

COUNCIL ON ACCESS AND FAIRNESS MEETING (COAF)

Meeting Summary and Action Items

Friday, August 27, 2021, 10:00 a.m. – 4:00 p.m.
State Bar of California (Conference Call via Zoom)

Roll Call		
Members Present	Liaisons	Staff
Chair Judge Esther Kim	Pat Lee (California LAW)	Christal Bundang
Vice Chair Ryan Harrison	Erica Yew (Judicial Council)	Lisa Chavez
Heather Anderson	Jose Cisneros (BOT)	Lisa Cummins
Novella Coleman		Randall Difuntorum
Sarah Good	Public Members	Christina Doell
Michael Rhoads	Areta Guthrey	Donna Hershkowitz
Chalak Richards		Elizabeth Hom
Judge Kristin Rosi		Christopher Jagard
Stephanie Chu Santoro		Danielle MacRae
Sal Torres		Christopher McConkey
		Andrew Tuft

		Members Absent
		None

OPEN SESSION

Chair Judge Esther Kim called the meeting to order at 10:02 a.m.

I. ROLL CALL

Roll call was taken, and quorum was established.

II. CALL FOR PUBLIC COMMENT

Judge Kim invited members of the public to comment on any items on the agenda. No public comment was made.

III. CHAIR'S REPORT

BOT liaison Jose Cisneros thanked the COAF members for their work in support of the State Bar. He was impressed and proud of work the COAF has done during his term as BOT liaison.

Judge Kim announced that for the upcoming term beginning in September, COAF's Chair will be Ryan Harrison and Vice Chair will be Judge Kristin Rossi. Angelica Salceda, the newest COAF member, was in attendance and gave a brief introduction to the members.

As this will be the last meeting of her term, Judge Kim expressed her gratitude for having served on COAF for the last four years. A small but mighty group, COAF has accomplished a lot and she always looked forward to these meetings. Program Manager Elizabeth Hom also thanked Judge Esther for her leadership and efforts over the years.

IV. CONSENT

A. Approval of Meeting Summary and Action Items from May 21, 2021 Meeting

COAF approved the May 21, 2021 meeting summary and action items by unanimous roll call vote (Sal Torres moved, Vice Chair Ryan Harrison seconded).

V. STATE BAR REPORTS

A. Update on Office of Access & Inclusion Activities and Staffing

Program Manager Hom reported that OA&I has hired several new staff members, who will be introducing themselves later on during the meeting. She also reported that Bridget Gramme recently joined as Deputy Chief of Programs and Leah Wilson has rejoined as Executive Director.

B. Update on Initiatives to Improve the Attorney Discipline System

Program Director Lisa Chavez provided an update regarding Professor Robertson's potential reforms to address racial disparities. Potential Reform 1.3, which is to revise guidelines to encourage reasonable reliance on other professionals and technologies, is complete and three potential reforms are in the exploring phase.

Another potential reform was to develop a pilot program of State Bar appointed counsel for income qualifying attorneys facing discipline. Analysis has been conducted on the estimated hours for representation at various case closure stages. Next steps are to estimate the number of attorneys who may participate and to explore funding options for this pilot program.

COAF asked whether the attorneys participating in the pilot program could be required to take additional MCLEs if they are not quite at the income threshold, similar to protocols when judges are investigated due to a discipline issue.

Ms. Chavez also provided an update on the Ad Hoc Commission on Discipline System, tasked with taking inventory of discipline system reforms, evaluating its impact, and recommending additional or revised reforms. At its kickoff meeting in April 2021, the commission formed the Effectiveness committee and Fairness committee. Each committee heard staff presentations on business processes, learned about practices other states in order to determine which topics to focus their review before developing recommendations.

After going through the process described above, the Fairness committee decided to form working groups for notification of attorneys of complaints closed without discipline, record expungement, and impact of attorney fees and costs. Working groups from members of both committees will be formed for preventative education for attorneys at risk and progressive discipline.

As a follow-up to the topic of discipline record expungement, COAF asked whether each State Bar judge would have to be interviewed before any expungements on the State Bar attorney profiles (similar to the process in judicial discipline.) Chief of Programs Donna Hershkowitz said the working group could consider a model with automatic expungements for non-disciplinary reasons, similar to administrative clears for failure to pay fees.

The commission will meet in September, where each committee will share findings and finalize working groups. From September to January 2022, the working groups will develop recommendations, which will be discussed during commission meetings from February through April 2022. The commission will meet in May 2022 to adopt the recommendations and submit a final report to the Board of Trustees by June 2022.

