Title of Report:	Diversity & Inclusion Plan: 2019 – 2020 Biennial Report to the Legislature
Statutory Citation:	Business and Professions Code section 6001.3
Date of Report:	March 15, 2019

The State Bar of California submits this report to the Legislature in accordance with Business and Professions Code section 6001.3, which directs that the State Bar 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." The plan is intended to support the following tenets:

- That the justice system is equally accessible and free of bias should be a core value of the legal profession;
- Diversity and inclusion are an integral part of the State Bar's public protection mission to build, retain, and maintain a diverse legal profession to provide quality and culturally sensitive services; and
- The State Bar should continue to increase diversity and inclusion in the legal profession.

This is the first report to be submitted under this statutory requirement, so it summarizes some of the activities the State Bar has advanced in the past to combat implicit bias and increase diversity and inclusion in the legal profession. More importantly, the report identifies on-going activities as well as the State Bar's planned initiatives moving forward. In January 2019, the Board of Trustees added nine concrete objectives to the State Bar's Strategic Plan on this critically important topic, focusing on priorities where the State Bar is uniquely situated to have the greatest impact by collecting data, making systematic changes as a regulator, and incubating innovative programs that can be scaled to increase diversity and inclusion throughout the California legal profession.

This summary of the report and the report are submitted in compliance with Government Code section 9795.

The full report and attachments are available for download on the State Bar website at: http://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Reports.

A printed copy may be obtained by calling 415-538-2252.

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Diversity & Inclusion Plan: 2019 – 2020

Biennial Report to the Legislature
Pursuant to Business and Professions Code section 6001.3

March 15, 2019

EXECUTIVE SUMMARY

The State Bar of California submits this report to the Legislature in accordance with Business and Professions Code section 6001.3, which directs that the State Bar 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." The plan is intended to support the following tenets:

- That the justice system is equally accessible and free of bias should be a core value of the legal profession;
- Diversity and inclusion are an integral part of the State Bar's public protection mission to build, retain, and maintain a diverse legal profession to provide quality and culturally sensitive services; and
- The State Bar should continue to increase diversity and inclusion in the legal profession.

The State Bar has been committed to increasing the diversity of the profession and eliminating bias for many years. This work has included outreach, summits, trainings on the elimination of bias, workshops, and incubating innovative programs.

In May 2017, the State Bar Board of Trustees adopted a new mission statement, proclaiming that:

> 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 for greater access to, and inclusion in, the legal system.

In January 2019, the Board of Trustees adopted amendments to the State Bar's 2017–2022 Strategic Plan to include concrete objectives advancing the diversity and inclusion components of this mission. Based on input from leaders in the field and a variety of stakeholders, the objectives focus the work where the State Bar is uniquely situated to make the most impact. Many organizations and entities provide direct programming to improve diversity (through education, mentorship and other specific forms of expertise). However, few if any have the statewide reach and unique role of the State Bar. The State Bar's focus accordingly will be on the systemic and institutional, rather than delivering direct programming. Pursuant to its Strategic Plan objectives the State Bar intends to:

- Serve as a data repository, research institution, and technical assistance provider on topics such as trends in attorney demographics, cross-sector employment data, and meta-analysis of diversity and inclusion studies;
- Convene stakeholders to discuss emerging issues, best practices, and data collection; and
- Recommend, incubate and/or pilot promising programs that are based on data and have the potential to scale throughout the state.

The State Bar has recently begun implementing its own internal diversity initiative, "Built In, Not Bolted On," in which the important work of diversity and inclusion is not limited to a single Office, but rather is an undercurrent of all that the State Bar does. The State Bar provided

implicit bias training to all staff, and will be delivering it to the volunteers on all of the State Bar's subentities.

The State Bar is investing in improving Bar exam passage rates, especially for historically under-represented groups through the Productive Mindset Intervention Study (now known as the California Bar Exam Strategies and Stories Program) which has had promising initial results. In addition, the State Bar is examining whether implicit bias affects decisions about how a matter proceeds through the discipline system, including the level of discipline ultimately meted out. The State Bar also expanded its demographic data collection efforts, seeking to develop more granular data on the makeup of the profession, the makeup of various practice areas, and issues affecting career advancement and satisfaction.

During the next two years we will focus on establishing baseline data, identifying and developing specific interventions, and implementing diversity and inclusion principles. We will be taking action where the State Bar can have the greatest impact, including: examining the disproportionate attrition rate of diverse students in law school; eliminating unintended bias in the Bar exam; collecting and analyzing statewide data to identify systemic issues that need to be addressed, and developing programs to address them; and supporting judicial diversity. The objectives adopted by the Board of Trustees expand on work already in progress and direct the State Bar to do the following:

Pipeline to the Profession
- Develop enhanced demographic reporting requirements for California Accredited and Registered Schools to gather better information on dropout rate of law students from diverse backgrounds. This data is currently collected and available for American Bar Association (ABA) Law schools.
- Identify effective law school retention programs, support them, and help to promulgate statewide.
- Review Bar exam questions and grading processes with diversity and inclusion principles in mind to eliminate unintended negative outcomes for those from diverse backgrounds.
- Expand implementation of the California Bar Exam Strategies and Stories Program and revise the criteria for determining if an individual possesses the requisite moral character to be admitted to the State Bar, to ensure greater transparency, impartiality and consistency, and address any implicit bias that may be embedded in the determination process.

Statewide Leadership
- Analyze and expand demographic data to identify particular obstacles to diverse attorneys' entry into specific areas of practice/employment, retention, and advancement in the legal profession.
- Produce an annual report card on diversity in California's legal profession.
- Develop a communications and outreach strategy including calls to action.

Retention and Advancement
- Based on data, develop and deploy initiatives to address survey results and share with regional and affinity bars to advance these strategies statewide.
- Explore modifying the elimination of bias continuing education requirement through additional hours and/or developing online modules to help support retention, advancement, and creating a more inclusive, culturally sensitive environment.

Judicial Diversity
- Partner with the Judicial Council to update the Judicial Diversity Toolkit, which contains sample outreach and education programs to be deployed by local courts and bar associations, designed to encourage diverse attorneys to apply for judicial appointment.
- Provide support to the Judicial Council and the courts in Toolkit implementation efforts.

INTRODUCTION

Increasing diversity and inclusion in the legal profession is a core objective of the work of the State Bar. In May 2017, the Board of Trustees adopted a new mission statement specifically emphasizing access and inclusion:

> 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 for greater access to, and inclusion in, the legal system.

Effective January 1, 2019, the State Bar's statutory mission statement was amended to also reflect the same concept, providing that protection of the public includes support for greater access to, and inclusion in, the legal system.[1] To implement these mission statements, in January 2019, the State Bar adopted nine concrete diversity and inclusion objectives in its Five-Year Strategic Plan (Strategic Plan),[2] designed to make demonstrable progress towards increasing diversity in the profession and building a diverse and inclusive legal profession that will produce a fair and equitable justice system for all Californians.

This report outlines some of the historical efforts led by the State Bar, current State Bar activities to promote diversity and inclusion throughout and amongst its licensees, and the Board adopted strategic plan goals and objectives guiding the future work of the State Bar in this area.

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[1] Business & Professions Code § 6001.1, as amended by AB 3249 (Stats. 2018, ch. 659 Eff. Jan. 1, 2019).
[2] *California State Bar's Updated Strategic Plan* at
http://www.calbar.ca.gov/Portals/0/documents/bog/Updated%202017-2022%20Strategic%20Plan.pdf.

SECTION I: HISTORY

In 2006, the Board of Trustees created the Council on Access and Fairness (COAF) to advise the Board on strategies to develop a diverse pipeline into the legal profession and promote individuals from diverse backgrounds to enter and advance in the legal profession.

The original charge of COAF was focused on producing institutional and attitudinal change to create a culture of inclusion within the legal profession and the judiciary that fostered diversity, primarily through outreach, education, mentorship, and workshops. Through COAF, the State Bar developed, distributed, and promoted materials on the need for diversity, and presented trainings about elimination of bias in the legal profession. COAF has also regularly conducted the elimination of bias training as part of the annual orientation for new members of the Commission on Judicial Nominees Evaluation (JNE).[3] COAF's major accomplishments are summarized below.

PIPELINE TO LAW

COAF was instrumental in the creation of the California Law Academies in 2010, part of the Department of Education's California Partnership Academy. These academies are three-year high school programs in the public school system. They are focused on specific career themes for students who are at high risk of dropping out of school. These focused academies integrate academics, business partnerships, mentoring, and internships. All the Partnership Academies are funded, supported, and monitored by the California Department of Education, in partnership with school districts, schools, industry, and post-secondary institutions.

Following its success in getting the California Law Academies off the ground, COAF worked to develop the Community College Pathway to Law program (also known as the 2+2+3 program) to guide students from community colleges to universities and to law school. In 2016, the State Bar supported a new nonprofit entity, California LAW, Inc. to coordinate these pipeline efforts to the legal profession.

These Academies and Pathway programs have been popular and have increased the visibility of, and opportunities in, the legal profession for many young people, illustrated by the number of students participating in the programs. For example, there were 96 students in the 2014 school year (when the 2+2+3 program was first launched) and in 2018 there were 963 students in these programs. While anecdotal feedback regarding the value of both programs is positive, data has not been systematically collected in a manner that would allow for an effectiveness or outcomes evaluation of either effort. For example, the State Bar is not able to report on the extent to which students have progressed from the Academies to the Pathway to Law, and then on to law school. California LAW, Inc. has expressed interest in this type of data collection and analysis. This would not be an insignificant task, however, as the Partnership Academy data is

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[3] This training satisfied the requirements of Government Code section 12011.5 (b), addressing fairness and bias in the judicial appointments process, but also endeavored to ensure the JNE commissioners had a clear understanding of the impact of the lack of judicial diversity on Californians.

held by the California Department of Education and individual participating schools hold the Pathways data.

The State Bar has transitioned leadership for these pipeline programs to California LAW, Inc. but continues to provide limited administrative support for the Pathways Annual Conference, promoting volunteer recruitment for its programs and some materials and resources.

ELIMINATION OF BIAS TRAINING

In 2014, COAF produced an elimination of bias video with companion materials called "Walk the Walk," created by award-winning filmmaker Abby Ginzberg and scriptwriter AJ Kutchins. The video included real-life experiences shared by people of color, women, lesbian, gay, bisexual, transgender and transsexual attorneys and legal workers at law firms, corporations and in academia. The companion materials include notes, tips, discussion questions, and resources to provide a framework for more inclusive environments. The video has been used and distributed to law firms, local bar entities, and national bar associations.

