup> That review, contained in Appendix I of the Task Force Report, posed a number of additional questions related to each of the individual subentities.

At its November 2017 meeting, the Board of Trustees directed State Bar staff and a number of Board Committees “to complete the subentity review pursuant to Appendix I” by August 31, 2018. State Bar staff then identified a list of common elements regarding each of the subentities to be considered in the review, including the following questions:

- What is the legal foundation for the subentity?
- How does the Board exercise oversight of the subentity?
- What is the subentity’s organizational structure?
- What is the division of labor between the subentity and State Bar staff?
- How does the subentity compare to like entities in other states or other sectors?

While the answers to these questions will necessarily be different for each subentity, it is important to recall that the broader inquiry into the subentities was animated by the organizational changes underway at the State Bar, specifically, the separation of the State Bar’s two conflicting and confusing functions—regulatory body and professional trade association. Related to the co-mingling of these functions was another issue identified by the Task Force: the reliance of the State Bar on volunteer attorneys and members of the public to staff the State Bar’s many committees, commissions and boards.

While the use of volunteers is not uncommon in a regulatory agency, the manner in which volunteers are used varies considerably and appears to have serious implications for the effective governance of the agency. As the California State Bar continues to reengineer its operations to function primarily as a regulatory body, it is natural that the question arises of whether and how volunteers, including attorneys who are licensed by the State Bar, should remain engaged in the work of State Bar. This question emerges not as a mundane exercise in

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<sup>1</sup> State Bar of California, *2017 Governance in the Public Interest Task Force Report*, (2017), p. 31.

downsizing or budget-cutting, but rather as part of an effort to clarify and focus on the State Bar's core mission: the licensing, regulation, and discipline of attorneys to ensure professional standards and ethics guide the practice of law. As part of that mission, the State Bar also seeks to improve access to, and inclusion in, the legal system, thereby safeguarding the public interest.

The discussion below is devoted to exploring this topic and providing conceptual clarification for the issues under consideration. The first section that follows looks at the key elements of successful governance generally. After that, the discussion identifies the main dimensions along which subentities may differ, such as the scope of work, organizational structure, formality and specificity of the charge, and composition and size of membership. These differences are identified, in part, through a comparison with other regulatory agencies in California.

The final section then looks at the impact of the current organizational structure of the State Bar's subentities on the elements of successful governance introduced below. Although there is no single solution to the question of how best to organize the functions performed by the various subentities, these introductory comments are intended to provide a lens through which this work can be scrutinized and organized in the most effective manner possible to achieve the strategic goals of the State Bar.

## **ELEMENTS OF SUCCESSFUL GOVERNANCE**

Governance consists of the processes by which an organization coordinates its work internally and with its external partners. A regulatory agency is constantly in the process of generating, managing, and evaluating its regulatory policies. At each stage, the elements outlined below are relevant to ensuring that the agency is achieving its public policy objectives. These elements provide a framework that can be used to evaluate whether and how the regulatory agency should make use of volunteers, including licensees regulated by that agency. Successful governance in a regulatory agency rests on these key elements:<sup>2</sup>

### **ROLE DEFINITION**

The purpose and objectives of regulation are clear to the regulator, the regulated, and the public.

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<sup>2</sup> Adapted from OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, (2014), <http://www.oecd.org/gov/regulatory-policy/the-governance-of-regulators-9789264209015-en.htm> (as of July 9, 2018).

## ACCOUNTABILITY AND TRANSPARENCY

The process and outcome of the work of the regulator is reported to the public and governmental partners on a timely basis and consistently. Reports include meaningful outcome measures to measure the effectiveness of the regulator's work.

## CLEAR LINES OF AUTHORITY

For each function performed by the regulator, a shared understanding about who makes decisions and how must exist within the regulatory agency itself as well as among the regulatory agency, those regulated, and the regulatory agency's partners in government.

## IMPARTIAL, CONSISTENT, AND FAIR DECISION-MAKING

The policies and decision-making rules of the regulatory agency are explicit and transparent. Those who make decisions are protected from undue influence from bureaucratic, political, or fiscal pressures.

## ENGAGEMENT

Those who are regulated, along with members of the public, are consistently aware of and active in improving current and future operations and outcomes of the regulator's work in a process free of conflicts of interest.

## SIZE

The size of the regulatory agency and its subentities is based on purpose. Decision-making bodies are optimized at seven members; policy advisory bodies may need to be larger to incorporate perspectives necessary to the work at hand.

## THE USE OF VOLUNTEERS BY CALIFORNIA REGULATORY AGENCIES

The use of volunteers—members of the public, licensees, and members of related professions—to perform the functions of regulatory agencies is common. The reasons for this are essentially twofold: 1) to ensure that regulation is conducted in the public interest for the purpose of public protection and does not become a shield protecting professions from accountability; and 2) to make use of the expertise and practical experience of licensees so that the content and mode of regulation makes sense in the contemporary world.

The ways in which volunteers are used in California regulatory bodies, however, varies considerably across different agencies, as summarized in Table 1, below. The first and most obvious dimension along which the use of volunteer subentities varies is in the scope of functions that they perform. The State Bar makes much more extensive use of volunteers than any other state regulatory body in California.

The most common function in which volunteers are used is Licensing, followed by Policy Advisory. No other major California regulatory agency besides the State Bar uses volunteers for Adjudication, Arbitration, or Grant-making, even though their mandates may include these functions. Very few regulatory agencies use volunteers for Education, Accreditation, Wellness, or Certification.

**Table 1. The scope of functions performed by State Bar subentities is much larger than that of other regulatory agencies**

Function	State Bar	Dental Board	Architects Board	Veterinary Board	Medical Board	Board of Accountancy	Board of Registered Nursing	Board of Optometry
Licensing	X	X	X	X	X	X	X	X
Regulation		X	X	X		X		
Policy Advisory	X				X	X	X	X
Certification	X			X	X			
Wellness	X			X				
Education	X	X	X					
Accreditation	X	X						
Adjudication	X							
Arbitration	X							
Grantmaking	X							

Another key dimension on which the use of volunteer subentities varies across the agencies shown in Table 1 is their organizational structure. The organizational structure may include the *form* that the volunteer subentity takes and the *duration* of its purpose. For example, an alternative model to the State Bar's use of standing subentities would be the formation of task forces or working groups to address specific regulatory or policy issues. Typically, a task force or working group is established for a limited term and renewed only if necessary to complete its work. This is the model used in many federal agencies, including the SEC, which typically convenes policy advisory committees for two-year periods, subject to renewal if need be.

Yet another dimension along which the use of volunteer subentities varies across agencies is in the formality and specificity of their charge. Volunteer advisory committees in other agencies

often engage in a much more formal process of selecting and utilizing volunteers than appears to be the case with many State Bar volunteers. Many agencies provide policy manuals and explicitly defined standards for participating as a volunteer and some even include evaluation of volunteer members with respect to interpersonal skills, communication, leadership, preparedness, and participation.<sup>3</sup> The California Department of Consumer Affairs provides a Board Member resource center for all appointed members of boards under its authority,<sup>4</sup> including information on completing the mandatory orientation training required by Business & Professions Code Section 453. This comprehensive training covers the regulatory process, the legislative process, ethics training, conflict of interest regulations, sexual harassment prevention training, and more. All of the training is designed to ensure the effective participation of volunteer and public members.

The formality of the employment of volunteers may also be matched by a more detailed and specific process of defining the scope of the subentity's charge. For example, in other regulatory agencies, subentities are often convened with a detailed charter, including authority, objectives and scope, meeting frequency, reporting requirements, structure and size of the committee, and required resources to support its work.<sup>5</sup>

Finally, the differences in the utilization of subentities across different regulatory agencies can be compared in terms of the number of subentities and their size. While it was already noted that the scope of work performed by subentities to the State Bar is much greater than what is found in other regulatory agencies, the actual number of subentities performing that work is also greater.

Figure 1 below shows the number of subentities and the number of volunteers working in those subentities in the California regulatory agencies shown in Table 1 above. In Figure 1, each rectangle represents a subentity, and its size is proportional to the number of volunteers who serve on it. The total number of volunteers working in State Bar subentities exceeds the total of the second largest regulatory body by a factor of five. And the size of individual subentities ranges from a high of 114 on the State Bar's California Board of Legal Specialization<sup>6</sup> to a low of 3 on the Dental Board's Dental Assisting Council. The insight from this additional figure is that

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<sup>3</sup> See, for example, California Board of Accountancy, *Committee Member Resource Guide*, (October 5, 2017), [http://www.dca.ca.gov/cba/about-cba/cm\\_resource\\_guide.pdf](http://www.dca.ca.gov/cba/about-cba/cm_resource_guide.pdf), (as of June 7, 2018).

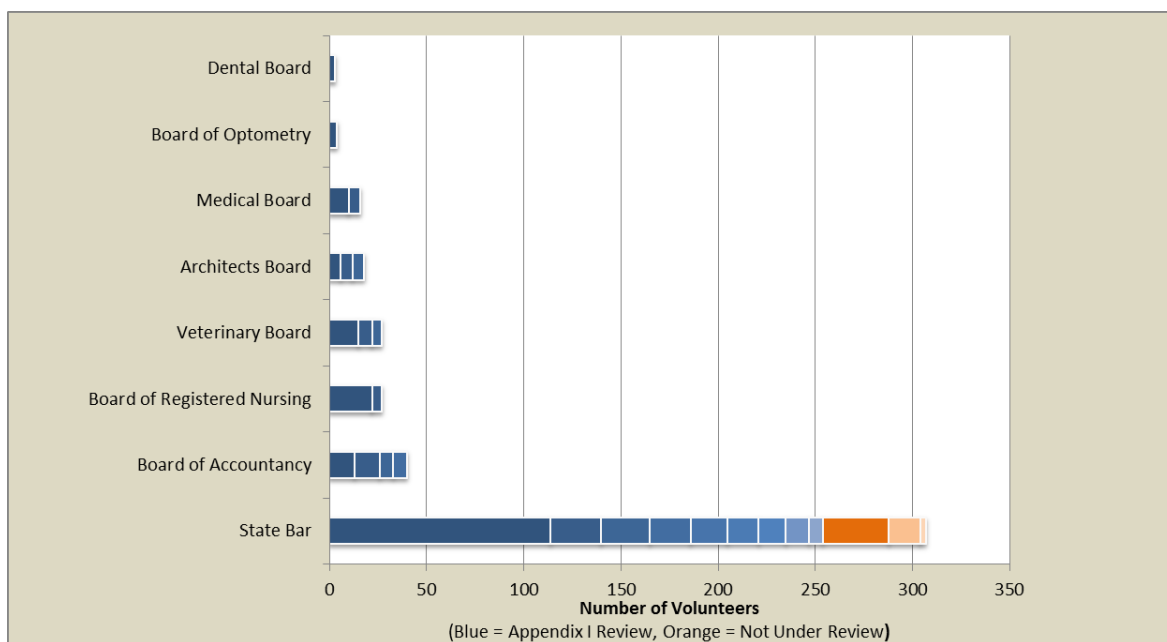
<sup>4</sup> See Department of Consumer Affairs, Board Member Resource Center, <http://www.dcaboardmembers.ca.gov/>, (as of June 7, 2018).

<sup>5</sup> These Federal advisory committees are governed by Federal Advisory Committee Act (FACA) ([Pub.L. 92-463](#), [86 Stat. 770](#), enacted October 6, 1972).

<sup>6</sup> The California Board of Legal Specialization comprises 15 members and coordinates the work of an additional 99 volunteers; together, these total 114.

the State Bar not only uses volunteers in more functions than other regulatory agencies, it typically uses more subentities and more volunteers.

**Figure 1. The number of volunteers and number of subentities used by the State Bar are much larger than that of other regulatory agencies in California**



## THE STATE BAR'S CURRENT USE OF VOLUNTEERS

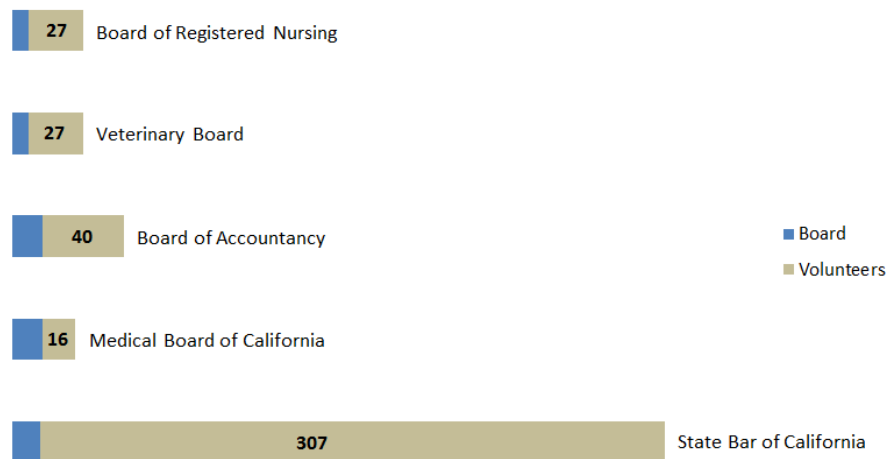
Why have licensees of the California State Bar and bar associations throughout the U.S. been so widely and actively engaged in the work of their bar organizations? The most straightforward answer to this question lies in understanding the dual functions of a bar as both a regulatory agency and professional association. Professional associations are membership organizations; such organizations typically rely on their members to provide member services aimed at career building (e.g., conferences, networking, continuing professional education) and direct services in support of their profession, such as negotiated discounts for direct benefits provided by others (e.g., insurance, vendor discounts, notary services, legal research) as well as services that benefit all members (e.g., legislative lobbying, public relations campaigns). A membership organization is constantly seeking to engage its members in the work of the association as volunteers, and the level of that engagement serves as a barometer of the health of the organization.

A regulatory agency, on the other hand, seeks to make selective and focused use of volunteers to explore new issues arising in its field and to help ensure that proposed regulations in the public interest are informed by the real world experience and perspective of the regulated.

### IMPLICATIONS OF STATE BAR'S CURRENT USE OF VOLUNTEERS FOR GOVERNANCE

The challenge for the Board of Trustees and the State Bar executive management team is plainly illustrated in Figure 2 below. In this figure, the State Bar has a Board of Trustees that is comparable in size to the governing boards of the other regulatory agencies shown (the Board of Registered Nursing, Veterinary Board, Board of Accountancy, Medical Board of California are shown for illustrative purposes). Only the State Bar's Board is dwarfed by the number of State Bar volunteers.

**Figure 2. Size of Board Compared to Number of Volunteers**



The sheer number of volunteers (both lawyers and public members) makes governance more difficult. When so many are involved it becomes increasingly difficult to focus effort, ensure alignment, and accomplish practical work based on shared goals and priorities. Thus, the Board's ability to achieve effective oversight is compromised.

In addition to the governance challenge, the staff workload of administering the participation of these volunteers is increased. Each additional volunteer is one more person who must be identified, recruited, ranked, nominated (or not), and voted upon by the Board. Once put in place, each volunteer's availability, travel, and participation must be administered by staff. The result has been that subentities of the State Bar vary in the efficiency and effectiveness of their functioning. The larger the subentity, the more difficult it is to ensure consistent participation. When absenteeism from meetings runs 20-30 percent and when subentities fail to achieve a quorum for conducting official business, the work product is delayed.

Among the larger subentities, size is attributable to the nature of their charge and the extent to which external partners are involved. All too often, positions are created to reward political

allies or create the perception that the appointing authority is seriously committed to the issue at hand. The typical outcomes are appointees who do not participate actively in the work, vacancies that go unfilled after the original appointment, or appointees who serve endlessly.

For example, the size of the California Commission on Access to Justice can be attributed to the political process which led to its creation, which resulted in 26 members appointed by 15 appointing authorities. For others, such as the Legal Services Trust Fund Commission (21 members) and Committee of Bar Examiners (19 members), the size of the subentity evolved by a combination of the process by which they were established and the extent to which volunteers have been engaged in a wide variety of roles within those subentities, not all of which may be appropriate for them, as opposed to staff, to perform..

## **THE CHALLENGES OF SUBENTITY ORGANIZATION TO EFFECTIVE GOVERNANCE**

Returning to the key elements of successful governance discussed above, the detailed examination of the subentities that follows in this report illustrates how this framework applies to the present-day State Bar. At the outset, it is worth noting that the State Bar has used various terms to name its subentities, without any rationale. There is no logic to the use of the terms “board,” “commission,” and “committee” and these terms signal nothing about the nature of the subentities to which they pertain.

### **ROLE DEFINITION**

The State Bar is well on its way to improving the shared understanding of its role as a regulatory agency, having made a number of symbolic and substantive changes in the last two years. The State Bar’s focus on its regulatory functions is sharper in its terminology (e.g., “licensees” rather than “members”) and in the formal separation from the State Bar of the sections (which focus on the networking and professional association functions of their members).

The role of the subentities, their organizational structure, and their relationship to the Board, however, is less clear. The purpose of this report, in the broadest sense, is to allow the Board to address those important issues.

### **ACCOUNTABILITY AND TRANSPARENCY**

In many cases the volunteer subentities have seemed reluctant to implement measures to evaluate the effectiveness of their work. As a result, most programs managed through the subentities have never been subjected to a rigorous evaluation to determine the effectiveness of the program’s work and whether it is achieving its intended outcomes.

### **Data-driven Program Management and Policy Development**

Program management and policy development require knowing what questions to ask and creating the data required to answer those questions. Many subentities do not know what

questions to ask and do not collect data that would provide answers to those questions. As a result, work is unfocused and outcomes are rarely measured. In other cases data exists but has never been used to provide insight into program effectiveness and direction.

### **CLEAR LINES OF AUTHORITY**

Related to the concept of Role Definition, some subentities are genuinely confused about what authority the Board of Trustees has delegated to them and what approval they need from the Board for actions they wish to undertake. Others have assumed authority they do not have, for example the submission of amicus briefs or legislative advocacy without seeking Board approval. Some subentities believe they exercise management control over State Bar staff, budget, or the allocation of non-General Fund revenues. This persistent lack of clarity has made it impossible for the State Bar to speak with one voice to its judicial and governmental partners or for the Executive Director to maintain effective control over State Bar resources.

### **IMPARTIAL, CONSISTENT, AND FAIR DECISION-MAKING**

Some subentities have managed their decision-making function (e.g., awarding grants, adjudicating claims) using documented policies and precedents that ensure consistent decision-making, while others have not. This inconsistency exists among subentities as well as within subentities: in one subentity, one of its subcommittees uses formal scoring matrices and explicit criteria and documents its decisions, while another subcommittee doing similar work does not.

### **Conflicts of Interest**

The State Bar must ensure the integrity of the decision-making being performed by its subentities through application of conflict of interest laws and principles and transparent reporting by subentity members. Any potential financial or other conflicts of interest should be disclosed by potential members of subentities prior to appointment. Any subsequent filing of conflict of interest statements by subentity members must be made available to the public for their assessment of same.

### **ENGAGEMENT**

The level of engagement of volunteer lawyers and public members varies widely among the subentities. Many subentities have no formal criteria in place to ensure that the subentity members encompass the relevant set of skills and experience needed for the purpose at hand. Too often, volunteer members of subentities engage in activities (e.g., education and training) for which they do not have professional training and which therefore fail to meet professional standards or take advantage of appropriate technologies and techniques for the work at hand.

For many subentities, the selection criteria for membership have not been sufficiently formalized. Distinguishing between attorney and non-attorney public members is one thing, but

many suffer from a failure to specify the knowledge and skills needed to address the work of the subentity. Finally, insufficient thought is often given to other factors, such as representation of the various types of legal practice, as well as geographic regions and populations in California, necessary to ensure an appropriate statewide perspective.

### Term Limits

Subentities have not always adhered to terms of service, allowing members to participate as ad hoc “emeritus” members and allowing stakeholders to participate in subentity policy-making without Board authorization. Some members have extended terms by seeking consecutive appointments from different appointing authorities. One subentity has no formal term limits. The lack of new members prevents new perspectives and fresh review of the work of a subentity<sup>7</sup>.

### Failure to Make Timely Appointments

The perpetuation of the participation ad hoc, emeritus, ex officio and other irregular forms of membership by whatever name is sometimes the result of the failure of appointing authorities to exercise their responsibility to make timely appointments. The Board must be vigilant and ensure that its partners are performing their public duty in making timely appointments.

### SIZE

What is the right size for a subentity? There is no one correct size, but the principles that govern size need to be applied in rethinking the functioning of subentities that the State Bar retains. These principles include the idea that form should follow function. If the role and scope of a committee or commission is well defined, then the size and composition of membership is determined defining the access to expertise and perspectives required for the purpose.<sup>8</sup> A classic study of private sector organizations discovered that every member of a committee beyond 7 members reduced the decision-making effectiveness of that group by 10 percent;<sup>9</sup>

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<sup>7</sup> The need for new perspectives is implicated not only by the current lack of formal term limit policies, but also by the common practice of subentities identifying potential appointees for the Board to consider; this practice likely results in an unintended consequence of insularity and may result in an “echo” chamber effect – existing subentity members are likely to suggest new appointees that align with their current thinking or approach.

<sup>8</sup> See BoardSource, *Leading with Intent: 2017 National Index of Nonprofit Board Practices*, (2017) pp. 17, 19.

<sup>9</sup> Marcia Blenko, Paul Rogers, and Michael Mankins, *Decide and Deliver: Five Steps to Breakthrough Performance in Your Organization*, (Harvard University Press, 2010).

other studies place the ideal number as 5 to 7. Thinking only about size, it would appear that few of the State Bar subentities are designed to be efficient and effective.<sup>10</sup>

## CONCLUSION

Over the years the State Bar has benefitted greatly from the thousands of hours of volunteer work contributed by public members and lawyers to maintain and improve legal practice and law in California. To ensure effective governance in the public interest, the Board of Trustees is undertaking this review of the numerous subentities and their volunteers in order to ensure that the work undertaken is appropriate given the State Bar's regulatory purpose and is being carried out in a manner that makes the best possible use of the experience and knowledge of practicing attorneys and the perspective and expertise of public members. It is incumbent on the Board to ensure that the subentities to which it has delegated specific responsibilities and authority act in concert and are aligned with the State Bar's strategic direction. A set of global recommendations for all subentities designed to improve governance and service delivery is summarized in Table 2 below.<sup>11</sup>

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<sup>10</sup> Note that the size of a Board of Directors is optimized at a higher number, since the purpose of that body is different. Currently, the national average for nonprofit organizations is 15 members. (BoardSource, op. cit.)

<sup>11</sup> Additional comparisons with other state regulatory bodies are included as Appendix E on fees, licensees, and complaints and Appendix F on approaches to diversity.

**Table 2. Staff Global Recommendations for Improving Governance & Service Delivery**

	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Subentity Role</b>	<b>Proposed Board of Trustees Role</b>
1. Institute formal orientation for all volunteers to the work of the State Bar	State Bar staff	<i>New</i>		Approve the content of Bar orientation
2. Institute and enforce term limits for all volunteers, ensure appointments made timely	Staff Bar staff, appointing authorities, & Board	Yes	Implement	Approve policy
3. Institute conflict of interest policy for volunteers	State Bar staff	<i>New</i>	Implement once approved	Approve policy
4. Formalize desired qualifications for volunteers, by subentity	State Bar staff and Subentity	<i>New</i>	Collaborate with staff to develop	Approve proposed qualifications
5. Establish standard subentity size of 7 or fewer volunteers and process for justification of additional based on workload and need for representation	State Bar staff	<i>New</i>	Collaborate with staff to develop	Approve proposed sizes of subentities
6. Institute sunset review of all subentities every 5 years	Staff Bar staff	<i>New</i>	Participate in review	Review & approve results of reviews
7. Eliminate subentity nominations committees.	State Bar staff	<i>New</i>		Review nominees and approve

## COMMITTEE OF BAR EXAMINERS

### INTRODUCTION

The Committee of Bar Examiners (CBE or Committee) was established in 1939 by the State Bar of California to administer the State 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 Appendix A.

### BACKGROUND

#### PURPOSE

The CBE was established to administer the State 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 State 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.<sup>12</sup>

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<sup>12</sup> 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 Appendix A.

## SOURCE OF AUTHORITY

The Legislature enacted Business & Professions Code Section 6046, which provides that the State Bar may establish an examining committee to examine all applicants for admission to the State Bar to practice law and administer the program for same.<sup>13</sup> The statute goes on to define the size and 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 State 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 State Bar and 1 judicial officer.

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

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<sup>13</sup> 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).

## SUBCOMMITTEES

The CBE organizes its work into four subcommittees and also receives input from three advisory bodies.<sup>14</sup>

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 State Bar's Office of Admissions (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 State 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:* 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 State Bar by Business & Professions Code Section 6046.7 in 2007.

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<sup>14</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.

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):* 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 Office of Admissions supports the CBE; this office is staffed by 60 full-time equivalent employees located in both the Los Angeles and San Francisco offices of the State Bar.<sup>15</sup> 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, staff function as a point of intake, processing applications for all examinations.

*Moral Character:* 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%).

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<sup>15</sup> Authorized and filled positions; does not include vacancies.

## WORK OF THE COMMITTEE OF BAR EXAMINERS

### 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 Appendix 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. Site visits to law schools related to the accreditation process and for moral character review interviews also require travel.

### COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS

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

- **Size:** In most states, bar examiner entities are half as big as the CBE and the size of such entities is not correlated to size of their respective states;
- **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;<sup>16</sup> 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.

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<sup>16</sup> Of the other four, two (Connecticut and Massachusetts) allow schools accredited by a regional accreditation provider (New England Association of Schools and Colleges); one (Tennessee) uses the state's Board of Bar Examiners; and the other (Alabama) does not require law school accreditation by the ABA in order for graduates with a J.D. to sit for the bar examination.

## 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 State 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 Appendix 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, recommendation development, and reporting. OGC's response to the CBE indicated, in essence, that the CBE derives its authority from the State Bar subject to the authority of the Supreme Court.<sup>17</sup> The CBE is authorized "to administer requirements for admission to practice law, examine all applicants for admissions, and certify to the Court for admission those applicants who fulfill the requirements."<sup>18</sup> The CBE administers these functions "only to the extent that the Board so authorizes, subject to the ultimate authority of the Court."<sup>19</sup>

*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

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<sup>17</sup> State Bar 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). Included in this report as Appendix B.

<sup>18</sup> State Bar Office of General Counsel, op. cit., p2.

<sup>19</sup> Ibid., p4.

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.

The challenges to engagement are reflected in the lack of attendance at meetings of the Law School Assembly, Law School Council, and Advisory Committee on California Accredited Law School Rules (RAC). In 2016 and 2017, attendance at meetings of these bodies for each category of law school ranged from 10 to 50 percent; the Law School Council was not even convened in 2016.

To explore the challenges to engagement, a recent survey of all California law school deans was conducted by the State Bar in July 2018. Results, consistent with the attendance statistics, 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 “usually” or “consistently” valuable.

Results are summarized below in Tables 3 and 4; given the small number of schools responding in each accreditation category, results should be interpreted with caution.

**Table 3. Law School Survey Responses**

Response Rate by Accreditation Type			
	Total Sent	Responses	Percentage
<b>ABA</b>	21	9	43%
<b>CALS</b>	15	5	33%
<b>Registered</b>	20	8	40%
<b>Total</b>	<b>56</b>	<b>22</b>	<b>39%</b>

**Table 4. Modes of Law School Engagement, by School Accreditation Type**

<b>Believe Current Mode of Engagement "Usually" or "Consistently" Valuable</b>				
	<b>All</b>	<b>ABA (n=9)</b>	<b>CALS (n=5)</b>	<b>Registered (n=8)</b>
<b>Law School Assembly</b>	43%	33%	40%	53%
<b>Law School Council</b>	37%	22%	0%	75%
<b>RAC</b>	43%	22%	60%	63%

<b>Future Modes: How useful would E-newsletter be? (1-5 scale)</b>				
	<b>All</b>	<b>ABA (n=9)</b>	<b>CALS (n=5)</b>	<b>Registered (n=8)</b>
Average Score	3.7	3.8	3.0	4.1
% rating "Very Useful"	32%	22%	20%	50%

<b>Future Modes: How useful would Annual Meeting be? (1-5 scale)</b>				
	<b>All</b>	<b>ABA (n=9)</b>	<b>CALS (n=5)</b>	<b>Registered (n=8)</b>
Average Score	3.7	3.8	2.8	4.1
% rating "Very Useful"	27%	22%	20%	38%

<b>Future Modes: How useful would Task Force/Working Group be? (1-5 scale)</b>				
	<b>All</b>	<b>ABA (n=9)</b>	<b>CALS (n=5)</b>	<b>Registered (n=8)</b>
Average Score	3.7	4.0	3.2	3.6
% rating "Very Useful"	36%	56%	20%	25%

*Size:* The report of the State Bar's consultants (Appendix A) includes a comparative analysis of the size of parallel entities in other states that indicates an average size of 9 and most common size of 7. When the size of committees 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 structure by which members are doing administrative and other work better performed by staff. In addition, a large committee 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 Appendix A.

Table 5 below provides a detailed overview of recommendations from State 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.

- The first column of the table describes a current or proposed admissions function (and its related tasks);
- 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 work and/or division of labor between the CBE and State 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 State Bar staff contained in Table 4 are:

#### **Examination Development**

- Increased review of the bar examination, through a new CBE role in evaluation of grading and staff work with a psychometrician to sample examinations.

#### **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.

#### **Eligibility & Enforcement of Examination Rules**

- Shift initial enforcement decisions to State Bar staff to relieve CBE of this administrative duty.

#### **Budget**

- Clarify that the CBE's role with respect to the budget is limited to making recommendations to modify bar examination fees.

### **Trends in Licensing & Certification**

- State Bar staff and CBE to collaborate in new work to review trends in licensing and certification and their application to the bar examination.

**Table 5. Staff Recommended Roles for Improving Governance & Service Delivery**

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

*Note: EDG stands for Examination Development and Grading.*

**Table 5. Staff Recommended Roles for Improving Governance & Service Delivery** (*continued*)

<b>IV. Eligibility &amp; Enforcement of Exam Rules</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Policy development	Staff & CBE	<i>Change</i>	Inform via law school assembly & e-newsletter	Review & approve proposed policy changes
2. Enforcement	Staff for initial decisions			
3. Appeals	CBE			
<b>V. Exam Analysis &amp; Review</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
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
<b>VI. Budget</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Budget development & management	Staff	<i>Change</i>		Approve annual budget and amendments
<b>VII. Personnel</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Personnel	Staff			
<b>VIII. Trends in Licensing &amp; Certification</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Trends study	Staff & CBE	<i>New</i>	Inform via law school assembly & e-newsletter, serve on working group	Review results, consider for 7-year study design

## **FUTURE OPPORTUNITIES: LAW SCHOOL ENGAGEMENT & ACCREDITATION**

In Table 6 below, issues for future consideration by the Board of Trustees are identified along with current staff thinking on these topics. These issues—law school engagement and accreditation of law schools— require further discussion before recommendations can be made to the Board of Trustees. Although no recommendations are being made at this time, a brief description of the primary ideas that staff is considering is provided below.

### **LAW SCHOOL ENGAGEMENT**

Based on attendance and review of past meeting agendas it is clear that the level of engagement by law schools is not as strong as the State Bar would like it to be. The approaches under consideration outlined in Table 6 below—e.g., newsletter and a more intentionally planned annual meeting of law school deans—are aimed at providing a more timely and consistent flow of information to and from the law schools as well as providing well-timed, focused opportunities for law schools to discuss and make recommendations about admissions issues. Through participation in focused, short term working groups, law schools would have a vehicle for substantive input on key policy issues. Working groups could be initiated by CBE, the law schools, the Board of Trustees, or State Bar. Law school deans would self-select into working groups designed with clear charters and a life of no more than two years, depending on the work at hand. Examples of the types of issues working groups might address include moral character policy review and guidelines; accreditation policies, rules, and guidelines; and Bar examination studies.

In addition to the level of engagement, the other important consideration regarding the current institutional arrangements and roles of the Law School Assembly, Law School Council, and Advisory Committee on California Accredited Law School Rules (RAC) is the issue of regulatory capture. The State Bar must ensure that the interests of the public are first and foremost, and that regulations are not being made to advance the interests of those it is charged with regulating. This lens is one used not only by the State Bar, but also by its partners in state government. To this end, the staff believe that elimination of the RAC in particular is likely warranted. The role of the Law School Council remains to be seen, and perhaps would be retained in order to recommend and populate the working groups described above.

## ACCREDITATION

The analysis of accreditation by consultants Walton and Parker surfaced several important considerations with respect to law school accreditation.<sup>20</sup> Fundamentally, accreditation should rest on rigorous and sound principles and professional expertise; the CBE's accreditation practices have never been subjected to review (a practice regularly done with respect to professional accreditation organizations in order for those to be "recognized" by the nonprofit Council for Higher Education Accreditation and the U.S. Department of Education.). For these and other reasons outlined in the Walton and Parker report, State Bar staff lean toward recognition and use of regional accreditor(s), reserving Bar accreditation for those schools that have chosen not to pursue regional accreditation. At present, more than one-half of the CALS have attained or are pursuing regional accreditation. It is the view of staff that any future State Bar-administered CALS accreditation process would require revision of guidelines and policies in consultation with regional accreditors, along with a transition to a staff-led process.

Finally, CALS accreditation, whether through recognition of a regional accreditor or directly by the State Bar, should include enforcement of Chapter 4, Rule 4.160 (N) of the Accredited Law School Rules, under which California-accredited law schools (CALS) must "... maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness of a law school's program of legal education."<sup>21</sup> As specified in Guidelines 12.1 of the Guidelines for Accredited Law School Rules, "a law school must maintain a minimum, cumulative bar examination pass rate" (MPR) of at least 40 percent for the most recent five-year reporting period" and the rate must be calculated and reported to the CBE annually.<sup>22</sup>

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<sup>20</sup> See Elise Walton and Elizabeth Parker, *Committee of Bar Examiners Report*, pp. 19-26. (June 1, 2018).

<sup>21</sup> Title 4, Admissions and Educational Standards, Division 2 Accredited Law School Rules, [https://www.calbar.ca.gov/Portals/0/documents/rules/Rules\\_Title4\\_Div2-Acc-Law-Sch.pdf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div2-Acc-Law-Sch.pdf) (as of September 4, 2018).

<sup>22</sup> Guidelines for Accredited Law Schools, Division 12, Minimum, Cumulative Bar Examination Pass Rate, <http://www.calbar.ca.gov/Portals/0/documents/admissions/AccreditedLawSchoolGuidelines.pdf> (as of September 4, 2018).

**Table 6. Future Consideration for Improving Governance & Service Delivery**

<b>I. Engagement with Law Schools</b>	<b>Approach</b>	<b>Possible CBE Role</b>	<b>Possible Staff Role</b>
1. Law School Assembly	Collaborative	Work jointly with staff to develop agenda	Work jointly with CBE to plan, provide logistical support
2. Law School Council	Elected by LSA	Take reports/proposals from	Provide logistical support
3. RAC	Sunset	na	na
4. Working Groups (e.g., re bar exam, moral character, testing accommodations)	Collaborative, can be initiated by law schools or State Bar	Make appointments to, take reports/proposals from	Provide support for
5. Newsletter	Staff-driven		
<b>II. Law School Accreditation</b>	<b>Approach</b>	<b>Possible CBE Role</b>	<b>Possible Staff Role</b>
1a. Law school accreditation process, including application, site visits, appeals)	Recognize national accreditor (ABA)		
1b. Law schools seek accreditation from regional accreditor	Recognize regional accreditor, can replace Bar accreditation	Work jointly with staff to administer	Work jointly with CBE to administer
1c. Law schools seek accreditation from state	State Bar as accreditor with redesigned process	Work jointly with staff to administer	Work jointly with CBE to administer
2. Accreditation policy	Review, revise, and propose new to BOT	Work jointly with staff to develop, approve and forward to BOT	Work jointly with CBE to develop

## RESPONSE AND INPUT FROM THE COMMITTEE OF BAR EXAMINERS

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.<sup>23</sup> Subsequently, in early 2017, the chair and the State 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. Staff recommendations were reviewed by the full CBE meeting in August.<sup>24</sup> CBE members were strongly opposed to all staff recommendations.

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.

### OPERATIONS & MANAGEMENT

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

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<sup>23</sup> Three CBE members were not able to participate or be interviewed due to scheduling challenges.

<sup>24</sup> Additional written comments are included in this report as Appendix D.



## California Board of Legal Specialization

### 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 State 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 certifications offered by the Bar be discontinued and the function of certification be outsourced only to accredited providers of certification?
- Could the certification of legal specializations be streamlined by redesigning the work and altering the division of labor among State 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 for review. In addition to the 15-member CBLS, the work is conducted using 99 volunteers. These 114 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.”<sup>25</sup>

## **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 STRUCTURE**

The CBLS consists of 15 members: 12 lawyers, at least 10 of whom must be certified specialists, and 3 non-lawyer public members.<sup>26</sup> 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:

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<sup>25</sup> Rule 9.35 of the California Rules of Court, [http://www.courts.ca.gov/documents/title\\_9.pdf](http://www.courts.ca.gov/documents/title_9.pdf) (as of July 24, 2018).

<sup>26</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 are compiled from a variety of sources and are best understood as self-description.

- 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; and
- Workers' Compensation Law.

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 State 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.<sup>27</sup> With approval from the Board of Trustees, the CBLS recognizes certification in nine

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<sup>27</sup> California does not *require* that these providers are ABA-accredited, but they *are* so accredited.

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.<sup>28</sup>

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); and
- 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.

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

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<sup>28</sup> Despite sharing the name, the two varieties of Legal Malpractice specialization are different because the CBLS program contains a larger ethics component.

## STAFFING OF THE CBLS

The CBLS is staffed by seven full-time employees of the State Bar's Office of Admissions. State 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 State 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 fees including the program's annual fee charged to all specialists, as well as 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, revenues were about \$600,000 and expenses were about \$2.1 million. The apparent decline in 2017 revenues and increase in 2017 expenses were the temporary and planned result of a one-time waiver of the annual fee normally charged to all certified specialists plus a further planned expenditure of program reserves for infrastructure programs and normal examination expenses; the Board of Trustees pre-approved these investments of the separate program fund reserves designed to bring the program into compliance with the State Bar's reserve policy. Revenues and expenses in 2018 have returned to prior levels.

## WORK PERFORMED BY THE STAFF

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

- processing applications and attendance fees;
- 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.<sup>29</sup>

- 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; and
- 5 states prohibit claims to specialization entirely (the position reflected in the ABA Model Rules of Professional Conduct until 1992).<sup>30</sup>

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<sup>29</sup> See the ABA Center for Professional Responsibility, "Find a Certification Program" directory at [https://www.americanbar.org/groups/professional\\_responsibility/committees\\_commissions/specialization/resources\\_for\\_lawyers/find\\_a\\_certification\\_program.html](https://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources_for_lawyers/find_a_certification_program.html) (as of June 22, 2018).

<sup>30</sup> ABA Standing Committee on Specialization, "A Concise Guide to Lawyers Specialty Certification," p.5, at [https://www.americanbar.org/content/dam/aba/migrated/2011\\_build/specialization/june2007\\_concise\\_guide\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/2011_build/specialization/june2007_concise_guide_final.authcheckdam.pdf) (as of June 11, 2018).

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.<sup>31</sup>

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.

Table 7 shows the number of attorneys who are certified by the CLBS as legal specialists.<sup>32</sup> The numbers, although increasing slowly in the last five years, remain low.

**Table 7. Number of CBLS-Certified Legal Specialists, 2017**

<b>Specialization</b>	<b>Certified Legal Specialists</b>
Admiralty & Maritime	38
Franchise & Distribution	53
Legal Malpractice	96
Bankruptcy	166
Immigration	214
Appellate	316
Taxation	324
Criminal	420
Estate, Trust, Probate	1,019
Workers' Compensation	1,073
Family	1,423

The public protection justification is called into question by a review of the distribution of specialists by practice area. Almost half practice in family law or trusts and estates. According to data compiled by the Judicial Council,<sup>33</sup> the rate of self-representation in family law

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<sup>31</sup> 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](https://www.americanbar.org/groups/bar_services/publications/bar_leader/2009_10/july_august/certification.html) (as of June 11, 2018).

<sup>32</sup> Note that there are an additional 379 attorneys certified by recognized certification organizations.

<sup>33</sup> [http://www.courts.ca.gov/documents/01\\_15\\_Hough.pdf](http://www.courts.ca.gov/documents/01_15_Hough.pdf)

proceedings is staggering due to the inability of most litigants to afford counsel. Certified specialists play no role for the vast majority of Californians involved in a family law case.

Similarly, although the data does not readily exist to support an analysis of this hypothesis, it is not unreasonable to assume that representation in trusts and estates matters is most often limited to those with or seeking assets. Thus, nearly half of all current California specialists are practicing in areas where legal services are likely being sought by higher income and higher educated clients. While all Californians deserve competent and ethical legal services, it is possible that most legal specialization area are serving a niche market composed of the state's more affluent population.

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 8 below.<sup>34</sup>

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 8. Certified Legal Specialists and Section Membership, 2017**

Specialization	Section Members	Certified Legal Specialists	Percentage
Trusts & Estates	7,180	1,019	14%
Family Law	4,515	1,423	32%
Taxation	3,546	324	9%
Workers Compensation	3,551	1,073	30%

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<sup>34</sup> State Bar of California, *2017 Annual Report of the California Board of Legal Specialization*, p.5. Section membership numbers provided by State Bar staff.

Taking a broader view, Table 9 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 9. The national profile includes all 49 specialties recognized by the ABA; the California profile includes all 22 specialties recognized by the State Bar.

**Table 9. Percentage of Active Attorneys Certified as Legal Specialists, 2017**

California Active Lawyers	Certified Legal Specialists	Percentage	National Active Lawyers	Certified Legal Specialists	Percentage
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.<sup>35</sup> 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.<sup>36</sup>

## 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 annually 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

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<sup>35</sup> 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](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2012_national_certification_census.authcheckdam.pdf) (as of June 11, 2018). More recent data has not been published by the ABA.

<sup>36</sup> The 2017 increase was due in part to a one-time waiver of the annual fee normally charged for examinations.

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.

*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 State 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 STATE BAR AND STREAMLINE**

- Continue certifying in a defined set of specialty areas and recognize private organizations to certify in additional areas; and
- 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; and
  - 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; and
- Eliminate the CBLS and Specialty Advisory Commissions and retain staff to manage vendors and reporting to the Board of Trustees.

### **OPTION 3: ELIMINATE CERTIFICATION OF LEGAL SPECIALIZATION**

- If the Board of Trustees 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 State Bar entirely.

### **RESPONSE AND INPUT FROM THE CBLS**

The CBLS discussed Appendix I with State 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 State Bar; and
- 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.

## Council on Access and Fairness

### INTRODUCTION

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 State Bar’s diversity and inclusion goals be incorporated into all aspects of the State 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 State 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 State Bar?

In restructuring the State Bar, the mission of COAF and the other related subentities was embraced as integral to the State Bar’s mission. This commitment is reflected in the State Bar’s Strategic Goal 4: “Support access to justice for all California residents and improvements to the state’s justice system.”<sup>37</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 State Bar’s public protection mission.<sup>38</sup>

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<sup>37</sup> State Bar of California, *2017-2022 Strategic Plan*, <http://board.calbar.ca.gov/Goals.aspx> (as of August 9, 2018).

<sup>38</sup> Assembly Bill 3249 (State Bar Act) 2017-18.

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 State Bar.

## 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 establish COAF in its stead.<sup>39</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>40</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

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<sup>39</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>40</sup> State Bar of California, Board of Governors Meeting Minutes, November 17, 2006, p.11.

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 21 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.

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

COAF is organized into four standing committees that are intended to mirror the diversity pipeline concept in the education system:<sup>41</sup>

*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 State Bar in the governance, policy, and programmatic

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<sup>41</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.

work of the State 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).

## **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 State 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 services, 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 State 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;
- 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 host of California local and affinity bars engage in judicial pipeline and bench diversity efforts in a manner similar to COAF.

A common weakness of most state bar diversity programs is the failure to collect data to measure progress; only 35 percent of the 74 bar associations responding to the most recent

published survey indicate that they collect such data.<sup>42</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 State 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 State Bar accountable for its efforts in this area.<sup>43</sup>

## 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, its work has been hampered by the lack of a clear set of diversity objectives related to its general charge. Further, it is unclear whether COAF, as a subentity of the State Bar, is the appropriate entity to advance efforts designed to increase the diversity of the judiciary. This work might be more appropriately housed in the Judicial Council, for example. Role definition may also be a challenge for COAF insofar as there are numerous stakeholders working to 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 assess the viability and need for such partnerships so as to maximize the potential benefits of meaningful collaboration;

*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 to inform that planning process nor has it meaningfully overseen COAF strategic plan implementation;

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<sup>42</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.

<sup>43</sup> It is noteworthy that the Little Hoover Commission identified the lack of demographic data on licensees as a shortcoming of all California licensing authorities. (Little Hoover Commission, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, (2016), <http://www.lhc.ca.gov> (as of August 28, 2018).

*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 an area in which COAF appears to operate well. 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.

*Size:* When the size of subentities is defined by considerations other than their function, they are almost always too large. That said, it is also true that policy bodies, unlike decision-making bodies, tend to be larger to include the diverse perspectives and constituencies that should be involved in that policy work. In the case of COAF, its large size was originally set by the Board of Trustees, in part to accommodate existing members of the five related committees that were eliminated in the process. With some issues, a tendency existed among state government stakeholders to create a large committee to signal concern and commitment to that issue. The size of the Council should be examined in this light as part of this review.

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 State 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 State 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 State Bar, “protection of the public ... includes support for greater access to, and inclusion in, the legal system.” Second, the bill requires the State 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 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 AND FOCUS**

- 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;

- Clarify charge of COAF, de-emphasizing focus on judicial diversity and ensuring alignment with the State Bar’s diversity and inclusion mandate and Board strategy; and

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). Recommendations related to the CCAJ will be delayed pending additional stakeholder engagement to occur this Fall; this additional COAF option could be considered at the conclusion of the stakeholder process.

#### **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; and
  - A merger would help ensure that the racial and ethnic dimensions of the access gap are made visible and are addressed.

#### **RESPONSE AND INPUT FROM THE COUNCIL ON ACCESS AND FAIRNESS**

COAF members discussed the Appendix I review with State 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.

## Client Security Fund Commission

### INTRODUCTION

The Client Security Fund (CSF) exists to relieve or mitigate client losses due to dishonest conduct committed by attorneys licensed by the State Bar or attorneys registered with the State Bar arising from their practice of law. The CSF is administered by the Client Security Fund Commission, a seven-member body created by the State Bar. The CSF program was created by State Bar-sponsored legislation in 1972, codified in Business and Professions Code Section 6140.5. Section 6140.5 specifies the purpose of the CSF and leaves details of its implementation to the Board of Trustees.

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

- Would there be benefits to claimants if certain Commission functions were brought in-house?
- Should the Commission function as an appellate body only, with staff making decisions in the first instance?

This small subentity follows formal, documented procedures and functions efficiently. A small improvement in timeliness might be possible by having staff issue Tentative Decisions without review by the Commission. The Commission's role could be eliminated altogether with BOT acting as the appellate body; however, the volume of work and timeliness of decisions likely require the Commission to serve as the appellate body should that approach be taken.

### BACKGROUND

#### PURPOSE

The Client Security Fund was established in 1972 to reimburse individuals for pecuniary losses caused by dishonest conduct of lawyers arising from or connected with their practice of law. The maximum allowable amount has increased over time to \$100,000 per applicant claim. The fund is supported by a \$40 fee paid by all active attorneys as part of their licensing fees.<sup>44</sup>

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<sup>44</sup> For a more complete description of work and current state of the CSF, see the State Bar of California, *2018 Client Security Fund Report*, <http://www.calbar.ca.gov/Portals/0/2018ClientSecurityFundReport.pdf>, (as of May 8, 2018).

## SOURCE OF AUTHORITY

The CSF was established by the enactment of Business and Professions Code Section 6140.5(a). Bus. & Prof. Code Section 6140.5(a) provides that the CSF will be subject to “regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.” Accordingly, the CSF program, including the procedures, rules, and operations of its Commission, are left to the State Bar Board of Trustees.<sup>45</sup>

## BOARD OVERSIGHT

The work of the Client Security Fund Commission is accountable to the Board through its Regulation and Discipline Committee (RAD). The Board also exercises its authority through the appointment of the seven commissioners; review and approval of recommended changes to CSF rules; and review and approval of the CSF budget. Basic management reports with workload and financial indicators are produced monthly and submitted to RAD. In addition, the State Bar’s Office of Finance provides a quarterly financial report to the Board’s Finance and Planning Committee that includes detailed case processing and financial information, e.g., number of cases resolved, amount paid out, 24-month pay-out ratio, projected payouts, pending claims, and more.

## STRUCTURE

The Client Security Fund Commission (CSFC or Commission) was established in 1985 in response to the Supreme Court of California’s decision in *Saleeby v. State Bar* (1985) 39 C3d 547. The Commission consists of 7 members, all of whom are appointed by the Board of Trustees. Pursuant to Rule 3.421(A) of the State Bar Rules, the Commission is to be composed of 4 lawyer members and 3 non-lawyer public members. Members serve for 3-year terms, and terms are staggered such that 2 or 3 members (both lawyer and public) are being replaced in any given year. A total of 6 in-person meetings are held annually by the CSFC.

## STAFFING

The Commission is supported by staff of the Office of the Client Security Fund at the State Bar. The staff support the CSFC and manage the day-to-day operations of the program. The 8 staff include the program manager, who is also counsel to the CSF, 3 attorneys, 1 investigator and 3 administrative staff.

## WORK OF THE CLIENT SECURITY FUND PROGRAM

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<sup>45</sup> See Rules of the State Bar, Title 3, Division 4, Chapter 1, Rule 3.420 et seq. for program rules.

## WORK PERFORMED BY THE COMMISSION

The Commission reviews applications for reimbursement submitted by clients of attorneys whom they allege have caused them loss of money or property through dishonest conduct. The decisions and processes of the Commission are governed by operational rules of the CSF as well as by substantive and procedural rules strongly influenced by the decision of the California Supreme Court in *Saleeby v. State Bar*.<sup>46</sup> This decision established that applicants and respondents have due process rights and that requests for reimbursement must be given independent review, to include findings of fact and conclusions of law.

The CSFC reviews Tentative Decisions drafted by CSF staff, approximately two-thirds of which are approved without modification. The bulk of the Commission's expertise is devoted to exceptional claims (novel issues of fact or law) and to objections from applicants or respondent attorneys, which are adjudicated as trial de novo on the original complaint.

The Commission also makes recommendations to the Board of Trustees on

- Rules for the CSF;
- Methods for reviewing applications; and
- Financial needs of the CSF.

## WORK PERFORMED BY STAFF

Staff attorneys and investigators conduct preliminary work to determine the eligibility of the applicant's claim and the status of the attorney. Staff attorneys prepare Tentative Decisions for cases proceeding on that path; all of these decisions are reviewed by the Commission, and some of them pose substantive questions on which the Commission provides guidance for the Tentative Decision. Staff work provides the legal assessment and application of precedent and rules and statutes that the Commission needs to review to reach a fair and consistent determination in each case. In addition, administrative staff provides the necessary infrastructure for the operations of the program.

## ADJUDICATION OF CASES

On average, about half the cases (approximately 1,000 claims) are resolved by program staff by applying statute and rules without ever reaching the Commission. These are either closed by 1) administrative means because the claim is outside the scope of the Client Security Fund's coverage or key requirements have not been met, or 2) through the issuance of a Notice of Intention to Pay, where the allegations and remedy are clear, and the respondent attorney is

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<sup>46</sup> *Saleeby v. State Bar* (1985) 39 Cal.3d

allowed to object. The other half of the cases, (another approximately 1,000 cases per year), are decided through Tentative Decision crafted by staff and reviewed and approved by the Commission. Of those, about one-third result in discussion and revision by the Commission due to novel issues of law or fact, which consumes about half of the Commissions 1-2 hour meetings every other month.

The bulk of the Commission's time is devoted to adjudicating the Objections to Tentative Decisions; objections are filed in about 25 percent of these cases, resulting in an additional review by the Commission for approximately 250 cases per year. These are disposed after a trial de novo process based on the original complaint with a Final Decision from the Commission.

Statistics on the work of the CSF for the past three years are summarized in Table 10 below. Year-to-year variation can be driven by a variety of factors, including external events like the loan modification crisis and related malfeasance by some lawyers as well as the funds available to satisfy claims and claims made against those funds.

**Table 10. CSF Caseload, 2015-2017, by Manner of Disposition**

Year	Total Claims Adjudicated	Commission	Staff	
		Tentative and Final Decisions	Notice of Intention to Pay	Closing Letter
<b>2015</b>	1,382	527	378	477
<b>2016</b>	2,326	1,470	417	439
<b>2017</b>	1,742	776	243	723
	5,450	2,773	1,038	1,639
<b>3-Year Annual Average</b>	1,817	924	346	546
<b>2015-2017 Percentage</b>		51%	19%	30%

Program staff and the Commission ensure consistency of decisions through a variety of measures. First, the Commission staff attorneys are trained in the rules and procedures and how decisions are made. These staff, in turn, train the Commission members. When new Commission members are appointed, a formal orientation meeting is conducted by CSF staff. Commission members are provided with the Client Security Fund's rules, the key court cases that govern the CSF, and the policies that the Commission has adopted over the years. The staggered terms of the Commission help to keep consistency, allowing more experienced members to guide discussions with the newer members. A key part of the CSF staff counsel's role is to ensure that the Commission is following the rules, making consistent decisions and only departing from precedent if there is good reason to do so.

## COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS

Every state and the District of Columbia has what the ABA refers to as a “lawyers’ fund for client protection” and most conform to the ABA’s “Model Rules for Lawyers’ Funds for Client Protection.”<sup>47</sup> California’s program is similar in most ways to those of other mandatory bar states: a volunteer body of attorney and non-attorney members provides oversight, reviewing and authorizing applications for reimbursement.<sup>48</sup> Table 11 below summarizes program characteristics. These programs are almost exclusively funded by lawyer fees, not general fund monies; some states supplement those fees, but not from taxpayer funds.

**Table 11. Client Security Fund Commissions, Claims, and Staffing**

State	Size of Client Security Fund Commission	Number of Staff	Average Annual Number of New CSF Claims 2014-16
California	7	8	1,284
New Jersey	7	6	437
Florida	26	not available	417
Illinois	7	not available	358
Pennsylvania	7	2	283
New York	7	5	560
Michigan	17	7	97
Massachusetts	7	3	76
Georgia	7	not available	56
Texas	6	1.5	148
DC	5	1.3	26

As shown in Table 11, from 2014 to 2016 California processed more claims than any other state. Significantly, it does this work with a staff that is not substantially larger than some states which have less than a third of the number of claims as California, and with a CSF Commission that is typical of the size of other commissions that perform this work in other states. Additional

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<sup>47</sup> American Bar Association, *Model Rules for Lawyers’ Funds for Client Protection*, [https://www.americanbar.org/groups/professional\\_responsibility/resources/client\\_protection/rules.html](https://www.americanbar.org/groups/professional_responsibility/resources/client_protection/rules.html), (as of May 5, 2018).

<sup>48</sup> Notably, the State Bar CSF in California has due process requirements that many other states do not.

detail on the operations of the CSF program can be found in the March 2018 report to the Legislature.<sup>49</sup>

## OPPORTUNITIES FOR IMPROVING GOVERNANCE AND SERVICE DELIVERY

Returning to the elements of successful governance discussed in the introduction to this report reveals primarily that the CSFC is an efficient and effective vehicle for overseeing the work of the CSF. There are, nonetheless, a number of opportunities for organizational restructuring to improve the efficacy of this work.

*Role Definition:* The role and regulatory purpose of the Commission are clearly defined.

*Accountability & Transparency:* As described above, the Board receives quarterly financial reports on the program through the State Bar's Office of Finance. While the financial elements of the program's operation have been regularly reported, it is less clear to what extent the Board has reviewed the rules and use of discretion by the Commission (for example, instances in which the Commission has waived the discipline requirement).

*Clear Lines of Authority:* The Commission has a clear understanding of its authority in the policies, decision-making, and management of the program. The Board delegated authority to the Commission to establish the rules and guidelines for the program; the Board does not appear to have regularly reviewed those guidelines to ensure the program is operating as intended by the Board.

*Impartial, Consistent, and Fair Decision-Making:* The decisions of the Commission are guided by documented precedents, rules, and statute and mindful of the requirements of the *Saleeby* decision. As described above, the Commission believes that the combination of staggered terms, formal orientation, and staff expertise contribute to the quality of decisions made, as evidenced by the lack of legal challenges to those decisions.

*Engagement:* Clients of attorneys subject to disciplinary proceedings given notice of the CSF service option should they have a claim. Beyond that, it is not clear to what extent consumers of legal services are aware of or have been made aware of the service provided by the CSF. While all State Bar licensees pay a fee annually to support the CSF, this is but a weak reminder of the Client Security Fund's existence and policies. Like many of the Bar's functions, the CSF would benefit from a more systematic dissemination of information about its work.

*Size:* The Commission consists of seven members, an ideal size for a decision-making body. Thus, size is not a factor in its effectiveness.

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<sup>49</sup> The State Bar of California, *2018 Client Security Fund Report*, <http://www.calbar.ca.gov/Portals/0/2018ClientSecurityFundReport.pdf>, (as of May 6, 2018).

### OPTION 1: STATUS QUO

- The Commission and staff continue to work as they have historically.

### OPTION 2: THE COMMISSION FUNCTIONS ONLY AS AN APPELLATE BODY

- The staff issue Tentative Decisions, which are then issued as Final Decisions if no Objection is filed; and
- The Commission addresses itself only to Objections to the Tentative Decisions or Notices of Intention to Pay. The Commission adjudicates the claim on the basis of the original complaint, which is effectively trial de novo for these claimants. Staff estimate this could possibly shorten time to resolution by 30-60 days.
- If transitioned to an appellate body, the size of the Commission could be reduced further, a result that could be achieved through natural attrition.

### RESPONSE AND INPUT FROM THE CLIENT SECURITY FUND COMMISSION

The Appendix I review of the CSF was discussed with State Bar staff and management by the full Commission at its meetings in April, June, and August. In discussions with the Commission and CSF staff, a number of concerns were raised regarding some of the possible changes outlined above.

Fundamentally, Commission members are concerned that shifting decision-making to staff would damage the integrity of the process in the eyes of the public and the parties. In their view, an independent Commission that includes public members helps ensure that the process is transparent, fair, and just, and is not driven by any budgetary or political imperatives of the State Bar.

Commission members pointed out that shifting to an appellate body would not reduce the frequency of meetings and will not result in any cost saving to the State Bar. The Commission currently spends about one third to a half of each meeting reviewing Tentative Decisions, so would be relieved of that, but would still need to meet as frequently to adjudicate the objections (appeals). Time savings for clients would be marginal. Thus the rationale seems unclear given how effectively they operate.

Commission members believe that ensuring integrity, transparency, fairness, and impartiality in the current process outweighs any theoretical reduction in the amount of time to receipt of tentative decisions that might be achieved if more authority was delegated to staff.

The Commission and staff believe that since almost all states do this in a manner similar to California's current program, this suggests that impartiality and fairness by unbiased neutrals is a key component to successful programs.

The Commission also has concerns about whether a wholesale delegation of its authority in Tentative Decisions would meet the requirements of *Saleeby*,<sup>50</sup> namely independent review, to include findings of fact and conclusions of law. Even if technically conforming, the Commission wonders if the perception of fair and impartial decisions would be jeopardized in any way by such a change. Also, the Commission is concerned that staff-issued Tentative Decisions could result in a higher rate of objection, forcing de novo review of more claims.

Finally, the Commission believes that it currently spends most of its time on objections, and only some of its time on Tentative Reviews in complex or novel cases. For that reason, the Commission believes that the proposed changes would do little to change its workload or meeting frequency, while providing minimal delay reduction to CSF applicants.

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<sup>50</sup> SCOCAL, *Saleeby v. State Bar*, 39 Cal.3d 547, <https://scocal.stanford.edu/opinion/saleeby-v-state-bar-30731>, (as of June 7, 2018). The State Bar Office of General Counsel has reviewed this issue and concluded that staff-issued decisions would conform to the requirements of *Saleeby*.

