



The State Bar of California

OPEN SESSION AGENDA ITEM JANUARY 2023 AUDIT COMMITTEE III.A

DATE: January 19, 2023

TO: Members, Audit Committee

FROM: Elizabeth Hom, Program Director, Office of Access & Inclusion

SUBJECT: Review and Discussion of Draft Biennial Report to the Legislature on Diversity, Equity, and Inclusion in the Legal Profession

EXECUTIVE SUMMARY

Business and Professions Code section 6001.3 directs the State Bar to develop and implement a plan demonstrating its ongoing “commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law.” To comply with this requirement, the State Bar submits a report detailing its progress and plans to develop and implement various policies and initiatives to advance DEI in the profession. The State Bar will submit the next biennial report to the legislature on March 15, 2023. This purpose of this agenda item is to provide the Audit Committee the opportunity to review and provide feedback on the report.

BACKGROUND

Beginning in 2019, Business and Professions Code section 6001.3 has required the State Bar to submit a biennial report on its progress and plans demonstrating its ongoing “commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law.” In 2019, the [first report](#) detailed the State Bar’s historical activities to combat implicit bias, to advance diversity and inclusion in the profession, and identified ongoing and planned initiatives. That report also highlighted the prioritization of diversity and inclusion in the State Bar’s strategic plan and the focus on priorities where the agency is uniquely situated to have the greatest impact, including data collection and systemic changes as a regulator. In 2021, the [second report](#) provided updates on the activities identified in the 2019 report and described the State Bar’s efforts in

the core pillars of its DEI work: statewide leadership, building a culture of diversity, pipeline to the profession, retention and advancement in the profession, and promoting judicial diversity. That report highlighted the State Bar's meaningful progress in data collection, including publication of the [First Annual Report Card on the Diversity of California's Legal Profession](#) as well as significant efforts to address issues impacting DEI in the legal profession, including ensuring bar exam questions are unbiased, improving performance on the bar exam, and addressing disparities in the attorney discipline system.

DISCUSSION

The current draft DEI report provides an update on ongoing initiatives identified in previous reports and identifies planned activities, underscoring the Board of Trustee's commitment to DEI in adopting the 2022–2027 Strategic Plan, which considers diversity, equity, and inclusion as a foundational principle for the State Bar's work in its own operations and for the legal profession. The report provides a demographic overview of the legal profession, highlighting the data collected from the attorney census, and organizes updates in four sections: statewide leadership, creating a culture of inclusivity, pipeline to the profession, and retention and advancement in the profession. Each section includes the plans outlined in the 2021 report and includes a subsection on future plans based on the 2022–2027 Strategic Plan. The report will also include an analysis of funding needs for this important work.

Please note that there are areas of the draft report that require further drafting and development, and that the report contains screen shots of charts and figures as placeholders; the final report will have clear images.

ATTACHMENT LIST

- A. Draft 2023 Diversity, Equity, & Inclusion Report to the Legislature

DRAFT 2023 DIVERSITY, EQUITY, & INCLUSION REPORT TO THE LEGISLATURE

INTRODUCTION

Diversity, equity, and inclusion (DEI) positively impacts the administration of justice, ensures fairness, and promotes the rule of law. As detailed in the State Bar's previous DEI reports to the legislature, beginning in 2019, the State Bar's organizational and statutory mission has prioritized DEI with the Board of Trustees and staff approaching this work with a "built in, not bolted on" approach.¹ In 2019, the board prioritized DEI work in the State Bar's strategic plan by including nine concrete DEI objectives in that plan. The board took its commitment to DEI a step further when adopting the [2022–2027 Strategic Plan](#),² which states the following:

The State Bar's mission is rooted in protecting the public. The strategic goals reflect the organization's vision for realizing that mission over the next five years. As a foundational principle, the State Bar is committed to advancing diversity, equity, and inclusion with respect to both its own operations and the legal profession itself.

The State Bar is proud to submit this report, which documents significant and meaningful progress in the last two years in its efforts to identify and reduce implicit bias in the practice of law and to increase DEI in California's legal profession. As the largest regulatory agency in the country, and against the backdrop of recovery from a global pandemic and growing awareness and support from both the legal profession and the public at large to address the impacts of systemic racism on the justice system, the State Bar continues to embrace its role to protect the public by advancing DEI in the profession. By reviewing and improving upon processes and practices from law school to licensure to retention and advancement across sectors, the State Bar's goal is to support an increasingly diverse attorney population who, in turn, will be able to provide meaningful access to justice to all Californians. With continuous feedback from the Council on Access and Fairness (COAF), attorneys, the public, and other stakeholders, the State Bar hopes these efforts will contribute to the larger national conversation on DEI and access to justice issues.

¹ The State Bar submitted its [first biennial DEI report](#) to the legislature in 2019 and the [second biennial DEI report](#) in 2021.

² The 2022-2027 Strategic Plan includes four goals:

- Protect the public by strengthening the attorney discipline system
- Protect the public by enhancing access to and inclusion in the legal system
- Protect the public by regulating the legal profession
- Protect the public by engaging partners

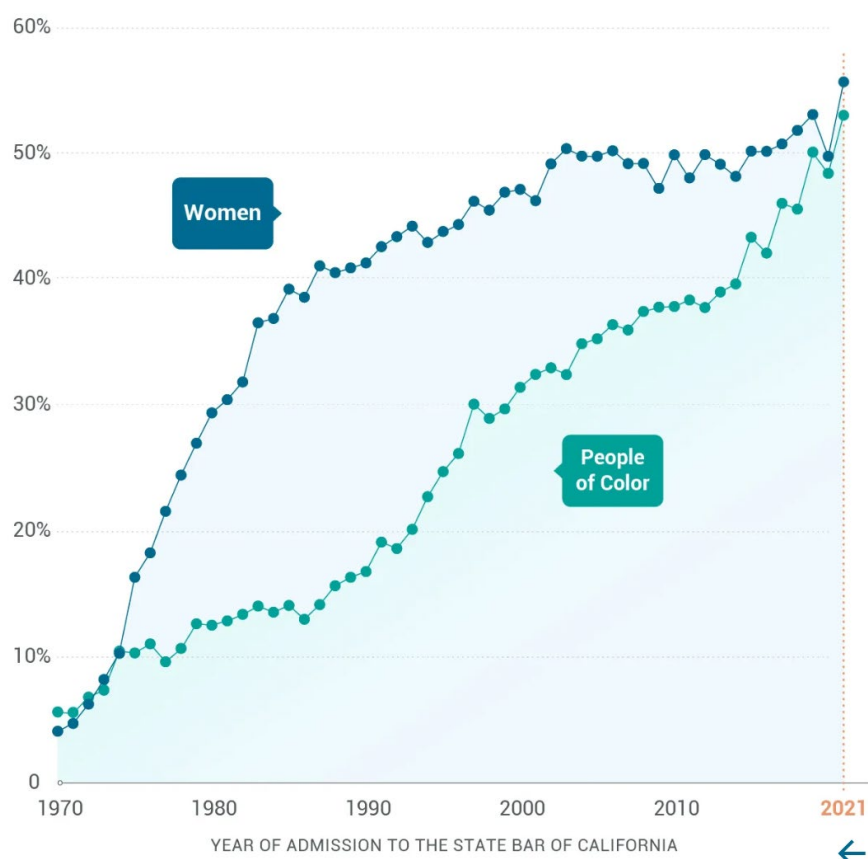
To meet these ambitious goals, the strategic plan focuses implementation strategies in the following areas: effectiveness; consumer focus; diversity, equity, and inclusion; and policy and systems change.

This report will highlight the State Bar’s progress and plans in the following areas: Statewide Leadership, Creating a Culture of Inclusivity, Pipeline to the Profession, and Recruitment and Advancement in the Profession. Please note that prior versions of this report included a section on Judicial Diversity; as indicated in the 2021 report, the State Bar defers to and supports the efforts of Judicial Council of California in this area.

DEMOGRAPHIC OVERVIEW

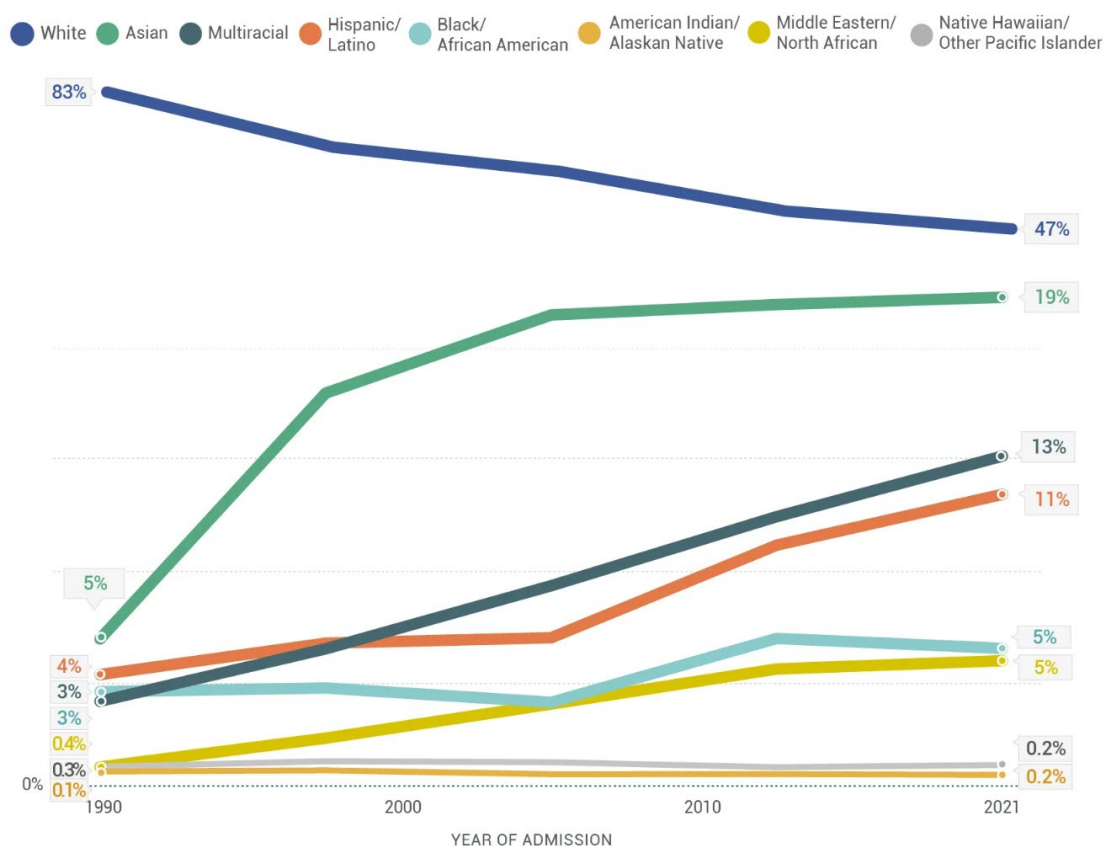
There has been little change in attorney demographics since the last report, and as highlighted in the 2021, while the profession has become increasingly diverse over the last 50 years, much work is still needed to ensure that the state’s active attorneys reflect the rich diversity of California’s adult population. The newest cohorts in the legal profession are far more diverse than those who have been in the profession for decades, with women comprising half of the newly admitted attorneys for the first time in 2003. People of color reached this milestone over 15 years later, and women and people of color comprised 53 and 51 percent of newly admitted attorneys, respectively, in 2019. While there was a slight decline in 2020, in 2021, the percentage of newly admitted attorneys who were women and people of color increased to 56 and 53 percent respectively, continuing the trend of a more diverse population of admittees.