JUDICIAL DIVERSITY SUMMITS AND OUTREACH

COAF convened Judicial Summits in 2006, 2011, and 2016 in conjunction with the Judicial Council and the California Judges Association to evaluate the state of diversity on the bench and increase awareness as to judicial diversity issues. Final reports and/or recommendations were produced following both the 2006 and 2011 summits. Each year COAF also convenes several judicial appointment workshops for those interested in becoming a judge, but who may not possess the role models to help them understand how to navigate the system. Often, a representative from Commission on Judicial Nominees Evaluation, judicial officers and a member of the Governor's appointments team is in attendance as well. Individual COAF members also provide mentoring for interested applicants.

SECTION II: CURRENT STATE BAR DIVERSITY AND INCLUSION INITIATIVES

In addition to the activities performed by COAF, the State Bar has been looking systematically at how to advance diversity, inclusion, and accessibility internally and as a regulatory agency. The State Bar has re-focused its efforts so that its diversity and inclusion work is "Built In, Not Bolted On." To understand the gaps, needs, and opportunities, the State Bar has been collecting and examining data and engaging in various diversity and inclusion initiatives.

DATA COLLECTION AND ANALYSIS TO SUPPORT ACCURATE AND COMPREHENSIVE ATTORNEY DEMOGRAPHIC REPORTING

The State Bar has been working to generate a comprehensive demographic snapshot of the state's attorney population. Recent efforts include a 2017 licensee survey, a modification to private attorney profile pages on the State Bar's website to encourage attorneys to provide demographic data at log in, and a new survey launched concurrent with the 2019 billing cycle, which seeks information about an expansive set of demographic and career-advancement

issues. In addition, the State Bar has folded in demographic data from the Office of Admissions to develop a more robust data set.

These myriad efforts have enabled the State Bar to report on the demographics of the profession in ways not previously possible. At the highest level, California lawyers are much less diverse than the state as a whole. Comparing the attorney population to data on Californians over the age of 18 shows that 77 percent of attorneys are white, while only 41 percent of the state's adult population is white. Similarly, while a slight majority of Californians over 18 are women, only 42 percent of the profession is made up of women.

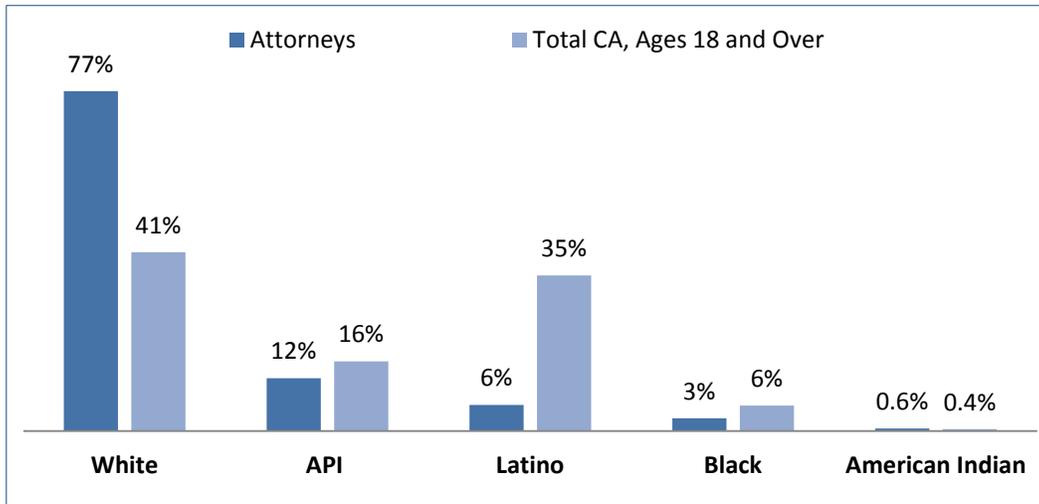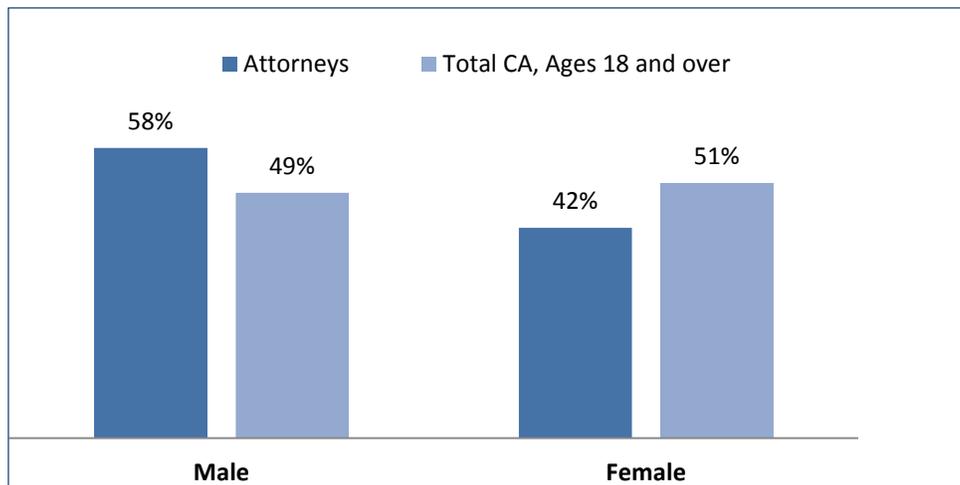**Figure 1. California Attorneys are Less Racially Diverse than State's Overall Population[4]**

Figure 2. California Attorneys are Less Diverse than State's Overall Population by Binary Gender[5]
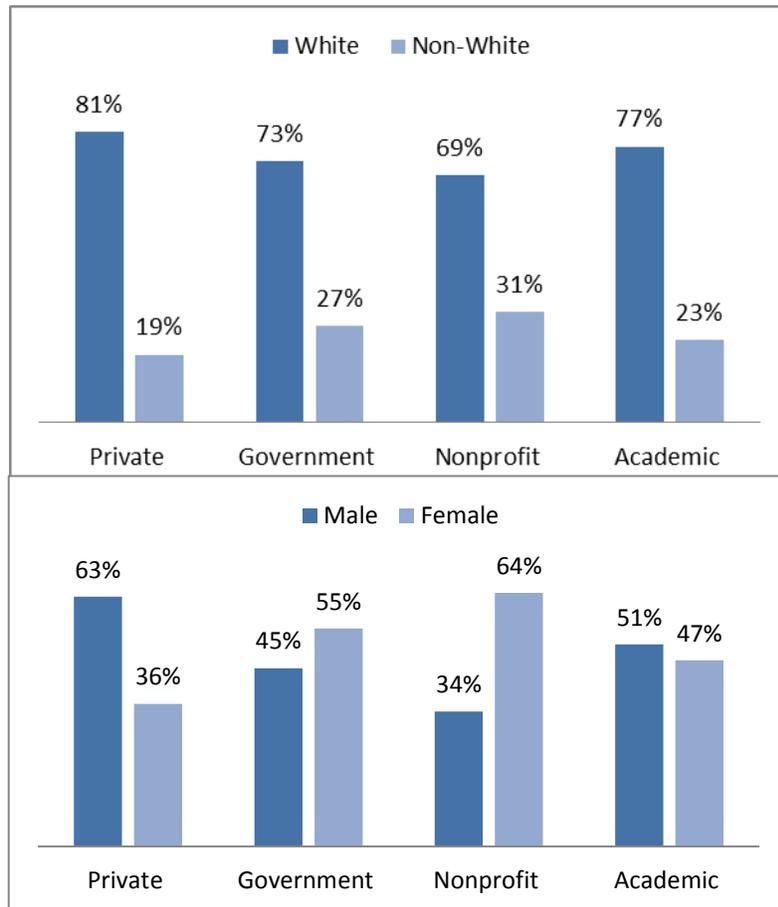

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[4] State Bar of California, Offices of Admissions, California State Bar Survey, 2017 and California population—U.S. Census Bureau Estimates, 2017
[5] State Bar of California, Office of Admissions, California State Bar Survey, 2017 and California population—U.S. Census Bureau Estimates, 2017

In addition, looking at the demographic make-up of attorneys in different sectors shows that the diversity of the profession varies depending on type of employment. The private sector is the least diverse in terms of the racial/ethnic and gender composition of the attorney population, while the non-profit sector is the most diverse on both of these dimensions.
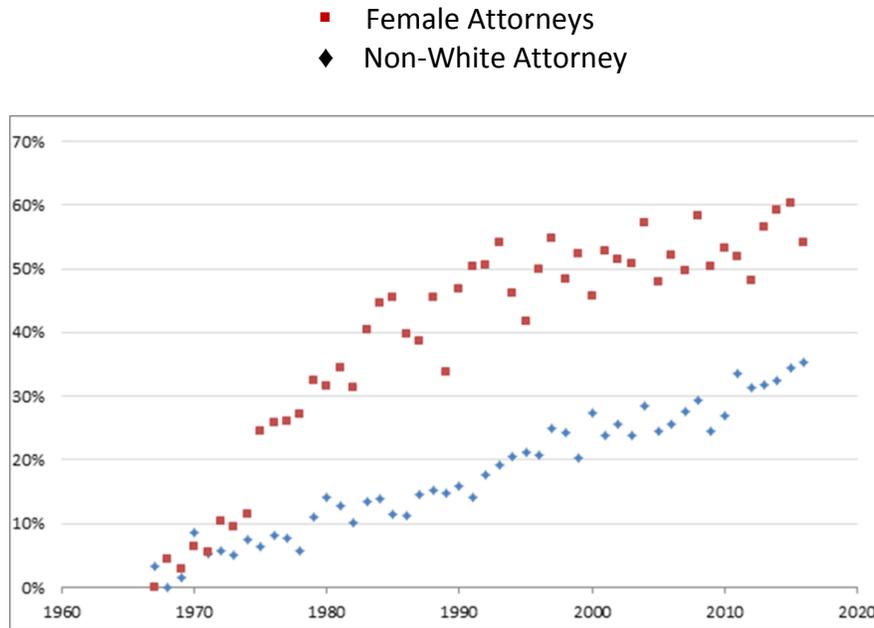
**Figure 3. Women and Non-White CA Attorneys
Underrepresented in the Private Sector[6]**

Trends over time, as opposed to a point in time snapshot, indicate that while the attorney population as a whole continues to be non-diverse, the demographics of the profession are changing. Figure 4 shows the demographic composition of attorneys by year of admission to the State Bar. The graph demonstrates a clear trend that attorneys who were admitted most recently to the State Bar are a much more diverse group than those admitted in the past.