## Lawyer Assistance Program Oversight Committee

### INTRODUCTION

The Lawyer Assistance Program (LAP) and the Lawyer Assistance Program Oversight Committee (LAPOC or Oversight Committee) were established by the Legislature in 2002 to provide a means to rehabilitate lawyers with substance use disorders or mental health impairments so that their law practice does not endanger the public. The LAPOC is unique among State Bar subentities—it is the only subentity whose establishment is mandated by statute.<sup>51</sup> The LAP was designed to offer assessment, recommendations for rehabilitative programs, and referrals to active, inactive, and former State Bar licensees; the LAP itself does not provide treatment. In recent years it has been expanded to include applicants for admission to the State Bar suffering from substance use disorders and mental health issues. The statute also directs the State Bar to engage in outreach and education about the program and to create continuing legal education (CLE) programs on the topic of substance abuse; the LAP also provides CLE on mental health wellness topics.

The central questions posed by the Governance in the Public Interest Task Force in Appendix I and by the State Bar’s review of this subentity regarding the LAP program and the LAP Oversight Committee are:

- In light of the relatively low level of utilization of the program, should the LAP be retained within the State Bar or repositioned outside the State Bar?
- If the program is retained within the State Bar, what can be done to improve the relationship between the LAPOC and the Board of Trustees and thus the effective oversight of the program?
- How can performance metrics be used to measure program effectiveness and evaluate program activity?

In 2017, only 143 individuals (<1% of State Bar licensees) enrolled in the Lawyer Assistance Program (LAP). They joined the 134 persons still enrolled from previous years, resulting in 277 individuals served by the LAP in 2017. Additionally, about 180 persons were provided with assistance and information over the phone and 129 persons were served by LAP’s transition

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<sup>51</sup> Typically, California’s authorizing statutes or rules mandate the creation of a *program* but leave to the State Bar how to implement that program, including whether to establish a subentity or not and if so, the details regarding the composition and functioning of that subentity.

assistance service (brief counseling for those whose careers or other life circumstances are in transition). Although the exact number of attorneys in California who might benefit from such services is unknown, the literature on substance abuse in the attorney population suggests that the LAP is substantially under-utilized. Surveys of State Bar licensees indicate that reluctance to use LAP stems from concerns about confidentiality between LAP and the State Bar as well as doubts about the effectiveness of a State Bar-affiliated program. Complete separation of the program from the State Bar, while not a panacea, might alter those perceptions; however, conversations with several directors of such programs in other states that are housed in nonprofit organizations separate from the State Bar report the persistence of this perception and concern despite organizational separation.

Alternatively, recognizing the link between the State Bar and the program, the LAP could be restricted to only those cases arising from disciplinary proceedings of the State Bar. In that context, the program could be redesigned as a variation on the drug court model. Self-referrals and other non-disciplinary referrals could be outsourced.

Finally, if retained under any scenario, the current composition of the Oversight Committee (which is embedded in the authorizing statute) needs reevaluation and careful coordination of selection criteria among appointing authorities to achieve effective management of this program (e.g., measuring outcomes, evaluating effectiveness, using data to understand who is utilizing the program and for whom it is effective, and more).

## BACKGROUND

### PURPOSE

The purpose of the LAP, as described in the statement of legislative intent set forth in Business & Professions Code Section 6230, is to

seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.<sup>52</sup>

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<sup>52</sup> Business & Professions Code Section 6230 et seq., [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=6230.&lawCode=BPC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6230.&lawCode=BPC), (as of June 6, 2018).

Entry into the program, following orientation and assessment, has two paths: Support LAP and Monitored LAP. Support LAP does not require the LAP staff to verify and report participation and progress; Monitored LAP permits reporting to the source of referral. Voluntary self-referral (which can take the form of either Support LAP or Monitored LAP) is open to all eligible persons. Referral to Monitored LAP results mainly from a disciplinary matter by the State Bar Court; the Committee of Bar Examiners, which may refer bar applicants undergoing moral character evaluation, holding that process in abeyance while the applicant completes specific requirements of Monitored LAP; and employers, who may refer their attorney employees. Referral and program types are summarized in Table 12 below.

**Table 12. The Relationship between Referral Type and Program Type**

<u>Referral Type</u>	Program Type	
	Support LAP	Monitored LAP
State Bar Court		X
Committee of Bar Examiners		X
Self	X	X
Employer	X	X

## SOURCE OF AUTHORITY

The program is mandated by Business & Professions Code Section 6230 et seq. and the Oversight Committee itself is mandated by Business & Professions Code Section 6231. State Bar Rule 3.240 et seq. and Rule 5.380 et seq. also govern its operations.

## BOARD OVERSIGHT

The Board appoints six of the twelve members of the LAPOC, and appoints its chair and vice chair. The LAPOC prepares a legislatively mandated annual report highlighting its activities and key data points from the year in question and submits it to the Regulation and Discipline Committee of the Board of Trustees as an informational item after submission to the Legislature.<sup>53</sup>

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<sup>53</sup> See State Bar of California, *2017 California Lawyer Assistance Annual Report*, <http://www.calbar.ca.gov/Portals/0/documents/reports/2017-State-Bar-of-California-Lawyer-Assistance-Annual-Report.pdf>, as of June 3, 2018). This report is mandated by Business & Professions Code Section 6238.

## STRUCTURE

The structure of the LAPOC is defined by Business & Professions Code Section 6231. The LAPOC is composed of twelve members, six appointed by the State Bar, four by the Governor (two of whom are attorneys, two of whom are members of the public), and one member of the public each by the Speaker of the Assembly and the Senate Rules Committee. Qualifications of members specified in statute include public members (4), licensed mental health professionals (2), attorneys (4, 1 of whom must be in recovery for at least 5 years), a physician with expertise in alcohol and substance use disorders (1), and 1 member of the board of directors of a statewide nonprofit assisting lawyers dealing with alcohol or substance use issues. Members serve four-year terms that are renewable without limit.

The LAPOC typically meets in person four times per year, twice in Los Angeles and twice in San Francisco, with conference calls between meetings as needed.<sup>54</sup>

## WORK OF THE LAWYER ASSISTANCE PROGRAM

### WORK PERFORMED BY THE LAWYER ASSISTANCE PROGRAM OVERSIGHT COMMITTEE

The LAPOC is statutorily tasked to oversee operation of the LAP. Specifically, the LAPOC is required to:

- Establish the policies and procedures for acceptance, denial, and completion of participants in the LAP; and
- Recommend criteria for assessing rehabilitation pertaining to acceptance, denial, completion, or termination to the Board.

In practice, over the course of its existence, the LAPOC has also taken on these tasks:

- Review and recommendation of proposed legislation related to the program;
- Development of a strategic plan to guide program development and improvement; and
- Review and approval of financial assistance packages for program participants who cannot afford to pay.

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<sup>54</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 are compiled from a variety of sources and are best understood as self-description.

The LAPOC does not directly manage the caseload of the LAP; that work is performed by LAP staff. The operations of the program are directed by LAP staff, who manage the ongoing operations of the program.

### **WORK PERFORMED BY THE LAP STAFF**

The LAP's main office and most staff are located in Los Angeles. The program is managed by a Program Supervisor, who oversees the work of four Clinical Rehabilitation Coordinators (one in San Francisco and 3 in Los Angeles), two Administrative Assistants and a Senior Program Analyst focused on outreach and education for the LAP's target audiences (a new position which began in June 2018).

The Program Supervisor, in addition to supervising program staff, is responsible for supervising the management of programs, policies and procedures, facilitating the development of operational guidelines, ensuring activities of programs are completed in accordance with procedures and policies, and launching new initiatives. In addition, the Program Supervisor is the liaison to the Board of Trustees or other State Bar subentities, as well as to outside agencies.

Clinical Rehabilitation Coordinators (CRCs) conduct initial and ongoing participant assessments; evaluate assessment and client interview results in order to develop a monitoring or support plan; and provide ongoing case management to participants including professional recommendations and referrals for services and monitoring compliance and progress in referred services. In addition, these staff maintain ongoing contact and consultation with participants and referred service providers and review lab results, treatment records, therapy reports, and psychiatry reports. Finally, CRCs prepare reports including participation reports, probation reports, and termination reviews.

### **COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS**

Descriptive information about similar lawyer assistance programs is compiled by the American Bar Association's Commission on Lawyer Assistance Programs.<sup>55</sup> The programs exist in virtually every state and on the local level in large urban jurisdictions (e.g., New York City). LAPs vary widely in terms of their design, ranging from voluntary peer-to-peer support groups and referral services to more comprehensive diagnostic and rehabilitation programs. California's

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<sup>55</sup> American Bar Association Commission on Lawyer Assistance Programs, *2014 Comprehensive Survey of Lawyer Assistance Programs*, [https://www.americanbar.org/groups/lawyer\\_assistance/research.html](https://www.americanbar.org/groups/lawyer_assistance/research.html), (as of July 30, 2018).

LAP is among the more comprehensive of these programs in its diagnostic and rehabilitative operations.

In addition to variation in services provided, these programs are also organized in a variety of different ways, ranging from independent nonprofit organizations (35%), bar programs (46%), and Supreme Court programs (19%). Funding streams are equally varied, ranging from bar fees, program fees for service, and state budgets, to donations and grants, with many combinations of these sources of funding. Staffing levels and professional credentials also vary. In 2014, about one-quarter of the programs indicated they used volunteers and had no paid staff.<sup>56</sup>

This variation in program purpose, funding, staffing, and practices makes meaningful comparison among states difficult. However, even an imperfect measure like “Files Opened,”<sup>57</sup> shown below in Table 13, demonstrates that none of these programs serves more than 1 percent of the active attorneys in their bar: all face a challenge of underutilization.

**Table 13. Utilization Rates of Lawyer Assistance Programs in 6 States, 2014**

State	Number of Active Lawyers	Client Files Opened	Files opened per 10,000 Active Attorneys
California	163,327	571	35
Florida	68,464	164	24
Illinois	61,871	258	42
Massachusetts	44,257	105	24
Michigan	37,739	80	21
Texas	84,800	587	69

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<sup>56</sup> ABA Commission on Lawyer Assistance Programs, *2014 Comprehensive Survey of National Programs*, p. 27, [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lsc\\_colap\\_2014\\_comprehensive\\_survey\\_of\\_laps.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lsc_colap_2014_comprehensive_survey_of_laps.authcheckdam.pdf), (as of July 30, 2018).

<sup>57</sup> The measure is imperfect because the definition of a file and the rules for counting files were not standardized. For some programs, a phone inquiry opens a file, while for others like California it is a more formal process of client intake. California data has been revised to include telephone inquiries and referrals as well as Transition Assistance Service to make it comparable to the other states listed. Data from ABA Commission on Lawyer Assistance Programs, *2014 Comprehensive Survey of National Programs*, [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lsc\\_colap\\_2014\\_comprehensive\\_survey\\_of\\_laps.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lsc_colap_2014_comprehensive_survey_of_laps.authcheckdam.pdf), (as of July 30, 2018). Verification of counting rules for “Files Opened” was obtained by telephone research with program directors in these states by Michelle Harmon, State Bar LAP program supervisor.

A comparison with other jurisdictions regarding the source of referrals in Table 14 below shows California to be midrange on self-referrals, higher than all but one on disciplinary referrals, and the highest of all on bar admissions referrals.<sup>58</sup>

**Table 14. Number and Sources of New Referrals to Lawyer Assistance Program, 2014-2017**

	<u>Intake</u>		Self	<u>Source of Referral</u>	
	Completed Intake	Admission Denied		Disciplinary (SBC & OCTC)	CBE
<b>2014</b>	179	15	59	47	73
<b>2015</b>	127	13	53	34	40
<b>2016</b>	134	21	55	32	47
<b>2017</b>	143	19	56	41	46
<b>4-year average</b>	146	17	56	39	52
<b>Percentage</b>		<b>12%</b>	<b>38%</b>	<b>26%</b>	<b>35%</b>

## EVALUATION OF LAP BY CONSULTANT

As noted earlier, the Task Force on Governance in the Public Interest posed the question of whether this program should be retained within the State Bar or whether it should be repositioned outside the State Bar. If retained, the Task Force asked how the Board of Trustees and LAP Oversight Committee could engage more effectively and how the work of the LAP might be integrated more effectively into the State Bar overall.

To assist in answering these questions, the State Bar contracted with Patrick Krill, an expert in the field of substance use disorders in the attorney population, to analyze “the advantages and drawbacks of the State Bar as host of the LAP, to examine the approaches of other states in relation to lawyer assistance, and to present an informed, considered, and actionable determination regarding whether the LAP should be retained within the State Bar.”<sup>59</sup> His evaluation is included as Appendix C to this report.

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<sup>58</sup> For California, disciplinary referrals originate with the State Bar Court or Office of Chief Trial Counsel. Admissions referrals originate with the moral character review as part of the admissions process of the Committee of Bar Examiners.

<sup>59</sup> Patrick Krill, *The California Lawyers Assistance Program: Protecting the Public by Helping the Lawyers that Serve Them*, June 18, 2018, p. 1.

As noted by the consultant, the structural location of the LAP inside the State Bar is a barrier to improving utilization: “Even presented with such guarantees of confidentiality . . . many lawyers will still not trust an agency that is part of the State Bar to help them with private matters such as addiction or mental health disorders.”<sup>60</sup>

Reflecting this reality, a State Bar survey (a random sample comprising 25,000 active State Bar licensees, resulting in 1,284 responses) commissioned by the consultant in early 2018 asked respondents what resources they would seek help from in the event of problems with substance use or mental health issues. Only 4% (47 of 1,153) indicated they would turn to the LAP. In a different version of the same question, 21% said they would seek help from LAP, while 51% were unsure, and 28% said they would not.<sup>61</sup> Regardless of the variation in results, the low level of trust on the part of respondents is apparent.

Similarly, in the 2017 State Bar survey of all State Bar licensees, 35% of over 17,000 respondents noted that their reservations hinge on perceptions of program effectiveness (a concern concentrated among younger lawyers) and 40% cited concerns about confidentiality (a concern more typical of older lawyers).<sup>62</sup>

Weighing the current challenges and reforms underway in LAP, Krill concluded that “LAP would be best served by remaining as part of the State Bar for the time being.”<sup>63</sup> He recommended that the State Bar remain engaged and monitor progress and revisit the issues should questions about program effectiveness persist.

## OPPORTUNITIES FOR IMPROVING GOVERNANCE AND SERVICE DELIVERY

The Oversight Committee began discussion of the pros and cons of separation of the LAP program from the State Bar as early as 2016, pursuant to recommendations issued as part of the legislatively mandated workforce planning analysis. More recently, the LAPOC has been in

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<sup>60</sup> Patrick Krill, *The California Lawyers Assistance Program: Opportunities for Growth and Improvement in Time of Need*, October 6, 2017, p. 3. Confidentiality for non-disciplinary cases is guaranteed by Business & Professions Code, Section 6230(d).

<sup>61</sup> *The California Lawyers Assistance Program: Protecting the Public by Helping the Lawyers that Serve Them*, June 18, 2018, incorporated in this report as Appendix C.

<sup>62</sup> State Bar of California, Summary Results of 2017 Five-Year Attorney Survey, <http://www.calbar.ca.gov/Portals/0/documents/reports/ORIA/Survey-2017.pdf>, (as of June 5, 2018)

<sup>63</sup> Krill, op. cit., p. 17

conversation with consultant Patrick Krill as part of his work to generate a report on the LAP. State Bar staff engaged with the LAPOC regarding the Appendix I review process through meetings and conference calls in March, May, and August 2018.

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, regardless of where it is located.

*Role Definition:* The intended public protection function of the LAPOC is spelled out in the statute that created the program. How best to achieve that function in practice, however, is less clear. The LAPOC has accepted a broad mandate without questioning how the acceptance of self-referrals by individual attorneys and law students to Support LAP, for example, could be said to serve a public protection function, especially given the voluntary nature of these cases and the ability of participants to terminate their participation without any clinical support for that decision or oversight of their treatment makes it difficult if not impossible to assess the efficacy of treatment. The LAPOC has not been actively engaged with the Board of Trustees in a dialogue about the fundamental purposes of the program. *Accountability & Transparency:* The LAPOC has not made use of a comprehensive set of measures that would allow more effective management of the program or accountability to the Board. These might include statistics on who is being served (client demographics, client location, client type (attorney or law student), type of problem being addressed (mental health, alcohol, drug), time in program, relapse while in program and after program completion (test results), graduation from program, etc.) as well as results of outreach activities. As noted above under Role Definition, however, the voluntary participants in Support LAP enjoy, by design, complete autonomy regarding their participation making it extremely difficult to measure outcomes and establish whether the program is effective or not for these participants. Program management and analysis (e.g., of low utilization rates), to the extent it takes place, is being done by the staff of the LAP. The fact that the LAPOC files its annual report after submission to the Legislature is one example of a lack of accountability for the program to the Board of Trustees.

*Clear Lines of Authority:* The LAPOC operates largely within its authority as defined by statute and by the Board. However, the Oversight Committee has also indicated it believes it should be involved in managing the program budget as well as creating job descriptions and salary determinations for the State Bar staff who work in the LAP. The past lack of appropriate Board oversight and engagement with this program has led LAPOC to believe it should have greater autonomy than it does and that increased Board oversight would only frustrate the efforts of the LAPOC.

*Impartial, Consistent, and Fair Decision-Making:* The LAPOC makes decisions about eligibility for financial assistance for those served by the program; no issues regarding those decisions have surfaced during this review.

*Engagement:* The low level of engagement by State Bar licensees discussed above needs to be addressed. The Oversight Committee recognizes the need for more effective outreach and as a result, a staff position dedicated to this purpose was created and filled. At the same time, other issues of program management do not seem to receive sufficient attention from the Oversight Committee. Reevaluating the composition of LAPOC membership may be required to address this issue.

*Size:* At 12 members, the Oversight Committee is too large for its purpose and should be reduced in size to become a more effective program management body. Changes will need to be understood and agreed upon by all appointing authorities.

#### **OPTION 1: RETAIN WITHIN THE STATE BAR AND CLARIFY CHARGE AND RESPONSIBILITY OF THE LAWYER ASSISTANCE PROGRAM OVERSIGHT COMMITTEE**

- **Term limits:** Currently the LAPOC is unique among subentities in that there are no term limits for its members. Term limits consistent with other subentities of the State Bar should be implemented for volunteers assisting the LAP to ensure fresh perspectives inform the work of the LAP;
- **Composition of LAPOC:** The composition and credentials of LAPOC volunteer members are specified in Business & Professions Code Section 6231. The composition should be reevaluated, with an eye toward a greater focus on participation by members of the population that the LAP is charged with serving;
- **Role Definition:** The overall charge to the LAPOC should be reviewed by the Board and clarified; it is currently overly broad. The State Bar should provide formal orientation to LAPOC members, situating the work of the LAPOC within the State Bar's mission, and providing clear expectations regarding their service on LAPOC. This includes clarification of the LAPOC role in program management, including for example its role in strategic planning, program evaluation, program policies and fees, and outreach;
- **Accountability & Transparency:** The LAPOC should report regularly to the Board using meaningful measures of program effectiveness and outcomes. Rigorous evaluation of the program should be conducted, including review of the program design and the use of standardized assessment tools. As noted by the consultant evaluation report, one

tool (Brief Symptom Inventory (BSI)) is used at intake, but nothing is used to “assess progress, program efficacy, and symptom remission.”;<sup>64</sup> and

- Since the ultimate purpose of the program is public protection, any meaningful evaluation should also include longer-term tracking of participants to determine whether they are subject of future disciplinary proceedings or complaints related to substance abuse or mental health issues after completion of the program.

## **OPTION 2: SEPARATE VOLUNTARY REFERRALS FROM THE STATE BAR PROGRAM, WHILE RETAINING THE DISCIPLINARY AND MORAL CHARACTER REFERRALS**

- The State Bar would retain the approximately 60 percent of participants who are referred to Monitored LAP by the State Bar Court, the Office of Chief Trial Counsel, and the Office of Admissions;
- The State Bar would transfer the function of managing the self-referrals (whether Support or Monitored) to a separate entity outside the State Bar. This would require fee splitting (proportional to caseloads) of the revenues that support the LAP as well as reporting mechanisms to ensure that funds are utilized effectively;
- An evaluation would be conducted of the efficacy of managing the retained portion of the program as part of the State Bar’s Office of Probation;
- The State Bar staff would manage the State Bar LAP and report to the Board of Trustees; and
- The Board of Trustees and State Bar staff would perform the functions currently performed by the LAPOC.

## **OPTION 3: SEPARATE THE ENTIRE LAWYER ASSISTANCE PROGRAM FROM THE STATE BAR**

- The entire LAP, including both voluntary Support LAP and mandatory Monitored LAP, from all sources of referral would be transferred to an organization or organizations outside the State Bar. A private, third-party administering entity would be identified to assume management of the LAP. Drawing from the example of the newly reestablished

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<sup>64</sup> Krill, op. cit, p.7. The tool is now being used quarterly as a corrective to this observation.

program of Medical Board of California, the private entity should utilize a statewide network that covers assessment, treatment, and support;<sup>65</sup> and

- Funding for program overhead would be provided from current LAP revenues.

## RESPONSE AND INPUT FROM THE LAP OVERSIGHT COMMITTEE

The Committee began discussion of the pros and cons of separation of the LAP program from the State Bar as early as 2016, pursuant to recommendations issued as part of the legislatively mandated workforce planning analysis. More recently, the LAPOC conducted several conversations with consultant Patrick Krill in the first half of 2018 as part of his report on the LAP. The Appendix I review was a formal agenda item at meetings and/or conference calls in March, May, and August.

The Oversight Committee voiced concern about program instability if the program were transferred outside the State Bar. This concern centered on whether or not a suitable provider or set of providers could be found; doubt was expressed as to whether a single provider could be found who would provide both substance use disorder and mental health services. The Committee also discussed the value of a program dedicated to lawyers, and expressed concern that outside of the State Bar it might be difficult to find a comparable peer group setting. Additional concerns included the need to ensure stable, ongoing funding. With respect to the idea of housing the program in a separate nonprofit organization, the Committee was concerned that the effort required to establish a new organization would consume all the attention of the members and staff and would thus derail the LAP itself for a time. Even if a new organization were established, the same challenges to utilization would remain. In addition, securing stable funding outside the State Bar was of paramount concern to some members. The Oversight Committee also believes that current program staff would be unlikely to move from the State Bar to staff the program outside of the State Bar, which would be highly disruptive.

Other members indicated that they believed it was necessary first to determine what an ideal program would look like, how the concerns about confidentiality and effectiveness could be addressed by such a program, and then determine what that would cost and how it would be funded.

To some extent, the Oversight Committee is frustrated that the State Bar and the Board are creating disruption and interfering with the work of the program through the process of the

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<sup>65</sup> See Business and Professions Code, Division 2, Article 14, Section 2340.4.

Appendix I review. They feel the Board does not understand their work and that this is evidenced by even raising the question of whether the program serves a public protection function.

The Oversight Committee expressed the opinion that with their new strategic plan and actions undertaken by the LAP to implement that plan and implement the recommendations from the 2017 Krill report, the LAP is headed in the right direction. Making a large-scale change now would be disruptive to the progress that has been initiated. Additionally, they felt that if utilization were higher and the goals of the strategic plan fully implemented, the State Bar might have a different view of the role of LAP at the State Bar. The Oversight Committee asked if the Board would consider a slower timeline for evaluating the need for changes and for making them.

Finally, the Oversight Committee indicated that other states look to California, and if it appears the State Bar is not committed to its LAP, this will negatively influence programs in other states, at a time where the issues of substance use and mental health disorders in the legal community are beginning to get the attention they deserve.

## Committee on Mandatory Fee Arbitration

### INTRODUCTION

The Mandatory Fee Arbitration (MFA) program provides a forum for resolving fee disputes between attorneys and their clients and provides a mechanism for the enforcement of fee arbitration awards. The MFA program includes a network of local programs sponsored by 35 participating local bar associations, which conduct the majority of these arbitrations. The State Bar provides arbitration only in the absence of a local program or when a local program has a conflict that prevents it from resolving the matter. Although the program itself is legislatively mandated in Business and Professions Code Section 6200 et seq., how the program is administered is determined by the State Bar. In 1984, the State Bar established the Committee on Mandatory Fee Arbitration (CMFA or Committee) to administer this program.

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

- Should functions currently performed by the Committee be brought in-house and performed by staff?
- What is the strategy for strengthening and supporting the local fee arbitration programs?

The primary purposes of the Committee are to assist local programs to recruit and train arbitrators and to review local program rules. Both of these functions appear to be more appropriate for staff who apply existing standards and can draw on professional support for the development, design, and delivery of modern curriculum. Local fee arbitration programs need training on demand (distance learning modules) and more timely review of their local program rules, both of which could be more effectively delivered by staff. As presently constituted, the committee is too large and too focused on task level activities without a strategic approach to program management. The role of the Presiding Arbitrator and two Assistant Presiding Arbitrators, on the other hand, may well be suited to volunteers.

### BACKGROUND

#### PURPOSE

The MFA program is designed to provide an informal, low-cost process to resolve fee disputes between lawyer and client. The program ensures that fee arbitration is made available statewide. About 95 percent of these cases are handled through local bar association

arbitrations, with the remainder being arbitrated by the volunteer arbitrators appointed by State Bar staff. The annual caseload handled by the State Bar-appointed arbitrators in the last two years (2016 and 2017) averaged 59 cases; an average of 970 cases were handled by local bar arbitration programs during the same period. The caseload is summarized in Table 15 below.

In addition to arbitration, the MFA program also handles requests for enforcement of fee arbitration awards. Over the past two years (2016 and 2017), the State Bar received an average of 23 such requests annually. This work is currently handled by State Bar staff, who seek to enforce payment through communication with respondent attorneys. If unsuccessful, a staff Attorney prepares motions under the name of the Presiding Arbitrator. Upon approval by the Presiding Arbitrator, these motions are filed in State Bar Court and seek to have the respondent attorney enrolled “involuntarily inactive” for failure to pay a client who has prevailed in fee arbitration.

**Table 15. Caseload Summary, State Bar and Local Programs**

Year	State Bar		Local Programs
	Arbitration	Enforcement	Arbitration
<b>2017</b>	43	17	824
<b>2016</b>	75	29	917
<b>2-year average</b>	<b>59</b>	<b>23</b>	<b>871</b>

To assist local programs in attracting the volunteer arbitrators necessary to initiate or maintain local programs, the MFA program develops and delivers training at the request of local bar associations. The basic training offers 1.75 hours of general MCLE credit and 1.0 hour of legal ethics credit, for a total of 2.75 hours MCLE credit. The advanced training is shorter and offers 2.0 hours of MCLE credit (1.0 hour of which is ethics).

#### **SOURCE OF AUTHORITY**

In 1978, the California Legislature enacted section 6200 et seq. of the Business and Professions Code that established the mandatory fee arbitration program. This statute tasks the Board of Trustees with designing and implementing a system to carry out that mandate. In 1982 the Board established a special committee on mandatory fee arbitration, which it converted to a

standing committee in 1984. State Bar Rules, Rule 3.500 et seq. provide the framework for how the State Bar's program works.<sup>66</sup>

## BOARD OVERSIGHT

The members of the Committee are appointed by the Board of Trustees following recommendations by the Committee. The work of the Committee on Mandatory Fee Arbitration is overseen by the Regulation and Discipline Committee (RAD) of the Board of Trustees. Up until the middle of 2017, the Committee on Mandatory Fee Arbitration provided regular status reports to RAD detailing its work; RAD is currently reviewing the frequency and contents of all reports it receives and has not yet provided guidance regarding reporting from the Committee.

## STRUCTURE

The CMFA consists of 16 members, all of whom are appointed by the Board of Trustees. The composition of the Committee includes lawyers and public members who are experienced in fee arbitration, whether as arbitrators, or management or staff of local bar fee arbitration programs.<sup>67</sup>

The Committee historically held six meetings per year, but in the 2017-2018 committee year that number has been reduced to five to reduce costs and staff work (i.e., drafting meeting agendas, notices, and minutes, etc.). Committee members who conduct training and outreach incur additional hours, as do those who are assigned projects (discussed below). Meetings are typically held in person in Los Angeles or San Francisco

The CMFA has two primary subcommittees:

- Education Committee: responsible for the development and updating of training materials for local fee arbitration programs; and
- Appointments Committee: responsible for the recommendation of new members and committee officers.

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<sup>66</sup> Rules of the State Bar, Title 3, Division 4, Chapter 2, Article 1, Rule 3.500 et seq.

<sup>67</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 are compiled from a variety of sources and are best understood as self-description.

A Presiding Arbitrator and two Assistant Presiding Arbitrators are selected from the committee. Their functions are described below.

### **Presiding Arbitrator**

The Presiding Arbitrator is a volunteer selected from among the Committee members. The Presiding Arbitrator (PA) performs several functions. In Fee Arbitration cases submitted to the State Bar, the PA issues orders on Fair Hearing requests,<sup>68</sup> Statute of Limitations challenges, issues other orders as required (e.g., on contested challenges to arbitrators). In Enforcement requests, the PA issues orders regarding Administrative Penalties (selects penalty amount), reviews attorneys' financial status forms in determining whether to grant abatement or reasonable payment plan amounts; appears on caption of Motion for Involuntary Inactive Enrollment and appears before the State Bar Court if a hearing is requested by respondent attorney. Finally, the PA serves as sounding board for the State Bar's statewide network of volunteer fee arbitrators on novel/unusual legal issues (typically relating to pending litigation that might affect arbitration of fee disputes or regarding the enforceability of agreements).

### **Assistant Presiding Arbitrator**

The program utilizes two Assistant Presiding Arbitrators (APA), who are selected from among the Committee members. In fee arbitration cases submitted to the State Bar, the APA issues fee waiver orders; hears State Bar fee arbitration cases involving disputes less than \$1,000 (in lieu of assigning these minor disputes to other volunteer arbitrators); and steps in for Presiding Arbitrator (PA) in any of PA duties if PA is unable to hear the matter. In Enforcement matters, the APA steps in for Presiding Arbitrator in any of PA duties if PA is unable to hear the matter.

### **STAFFING**

The Committee is staffed by two employees of the State Bar's office of Attorney Regulation and Consumer Resources, an Attorney and a Senior Program Analyst, supervised by a Program Supervisor. Both State Bar staff support the MFA program and manage its day-to-day operations.

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<sup>68</sup> A Fair Hearing request is initiated by clients who request a hearing by the State Bar MFA program because they allege they cannot get a fair hearing through the local fee arbitration program. The State Bar MFA program staff process the request and seek information from local bar and attorney involved in the dispute. This information is considered by the Presiding Arbitrator, who issues any order accepting or denying the request. The majority of such requests are not granted and clients are advised to refile with a local program.

**WORK OF THE MANDATORY FEE ARBITRATION PROGRAM**

**WORK PERFORMED BY THE COMMITTEE ON MANDATORY FEE ARBITRATION PROGRAM**

The Committee supports local bar association arbitration programs by providing mandatory review of local bar rule changes and formal approval of local bar fee arbitration programs and arbitrators based on *Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs* and the *State Bar's Model Rules of Procedure* (estimated by the chair as 25% of its work). In addition, the Committee develops training curriculum resources for local attorneys and arbitrators (who may serve in local programs, accept assignments from the State Bar, or both) and conducts the fee arbitrator MCLE training programs across the state. Trainings are typically conducted in person with a team of three CMFA members for local fee arbitration programs managed by local bar associations (estimated by the chair as 40-50 percent of its work).

The Committee also evaluates and proposes legislation on fee arbitration as needed (estimated by the chair as 20 percent of its work, although the extent of this work varies widely from year to year). Other responsibilities of the Committee include periodic updating of key reference documents for fee arbitration (sample fee agreements, etc.); reviewing existing policy and making policy recommendations; and issuing arbitration advisories to assist arbitrators (see Table 16 below).

**Table 16. Arbitration Advisories by Year**

<b>Year</b>	<b>Number of Advisories</b>
2016	1
2015	2
2014	1
2013	0
2012	3
2011	2
2010	1

The CMFA provide support to the numerous local bar associations as a clearinghouse of information and best practices for fee arbitration, and works to recruit lawyers to the specialized skill of fee arbitration and in that way to strengthen local bar and State Bar fee arbitration programs. Individuals trained as arbitrators serve as volunteers for local and/or State Bar programs; local attorney arbitrators are vetted by State Bar staff through checking on reportable actions with the Office of Chief Trial Counsel of the State Bar. Non-attorney arbitrators are checked through a less formal process by State Bar program staff. Once

accepted as volunteers in the State Bar program, they serve for one-year terms and must be recommended for reappointment; recommendations from the Committee on reappointment are reviewed and approved by the Board of Trustees.

### **WORK PERFORMED BY STAFF**

The Senior Program Analyst working on Mandatory Fee Arbitration at the State Bar manages the arbitration of matters referred to the State Bar when local jurisdictions do not/cannot arbitrate. This work includes the appointment of a sole arbitrator or a panel of three arbitrators (depending on the size of the claim) from the statewide pool of approximately 460 arbitrators, as well as caseload management of these cases from filing to resolution. Local volunteer arbitrators serve local or nearby jurisdictions, and the program relies on their willingness to serve to provide maximum coverage, since the majority of arbitrations are provided through in-person hearings.

The Senior Program Analyst also coordinates with the Presiding Arbitrator regarding the handling of challenges (statute of limitations, jurisdiction) arising from local and state arbitration matters for:

- Cases claiming less than \$500, which are reviewed without a hearing;
- Cases involving \$500 to \$1,000, which are decided by a sole arbitrator (an Assistant Presiding Arbitrator), usually based on evidence submitted but sometimes with either a telephonic or in-person hearing;
- Cases involving between \$1,000 and \$15,000, which make use of a single arbitrator and involve a hearing; and
- Cases claiming more than \$15,000, which are heard by a panel of three arbitrators (2 lawyers, 1 public member), or the parties can stipulate to the use of a single arbitrator, and involve a hearing.

The staff Attorney working on Mandatory Fee Arbitration at the State Bar handles enforcement actions from filing to resolution. If filing an action in State Bar Court is required for enforcement, the staff Attorney drafts the necessary pleadings, which are filed in the name of the Presiding Arbitrator; the Presiding Arbitrator appears in State Bar Court when necessary. The enforcement work performed by the Attorney also includes managing payment plans as well as imposition of administrative penalties if imposed by the Presiding Arbitrator.

Both the Senior Program Analyst and the staff Attorney at the State Bar provide administrative support to the Committee as needed with the staff Attorney serving as liaison to the Committee.

## **SURVEY OF LOCAL FEE ARBITRATION PROGRAMS**

To help inform the assessment of this program, the State Bar surveyed all local fee arbitration programs in August 2018; 22 of the 35 active programs provided responses and written comments.<sup>69</sup> Local program directors expressed a desire for:

- more on-demand, online training and resources;
- greater efforts by the State Bar to educate attorneys and the public about the fee arbitration program;
- the resumption of statewide, in-person roundtables of local program directors to promote peer-to-peer learning;
- improving the current contracting and reimbursement process for State Bar reimbursement for cases handled by local programs; and
- increased and consistent communication about fee arbitration issues.

## **COMPARISON WITH PRACTICES IN OTHER JURISDICTIONS**

Thirty-nine states have a program that addresses fee arbitration, while only eight of those (including California) have a mandatory program.<sup>70</sup> Typically, a committee or board is appointed by the Supreme Court or the State Bar. This committee or board manages fee arbitration, assigning individuals or panels to arbitrate and rule, depending on the amount in controversy. Most committees or boards also have public members in addition to lawyer members and jurisdiction is geographically based in counties, cities, or districts created for this purpose. Most programs rely on a combination of local and state-level fee arbitration programs.

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<sup>69</sup> State Bar of California, “Survey of Mandatory Fee Arbitration Programs,” August 2018. Summary results included in this report as Appendix G.

<sup>70</sup> American Bar Association Standing Committee on Client Protection, *Survey of Arbitration Programs*, [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/clientpro\\_migrated/fee\\_arb.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/clientpro_migrated/fee_arb.authcheckdam.pdf) (as of May 4, 2018).

California's program is one of a few that have an enforcement mechanism. Those that do typically have either or both of the following remedies: suspension of license to practice until award is satisfied and/or right to enforce arbitration award as a judgment in court.<sup>71</sup> California's enforcement program includes both of those elements, preceded by a collection effort by program staff.

## 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 Committee is clear on its regulatory role and supervisory role vis-à-vis local programs. What appears less salient to the Committee is the need for a proactive strategy for ensuring the maximum availability of fee arbitration at the local level everywhere in the state. Local programs come and go and the Committee reacts to those events rather than developing and pursuing a systematic strategy for growing programs where they do not exist. Similarly, a strategy for preventing the need for fee arbitration in the first place is evidenced in some of the work of the Committee, but needs to be part of a broader and more consistent regulatory strategy.

*Accountability & Transparency:* The Committee nominally reports to the Board through the Regulation and Discipline Committee (RAD). *Clear Lines of Authority:* The authority of the Committee is clear as are the issues that are authorized by the Committee (e.g., approval of local program rules) and by the Board (e.g., approval of statewide model rules of procedure).

*Impartial, Consistent, and Fair Decision-Making:* The decisions of the Presiding Arbitrator and two Assistant Presiding Arbitrators are based on the application of the law, rules, and personal experience and knowledge of precedent. The extent to which these decision rules and precedents are documented is not clear.

*Engagement:* Local programs are engaged and express a desire for more consistent and responsive support. This includes the availability of on-demand, online training for new local arbitrators as well as the return to statewide/regional roundtables for local program directors

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<sup>71</sup> Program details from ABA Standing Committee on Client Protection, *Survey of Fee Arbitration Programs*, 2006, 2008, 2013, 2016, [https://www.americanbar.org/groups/professional\\_responsibility/committees\\_commissions/standingcommitteeonclientprotection/directoriesandsurveys.html](https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standingcommitteeonclientprotection/directoriesandsurveys.html) (as of May 4, 2018).

to share solutions and discuss challenges. The local programs also seek assistance from the State Bar to build greater awareness of the availability of fee arbitration on the part of consumers of legal services.

*Size:* The current size of the committee is too large. When the size of subentities is defined by considerations other than their function, they are almost always too large. Size often dictates 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, or delivering services in person rather than making appropriate use of technology. A large size almost always means a high rate of absenteeism from meeting to meeting, making continuity and full participation of all members almost impossible.

#### **OPTION 1: STAFF-DRIVEN PROGRAM, WITH VOLUNTEER PRESIDING ARBITRATORS**

- MFA staff continue to manage the statewide caseload with the statewide network of local volunteer arbitrators;
- Staff assume responsibility for reviewing local program rules for conformity with State Bar standards for arbitration programs;
- The arbitration and enforcement functions performed by the Presiding Arbitrator and two Assistant Presiding Arbitrators continue to make use of attorney volunteers;
- Taskforces or working groups of expert arbitrators convene as needed for limited-term work to develop policy recommendations (e.g., changes to arbitration fees, revisions to guidelines and standards);
- Two or more slots on the Committee on Professional Responsibility (COPRAC) are designated for fee arbitrators. This would then allow arbitration advisories to be developed and disseminated using the State Bar's process for disseminating ethics opinions; and
- Fee arbitration staff work to enhance reporting to the Board through the Regulation and Discipline Committee by identifying the data and statistics that would serve to ensure effective oversight by the Board as well as the frequency of reporting.

## **OPTION 2: ENTIRELY STAFF-DRIVEN PROGRAM**

- Staff continue to manage the statewide caseload with the statewide network of local volunteer arbitrators;
- Staff assume responsibility for reviewing local program rules for conformity with State Bar standards for arbitration programs;
- The functions of the Presiding Arbitrator and two Assistant Presiding Arbitrators for arbitration and enforcement are brought in-house and assumed by staff attorney(s).

## **RESPONSE AND INPUT FROM THE COMMITTEE ON MANDATORY FEE ARBITRATION**

Following discussion between State Bar staff and management and the Committee chair in April, two additional conversations were held at meetings of the full Committee in May and July. In August, at the suggestion of the Committee, a survey of local fee arbitration programs was completed to assess how well the program was working with and for them.

Currently, the Committee believes it is the right size and that its size allows it to include an appropriate mix of members representing northern and southern California as well as a necessary cross-section of practice areas. The Committee chair believes the Committee should have geographic representation from across the state in order to develop and sustain relationships with and support for local fee arbitration programs as well as to encourage the growth or maintenance of local fee arbitration programs. The non-lawyer public members are experienced administrators and/or staff of MFA programs at local bars and provide valuable perspective.

The Committee also indicated that the large size of the Committee is necessary since the orientation and training that it delivers is best done in person, currently in teams of three. The Committee believes that this allows for establishing better relationships with local arbitrators and programs, allowing Committee members to serve as effective mentors following their in-person sessions. In addition, the Committee expressed concern that without their presence on the ground, it would be difficult to get a feel for the local program needs and would eliminate the ability to provide real-time technical assistance and advice.

The Committee chair and staff believe that the experience of practicing arbitrators who serve as the Presiding Arbitrator and the Assistant Presiding Arbitrators and as Committee members gives them a valuable perspective that would be lost if their work was performed by State Bar staff.

With respect to arbitration advisories (which vary in length from 2 to 16 pages), the Committee believes the size and breadth of the Committee is important for capturing a range of viewpoints. They noted that some advisories had been cited by the Federal courts, a sign of their quality.

Finally, additional suggestions were made in considering the future of this program and the achievement of its purpose in protecting the public. Among those was the idea that the Board of Trustees should also consider the addition of mediation of fee disputes as an additional, more informal and less expensive process for clients. It was noted that the growth of mediation since the inception of the fee arbitration program is a development that deserves greater consideration by the State Bar.

APPENDICES

**APPENDIX A.**

**ELISE WALTON AND ELIZABETH PARKER, COMMITTEE OF BAR EXAMINERS REPORT**

# **Committee of Bar Examiners Report**

## **Work Draft June 1, 2018**

Elise Walton and Elizabeth Parker

Work Draft

# Committee of Bar Examiners Report

Work Draft June 1, 2018

Elise Walton and Elizabeth Parker

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## **Executive Summary**

The Committee of Bar Examiners (CBE) is an entity charged by statute for managing the licensing of California lawyers on behalf of the California Supreme Court under the supervision of the Board of Trustees of the State Bar of California. In response to the 2017 California State Bar Governance in the Public Interest Task Force, Appendix I, guidance from State Bar leadership, the State Bar Board of Trustees, and the Office of the General Counsel, the consultants engaged in a specific design project to clarify, align and improve the Committee of Bar Examiners (CBE) and their activities and accountabilities. The project made explicit the probable benefits and costs of specific decisions and puts forward opportunities for improving the function and effectiveness of the CBE and the State Bar and the logic of final recommendations.

In all, the report makes recommendations in three specific areas: Governance Design, Moral Character, and Accreditation. This report reviews 24 specific recommendations developed in conjunction with the CBE Working Group, and five general recommendations put forward independently by the consultants. In general, the recommendations speak to improved governance and oversight practice, including regular benchmarking and audits of existing practice, as well as updates to past practice to align with current governance and management standards. These recommendations and their logic are discussed in the report and summarized in the reference documents.

It is the hope that this report provides useful guidance for the State Bar and the CBE toward implementing improved practices and continued contribution toward providing a strong system for lawyer licensing, both economical and efficient, that both protects the public and enables good lawyers to serve the public.

This report is respectfully submitted by Elise Walton, PhD and Elizabeth Parker, May 2018

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### **Context: Appendix I and Programs Committee Assignments**

Periodic review of important responsibilities and functions is the hallmark of all well-managed organizations. Accordingly, the Board of Trustees directed that all functional areas of the State Bar be reviewed in 2018-2019. More specifically, Appendix I of the 2017 Report of the Task Force on Governance in the Public Interest provides questions on which to build a more comprehensive review of current CBE functions and practice, with specific areas and ideas suggested for improvement. In addition, the CBE assessment went beyond the specific parameters assigned in Appendix I, in the belief that a holistic approach would be more beneficial to making fundamental and lasting improvements.

The 2017 Governance in the Public Interest Task Force (Task Force) noted the Board's limited engagement in CBE's work. Equally, the Task Force noted that CBE appears to act independently in matters that should come to the Board's attention, such as public statements made on behalf of the State Bar and important policy considerations with significant implications for the State Bar's exercise of its licensing responsibilities. The Task Force recommended strengthening the Board's relationship with CBE.

The Task Force also noted CBE's large volume of work and range of functions and observed that some arguably might be more suited for staff or outside entities. For example, a professional accreditation agency might better handle CBE's law school accreditation function; similarly, staff may be better positioned to review various administrative processes (e.g., examination of refund requests). Reducing CBE's administrative workload would make time and resources available for broader policy issues, particularly important given the transformational changes occurring in legal education and law practice.

The Task Force also discussed the importance of the Law School Council and its relationships with the CBE and the Bar. While the report recognized the importance to the State Bar of maintaining a formal relationship with law schools, the current mechanism is of limited benefit. No mention of the Law School Council appears in the Board Book, and there is no explicit Board oversight mechanism to ensure that the Board knows what the Council does or whether it is performing its function effectively. Consequently, there are gaps in communication and role clarity.

In addition to the specific assignments set forth by the 2017 Governance Task Force, this may be an opportune time to review the bar exam and admissions process overall, as many jurisdictions are reviewing the nature, scope and validity of the bar exam and overall regulatory process with an eye to understanding their value in protecting the public, as well as providing good educational preparation for future lawyers. The move to adopt the Uniform Bar Exam (UBE) by many jurisdictions reflects a growing awareness of the need to professionalize the exam process, but other changes are being considered as well. As one example, Arizona is looking at its entire regulatory framework; Arizona Law Schools have begun allowing tests other than the Law

Students Admission Test, such as the GRE, to satisfy entrance requirements.<sup>1</sup> Recently Arizona has also allowed its bar exam to be taken before a student graduates from law school, thereby shortening the time before a student can begin to enter the labor market and repay the increasingly significant education loans which result from a traditional three year education in an ABA approved law school. Much of the impetus for change in Arizona is due to external factors, including an historically litigious context, and the relative power of legislative actors, who have been actively considering separating the Bar's subject matter sections.

In October 2017, Executive Director Leah Wilson, on behalf of the Board of Trustees of the State Bar of California (Programs Committee), requested a study on the role and design of California's Committee of Bar Examiners (CBE). The specific request was to prepare and submit a well-researched, well-reviewed with relevant parties, and well-documented proposal for improving CBE design, development and function. More specifically, the study was tasked to examine issues raised in the Governance in the 2017 Public Interest Task Force Report, Appendix I, and specifically to better define CBE's relationship with the Board and develop a plan for meaningful engagement between CBE and the Board.

The project spent several months in discovery, conducting interviews with current and past CBE members, Bar Examiners in other jurisdictions, other California licensing agencies, Admissions staff, relevant Subject Matter Experts (SMEs) and noted experts, as well as Bar admissions practices in other countries.<sup>2</sup> In all, 45 interviews were conducted. As well, background documentation was reviewed, including the CBE Orientation materials, prior reports and studies, court correspondence and additional academic commentary.

Based on this discovery, the project identified specific design areas for consideration and evaluated redesign and improvement options around each area. The project made explicit the probable benefits and costs of specific decisions and put forward the logic of the final decision.<sup>3</sup> In all, this report supports 24 specific recommendations developed in conjunction with the CBE and staff, discussed below, and adds additional recommendations based on our research and experience.

An early meeting was set up with CBE members to discuss issues and opportunities. Trustees Joanna Mendoza and Todd Stevens, members of the board Programs Committee were also in attendance. Consultants Elise Walton and Elizabeth Parker shared some preliminary perspectives; however, the session was principally designed to identify issues the CBE felt important to address in any study.

After initial interviews with some CBE members and Admissions Staff, the CBE Chair and Executive Director appointed a working group (including Erika Hiramatsu, Larry Kaplan and David Torres) to facilitate the investigation and further explore focus priorities. The group met several times to review key design elements, including primarily governance (structure, size,

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<sup>1</sup> <https://www.wsj.com/articles/arizona-law-faces-fight-over-lsat-policy-1462008600>

<sup>2</sup> See *Reference Table 1: Interviewee List* for names of those interviewed

<sup>3</sup> See *Reference Table 2: Governance Recommendations from CBE*, for a review of the debates and discussion.

terms, roles, subcommittees), accreditation, accommodation, moral character, policy and finance related topics, and relationships with key constituents. During these meetings, major proposals were discussed and reviewed for potential benefits and risks. The working group summarized their thinking and the logic for their preliminary recommendations to facilitate a dialogue with the full CBE at its February 2, 2018 meeting. During the meeting, many recommendations were accepted, some were debated and rejected, and additional suggestions for improvement were offered.<sup>4</sup>

After the meeting, the consultants continued work to review practices in other jurisdictions and began report writing in conjunction with staff guidance on timing and report design.

## **General Background**

### **Committee of Bar Examiners in Brief**

The Committee of Bar Examiners (CBE) plays a critical role in the overall administration of the bar exam and the admission of lawyers to the State Bar of California. Historically, functioning as an oversight and appeals committee, the key activities of the CBE have been:

- Support the development, administration and grading of the California Bar Examination to over 14,000 applicants per year;
- Oversee the development, administration and grading of the First-Year Law Students' Examination to approximately 800 applicants per year;
- Oversee the moral character reviews of more than 7,000 applicants for admission to practice law in California per year; handle appeals prior to interim review by the State Bar Court or final review by the California Supreme Court;
- Support the accreditation process of 21<sup>5</sup> law schools in California that are not approved by the American Bar Association and provide oversight of an additional 20 registered unaccredited law schools, a category which includes correspondence law schools, distance-learning law schools and fixed-facility law schools.<sup>67</sup>

In addition, the CBE may consider items related to:

- Operations issues related to the administration of examinations; and
- Applicants' petitions for waivers of Committee policies and rules, which relate to such things as refunds, late fees and deadlines.

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<sup>4</sup> See Table 2 in References for Summary

<sup>5</sup> Technically, CBE accredits 17 schools, but if branch campuses are included, 21 actual campuses are accredited. We use the number 21 as a more accurate reflection of the workload. We use 21 throughout this document. See Rule 4.105 Definitions, Rule 4.160 Standards, Rule 4.162 Periodic inspection, Rule 4.165 Major changes, as well as 170-172 for an overview on the California accreditation process.

<sup>6</sup> <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Law-Schools#cals>. Numbers reflect a simple count. Branch schools are counted separately from parent.

<sup>7</sup> California is one of five states that allows candidates from non-ABA accredited schools to sit for the bar. Several states also allow graduates from non-ABA law schools to sit for their bar exams, but only if they have been licensed in their sending state and successfully practiced, typically for three to five years.

Changes adopted in early 2018 formally eliminated legacy CBE activities (e.g., some budget review) that are not applicable, given structural, administrative, and judicial changes. Further, it was explicitly clarified that CBE is a committee of the State Bar, and thus reports directly to the Board of Trustees on all policy work and administrative matters, although not on individual admission recommendations.

Thus, the CBE suggests or recommends practice, process and policy changes to the Board of Trustees, but within the administrative system of the Supreme Court. A frequent sequence of events is: (1) any of a variety of stakeholders (e.g. public, Court, Bar, or CBE) might raise a concern or suggest a change (e.g., “our pass rates are too low” or “we should change the cut score”; other concerns and proposals might focus on exam design, exam validity, passing score); (2) Admissions staff, with agreement by the CBE, sponsors research into the topic; (3) Admissions Staff and CBE review the research and recommendations; (4) the CBE makes a recommendation to the State Bar Board; and (5) the Board reviews the recommendation, then forwards its recommendation onto the Court. As noted above, the only exception to this basic process is that of the formal bar pass candidate and admit list. Candidates for admission to the bar are conveyed directly from the CBE to the Court, without review by the Board.

The all-volunteer 19-member CBE committee consists of:

- 3 public members<sup>8</sup> 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 to be 9 lawyer members and one judicial officer. At least one of the 10 examiners must be a judicial officer in this state, and the balance must be California licensed attorneys. At least one of the attorney examiners shall have been admitted to practice law in California within three years from the date of his or her appointment. The Court appoints from a list of nominees provided by the State Bar.<sup>9</sup>

All members are appointed for four-year terms, which may be renewed at most three times.<sup>10</sup> All are eligible for appointment by the Supreme Court to one-year terms as Chair and Vice-Chair of the Committee.

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<sup>8</sup> Public member refers to a trustee appointed to represent the general public, and may or may not be a legal professional

<sup>9</sup> This new lawyer appointment process was adopted January 1, 2018. Source: <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees-Commissions/Committee-of-Bar-Examiners>

<sup>10</sup> Public members have occasionally stayed past their appointed terms if a replacement was not named/appointed by the Governor or Legislature. Lawyer members have not stayed past their terms.

## **Institutional Context**

In considering the potential governance design and process recommendations, it is important to understand the organizational context in which the CBE operates. A recent review conducted by the State Bar Office of the General Counsel establishes the following foundational elements. Specifically:

- The Supreme Court has inherent authority over the practice of law in California, including Admissions functions to the State Bar.
- The State Bar is the administrative arm of the Court for admissions matters.
- The Legislature, in its shared authority with the Court over the State Bar, has set forth statutory obligations of the State Bar regarding Admissions.
- The State Bar's authority over the various Admissions functions is exercised through its Board, subject to the ultimate authority of the Court.
- As authorized by statute, the Board created CBE as a committee of the Board and promulgated rules setting forth the CBE's policies and procedures for establishing and enforcing admissions and educational standards.<sup>11</sup> Rules proposed by the CBE and approved by the Board must be submitted to the Court for review and approval.
- The CBE must comply with all Board policies, including but not limited to contract, fiscal, grant and personnel control policies.
- Accreditation of California law schools is undertaken by CBE based on legislative mandate, subject to approval by the Board, and not as part of the Court's inherent authority to regulate the practice of law in California.

The CBE administers admissions functions to the extent that the Board authorizes, subject to the ultimate authority of the Court. The CBE may not act on its own or without Board oversight in admissions matters. The CBE must report to and provide status reports on its work to the Programs Committee of the Board. Generally, CBE actions would be only recommendatory to the Board. Recent examples would include the approval of the Board sought by the CBE in 2016 to modify the format of the California Bar examination.

## **Law School Council in Brief**

The Law School Assembly was created by the State Bar Board of Trustees as an organization to provide a forum for discussion with all members of California's legal academic community on topics of mutual concern relevant to the requirements for admission to the State Bar. Specifically, membership included all law schools, ABA- accredited and California-accredited and unaccredited law schools. From this body, a Law School Council is selected by vote of the Assembly members

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<sup>11</sup> Section 6046 provides that the Board *may* establish an examining committee having the power to examine all applicants for admission to practice law, to administer the requirements for admission to practice law, and to certify to the Supreme Court for admission those applicants who fulfill the legal requirements. This examining committee is to have 19 members, 10 of whom are State Bar members or California judges, including one within 3 years of admission to the Bar, and 9 of whom are non-attorney members of the public.

according to school type. The 14-person Law School Council (Council) includes 10 law school deans, elected by their category of school and appointed by the State Bar Board, three CBE members appointed by the CBE Chair, and one trustee from the State Bar Board of Trustees. Law school members serve terms of three years and should proportionately represent student enrollment and first-time bar applicants (e.g., two from Public ABA-approved law schools, four from private ABA-approved law schools, two from California accredited law schools, one from California's unaccredited law schools (i.e. correspondence/distance schools). This distribution has sometimes raised issues as to whether the larger ABA schools engage sufficiently, often because the topics considered may not be of significance to them.

Over time the Council has functioned to advise the CBE on matters relating to content and form of the bar examination, problems of coordinating curricula, and on all aspects of law school education relevant to the bar examination process; it acts as a two-way channel of information and as a sounding board and source of expertise for the CBE for proposals from the CBE or from the law schools and advises on such other matters as may be appropriate from time to time.

The CBE's Advisory Committee on California-Accredited Law School Rules, known as the Rules Advisory Committee (RAC), was formed by the CBE to provide a forum for the California-accredited law school Deans and the CBE to discuss accreditation rules and guidelines in advance of any substantive changes and provide the opportunity for RAC to make recommendations before final actions are taken.

The Council meets one to two times a year and the full Assembly generally meets once each year if there are matters of mutual interest to discuss. The Council also designates two liaisons to attend CBE meetings. Both the Council and the Assembly may periodically become active in important discussions, such as when the bar examination minimum cut score was being explored. In addition, the Council may be asked to consider topics such as changes in the rules, bar examination scope and form, examination statistics, and other admission requirements that may directly affect the law school community.

An agenda for each Council or Assembly meeting is created and coordinated by the State Bar's Office of Admissions and mailed at least ten days prior to the meeting. The Chair of the Council has primary responsibility for approval of the agenda. Generally, the Office of Admissions produces a summary of each meeting, and copies of the summary are distributed to all California law school deans. The program for the Law School Assembly meeting (alternately held in the San Francisco and Los Angeles areas), is discussed with the Council, in coordination with the CBE.

### **Governance Design Comparisons**

## Discussion and Context

The design and functioning of Bar Examiners<sup>12</sup> varies widely across jurisdictions. In all cases, they reflect the unique character, size and history of their state. Generally, the nomenclature of Bar organizations is unclear and can be confusing. For instance, the term “Unified Bar” has very little documented formal explanation but typically means combining the local bar organizations into a single statewide bar organization in which membership is required for the practice of law (hence, meaning ‘mandatory’) or alternatively, unifying two distinct functions (regulatory and member services) into one organization. Some mandatory bars provide regulatory functions, and some do not. Some mandatory bar associations are responsible for the regulation of the legal profession in their jurisdiction; others are professional organizations dedicated to serving their members; in many cases, they are both.

### Insert 1: Proposed Bar Terminology

**Mandatory:** a lawyer must be a member of the state bar in order to practice law in that state. In this context, a bar is an organization that is a governmental entity.

**Voluntary:** a lawyer may pay dues and be a member of the state or local bar, but it is not required to do so in order to practice in that state. These Bar entities are private organizations that promote the professional, social, educational, and political interests of their members.

**Unified:** A unified bar is one that has both regulatory and voluntary (e.g. trade associational) aspects.

Moreover, when the terms “unified,” “integrated,” “mandatory” and “voluntary” are used to describe bar organizations, there are no consistent definitions of the functions that each of these is required to include. Generally, ‘unified’ and ‘integrated’ are terms used interchangeably to describe bar organizations where both regulatory and representational functions are combined in one state-wide body, in which membership is required for the practice of law. Academic commentary and analysis generally stops with the recommendation that trade and regulatory functions should be placed in separate organizations, reflecting traditional legal concerns with separation of powers and conflict of interest between the regulator and regulated.<sup>13</sup> There could be a benefit in the evolution of bar design from clarifying language, and to this end, this report proposes terminology as shown in Insert 1.

Despite these differences, this project reviewed other jurisdictions to ascertain how they allocated responsibility for lawyer admissions, ranging from the respective roles of the judiciary, legislature and bar organizations for exam

tions is not standard. State bar organizations may have boards of law or functional responsibility for a body that oversees a given state’s bar

<sup>13</sup> Linda Katz’s chart described the California Bar before separation of the sections and provides comprehensive inventory of the specific functions that all bar organizations have in whatever organizational grouping. All states mandate that one must be a member of an official bar to practice law, but what functions are a part of that ‘official bar’ varies widely; some also mandate membership in a trade association bar organization. Functional areas may be based in a state (or public) as well as non-profit entities (e.g. LAP). And some states divide regulatory functions between the official and non-profit entity. For example, Arizona is considered a unified bar, yet all admissions functions are handled by the Court and its staff directly. The State Bar only becomes involved after membership has been granted and then only as a records manager and for discipline. Wisconsin is also considered unified, but its Bar only functions to collect dues (and pass them onto two court entities) and to serve its members as a trade association.

development, testing, admissions and follow up, and all the activities that arise in relation to these core activities bar exam development and the work associated with Moral Character and Fitness reviews.

