

COUNCIL ON ACCESS AND FAIRNESS MEETING (COAF)

Meeting Summary and Action Items

Friday, December 3, 2021, 10:00 a.m. – 4:00 p.m.

State Bar of California (Conference Call via Zoom)

Roll Call		
Members Present	Liaisons	Staff
Chair Ryan Harrison	Pat Lee (California LAW)	Christal Bundang
Vice Chair Judge Kristin Rosi	Judge Judith K. Dulcich (Judicial Council)	Lisa Chavez
Heather Anderson		Brady Dewar
Novella Coleman		Donna Hershkowitz
Sarah Good	Public Members	Elizabeth Hom
Michael Rhoads	Areta Guthrey	Kelsey Lyles
Chalak Richards		-----
Stephanie Chu Santoro		Members Absent
Sal Torres		None

OPEN SESSION

Chair Ryan Harrison called the meeting to order at 10:05 a.m.

I. ROLL CALL

Roll call was taken, and quorum was established.

II. CALL FOR PUBLIC COMMENT

Public Member Areta Guthrey shared concerns that people with disabilities are not at the forefront of COAF and the State Bar's diversity discussions and initiatives. Ms. Guthrey emphasized that people with disabilities is the only group that intersects with other groups.

III. CHAIR'S REPORT

Chair Harrison welcome new COAF member Angelica Salceda and Judicial Council Liaison Judge Judith Dulcich.

IV. CONSENT

A. Approval of Meeting Summary and Action Items from August 27, 2021 Meeting

COAF approved August 27, 2021 meeting summary and action items by unanimous roll call vote (Torres moved, Richards seconded).

V. STATE BAR REPORTS

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

Program Manager Elizabeth Hom reported that in 2022, the Legal Services Trust Fund Commission will be distributing \$135 million in legal aid throughout the state. In terms of staffing, the Office of Access & Inclusion will soon be onboarding a Senior Financial Analyst and Program Analyst and are currently recruiting for a Program Analyst and Senior Program Analyst.

B. Update on Initiatives to Improve the Attorney Discipline System

Program Director Lisa Chavez and Principal Program Analyst Kelsey Lyles from the Office of Research Institute and Accountability provide an update regarding the reforms to the attorney discipline system.

In September 2021, the Fairness and Effective Committee established working groups for expungement, diversion (alternatives to discipline), discipline costs, and complaints closed without discipline. Each working group is currently looking at specific issues and guiding questions. All working group recommendations regarding these issues will be discussed by the full Ad Hoc Commission at its March-April 2022 meeting, for adoption scheduled in May. A final report summarizing all the recommendations will be published in June. COAF Member Sarah Good serves on the Ad Hoc Commission on the Fairness Committee and is a part of several of the working groups mentioned. Good shared that the working groups are working diligently to thoroughly review the issues and develop recommendations. She reminded COAF that the Committee meetings are also open to the public.

Lyles shared updates regarding Attorney Representation. Potential Reform 3.2, which is to inform attorneys facing discipline about the increased statistical likelihood of discipline without counsel and Potential Reform 3.1, which is to track and report the proportion of discipline cases lacking representation as a key performance indicator have both been completed. As part of Potential Reform 3.2, beginning in Q4 of 2021, a letter was distributed to half of the attorneys facing discipline (who have an investigation open against them). Since then, there has been an increase of attorneys securing counsel, around 20 percent throughout the year. Staff will continue to evaluate the impact of the letter on attorney representation in Q1 of 2022.

Staff continues to work on Potential Reforms 3.3 and 3.4 and is developing a one-year pilot program with the Association of Discipline Defense Counsel. Anticipated cost of the program is \$250,000 and is proposed to contain the following components –phone screening, case evaluation, and pro bono or low bono representation. Attorneys who pay reduced State Bar licensing fees would be eligible for this program. As for next steps, staff is still in the early phases on how to administer the program and subsidize costs. The Ad Hoc Commission on the Attorney Discipline System will review and consider the pilot program proposal at its next meeting.

COAF asked about State Bar Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation and when the State Bar will be providing notice to attorneys about this rule. Hom confirmed that an announcement will be included in the next quarterly email sent to all attorneys.

VI. TRAINING

A. Overview of Bagley-Keene Open Meeting Act Requirements

Assistant General Counsel Brady Dewar provided a training to COAF regarding Bagley-Keene Open Meeting Act and California Public Record Act requirements. As best practice, Dewar recommended the following tips for compliance:

- Be careful when emailing and texting about State Bar business, as this may be later deemed as public record
- Avoid conducting conversation about council business outside of a noticed meeting. When in doubt, route communications to State Bar staff only

- Keep emails regarding State Bar business separate from personal emails
- Always copy State Bar staff on any COAF business
- Comply with any requests from State Bar management/OGC/etc. to search emails for certain documents

B. Overview of Proposition 209 and Related Restrictions on Diversity Activities

Dewar also provided an overview of Proposition 209 and related restrictions on diversity activities. Under Proposition 209, permissible activities include outreach to increase applicant pools, such as targeted outreach to underrepresented schools and geographic areas as long as there is also broad outreach, advertising and distributing the State Bar's missions and diversities and activities (including COAF's work) and ensuring a discrimination-free workplace.