C. Presentation on California Bar Exam Strategies and Stories program

Victor Quintanilla, Anita Kim, and Michael Frisby from Mindsets in Legal Education provided an update on the study of the California Bar Exam Strategies and Stories program, which was an intervention that COAF had recommended.

The group studied disparities produced by the bar exam and the impact of cut scores on diversity in the legal profession. The group presented data illustrating that bar exam performance varies considerably between racial and ethnic group of test-takers. White test-takers have a higher passage rate versus Black and Hispanic test-takers; first-generation test-takers outperform continuing generation test-takers; and advantaged test-takers (white, continuing generation, and higher socioeconomic status) outperform disadvantaged test-takers. The group also considered historical passage rates and what the impact would have been on racial and ethnic groups with lower cut scores. For example, if the cut score was 1300, there was be a 49.2 percent increase in Black attorneys. There was also not a significant relationship between cut scores and attorney discipline actions.

The group then provided an update on the California Bar Strategies and Stories Program. The program's intent was to address and treat psychological friction affecting bar exam performance such as the high stakes nature of the exam, stress about the stress, and fixed mindset beliefs about mistakes. The 45-minute program was delivered online in 2018, 2019, 2020, and 2021. While it was initially a Randomized Controlled Trial with a control group and treatment group, the group later began to offer the treatment program to all participants.

Over four years and with 2,500 participants, the program improved disadvantaged and advantaged test-taker performance by +30 points. The program also improves pass rates for disadvantaged and advantaged test-takers across the exam score thresholds.

VI. DISCUSSION AND ACTION ITEMS

A. Review COAF Work Plan, approved March 2021

The work plan was included as part of the posted meeting materials for reference. No updates or revisions were made.

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

Senior Program Analyst Christal Bundang provided an update on behalf of the working group, comprised of COAF members Torres, Richards, and Coleman. The Law School Retention Study consists of three parts - the survey sent to California Law Schools regarding recruitment and retention practices, law school enrollment analyses, and law school attrition analyses. The survey was completed from October 2020 through February 2021 and had an 87 percent response rate across the ABA-accredited, California Accredited Law Schools (CALS), and Unaccredited law schools.

Ms. Bundang shared some preliminary findings from the survey:

- 89 percent of law schools report having at least one (1) academic support program
- 68 percent of law schools report having at least one (1) program to recruit diverse students
- 63 percent of law schools have specific forums/events for cross-cultural understanding
- 63 percent of law schools support student affinity groups that span cultural/ethnic, religious, gender and sexual orientation
- 67 percent of law schools indicated that they or their affiliated university offers wellness support and services

After staff completes an initial analysis of the data, the working group will meet to review the data and determine if any additional follow-up is needed from the law schools. The working group plans to finalize the report/resource guide around October/November 2021.

COAF then discussed the effectiveness of programs offered in increasing students' sense of belonging. While law schools offer programs, this does not necessarily mean that students are using them. COAF asked whether there was any way to enforce COAF's recommendations. Chief of Programs Hershkowitz responded that with COAF's input, DEI principles have been included in the updated rules for CALS and unaccredited law schools, and while it would be inappropriate to set certain numbers or metrics, the working group could identify ways to keep the law schools accountable. Hom also presented the initial findings at the Law School Council meeting so that deans and registrars are aware of the study. There will also be an opportunity to discuss the study and any recommendations at future State Bar law school meetings like the Law School Assembly.

Richards shared that in May, the ABA set forth proposed changes for a 90-day public comment period. These included ABA accreditation standards 205 regarding non-discrimination and equality of opportunity, and standard 206 regarding diversity and inclusion. Richards has not seen a formal notice of adoption and will keep COAF updated. She also shared that the US News & Reports added specific questions about diversity to their rankings. Some law school deans factor these rankings into what they are evaluating and there could be some potential information from this source.

COAF also discussed whether policies should be implemented in the law schools and if it was possible to develop and require trainings for teachers and/or professors to identify problematic and hurtful conduct. Richards said there could be some resistance to required trainings, but that there are existing trainings out there that could be recommended.

Public Member Areta Guthrey commented that the disability community provides MCLE and resources, which she will share this information with Hom following the meeting.

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

COAF members Torres and Richards reported on the DIF Working Group activities. The working group reviewed exam questions with DIF findings and determined that there are very subtle biases, such as referencing female widowers, heterosexual relationships, and Anglo-Saxon names. Bias was more pervasive in the performance questions because of the

fact patterns. The larger group will reconvene in September for further discussion and to develop recommendations.