### ***Size of Bar Examiners***

The size of the largely volunteer organizations that manage lawyer admissions ranges from three (Idaho, North Dakota, Washington) to 26 (Delaware).<sup>14</sup> The mean average size is around nine members, and the most frequent size is seven. It should be noted, however, that more than one body may be involved in admissions, since some states divide responsibility for exam design and administration and character and fitness review between two organizations. Indiana, for instance, has a 10-person, jurisdiction-based Board of Law Examiners that is also responsible for legal intern certification, formation and renewal of professional corporations, limited liability companies and limited liability partnerships for the legal profession. Indiana also has the Indiana Committee on Character and Fitness, which numbers over 300 lawyers and interviews all applicants to the bar personally.<sup>15</sup>

### ***Terms of Bar Examiners***

Most jurisdictions set *terms* of members at three years, though some have longer terms with Missouri, at a nine-year term, the highest. Some states allow longer terms of service, or indefinite renewal.<sup>16</sup> The majority offer two or three renewals and require that members step down when their terms are complete, or after reaching some specified number years of service. Some states specify staggered terms, thus ensuring a mix of experienced members with new, “fresh” views as well as smooth transitions. For instance, the Connecticut Bar Examining Committee, with 24 members, has 3 year terms renewable for 3 years and specifies that 1/3<sup>rd</sup> of the members terms must expire every year, ensuring that, at most, 1/3<sup>rd</sup> of the board would cycle off, or need to be replaced, in any given year. Nebraska, with a 6 person State Bar Commission, appoints for 6 year terms (2 term max) and specifies when of the six jurisdictions represented appoint a commissioner.<sup>17</sup>

Most significantly, the 2017 NCBE/ABA Code of Recommended Standards for Bar Examiners (“Code”), developed to establish standardized ‘best practices,’ recommends consistent and fixed, but staggered, terms, identical length for all members, with ‘sufficient’ rotation to encourage fresh views; most Bars consulted agree. See Reference 9 for a Summary of the NCBE/ABA Code.

<sup>14</sup> See Reference 3: Table of Inter jurisdiction comparisons in References

<sup>15</sup> IN BLE is responsible for the admission of attorneys, the certification of legal interns and the formation and renewal of professional corporations, limited liability companies and limited liability partnerships for the legal profession: <https://www.in.gov/judiciary/ace/2521.htm>

<sup>16</sup> Some jurisdictions do have significantly longer terms (e.g. New York and Idaho).

<sup>17</sup> For instance, the first judicial district appoints a commissioner in 2015, the fourth in 2016, the sixth in 2017 and so forth. Nebraska follows NCBE testing procedures and standards.

### ***Appointment of Bar Examiners***

Most commonly, the state Supreme Courts or their equivalent<sup>18</sup> are the body that appoints Bar Examiners, often on recommendation from the Bar or Bar President. In some cases, there are specific liaisons appointed to sit on the committee. One variation is who appoints the chair – in some cases, the Court appoints the Chair and other positions; in other cases, the Board of Bar Examiners selects their own Chair.

There are usually general guidelines as to who may be appointed (lawyers, public representatives), although generally there are no overall composition guidelines (specifying type of experience, specialties, etc.). Typically lawyer members must be actively practicing law in good standing in the state, and there is some specified experience time frame (10 years of practice, for instance) set forth. Some states routinely use public member seats to provide relevant expertise (e.g. financial and psychological experts). Wyoming requires one substance abuse expert (the non-lawyer on its five-person board). Formal limits on service by legal academics as examiners are common, however there is increased interest in taking advantage of academic knowledge and skill. The Iowa board must be gender balanced, per Iowa Code §69.16A.

### ***Activities and accountabilities of Bar Examiners***

Bar Examiners in most states are tasked with overseeing the admissions process (see Illustrations in Insert 2).<sup>19</sup> Specifically, Bar Examiners recommend the list of law candidates for admission to the bar to the Supreme Court. Generally, Examiners must also review appeals from decisions on accommodations and moral character (unless there is a separate entity tasked with this responsibility). In some states, Examiners are involved in writing exam questions and grading exams; however, with the increased use of the Uniform Bar Exam (now adopted by 30 states), the involvement of Examiners in writing questions is reduced, often limited to developing a state-specific educational program. However, UBE state Examiners may grade and be required to attend grading training offered by NCBE.

#### **Insert 2: Illustrative Roles of other Bar Examiners**

- The Illinois Board of Admissions to the Bar “shall oversee the administration of all aspects of bar admissions in this State including the character and fitness process”
- Nevada BBE “writes and grades the bar examination questions and oversees the administration of the two bar examinations. The board works closely with the Supreme Court and the Board of Governors in formulating rules and procedures for admission to the State Bar of Nevada”<sup>1</sup>
- The Texas Board of Law Examiners is an agency of the Texas Supreme Court. The Board’s sole purpose is to qualify applicants for admission to the State Bar of Texas. The Supreme Court is ultimately responsible for admitting those applicants certified by the Board as eligible for admission to the State Bar of Texas. In performing its duties, the Board administers and interprets the Rules Governing Admission to the Bar of Texas, promulgated by the Supreme Court. The State Bar of Texas licenses and disciplines its members, independent of the Board’s work.

<sup>18</sup> Note: this terminology and discussion is intended to include the highest state court in every jurisdiction, whether denominated as the Supreme Court, Court of Appeals, or Court of Last Resort, among others.

<sup>19</sup> Illinois also shall appoint, with the approval of the Supreme Court, a Director of Administration to serve as the Board’s principal executive officer, who may hire sufficient staff as necessary to assist the Board in fulfilling its responsibilities. And shall audit annually the accounts of its treasurer and shall report to the Court at each November term a detailed statement of its finances, with recommendations as seem advisable. Per [http://www.illinoiscourts.gov/SupremeCourt/Rules/Art\\_VII/artVII.htm#Rule702](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/artVII.htm#Rule702). The NV BBE is part of the State Bar of NV, which is a public corporation operating under the supervision of the NV Supreme Court <https://www.nvbar.org/about-us/bar-committees/board-of-bar-examiners/> Refc Texas <https://ble.texas.gov/about>

Meeting frequency ranges from twice a year (Arkansas) to monthly (New York). Special meetings may be called for appeals procedures.

Compensation is usually limited to lodging and travel related meeting expenses. New York has a set pay for Bar Examiners. Others have compensation “set at the discretion of the court.” Alaska and Georgia pay Bar Examiners per exam, \$400 and \$7500, respectively, or \$800 and \$15,000 annually. In many states, Examiners are unpaid volunteers. However, service related expenses (travel, education, etc.) are typically covered.

## **CBE Governance Design Recommendations**

This report supports the following recommendations derived from the CBE working group and CBE discussions:<sup>20</sup>

### **CBE WORKING GROUP RECOMMENDATIONS: Governance**

#### **1. Size and Structure**

- a. Reduce the size of the CBE. A smaller CBE will make it easier to convene a simple majority quorum; a smaller CBE will be more conducive to member meeting participation. Size should be commensurate with workload.
- b. Set and enforce three-year subcommittee chair terms, and where applicable, committee chair terms. Enforce actual terms, opt for filling vacancies rather than continuing the past terms of incumbents until replaced.
- c. Develop a CBE Skills Matrix and apply it to recruiting efforts; utilize communications and recruiting efforts to attract members with needed skills and experience.
- d. Review CBE sub-committees.<sup>21</sup>

#### **2. Activities**

- a. Identify key policy and long-term items to be covered on the CBE agenda, including alignment with the State Bar Five-year Strategic Plan.<sup>22</sup>

<sup>20</sup> These are summarized in Reference 2. It should be noted that the Feb 2, 2018 CBE discussion conversation generally accepted these recommendations, but they were not put to a formal vote. It is possible some members disagree with these conclusions but they were vetted and generally endorsed by the group as a whole.

<sup>21</sup> Sub-committee design was discussed at the February 2, 2018 CBE meeting. A proposal was made to eliminate all but the Moral Character Sub-Committee and Examinations Sub-Committee (for appeals and review). Though this was endorsed, it was also debated again at future CBE meetings. At the time of this writing, Sub-Committee design and role remains under discussion.

<sup>22</sup> Specific State Bar Strategic Plan Goals relevant to CBE’s work can be found in Reference 6.

- b. Strengthen onboarding practices, e.g., create mentors, provide the opportunity to role-play an appeals session before actually conducting one<sup>23</sup>, and opportunities to observe Moral Character reviews.
- c. Staff should provide uniform agenda and agenda management process.
- d. Eliminate CBE involvement in formal financial reviews; limit it to approving bar examination fees only.

### **3. Cooperation with the State Bar Board, Staff, Court and Legislature**

- a. Identify positive scenarios of how CBE, the State Bar of California and the Court should work together, both by using successful cases from experience, as well as developing prospective cases for future guidance.<sup>24</sup>
- b. Validate roles and authorities of all respective bodies pursuant to an Office of General Counsel review.
- c. Improve training of CBE volunteers on their respective roles, authorities and accountabilities.

### **4. Law School Council to Facilitate Communications between Deans and CBE**

- a. Work/study with deans and LSC to design a more robust partnership.
- b. Institutionalize points when LSC and law school deans “weigh in” at key points – but be sensitive to Bagley-Keene requirements. The Bar and CBE should consider options to gauge interest and opinions early on to build trust and collaboration. For instance, as a policy change or important matter with implications for law schools is considered, a first step would be an open webcast with a call in for public comment.
- c. Ensure including an annual “Admissions Day” on the State Bar Calendar<sup>25</sup>; ascertain the possibility of extending Admissions Day training to Law School constituents/deans (next step: consult with those who attended the Board of Trustees Admissions review session).
- d. Take advantage of the Ad Hoc Committee currently being formed to discuss Bar Exam review, to engage all deans in the process of overseeing the Job Analysis; review this work at the State Bar Annual Planning Committee meeting.
- e. Pending study about the original reasons for creating both LSC and RAC, consider combining both into a single organization to broaden perspective and avoid conflict of interest.

Many of the above recommendations will improve the functioning and focus of the CBE. However, as noted below, the consultants also believe that there is further opportunity to simplify and focus the CBE on work core to its critical admissions responsibility at a time of significant challenge to its licensing function.<sup>26</sup>

Generally, in good governance and organization design, a committee should operate in a defined arena to keep roles clear, unconflicted and build competence at its core task. This principle suggests that the CBE should focus primarily on admissions-related tasks, which would, in turn, simplify and focus the role of volunteers and enable greater professionalization of the admissions process. Further, an admissions focused CBE would eliminate perceived or actual conflicts, reduce an unrealistic span of expertise expectations (thereby assuring that Bar Examiners are providing informed oversight, not merely sitting as a “jury of peers”), and create a more reasonable scope of

<sup>23</sup> The concept of role-play is both to allow examiners to practice their role, and also to gain an understanding of the process from the candidate’s point of view.

<sup>24</sup> Of note: a specific issue and its resolution path may be seen differently by the CBE and the Bar, thus scenarios should serve as a joint learning process to achieve a common understanding what constitutes an effective issue identification and resolution process

<sup>25</sup> Discipline Day has been on the Bar Agenda over the years with the goal of keeping all Trustees, new and experienced, educated and up to date on the current discipline practices, processes, constituents, and results. The Admissions Day’ idea received attention in response to the 2017 concern about the Bar Exam passing score. In addition, admissions decisions represent a complex and challenging administrative process, along with some highly technical concepts (e.g. test validation and the application of psychometric principles) which the Board of Trustees had not considered in recent time. Admissions has been a focus of antitrust concerns as well. The State Bar Board had an Admissions Day in 2018 and will institutionalize it in Board processes, with the potential to replicate it for the Council and beyond.

<sup>26</sup> The current Appendix I review should give the State Bar of California a valuable opportunity to review all admissions responsibilities to align them for maximum effectiveness and maximize the CBE’s contribution.

activity, commensurate with delegated authorities. More specific recommendations (including the simplification of Moral Character Reviews, as well as Accreditation function outsourcing) are considered below.

## Moral Character Approach

### Discussion and Context

The basic structure of licensing lawyers through a written exam and review of moral character and fitness by lawyers, sometimes assisted by public members, has remained largely unchanged considered since the early 20<sup>th</sup> century. Even so, there are considerable variations across jurisdictional approaches. Moral Character (or Character and Fitness) reviews relied on no uniform definition of Moral Character, and only 39 states have published moral character standards.<sup>27</sup> Required timing for applications also differs. Some states open a file during the second year of law school, some require a Character Review just before the exam, blocking those who do not pass from taking the exam, and other jurisdictions require the application only after the applicant has passed the Bar Exam.<sup>28</sup> Students and applicants alike see variances in approach across jurisdictions, as well as in the tone in the decisions of different states. One lawyer offers online advice to an applicant concerned about juvenile convictions:

*Florida C&F process is rigorous, and they try to intimidate people into abandoning the process, but they know perfectly well judges (who are the ultimate arbiter of C&F proceedings) have no problem smacking them down when they get ridiculous. If you don't give up and force them to litigate it, they'll either give up or probably lose.<sup>29</sup>*

Alongside varying processes, moral character review *scope* vary as well. Some states interview all applicants; in other states reviews are selective according to problems identified.

Usually the review of denied applicants may involve either three or four steps but at least: an informal subcommittee conference (or panel), a board review, and final Supreme Court review. Some jurisdictions provide:

- Final board hearing before a quorum of the Board;
- Intermediate court review before the Supreme Court; and
- One state allows the Chair to override a negative decision on taking the test.

Arizona has a 15-member Character and Fitness (C&F) Committee. Staff approves approximately 65% of reviews, and the remaining 35% go to an individual member of the C&F Committee. Of these, the individual members determine over 2/3<sup>rd</sup>s of the assignments on their own, slightly less than 10% of all applications go into a subcommittee review. This portion goes before a subcommittee of three different members of Character and Fitness Committee for an informal in-person meeting, which is a non-adversary proceeding without recordings or sworn testimony. This first review panel may admit, conditionally admit, or refer the applicant to a hearing, but it may not deny the applicant the opportunity to take the Bar Exam. Approximately 2-3% of

<sup>27</sup> The Code recommends that standards be published; while 70% of jurisdictions do so, California was not identified as one of this group.

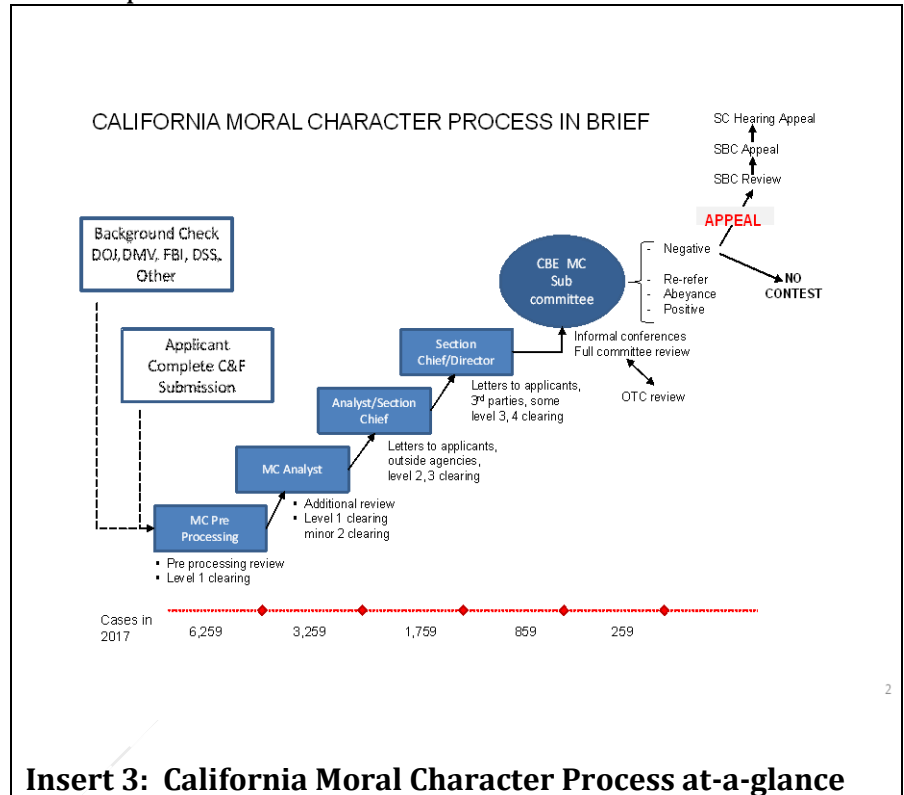
<sup>28</sup> <https://abaforlawstudents.com/2013/12/01/bar-hurdle-character-fitness-requirement/>

<sup>29</sup> <https://www.jdunderground.com/admissions/thread.php?threadId=109496>

applicants go to a second evidentiary hearing before a new five-member subcommittee, with the original committee member acting as the ‘prosecutor’ and testimony taken under oath. This second five-person subcommittee is composed of different members of the Character and Fitness Committee and it may act to deny an applicant’s admission to the State Bar. Appeals from such a decision are only to the Arizona Supreme Court. As with most jurisdictions, a very small portion of all applications eventually end up at the Supreme Court.

Using a different approach, New York State processes character and fitness applications through the four departments of the Appellate Division Court. Applicants must submit two applications: first an application to sit for the bar exam and then, one certified as having passed the exam, an application for moral character review which is handled by one of Appellate Division Courts. The four departments each have staff who review applications initially and then assign applicants a volunteer member of New York Committee of Character and Fitness for review and a personal interview. If staff identifies an

issue, the application is sent to the full committee for review. Each Appellate division appoints its own volunteers to manage the review work. Notably every applicant has a personal interview.



Overall, twenty-four states have created a separate entity that assesses moral character.<sup>30</sup> The variety of organizational and governance structures of these entities is large and there is no consistent format, but generally there are three basic types: (a) an entity placed within the highest court or a part of the judicial branch; (b) a separate public non-profit entity; and (c) a component of the state bar organization. For instance, the Arizona C&F Committee is a component of a state high court and has court staffing. Wisconsin is separately organized as an entity, governed by the high court but structurally distinct Florida operates as a separate non-profit public entity with its own governing bodies, responsible to the Court. Oregon and California are part of the bar organization itself. In all cases, the decision of these organizations, no matter their structure, are overseen by the highest court of the jurisdiction.

<sup>30</sup> Alabama, AZ, CO, GA, IL, IN, KY, LA, MA, MI, Mississippi, Missouri, Montana, Nebraska, NH, NJ, NY, OH, RI, SC, UT, VT, WA, WV, WY

The history of Moral Character reviews is mixed; they have sometimes been used for an agenda other than public protection, for instance:

- *"Much of the initial impetus for more stringent character scrutiny arose in response to an influx of Eastern European immigrants, which threatened the profession's public standing. Nativist and ethnic prejudices during the 1920s, coupled with economic pressures during the Depression, fueled a renewed drive for entry barriers."<sup>31</sup>*

Generally, moral character reviews have raised issues of definition and validity among the public, applicants and examiners alike. Several CA bar staff and examiners interviewed for this project criticized the predictive value of character and fitness reviews; given the relatively young age of most applicants, youthful infractions may not predict lifelong character issues. Some suggested that, despite guidance and calibration, standards for rejection seemed uneven and, at times, imbalanced.<sup>32</sup> The lack of good standards for defining moral character has been widely noted.<sup>33</sup>

In addition, there have been concerns about whether substance abuse and mental health inquiries constitute a character failure of character and consequent risk to the public. Equally, this area of inquiry may violate the Americans with Disabilities Act. Though many debate the appropriate approach, all jurisdictions continue to include substance abuse and mental health issues as part of the Moral Character screen.<sup>34</sup> Many states allow conditional admission for those with substance abuse or psychological problems. Some offer treatment for substance abuse or psychological problems. Most allow rehabilitated felons to seek admission; notably Florida does not. Most states also allow applicants to seek re-admission after denial, usually after a prescribed waiting period.

A lack of rigorous analysis appears to be part of a long-standing problem in the general approach to bar examinations. Among the bar organizations contacted, none made use of data available from a variety of sources to study and examine the efficacy of bar admission practices dating back to the mid-twentieth century. Little has been done to study the relationship between licensing requirements and their impact on public protection. We know of no studies that establish a correlation between character and fitness reviews and subsequent discipline. The complete absence of a definition of minimum competence is part of this problem, as is the lack of an occupational analysis to validate the form, content and structure of bar exams (with the single exception of a job analysis conducted by the NCBE in 2009).<sup>35</sup>

<sup>31</sup> The Troubling Rise of the Legal Profession's Good Moral Character: Barbarians at the Bar.

<sup>32</sup> For instance, one interviewee reported discussions on denying an applicant based on missing an application deadline due to a family illness; another applicant with a history of abuse was not denied.

<sup>33</sup> There are frequent comments raising this concern in law reviews and during our review, researchers at the Stanford School of Law contacted us regarding their interest in studying the problem. The role of moral character review is currently also under review by the Solicitors Regulation Authority in the U.K. See Appendix A for the interview with Julie Brannan, SRA's Director of Education and Training.

<sup>34</sup> <https://abaforlawstudents.com/2013/12/01/bar-hurdle-character-fitness-requirement/>

<sup>35</sup> The State Bar of California has an unusual amount of data which might be analyzed to inform admissions policies (e.g. data from the 'Baby Bar' and a broadly inclusive approach to those who take the bar would seem to offer a chance to study the success of current approaches to attorney licensing.)

In the licensing practices by other professions, most if not all conduct background checks via core databases (FBI, DOJ, etc.), yet none have the separate, formal C&F application and review process the legal profession does. The medical profession, for instance, has three distinct tests and testing points which a student must pass before she is admitted to the practice of medicine.<sup>36</sup> Applicants may be denied a license for past actions, but there is not a separate review of moral character. It is presumed that, if issues exist, they will arise during academic and internship work and can be addressed in those venues.

## Moral Character Recommendations

Consistent with the CBE Working Group suggestions, this report agrees with the following actions be implemented:<sup>37</sup>

### CBE WORKING GROUP RECOMMENDATIONS: Moral Character

1. Ensure Moral Character review has more specific, clearly articulated standards/guidelines for determinations; document and publish specific guidance for decisions beyond the existing high-level description; include “if-then” protocols for decision sequences;<sup>38</sup> reinforce, extend, and clarify Rule 4;
2. Compare California’s guidelines to those used by the NCBE guidelines annually;
3. Undertake a review of the reform efforts being developed in other jurisdictions, notably the State Bar of Utah and the Solicitors Regulation Authority in the U.K., to determine what possible alternate approaches to reform may be possible;<sup>39</sup> and
4. Retain CBE level review of appeals denied.<sup>40</sup>

Further, this report does not recommend that CBE, or the Court, create a separate entity to review Moral Character appeals, as occurs in other states.<sup>41</sup> Forming and supporting a separate committee or delegating Character Reviews to separate entities (as do New York and Maryland) would require selecting, training, managing, and supporting an additional group of volunteers. In the spirit of retaining focus and simplification, character appeals should continue to be reviewed

<sup>36</sup> <http://www.bennettlawfirm.com/practice-areas/texas-medical-board/>

<sup>37</sup> [http://calbar.granicus.com/GeneratedAgendaViewer.php?view\\_id=3&clip\\_id=245](http://calbar.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=245)

<sup>38</sup> For instance, rather than stating general considerations (nature of offense, date of offense, age at time of offense); state specifics (if applicant was under 25, then said offense will not be considered in character review).

<sup>39</sup> As noted above, work by researchers at Stanford may provide an opportunity for collaboration in a review of moral character and fitness standards.

<sup>40</sup> Specifically, the group argued that the Committee level review best reflected the due process that should be accorded candidates. Thus, character and fitness applications that were denied or questioned by staff or subcommittee should be reviewed by the full committee (as opposed to going directly from subcommittee to State Bar Court).

<sup>41</sup> The CBE discussed potential for allowing subcommittee that constitutes a quorum of the board to make the final decision and thus avoiding appeals which all 19 hear

by CBE panels, with improved support, functional and administrative processes. The review processes employed should, however, be simplified and include only a single review by a quorum sized CBE subcommittee before appeal to the State Bar Court and the California Supreme Court.<sup>42</sup>

Based on comparisons and the issues discussed in this report, we posit that the State Bar of California should take a very fundamental re-look at character and fitness reviews. In its most primary mission – to serve and protect the public – the State Bar and the CBE have both the opportunity and an obligation to redesign current practice for C&F reviews to correspond more directly with relevant outcomes and fairness. Given the history of bias and subjectivity in the character and fitness screens, California should strive to counter these forces.

More specifically, we find that the California State Bar could:

- Conduct regular reviews of the appropriateness and consistency of decisions to ensure consistency and compliance with applicable standards;
- Create a specific path for substance abuse and mental health issues, including conditional admission and support; and
- Take a broader, more evidence-based approach to establishing the validity of character and fitness process and decisions.

Taking a broader approach toward character and fitness validity would require use of data across a broader time frame, and across multiple parties. It could involve partnership with academia or using available data more affectively (e.g., Baby Bar data). Evolving work on character and fitness must consider privacy concerns and adverse impact concerns. Most important is the overall integrity of the process, as it is used to make such a fundamental decision about the ability of individual applicants to become licensed as lawyers.

## **Accreditation Approach**

### **Discussion and Context**

The U.S. system of higher education accreditation is generally considered the world's 'gold standard' process for external quality review of educational institutions. A critical element in this system is the core principle is that accreditation is most effectively done in an objective context, among peers with relevant expertise and members of the public. Concomitantly, accreditation should be the responsibility of private, non-profit entities composed of peers and the public, and not done by government or government regulators.

As such, accrediting organizations in the U.S. are structured as peer review activities, managed by various non-profit educational and professional organizations pursuant to clearly articulated standards. These accreditation organizations must in turn be qualified through review of

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<sup>42</sup> This report recommendation may be consistent with the CBE Working Group recommendation of retaining Committee level reviews; it is distinct or different to the extent that we recommend only a one stage (committee quorum) review vs. subcommittee plus full committee.

published standards to achieve ‘recognition.’ Accreditation and recognition are thus distinct processes; accreditation is considered a non-governmental function; recognition is not.

Recognition is done using parallel processes by the private non-profit Council for Higher Education Accreditation (CHEA) and the U.S. Department of Education (USDE). CHEA recognition confers academic legitimacy on accrediting organizations, helping to solidify their place in the national higher education community. USDE recognition is required for accreditors whose accreditation is a prerequisite for granting student federal loan support for individual institutions and programs. In its recognition activity, USDE relies on the National Advisory Committee on Institutional Quality and Integrity (NACIQI), a separate body composed of educators and public members, who review the recognition accorded to such accrediting bodies. Although the purposes of their recognition differ, many CHEA and USDE requirements and processes are the same. Importantly, both require periodic external review by accrediting organizations.

CHEA includes in its membership the majority of U.S. accrediting organizations. At the national level, CHEA recognizes 18 institutional and 62 program accreditors. Notably, CHEA standards preclude governmental organizations from membership as accrediting bodies.<sup>43</sup>

CHEA considers four types of accreditation; the two relevant to the CBE are based on review of either programs or institutions, but not both. CHEA requires that each accreditation member select one of these for which it will serve as the accrediting body. Managing both functions is generally not allowed.

Nationally there are several regional organizations responsible for institutional accreditation in their respective geographical areas. Numerous other organizations are responsible for program accreditation, but only one, the Accreditation Committee of the Section of Legal Education and Admissions to the Bar, within the American Bar Association (ABA), serves to accredit legal programs. Normally accrediting organizations have decision-making bodies (commissions) made up of administrators and faculty from institutions and programs as well as public members. Accreditors undertake an organizational self-assessment on a routine basis and are required to have internal complaint procedures.

The Western Association of Schools and Colleges (WASC) is one of four regional accreditors recognized by CHEA and the only institutional accreditor of educational institutions in California. WASC is a nationally recognized leader in adopting accreditation standards based on learning outcome assessment, a signature focus of all its accreditation work. While WASC is designated as an institutional accreditor, rather than a program accreditor, many of the institutions it accredits are small and based on single programs (e.g. Charles Drew Medical College and the San Joaquin College of Law). Thus, the distinction between program and institutional accreditation becomes

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<sup>43</sup> Dr. Eaton was willing to consider whether CHEA could review the current standards employed by the CBE in its accreditation of California law schools. Alternatively, she was also prepared to suggest names of experts in the field of accreditation.

less significant for smaller institutions; accreditation for such single program institutions does, however, rely on participation by those with program expertise.

### ***Law School Accreditation & California***

Almost all states require graduation from an ABA accredited school for eligibility to take the bar exam. California is one of six states that permit accreditation of non-ABA schools, as follows:

- Connecticut allows all ABA Law Schools, and one Massachusetts state accredited school to sit for its bar exam;<sup>44</sup>
- Alabama does not require graduation from an ABA Accredited Law School as a pre-requisite for taking the bar and has two non-ABA accredited law schools – Birmingham School of Law and Miles School of law.<sup>45 46</sup>
- Nashville YMCA School of Law is accredited in perpetuity by the Tennessee Board of Bar Examiners.<sup>47</sup>
- Massachusetts also allows students to sit for the bar exam if they have earned a Bachelor of Laws or Juris Doctorate degree from the Massachusetts School of Law at Andover, a school authorized by the Commonwealth and accredited by the New England Association of Schools and Colleges (NEASC).
- On behalf of the State Bar of California, the CBE accredits 21 law schools located within the State of California.

With the largest number of state accredited law schools and an unusually open process for taking the Bar Exam<sup>48</sup>, California is the only state that must address law school accreditation on an ongoing and substantial basis. Historically, this has been overseen by the State Bar and the CBE with the assistance and participation of law school deans and other legally trained volunteers. Specific activities include:

- Processing of applications for the registration of new law schools or the accreditation of unaccredited law schools;
- Annual compliance reporting of accredited and unaccredited law schools;
- Inspecting schools every five years to re-confirm the operational compliance of accredited and unaccredited law schools;
- Enforcing compliance through issuance of Notices of Noncompliance, subsequent inspections and, if needed, CBE hearing and action;

<sup>44</sup> <https://www.lawyeredu.org/connecticut.html>. In 2016 a second Massachusetts state approved law school, the University of Massachusetts School of Law-Dartmouth, which had been recognized by Connecticut received full ABA accreditation; previously it had been accredited by the New England Association of Schools and Colleges.

<http://www.bennettlawfirm.com/practice-areas/texas-medical-board/>

<sup>45</sup> See <https://web.archive.org/web/20100316224800/http://www.legislature.state.al.us/CodeofAlabama/1975/34-3-2.1.htm>. Graduates from both law schools are by statute authorized to sit for the exam; it is unclear whether either is accredited by any state accrediting institution.

<sup>46</sup> <https://admissions.alabar.org/july-2017-statistics>. Recent Bar pass rates for non-accredited schools is notably lower than overall Alabama average (e.g., 18% vs. 78%).

<sup>47</sup> [https://en.wikipedia.org/wiki/Nashville\\_School\\_of\\_Law](https://en.wikipedia.org/wiki/Nashville_School_of_Law)

• <sup>48</sup> In addition to ABA and California accredited law schools, students may also sit for the Bar Exam with a degree from an unaccredited correspondence law school; a distance-learning law school; or a fixed-facility law school.

- Reviewing and recommending CBE action regarding requests for variances, waivers of requirements and major changes by accredited and unaccredited law schools;
- Drafting recommended changes to the CBE's accreditation or registration standards; and
- Assisting the CBE in the adoption of all such changes.

The State Bar and the CBE have responsibility for accrediting 21 California law schools, and oversight of an additional 20 registered unaccredited law schools: which includes correspondence law schools, distance-learning law schools and fixed-facility law schools.<sup>49</sup> In accordance with Education Code Section 94900, the CBE has been delegated the responsibility for the approval, regulation and oversight of accredited degree-granting law schools. The accreditation rules are contained in the Accredited Law School Rules. All ABA-approved law schools are deemed accredited; and the CBE does not exercise any oversight of these schools.

Schools seeking accreditation by the CBE must file an Application for Provisional Accreditation. If there appears to be a reasonable probability that the school will meet the requirements, the school is visited. Following the visit and the filing of a report, provisional accreditation may be conferred. If a school does not appear to be eligible, it will be so advised and asked to withdraw its application. Following a two-year period as a provisionally accredited law school, the school may seek full accreditation.

All California accredited schools are subject to re-inspection every five years, or more often if the Committee so determines, at the school's expense.<sup>50</sup> In addition to other reports that may be requested, all California accredited schools must file an annual report in November of every year.

Accreditation is a mission critical and serious endeavor; it consumes significant resources and needs to be done with transparency, rigor and validity. The current process has invoked concern, engagement and criticism from several stakeholders, and for different reasons.<sup>51</sup> A comparison of bar pass results between ABA, California accredited and unaccredited law schools suggests a need for careful oversight of non-ABA schools as a matter of consumer protection for potential students. While some are highly successful and well regarded (e.g. the WASC accredited San Joaquin College of Law whose bar pass outcomes are better than many ABA accredited institutions), overall the record is mixed, as reflected in a much lower pass rate by non-ABA schools.

Nonetheless, California accredited law schools do offer several important advantages: flexible schedules, lower admissions standards and lower tuition fees. At a time of significant increase in

<sup>49</sup> The authority to accredit law schools is derived from Education Code 94310 and Business and Professions Code Section 6060.

<sup>50</sup> The assessment of charges or expenses varies by size of school and other factors, and may not, in a specific case, cover the precise expense of the individual program accreditation.

<sup>51</sup> A July 25, 2015 article in the *Los Angeles Times* was particularly critical of California's unaccredited law schools. (See [www.latimes.com/local/education/la-me-law-schools-20150726-story.html](http://www.latimes.com/local/education/la-me-law-schools-20150726-story.html)). New statutory reporting requirements for all non-ABA accredited law schools were adopted in 2017 and these may, however, address the problems of such schools by requiring more accurate reporting among other things their enrollment statistics and outcomes, along with curriculum offerings and financial practices. See Business and Professions code, § 6061.7.

the cost of legal education, these benefits may be significant, and may outweigh perceived drawbacks of lesser prestige, mobility and predicted earning power. However, if quality and educational service suffers because of inadequate oversight and regulation, these schools are doing a disservice to students and the public. California's non-ABA schools are an important resource but require thoughtful attention.

With an already significant task of managing the Bar Exam and admissions, including the accreditation function in the CBE responsibilities raises questions about focus, resource allocation and even conflict of interest. To this end, proposals arose around different approaches, including the option to outsource accreditation to a third-party expert, specifically, the Western Association of Schools and Colleges (WASC).<sup>52</sup> Three principal arguments have been put forth for outsourcing accreditation to a third party:

1. Bringing the rigor of nationally recognized educational standards and practices to bear on the accreditation of all non-ABA approved law schools;
2. Taking advantage of the deeper skills and experience in accreditation by an organization such as WASC, a highly recognized leader in the field; and
3. Eliminating a set of activities which distract from organizational, management and resources of the CBE, Board and staff.

Four arguments *against* outsourcing to WASC were discussed at the CBE's December 2017 meeting; they are:

1. The WASC long review cycle<sup>53</sup> and focus on larger institutions, with a review authority limited to accrediting institutions, not programs, would not meet the needs of the 39 California non-ABA law schools (both California accredited and unaccredited), which are smaller and have a single program focus;
2. WASC would be unlikely to be qualified to specify required studies or courses as pre-requisite to practicing law, as is currently done for both ABA and California approved schools;
3. The current process incorporates law school dean involvement in accreditation reviews which creates valued mutual learning and peer feedback, along with in-depth experience-based critiques and recommendations. This is highly valued;<sup>54</sup> and there is concern that WASC reviews would eliminate the benefits of this important practice.
4. The cost of the WASC accreditation process would be higher and could force a tuition increase, offsetting one of the principle benefits of the lower-cost California accredited law schools.<sup>55</sup>

<sup>52</sup> Accrediting Commission for Schools Western Association of Schools and Colleges, [www.acswasc.org/](http://www.acswasc.org/).

<sup>53</sup> WASC review cycle may be up to 10 years

<sup>54</sup> Notably, by representatives of non-ABA approved law schools

<sup>55</sup> It should be noted that a 2017 review revealed that accreditation costs are not fully funded by the fees charged, thus requiring subsidization from other revenue sources.

The majority of CBE members strongly preferred to keep the accreditation function within the State Bar and there has been no specific evidence put forward that the CBE's review processes or its standards, now strengthened by the new disclosure requirements contained in 2017 legislation, are inadequate.<sup>56</sup> At the same time, the CBE's accreditation practices themselves have never been reviewed by either national or state bodies charged with setting best accreditation practices.<sup>57</sup> To take full advantage of its unusually diverse system for educating lawyers, California must ensure that its accreditation standards are well-designed and effectively implemented, consistent with best practices. To achieve this result, a three-year audit process by an accrediting review organization is recommended to ensure that California's accreditation practices are on par with, or superior to, existing best practices for accrediting pre-licensure education. The CBE members supported this recommendation.

Outsourcing concerns merit further consideration but may not be sufficiently determinant to eliminate the WASC outsourcing option.<sup>58</sup> For instance, the cost of accreditation must be balanced against the values of quality, rigor and independence, particularly as it relates to the mission to protect the public. The accreditation design and governance decision should be driven by the solution that best meets the mission, with costs managed subsequently within the budget envelope. In addition, cost analysis may be imbalanced if it underestimates true internal costs (e.g., as current staff and CBE operating costs, not investments required to maintain expertise consistent with emerging laws, technology and educational practice) or overestimates third party costs (which may be negotiated or reduced for more precisely or narrowly scoped service).

Other concerns<sup>59</sup> about outsourcing may be mitigated by further investigation. For instance, WASC does accredit small, single program institutions and can create teams of subject matter experts appropriate to the task,<sup>60</sup> and may have flexibility in length of review cycle.

## Accreditation Recommendations

Based on our reviews and discussions with the CBE<sup>61</sup>, this report supports the following recommendations outlined by the CBE working group:

<sup>56</sup> This statement summarizes discussions and interviews held with the consultants, as well as the state of discovery as of this writing.

<sup>57</sup> As detailed in the attached memo on accreditation practices, it is standard to have accrediting bodies certified themselves and to be reviewed periodically. Because this has never been done in the case of the State Bar and because the State Bar is unusual in being a governmental body, rather than a private entity, inconsistent with standard accreditation practices, such a review would seem particularly useful.

<sup>58</sup> Staff estimates suggest the cost of a WASC accreditation would likely exceed the current Average Annualized Law School Regulation Cost of the State Bar review process (i.e. \$1,735-\$6,319). Both the cost of the seven-year ABA Annual Law School Review (i.e. \$17,8186) and that of the ten-year WASC review (i.e. \$8,340-\$11,575) would be greater.

<sup>59</sup> (i.e. length of review cycle; limitations of size and authority for institutional, rather than program, review; and involvement of subject matter experts in legal education)

<sup>60</sup> Information about the WASC review processes appears in the attached interview report with Dr. Elizabeth Griego, a former WASC Associate Director with responsibility for accreditation standards and review.

<sup>61</sup> [http://calbar.granicus.com/GeneratedAgendaViewer.php?view\\_id=3&clip\\_id=245](http://calbar.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=245). As noted, CBE members expressed a strong preference that accreditation not be outsourced to WASC or another entity. This perspective was strongly supported by representatives from California accredited school members of the Law School Council as well.

**CBE WORKING GROUP RECOMMENDATIONS: Accreditation**

1. A three-year audit should be conducted to understand and ensure that CBE accreditation practices are consistent with national education accreditation standards.
2. The first audit should begin in 2018.<sup>62</sup>
3. Before beginning this process, the State Bar should solicit input from the Supreme Court and the Legislature.
4. Pursue value driven innovation in education and licensure based on growing knowledge and skill assessment practice.

CBE and Council members had a clear preference to retain accreditation as part of the CBE scope; contrary to this preference, this report argue that the current approach to accrediting California law schools is inconsistent with good governance design.<sup>63</sup> Accreditation is a separate function, requiring skills and processes different from those needed to evaluate bar exams and applicant character. While there is a relationship between the body of information and ability law schools offer and what constitutes minimum competence for professional licensing, the two domains are distinct. Volunteers cannot be expected to master both areas.

In fact, there is a natural conflict between those accountable for creating a robust and valid admissions exam testing vital knowledge domains, and those wishing to achieve impressive exam pass rates. The two responsibilities should remain separate for their own integrity and effectiveness.

There are specific design considerations that suggest the State Bar might benefit from outsourcing accreditation. These include:

- Accreditation requires a wholly different set of activities and skills than overseeing admissions.
- Addition responsibility for accreditation adds burden and distraction to the core focus of the volunteers.
- Overseeing both accreditation and admissions may invite conflicts of interest or perspective, particularly given the apparent dominant role of law school deans in the accreditation process.
- Additionally, past practice has shown little interest in review and improvement of the CBE accreditation process.

<sup>62</sup> The original proposal was to begin the audit concurrently with the legislative mandate on accreditation. However, as the timing of the legislation has changed, the recommendation has been modified to reflect the original intent that the audit begin immediately.

<sup>63</sup> This represents the opinion of the authors of the report.

- Maintaining the expertise to oversee accreditation may be an expensive time and resource demand on staff and volunteers; alternatives to an internal CBE-led accreditation process either exist now or could be developed.

California is unique in having its own state accredited law schools and providing opportunities for legal education in an exceptionally broad spectrum of educational venues, more than is available in any other state. As such, deriving recommendations from common practice or best practice is not possible, beyond the observation that the focus on admissions activity is the norm. Given that there is no comparable practice, the California current approach relies purely on historical events and precedent.

Given the above considerations, the consultants believe that the burden should be on the State Bar of California to demonstrate why it should not separate its accreditation function from the Bar and/or why it should retain the function in CBE.

### **Opportunities for the CBE and the State Bar**

The work done by the CBE and its working group resulted in important recommendations which should be implemented. We expect that these actions, standing alone, will result in better communications and more aligned action. The State Bar of California can, and should, consider additional specific actions to increase focus of the CBE on policy and its specific admissions tasks, eliminating a range of activities that are more appropriately delegated to staff or outside organizations with greater subject matter expertise, rather than relying on over-burdened volunteers. This may materially reduce the tasks of the CBE and would support a reduction in Committee size. While a larger committee allows tasks (i.e., appeals, question review) to be spread over a greater number of examiners, it also carries additional costs of coordination and expense, and dilutes policy focus. It may also increase risks of role confusion, outcome inconsistency, and redundancy.

Standard and well-recognized organization design goals for any committee such as the CBE help us to identify additional recommendations. Summarized in Insert 4, these design criteria apply to the CBE in the following ways:

1. *Form should follow function.* The design of the CBE should reflect its role and contribution in the overall State Bar Strategic Plan, as well as the responsibilities of the Court.
2. *Design for clarity.* Particularly in the case of volunteers, the State Bar will do a service to its volunteers, the public, and the lawyer population by providing a very clear remit of the tasks needed to be done, and the commensurate and relevant skills required. For instance, only

#### ***Insert 4: Governance Design Criteria***

1. *Form should follow function.*
2. *Design for clarity.*
3. *Focus on domain of influence.*
4. *Design for accountability.*
5. *Design for skill and strength.*
6. *Design for collaboration by effective communication.*
7. *Design for impact.*
8. *Design for privacy and data protection.*

admissions testing related tasks (e.g. oversight of exam development, exam policy, grading and character appeals) require the practice and learning that comes from professional calibration and experience. These skills are independent from those required to review budgets or oversee the sufficiency of academic programming. By setting forth a clear and defined task, the State Bar will elicit stronger service from its volunteers.

3. *Focus on domain of influence.* It is important to determine what a group can understand, manage effectively. While there may be some interdependent outcomes (e.g. the percent of Bar Exam pass rate could reflect both exam design as well as the content of academic programs), this does not mean that CBE should engage in overseeing, shaping, or monitoring all related outcomes.
4. *Design for accountability.* To promote accountability, a clear delineation of responsibility, action, expertise is needed. Committees and organizations can function more effectively when accountability is clearly delegated to a specific group. Thus, when errors occur, the source of errors may be more readily identified and remedied. In contrast, when accountability is diffuse, organizational failure is more difficult to identify and remediate. For this reason, focused accountability for the CBE is should be a goal and is strongly advocated.
5. *Design for skill and strength.* This is particularly important for key stress points in any process. For the State Bar, Admissions a critical activity and appropriately much scrutinized, but multiple accountabilities and activities can pose serious problems. Only when a task is clearly focused task, can volunteers spend their time devoted to doing the best job, omitting unnecessary tasks, training new volunteers, and identifying sources of strength and sources of error.
6. *Design for collaboration by effective communication.* All committees/teams must operate in a larger context; the ability to communicate and work effectively with other relevant parts of the organization is essential for overall organizational effectiveness and requires careful oversight and design, based on clear lines of authority, clear task delineation, and effective, frequent, constructive communication. The relationship between communications and informal relations should not be overlooked. Many problems arise as the result of informal conversations, misguided conclusions, or erroneous assumptions or beliefs about respective roles and rights. Designing and monitoring informal relations is as important as designing the formal rules structures and authorities. Throughout this study, several factors suggest that the California State Bar may want to look further into focusing CBE activities and the State Bar as an organization to avoid misalignment of approach.
7. *Design for impact.* As one of the largest lawyer licensing jurisdictions, California has the scale to try different and promising approaches to overseeing admissions and practice of law. This criterias should be a focus in adopting change.
8. *Design for privacy and data protection.* Given growing concerns about privacy and security, require that the State Bar and CBE ensure that all systems and processes are designed to minimize the risk of leaks, hacks or other system intrusions, which might damage

individual members of the public, California’s licensed lawyers, and the trust needed to preserve confidence in the legal system.

Applying these criteria clearly argues for a redesign of current tasks and activities of the CBE. California CBE tasks beyond admissions (accreditation, financial, etc.) should be reassigned to appropriate divisions or entities. Consistent with the design of larger Law Examiner structures in the US, administrative tasks not directly related to overseeing a fair, effective admissions process should not be the remit of the CBE. The CBE’s role, consistent with the State Bar Strategic Plan, should be limited to ensuring that it is delivering an effective, unbiased admissions process to protect both the public and the applicants. Where the professionalization of Bar practices continues, some CBE work could, and should, be done by professional staff (with oversight reporting to the CBE).<sup>64</sup> This would enable the CBE to do its best work providing input on policy and emerging admissions issues, and managing a defined set of appeals.

### **Summary of Additional Report Recommendations**

Thus, in addition to the CBE recommendations, this study strongly recommends that:

1. CBE tasks should be focused primarily on admissions related work, specifically handling only the most difficult appeals and, where appropriate, adjudicating and offering opinions on critical matters of policy and capabilities.
  - Additional input on policy and strategy matters should address relevant items of the Bar Strategic Plan (see Reference 6).
2. A thorough review of the State Bar’s approach to Moral Character assessment should be undertaken, examining, to the extent possible within privacy protections, the correlations and predictive value of moral character reviews. In addition, the State Bar should be sure that the character reviews are as effectively as possible “de-biased.” This could involve another course of research as well as setting in affirmative practice to counteract unconscious bias.
3. Accreditation outsourcing should be reviewed seriously considered by the State Bar. Many of the positive features described above could be built into a customized approach. However, outsourcing would provide the State Bar access to current and evolving expertise as well as best practice in accreditation. It will also allow for greater independence and perceived or actual objectivity. Further, this report asserts that the burden is on the State Bar of California to demonstrate why it should not separate its accreditation function from the CBE.

<sup>64</sup> A recent example was of the selection of a new IT system, to be used by multiple functions in the State Bar. Some CBE members argued that the full CBE should have had a chance to review the vendor offers and offer opinions on the choice. Such a role seems well beyond CBE accountability or knowledge domain. More appropriately, perhaps when institutional changes may affect the CBE’s work, the CBE should have an opportunity to request or specify functionalities needed in the system, but not take part in the process of vendor selection.

4. The State Bar should continuously scan for innovations in licensure, certification and validation. Test and evaluations tools and methods are evolving rapidly and there may be an opportunity for California, with its unique history and experience to innovate improvements in the preparation of lawyers and improvement of legal access in California. California's CBE is responsible for managing the largest admissions system in the U.S. California's expansive educational qualification options (e.g., online, rural, job experience, etc.) may afford the opportunity for more people, particularly those limited by geography or financial resources, to attend law school, thus expanding access to the legal system. This unique context may offer opportunities to evaluate current educational and licensing technologies and to experiment with new designs, to demonstrate the relationship of law student preparation to the licensing qualifications and capabilities required of minimally competent lawyers. Such an effort would be of great benefit to California, and potentially to other jurisdictions as well, given California's significance in the market place of legal education. The underlying challenge will be to determine the unique, innovative, fair, and cost-effective approaches which California can take to testing and admissions processes.
5. This State Bar must be intentional about introducing and managing change. This report offers a checklist of recommended activities, as well as identifying bigger ideas for change and alignment. Redesigned admissions and organizational processes require change across several actors and constituencies. To implement the recommendations set forth in this report, the Bar needs a road map, or transition plan. A change plan needs to outline compelling opportunities, specify new rules, roles and behaviors, and bring key constituents along to realize positive impact as well as to minimize the costs and conflicts of change.

Further, a restructuring, such as outsourcing accreditation, requires alignment and coordination across diverse constituents, during the transition process, and in the future. Such a change should clearly define and ultimately measure the anticipated benefits of the new design (including practices to keep from the current model) and must be executed to minimize implementation costs and risks. Change of this scope must have a well-documented transition project plan and effective project management.

Managing the admission of lawyers in all states is a matter of great importance with a direct impact on public protection. For the State Bar of California, however, this is a responsibility comparatively unequalled in both the size of the lawyer population and the scope of functions involved. Current changes in the legal profession and legal education, combined with advances in the science of psychometrics and data analytics, make review of lawyer licensing nationally overdue. All jurisdictions, like California, have largely relied on licensing systems which date from the early twentieth century. This review of the Committee of Bar Examiners, mandated by the State Bar of California Board of Trustees, is thus both a timely undertaking and a valuable opportunity.

The recommendations set forth above seek to retain the best of past practice, and to re-balance the role of the volunteers, staff, constituencies, and experts. By focusing the CBE on its core task of admissions (as well as input into policy formation and review), the goal is to leverage the insight, experience and opinions of volunteers for admissions appeals and adjudication. Specialist and administrative tasks should be appropriately assigned to staff or outside experts; while policy making should take place in a larger context overseen by the Court. The goal is to increase efficiency and economy and improve performance with increased professionalization. By doing so, the State Bar of California will build on its legacy of excellence and set a national standard for best practices in lawyer licensing.

## **REFERENCES**

## Committee of Bar Examiners Report References – Work Draft

*Reference 1: Interviewee List***Reference 1: CBE Interview List**

<p><u><i>CBE Members</i></u></p> <ul style="list-style-type: none"> <li>▪ Angeli Agatep, CBE Member</li> <li>▪ Robert Brodie, CBE Member</li> <li>▪ Alex Chan, CBE Member</li> <li>▪ James Efting, CBE Member</li> <li>▪ Delores Heisinger, CBE Member</li> <li>▪ Erika Hiramatsu, , CBE Member and Chair</li> <li>▪ Larry Kaplan, CBE Member</li> <li>▪ Paul Kramer, CBE Member</li> <li>▪ Alexander Lawrence, CBE Member</li> <li>▪ Ester Lin, CBE Member</li> <li>▪ Larry Sheingold, CBE Member*</li> <li>▪ David Torres, CBE Member</li> <li>▪ Lee Wallach, CBE Member*</li> </ul> <p><u><i>Board Members</i></u></p> <ul style="list-style-type: none"> <li>▪ Michael G. Colantuono, President State Bar Board</li> <li>▪ Joanna Mendoza, Chair Programs Committee, State Bar Trustee</li> </ul> <p><u><i>Staff</i></u></p> <ul style="list-style-type: none"> <li>▪ Andrew Conover, Principal Program Analyst</li> <li>▪ Lisa Cummings, Program Manager, Examinations Admissions</li> <li>▪ Donna Hershkowitz, Chief of Programs</li> <li>▪ George Leal, Director Admissions</li> <li>▪ Gayle Murphy, Director, Admissions</li> <li>▪ Amy Nunez, Interim Director Admissions</li> <li>▪ Greg Shin, Admissions</li> <li>▪ Mark Torres-Gil, Program Manager Moral Character Determinations</li> <li>▪ Leah Wilson, Executive Director</li> </ul> <p><u><i>U.S. Bar Admissions Organizations</i></u></p> <ul style="list-style-type: none"> <li>▪ Alaska – Elizabeth O'Reagan</li> <li>▪ Arizona—John Phelps</li> <li>▪ Florida-- Missy Gavagni</li> <li>▪ Idaho-- Maureen Ryan Braley</li> <li>▪ Michigan—Janet Welch</li> <li>▪ New York—John McAlary</li> <li>▪ Oregon—Troy Wood</li> <li>▪ Pennsylvania-- Gicine Brignola</li> <li>▪ Texas—Susan Hendricks</li> <li>▪ Washington State—Paula Littlewood</li> </ul>	<p><u><i>Other Individuals and Groups</i></u></p> <ul style="list-style-type: none"> <li>▪ Dr. Tracey Montez, Head Psychometrician, California Department of Consumer Affairs</li> <li>▪ Dr. Mary Pitoniak, Consulting Psychometrician, Educational Testing Service</li> <li>▪ Dr. Chad Buckendahl, Consulting Psychometrician (on contract to the California State Bar)</li> <li>▪ Dean Barry Currier, ABA Managing Director of Accreditation and Legal Education</li> <li>▪ Erica Moeser, CEO Emerita, National Commission of Bar Examiners</li> <li>▪ Dean Judith Areen, Executive Director, Association of American Law Schools</li> <li>▪ Dean Kelly Testye, CEO, Law School Admissions Council (formerly Dean, University of Washington)</li> <li>▪ Christopher Chapman, CEO, Access-Lex</li> <li>▪ Dr. Elizabeth Griego, Educational Consultant and former head of standards, WASC</li> <li>▪ Dr. Judith S. Eaton, CEO of the Council for Higher Education Accreditation</li> <li>▪ Bridgette Gramme, Center for Public Interest Law</li> <li>▪ Julie Brannan, Director of Education and Training, U.K. Solicitors Regulation Authority</li> </ul>
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\*Term completed as of May 2018

**Reference 2: CBE Working Group 24 Recommendations and Discussion Summary****I. Governance Recommendations****1. On Size and Structure**

- a. Reduce the size of the CBE. A smaller CBE will make it easier to convene a simple majority quorum; a smaller CBE will be more conducive to member meeting participation.
- b. Set and enforce three-year CBE chair terms; and where applicable, CBE chair terms. Enforce actual terms, opt for filling vacancies rather than continuing the past terms of incumbents until replaced.
- c. Develop a CBE Skills Matrix and apply it to recruiting efforts; utilize communications and recruiting efforts to attract members with needed skills and experience.
- d. Review CBE Sub-committees role and activities for alignment with focused design.

**2. Activities**

- a. Identify key policy and long-term items to be covered on the CBE agenda, including alignment with the State Bar Five-year Strategic Plan.
- b. Strengthen onboarding practices, e.g., mentors, role play practice, observing join Moral Character reviews.
- c. Staff should provide uniform agenda and agenda management process.
- d. Eliminate CBE involvement in formal financial reviews; limit it to approving bar examination fees only.

**3. Cooperation with the State Bar Board, Staff, Court and Legislature**

- a. Identify positive scenarios of how CBE, the California Bar and the Supreme Court can most effectively work together, both by using successful cases from experience, as well as developing prospective cases for future guidance.<sup>65</sup>
- b. Validate roles and authorities of all respective bodies via an Office of the General Counsel review.
- c. Educate and inform constituents (CBE members, Trustees, staff, judicial and legislative authorities) on respective roles, authorities and accountabilities.

**4. Law School Council Should Facilitate Communications between Deans and CBE**

- a. Work/study with deans and LSC to design a more robust partnership.
- b. Clarify and institutionalize points when LSC and law school deans “weigh in” at key points, being sensitive to Bagley-Keene requirements; The Bar and CBE should consider options to gauge interest and opinions early on to build trust and collaboration. For instance, as a policy change or important matter with implications for law schools is considered, a first step would be an open webcast with a call in for public comment.
- c. Ensure annual “Admissions Day” is permanently on Bar Calendar; ascertain possibility of extending Admissions Day training to Law School constituents/deans (next step: consult with those attending the Board of Trustees Admissions review session for their recommendations).
- d. Take advantage of the Committee being formed to discuss Bar Exam review, to engage all deans in the process of overseeing the Job Analysis; review this work at the Planning Committee meeting.
- e. Pending study about the original reasons for creating both LSC and RAC, consider combining both into a single organization to broaden perspective and avoid conflict of interest.

## Committee of Bar Examiners Report References – Work Draft

*Reference 2: CBE Working Group Recommendations and Discussion Summary*

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**II. Moral Character Recommendations**

- a. Ensure Moral Character review has more specific, clearly articulated standards/guidelines for determinations; document and publish specific guidance for decisions beyond the existing high-level description; include waterfall, “if-then” protocols for decision sequences; reinforce, extend, and clarify Rule 4;
- b. Compare California’s guidelines to those used by the NCBE guidelines annually;
- c. Undertake a review of the reform efforts being developed in other jurisdictions, notably the State Bar of Utah and the Solicitors Regulation Authority in the U.K., to determine what possible alternate approaches to reform may be possible; and
- d. Retain CBE level review of appeals denied.<sup>66</sup>

**III. Accreditation Recommendations**

- a. A three-year audit to understand and ensure that CBE accreditation practices are consistent with national education accreditation standards;
- b. Begin the first audit immediately in 2018;<sup>67</sup>
- c. Before beginning this process, the State Bar should solicit input from the Supreme Court and the Legislature.
- d. Pursue value driven innovation in education and licensure based on growing knowledge and skill assessment practice.

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<sup>66</sup> Specifically, the group argued that the Committee level review best reflected the due process that should be accorded candidates. Thus, any character and fitness applications that were denied or questioned by staff or subcommittee should be reviewed by the full committee (as opposed to going directly from subcommittee to State Bar Court).

<sup>67</sup> The original proposal was to begin the audit concurrently with the legislative mandate on accreditation. However, as the timing of the legislation has changed, the recommendation has been modified to reflect the original intent that the audit begin immediately.