Figure 1. Percent of California Attorneys who Identify as a Woman or Person of Color by Year Admitted to the State Bar of California: 1970–2021



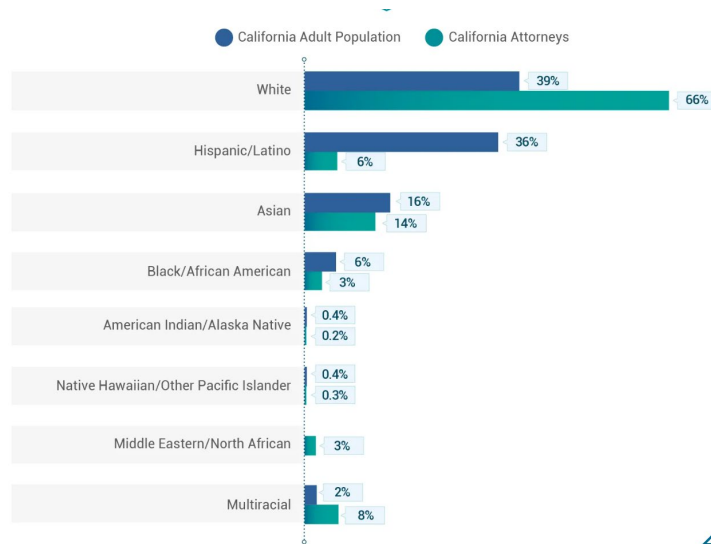
The State Bar's new licensees have become more racially and ethnically diverse, but the rate of change has varied by racial/ethnic group. Over the last three decades, the Hispanic/Latino share of newly admitted attorneys nearly tripled from 4 percent in 1990 to over 11 percent in 2021. Likewise, the proportion of new licensees who are Asian or multiracial has more than tripled. The rapid growth in the number of Asian attorneys began in the 1990s and has since leveled off. Over the same period, the proportion of newly licensed Black attorneys increased from 3 percent to 5 percent.

Figure 2. Racial/Ethnic Composition of Attorneys by Year Admitted to the State Bar of California: 1990–2021



While recent cohorts are more diverse by race/ethnicity and gender, the overall attorney population remains predominantly white and male. White people comprise 39 percent of the state's adult population yet are 66 percent of California's active licensed attorneys. Hispanics/Latinos comprise 36 percent of the state's population but only 6 percent of all California's licensed attorneys. Asian attorneys comprise 14 percent of all attorneys and 16 percent of the state's population. Attorneys who identify as multiracial comprise 8 percent of all attorneys; this is four times more than the share of adults statewide who identify as multiracial. Black people are 6 percent of the adult population in California and 3 percent of all attorneys.

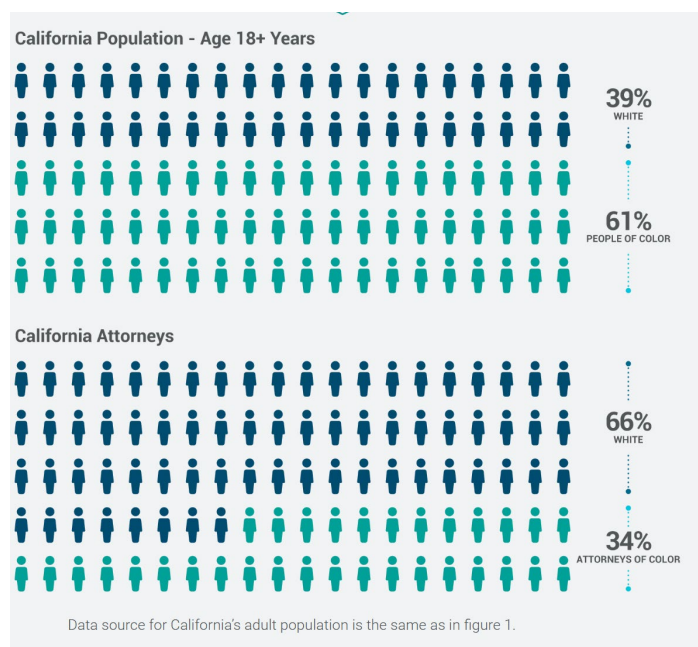
Figure 3. Race/Ethnicity of California's Adult Population Compared with California's 2022 Attorney Population



Data on California's adult population in this figure represents the year 2020 and was drawn from the Annie E. Casey Foundation's Kids Count Data Center.

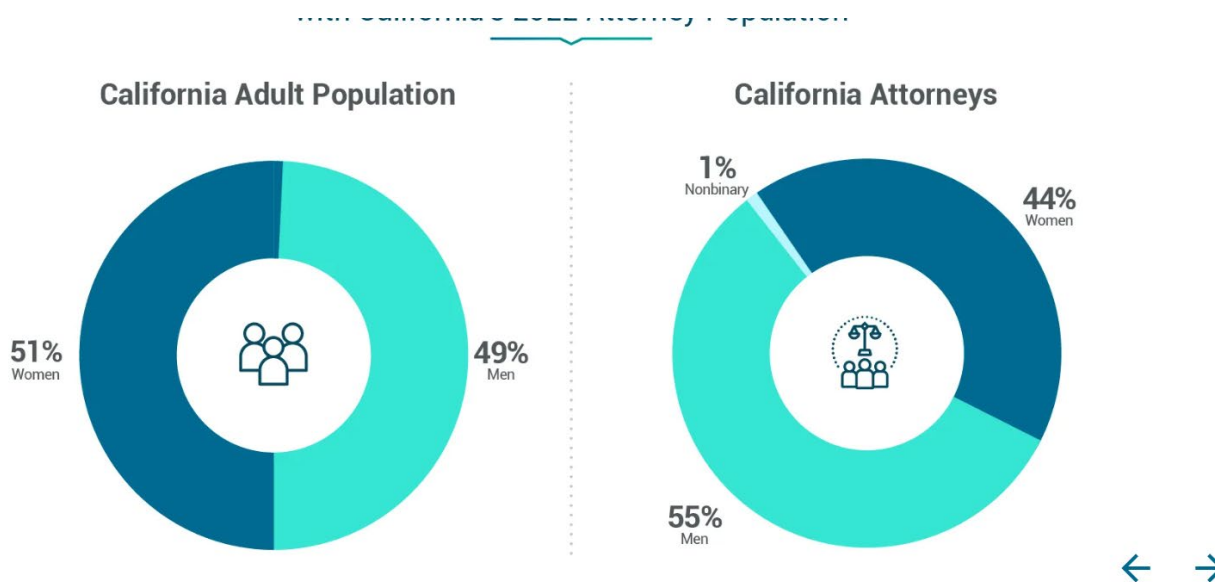
People of color constitute 61 percent of the state's adult population yet just over one-third (34 percent) of California's attorneys.

Figure 4: White and People of Color: California's Adult Population Compared to California's 2022 Attorney Population



Women are over half of California’s adult population, but just 44 percent of California attorneys. One percent of the attorney population identifies as nonbinary. No comparable data is available for the California adult population.

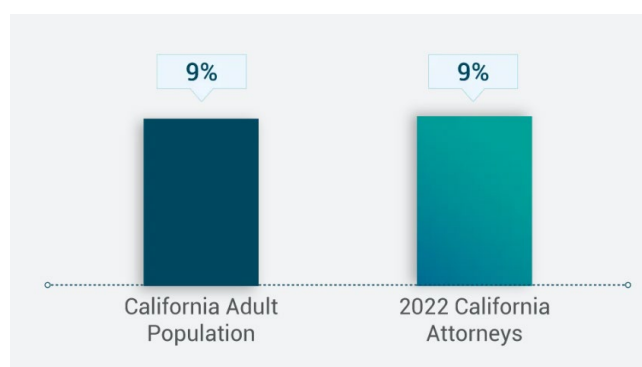
Figure 5: Gender Identity: California’s Adult Population Compared with California’s 2022 Attorney Population



Data on California’s adult population in this figure represents the year 2020 and was drawn from the American Community Survey, United States Census. Data on California’s adult population that identifies as nonbinary is unavailable.

The share of attorneys identifying as LGBTQIA+ is the same as California’s statewide LGBTQIA+ adult population.

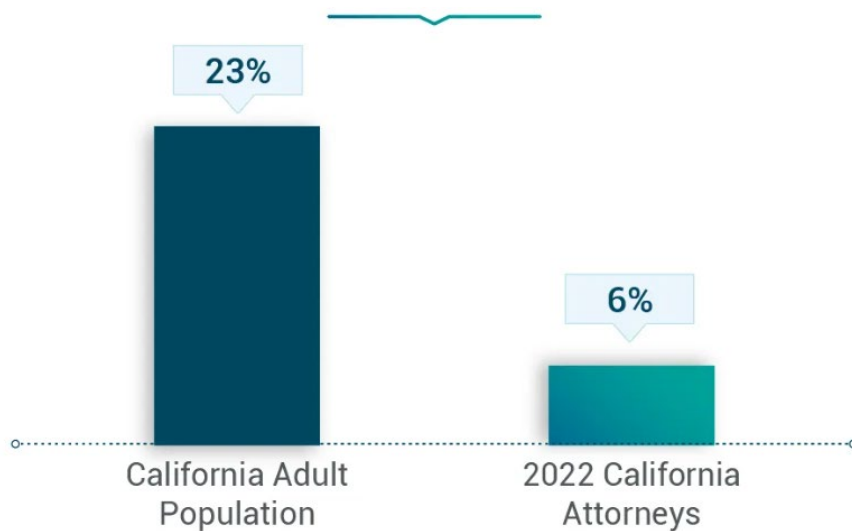
Figure 6. Sexual Orientation/Identity: LGBTQIA+: California’s Adult Population Compared with California’s 2022 Attorneys Population



Attorneys with disabilities comprise just six percent of the profession. More than one in five Californians report having at least one form of disability that limits activities and self-care.

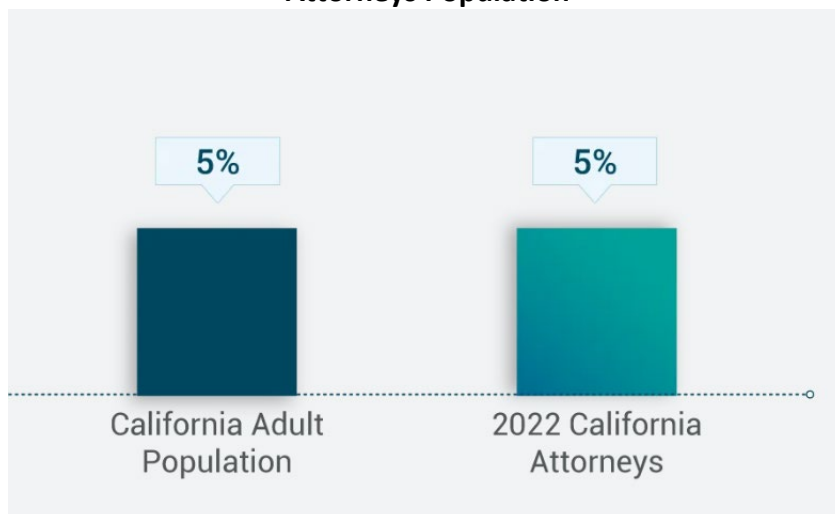
These include mobility issues, cognitive impairments, and vision and hearing impairments. In contrast, only 6 percent of California attorneys reported living with a disability in 2022.

Figure 7. People with Disabilities: California's Adult Population Compared with California's 2022 Attorneys Population



Veterans' presence in the attorney population is comparable to the state population.

Figure 8. Veterans: California's Adult Population Compared with California's 2022 Attorneys Population



STATEWIDE LEADERSHIP

The 2021 plan outlined key statewide leadership activities as follows:

- Administer annual attorney census
- Administer 2020 Impact Survey

- Publish Diversity Report Card
- Develop DEI Leadership Seal program

ATTORNEY CENSUS

The attorney census continues to be administered annually to all California attorneys. It is a voluntary survey administered during the annual licensing fee payment period through the State Bar's online portal. As reported previously, the survey was first issued in 2019, and it contained questions on (1) demographic characteristics, (2) primary employment sector, (3) workplace leadership, and (4) workplace climate. The State Bar has since developed two versions of the survey. A short version, containing demographic questions and formatted so that prior answers are stored and available for updating, is administered annually. An extended version of the survey that includes employment and workplace-related questions is administered every two to three years. In 2021, the extended version of the survey was administered. In 2022, the shortened version of the attorney census was administered.

