



The State Bar of California

OPEN SESSION AGENDA ITEM 703 MAY 2022

DATE: May 19, 2022

TO: Members, Board of Trustees

FROM: Brandon Stallings, Vice-Chair, Board of Trustees
Mark Toney, Board of Trustees
Louisa Ayrapetyan, Board Secretary, Office of the Executive Director
Roberta Boomer, Consultant

SUBJECT: Discussion Regarding Parliamentary Rule Changes

EXECUTIVE SUMMARY

State Bar staff have engaged Ms. Roberta Boomer former Secretary for the San Francisco Municipal Transportation Agency to address a host of governance issues that have been raised by members of the Board of Trustees including rules and processes for public comment and parliamentary rules, including those addressing recusals, abstentions, and voting. A related concern raised by some trustees is the lack of consistency in application of rules and processes across Board committees and State Bar subentities.

Ms. Boomer interviewed several trustees and conducted an assessment of current written and practiced procedures as related to both the Board of Trustees and select subentities. Based on those interviews, her assessment, and her significant expertise as a public agency board secretary, Ms. Boomer identified a number of recommended changes. The most significant of these changes is the replacement of Roberts Rules of Order with Rosenberg's Rules.

Chair Duran asked Trustees Stallings and Toney to take the lead on facilitating the Board's review of Ms. Boomer's recommendations at the May 2022 Board meeting, as well as to finalize a process by which the Board will make final decisions regarding any forthcoming governance changes. It is anticipated that the Board will focus its May discussion on parliamentary rules; in July the focus will be on public comment and Board agendas/agenda setting. While trustees

Stallings and Toney are generally in agreement with Ms. Boomer's recommendations, Trustee Toney will be presenting an alternative recommendation on voting procedures during the May meeting.

Staff has issued a brief survey to the leadership of State Bar subentities to solicit feedback on Ms. Boomer's recommendations. That feedback will be orally summarized at the May meeting and in writing for the Board's July discussion.

Ms. Boomer's full report and recommendations is provided as Attachment A. Staff's summary of the recommendations is provided as Attachment B.

BACKGROUND

None

DISCUSSION

None

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

None

ATTACHMENTS LIST

- A. Roberta Boomer's Report on Standardization of State Bar Policy Body Practices
- B. Staff's Summary of the Recommendations

STANDARDIZATION OF STATE BAR POLICY BODY PRACTICES

GOAL: To ensure smooth, effective and efficient State Bar Board and sub-entity meetings, the State Bar of California wishes to standardize policies, practices and procedures regarding parliamentary process, public comment, voting procedure and clarification of the use of “abstention” and “recusal”.

CURRENT STATUS: State Bar entities (“policy bodies”) currently use Robert’s Rules of Order as a guide for all meetings of the Board, including standing committees and State Bar sub-entities. The Commission on Judicial Nominees Evaluation (JNE) and the Review Committee of the Commission on Judicial Nominees Evaluation (RJNE) are excepted. (Board of Trustees Policy Manual Section 3.1, Applicability of These Procedures and Section 3.10, Meeting Rules).

Section 3.2, Bagley-Keene Open Meeting Act, stipulates that State Bar policy bodies, with the exception of JNE and RJNE, are subject to Bagley-Keene.

Following a detailed review of various policy body practices, as requested by the Executive Director of the State Bar, I have reviewed and recommend potential alternatives for established practices and policies with regard to:

- 1) Parliamentary Procedure
- 2) Public Comment
- 3) Clarifying the use of “abstention” as a vote
- 4) Voting procedure: number of votes needed to take action
- 5) The ability of the Chair to participate in a vote

PARLIAMENTARY PROCEDURE

FINDINGS: When discussing the standardization of practices, policies and procedures late last year, it was suggested that there may be more useful alternatives to parliamentary procedure than Robert's Rules of Order (Robert's). It was suggested that other formats be examined to determine which may be better suited for State Bar policy bodies.

In order to hold an orderly and effective meeting, a policy body must have an established set of rules that will be used as a guide to facilitate the decision-making process. Generally, such rules are needed to:

- 1) Maintain order during the conduct of business
- 2) Protect the right of policy body members to participate equally and fully
- 3) Protect the right of the minority to be heard
- 4) Ensure there is a process to resolve any issues that arise
- 5) Make decisions via the use of "majority rules"

Meetings that are governed by straightforward rules enable the Chair and all participants to focus on issues.

