

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

TELEPHONIC MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE

OPEN SESSION

Friday, December 16, 2011

4:05 p.m.

Legal Services Corporation
3333 K Street, N.W.
Washington, D.C. 20007

COMMITTEE MEMBERS PRESENT:

Charles N.W. Keckler, Chairman
Harry J.F. Korrell, III
Laurie I. Mikva
John G. Levi, ex officio

OTHER BOARD MEMBERS PRESENT:

Julie A. Reiskin

STAFF AND PUBLIC PRESENT:

James J. Sandman, President
Kathleen McNamara, Executive Assistant to the President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel, and Corporate Secretary
Mattie Cohan, Senior Assistant General Counsel,
Office of Legal Affairs
David L. Richardson, Comptroller and Treasurer, Office
of Financial and Administrative Services
Stephen Barr, Communications Director, Office of
Government Relations and Public Affairs
Jeffrey E. Schanz, Inspector General
Charles Greenfield, Program Counsel III, Office of
Program Performance

Linda Perle, Center for Law and Social Policy (CLASP)
Terry Brooks, American Bar Association Standing
Committee on Legal Aid and Indigent Defendants
(SCLAID)

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(4:05 p.m.)

CHAIRMAN KECKLER: I'll go ahead and note the presence of a quorum and begin the duly noticed meeting of the Operations & Regulations Committee.

The first item is the approval of the agenda, which should have been received. We have one substantive item. But may I have a motion to approve the agenda?

M O T I O N

MR. KORRELL: So moved.

MR. LEVI: Second.

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

CHAIRMAN KECKLER: With the agenda approved, we can now go on to our substantive item of business, which is the modification of the Legal Services Corporation Bylaws in conformity with the D.C. Nonprofit Corporations Act.

Everybody on the board, at least, should have received a memorandum earlier this week on the matter. And I think I'll briefly -- hopefully, this meeting will be relatively brief -- turn the matter over to Ms. Mattie

1 Cohan to explicate her memo and add any further details
2 she might wish.

3 MS. COHAN: Great. For the record, this is
4 Mattie Cohan with the Office of Legal Affairs.

5 At this point we are asking the committee to
6 recommend that the full Board take up and adopt a few
7 changes to the bylaws. The main substantive change is
8 occasioned by a change in the act to when notice is
9 deemed given.

10 Under the new act, the notice required is
11 deemed effective at the earliest of a number of
12 conditions, either when received or left at the
13 recipient's residence or usual place of business five
14 days after its deposit in the main or with a commercial
15 delivery service, or on the date shown by a return
16 receipt for registered or certified mail or by a
17 commercial delivery service.

18 In contrast, our current bylaws had notice
19 deemed given when deposited in the United States Postal
20 Service, first class postage paid, addressed to the
21 director at his or her address; and then notice by
22 telefax or Express Mail was deemed given when sent,

1 charges prepaid, to such address. So the current notice
2 provisions are just -- they're inconsistent with what the
3 new law is.

4 So the main change is to adopt the language
5 essentially straight out of the Corporation Code
6 regarding when notice is given. Also, in the new code,
7 notice given by electronic means is separated out and has
8 its own provision about when that's deemed given, then
9 mail done by commercial service or postal mail.

10 Our current bylaws have telefax, including
11 commercial mail service that's not U.S. Postal Service,
12 as well as electronic communications. So to make the
13 bylaws read better, we are also suggesting a couple of
14 new definitions -- to get rid of the definition of
15 telefax that's in the existing bylaws, and to create a
16 definition for mail and commercial mail service and add a
17 definition of electronic communications, which is
18 consistent with the code.

19 So those are the two substantive changes that
20 we're proposing. And then there are a handful of little
21 cleanups such as making reference to the current sections
22 of the code in the authority on the cover page; cleaning

1 up a couple of typos.

2 There was a reference to a statutory reference
3 to the U.S. Code that for some reason has been incorrect
4 for a while. And so we want to use the correct citation.
5 The LSC Act has the correct citation; I don't know what
6 happened with the Code -- I mean, with the bylaws. But
7 we've got that in there since we're cleaning it up.

8 And just I will note, from the draft that you
9 were provided, Charles noted for me two typos within the
10 corrections we were making. My copy, I've already
11 incorporated those, and if anybody finds any others, we
12 can incorporate those as well. But those were not
13 substantive.

14 So that's the short version of what we're
15 doing. And I'm happy to answer questions if anybody has
16 any.

17 CHAIRMAN KECKLER: My question is, this
18 involves notice primarily to the directors, or notice --

19 MS. COHAN: Yes.

20 CHAIRMAN KECKLER: Yes? Okay. Does anybody
21 else -- is anybody else covered by this notice provision?

22 MR. FORTUNO: No. This is notice to directors.

1 MS. COHAN: Yes.

2 MR. FORTUNO: And we're a nonmember
3 corporation, so the provisions relating to notice to
4 members wouldn't apply to us.

5 MS. COHAN: Correct.

6 CHAIRMAN KECKLER: Right. And so our current
7 practice really wouldn't particularly change because
8 primarily what I've noted is that we give notice via
9 email.

10 MS. COHAN: Correct.

11 CHAIRMAN KECKLER: Right. And so --

12 MS. COHAN: And it's not changing how notice is
13 given. It's really just when it is technically deemed
14 having been given, when the notice is deemed effective
15 should somebody later say they didn't get notice.

