



The State Bar of California

OPEN SESSION AGENDA ITEM 705 FEBRUARY 2022

DATE: February 25, 2022

TO: Members, Board of Trustees

FROM: Kelsey Lyles, Principal Program Analyst, Office of Research & Institutional Accountability
Dag MacLeod, Chief of Mission Advancement & Accountability Division

SUBJECT: Strategic Planning Session

EXECUTIVE SUMMARY

This agenda item is intended to guide the conversation among members of the Board of Trustees toward finalization of a five-year strategic plan. The item provides notes from the conversation that Trustees engaged in at their previous strategic planning session and provides contextual information for three questions that remained unanswered at the end of the previous strategic planning session. In addition to this item, Lucas Public Affairs has provided the Board with a draft 2022–2027 Strategic Plan for consideration at the February 25 meeting via a separately posted memorandum.

BACKGROUND

At the Board of Trustee's January 21 strategic planning session, members of the Board reviewed stakeholder input that had been compiled by strategic planning consultant, Lucas Public Affairs (LPA) and State Bar staff. The input included findings from interviews with key stakeholders, ideas submitted by State Bar staff during strategic planning sessions conducted by State Bar managers, and feedback from the public solicited through a media campaign.

LPA then facilitated a conversation among members of the Board of Trustees to determine what each Trustee believed should be the top priority of the Board for the 2022–2027 strategic plan, and to determine whether there was consensus among members of the Board as to those

priorities. Notes from the conversation at the January 21 strategic planning session are attached here as Attachment A.

DISCUSSION

For many years, protection of the public has been the statutorily mandated top priority for the State Bar. The public protection mission is relatively straightforward as it relates to the attorney discipline system. The addition of goals related to *access* to and *inclusion* in the legal system, however, are less clear in their relationship to public protection.

The State Bar's mission statement, adopted in May 2017, reads:

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.

In 2018, the State Legislature amended Business and Professions Code section 6001.1, adding language about access and inclusion to the State Bar's statutorily defined "highest priority." The Legislature's approach to aligning public protection with issues of access and inclusion was to redefine public protection to include them so that the code section now reads:

Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions.

At its January 21 strategic planning session, the Board identified three key questions in relation to the Bar's public protection mission that need to be answered to resolve the question of how the Board will articulate the Bar's access and inclusion objectives and scope in the 2022–2027 Strategic Plan. These questions are:

- What should the State Bar's goal be in diversifying the profession and how can we have the greatest impact in achieving that goal?
- What does increasing access to the legal system mean? Specifically, how is it different from increasing access to justice or access to legal representation?

In addition to these questions, the Board also identified a third question, related to the State Bar's broad public protection mandate:

- Who is the public that the Bar is charged with protecting?

The Board will engage in a conversation about these questions at its February 25 meeting.

To provide context for the Board’s discussion of the diversity and access questions, staff have prepared a brief summary of the history of the Board’s prior work in these areas as outlined below.

PRIOR BOARD ACTION ON ACCESS AND INCLUSION

During annual strategic planning meetings in 2018 and 2019, the Board worked to clarify the scope of work and priorities related to the State Bar’s access and inclusion efforts, particularly in light of the separation of the State Bar sections effective January 1, 2018. The Board heard reports from staff and panels of subject-matter experts on increasing diversity in the legal profession and public access to the legal system; discussed how the State Bar’s role in diversity and access activities should be defined, and; adopted a series of objectives for inclusion in the 2017–2022 Strategic Plan.

DIVERSITY, EQUITY, AND INCLUSION SCOPE

Prior to January 2019, the State Bar’s scope of work around Diversity Equity and Inclusion (DEI) initiatives was expansive and included programs designed to draw young people into the legal profession, as well as programs advocating for judicial diversity on the California courts. Following separation from the California Lawyers Association, the Board began to narrow the focus of the State Bar’s DEI work. The Board identified two overarching goals framing the development of 2017–2022 DEI strategic objectives:

1. focusing resources and programmatic work on strategies where the State Bar can have the greatest impact; and
2. integrating a “built in, not bolted on” approach to DEI, so that all State Bar activities, including discipline, were viewed through a DEI lens.