Robert's Rules of Order

Pursuant to the State Bar's Board of Trustees Policy Manual, Robert's Rules of Order, to the extent that it does not conflict with state law, is used as a *guide* for all State Bar policy bodies. While Robert's Rules of Order has long been the standard for many policy-making bodies, to many, with 12 editions and hundreds of pages of procedures and rules, Robert's Rules may have become too complex for many organizations and may inadvertently slow the effective running of a meeting should there not be someone present who is intimately knowledgeable of Robert's. In fact, Robert's itself states "in a board meeting where there are not more than *about* a dozen members present, some of the formality that is necessary in a large assembly would hinder business". Robert's discusses how members may raise their hand rather than stand, that motions need not be seconded, that there is no limit to the number of times a member can speak, and that the chair may participate in debate and vote on all questions (to name a few).

Review of other Rules of Order

There exist many other parliamentary procedure models that accomplish the same objectives as Robert's. These include (but are not limited to) Mason's Manual of Legislative Procedure, Rosenberg's Rules of Order and the Standard Code of Parliamentary Procedure (formerly known as Sturgis).

The Board of Trustees could consider using another set of Rules to conduct meetings or, similar to the Judicial Council of California, could craft their own. I spoke with Bernadette McNulty, Chief Assistant Secretary of the California State Senate regarding parliamentary procedure, who suggested either Robert's or the Standard Code of Parliamentary Procedure. The state legislature

uses Mason's Manual of Legislative Procedure. Several California municipalities use Rosenberg's Rules of Order.

Mason's Manual of Legislative Procedure for Legislative or other Governmental Bodies

The basic principles of Mason's are similar to Robert's with small differences. Because Mason's was primarily designed for and is used to meet the needs of legislative and administrative bodies, it includes hundreds of rules and procedures appropriate for such bodies. Such bodies tend to have members who serve full time. These bodies also require more technical rules and procedures and a more technical application of those rules. As stated previously Mason's is used by the California State Legislature which has multiple members, committees and relationships with other executive, judicial and legislative branches of the government. Given that Mason's is almost as complex as Robert's, Mason's would not be an appropriate model for the State Bar, should the goal be to have a simplified set of rules. I have, however, reviewed Mason's with regards to voting procedures, and a presiding officer's right to vote (See appropriate sections below for discussion)

Rosenberg's Rules of Order

I spoke with Corrie Manning, General Counsel to the League of California Cities who stated that Rosenberg's Rules of Order is used by some State of California municipalities. While the League of California Cities uses Robert's Rules of Order, Ms. Manning stated that the League did assist in the publishing of Rosenberg's because some of their member cities wanted to use Rosenberg's Rules. The League's website states "Rosenberg's Rules of Order is a simplified set of parliamentary rules widely used in California. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations, and private corporations and companies have adopted Rosenberg's Rules in lieu of Robert's Rules because they have found them practical, logical, simple, easy to learn and user friendly. The rules were developed by Dave Rosenberg, a longtime Superior Court Judge in Yolo County, based on his decades of experience chairing meetings in state and local government. The rules have been simplified for smaller governing bodies and slimmed down for the 21st Century, while retaining the basic tenets of order." See the attached link for Rules of Order: [Rosenberg's Rules of Order: Simple Rules of Parliamentary Procedures for the 21st Century \(PDF\)](#)

There have been some concerns raised regarding the use of Rosenberg's. The significant ones include:

- 1) A chair has discretion in several matters which Robert's leaves to the body as a whole.

The chair has the ability to limit public comment (Robert's leaves this decision to the body); Requiring a second (Rosenberg's states that "a second is not an absolute requirement and leaves this matter to the discretion of the chair. Robert's states that a second is not required in small boards (up to 12 people);

- 2) A motion to recess (Rosenberg allows the chair to determine the length of time. In Robert's, it is determined by a vote of the body.)

The Board of Trustees Policy Manual vests the chair with the responsibility to preside over a meeting. The ability to manage public comment in a way that allows the concerns of the public to be fully represented but also considers the amount of business to be transacted on the agenda is part of “presiding”. In fact, Board of Trustee meeting agendas state “The Chair reserves the right to limit the duration of the public comment period”, so this is already a vested responsibility of the chair.” Should a policy body disagree with the ruling of the chair, the body always has the ability to appeal and overturn the ruling. While this is not explicitly stated in the policy manual, the ability to appeal a ruling of the chair is a fundamental right of the body.

3) Rosenberg gives latitude to the use of “substitute motions.”