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[6] State Bar of California, Office of Admissions, California State Bar Survey, 2017 and California population—U.S. Census Bureau Estimates, 2017

Figure 4. Change in California's Attorney Population Over Time[7]

■ Female Attorneys
♦ Non-White Attorney

Our early review of the 2019 demographic survey results, with over 66,000 responses tallied, shows that if not for the predominance of men among whites, the profession would be majority female. The profession is already majority female among Asian, Blacks, Middle Eastern/North Africans, and Native Hawaiian/Pacific Islanders. Latino attorneys are evenly split between men and women. About 2 percent of the profession does not identify as either male or female.

BUILDING A CULTURE OF DIVERSITY- INVESTING IN TRAINING ALL STAFF ON IMPLICIT BIAS

The State Bar recognizes that in order to focus on diversity and inclusion of the attorney population, these principles and values must be fully integrated throughout the organization. The State Bar has thus adopted a "Built In, Not Bolted On" strategy. In other words, diversity and inclusion issues, efforts and interventions, which had previously been laser focused with a single staff person and committee, will be the responsibility of all State Bar Offices in various ways.

In the fall of 2018, the State Bar invested in training all of its employees on implicit bias, providing more intensive and focused training for those staff who make decisions about an applicant's fitness to be admitted to the State Bar, or about disciplinary matters. Implicit bias refers to the attitudes or stereotypes that affect an individual's understanding, actions, and decisions in an unconscious manner. Understanding the importance of this issue, the State Bar engaged a nationally recognized expert to design and execute trainings specifically for the State Bar staff.

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[7] State Bar of California, Office of Admissions, California State Bar Survey, 2017

Nearly 178 staff who are involved in the moral character determination or attorney discipline process engaged in an in-person six hour training on the Neuroscience of Decision-Making in the Attorney Discipline System. Another 249 staff underwent a three-hour training on the Neuroscience of Decision-Making in the State Bar.

Moving forward, the State Bar will train all new employees on implicit bias and reinforce unconscious bias training with staff and managers regularly. In addition, pursuant to the Board of Trustees' recently completed review of State Bar committees, councils, commissions, and boards (collectively the "subentities"), beginning this year all State Bar volunteers, regardless of which subentity they serve on, will receive a standardized elimination of bias training.

ENSURING BAR EXAM QUESTIONS ARE INCLUSIVE

Essay questions for the California Bar Examination and the First-Year Law Students' Examination are solicited from law professors and other qualified drafters and edited by the Examination Development and Grading (EDG) Team under the supervision of the Office of Admissions. The Office of Admissions considers diversity in the recruitment of EDG and Performance Test Drafting Team members. Performance Test questions are drafted and edited by a team of practitioners and academics, in collaboration with a member of the EDG Team, also under the supervision of the Office of Admissions. All questions selected for the Bar exam are pretested to find potential problems of bias, ambiguity, etc., and then further edited, if necessary, prior to administration. The review and development process also involves assessing selected questions to ensure that proper names, gender, roles, etc. are not biased and represent the diverse population reflected in our state to the greatest extent practicable.

IMPROVING BAR EXAM PASSAGE

Another important and innovative initiative undertaken by the State Bar to increase diversity in the legal profession is the California Bar Exam Strategies and Stories Program (Strategies and Stories Program). Designed by a team of professors of law and psychology from Indiana University Law School, the University of Southern California Gould School of Law, and Stanford University, the Strategies and Stories Program seeks to improve outcomes on the Bar exam for all test takers, but with a focus that may be especially helpful to historically under-represented groups.

The Strategies and Stories Program is designed to mitigate the harmful effects of "psychological friction" – test takers' concerns about ability, potential, and belonging that can prevent them from performing up to their actual skill level on an exam. The intervention was developed with the support of the State Bar of California beginning in 2017 and builds on a growing body of research exploring the social-psychological factors that influence student achievement.[8]

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[8] See generally Gregory M. Walton & Timothy D. Wilson, Wise Interventions: Psychological Remedies for Social and Personal Problems, 125 PSYCH REV. 617 (2018).

Researchers spent the fall and winter of 2017 conducting surveys and focus groups of recent law school graduates in California to better understand the experiences, challenges, and concerns of students who had recently taken the Bar exam. These data were then used to create intervention materials: short videos, audio stories, Bar exam study strategies, and a short writing exercise, all designed to help test takers interpret the obstacles and challenges associated with taking the Bar exam in a productive way.

While these psychological factors can produce mental friction in all test takers, these challenges may be greater for recent graduates who are the first in their families to attend college, or who come from lower socio-economic families, or from groups who have not, historically, been represented among the ranks of the legal profession.

The preliminary findings, based on the outcomes of students who took the 2018 Bar exam, are extremely promising. Looking exclusively at first-time test takers from US law schools, the Strategies and Stories Program appeared to improve the likelihood of passing the Bar exam by 18 percent compared to a control group. Because this finding is based on a relatively small sample and is focused exclusively on a subset of all exam takers, the State Bar plans to continue working with the research team to expand the availability of the Strategies and Stories Program and evaluate the impact of the intervention on all exam takers.[9] A memo outlining the details of these preliminary findings is included in this report as Attachment A.

EXAMINING RACIAL AND ETHNIC DISPARITIES IN THE DISCIPLINE SYSTEM

In addition to examining diversity and inclusion within the legal profession, the State Bar has committed to evaluating the attorney discipline system to determine if there is disproportionality in the imposition of discipline on attorneys by race or gender. This study will also address the question of whether or not solo and small firm practitioners are disciplined disproportionately.

To evaluate the question of disproportionality in the attorney discipline system, the State Bar contracted with the University of California, Irvine, to conduct a systematic, statistical analysis of data on attorney discipline. The analysis will examine outcomes in the discipline system in a manner similar to the way in which researchers conduct parallel disparity analyses in the criminal justice setting. Just as a criminal case proceeds through phases corresponding to progressively more serious consequences – from arrest, through charging, to conviction – so a case in the discipline system also has phases – initial complaint, investigation, prosecution, and the imposition of discipline. The study will determine whether there are statistically significant variances in the likelihood that different racial/ethnic groups (and attorneys by firm size) proceed along this continuum in the discipline system. This study will control for a wide range of factors including the length of time that attorneys have practiced, attorney age, law school attended, score on the Bar exam, and county in which the attorney practices.

The results of the study are expected in April 2019.

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[9] http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Exam-Strategies-and-Stories-Program. Bar exam applicants interested in participating need to sign up via the applicant portal.

DATA COLLECTION: LICENSEE SURVEY ADDRESSING EXPANDED DEMOGRAPHIC INFORMATION AND CAREER SATISFACTION

In 2019, the State Bar expanded data collection to better understand the demographics of the profession. To accomplish this, the State Bar launched a survey concurrent with the 2019 licensee billing process. The questions on race and ethnicity align with categories used by the U.S. Census; the survey also includes questions on gender identification, sexual orientation, veteran status, age, and disability. Responders are asked about the sector of the legal profession in which they work, their rank within their firms, and their level of job satisfaction.

The State Bar designed the survey following an examination of research and surveys conducted by the American Bar Association and other entities focusing on addressing disparities in the profession based on race, ethnicity and gender.[10] The survey was further improved with the assistance of a group of participants from the State Bar's Diversity Summit.[11] As of mid-March, 2019, the State Bar has collected over 66,000 responses that will help inform statewide strategies to increase diversity and create a more inclusive profession. Data collection continues, including various outreach efforts to get even greater participation.

SECTION III: THE STATE BAR'S FUTURE DIVERSITY AND INCLUSION OBJECTIVES

In developing the State Bar's plan to increase diversity and inclusion in the legal profession, the Board of Trustees focused on where the State Bar is uniquely positioned to effectuate the most change. The Board also sought to identify measurable initiatives, so we can determine the extent to which efforts in a particular area have been effective, and whether continuation or expansion is warranted. In its Strategic Plan, the State Bar focused on a data driven approach, establishing baseline data to identify specific opportunities for interventions and inform how to pilot or expand innovative strategies.

The State Bar has five strategic goals in its 2017-2022 Strategic Plan; the fourth goal specifically addresses access to justice for all California residents. Under this goal, the Board of Trustees adopted the following diversity and inclusion Strategic Plan objectives:

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[10] *See e.g.,* L. Hughes, Jennifer & Camden, Abigail & Yangchen, Tenzin, *Rethinking and Updating Demographic Questions: Guidance to Improve Descriptions of Research Samples* (2016) Psi Chi Journal of Psychological Research. 21. 138-151. 10.24839/2164-8204.JN21.3.138. and *Interrupting Racial & Gender Bias in the Legal Profession at* https://www.americanbar.org/content/dam/aba/administrative/women/Updated%20Bias%20Interrupters.pdf.
[11] In August 2018, the State Bar convened approximately 25 members of Statewide, Regional, and Local Affinity Bars to brainstorm how the State Bar could be most impactful in the diversity and inclusion space. Several attendees volunteered to assist with the development of this survey.

Pipeline to the Profession
- Work with the California Accredited Law Schools and registered schools to develop enhanced demographic reporting requirements by December 31, 2019.
- Identify means of supporting existing law school programs to improve retention by December 31, 2019.
- No later than December 31, 2019, identify ways that diversity and inclusion principles can be institutionalized in Bar exam development and grading analyses and implement these practices no later than December 31, 2020.
- Assuming positive results from the Productive Mindset Intervention (Strategies and Studies Program), expand implementation by February 2020.

Statewide Leadership
- Continue development and implementation of initiative to collect demographic data about licensed attorneys through all stages of their career through 2019.
- Develop and publish an annual report card on the state of the profession by January 31, 2020, and annually thereafter.

Retention and Advancement
- No later than December 31, 2019, analyze available data to identify the particular obstacles to diverse attorneys' entry into, retention, and advancement in the legal profession.
- By December 31, 2020, modify the elimination of bias curriculum contained in the Minimum Continuing Legal Education requirements to consider the creation of sub-topics, and expanding the number of required hours.

Judicial Diversity
- Partner with the Judicial Council to complete the Judicial Diversity Toolkit.