During the January 2019 BOT meeting the Board reviewed the State Bar’s DEI portfolio and identified new State Bar objectives for influencing the legal diversity pipeline; improving retention and career advancement for diverse attorneys; and, to a lesser extent, supporting judicial diversity. With input from stakeholders including the Council on Access and Fairness (COAF), and despite some strong opinions to the contrary, the Board decided to shift the focus of the State Bar’s pipeline intervention efforts away from early education and toward law schools and aspiring professionals in the early stages of their legal career.

Specific priorities included adopting strategies for law school retention, improving bar exam passage rates, and promoting advancement in the profession. Although still reflected as a strategic plan objective, increasing judicial diversity was limited to working in partnership with the Judicial Council of California to support that agency’s leadership in this area. The Judicial Council of California, the policymaking body for California courts, has the following as an explicit aspect of its own strategic plan Access, Fairness, and Diversity goal: *“The makeup of California’s judicial branch will reflect the diversity of the state’s residents.”*

Consistent with the first overarching goal outlined above (focusing the State Bar’s resources and programmatic strategies where they can have the greatest impact), the Board determined

that supporting the Judicial Council in its efforts, particularly through outreach to attorneys to connect them to Judicial Council sponsored diversity events, would be the most effective and appropriate way for the State Bar to engage in judicial diversity work.

A similar analysis was done by the Board with respect to the pipeline to the legal profession. After significant deliberation, the Board settled on law school and “after” as the appropriate area of focus for the State Bar’s pipeline work given the State Bar’s direct connection to every law school and attorney in the state. This direct relationship increases the potential impact of any interventions or supports that the State Bar might implement. In contrast, high school or undergraduate programming are difficult to scale, and the State Bar’s impact in this space is limited.

In recognition of the unique ability and core function of the State Bar to collect and analyze licensee data, and in alignment with the overarching goal to maximize impact, the Board also directed the collection and publication of licensee demographic data in an annual report card during its 2019 planning session. The report card and underlying data provide an analytic foundation for the State Bar’s work on retention and advancement in the legal profession.

Finally, although the State Bar intentionally shifted its DEI focus on areas where it can have the greatest impact, it continues to recognize and support the important work of early pipeline initiatives that many stakeholders are engaged in including the California Lawyers Association (CLA), California Leadership-Access-Workforce (California LAW), and local and affinity bar associations.

Access to the Legal System Scope

In addition to clarifying the State Bar’s DEI objectives, the Board engaged in a similar process of identifying where the State Bar can have the greatest impact in increasing access to the legal system. Recognizing that there are various points of intervention in the legal system, the Board intentionally focused efforts on activities grounded in increasing access to legal representation and legal services that align with the State Bars’ funding, regulatory, and oversight responsibilities.

Based on discussions among Board members during the January 2019 planning session, staff proposed the following scope of work for its access to the legal system initiatives:

- Increasing or improving access to legal representation (e.g., funding for legal representation, unbundling and limited scope representation, loan repayment for law school debt, encouraging pro bono);
- Increasing or improving access to legal services that fall short of representation (e.g., self-help services, Practical Training of Law Student (PTLS) program); and
- Increasing or improving access to alternatives to legal representation (e.g., licensing paraprofessionals, examination of regulations to increase access through use of technology, exploration of alternative business structures/multidisciplinary practice to deliver legal services.)

In March 2019, following the critical review and discussion of the State Bar’s DEI and access work, the Board amended the strategic plan to include a specific diversity and inclusion goal, emphasizing those areas where the State Bar can have the greatest impact as a regulatory agency. To strengthen and clarify the commitment to DEI, the Board recommended the adoption of the following resolution:

RESOLVED, that the Board of Trustees approve revising Goal 4 of the State Bar 2017-2022 Strategic Plan to read:

Goal 4. Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves and strive to achieve a statewide attorney population that reflects the rich demographics of the state’s population.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None – core business operations

ATTACHMENT LIST

- A. Notes from January 21 2022 Strategic Planning Session

What does the State Bar need to accomplish in the next 5 years?

Duran - Deal with the backlog – need to make significant improvement in it.

Improve relationships with the legislature.

A more diverse profession in terms of race /ethnicity as well as socio-economic status

Toney – Increase the support and education of attorneys to prevent complaints from occurring in the first place.