Program Managers Lisa Cummins and Christina Doell from the Office of Admissions reported on updates to the bar exam development and grading process. There are approximately 100 experienced and diverse graders. Since the transition to online grading, it has allowed the State Bar to expand its grader pool outside of the Bay Area. All graders are provided implicit bias training prior to the receiving grading files and new graders are asked to provide feedback on the grading process. Ms. Cummins also provided an overview of the pre-testing process ongoing outreach efforts.

Vice Chair Harrison, who serves on the Blue Ribbon Commission on the Future of the Bar Exam, reported that the commission just had its first meeting. The commission will be getting presentations from other states as it considers whether California should have a uniform bar exam.

D. Update on Diversity Report Card (Goal 4, Objective k)

Ms. Hom and Ms. Chavez provided a demo of several interactive dashboards with the Diversity Report Card information. The dashboards will be eventually be available on the State Bar website. The State Bar also plans to develop “Diversity Briefs,” formatted similar to the State Bar’s Bar Briefs as an additional resource for attorneys and the public.

COAF asked if notifications will be sent to attorneys and law school students when the Diversity Report Card dashboards are published. Ms. Hom confirmed that the State Bar’s Office of Communications plans to push out the information as far as possible. Donna added that a link can be included in the welcome letter to bar exam passers.

Public Member Areta Guthrey asked about how much information the State Bar has on the disability categories, as the survey only included 5-6 categories. When she took the survey, she did not fit into any of the categories. Ms. Guthrey was invited to contact Ms. Hom to provide additional feedback.

As for next steps, the State Bar will complete the dashboards, develop diversity brief(s), and publish by the end of the year. COAF members Torres, Good, Rhoads and Anderson volunteered to serve on the working group to review the Report Card before it is published.

E. Update on 2020 Impact Survey (Goal 4, Objective l)

Senior Program Analysts Chris McConkey and Danielle MacRae shared preliminary findings from the 2020 Impact Survey, which was administered in April 2021. The survey was sent to all active attorneys licensed in California and asked 75 questions related to employment, work/life balance, and diversity and inclusion. Responses were received from 17,761 attorneys and demographic data across race/ethnicity, gender, and disability status.

- 31 percent of all respondents experienced reduced compensation during the pandemic to now.
- 46 percent of all respondents said that engagement with client was more challenging during the pandemic compared to pre-pandemic. Men of color were more likely to say it was more challenging.

- 32 percent of all respondents said that their ability to manage childcare was much worse. White women and women of color were more likely to respond that it was much worse.
- 35 percent of all respondents said that their ability to maintain a management work schedule was about the same.
- 71 percent of respondents said that they felt a sense of belonging and inclusion in their workplace always or most of the time pre-pandemic versus 69 percent now.

OA&I also plans to highlight key findings and provide a narrative explaining their importance. COAF members Rhoads, Torres, Good, and Richards volunteered to serve on the working group to review the report before it is published.

F. Update on Implicit Bias Online Training Module (Goal 4, Objective m)

Senior Program Analyst Erica Carroll reported that since the last COAF meeting, staff and the working group (Judge Kim and COAF member Coleman) reviewed implicit bias course and plan to finalize in the next 4-6 weeks, which on track to release before the MCLE elimination of bias rule goes in effect in 2022.

G. Update on Addressing Retention in the Legal Profession through Law School Loan Repayment (Goal 4, Objective l)

Ms. Carroll reported on findings from the Student Loan Debt Survey that the State Bar recently administered. The survey was sent to 16,000 active government and nonprofit attorneys and 3,546 (22 percent) responded. The survey asked about the types of loans, current interest rate on loans held now, intention of having loan amounts forgiven through Public Service Loan Forgiveness (PSLF), and current or previously involved with Loan Repayment Assistance Programs (LRAPs) or Income Based Repayment (IBR) plans. Demographic data was also collected. Some findings included:

- Younger attorneys generally have more student loans now than their older counterparts and appear to have a harder time paying them off.
- Generation X, proportionally, have more private student loans than Baby Boomers and Millennials.
- Attorneys who attended private school have more student loan debt than attorneys who attended public schools, controlling for generation.
- Federal direct loans are the most prevalent student loans among all generations.
- A majority of attorneys are interested in PSLF, especially those expecting to pay off their student loans in the distant future.
- Across all generations, there appears to be a lot of uncertainty around LRAPs.