VII. DISCUSSION AND ACTION ITEMS

A. 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. Staff presented preliminary findings from the Law School Retention Study at the Law School Assembly in August. Staff will hold its first focus group on December 16 focused on academic support programs and non-academic support. COAF members offered suggestions for potential law school contacts to participate in the focus group.

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

COAF Members Richards and Anderson reported that the DIF Working Group, which is comprised of both COAF and Committee of Bar Exam members began reviewing previously used Bar Exam questions that triggered a DIF flag to determine if there were any patterns of bias. The working group also drafted a set of guiding principles on how to prevent future bias in exam question development. These principles include: ensuring that the questions use verbiage and terminology with more common meaning; that there is more balanced representation across gender, culture, and ethnic groups; and minimizing fact patterns that might trigger traumatic or emotional responses from the test takers. In January 2022, the working group plans to fine-tune the guiding principles and will ultimately present them to the Board of Trustees for approval.

C. Update on Blue Ribbon Commission on the Future of the Bar Exam (Goal 4, Objective i)

Chief of Programs Donna Hershkowitz, Chair Harrison and Vice Chair Judge Rosi reminded COAF of the Blue Ribbon Commission's charter and shared the principles the Commission is using to help guide decision-making and developing recommendations. For example, the recommended examination should be evidenced-based and that the examination, or examination alternative, should minimize disparate performance impacts on race, gender, ethnicity, or other immutable characteristics.

The Blue Ribbon Commission met in November to discuss exam versus non-exam pathways and decided to form two subcommittees to review each option more closely. Chair Harrison is on the exam subcommittee and Vice Chair Judge Rosi is on the non-exam subcommittee.

The Blue Ribbon Commission discussed potential reciprocity and ensuring consistency across all law schools and law office study programs, and whether the pathways are scalable to accommodate California's large applicant pool. The commission also created subcommittees to take a closer look at each pathway and will meet on December 8 to further discuss these options.

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

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

Items VII.D and VII.E were taken together. Hom reported that in order to produce a larger and more impactful work product, data from the Attorney Census will be analyzed along with the 2020 Impact Survey data. The two data sets will be published in a single report (combining the Diversity Report Card and the Impact Survey Report, which will be published in March 2022. Staff will reach out the respective working groups about to preview additional data findings in January and February.

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

Hom reported that staff received a final version of the implicit bias training module this morning. After review, it will be uploaded on the State Bar's e-learning platform. Hom thanked COAF member Coleman and former COAF members Judge Esther Kim and Connie Broussard for their work on this project.

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

Hom reported that the staff will develop a proposal for a statewide LRAP program. Another working group meeting will be scheduled in January with the Legal Services Trust Fund Commission and Access Commission, and an update will be provided at the February COAF meeting.

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

Hom reported that the planned outreach video with Disney will either be later this month or at the beginning of the next year.

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

No updates were provided for this agenda item.

J. Discussion of Additional Diversity and Inclusion Initiatives

Chair Harrison would like COAF to develop an imposter syndrome resource page on the State Bar website, as an additional diversity and inclusion initiative. COAF agreed with this suggestion and discussed having this resource page target both law students and practicing attorneys. It also discussed potentially collaborating with CLA, who has a Diverse Voices of the Legal Profession Video Project. Chair Harrison, Torres, Anderson, Rhoads, and Richards volunteered to serve on this working group. Santoro volunteered to be a potential candidate for a resource video if needed. There was a suggestion that staff invite an expert on imposter syndrome to present at the February COAF meeting.

K. Review COAF Work Plan, approved March 2021

L. Discussion of 2022 Work Plan

Hom provided an overview of COAF's 2021 workplan, which was approved in March 2021, and reviewed the 2022 work plan. Hom noted that the State Bar is coming to the end of its five-year strategic plan and will meet in January to discuss its new strategic plan. COAF reviewed and discussed proposed changes to the 2022 charge and work plan, which will be also discussed and finalized at the February meeting.

VIII. LIAISON REPORTS

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

Hom reported that CLA recently published a report on the Pipeline Summit. The report is available on CLA's website.

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

California LAW liaison Pat Lee reported that on December 9, it will hold a program on Critical Race Theory facilitated by Dean Kevin Johnson. Lee also reported that the deadline for the Annual Education Pipeline award has been extended to December 15 and that California LAW is in the process of recruiting for an Executive Director.

C. Discussion on Council Report on Diversity and Inclusion Initiatives

Judicial Council Liaison Judge Dulcich reported that the "Stronger Together: Judicial Diversity Summit 2021" was a success and had over 400 attendees. The advisory committee convened twice and continues to work with sponsoring agencies. Finally, the Judicial Council continues to work with JNE and has a training scheduled for January 29.

IX. ADJOURN

There being no other business, the meeting was adjourned at 2:24 p.m.