Rosenberg states that “a substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.” Some suggest it is better to defeat the original motion and then to propose a new one. For smaller boards, this just is an extra procedural step.

4) Rosenberg approves the use of “friendly amendment.”

Generally, once a motion is made, seconded and stated by the chair, the motion belongs to the body as a whole rather than to the person who made the motion. The concern is that once it belongs to the body, the maker should not have the right to accept an amendment. While allowing a “friendly amendment” is a common practice, some parliamentarians suggest that there is no such thing as a “friendly amendment”, and that any amendments suggested should be considered as a “motion to amend” and be voted on formally. A friendly amendment is less formal and saves time. Usually such amendments are suggested as “friendly” because, after debate, the motion is seen by the policy body to help clarify the intent of the motion or of the will of the body. Should a member object, the chair could resolve the matter by asking that it be a formal motion to amend.

5) Rosenberg allows a member of the body to interrupt debate and withdraw a motion unilaterally.

The ability of the maker of the motion to withdraw it is seen as disruptive and undemocratic. The motion, once seconded and stated by the chair, becomes a motion of the body and therefore, no one person should be allowed to withdraw it. This is understandable, however, following discussion and debate, the original maker of the motion may wish to withdraw their motion. Allowing this, without requiring a vote of the body, is a simple way to conduct business. Rosenberg doesn’t restrict the ability of another policy body member to make the same motion should they so desire.

6) In Rosenberg, only three motions may be on the floor at the same time.

Robert’s allows for up to 13 motions to be on the floor at once so limiting the number of motions a body make take at any given moment to three, is seen as restrictive. Rosenberg’s is designed to keep the voting process simple. Having multiple motions on the floor at once can be confusing to policy body members and to the chair who has to keep track of whether a motion requires

debate, takes precedence, can be amended or the number of votes needed to approve it. There is nothing in Rosenberg that states that additional motions can't be made once others have been disposed of.

The Judicial Council of California has adopted a set of parliamentary procedures which seem to be based on Rosenberg's and specifically tailored for the Judicial Council. Their rules include the ability of the chair to participate in the discussion of an item as well as cast a vote. These rules include a clear definition of a quorum, how motions are made and amended, the number of votes needed to take action and how abstentions are dealt with during the voting process. (https://www.courts.ca.gov/documents/Parliamentary_Procedures.pdf).

The American Institute of Parliamentarians Standard Code of Parliamentary Procedure (formerly known as "Sturgis")

This model was first developed in the 1950's for the purpose of simplifying meeting procedures and making the rules and procedures more easily understandable. This resulted in the use of plain language (thereby dropping archaic terminology and procedures). The underlying fundamentals are basically the same as Robert's, however, it includes new rights (association and assembly) as well as new motions. It is consistent with Robert's with respect to a vote being based on a majority of those present and voting. This code is simple and easy to follow, and is a good model.

RECOMMENDATIONS:

Having a simpler set of rules that are easy for all policy body members to understand and use may help ensure a more efficient meeting. Rosenberg's Rules of Order seems to accomplish that objective as it clearly and simply outlines how a policy body will conduct business.

Should the State Bar Board of Trustees wish to use Rosenberg's as a guide, it is recommended that parliamentary procedures be crafted based on Rosenberg's Rules (similar to the procedures approved by the Judicial Council of California) and presented to the Board of Trustees for adoption.

Should the Board of Trustees wish to continue to use Robert's, because it is used as a guide, the Board could consider following the procedures for small boards as discussed above (Robert's Section 49.21).

NOTE: Most models recommend that the bylaws of an organization include provisions for how to amend the bylaws. These may include how and by whom amendments may be proposed, the effective date of bylaw revisions, required notice to members (and to the public) and the vote required to adopt a bylaw change. I recommend that the Board of Trustee Policy Manual be amended to include such rules.

PUBLIC COMMENT

FINDINGS: As stated on the State Bar's website, State Bar of California has a clear commitment to receiving input on proposed actions from members of the public. Public comment provides valuable insight and can further the understanding of the issues and of the impact an action may have on affected stakeholders.

The commitment to public comment has been memorialized by the Bagley-Keene Open Meeting Act which states "...the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item..." (Section 11125.7 (a)). Bagley-Keene also states "the state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total time allocated for public comment on particular issues and for each individual speaker." While the Board Manual includes discussion of public comment on proposals for the Rules of the State Bar, it has not adopted "reasonable regulations" with respect to public comment at meetings.