PIPELINE TO THE PROFESSION

At its January 2019 planning session the Board of Trustees grappled with the question of where the State Bar can be most impactful with respect to the goal of increasing the diversity of the attorney population. The Board of Trustees decided to focus on areas where the State Bar is uniquely situated to make the most impact as a regulatory agency and where the data identifies actionable disparities.

With that lens, the Board of Trustees adopted the above strategic objectives to identify interventions and policies to support diverse law students, Bar exam test takers, and State Bar applicants to join the legal profession.
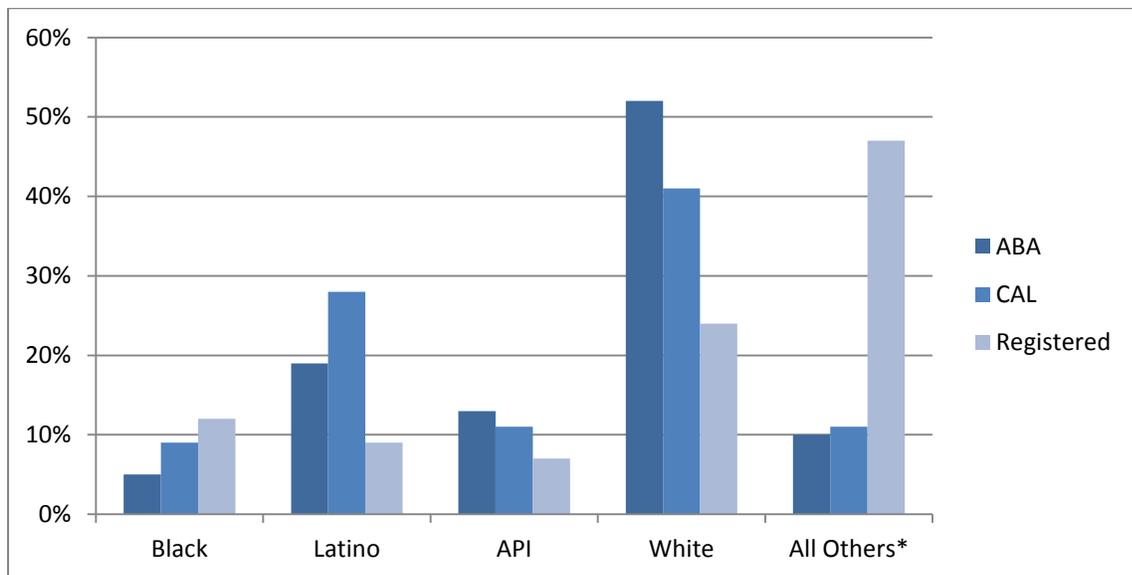
Law School Data Analysis, Attrition Data and Attrition Interventions

While there is consensus in the literature that career pipeline work should begin early, many other local organizations are engaged in that space with respect to the pipeline to law. As a

result, and taking advantage of the State Bar's statewide purview, the Board has determined that the most appropriate point of intervention for the State Bar is in law schools. This decision was animated by an extensive data review which identified a growing diversity gap between law school matriculation and law school graduation in ABA schools; corresponding data is not available for non-ABA schools at this time. Pursuant to newly adopted Strategic Plan objectives however, this year the State Bar will work with California Accredited Law Schools and Registered schools to develop enhanced demographic reporting requirements.

Figures 5 below reflects the demographics of California law students, amounting to nearly 15,660 law students at American Bar Association (ABA), California Accredited, and Registered law schools. As shown, non-ABA schools tend to have more racially and ethnically diverse students. Non-ABA schools generally have lower graduation rates and bar passage rates but they play an important role in shaping California's legal profession. They can offer less expensive law school options which allow for part-time attendance for non-traditional students working full time, they can offer online education, and are more prevalent in rural areas of California where there may not be any ABA law schools.

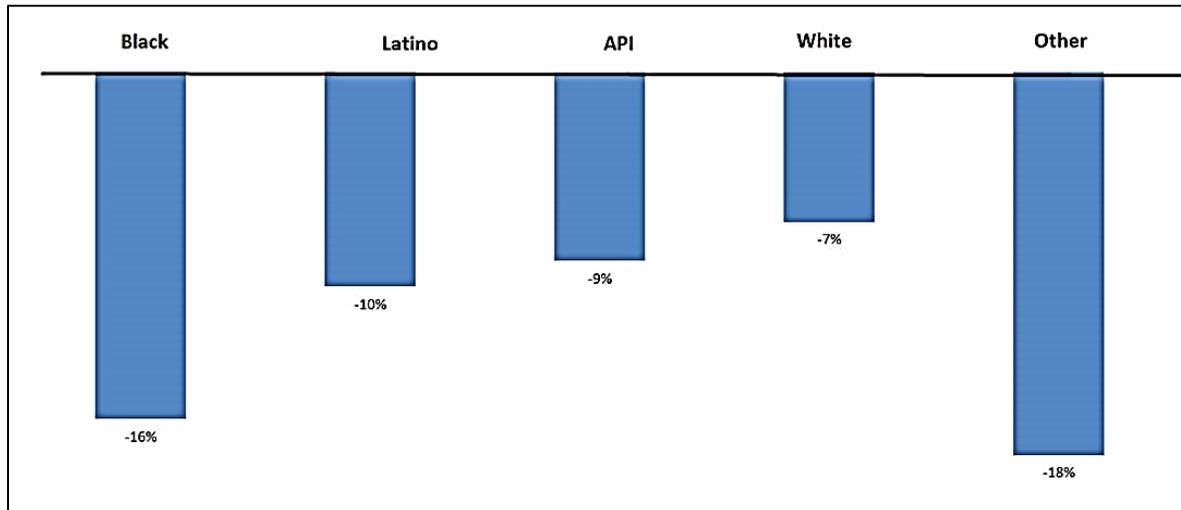**Figure 5. California Law School Student Population by Race and Ethnicity by Type of School in 2018[12]**

* Am. Indian/Alaskan and race unknown.

Figure 6 illustrates the disparity gap for students of color who leave law school before graduation.

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[12] Admissions to the Bar of the American Bar Association, Council of the Section of Legal Education and Admissions, Standard 509 Information Report - JD Enrollment and Ethnicity

**Figure 6. Estimated California ABA Law School Dropout Rate[13]
(Percent Change) 2015 Matriculates vs. 2018 Law School Graduates**

As noted above, detailed attrition data is not currently available for California Accredited or Registered Law schools. Staff will work with the California Accredited Law Schools and Registered Law schools to develop enhanced demographic reporting requirements by December 31, 2019. This information will enable similar graduation rate analyses to be generated for non-ABA schools, and ultimately will inform ways in which the State Bar's regulation of these entities may need to be modified to address this result.

Decreasing Law School Attrition for Students of Color

Currently there is no California repository of law school retention programs. Further, data about the efficacy of these, as well as similar efforts employed in other jurisdictions, is almost entirely unavailable. Most of the existing programs are isolated and generally coordinated with informal partnerships. For the few programs that have been evaluated, the findings are not widely shared, and best practices are not readily available. As a result, little is known about the extent to which these programs are successful.

This year, the State Bar will use its annual Law School Assembly – to which deans of all California law schools are invited – to begin a dialogue about promising retention programs. The State Bar will also explore programs at schools across the country for ideas about successful and replicable programs. Pursuant to the State Bar's new Strategic Plan objectives, by December 31, 2019, the State Bar will work with law schools to support existing programs or deploy and evaluate new programs to improve retention. Supporting these types of programs could directly help nearly 6,000 students of color *currently* enrolled in law schools in California persist to succeed in and graduate from law school.

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[13] ABA Section of Legal Education 509 Required Disclosures, Compilation—All School Data, JD Enrollment and Ethnicity 2015- 2018 Report, First Year Class 2015-2018 Report
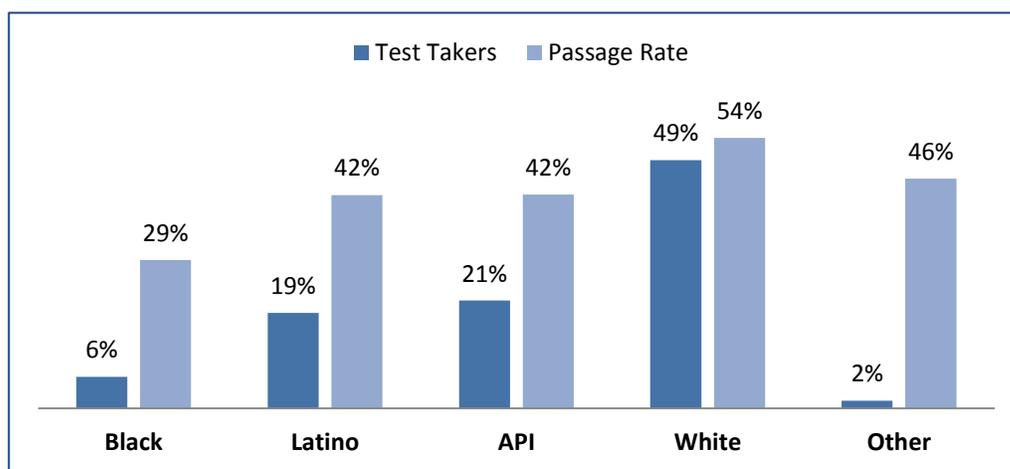
Bar Exam Questions from an Inclusion Perspective

The State Bar will review California Bar exam questions and grading from a diversity and inclusion perspective to help protect against unintended negative outcomes for people of diverse backgrounds. This includes ensuring those who test or grade exam questions have been trained in implicit bias. By the end of this year, the State Bar will identify ways that diversity and inclusion principles can be institutionalized in Bar exam development and grading analyses, and implement these practices no later than December 31, 2020. We anticipate this will include memorializing important question development and grading procedures in the State Bar rules, so they are not forgotten over time.

Increasing Bar Exam Passage Rates

Figure 7 below reflects Bar examination passage rates by race and ethnicity.

Figure 7. California ABA Law School Bar Exam Passage Rate by Race and Ethnicity, 2018[14]

As mentioned in Section II, the State Bar has already began exploring how to improve outcomes on the Bar exam for all test takers, with a focus that may be especially helpful to historically under-represented groups. The Strategies and Stories Program is specifically designed to mitigate the harmful effects of "psychological friction" – test takers' concerns about ability, potential, and belonging that can prevent them from performing up to their ability on an exam. These challenges may be greater for diverse populations who have not historically been represented among the ranks of the legal profession, graduates who are the first in their families to attend college, or who come from lower socio-economic backgrounds.

