

## NACM Bylaws

### **Bylaw Amendments**

#### **Requirements**

The National Association for Court Management was formed in August 1985 as a consolidation of the National Association of Trial Court Administrators and the National Association for Court Administration. NACM incorporated as a nonstock corporation in the State of Virginia and created a set of Bylaws to guide their actions. At times, it is necessary to update these Bylaws to match the current state of affairs and affirm proper procedure and protocol. NACM last approved changes to the Bylaws on July 22, 2019. Article XVI, Section 2 of our Bylaws sets forth the requirements for amending the Bylaws. Article III covers voting rights (§ 2) and voting by mail (§ 3), and Article VII covers meetings of members at which elections and other votes are conducted.

As the Association has considered updates to various requirements in the Bylaws for in-person meetings and votes, several other provisions in the Bylaws were found to be in need of clarification. Consequently, proposed 2023 amendments include a new article, XVII: Definitions, and changes to Article XVI: Amendments; Article VI: Board; and Article VII: Meetings of Members. The amendments are presented in this order because of how they relate to one another.

### **Proposed 2023 Amendment: New Article XVII**

#### **Article XVII Explanation:**

The purpose of a definitions section in the Bylaws is to improve clarity in the use of terminology.

#### **Article XVII (New) Definitions**

**Absent**—not “present” as defined in this article; not participating contemporaneously in an Association meeting or other event.

The meaning places greater emphasis on an individual’s participation not being simultaneous in time than on whether participation would be remote as to place because technology now allows individuals to be remotely present.

**Association**—the National Association for Court Management (NACM)

**Board**—the Association’s collective Directors and Officers

**Director**—a regular member who is elected by the members to manage the affairs of the Association (see Article III, Section 1 for an explanation of who is a “regular”

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member). In the Bylaws, this term applies to a Class A director under the Articles of Incorporation.

**In-person**—physically in attendance at the site and time designated for an Association meeting or other event.

**Officer**—a Class B director under the Association’s Articles of Incorporation who is elected to a one-year term by the members and on whom the Bylaws confer special managerial responsibilities for the Association

**Present**—contemporaneously in attendance at a meeting of the Association, whether in-person or remotely.

An individual is considered “present” who is participating in real-time, whether in-person or remotely, in business of the Association, including meetings and votes of the Association membership, the Board, or committees.

**Proxy**—the authority to represent someone else, especially in voting.

**Remote**—not in-person; not taking part at a physical location such as where a meeting or event may be designated to take place; the term generally but not exclusively applies to participation via online mechanisms.

Remoteness is principally a designation of location, not of time. A member might attend a meeting remotely and still be present at a meeting; however, a vote transmitted by traditional postal mail for a special meeting would be remote but *not* present (i.e., absent) at the time when votes are counted.

**Voting group**—[We are awaiting legal advice as to the meaning of this term under Virginia law. We intend to provide authoritative text before the vote at the Annual Meeting or will omit this entry until next year.]

**Written demand**—a request communicated by a member in writing, whether physically or electronically, and delivered to an appropriate Association business address.

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## Proposed 2023 Amendment to Article XVI

### Article XVI Explanation:

Article XVI specifies the requirements for amending the Articles of Incorporation (Section 1) and the Bylaws (Section 2). Votes to amend the Articles of Incorporation or the Bylaws may take place at annual or special meetings. The conditions for meetings, including quorum and action, are specified in Article VII. To avoid confusion and potential inconsistencies between the two Bylaw articles, this proposal recommends striking any language in Article XVI relating to present or remote participation in amendment votes.

In addition, both sections of Article XVI require that amendments be approved by supermajorities. A review of [Virginia Code § 13.1-886.D](#), which governs the Amendment of our Articles of Incorporation, found that the supermajority provisions of Section 1 of Bylaw Article XVI do not sufficiently track the law, which reads, “*the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes cast by that voting group.*” The proposed amendments to that section below are intended to conform the Bylaw to the legal text. A “voting group” refers to a class of Association members who possess the right to vote (see Bylaw Article III, Section 1 for classes of members who may vote). Basically, votes of each voting group/membership class with voting rights are counted separately, and more than two-thirds of the votes cast in each group must be favorable to an amendment for it to pass. Failure to meet the “more than two-thirds” threshold in any voting group would kill an amendment.

As for the requirements for amending the Bylaws, after discussions among the Governance Committee and the Board, a slightly smaller and less complex supermajority is recommended than that for amending the Articles of Incorporation. This proposal would revise Section 2 so that adoption of Bylaw amendments would require a favorable vote by *at least* two-thirds of the votes cast by the members entitled to vote at a meeting, without regard to voting group. Interestingly, Virginia law would allow a board to amend bylaws without a vote by association members.

All proposed changes are indicated by red text below. Text that would be removed is ~~stricken~~ while text that would be inserted is underlined.

### **ARTICLE XVI** **Amendments**

Section 1. **Amendment of Articles of Incorporation.** In order to amend the Articles of Incorporation of the Association, the Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or special meeting of members. Notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be provided to the membership at least thirty (30) and not more than ninety (90) days in advance of the meeting. The amendment to be adopted shall be

**Commented [KP1]:** As of 4/19, the Governance Committee and Board are awaiting legal advice regarding the accuracy of this interpretation so that NACM will understand the operation and implications of the language whenever there is another proposal to amend the Articles of Incorporation.