Members of the public are encouraged to reach out to a policy body to express their thoughts either prior to or during the meeting. As there are many people who are uncomfortable with public speaking, the ability to provide written public comment in advance is highly encouraged. The comment process that will be followed is clearly stated on the State Bar's website. (<https://www.calbar.ca.gov/About-Us/Who-We-Are/Board-of-Trustees/Public-Comment-Guidelines>). Information about how to provide public comment (including a link to this page) should also be on each meeting page and on all agendas.

There have been questions raised regarding whether public comment can be limited or continued to later in the meeting. Bagley-Keene does not state that every person who wishes to comment be heard before an agenda item is considered, therefore, the State Bar can indeed limit or end public comment, provided that there are reasonable regulations established.

Some presiding officers have asked if they can take some public comment at the start of the meeting and then continue it until the end of the agenda, after all items have been concluded. Bagley-Keene does not allow this as it states that public comment must be taken before or during consideration of the item.

There are occasions (albeit rare) when the number of members of the public who wish to address one of the State Bar's meetings (including sub-entities) has been significant and has been disruptive to the efficient conduct of business. For example, when members of the public are reading from a prepared statement that does nothing to further the understanding of the policy body on an issue, the repetition of the same statement by many people is not helpful. It is reasonable, therefore, for the chair to limit public comment when there is no new information being provided. When this occurs, there should be a pre-defined process to assist the chair (and staff) that will ensure that members of the public have the opportunity to speak prior to any action taken and that will also ensure that the rest of the items on that agenda can be completed.

On State Bar policy body agendas, public comment is taken at the start of the meeting for items within the jurisdiction of the body or on a matter scheduled for consideration on that agenda. This is consistent with Bagley-Keene's requirement for input prior to (or during) the state body's discussion or consideration of the item. It also allows members of the public to have their say and then, to either continue to listen to the discussion when the item is called or to leave the meeting. This practice should continue when it is clear that there are not a large number of people seeking to address the body.

The challenge is in knowing when a large number of people wish to address the policy body. When meetings were only held "in person", the presence of members of the public in the room as well as the use of speaker cards, revealed when there would be significant comment on an agenda item. With public comment being taken in person, by phone or virtually, knowing this is harder.

When there is known interest before the agenda is published, the committee coordinator, working with the presiding officer should discuss the placement of the item on the agenda, either before or after the other business on the agenda.

At the start of the meeting, some presiding officers ask for a show of hands (virtually) of those who wish to comment. While this is commonly used as the basis for the chair to decide how best to proceed, many commenters may join the meeting after the chair has made a determination. This can result in hours of public comment and disrupt the completion of business. (Note: when there is a "show of hands", the chair should announce how many people have raised their hands (an approximation is fine) so people who can't see the number of hands raised will have access to the information. People with low or no vision or people who are participating by phone would be in this category.) A show of hands is helpful to make a decision about public comment, however, sometimes additional questions may be useful. For example, asking for a show of hands of the people who wish to address a particular item on the agenda may be in order or asking how many people would like to discuss a matter that is not on the agenda. If it is known that there are a lot of people who wish to comment on one item, the chair may decide to take general public comment on other matters at the start of the meeting and take public comment on the agenda item when that item is called. If a member of the public attempts to address the matter before the item is called, the chair should ask that they hold off until the appropriate time. I understand this is a practice that is already used by some State Bar bodies.

There are other practices that could be used depending on how far in advance it is known that there will be significant comment. When it is known well in advance, the matter could be referred to a committee where public comment would be taken or the body could schedule a special meeting to consider that item. Per Bagley-Keene, as long as certain conditions are met, the body does not need to re-open public comment if comment has been taken by a committee. The committee chair will need to set a reasonable procedure for public comment at the time the matter is heard by the committee.

Some policy bodies use a "special order" on their agenda. This order sets a specific time on the agenda for an item to be heard. The benefit is that members of the public who wish to comment will know that the item will not be heard prior to that time and can plan their schedules

accordingly. The item would be called at the time stipulated or as near as practicable after the time has passed. This allows for the body to conclude any item of business they are discussing when the time for the special order has been reached. The down side is that the item cannot be called prior to the time stated on the agenda so if the body concludes the rest of its business prior to the stated start time, the body must wait until the time stipulated before proceeding. The body can conduct other business until the time is reached but if all other business has been conducted, and a pause is required, this is an inconvenience for the policy body and for staff. With careful planning, setting a special order can be a useful tool.