The preliminary findings of the Strategies and Stories Program from the July 2018 Bar exam are extremely promising. The State Bar will extend the program to July 2019 test takers to allow for greater participation. This additional expansion will provide more robust data on its impact on diverse populations, to inform future efforts to deliver this intervention and develop additional

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[14] State Bar of California, Office of Admissions

strategies to improve passage rates such has additional interventions for non-first time test testers.

Admissions Process: Moral Character

This year, the Office of Admissions will lead an effort to review the factors considered in the moral character determination process to determine if an applicant possesses the requisite moral character to be certified for admission to the State Bar. The review will include establishing more formal guidelines to ensure consistency, as appropriate, and provide accountability and transparency into the process. The review will include an evaluation of how an applicant's rehabilitation following past criminal convictions should be taken into account.

To protect the public, and pursuant to rules governing admission to practice law in California, applicants with significant issues in their backgrounds that may inhibit their ability to practice law are invited to participate in informal conferences to discuss these issues. Under the present scheme, applicants attend informal interviews and are questioned by a panel comprised of members of the Committee of Bar Examiners' Subcommittee on Moral Character. The panel then recommends a positive, negative, or other outcome to the full Committee of Bar Examiners (CBE), which makes the final determination.

To address issues raised concerning the consistency of recommendations made by panels of fluctuating members of the CBE, and to properly house this administrative function with staff, the Board of Trustees has directed that the responsibility for handling informal conferences and making initial moral character determinations be delegated to staff. Under the new scheme to ensure more standardization and consistency, the CBE will transition to a role of an administrative appellate body.

STATEWIDE LEADERSHIP

The State Bar is uniquely situated to be a data repository, to help identify trends in attorney demographics, cross-sector employment data, and to conduct meta-analyses of diversity and inclusion studies. With that in mind, the Board of Trustees adopted a Strategic Plan objective to analyze available data, no later than December 31, 2019, to identify the particular obstacles to diverse attorneys' entry into, retention, and advancement in the legal profession. These enhanced data collection efforts will enable the State Bar to produce an annual report card on the state of the profession beginning in 2020.

Licensee Survey Addressing Expanded Demographic Information and Career Satisfaction

As mentioned in Section II, the State Bar expanded its demographic data collection with a survey[15] in 2019 to include race and ethnicity as well as gender identification, sexual orientation, veteran status, age, and disability. Responders are asked questions including about the type of legal job they hold, the level of the position they hold, and their job satisfaction. Analysis of the data is still very early and, with additional time, the State Bar will be able to

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[15] Attached as Attachment B.

provide more in-depth demographic information about the attorney population in California, including data regarding career satisfaction by race and ethnicity, gender, and practice area. This is the most robust data set about the attorney population ever collected in California, and will be used to inform diversity and inclusion strategies moving forward.

Preliminary Analysis of 2019 Survey

With regard to career satisfaction, attorneys of all backgrounds were consistently the most dissatisfied with their salaries, with between 24 percent and 30 percent of respondents indicating dissatisfaction with this metric. Attorneys appeared to be the most satisfied with the respect and prestige associated with the profession, and with working on challenging assignments.

Despite the consistency in the rankings that attorneys gave to these issues within each of the racial/ethnic groupings, levels of dissatisfaction are modestly higher among attorneys of color.

Rankings of attorneys are much less consistent across racial/ethnic groups in the area of evaluating the workplace (including factors such as relationship with co-workers, relationship with leadership, diverse work environment, inclusive work environment, performance evaluations, and application of the sexual harassment/discrimination policy). Not a single one of the questions in this category rose above the average level of dissatisfaction for White or Asian attorneys, but Black attorneys assessed half of the items in this category negatively. Latinx attorneys and attorneys who indicated that they belong to a racial/ethnic group other than these or belonged to more than one race, indicated a relatively high level of dissatisfaction with performance evaluations.

The other issues that Black attorneys rated negatively in this category were the diversity of the workplace and the inclusivity of the workplace.

Finally, we see slightly higher levels of dissatisfaction among Latinx and Asian attorneys when we look at issues of work/life balance (number of hours worked, flexibility in the work schedule, maternity and paternity leaves, family medical leave, and child-friendly work environment), and the highest levels of dissatisfaction in this category among attorneys of a race other than the four that we focus on here - Asian, Black, Latinx, White. Attorneys of another race or more than one race, indicate higher than average levels of dissatisfaction on every single item in this category, while Asian and Latinx attorneys report moderately higher levels than average of dissatisfaction on four of the six categories (hours worked, maternity and paternity leave, and a child-friendly workplace). White and Black attorneys indicate the least dissatisfaction with work/life balance issues.

Career Satisfaction and Gender Preliminary

There is significantly more divergence between men and women on the different elements of career satisfaction than across racial or ethnic groups.

Under individual career orientation questions as a whole (which includes advancement opportunities, career development support, mentoring, challenging responsibilities/job assignments, respect and prestige, and salary), almost one in five women attorneys (18 percent) report dissatisfaction. This overall dissatisfaction with issues related to individual career orientation is driven by the highest levels of dissatisfaction with salary (30 percent), and also high levels of dissatisfaction with opportunities for career advancement and mentorship. It should be noted that women have similar levels of satisfaction as men (low levels of dissatisfaction) with the challenges of the career.

Looking at the collective workplace orientation questions (relationship with co-workers, relationship with leadership, diverse work environment, inclusive work environment, performance evaluations, and application of the sexual harassment/discrimination policy), women report levels of dissatisfaction that are almost double the levels of their male counterparts. The higher levels of dissatisfaction on issues related to the collective workplace experience are most salient on the issues of performance evaluation and workplace diversity.

Finally, looking at the ratings of satisfaction related to work/life balance, women again rate this aspect of their career as less satisfying at almost double the rate that men rate it as dissatisfying. Specific issues under this heading that women rate especially low include maternity leave (almost one in four women indicated dissatisfaction with this aspect of their careers), paternity leave (over one in five women indicated dissatisfaction), child friendly workplace, and number of hours worked (both with almost one in five women rating it as dissatisfying).

This brief overview reflects preliminary highlights from the State Bar's most recent licensee survey. The State Bar has yet to analyze survey results based on types of employment and job level, or to delve into what the data reveals about career advancement among different populations. Additional analyses will occur over the next several months, concurrent with efforts to encourage even more attorneys to complete the survey. After completion of the first round of comprehensive data review and analysis, the State Bar will partner with affinity bars and other organizations working in this space to identify trends and ways in which this data set can support their efforts. For example, this data can inform what areas of emphasis are needed in elimination of bias trainings or areas where there are opportunities for other organizations to provide specific programming for specific types of workplaces and/or populations.

RETENTION

The licensee survey and analysis will help the State Bar identify themes and trends in the profession, and better understand potential challenges. The State Bar also plans to collect information from attorneys when they go inactive, to see if that gives us further insight about the reasons people of different genders, gender identity, race, ethnicity, etc. leave the profession and whether those from diverse backgrounds leave at greater rates. The State Bar will use this data to support the development and evaluation of retention initiatives.

California specific data will inform how the State Bar should develop initiatives to address specific issues that may be identified. For example, the State Bar may learn that key times for

attorney attrition – and therefore crucial times to provide support to prevent attrition – are when attorneys have young children or when they lack advancement opportunities after several years in practice. Such findings may result in the State Bar partnering with regional or local bar associations to provide data, develop best practices, or support deployment of interventions.

Enhanced Continuing Legal Education

With the exception of those who are statutorily exempt, active attorneys in California must take 25 hours of MCLE every three years. Of the 25 hours, currently only one hour is required in the area called Recognition and Elimination of Bias in the Legal Profession and Society.

The Board of Trustees adopted a Strategic Plan objective indicating that by December 31, 2020, the State Bar will modify the elimination of bias curriculum contained in the Minimum Continuing Legal Education (MCLE) requirements and will specifically consider the creation of sub-topics and expanding the number of required hours.

New modules may be delivered in an interactive online modality and could be designed to support retention, advancement, and creating a more inclusive, culturally sensitive environment in the legal system. The State Bar will explore how specific curricula can be delivered to educate, train, and scale best practices through an enhanced MCLE requirement.

JUDICIAL DIVERSITY

Lastly, the Board of Trustees adopted a Strategic Plan objective that the State Bar partner with the Judicial Council to complete the Judicial Diversity Toolkit.

The Judicial Council is the policy making body of the California courts and is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. Judicial officers are attorneys licensed in the State of California who are either appointed by the Governor or run for elected office. To support and advance a diverse bench, the Judicial Council and the State Bar have initiated a partnership to update the Judicial Council's Judicial Diversity Toolkit, which contains model programs designed to encourage diverse attorneys to apply for judicial appointment, as well as model pipeline programs to acquaint middle and high school students with the justice system and encourage them to consider a future legal or judicial career.

The Judicial Council has expressed an intention to assume a leadership role working to ensure a diverse bench. The State Bar will provide support to the Judicial Council and the courts in these efforts, including exploring the Judicial Council's interest in conducting regional workshops to provide information and support to licensees who are exploring their interest in becoming judicial officers, but do not have role models to assist them in these endeavors.

SECTION IV: FUNDING HISTORY AND NEEDS

Funding for diversity and inclusion comes primarily from attorney licensee fees. Annual fees include an opt-out for the Elimination of Bias Fund, allowing licensees who do not wish to support these activities to subtract this amount from their payment. In 2018, the opt-out was $2 per active licensee.[16] In prior years, the opt-out supported both elimination of bias activities and the Office of Bar Relations, which was eliminated in 2017. When it supported both, the opt-out amount was $5. From 2001 through 2018, in total, licensees contributed $12.8 million through this combined opt-out. Approximately $7.3 million of that amount was used to support diversity and inclusion efforts. During that period, annual funding for diversity and inclusion initiatives fluctuated from $93,000 to roughly $440,000, and traditionally supported COAF and two State Bar staff members. More recently, opt-out funding supports staff engaged in diversity and inclusion efforts, COAF administration, and the various initiatives currently underway as described above.

For the next report, the State Bar will be in a better position to identify the costs of specific projects, programs, and interventions that will directly improve diversity and inclusion in the legal profession.