## Committee of Bar Examiners Report References – Work Draft

## Reference 2: CBE Working Group Recommendations and Discussion Summary

*CBE Working Group Recommendations: Discussion Record*

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
<b>1. Governance and composition</b>	<ul style="list-style-type: none"> <li>10 lawyers (appt BOT)</li> <li>9 public members (apptd by legislature, senate, court)</li> </ul>	<p>↓ Absences may make it challenging to have a quorum (majority)</p>	<ul style="list-style-type: none"> <li>If work is redesigned, consider smaller board.</li> <li>Smaller board makes majority quorum easier to convene</li> <li>Smaller board may be more conducive to member meeting participation</li> </ul>	<ul style="list-style-type: none"> <li>NY 5 long-termed examiners, paid board service; Texas 9 lawyers, WI 11, FL 12</li> </ul>
<b>a. Terms</b>	<ul style="list-style-type: none"> <li>Public: 4-year term, renewable for 4 terms total</li> <li>Licensed: 4 yr. terms</li> <li>Serve until position filled</li> </ul>	<p>↓ No effective terms for public members; some serving up to 17 years</p>	<ul style="list-style-type: none"> <li>Enforce actual terms, opt for vacancy vs. continuance of past terms</li> <li>Utilize communications and recruiting efforts to gain members with needed skills and experience</li> </ul>	<ul style="list-style-type: none"> <li>NCBE/ABA Code of Recommended Standards for Bar Examiners (“Code”) recommends consistent and fixed, but staggered, terms, identical length for all members, with ‘sufficient’ rotation to encourage fresh views; most Bars consulted agree.</li> </ul>
<b>b. Leadership and Composition</b>	<ul style="list-style-type: none"> <li>Annual member rotation</li> <li>Fixed sub-committee leadership</li> </ul>	<p>↑ Stable leadership, institutional knowledge</p> <p>↑ Opportunity to participate in all committees/don’t get stuck in one committee</p> <p>↓ Entrenchment of leadership</p> <p>↓ Newer members may have challenge participating</p>	<ul style="list-style-type: none"> <li>3-year subcommittee chair terms</li> <li>3-year committee terms</li> <li>Develop a Committee Skills matrix, apply to recruiting efforts</li> <li>Strengthen onboarding practices, e.g., mentors, role play practice, join MC reviews</li> </ul>	<ul style="list-style-type: none"> <li>Many Bars have predictable rotation of Chair and Vice Chair for continuity</li> </ul>

## Committee of Bar Examiners Report References – Work Draft

## Reference 2: CBE Working Group Recommendations and Discussion Summary

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
<b>c. Meeting agendas/ meeting management</b>	<ul style="list-style-type: none"> <li>Agendas sent out 1 week prior</li> <li>Materials posted</li> <li>Dinners, social activity supplement formal meetings</li> </ul>	<ul style="list-style-type: none"> <li>↓ Oscillating between open and closed sessions has been confusing</li> <li>↓ Acronyms, “lawyer speak” may discourage public member engagement</li> <li>↓ Materials are not received in sufficient time</li> <li>↑ Informal time seen as helpful to collegiality</li> </ul>	<ul style="list-style-type: none"> <li>Staff to provide uniform agenda and agenda management process (Herschkowitz to review)</li> <li>Identify key policy and long-term items to be covered on committee agenda, including alignment with Bar 5-year Strategic Plan</li> </ul>	Most admissions management organizations meet monthly.
<b>d. Sub-Committee Design</b>	<ul style="list-style-type: none"> <li>Educ Standards</li> <li>Examinations</li> <li>Moral Character</li> <li>Ops &amp; Mgt</li> </ul>	<ul style="list-style-type: none"> <li>↓ May be challenging under Bagley Keene, subcommittee sessions are closed</li> </ul>	<ul style="list-style-type: none"> <li>Per 2/2 CBE meeting; eliminate Sub-committees except MC [NOTE: Revised to “Review Sub Committee roles and activities”]</li> </ul>	<ul style="list-style-type: none"> <li>Many Bars have separate entities or committees for Moral Character and Fitness and Exam Administration; some are also in separate organizations</li> </ul>

## Committee of Bar Examiners Report References – Work Draft

## Reference 2: CBE Working Group Recommendations and Discussion Summary

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
<b>2. Moral Character Approach</b>	<ul style="list-style-type: none"> <li>Appeals rec'd by staff to MC Subcommittee (of approx. 7K 2017 appeals, 259 to Subcommittee)</li> <li>Teams receive folios, have informal conference with applicant, staff member present.</li> <li>Staff provides history and calibration</li> </ul>	<ul style="list-style-type: none"> <li>↓ Significant reading demand on volunteer</li> <li>↓ Varied outcomes – no “rules” for determinations</li> <li>↑ Staff informs for consideration</li> <li>↑ Important to have public, eclectic, “human” perspective</li> <li>↑ Full committee review realizes due process</li> <li>↑ Review of individual situations allows CBE to be current on policy and interpretation issues; may identify areas where policy is unclear</li> </ul>	<ul style="list-style-type: none"> <li>Ensure Moral Character review has more specific, clear standards/guidelines for determinations; document and publish specific guidance for decisions beyond existing high-level description; include waterfall, “if-then” protocols for decision sequences; Reinforce, extend, clarify Rule 4</li> <li>Compare to NCBE guidelines</li> <li>Retain Committee level review</li> </ul> <p>--NO: Outsource Moral Character to separate entity</p>	<ul style="list-style-type: none"> <li>The Two-level review with final decision by the Supreme Court is standard. The final review for some Bars is based on a quorum (not all members) of the Board of Bar Examiners (e.g. about 3-5 members)</li> <li>39 states have published moral character standards</li> <li>24 states have separate entity that assesses moral character</li> </ul> <p>The Code recommends a clearly articulated and published set of standards with which to guide C&amp;F reviews; 70% of U.S. jurisdictions comply; California appears to lack such a set of standards.</p>

## Committee of Bar Examiners Report References – Work Draft

## Reference 2: CBE Working Group Recommendations and Discussion Summary

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
<b>3. Accommodations Approach</b>	<ul style="list-style-type: none"> <li>Staff reviews application, background documentation, including other accommodations made – makes recommendations</li> <li>Reviewed by Ops &amp; Mgt; closed session</li> <li>Important to have experts' opinion on disabilities</li> <li>2017: @ 800 applications; 100 appealed to CBE</li> </ul>	<ul style="list-style-type: none"> <li>↓ Staff/SMEs guide decisions – CBE subcommittee members have little to add</li> <li>↓ Frustrating to both sides – very challenging and complex to determine actual from false claims</li> <li>↑ Very important to have due process</li> <li>↑ Likely recent national decisions will make accommodations decisions more rote</li> </ul>	<ul style="list-style-type: none"> <li>Delegate to staff per evolving precedent</li> </ul>	<ul style="list-style-type: none"> <li>The State Bar's organizational approach to accreditation should be reviewed and alternate models considered considering national practice and state bar funding.</li> </ul>
<b>4. Accreditation</b>	<ul style="list-style-type: none"> <li>Done primarily by staff</li> <li>Site visits by CBE members</li> <li>Require Cal-accredited schools have acceptable pass rate of student</li> </ul>	<ul style="list-style-type: none"> <li>CA has most expansive qualification options (e.g., online, rural, job experience)</li> </ul>	<ul style="list-style-type: none"> <li>Propose accreditation audit every 3 years to ensure accreditation practices are consistent with national education standards</li> <li>First audit concurrent with legislative mandate on accreditation-</li> <li>PROS: Legislature might like, should discuss approach with legislature</li> <li>NO: Outsource to WASC</li> </ul>	<ul style="list-style-type: none"> <li>No other State Bar organization accredits law schools; Massachusetts appears to use the Regional Accrediting Body to accredit its state approved law school (further clarification required)</li> <li>Many states require graduation for an ABA accredited school for eligibility to take the bar exam.</li> </ul>
<b>a. Recommendation of Admittance</b>	<ul style="list-style-type: none"> <li>Done by CBE</li> </ul>	<ul style="list-style-type: none"> <li>Continued studies and debates</li> </ul>	<ul style="list-style-type: none"> <li>Remain as is</li> </ul>	

## Committee of Bar Examiners Report References – Work Draft

## Reference 2: CBE Working Group Recommendations and Discussion Summary

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
<b>b. Policy changes</b>	<ul style="list-style-type: none"> <li>▪ CBE, BOT, Staff can initiate, propose policy changes</li> <li>▪ Staff studies, CBE and BOT review</li> </ul>		<ul style="list-style-type: none"> <li>▪ Remain as is</li> <li>▪ Worth reviewing appropriate scenarios, particularly since clarity and alignment will be needed in approaching upcoming policy question</li> </ul>	
<b>c. Financial Oversight</b>	<ul style="list-style-type: none"> <li>▪ CBE oversees collection, finances</li> <li>▪ CBE reviews fees</li> </ul>	<p>↓ History of concern that CalBar treats admissions as a “cash cow”</p> <ul style="list-style-type: none"> <li>▪ CBE has substantial fiscal reviews are inconsistent with current structure and regulatory framework</li> </ul> <p>Few CBE members expressed interest in great/greater in depth fiscal reviews</p>	<ul style="list-style-type: none"> <li>▪ Re-allocate financial oversight to accountable staff (e.g., ED, CFO, etc.)</li> <li>▪ Review fees annually; recommend to BOT</li> <li>▪ Potential for further education and understanding re CBE role</li> </ul>	

## Committee of Bar Examiners Report References – Work Draft

## Reference 2: CBE Working Group Recommendations and Discussion Summary

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
<b>7. Cooperation, among bar examining authority, law schools, the judiciary, and the bar</b>	<ul style="list-style-type: none"> <li>Law School Council to facilitate communications between deans and CBE</li> <li>Ad hoc meetings between BoT members, staff and judiciary</li> <li>Law School Assembly (all deans) meets 1x year</li> <li>RAC focus is on accreditation; LSC on exam</li> </ul>	<ul style="list-style-type: none"> <li>↓ Unclear there is consistent or sufficient LSC engagement</li> <li>↓ Ad hoc meetings undermine transparent communication and aligned action</li> <li>↓ What is the overlap, redundancy between LSC and RAC</li> </ul>	<ul style="list-style-type: none"> <li>Work/study with deans and LSC to design a more robust partnership</li> <li>Institutionalize points when LSC and law school deans “weigh in” at key points – need to be sensitive to BK; need to gauge interest early on to build trust and collaboration, could do webcast w call in for public comment</li> <li>Ensure annual “Admissions Day” on Bar Calendar; ascertain possibility of extending Admissions day training to Law School constituents/deans (ask deans who attended BoT session)</li> <li>Committee being formed to discuss Bar Exam review, will engage the deans, will oversee the Job Analysis, will review at Planning Committee meeting</li> <li>Pending study on original reason formation of both LSC and RAC, consider combining</li> </ul>	The Coder recommends this stake-holder collaboration. It is unclear how well California meets this recommendation.

## Committee of Bar Examiners Report References – Work Draft

*Reference 3: Comparisons with other jurisdictions***Reference 3: Table of Inter jurisdiction comparisons**Note: ● Mandatory Bar State ● Voluntary Bar StateSources and abbreviations:<sup>68</sup>

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Alabama	BBE <sup>69</sup>	15	1	4			President of AL State Bar	Y	Y
Alaska	Law Examiners Committee <sup>70</sup>	20 <sup>71</sup>	3	Y	N		President	Y	
Arizona	Committee on Examinations	11						Y	18
Arkansas	Admin Office of Court	11	6			2 per (4) judicial districts, 3 at large, [Incl 1 liaison/judge]	per curiam		
California	CBE	19	3	4x					
Colorado	BLE - Law Committee	11; + 2 Liaisons						Y	
Connecticut	CT Bar Examining Committee	24	3	3x	1/3 expire each year	practicing attorneys + 1 judge	Judges of the Superior Court		
Delaware	Board of Bar Examiners	26 <sup>72</sup>	3	2x		+ liaison judge & Exec Dir		Y	NCBE does C&F

<sup>68</sup> Most of the documentation comes from published websites and Rules of the Court. Effort was made to reflect naming conventions of the source. Where traditional names (Board of Law Examiners, Committee of Law Examiners), abbreviations (BLE, CLE) are used. Where the state name is included in the name (e.g., Florida Board of Bar Examiners), it is included here.

<sup>69</sup> "members of the bar of Alabama are members of a private incorporated association."

<sup>70</sup> Law Examiners are paid \$800/y (\$400 per exam period graded)

<sup>71</sup> Alaska down from 31 before UBE

<sup>72</sup> DE repr 3 counties: currently 23 members plus 24 Associates, liaison justice & Exec Dir

## Committee of Bar Examiners Report References – Work Draft

*Reference 3: Comparisons with other jurisdictions*

Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
DC	Committee on Admissions	7	3	2x	1 member of counsel <sup>73</sup>	Court	Y	N
Florida	Florida BBE	18.		No	5 L; P 1	State Court nominated by Bar		15 <sup>74</sup>
Georgia	Office of Bar Admissions	6	6			Court; Court appts Chair		10 <sup>75</sup>
Hawaii	HI BBE	per SC Quorum is 15	Set by Court			Court; Court appts Chair; Sec'y is Clerk of Supreme Ct	Y	NCBE <sup>76</sup>
Idaho	Bar Exam Preparation Committee <sup>77</sup>	3					Y	9 <sup>78</sup>
Illinois	IL Board of Admissions to the Bar	7	3	3x	Y	+ law school dean <sup>79</sup>	Supreme Court, each justice gets 1 appointee, done by district	
Indiana	BLE	10.						300+ <sup>80</sup>
Iowa	BLE	7	3	3x		5 L, 2 P, gender balanced	Supreme Court	Y
Kansas	KBLE	10	5	2x <sup>81</sup>		Lawyers & Judges	Y	N

<sup>73</sup> DC – all members of the Bar<sup>74</sup> Min 4 public members<sup>75</sup> GA C&F 6 attny, 3 public, 1 apptd by chair of BBE – 5 yr terms<sup>76</sup> HI application reviewed by Bd, Staff, Judiciary; The Board or the ARC shall consider whether the evidence meets the standard of character and fitness set forth in Rule 1, RSCH<sup>77</sup> Reviews questions and analyses for each bar exam and provides feedback to the National Conference of Bar Examiners. Meets twice per year; 3 members.<sup>78</sup> ID Apptd by Bar Board appoint a nine-members of CF committee (7 members in good standing of the Bar and 2 non-lawyer members. 0 Reviews character or fitness issues of applicants for admission. Makes recommendations to the Board of Commissioners Meets 5-6 times per year; 8 members (2 non-lawyers)."<sup>79</sup> ex officio, non-voting<sup>80</sup> IN the Committee on Character and Fitness now numbers over 300 lawyers and interviews personally all applicants to the bar.<sup>81</sup> KS BLE terms specified as maximum

## Committee of Bar Examiners Report References – Work Draft

*Reference 3: Comparisons with other jurisdictions*

Name	Size	Term	Renewable	Staggered	Composition	Appointed by	UBE	C&F Cmte
Kentucky	KY Office of Bar Admissions <sup>82</sup>	7					Y	4
Louisiana	LASCBA Committee on Bar Admissions	19	5	2x <sup>83</sup>		Court, recommended by Bar		3 <sup>84</sup>
Maine	BBE	9	5	Until successor	7 L, 2 P+ court liaison	Governor, Liaison of Supreme Judicial Court	Y	By panel
Maryland	State BLE	7				Court		7 <sup>85</sup>
Massachusetts	BBE	5	5	?	Lawyers, 4 residing in different MA counties,	Justice of the Supreme Judicial Court		
Michigan	MI BLE	5	5	Y		Governor; nominated by SC		
Minnesota	MSBLE	9	3	3 <sup>86</sup>	7L, 2P	Supreme Court	Y	
Mississippi	Mississippi Board of Bar Admissions	5						
Missouri	MBLE	6	9	1 term		Court	Y	
Montana	BBE	7 <sup>87</sup>	Until successor appointed			Supreme Court	Y	9 <sup>88</sup>

<sup>82</sup> KY Office of Bar Admissions which shall be comprised of the Kentucky Board of Bar Examiners, as defined in SCR 2.020 and the Character and Fitness Committee, as defined in SCR 2.040.

<sup>83</sup> LA BLE terms specified as maximum

<sup>84</sup> LA Director of Character and Fitness and two other members of the BA Committee

<sup>85</sup> MD C&F Committees 5 members by jurisdiction

<sup>86</sup> No more than 3 terms of 3, except president.

<sup>87</sup> MT The Board may engage the services of active members of the State Bar of Montana to augment the grading performed by members of the Board if necessary.

<sup>88</sup> MT Commission on C&F appointed by the Montana Supreme Court; 9 members, 6 licensed Montana attorneys, 3 lay members, nominated by either the State Bar or the Montana Supreme Court. Each member serves until a successor is appointed.

## Committee of Bar Examiners Report References – Work Draft

*Reference 3: Comparisons with other jurisdictions*

Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte	
Nebraska	Nebraska State Bar Commission	6	6	2x	Y	One commissioner per judicial district		Y	
Nevada	BBE	14 <sup>89</sup>	3	No limit		Liaison for BOG, Staff			
New Hampshire	BBE	15+ <sup>90</sup>	3	3			Court, Court appts BBE Chair, VC	Y	9 <sup>91</sup>
New Jersey	BBE	per SC	3	3			Supreme Court SC appts chair, appts Sec'y who is not a member	Y	Y <sup>92</sup>
New Mexico	NMBBE	12 members of State Bar	5	Y	Y				
New York	NYSBLE	5	3	Y			Ct of Appeals		
North Carolina	NCBLE	11 <sup>93</sup>					Elected by Council of NC State Bar	Y	
North Dakota	SBLE	3				+ court clerk as Sec'y/ Treasr	Supreme Court	Y	
Ohio	BBE	18					Supreme Court		

<sup>89</sup> NV Board of Bar Examiners, 14 members plus 2 liaisons from the Board of Governors, writes and grades the bar examination questions and oversees the administration of the two bar examinations. The board works closely with the Supreme Court and the Board of Governors in formulating rules and procedures for admission to the State Bar of NV

<sup>90</sup> NH BBE no fewer than 13

<sup>91</sup> NH 9 A Supreme Court committee 2 non-attorney members and 7 members of the New Hampshire Bar Association as follows: (i) one member of the board of bar examiners; (ii) one member who is a member of the committee on professional conduct; (iii) the attorney general of New Hampshire or his or her designee; (iv) the clerk of the supreme court or his or her designee; and (v) three other members of the New Hampshire Bar Association, one of whom shall be designated chair of the committee. The terms of the attorney general and of the clerk of the supreme court as members of the committee shall be coterminous with their terms of office; and, in the absence of either the attorney general or the clerk of the supreme court, his or her designee is authorized to act as an alternate, exercising all the powers of an appointed member of the committee. Each other member of the committee shall be appointed for a term of three years and shall be eligible for reappointment.

<sup>92</sup> NJ Supreme Court shall appoint the Committee on Character, which shall consist of such members of the bar as the court may determine. Members shall serve for terms of three years and may be reappointed at the discretion of the Supreme Court.

## Committee of Bar Examiners Report References – Work Draft

*Reference 3: Comparisons with other jurisdictions*

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Oklahoma	OKBBE	9				from districts	Supreme Court		
Oregon	OSBBE	14				4 Bar, 2 public, no academic	Court	Y	-
Pennsylvania	PBBE	7	2	2 max			Supreme Court		
Rhode Island	BBE	11					Supreme Court		
South Carolina	BBE	?						Y	Y
South Dakota	BBE	5		3			Supreme Court <sup>94</sup>		
Tennessee	TBLE	?						Y	
Texas	TBLE	9	6	2	Y	35+ yr old, 10 yrs exp	Supreme Court		
Utah	Board of the Bar	13-15	3	until success or appointed		Pract'g for 10 years+ 11 L, 2 P	11 elected lawyers, 2 non lawyers appt by SC		
Vermont	BBE	16 <sup>95</sup>	4	2 term max <sup>96</sup>		9 Exmnrs (7 L, 2 P) 7 Assoc Exmnrs	Court	Y	5 <sup>97</sup>
Virginia	VBBE	5				+ Scy/Trs			5
Washington	BBE <sup>98</sup>	3							
West Virginia	BLE	7	7	No cap			Supreme Court of Appeals	Y	48 <sup>99</sup>

<sup>94</sup> The court shall designate a chairman and the clerk of the SC or officer of court is ex officio Secretary of board. No academic

<sup>95</sup> VT BBE includes 9 Examiners (7L, 2P) and 7 Associate Examiners

<sup>96</sup> VT Each term of appointment is for four years, plus time to find successor NO appts > 2 terms, but can come back after year lapse.

<sup>97</sup> VA C&F 2 L, 2P, 1 ret'd SC justice or judge. No current Examiner or Associate Examiner of the Board may serve as a Member of the Committee.

<sup>98</sup> WA BBE Members must attend mandatory training sessions and four-day grading conferences in March and August. All positions are funded <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/board-of-bar-examiners>

## Committee of Bar Examiners Report References – Work Draft

*Reference 3: Comparisons with other jurisdictions*

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Wisconsin	BBE	11	3	2 max		5L, 3 judge/law school, 3P			
Wyoming	BLE	5	3	3 max			Court , Recommended by Bar Prez	Y	5, <sup>100</sup>

<sup>99</sup> WV Bar Admissions Administrators coordinate character and fitness investigations by the National Conference of Bar Examiners, the District Character Committees and the Board of Law Examiners. 16 District Character Committees = 3 members from district, apptd by Supreme CT of appeals from district judges' nominations, 5 yr renewable terms. Must select Chair & Secy <http://www.courtswv.gov/legal-community/rules-for-admission.html#rule5-1>

<sup>100</sup> four active, resident members of the Bar and one non-lawyer with special training in substance abuse, mental health, financial management or another area of value to the assessment of good moral character and fitness to practice law of applicants

## Committee of Bar Examiners Report References – Work Draft

*Reference 4: Moral Character Committees in other jurisdictions***Reference 4: Moral Character in Other Jurisdictions**

**Alabama** The Committee on Character and Fitness of the Alabama State Bar conducts hearings and makes a determination for law student registrants and applicants seeking admission by bar examination, reciprocity, and transfer of UBE score.

**Georgia** The Board to Determine Fitness of Bar Applicants is separate and distinct from the Board of Bar Examiners. The Fitness Board makes character and fitness determinations. The Office of Bar Admissions reports to both Boards, and both Boards must certify an applicant to the Supreme Court.

**Illinois** Committee appointed by the Supreme Court determines whether applicants having been assigned to the committee for certification possess good moral character and general fitness for admission to the practice of law.

**Indiana** The Indiana Supreme Court's Committee on Character and Fitness interviews each applicant and then submits a report and recommendation to the Board of Law Examiners, which makes a final determination.

**Kentucky** The Character and Fitness Committee is responsible for determining the eligibility of applicants for admission to the Kentucky Bar.

**Maryland** Character Committees appointed by the Court of Appeals of Maryland perform character investigations and interviews and make recommendations to the State Board of Law Examiners.

**Mississippi** The Board of Bar Admissions appoints persons to serve on the Committee on Character and Fitness. This committee reviews applications, conducts conferences and hearings with applicants, and makes recommendations to the Board. The Board makes the final determination to approve or deny an applicant on character and fitness grounds.

**Montana** Montana's Character & Fitness Commission, which is separate from the Board of Bar Examiners, evaluates all applicants to determine certification.

**New York** Character and fitness applications are processed by 1 of 4 appellate departments.

**Ohio** Local bar association admissions committees make recommendations to the Board of Commissioners on Character and Fitness, which makes final determinations. This Board is separate from the Board of Bar Examiners.

**Rhode Island** The Rhode Island Supreme Court Committee on Character and Fitness makes character and fitness determinations for the Court. The Committee on Character and Fitness is separate from the Rhode Island Supreme Court Board of Bar Examiners, which deals with testing content and administration.

**Washington** The Washington Supreme Court makes the final character and fitness determinations.

**West Virginia** District Character Committee conducts character and fitness investigation and interviews each applicant, then submits report and recommendation to the Board of Law Examiners.

Source: 2017 Bar Administration Practices, NCBE.

Committee of Bar Examiners Report References – Work Draft  
Reference 5: Bar and Admissions Activities

**Reference 5: Bar and Admissions Activities**

Reference 5A: Bar Activities

Program Area	Regulatory and Discipline										Mandatory				Voluntary			
	Admissions	Member Records and Compliance	Professional Competence	Discipline	Client Security Fund	Lawyer Assistance Program	Mandatory Continuing Legal Education	Legal Specialization	Mandatory Fee Arbitration	Judicial Nominees Evaluation	Legal Services	Diversity & Bar Relations	Legislative Activities	Sections & California Young Lawyers Association				
Funding	S	M	M	M	M	M	M	S	M	M	G/V	V	V	S				
Principal Functions	Bar Exam Development	Maintain Attorney Records	Rules of Professional Conduct	Chief Trial Counsel	Investigation and Payment of Claims	Monitored LAP	Compliance Tracking	Certification of Legal Specialists	Arbitration of Fee Disputes	Evaluation of Nominees	Access to Justice	Elimination of Bias	Legislative Advocacy	Education				
	Bar Exam Grading		Ethics Hotline	Probation		Support LAP	Accreditation of Providers				Program Development	Bar Relations	Town Hall Meetings					
	Moral Character Determination		Ethics Opinions	State Bar Court							Legal Services Trust Fund	Council on Access and Fairness						
	Law School Regulation		Education															
	Special Admissions																	
Staff Size	54.0	15.7	12.0	267.8	11.0	7.0	5.3	8.0	5.0	4.0	17.0	4.0	2.0	16.2				
Direct Cost	15,952	1,855	1,706	36,193	7,040	1,158	665	1,117	637	647	31,597	1,014	527	7,085				
Indirect Cost	3,558	753	654	15,354	702	433	122	426	190	145	1,081	277	98	1,440				
Total Cost	19,510	2,608	2,360	51,547	7,742	1,591	787	1,543	827	792	32,678	1,291	625	8,525				

**Regulatory and Discipline:** governing the licensing, discipline, and competence of lawyers  
**Mandatory:** other mandated programs and activities required by statute or court rule which contribute to the public protection mission of the State Bar  
**Voluntary support for the association:** activities which contribute to the broader mission of the State Bar of educating the public, supporting the professional development of members of the Bar, and improving the administration of the legal system  
**Funding Sources:** G = Grant Funding; M = Mandatory Membership Fees; V = Voluntary Contributions; S = Self-Funded by User Fees  
**Indirect Costs** include an allocation of the costs of each of the following departments: Executive Director's Office, Finance, General Counsel, Human Resources, Information Technology, Communications, and General Services

\$ thousands

**Reference 5: Bar and Admissions Activities (cont'd)**

## Reference 5A: Admissions Tasks

Reference 5b: Admissions Tasks				
Goals and Policy	Design & Development	Administration, Including appeals	Evaluation, modifications, maintenance	
<ol style="list-style-type: none"> <li>1. Set Admissions Criteria and Standards, broadly</li> <li>2. Anticipate and address policy issues as raised by the public, the legislature or key constituents</li> <li>3. Ensure overall process integrity</li> <li>4. Manage appropriate engagement of constituents (e.g., Law School Council)</li> </ol>	<ol style="list-style-type: none"> <li>5. Identify and adopt key elements of Bar licensing requirements, including exam components (e.g. MBE, MPE, written and practice tests etc.), as well as Moral Character requirements</li> <li>6. Select key questions for California Essay Questions</li> <li>7. Manage exam testing</li> <li>8. Ensure sufficient inventory of reliable, valid questions</li> <li>9. Ensure and oversee professional expertise available and consulted on key exam elements (administration, question development, exam validation, etc.)</li> </ol>	<ol style="list-style-type: none"> <li>10. Administer approximately 5,000 applications, including exam components (e.g. MPE, MPRE, jurisdiction questions) and Moral Character standards</li> <li>11. Manage any and all appeals processes</li> <li>12. Process special admissions, foreign applications</li> </ol>	<ol style="list-style-type: none"> <li>13. Ensure technology, facilities, and other key process and procedural elements are in place to administer exam and admissions process are conducted reliably, with integrity</li> <li>14. Oversee and implement technology or other updates as appropriate</li> <li>15. Manage any and all appeals</li> </ol>	

**Reference 6: State Bar Strategic Goals Relevant to CBE**

Goal 1. b. Implement and pursue governance, composition, and operations reforms needed to ensure that the Board's structure and processes optimally align with the State Bar's public protection mission.

Goal 2: Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

2. n. For greater transparency, accountability, efficiency, and access, develop and deploy a new case management system for the Office of Admissions by June 30, 2019.
  - o. After the results of the February 2019 Bar Exam are published, evaluate the results of the two-day exam on pass rates and costs.
  - p. No later than June 30, 2019, conduct a California specific job analysis to determine the knowledge, skills, and abilities for entry level attorneys. Upon completion, conduct a new content validation study.
  - q. No later than December 31, 2018, review special admissions rules to determine whether changes are needed to support the goal of increased access to legal services or for other reasons, and implement needed changes.

Goal 3 1. No later than November 30, 2018, develop goals and objectives for each functional area of the Bar and use those to develop organizational performance metrics.

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

- a. Support increased funding and enhanced outcome measures for Legal Services.
- b. Study and implement improved programmatic approaches to increasing access to justice.
- c. By December 31, 2018, review Lawyer Referral Services certification rules with a goal of increasing access to justice.
- d. Commencing in 2018 and concluding no later than December 31, 2019, study online legal service delivery models and determine if any regulatory changes are needed to better support and/or regulate the expansion of access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice.
- e. No later than December 31, 2019, complete a California Justice Gap Study. The Justice Gap Study will be modeled on the 2017 Legal Services Corporation Justice Gap Study but will also include an evaluation of the costs of legal education in California and the impact of those costs on access to justice, as well as possible approaches to addressing the costs of legal education including loan forgiveness programs or other means.

**Reference 6: State Bar Strategic Goals Relevant to CBE (cont'd)**

Goal 4 f. No later than December 31, 2020, explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals.

Goal 5: Proactively inform and educate all stakeholders, but particularly the public, about the State Bar's responsibilities, initiatives, and resources.

- a. No later than July 1, 2018, develop and implement a Communication Strategy Plan for timely and effective communication about public protection goals, objectives, and accomplishments to external audiences including the public, oversight bodies, regulated parties, and other bars.
- b. Develop metrics to measure both the quality and effectiveness of the Bar's communication and stakeholder engagement strategies and use those metrics to inform modifications to strategy.
- c. Maintain and enhance relationships with courts and other regulatory and enforcement agencies that share a mission of public protection.
- d. Improve transparency, accountability, accessibility, and governance by increasing the availability of meeting materials and public access to meetings and records and reporting these efforts to stakeholders and the general public

**Reference 7: National Practices for Lawyer Licensing**

An effort was undertaken to identify best practices and trends for assessing the lawyer licensing responsibilities of the California State Bar and its Committee of Bar Examiners (CBE). Twenty-two interviews were conducted of knowledgeable individuals between November 2017 and March 2018, along with related research of relevant websites of various bar organizations and relevant literature. Those interviewed were selected for their expertise and involvement in the preparation, education and licensing of lawyers, with a particular focus on the design, management and implementation of bar exams.<sup>101</sup> The goal of this work was to ensure that California was aware of best practices which might be identified and could be used to enhance the role and contributions of the CBE at a time of profound change in the legal profession and legal education, even as access to legal services also continues to decline.

A number of concerns were identified as shared among all surveyed bar organizations (e.g. ensuring high court control of admissions; designing structures to insulate regulatory responsibilities from the fact or appearance of influence by practicing lawyers; interest in professionalizing bar examinations by greater use of psychometrically validated testing design). In contrast, the organizational structures bar organizations employed to execute their responsibilities varied significantly. Nonetheless, the comparison produced a rich menu of alternatives which may prove useful in considering alternatives to California's current operational design.

Summaries of selected interviews follow.<sup>102</sup> Additional context is provided by the 2017 Comprehensive Guide to Bar Admission Requirements (National Conference of

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<sup>101</sup> Individuals involved in regulatory organizations included those principally responsible for lawyer licensing and bar exam development from the following bar organizations: *Arizona* (John Phelps and Mark Wilson); *Florida* (Michele A. Gavagni); *Idaho* (Maureen Ryan Braley); *Michigan* (Janet Welch); *New York* (John McAlary); *Oregon* (Troy Wood); *Texas* (Susan Hendricks); *Washington State* (Paula Littlewood); and *The U.K. Solicitors Regulation Authority* (Julie Brannan).

Other knowledgeable individuals included: Dr. Tracey Montez, Head Psychometrician, California Department of Consumer Affairs; Dr. Mary Pitoniak, Consulting Psychometrician, Educational Testing Service; Dr. Chad Buckendahl, Consulting Psychometrician (on contract to the California State Bar); Dean Barry Currier, ABA Managing Director of Accreditation and Legal Education; Erica Moeser, CEO Emerita, National Conference of Bar Examiners; Dean Judith Areen, Executive Director, Association of American Law Schools; Dean Kelly Testye, CEO, Law School Admissions Council (formerly Dean, University of Washington); Christopher Chapman, CEO, Access-Lex; Dr. Elizabeth Griego, Educational Consultant and former head of standards, WASC; Dr. Judith S. Eaton, CEO, Council for Higher Education Accreditation; Bridget Gramme, Center for Public Interest Law, University of San Diego School of Law; and Dr. Ron Pi, State Bar of California.

<sup>102</sup> Complete reports of many conversations are also available.

Reference 7: National Practices for Lawyer Licensing

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Bar Examiners and ABA Section of Legal Education), a summary of which has been provided separately.<sup>103</sup>

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<sup>103</sup> See, <http://www.ncbex.org/publications/bar-admissions-guide/>.

**Interview Summaries: Individual Bar Organizations****Arizona**

Operating as a unit within the Supreme Court since the late 1980's, two separate volunteer committees are directly supported by Court staff to manage all aspects of admissions. Staff now approves approximately 65% of applicants; less than 1-2% are referred for a formal hearing before a five-member panel selected from the 15 member Character and Fitness Committee. Appeals are to the Arizona Supreme Court and applicants may be denied sitting for the bar exam for up to five years; conditional admissions are allowed for two years. A UBE state, 50% of bar takers seek to transfer scores out of state and the Examinations Committee now only grades exams; all applicants must also take an on-line, ungraded course on Arizona law. In 2011 the Court created a 16 member Attorney Regulations Advisory Committee to periodically review admission and discipline.

**Florida**

One of the four largest U.S. bar organizations, admissions functions are the responsibility of the separately organized Florida Board of Bar Examiners and are completely self-funded. Fifteen members (12 lawyers, three public) are appointed by the Supreme Court from nominees jointly chosen by the Bar and the Board and serve five-year renewable terms. Typically members serve one term, but may continue as emeritus members on investigative or formal hearing panels. Application denials are formally heard by a five member panel which is binding on the full Board and only appealable to the Supreme Court. Florida has not adopted the UBE but has studied the comparative cost of doing so, concluding that it would increase expense. In 2008 the Court appointed an independent 16 member Testing Commission to review exam topics and process, assisted by a psychometric consultant; the exam was validated with only minor changes recommended.

**Idaho**

A Director of Admissions staffs the day-to-day admissions activities, reporting through the State Bar Executive Director to the elected five-member Board of Commissioners, a sub-entity of the Idaho Supreme Court. A separate nine member Character and Fitness Committee and a three member Accommodations Committee manage admissions and operate with considerable independence as a result of their tenure and expertise. Idaho limits applicants to taking the bar exam three times; thereafter special permission is required. Appeals from denials on moral and fitness grounds are initially to the Character and Fitness Committee, followed by an appeal to the full Board and a final review by the Supreme Court. Idaho adopted the UBE in 2011, in order to obtain a more sophisticated exam which would be better able to withstand possible challenges.

### **Michigan**

The Michigan State Bar was created in 1935 as a public corporation to be responsible for licensing and discipline functions. In 1992 the Michigan Supreme Court separated these functions from the Michigan State Bar Association to avoid appearance of conflict of interest. Now directly under the State Supreme Court, a separate five member Board of Law Examiners manages everything related to admissions and licensing except moral character and fitness reviews which are done locally by regional committees. The 15 member Standing Committee on Character and Fitness uses interview panels who recommend action to the full Committee; when rejected, an applicant is entitled to a full formal hearing, usually before three members, a subsequent hearing before the full Board is also possible. The only subsequent review is to the Michigan Supreme Court.

### **New York**

New York's regulation, admission and discipline of lawyers is a judicial function, separated from the voluntary New York State Bar Association. Although New York's number of licensees exceeds that of California, its population of bar takers is typically smaller due to higher pass rates and the possibility to transfer UBE scores in lieu of taking the New York exam. Responsibility for the design and administration of the bar exam rests with the five member Board of Law Examiners, paid part time employees, who are part of the highest New York court, the Court of Appeals; character and fitness review and actual admission after a lawyer is certified as having passed the bar exam, is managed by the four Appellate Division Department courts according to an applicant's residence. New York adopted the UBE in 2016 and is studying its impact now; it also has begun a study to look at the characteristics of those who fail the bar initially but pass subsequently.

### **Oregon**

Part of the Judicial Department, the Oregon State Bar is governed by a 16 member Board of Governors which reports to the Supreme Court; it contains an admissions function that reports to the Executive Director through its Director of Regulatory Services, who has dual reporting to the 14 member Board of Bar Examiners and the Board of Governors. A three member hearing panel is responsible for all formal hearings. Final appeals are to the Supreme Court. Oregon's adoption of the UBE in 2016 was designed to encourage lawyers to locate to Oregon; it adjusted its bar pass score to support this goal, but remains among the states with the highest passing score. Until 2018 the only U.S. bar to require malpractice insurance, data from the Oregon Professional Liability Fund informs continuing legal education offerings and other lawyer support.

**Texas**

A separate Board of Bar Examiners administers a two and a half-day; members participate directly in question preparation. The Board only refuses applications from those who do not meet the legal education requirements or who have been sentenced for a felony conviction, if the application is made less than five years after completion of the sentence, but this requirement may also be waived upon request. The Board makes broad use of conditional admissions. Hearings on moral character and fitness grounds before a three-member panel of the Board are closed; denials are appealed directly to the Supreme Court. A study of the UBE is underway; in 2017 the Executive Director studied the cost differential and found no financial impact would result from adopting the UBE. Texas has experienced an almost 50% increase in accommodation requests between 2015 and 2017.

**U.K. Solicitors Regulation Authority**

The U.K. Solicitors Regulation Authority (SRA) is engaged in a deep review of licensing for solicitors, responding, among other issues, to concerns about the lack of access to the legal profession by an increasingly diverse society and the resulting impact on access to justice.

An extensive occupational analysis has been completed and SRA is preparing to pilot a national two part exam: both a test of knowledge and of skills, the first administered before the U.K.'s two year practicum requirement and the second after the completion of the practicum. Their reform-minded approach is described on their web site ([sra.uk.org](http://sra.uk.org))<sup>104</sup> and they are also exploring reform of moral character and fitness standards and implementing reform in other areas, as well (e.g. CLE).

SRA's reform efforts may to be unique among bar organizations. They appear to have set a high standard for improving the licensing of lawyers. This, and SRA's comparable size to California, makes them a jurisdiction of particular interest.

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<sup>104</sup> See the following sections on the SRA website: Statement of Solicitor Competence; Statement of Legal Knowledge; Threshold Standard; and Assessment Specification.

**Reference 8: Summary of NCBE/ABE 2017 Comprehensive Guide to Bar Admission Requirements****National Conference of Bar Examiners and ABA Section of Legal Education<sup>105</sup>**

Code of Recommended Standards for Bar Examiners (agreed upon by the ABA, NCBE and AALS).

The ABA/NCBE Code of Recommended Standards for Bar Examiners sets forth best practices in the management of bar exam management and testing. The questions below (following Code numbering) are suggested as relevant to a review of the admissions processes and standards as employed by the State Bar of California and the Committee of Bar Examiners (CBE).

1. Presence of a published Code. Does the State Bar of California subscribe to the principles recommended by the ABA/NCBE Code? If not, does it have its own code?

2. Member Tenure: How does the California State Bar compare to the ABA/NCBE Code's recommendation that members of bar examining boards:

- be appointed by, and responsible to, the judicial branch of government;
- serve for fixed terms, eligible for reappointment;
- have staggered terms; but with
- sufficient rotation among members.

3. Conflict of Interest: Does the State Bar of California ensure that there is no participation by purveyors of bar preparation courses, or other interested parties, in the design and administration of the bar examination?

6. Required legal education. The ABA/NCBE Code requires that all applicants for admission to the bar be graduates of an accredited ABA school. 'Neither private study, correspondence study, law office training, age, nor experience should be substituted for law school education.' What steps has the State Bar of California and the CBE taken to ensure that its more inclusive approach to lawyer education is consistent with public protection and best educational practices?

7. Character and Fitness. The ABA/NCBE Code requires that "The primary purpose of character and fitness screening before admission to the bar [be] the protection of the public and the system of justice." What has the State Bar of California and the CBE done to ensure meeting this requirement?

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<sup>105</sup> This summary, prepared by Elizabeth Parker, is based on a report prepared annually by the National Conference of Bar Examiners and ABA Section of Legal Education and Admissions to the Bar, see <https://www.americanbar.org/.../aba/.../ComprehensiveGuidetoBarAdmissions/2017> (May 1, 2017). A 2018 version became available after completion of this Report.

Reference 7: National Practices for Lawyer Licensing

9. Definition of Character and Fitness. The ABA/NCBE Code requires that “Character and fitness standards ... be articulated and published by each bar examining authority.” Does the State Bar of California and the CBE meet this requirement?

The ABA/NCBE Code sets forth additional specific requirements for the design and development of bar examinations. Does the CBE process meet the following ABA/NCBE Code recommendations (following Code numbering)?

- “21. Before an essay question is accepted for use, every point of law in the question should be thoroughly briefed and the question should be analyzed and approved by the members of the bar examining authority.
- 24. The grading process and grade distributions should be periodically reviewed in order to assure uniformity in grading.
- 26. An applicant who has failed to pass three or more bar examinations may be required to complete additional study...before being permitted to take any subsequent examination.
- 29. A thorough study should be periodically made of the results of the bar examination to determine...[its impact],
- 31. Each jurisdiction should have an active committee on cooperation, consisting of representatives of the bar examining authority, the law schools, the judiciary, and the bar, which meets at least annually to consider issues relating to legal education, eligibility and admission to the bar.”

A review of various charts and surveys contained in the ABA/NCBE Comprehensive Guide reveals the following points relevant to the current review of the CBE and bar admissions processes.

Chart 2: Character and Fitness Determinations

- California does not have published character and fitness standards. 70% of jurisdictions (i.e. 39 of 56) reported having such standards.
- California does not have a separate entity which evaluates character and fitness. 43% of jurisdictions (24 of 56) do have such a structure.

Chart 3: Eligibility to Take Exam: Legal Education

Although 70% of jurisdictions (39 of 56) do not limit taking the exam to ABA law school graduates, California is the most liberal in wide variety of the legal education it requires as a pre-requisite for taking the bar exam.

Chart 5: Eligibility for Admission: Additional Requirements

California requires 25 hours of MCLE every three years. Only four jurisdictions require less MCLE than California (Alaska, Hawaii, Palau and Puerto Rico). All others require between 10 and 15 hours per year.

Supplemental education is required by 66% of jurisdictions: before admission by 11 jurisdictions and after admission by 26 jurisdictions.

#### Chart 6: Length of Examination, UBE

36% (20 jurisdictions) limit the number of times an applicant may take a bar exam (from 2 in Iowa to 6 in Idaho, North Dakota, Utah and Puerto Rico).

Slightly over 50% of the jurisdictions (29 reported, but 30 according to E. Moeser with Maine's adoption) now use the Uniform Bar Exam (UBE), first introduced in July 2011, for the written portion of their exam. 45% (26 jurisdictions, including several larger states such as Arizona, Colorado, Connecticut, DC, Massachusetts, New Jersey, New York, and Washington) also accept UBE scores from other jurisdictions. Their charges for such UBE admission range from \$150 to \$1,000 (see Chart 10). Most also have a time limit for which they will accept UBE scores.

#### Chart 7: Bar Examination Application Fees

California's bar exam fee for first-time takers is \$1,228 and larger than the majority of jurisdictions, which range from a low of \$300 (Oklahoma, South Dakota, Vermont and Palau) to a high of \$950 (Illinois). Comparisons may not, however, be exact and change by character of the exam taker (i.e. licensed attorney, repeater, international applicant).

#### Chart 8: Test Prerequisites for Licensure

California requires the Multistate Bar Examination (the MBE is a multi-choice exam), as do all other jurisdictions except Louisiana and Puerto Rico (both civil law jurisdictions).

California does not require the Multistate Essay Examination (MEE), which is required by 30% (17 of the jurisdictions).

California does not require the Multistate Performance Test (MPT); all but ten other jurisdictions require the MPT (Florida, Kentucky, Louisiana, Massachusetts, Michigan, North Carolina, Oklahoma, Pennsylvania, Virginia, and Puerto Rico.)

California requires The Multistate Professional Responsibility Examination (MPRE) as do all but three jurisdictions (Maryland, Wisconsin and Puerto Rico).

28 jurisdictions, including California, draft their own exam questions.

California is among the 55% of jurisdictions that do not accept MBE scores from other jurisdictions.

Reference 7: National Practices for Lawyer Licensing

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Only the District of Columbia, Minnesota, and North Dakota admit applicants on the basis of MBE scores alone.

Chart 9: Grading and Scoring

Although California's combined passing score of 144 is the second highest in the nation, for the MPRE, where scores range from 50-150, the scores required by jurisdictions requiring the MPRE fall in a relatively narrow range, from 75 to 86. California requires a score of 86, as does Utah. Twenty states, 36% require a score of 85; eighteen, 32% require 80, with the remaining thirteen 23% requiring scores between 75-79.

Chart 11: Admission on Motion/Fees

California is one of nine jurisdictions that does not grant admission on motion of lawyers licensed in other jurisdictions. Fees for such admission by the 47 states that do allow such admission (84%) range from \$100 (Puerto Rico) to \$2,000 or more (Montana, New Mexico, North Carolina, Oklahoma, West Virginia). 16 states charge \$1,000 or more. Thus a majority of states charge significantly more for admission on motion than by taking the bar exam.

Chart 12: Reciprocity, Comity, and Attorneys' Exams

California is one of eight states that offers an attorney's exam and one of only four that does not require that an applicant be a graduate of an ABA approved law school.

Chart 13: Other Licenses and Registration Fees

New York does not charge for certifying foreign legal consultants, corporate counsel, legal services lawyers or pro bono lawyers. In contrast, California charges \$1,135 for foreign legal consultants, and \$1,400 for corporate counsel and legal services lawyers, the latter is the second highest fee after the District of Columbia. Most states charge between \$90 and \$500 for certifying a lawyer to work as a legal services lawyer.

Submitted by:

Elise Walton, Ph.D.  
Principal, Organization & Governance Consulting

Elizabeth Parker  
Executive Director (retired) California State Bar

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**APPENDIX B.**

**STATE BAR OFFICE OF GENERAL COUNSEL, MEMORANDUM ON AUTHORITY OVER STATE BAR  
ADMISSIONS FUNCTIONS**



# THE STATE BAR OF CALIFORNIA

VANESSA L. HOLTON  
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## MEMORANDUM

DATE: April 4, 2018

TO: Erika Hiramatsu, Chair  
David Torres, Vice-Chair  
Committee of Bar Examiners

FROM: Vanessa Holton, General Counsel *Vanessa L. Holton*  
Destie Overpeck, Assistant General Counsel *Destie Overpeck*

SUBJECT: Authority Over State Bar Admissions Functions

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## INTRODUCTION

The State Bar of California's sub-entity review, housed in Appendix I of the 2017 Governance in the Public Interest Task Force Report, and questions from the State Bar's Committee of Bar Examiners (CBE) in September, 2017, have prompted an analysis of two issues related to the State Bar's admissions functions:

- I. The role and/or authority of the California Supreme Court (Court), the California Legislature, the State Bar Board of Trustees (Board)/Executive Director and the CBE over State Bar admissions functions.
- II. The accountability of the CBE to the Court, the Legislature, and the Board/Executive Director.

This memorandum analyses these issues, and concludes as follows:

- I. The Court has inherent authority over the practice of law in California, including State Bar admissions functions. The State Bar is the administrative arm of the Court for these matters. The California Legislature, in its shared authority with the Court over the State Bar, has set forth statutory obligations of the State Bar with regard to admissions.
- II. The State Bar's authority over the various admissions functions is exercised through its Board, subject to the ultimate authority of the Court. All of the CBE's admissions functions, which derive from statute, Court rule, or Board rule or delegation, are to be

carried out under the authority of the Board, subject to the Court's inherent authority and in compliance with any legislative mandate.

## ANALYSIS

### I. The Role and/or Authority of the Court, the California Legislature, the State Bar Board of Trustees/Executive Director and the CBE over State Bar Admissions Functions.

#### **The Court**

Any analysis of the authority over State Bar admissions functions must begin with the proposition that the Court has inherent authority over the regulation of the legal profession, including the State Bar admissions functions. *In re Attorney Discipline*, 19 Cal.4<sup>th</sup> 582, 592-93 (Cal. 1998); Rules of the State Bar of California (State Bar Rules), rule 4.1. The State Bar and the CBE serve as the administrative arm of the Court for attorney admission matters and in that capacity act under the authority and at the direction of the Court, which has the sole authority to grant or deny admission to the bar. *Chaney v. State Bar*, 386 F.2d 962, 966 (9th Cir. 1967).

Similarly, California Rules of Court (Court Rule), Rule 9.3 (Inherent Power of Supreme Court), sets forth the proposition that the Court has the inherent power to admit persons to practice law in California, and that the State Bar and its CBE serve as the administrative arm of the Court for admissions matters under the authority and at the direction of the Court. Consistent with California Business & Professions Code § 6046,<sup>1</sup> Court Rule 9.3 authorizes the CBE to administer the requirements for admission to practice law, examine all applicants for admissions, and certify to the Court for admission those applicants who fulfill the requirements.

Court Rule 9.5 provides that rules adopted by the CBE and approved by the Board pertaining to admission to practice law must be submitted to the Court for review and approval.

#### **The Legislature**

In its shared authority with the Court over admission to the State Bar, the California Legislature enacted § 6046, which provides that the Board *may* establish an examining committee having the power to examine all applicants for admission to practice law, to administer the requirements for admission to practice law, and to certify to the Court for admission those applicants who fulfill the legal requirements. The examining committee is to have 19 members, 10 of whom are State Bar members or California judges, including one within 3 years of admission to the Bar, and 9 of whom are non-attorney members of the public. § 6046 et seq., sets forth various other duties of the examining committee

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<sup>1</sup> All § references are to the Business & Professions Code, unless otherwise indicated.

pertaining to State Bar admissions. Subject to the approval of the Board the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in the Act. § 6047.

The Legislature provided that the State Bar is governed by its Board, with the powers and duties conferred by the State Bar Act (Act). § 6010. The Board is charged with the executive function of the State Bar and the enforcement of the Act. § 6030. The Board may formulate and declare rules necessary or expedient to carry out the Act. § 6025.

### **The State Bar**

State Bar Rules, Division 1 (Board of Trustees), Chapter 2 (General authority of the board), Rule 6.20 (Delegations, supervision and control) provides:

All State Bar . . . committees . . . have only the powers, duties, and authority delegated by the board and are subject to its supervision and control. Notwithstanding any delegation, the board reserves authority over all matters pertaining to the State Bar, including whether actions or positions taken by a State Bar . . . committee . . . are consistent with State Bar policies.

State Bar Rule 6.21 (Public Communications) provides:

Unless expressly authorized by the board or the Rules of the State Bar, a State Bar . . . committee . . . must not

- (A) act, or purport to act, speak or purport to speak for the State Bar;
- (B) make any public communications on behalf of the State Bar;

. . .

Pursuant to § 6046, the Board created the CBE as a committee of the Board and promulgated rules setting forth the CBE's policies and procedures for establishing and enforcing admissions. State Bar Rules, title 4. On November 4, 1981, the Board approved a resolution proposed in Agenda Item No. 113 in response to a report on CBE's relationship with the Board. In pertinent part, the resolution declares that "the Committee of Bar Examiners, as well as staff, must comply with all Board policies, including but not limited to contract, fiscal, grant and personnel control policies."

**II. The Accountability of the CBE to the Court, the Legislature and the Board/Executive Director.**

In its September 9, 2017, memorandum, the CBE asked the following questions of the Office of General Counsel (OGC):<sup>2</sup>

1. What can the CBE decide on its own?
2. What is reported to the Board of Trustees?
3. What must be approved by the Board?
4. What requires Legislative approval or must be reported to the Legislature?
5. What requires Supreme Court approval?

As set forth, the Board is authorized by statute to and did establish an examining committee with the duties enumerated therein. The Board created the CBE as a committee of the Board and promulgated rules setting forth the CBE's policies and procedures for establishing and enforcing admissions and educational standards. State Bar Rules, title 4. Thus, consistent with Board Rules 6.20 and 6.21, the duties of the CBE, which may best be characterized as administrative, are overseen by the Board, subject to the Court's ultimate authority over the State Bar. The answer to the CBE's question 1, therefore, is that by legislative enactment, Court Rules and Board Rules, the CBE administers admissions functions only to the extent that the Board so authorizes, subject to the ultimate authority of the Court. The CBE may not act on its own or without Board oversight in admissions matters.

Similarly, in answer to question 2, the scope of CBE's reporting obligations to the Board derives from the Board. For example, Article 1, Section 5 (Reporting Requirement to Board Oversight Committee), Tab 2.6 of the Board Book provides that each advisory committee must periodically report to the Board committee with oversight responsibility of its continuing work, and must provide status reports on activities as requested by the pertinent Board oversight committee. At the August 2017 Board meeting, the Board adopted the new Board Committee structure. As such, the CBE will now report to and provide status reports on its work as requested by the Programs Committee.

Answering question 3, in addition to approval requirements already set forth by statute or rules,<sup>3</sup> the authority lies with the Board to approve any acts of the CBE that it determines require approval. Such CBE acts would be only recommendatory to the Board. Recent

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<sup>2</sup> CBE also asked the question: "What action would be required by the CBE and Admissions in the event the Supreme Court orders an interim reduction of the cut score?" This question is moot. In its October 18, 2017, letter to the State Bar, *In re California Bar Examination*, the Court did not order an interim reduction in the cut score.

<sup>3</sup> As set forth earlier, these include Board approval of reasonable rules and regulations adopted by the CBE as necessary or advisable to make effective qualifications for the practice of law.

examples would include the Board approval sought by the CBE in 2016 to modify the format of the California Bar examination.<sup>4</sup>

In answer to CBE's fourth question, legislative approval and reporting requirements are generally set forth by statute. For example, § 6046.8, effective January 1, 2018, requires the Board to oversee an evaluation of the California Bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys, and to make a determination whether to adjust the examination or passing score. The Board is required to report the results of the evaluation and any determination regarding adjustment of the passing score to the Court and the Legislature no later than March 15, 2018, and at least every seven years from the date of the previous report. Although the statute and parallel Court Rule 9.6 place the responsibility for this undertaking on the Board, it is anticipated that the CBE will be involved in this analysis.

Finally, in response to question 5, admissions matters requiring Court approval are set forth in Court Rules and State Bar Rules. They include: all rules adopted by the CBE and approved by the Board (Court Rule 9.5); admittance of applicants who fulfill admission requirements as certified by the State Bar (Court Rule 9.3(a)); the appointment of ten examiners to the CBE from a list of candidates nominated by the Board (Court Rule 9.4(a)); and, any State Bar recommendations proposing significant changes to the California Bar examination and passing score (Court Rules 9.6(a) and 9.6(b)).

## CONCLUSION

We hope that this memorandum satisfactorily answers your questions. We apologize for the time it has taken to respond. The upcoming sub-entity review of the Board will likely provide more specific detail about the reporting and approval obligations of the CBE. Please contact OGC if you have any further questions.

cc: Leah T. Wilson, Executive Director  
Donna Hershkowitz, Chief of Programs  
Joanna Mendoza, Program Committee Chair, Board of Trustees

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<sup>4</sup> With regard to all three questions, a goal of the current sub-entity review of the CBE is to clarify and further set forth the CBE's and Board's engagement, which may include the CBE's reporting and approval obligations to the Board.

**APPENDIX C.**

**PATRICK KRILL, THE CALIFORNIA LAWYER ASSISTANCE PROGRAM: PROTECTING THE PUBLIC  
BY HELPING THE LAWYERS THAT SERVE THEM**





**KRILL STRATEGIES**  
TRANSFORMING THE LEGAL PROFESSION

# The California Lawyers Assistance Program: Protecting the Public by Helping the Lawyers that Serve Them

*An analysis of the structure and organization of the LAP and  
suitability of the State Bar as program host.*



## I. Introduction and Background:

Acting on recommendations from the State Bar of California's Governance in the Public Interest Task Force, the State Bar's Board of Trustees has directed that a review be conducted of the Bar's volunteer committees and commissions, and the staff and processes that support them (the "Appendix I Review"). Each review will compare the work of these committees with similar work conducted by other State Bars across the country.

As such, the structure and organization of the Lawyers Assistance Program ("LAP") within the State Bar is being evaluated to determine if the State Bar is the best and most appropriate host for the program. As part of a broader consulting agreement between The State Bar and Krill Strategies, I have been asked to conduct an analysis of the advantages and drawbacks of the State Bar as host of the LAP, to examine the approaches of other states in relation to lawyer assistance, and to present an informed, considered, and actionable determination regarding whether the LAP should be retained within the State Bar.

### A. Broader Context

A meaningful analysis of whether the State Bar is the best and most appropriate host of the LAP cannot occur in a vacuum, but rather must be predicated upon a more global understanding of the current landscape related to the underlying subject matter. Substance use disorders, mental health, and lawyer well-being generally are becoming increasingly important priorities for the legal profession. Following the publication of two studies<sup>1</sup> in 2016—one of practicing lawyers, published in the *Journal of Addiction Medicine*, and one of law students, published

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<sup>1</sup> The American Bar Association has been instrumental in developing recent research examining aspects of impairment among law students and attorneys. This research has quantified an alarming rate of problematic alcohol/substance use and mental health impairments, coupled with deficient help-seeking behaviors in the legal profession. For example, the research indicates that attorneys engage in problematic alcohol use at nearly twice the level of the general population and have higher rates of depression and anxiety throughout their legal careers. Complicating matters, attorneys are reluctant to seek help. They are concerned that available resources are not sufficiently private and confidential, are worried that others will learn of their circumstances, and that any indication of an issue will detrimentally impact their career or prospects in the legal profession.

in the *Journal of Legal Education*, a National Task Force on Lawyer Well-being<sup>2</sup> was formed in response to troubling levels of substance use and mental health disorders in the legal profession. The Task Force, of which I am a member, then published a comprehensive report, titled “The Path to Lawyer Well-being: Practical Recommendations for Positive Change” in August of 2017. That report contained recommendations for all stakeholders in the profession, including lawyer assistance programs and bar associations, to begin to address the behavioral health problems we face more proactively and with greater commitment.

Subsequently, the American Bar Association passed Resolution 105 in February of this year, urging all stakeholders, including state bar associations, to adopt the Task Force recommendations within their states as appropriate, and to work to reduce the prevalence of substance use and mental health disorders in the legal profession. At the present time, a total of 17 states have already formed their own state-wide well-being task forces, and several others are in the exploratory and planning stages. It is important to note that these statewide wellbeing task forces are being conceptualized and formed with the understanding that the state’s LAP will be a strategic partner intended to play a pivotal role in the task force’s work.

Also, in 2017, the ABA President formed a working group to improve lawyer well-being, of which I am also a member. Of the many initiatives soon to emerge from that group, one of particular relevance to this discussion is a “Law Firm Pledge” to reduce the incidence of substance use and mental health disorders in the legal profession. Currently slated for launch in the next few months, the pledge campaign will ask law firms to become signatories to a seven-point framework to improve the mental health and well-being of their lawyers. It is important

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<sup>2</sup> In 2016, the above-referenced studies were a catalyst for a coalition of entities within and outside of the ABA to form the National Task Force on Lawyer Well-Being. After analyzing the data and seeking input from numerous sources, the Task Force issued a report in August 2017, which presented a series of recommendations directed at a variety of stakeholders within the justice system, and more importantly, for the purposes of this report, Lawyer Assistance Programs and Bar Associations. Both the Conference of U.S. Chief Justices and the American Bar Association have subsequently passed resolutions recommending adoption of the Task Force recommendations.

to note that one of the seven steps in that framework specifically states that law firms should seek to partner with lawyer assistance programs and utilize their resources. Several of the largest global law firms in the world have already committed to becoming inaugural signatories to the pledge, and planning is underway to have a robust roster of signatories by the end of 2018.

Finally, in the realm of law-student well-being, student governments at the top 14 law schools in the country, members of the so-called “T-14,” recently banded together and signed a pledge that they would work collaboratively to demand greater access to behavioral health resources in legal education, as well as other structural changes to the profession which would support better mental health. Again, this points to an important role for organizations like LAPs to play. A number of these schools have recently conducted surveys of their own student populations and found that the rates of substance abuse and mental health distress, including suicidality, are far higher than previously known, and there is a growing motivation and willingness—nationwide—to develop effective institutional responses to the pervasive mental health problems in legal education.

Taken together, the increased and growing emphasis on lawyer and law student well-being is quite clear, and points to an exciting era of overdue improvements in the legal profession, as well as a central and expanded role for stakeholders properly situated to make a difference. It makes sense, however, that this could also be a potentially fraught time to be contemplating existential questions and complex structural changes related to the State Bar of California’s Lawyer Assistance Program. By way of rough analogy, it is somewhat like contemplating the relocation of a storefront during peak shopping season—no shortage of practical and logistical questions would exist.

In terms of this Appendix I review, the foregoing facts are not dispositive in favor of one particular course of action, nor should they be viewed as necessarily supporting one outcome over another. Rather, they should inform the conversation more broadly, and underscore the

importance of a rigorous and transparent analysis, and ultimately of reaching the right conclusion.

## II. The Appendix I Question and Rationale for this Analysis

The question raised by the Governance in the Public Interest Task Force as to whether the State Bar is the appropriate host for the LAP is not without precedent among LAP's nationally, nor without justification in the context of the specific challenges that these programs often face. Specifically, the language in Appendix I states:

*“The program goal is not in doubt, but the State Bar lacks expertise in matters of substance abuse and mental illness, making it an unusual host. Moreover, concerns have been raised that attorneys might be disinclined to seek assistance from the same entity responsible for attorney discipline, a concern that may explain LAP’s low attorney participation rate. A review of other state practices also suggested that many jurisdictions have chosen to structure their parallel programs as separate entities from the regulatory body precisely because of these types of concerns. The direct relationship between LAP and the discipline system, particularly as related to the direct diversion role it plays for some attorneys appearing before State Bar Court, could be a counter to arguments for separation of the program; this perspective suggests that the State Bar has a responsibility to ensure appropriate quality control of the services being provided and can best do so if LAP is part of the State Bar proper.”*

Similarly, in a report<sup>3</sup> I prepared for the Lawyer Assistance Program in October 2017, which outlined a series of recommended program improvements, I noted the challenges inherent to operating the LAP from within the State Bar:

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<sup>3</sup> A report titled “The California Lawyers Assistance Program: Opportunities for Growth and Improvement in a Time of Need: A review of current processes for Monitored and Support LAP” was submitted to the State Bar and LAP

*“Chief among the “big-picture” considerations with which the LAP must grapple is, essentially, a question of identity. Currently, the LAP is situated as a resource for those members of the State Bar who either independently wish to avail themselves of support for addiction, mental health, and other problems, or those who have been directed to seek such support and provide documentation of its receipt. This mixed constituency presents a threshold, and potentially irreconcilable, tension between housing discipline-related LAP participants and referrals under the same roof as voluntary self-referrals. Experience and research demonstrate that fear of disclosure and discipline keeps many legal professionals and those close to them from seeking help from agencies that may be perceived to be court or bar related.*

*To overcome this fear for the purposes of attracting voluntary self-referrals to the LAP, the LAP must not only guarantee confidentiality, but that confidentiality must be widely advertised. Even presented with such guarantees of confidentiality, however, many lawyers will still not trust an agency that is part of the State Bar to help them with private matters such as addiction or mental health disorders. In short, the intensely personal and potentially embarrassing nature of their problems make many lawyers skeptical that firewalls between the LAP and the State Bar are adequate for preventing a breach of confidentiality and the damage to their professional reputation that could ensue. Irrespective of the merits of such fears, they are real, pervasive,*

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Oversight Committee in October of 2017 and is hereby incorporated by reference. The report was intended to address a number of deficiencies within the then-current structure and operation of the LAP, including low utilization. Since that time, a significant number of the recommendations outlined in the report have been adopted or are in the process of being adopted, all hopefully leading to a more streamlined, efficient, and effective program with greater utilization and better outcome measurement.