When there is known public opposition in advance, staff should reach out to the affected stakeholders to see what the issues are to see if there is a way to resolve the issues. The agenda item should include discussion of when this happens including a summary of the issues, how the issues were resolved and if resolution was not possible, what the issues were that prevented resolution.

The State Bar's public comment page states: "In order for the entire meeting agenda to proceed on schedule, those who wish to speak are allotted limited time, typically three minutes or less, depending on the number of requests and the time available. Public comment may be restricted to the items on the agenda. The meeting chair has discretion to curtail public comment unrelated to agenda items, as well as public comment that exceeds the given time allotment. It is not guaranteed that all who request to speak can be accommodated." This could create the expectation that the typical time for each speaker is three minutes and because people do craft their comments so they can be said within that time, having to abruptly reorganize their speech when a lesser time is set is hard on the commenter.

Many local and state bodies follow the rule that members of the public have the right to speak for "up to" three minutes. This allows the chair to consider less than three minutes should there be multiple people wishing to speak. Giving each commenter less time has the benefit of allowing more people to speak within a given time frame. Generally, I recommend setting a limit of not less than two minutes as two minutes is sufficient time to allow a speaker to make their point.

A question has been raised regarding how to consider comment coming from a specific entity that will be directly affected by an action, such as a law school. The standard practice is for entity representatives to state their thoughts during general public comment, the same as for individual members of the public. As stated above, staff should reach out to known stakeholder entities well in advance and summarize the concerns (and the resolution of such concerns) in the agenda item. Decision makers do not want to first learn of entity concerns at the meeting as it does not afford them the opportunity to think through what is being said nor consider possible solutions. When an entity is involved, rather than include them as part of general public comment, the official representatives of the entity could be included when staff presents the item. The number of official representatives could be limited or a set time could be given for the entity to present.

Staff should consider the use of an electronic sign-up sheet that will allow members of the public to make a written request to address the body in advance of the meeting. The biggest challenge that a presiding officer faces is in not knowing when there will be significant public comment. Having a sign-up sheet will alleviate this issue and will allow the chair (and staff) the ability to tailor a process for taking public comment that is reasonable and that allows for a smooth and efficient meeting.

The Judicial Council of California uses this practice. Their website states: “Each meeting agenda lists a time frame for receipt of written requests. Those who submit a written request to speak will receive a confirmation of receipt. Submit your request electronically, by mail, or in person to the addresses listed below. Please provide the speaker’s first and last name and the topic to be addressed or the number of the specific agenda item. Emergency meetings or some urgent circumstances may only allow for written comments.” Their website also includes how to make comment at the meeting (<https://www.courts.ca.gov/28045.htm>). It also provides information regarding how public comment will be taken. Each agenda includes a time by when a written request must be received (1 ½ days in advance of the meeting). This is an excellent tool and should be considered by the State Bar.

Public comment has value when discussing matters that impact stakeholders however, it can also impede an efficient decision-making process, especially when the comments become repetitive. The biggest challenge facing presiding officers is knowing in advance of the meeting when there will be significant public comment. Knowing this in advance allows the presiding officer, working with staff, to outline a possible procedure for use during the meeting. Staff could then include language in the chair’s script.

Sometimes, a member of the public may bring material to the meeting that they want distributed to the body during their public comment time. This is difficult for the policy body as they can either be reviewing the material while the speaker is talking or listen to the speaker. Trying to consider the written material and comment in the same moment is challenging at best. A speaker may feel that they are not being listened to if policy body members are reading the distributed material. Members of the public should be urged to send information in advance of the meeting. More importantly, should the body have someone on the board who has little or no vision, distributing information to the members would make it available to some but not to the person/s who access information in a manner other than visually. The secretary or committee coordinator should hold the material and distribute it to the body after the meeting has concluded.

When orienting a person newly-appointed to a State Bar committee or entity, discussion of how public comment is taken should be included. Topics would include:

- 1) The regulations regarding public comment, including the ability to limit total and individual time.
- 2) Allowing the speaker to address the body uninterrupted during their set time.
- 3) A body cannot prohibit public criticisms of policies, programs or services of the State Bar.
- 4) Public comment is an opportunity for the public to address the body. The speaker does not have the right to an immediate response.
- 5) If there are questions that a member wishes to ask, they should seek to be recognized by the chair.