Since 2019, the State Bar has learned a great deal about collecting and analyzing demographic and other data; it is not a static or one-size-fits-all process. Creating an inclusive and equitable demographic data collection tool requires actively seeking input from relevant stakeholder groups and inquire how they choose to express and define their identities. The State Bar is committed to continuously improving the attorney census to maximize its reliability and validity and has made several changes since it was first administered in 2019.

Gender Identity

The 2019 attorney census included transgender as a response option to the gender identity question. California attorneys from LGBTQIA+ bar associations partnered with the State Bar to explore how to allow transgender attorneys to best self-identify. The solution was to create an additional question to allow respondents to identify as cisgender, transgender, or intersex, or to provide another category with which they identify. This new question immediately follows the gender identity question, which no longer has “Transgender” as a response option. The new question was first administered in the 2021 attorney census.

Employment and Workplace Satisfaction Questions

In fall 2019, the State Bar engaged in focus group discussions with California licensed attorneys to review preliminary results of the 2019 attorney census. These informative discussions led to the following modifications, which were first deployed in the 2020 census:

- Improved categories to capture the primary employment sector;
- Updated categories listed for employment position levels across all sectors;
- New questions on employment status, position title, practice area, office size and location, and salary; and
- New questions for attorneys who work in law firms that delve more deeply into leadership opportunities specific to this sector.

The workplace climate questions were revised as follows:

- Listed improved workplace factors in the primary matrix question;
- Expanded the Likert response scale associated with the matrix question from three response categories to five and removed the option to select “not applicable”; and
- Added a new question that asked attorneys to identify the top five areas of work that would need to change for their overall satisfaction to increase.

DIVERSITY REPORT CARD AND 2020 IMPACT SURVEY

Building off of the [2020 Diversity Report Card](#), the State Bar published a first of its kind online, interactive [Report Card on the Diversity of California’s Legal Profession](#) in August 2022. The report card describes the demographic composition of California’s 2022 attorney population and explores racial/ethnic and gender patterns in more recent cohorts of attorneys admitted to the State Bar. Analyses that explore where attorneys work, their leadership experiences, and satisfaction with workplace experiences crucial to advancement and retention are also included and are based on the 2021 attorney census. These analyses were supplemented with findings from the 2020 Impact Survey, which was administered in April 2021 to explore how the first year of the COVID-19 pandemic and the increased national attention on racial justice impacted attorneys’ work experiences.³ Interactive data visualizations are provided throughout the report with plans to provide deeper dives into specific topics to be released during the coming year. Key findings are highlighted immediately below.

Where California Attorneys Work

Showing little change from the 2020 Report Card, the majority of attorneys (80 percent) work in the private sector, with white attorneys and male attorneys more likely to do so than women, non-binary attorneys, and attorneys of color. The largest share of attorneys works in law firms of two or more attorneys (39 percent), while 22 percent are solo practitioners, and 15 percent work in corporate settings. Over one in 10 attorneys work in the government sector, 4 percent work in nonprofit settings, 3 percent work in other private settings, and 2 percent work in academic or other settings (labeled as “Other”).

³ The 2020 Impact Survey was a one-time survey that sought to learn how the first year of the COVID-19 pandemic and the increased national attention on racial justice impacted attorneys’ work experience. Survey topics included: (1) the challenges faced by California licensed attorneys in their work life, (2) the employee resources that aided them, (3) the priority attorneys placed on diversity and inclusion, and (4) perceptions about employers’ efforts to advance diversity and inclusion in the workplace. The findings represent 18,000 attorneys who met the following conditions: (1) they had an active license at the time of the survey, and (2) their race/ethnicity was available via this survey or any other data sources by which the State Bar collects demographic data from attorneys. This group of attorneys comprised 9 percent of all 2021 active attorneys and is a representative sample of active attorneys licensed in California along racial/ethnic and gender demographics.

Figure 9. California Attorneys' Primary Employment Sector

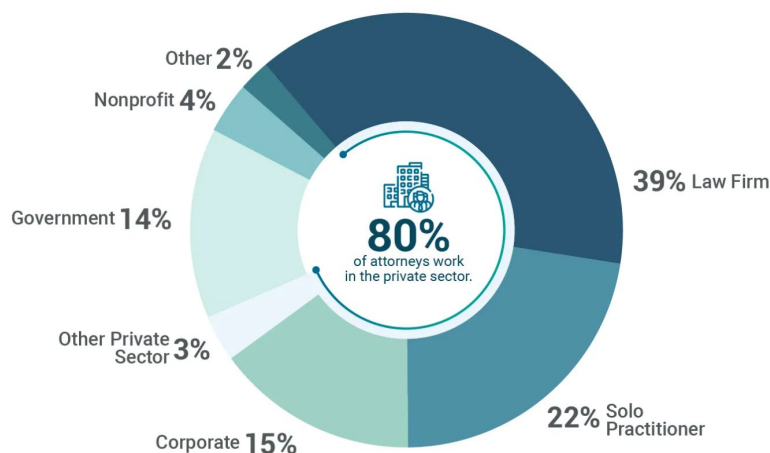
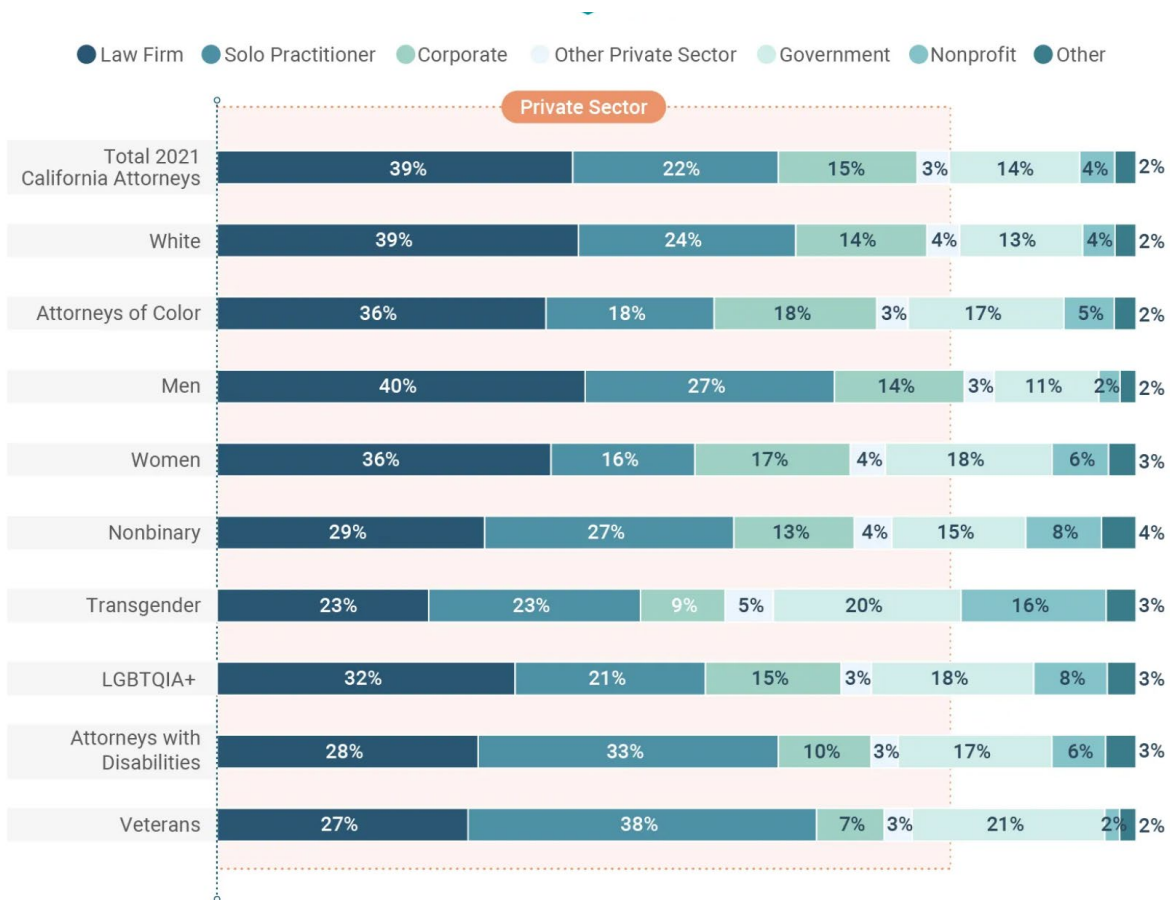


Figure 10 explores attorneys' primary employment setting by demographic characteristics.

Highlights include the following:

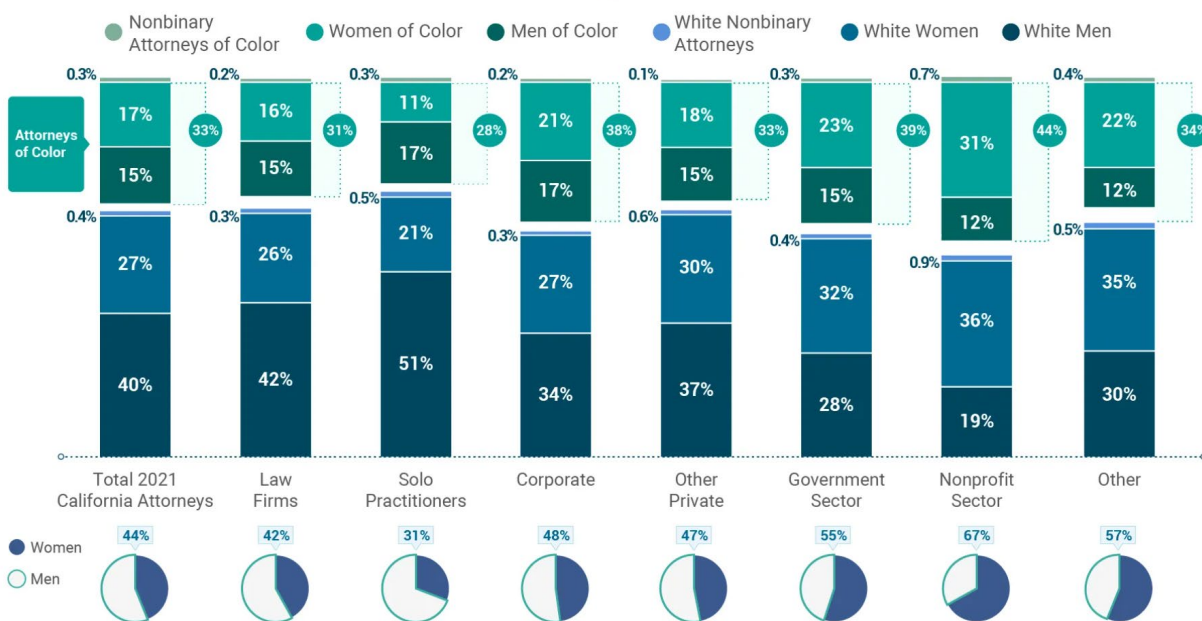
- Nearly one in four white attorneys (24 percent) are solo practitioners compared with 18 percent of attorneys of color.
- Attorneys of color are more likely to work in government settings than white attorneys (17 percent versus 13 percent).
- Eighteen and 6 percent of women work in the government and nonprofit sectors, respectively, while only 11 and 2 percent of men work in these sectors.
- Transgender attorneys are four times more likely to work in the nonprofit sector compared with all attorneys.
- Veterans and people with disabilities are more likely to work as solo practitioners compared with all attorneys.
- One in five transgender attorneys and veteran attorneys work in the government sector.

Figure 10. California Attorney Primary Employment Sector by Demographic Background Characteristics



By sector, the government/public and nonprofit sectors are the most diverse. Women comprise 44 percent of all attorneys yet are more than half of attorneys who work in the government sector and 67 percent of attorneys who work in the nonprofit sector. This pattern is also the same for attorneys of color, although it is primarily driven by women of color, who comprise just 17 percent of all attorneys yet 23 and 31 percent of the government and nonprofit sectors, respectively. White men comprise 40 percent of all active attorneys but were slightly more than half of all solo practitioners (51 percent).

