

# AGENDA ITEM

114 July 18 14

**DATE:** July 11, 2014

**TO:** Members, Board Committee on Operations  
Members, Board of Trustees

**FROM:** Frederick Brown, President, California Bar Foundation  
Sonia Gonzales, Executive Director, California Bar Foundation  
Joseph Dunn, Executive Director/CEO, State Bar of California

**SUBJECT:** Independence of the California Bar Foundation

---

## EXECUTIVE SUMMARY

The California Bar Foundation ("Foundation") was incorporated in 1989 as the Foundation of the State Bar of California. The Foundation was created as a supporting organization to the State Bar, to support the functions and the charitable, educational, and public benefit purposes of the State Bar. As the supported organization, the State Bar appoints all of the members of the Foundation's Board of Directors and approves any amendments to the organization's governance documents. The Foundation funds projects and scholarships that further its mission to champion full and equal access to the justice system, invest in the next generation of California's lawyers, educate Californians about their rights and responsibilities under the law, and promote philanthropy throughout the legal community. The Foundation is developing a new strategic plan focusing on increased investment in diversity and inclusion projects. However, as a supporting organization to the Bar, the Foundation is subject to the same constitutional restrictions as the Bar with respect to certain types of targeted diversity activities. Therefore, the Foundation's Board of Directors has voted to approve amendments to its governing documents, which would change the corporate status of the Foundation to be independent from the State Bar. This item presents these governance changes to the Board of Trustees for their approval.

---

## BACKGROUND

The California Bar Foundation ("Foundation") was incorporated in 1989 as the Foundation of the State Bar of California. The Foundation was created as a supporting organization to the State Bar under section 509(a)(3) of the Internal Revenue Code. The Foundation's Articles of Incorporation provide that the Foundation operates "exclusively for the benefit of, to perform the functions of, or to carry out the charitable,

educational, and public benefit purposes of The State Bar of California.” Under the Foundation’s Bylaws, all of the directors that sit on the Foundation’s Board are designated by the State Bar. Further, any amendments to the governance documents must be approved by or on behalf of the Board of Trustees of the State Bar. Part of the Foundation’s funding is derived from a recommended voluntary \$50 donation that appears on the State Bar’s annual fee statement. In addition, the State Bar and the Foundation have entered into a Memorandum of Understanding regarding administration of and revenue sharing for corporate sponsorships that will expire December 31, 2015.

The Foundation’s mission is to champion full and equal access to the justice system, invest in the next generation of California’s lawyers, educate Californians about their rights and responsibilities under the law, and promote philanthropy throughout the legal community. To advance this mission, the Foundation funds projects and scholarships. Currently, the Foundation is developing a new strategic plan refining the mission to focus on increasing diversity and inclusion in the justice system and the legal profession. However, as a supporting organization to the State Bar, the Foundation is subject to the same constitutional restrictions as the Bar and may not engage in certain types of targeted diversity activities.

In order to be able to fully engage in diversity projects, on May 22, 2014, the Board of Directors of the Foundation voted to change the Foundation’s legal status as a 509(a)(3) supporting organization of the State Bar. Subsequently, the Board voted to amend the Foundation’s Articles of Incorporation and Bylaws to change its corporate structure so that it would be an independent non-profit public benefit corporation and no longer be a supporting organization to the State Bar. In order to become effective, these amended governance documents must be approved by the Board of Trustees.

## **ISSUE**

Should the Board of Trustees approve the proposed Amended and Restated Articles of Incorporation of the California Bar Foundation and Amended and Restated Bylaws of the California Bar Foundation?

## **DISCUSSION**

The Board of Directors of the Foundation is developing a new strategic plan which greatly increases its involvement in activities and projects that would increase diversity and inclusion in the justice system and the legal profession. The Foundation’s Board is excited about moving the Foundation in this new direction. However, as a supporting organization to the State Bar, the Foundation is limited in its ability to fully engage in diversity projects due to the legal restrictions on targeted diversity activity that apply to the Bar.

In order to allow more robust engagement in diversity projects, the Foundation’s Board of Directors has decided that it is in the best interests of the Foundation to become

independent of the State Bar. This change will allow the Foundation much greater freedom to support its diversity agenda. In order to accomplish this, the Foundation's Board of Directors has approved amended Articles of Incorporation to eliminate the provision that provided that the sole purpose of the Foundation was to carry out the charitable, educational and public benefit purposes of the State Bar. The amended Articles broaden the mission of the Foundation to include any allowable exempt purposes under section 501(c)(3) of the Internal Revenue Code. This mission would continue to allow the Foundation to support the Bar's charitable and educational purposes, while broadening the overall scope of activities that the Foundation can participate in with funds it raises separately. Thus, the Foundation can continue to work to advance the State Bar's charitable and educational purposes with funding obtained through the donation line on the fee statement and in connection with corporate sponsorship revenue governed by the MOU between the Foundation and the Bar, subject to applicable legal restrictions on expenditure of these funds. To facilitate this, this item recommends that the Board direct staff to execute an agreement with the Foundation to ensure that money that flows to the Foundation from the State Bar will be spent only on projects related to the Bar's mission and subject to applicable legal restrictions.

In addition, the Foundation's Bylaws have been amended so that the State Bar will no longer appoint members of the Foundation's Board of Directors or be required to approve changes to the Foundation's governing documents. These changes will allow the Foundation necessary independence from supervision and control of the Bar.

**FISCAL / PERSONNEL IMPACT:**

N/A

**RULE AMENDMENTS:**

N/A

**BOARD BOOK IMPACT:**

Tab 15, Article 3.

**RECOMMENDATION**

The Board of Directors of the California Bar Foundation recommends that the Board of Trustees approve the proposed amended Articles of Incorporation and Bylaws for the California Bar Foundation. It is also recommended that the Board of Trustees direct the Executive Director or his designee to enter into an agreement with the Foundation and amend the existing MOU with the Foundation regarding corporate sponsorships to ensure appropriate expenditure of funding from the State Bar.

## **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 recommends that the Board approve the Amended and Restated Articles of Incorporation of the California Bar Foundation and Amended and Restated Bylaws of the California Bar Foundation, in the form attached as Exhibits A and B, and declare that upon final certification of those documents, the California Bar Foundation is and will continue to be a non-profit public benefit corporation separate and independent from the State Bar of California; and it is

**FURTHER RESOLVED**, that the Board Committee on Operations recommends that the Board direct the Executive Director or his designee to enter into an agreement with the Foundation and amend the existing Memorandum of Understanding with the Foundation regarding corporate sponsorships to assure appropriate expenditure of funding from the State Bar.

## **PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board concur with the Board Committee on Operations' recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee on Operations, the Board hereby approves the Amended and Restated Articles of Incorporation of the California Bar Foundation and Amended and Restated Bylaws of the California Bar Foundation, in the form attached as Exhibits A and B, and hereby declares that upon final certification of those documents, the California Bar Foundation is and will continue to be a non-profit public benefit corporation separate and independent from the State Bar of California.

**FURTHER RESOLVED**, that upon the recommendation of the Board Committee on Operations, the Board hereby directs the Executive Director or his designee to enter into an agreement with the Foundation and amend the existing Memorandum of Understanding with the Foundation regarding corporate sponsorships to assure appropriate expenditure of funding from the State Bar.