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[16] In 2017, in the absence of authorizing legislation for the annual licensing fee, the State Bar converted the elimination of bias opt-out to an opt-in voluntary contribution. That year, $93,000 was collected. Licensing fees for 2018 were once again collected pursuant to authorizing legislation. Asa result, the State Bar converted the elimination of bias payment back to an opt-out, resulting in collections of approximately $320,000.

To: State Bar of California
From: Professor Victor D. Quintanilla, Dr. Sam Erman, Dr. Mary C. Murphy, Dr. Greg Walton
Re: Designing Productive Mindset Interventions that Promote Excellence on the Bar Exam
Date: February 20, 2019

Status Update: Designing and Evaluating the Productive Mindset Intervention to Promote Excellence on California's Bar Exam

This memorandum provides an update on research and design activities relating to the development of a productive mindset intervention for the State Bar of California (SBC) that improved performance on the July 2019 bar exam among U.S. law school graduates taking the bar exam for the first time. The memorandum provides a project overview and describes four developments since our December 2017 update to the Committee of Bar Examiners.

Briefly, these developments are:

1. First, we designed a productive mindset intervention for the July 2018 bar exam, which we refer to as the *California Bar Exam Strategies and Stories Program* (the program). The productive mindset intervention is an online program that incorporates an introductory film, audio and written stories from prior test takers, and a module in which participants write letters to future test takers about how to use the insights and strategies shared. The productive mindset intervention was designed for U.S. law school students taking the California July bar exam for the first time.

2. Second, the program was made available to all registrants of the July 2018 California bar exam. In March 2018, the program was discussed on the SBC's website, where an enrollment link appeared. The SBC also sent emails to everyone registered for the bar exam. These emails introduced the program and invited applicants to enroll. In May 2018, we provided enrollees a weblink to the program. Most enrollees who followed the link and participated in the program did so shortly thereafter, in late May or early June.

3. Third, we worked closely with the State Bar of California in mid-December 2018 to conduct initial analyses and examine results. These preliminary inquiries are promising. Given the relatively small sample size and inherent uncertainties, however, it is essential to evaluate the program further. Only then can we accurately ascertain potential benefits to future test takers. Thus, we recommend that the State Bar of California continue to implement the program for the purpose of evaluation in the July 2019 administration. Because the positive effects of the program were observed for many kinds of first-time test takers from U.S. law schools, our goal is to replicate the evaluation with a larger sample of test takers to further inform program effectiveness. We look forward to working with the State Bar to streamline the recruitment and delivery of the program for the July 2019 bar exam.

4. Fourth, we are designing a modified version of the program for test takers from U.S. law schools repeating the bar exam in July 2019.

The Challenge and the Opportunity

The July 2016 California bar exam pass rate was forty-three percent—the lowest in three decades. Passage rates by group continue to reveal wide racial and ethnic disparities. These troubling outcomes suggest a need for research into (1) the factors that shape bar exam performance and (2) interventions to improve exam performance for all bar exam takers, including racial and ethnic minorities. This challenge creates opportunity. Greater bar passage will motivate prospective law school applicants, thereby increasing access to the legal profession. It will also fulfill a promise to law students who expend considerable effort and resources to join the profession, expanding the value of legal education.

Psychological Friction: A Root Cause

In addition to a high-quality legal education and adequate financial aid, productive mindsets may be important for success in law school and during bar exam preparation. Worries about ability, potential, and belonging can occur for all students during the transition into law school, within law school classes, and while studying for the bar exam. These worries can create psychological friction that prevents students from achieving what they are capable of (e.g., Murphy et al., 2007). One concerning result is the drain on students' executive functioning and cognitive resources, which lowers persistence and performance (e.g., Kamins & Dweck, 1999, Walton & Cohen, 2007; 2011).

Productive Mindset Interventions: A Way to Reduce Psychological Friction

Productive mindset interventions mitigate the harms associated with concerns about potential, belonging, and stress and spur motivation and performance. The *California Bar Exam Strategies and Stories Program* 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 so as to improve the test taking experiences and exam performance.

Design of the Intervention (Summer 2017 – Spring 2018)

In collaboration with the State Bar of California, we engaged in a user-centered iterative design process to create a well-tailored, optimized productive mindset intervention for law school graduates taking the California bar exam for the first time.

> Spring 2017: We presented research on the potential benefits of a productive mindset intervention to the State Bar of California and the Committee of Bar Examiners.
>
> Summer 2017: We conducted an online survey that elicited the thoughts, feelings, and behaviors of recent law school graduates studying for the July 2017 bar exam.
>
> Fall 2017: We conducted follow-up online surveys to learn about the challenges, concerns, and experiences of students who took the 2017 bar exam and completed focus groups with recent law school graduates who took the July 2017 bar exam in the Los Angeles area. Results of these focus groups are described below.

Winter 2017: We used information collected from the surveys and focus group to create intervention materials. We adapted, improved, and revised the intervention materials in an iterative process with focus groups. These focus groups (a) provided additional insights into law school graduates' psychological experiences and behaviors; (b) provided additional preliminary measures of the effectiveness of the draft materials; and (c) allowed for further refinement.

Spring 2018: In early Spring 2018, we finalized the materials. With the assistance of a film production studio, we produced the films, audio stories, and materials that form the basis of the productive mindset intervention. Beginning on March 1, 2018, participants were enrolled into the program.

Summer 2018: In May 2018, the program was made available to registrants for the July 2018 bar exam.

Findings of Focus Groups Conducted with Test-Takers Who Took the July 2017 Bar Exam

In December 2017, we conducted focus groups at the University of Southern California (USC) with recent law school graduates who sat for the July 2017 bar exam. These focus groups brought the following important themes to light:

Related to overall performance, test-takers of the July 2017 bar exam experienced stress and anxiety when preparing for the bar exam. They described a fear of failure, a perceived lack of time, and concern about learning a new subject they had not studied in law school, among others:

- *Fear of Failure:* Several test-takers mentioned frequently ruminating on failing the exam. This was particularly the case for students who were in the lower-middle or low quartile of their law school classes–students who did not perform well in law school. Students mentioned attempting to handle the stress of studying for the exam on top of feeling the stress of potential failure.
- *Time*: Many students felt like they did not have enough time and were constantly stressed about the lack of time leading to the exam. Two to three months to master the material did not seem like enough time, and panic set in when thinking about the lack of time and studying simultaneously.
- *Attention span:* Many students indicated that they were stressed because they had difficulty focusing for the many hours required to study each day on the exam.
- *Confidence*. Students took practice tests and yet many still struggled. Many of the students compared themselves against others studying for the bar and became very stressed when they were either covering less material than their peers or performing more poorly than their peers on practice exams. Often the negative feedback received when studying for the bar created negative expectations and reduced their confidence, rather than motivating and spotlighting areas for learning.
- *Not learning subjects during law school*: Some graduates were unnerved by trying to learn a new subject because they did not learn subjects in law school. The volume of

information was stressful for many taking the exam. Some students compounded this by skipping too many of the subjects early when preparing for the exam in the summer and then becoming overwhelmed during bar study.

- *Lack of feedback:* Students reported feeling that feedback from bar review courses was not timely (the courses take days or weeks to return work) and was not frequent enough. Students did not trust their self-assessments, which created stress during the study period, and often relied on the limited grading done by bar review courses.
- *Bar review courses:* Students reported that some of the review courses have practices that are not helpful, such as assigning remedial work when students show weakness. While identifying weak areas is helpful, assigning extra "homework" on top of a 10 to 12-hour study day created additional stress. Moreover, many students reported believing that their review courses intentionally provided them low scores on practice problems to motivate further study, and that this practice seemed like a "mind game," which created additional stress and anxiety.

Students in the focus groups also reported personal stressors ranging from balancing family commitments to self-care.

- *Financial concerns:* Many students were not working when studying for the bar exam, or if they were they cut back on hours as the bar exam approached.
- *Relationships*: Some students were parents who had personal obligations and had to take care of small children while preparing for the bar exam. These students were particularly stressed not only because they had to parent and study simultaneously, but also because of the stress that they felt like they were being neither "good parents" nor "good students." Moreover, family obligations added to their financial burdens.
- *Jobs:* Some students did not have a job offer. They continued their job search during the summer, which took time away from studying. Others abandoned their job search to focus on the bar. Either way, it was a source of stress and anxiety.
- *Unexpected crisis:* These tended to be the more difficult to deal with than performance issues because these are out of their control. For some students, this was detrimental to their personal wellbeing.
- *Isolation*: For some students, studying for the bar exam was quite lonely and isolating, and many expressed this concern. Students experienced stress in not being able to see family members or loved ones as much as they were accustomed to. Moreover, students experienced stress in not being able to talk with family and friends who have not taken the bar exam. Often the kinds of familial support they received (e.g., "You are smart, you have nothing to worry about.") was counterproductive and increased anxiety about failing the exam.
- *Self-care:* Many students reported having self-care challenges in early July. Students reported sleeping poorly, having anxiety attacks, eating junk food, drinking alcohol, cutting back on time with loved ones, and being unable to exercise. Relations with family and friends were impacted in this period, which reduced wellbeing and the ability to mitigate stress and anxiety.

Delivery of the Productive Mindset Intervention (Summer 2018)

The *California Bar Exam Strategies and Stories Program* was delivered online in partnership with the State Bar of California. First, beginning in mid-March 2018, test takers registering for the bar exam had the opportunity to opt in to the program. In so doing, they consented to participate in the program and permitted the researchers to analyze their bar exam results. Those who opted-in received a link to the online program in May 2018.

The *California Bar Exam Strategies and Stories Program* incorporated an introductory film, audio and written stories from prior test takers, and a module in which participants wrote letters to future test takers about how to use the stories' insights and strategies.

The program was designed as a randomized control trial (RCT). Randomized controlled trials are the gold standard for examining efficacy of interventions. Random assignment of test takers ensures the random dispersal of student traits (e.g., GPA, demographic details) between conditions. When possible, moreover, block random assignment (also known as stratified random assignment) is recommended. Here, blocks were designed to ensure that equal proportions of men/women, racial and ethnic groups, U.S. law students, first-time/repeat takers were randomly assigned into the treatment and control condition. Moreover, a statistical package was applied which ensured that average prior performance scores (i.e., LSAT and law school GPA) were equal within the treatment and control condition. Every participating test taker was then randomly assigned into either (1) the active control condition where they learned bar exam study strategies or (2) the treatment condition where they received the productive mindset intervention as well as bar exam study strategies. This left the intervention treatment as the only systematic difference between the conditions.