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~~approved by each voting group entitled to vote on the amendment by adopted upon receiving more than two-thirds (2/3) of all the votes cast by that voting group which members present at the meeting and members represented remotely (electronic or otherwise).~~

**Section 2. Amendment of Bylaws**

- a. These Bylaws may be amended ~~upon receiving a favorable vote of only by a~~ at least two-thirds (2/3) ~~vote of the votes cast by~~ the members entitled to vote ~~who are present~~ at the annual or special meeting ~~or who are represented remotely (electronic or otherwise).~~
- b. Notice setting forth the proposed amendment shall be provided to the membership at least thirty (30) days and not more than ninety (90) days in advance of a meeting.
- c. Members may submit proposed changes to the Bylaws to the President or to any member of the Board at least ninety (90) days prior to the annual meeting.
- d. Any amendment shall be in full force and effect immediately upon its adoption at the annual or special meeting unless otherwise provided.
- e. All amendments to the Bylaws shall be discussed by the Board at its regularly scheduled meeting prior to the annual meeting. Recommendations will be announced to the membership by the Board for approval or disapproval of said amendments.

**Commented [KP2]:** Depending upon how our amendment proposals are voted upon at the annual meeting (i.e., individually, in sets, or as a single proposal) this provision could affect the vote.

## Proposed 2023 Amendment to Article VI

### Article VI Explanation:

Article VI governs the composition and operation of the NACM Board of Directors.

Section 3 addresses the requirements for Board meetings. Provisions in Section 3 call for four regular in-person meetings in each conference year. Conditions during the Covid-19 pandemic and the availability of numerous reliable remote conferencing technologies revealed that the in-person meeting requirements were not only unnecessary but also potentially crippling. While NACM leaders believe that a minimum number of in-person meetings is *preferable* for healthy board operations, this proposal recommends that the in-person requirement for regular meetings be removed. The proposal also includes some minor grammatical corrections. All proposed changes are indicated by red text below. Text that would be removed is ~~stricken~~ while text that would be inserted is underlined.

### **Article VI** **Board**

Section 3. **Board Meetings.**

- a. The Board shall hold four regular ~~in-person~~ meetings in each conference year (the conference year being: from the close of the annual meeting to the close of the following annual meeting): one regular midyear meeting at the call of the President, on not less than thirty (30) days' notice, at the site of the next scheduled annual conference; a second regular midyear meeting immediately prior to and in conjunction with the midyear conference, without notice; and two regular meetings, one immediately prior to, and one immediately following, the annual meeting of members, without notice.
- b. In addition to the four regular ~~in-person~~ meetings set forth in Article VI, Section 3, subparagraph a, the Board shall also hold a minimum of three regularly scheduled conference call meetings in each conference year. The schedule of the conference call meetings is at the discretion of the President.
- c. Special meetings of the Board shall be held at the call of the President or at the written request of a majority of the members of the Board, on ten (10) days' notice.

## Proposed 2023 Amendment to Article VII

### Article VII Explanation:

Article VII governs the meetings of NACM members. These are meetings at which business may be conducted for the whole Association by its voting members—as distinct from the business of committees or of the NACM Board. Consistent with advances in the ability to conduct business remotely and with the proposal to remove the requirement in Article VI for regular Board meetings to be in-person, this proposal would allow remote voting by members who are present, eligible to vote (as determined by class of membership), and meet any other voting requirements applicable to a specific meeting of members. For example, members must be registered at the annual conference, per Art. VII, Section 5, subparagraph a in order to vote at the annual meeting. Removing the in-person restriction allows the greatest flexibility in conducting business at meetings of members, especially the annual meeting.

The current in-person requirement also seems out-of-place given that remote voting has already been permitted in special meetings and to amend the Articles of Incorporation (Art. XVI, § 1) and the Bylaws (Art. XVI, § 2.a). Consistent with the definitions proposed for new Article XVII, the term “present” in this context means that a member casts his or her own vote in real-time, not by proxy; it does not require physical presence at the site of the meeting. Absentee voting—as in voting by postal mail—is currently permitted only in special meetings per the provisions of Article III, Section 3. In the future, any further details clarifying how the Association should conduct remote voting to ensure that voting requirements are met may be specified in the [Operations and Procedures Manual](#) and related policy documents.

### **Article VII** **Meetings of Members**

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#### Section 5. Quorum and Action.

- a. At the annual meeting of members, a quorum shall consist of one tenth (1/10) of the members who are registered at the conference and are eligible to vote. Members must be present to vote.
- b. At any special meeting of members, a quorum, present or **absent** (voting ~~remotely~~ **electronically** or otherwise), shall consist of a majority of all members eligible to vote at the meeting.
- c. All elections and all other matters voted on at any meeting of members at which a quorum is present shall be determined by a majority of those eligible to vote ~~who are present in person or, at a special meeting, remotely (electronic or otherwise)~~; except that amendment of the Articles of Incorporation **and the Bylaws** shall require **supermajority the votes according to the provisions of Article XVI of more than two-thirds (2/3) of those eligible to vote who are present in person or remotely (electronic or otherwise) at the meeting.**