*and dis-incentivizing for many in the legal community to step forward and get help.”*

While there are challenges and drawbacks associated with structuring and operating a LAP as an agency within a state bar, the alternatives also present limitations and problems. As such, it was important to examine the experiences and perspectives of LAPs in other jurisdictions, to solicit feedback from the LAP’s target constituency (California attorneys), to solicit input from other stakeholders including the LAP Oversight Committee and State Bar Court, and to analyze the practical as well as theoretical obstacles to implementing a change to the current structure of the LAP.

### **III. Analysis**

#### **A. Approaches and Perspectives in Other Jurisdictions**

As noted above, other states have chosen to structure their Lawyer Assistance Programs in a variety of ways<sup>4</sup>, including as an entity within the State Bar, similar to California. To ascertain whether there exists, nationally, a consensus view or majority opinion among LAPs as to the best and most effective structure and host for these types of programs, I initially conducted phone interviews with staff from roughly a dozen programs throughout the country. Perhaps not surprisingly, all but one program director expressed the view that the structure of the LAP in their state tended to have the most benefit and deliver the best results. While I anticipated that opinions and perspectives regarding the best approach would hew closely to the established practices in any given state, I was struck by the fact that only one program director I

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<sup>4</sup> The American Bar Association Commission on Lawyer Assistance Programs conducts a biannual survey of LAPs around the country and publishes a report titled the “Comprehensive Survey of Lawyer Assistance Programs.” The most currently available survey can be found at: [https://www.americanbar.org/content/dam/aba/administrative/lawyer\\_assistance/lis\\_colap\\_2014\\_comprehensive\\_survey\\_of\\_laps.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_2014_comprehensive_survey_of_laps.authcheckdam.pdf)

spoke with suggested that their might be a better system than the one in which they were currently operating. This conformity between opinions and practices suggested to me that an apparent bias towards one's own approach to the work of lawyer assistance was likely to preclude the discovery of "gold standard" or clearly-established best practice that would prove dispositive of the question now before the State Bar. Alternatively, the variations in legal culture and demographics that exist between different states could suggest that the structure of the lawyer assistance program in any given state is, in fact, the best fit *for that state* and its unique characteristics.

To further probe these questions, however, I decided that a larger sample would be useful, and therefore created an online survey which the Chair of the ABA Commission on Lawyer Assistance Programs agreed to circulate on the organization's directors' listserv. The survey yielded responses from 37 different LAPs, representing a very robust response rate for research more generally. Reports containing detailed breakdowns of the responses, including narrative comments offered at the end of the survey, are attached to this report as "Appendices A and B."

In summary, the largest number of respondents identified as working for LAPs organized as agencies within the state bar, followed by entities that were structured in a variety of alternative ways (including nonprofit corporations), followed by agencies organized within the court. Most respondents reported being part of a unified/mandatory bar, having more than ten years of experience working in lawyer assistance, and having formed an opinion as to what structure and organization of a LAP holds the most benefit. Here, in the larger sample, there was greater divergence between the system in which someone was currently operating, and their view of what system was best.

Specifically, several respondents who identified as currently working in a LAP situated within a state bar indicated that they viewed other structures as being more advantageous. Conversely, of the 14 respondents who identified as a) working in LAPs *not* situated within a state bar; and b) having an opinion as to the most advantageous structure for a LAP, none indicated a preference for being an entity within the state bar. In sum, it would appear from this survey that when a divergence exists between personal experience and stated belief about which approach is best, that divergence militates against structuring a LAP as an agency within a state bar.

As noted above, legal cultures vary from state to state, as do overall structures of bar associations, budgets, population sizes, and multiple other factors. For that reason, the conclusions that can be drawn from a survey such as this are subject to limitations regarding applicability to California. With that in mind, I also looked more specifically at the smaller number of LAPs from states with a unified/mandatory bar association, and whose size, budget, and number of clients served were at least somewhat comparable to California. Among those 9 states, the majority (6) were situated as agencies within the state bar. Again, when there was a divergence between how a LAP was currently structured and which structure the staff member believes to hold the most benefit, the divergence was away from being organized as an entity within the state bar.

As to the reasons survey respondents cited for their choice about which program structure held the most benefit, budgetary concerns, effectiveness of services offered, and confidentiality of services were selected with the greatest frequency. At the end of the survey, respondents were asked for any additional feedback they wished to provide. Those comments offer a useful though limited view into the thinking reflected in the survey responses and are worth reading. A final point meriting serious consideration is that the issue of budget and budgetary stability emerged as a significant theme, both in my individual interviews of LAP staff and in the survey. In fact, I was told by just about every individual I spoke

with that this should be a threshold consideration for any action the State Bar may contemplate, and that any action which would reduce the program's budget or stability should be avoided for the sake of the program's underlying mission. Irrespective of how LAPs are organized around the country, it is clear to me that inadequate and unstable funding is viewed as the single largest handicap and biggest threat these types of programs face.

**B. Feedback from California Attorneys**

Together with State Bar Staff, I worked to develop a survey that was disseminated, through an email from the State Bar, to a random sample of licensed California attorneys. It is my view that this information was critical to the analysis at hand, since California attorneys are the clients of the LAP—either presently or prospectively—and thus the group most affected by any potential changes to its structure. This survey was intended to ascertain a number of important facts, including: whether attorneys would be more or less likely to utilize the LAP if it were reconstituted as an entity separate from the State Bar; what their concerns would be with utilizing the LAP; whether they had ever experienced a substance use and/or mental health problem and, if so, sought help for it; what their more general experiences and beliefs are about the prevalence and significance of substance use and mental health disorders in the legal profession.

Approximately 1200 California attorneys participated in the survey, the full results of which are attached as "Appendix C." The most notable findings of the survey include: the overwhelming majority of attorneys believe that substance and mental health distress are significant problems in the legal profession (67%); the majority know friends, peers, or colleagues who struggle with alcohol or drugs (46%) and mental health distress (45%); only 16% believe that enough is being done to address the problems; the majority of those who have struggled with substance use or mental health problems have sought help for the issues, but not from the LAP; roughly half of attorneys are aware of the LAP and the services it provides; the majority are unsure if they

would utilize the LAP if they needed it; concerns about privacy and potential threat to licensure are the most commonly cited concerns about utilizing the LAP; and those concerns would appear to lessen, though it is unclear by precisely how much, if the LAP was reorganized as an entity completely independent of the State Bar.

Taken together, these responses signal a heightened level of concern among California attorneys as to the prevalence and significance of substance use disorders and mental health distress in the profession, coupled with a moderate level of awareness about the State Bar's existing resources to address those problems, and a clear reluctance to utilize those resources. If the LAP were reorganized as an entity independent of the State Bar, there is a minority (15%) that would still not be open to the idea of utilizing the LAP, but a majority who would appear to at least be open to that possibility, pending the provision of further details.

In my opinion, two competing conclusions can be drawn from these findings: First, that the State Bar is uniquely positioned to provide the level of resources and services that most California attorneys clearly believe are lacking when it comes to addiction and mental health distress in the legal profession. Put another way, enhancing and significantly increasing the reach, scope, and effectiveness of the LAP would likely be a welcome development and viewed as the State Bar providing much-needed and valuable services to its members. This conclusion would support retaining the LAP within the State Bar, subject to ongoing and increased improvements.

Alternatively, the findings could support the idea that the perception of the LAP as part of the State Bar presents too many obstacles to reasonably believe that utilization could ever reach the level needed to match or meaningfully address the scope of the problems in the profession. Under this interpretation of the findings, a separation from the State Bar would be supported, with the significant caveat that the devil would be in the details as to whether such a separation would actually lead to increased utilization of the program, because the majority of

respondents answered “Maybe” (35%) or “Unsure/Would Need More Information” (26%) when asked if separation from the State Bar would make them more likely to utilize the LAP.

**C. Position of LAP Oversight Committee**

The LAP Oversight Committee is a key stakeholder in this analysis. As such, the question raised by the Appendix I Review has been squarely on their radar throughout 2018 and has been addressed in two separate Oversight Committee meetings I have attended this year (one telephonically, and one in-person). Throughout these discussions, the views expressed by the Committee as to the appropriateness of the State Bar as host of the LAP have been wide-ranging and fluctuational, taking into account many different and sometimes competing considerations. For example, frustration was expressed by some Committee members that the LAP was subject to a recently-negotiated employee classification system and salary schedule for all State Bar employees. Under this system, the LAP would likely be precluded from hiring licensed mental health clinicians in the future, due to the limitations the system imposes. At the same time, many of the Committee members expressed a realization that there are many practical and logistical benefits associated with being part of the State Bar, including access to the Bar’s overall infrastructure and the support it can provide.

At the May 2018 Oversight Committee meeting, I presented a report of my initial findings related to both the LAP survey and the attorney survey, as well as the more general considerations which would underpin this report. A robust conversation ensued, wherein the Committee members discussed various pros and cons associated with reorganizing the LAP as an entity separate from the State Bar. Following this discussion, the Committee held an informal vote to determine what it would recommend at this point in time regarding the Appendix I question. The Committee voted in favor of retaining the LAP within the State Bar at this time.

Chief among the considerations supporting the Committee's position was the fact that a significant amount of changes and improvements<sup>5</sup> have been underway within the LAP over the course of the last year, and many if not most of those improvements will take additional time for their benefits to be realized. The Committee believes, and I would have to concur, that initiating a separation from the State Bar at this time would have the potential to disrupt progress, divert momentum, and distract attention from the improvements currently underway, ultimately making the work of the last year amount to an academic exercise as it would be unknown if those improvements would have led to increased utilization and better functioning of the LAP as a program of the State Bar. Put more simply, the work of the last year has not yet borne fruit, and therefore the issue of separation is premature at this time.

The Committee expressly did not conclude, however, that retaining the LAP within the State Bar was the better or best course of action in the abstract or the long-term. Rather, they concluded that it is the best course of action to support the LAP's mission at this time. This, I believe, is a critical distinction. If the changes and improvements currently underway at the LAP—including a greatly enhanced focus on outreach and outreach strategies—do not yield higher utilization and better overall functioning of the LAP over the next several years, it would be clearer that being part of the State Bar was not, and could not be, the best fit for the program and its mission.

#### **D. Feedback from State Bar Court**

The State Bar Court is another important stakeholder in this analysis, primarily because the Court relies upon the judgment and recommendations of LAP staff while adjudicating

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<sup>5</sup> A non-exhaustive list of the improvements and project the LAP staff have been working on over the last year, as provided by Michelle Harmon, Program Supervisor of the LAP, is attached as Appendix D.

cases involving substance use and mental health disorders (ADP cases). I did not formally interview a State Bar Court Judge or staff member to solicit an official position of the Court on the Appendix I Review question, but nonetheless had the opportunity to hear feedback from both Presiding Judge Catherine Purcell, who regularly attends LAP Oversight Committee meetings, and Judge Roland, Assistant Supervising Judge of the Hearing Department. It became clear to me that the State Bar Court views the LAP as an integral partner in certain of the cases that come before it, and therefore any reorganization or relocation of the LAP outside of the State Bar would need to ensure for continuity in availability of expert guidance from the LAP to the State Bar Court, and preservation of the lines of communication and overall working relationship between the two entities. Any change to the structure of the LAP that would materially diminish, disrupt, or delay the availability of LAP participation in ADP cases would be a significant detriment to the State Bar Court and its ability to fulfill its role within the broader scheme of attorney regulation in California.

**E. Potential Benefits of Separating the LAP from the State Bar**

The foregoing facts and discussion notwithstanding, there could be numerous potential and hypothetical benefits to relocating the LAP outside of the State Bar, including greater autonomy and decision-making authority for the LAP staff in relation to hiring, program structure, content, and overall direction. As such, it is possible that a LAP outside of the State Bar could enjoy greater capacity for innovation. It is also possible that the LAP could experience increased utilization if it were separated from the State Bar, for reasons discussed above, including the perception of many lawyers that it is risky to seek help for a substance use or mental health problem from the State Bar. Additionally, the LAP survey and interviews that were conducted for purposes of this analysis revealed that being removed from the politics and bureaucracy of a state bar was viewed as a positive among many who work in lawyer assistance. It is important to note, however, that current staff of the California LAP have expressed a strong interest in the

program remaining part of the State Bar, and view the State Bar as a good, if not in all cases perfect, host for the LAP.

While it is not a “benefit” of separating the LAP from the State Bar, it must be noted that, should the decision be made to separate the program, a broadly-applicable roadmap for how the process could unfold already exists: the process that was undertaken to separate the Sections from the State Bar and to create the California Lawyers Association (“CLA”) following the passage of SB 36. Included in that process was the creation of a mechanism by which the State Bar would continue to collect dues that would be used to support the work of the CLA, if it meets certain conditions, including serving a public purpose. A provision such as this, which would allow the State Bar to continue to collect dues to support the LAP, would be an enormously important component of any process that was undertaken to separate the LAP from the State Bar. As has been discussed, adequate and stable funding is of paramount importance to the LAP and without such it will be wholly unable to fulfill the vital purpose for which it was created. At the same time, it is unclear if California attorneys (and law students) will come to view any newly-formed LAP as being truly independent from the State Bar if the Bar is collecting the funds for the LAP to operate. Any resulting doubt as to the LAP’s true independence from the Bar could obviously serve to undercut one of the primary potential benefits of separation in the first place, namely increased program utilization.

**F. Potential Benefits of Retaining the LAP Within the State Bar**

As an initial matter, it must be noted that the LAP was created by statute, and therefore new legislation would be required to alter its structure or remove it from the State Bar. As such, one potential benefit of retaining the LAP within the State Bar would be to avoid the time, effort, and cost associated with such an undertaking. Additionally, as has been discussed above, there

are a significant amount of program improvements currently underway at the LAP, with even more being contemplated. The time, effort, and cost associated with undertaking those initiatives would have been largely for naught if the program is extricated from the State Bar in the near term, prior to the benefits of the initiatives being realized. Additionally, current LAP staff have expressed a desire to remain part of the State Bar, and it is likely that they would seek to remain as State Bar employees, rather than continue as LAP staff, should the decision be made to separate the program. An additional benefit of retaining the LAP within the State Bar, therefore, would be to retain the current LAP staff and the experience and institutional knowledge of the LAP that they bring to their work. Attempting to create an alternately structured LAP with entirely new staff would seem to be a significant challenge that could threaten program continuity and reduce program efficacy and functionality until new staff and program management were fully up to speed.

Additional benefits of retaining the LAP within the State Bar include: preservation of working relationships with ADP, the State Bar Court, and other departments within the State Bar that benefit from the services offered by the LAP; preservation of stable and secure funding for the LAP through the existing dues collection mechanism; providing the LAP access to the State Bar infrastructure and resources; allowing the State Bar to oversee an important public protection function and provide a unique and valuable service to its members.

#### **IV. Conclusion**

The question of whether the LAP should be retained within the State Bar is complex and consequential. The Lawyer Assistance Program (LAP) was established by statute<sup>6</sup> in 2001 expressly “to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be

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<sup>6</sup> Business and Professions Code §6230.

treated and returned to the practice of law in a manner that will not endanger the public health and safety.” In the years since its formation, the LAP has begun taking on a broader role, more consistent with LAPs nationwide, which also includes an educational and outreach component aimed at prevention and awareness. Despite the longstanding nature of the challenge that substance use and mental health disorders present to the legal profession, the issues are receiving far more attention than they ever have, and an increased recognition of the need for systemic reform aimed at greater attorney and law student well-being is evident throughout the profession.

To be clear, the LAP has faced numerous challenges and not manifested the type of progress and success one might hope for and expect from a program with its level of resources. Program utilization, as a percentage of the overall attorney population, remains low. Roughly half of California attorneys remain unaware of the LAP and the services it provides, and only 21% can say that they would use the LAP if they needed it, while 50% say they are unsure and 30% say they would not. At the same time, almost 70% of California attorneys view substance use and mental health disorders as significant problems in the profession. Without question, room for improvement abounds.

The news, however, is not all bad. A significant number of program improvements are underway at the LAP, including the addition of a new full-time position (senior analyst serving as project manager with a focus on outreach) beginning on June 18, 2018. These improvements, coupled with the LAP’s new Strategic Plan, promise to improve functionality and utilization at the LAP, hopefully leading to a program that looks different, works better, and is perceived more positively by lawyers and law students in the state over the course of the next several years. As is often said, timing is everything. Without doubt, this analysis would be different under two different scenarios, both relating to timing. First, if the LAP didn’t currently exist in California, and the State Bar was starting with a blank slate, sufficient evidence exists to

suggest that a different structure and organization of the program—outside of the State Bar proper—*might* yield better results. (I do not believe that enough data and evidence are currently available to reach the decisive conclusion that a LAP situated outside of a State Bar is the “best” approach, though there is enough support for that idea as to make it a wholly reasonable position for one to have.) Second, if the Appendix I question was being contemplated three years ago, when the state of lawyer well-being was not an increasingly prominent strategic priority for the entire legal industry nationally, the State Bar would have enjoyed more latitude in reinventing or relocating the LAP, as the risks of having a *less* functional LAP—even for a period, during transition—would have been less substantial.

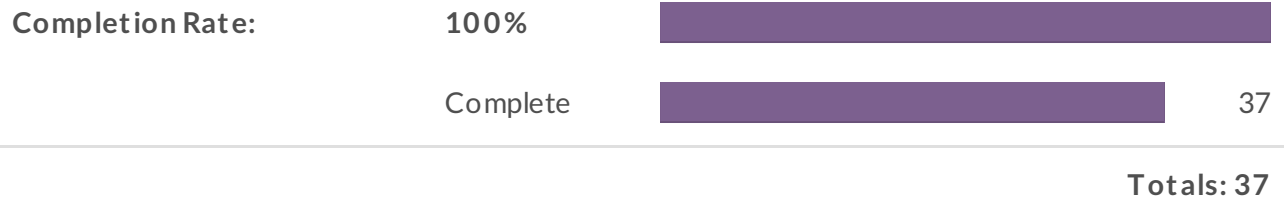
As it stands, however, the program does currently exist, with a framework and program design currently under renovation, as well as an established role in supporting other elements of the State Bar, including the State Bar Court. Additionally, opportunities for the LAP to grow its profile and have more of a positive impact on the judicial system in California can be expected to increase in the coming years, all of which would inure to the benefit of the State Bar if it remains as host of the program. For these reasons, it is my opinion that the LAP would be best served by remaining as part of the State Bar for the time being. My opinion mirrors that of the Oversight Committee insofar as it is delimited by the present time in its applicability. I would encourage the State Bar to remain engaged with monitoring the progress and overall functioning of the LAP over the next 2-3 years and to reserve the right to revisit this issue in the future, should doubts continue to linger as to whether the needs and objectives of all stakeholders are being well-served by housing the LAP within the Bar.

By: Patrick R. Krill, JD, LL.M, MA, LADC

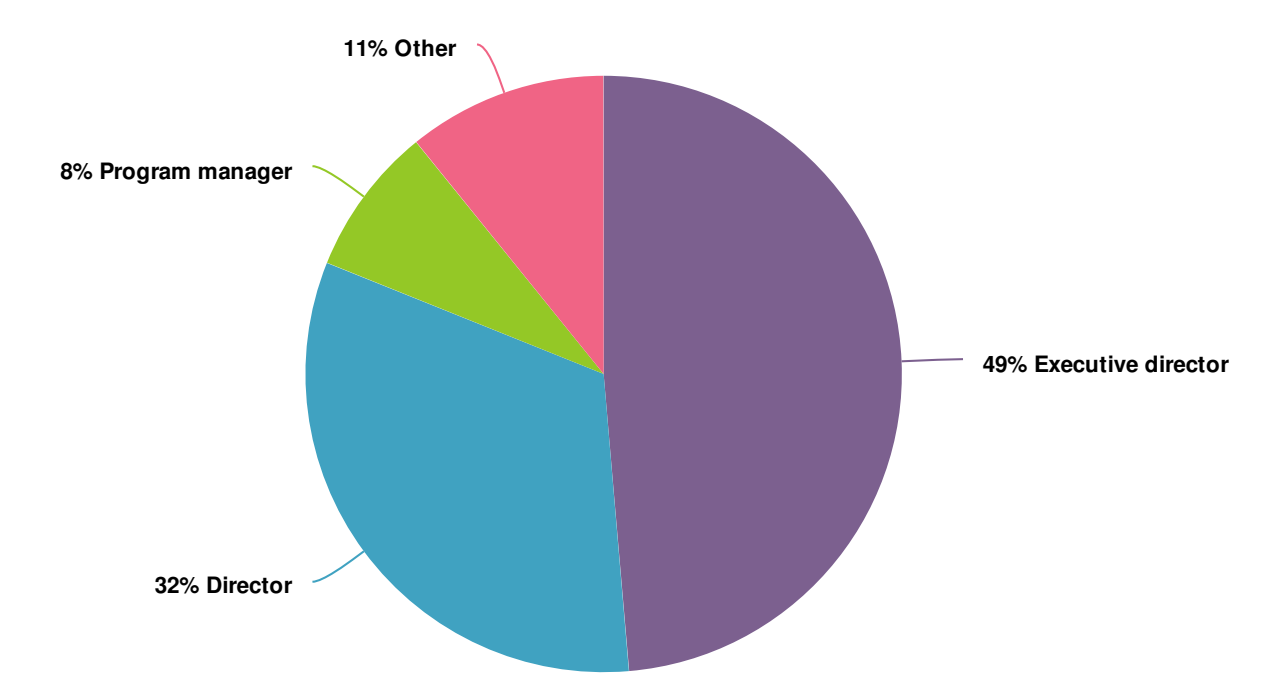
Date: June 18, 2018

# Report for 2018 State Bar of California National LAP Survey

## Response Counts



1. What is your position with the LAP?



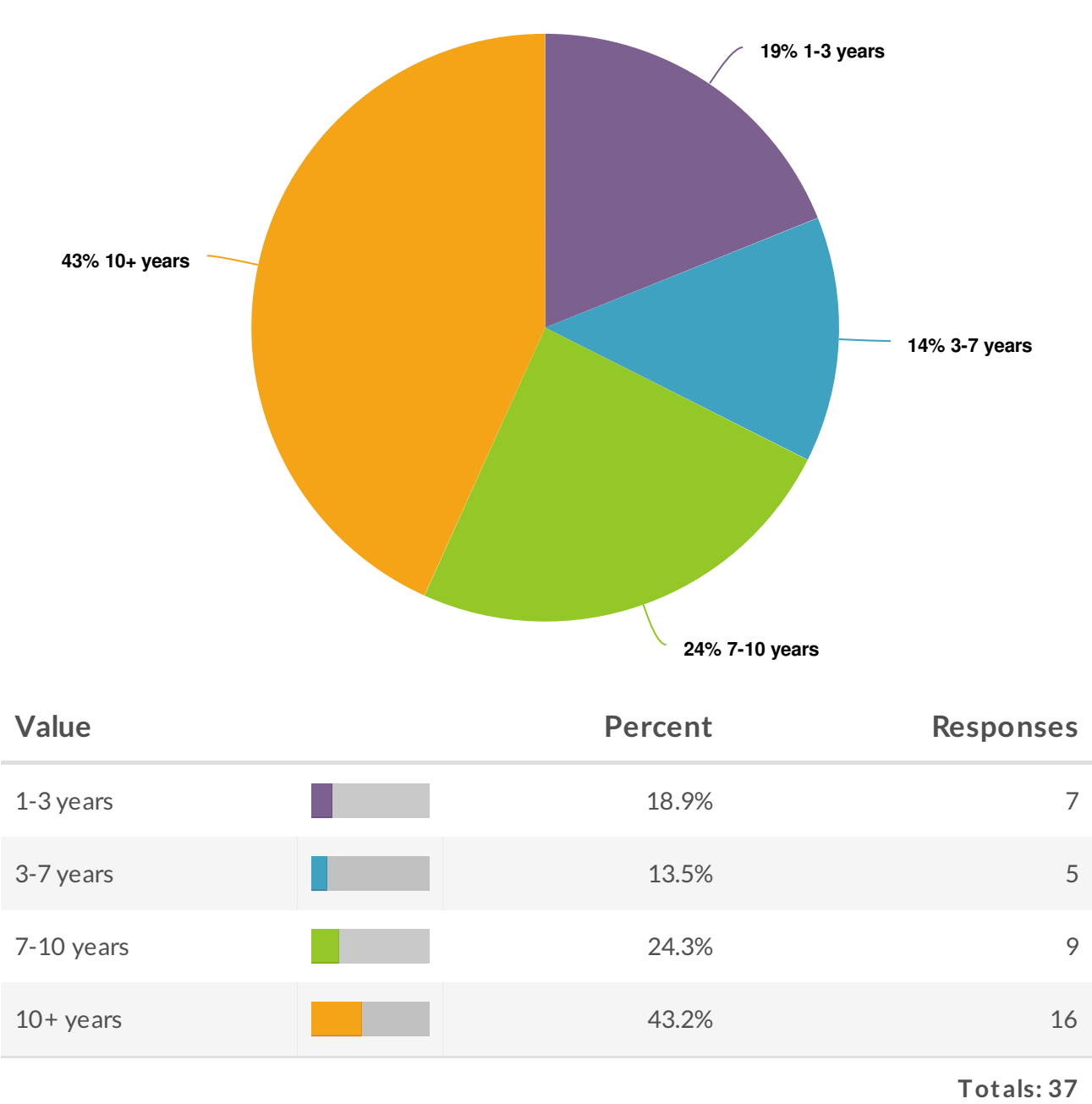
Value		Percent	Responses
Executive director	<div><div></div></div>	48.6%	18
Director	<div><div></div></div>	32.4%	12
Program manager	<div><div></div></div>	8.1%	3
Other	<div><div></div></div>	10.8%	4
			Totals: 37

Statistics

Skipped	0
Total Responses	37



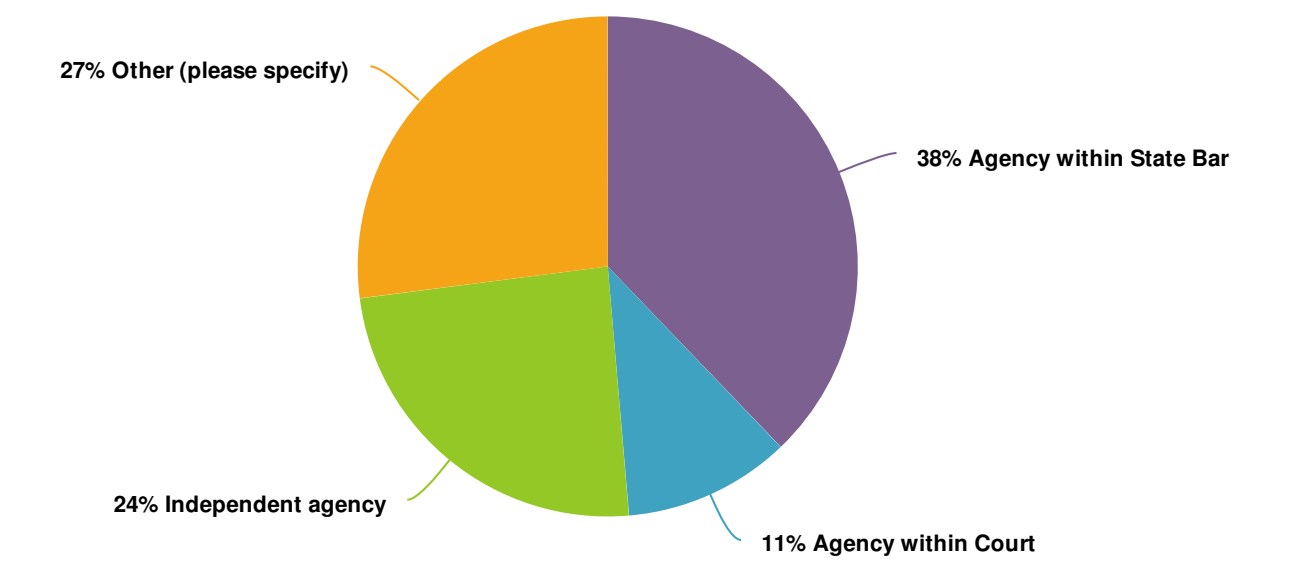
2. How many years have you been working in lawyer assistance?



Statistics

Min	1
Max	10
Sum	245.0
Average	6.6
StdDev	3.6
Skipped	0
Total Responses	37

3. How is your state’s LAP organized and structured?



Value		Percent	Responses
Agency within State Bar	<div><div></div></div>	37.8%	14
Agency within Court	<div><div></div></div>	10.8%	4
Independent agency	<div><div></div></div>	24.3%	9
Other (please specify)	<div><div></div></div>	27.0%	10
Totals: 37			

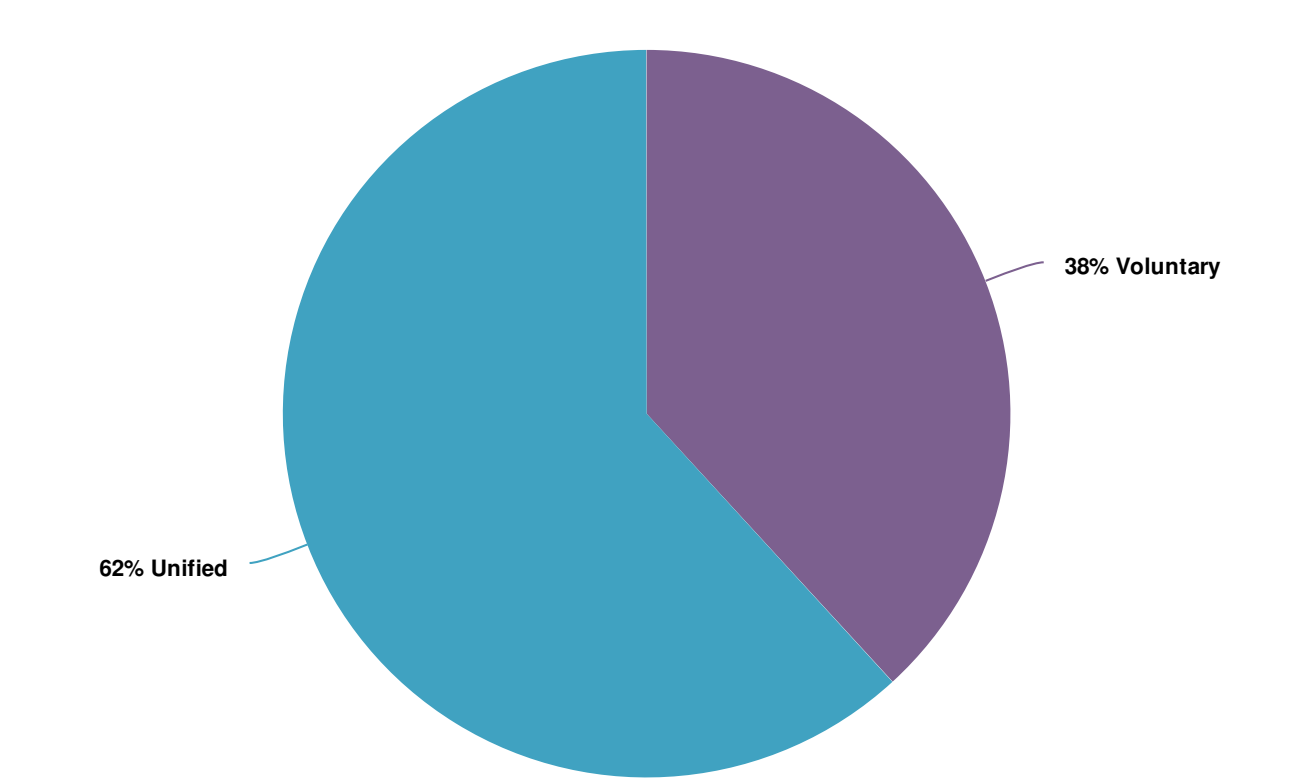
Statistics

Skipped	0
Total Responses	47

**Other (please specify)**

501 c 3	2
Independent agency supervised by state bar funded by lawyer assessment	2
Not for profit corporation	1
Program of the NY City Bar	1
We are a state bar association "committee" formed by Supreme Court Rule.	1
committee of bar association	1
program of the self insurance of state bar but kept confidential from bar and the Professional Liability fund	1
state funded program within a county Bar Association. NY has 3 state funded LAPs: NYS, NYC and Nassau County	1
Totals	10

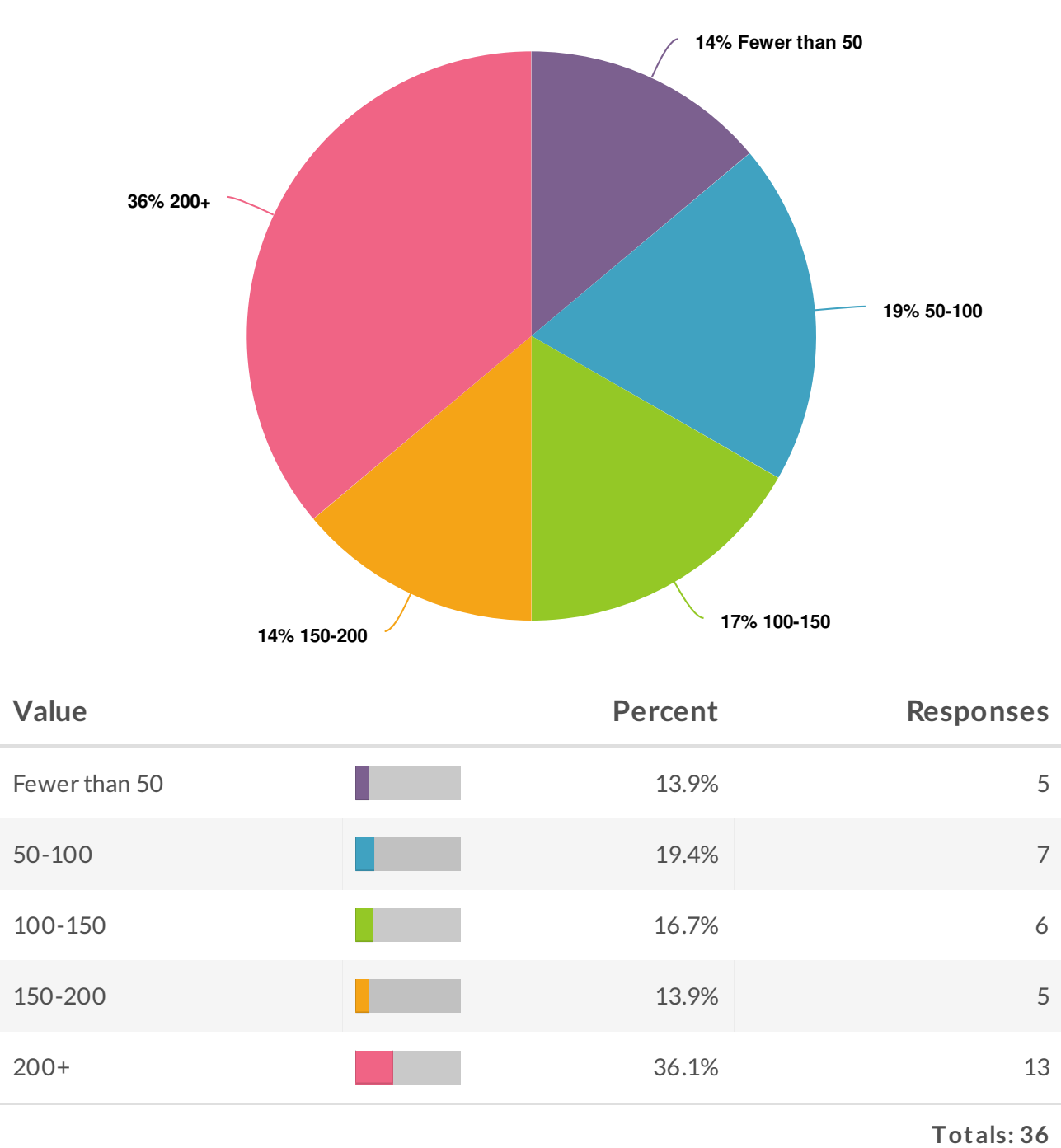
4. Does your state have a voluntary or mandatory/unified bar association?



Value		Percent	Responses
Voluntary	<div><div></div><div></div></div>	38.2%	13
Unified	<div><div></div><div></div></div>	61.8%	21
			Totals: 34

Statistics		
Skipped		3
Total Responses		34

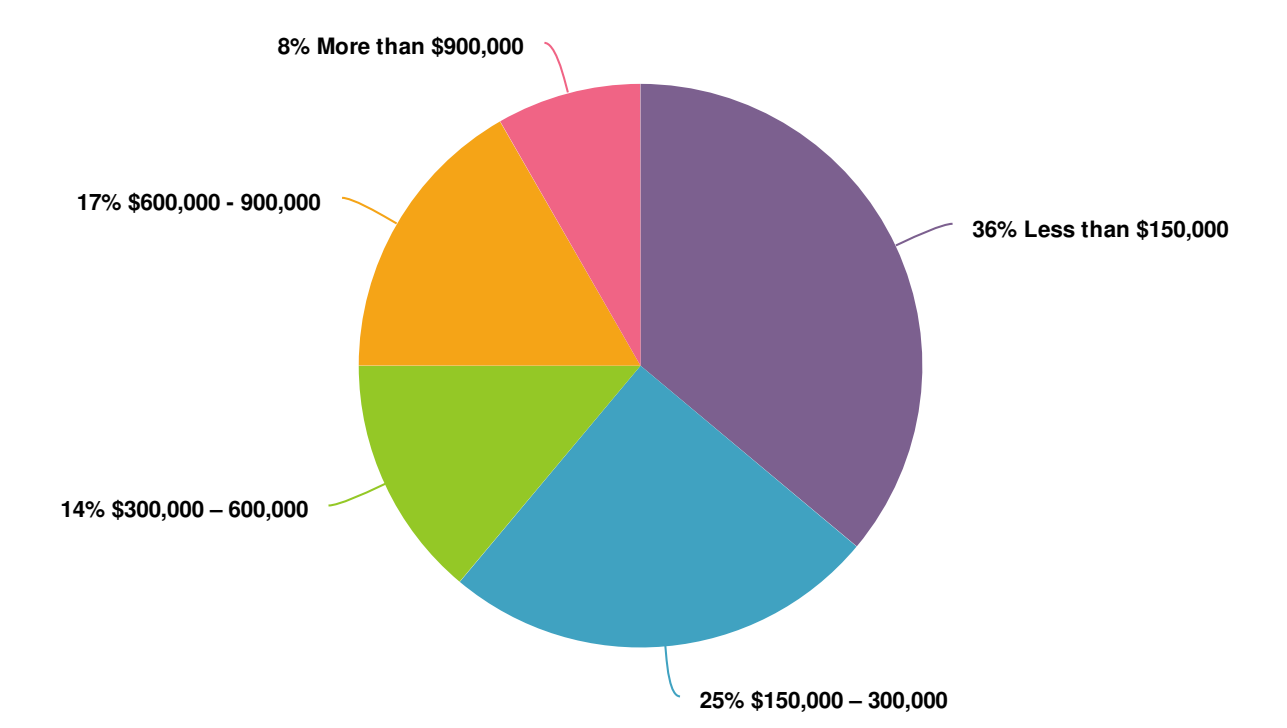
5. How many clients, on average, does your LAP serve every year?



Statistics

Min	0
Max	200
Sum	4,300.0
Average	119.4
StdDev	73.9
Skipped	1
Total Responses	36

6. What is your LAP’s annual budget?



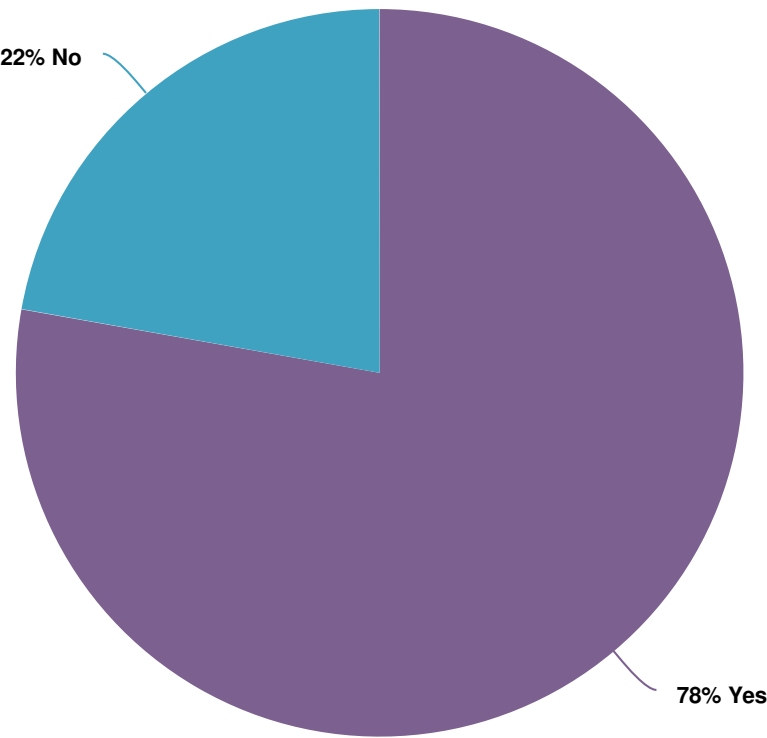
Value		Percent	Responses
Less than \$150,000	<div><div></div></div>	36.1%	13
\$150,000 – 300,000	<div><div></div></div>	25.0%	9
\$300,000 – 600,000	<div><div></div></div>	13.9%	5
\$600,000 - 900,000	<div><div></div></div>	16.7%	6
More than \$900,000	<div><div></div></div>	8.3%	3

Totals: 36

Statistics

Skipped	1
Total Responses	36

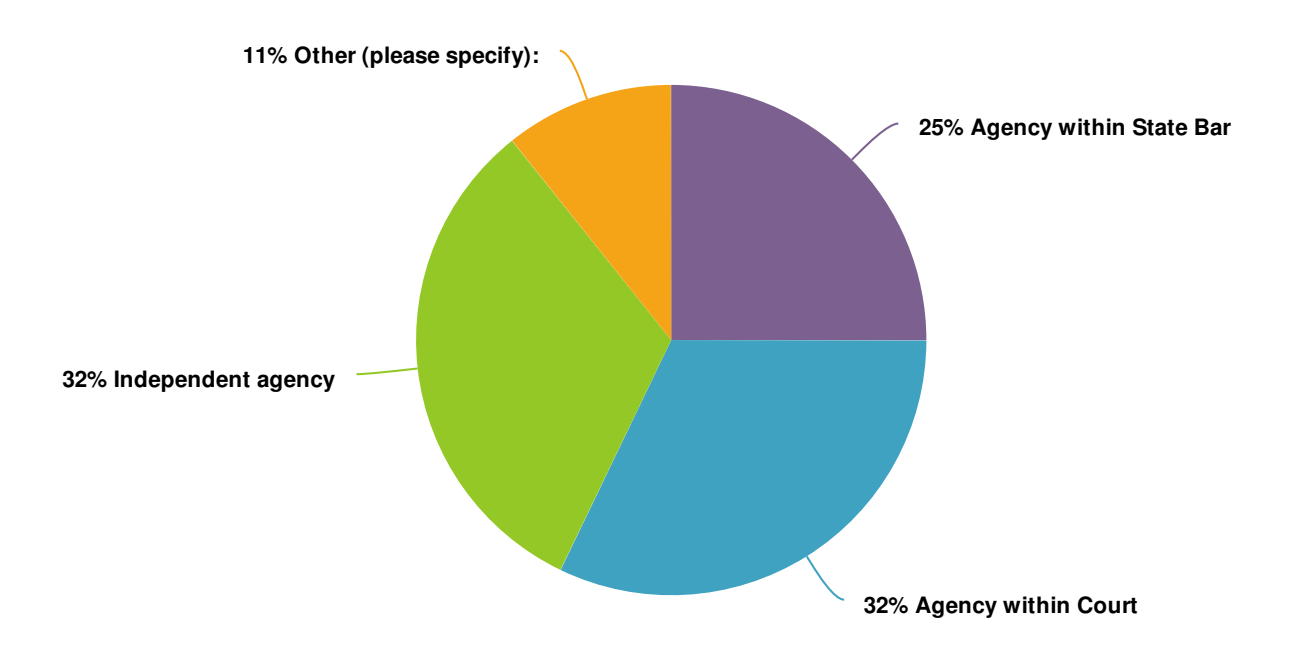
7. Has your experience working in lawyer assistance allowed you to form an opinion about which LAP structure (from those listed in #3) is the most advantageous and efficacious?



Value		Percent	Responses
Yes	<div><div></div></div>	77.8%	28
No	<div><div></div></div>	22.2%	8
			Totals: 36

Statistics	
Skipped	1
Total Responses	36

8. If you answered "Yes" to #7 above, please indicate which LAP structure holds the most benefit in your opinion.



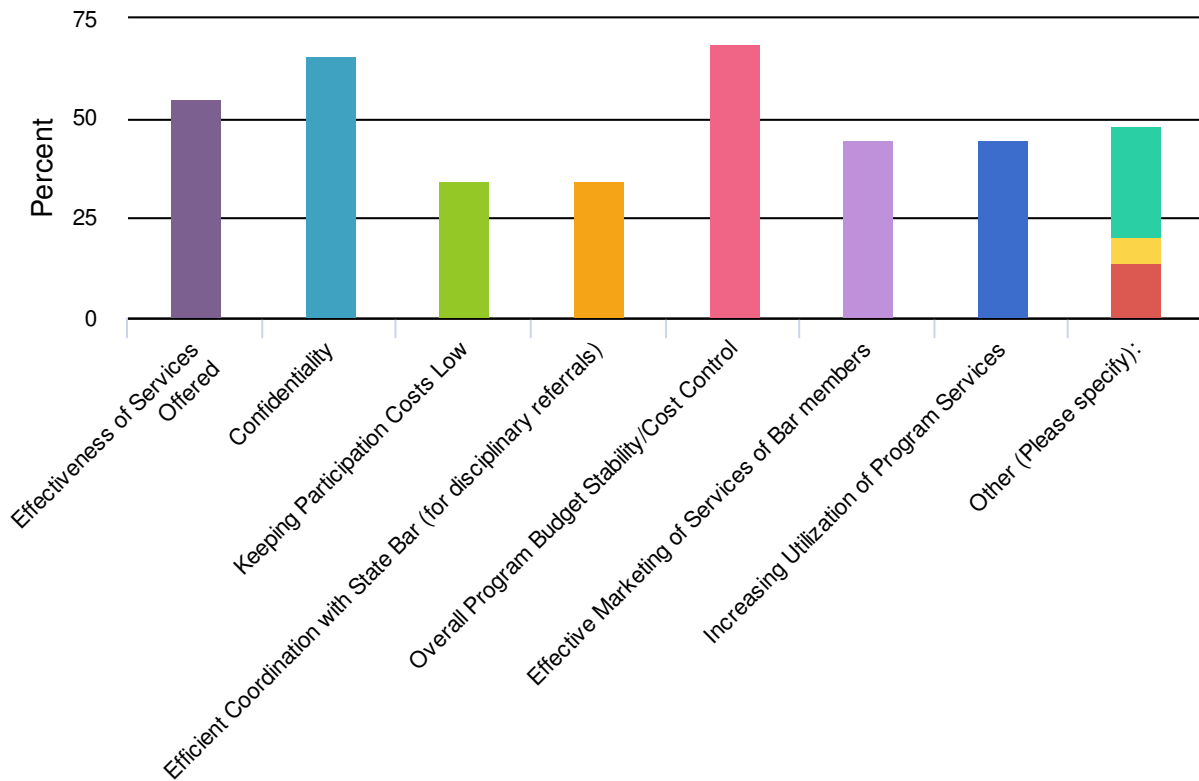
Value		Percent	Responses
Agency within State Bar	<div><div></div></div>	25.0%	7
Agency within Court	<div><div></div></div>	32.1%	9
Independent agency	<div><div></div></div>	32.1%	9
Other (please specify):	<div><div></div></div>	10.7%	3

Totals: 28

Statistics

Skipped	9
Total Responses	28











9. Please select the top five reasons for your choice in #7.



## Value

## Percent

## Responses

Effectiveness of Services Offered		55.2%	16
Confidentiality		65.5%	19
Keeping Participation Costs Low		34.5%	10
Efficient Coordination with State Bar (for disciplinary referrals)		34.5%	10
Overall Program Budget Stability/Cost Control		69.0%	20
Effective Marketing of Services of Bar members		44.8%	13
Increasing Utilization of Program Services		44.8%	13
Other (Please specify):		48.3%	14
Other (Please specify):		20.7%	6
Other (Please specify):		13.8%	4

## Statistics

Skipped	8
Total Responses	29

**Other (Please specify):**

Enhanced protection of the program	1
Governance through Court Rules lends credibility and stability to the program	1
I'm sorry, I really don't know how to answer this question, as my experience and understanding of how other LAPs work is not near extensive enough.	1
Independence	1
Level of independence from (political) interests of State Bar	1
Must ensure confidentiality	1
No need to worry about 501c3 infrastructure - State Bar handles salary, retirement, health insurance, etc.	1
Voluntary	1
autonomy	1
less bureaucracy	1
obtain dedicated funding stream from court system	1
privacy/anonymity	1
the well-being of lawyers and their profession is the responsibility of the State Bar	1
we serve judges, lawyers and law students	1
Totals	14

**Other (Please specify):**

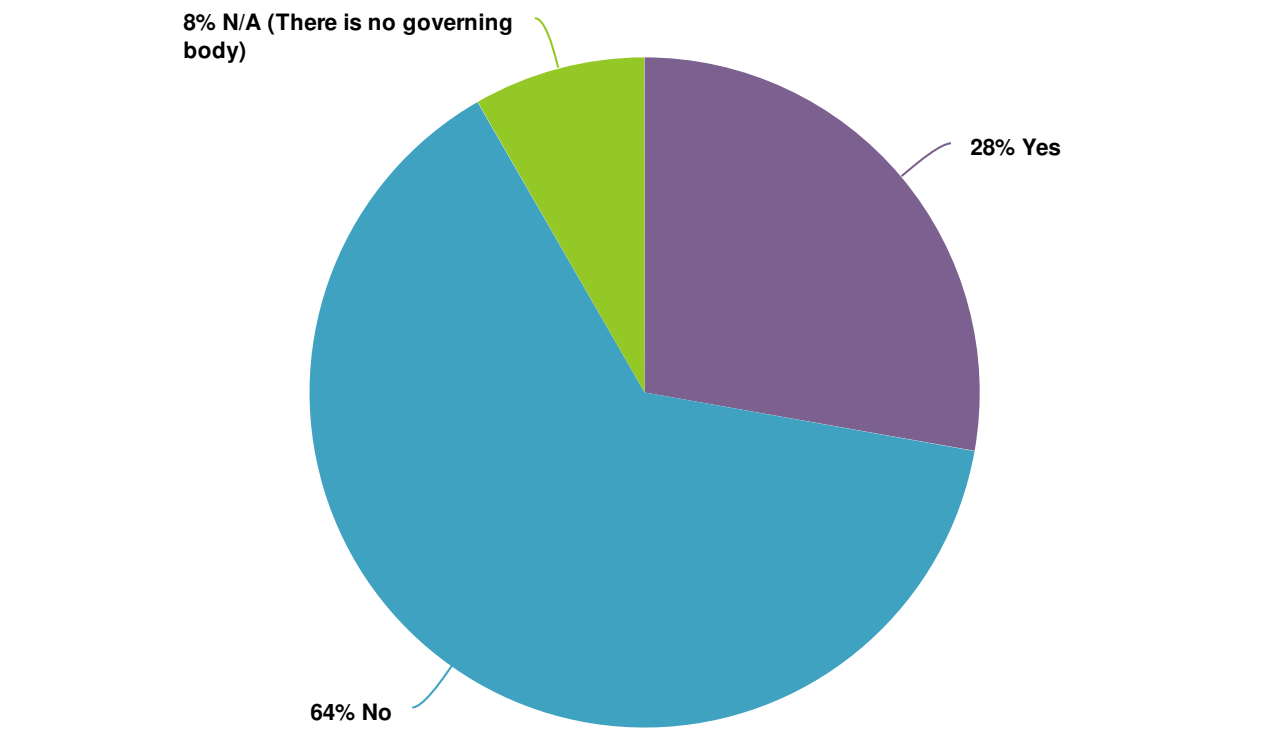
Compassionate	1
If you have a state bar LAP, it is y impressiona you are at the mercy of them and their budget	1
Independence	1
apolitical/not subject to special interest pressure	1
effective use of volunteers	1
increase staff to provide a greater range of services	1
Totals	6

**Other (Please specify):**

**Count**

Independence	1
assist a larger number of attorneys, judges, law students and their family members	1
independent organization viewed as more trustworthy	1
reduce stigma; lawyers helping lawyers	1
Totals	4

10. Has the governing body of your LAP ever considered or evaluated the possibility of restructuring or reorganizing the program?

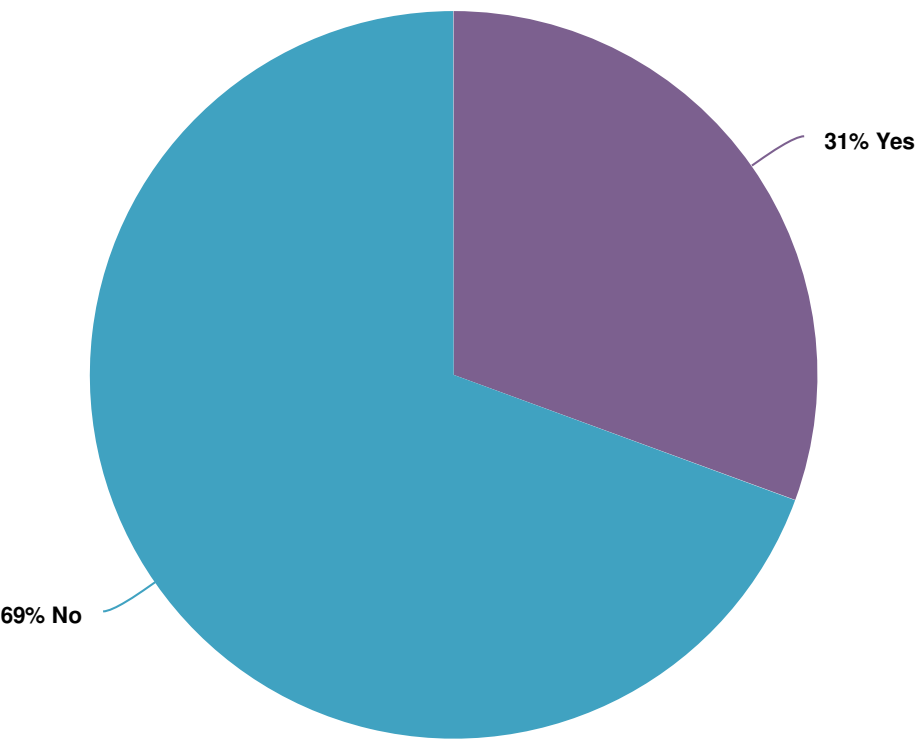


Value		Percent	Responses
Yes	<div><div></div></div>	27.8%	10
No	<div><div></div></div>	63.9%	23
N/A (There is no governing body)	<div><div></div></div>	8.3%	3
			Totals: 36

Statistics

Skipped	1
Total Responses	36

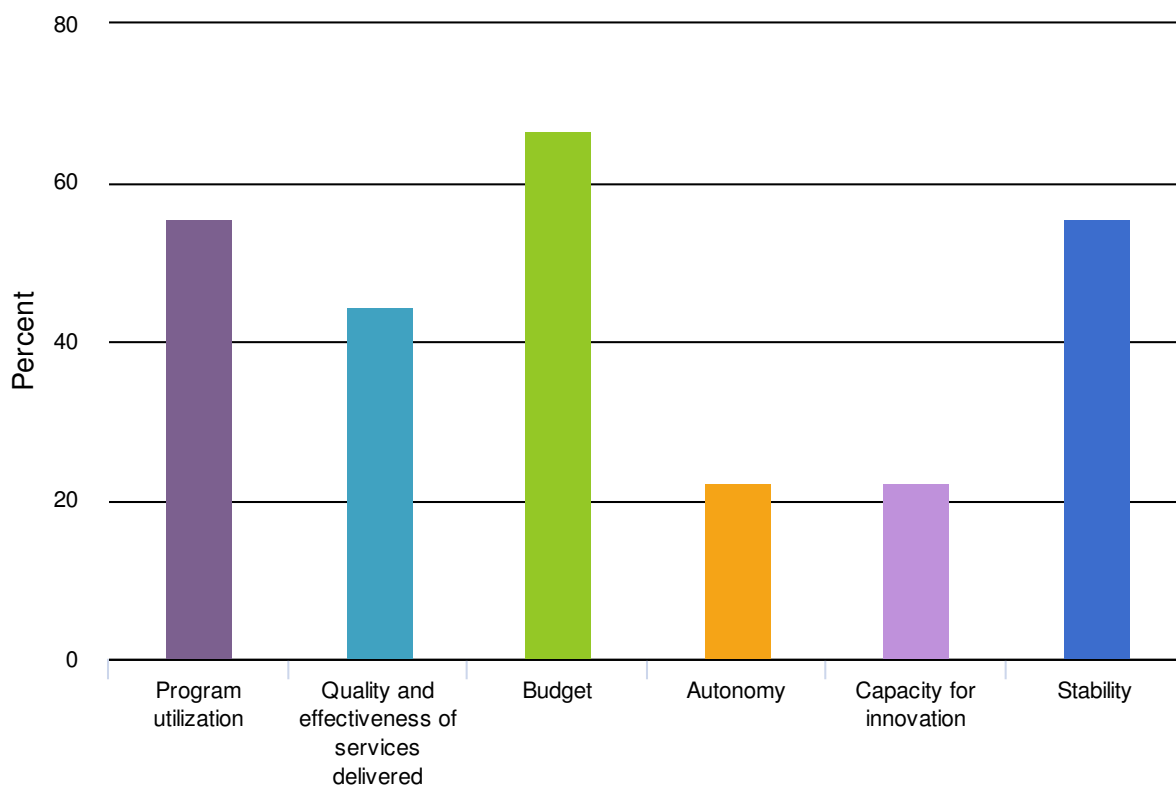
11. Are there organizational deficiencies or procedural challenges within your LAP that you feel could be addressed if your program was restructured or reorganized?