H. Update on Early Pipeline to the Profession Outreach Materials Development (Goal 4, Objective l)

Ms. Hom thanked COAF members Good, Rhoads, and Judge Rossi for connecting the National LGBTQ+ Bar with the Office of Admissions recently connected with the LGBTQ+ Bar regarding the Campus Climate Survey. Judi O'Kelly, Executive Director of the National LGBTQ+ Bar, joined the Law School Council and CSBARS meeting in August, where she announced that the survey would be expanded to CBE accredited and registered law schools. Both groups discussed potential partnerships opportunities, such as the Lavender Law Conference in 2022.

Ms. Hom also provided an update regarding the video project with Disney. The working group comprised of Vice Chair Harrison, Judge Rossi, Anderson, and Good, plan to extend the timeline and will begin either later this year or beginning of 2022.

In preparation for the ABA Diversity Summit, feedback was provided regarding the “Be a Lawyer” brochure. The working group decided not to accept the recommendations, primarily because the brochure highlights non-traditional, state-specific paths to become a lawyer, which is important information to make available.

I. Update on Judicial Council Requests for Assistance on Judicial Diversity Initiatives (Goal 4, Objective o)

Before her term concludes, Judge Kim would like to coordinate an informal meet and greet with Judicial Appointments Secretary Luis Céspedes and the incoming COAF Chair, Vice Chair, and Judicial Council Liaison Judge Yew.

J. Discussion of Additional Diversity and Inclusion Initiatives

In response to COAF’s request, Assistant Chief Trial Counsel Christopher Jagard from the Office of Chief Trial Counsel (OCTC) and Supervising Attorney Andrew Tuft and Program Director Randall Difuntorum from the Office of Professional Competence provided background information about State Bar Rule 8.4.1 Prohibited Discrimination, Harassment, and Retaliation and general overview of the complaint process.

Rule 8.4.1 was approved in November 2018, and OCTC reviews complaints coded under this rule. COAF asked whether investigations are only prompted by complaints, and Mr. Jagard said that OCTC is able to open up its own investigation if prompted by other sources, such as a news article. COAF suggested that attorneys be given notice about this rule and discussed possible ways outreach about the rule could be leveraged in other contexts like law schools and legal aid organizations. OPC undertook communications efforts when the rule was first adopted and will work with OCTC and the Office of Communications about highlighting the rule in future communications to attorneys.

Judge Kim reported that the ABA adopted the following resolution at its annual meeting without any opposition:

“RESOLVED, That the American Bar Association urges lawyers, as members of the legal profession and public citizens having special responsibility for the quality of justice, to devote at least 20 hours each year to efforts that advance and promote diversity, equity, and inclusion in the legal profession.”

The rule is considered House of Delegates policy and will not be a part of the ABA Model Rules. COAF also wants to recommend an aspirational goal for the State Bar to mirror this resolution. Vice Chair Harrison, Anderson, Rhoads, who are on working group for the DEI leadership seal program will look more closely at the resolution and develop a formal recommendation and added to the 2022 work plan.

Ms. Hom reported that California Lawyers Association was interested DEI leadership seal program and developing a pledge of their own. She will be meeting with Ellen Miller to see if

there are any opportunities to partner and will convene the working group following that meeting.

Vice Chair Harrison suggested that COAF create a resource page on website for law students, attorneys, and students experiencing imposter syndrome with peer-reviewed academic articles, professional assistance, and a video from a diverse attorney to encourage them. Ms. Hom and Vice Chair Harrison have met with staff from the Lawyers Assistance Program about providing resources and will follow up. Vice Chair Harrison also suggested a potential opportunity to work with California Law Pathways on this project.

VII. LIAISON REPORTS

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

No updates were provided for this agenda item.

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

California LAW Liaison Pat Lee reported that California LAW has a Constitution Day celebration on September 17, and the annual Pathway to Law Summit will be held on September 18 and 19 at USC Law School. The summit will address imposter syndrome and sense of belonging, invisible barriers to success and feature a panel of attorneys to discuss how they are able to achieve systemic change. California LAW also recently opened the nomination period for the education pipeline award and is planning a program about Critical Race Theory in the future.

C. Discussion on Council Report on Diversity and Inclusion Initiatives

Judicial Council Liaison Judge Yew reported that the Stronger Together: Judicial Diversity Summit pre-sessions about pathways to the bench have already kicked off. The summit will take place on September 14, 21, and 28. Topics will mentor programs for judges who wish to elevate to the Appellate Court and glass ceiling judges face who are assigned in certain courts. The Judicial Council also continues to work with JNE to provides training on biases.

VIII. ADJOURN

There being no other business, the meeting was adjourned at 3:18 p.m.