

AGENDA ITEM

JULY 111
California Bar Foundation
Revision of Bylaws

DATE: June 28, 2010

TO: **Members of the Board of Governors**
Members of the Board Committee on Operations

FROM: Leslie Hatamiya, Executive Director, California Bar Foundation
Thomas Silk, Chair, Governance Committee, California Bar Foundation

RE: Amendments to California Bar Foundation Bylaws and Articles of Incorporation

EXECUTIVE SUMMARY

Under the Bylaws of the California Bar Foundation, the Board of Governors must approve any amendments to the Foundation's Bylaws. The California Bar Foundation's Governance Committee recently reviewed the Foundation's key corporate governance documents and made recommendations for updating those documents. Amendments to the bylaws will simplify the Bylaws and will also include best practice provisions consistent with recent laws governing nonprofit organizations.

Public comment is not required under the State Bar Rules.

BACKGROUND

As part of its continuing effort to follow best practices for non-profit organizations and to stay in compliance with applicable state and federal law, the California Bar Foundation's Governance Committee (formerly known as the Bylaws Committee) recently reviewed the Foundation's key corporate governance documents and made recommendations for updating those documents. At its May 6, 2010, meeting, the Foundation's Board of Directors approved those changes and now brings to the Board of Governors for approval the amendments to the Foundation's Bylaws and Articles of Incorporation.

Under Article XIII of the Foundation’s Bylaws, amendments to the Bylaws must be “approv[ed] by or on behalf of the Board of Governors of the State Bar.”

Although the Articles of Incorporation do not explicitly require Board of Governors approval of amendments, out of courtesy we are including the amendments to the Articles of Incorporation for the Board of Governor’s review.

We request that the Board of Governors approve these amendments at its July 2010 meeting.

DISCUSSION

1. Amendments to the Bylaws.

Since 1989 when the original Bylaws were adopted and 1998 when they were amended, significant changes have been made in laws governing nonprofit organizations (including the adoption of the California Nonprofit Integrity Act of 2004(“NIA”). The Bylaws amendments reflect those changes.

The Amendments revise the Bylaws in two other ways: the changes simplify the Bylaws, and they include best practice provisions. The amendments simplify the Bylaws by reducing Article 1 from a half-page to a sentence, by deleting Article II, and by reducing Article III significantly. These changes also expand the Bylaws by containing a new Article on grants, appropriate to a foundation. These changes are described further below. Copies of the current Bylaws and the amended Bylaws are attached as Exhibits A and B. Because of the large number of changes, an explanatory narrative is provided below in place of a redline version. Unless noted otherwise, references below pertain to the sections in the amended Bylaws.

Article I. Principal Office. The current Bylaws devote one-half page to provisions that are unnecessary (the name of the Foundation, its nonprofit status, and its power to establish other offices). It also includes a provision that is too specific – the street address of the Foundation – prompting Bylaw amendments each time the address of the Foundation is changed. Amended Article I simply provides, in one sentence, that the principal office of the Foundation is located in San Francisco.

[*Current Bylaws, Article II. Purpose.* The current Bylaws list general purposes, specific purposes, and limitations. The amended Bylaws delete this Article. It is redundant. The information in this Article is also found in the Articles of Incorporation.]

Article II. Membership. Current Bylaws address statutory members, associates, emeritus members, and advisory members. The amended Bylaws provide that the Foundation shall have no voting members and that the Board may establish other types of membership. It discontinues the categories of associates and advisory members, and it transforms the category of Emeritus Members to Emeritus Director (Article III, Section 20).

Article III. Board of Directors.