Value		Percent	Responses
Yes	<div><div></div></div>	30.6%	11
No	<div><div></div></div>	69.4%	25
			Totals: 36

Statistics	
Skipped	1
Total Responses	36

12. If you answered “Yes” to #11 above, please select the areas where you would expect to see an improvement if your program was restructured:



Value		Percent	Responses
Program utilization		55.6%	5
Quality and effectiveness of services delivered		44.4%	4
Budget		66.7%	6
Autonomy		22.2%	2
Capacity for innovation		22.2%	2
Stability		55.6%	5

Statistics

Skipped	19
Total Responses	9

13. Please share any additional comments or feedback you may have:



ResponseID	Response
1	Welcome back California!
4	Strategically, and as Executive Director, International EAP, trained and certified, organizational counseling and certified non-profit leadership - annually I look at where we have been, where we are, and where we want to be in future so that we meet our mission and goals
5	Hi Patrick, New York State is unlike any other state. We have four distinct Appellate Divisions, each with it's own Character & Fitness and Disciplinary Committees responsible for different areas of the state.. We also have 3 LAPS, at the State Bar, the City Bar and the Nassau County Bar. We try to work in a unified manner. We have the largest number of attorneys than any other state, the majority in the five boroughs of New York City. We each receive funds by grant from our court. The current grant expires March 2019 and we do not know if it will be renewed, although we are cautiously optimistic. We have never succeeded in obtaining a dedicated funding stream from our court system which is extremely frustrating. Each of the three Bar's that sponsor LAPS also contribute to the budgets, but it's getting harder for them to do so. We each work with a Bar Committee, but that relationship is different in each jurisdiction. I am happy to discuss with you. Eileen

ResponseID	Response
6	Having the great program we have with support from our supreme court (all judges/magistrates including administrative law and municipal judges), regulation counsel, and the bar associations, I can't imagine being part of a bar association.
8	I believe that an independent organization can encourage voluntary participation by offering confidentiality and separation from Bar Associations and Courts that are perceived only as agents of discipline. Bar Discipline refers lawyers who have been grieved or arrested to our program for evaluation and recommendation. If monitoring is necessary we provide that for the Bar through the appropriate means. Non-compliance is reported and, if further discipline is needed, the Bar takes action, but our mission is to assist attorneys, judges and law students.
10	regardless of the structure, stigma and denial are the twin impediments to improving the lives of those lawyers in need.
11	Procedural challenge: There no term limits on one powerful committee.
13	We have a voluntary Bar Association. I believe lawyers have less confidentiality concerns because we are separate from the Court and discipline (which is part of the courts in our state, not the bar).
15	NC has BOTH a voluntary bar and a mandatory bar. LAP is housed within the mandatory bar. We are therefore well funded, stable, and super effective - able to focus solely on the mission. I see many 501 c3 LAPs struggle to find proper funding and deal with administrative issues like 401Ks and other things that we do not have to deal with. I think being housed at the State Bar is the best structure and the upside far outweighs the downside (i.e., the misperception that we are in kahoots with the discipline arm of the bar or are otherwise not confidential...but lawyers think that no matter where a LAP is housed).
16	Funding a LAP through direct assessment of members of the Bar as part of annual registration is the best means of assuring consistent funding free of political influence. States that employ this method assess attorneys from \$20 to \$45 annually.
18	I am very grateful for the strong support that our program receives from our state bar. We work hard to maintain a positive working relationship with the regulatory people, and we stress the importance of maintaining the integrity of our program through confidentiality.

ResponseID	Response
27	I think there are challenges with having the LAP be part of the Bar or Court system, primarily that clients might be afraid to use it for fear of a connection with the disciplinary arm of the Bar. But, there are challenges with being independent as well, primarily fundraising issues and less stability perhaps. There are pros and cons with both types of structures.
29	Get stable funding that is adequate to meet your needs for the next few years, and don't let it be in any way unstable. The worst situation possible is to have to request your budget every year. It is a distracting waste of time.
31	Thank you Patrick for all of your many contributions to the LAP world!
33	those matters above (in #12) need always be review and revised. restructuring would hurt most of those and at best might, in some cases, improve stability and budget.
37	Stable funding and consistency and confidentiality and a professional staff with lawyer/counselors has allowed us to thrive for over 30 years and to have high access to our program.

# Report for 2018 State Bar of California National LAP Survey

\*Similarly Situated Programs Only

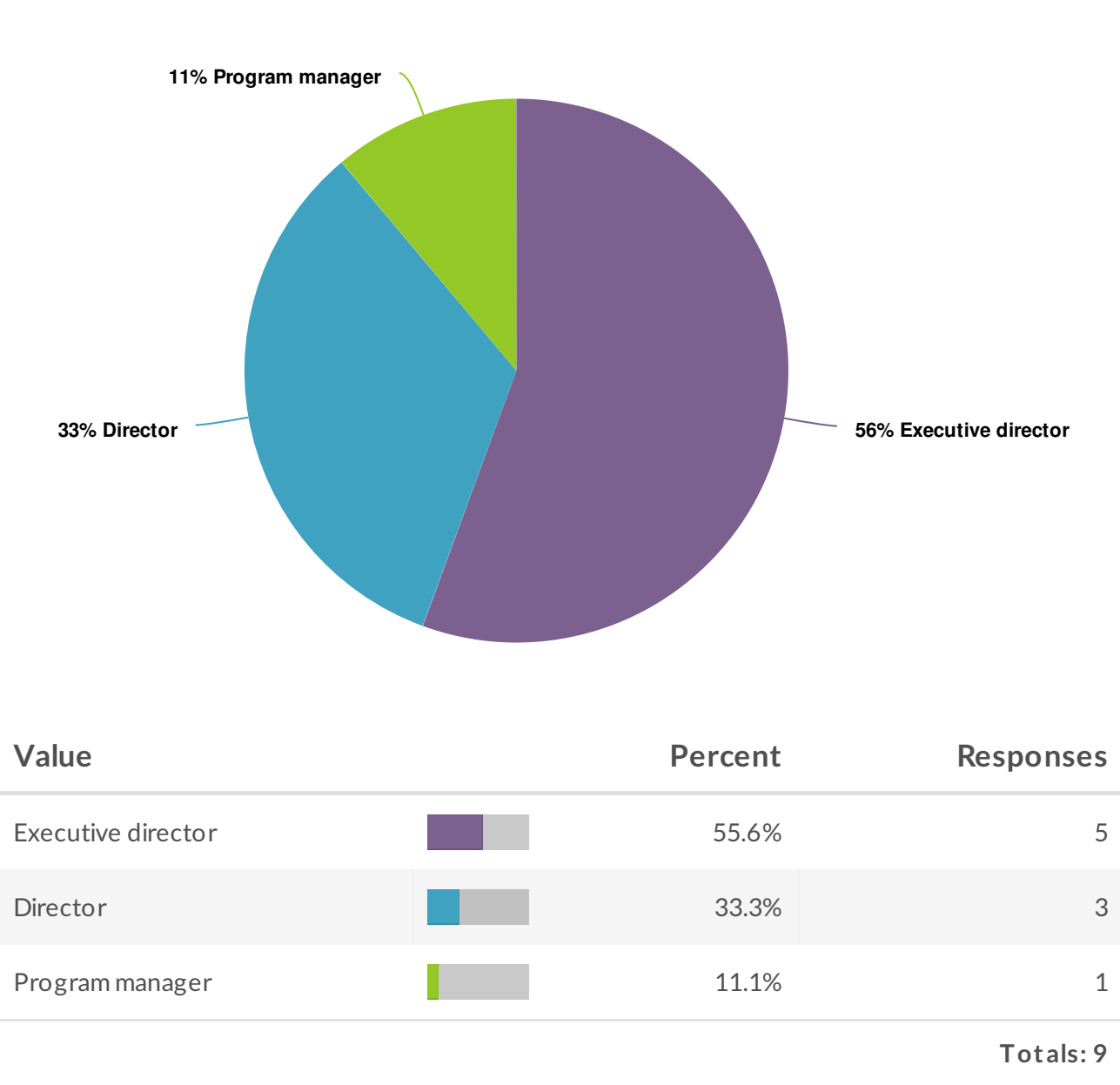
## Response Counts

Completion Rate:	100%		
	Complete		9

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Totals: 9

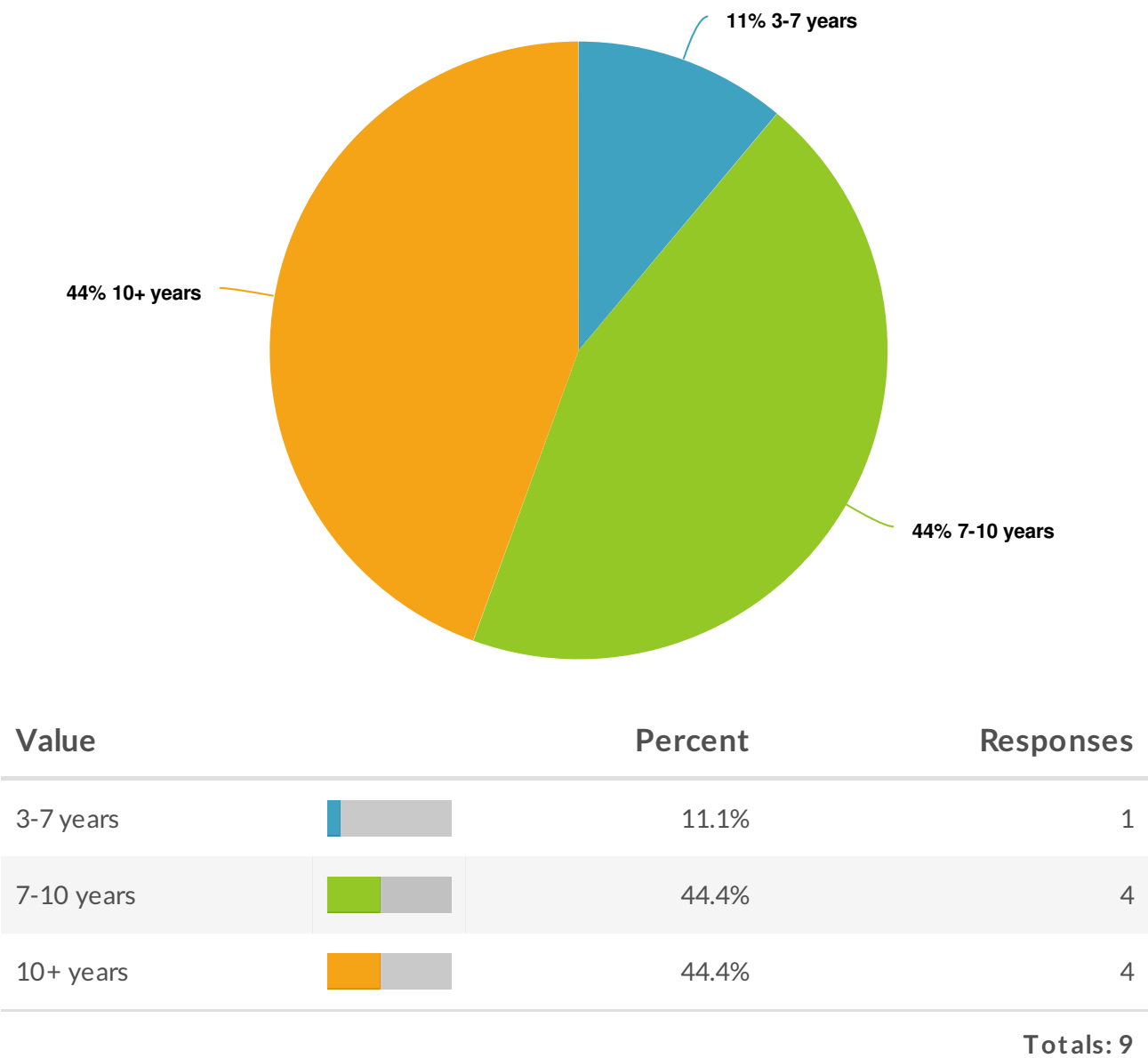
1. What is your position with the LAP?



Statistics

Skipped	0
Total Responses	9

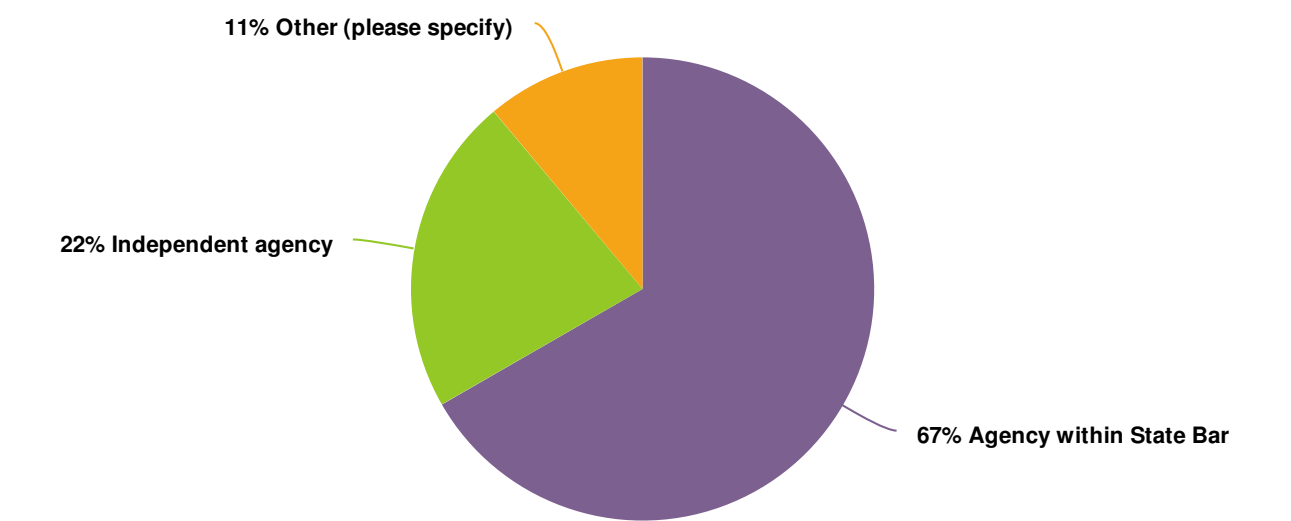
2. How many years have you been working in lawyer assistance?



Statistics

Min	3
Max	10
Sum	71.0
Average	7.9
StdDev	2.2
Skipped	0
Total Responses	9

3. How is your state’s LAP organized and structured?



Value		Percent	Responses
Agency within State Bar	<div><div></div></div>	66.7%	6
Independent agency	<div><div></div></div>	22.2%	2
Other (please specify)	<div><div></div></div>	11.1%	1
			Totals: 9

Statistics

Skipped	0
Total Responses	10

**Other (please specify)**

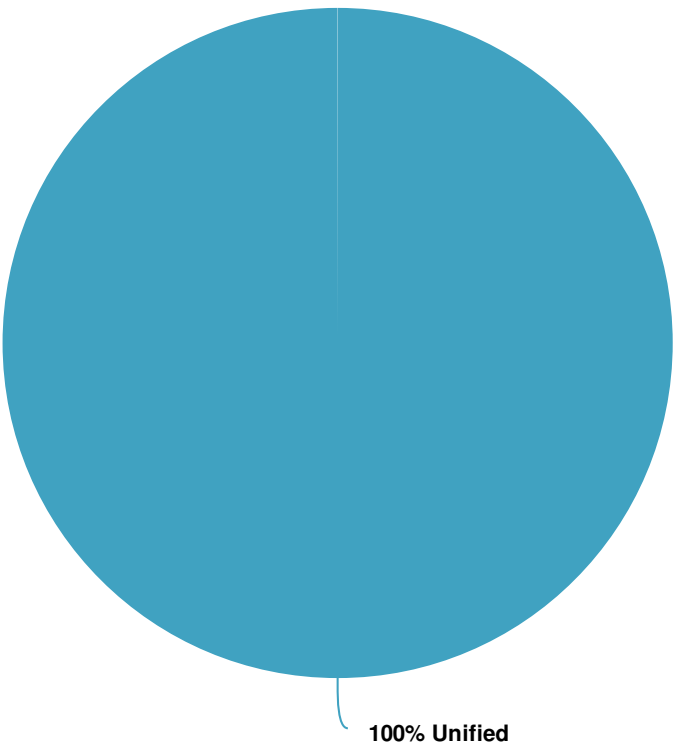
program of the self insurance of state bar but kept confidential from bar and the Professional Liability fund

1

Totals

1

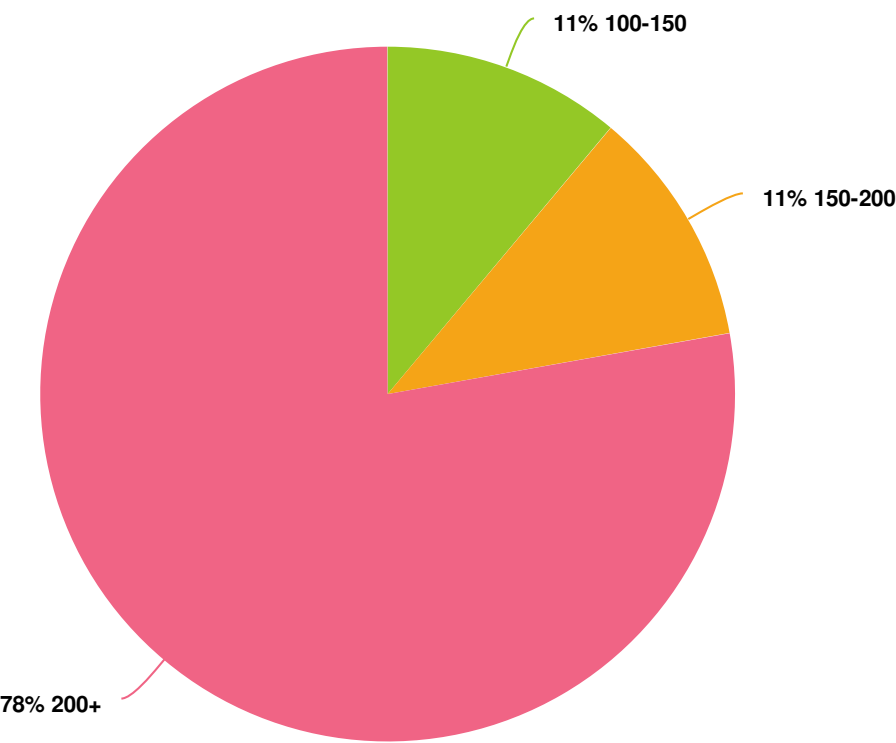
4. Does your state have a voluntary or mandatory/unified bar association?



Value		Percent	Responses
Unified	<div></div>	100.0%	9
			Totals: 9

Statistics		
Skipped		0
Total Responses		9

5. How many clients, on average, does your LAP serve every year?



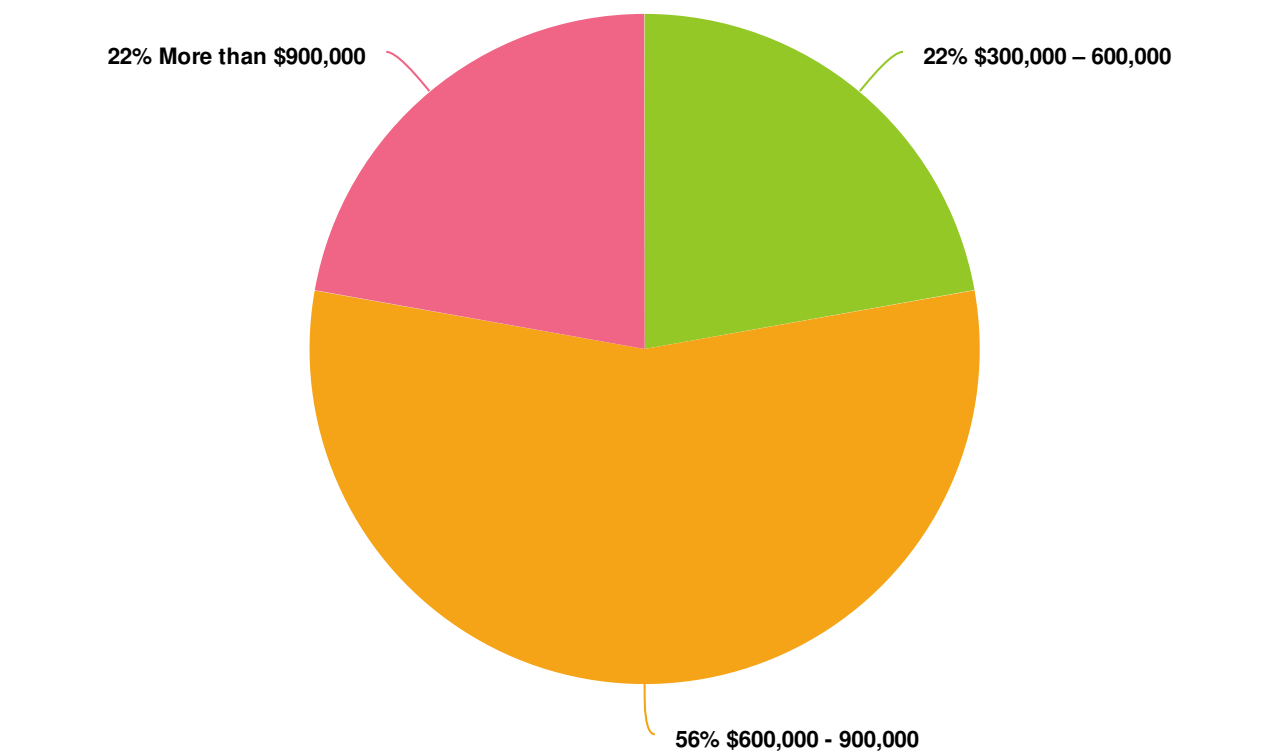
Value		Percent	Responses
100-150	<div><div></div></div>	11.1%	1
150-200	<div><div></div></div>	11.1%	1
200+	<div><div></div></div>	77.8%	7

Totals: 9

Statistics

Min	100
Max	200
Sum	1,650.0
Average	183.3
StdDev	33.3
Skipped	0
Total Responses	9

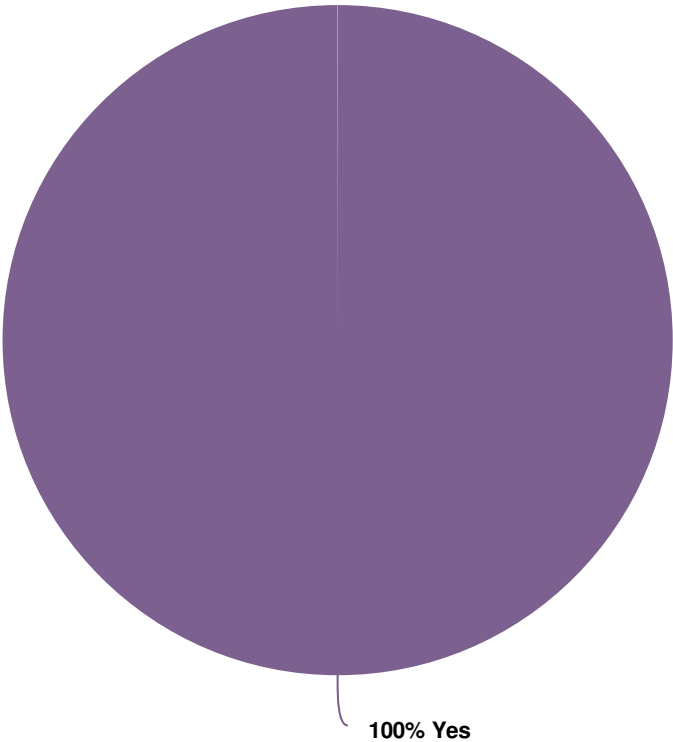
6. What is your LAP’s annual budget?



Value		Percent	Responses
\$300,000 – 600,000	<div><div></div></div>	22.2%	2
\$600,000 - 900,000	<div><div></div></div>	55.6%	5
More than \$900,000	<div><div></div></div>	22.2%	2
			Totals: 9

Statistics	
Skipped	0
Total Responses	9

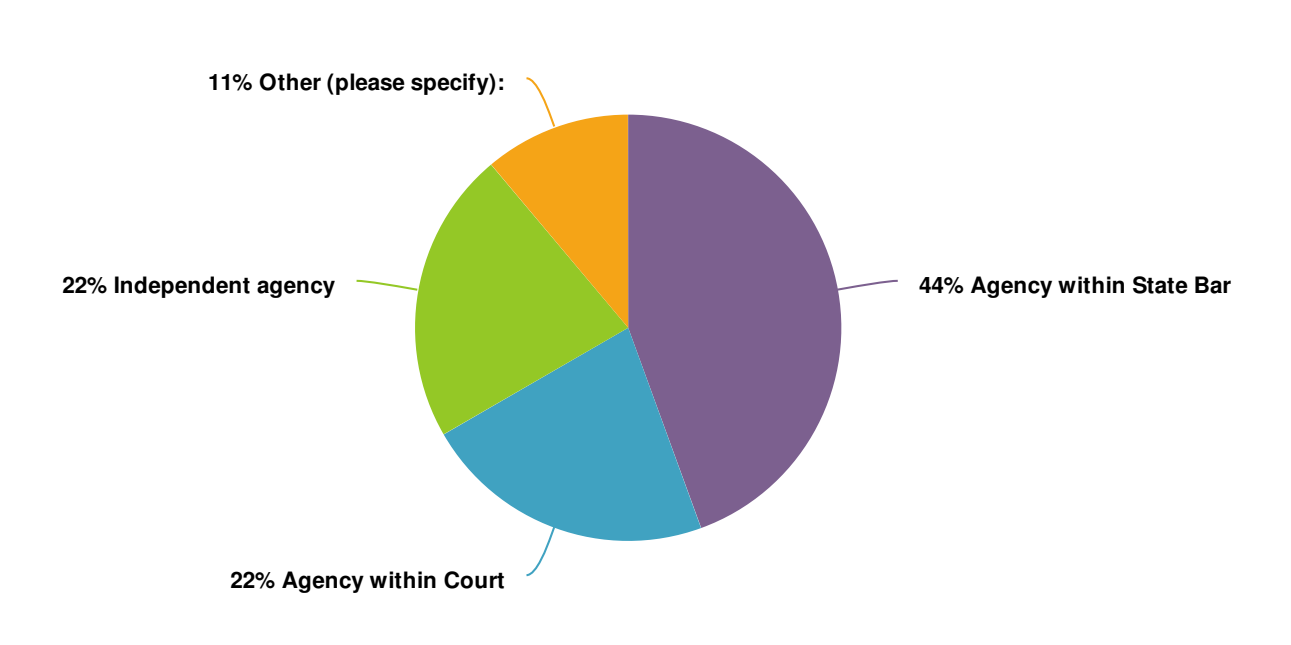
7. Has your experience working in lawyer assistance allowed you to form an opinion about which LAP structure (from those listed in #3) is the most advantageous and efficacious?



Value		Percent	Responses
Yes	<div></div>	100.0%	9
			Totals: 9

Statistics		
Skipped		0
Total Responses		9

8. If you answered "Yes" to #7 above, please indicate which LAP structure holds the most benefit in your opinion.

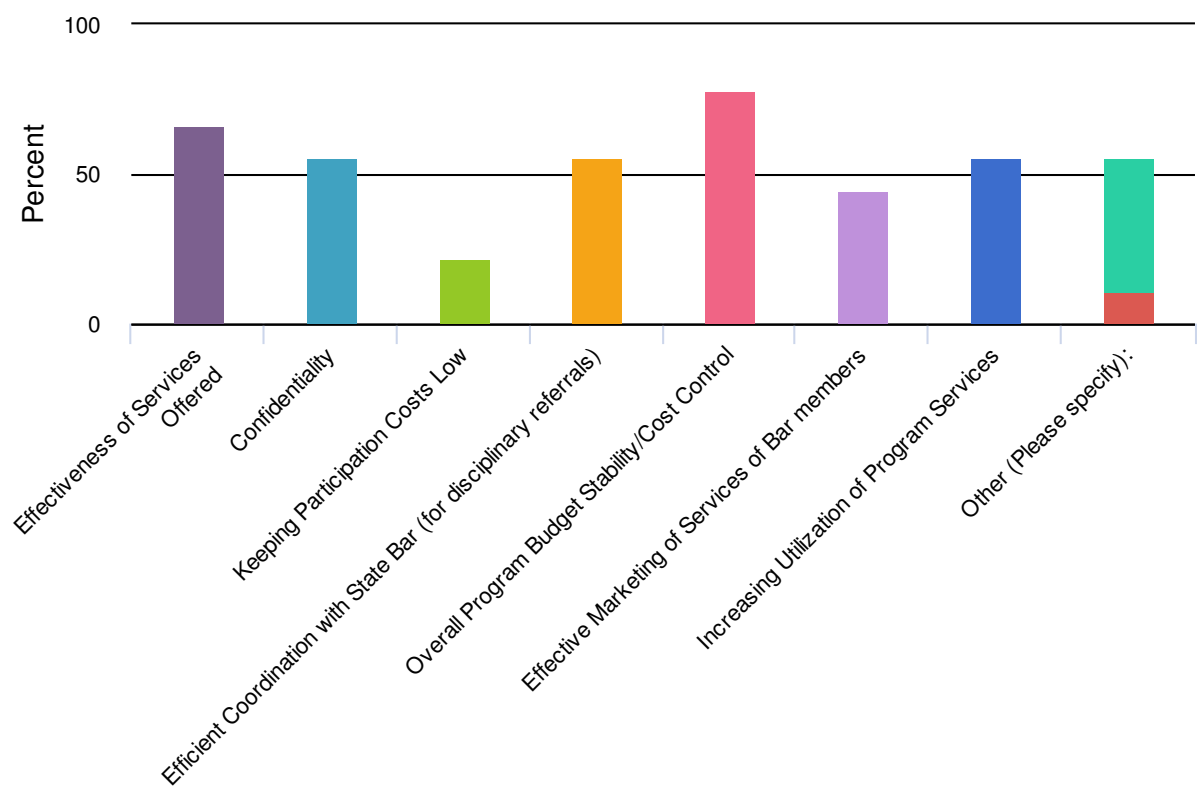


Value		Percent	Responses
Agency within State Bar	<div><div></div><div></div></div>	44.4%	4
Agency within Court	<div><div></div><div></div></div>	22.2%	2
Independent agency	<div><div></div><div></div></div>	22.2%	2
Other (please specify):	<div><div></div><div></div></div>	11.1%	1
Totals: 9			

Statistics

Skipped	0
Total Responses	9











9. Please select the top five reasons for your choice in #8.



## Value

## Percent

## Responses

Effectiveness of Services Offered		66.7%	6
Confidentiality		55.6%	5
Keeping Participation Costs Low		22.2%	2
Efficient Coordination with State Bar (for disciplinary referrals)		55.6%	5
Overall Program Budget Stability/Cost Control		77.8%	7
Effective Marketing of Services of Bar members		44.4%	4
Increasing Utilization of Program Services		55.6%	5
Other (Please specify):		55.6%	5
Other (Please specify):		11.1%	1
Other (Please specify):		11.1%	1

## Statistics

Skipped	0
Total Responses	9

**Other (Please specify):**

Enhanced protection of the program	1
Must ensure confidentiality	1
No need to worry about 501c3 infrastructure - State Bar handles salary, retirement, health insurance, etc.	1
less bureaucracy	1
the well-being of lawyers and their profession is the responsibility of the State Bar	1
Totals	5

**Other (Please specify):**

**Count**

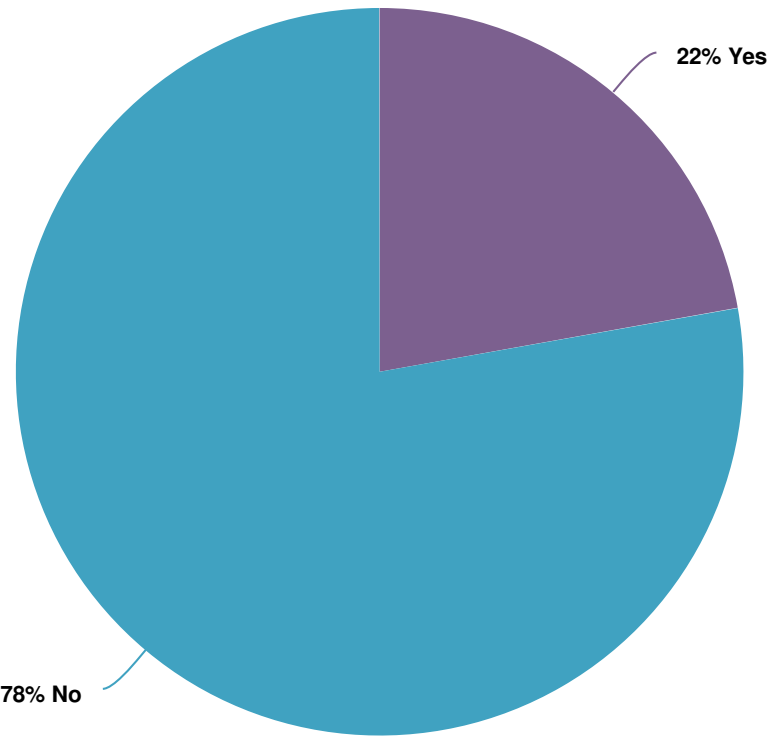
effective use of volunteers	1
Totals	1

**Other (Please specify):**

**Count**

reduce stigma; lawyers helping lawyers	1
Totals	1

10. Has the governing body of your LAP ever considered or evaluated the possibility of restructuring or reorganizing the program?



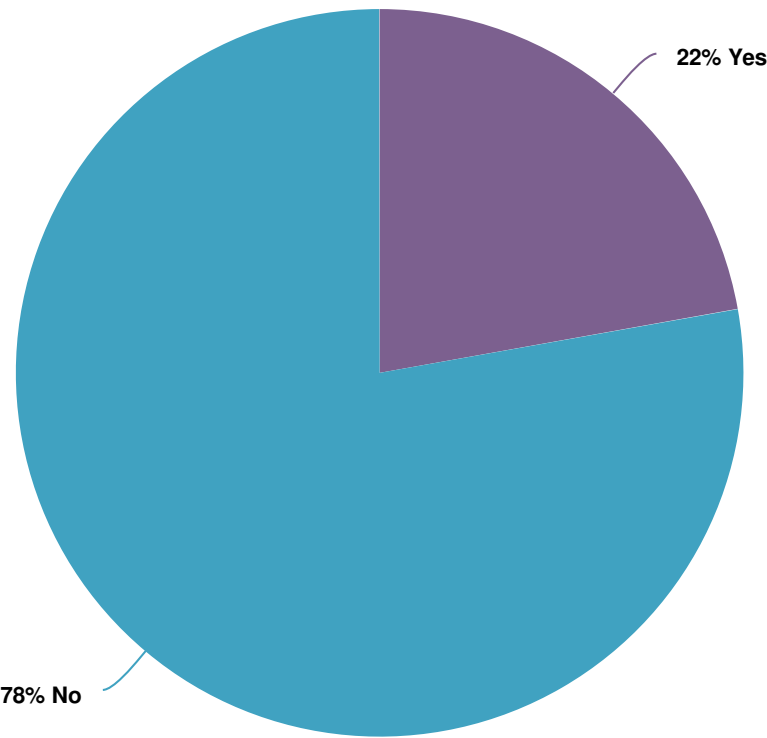
Value		Percent	Responses
Yes	<div><div></div></div>	22.2%	2
No	<div><div></div></div>	77.8%	7

Totals: 9

Statistics

Skipped	0
Total Responses	9

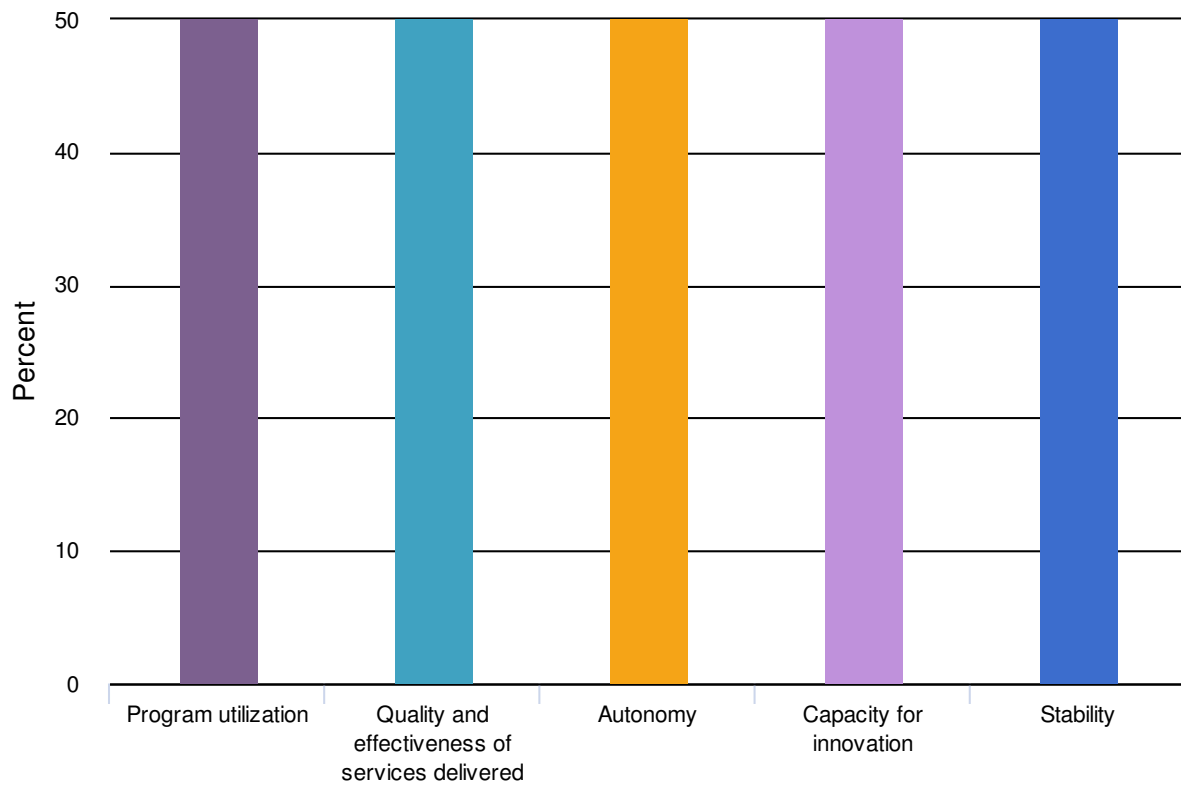
11. Are there organizational deficiencies or procedural challenges within your LAP that you feel could be addressed if your program was restructured or reorganized?








Value		Percent	Responses
Yes	<div><div></div></div>	22.2%	2
No	<div><div></div></div>	77.8%	7
			Totals: 9

Statistics	
Skipped	0
Total Responses	9

12. If you answered “Yes” to #11 above, please select the areas where you would expect to see an improvement if your program was restructured:



Value		Percent	Responses
Program utilization		50.0%	1
Quality and effectiveness of services delivered		50.0%	1
Autonomy		50.0%	1
Capacity for innovation		50.0%	1
Stability		50.0%	1

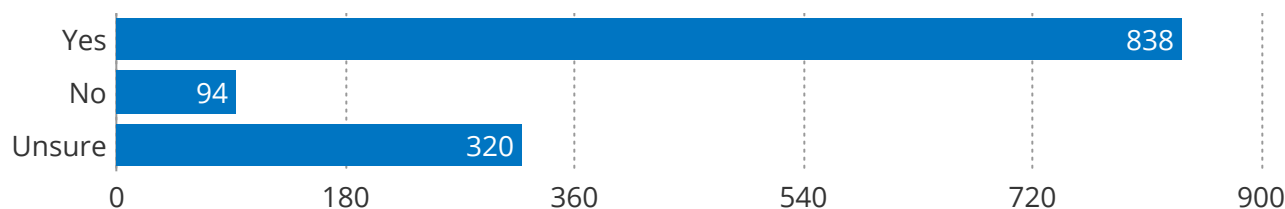
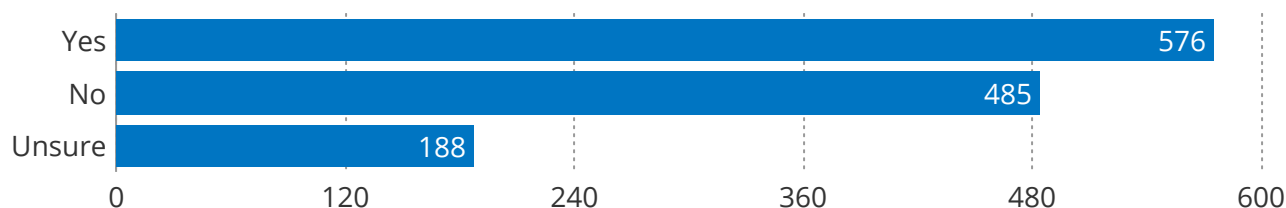
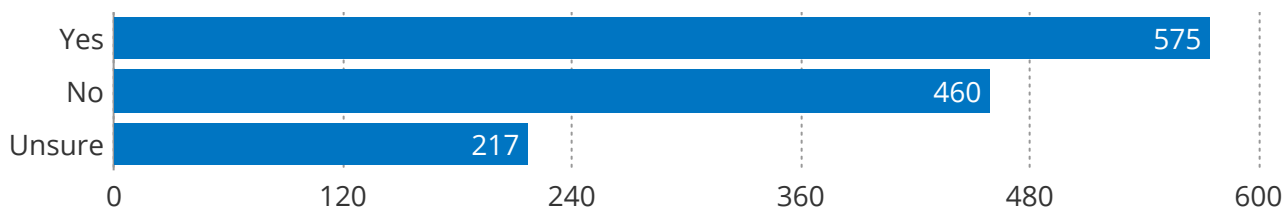
Statistics

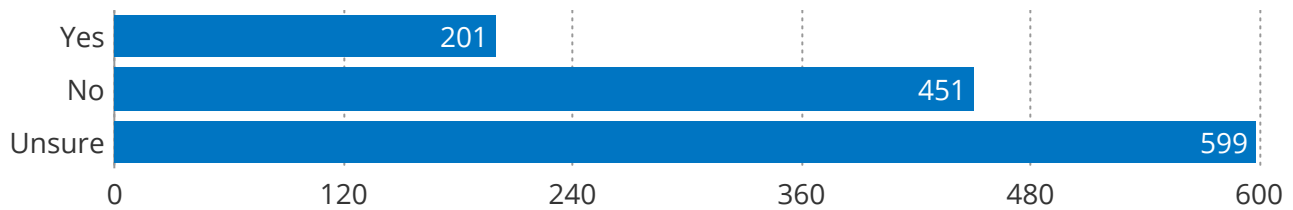
Skipped	5
Total Responses	2

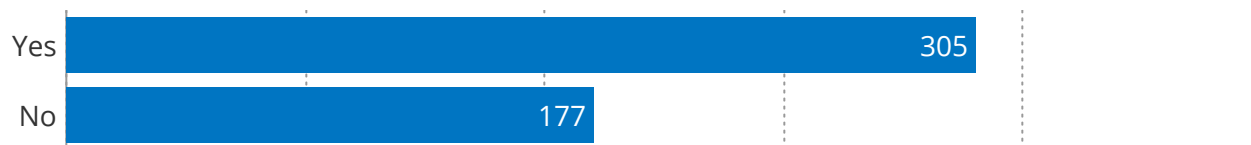
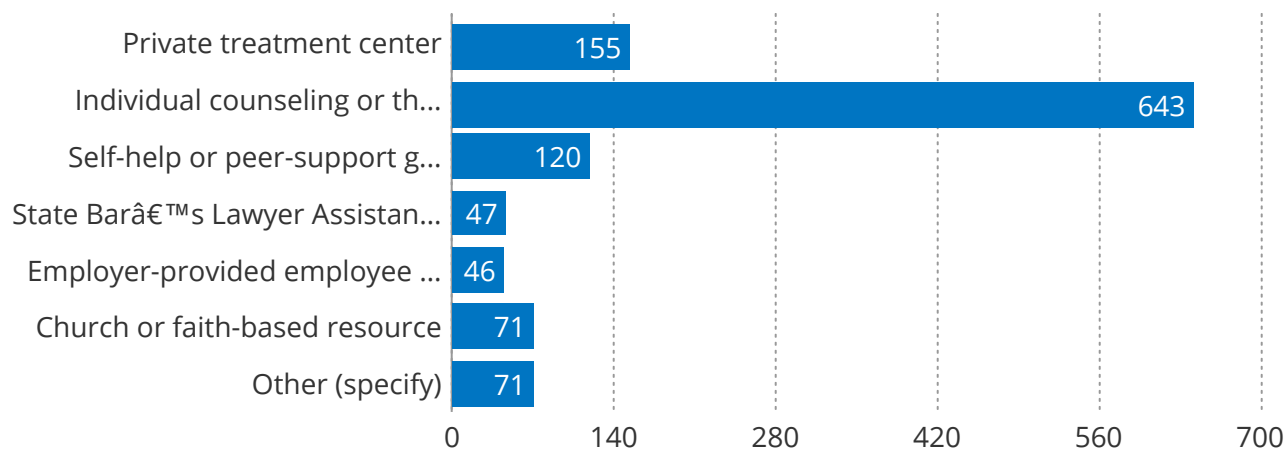
13. Please share any additional comments or feedback you may have:



ResponseID	Response
8	I believe that an independent organization can encourage voluntary participation by offering confidentiality and separation from Bar Associations and Courts that are perceived only as agents of discipline. Bar Discipline refers lawyers who have been grieved or arrested to our program for evaluation and recommendation. If monitoring is necessary we provide that for the Bar through the appropriate means. Non-compliance is reported and, if further discipline is needed, the Bar takes action, but our mission is to assist attorneys, judges and law students.
15	NC has BOTH a voluntary bar and a mandatory bar. LAP is housed within the mandatory bar. We are therefore well funded, stable, and super effective - able to focus solely on the mission. I see many 501 c3 LAPs struggle to find proper funding and deal with administrative issues like 401Ks and other things that we do not have to deal with. I think being housed at the State Bar is the best structure and the upside far outweighs the downside (i.e., the misperception that we are in kahoots with the discipline arm of the bar or are otherwise not confidential...but lawyers think that no matter where a LAP is housed).
18	I am very grateful for the strong support that our program receives from our state bar. We work hard to maintain a positive working relationship with the regulatory people, and we stress the importance of maintaining the integrity of our program through confidentiality.
33	those matters above (in #12) need always be review and revised. restructuring would hurt most of those and at best might, in some cases, improve stability and budget.
37	Stable funding and consistency and confidentiality and a professional staff with lawyer/counselors has allowed us to thrive for over 30 years and to have high access to our program.

**Do you believe that substance use and mental health distress are significant problems in the legal profession?****1252 responses in 1285 results****Do you know friends, colleagues, or peers in the profession who struggle with alcohol or drugs?****1249 responses in 1285 results****Do you know friends, colleagues, or peers in the profession who struggle with mental health problems?****1252 responses in 1285 results**

**Do you feel that enough is being done to address substance abuse and mental health in the legal profession?****1251 responses in 1285 results****Since entering the legal profession, have you ever felt concerned about your use of alcohol or drugs?****1225 responses in 1259 results****Since entering the legal profession, have you ever felt concerned about your mental health?****1219 responses in 1259 results**

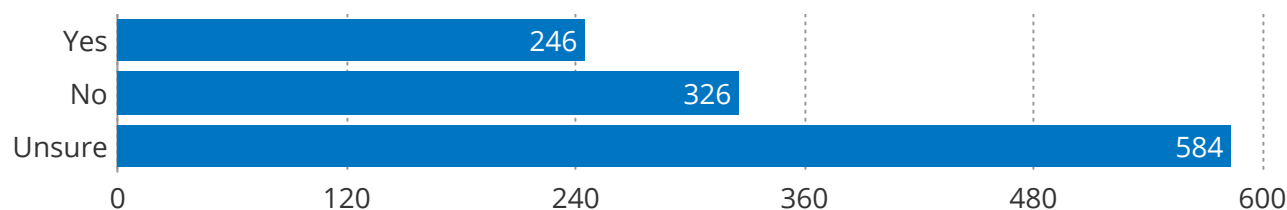
**Did you seek some form of help for your concerns?****482 responses in 495 results****Did you use the State Bar's Lawyer Assistance Program?****302 responses in 305 results****In the hypothetical event that you decided to seek help for alcohol or drug use problems or mental health issues, which of the following resources would you be most likely to use?**

**Are you aware of the confidential services of the State Bar's Lawyer Assistance Program for lawyers concerned with their alcohol or drug use or their mental health?**



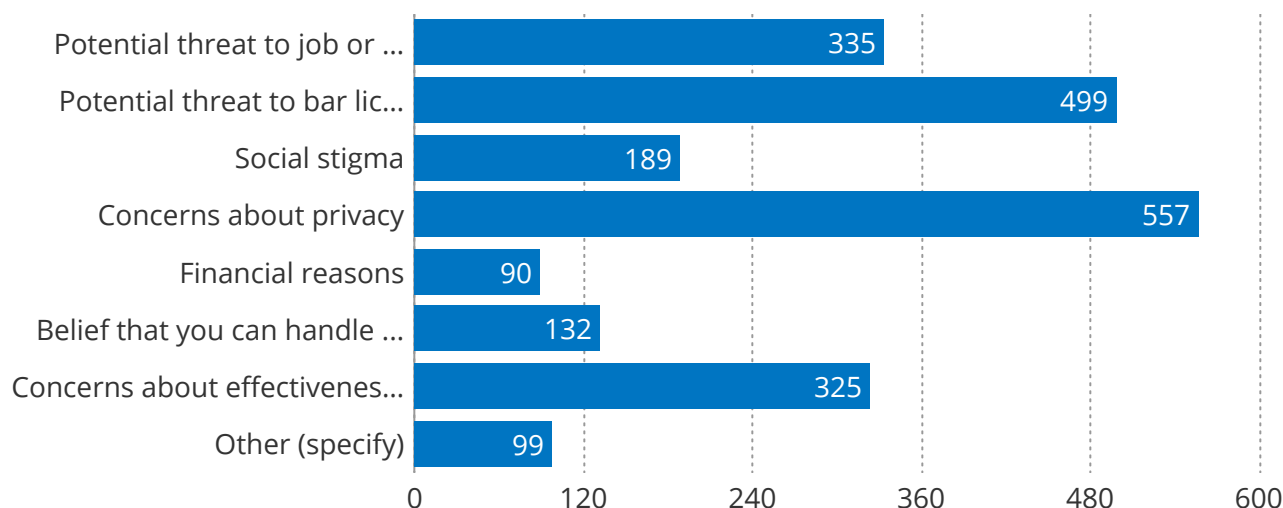
**1157 responses in 1187 results**

**In the hypothetical event that you did need help for a substance use or mental health problem, would you seek assistance from the State Bar's Lawyer Assistance Program?**



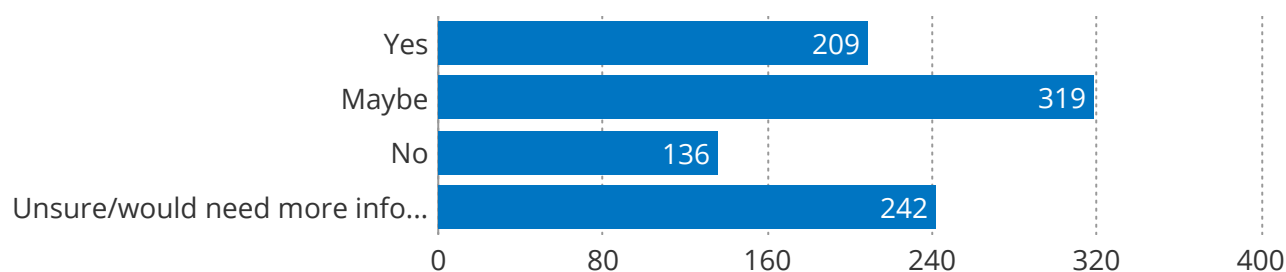
**1156 responses in 1187 results**

**Which of the following factors would discourage you from seeking help from the State Bar's Lawyer Assistance Program, or from referring someone else to the Program? (Select up to three)**



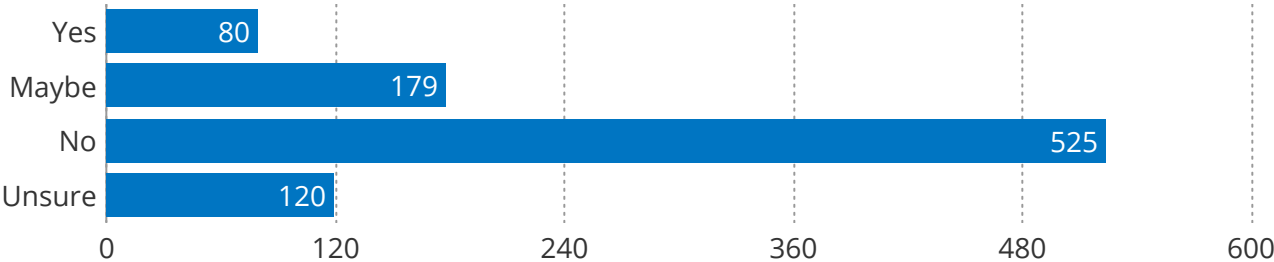
**2226 responses in 910 results**

**Would your view of these factors be different if the Lawyer Assistance Program was reorganized as an entity completely independent of the State Bar?**



**906 responses in 910 results**

**Would your view of these factors also discourage you from seeking help from other resources (for example, from a private counselor, self-help group or employee assistance program)?**



**904 responses in 910 results**

**Improvements Under Way at the LAP over the preceding 12 Months, as provided by program supervisor, Michelle Harmon, June 2018:**

- Secure funding for TAS
- Promote TAS & LAP services (ie. New attorney MCLE, Flyer in oath packet)
- Updated intake forms to eliminate redundancies. Asked other lawyer assistance programs about their intake forms & revised intake forms (eliminating one entirely)
- Review and amend all existing forms to updated terminology.
- Seek approval from Oversight Committee to Eliminate Evaluation Committee, develop new process to replace ECs (including onboarding staff, participants and group facilitators to new process), and update policy and operations manual to reflect change
- New clinical and procedural supervision of staff
- Policy manual update (drafted but not finalized.)
- Data collection with goals of measuring program efficacy, success and client satisfaction – implemented use of BSI quarterly throughout program participation, tracking number of days sober. New quarterly report process to track changes in areas of accountability, structure, support and law practice management
- In process of developing a participant satisfaction survey
- Conduct a survey of CA attorneys on what they need and the best way to disseminate information.
- Research how other LAPs are working to reduce stigma.
- Develop a list of contacts at accredited, unaccredited and unaffiliated law schools.
- Initial stages of collaboration with the California Young Lawyers Association to provide outreach to law students.
- 1.5 hour MCLE in the mandated 10 hours of CLE requirements for newly admitted lawyers.
- Provide in-person seminars/MCLE – average of 2 per month

- Researched the cost, availability, and reliability of other testing methods at FirstSource. Determined to maintain current testing protocol and add SoberLink breath test when available through FirstSource.
- Frequent meetings with Office of Probation) to identify issues that should be assigned to LAP for evaluation and partner with them in Probation developments.
- Provide guidance and training to OCTC through formal MCLE presentation in February 2018 and increased informal contact with OCTC staff to assist attorneys and investigators in cases where substance abuse or mental illness may be contributing factors to a discipline case.
- New management structure (formed department of “Case Management & Supervision” with Probation with Donna as direct manager). New LAP Program Supervisor.
- Hired new senior analyst (formerly designated as PIO) to function in role of project manager with focus on outreach. Start date of June 18, 2018.

**APPENDIX D. WRITTEN RESPONSES FROM MEMBERS OF SUBENTITIES AND THE PUBLIC**

In addition to the responses documented in the report, the State Bar invited and received several written responses, which are included here.

# Memo

Date: July 11, 2018

TO: Richard Schauffler, Senior Program Analyst  
FROM: Mitchel L. Winick, President and Dean  
Monterey College of Law, San Luis Obispo College of Law, Kern County College of Law, and Santa Cruz College of Law

SUBJECT: Accreditation Recommendations of Appendix I and Consultants' Report, Work Draft June 1, 2018 re: Governance in the Public Interest Task Force

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Richard,

It was a pleasure to meet and talk with you at the recent meeting of the Committee of Bar Examiners. As we discussed, the Association of California Accredited Law Schools (CALS) are important and interested stakeholders in the dialogue regarding the Governance in the Public Interest Task Force Consultant recommendations particularly concerning the role of the Committee of Bar Examiners (CBE) in the accreditation and regulation of law schools. On the specific issue of accreditation, you indicated that it would be helpful and useful to have the schools' perspective as you gather and present your own report. While I certainly do not speak for all of the CALS and/or Registered Law Schools, I believe that the comments below present many of the main concerns of the schools that will be effected by the proposed recommendations.

Mitch Winick

## BACKGROUND

Former Executive Director of the California State Bar, Elizabeth Parker, and Organizational and Governance Consultant, Elise Walton (Consultants), partnered to conduct a review and analysis of the CBE in accordance with the direction of the 2017 Governance in the Public Interest Task Force.<sup>1</sup> A preliminary draft of the report was presented to the CBE at its October 4, 2017 public meeting<sup>2</sup> and feedback was solicited and provided in public session. The Consultants were charged to work with staff and several members of the CBE including its Chair (the CBE Working Group) to refine the report's observations and recommendations. The June 1, 2018 version of the Consultants' report was presented to the CBE at its June 22, 2018 meeting.<sup>3</sup> Responses were again solicited from the Committee and other interested parties.

The Parker/Walton report provided the following overall recommendation regarding accreditation:

*Accreditation outsourcing should be reviewed seriously considered (sic) by the State Bar. . . . outsourcing would provide the State Bar access to current and evolving expertise as well as best practice in accreditation. It will also allow for greater independence and perceived or actual objectivity. Further, **this report asserts that the burden is on the***

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<sup>1</sup> <http://www.calbar.ca.gov/About-Us/Who-We-Are/Board-of-Trustees/Board-Task-Force/Governance-in-the-Public-Interest-Task-Force>

<sup>2</sup> <http://apps.calbar.ca.gov/cbe/docs/agendaitem/Public/agendaitem1000002106.pdf>

<sup>3</sup> <file:///localhost/Users/admin/Downloads/Appendix I and Attachments.pdf>

***State Bar of California to demonstrate why it should not separate its accreditation function from the CBE.<sup>4</sup> (emphasis added)***

Additionally, the report argued for outsourcing of the CBE accreditation functions as:

- 1. Bringing the rigor of nationally recognized educational standards and practices to bear on the accreditation of all non-ABA approved law schools;*
- 2. Taking advantage of the deeper skills and experience in accreditation by an organization such as WASC, a highly recognized leader in the field; and*
- 3. Eliminating a set of activities which (sic) distract from organizational, management and resources of the CBE, Board and staff.<sup>5</sup>*

## **SUMMARY OF COMMENTS**

Since at least 1981, state public policy has prioritized access to justice, a diverse law profession and judiciary, and affordable legal education as important state policies. The legislature and the State Bar have supported state accreditation and state regulation of law schools outside the costly and limited national accreditation system<sup>6</sup> as a means of achieving these policies. Changes to the accreditation system that increase cost, reduce the opportunity these schools provide, or impose additional burdensome and unnecessary requirements, adversely impact these important state objectives.

The long-standing statutory mandate for the State Bar is to maintain an examining committee (of defined composition), to promulgate and enforce standards for the accreditation of state-accredited law schools, and to register and regulate the lawful operation of state-authorized unaccredited law schools. These statutory responsibilities have been specifically enacted for the promotion of the important state policies delineated above -- diversity of the law profession, access to legal services, access to justice, and public protection.

This public policy was legislatively reaffirmed twice in recent times.

In 2002, California amended B&P Code section 6060<sup>7</sup> designating the accreditation of law schools by an agency of the state.<sup>8</sup> The legislature determined that the admission to the Bar and a license to practice law shall require, among other allowable requirements, *a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee.*<sup>9</sup>

In 2006, the legislature enacted SB 1568<sup>10</sup> explicitly delegating authority to the State Bar to regulate law schools and law degree programs.

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<sup>4</sup> Committee of Bar Examiners Report, Work Draft, June 1, 2018, Walton and Parker, p.28

<sup>5</sup> Ibid. p. 23.

<sup>6</sup> The American Bar Association's Section of Legal Education and Admission to the Bar is a national specialty accreditor whose accreditation regimen is frequently cited as a major contributor to the rising cost of education at ABA-approved law schools. See, for example,

<sup>7</sup> CA Bus & Prof Code § 6060, Amended by Stats. 2002, Ch. 664, Sec. 12. Effective January 1, 2003.

<sup>8</sup> [CA Bus & Prof Code § 6060 \(2016\).](#)

<sup>9</sup> CA Bus & Prof Code § 6060(3)(1).

<sup>10</sup> [http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb\\_1551-1600/sb\\_1568\\_bill\\_20060928\\_chaptered.html](http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1551-1600/sb_1568_bill_20060928_chaptered.html)

Moreover, the mission of the State Bar of California was recently amended to include in its definition of public protection *the important state priorities of the promotion of access to justice and diversity in the legal profession*. These priorities take precedence over the recommendations in the Parker/Walton report regarding outsourcing state accreditation, a move that will likely reduce diversity of the profession and hinder access to justice.

The dominance of ABA-approved law schools in California has not resulted in a diverse legal profession that is reflective of the population it serves.<sup>11</sup> Nor has it solved problems of access to justice or the affordability of legal representation. In fact, since each year more than 85 percent of the lawyers who pass the California Bar Exam<sup>12</sup> come from ABA-approved schools, it is more accurate to say that the dominance of high cost ABA-accredited schools has *exacerbated* problems of lack of diversity and limited access to justice. The escalating costs of ABA law school attendance has prioritized access to the legal profession to those who are economically advantaged and generally capable of attending law school full time without working. Higher cost and more restrictive regional or national accreditation will eliminate the very schools striving to serve a more-diverse population.