Measurement of the Intervention (November 2018 – April 2019)

The primary outcome of interest was bar passage. This is because an increase in bar exam passage rates in the intervention condition would provide evidence that the productive mindset intervention was effective. We also assessed psychological and behavioral outcomes, including whether participants adopted more adaptive mindsets or productive studying behaviors.

Bar exam performance data become available in November 2018. The research team conducted an onsite visit with the State Bar of California in December 2018. We worked closely with the SBC's internal researchers to examine the effect of the intervention and validate a publicly available bar passage list.

This executive summary provides our initial findings. We anticipate that the remaining primary analyses of the *California Bar Exam Strategies and Stories Program* will be complete in May 2019.

Results of the Productive Mindset Intervention

A. Predictors of Performance on the Bar Exam

We turn first to the predictors of bar passage among first-time test takers who were U.S. law school students.

GPA performance in law school and performance on the LSAT both correlated moderately with passing the July 2018 bar exam. When registering for the program in March 2018, participants self-reported their LSAT scores and cumulative law school GPAs. Most current U.S. law school students registered for the July bar exam in the final semester of their third year of law school; therefore, their law school GPA corresponded with the previous five semesters in law school. For these U.S. law school students, law school GPAs ($r = .496$) and LSAT scores ($r = .422$) both correlated moderately with passing the bar exam.

Regarding situational factors, initial results revealed that summer employment (including full time or part time employment) negatively correlate with passing the bar exam ($r = -.310$) as did responsibility for caring for dependents (such as children or aging parents) over the summer while preparing for the exam ($r = -.164$).

Finally, we extended this correlational analysis to the full dataset of participants in the program, regardless of whether the program was designed for them. We observed that test takers who previously failed the exam and had repeated the bar exam in July 2018 were less likely to pass than those taking the exam for the first time ($r = -.308$). Moreover, test takers from law schools outside the U.S. were less likely to pass ($r = -.194$).

B. Enrollment and Participation in the Program

The *California Bar Exam Strategies and Stories Program* was delivered online in partnership with the State Bar of California.

The program was designed for applicants who timely registered for the July 2018 bar exam. This enrollment window extended from March 1, 2018 until several days after April 1, 2018. When recruiting participants, the State Bar of California made a enrollment link available on its website and sent emails to test takers who had registered for the bar exam. Within the timely registration window, 1,638 test takers enrolled in the program and consented to permit the researchers to analyze the impact of the program.[1]

In May 2018, we sent test takers who enrolled in the program a link to participate in the program, along with a series of reminder emails. Of these 1,638 test takers who enrolled in the program,

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[1] In April 2018, the SBC asked the researchers to open a second enrollment window allowing test takers who did not timely register for the bar exam to participate in the program. This second enrollment window was primarily designed for repeat test takers who failed the February 2018 bar exam and learned these bar results after the timely registration deadline. This second enrollment window extended from mid-April 2018 until May 15, 2018. Within this second enrollment window, 781 applicants enrolled in the program.

830 (50.67%) clicked on this link and participated in the program. Of these participants, 661 (79.6%) were first time takers, whereas 169 (20.4%) were repeat test takers; 674 (81.2%) were applicants from U.S. law schools, whereas 146 (17.6%) were applicants from non-U.S. law schools. Ultimately, 438 (52.77%) of these participants were U.S. law school students taking the bar exam for the first time.

C. Analyzing the Effects of the Productive Mindset Intervention

We then turned to analyzing the results of the *California Bar Exam Strategies and Stories Program*.

1. **Do initial analyses suggest that the program may be effective among U.S. law students who were first-time test takers?**

We first conducted an intent-to-treat (ITT) analysis, which researchers often consider to be a conservative test of the efficacy of interventions. The ITT analysis examined the effect of the *California Bar Exam Strategies and Stories Program* regardless of whether participants actually began or completed the program. Instead, the ITT analysis compared test takers assigned to the treatment or control condition who received the link to begin the online program, regardless of whether they clicked on the link to begin.

This ITT analysis included all test takers who timely registered for the July 2018 bar exam even those for whom the program was not specifically designed: repeat test takers, graduates of foreign law schools, and out-of-state attorneys. As is recommended, we controlled for participants' prior exam performance, LSAT, to ascertain the effects of the program. Controlling for LSAT, this initial examination of bar passage rates was promising. The estimated probability of passing the bar exam was 7.4 percent higher in the treatment than the control condition.

We then examined the average-treatment effect of the *California Bar Exam Strategies and Stories Program* among U.S. law graduates taking the July bar exam for the first time. In so doing, we applied a program completion rule: we analyzed the effect of the intervention among test takers who completed the program. That is, this program completion rule included only those participants who completed all video and written modules of the program, watched the introductory films, listened to the audio, read the written stories from prior test takers, and wrote a letter to a future test taker about how to use the insights and strategies shared. We focused our analysis on U.S. law students taking the bar exam for the first time who completed the program ($N = 193$). Again, we controlled for participants' prior exam performance, LSAT, to ascertain the effects of the program. The estimated probability of passing the bar exam was 18.2 percent higher in the treatment than the control condition. The results of this initial examination were promising. The sample size was, however, small. Therefore, replication with a larger sample will be essential to reduce uncertainty about the replicability and magnitude of any effect. It is essential to evaluate the program in another independent trial, ideally with a larger sample of test-takers, to address these questions.

2. Did the program benefit all demographic groups equally?

Next, we analyzed whether the effect of the program was stronger for some groups as compared to others. Our initial analysis, among graduates of U.S. law students taking the bar exam for the first time, the *California Bar Exam Strategies and Stories Program* revealed no differential impact across demographic groups (e.g. men and women, participants from majority and minority racial and ethnic groups).

At this time, we have two theories why no significant differences emerged in the effectiveness of the program between groups. First, we theorize that most test takers experience the psychological friction that the program was designed to address. As such, most test takers benefited from the productive mindset intervention. Second, the sample size among participants of racial and ethnic groups was likely too small to detect significant differences between conditions. In this regard, the table below indicates group memberships that these U.S. law students selected when enrolling in the program.

U.S. law student initial test takers who completed the program	
Gender	Men, $n = 77$
	Women, $n = 115$
White	$n = 123$
Black	$n = 18$
Hispanic	$n = 34$
Middle Eastern	$n = 5$
Pacific Islander	$n = 3$
East Asian	$n = 17$
South East Asian	$n = 9$
Indiana Subcontinent	$n = 6$
Native American	$n = 5$

Given the promising initial results, we recommend that the State Bar of California streamline recruitment and enrollment into the program for the July 2019 bar exam administration, thereby increasing the number of U.S. law students who participate in the program.

3. Why did the program have this beneficial effect?

How could the *California Bar Exam Strategies and stories Program* have promising effects on bar passage rates? Our initial analyses point to a variety of potential psychological benefits, including improved confidence in handling stress, more adaptive mindsets about making mistakes when studying for the exam, and more adaptive mindsets about handling stress.

These benefits are consistent with the effects of other well-designed psychological interventions. *See generally* Gregory M. Walton & Timothy D. Wilson, *Wise Interventions: Psychological Remedies for Social and Personal Problems*, 125 PSYCH REV. 617 (2018).

Future analyses will further explore both effectiveness and underlying mechanisms.

Conclusion

The research and design team is grateful to have this opportunity to update the State Bar of California on this project and for the chance to collaborate with the SBC on the goal of designing and implementing productive mindset interventions to improve performance on the bar exam.

Research Team Qualifications

The research team is highly qualified to conduct the project. The team is comprised of members of the College Transition Collaborative (http://collegetransitioncollaborative.org) — a partnership between researchers and institutions of higher education aimed at improving student success in college. The investigators are leaders in the field of creating, implementing, and evaluating large-scale productive mindset interventions that reduce achievement gaps and boost retention among undergraduate and graduate students (e.g., Walton & Cohen, 2011; Murphy et. al., in prep.; Walton, Logel, et. al., 2015).

Principal Investigator, Victor D. Quintanilla is an Associate Professor of Law at the Indiana University Maurer School of Law, Adjunct Professor of the IU Department of Psychological and Brain Sciences, and the Director of the IU Center for Law, Society & Culture. Quintanilla's research investigates legal education, access-to-justice, and civil justice by drawing on theory and methods within the field of psychological science, including experiments conducted with judges, lawyers, law students, and members of the public. He is currently serving as a Principal Investigator for a research line that seeks to design interventions to nourish the value of access-to-justice, collaborative problem solving, and service among law students. A second research line seeks to design interventions to promote diversity and excellence in the legal profession. His work appears in leading law reviews and peer-reviewed journals. He has been awarded several grants to support his projects and in 2015-2016 he was a Fellow in Residence at the Center for Advanced Study in the Behavioral Sciences at Stanford University.

Co-Principal Investigator, Dr. Sam Erman is an Associate Professor of Law at the USC Gould School of Law. Dr. Erman conducts policy-relevant research concerning the relationship of law to belonging, the relationship of psychology to antidiscrimination law, the spread and maturation of ideas within legal communities, and the strategies and impacts of outsiders on legal thought and practice. His work has appeared in leading law reviews and peer-reviewed journals and is forthcoming as a book with Cambridge University Press. Before joining the law school, Erman served as a Latino Studies Fellow at the Smithsonian Institution National Museum of American History; the Raoul Berger-Mark DeWolfe Howe Legal History Fellow at Harvard Law School; a law clerk to Supreme Court Justices Anthony Kennedy and John Paul Stevens; and a law clerk to Judge Merrick Garland of the U.S. Court of Appeals for the D.C. Circuit.

Co-Principal Investigator, Dr. Mary Murphy is an Associate Professor of Psychology at Indiana University. Her research focuses on developing and testing theories about how people's social identities—such as their gender, race, and social class—interact with academic and professional contexts to affect their thoughts, feelings, motivation, and performance. She develops, implements, and evaluates social psychological interventions that reduce threat and sustain motivation, persistence, and performance. Her research has been funded by the National Science Foundation, the Spencer Foundation, the Ford Foundation, the Society for Experimental Social Psychology, and the Society for the Psychological Study of Social Issues, and has appeared in the most selective journals in psychology and education.