1. *Powers.* Both current and amended Bylaws address powers as well as delegation with continued direction and control of the Board. The amended Bylaws are more succinct.
2. *Limitations on Board Powers.* The current Bylaws contain limits on powers regarding loans and self-dealing, which appear much later in the Bylaws (Article VI). The amended Bylaws bring those provisions forward in the Bylaws, so that limits on Board powers follow immediately after the section on powers.
3. *Number of Directors.* The current Bylaws provide for 25 directors. The amended Bylaws set a range (25-35), with the exact number fixed by the Board from time to time. This increase in the number of directors will allow for greater flexibility in recruiting new directors, particularly ones that can assist the Foundation in its fundraising activities, which has become increasingly critical as the Foundation has experienced a substantial decrease in its fee statement donations and corporate sponsor royalties in recent years.
4. *Qualifications; 5. Limitations on Interested Persons; 6. Designation of Directors.* No materials change (NMC).
7. *Term of Office.* The current Bylaws provide for two-year terms with no limit on the number of consecutive terms a director can serve. The amended Bylaws follow the current practice of limiting directors' service to three consecutive two-year terms, which the Foundation Board established in 2004.
8. *Vacancies.* NMC.
9. *Annual Meetings; 10. Special Meetings; 11. Notice; 12 Waiver of Notice; 14. Action Without a Meeting; 15. Telephone and Electronic Meetings.* These provisions somehow were deleted in the final draft that was approved and submitted to the Secretary of State's Office. The amended Bylaws reflect current law and best practices.
13. *Quorum.* This provision was similarly deleted from the final draft of the current Bylaws. The Foundation has assumed that the current Bylaws provided that a majority of directors in office constituted a quorum. The amended Bylaws provide for a lesser quorum of 40%. This number will give the Board leeway to do business even if current levels of attendance decline. Note that the statute pertaining to non-profit corporations permits a quorum as low as 20%. (Cal. Corp. Code §5211(a)(7).)
16. *Standard of Care.* NMC. The self-dealing and loan prohibitions have been moved to Section 2.
17. *Inspection.* NMC. This section has been moved from Article XI, Section 11.02 of the current Bylaws.

18. *Compensation and Reimbursement.* NMC.
19. *Executive Compensation Review.* Taken from the NIA, this provision requires a periodic review of the compensation of any compensated officers to assure the compensation is comparable and not excessive. Currently, it would apply only to the Executive Director.
20. *Emeritus Director.* In place of the Emeritus Member category of the current Bylaws, this provision empowers the Board to appoint, from the ranks of past directors, any number of Emeritus Directors. The provision makes plain, however, that the appointment is purely honorary, carrying with it no rights, privileges, or responsibilities.

Article IV. Committees. The committee article in the bylaws of California public benefit corporations usually contains three provisions: board committees, advisory committees, and a meeting provision, making clear that the rules in the Bylaws on the meetings of the board also apply to board committees. The current Bylaws generally follow that pattern. The amended Bylaws add a fourth section, requiring the Board to adopt a Charter for each Board and Advisory Committee containing the governance rules of each.

Article V. Officers. NMC.

Article VI. Indemnification and Insurance. NMC. The insurance provision, to which current Bylaws devote a separate article, is now included as part of the indemnification article, following the pattern of Cal. Corp. Code §5238.

Article VII. Grants. This new article applies to the grant-making aspects of the Foundation, for the benefit of the Board and Foundation grantees.

Article VIII. Miscellaneous. The amended Bylaws include sections on:

- Annual Reports to Directors, fixing on the Executive Director the obligation to provide them (rather than on “the Foundation” as provided by the current Bylaws).
- Requiring annual financial audits (taken from the NIA, absent the annual \$2 million gross revenue threshold).
- Transporting from elsewhere in the Code the section making clear that email messages and other electronic transmissions constitute “writings.”
- Continuing the Bylaws amendment language with no material change.
- California law as governing law.

2. Amendments to the Articles of Incorporation.¹

The Articles of Incorporation were last amended in 1990, soon after the Foundation was created. Only one amendment is being made to the Articles. A redlined copy of the Articles of Incorporation is attached as Exhibit C. The “California Bar Foundation” is a simple name that the Foundation uses uniformly and universally. In fact, however, that name is a fictitious business name (added in 2007), while the legal name of the Foundation remains the “Foundation of the State Bar of California.” The Governance Committee and the Board of Directors have agreed unanimously to amend the Articles to conform them with the actual name used by the Foundation. Such action will also enable the Foundation to amend its IRS exemption letter thereby eliminating any confusion about the corporation and tax-exempt status of the “California Bar Foundation.”

FISCAL AND PERSONNEL IMPACT - NONE

RULE AMENDMENTS - NONE

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT - NONE

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Board Committee on Operations agree with the Foundation’s request to approve the amendments to its Bylaws, adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations recommends that the Board of Governors approve the amendments to the Bylaws of the California Bar Foundation.

PROPOSED BOARD RESOLUTION

If the Board of Governors concurs with the recommendation, adoption of the following resolution would be appropriate.

RESOLVED, that upon recommendation of the Board Committee on Operations, the Board of Governors hereby approves the amendments to the Bylaws of the California Bar Foundation, effective immediately.

¹ The Articles of Incorporation do not explicitly require Board of Governors approval of amendments. However, as a courtesy, the Foundation is also including the amendment to the Articles of Incorporation for the Board’s review.