

AGENDA ITEM

DATE: July 8, 2012

TO: Members, Board Committee on Operations

FROM: Starr Babcock, General Counsel
Dina E. Goldman, Senior Assistant General Counsel

SUBJECT: Referral – Proposed Amendments to Title 6 Board of Trustees Open Meeting Rules

EXECUTIVE SUMMARY

Last July, the Board of Trustees adopted numerous amendments to the State Bar Rules governing open meetings of the Board and Board Committees. These amendments were designed to provide greater public access to Board of Trustees' meetings. The Bar's new open meeting rules still contain a few provisions that could be amended to provide better public access to meetings of the Board. To address these areas, President Streeter has suggested that the referral list for the October meeting of Board Operations include an item for Board Operations to consider releasing additional amendments to the Bar's open meeting rules for public comment in three areas: elimination of the secret ballot for election of State Bar President, Vice-President and Treasurer; elimination of the exception which allows Board Committees to go into closed session for "advice of counsel"; and amendment of the rule which allows Board members who are not members of a Board Committee to attend and participate in committee meetings to prohibit non-committee members from attending and participating in closed sessions of the Board Committees.

BACKGROUND

In July 2011, the Board of Trustees adopted a set of amendments to the Bar's open meeting rules. The amendments adopted were designed to provide greater public access to the Board's meetings. The amendments included: expansion of the coverage of the open meeting rules to a greater range of Board committee, commissions, and subcommittees; lengthened notice period for meetings; tightened requirements for adding agenda items to existing agendas and for special and emergency meetings; expanded public access to an participation in meetings; and repeal of a existing provision allowing action by fax poll in emergencies.

ISSUE

Should the October referral list for the Board Operations Committee include an item to propose releasing further amendments to the Bar's open meeting rules for public comment?

DISCUSSION

The Bar's newly amended open meeting rules still contain a few provisions that if further amended may provide greater public access to Board of Trustees' meetings. Specifically, there are three amendments to the open meeting rules that this item proposes be referred to the Board Operations Committee for consideration at its October meeting.

Elimination of Secret Ballots: The Board's current practice is to vote for Board President by secret ballot. Beginning this year, the Board will elect three officers: a President, a Vice-President, and a Treasurer. The first proposed amendment would be to eliminate, beginning in 2014, the use of secret ballot to elect the Board's officers. Secret ballots have largely been eliminated by various local and state open meeting acts. Elimination of secret ballots in the Board election process may increase public access to the Board's governance.

Elimination of Open Meeting Exception at Board Committee Meetings for "Advice of Counsel": Under the statutory provisions applicable to the Board of Trustees, the full Board of Trustees may only meet in closed session to consult with its attorneys when the consultation concerns pending or prospective litigation. The Bar's open meeting rules for Board Committees allow committees to go into closed session to obtain advice of counsel on any topic. Elimination of this closed meeting exception at the Board Committee level may increase public access to discussions at Board meetings, while allowing closed sessions on other enumerated topics within the State Bar open meeting rules.

No Longer Allowing Non-Committee Members to Participate in Board Committee Closed Sessions: The Bar's open meeting rules for Board Committees allow Board of Trustees members who are not members of a committee to attend and participate in committee meetings, including closed sessions of the committee. When significant numbers of non members attend in this fashion, it can create a situation where a majority of the Board of Trustees is meeting in closed session under a closed session exception that would not be allowed for the Board of Trustees itself.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

RECOMMENDATION

It is recommended that the Board Operations Committee refer this item to itself for consideration at its October 2012 meeting.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations refers the proposed amendments to Title 6, Board of Trustees Open Meeting Rules to the Board Committee on Operations, to be presented for consideration for release for public comment at the October 2012 meeting of the Committee.