Co-Principal Investigator, Dr. Gregory Walton is an Associate Professor of Psychology at Stanford University. Dr. Walton designed and evaluated the original social-belonging

intervention (Walton & Cohen, 2007, 2011) and is, more broadly, a leading scholar of social psychological theory and its intersection with societal issues, including theory-based interventions to address social problems. His research has been published in the most selective journals in psychology, education, and science (e.g., J. Educational Psychology, J. Personality and Social Psychology, Proceedings of the National Academy of Sciences, Psychological Science, Review of Ed. Research, and Science). He has received numerous honors and awards from various societies, including the American Psychological Society, the Society for Experimental Social Psychology, the American Psychological Association, and the American Education Research Association.

The State Bar *of California*

Step 1: Log in

Please participate in the State Bar's *new* Demographic Survey! After entering your login you will be directed to the survey. The data you provide will allow the State Bar to understand changes in the attorney population, career trajectories, and experience working in the legal profession.

This provision information will assist the Bar in complying with California Rule of Court rule 9.9 and California Business & Professions Code sections 6002.1 and 6009.5. This survey is voluntary. If you have questions regarding the collection or use of this data, contact surveydata@calbar.ca.gov or visit MSBP Survey Frequently Asked Questions.

Returning Users

Enter your State Bar Licensee number or MJP number, then enter your password:

State Bar Number

Password

(**Reminder:** Your password is at least 7 characters long, including at least 1 number.)

Log In

Forgot password?

New Users

If you have not used *My State Bar Profile* before, you will need to register before you can access the system. Enter your State Bar Licensee number or MJP number below to get started.

State Bar Number

Register

Law students and exam applicants log in

Frequently Asked Questions about Account Lockout

Step 2: Survey Instructions

Welcome to My State Bar Profile

Please participate in a short survey before accessing your profile.

Business and Professions Code Section 6001.1 was amended in 2018 to clarify that protection of the public, the highest priority for the State Bar, "includes support for greater access to, and inclusion in, the legal system." To fulfill this mandate and ensure the legal profession continues to thrive, the Bar is seeking more accurate and comprehensive information about attorneys licensed in California.

Your participation in this survey will allow the Bar to collect and analyze a rich dataset representing one of the largest and most diverse State Bars in the nation. In addition, the provision of demographic and employment information will assist the Bar in complying with the following: California Rule of Court rule 9.9 and California Business & Professions Code sections 6002.1 and 6009.5.

The survey is voluntary. Please skip through any responses you choose not to answer. Any information you provide is confidential. No personally identifiable information will be reported or shared outside of the Bar. If you have questions regarding the collection or use of this data, contact surveydata@calbar.ca.gov or visit MSBP Survey Frequently Asked Questions.

The State Bar thanks you for your participation! The survey will begin on the next screen.

Next

Step 3: Enter Race and Ethnicity

Race and Ethnicity
Please follow the steps and answer the questions.

● ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○

With which racial and ethnic group(s) do you identify? ⓘ
Choose all that apply

- ☐ Hispanic/Latino/ or Spanish
- ☐ White
- ☐ Black or African American
- ☐ Asian
- ☐ Middle Eastern or North African
- ☐ American Indian or Alaska Native
- ☐ Native Hawaiian or Other Pacific Islander
- ☐ Other race, ethnicity, or origin (please specify): ▮▮▮▮▮▮▮▮

Back   **Next**

Skip

Step 4: Enter Gender

Gender

Please follow the steps and answer the questions.

○ ● ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○

What is your gender? ⓘ
Choose all that apply

☐ Female

☐ Male

☐ Transgender

☐ Gender Variant/Non-conforming/Non-binary

☐ Two Spirit

☐ Not listed (please specify): _____

Back   **Next**

Skip

Step 5: Enter Sexual Orientation

Sexual Orientation
Please follow the steps and answer the questions.

○ ○ ● ○ ○ ○ ○ ○ ○ ○ ○ ○ ○

What is your sexual orientation? ⓘ
Choose all that apply

☐ Lesbian or Gay

☐ Bisexual

☐ Heterosexual

☐ Pansexual

☐ Asexual

☐ Not listed (please specify): ▬▬▬▬▬▬▬

Back   **Next**

Skip

Step 6: Enter Disability

Disability

Please follow the steps and answer the questions.

○ ○ ○ ● ○ ○ ○ ○ ○ ○ ○ ○ ○

I identify as a person with a disability ⓘ

Choose one

◉ Yes

Select all that apply:

☐ A vision impairment

☐ A hearing impairment

☐ A mobility impairment

☐ A learning disability

☐ A disability or impairment not listed above

○ No

Back   **Next**

Skip

Step 7a: Enter Employment

Which of the following best describes your current primary employment? ⓘ

Choose one

- ○ Private
- ○ Government
- ○ Nonprofit
- ○ Academic
- ○ Consultant
- ○ Retired
- ○ Not employed as an attorney
- ○ Unemployed
- ● Other (please specify): _____

Back   **Next**

Skip

Which of the following best describes your current primary employment? ⓘ

Choose one

- ● Private

  Choose one:
  - ○ Solo practitioner
  - ○ Corporate In-house Counsel
  - ○ Law firm
  - ○ Other (please specify): ▭

Which of the following best describes your current primary employment? ⓘ

Choose one

- ○ Private
- ● Government

  Choose one:
  - ○ Federal
  - ○ State
  - ○ County
  - ○ City
  - ○ Other (please specify): ▭

- ● Academic

  Choose one:
  - ○ Tenured/Tenure-track
  - ○ Non-tenured
  - ○ Adjunct faculty
  - ○ Other (please specify): ▭

Step 7b

Which of the following best describes your current primary employment? ⓘ

Choose one

⦿ Private

Choose one:

○ Solo practitioner

○ Corporate In-house Counsel

○ Law firm

○ Other (please specify): ▭

Which of the following best describes your current primary employment? ⓘ

Choose one

⦿ Private

Choose one:

○ Solo practitioner

○ Corporate In-house Counsel

⦿ Law firm

Firm size:

○ 2 - 5

⦿ 6 - 10

○ 11 - 25

○ 26 - 50

○ 51 - 100

○ 101 - 200

○ 200+

○ Do not know

○ Other (please specify): ▭

What is your current job level? ⓘ

Choose one

○ Partner (please specify): ▭

○ Counsel (please specify): ▭

○ Associate (please specify): ▭

○ Staff Attorney (please specify): ▭

○ Law Clerk

○ Manager/Administrator

⦿ Non-Attorney Position

○ Other (please specify): ▭

Pro Bono service ⓘ

Choose one for each

How many hours per month do you provided reduced cost/low bono work?

○ 1 - 5

○ 6 - 10

○ 11 - 25

○ 26 - 50

○ 51 or more

○ I do not provide reduced cost/low bono services

How many hours per month do you provide pro bono work?

○ 1 - 5

○ 6 - 10

○ 11 - 25

○ 26 - 50

○ 51 or more

○ I do not provide pro bono services

Step 7c

Malpractice Insurance

Please follow the steps and answer the questions.

○ ○ ○ ○ ○ ○ ○ ● ○ ○ ○ ○ ○

Do you have malpractice insurance? ⓘ

Choose one

- ⦿ Yes
- ○ No
- ○ Not sure

Do you have malpractice insurance? ⓘ

Choose one

- ○ Yes
- ⦿ No

  Why don't you have malpractice insurance?

  - ○ It's too expensive/I can't afford it
  - ⦿ It is not required for my area of practice
  - ○ I don't believe I will be sued
  - ○ My assets are protected from a malpractice judgment
  - ○ I don't practice enough to make it worthwhile
  - ○ I am retired
  - ○ I am unable to obtain coverage
  - ○ Other (please specify): ▭

- ○ Not sure

Step 8: Enter Job Level

Employment

Please follow the steps and answer the questions.

○ ○ ○ ○ ○ ● ○ ○ ○ ○ ○ ○ ○

What is your current job level? ⓘ

Choose one

○ Executive Management

○ Middle Management

○ Staff Attorney

○ Other (please specify): _____

Back   **Next**

Skip

Step 9: Enter Job Satisfaction

Job Satisfaction

Please follow the steps and answer the questions.

○ ○ ○ ○ ○ ○ ○ ○ ● ○ ○ ○ ○

How satisfied are you with your legal career? ⓘ

Choose one

○ Very satisfied

○ Somewhat satisfied

○ Neither satisfied nor dissatisfied

○ Somewhat dissatisfied

○ Very dissatisfied

Back **Next**

Skip

Step 10: Job Satisfaction

Job Satisfaction

Please follow the steps and answer the questions.

○ ○ ○ ○ ○ ○ ○ ○ ● ○ ○ ○

What would make your legal career more satisfying? ⓘ

Choose all that apply

- ☐ Ability to work for yourself
- ☐ Alternative work schedule/flexible hours
- ☐ Potential for advancement
- ☐ Better salary and benefits
- ☐ Diverse work environment
- ☐ Inclusive work environment
- ☐ Job training
- ☐ Mentoring support
- ☐ More responsive and supportive employer
- ☐ Feeling like you are making a difference
- ☐ Opportunities to build networks

Back   **Next**

Skip

Step 11: Job Satisfaction

○ ○ ○ ○ ○ ○ ○ ○ ○ ● ○ ○

How satisfied are you with each of the following aspects of your current legal position? ⓘ
Choose all that apply

Category	Satisfied	Neutral	Dissatisfied	Not Applicable
Advancement opportunities	○	○	○	○
Career development support (i.e., training)	○	○	○	○
Mentoring	○	○	○	○
Challenging responsibilities/job assignments	○	○	○	○
Number of hours worked	○	○	○	○
Flexibility in work schedule	○	○	○	○
Relationships with co-workers	○	○	○	○
Relationships with leadership	○	○	○	○
Respect and prestige	○	○	○	○
Salary	○	○	○	○
Maternity leave	○	○	○	○
Paternity leave	○	○	○	○
Family medical leave	○	○	○	○
Child-friendly work environment	○	○	○	○
Diverse work environment	○	○	○	○
Inclusive work environment	○	○	○	○
Performance evaluations	○	○	○	○
Application of sexual harassment/discrimination policy	○	○	○	○

Back **Next**

Skip

Step 12: Your Responses

Review

Please follow the steps and answer the questions.

○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ● ○

Your Responses

Review your responses. To change a response use the Back button to navigate to that page. Confirm your responses by clicking next.

1. With which racial and ethnic group(s) do you identify?

Step 13: Your Responses

Demographic Information
Please follow the steps and answer the questions.

Thank You

You have completed all of the questions.

Click Next to return to My State Bar Profile.

Back   Next