- 6) Matters raised by members of the public may not be discussed, nor acted on as they are not on the day's agenda. The item may be scheduled for discussion at a future meeting if the policy body so desires.
- 7) If a member has questions about issues raised, it is appropriate to ask at the conclusion of public comment for staff to respond. Staff can also be asked to follow up with the speaker directly.

RECOMMENDATIONS:

The State Bar Board of Trustees should adopt regulations related to public comment per Bagley-Keene. These regulations would include allowing the presiding officer to set both a total amount of time and set a time limit for individuals. These regulations would be standard for all committees and sub-entities and would allow the presiding officer, working with staff, to craft a process for any given meeting. Options include setting a special order, timing of when to take comment in agenda items, dealing with directly affected stakeholders (such as law schools) in a manner separate from individual public comment and setting a total time and individual time for public comment.

When setting a time limit for individuals, it is important to set the same time limit at the start of the meeting. It is not fair to give the public three minutes at the start and then reduce the time to less than that when the hour is getting late. Setting the same standard for everyone is reasonable and fair.

Allowing directly affected stakeholder entities more time to address the policy body is also recommended. This can and should be choreographed in advance with limits being placed on either the total time or the number of official representatives that can address the body. If they have a slide presentation, the entity should be asked to provide it well in advance so policy body members have the opportunity to review it.

Similar to the Judicial Council, the State Bar's webpage for public comment should be revised to alert the public that there is no guarantee that everyone can speak, that the total time allotted may vary and that public comment on an agenda item may be taken when that item is called.

If a member of the public who is in the room wishes to distribute materials to the body during their public comment time, I recommend that the material be held by the secretary and distributed after the meeting.

Lastly, I strongly recommend the use of an advance sign-up (that includes a deadline). This will allow the secretary or committee coordinator to work with the presiding officer to design a reasonable path forward for the meeting. This choreography would ensure a smooth and efficient meeting that allows for the completion of business in a reasonable timeframe. Template scripts could be crafted for these situations and incorporated in the chair's script for use by presiding officers.

VOTING: ABSTENTION AND RECUSAL

FINDINGS: The Board of Trustee's Policy Manual (Section 3.8) allows Board members to vote to support, to oppose, to abstain or to be recused.

Abstention: Pursuant to Robert's Rules of Order (Section 4.35) a vote to abstain means that the member is choosing not to participate in the vote.

All members of a policy body have the right to (and some would say have an obligation to) attend meetings and to vote. When a member chooses to abstain, the abstention is not considered a vote and therefore, is not counted in determining the outcome of the vote. The member is considered to have waived their right to vote and to have consented to allow the will of the policy body to be expressed by those who are present and voting. The effect of this is that less than a majority of the policy body may decide an item.

Many policy bodies do not allow its members to abstain and their bylaws or rules of order include a rule that requires either a "yes" or "no" vote. However, many parliamentary procedures recognize that while members have a duty to vote, the member cannot be compelled to vote. They have the "right of abstention".

The Board of Trustees policy manual does not clarify the conditions under which a trustee may abstain. Members may abstain for various reasons and are not obliged to reveal or discuss those reasons.

Recusal: Appendix H, Ethics and Conflicts of Interest References in the Board of Policy Manual clearly defines the conditions under which a trustee must recuse themselves from participating in the decision-making process. Members must disqualify themselves when there is a financial or personal interest on matters where they have a financial interest or that prevents the member from applying "disinterested skill and undivided loyalty to the State Bar."

When such a conflict exists, the member must immediately disclose the interest, withdraw from participation, refrain from attempting to influence another member and refrain from voting. The member does not need to disclose the nature of the interest, only that one exists. It is possible that members are choosing to "abstain" when this conflict exists. In such instances, it is more appropriate for a trustee would say that they must *recuse* themselves due to a conflict of interest.

RECOMMENDATIONS:

When there is a new appointee to the Board of Trustees or to a State Bar sub-entity, during their on-boarding process, it is important to distinguish the difference between an abstention and recusal. One is a choice to not participate in the vote, and the other is the inability to vote due to a conflict.

When a member does need to recuse themselves, at the time the item is called, the member should immediately say that they need to recuse themselves due to a conflict of interest. At that point, the member could also step away from the table (if meeting in person), or, if meeting

electronically, turn off their camera and microphone. While this does not result in them “leaving the room”, it does have the appearance of doing so and therefore not participating in the debate and vote.

Recognizing that a Trustee is under no obligation to reveal why they voted to abstain, if they do because they do not feel like they have sufficient information to make an informed decision, it would be helpful to advise staff. This would be valuable feedback to staff when they consider bringing similar items to the board in the future.

