

DISCUSSION: PROCEDURES FOR PUBLIC COMMENT

The State Bar complies with 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 limiting the total time allocated for public comment on particular issues and for each individual speaker.” While the Board Policy Manual includes discussion of public comment on proposals for the Rules of the State Bar, it does not include “reasonable regulations” with respect to public comment at meetings.

Current Process for Receiving Written Public Comment

Currently, members of the public may submit comments in writing before Board meetings by sending them directly to the Board secretary, or for subentity meetings, the committee coordinator. To allow sufficient time for the Board and subentity members to review written public comments, members of the public are encouraged to submit written comments generally no fewer than five days before a meeting. The agendas for the Committee of Bar Examiners and its subcommittees include a note with a deadline and email address for receiving written public comment. The Board and remaining subentities do not follow this same approach, creating inconsistencies in how written public comment is received.

Recommendations for Receiving Written Public Comment

Ms. Boomer’s recommendations for written public comment include:

1. Setting clear and reasonable deadlines: written public comment received within the set deadline (for example, 24 hours before the start of the meeting), will be compiled and distributed. Written comments received less than 24 hours before the meeting may not be provided to members prior to the meeting, depending on when the material is received, but will be distributed the following business day.
2. For in person meetings, if a member of the public wishes to distribute written materials to the policy body during their public comment time, the written materials should be held by the Board secretary or committee coordinator to distribute after the meeting.
3. Including information about how to provide public comment and linking to the webpage for public comment guidelines should be on each meeting page and all agendas.

Current Process for Receiving Oral Public Comment

Opportunities for oral public comment exist during all meetings of the Board and subentities, however the approaches applied are not consistent. The Board generally calls for public comment at the beginning of each meeting, and sets limits per speaker comment period; this time period is generally 2 or 3 minutes. When there are a large number of speakers who wish to comment on one item on the agenda, the chair can decide to take the general public comment

at the start of the meeting or take public comment on the agenda item when that item is called. The Board chair may also limit the total number of speakers or decide to split up the public comment period during the duration of the meeting. Subentity meetings generally follow this approach but also use a model where public comment is taken prior to individual agenda items being discussed. In addition, some subentities set inconsistent time limitations per speaker or the total allotted time for public comment is not sufficient for the number of public commenters, limiting the opportunity for public comment overall.

Recommendations for Receiving Oral Public Comment

Ms. Boomer's recommendations for oral public comment include:

1. Create an electronic sign-up sheet that includes a deadline that will allow members of the public to make a written request to address the policy body in advance of the meeting;
2. Set time limitations at the start of the meeting and to adhere to that time limit for each member of the public wishing to speak on a particular item.
3. Should public comment be taken when an item is called instead of at the beginning of the meeting, the presiding officer will set a time limit for that item when public comment is taken. The time limit will be applied equally to all speakers.
4. Allow directly affected stakeholder entities more time to address the policy body, with time limits being placed on either the total time or the number of official representatives that can address the body, and taking public comment from affected entities at the time the respective agenda item is called; and
5. Revise the State Bar's webpage for public comment 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 at the beginning of the meeting or when that item is called.

In addition to Ms. Boomer's recommendations, Trustee Toney has provided for Board consideration an alternate, or supplementary, proposal for oral public comment procedures, reflecting the following guiding principles:

1. Maximize public participation, while setting reasonable boundaries that permit Commission business to be conducted before the end of the day;
2. Support unfettered freedom of speech, with issues of public safety acting as the primary limiting factor; and
3. Establish fair and reasonable rules that pair time limits for public comments, with minimum time requirements for public comment.

Trustee Toney's recommendation is provided in full as Attachment B2.

Roberta Boomer's Recommendations Regarding Public Comment Procedures

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. Setting a time limit of less than that could be seen as a policy body not being really interested in what the public has to say, especially if the item under discussion is complex. It is also difficult on staff.

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.

State Bar Public Comment Proposal
Submitted by Board Trustee Mark W. Toney, Ph.D.

Introduction

I base this proposal for rules governing public comment at meetings of the State Bar and its committees and entities upon extensive experience in the theory and practice of democracy, particularly in providing public comments before numerous government agencies. I started delivering public comment as a high school student at Napa Valley Unified School Board meetings, I've trained hundreds of grassroots leaders from several organizations on how to deliver effective testimonials at public meetings from the 1980's to the present day, and more recently have coached dozens of community activists in how to provide impactful statements during California Public Utility Commission meetings.