16 CHAIRMAN KECKLER: All right.

17 MR. FORTUNO: Also, under the new act, some
18 organizations will be using a procedure that's available
19 to them under the new act, the D.C. Nonprofit Corporation
20 Act of 2010, which allows for notice. If you have the
21 dates known at the start of the year, you can actually
22 give one notice for the entire year.

1 But most are not doing that because there's a
2 tendency to change dates or for people to forget.

3 MS. COHAN: And that doesn't require a change
4 to the bylaws.

5 CHAIRMAN KECKLER: All right. Well, I think
6 that's relatively straightforward. So it really won't
7 change our practice at all. It's just a conformity.

8 MS. COHAN: Correct.

9 CHAIRMAN KECKLER: All right. Are there any
10 other questions from members of the committee or Board?

11 MS. REISKIN: No.

12 M O T I O N

13 CHAIRMAN KECKLER: Okay. Well, in that case,
14 if there's nothing else to add, I'll go ahead and just
15 straightforwardly move to recommend that we adopt these
16 conforming amendments to the LSC bylaws and present them,
17 with our recommendation, to the board of directors at its
18 next telephonic meeting.

19 Do I have a second?

20 MS. MIKVA: Sounds great. I second.

21 CHAIRMAN KECKLER: All in favor?

22 (A chorus of ayes.)

1 CHAIRMAN KECKLER: And with that, I deem that
2 motion to be approved and that recommendation to be
3 transmitted to the Board.

4 The next item on the agenda is consideration of
5 other business. Is there anybody on the committee or the
6 Board that has any other business that needs to be
7 conducted?

8 MR. FORTUNO: I guess, on a related note, we
9 will be presenting a more comprehensive outline of
10 changes. They're not changes that need to be made now,
11 and that's why we didn't take up your time on this
12 occasion.

13 But, for example, the structure we have,
14 executive and non-executive committees, non-directors can
15 serve on non-executive committees. Some of it is just
16 change in name, so now, under the new law, you have board
17 committees and you have advisory committees.

18 Board committees are those that we have
19 traditionally referred to as executive committees. On
20 those, you can only have board members. You can have
21 non-directors on advisory committees. And in effect,
22 that's what the current standing committees that we have

1 are; they're advisory committees. That's how they were
2 created under the bylaws, and they don't exercise the
3 power of the board.

4 There were some new concepts, one of which, one
5 of the more interesting of the new concepts, is the
6 concept of a designated body, where the board can
7 delegate to this designated body almost all of its
8 functions.

9 And we may see that when you have a board of
10 VIPs who won't be focusing on the day-to-day activities
11 of the organization. So they may constitute the board of
12 directors, and then there may be an advisory body that in
13 fact is charged with carrying on the day-to-day type of
14 board work that normally gets carried out by a board of
15 directors.

16 But we'll get into this, and indemnification,
17 and scope of liability and limitations on that. There
18 are actually some protections. It's interesting because
19 this is the -- we're the first jurisdiction to adopt the
20 model nonprofit corporation act.

21 So the District of Columbia has not yet issued
22 -- I need to check today because they didn't Friday --

1 MS. COHAN: No, they didn't.

2 MR. FORTUNO: They didn't?

3 MS. COHAN: They issued --

4 MS. REISKIN: Do you see this coming elsewhere?
5 Do you see this becoming a national thing?

6 MR. FORTUNO: Oh, I think that other
7 jurisdictions will be picking up the model act either in
8 whole or at least in part. They may adopt it with some
9 modifications.

10 D.C. largely just took the model act. We're
11 able to look to -- there isn't much legislative history,
12 but we're able to look to the comments to the model act
13 for some guidance. But there are some new concepts.

14 There's some changes, none of which require,
15 other than notice requirement, a change at this point.
16 But we will want to brief the Board more extensively, and
17 you will want to consider whether to modify the bylaws to
18 more closely track the actual terms and concepts that are
19 used in the new D.C. Nonprofit Corporation Act.

20 MS. COHAN: Right. And there are some
21 authorities that the act provides that the act is -- the
22 act basically says, this is what the law is. If the

1 board of an organization wants to do something different,
2 they can adopt something different in their bylaws.

3 So I don't think the act is prescribing or
4 suggesting that you have to do something different. But
5 there's an authority question that then the Board will
6 want to consider.

7 CHAIRMAN KECKLER: All right. And I should
8 point out that at the current time, although it's sort of
9 a placeholder time period, we've set up the next meeting
10 of the Operations & Regulations Committee in January,
11 reserving a half hour or so for discussion of whatever
12 these changes are.

13 And so I'm sure the management will present
14 things that they think would be of interest to the Board.
15 If, either from the memorandum that you've received or
16 from the D.C. Nonprofit Act, you see items that you think
17 should be specifically included for our discussion at the
18 January agenda, please tell me, Mattie, and so on.

19 Well, with that, I will -- I think we can now
20 move towards considering the adjournment of the meeting.

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MS. MIKVA: I move to adjourn.

CHAIRMAN KECKLER: Is there a second? I will
second. I will second the motion.

(Laughter.)

CHAIRMAN KECKLER: All in favor?

(A chorus of ayes.)

MS. MIKVA: Happy holidays, everybody.

CHAIRMAN KECKLER: Yes. Happy holidays.

(Whereupon, at 4:18 p.m., the committee was
adjourned.)

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