Figure 11. Race/Ethnicity and Gender Composition of Employment Settings



Diversity in Leadership Roles

Diversity in leadership roles in any organization reflects the entity's values to its workforce, clients, stakeholders, and community. Leaders that demonstrate a commitment to inclusion and diversity can drive a workplace culture that supports the recruitment, retention, and advancement of a diverse workforce. The following findings underscore the importance of studying, developing, and supporting initiatives to ensure retention and advancement for women attorneys, nonbinary attorneys, attorneys that identify as transgender, attorneys of color, and attorneys living with disabilities.

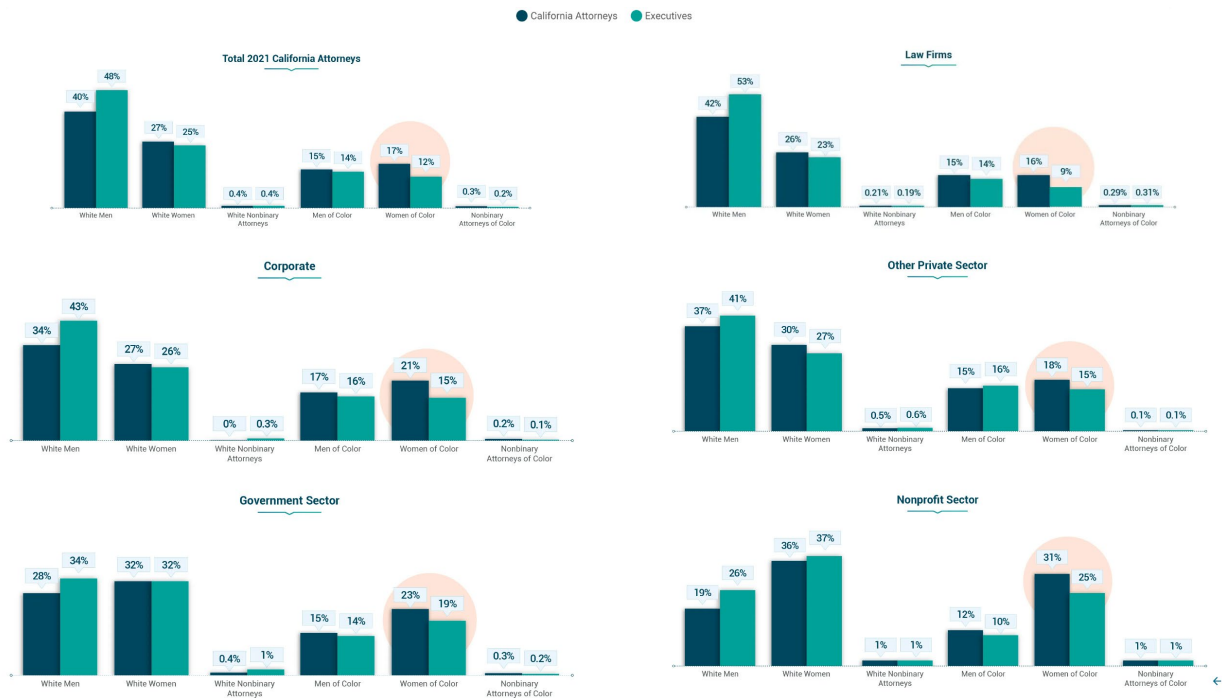
The 2021 attorney census contained several questions regarding workplace roles and responsibilities. Among all attorneys, 42 percent are executives. Law firms stand out as the sector that provides the most opportunities for an executive role, with 56 percent of law firm attorneys reporting that their primary position is an executive. In contrast, only one in five attorneys who work in the government sector report serving in an executive role.

Figure 12. Percent of Attorneys who are Executives by Employment Sector

| | |
|-------------------|-----|
| Total Attorneys | 42% |
| Law Firms | 56% |
| Corporate | 36% |
| Other Private | 37% |
| Government Sector | 12% |
| Nonprofit Sector | 31% |

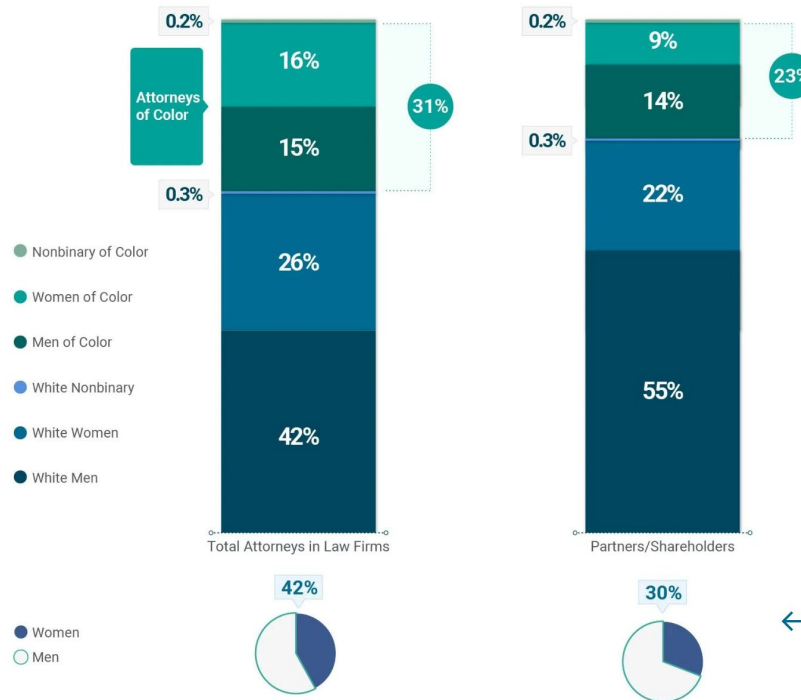
Women of color are underrepresented among executives. Figure 13 compares the demographic composition of executives with the composition of attorneys statewide and at law firms, corporations, and in the government and nonprofit sectors. Racial/ethnic and gender disparities among executives are driven mainly by patterns among white men and women of color. White male attorneys comprise 40 percent of attorneys statewide yet are 48 percent of all executives. In contrast, women of color are 17 percent of total attorneys and 12 percent of executives. These patterns persist across all sectors, including the nonprofit sector, where women of color comprise 31 percent of attorneys yet only 25 percent of nonprofit executives.

Figure 13. Racial/Ethnic and Gender Composition of Executive Leaders by Sector



People of color and women are underrepresented among law firm partners and shareholders. Women comprise 42 percent of all law firm attorneys yet 30 percent of law firm partners and shareholders. Racial disparities among law firm partners/shareholders are driven mainly by differences between white men and women of color. For example, white men comprise 42 percent of all law firm attorneys yet are 55 of law firm partners and shareholders. In contrast, women of color are 16 percent of law firm attorneys yet comprise just 9 percent of partners and shareholders. The difference for white women is not as large (26 percent versus 22 percent), and there is little difference for men of color.

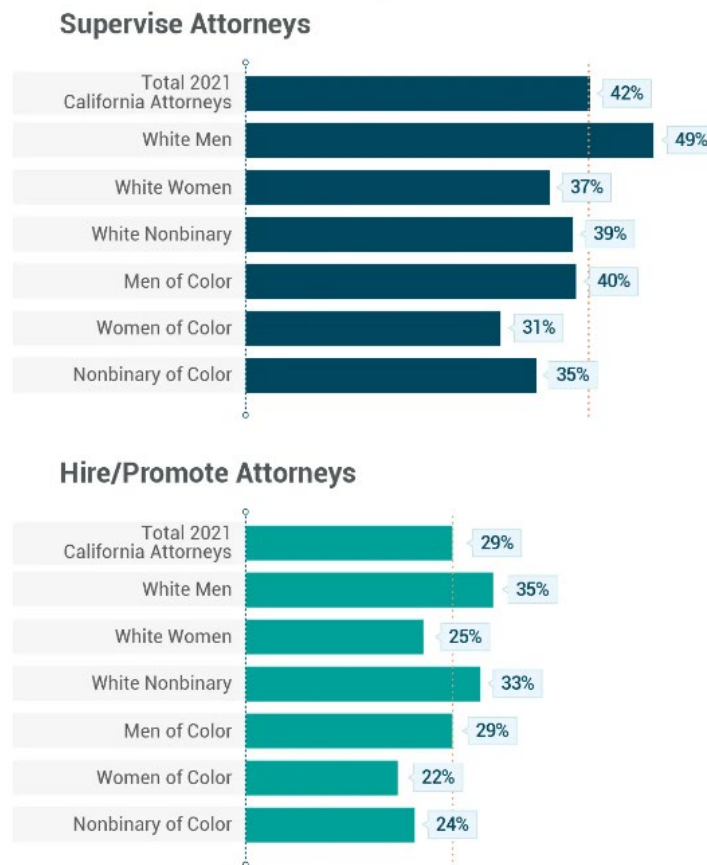
Figure 14. Racial/Ethnic and Gender Composition of Law Firm Attorneys and Partners/Shareholders



Women, nonbinary attorneys, and attorneys of color are less likely to supervise, hire, and promote other attorneys than white men.

Figure 15 explores variation in the share of attorneys who supervise, hire, and promote other attorneys by the intersection of race/ethnicity and gender identity. Unsurprisingly, white men are more likely to be in these roles than all attorneys, with the difference in the percent of attorneys who have these roles being largest between white men and women of color. For example, nearly half of white male attorneys (49 percent) supervise other attorneys compared with one-third of women of color attorneys (31 percent), an 18-percentage point difference. In addition, over one-third (35 percent) of white men hire and promote other attorneys compared with just one in five women of color (22 percent), a difference of 13 percentage points.

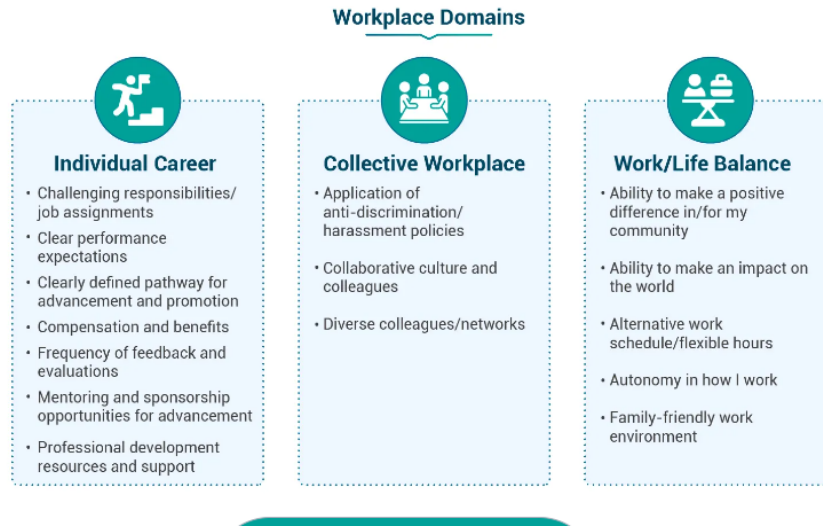
Figure 15. Attorneys who Supervise, or Hire and Promote Attorneys by Race/Ethnicity and Gender



Workplace Satisfaction

Satisfaction with workplace experiences is an important retention factor. The attorney census asked survey respondents to indicate their satisfaction with 15 areas of the workplace that impact: (1) individual careers, (2) the collective workplace, and (3) work-life balance. The analyses below are based on composites that represent an overall satisfaction rating for each of these three domains based on three to seven areas. Each domain and its areas are listed in Figure 16.

