

AGENDA ITEM

NOV 54-112
Open Meetings, Closed Sessions and Records of the BOG-Proposed Amendments Following Public Comment

DATE: October 18, 2007

TO: Members, Board of Governors
Members, Board Committee on Operations

FROM: Marie M. Moffat, General Counsel
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SUBJECT: Open Meetings, Closed Sessions and Records of the Board of Governors, Proposed Amendments Following Public Comment

EXECUTIVE SUMMARY

In August, the Committee on Operations of the Board of Governors authorized a 60-day public comment period on a proposed amendment to the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of The State Bar Of California to clarify that Governors who are not members of Board Committees may participate, but not vote in committee meetings. The public comment period will close on October 26, 2007. To date, no comments have been received. We will update you regarding any comments received between now and the deadline. At this time, it would be appropriate for the Board Committee on Operations to recommend that the Board of Governors adopt the proposed amendments.

BACKGROUND

In California, the Ralph M. Brown Act, Cal. Gov. Code §§ 54950-54963, and the Bagley-Keene Open Meeting Act, Cal. Gov. Code §§ 11120-11132, govern the meetings of local and state boards, commissions, agencies and other governmental bodies. Because the State Bar is a judicial branch agency, it is exempt from the Brown and Bagley-Keene Acts. However, in 1975, the California Legislature added to the State Bar Act section 6026.5 to the California Business and Professions Code ("Section 6026.5). Like the Brown and Bagley-Keene Acts, section 6026.5 requires that all meetings of the Board of Governors shall be open to the public, except where closed sessions are expressly authorized.

DISCUSSION

Section 6026.5 requires that all meetings of the Board of Governors be conducted in sessions open to the public, permitting closed meetings only for eight enumerated purposes.¹ The Rules Governing Open Meetings, Closed Sessions And Records Of The Board Of Governors Of The State Bar Of California (“Open Meeting Rules”) extends these requirements to meetings of Board Committees. Under the sequential, rather than concurrent committee meeting schedule, governors who are not members of committees and want to be fully informed of matters may attend and participate in the discussions of committees. The non-committee members do not vote in committees, and no Board action is taken until the scheduled meeting of the full Board. Open Meeting Rules, art. 1, § 4(b)(6).

However, an Attorney General opinion construing a comparable provision under the Ralph M. Brown Act has advised that the non-committee members may only observe the proceedings in committee meetings, but cannot ask questions or otherwise participate in the discussions. 81 Ops. Cal. Atty. Gen. 156 (1998). While the Brown Act does not apply to the State Bar, the opinion creates ambiguity in the language in Section 4(b)(6) of article 1 of the State Bar’s Open Meeting Rules. To clearly permit non-committee members to not only observe, but also to participate in committee meetings, staff has drafted an amendment to Section 4(b)(6). (Attachment A.)

The proposed amendment would amend existing language that states governors who are not committee members may attend only as “observers.” It would expressly provide instead that governors may participate, but not vote. It would further provide that a statement be included in the agenda for Board Committees to notify the public when a quorum of the Board is present at a committee meeting, the meeting becomes a meeting of the whole Board, but is not a meeting at which the Board will take action.

In August, the Committee on Operations of the Board of Governors authorized a 60-day public comment period on the proposed amendment to the Open Meeting Rules. The

¹ The statute states:

- Every meeting of the board shall be open to the public except those meetings, or portions thereof, relating to:
- a. Consultation with counsel concerning pending or prospective litigation.
 - b. Involuntary enrollment of active members as inactive members due to mental infirmity or illness or addiction to intoxicants or drugs.
 - c. The qualifications of judicial appointees, nominees, or candidates.
 - d. The appointment, employment or dismissal of an employee, consultant, or officer of the State Bar or to hear complaints or charges brought against such employee, consultant, or officer unless such person requests a public hearing.
 - e. Disciplinary investigations and proceedings, including resignations with disciplinary investigations or proceedings pending, and reinstatement proceedings.
 - f. Appeals to the board from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist’s certificate.
 - g. Appointments to or removals from committees, boards, or other entities.
 - h. Joint meetings with agencies provided in Article VI of the California Constitution.

public comment period will close on October 26, 2007. To date, no comments have been received. We will update members of the Board if any comments are received between now and the date that comment closes.

FISCAL / PERSONNEL IMPACT: None.

RULE AMENDMENTS: Rules Governing Open Meetings, Closed Sessions, and Records of the Board of Governors of the State Bar of California, Article 1, Section 4(b)(6).

BOARD BOOK/ ADMINISTRATIVE MANUAL IMPACT: Tab 10, page 3

RECOMMENDATION

Staff recommends that the Board Operations Committee recommend that the Board of Governors adopt the proposed amendment to the Open Meeting Rules.

PROPOSED BOARD COMMITTEE RESOLUTION:

If the members of the Board Operations Committee agree with the staff recommendation, you may adopt the following:

RESOLVED, that the Board Committee on Operations hereby recommends that the Board of Governors adopt the proposed amendments to the Rules Governing Open Meetings, Closed Sessions And Records Of The Board Of Governors Of The State Bar Of California, article 1, section 4, in the form attached hereto.

If the members of the Board of Governors agree with the recommendation of the Board Operations Committee, you may adopt the following:

RESOLVED, that upon recommendation of the Board Committee on Operations, the Board of Governors hereby adopt the proposed amendments to the Rules Governing Open Meetings, Closed Sessions And Records Of The Board Of Governors Of The State Bar Of California, article 1, section 4, in the form attached hereto.

**PROPOSED AMENDMENT TO
RULES GOVERNING OPEN MEETINGS,
CLOSED SESSIONS AND RECORDS OF THE
BOARD OF GOVERNORS OF THE
STATE BAR OF CALIFORNIA
ARTICLE 1, SECTION 4**

Section 4 Meeting, Definition

- (a) As used in these rules, “meeting” includes any congregation of a majority of the members of the board or board committee at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the State Bar.
- (b) Nothing in this section shall impose the requirements of these rules upon any of the following:
 - (1) Individual contacts or conversations between a member of the board and any other person.
 - (2) The attendance of a majority of the members of the board or a board committee at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to the State Bar, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the State Bar.
 - (3) The attendance of a majority of the members of the board or a board committee at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the State Bar, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the State Bar.
 - (4) The attendance of a majority of the members of the board or a board committee at an open and noticed meeting of a State Bar committee, commission or task force or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the State Bar.
 - (5) The attendance of a majority of the members of the board or a board committee at a purely social or ceremonial occasion, provided that a

majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the State Bar.

- (6) ~~The attendance of a majority of the members of the board at a an open and noticed meeting of a board committee provided that the members of the legislative body who are not members of the board committee attend only as observers.~~a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is with the subject matter jurisdiction of the State Bar. For open and noticed meetings, or meetings closed under Business & Professions Code 6026.5, Board members may attend and participate in a meeting of a Board Committee of which they are not members, but they may not vote. Notice of meetings of Board Committees must also include the following statement:

The rules of the State Bar permit Board members who are not committee members to participate but not vote in the committee meeting. If a majority of Board members is present, the meeting is a meeting of the Board as a whole but no formal action by the full Board will take place.