VOTING PROCEDURE: NUMBER OF VOTES NEEDED TO TAKE ACTION

FINDINGS: During the November 2021 meeting of the Board of Trustees, a matter was deemed approved with four of the nine trustees attending having voted in the affirmative. A question was raised regarding the number of votes needed for a motion to pass. The Board of Trustees Policy Manual does not include language regarding the number of votes required for approval of an item.

There is language in the State Bar Frequently Asked Question” document (Section 5) which states “as long as there is a quorum, only a majority of those present is sufficient to approve or defeat a resolution”, however, because the Board of Trustees, did not formally adopt this interpretation of what constitutes a majority vote, the Board must rely on the Board Policy Manual and thus, on Robert’s Rules of Order. Robert’s Rules of Order states: “when the term “majority vote” is used without qualification, it means that more than half of the votes cast by persons entitled to vote, excluding blanks or abstentions at a regular or properly called meeting.”

There are various models that can be followed to determine the outcome of a vote:

1) A majority of those present and voting

This is the default method under most parliamentary procedure systems. However, it does mean that a small number of people can make the decision for the entire body because abstentions are not considered.

2) A majority of those present at the meeting

This is a more difficult requirement to meet as it requires more people to vote in the affirmative. Given the ability for trustees to “abstain” (or when members need recuse themselves), this creates a much higher bar for passage and would likely mean that more motions would fail. This would impact the State Bar’s ability to conduct business.

3) A majority of the entire policy body

This would require the affirmative vote of 7 of 13 members, if all seats of the Board of Trustees are filled. It is based on the number of people who comprise the Board of Trustees but does not include any seat that is designated yet vacant. Should there be vacancies, the number of affirmative votes would be less. This model does not account for member absences at a meeting so when there is less than the full complement of members present this sets a high bar to approve motions and conduct business.

Given that the Board of Trustees is comprised of volunteers who do not serve full-time in their capacity as a member of the Board of Trustees, and thus, may not be able to attend meetings, requiring a vote of seven members could result in many items not being approved.

4) A majority of fixed membership

This last model is the strictest requirement of all as it would include vacant seats. If two of the 13 seats were vacant and thus, there were only 11 active members, the affirmative vote of seven would be still required.

RECOMMENDATIONS:

I recommend that the State Bar continue to consider the outcome of the vote based on a majority of those “present and voting”. This is the most commonly used form of voting in parliamentary procedures as noted by multiple parliamentarian models.

To avoid confusion in the future, it would be advisable for the Board of Trustees to formally amend its’ policy manual to clarify that this is the rule being used. I also advise that, following adoption of any revisions to the policy manual, that the “Frequently Asked Questions” document be revised to conform with the manual. Currently the “FAQ” states that “only a majority of those present is sufficient to approve or defeat a resolution”. This is not an accurate statement as the vote is based on members “present and voting.”

The clarification of voting procedures should be included in the orientation when someone is appointed to the Board of Trustees.

ABILITY OF THE CHAIR TO VOTE

FINDINGS: Historically, the Chair of the State Bar Board of Trustees has not voted on matters put before the policy body except to break a tie. Robert's Rules of Order states that "the presiding officer should make every effort to maintain an appearance of impartiality so that members on both sides of any issue can feel confident that they will receive fair treatment."

While the chair has the same right to vote as everyone else, Robert's Rules likes the chair to *convey neutrality* to the members so that no member feels slighted or has any reason to question whether any fundamental member rights are being disregarded.

Under Robert's, the chair only votes when the vote is by ballot, or when there is a tie or a one vote difference. In these instances, the chair's vote, could impact the outcome. (When there is a one vote difference, the chair could vote to tie the vote resulting in the failure of the motion.) Under Mason's, Rosenberg's and Sturgis, the chair has the same rights as every other member, include the right to vote on all matters before the policy body.

Robert's has also opined that in meetings of a small board (where there are not more than *about* a dozen board members present), and in meetings of a committee, the presiding officer may exercise the same rights as fully as any other member.

In many policy bodies, such as the Judicial Council of California, the practice is to allow the chair to engage in the debate and to vote on all matters. However, if the chair does wish to participate in the debate, with some bodies, the chair would turn the gavel to another in order to speak.

With respect to the concern for impartiality, when there is a roll call vote, the chair could be called last so that the chair's vote does not have influence on how other members of the body choose to vote.