Figure 16. Workplace Domains



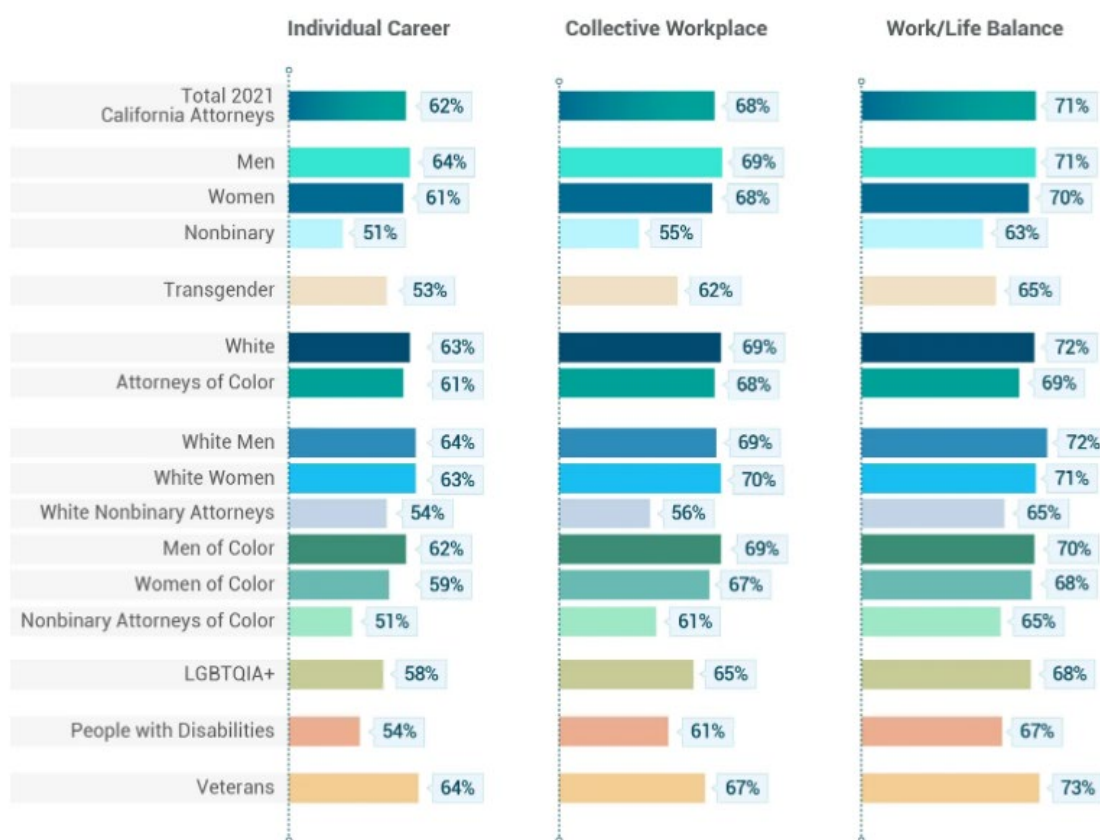
There is minimal variation in satisfaction with individual career issues by sector. However, nonprofit attorneys report the highest satisfaction with collective workplace and work-life balance issues (83 and 79 percent, respectively). All three private subsectors (corporations, law firms, and other private settings) report lower satisfaction with work-life balance than attorneys working in the government and nonprofit sectors.

Figure 17. Workplace Satisfaction by Employment Sector



Attorneys who identify as nonbinary (white and of color) report the lowest satisfaction levels with workplace experiences across all three domains. The satisfaction gap between white men and women of color is largest in workplace experiences related to individual careers. Attorneys with disabilities also report lower satisfaction levels in workplace experiences related to both individual careers and the collective workplace compared with total attorneys.

Figure 18. Satisfaction with Individual Career, Collective Workplace Issues, and Work/Life Balance



Related to workplace satisfaction, belonging in the workplace is rooted in the basic concepts of feeling supported, accepted, and valued as an employee. The 2020 Impact Survey found that approximately 69 percent of attorneys reported feeling a sense of belonging and inclusion in their organization. However, differences in race/ethnicity and gender identity are notable. Attorneys of color and women report lower levels of belonging than white and male attorneys (65 and 66 percent compared with 71 and 72 percent, respectively). These patterns were consistent before 2020 and in 2021.

The 2020 Impact Survey also found that the shift from in-person to remote or hybrid work environments due to the pandemic impacted workplace satisfaction. In response to the survey, most attorneys reported primarily working from home during the pandemic and, in response,

cited benefits of remote work to include cost savings, personal flexibility, and better work-life balance. However, attorneys of color, especially women of color, were more likely to report increased workload during the pandemic.

In addition, women were much more likely to report difficulties coordinating and providing care for children and family members. For example, 57 percent of women, 40 percent of men, and 42 percent of nonbinary attorneys reported their ability to manage childcare was worse during the pandemic. Attorneys' ability to manage childcare also varied by race/ethnicity. About half of white and Hispanic/Latino attorneys reported it was worse (about 50 and 48 percent, respectively), while only about 41 percent of Black attorneys reported it was worse.

Both the 2020 Impact Survey and the attorney census identify that there are opportunities to improve workplace satisfaction for attorneys. A question in the attorney census asked attorneys to select the top five areas that would need to improve for their overall satisfaction to increase. The analysis below highlights key findings.

Figure 19. Top Five Areas of the Workplace that Need to Improve for Employee Satisfaction to Increase: Highlights



"Compensation and benefits" is ranked as the top area of desired improvement by all attorneys and demographic groups analyzed.



"Ability to make a difference in/for my community" is the second-highest area selected by white men and attorneys who work in law firms and other private noncorporate settings.



"Professional development resources and support" is the second-highest area selected by women, nonbinary, attorneys of color, LGBTQIA+, attorneys with disabilities, veterans, and attorneys working in nonprofit settings.



"Alternative work schedules/flexible hours" is a top-five area for women, transgender attorneys, attorneys with disabilities, veterans, and attorneys across all employment sectors except for corporate settings.



"Mentorship and sponsorship opportunities for advancement" is a top-five area for attorneys of color, nonbinary attorneys, LGBTQIA+, attorneys with disabilities, and attorneys who work in corporate, government, and nonprofit settings.

Calls to Action

The Report Card also features "Calls to Action" to share strategies and best practices to encourage employers and attorneys to advance an inclusive workplace in support of a profession that reflects the diversity of our state. The calls to action build off the ones included in the 2020 report card and are based on research of best practices and stakeholder focus groups and interviews. Additionally, recognizing the differences in available resources and practices across sectors, the calls to action section now includes sector specific calls to action for the private sector, government sector, and nonprofit sector. The employer calls to action are organized into four sections:

- Promote transparency and accountability
- Build an inclusive culture
- Diversity recruitment strategies and pipelines
- Retain, advance, and empower staff

Calls to action for attorneys were also developed to encourage individuals to proactively take steps to impact DEI in their workplaces and the profession in categories that complement the employer calls to action:

- Transparency and accountability
- Contribute to an inclusive workplace culture
- Advocating for equitable resources and opportunities

Calls to action by sector and for attorneys are available at Attachment X.

DEI LEADERSHIP SEAL

Complementing the Diversity Report Card and its calls to action, the goal of the DEI Leadership Seal program –launched in mid-January 2023– is to encourage legal employers to publicly commit to and implement measurable diversity, equity, and inclusion best practices. The DEI Leadership Seal will be available to all legal employers with California-licensed attorneys, including law firms of all sizes, in-house legal departments, legal academia, nonprofit organizations, and government agencies with attorney staff. Employers that commit to pursuing at least five out of ten Action Items will be recognized as participating employers and listed on the State Bar website. The DEI Leadership Seal application with the full list of Action Items is available at Attachment X.

Participating employers that have already implemented at least five of the ten Action Items will be eligible to receive the State Bar DEI Leadership Seal, which they can use on their own print and online materials to signal their participation. Seal recipients will be recognized as bronze, silver, or gold-tier recipients based on the number of Action Items they implement. Participating employers that have not yet implemented the Action Items will have one year to implement them before the employer can receive the DEI Leadership Seal.

The DEI Leadership Seal Action Items were informed by the best practices in the Diversity Report Card, research on pre-existing DEI programs for legal and non-legal employers, and information gathered from focus groups and interviews. Staff held over a dozen focus groups and feedback sessions with members of COAF, representatives from California Lawyers Association, members of local and affinity bar associations, legal employers and stakeholders in the nonprofit sector, private sector, and government sector to gain their perspectives on whether employers would be willing and able to commit to and implement the Action Items. The State Bar has compiled a resource guide, which includes best practices and samples, as a tool to help employers develop and achieve their DEI goals. The DEI Leadership Seal Action Items Resource Guide is available at Attachment X.

The State Bar plans to announce the first cohort of participating employers and seal recipients in summer 2023. In future years, the DEI Leadership Seal Action Items will change to encourage employers to commit to additional, more ambitious steps toward diversity, equity, and inclusion to continue participating in the program.

The State Bar, itself as an employer of California attorneys, also plans to seek DEI Leadership Seal status and will share our progress in hopes to inspire legal employers to participate in the program.

OTHER OPPORTUNITIES TO PROMOTE DEI WITH INDIVIDUAL ATTORNEYS

The State Bar continues to seek out opportunities to promote DEI with individual attorneys, including making presentations on the Diversity Report Card, DEI Leadership Seal, and other initiatives to law schools, including UC Berkeley and Pepperdine School of Law, as well as to local and affinity bar associations, including the Alameda County Bar Association, Bar Association of San Francisco, Black Women Lawyers Association, and California Asian Pacific American Bar Association. Staff are also seeking partnerships with California Lawyers Association and local and affinity bar associations to further develop and make available resources to attorneys.

FUTURE PLANS

The State Bar consistently receives both positive and constructive feedback in its work on the Attorney Census and Diversity Report Card and will continue to prioritize this work. As outlined in the 2022–2027 strategic plan, future planned activities in this area include:

- Administer the attorney census, including deploying attorney census separate from the licensee fee billing cycle
- Publish annual report card on workforce diversity and retention trends in the legal profession
- Engage DEI leaders and other stakeholders to encourage legal employers to set and publicly commit to measurable diversity, equity, and inclusion goals through the State Bar Diversity Leadership Seal Program
- Ensure communications materials and resources are accessible to California’s diverse communities
 - Expand multilingual content and outreach
 - Increase the number and variety of stakeholders to include affinity bar associations and a broad range of organizations invested in the mission of the State Bar
 - Engage diverse voices in the development and evaluation of State Bar policy

CREATING A CULTURE OF INCLUSIVITY

The 2021 plan outlined key efforts related to building a culture of inclusivity as follows:

- Regular implicit bias trainings and learning opportunities for all staff

- Regular cycle for subentity training
- Monitoring online implicit bias module/explore other EOB subtopics

TRAININGS AND LEARNING OPPORTUNITIES TO BUILD AWARENESS AND CULTIVATE INCLUSION

Utilizing the “built in, not bolted on” approach to cultivating a culture of inclusion, the State Bar has both continued to improve existing and launched various internal DEI initiatives for its staff, including robust training and learning opportunities. In 2021 and 2022, State Bar staff were required to complete the following online courses:

- Moving from Bias to Inclusion in a DEI Journey
- Recognizing and Addressing Micro-behaviors in the Workplace
- Workplace Diversity, Equity, and Inclusion in Action
- Understanding Unconscious Bias (retired mid-2022)
- Overcoming Unconscious Bias in the Workplace (retired mid-2022)
- Overcoming Your Own Unconscious Biases (retired mid-2022)
- Expert Insights on Unconscious Bias (retired mid-2022)

With input from staff, a well-received quarterly speaker and discussion series launched in 2021. Topics have included:

- Unconscious bias (March and May 2021)
- Navigating microaggressions in the workplace (August 2021)
- Allyship (November 2021)
- DEI topics in television series and documentaries (March 2022)
- Inclusive behaviors featuring Dr. Arin Reeves (July 2022)
- Performance of *Why Would I Mispronounce My Own Name?* presented by Irma Herrera (Minimum Continuing Legal Education credit, October 2022)
- Open discussion with an opportunity for staff feedback (November 2022)

The State Bar developed and maintained a host of voluntary resources to develop and increase staff awareness and sensitivity. Resources include reference websites, books, videos, and podcasts, a guide for bias-free writing, and a glossary of key DEI words and phrases; the glossary is a living tool that is updated as appropriate. In 2022, the State Bar also made available the option for staff to voluntarily update at any time their demographic information using online human resources portal. Gathering this information will help the State Bar further monitor and analyze trends in employee retention, promotion, and separation. The State Bar plans to share this analysis with staff regularly.

