

Date: July 15, 2017

To: The ANA Board of Governors

Copy to: Ms. Kim Kiick, Executive Director
All other Bylaws and Ethics Committee Members
Ms. Hollie L. Wieland, General Counsel

From: Doug Andrews, Chair
Bylaws and Ethics Committee

Re: Proposals to Amend Bylaws – Articles VII to XIV

We received the Board's proposals to amend Articles VII to XIV of the Bylaws on June 20, 2017. Attached please find our report in two sections:

- Articles I to VI (see below)
- Articles VII to XIV

Summary

The majority of our Committee's comments address technical matters. However, some deal with more substantive or policy concerns. Whether technical or substantive, all feedback here is offered in good faith, it is supportive and above all, it is important that each and every issue receive the Board's attention. With this in mind, the following are among current priorities in the opinion of the Bylaws and Ethics Committee:

- Article VII 6 Voting: Integrity, security, and secrecy of voting
- Article VII 10 Elected Officials – Election – Expressions of Support for Candidates
- Article VIII 4 (Re-numbered) Elections – Ethics – Gifts to Board Candidates
- Article VIII 5 (Re-numbered) Elections – Ethics – Violation of Election Ethics
- Throughout: Accurate and consistent use of position terminology for "Elected Official," "Board member," "Corporate Officer," for example, particularly in reference to the proposed amendments

All proposed changes to Article XII – "Fiduciary Duties of Elected Officials, Officers & Special Officers" and use of terms "Elected Official," "Board member," "Corporate Officer," "Special Officer," "Coordinator," "Committee" elsewhere in the Bylaws **must be reviewed and vetted by General Counsel.**

Articles I to VI

We are submitting suggested revisions to Articles I to VI in a separate, attached document. These recommendations are almost entirely of a technical nature, but tweaking is necessary, among other reasons, to update Articles I to VI due to changes in the Board's proposals contained in Articles VII to XIV that were submitted to our Committee subsequent to our review of the first six articles. These recommended revisions are generally not substantial but are required to achieve consistency and cohesion throughout the Bylaws.

Articles VII to XIV

The second enclosure is the Board's proposals received by Bylaws and Ethics and it serves as the foundation for our assessment and recommendations.

Our report provides nearly all the Committee's analysis alongside each article and section. Two in particular require further comment. We are recommending restoration of Article VIII 4 to the Bylaws dealing with election ethics and "Gifts to Board Candidates." General Counsel's observations included in our report to the Board on February 10, 2016, before this section was removed, stated that while provisions to the effect are contained in the Board Code of Ethics, non-incumbent Board candidates are not bound by the Code. She added, "Inclusion of the Section is intended to add more teeth to the Code of Ethics' provision." Our Committee supports this position.

Article VIII 5 respecting Violation of Election Ethics is a particular concern and is problematic also. A special committee of four people drawn from the Mediation Committee and one from Bylaws and Ethics to investigate, with three Board members to decide the issue, and nine from the Advisory Council if insufficient Board members are eligible to rule, these are unwieldy numbers. Experience strongly suggests that complaints involving an alleged breach of election ethics need to be resolved without delay. This would be particularly true if they occur during the four-week balloting period.

Both investigation and making recommendations to the Board concerning election ethics complaints are ideally suited to the capabilities of the Bylaws and Ethics Committee. Reliance on Bylaws and Ethics additionally would help avoid any perception of bias that could occur as a result of striking a special committee after receipt of a complaint. A panel of "the most recently inducted nine Advisory Council members" plus its chair creates further problems due to members often reaching the Advisory Council in groups, and the prospect of deadlocked votes of 5-5 or other equal numbers of members free of potential conflicts of interest in the complaint. While the Board may ultimately decide to examine resolution alternatives, we recommend engagement of the Bylaws and Ethics Committee itself for investigation and reporting to the Board.

Important Note

Your Bylaws and Ethics Committee is striving to bring credible and thoughtful recommendations on the Board's proposals in the very limited time made available to us, and in doing so we have met every Board deadline at each of the three stages of our review.

How limited was the time given to Bylaws and Ethics? Thirty days to respond to the initial proposals in early 2016; a mere 20 days to vet, discuss, and report on Articles I to VI; 25 days to handle Articles VII to XVI from start to finish. The Bylaws and Ethics Committee is not complaining. In fact, everyone around us has supported us, and we appreciate it. Looking ahead, additional time will be needed for General Counsel to provide advice, for the Board to deliberate over these involved documents and make decisions, and for our Committee to receive questions and deliver appropriate answers.

Meeting our deadlines actually has a downside. The time given to the Bylaws and Ethics Committee has been far too little. The review requests have been sporadic, spread over 18 months resulting in inefficient use of our human and other resources, and pressures that otherwise may have introduced an increased risk of error in our work. We **need** more time. The same, in all likelihood, can be said of both your respected General Counsel and the Board. The Bylaws and Codes of Ethics are the ANA's primary governance documents. These are too important now, and to the future of the Association, to dash forward or for the process to result in miscalculations that could be costly.

While this sounds repetitious, more time is essential to ensure the best possible outcome.

I know I speak for every member of our Committee, volunteers and staff, it is a privilege to serve the ANA. Thank you for this opportunity.