RECOMMENDATION:

Regardless of which parliamentary procedure is followed, it would be advisable for the Board Policy Manual be amended to clarify the Chair's right to engage in the debate and decision-making process, to either allow it or not.

I would recommend that the chair be allowed to participate fully in the decision-making process, including the right to vote.



The State Bar of California

RECOMMENDATIONS FOR STANDARDIZATION OF STATE BAR POLICY BODY PRACTICES

AGENDA TEMPLATE

Create a standardized meeting agenda template including the numbering/lettering system to be used by Board and all subentities. The first items of business on all agendas should include (1) Call to Order; (2) Roll Call; and (3) Public Comment. On the agenda, only the name and contact number of the committee coordinator should be provided as the contact for questions about an agenda item. The link to the public roster of the committee should be included to ensure members of the public have access to the current composition of that Board or subentity. In addition, links for the public comment policy, oral public comment sign-up, and written public comment submission (all outlined below), should be included on all agendas.

MINUTES TEMPLATE

Create a standardized minutes template that includes a standard phrase for referencing minutes (Open Session Minutes or Closed Session Minutes), how votes are listed (ayes, nays, abstain, recused, or absent), and how members are noted if they are absent. The following list of items should be included in minutes (1) name of committee; (2) date and location of meeting; (3) time meeting commenced and adjourned; (4) members present/absent or joining late; (5) name of secretary or committee coordinator; (6) voting record of members; (7) resolutions entered in full as finally adopted; and (8) names, organizations (if any), of public comments, and a brief summary of the public comment. Minutes should include what actions were taken and not what was said during a meeting. The only time that staff should include what is said at a meeting is when a policy body member makes a request for a presentation on something in the future, or if there is a request that an item be brought back to the body for consideration.

PROCEDURES FOR PUBLIC COMMENT

Establish a written policy governing public comment procedures for the Board and all subentities. The policy should:

- Provide for advance electronic sign-up for oral public comment.
- Provide for advance written public comment with a deadline no more than 48 hours before the meeting.
- State that there is no guarantee that everyone can speak.
- State that the total allotted time for public comment may vary by meeting.
- State whether public comment on the agenda item will be taken at the beginning of the meeting or when an item is called.
 - When it is clear that there are not a large number of people seeking to address the body, public comment should be taken at the start of the meeting for items within

the jurisdiction of the body or on a matter scheduled for consideration on that agenda.

- When it is known that there will be a significant number of public commenters on a particular item, it is more appropriate to take public comment on that item before it is called.

The secretary or committee coordinator should disseminate all written public comment received no later than by the close of business the day prior to the meeting.

The Board or subentity chair should establish a time limit for public comment at the start of each meeting. Time limitations should be the same for all public commenters, and should be no less than 2 minutes per commenter. Public commenters who are representatives of agencies or institutions who will be directly affected by a direct action on the agenda are not considered members of the public.

Instead, agencies directly affected by an agenda item should be allowed to address the state body after the item is presented. There should be a set time greater than 3 minutes for the entities to present; this may be best accomplished by having them speak as part of the presentation of the item. Committee coordinators should consult with the entity/ies and the chair to finalize the approach on a case-by-case basis.

PARLIAMENTARY PROCEDURE CHANGES

To effectively run a meeting without slowing down the business, Rosenberg's Rules of Order, rather than Robert's Rules of Order, should be followed. Rosenberg's Rules of Order is a simpler set of rules that is easy for all policy body members to understand and use to ensure a more efficient meeting. Highlights include:

Establishing a quorum

A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The rule is that a quorum is one more than half of the body.

The three basic motions

1. **A basic motion** is the one that puts forward a decision for the body's consideration.
2. **A motion to amend** is if a member of the body wants to change a basic motion that is before the body.
3. **A substitute motion** is if a member of the body wants to completely do away with the basic motion that is before the body, and put a new motion on the floor.

Multiple motions before the body

Rosenberg's Rules of Order allow for up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made.

Voting: Counting votes

The outcome of the vote should be based on a majority of those “present and voting.”

Voting: Abstentions and recusals

Abstention is a choice to not participate, and recusal is the inability to vote due to a conflict. When a member chooses to abstain or recuse, the abstention or recusal is not considered a vote and therefore, is not counted in determining the outcome of the vote.

Ability of the chair to vote

Under Rosenberg’s Rules of Order, the chair has the same rights as every other member, including the right to vote on all matters before the policy body.