Stallings – Reallocation of resources to support backlog reduction: investment of licensing fees and/or money earned from sale of assets.

- Efficient case processing, timely case processing in OCTC.
- Improved access to justice in rural California featuring new programs of scholarships or loan forgiveness / repayment.

SeLegue – Restore credibility with the public and the legislature.

- Establish new metrics for the discipline system that are acceptable to our oversight bodies and feasible within existing (or augmented) resources.
- Make meaningful progress in closing the justice gap.
- Diversify senior leadership of the State Bar.
- Synthesize work and recommendations arising from the Committee on Special Discipline Case Audit with recommendations from the Ad Hoc Commission on the Discipline System.

Chen – Focusing on the organization we would like to be in 5 years.

- The public understands and views the State Bar as a resource for access to justice (consider the necessity of organizing the delivery of legal services by county)
- The licensee population views the State Bar as a resource for them. Only interaction with the State Bar should *not* be admissions, fee payments, mcle.
- OCTC feels motivated and supported in fulfilling their public protection duties, goes after the most important cases.

De La Cruz – Building on prior comments ...

- Work with the Legislature to get the Chief Trial Counsel confirmed.
- Improved public understanding of how the Bar supports access to justice.
- Promoting programs that encourage diverse young people to become attorneys.
- Healthy relationships with the legislature, advocacy groups, and others to better protect the public.

Delen –

- Backlog is reduced with a more permanent solution. Additional resources, better communication with the legislature about why we need the resources.
- Dispense with lower-level cases more rapidly to free up resources for more serious cases.

- Communicating effectively with the public about legal services, educating the public about when they need legal services and understand how to get them (resources, website, social media)
- Support for attorneys, proactively preventing them from engaging in misconduct in the first instance, identify opportunities for collaboration with CLA to do this.
- Improving the State Bar's relationship with the Legislature.

Wilson – We need to clarify what we mean by “access to justice.” Does it refer to access to lawyers; access to courts; access to legal advice? These are not all the same things.

Stallings – views access to justice in rural areas as encompassing *all* of the parts of what Leah Wilson mentioned – need to increase the number of lawyers in rural areas. Access does involve access to lawyers.

Broughton – agrees with Leah Wilson about the need to clarify what is meant by access to justice. Moreover: What does that mean for what the Bar does?

- “Support programs to increase access to the Legal System” in the current mission statement means what, exactly?
- Our number one priority needs to be regulation of attorneys.
- The Client Security Fund should have more money to pay out in claims.

Cisneros – model to organize the thoughts into three buckets.

- Support of the legal profession – adequate oversight in addition to support for attorneys w mental health / substance abuse problems and educational support.
- Support of the public – access to legal services, making referrals for legal assistance, Client Security Fund, investigating complaints.
- Engagement with our partners to ensure success. Legislature, judiciary, executive, consumer organizations, community organizations, the bench.

Shelby – Embedding diversity, equity & inclusion throughout all operations of the State Bar (involves both pipeline (who's not there) and representation (who's already there)).

- Reducing the backlog and producing metrics that capture the work that we do and the public protection value.
- Educate all stakeholders and the public.
- Restore and build effective relationships with all constituencies including legislature, judiciary, and the general public.

Sowell – It's all been said ... but, the areas that resonate the most:

- Improving and restoring relationships.
- Dealing with the discipline system backlog.
- Access to justice in its various different forms.

Duran – circling back – no change.

Wilson – We need:

- Strong Relationships to Advance our Mission
- An Informed and Empowered Public
- Increase Access to Legal Services (not just lawyers)
- Meaningful and Effective Prevention
- A Robust and Effective Enforcement System (includes development of metrics that have buy-in and credibility)
- A Diverse and Inclusive Profession

Toney – reflections on the input over the last couple of days.

- Strategic planning is important in large part because it is essential for the Board to have a consensus and embrace the goals contained in the plan.
- There's a lot of agreement, but there are also a lot of questions that will require another day of conversation, e.g., what access to justice means.

Stallings – agrees that we've made a lot of progress and that there's a lot of consensus.

Chen – Thinks that specifying what we mean by access will help us clarify the goals.