The laws and public policy of the State of California, the mission of the State Bar of California, and the goals and priorities of California's non-ABA law schools are all aligned and well served by the present system of accreditation and regulation. For this reason, the purported "burden" on the State Bar to justify its authority to accredit law schools is entirely fictional. The following analysis supports this finding.

## ANALYSIS

The outsourcing recommendation is flawed in four main ways:

1. The principal arguments propounded in support of the report's recommendations lack a sound basis in facts or evidence. Unsupported opinions are presented as the basis for many recommendations. The Board should limit its considerations to evidence-based, factually accurate recommendations.
2. The report inaccurately describes the national system of accreditation and suggests inappropriate institutions as alternatives to accreditation by the CBE. The evidence and record suggests that there are no competent and appropriate alternative authorities or institutions for the accreditation of non-ABA law schools.<sup>13</sup>
3. As evidenced by debate at the recent public CBE meetings, the report misrepresents positions of the senior CBE members serving on the CBE Working Group as consensus approval when, in fact, these members vehemently object to the Consultants' opinions and recommendations related to outsourcing accreditation.

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<sup>11</sup> "Predominantly white male State Bar changing ... slowly,"  
<http://www.calbarjournal.com/January2012/TopHeadlines/TH1.aspx>

<sup>12</sup> [http://www.calbar.ca.gov/Portals/0/FEB2018\\_CBX\\_Statistics.pdf](http://www.calbar.ca.gov/Portals/0/FEB2018_CBX_Statistics.pdf)

<sup>13</sup> The accrediting body presented as an alternative – WASC – is a regional institutional accreditor that is already available to law schools in California but not widely used because its processes are very costly, its law school expertise is very limited, and it has little or no institutional interest in providing an appropriate accreditation system for affordable and accessible law schools. This was established by staff research and memos, CBE public comments, and other evidence during the time the report was being prepared -- but this evidence was not used by the Consultants.

4. The report reaches internally contradictory conclusions in both recognizing the validity and historical basis for State Bar accreditation of law schools and arguing for the State Bar to bear a burden of justifying why it should perform an accreditation function.

### **Foundational Arguments Unsupported by the Facts or Evidence**

The Consultants' report does not provide any substantive law, documentation, research, analysis, case studies, surveys, reports, findings, legislative actions, or other objective evidence for the statements related to accreditation in the report. Considering the significant impact that the above recommendations would have on the more than five decades of practice by the State of California in accrediting law schools, the Board should expect an evidence-based recommendation.

For example, the Consultants' premise that "[t]he current process has invoked concern, engagement and criticism from several stakeholders . . ."<sup>14</sup> appears to be based entirely on a July 25, 2015 article in the Los Angeles Times that was critical of California's unaccredited law schools.<sup>15</sup> It is important to note that this article was only related to unaccredited law schools and did not speak to the issue of California accredited law schools. Furthermore, it is valuable to note that the author of the article, while in possession of statistics provided by the State Bar, inaccurately reported them. Finally, statutory reporting requirements for all non-ABA law schools were strengthened in 2017, in part in response to the article.<sup>16</sup> This legislative initiative to provide additional transparency and public protection was endorsed by CALS.

Similarly, the Consultants commented that, "*if quality and educational service suffers because of inadequate oversight and regulation, these schools [CALS and CRLS] are doing a disservice to students and the public.*"<sup>17</sup>

While phrased hypothetically, it appears the Consultants based many of their recommendations on the assumption that "inadequate oversight and regulation" is occurring. Fortunately for the people of California, no legislative or judicial findings, studies, documents, reports, etc. exist to establish a basis for such a statement regarding the CBE's accreditation functions. A factual and objective comparison of the Rules<sup>18</sup> and Guidelines<sup>19</sup> of the CBE pertaining to California Accredited Law Schools and the California Registered Law Schools with the accepted performance standards for accrediting agencies would illustrate the following:

The U.S. Department of Education details six primary accrediting activities expected from an accrediting agency.<sup>20</sup>

#### **Primary Accrediting Activities**

1. Standards: The accreditor, in collaboration with educational institutions and/or programs, establishes standards.

<sup>14</sup> Ibid. p. 22, footnote 51.

<sup>15</sup> See <http://www.latimes.com/local/education/la-me-law-schools-20150726-story.html>

<sup>16</sup> See Business and Professions code, § 6061.7

<sup>17</sup> Walton and Parker, Ibid. p. 23.

<sup>18</sup> California Accredited Law School Rules,  
[http://www.calbar.ca.gov/Portals/0/documents/rules/Rules\\_Title4\\_Div2-Acc-Law-Sch.pdf](http://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div2-Acc-Law-Sch.pdf)

<sup>19</sup> Guidelines for Accredited Law School Rules,  
<http://www.calbar.ca.gov/Portals/0/documents/admissions/AccreditedLawSchoolGuidelines.pdf>

<sup>20</sup> Primary Accrediting Activities, <https://www2.ed.gov/admins/finaid/accred/accreditation.html>

2. Self-study: The institution or program seeking accreditation prepares an in-depth self-evaluation report that measures its performance against the standards established by the accreditor.
3. On-site evaluation: A team of peers selected by the accreditor reviews the institution or program on-site to determine first-hand if the applicant meets the established standards.
4. Decision and publication: Upon being satisfied that the applicant meets its standards, the accreditor grants accreditation or preaccreditation status and lists the institution or program in an official publication with other similarly accredited or preaccredited institutions or programs.
5. Monitoring: The accreditor monitors each accredited institution or program throughout the period of accreditation granted to verify that it continues to meet the accreditor's standards.
6. Reevaluation: The accreditor periodically reevaluates each institution or program that it lists to ascertain whether continuation of its accredited or preaccredited status is warranted.

The Rules and Guidelines of the California Accredited and Registered Law Schools require each and every one of these six primary accrediting activities as part of the Committee's existing comprehensive regulatory process.

In addition, the Department of Education outlines four important functions<sup>21</sup> identified for the accrediting process.

#### **Important Functions of Accreditation**

1. Assess the quality of academic programs at institutions of higher education.
2. Create a culture of continuous improvement of academic quality at colleges and universities and stimulate a general raising of standards among educational institutions.
3. Involve faculty and staff comprehensively in institutional evaluation and planning.
4. Establish criteria for professional certification and licensure and for upgrading courses offering such preparation.

Again, a reasonable and objective review of the Committee's existing process for the oversight of California Accredited and Registered Law Schools readily demonstrates that all four functions are required in the annual self-studies and five-year site visit reports.

#### **Inaccurate Description of State Agency Accreditation Authority**

The Consultants base their primary recommendation on the statement that, "*Concomitantly, accreditation should be the responsibility of private, non-profit entities composed of peers and the public, and **not done by government or government regulators.***"<sup>22</sup> (emphasis added)

In fact, the U.S. Department of Education – the agency with primary authority over the national and regional systems of accreditation -- specifically recognizes the role of federal and state entities in the accreditation process (emphasis added):

***Accreditation in the United States***<sup>23</sup> - The goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality. Accreditation in the

<sup>21</sup> U.S. Department of Education, Important Functions of Accreditation, <https://www2.ed.gov/admins/finaid/accred/accreditation.html>

<sup>22</sup> Walton and Parker. Ibid. p. 19.

*United States involves non-governmental entities as well as **federal and state government agencies.***

***The Recognition Process for State Agencies<sup>24</sup> - The recognition procedures following by the Secretary [of Education] in reviewing State approval agencies are the same as those for accrediting agencies seeking recognition by the Secretary.***

***Public Postsecondary Vocation Education<sup>25</sup> - The criteria and procedures used by the Secretary [of Education] in designating a State agency as a reliable authority concerning the quality of public postsecondary vocational education in a State are contained in Part 603 of Title 34 of the Code of Federal Regulations. Those State agencies that have requested recognition and have been determined to meet the established criteria are granted recognition for a period not to exceed four years. The Secretary publishes a list of those State agencies that he recognizes as reliable authorities.***

Although the six largest regional accreditors<sup>26</sup> are non-governmental, state agencies that have been assigned higher education accreditation responsibilities are not unusual. For example:

- **New York State Board of Regents, and the Commissioner of Education**  
Scope of recognition: the accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency including accreditation of programs offered via distance education within these institutions.
- **Oklahoma Board of Career and Technology Education**  
Scope of recognition: the approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education, including the approval of public postsecondary vocational education offered via distance education.
- **Pennsylvania State Board of Vocational Education, Bureau of Career and Technical Education**  
Scope of recognition: The Pennsylvania Department of Education (PDE) oversees Career and Technology Centers/Vocational Technical schools, and publicly funded preschools, and community colleges.

### **No Appropriate, Qualified Alternative National or Regional Accreditor**

The Consultants recommend the Western Association of Schools and Colleges (WASC) as an alternative accrediting body. WASC is one of six regional accreditors recognized by the Council for Higher Education Accreditation (CHEA) and the only institutional regional accreditor in California.

There are three types of recognized accrediting agencies: Regional Accreditors, Institutional Accreditors, and Specialized or Professional Accreditors.<sup>27</sup>

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<sup>23</sup> U.S. Department of Education, <https://www2.ed.gov/admins/finaid/accred/accreditation.html>

<sup>24</sup> U.S. Department of Education, <https://www2.ed.gov/admins/finaid/accred/accreditation.html>

<sup>25</sup> National Recognition of State Approval Agencies by the U.S. Secretary of Education, [https://www2.ed.gov/admins/finaid/accred/accreditation\\_pg16.html](https://www2.ed.gov/admins/finaid/accred/accreditation_pg16.html)

<sup>26</sup> Middle States Commission on Higher Education (MSCHE), New England Association of Colleges and Schools (NEASC), The Higher Learning Commission (HLC), Northwest Commission on Colleges and Universities (NWCCU), Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), and Western Association of Schools and Colleges (WASC).

**Regional Accreditation** - *Regional Accreditation is a form of institutional accreditation that involves a comprehensive review of all institutional functions. Regional accrediting organizations do not accredit individual programs (such as law degrees), although new programs are actively reviewed through the substantive change process.*

**Institutional Accreditation** - *A second type of institutional accreditation focuses on institutions in special areas of study, such as Theology (Association of Theological Schools), Art and Design (National Association of Art and Design), and Music (National Association of Schools of Music).*

**Specialized or Professional Accreditation** - *A third type of accreditation is specialized or professional accreditation, which focuses on programs in a specific discipline within an institution, but does not evaluate the entire institution. **Specialized accreditation exists in the fields of education, law, medicine, chiropractic, computer science, and more than 90 other disciplines.** Most specialized accreditors require regional accreditation as a foundation for their reviews and as assurance of the fiscal integrity and health of the institution.*

Law schools are, of course, most appropriately accredited by a specialized institutional or professional accreditor -- not a general regional accreditor -- because of the specialty knowledge and expertise required. Although there are law school programs that are included within WASC's *regional institutional accreditation* of systems, universities, and colleges -- it appears that since 1987, **WASC has accredited only one stand-alone law school** (San Joaquin College of Law in Clovis, California.) Thus, its experience with full, primary institutional accreditation of law schools is very limited. In contrast, **the CBE has over five decades of ongoing experience in effectively accrediting approximately 21 CALS campus locations and regulating an additional 20 California Registered Law Schools**, including distance-learning, correspondence, and residential programs.

The Consultants' report describes the State Bar's lack of "recognition" by the private non-profit Council for Higher Education Accreditation (CHEA) as a concern. According to the Consultants, CHEA recognition confers academic legitimacy on accrediting organizations, helping to solidify their place in the national higher education community. In lieu of the State Bar seeking CHEA recognition, the Consultants' recommend that some type of institutional "audit" be undertaken by CHEA or another national accrediting reviewer in order to legitimize the Committee's accreditation process.

However, the Consultants' report does not address several important points for consideration.

First, CHEA was founded in 1996. By then, the State Bar of California had been accrediting law schools effectively for over fifteen years. One of the primary factors in the organization of CHEA was the failure of predecessor accreditation oversight mechanisms to adequately address fraud, mismanagement, and lack of public protection.<sup>28</sup> The institutions CHEA was formed to improve and monitor are the very same regional and national accreditors the Consultants would propose as alternatives to CBE accreditation. The Bar should not assume without any evidence that those institutions are in any way better than the CBE system. The report presents no such evidence.

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<sup>27</sup> Types of Accreditation, <https://www.wscuc.org/about/regionalaccreditation>

<sup>29</sup> Summarized from the Report of the Director of Admissions regarding "Governance in the Public Interest Task Force Recommendations re the Committee's Law School Regulation Responsibilities -- Presentation on Western Association of School and Colleges (WASC) Requirements", October 6, 2017 found at: <http://apps.calbar.ca.gov/cbe/docs/agendaitem/Public/agendaitem1000002085.pdf>

Second, the only professional accreditors for first professional law degree programs, other than the CBE, are the ABA's Accreditation Committee of the Council of the Section of Legal Education and Admissions to the Bar (ABA) and the Distance Education Accrediting Commission (DEAC). DEAC is a CHEA-recognized accreditor, with specialty accreditation authority from the Department of Education that is specifically limited to distance learning programs. There is no evidence provided in the report supporting the premise that CHEA has the specific knowledge or expertise to evaluate the activities of an accreditor of law schools that includes both residential and online programs. **Furthermore, the ABA, as the only accreditor other than the CBE that accredits residential law programs, is not a CHEA-recognized accrediting institution.** Therefore, a CHEA "audit" of the CBE law school accreditation program does not provide the assumed validity that the Consultants' suggest.

The Consultants mentioned, but did not appear to consider, direct evidence against outsourcing to WASC that was presented and discussed in depth at the CBE's October, 2017 meeting:

- 1. The WASC long review cycle (7-10 years) and focus on larger institutions, with a review authority limited to accrediting institutions, not programs, would not meet the needs of the California non-ABA law schools (both California accredited and unaccredited), which are smaller and have a single program focus;*
- 2. WASC would be unlikely to be qualified to specify required studies or courses as prerequisite to practicing law, as is currently done for both ABA and California approved schools;*
- 3. The current process incorporates law school dean involvement in accreditation reviews which creates valued mutual learning and peer feedback, along with in-depth experience-based critiques and recommendations. There is concern that WASC reviews would eliminate the benefits of this important practice; and*
- 4. The cost of the WASC accreditation process would be higher and could force a tuition increase, offsetting one of the principle benefits of the lower-cost California accredited law schools.<sup>29</sup>*

### **Inaccurately Reflecting CBE Input**

The Consultants appeared before the CBE from 11:00 AM to 1:00 PM on Friday, February 2, 2018 with the stated purpose of soliciting CBE input on the report's observations and recommendations, including those related to accreditation, and the promise to consider and incorporate that feedback.<sup>30</sup> The CBE and public comments at the meeting consistently supported and validated the role of the CBE in accreditation and regulation of non-ABA law schools.<sup>31</sup> The June 1, 2018 final report acknowledged, but did not appear to take into consideration, the support expressed by the majority of CBE members for continuation of the accreditation function within the State Bar.<sup>32</sup> Alternatively, the final Consultants' report recommend outsourcing to an entity that was specifically rejected by the CBE Working Group.

<sup>29</sup> Summarized from the Report of the Director of Admissions regarding "Governance in the Public Interest Task Force Recommendations re the Committee's Law School Regulation Responsibilities – Presentation on Western Association of School and Colleges (WASC) Requirements", October 6, 2017 found at:

<http://apps.calbar.ca.gov/cbe/docs/agendaitem/Public/agendaitem1000002085.pdf>

<sup>30</sup> Meeting Archive. [http://calbar.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=245](http://calbar.granicus.com/MediaPlayer.php?view_id=3&clip_id=245)

<sup>31</sup> Meeting archive, beginning at 2:23:48.

[http://calbar.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=245](http://calbar.granicus.com/MediaPlayer.php?view_id=3&clip_id=245)

<sup>32</sup> Meeting Archive, at 2:25:29.

[http://calbar.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=245](http://calbar.granicus.com/MediaPlayer.php?view_id=3&clip_id=245)

It also appears that the report's claim that the CBE supports a three-year audit process by an accrediting review organization is not factually accurate. While there were supportive comments by some individual members, the CBE has taken no such action, and would require a deliberative – and public – process for consideration of any such proposal.

### **Internally Conflicting Conclusions Lacking Corroborating Documentation to Meet the Burden of Validity**

Finally, the Consultants present an opinion that the current approach to accrediting California law schools is inconsistent with good governance design. According to the Consultants, despite the Committee's five-decade history of accrediting law schools,

*“ . . . accreditation is a separate function, requiring skills and processes different from those needed to evaluate bar exams and applicant character. While there is a relationship between the body of information and ability law schools offer and what constitutes minimum competence for professional licensing, the two domains are distinct. Volunteers cannot be expected to master both areas. In fact, there is a natural conflict between those accountable for creating a robust and valid admissions exam testing vital knowledge domains, and those wishing to achieve impressive exam pass rates. The two responsibilities should remain separate for their own integrity and effectiveness.”<sup>33</sup>*

The Consultants provide no judicial or legislative finding, documentation, research, reports, case studies, articles, or any tangible references that validate any of the above opinion points – including the vague insinuation of some type of conflict of interest inherent in the examining committee supervising a law school accreditation system. The law schools have no role in the content or administration of the bar exam and its administration. Furthermore, entirely separate subcommittees, program managers, and staff are assigned to these functions.

In fact, the specific experience and practices of the ABA and the CBE – the two main institutions with accreditation responsibility for law schools for more than fifty years – provides ample objective evidence of a uniquely effective tiered regulatory system, promoting quality and public protection as well as important diversity and access to justice public policies.

The Consultants' findings actually support that conclusion, stating,

*California is unique in having its own state accredited law schools and providing opportunities for legal education in an exceptionally broad spectrum of educational venues, more than is available in any other state. As such, deriving recommendations from common practice or best practice is not possible . . . Given that there is no comparable practice, the California current approach relies purely on historical events and precedent.*

### **SUMMARY AND RECOMMENDED FINDING**

Restating the Consultants' own conclusion above, it is accurate to find that the historical events and precedent of the CBE's accreditation process **has become the standard for common and best practice for accreditation and regulation of non-ABA law schools.**

The Consultants' report states that the unique historical success of the Committee's accreditation process requires that the *“burden should be on the State Bar of California to demonstrate why it should not separate its accreditation function from the Bar and/or why it should retain the function*

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<sup>33</sup> Walton and Parker, Ibid. at p. 25.

*in CBE.*"<sup>34</sup> Quite the contrary, it should be the Consultants' burden to prove that the current system is inadequate or fails to accomplish the State Bar's mission, its statutory responsibilities, and California's public policy.

The State Bar should act on evidence-based advice. The State Bar should only change direction if it is shown by at least a preponderance of the valid evidence that the current accreditation process is failing. Given the absence of substantive documentation, research, analysis, case studies, surveys, reports, findings, legislative actions, or any objective basis to validate the report's opinions, the State Bar should reject the recommendation to outsource the accreditation of law schools.

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<sup>34</sup> Walton and Parker. *Ibid.* at p. 26.



THE STATE BAR  
OF CALIFORNIA

Council on Access & Fairness

180 Howard Street, San Francisco, California 94105

Telephone (415) 538-2240

TO: Board of Trustees Programs Committee

FROM: Diana Becton, Chair, Council on Access & Fairness (COAF)

DATE: September 7, 2018

RE: COAF Comments re: Governance Appendix I Report and Recommendations

The Council on Access & Fairness (COAF) appreciates the opportunity to discuss the issues raised during the Governance Appendix I dialogue and to weigh in on the options presented for COAF's future governance and structure. The questions posed for consideration in relation to COAF were as follows:

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

**Merger or becoming a subcommittee of the California Commission on Access to Justice (Access Commission):**

COAF supports the recommendation adopted by the Programs Committee during its recent conference call on August 17, 2018 to take the merger/subcommittee option "off the table" and to focus solely on the option to retain COAF as is, with a clarified charge. The Programs Committee noted the importance of the bar's continued specific focus on diversity and inclusion and of retaining COAF as the single appointed volunteer entity specifically charged with focusing on diversity and inclusion in the legal profession. The adopted recommendation is consistent with the new State Bar mission, which embraces diversity and inclusion as integral to the Bar's public protection mission. This structure also supports the vision of the legislature, which in the current version of Assembly Bill 3249 has also reaffirmed the importance of diversity and inclusion in the legal profession and the centrality of these concepts to the Bar's mission.

**Retaining COAF As Is with a Clarified Mission and Increased Board Engagement:**

The remaining recommendation by the Programs Committee is to retain COAF as is but to work with the Board on the clarification of its mission. We see this work as including: 1) evaluating the size and structure of COAF; COAF is open to a discussion of reducing the current 25 members to 20 members, which would be sufficient to work effectively on its core projects, as redefined; 2) increasing Board engagement and direction in COAF's ongoing planning;

3) creating a sharper definition of its role with the State Bar; 4) increasing accountability through defined and documented outcome measures; and 5) regularly reviewing and adapting current goals to ensure they reflect changes in diversity and inclusion issues over time.

In connection with the redefinition of its goals, COAF believes that its goals should include the work it has been doing successfully for over 12 years on increasing the judicial diversity pipeline. COAF's work involves outreach, education and local bar collaboration. This work naturally lends itself to the encouragement of judicial candidates – i.e., lawyers – to apply to the bench and to facilitation of the application process. COAF also conducts research and generates annual statistical and demographic data on the judicial applicant pool, JNE rankings of applicants referred by the Governor's Office, actual judicial appointments, and sitting judges, which is key to the diversity pipeline effort.

This work is not a natural fit with the mission of the Judicial Council, to which it has been proposed that judicial pipeline work be shifted. For example, while the Judicial Council compiled a "Judicial Diversity Toolkit" during the previous administration, the purpose of which was to assist individual courts in running their own Diversity Pipeline Programs, the Council has not updated or specifically promoted this Toolkit since that time. Moreover, this Toolkit is designed for individual Superior Courts to run, and those courts lack the resources to conduct the many local judicial diversity programs which COAF currently runs. In fact, to COAF's knowledge, only one of the 58 Superior Courts has any personnel to assist with, much less organize their own local programs. On the other hand, COAF serves those counties, and conducts programs in partnership with the local bars throughout the State that are specifically tailored to the needs of the lawyers who practice there.

COAF would in fact welcome a partnership with the Judicial Council in these efforts, with the Council providing support and COAF putting on the actual programs. In fact, COAF has worked with the Judicial Council on the three Judicial Diversity Summits to identify challenges to increasing judicial diversity and to develop and implement 5-year action plans to address these identified issues. The Summits were initiated in 2006 through the State Bar's Diversity Pipeline Task Force, which preceded COAF, and have been convened every five years. Participants include all stakeholders seeking to increase diversity on the bench (e.g. the Governor's office, state legislators and other elected officials, judges, attorneys, law schools and other academia, students and community representatives). COAF looks forward to continuing its partnership with the Judicial Council on these Summits.

COAF, however, is in the best position to work on increasing the Judicial Applicant Pipeline because the pipeline consists of the State Bar's licensees who are the potential applicants which the program seeks to reach. Educating lawyers on the judicial application process is a natural fit with the State Bar's role as the licensor of those applicants. The Judicial Council's focus, on the other hand, is on the Courts and sitting judges, and the Judicial Council may not be able to effectively target diverse attorney applicants, as targeting specific groups of attorneys might give rise to conflict of interest concerns, since lawyers appear before the courts which the Judicial Council oversees. Once lawyers are appointed or elected to the bench, then the Judicial Council can focus on those sitting judges to sustain, support and maintain diversity on the bench by creating a support network to keep diverse judges feeling like a part of the judiciary (e.g. inclusion, support, etc.) consistent with the Court's diversity goals. COAF suggests that this division of labor regarding judicial diversity would make the best use of resources resulting in a productive, effective partnership between the Judicial Council and the State Bar.

**Incorporating Diversity and Inclusion Goals Into All Aspects of the Bar's Work:**

COAF supports the proposals for incorporating diversity and inclusion into all aspects of the Bar's work. It is COAF's understanding that this proposal involves incorporating diversity and inclusion into the fabric of the Bar's mission and focus internally, as well as externally.

Internally, diversity and inclusion goals would be achieved within every Division and Office (with staff and leadership to lead through example), including ensuring that outside contracts and vendors are equally diverse and including diversity among volunteers working with the bar.

These internal bar initiatives would not displace the primary focus on external efforts to increase diversity in the legal profession.

Externally, the Bar would exercise leadership through COAF in diversifying the legal profession through programs such as: supporting and sustaining an educational diversity pipeline from K-12 to the profession; collaborating with local and affinity bar associations on diversity and inclusion projects; working with key stakeholders to develop and implement initiatives to increase recruitment, hiring, retention and advancement in the profession; partnering with bar associations to promote the judicial pipeline for attorneys seeking judicial office; collaborating with the Judicial Council in the support of new diverse judges; convening lawyer groups to enhance and support diversity and inclusion in the legal profession; and interacting with other diversity and inclusion legal entities to share resources, ideas and programs, and bringing the best of such programs to the State Bar.

**Conclusion:**

COAF looks forward to partnering with the Board of Trustees Programs Committee and the full Board in redefining its role in the Bar's diversity and inclusion efforts and in implementing the goals identified by the Board in support of the Bar's public protection mission and the legislative mandate of AB 3249.

To: Donna Hershkowitz, Dag MacLeod, Leah Wilson  
From: Lee Straus  
Date: September 4, 2018  
Re: State Bar Subentity Review

*[via email]*

I've had a chance to read the DRAFT Memo on the CMFA and have the following comments/observations.

I joined the CMFA five years ago. I came to the Committee having been involved with the Los Angeles County Bar Association's Attorney-Client Mediation and Arbitration Services. Over my five years on the Committee, I have grown to greatly appreciate the value and importance this Committee has in ensuring that the mandate the California Legislature enacted in 1978 is carried out by the State Bar of California in such a way that ensures the local programs, as well as the State Bar's program, operate in the best way possible, so that clients and attorneys may receive a fair, speedy, economical and impartial hearing and award, including enforcement efforts.

We have now been in numerous meetings with you, including one with Ms. Wilson, to try and explain to you how important this Committee is to ensuring the intent and goal of the California Legislature in connection with mandatory fee arbitrations within the State of California.

The two "Options" that you have proposed were never discussed with the current CMFA. What these two options do is a complete elimination of the CMFA, which I strongly believe is not in the best interest of anyone that potential touches the tentacles of B&PC Section 6200 et. seq.

To use the old adage, this is an area where "practice makes perfect." The depth of knowledge in how these programs work on the local level that comes from the volunteer lawyers and administrators that make up the members of the Committee is what is key to ensuring that the important functions that CMFA perform will continue to enhance the various MFA programs. Enabling staff or a new hire will NOT replace this depth. Could a baseball team operate with only two or three players? Of course not, it's the depth of the experience from all the players that makes the team great. What you have proposed would obliterate that depth of knowledge and, therefore, in my opinion, severely handicap the success of the programs Statewide.

You've indicated that the current CMFA is "too large and too focused on task level activities without a strategic approach to program management." Let's talk about the size of the current CMFA. Again, the current membership of the CMFA allows for a broad range of experience from individuals that have collectively performed thousands of MFAs. Plus, by having an administrator of one or more local programs on the CMFA, that allows first-hand knowledge on what are the issues at the local level and whether new ideas to improve the programs and performance of arbitrators will be beneficial state wide. Could the CMFA has a more strategic approach to how the State Bar's program and local programs operate. Sure. But just as the Committee of Bar Examiners focuses on the tasks of

administering the bar exams or law school accreditation, are those not task oriented functions for which that Committee primarily focuses on? How is being “task oriented” a bad thing?

For example, many action items for the CMFA are generated by court decisions, which have either a positive or negative impact on MFA. They are items that weren’t expected, but need to be addressed to give guidance to the thousands of volunteer arbitrators across the State.

From our interaction with Ms. Wilson, it appeared that her biggest concern with the various Committees within the State Bar was that “policy” was being enacted without proper oversight. Case in point the Committee of Bar Examiners making a decision about how pass rates would be calculated, which eventually led to a public relations issue for the State Bar. Totally understand that concern and it’s a completely fair one to raise. However, if that’s what’s driving you toward disbandment of the CMFA, then instead of just throwing out the entire inner workings of the Committee, wouldn’t the better option be to address the root concern, so that there are internal procedures in place to ensure that “policy” is not being made, which isn’t sanctioned by the Board of Trustees? Wouldn’t that allow for a better improvement of “governance?”

You’ve made the observation that you believe Committee members are doing “administrative and other work better performed by staff, or delivering services in person rather than making appropriate use of technology.” As I read this, you believe that it’s a negative that you have volunteers doing all sorts of tasks, including those that you define as administrative, but cite no examples. Is it a bad thing that you have volunteers that believe so much in the fundamentals of MFA that they are willing to do whatever it takes to enhance and make the various associated programs the best they can be? While you may believe that on-line training programs are the only way to go, there is much to be said for in-person trainings for potential, new arbitrators and providing advanced trainings. The in-person interaction of teaching the many aspects of the program and best practices, cannot be duplicated by a simple on-line training tool. As an Adjunct Professor-of-Law at Loyola Law School, I believe I am extremely qualified to understand the importance of conveying information and knowledge to individuals so that they can take what they learn and use it in the best way possible. Our goal is to train arbitrators, including lay arbitrators to be their very best. Doing these trainings in-person allows for questions to be answered and a dialogue to transpire, in addition to, building a relationship with the local MFA programs. That said, can supplemental on-line programs also exist as refreshers, of course, but to eliminate in-person trainings would be a disastrous decision.

As for the claim that a larger Committee means higher absenteeism, with respect to the CMFA, that is NOT the case and can be documented from our past Minutes. If you believe that is really an issue, reducing the size of the Committee is the step to take, not the drastic step of eliminating it in its entirety.

The Options presented appear to be a clear example of the Bar wanting to “cut its nose off to spite its face.” Currently you have a Committee comprised of individuals that are experts in MFA and come from a diversity of practices and areas of the State. Besides the minimal travel costs to attend around 4 meetings per year, the cost to the State Bar in connection with the CMFA volunteers is negligible at best. But the value you’re receiving from the volunteers is priceless and certainly cannot be achieved by hiring another one or two staff members to perform the functions of an entire Committee.

As an Assistant Presiding Arbitrator, I’m asked to make decisions on a number of matters that are important to the proper functioning of the MFA program as directed by the State Legislature. While the

Legislature did not say how the State Bar should “establish, maintain, and administer” the program, having been part of the CMFA for the last five years, proves to me that disbandment of the CMFA to a program purely run by Staff inside the State Bar will have long-lasting, damaging effects on the programs across the State. And being that the State Bar is supposed be a protection agency, that doesn’t seem to be in the best interests of consumers/clients or attorneys, for that matter.

Since this study started, the CMFA members have tried in earnest to explain to you all of the reasons that we strongly believe the existence of the Committee and the work that is has and would continue to do is in the best interests of the citizens of California.

Can things be improved? Of course they can. But to throw away 34 years of CMFA history to ensure bad “policy” decisions don’t get enacted doesn’t seem to be the right solution or option. In fact, to be blunt, it feels very short-sighted and misguided.

Respectfully submitted,

Lee Straus, Co-Chair  
Committee on Mandatory Fee Arbitration

cc: Lorraine Walsh, Co-Chair, Committee on Mandatory Fee Arbitration  
Isabel Liou, State Bar  
Elizabeth Lew, State Bar  
Arayeh Rahimitabar, State Bar

# Santa Barbara County Bar Association

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ATTACHMENT F  
Appendix D



August 29, 2018

Elizabeth Lew  
Senior Program Analyst, Mandatory Fee Arbitration  
The State Bar of California  
180 Howard Street  
San Francisco CA 94105

RE: State Bar Mandatory Fee Arbitration Committee

Dear Ms. Lew:

It has recently come to my attention that the California State Bar is considering dissolving the Fee Arbitration Committee. As the director of the Santa Barbara County Bar Association, I've both called and emailed the committee on numerous occasions for clarification, rules changes, and to request a fee arbitration training, among other queries. The breadth of knowledge, particularly of specifics, shared by committee members has been most appreciated. I've been pleasantly astonished as to how quickly and efficiently answers have been provided.

Additionally, the fee arbitration advisories have been very helpful, and are referred to by our program time and time again. This particular State Bar committee is one we've turned to quite often.

Please forward this letter to the appropriate individual(s), as I understand comments are being accepted at this time.

Sincerely,

Lida Sideris  
Executive Director

-----Original Message-----

From: Patty Andreen [mailto:andreenfam@yahoo.com]  
Sent: Thursday, August 16, 2018 8:52 AM  
To: Michael Colantuono  
Cc: Wilson, Leah  
Subject: Cal Accredited Law Schools

I am writing to strongly express my opposition to the proposal to “outsource” accreditation of California law schools. I fear that many smaller law schools in underserved communities will be casualties of this proposal. Other casualties would include existing advisory groups and channels of communication that were established to provide needed input from the trenches.

Hasty action that imperils state accredited schools could result in serious harm to the diversity of the profession, by removing an important pathway to the profession for people who want to remain in smaller communities. I graduated from a Cal accredited school in 1978, worked as an education lawyer, and I have taught at several such schools.

I know many successful graduates of Cal accredited schools who are respected lawyers and judges in the Central Valley and along the Central Coast. Their value may not be apparent to those living in larger cities, but they play a vital role throughout the State.

In my twenty years teaching Bar review for BarBri and Barmassers, I encountered thousands of hard working, dedicated lawyers who attended law school at night; some struggled before passing the Bar exam. They had to go the extra mile to become lawyers, often while supporting a family. Such graduates typically work in their local community and deliver quality legal services to those who cannot access big city firms.

Please do not act hastily to undermine this valuable pathway to the legal profession, which has served us well for many years.

Patricia Andreen SBN #082550

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Sina Aval

27941 Greenlawn Circle  
Laguna Niguel, CA. 92677  
SinaAval@gmail.com

August 13, 2018

Leah Wilson - California Bar Executive Director  
[leah.Wilson@calbar.ca.gov](mailto:leah.Wilson@calbar.ca.gov)

Dear Leah,

I am writing you regarding the Bar Association meeting going over the outsource the accreditation process to W.A.S.C..

This decision adversely affects many hardworking Californians who believe in our beautiful land of opportunities. The United States of America is known in the world as "The Land of Opportunities". At the forefront, California has been the leading state in providing the equal opportunities for anyone who is willing to work hard and built his future. Unfortunately, not everyone has the opportunity to pursue his dreams in the early stages of his youth. People have to deal with their life priorities and their obligations first hand before pursuing these dreams. For me like many other people, life choices was not as easy. I did earn an Engineering degree before perusing my Law carrier. It was not easy to deal with all the adversities. However, if it was not because of opportunity provided by some great Californians. I would never have the opportunity to pursue my dream. I earned my JD from Pacific Coast University School of Law in Long Beach (PCU). I do greatly appreciate their efforts in providing a great legal education for people who work hard to support their families while pursuing their legal education. I believe we owe it to all, the very same great opportunity that was provided to us. Us as Californians need to more than ever to preserve what makes us strong as a state and nation. The California Bar Examiners Accredited schools need to be supported.

The Cal Bar Association should not outsource the accreditation process to W.A.S.C. W.A.S.C. accreditation is not properly geared for accrediting Law school colleges within the California State as it is geared for accrediting colleges for federal government student loans.

The California Bar should keep the Rule Advisory Committee (RAC) and the Law School Committee (LSC). Their continued recommendation to the Bar Board of Trustees for their governance, is crucial in the continued success of the Cal Bar in producing great attorneys to the community. Diversity can only makes us stronger as a State and a Nation.

Sincerely yours,

Sina Aval

Begin forwarded message:

From: Cathy Bennett <CBennett@KleinLaw.com>

Date: August 16, 2018 at 11:52:30 AM CDT

To: "mcolantuono@chwlaw.us" <mcolantuono@chwlaw.us>, "leah.wilson@calbar.ca.gov" <leah.wilson@calbar.ca.gov>

Subject: Friday Meeting: Programs Committee recommendations

Dear Chair Colantuono and Executive Director Wilson,

I note that at the meeting Friday, you will be discussing a series of proposals from the Programs Committee about the work of the Committee of Bar Examiners, and specifically regarding the accreditation of law schools: "Should the law school accreditation function be reviewed, and the feasibility of partnering with professional accreditation bodies for this function be explored?" It seems that this may be a thinly-veiled attempt to eliminate California Accredited Law Schools, since the report notes that only five states accredit law schools not accredited by the ABA.

I write in hope that you will not pursue a path to eliminate California Accredited Law Schools.

I graduated from a small, local law school that was accredited as a California Accredited Law School the year after I graduated—California Pacific School of Law in Bakersfield. Although CPSL is gone, it contributed mightily to the legal community in Bakersfield. Among its graduates are county bar presidents, several certified specialists, prosecutors, defense attorneys, members of the civil bar, and judges. Recently, the legal community worked for some time with Monterey College of Law to open a campus here, so now, for the first time in several years, we have a law school again serving the Southern San Joaquin Valley.

California Accredited Law Schools contribute to the legal communities they serve, providing returning students and non-traditional students a way to achieve a legal education while they maintain their families, jobs, and households. These schools advance the cause of justice for underserved populations by providing competent lawyers familiar with, and trained to address, the communities' unique access to justice issues. Smaller, community-based, and more economical schools also increase the diversity in the profession.

I never could have attended law school without CPSL—I was working full time, owned a home, and could not simply pull-up and move to one of the "big cities" to attend an ABA accredited school. My fellow students were all in the same position. Students at KCCL are in a similar position, as are their fellow students at San Luis Obispo and Monterey.

With access to justice having reached a crisis point, it seems very foolish to eliminate a source of legal education designed to address access so directly.

I ask that this email be included as public comment on the Programs Committee recommendations.

Thank you for your attention.

Catherine E. Bennett | Attorney

Certified Specialist  
Appellate Law

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Attorney

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To: Nunez, Amy  
Subject: RE: Email from Pacific Coast University law student

From: Neda Bolourchi [mailto:nedabolourchi2003@yahoo.com]  
Sent: Monday, August 13, 2018 2:00 PM  
To: Wilson, Leah  
Subject: Email from Pacific Coast University law student

Dear Mrs. Wilson:

My name is Neda Bolourchi and I am a recent graduate of Pacific Coast University College of Law (PCU) in Long Beach CA, and I was very disturbed by the news that you are thinking about taking away our right to make decisions about the rules that govern our school. Every type of law school in CA that is recognized by your organization has to have the right to continue to serve on your Rules Advisory and the Law School Committees. Every voice matters. Every perspective provides you with a unique resolution of the issues that will challenge our legal profession in the future. You cannot claim that you are truly implementing your own mission of serving the community by taking away the voices on the committees, that represent those future attorneys that will serve our complex and diverse community.

Also, I wanted to address the issue of your organization's consideration of outsourcing the accreditation process of law schools to a third party. This will be a disastrous idea. Every organization needs to be responsible for implementing their own guidelines and rules and should not escape responsibility by asking others to do so. Cal Bar is in a better position to understand the needs of law schools and law students and how to best serve the legal community. You ask us law students to be professionally responsible for our own conduct, and hold us accountable for our actions and decisions, by having us take classes and the MPRE test to make sure that we understand that the privilege of becoming a licensed attorney in our great state comes with responsibilities and duties, and yet Cal Bar wants to forego their own duties to the legal profession which is fundamental to your mission and objectives, this is not right.

Your decision to outsource to a third party will also result in irreparable harm in the form of inequities in past and new rules that may be created to address the functioning of law schools under a third party governance. The implementation of new accreditation rules will also result in higher tuition costs which would have to be passed on to future students.

I am so proud to have attended PCU because of four very fundamental reasons. One, PCU gives you the exact same legal education that you would have received in any ABA law school but at an affordable price. More importantly unlike all other ABA law schools, I am graduating without any debts which is a tremendous economic relief.

Secondly, the fact that our tuition goes to pay down for our future bar prep courses is yet another burden lifted off our shoulders, knowing that we don't have to worry about coming up with an additional three or four thousand dollars to pay for these courses.

Thirdly, the remarkable opportunity that our law school provides its students by giving us MBE questions along with essays on our exams is a testament to their commitment in preparing us for the bar. Our students graduate with having done hundreds of MBES. We are also offered a separate class on MBES alone. This outstanding practice sets us apart from any ABA law school.

Lastly, our small student size affords every student individualized time with our outstanding professors who not only are working attorneys but take the time to teach, and serve as our mentors. We have professors who have even taken the time on a Sunday to offer a special class to go over issues that students did not fully understand. You do not find that level of commitment in all law schools.

Thank you so much for your attention to my email and I hope that you reconsider all your decisions, and you come to realize what grave injustice it will be to silence the voices of law schools who serve on your committees and how best you can carry out your own mission of protecting the public and enhancing the administration of justice when it is done by your own organization.

Sincerely

Neda Bolourchi  
Founder/Executive Director  
FarsiVoter  
Email: neda@FarsiVoter.com  
Website: www.FarsiVoter.com

CESAR BRITO  
10551 LEXINGTON STREET- STANTON, CA 90680  
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August 9, 2018

**Sent Via Email to:** [ExecutiveDirector@calbar.ca.gov](mailto:ExecutiveDirector@calbar.ca.gov); and [Leah.Wilson@calbar.ca.gov](mailto:Leah.Wilson@calbar.ca.gov)

Leah Wilson, Executive Director  
California Bar Board of Trustees

Re: Pacific Coast University SOL of Long Beach (P.C.U.)  
Rules Advisory Committee (RAC), and Law School Committee (LSC)

Dear Ms. Wilson:

I hope this letter finds you well. I am a third-year student currently going onto my 4<sup>th</sup> year at Pacific Coast University SOL of Long Beach (P.C.U.). The legal field is my passion and I have been in the legal field for over 20 years. Throughout my legal career, I have encountered many hurdles all of which prevented me from attending law school to complete a JD program. Some of those hurdles have been financially in nature in addition to finding a reputable institution.

I was referred to P.C.U. by a former P.C.U. student, currently a practicing law attorney in Orange County. I remember the moment I walked into the school premises, I felt reassured this was the school I had been looking for. At the time, I was not aware of the fact that P.C.U. had been around and was established 91 years ago.

After I have been attending P.C.U. for the past three years, I can honestly say P.C.U. administration's staff, its fine professors, and our current Dean, Andrea L. Luna believe in one sole mission of being the "School of the People" How do I know that? Over the years, I have met over 80 students who have been enrolled in its J.D. program at P.C.U. I have personally spoken and become friends with most of those students. Most of those students are career graduates holding MBA's, working in a variety of fields of work, and looking to transfer into the legal field. Most of those students, myself included, share the same opinion that P.C.U. is financially affordable and offers the highest quality of legal education.

I truly believe in P.C.U.'s mission and I can say that attending P.C.U., has substantially changed my life and my future. I also believe that helping P.C.U. remain the forefront of providing the highest quality of legal education to new prospective lawyers will change drastically our legal community because most if not all of those new prospective working legal peers will have access to the same legal education. P.C.U. is more than just a legal learning institution for me.

The legal community should be proud of having a law school like P.C.U. around which also equips legal community by giving birth to new reputable attorneys through its JD program.

Letter to California Bar Board of Trustees  
August 9, 2018  
Page 2

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P.C.U. has been a strong advocate of helping our community leaders gain access to its J.D. program by offering financially accessible means and keeping its doors open to provide a legal education for those who would not otherwise be able to go to law school. In fact, I am one of those individuals that if it had not been for P.C.U., I could not have reached the same goals.

I strongly believe that it is important that both the Rules Advisory Committee (RAC), and Law School Committee (LSC) should continue assisting and serving its purpose and not disappear because both the RAC and LSC make important recommendations to the Bar Board of Trustees for its governance. I believe that once those organizations disappear, P.C.U. will be negatively impacted because P.C.U.'s voice will no longer be heard. P.C.U. will be forced to outsource its accreditation. If P.C.U. is forced to outsource its accreditation process through some other means, P.C.U. will be forced to increase its tuition exponentially just to keep up with its overhead costs in order to hire a group of individuals to implement the necessary protocols and the hiring of those individuals will cost P.C.U. hundreds of thousands of dollars per year which will require P.C.U. increase its tuition, thereby, making its access to education impossible for many potential students.

I also believe in the California Bar Board of Trustees and I trust in your wisdom. Your decisions impact our legal community as a whole. I know that P.C.U. will continue serving hundreds of prospective law school students, as long as, it remains financially accessible to many. Please help P.C.U. remain open by preserving the R.A.C and L.S.C.'s integrity.

If you have any questions, please contact me.

Respectfully submitted,



Cesar Brito

Prospective J.D. Student at P.C.U.  
Cell (714) 681-8720

From: Al J. Carrion [mailto:carrion@yclaw.com]  
Sent: Thursday, August 16, 2018 10:12 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: Elimination of State Bar of non ABA schools

I understand there is a meeting to consider not reviewing non ABA schools in the future. I have been closely associated with Cal Northern School of Law for over 30 years. When this school was started were received numerous visits from the State Bar while seeking accreditation. In my view you will be making a terrible mistake eliminating the review and accreditation of non ABA schools. As a retired judge, professor of law and attorney for 47 years, I say using expense as an excuse for this action is simply lame. Most school seeking accreditation pay for the review process. To the extent the Bar concludes otherwise, they should increase Bar Dues to cover the cost of the accreditation process. I suspect that you may have already decided this issue. If you have and you eliminated the review/accreditation process, you have made a terrible mistake.

AL J. CARRION SBN 47559  
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From: David Clark [mailto:dsp@snowcrest.net]  
Sent: Thursday, August 16, 2018 9:37 AM  
To: Michael Colantuono; Wilson, Leah  
Cc: sbrooks@calnorthern.edu  
Subject: Proposal to discontinue the Committee of Bar Examiner's accreditation of non-ABA law schools

Mr. Colantuono,  
Mrs. Wilson, and  
Members of the State Bar Board of Trustees Programs Committee,

I oppose the proposal to discontinue the Committee of Bar Examiner's accreditation of non-ABA law schools. I graduated from Cal Northern School of Law in 2014 at the age of 61. I and 91% of my classmates passed the California Bar Exam on our first attempt. None of my working classmates would have been able to commute from Redding CA to an ABA approved school.

I have been practicing law since 2015. In my first year I volunteered as an Attorney for a Domestic Violence Prevention Center. In that capacity, I provided advice, counsel and advocacy for Domestic Violence Victims seeking protective orders in the rural economically depressed regions of Shasta and Trinity Counties. Had I not been available to provide this service, the victims served might not have received the benefit of any legal service. I now conduct a private practice in a legal community where a substantial number of the attorneys with whom I work also graduated from Cal Northern School of Law. These attorneys provide competent services at affordable rates which also would not be available to our rural economically depressed region were Cal Northern, Lincoln Law School, and other non-ABA accredited schools unable to provide the legal education necessary to train these contributors to the legal community. The non-ABA schools are vital to a diverse community sensitive legal profession.

I therefore urge you to drop the proposal to discontinue the Committee of Bar Examiner's accreditation of non-ABA law schools.

Please include this email as a public comment on the proposed Programs Committee recommendations.

Respectfully,

David Clark

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David Clark  
(530) 623-6447  
dsp@snowcrest.net

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From: Andrew Dibbern [mailto:adibbern@slolaw.org]  
Sent: Thursday, August 16, 2018 8:07 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: My support for State Bar's continued accreditation of CALS

My name is Andrew Dibbern, and I am a 4th year law student at San Luis Obispo College of Law, a practicing veterinarian and an active community member in the city of Arroyo Grande. I strongly support the continued accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by the California Business & Professions Code § 6060.7. I believe that California Accredited Law Schools such as San Luis Obispo College of Law, are an important contribution to the diversity of the profession, access to justice, and the education of competent lawyers and judges serving our local communities. They are vital to allowing Californians access to opportunities that would be impossible to experience otherwise. Withholding accreditation to these programs would effectually promote severe inequality, as it would limit the affordability of a legal education to many Californians whose inclusion serve to enrich and strengthen the law profession in this state. Limitations on the diversity of professionals in the state's law communities would severely reduce the ability to serve the needs of the diverse citizenry that California enjoys, concurrently subverting public access to justice. The format of learning, affordability and the evening class schedule has been vital in allowing me the opportunity to pursue this avenue of education, expand my career, benefit my family, and further contribute to my community and the State of California. Please include my email as public comment on the proposed Programs Committee recommendations. Thank you,  
Andrew Dibbern,  
4L, San Luis Obispo College of Law

ANDREW L. DIBBERN, DVM  
503-310-0916

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Begin forwarded message:

From: Misty Franklin <mfranklin@kerncountylaw.org>

Date: August 16, 2018 at 11:34:39 AM CDT

To: <mcolantuono@chwlaw.us>, <Leah.Wilson@calbar.ca.gov>

Subject: State Bar's accreditation of California Accredited Law Schools

Dear Chair Colantuono and Executive Director Wilson,

My name is Misty Franklin and I am a second-year law student at the California accredited Kern County College of Law, affiliated with Monterey College of Law. I cannot stress enough the importance of continuing accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by the California Business & Professions Code Section 6060.7.

Our community here in Kern County is in grave need of attorneys. However, the nearest ABA accredited law school is well over 100 miles away. Many of us have families and jobs and the option to pick up and relocate to an area with a higher cost of living is simply not an option. Many who do choose to leave this well-populated area for law school simply do not come back. It would be a tragic disservice to the entire Central Valley to pull accreditation from an established, successful legal institution.

On a personal note, the sacrifice myself and my classmates have made is no less than any other ABA law student, quite frankly, it is likely to be greater. We have jobs and families and other responsibilities all day long, yet we read the same number of cases from the same casebooks. We are tortured by the same Socratic Method and have survived the feelings accompanied by the inevitable "your-entire-grade-depends-on-this-one-test" phenomenon. We wake up at 5 AM to reread the Rules Against Perpetuity once again hoping we might get it this time before we have to get ready to go to work for the day and then school until nearly 10pm when we will read again before heading to bed to start the process all over again.

We are also mentally rewired to think and act like a lawyer right alongside with the best of them. I have had an opportunity to Clerk for a local Criminal Defense attorney who graduated from UC Davis and he has only phenomenal things to say about the skills that were acquired at our local California accredited College of Law.

If accreditation is taken away, you take away the respect that comes with that accreditation. Students that go to unaccredited law schools do not pay the tuition we pay, do not have the high level of professors we have, and do not have the requirements we have abided by in order to not only ensure we pass the bar, but that we have the respect from potential employers that is garnered from having survived a law school experience they had themselves. You also cannot get employment many places UNLESS you have graduated from an accredited program. The money we spent could be a waste, but the time we have lost with our families and in our lives would be a priceless, tragic loss.

Please consider all these factors as you move forward on this issue.

Sincerely,

Misty Franklin  
mfranklin@kerncountylaw.org  
661-889-3366

Begin forwarded message:

From: Albert Fritz <alfritzesq@earthlink.net>

Date: August 12, 2018 at 12:55:54 PM PDT

To: <leah.wilson@calbar.ca.gov>

Cc: <pculawschool@pculaw.org>

Subject: Rules Advisory Committee and Law School Committee -  
accreditation

Dear Director:

I am informed that you intend changes that will diminish input from California Bar Examiners Accredited schools.

As a graduate (many years ago) from Pacific Coast University Law School, and a practicing attorney in California for more than thirty years, I have a long- standing interest in the organization.and recognition of the California Bar.

Please allow me to share my personal anecdote of how the Pacific Coast University Law School enabled my career.

When I graduated university with a bachelor degree in mathematics, I was afflicted with serious ill health which precluded post-graduate educational plans. Later, my wife and I moved to Long Beach, and through friends and contacts, I was informed about Pacific Coast University. I enrolled, hopefully, to avoid exacerbation of poor health, while pursuing professional-level education. The curriculum, schedule, and faculty at Pacific Coast University were my ticket to an education and worthwhile future in law.

Years have passed, so I cannot claim to know how many more succeeded as I did. However, out of my office alone, three employees or associates took advantage of the same school, and became practicing members of the bar.

In one respect my class was average: a mixed group of ambitious, hard-working, and willing middle income men and women, some educated and some grasping for a chance to be - college graduates, business owners, civil servants, teachers, even a stevedore. Of this group, I recall, about twenty qualified for and took the final bar exam. Of those graduates I believe 75% went into the practice of law as private practitioners, city and county attorneys, prosecutors and public defenders, and at least one Superior Court judge.

In my private practice I had the loyalty and confidence of clients for as long as thirty years and through several generations. My clients included other attorneys and their families, prior employers, friends from prior employment, businesses, and out-of-state referrals. I also did pro bono and worked closely with Legal Aid. Professionally and ethically I earned and held the confidence of judges, commissioners, and clerks. I dealt with lawyers from schools such as Harvard, Stanford, etc with equanimity. Nobody questioned my education or background. Nobody belittled me as a lawyer or counselor because I had graduated from an ABA non-accredited law school. Professionally I was always accepted on the basis of my good standing at the bar. I give credit to Pacific Coast University for my preparation to practice law.

I want to add one anecdote to footnote my support for Pacific Coast University: I

was sitting at the table, along with hundreds of others, just minutes before the beginning of the California bar exam. Across the table from where I sat was a seemingly nervous young man who engaged me in conversation about the exam. He explained that he was a graduate of Harvard Law School and he was taking the exam for the third time. He did not know what he was doing wrong. The exam started, I began writing the answer to the first question, when I discovered that I was writing in the wrong colored exam book. I had wasted twenty minutes on the first essay, and when the lunch break came I was convinced that I, too, would be taking the exam again, sitting morosely across from a first-timer. It was not to be:

I passed the bar exam on my first attempt.

I support Pacific coast University Law School on account of the preparation for the California Bar Exam it provides to a broad spectrum of potential law students.

Albert G. Fritz, Jr  
alfritzesq@earthlink.net

Sent from my iPad

From: Kizzy Garcia [mailto:kgarcia@slolaw.org]  
Sent: Thursday, August 16, 2018 11:45 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: California State Bar Board of Trustees Programs Committee meeting tomorrow, August 17, 2018 at 1:00 p.m.

To: Michael Colantuono, Chair of the California State Bar  
Leah Wilson, Executive Director of the California State Bar

Re: California Accredited Law Schools

My name is Kizzy Garcia. I am a second year law student at San Luis Obispo College of Law. In anticipation of the California State Bar Board of Trustees Programs Committee meeting tomorrow, I am writing in support of the continued accreditation of non-ABA law schools by the Committee of Bar Examiners, as authorized by the California Business & Professions Code Section 6060.7.

I believe that California Accredited Law Schools, such as Monterey College of Law, San Luis Obispo College of Law, and Kern County College of Law are an important contribution to the diversity of the profession, access to justice, and the education of competent lawyers and judges serving our local communities.

I would like to share with you my personal experience on why the continued accreditation of non-ABA law schools is important. I started my college career later in life. I am also a first generation college student. I attended Allan Hancock Community College and obtained my Associate of Science in Paralegal Studies. Now, San Luis Obispo College of Law has given me the opportunity to accomplish my goal of becoming a professional in the field of law within my community. The study of law has given me a sense of belonging to a greater community that is in place to help others.

If the board decides to discontinue accreditation of non-ABA law schools, it would affect my future along with the future of all my fellow cohorts. Every day that I attend San Luis Obispo College of Law, I feel fortunate because I am supported by an administration whose goal is to make the law profession in California a paramount.

I respectfully request that my email be included as public comment on the proposed Programs Committee recommendations.

Thank you for your time and consideration regarding my view on the above referenced matter.

Best regards,

Kizzy Garcia  
(805) 710-3916  
kgarcia@slolaw.org

From: Dorothy Grant [mailto:dgrant@slolaw.org]  
Sent: Thursday, August 16, 2018 8:17 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: Email in support of the continued accreditation of non-ABA law schools by the Committee of Bar Examiners

My name is Dorothy Grant and I am a 3L student at the San Luis Obispo College of Law.

I wanted to show my support of the continued accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by the California Business & Professions Code Section 6060.7.

I believe that California Accredited Law Schools such as Monterey College of Law, San Luis Obispo College of Law, and Kern County College of Law are an important contribution to the diversity of the profession, access to justice, and the education of competent lawyers and judges serving our local communities.

I began law school in my early thirties with two young daughters. Having access to a local, accredited law school is the only way I could have realized my dream of getting a quality legal education while raising my family. In addition, the community of San Luis Obispo is greatly benefitting from having an accredited law school so close by. The population of San Luis Obispo is growing with a shortage of quality lawyers because there is no place to get a law degree anywhere near by.

Please include my email as public comment on the proposed Programs Committee recommendations.

Regards,

Dorothy Grant

From: Spencer Gysin [mailto:spencergysin@yahoo.com]  
Sent: Thursday, August 16, 2018 11:48 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: August 17, 2018 at 1:00 p.m. Meeting Re: Accreditation of Non-ABA Schools

Dear Chair Colantuono and Executive Director Wilson:

My name is Spencer Gysin and I am a Family Law and Estate Planning attorney in Chico, CA. I graduated from Cal Northern School of Law in 2012 and I started my own law firm about 9 months after that. I am writing this email to encourage the board not discontinue the Non-ABA School accreditation process. After I explain my reasons for not ending the process, I will give my outsiders idea of a way to continue the process at a minimum cost to the State Bar. I agree that this email may be shared publicly or discussed with anyone.

I believe that schools like Cal Northern should be given a chance to become accredited law schools. The diversity I have seen in Cal Northern is truly different from what I have heard about other law schools. In my class, we has a Court bailiff who was in her late 30's and a mother of 2 who was in her late 50's and had been working as a Court Interpreter. I do not believe that either of these two amazing individuals who both graduated and passed the bar would have been able to go to a traditional law school because they were working full time and going to school at Cal Northern which offers night classes and affordable tuition rates. Both of these women now own and work at a successful immigration law firm here in Chico. Their business serves a valuable need because they are both fluent in spanish (one of them is actually from Mexico) and there are a lot of farm workers in Butte County who could use their help with immigration issues.

I could go on about the other amazing and diverse people I met in my Law School who would likely have never had a chance to become an attorney, but that is not the point of this email. The point is that I believe schools like Cal Northern who offer classes that allow student to work full time jobs and offer reasonable tuition should not be overlooked as possible accredited schools.

I know nothing about the internal workings of your committee except that I have been told you are thinking of stopping the accreditation process for law schools due to budget concerns. I would propose that you set a deadline of December 31, 2019 for all schools currently in the accreditation process to become accredited or not. If they are not approved by the board by December 31, 2019, there chances of accreditation are over temporarily. Then, completely close the accreditation process for 7 years with no need for any staff in the department. On January 1, 2027, you could open up an application process for all non-accredited schools to apply for a period of one year. Then, starting January 1, 2028, you could have a mostly volunteer team established to determine if any of the schools that applied during the one year period should become accredited. But, the panel would only have two years to choose to give the school accreditation or not. Then, the program could shut down for another 7 years and repeat the process.

This gives new law schools the chance to become accredited every 10 years. It also ensures that law schools won't be required to go through the accreditation process for more than 2 years (which can be difficult and time consuming for Law Schools). As I said I don't really know enough about what your board does in the accreditation process, I just thought I would offer an idea of a way to conserve the budget while still making it possible for other schools to become accredited.

Thank you for your time.

Sincerely,

SPENCER M. GYSIN Esq.  
Law Offices of Spencer M. Gysin  
80 Declaration Drive, Suite 204  
Chico, CA 95973  
(530) 838-4111

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Begin forwarded message:

From: Collette Hillier <chillier@slolaw.org>

Date: August 16, 2018 at 11:52:26 AM CDT

To: <Leah.Wilson@calbar.ca.gov>, <mcolantuono@chwlaw.us>

Subject: Public Comment to Programs Committee Agenda Item IIIA -  
August 17, 2018

I am an attorney with the San Luis Obispo Legal Assistance Foundation. We assist homeless veterans and seniors in our community. Previously, I was employed with an outstanding private firm, whose practice has been deeply committed to San Luis Obispo for over 60 years. I am a graduate of Santa Barbara College of Law and now also an adjunct professor at San Luis Obispo College of Law; both non-ABA accredited law schools, but California Accredited Law Schools.