Listening to members of the public provide personal testimony explaining how proposed policies impact them and the communities they serve provides the State Bar Trustees with the opportunity to hear directly from diverse communities that provide legal representation and those who are consumers of legal representation and to include public input into decision making that aims to protect the California public.

Guiding principles for public comments should be bounded by key principles that seek to:

- 1) Maximize public participation, while setting reasonable boundaries that permit Commission business to be conducted before the end of the day;
- 2) Support unfettered freedom of speech, with issues of public safety acting as the primary limiting factor;
- 3) Establish fair and reasonable rules that pair time limits for public comments, with minimum time requirements for public comment.

I submit the following recommendations for public comment at State Bar business meetings, which include recommendations on clarifying how rules may apply differently based upon whether business meetings are held in-person, or remotely.

Welcome public comment at State Bar meetings

The California State Bar welcomes public comment at its Trustee, Committee and Entity meetings, and appreciates listening to a wide range of viewpoints that reflect the diversity of California residents. These public comment rules are designed to insure that residents who are impacted by proposed decisions may exercise their right to be heard, as well as insure that the State Bar is able to fulfill its obligation to conduct the business of California in a timely fashion.

Provide diverse avenues for hearing public comment.

The State Bar may allow public comment in person, over the telephone, or by video conference. These instructions will include the process for signing up to speak, the maximum speaking time for speakers, and the order of speakers. These instructions will be consistent with this resolution and the Bagley-Keene Open Meeting Act. Instructions will be posted to the State Bar's website at least 72 hours before the beginning of the meeting to which they apply.

Encourage groups of people who share a position to appoint a common spokesperson(s)

Groups of people that have a shared position are encouraged to appoint a one or more spokesperson(s) to speak for their group. A speaker cannot cede time to another speaker. In the event that a spokesperson request that others who share their views by standing up or raising their hands in video chat, the chair shall verbally acknowledge the number of people signifying their support to communicate more fully to those who are unable to see because of vision impairment or because they are participating by telephone without video.

Establish a minimum standard for public comment, balanced with need to conduct business

The chair may limit the time for each speaker to no less two minutes. After up to three hours inclusive of a 10 minute break, or up to the first 100 speakers, whichever comes first, the chair may declare the Public Comment Session closed. Any speakers who are not able to speak will be provided with instructions on how to submit written comments. No speakers will be accommodated after the Public Comment Session is closed. Speakers will be called upon in the order in which they signed up, with the exception that public officials may be called on to speak out of order.

Provide reasonable accommodations to facilitate public comment

Individuals in need of interpreters or other reasonable accommodations must contact the Public Advisor's Office at least three business days in advance of the meeting. Reasonable accommodations will be provided free of charge. Public speakers who require interpreters shall be given at least twice the time limit for other speakers, in accordance with Bagley-Keene Open Meetings Act Section 11125.7(c)(1) requirements that "when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body." The granting of the additional time for speakers who require other accommodations is at the discretion of the chair, but must be sufficient to allow people needing special accommodations to have an equivalent opportunity to address the State Bar.

Permit signs that do not obstruct views or pose a safety hazard.

Signs brought by meeting attendees must be kept in the possession of attendees, must not be taped on walls or doors, and must not obstruct the view of any other attendee. Sticks or any other type of handle are strictly prohibited. Signs with any kind of handles-must be left outside of the security screening.

Maintain decorum at meetings.

The chair reserves the right to order the removal of disruptive attendees from State Bar meetings, video conferences or phone calls if it is necessary to maintain the orderly conduct of the meeting. If disruptive attendees are removed from a State Bar meeting, the State is required to submit a report to the Attorney General's Office justifying the removal.

Waive rules in case of emergency situations.

The State Bar may waive or override the above rules in case of emergency situations as defined in Section 11125.5(a-b) of the Bagley-Keene Open Meetings Act, or to maintain the orderly conduct of the meeting as defined by Section 11126.5 of the Bagley-Keene Open Meetings Act.

Conclusion

The California State Bar has the leadership opportunity to adopt a set of rules governing public comment at business meetings that will serve as a model by other state agencies because it achieves the delicate balance between maximizing public participation with allowing decision making by the state body to proceed in a timely manner.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Mark Toney", with a stylized, flowing script.

Mark W. Toney, Ph.D.