In addition, the State Bar expanded opportunities for staff to provide feedback using various modalities, including stay interviews for all new hires, exit interviews for staff leaving the organization, and the opportunity to provide anonymous feedback directly to the executive director with an option to receive a direct response through an online application available to all staff. The State Bar also regularly surveys staff to better understand staff perspectives. The 2021 Employee Engagement Survey was administered with the goal of improving the State

Bar's assessment of its organizational culture. The survey gauged employee engagement by assessing employee attitudes, conditions in the work environment, and the impact of perceptions about working conditions and organizational culture on individual and team performance.

The State Bar continually evaluates and seeks to improve staff engagement and opportunities for feedback. Staff are currently planning to incorporate additional belonging and inclusion questions in stay interviews, exit interviews, and the employee engagement surveys to gauge how these impressions change over the employee lifecycle. Additionally, to supplement existing resources, an inaugural annual implicit bias training series for staff in decision making roles, like the Office of Chief Trial Counsel and State Bar Court will be launched in early 2023. Last, due to the enthusiastic responses and with feedback on potential topics and activities, the quarterly DEI speaker and discussion series will increase to six times a year for 2023.

Building Awareness and Cultivating Inclusion for State Bar Volunteers

The State Bar's obligation to advance diversity, equity, and inclusion applies not just to staff but also to the organization's hundreds of volunteers. All State Bar volunteers, who collectively serve on 15 committees, commissions, and the Board of Trustees, will be required to participate in regular implicit bias training. Plans are also underway to expand outreach on subentity appointment opportunities to support the long-range goal of diversifying subentity membership.

BUILDING AWARENESS AND DEVELOPING TOOLS TO REDUCE BIAS IN THE PROFESSION

With the exception of those who are statutorily exempt, active attorneys in California must take 25 hours of minimum continuing legal education (MCLE) every three years, including credit related to "the recognition and elimination of bias in the legal profession and society." In September 2020, the Elimination of Bias (EOB) MCLE requirement was doubled to two hours of credit every three years. The EOB MCLE requirement now includes an implicit bias subtopic to conform to the requirements of Business and Professions Code section 6070.5. Over the course of 2021, the State Bar worked with a subject matter expert and learning design company to develop a free online program to support attorneys in satisfying this new requirement. The curriculum went live in early 2022 through the State Bar's online learning portal.

The Disrupting Implicit Bias course is comprised of four modules: Implicit Bias and Microaggressions; Types of Implicit Bias; Managing and Disrupting Bias; and a post-assessment that allows the learner to test their knowledge from the course. Thus far, over 5,000 attorneys have completed the course. Moreover, the State Bar will update the course content every three years to remain relevant and make the course more responsive to attorneys' needs, based on current research as well as learner feedback within the course. COAF members also plan to convene a working group to review the feedback and develop additional recommendations for training modules.

FUTURE PLANS

The State Bar plans the following activities to continue to develop a culture of inclusivity.

- Conduct an internal DEI Audit, including a procurement disparities study and revisions to the State Bar investment policy
- Apply for the DEI Leadership Seal as an employer and share our progress with stakeholders
- Hold annual implicit bias training for decisions makers in the Office of Chief Trial Counsel and State Bar Court
- Expand current DEI and implicit bias training offerings and discussions for all staff
- Expand outreach on subentity appointment opportunities to support the long-range goal of diversifying subentity membership
- Continue to review metrics for the implicit bias module and explore development of additional trainings addressing EOB

PIPELINE TO THE PROFESSION

The 2021 plan outlined specific strategies to advance the goal of a diverse pipeline into the profession:

- Study law school enrollment and retention across all law school types
- Continue Mindsets in Legal Education
- Review DIF working group developed guidelines approved by CBE and BOT
- Blue Ribbon Commission on the Future of the Bar Exam

While the State Bar continues to focus on areas where it can be most impactful, it recognizes the important work of early pipeline initiatives that many stakeholders, including the California Lawyers Association (CLA), California Leadership-Access-Workforce (California LAW), and local and affinity bar associations, are engaged in. The State Bar continues to coordinate closely with these organizations to share information and to support their work where appropriate. In 2023, following up on the 2020 video interview with David Kelly from the Golden State Warriors to spotlight nontraditional legal paths/careers, COAF will develop a new video to outreach to aspiring law students and lawyers. The State Bar will continue to explore partnership opportunities with CLA in the early pipeline space including sharing information and resources, as appropriate.

LAW SCHOOL ENROLLMENT AND RETENTION

The State Bar's efforts to study law school enrollment and retention to increase law student diversity and promote law student retention have involved a multiyear process to engage law school leadership in sharing information about their programs to recruit and retain diverse law students and gather demographic and attrition data from all California law schools.

Enhancements to California Accredited Law Schools and Registered Schools Annual Report

Consistently gathering law school enrollment and attrition data is a key component to understanding law school recruitment and retention. In 2019, the State Bar implemented a three-year plan to collect more comprehensive demographic and attrition data from the California Accredited Law Schools (CALS) and unaccredited law schools registered with the State Bar as part of their annual reporting requirements. Enhancements to reporting requirements

include the following: (1) requiring the reporting of enrollment and graduation data by sexual orientation, disability, and veteran status, (2) modifying reporting requirements on gender identity to include data on non-binary students, and (3) requiring the reporting of attrition data by race/ethnicity, and gender identity. Improvements to these annual reporting requirements align with best practices for collecting demographic data in an inclusive, representative way. This new comprehensive data set will be analyzed along with data reported by the American Bar Association (ABA) for ABA-accredited California law school data and offer insights on demographic trends among law school students in California.

Law School Retention Study

To better understand the efforts of California law schools to retain diverse law students, from late 2020 to early 2021, the State Bar administered a survey that asked law schools about current student recruitment efforts, academic support programs, nonacademic student support, mentorship opportunities, career development services, faculty and staff, financial support, and key retention program performance indicators. Overall, 87 percent of law schools responded to the survey.

The State Bar also held several focus groups with the law schools to obtain additional context that would supplement the survey results and provide relevant updates. Approximately 28 law schools participated in focus groups from December 2021 to February 2022 to discuss academic support, nonacademic support, attrition, and other topics. The focus groups revealed nuances between the different law school types and provided an opportunity for law schools to share recent challenges as a result of the pandemic.

The State Bar will publish a report on California law school enrollment and attrition trends and provide recommendations for improving law school recruitment and retention practices in 2023.

MINDSETS IN LEGAL EDUCATION: IMPROVING PERFORMANCE ON THE BAR EXAM

The State Bar has continued to work with academic researchers to continue the Mindsets in Legal Education Program, known also as the California Bar Exam Strategies and Stories Program. As detailed in the 2019 report, this intervention was developed to help test takers find productive ways to interpret the challenges, obstacles, and negative psychological experiences associated with preparing for the bar exam. Its goal was to improve bar applicants' test-taking experiences and exam performance. The program includes an introductory film, audio and written stories from prior test takers that illustrated how to reduce psychological friction, and an activity in which participants write letters to future test takers about how to use the insights and strategies they gained from the program. The voluntary program is offered to all bar exam applicants during the application process.

Analyses of bar exams administered in July 2018, July 2019, October 2020, and February 2021 continue to yield very positive results, especially for first generation college students and people of color. After controlling for Law School Admissions Test (LSAT), grad point average (GPA), and cohort effects, participants' total bar scores increased by approximately 24 points

when compared to those who did not participate. Participation also increased bar passage rates. The combined effect of participating in the program and the Supreme Court modifying the bar passage cut score to 1390 improved bar passage by more than 20 percentage points. For first generation and bar takers of color, the joint effect of participating in the program and the modified bar passage score improved bar passage by 22 percentage points. The researchers concluded that the productive mindset intervention was successful in reducing psychological friction, fostering a stress-is-enhancing and growth mindsets, and recommends that the State Bar continue to offer this program. See Attachment X for the Executive Summary of Evaluating Productive Mindset Interventions that Promote Excellence on California's Bar Exam.

The program was also offered for bar exams administered in July 2021, February 2022, and July 2022. Though the program cannot be offered for the February 2023 bar exam due to a transitionary period with the research team, the State Bar has included administration of the program in its budget and anticipates offering the program for the July 2023 bar exam. The State Bar is also exploring expanding the program for applicants taking the First-Year Law Students' Exam.

MINIMIZING POTENTIAL BIAS IN BAR EXAM QUESTION DEVELOPMENT AND GRADING

In 2019, the State Bar contracted with Scantron Corporation to conduct a differential item functioning (DIF) analysis for essay and performance test questions administered on the California Bar Exam between 2009 and 2019. The study raised no major areas of concern related to how the essays and performance tests performed in different populations. However, as some individual questions resulted in some degree of differential performance, the report recommended that the State Bar conduct a bias and sensitivity review of those items to inform future essay and performance test question development. The report also recommended that the State Bar incorporate bias and sensitivity reviews into the examination review process prior to the administration of future exams.

To that end, the Board of Trustees directed State Bar staff to form a joint working group comprised of members from the Committee of Bar Examiners (CBE) and COAF to review the findings of the DIF study, conduct a bias and sensitivity review of flagged items, and develop a set of guiding principles to inform future question development. The DIF working group met from December 2020 through January 2022 and developed Guiding Principles in Examination Development to Minimize Potential Bias in Bar Exam Questions (Guiding Principles,) which were approved by the CBE in January 2022 and the Board in March 2022.

Since the Guiding Principles were adopted and continuing to the present, all Exam Developers (Examination Development and Grading (EDG) Team, Performance Test (PT) Drafting Team, essay question drafters, essay question pretesters, and performance test pretesters) have been provided with the Guiding Principles as part of the onboarding and training process, as well as with each round of drafting and pretesting. All Exam Developers are encouraged to keep the Guiding Principles in mind as they complete their assignments and when providing feedback and recommendations. State Bar staff overseeing Examination Development monitors and ensures overall consistency and continuity in the implementation and application of the

Guiding Principles by exam developers, and ultimately in the exam questions themselves. It is the intent of the State Bar to continue with this practice into the future on an ongoing basis.

IMPLICIT BIAS TRAINING FOR BAR EXAM GRADERS

The update for this section is forthcoming.

BLUE RIBBON COMMISSION ON THE FUTURE OF THE BAR EXAM

This section will be completed following the next meeting of the Blue Ribbon Commission on the Future of the Bar Exam in January 2023.

FUTURE PLANS

The State Bar plans the following future activities to further develop and support a diverse pipeline into the profession:

- Increase the numbers of diverse attorneys in the legal profession through studying and highlighting diversity pipeline programs that support aspiring attorneys in graduating from law school and passing the bar exam
- Continue the Mindsets in Legal Education Initiative and evaluate the merits of expanding the program to first-year law student examinees
- Conduct an equity and cost focused analysis of the impact of various options for administration of the bar exam on pass rates, including remote and open-book formats
- Provide implicit bias trainings for bar exam proctors and graders to reduce bias
- Continue to diversify the exam development and grading pool
- Issue the Blue Ribbon Commission on the Future of the Bar Exam final report

RETENTION AND ADVANCEMENT IN THE PROFESSION

The 2021 plan outlined the following retention and advancement activities:

- Public sector diversity summit, potential additional summits
- Inactive attorney survey
- Recommendations in response to racial disparities in atty discipline system and Ad Hoc Commission on the Attorney Discipline System
- Loan Repayment Assistance Program

DIVERSITY SUMMITS

The State Bar continues engage with leaders in diversity, equity, and inclusion in the profession by hosting diversity summits annually. These convenings are an opportunity to share the latest California attorney diversity data, discuss common challenges, uplift best practices, and make connections to further advance this work.