I support of the continued accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by the California Business & Professions Code Section 6060.7 because without them, I would not have been able to earn a Juris Doctorate Degree. California Accredited Law Schools such as Santa Barbara College of Law, Monterey College of Law, San Luis Obispo College of Law, and Kern County College of Law are an important contribution to the diversity of the profession, access to justice, and the education of competent lawyers and judges serving our local communities. Non-ABA accredited law schools are simply more accessible. There are no ABA accredited schools between Los Angeles and San Francisco. At the time that I attended Santa Barbara College of Law, San Luis Obispo did not have a California Accredited Law School of its own and I drove 100 miles one way, three to four days a week to attend law school after work. I had children in high school at the time. I was not willing to move from the community they grew up in so that I could attend law school. As an adjunct professor, I believe that although virtual teaching can be an aid to learning, I do not believe it can replace personal classroom time.

The legislature and the State Bar have supported state accreditation and state regulation of law schools outside the costly and limited national accreditation system as a means of providing legal services at affordable rates to smaller rural and local communities--like San Luis Obispo. Changes to the accreditation system that increase cost, reduce the opportunity these schools provide, or impose additional burdensome and unnecessary requirements, adversely impact these important state objectives.

Please included this email as public comment on the proposed Programs Committee recommendations.

Sincerely,

Collette Hillier,  
Adjunct Professor  
SLO College of Law

From: Shannon Jones [mailto:sjones@kerncountylaw.org]  
Sent: Thursday, August 16, 2018 9:53 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: Please continue the State Bar Accreditation of non-ABA schools

Good morning,

My name is Shannon Jones, 2L law student at Monterrey College of Law (Kern County College of Law campus). I wholeheartedly support the continued Accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by the California Business & Professions Code Section 6060.7.

California Accredited law Schools (such as mine) play such a vital role in the State of California and areas in which these schools are placed. The education received, ability to attend law school and ultimately sit for the Bar would not be possible for me without Accredited Law Schools such as Monterrey College of Law.

As a mother of 4, working during the day and attending law school in the evening, I am grateful to be able to receive top quality education from a non-ABA law school, but one that is Accredited by the State of California. The nearest ABA law school is over 100 miles and it would not be possible for me and so many others who are currently enrolled in the 18 State Bar Accredited schools to attend. If the State Bar discontinues the accreditation of non-ABA law schools, the potential for losing out on great future attorneys who do not have access to ABA schools would be disheartening.

I am saddened by the thought of the closure of so many law school campuses across the state and the access to legal education would be greatly affected. I urge you to consider continuing the Accreditation of non-ABA law schools for the future of our industry.

If the Board chooses to discontinue the Accreditation, I would hope that the process would allow for students currently enrolled to complete their education and take the Bar Exam. The amount of time and financial commit to my education depends on it.

Please allow my comments to be included in the public comment section on the Program Committee recommendations. I would be happy to discuss this further and look forward to the continuation of the State Bar Accreditation of non-ABA schools.

Thank you,  
Shannon Jones  
661-623-5918  
sjones@kerncountylaw.org

From: Jan Marx [mailto:jmarx@slolaw.org]  
Sent: Thursday, August 16, 2018 11:07 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: Public comment on the proposed Programs Committee recommendations

Dear Mr. Colantuono and Ms. Wilson,

I am writing to state my support of the continued accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by the California Business & Professions Code Section 6060.7. I have practiced law for thirty years in San Luis Obispo and served twelve years in local elected office.

In my present position as Campus Dean of the San Luis Obispo College of Law, Constitutional Law Professor and former Mayor of the City of San Luis Obispo, I have witnessed first hand the important contributions of California Accredited Law Schools, such as the Monterey College of Law and its branch campuses San Luis Obispo College of Law, and Kern County College of Law, to the diversity of the profession, access to justice, and the education of competent lawyers and judges. These local law schools also contribute to economic resiliency, educational options and job creation in our local communities.

Taking responsibilities and oversight away from the dedicated volunteer attorneys and public members who serve on the Committee of Bar Examiners would be ill advised, in light of the fact that the present system works quite well. The elimination of the Law School Council, the Law School Assembly, and the Rules Advisory Committee of the California accredited Law Schools would eliminate critical law school input into the regulation and oversight of legal education in California. It would also reduce protection of the public, diversity of the profession, and access to legal education and the justice system.

Please include this email as public comment on the proposed Programs Committee recommendations.

Jan Howell Marx, Esq., Campus Dean  
San Luis Obispo College of Law

From: Margaret McNulty [mailto:mmmmcnulty@margaretmcnultylaw.com]  
Sent: Thursday, August 16, 2018 11:03 AM  
To: Michael Colantuono; Wilson, Leah  
Subject: Accreditation of non-ABA California law schools

Hello,

I attended Cal Northern Law School in Chico, CA, from 2009-2013. I graduated in 2013, took and passed the California Bar Exam on my first attempt, and swore in as a licensed California attorney in December 2013.

I was not in a position to attend an ABA law school, either financially or geographically (living in Chico). I was please to find out that California accredited law schools were much more affordable and that there was one in my community (Cal Northern). Before applying for admission at Cal Northern, I checked to see if they were accredited as a California law school as it was important to me that the school I chose had been reviewed by representatives from the State Bar to verify that it was a quality teaching institution. I was pleased to find out that not only was Cal Northern accredited, but that it had one of the highest bar exam pass rates for non-ABA schools in the state.

I recently read that the State Bar has started the process of discontinuing its accreditation and oversight of non-ABA schools as a way to save money. I believe this would be a huge mistake for many future lawyers, who need affordable legal education and the assurance that they are going to a quality institution. In addition, because lawyers from non-ABA accredited law schools do not incur the large school loans associated with many ABA law school students, they can afford to charge less for their services, or can work in a community legal clinic, which benefits the public at large.

For the above reasons, please do not discontinue the accreditation process and oversight of non-ABA law schools. Also, please include my email as a public comment on the proposed Programs Committee recommendations.

Sincerely,  
Margaret McNulty  
California State Bar No. 292505

-----Original Message-----

From: Megan O'Connor [mailto:m.oconnor221@gmail.com]  
Sent: Thursday, August 09, 2018 10:55 AM  
To: Wilson, Leah  
Subject: W.A.S.C. Accreditation

Hi Leah,

I am a student at Pacific Coast University in Long Beach, CA. I was recently informed of your intent to outsource the accreditation process to W.A.S.C. Unfortunately, if the Bar is allowed to outsource the accreditation process, it would cost our school hundreds of thousands of dollars.

This change would at least double our tuition and potentially be the end of PCU and many other California accredited schools. The new process would cost our school hundreds of thousands of dollars and our tuition would increase exponentially. The increase in tuition is contrary to our school's mission, which is to provide a quality legal education at an affordable cost to students like myself, who would otherwise not be able to afford to go to law school.

PCU has allowed me an opportunity to earn an education that will change my future for the better. If the accreditation program is outsourced in the middle of my education, and the education of my classmates, our dreams of becoming attorneys will be ripped away. I implore that you consider the impact of the decision that you are making, not only for me, but for anyone that attends a California accredited school.

Thank you for taking the time to understand my concerns.

Megan O'Connor

Begin forwarded message:

From: Jacqueline Pierce <jpierce@horanlegal.com>

Date: August 16, 2018 at 10:57:21 AM CDT

To: "mcolantuono@chwlaw.us" <mcolantuono@chwlaw.us>,  
"Leah.Wilson@calbar.ca.gov" <Leah.Wilson@calbar.ca.gov>

Subject: Support for Accreditation of non-ABA law schools--Monterey College of Law

Dear Mr. Mcolantuono and Ms. Wilson,

I am the Executive Director of the Mandell Gisnet Center for Conflict Management at the Monterey College of Law. I have been a civil trial lawyer for 34 years, and I have recently retired from full time practice to run the mediation center. In this capacity, I am also the ADR Administrator for Monterey Superior Court. I am writing because I support the continued accreditation of non-ABA law schools by the Committee of Bar Examiners as authorized by California Business & Professions Code Section 6060.7.

I took this position because I believe that law schools such as Monterey College of law (and its associated campuses) provide an important contribution to our profession. I am particularly impressed with the fact that Monterey College of Law requires that each law student complete a two credit course in mediation through the Mandell Gisnet Center. It is my firm belief that by requiring mediation and case evaluation as a part of the curriculum, we are preparing new lawyers to enter the work force with a greater understanding of the needs of clients. Furthermore, once our students become trained mediators, they volunteer and pursue clinical assignments through various mediation programs that we offer in small claims court, and on the unlawful detainer and civil harassment calendars at Monterey Superior Court. In addition, we have a program called "The Neighbor Project" designed to assist law enforcement and code enforcement authorities in reducing conflict and violence in our neighborhoods and communities. We also provide volunteers to assist with homeless veterans, and received a JAMS grant in support of this program.

Because of the nature of Monterey College of Law, and its close relationship to the courts and community, we are able to serve in unique ways. We are an integral part of the Monterey County and we can respond rapidly to emerging needs, largely because we are a small school and a non-profit organization with a well-trained student population. It is an honor and a privilege to serve as the Executive Director of this program. During my time in civil practice, I became committed to the concept of mediation as an important and necessary vehicle for resolving litigation and conflict. I am pleased to be mentoring students in the importance of early case resolution through MCL's unique program. I would be pleased to give you more details if you would like to phone me at my cell phone number, below.

Jackie Pierce  
CSB #128637  
Jacqueline M. Pierce, Esq.  
Executive Director  
Telephone (831)224-3819

July 25, 2018

**TO: THE PRESIDENT AND HONORABLE MEMBERS OF THE  
BOARD OF TRUSTEES OF THE STATE BAR OF  
CALIFORNIA**

**FROM: SOUTHERN CALIFORNIA INSTITUTE OF LAW**

**RE: PETITION TO VACATE CERTAIN ACCREDITED LAW  
SCHOOL GUIDELINES**

**INTRODUCTION**

It is true that the power of non-judicial officials to interpret the constitution in no way reduces the concomitant power of the judiciary to settle constitutional questions for all branches of government. *Marbury v. Madison* instructs that the interpretation given to the Constitution by the judicial branch, once made, is binding on all non-judicial officials within the jurisdiction of the deciding court. (*Marbury v. Madison* (1803) 5 U.S. 137 at 177.

However, the judiciary's power of review presupposes that other government officials have interpreted the Constitution themselves in the first instance:

"Long familiarity with the institution of judicial review sometimes leads to the misconception that constitutional law is exclusively a matter for the courts. To the contrary, when a court sets aside government action on constitutional grounds, it necessarily holds that legislators or officials attentive to a proper understanding of the constitution would or should have acted differently." (*Cooper v. Eugene School Dist. No. 4J* (Or. 1986) 723 P.2d 298, 303.)

See for example, *City of Boerne v. Flores*, (1997) 521 U.S. 507, 535, "When Congress acts within its sphere of power and responsibilities, it has not just the right but the duty to make its own informed judgment on the meaning and the force of the Constitution" and in *United States v. Nixon* (1974) 418 U.S.683, 703. where the court explained that each branch must "initially interpret the Constitution" in carrying out its duties.

In the light of *new* developments where it is now conceded that the State Bar does not exercise the *inherent* judicial power of our Supreme Court as a sovereign branch of state government in the accreditation-rulemaking and oversight of state law schools, we respectfully urge a review of a number of prior regulations as to whether or not they should be vacated as contrary to law.

As Justice Felix Frankfurter once wrote: "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters National Bank & Trust Co.*, 335 U.S. 600, (1949.) (Frankfurter J. dissenting.)

"[A] court must vacate any judgment entered in excess of its jurisdiction." (*Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972)). It is an axiom as old as the hills that an order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Rose v. Himely* (1808) 4 Cranch 241. Finally, a void judgment does not create any binding obligation. See *Kalb v. Feuerstein* (1940) 308 US 433.

These are *pure* legal issues that belong to an independent branch of state government and does not require input or comment from affected third parties. This is a private communication to the State Bar Board of Trustees and its Office of Legal Counsel. Courts have defined the State Bar as "surrogates" for the state Supreme Court. Hence we appeal to your independence and impartiality in reviewing this petition.

For the legal reasons analyzed below, we respectfully submit that the following FIVE accreditation rules and guidelines be *vacated* as being improvidently issued without lawful authority.

### 1. ONLINE POSTGRADUATE LAW DEGREES

Guidelines that allow for the issuance of exclusively online postgraduate law degrees that are unlicensed, unapproved., and for which there is no regulation, approval or oversight as required under Bus. and Prof. Code §6060.7(b)(1) cannot be defended on any legal basis.

That statutory provision recites: "The examining committee shall be responsible for the approval, regulation, and oversight of degree-granting law schools that (A) exclusively offer bachelor's, master's, or doctorate degrees in law, such as juris doctor, and (B) do not meet the criteria set forth in Section 94750 of the Education Code."

The necessary predicate of "approval, regulation, and oversight," must be found in every degree program. If not, the degree translates into a sham. The Saudi in Riyadh can gold frame his postgraduate law degree and say it was issued by a law school "accredited by the State of California" acting on behalf of the Supreme Court. There is nothing in the diploma itself stating that the degree is not licensed, authorized, or accredited or that the recipient may not use it to sit for the state bar examination

This applies to Accredited Law School (ALS) Guideline §13.1 where in the context of ALS Guideline §13.5 it is admitted that these online postgraduate law degrees cannot be represented as an “approval of the quality of any such program.”

Further these Guidelines were adopted pursuant to a “recommendation” of the Rules Advisory Committee that as argued later in this petition violate state separation of powers and are in violation of state and federal antitrust law

## 2. HYBRID LAW DEGREES

The Committee of Bar Examiners has authorized schools to issue a so-called “hybrid” J.D. degree with *seventy percent* of the instruction being online and thirty percent of the units required for this new “accredited hybrid J.D.” are to be taught on weekends as part of on-campus classroom instruction.

Of course agencies can fill up the details. But this is not detail-filling. And even then, implicit in the concept of filling in the details is the idea that there is *some* intelligible guiding principle or framework to apply. Bus. and Prof. Code §6060.7(b)(1) admits to *no* such guiding statement. Courts require that the “truly fundamental issues should be resolved by the Legislature,” *Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal. 4th 1183, 1206.

California courts permit the delegation of legislative functions only where the grant of authority is “accompanied by safeguards adequate to prevent its abuse.” *Wilke & Holzheiser, Inc. v. Dep’t of Alcoholic Beverage Control* (1966) 65 Cal. 2d 349, 369.)

Such standards are not only an essential check on the danger of *ad hoc* or arbitrary agency decision-making, but also ensure that the exercise of political judgments is left to those who are directly accountable to the public for their policy choices. California’s non-delegation doctrine places special emphasis on the presence of safeguards to check an agency’s exercise of delegated authority. *Kugler v. Yocum* (1968) 69 Cal. 2d 371 at 376, quoting *Wilke & Holzheiser* (1966) 65 Cal. 2d 349 at 369.

A delegation of *policymaking* authority, as what has occurred with hybrid J.D. degrees, is unconstitutional under California jurisprudence. See, *Slavich v. Walsh* (1947) 82 Cal. App. 2d 228, 235 “It needs no citation of authority to establish the principle that the Legislature may not thus divest itself of its constitutionally granted powers.”

In extending to law schools the authority to operate a *hybrid* J.D. degree program the Committee of Bar Examiners has not only mangled the concept of a J.D. degree as it was popularly understood at the time Bus. and Prof. Code §6060.7(b)(1) was enacted, it has ventured to create into law its own policy preference.

The private American Bar Association (ABA) has no stated policy or regulations on hybrid J.D. degree although it has allowed a small handful of law schools to experiment on issuing such hybrid degree after years long evaluation of a school petition. However, Bus. and Prof. Code §6060.7(b)(1) does not allow for “pilot” degree programs outside of the clear meaning of what is a J.D. degree program.

If the Committee believed it possesses a freelance “inherent” authority to construct this new type of J.D. degree then this assumption was mistaken.

More astounding, by establishing this hybrid J.D. degree where seventy percent of the courses being offered online, the State Bar ignored the important legislative distinctions between unaccredited online J.D. degree programs and an accredited J.D. program. A clearer case for the vacation of a Committee order, as having been issued in excess of State Bar jurisdiction, cannot be made.

### **3. JOINT J.D. DEGREE PROGRAMS**

For all of the reasons stated above, this new form of joint J.D. degree that may be authorized by private national accrediting bodies finds no legislative warrant under Bus. and Prof. Code §6060.7(b)(1.) It is nothing but a “policy” departure from what the statute allows for.

There are no Guidelines for the approval, regulation and oversight of either hybrid or joint J.D. Degrees nor is there clear state authorization for such “new” types of J.D. degrees. In *U.S. Telecom Assn v. FCC*, 855 F.3d 381,419 (2017) Judge Kavanaugh dissenting from a denial of en banc rehearing wrote: “For an agency to issue a major rule, Congress must *clearly* authorize the agency to do so. If a statute only *ambiguously* supplies authority for the major rule, the rule is unlawful.” (emphasis in original.)

The authorization for joint and hybrid J.D. programs are neither explicitly found nor implied from Bus. and Prof. Code §6060.7(b)(1.)

### **4. MINIMUM BAR PASS RATE**

ALS Guideline §12.1-12-2 sets a minimum bar pass rate as a condition of continuing law school accreditation even if an accredited law school has met or exceeded all the other accreditation requirements. In short, it acts as a stand-alone, sole, singular, and dispositive standard of law school accreditation.

This Guideline was passed after a “recommendation” from the six member Rules Advisory Committee (RAC.) The RAC is a six-member formal committee of the State Bar. Three of its members are law school deans and three are committee representatives. Often the RAC committee representatives are the Committee members themselves. And not infrequently the chair of the Committee is one of the three Committee representatives.

This Guideline is constitutionally defective in several ways, primarily it is in violation of state and federal antitrust law; it violates the doctrine of unconstitutional delegation of state powers to private parties and finally, it fails the “substantial evidence” test.

These issues were never quite thought of at the time the Rules Advisory Committee was established.

(i) **Violation of Anti-Trust Law**

By the very terms of the Rules Advisory Committee (RAC) framework, the Committee of Bar Examiners (Committee) has completely surrendered its statutory authority over the *initiation* of any *new* Guidelines or *amendments* to existing Guidelines exclusively to the RAC. See, State Bar Rules Advisory Committee, 1(A).

Thus the RAC alone gets to decide which *new* Guidelines or *amendments* to existing regulations get voted out. The Committee concedes that absent a “recommendation” from the RAC, no new accreditation-regulation gets approved or adopted. Far worse, the law dean representatives on the CALS design, introduce, and even frame the relevant motions, and thereafter vote their own market interests, together with a majority of CALS who supported their election to be dean representatives among the RAC.

Four of the six voting members are needed to approve new Guidelines or make modification to existing regulations

The Federal Trade Commission Staff Guidance Paper on Active Supervision of State Regulatory Boards Controlled by Market Participants is very instructive:

“Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision. A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market (e.g., through veto power, tradition, or practice) must be actively supervised to be eligible for the state action defense.” FTC, October 2015, p.8.

Section 1(A) of the RAC framework places private law deans in the driver's seat who are in charge of the controls. They are able to steer regulations that are self-serving in substance. It should not come as a surprise that all applications submitted by law deans on the RAC for waivers of accreditation guidelines, major change, or related dispensation for the law schools they represent have all been approved by the Committee.

All accreditation Guidelines, even those that are very contentious, such as ALS Guideline §12.1-12.2 was *required* to have been first "recommended" by the RAC before being subject to "approval" and "adoption" by the Committee.

Thus private parties are able wrest control over the metes and bounds of what becomes an accreditation Guideline. Private parties exercise a pre-clearance veto. Without a "recommendation" from the RAC there is nothing to approve or adopt.

On a related matter of state law importance is that attorneys serving on *state* committees are required to sign a conflict of interest statement and are mandated by statute to further the public interest. However, law deans on the RAC do not sign such a statement. They are not appointed or removable by a sovereign body and are ostensibly committed to advancing their own trade interest.

This reinforces the concerns raised in the Parker-Walton Work Draft Report that states: "*Overseeing both accreditation and admissions may invite conflicts of interest or perspective, particularly given the apparent dominant role of law school deans in the accreditation process.*"

The anti-trust implication cannot be more compelling now that the State Bar no longer considers itself the relevant state sovereign exercising its inherent powers of oversight in law school accreditation matters.

*North Carolina State Board of Dental Examiners v. F.T.C.*, 135 S. Ct 1101 (2015) ("*N.C. Dental*") demands that when private parties control the regulations of a defined market their actions must conform to specific "interstitial policies made by the entity claiming immunity" and further, these decisions must be "review[ed] and approve[d]" by the state sovereign. (Id. at p. 1112.) This is a two-part requirement.

*N.C. Dental* (Id. p. 1114) references *Bates v. State Bar of Arizona*, 433 U.S. 350, 361-362 (1977) as an example of proper application of state action immunity. There, *N.C. Dental* found Arizona State Bar's rules were "subject to pointed re-examination by the policymaker." i.e. The Arizona Supreme Court. In *Bates*, anti-trust immunity was defensible because rules relating to lawyer advertising reflected a "clear articulation of the State's policy,

Again, in *Goldfarb v. Virginia State Bar* 421 U.S. 773, 781 (1975) the Court did rule that the State Bar is entitled to immunity only when it is acting in a sovereign capacity. *Id.* pp.790-791. As *Goldfarb* put it: "the anticompetitive activities must be compelled by direction of the State acting as a sovereign."

In *Patrick v. Burget*, 486 U. S. 94, 100,101 (1988), the active supervision requirement demanded, *inter alia*, "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy."

Not so with ALS Guideline §12.1-12.2. Since the State Bar is not the appropriate "state sovereign" for oversight purposes, it can no longer take comfort in RAC regulations that allows it the final power to approve, accept, reject, or modify a "recommendation" from the RAC. Further, Committee members on the RAC then go on to approve and adopt the very regulations they previously voted to recommend.

Therefore the independent sovereign oversight demands articulated in "*N.C. Dental*," which here would be the "legislature," have not been met.

There is no need for poof of actual harm. This is buttressed by the fact that there is no need to establish case-by-case proof of actual antitrust violations. Justice Kennedy referring to *City of Columbia v. Omni Outdoor Advertising, Inc.*, writes: "*Omni* made clear that recipients of immunity will not lose it on the basis of *ad hoc* and *ex post* questioning of their motives for making particular decisions." (*N.C. Dental*, *Id.* 1105.)

In short, *N.C. Dental* formulates an *ex ante* rule, to identify those entities who, by their very composition, are likely to "pursue private interests in restraining trade." (*Id.*)

The Law dean representatives on the RAC are explicitly committed to pursuing the interests of CALS and indeed have been recognized by the State Bar as an indispensable construct of the state's regulatory process on initiating accreditation regulations.

The Committee admittedly does **NOT** "control" in the *initiation* of either new Guidelines or the *modification* of existing ones for which at least *four of six votes* are needed from the RAC before adoption by the Committee.

Neither the state Supreme Court nor the legislature reviews the policy rules on minimum pass rates, branch campuses; exclusively online postgraduate law degrees; joint degree programs or hybrid J.D. degree programs that have been products or by-products of RAC "recommendations" that led to final State Bar approval.

There are no independent review mechanisms in place here to satisfy the “constant requirements of active supervision” that the Supreme Court identified in *N.C. Dental*, 135 S. Ct. at 1116. Those requirements are the foundation of the active supervision test, which is why the Court described them as “constant.”

(ii) **Unlawful Delegation of State Regulatory Power**

In its preamble, the “A” in RAC is labeled “Advisory,” but this by itself is not conclusive that these private representatives on the RAC do not function as (un-appointed) state actors are simply “advisory” and not part of any formal regulatory decision-making process. The full provisions of the RAC with rights of appeal built into the regulatory structure suggest otherwise.

The California Supreme Court declared in *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 75, that a statute's preamble cannot confine the meaning of the words themselves. Likewise, Chief Justice Roberts, in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2012), wrote that magic words or labels have no bearing on a “functional” approach to interpretation. It is “not controlled by Congress’ choice of labels.” *Id.* 2595.

A canon of construction, *noscitur a sociis*, holds that a word gathers its meaning from its context, which is established by the surrounding words. *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961.)

The RAC’s authority to “recommend” must be interpreted as part of a symmetrical and coherent governmental regulatory scheme in which operative words like “modify”, “reject”, and “accept” all acquire a consistent and common theme, framing the formal state processes for the adoption of new Guidelines by the Committee: “[T]he coupling of words together shows that they are understood in the same sense.” *Neal v. Clark*, 95 U.S. 704, 709 (1877.) In short, the RAC is part of the formal state regulatory process.

Aside from anti-trust issues, the delegation of the “initiation” power to private parties violates a cardinal rule of non-delegation and separation of powers doctrine.

*Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936) explained that a delegation to a private party “is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interest may be and often are adverse to the interests of others in the same business.”

More recently in *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. \_\_\_, 135 S. Ct. 1225 (2015) it was noted that in the delegation of governmental power to private parties, "there is not even a fig leaf of constitutional justification." *Id.* at 1237 (Justice Alito concurring.)

ALS Guideline §§12.1-12.2 must be declared as a violation of the settled cannon *Delegatus Non Potest Delegare* especially when it involves a delegation of state regulatory power to private parties in the initiation of accreditation Guidelines such as ALS Guideline§12.1-12.2 (minimum pass rate); ALS Guideline § 13.1 (online postgraduate law degree programs); and branch campuses ALS Guideline §15.1 (branch campuses)

### (iii) Substantial Evidence Test

The Guideline on the Minimum Pass Rate was never subject to the "substantial" evidence test as required under the state Administrative Procedure Act. It was believed that only the "rational" basis test applied on the assumption that the State Bar was acting as a *sovereign branch of state government* and was exercising its inherent judicial authority (much as in rulemaking for attorney admission and discipline) in the formulation of accreditation rules. Thus it was exempt from the state Administrative Procedure Act. This of course is now understood as a mistaken assumption of the State Bar's inherent authority.

If it were subject to the "substantial evidence" test the Guideline fails for the following reasons. This Guideline speaks to an accredited law school being required to maintain a minimum pass rate over a rolling five-year period as a sole, singular, and dispositive condition for continued accreditation.

This pass rate is required even if an accredited law school has been found by a state bar accreditation inspection team to have met or exceeded all the other qualitative and quantitative rules and regulations pertaining to law school accreditation.

This five-year minimum pass rate became effective on January 01, 2013 where RAC Law Deans made sure it would include retroactive bar pass rates from 2010 for the 2010-2015 period. In other words, the RAC law deans *knew* their own pass rates for the preceding three years 2010, 2011, and 2012, and thus they were in a position to fix both the calculation formula and the timeframe to benefit the majority of CALS they represented.

The final benchmark minimum pass rate was a compromise offer between a 50% pass rate with mitigating factors, much like ABA Standard 301-6 (C) or a one-size-fits-all absolute 40% pass rate. The absolute 40% "*compromise*" was the RAC "recommendation" that became ALS Guideline §§12.1-12.2.

Neither the RAC nor the Committee adduced any empirical evidence for this metric and there was no need to do so because the State Bar had all along claimed it is a separate sovereign branch of state government for accreditation purposes as well and was thus free from the "substantial evidence" requirements that applies to all other executive-agency rule making. To be fair to the State Bar, it did later have the benefit of an unpublished state appeal court ruling that supported this mistaken belief.

In the light of what has now been confirmed in the Work Draft, this needs to be immediately revisited to examine the illegality of the current structure and operations.

Prior to Accredited Law School (ALS) Guideline §§12.1-12.2, the Committee engaged in a holistic review by focusing on a whole array of factors that touches every aspect of a law school, including: honesty and integrity; faculty governance, admission policies, academic good standing; faculty credentials and student and peer review; student and faculty diversity, curriculum; instructors; course materials; teaching quality; admission requirements; class size; quality of assignments, student experiential and clinical work, evaluation of faculty grading; system; research resources; library access and graduates performance on the California Bar Exam.

No one single rule, guideline, or regulation was decisive as to the quality of legal education. There was no single litmus test.

However, based on a RAC recommendation that was approved by the Committee as ALS Guideline §§12.1-12.2, bar pass rates became the single, sole, and dispositive factor in continuing law school accreditation.

Despite a written opposition to the proposed ALS Guideline §§12.1-12.2 that was filed by a former retired state appellate court jurist, a retired law dean of Loyola Law School, Los Angeles, and SCIL's Dean (the author of this petition) the retroactive forty-percent minimum pass rate was recommended unanimously by the RAC, thereafter approved by the Educational Standards Committee in a telephonic meeting, and then adopted Committee of Bar Examiners in a period of three consecutive days.

The RAC's rulemaking relative to ALS Guideline §§12.1-12.2 finds itself in the crosshairs of rules made without the benefit of a single piece of supporting evidence; in violation of state separation of powers; and more to the point in violation of state and federal antitrust laws. Besides, it is in flat out opposition to legal precedents and expert studies as catalogued below in numerical order.

1. “Merely . . . picking a compromise figure is not rational decision-making.” *Qwest Corp. v. FCC*, 258 F.3d 1191,1202 (10th Cir. 2001). Political compromises in legislation are different from those in agency rulemaking: See *Massachusetts v. EPA*, 549 U.S. 497, 533-34 (2007).

2. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) when a change in agency policy “rests upon factual findings that contradict those which underlay its prior policy...a reasoned explanation is needed for disregarding facts and circumstances that underlay” the prior policy. *Id.* at 515–516. Four dissenters led by Justice Breyer demanded more: “To explain a change requires more than setting forth reasons why the new policy is a good one. It also requires the agency to answer the question, ‘Why did you change?’” *Id.* 549.

[http://www.supremecourt.gov/opinions/15pdf/15-415\\_mlho.pdf](http://www.supremecourt.gov/opinions/15pdf/15-415_mlho.pdf) (June 20, 2016) p.12

3. *Med. Inst. of Minn v. Nat’l Ass’n of Trade & Technical Schools*, 817 F.2d 1310, 1314 (8th Cir. 1987) (“Strict guidelines would strip [the accreditor of] the discretion necessary to adequately assess the multitude of variables presented by different schools.”)

4. State free speech principles are violated when a regulation causes a “real and appreciable impact” affecting traditional Socratic instruction. See *Planning & Conservation League, Inc. v. Lungren* (1995) Cal. App 4th 497, 506. It cannot be doubted that all CALS have now embedded commercial bar prep courses into their required curriculum and that instructors teach to the bar exam.

“[P]rivate schools have a First Amendment right to academic freedom,” part of which is a school’s right “to determine for itself on academic grounds who may teach, what may be taught, *how it shall be taught*, ..” *Asociación de Educación Privada de Puerto Rico, Inc. v. García-Padilla*, 490 F.3d 1, 9-11 (1st Cir. 2007.) The rule has a direct and “fairly traceable” impact a law school’s First Amendment right to shape its curriculum. *Monsanto Co. v. Geertson Seed Farms*, 130 S. Cut. 2743, 2752 (2010.)

5. “Bar prep courses now offered within law schools are being outsourced to bar review companies, defeating a more reasonable relationship between such courses and sound, semester-long pedagogy with more deeply embedded understandings of the application of law.” Erica Moeser, President NCBE. *The Bar Examiner*, Vol.83, No.4 (2014) 4 at p.6.

6. Several Law CALS have now formally engrafted mandatory Bar Review instruction into their regular curriculum. Bar pass rates, as Moeser points out, is more a reflection of “drill and kill” pedagogy through bar prep instruction beginning from year one until graduation rather than a comprehensive reflection of a school’s qualitative instruction. (See Attachment.)

7. In enacting ALS Guidelines §12.1-§12.2 the market participants swept aside expert studies. In a State Bar commissioned study undertaken by Dr. Chad Buckendahl, [July 15, 2013 (PR-13-02)] titled: *"Key Factors To Consider When Engaging In A Development Or Redevelopment Process For Examinations"* he writes:

"One of the primary purposes of a professional licensure examination is to provide independent evidence that candidates possess sufficient competency for entry-level practice. It would be inappropriate to confound that intent with the purposes of educational training programs or accreditation activities with that program...*Although often misused for such purposes, licensure testing program scores are not intended to serve as a comprehensive evaluation of a program's curriculum and instruction.*" (Emphasis added.)

8. Addressing *"Accreditation and Quality of J.D. Programs,"* a 2014 ABA Task Force On The Future of Legal Education concludes: The "quality of legal education" is, "[A]n abstract notion as to which there is no objective metric for progress or achievement."

9. In a Study of Texas Law Schools by Klein and Bolus who are the primary "psychometric analysts for the State Bar of California, conclude:

*"[T]here is a nearly perfect relationship between a law school's mean total bar exam score and its mean LSAT score (the correlation is 98 out of a possible 100."*

The consequences of a single dispositive regulation have brought about the "bar mill" model operated in several CALS. The "bar-mill" model is fraught with the danger of producing alumni attorneys who write with "near incomprehensibility" with "little more than gibberish." *Stanard v. Nygren* 658 3d 792, 798 (2011.)

## **5. BRANCH CAMPUS REGULATIONS**

There were no rules or regulations relating to branch campuses prior to the establishment of the RAC. This allowed free rein for the Law deans on the RAC, in collaboration with the Program Manager and of course with the approval of the Committee members on the RAC, to write all its regulations.

In doing so they established Guidelines where branch campuses need not have a full time law school administrator. Indeed when one was proposed and written into the draft it was later removed on account of the objections of one law dean.

Prior to this time, when schools like the Southern California Institute of Law were established both the main and branch campus were approved together at the commencement of operations; the campuses had to be contiguous; a full time administrator was needed for each campus; an active interaction between students and faculty was demanded; and a single student bar association covering both campuses were required, and the campuses had to be geographically contiguous.

More importantly, students at each campus were assessed for their performance at the First Year Law Student Examination aka "Baby Bar."

All these factors were dispensed of in ALS Guideline §15.1 through §15.3. Thus a main campus in San Francisco was able to have a branch campus in San Diego and upon a fast-track provisional accreditation (See §15.3) its students are immediately exempt from the FYLSX.

Thus should a new law school plan to compete in San Diego with superior deans, faculty, staff and admissions policies it must wait a number of years before it can successfully apply for and obtain accreditation.

This creates a *cordon sanitaire* from competition, discouraging the establishment of new law schools based on regulations written by deans of existing accredited law schools. Following *N.C. Dental*, this regulation is a manifest product of unlawful antitrust actions. This Guideline was illegal *ab initio* and needs retroactive annulment.

### CONCLUSION

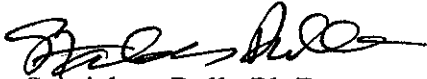
Following the realization that the State Bar does not exercise its sovereign power as a branch of state government in the accreditation of state law schools, we now call upon the State Bar Board of Trustees to act as "surrogates" of the State Supreme Court to independently review the legitimacy of these five contested Guidelines.

Moreover, *N.C. Dental* provides a new lens to review the legitimacy of these Guidelines.

We are confident, as explained in the introduction to this petition, that the Board of Trustees will not back away from its own independent constitutional responsibility to undertake a fearless and impartial legal analysis of each of the above referenced regulations. It is simply unfair to the rest of the schools if a school(s) has been extended advantages that were not made under proper lawful authority.

Thank you.

Sincerely,



Stanislaus Pulle Ph.D.

Dean of Law

Southern California Institute of Law

877 S. Victoria Avenue

Ventura, CA 93003

Tel. (805) 644-2327

Fax. (805) 644-2367

[www.lawdegree.com](http://www.lawdegree.com)

Begin forwarded message:

From: Christopher Reed <careed@ix.netcom.com>

Date: August 16, 2018 at 11:37:24 AM CDT

To: <mcolantuono@chwlaw.us>, <Leah.Wilson@calbar.ca.gov>

Subject: I support CA Accredited Law Schools as implemented by CBPC

Section 6060.7. Please do not eliminate it because so many in California benefit from it

Chair Colantuono and Executive Director Wilson,

I am an attorney who graduated from Monterey College of Law (MCL) and used the CA Accredited program to take and pass the California Bar Exam. From there I have worked in the United States Senate as an investigator for Senator Carl Levin. We did important work investigating fraud, corruption and abuse greater than \$1 billion. I have also worked as Corporate Counsel at startups and at EPRI, and I am presently IP Officer at UC Santa Cruz, working as a patent attorney with inventors and the UC to help them manage the patent portfolio and file patent applications resulting from research at UCSC.

Without MCL I would not have done those things. My first career was in engineering and I was fortunate enough to have success that allowed me to attend MCL at night while I worked. I found it not only affordable, but I am certain it was comparable to an ABA school, because I made a point of attending a class at an ABA school and getting to know students there. I scored the high score on the final at the ABA school in the course I took there, and I can tell you that MCL was of the same caliber of instruction and was even a bit more demanding on students than the ABA school.

Please do not eliminate the opportunity created by CBPC Section 6060.7 for people. So many of my classmates from MCL are making impacts in California that help people who are less able to afford legal help or who are in parts of the state less well served by the legal profession. Please consider these outside impacts and not just the academic or operational aspects of this section. Also, please keep in mind that people who live and work far from the limited number of ABA law schools will suffer negative impacts if this section is eliminated.

Please do not hesitate to contact me to discuss my personal experience or the issue more generally,

Best,

Christopher Reed

831-419-2200

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Member California Bar

Patent Attorney

Senior Member IEEE

MCL Alumnus

-----Original Message-----

From: Silvia Dominguez [mailto:sildom06@yahoo.com]

Sent: Monday, August 13, 2018 9:23 AM

To: Wilson, Leah

Cc: Michael Colantuono; mayor.garcetti@lacity.org; governor@governor.ca.gov; jerry.brown@gov.ca; senator@boxer.senate.gov; senator@feinstein.senate.gov; pculawschool@pculaw.org

Subject: Silvia Reynoso-Dominguez Pacific Coast University, School of Law Student. Please Read.

Dear Leah Wilson:

First and foremost, I would like to thank you for your time. Running the Nation's Largest Bar Association is not an easy task and I salute you for embarking in such a difficult task. I write to you today to shed some light on a topic that will be discussed on your upcoming public meeting that is significant to me as a current law school student.

My name is Silvia Reynoso-Dominguez. I attend Pacific Coast University, School Of Law in the City of Long Beach, California. As you may know, PCU is a California Bar Examiners Accredited school. It is my understanding that there has been talks of possibly doing away with the Rules Advisory Committee and the Law School Committee. Committee's which allow our Deans to make recommendations to the Board of Trustees for our governance. Furthermore, it is my understanding that the accreditation could potentially be outsourced to W.A.S.C. Outsourcing accreditation to W.A.S.C. would be disastrous to PCU as it would be financially detrimental, possibly putting PCU and all other law schools accredited by the California Bar Examiners out of business.

I would like to explain to you what a law degree means to me. I was brought to this country when I was only four years old by my parents from Mexico. My parents were tired of the social and political unrest that existed in our country as well as the immense poverty which was our reality. They embarked in a difficult journey to migrate a family of eight to a foreign country which promised better opportunities. It wasn't an easy transition, but we managed to learn the language and adjusted to the best of our ability. I was told by my parents that if I wanted to succeed in life I needed to study hard and earn good grades, and in fact that I did. However, I was aware of my reality, and knew that my resources and opportunities were extremely limited. Mrs. Wilson, on your introduction letter as Executive Director you mention the opportunity gap that you were able to observe first hand while serving as an active classroom volunteer for your children. I know exactly what you mean by this opportunity gap, because I lived it. My opportunity gap existed since the moment I was enrolled in school and grew through my academic career. Despite earning good grades, the fact that I was an immigrant with limited resources made the gap between my reality and a successful future too significant to overcome.

Mr. Calantuono has also indirectly addressed this opportunity gap, "I went to law school to be a professor and never intended to practice law. I didn't think anything lawyers did was worthwhile or socially redeeming. Going to Berkeley quickly changed that view. My first job as a city attorney in an impoverished Latino community of Los Angeles County showed me how good lawyers can make the world a better place." He is right. The Latino community of Los Angeles County is in fact very poor and deprived of the resources needed to succeed. Mrs. Wilson, I belong to this community, however, I have made it my mission to break this mold. I, like Mr. Calantuono believe that good lawyers can make the world a better place. I hope to one day become a good lawyer. I want to become a lawyer not for the fame or the glory that goes along with the title, but to be able to make a difference and serve my people, the impoverished Latino community of Los Angeles County.

PCU is a remarkable institution where I have met some of the brightest and most passionate professors. Not to mention the administration under the direction of Dean Andrea L. Lua. I consider myself extremely

fortunate to be able to attend an institution of higher learning that fits my schedule and budget as in addition to being a law school student, I am also a full time employee, and full time mother and wife. Furthermore, it is an amazing feeling when the professors, deans and administration truly have your best interest at heart and want you to succeed. Mrs. Wilson, I have a lot of people on my side who want to see me succeed, a lot of people who believe in me, and I don't want to let them or myself down. I want to become an attorney for my parents, to prove to them that the sacrifice they made 26 years ago in bringing me to the land of opportunity was not done in vein. I want to become an attorney for my children, I want to leave them a legacy of which they will be proud of. I want to become an attorney for my husband, one of my biggest cheerleaders, who works day and night to make sure my tuition is paid for. Finally, I want to do this for my community. I would like to pave the way for the many individuals currently in elementary school, middle school or even high school who are feeling like I did many years ago; hopeless. Mrs. Wilson, I am just one of the many people who have worked extremely hard their entire lives in pursuit of a better life who will be extremely affected if schools like PCU ceased to exist. I would like to respectfully request that when making a decision on new regulations, you think of all of us who are in pursuit of a law degree attending institutions like PCU and the negative impact it would have in our community. If PCU would close its doors, the opportunity gap that I believed to have left behind me would again become my reality.

Thank you so much for reading.

Best Regards,

Silvia E. Reynoso-Dominguez

-----Original Message-----

From: Tomoyo Takahashi [mailto:tomoyo\_takahashi@berkeley.edu]  
Sent: Wednesday, August 15, 2018 5:42 PM  
To: Wilson, Leah  
Subject: WASC

Ms. Leah Wilson,

I am a first-year law school student at Pacific Coast University, School of Law in Long Beach, California and UC Berkeley alumni. Today, I learned you expressed the intention to outsource the accreditation process to WASC. This change might not be the best solution because the increasing the tuition costs is inevitable.

Pacific Coast University is a non-profit, California Accredited Law School. Most of the students do not have socio economic privilege. In our class, there are the first-generation immigrants, elders, war-veterans, and religious minorities. We work daytime and study night. We would like to keep the low-cost law schools to keep the diversity of class environment.

Please reconsider your intention regarding this matter. If you have any questions, please contact me.

Thank you,

Tomoyo Takahashi  
Pacific Coast University, the School of Law 1L Track2

From: Michelle Welsh [mailto:mwelsh@mwelshlawoffice.com]  
Sent: Thursday, August 16, 2018 11:40 AM  
To: Michael Colantuono; Wilson, Leah  
Cc: Mitch Winick  
Subject: Opposition to change in Accreditation Process for Non-ABA Law Schools

Dear Chair Colantuono and Executive Director Wilson:

My name is Michelle Welsh. I have been a member of the California Bar and a practicing lawyer for over 40 years. I graduated with a JD from Monterey College of Law in 1978 in its second graduating class. I have served the Monterey County and broader the community as a practicing attorney and also as a volunteer for many nonprofit organizations, including pro bono work, most prominently for the American Civil Liberties Union (ACLU) of Northern California, culminating in my service as Chair of the ACLUNC Board of Directors. I also served as Board member and Board Chair for Monterey College of Law during its early years of accreditation, and the reconstruction of its current campus on the former Fort Ord. I can honestly say that without Monterey College of Law I could not have attended law school or provided decades of service to clients or to community. I am a second generation immigrant, child of working class parents, and in the first generation of my family to attend college; law school was not an option until I learned of Monterey College of Law. For the first time, law school was local, affordable, nonprofit, and dedicated to students like me who never before had such an opportunity. I support the accreditation of Non-ABA law schools by the Committee of Bar Examiners as authorized by Business and Professions Code section 6060.7, and I oppose the proposed changes to that process, because I believe that the voice and participation from the state-accredited law schools with the separate Committee of Bar Examiners enhances the governance process and ensures that the role and function of law schools like Monterey College of Law continue to provide high- quality legal education to many who would otherwise lack access. This leads to greater race, gender, economic and geographic diversity in the legal profession, and also provides legal services in rural and other underserved areas which may not attract ABA law school graduates. Monterey College of Law and other Non-ABA Laws schools are working in California. The proposed changes are not needed, and they place at risk the continued success of this important source of legal education and legal services.

Please include this email as public comment on the Programs Committee recommendations.

Thank you.

Michelle Welsh,  
1978 Graduate, Monterey College of Law

Heather E. Yamamoto  
Student at Pacific Coast University School of Law, Long Beach  
heather\_yamamoto@hotmail.com  
310-528-1360

August 9, 2018

Via Email Only

Leah T. Wilson  
Executive Director, State Bar of California

Re: California Accredited Law School  
Pacific Coast University School of Law (P.C.U.)

Dear Ms. Wilson:

My name is Heather Yamamoto, I am currently in my last year of law school and will be graduating in May 2019. As a current 4L, I try to keep up with Bar related information and have been informed that there are meetings taking place on August 23 and 24, 2018 regarding the accreditation process being outsourced. Honestly, this prospect scares me in regards to my future and the future of P.C.U..

I felt compelled to write this letter on behalf of myself, my fellow classmates, and future California Bar Examiners Accredited School students. I chose to attend P.C.U. because of the financial benefit. I work full time as a paralegal and have two children to take care of. I did not have the option of acquiring huge student loan debt nor to attend school full time. P.C.U. gave me the opportunity to fulfil my dreams of becoming an attorney. Like my classmates, I work hard to prove myself in the legal profession and wish nothing more than to become an attorney.

I have sat through three years of classes at P.C.U.. The students and professors there are so passionate about what they are doing. I have heard countless stories of how my classmates plan to use their Bar Card to make positive social changes. From protecting children, to the less fortunate, to the elderly. Our lives have shaped our desire to make a brighter future for the legal community and our community as a whole.

I strongly believe in the need for lower cost education to empower and educate society and those who do not have the means to obtain an education otherwise.

I appreciate your time, effort and concern in this matter.

Very truly yours,



Heather Yamamoto

**APPENDIX E.**

**FEES, LICENSEES, AND COMPLAINTS IN CALIFORNIA STATE REGULATORY AGENCIES**

## Appendix E. Licensees, Licensing Fees, and Consumer Complaints, 2017

Regulatory Agency	License Fees		Complaints	Licensees	Complaints per 10K Licensees
	New	Renewal			
Medical Board	\$1,235	\$392	9,391	157,831	595
Dental Board	\$2,950	\$263	3,261	88,061	370
Veterinary Medical Board	\$715	\$151	1,004	29,945	335
<b>State Bar</b>	<b>\$1,687</b>	<b>\$340</b>	<b>5,912</b>	<b>193,228</b>	<b>306</b>
Board of Accountancy	\$1,304	\$60	1,853	102,882	180
Board of Optometry	\$2,450	\$213	218	17,082	128
Board of Registered Nursing	\$150	\$95	4,048	549,047	74
Board of Architects	\$500	\$150	0	21,025	0

*Note: Complaints are defined as consumer complaints from any source alleging violation of a law, rule, or Business & Professions code. Complaints here are those referred for investigation and do not include those that are closed before investigation. Renewal fees are annualized for accurate comparison.*

Source: All data from California Department of Consumer Affairs, 2017 Annual Report.  
[https://www.dca.ca.gov/publications/2017\\_annrpt.pdf](https://www.dca.ca.gov/publications/2017_annrpt.pdf). State Bar data from State Bar staff.

**APPENDIX F.**

**APPROACHES TO DIVERSITY IN CALIFORNIA STATE REGULATORY AGENCIES**

## Appendix F. Approaches to Diversity by State Regulatory Agencies

Regulatory Agency	How Addressing Diversity
Board of Accountancy	Not mentioned.
Board of Architects	2015-2016 Strategic Plan includes an objective for the Board to identify entry barriers for diverse groups. Not mentioned in current plan.
Dental Board	Listed as "Value" in Mission Statement ("Diversity: To acknowledge and recognize the diversity of California consumers and professionals.") but not included in latest Strategic Plan. Relies on dental accreditation which requires diversity efforts at schools.
Medical Board	Conducted several detailed statewide surveys of demographics, language proficiency, and cultural background of physicians, documenting gap in representation.
Board of Optometry	Not mentioned.
Veterinary Medical Board	Not mentioned.
Board of Registered Nursing	Strategic Plan Goal 7.6: "Identify the need for each outreach coordinator to increase the ethnic diversity of the nursing profession."
<b>State Bar</b>	Mission Statement: " . . . support of efforts for greater access to, and inclusion in, the legal system." Council on Access and Fairness seeks to diversify legal profession.

Source: Agency web sites, strategic plans, mission and value statements, 2018.

**APPENDIX G.**

**SUMMARY OF SURVEY OF LOCAL FEE ARBITRATION PROGRAMS**

### Appendix G. Summary of Local Mandatory Fee Arbitration Survey

(Survey sent August 2018 to all 35 local programs, 22 responded (63%))

**If the State Bar could improve support for your program what areas would you choose?  
(pick 3)**

Area of Improvement	Votes
Increase reimbursement above current level of \$50 per case	13
Provide more frequent training for local arbitrators	11
Resume conducting the in-person roundtables on hot topics	11
Increase attorney and public awareness of the MFA program	11
Connect my program to other programs to promote peer-to-peer learning	6
Regularly contact me about my local program to check in	4

**Please rate the areas in which your local program needs the most technical assistance.**

Area of Need	1 (Low)	2	3	4	5 (High)	Average
Educating lawyers and the public about the availability of this service	1	0	7	6	8	3.91
Training for local fee arbitrators	3	2	4	4	9	3.64
Recruiting local attorneys to become involved in fee arbitration	3	2	4	5	8	3.59
Marketing the availability of fee arbitration to the public	3	2	6	4	7	3.45
Helping lawyers avoid fee arbitration in the first place	4	4	1	6	7	3.36
Updating local fee arbitration rules and forms	7	2	6	1	6	2.86

**Appendix G. Summary of Local Mandatory Fee Arbitration Survey** *(continued)*

**What is the best way to deliver these services to you and your program?**

Service	Online	In Person	Phone/Email
Training for new arbitrators	12	9	1
Advanced Training for experienced arbitrators	12	9	1
On-site education about fee arbitration	9	7	6
Technical assistance on program operations	8	2	12

**In the last two years my program has used the following forms of support:**

State Bar Support	Count	% of respondents
Phone/email support by Bar Staff	19	86%
Online resources	12	55%
In-person roundtables at Bar offices on hot topics	7	32%
Review of local program rules and guidelines	6	27%
On-site training by committee members	5	23%
Other	3	14%

**How useful are the State Bar's Arbitration Advisories?**

Not Useful				Very Useful
1	2	3	4	5
1	1	3	5	12

**How useful are the State Bar's Program Advisories?**

Not Useful				Very Useful
1	2	3	4	5
2	0	3	5	12

## Attachment B. Fiscal/Personnel Impact of Recommendation for Improving Governance and Service Delivery

	Staff Workload		Board Impact		Fiscal Impact	
	Staff	FTE	Oversight	Meetings	Transition Costs	Interfund Effect
<b>Committee of Bar Examiners</b>						
<i>Examination Development</i>						
• Evaluate grading	none		none		<\$50K	none
• Sampling plan	none		none		Minimal	none
<i>Moral Character</i>						
• Staff conduct reviews and informal conferences	Increase		none		none	(56K)
<i>Eligibility &amp; Enforcement of Examination Rules</i>						
• Enforcement of exam rules by Staff for initial decisions	none		none		none	none
• Budget development & management	none		none		none	none
• Trends Study	none		none		none	none
<b>CA Board of Legal Specialization</b>						
Eliminate certification of legal specialization	Eliminate	(8.0 FTE)	Eliminate	Eliminate	na	800K
<b>Council on Access &amp; Fairness</b>						
Retain & focus	none	na	Increase	Increase	none	none
<b>Client Security Fund</b>						
Commission functions only as appellate body	none		none		none	none

## Attachment B. Fiscal/Personnel Impact of Recommendation for Improving Governance and Service Delivery

(continued)

	Staff Workload		Board Impact		Fiscal Impact	
	Staff	FTE	Oversight	Meetings	Transition Costs	Interfund Effect
<b>Lawyer Assistance Program Oversight Cte</b>						
Separate Voluntary Referrals from the State Bar Program, while Retaining the Disciplinary and Moral Character Referrals	Reduce	(2.0 FTE)	Increase		Net zero	56K
<b>Mandatory Fee Arb Cte</b>						
Staff-driven program, with volunteer Presiding Arbitrator and Assistant Presiding Arbitrators	Increase			Eliminate	340K	56K
<b>Global Recommendations</b>						
• Formal orientation	none		none	none	none	none
• Term limits	none		Increase		none	none
• Conflict of interest policy	none		none		none	none
• Formal qualifications	none					
• Standard size for subentity	none		none		none	none
• Sunset review every 5 years	none		Increase		none	none
• Eliminate nominations committees	none		Increase		none	none
<b>Net Totals</b>		<b>(10.0 FTE)</b>			<b>\$390K</b>	<b>\$859K</b>

Note: Where increased workload for Staff is indicated, this will be covered by the reassignment of FTEs from programs recommendation for reduction or elimination. As indicated above, it is unlikely that the separation or elimination of programs will actually result in any reduction in FTEs.

**Attachment C. Statute and Rule Changes Required to Implement Staff  
Recommendations for Improving Governance and Service Delivery**

<b>Subentity</b>	<b>Purpose and Authority for Existence</b>	<b>Recommended Option(s)</b>	<b>Changes Required</b>
Committee of Bar Examiners	<p>Business and Professions Code section 6046 provides that the BOT may establish an examining committee having the power to (a) examine all applicants for admission to practice law; (b) to administer the requirements for admission to practice law; and (c) to certify to the Supreme Court for admission those applicants who fulfill the legal requirements.</p> <p>Section 6047 provides that, subject to the approval of the board, the committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4 (Admission to the Practice of Law).</p> <p>Pursuant to section 6047, the Board established the Committee of Bar Examiners and its rules via State Bar Rules, Title 4.</p>	<p>I. Exam Development</p> <ul style="list-style-type: none"> <li>• 3. Evaluate grading (CBE)</li> <li>• 4. Sampling plan (Staff &amp; psychometrician)</li> </ul> <p>III. Moral Character</p> <ul style="list-style-type: none"> <li>• 2. Staff conduct and reviews and informal conferences</li> </ul> <p>IV. Eligibility &amp; Enforcement of Exam Rules</p> <ul style="list-style-type: none"> <li>• 2. Enforcement of exam rules by Staff for initial decisions</li> </ul> <p>VI. Budget</p> <ul style="list-style-type: none"> <li>• Budget development and management by staff</li> </ul> <p>VIII. Trends in Licensing &amp; Certification</p> <ul style="list-style-type: none"> <li>• Trends study by Staff and CBE</li> </ul>	<p>These options may require changes to the State Bar Rules either as new rules to be adopted, or as modifications of existing rules.</p>
California Board of Legal Specialization	<p>Rule of Court 9.35(b) provides that “The State Bar must establish and administer a program for certifying legal specialists and may establish a program for certifying entities that certify legal specialists under rules adopted by the Board of [Trustees] of the State Bar.”</p> <p>State Bar Rules regarding Legal Specialization are found at Title 3, Division 2, Chapter 2, Article 1, Rule 3.90 et seq.</p>	<p>Option 3: Eliminate certification of legal specialization.</p>	<p>Change or repeal Rule of Court and State Bar Rules.</p>

**Attachment C. Statute and Rule Changes Required to Implement Staff Recommendations  
for Improving Governance and Service Delivery**  
(continued)

<b>Subentity</b>	<b>Purpose and Authority for Existence</b>	<b>Recommended Option(s)</b>	<b>Changes Required</b>
Council on Access and Fairness	Established by the BOT in November of 2006. See Board Book, Section 5, Tab 5.1, Article 4, Section 10.	Option 1: Retain and Focus	BOT can establish rules to govern the work of the Council.
Client Security Fund Commission	<p>Established pursuant to Business and Professions Code section 6140.5(a). Section 6140.5(a) further provides that CSF will be subject to the regulation and conditions as the BOT shall proscribe and that the BOT may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the BOT.</p> <p>State Bar Rules regarding CSF are found in Title 3, Division 4, Chapter 1, Article 1, Rule 3.420 et seq. The CSF Commission is established pursuant to Rule 3.421.</p>	Option 2: Commission functions only as appellate body.	Changes to State Bar Rules.
Lawyer Assistance Program Oversight Committee	<p>Program is mandated by Business and Professions Code section 6230 et seq.; Section 6231 provides that the BOT shall establish a committee to oversee the operation of the program.</p> <p>State Bar Rules regarding LAP are found in Title 3, Division 2, Chapter 5. Rule 3.240 et seq.; Rule 5.380 et seq. (State Bar of California Rules of Procedure) also govern its operations.</p>	Option 2: Separate State Bar Court, Office of Chief Trial Counsel, and Office of Admissions referrals from voluntary (self) referrals.	Changes to Business and Professions Code and State Bar Rules.

**Attachment C. Statute and Rule Changes Required to Implement Staff  
Recommendations for Improving Governance and Service Delivery**  
(continued)

<b>Subentity</b>	<b>Purpose and Authority for Existence</b>	<b>Recommended Option(s)</b>	<b>Changes Required</b>
Mandatory Fee Arbitration Committee	<p>Business and Professions Code section 6200 requires the BOT to establish a procedure to arbitrate and mediate disputes concerning fees, costs or both charged for professional services by members of the State Bar or members of other bars.</p> <p>Business and Professions Code section 6200(d) requires the BOT to adopt rules to allow local bar associations to arbitrate and mediate attorney fee and costs disputed under section 6200.</p> <p>State Bar Rules regarding Fee Arbitration are found at Title 3, Division 4, Chapter 2, Article 1, Rule 3.500 et seq.</p>	Option 1: Staff-driven program, with volunteer Presiding Arbitrator and Assistant Presiding Arbitrators	Changes to State Bar Rules.

**Attachment D. Statute and Rule Changes Required to Implement Staff Global  
Recommendations for Improving Governance & Service Delivery**

<b>Recommendation</b>	<b>Required for Implementation</b>
1. Institute formal orientation for all volunteers to the work of the State Bar.	Create State Bar policy/procedure for BOT approval.
2. Institute and enforce term limits for all volunteers, ensure appointments made timely.	<p>Create State Bar policy/procedure for BOT approval; amend State Bar rules applicable to specific subentities to the extent term limits are approved that conflict with current rules. (Terms generally vary from two to four years.)</p> <p>Note that for LAPOC and CBE, the terms for members of those subentities are established by statute.</p> <p>With respect to LAPC, per Business and Professions Code Section 6231(b), committee members shall serve a term of four years, and may be reappointed as many times as desired.</p> <p>With respect to the CBE, per Business and Professions Code section 6046.5 and Cal. Rule of Court 9.4(a), the term of the members is four years. Id.</p> <p>To the extent term limits are approved that conflict with section 6321(b), section 6046.5, and Rule of Court 9.4(a), amendments to the statutes and rule may be required.</p> <p>Ensuring timely appointments presumably may be addressed in rules and regulations approved by the BOT.</p>
3. Institute conflict of interest policy for volunteers.	Create State Bar policy/procedure for BOT approval.
4. Formalize desired qualifications for volunteers, by subentity.	Develop desired qualifications for each subentity for approval by BOT

**Attachment D. Statute and Rule Changes Required to Implement Staff Global  
Recommendations for Improving Governance & Service Delivery**  
(continued)

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|--|---|
| <p>5. Establish standard subentity size of 7 or fewer volunteers, and process for justification of additional based on workload and need for representation.</p> | <p>Change applicable State Bar rules that apply to specific subentities which vary in size.</p> <p>Note that for LAPOC and CBE, the size and composition of those subentities are established by statute. See Business and Professions Code section 6231 (LAPOC shall consist of 12 members) and Business and Professions Code section 6046 (CBE shall consist of 19 members). Amendments to those sections of the Business and Professions Code will be required to implement this recommendation as to those two subentities.</p> |
| <p>6. Institute sunset review of all subentities every 5 years.</p>  | <p>Create policy regarding sunset review for approval by BOT.</p> <p>Abolition of specific subentities will require revisions or repeal of State Bar rules related to specific subentities. For subentities established by statute or a Rule of Court, (CBE, CBLE, CSF, LAP, MFAC) amendments or repeal of the applicable statute or rule will need to occur if abolition of such a subentity is recommended as a result of the review and approved by the BOT.</p>   |
| <p>7. Eliminate nominations subcommittees from subentities.</p>  | <p>Create policy for nomination and selection of volunteers for subentities for review and approval by BOT.</p>   |