Following the 2020 convenings held for the private and nonprofit sectors, on May 27, 2021, the State Bar hosted a Diversity Summit for the Public Sector with 74 attendees via Zoom. This summit featured a presentation focused on public sector attorney census data, a panel discussion with government/public sector leaders on effective diversity and inclusion efforts

and the impact COVID-19 and increased focus on racial justice issues, and an interactive breakout session to encourage and promote new ideas for recruitment, retention, and advancement in light of the prioritization of racial justice issues and impact of the COVID-19 pandemic. Through a post-event survey, participants expressed appreciation for the focused space to discuss issues specific to the government sector, requested future opportunities to share successful programs and best practices, and suggested future topics, including developing DEI policies and strategic plans, and recruitment strategies.

On October 24, 2022, the State Bar hosted the 2022 diversity summit with 113 attendees via Zoom. The summit featured a presentation on the new Diversity Report Card; a panel discussion on advancement, mentorship, and sponsorship across sectors; and a presentation about the DEI Leadership Seal Program.

Through a post-event survey, attendees identified the following additional topics of interest for future convenings, including: mentorship and sponsorship, retention and advancement, data collection and metrics to measure belonging and inclusion, and exploring resources to fund such work. Attendees also identified several challenges including: data collection; lack of diversity in positions of power and hiring; recruitment and retention; pushback against and lack of capacity for DEI initiatives and policies; and a lack of professional development opportunities.

Based on this feedback, the State Bar plans future convenings to include reflections on the first cohort of the Leadership Seal Program, as well as a panel or workshop about DEI recruitment, retention, and advancement. The next Diversity Summit will be either fully remote or hybrid and will continue to serve a mixed-sector audience.

INACTIVE ATTORNEY STUDY

The State Bar has added questions to the inactive transfer form to better understand reasons for transition to inactive status. The inactive transfer form was also converted to electronic administration and submission and was made available to attorneys in late 2022. Attorneys can file a request to transfer to inactive status throughout the year but most fill it out during the fee billing cycle. The State Bar plans to analyze the data annually and explore trends that may lead to involuntary transfer to inactive status.

In 2023, the State Bar will publish a comprehensive study of inactive attorneys. This will include an analysis of historical data to identify demographic and employment patterns among attorneys who select to transfer to inactive status. This study will also include an analysis of the survey data collected in the inactive transfer form described above.

ADDRESSING DISPARITIES IN THE DISCIPLINE SYSTEM

As reported in the 2021 report, the State Bar initiated a study of complaints and discipline against attorneys admitted to the State Bar between 1990 and 2009 to determine whether nonwhite attorneys experience disproportionate discipline. The study found that Black male attorneys experience disproportional discipline and that factors associated with this discipline

include the number of prior complaints and lack of counsel representation in discipline proceedings. Among attorneys with 10 or more complaints, Black male attorneys had nearly twice as many reportable-action bank cases than white male attorneys.⁴ The State Bar invited Professor Christopher Robertson, N. Neal Pike Scholar and Professor at the School of Law of Boston University, to explore possible remedies. He identified 13 potential reforms across three broad areas: (1) client trust fund accounting, (2) the treatment of prior complaints and discipline history, and (3) securing legal representation for those facing discipline. Since then, the State Bar has implemented several of these reforms, summarized in Table X, and will evaluate the impact of these reforms in 2023.

Table X. Racial Disparities Study: Results, Recommendations, Implementation, and Evaluation Plans

| Study Finding and Recommendation | Implementation | Evaluation Plans |
|--|--|---|
| <p>Finding. The number of prior complaints is a strong predictor of discipline. Almost half (46 percent) of all Black male attorneys had at least one complaint filed against them and 12 percent had 10 or more complaints. In contrast, 32 percent of white male attorneys had at least one complaint filed against them and 4 percent had 10 or more complaints.</p> <p>Recommendation. Shield decision-makers from complaints more than five years old that were closed without discipline by expunging complaints or, alternatively, archiving complaints closed without discipline after five years.</p> | <p>In late 2020, the State Bar archived nearly 400,000 cases of all types and origins that were more than five years old and were closed without discipline (excluding the issuance of warning, directional, or resource letters). Archiving complaints removes them from the view of Intake staff when they assess the merits of a new complaint.</p> | <p>Staff will evaluate the impact of archiving complaints on reducing racial disparities in discipline in 2024.</p> |
| <p>Finding. Among attorneys with a large number of complaints against them, Black male attorneys had, on average, 6.8 Reportable Action Bank cases while white male attorneys had 3.7.</p> <p>Recommendation. Explore proactive, preventive options for attorneys who experience low-level Reportable Action Bank matters that also ensure</p> | <p>OCTC modified the four letters it sends attorneys in response to notices from banks of insufficient funds in a client trust account. All letters now include a comprehensive list of resources related to client trust accounting and warning language regarding the risk of discipline. Approximately 800</p> | <p>Staff will evaluate the impact of modifying and expanding the reach of communication regarding client trust account resources on racial disparities in reportable action bank matters in 2023.</p> |

⁴ Reportable Action Bank cases are initiated when a bank reports insufficient funds activity in an attorney's client trust account as required under Business and Professions Code section 6091.1.

| Study Finding and Recommendation | Implementation | Evaluation Plans |
|---|---|--|
| public protection is not compromised. | attorneys receive these letters annually. | |
| <p>Finding. The proportion of investigations in which attorneys were not represented by counsel is a strong predictor of discipline. Black respondents were less likely to be represented by counsel when facing a disciplinary investigation by the State Bar compared with white attorneys.</p> <p>Recommendation. (1) Track and report rates of representation in the discipline system as a key performance indicator. (2) Inform attorneys facing discipline about the statistical likelihood of probation or disbarment if they fail to secure counsel.</p> | <p>Staff operationalized a metric “Percent of Respondents that Retain Representation” that is based on closed cases of all types that reached the investigation stage or a later stage. This metric is reported in OCTC operational reports and reports to the Board.</p> <p>Staff developed a one-page flyer for respondents that includes a link to the membership directory of the Association of Discipline Defense Counsel Association (ADDC) and advises them of the importance of securing counsel. This letter is distributed to all attorneys when notified that OCTC has opened an investigation.</p> | Staff will evaluate the impact of the flyer on counsel retention that goes beyond descriptive statistics. The evaluation will leverage all available data to determine whether the flier has independent effect on securing representation and identifying any additional factors that contribute to doing so. |

The State Bar will also conduct an updated study on racial disparities in attorney discipline in 2024.

AD HOC COMMISSION ON THE ATTORNEY DISCIPLINE SYSTEM

The State Bar has implemented several initiatives, policies, and procedures to improve the effectiveness and fairness of the attorney discipline system. Examples of reforms that address effectiveness include implementing a case prioritization system, modernizing the online complaint portal and the Office of Chief Trial Counsel’s (OCTC) case management system, and reorganizing OCTC teams. Reforms addressing fairness include creating the Complaint Review Unit, expanding multilingual communication, and increasing targeted services and outreach to vulnerable populations. In addition, the Board of Trustees has taken a proactive approach to researching and addressing disproportionate discipline as described above.

Given these wide-ranging and ambitious efforts, the Board directed a comprehensive review of discipline system improvement efforts and established an Ad Hoc Commission on the Discipline System in 2020 and tasked the commission with evaluating:

- Procedural justice and the experiences and perceptions of the system by complaining witnesses and respondents;
- Workload and operational efficiency of case processing;

- Case prioritization and differentiated case-flow management; and
- The efficacy of the system for preventing future attorney misconduct.

The 26-member commission began its work in April 2021 and formed two subcommittees to review the OCTC catalog of reforms. One, the Effectiveness Subcommittee, focused on initiatives, policies, and procedures address workload and operational efficiency, and the other, the Fairness Subcommittee, focused on initiatives, policies, and procedures promote procedural justice, reduce disparate impact, prevent future attorney misconduct, and improve the experiences and perceptions of complaining witnesses and respondents.

At its meetings on June 1, 2022, and August 24, 2022, the commission adopted the following recommendations.

Discipline Costs and Sanctions Assessment

The commission explored discipline costs and monetary sanctions imposed on attorneys by the State Bar. In general, commission members expressed widespread support for lowering discipline cost assessments and eliminating sanctions for several reasons, including:

- State Bar discipline costs are much higher than those assessed by other state bars, comparable California regulatory boards, and other state attorney regulatory agencies;
- Among 16 jurisdictions surveyed, none report imposing monetary sanctions in addition to disciplinary costs, and the punitive nature of sanctions is contrary to long-standing precedent that discipline exists to protect the public, not to impose punishment;
- High costs can impact the ability of an attorney to return to practice, impeding rehabilitation; and
- The current cost structure unfairly penalizes respondents for contesting charges. For instance, costs for matters that proceed to a one-day trial are more than two times higher than costs for matters that settle prior to filing of a notice of disciplinary charges (NDC).

The commission adopted the following recommendations:

The Ad Hoc Commission on the Discipline System recommends the Board of Trustees reevaluate its current discipline cost model with a focus on reducing costs. This includes, but is not limited to, restructuring the costs structure so that attorneys are not penalized for going to trial or review and scaling fees when charges are dismissed.

The Ad Hoc Commission on the Discipline System recommends that the State Bar seek a statutory amendment to eliminate disciplinary sanctions.

Attorney Discipline on State Bar Website and Expungement of Attorney Discipline Records

The commission explored policy issues relating to public access to attorney discipline history in two ways. First, the commission reviewed current options for discipline record expungement.

Second, the commission examined the State Bar's practice of displaying public discipline history on the licensee's attorney profile page on the State Bar's website.

There is currently no time limit on how long such information is posted, contrary to the practice of other state agencies such as the California Board of Registered Nursing, which has provisions allowing for the removal of all discipline except for license revocation or surrender, and the Medical Board of California, which has provisions allowing for the removal of public reprovations. There was widespread consensus regarding both adoption of timeframes for removing discipline history from attorneys' profiles and expunging discipline records. Eligibility for both would be based on no new discipline imposed during the relevant timeframes, no current active investigations, and payment of all restitution. Expungement of attorney discipline records would require changes to the California Rules of Court.

The commission adopted the following recommendation:

The Ad Hoc Commission on the Discipline System recommends the Board of Trustees adopt the following timelines for removal of the attorney discipline from the website attorney profile page and for expungement of attorney discipline records:

- Private reproof: 1 year of when conditions are met
- Public reproof: 3 years
- Probation with stayed suspension: 3 years of conclusion of probation
- Probation with actual suspension: 5 years from reinstatement
- Disbarment: Public indefinitely (no change)

Early Neutral Evaluation Conference (ENEC)

The commission explored the ENEC phase of the discipline process, particularly in relation to criminal conviction matters. The ENEC is a settlement conference held before filing an NDC. The purpose of the ENEC is for all parties to obtain a judicial evaluation of the case. Before filing an NDC, OCTC notifies a respondent of their right to request an ENEC; the respondent must respond to the notice within 10 days to exercise this right. The conference is to take place within 15 days of a respondent's request for an ENEC.

Commission members expressed interest in affording respondents in conviction matters an ENEC because State Bar research showed that nearly half of all criminal conviction cases where the underlying charge was a misdemeanor resulted in nondisciplinary action and nearly all were dismissed pretrial. Allowing respondents an opportunity to present a response to the allegation that a misdemeanor conviction involves moral turpitude before the case becomes public would increase fairness in the system and benefit both the respondents, who would avoid costs associated with trial should they settle their cases in an ENEC, and the costs associated with State Bar Court. Because the current statutory timeline does not allow sufficient time for an ENEC to be offered, scheduled, and conducted, modifying the criminal conviction transmittal timeline would require a legislative change.

The commission adopted the following recommendation:

The Ad Hoc Commission on the Discipline System recommends seeking a statutory amendment to extend the deadline for the transmission of criminal conviction matters in misdemeanor cases to allow for an Early Neutral Evaluation Conference.

Moral Turpitude

The commission explored the experiences of respondents who are charged with moral turpitude. Moral turpitude, which is discussed in [Business and Professions Code section 6106](#), is a designation meant to protect the public against unsuitable practitioners: “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.” The California Supreme Court defined moral turpitude in *In re Lanksy* (2001) 25 Cal.4th, 16, as conduct that “shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.” Attorneys can also be charged with moral turpitude when OCTC seeks discipline for a criminal conviction.

There was widespread consensus among commission members about needing to address several moral turpitude-related issues. With respect to criminal conviction matters, for example, State Bar research found high rates of nondisciplinary action in misdemeanor cases and high rates of pretrial case dismissal initiated by OCTC. These rates suggest that if a determination of whether a criminal conviction matter involves moral turpitude was conducted before transmittal to State Bar Court both respondents and the discipline system would be better served. However, as described above, there is no rule (or sufficient time) that authorizes either an ENEC or other pretransmittal meeting in a misdemeanor criminal conviction proceeding, at which respondents or the State Bar Court could weigh in on whether a respondent’s misdemeanor criminal conviction involves moral turpitude or other misconduct warranting discipline. In addition, there appears to be ambiguity within the State Bar rules involving referrals to ADP. Finally, OCTC is not bound to follow judges’ judicial evaluations during the ENEC process, even those that raise concerns regarding a lack of evidence to support moral turpitude charges.

The commission adopted the following recommendations:

The Ad Hoc Commission on Discipline System recommends that the Board direct staff to work with stakeholders to study possible revisions to all applicable rules to determine the feasibility of conducting a pretransmittal meeting similar to an Early Neutral Evaluation Conference in misdemeanor conviction matters subject to Rule 5.340–5.347 that would determine whether or not the facts and circumstances underlying the misdemeanor conviction involve moral turpitude or other misconduct warranting discipline, and if appropriate, evaluate a potential disposition of the matter.

The Ad Hoc Commission on the Discipline System recommends that the Board direct staff to work with stakeholders to study and clarify all applicable rules involving referrals to the Alternative Discipline Program (ADP), specifically concerning whether or not moral turpitude has resulted in significant harm to a client(s) or the administration of justice.

The Ad Hoc Commission on Discipline System recommends that the Board direct staff to work with stakeholders to propose revisions to all applicable rules to promote the use of Early Neutral Evaluation Conferences as a mechanism for arriving at prefiling settlements of State Bar disciplinary proceedings.

Progressive Discipline

The commission explored discipline standards adopted by the Board of Trustees to ensure consistency in disciplinary proceedings. The State Bar currently follows a policy of “progressive discipline,” which means each successive incident of discipline should generally be more severe than the last. The rationale for what is commonly referred to as progressive discipline is that an attorney who is at odds with professional standards even after having been disciplined recently for serious misconduct should receive more serious discipline. The commission specifically reviewed standard 1.8, which states that “If a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The commission also reviewed standard 1.6, which details mitigating circumstances.

There was widespread interest among commission members in modifying standards 1.8 and 1.6 to enable greater judicial discretion to reduce the impact of racial disparities in discipline on future outcomes. However, there was also consensus that specific changes to the standards would require extensive and in-depth legal analyses beyond the commission’s scope.

The commission adopted the following recommendation:

The Ad Hoc Commission recommends that the State Bar Board of Trustees analyze and consider modifying Standards 1.6 and 1.8 to permit the greater exercise of judicial discretion with regards to progressive discipline.

Attorney Representation

The commission examined the impact that lack of respondent representation has on discipline outcomes, as empirically demonstrated by the State Bar’s research on racial disparities in discipline. Staff developed two options for an attorney representation pilot program. Eligible participants (i.e., respondents) for both options include attorneys licensed in California who qualify for reduced license fees and undergo a formal discipline investigation by OCTC.⁵ Both

⁵ Approximately 200 attorneys who pay reduced license fees undergo a formal investigation per year. The 2022 reduced license fees threshold is approximately \$60,500 in gross annual individual income from all sources.

options proposed the use of \$250,000 in State Bar resources to provide representation to low-income respondents as a pilot program that would remain active until funds are exhausted. The options varied by compensation structure: (1) an hourly rate at \$300 per hour, an approach estimated to result in 83 attorneys per year being served; or (2) a flat fee of \$3,500 for complete services only up to and including the ENEC, estimated to benefit 71 attorneys annually. The funding to provide this representation would come from the State Bar's General Fund, which supports the attorney discipline system overall.

The commission debated both options and adopted the following recommendation:

The Ad Hoc Commission on the Discipline System recommends the Board of Trustees implement a State Bar Appointed Counsel Program based on an hourly rate structure similar to the 6007 Court Appointed Counsel Program.⁶

Public Comment

On September 22, 2022, the State Bar Board of Trustees formally received the final report of the Ad Hoc Commission on the Discipline System. It directed staff to issue the commission's recommendations for a 60-day public comment period. The public comment period closed on November 28, 2022, and 78 public comments were received. The majority of respondents (54) were attorneys. Public comment respondents were asked to select one of three options for each recommendation:

1. Agree only if modified;
2. Agree with proposed recommendation; or
3. Disagree with the proposed recommendation.

All recommendations received a majority vote for "Agree with proposed recommendation." In general, attorneys were more likely to agree with the proposed recommendations than the total set of respondents.

The full commission reviewed public comments on December 5, 2022, for the purpose of considering modifications to adopted recommendations or creating new ones. Staff identified five potential recommendations and the commission expressed support for four them. However, the commission did not vote on any of these items, which as a result are not reflected as commission-adopted recommendations in the commission's final report. Instead, the commission directed staff to address the four new recommendations in a staff memo that accompanied the commission's final report to the Board of Trustees.

Board of Trustee Review of Commission Recommendations

On January 19, 2023, staff presented the Board of Trustees with the commission's final report and recommendations and a memo with staff recommendations to some of the commission's

⁶ This is a State Bar Court program that appoints counsel to two case types: (1) when a licensee asserts a claim of insanity or mental incompetence (Business and Professions Code section 6007, subdivision (b)(1) and (2) when the State Bar Court finds the licensee unable to perform competently due to mental infirmity or illness, or the habitual use of intoxicants or drugs. (Business and Professions Code section 6007, subdivision (b)(3)).

recommendations. These amendments were motivated by several factors, including anticipated stakeholder concerns and fiscal implementation challenges. The State Bar's 2022–2027 Strategic Plan includes the following Implementation Step: Align and implement recommendations of the Special Discipline Case Audit Committee and the Ad Hoc Commission on the Discipline System. The practical implication of this directive is that any perceived relaxation of attorney discipline processes, standards, and impacts should be carefully weighed against the State Bar's public protection mission. Staff's proposed amendments seek to strike this balance. Second, the Legislative Analyst's Office recently published [its analysis](#) of the State Bar's legislatively mandated case processing standards proposal, submitted on October 28, 2022. The LAO identified the Early Neutral Evaluation Conference and its timelines as appropriate for further study; this recommendation and related narrative resulted in a modification to the respective Ad Hoc Commission recommendation.

In addition to staff's proposed amendments to Commission recommendations, staff proposed a new recommendation related to discipline stemming from a criminal conviction that has been expunged, which staff views as aligned with the commission's interest in allowing attorneys to move past discipline.

Direct staff to explore the removal of criminal conviction transmittals and discipline from the profile page where the sole underlying basis for discipline was a criminal conviction that was expunged pursuant to Penal Code section 1203.4 and submit the proposal to the Board for approval.

CALIFORNIA RULE OF PROFESSIONAL CONDUCT RULE 8.4.1

In providing feedback on various issues impacting reforms to the attorney discipline system, COAF requested that staff review attorney complaint data related to California Rule of Professional Conduct 8.4.1, which prohibits unlawful discrimination, harassment, and retaliation by attorneys and law firms. At COAF's suggestion, the State Bar sought to increase awareness of the rule by producing a short video explainer for consumers and attorneys. This video was included in an all-licensee email send in April 2022 and posted on the State Bar social media accounts.⁷

LOAN REPAYMENT ASSISTANCE PROGRAM

As reported in the 2021 report, the State Bar studied the viability and impact of loan repayment assistance programs (LRAP) and loan forgiveness on recruitment and retention in the profession, particularly in the nonprofit and public sectors. COAF, in partnership with the State Bar's Legal Services Trust Fund Commission and the California Access to Justice Commission, started examining the current LRAP and loan forgiveness landscape in early 2021 to develop recommendations for potential interventions or initiatives. In addition, the working group surveyed nonprofit and public sector attorneys to better understand the types of loans and amount of debt experienced among that cohort and spoke with student loan debt experts regarding best practices in LRAP design.

⁷ The video is posted on the State Bar's YouTube channel. See https://www.youtube.com/watch?v=L-T_S8ctDVc

In March 2022 the working group unveiled an LRAP proposal to benefit civil legal aid attorneys in California. The proposal intended to cover up to \$10,000 per year in loan repayment assistance per attorney as long as the attorney continued to work for a qualifying employer (i.e., organizations that receive State Bar grants or funds for immigration-related legal services from the California Department of Social Services). These funds would have been administered by a government agency, such as the Student Aid Commission or the State Bar, as a forgivable loan, and the intent was to design a program that would render significant tax savings to the borrower.

Advocacy with the Legislature garnered support for the program, and the 2022–2023 budget initially earmarked \$55 million for the establishment and administration of the LRAP over the next five years. However, this funding provision was removed from the final version of the budget. The working group remains committed to exploring other funding alternatives. Moreover, the Access to Justice Commission is partnering with the State Bar to provide educational webinars and technical assistance to legal aid employers who want to develop their own LRAPs, either individually or in tandem with other employers.

FUTURE PLANS

The State Bar plans the following activities support attorney retention and advancement in the profession.

Reforms to the attorney discipline system

The State Bar takes seriously the shortcomings and criticism of its attorney discipline system and plans to:

- Implement reforms and recommendations to reduce inequities identified in the 2019 report: Discrepancies by Race and Gender in Attorney Discipline by the State Bar of California: An Empirical Analysis (Goal 1, DEI)
- Conduct a follow up study of racial disparities in attorney discipline, identify areas for improvement, and implement recommendations (Goal 1, DEI)
- Identify and implement strategies to address other disparities in discipline rates and outcomes, including those related to solo and small firm practitioners (Goal 1, DEI)

Prevention and proactive risk-management for attorneys

The State Bar recognizes its role in protecting the public by providing support and resources to attorneys, particularly underrepresented attorneys, so that they do not enter the attorney discipline system. The State Bar plans to:

- Develop metrics for assessing the impact of the State Bar’s prevention and proactive risk-based management work (Goal 3, effectiveness)
- Support attorneys from disenfranchised and underserved communities who may experience unique practice management and other challenges (Goal 3, DEI)

- Create a licensee resource page on the State Bar website to provide information and tools on emerging topics and issues including mental health, financial literacy, and navigating imposter syndrome in the workplace (Goal 3, consumer focus)
- COAF participation
- Identify competency-related factors that drive disparate voluntary departures from the legal profession by race and gender (Goal 3, DEI)

Promoting retention and advancement

The State Bar will continue to study trends and engage with leaders in the legal profession to explore barriers and solutions to recruitment and advancement in the profession. The State Bar plans to:

- Identify data-supported practices that promote retention and advancement of a diverse and inclusive legal profession and share those practices through toolkits and other resources (Goal 2, DEI)
- Review innovative DEI practices from other industries that may be adaptable to the legal profession
- Collaborate with legislative and other stakeholders to establish a law school student loan forgiveness program to make legal aid an attractive and sustainable career goal. (Goal 2, policy and systems change)

CONCLUSION

A summary of the 2023–2024 plans will be included here.

FUNDING HISTORY AND NEEDS

An analysis of revenue/expenses and potential revenue needed to accomplish the State Bar DEI goals will be included here.

ATTACHMENTS

1. 2022–2027 Strategic Plan
2. Diversity Report Card Calls to Action by sector/attorney PDFs
3. DEI Leadership Seal Application
4. DEI Leadership Seal Action Items Resource Guide
5. Guidelines for Bar Exam Question Development
6. Evaluating Productive Mindset Interventions that Promote Excellence on California’s Bar Exam