

Report to the ARRL Board
ARRL Special Committee on Bylaw 46 Revisions
November 2024

At the annual ARRL Board of Directors meeting in January, 2024, the Board passed the following motion:

"48. Moved by Director Zygielbaum with a second by Director McIntyre: WHEREAS, the organization has been advised by Connecticut counsel that it is not in the best interests of the organization or membership to be operating without an established set of ethical standards and guidelines for the board to be held to; WHEREAS, in careful consideration of and response to concerns recently expressed by certain members regarding potential problems with the proposed text of an amendment to By-Law 46; WHEREAS, in careful consideration of and response to concerns recently expressed by certain members that ethics investigations by the Ethics and Elections (E&E) Committee of the ARRL board, may have been conducted improperly, swayed by person or political bias, and/or conducted without appropriate transparency; WHEREAS, the organization has had to deal with very specific alleged ethical infractions leading to uncomfortable investigations and subsequent proliferation of false or misleading comments made publicly about the investigations; and WHEREAS, prior ethics inquiries have required engaging ARRL's Connecticut counsel in legal issues such as conflict of interest, violation of fiduciary responsibilities or violation of Connecticut law.

THEREFORE, be it resolved that:

A committee of the members of the 2022 and 2023 E&E Committees (Directors Zygielbaum, Lippert, Norris, McIntyre, Luetzelschwab and Ryan), one member from ARRL's Connecticut counsel in consultation as needed, and chair appointed by the ARRL Board President will

a) Assure the existence of a set of ethical standards and guidelines as set for the in ARRL By-Law 42, by revising the proposed amendment to By-Law 46 to assure that the By-Law is concise, easily comprehended, and soundly based in Connecticut State Statute and ARRL Governing Documents. Concomitantly, specific attention will be given to defining appropriate, legal, and effective remediation which protects the organization and furthers the interest of ARRL members in the case of a confirmed violation.

b) Investigate and, if determined to be in the best interest of the ARRL and its members, recommend modifications to By-Law 42, the charter for the E&E Committee, to facilitate delegation of ethical inquiries to an independent, appropriately vetted, and legally sanctioned third party.

Additional committee members may be appointed as needed and appropriate by the committee chair.

After discussion, Director Yonally moved, seconded by Director Zygielbaum to call the question.

The motion to call the question was APPROVED by a majority vote. Per Standing Order #23-2.38,

five or more Directors requested a roll call vote.

The motion was APPROVED unanimously by a roll call vote."

I was appointed to chair the special committee. As chair, I asked Director Baker and Director Yonally to join the committee and they agreed to do so.

The whole committee met on several occasions via Zoom. Director Zygielbaum, First Vice President McIntyre and I served as a drafting subcommittee to begin drafting documents for the whole committee to review. The subcommittee met often via Zoom and via telephone calls related to the preparation of the documents.

Connecticut Corporate Counsel attended 2 of the Zoom meetings and participated in over four hours of discussion regarding the documents. All draft documents were provided to Connecticut Counsel to ensure they had sufficient time to review the drafts prior to Counsel participating in the Zoom conferences. In addition, Corporate Counsel participated in one additional 45 minute Zoom session to go over the final wording of the documents. After the "open committee meeting on November 19, 2024, Connecticut Counsel was once again consulted regarding eligibility issues related to the proposed bylaw changes.

What you will find attached to this report are the output documents from the work of the committee. They include revisions to Bylaw 42, Bylaw 46, the Board Member Statement and a proposed amendment to Article 7 of the Articles of Association. I invite all Board members to carefully review the attached documents. The Committee will present a motion at the January 2025 Board of Directors meeting that the Board accept the report of the committee and implement the recommendations of the committee as set out in the proposed three documents.

Summary of the Documents

1. The Board Member Statement sets out the ethical, fiduciary, and legal duties of ARRL Board Members. It is based upon the Connecticut Revised Nonstock Corporation Act. Section 33-1104 of that Act specifies the expectations of a member of the Board of Directors.

“Sec. 33-1104. General standards for directors. (a) A director shall discharge his duties as a director, including his duties as a member of a committee: (1) In good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation.”

This statute is interpreted as requiring a Board Member to exercise fiduciary responsibility including *doing no harm* to the organization and working for the benefit of the organization.

The three overarching duties of Directors is explained in the Board Member Statement.

- *Duty of Care* -- Directors must take care of the ARRL by ensuring prudent and effective use of all assets, including facility, people, and goodwill.

- *Duty of Loyalty* -- Directors must make decisions that are in the best interests of the ARRL and not in the best interest of a board member or any other individual or entity.

- Duty of Obedience -- Directors must ensure that the ARRL obeys applicable laws and regulations and follows its own governing documents.

The Board Member Statement on Authority, Responsibility, and Expectations sets out the ARRL Conflict of Interest Policy, including its purposes, defining Conflicts of Interest and the Duty to Disclose any conflicts of interest. Additionally, it sets out possible remediation actions in the event of a conflict of interest, including various levels of recusal, or in extreme cases ineligibility to serve or continue to serve.

Last, but certainly not least, the Board Member Statement sets forth the procedure for investigating violations and remediation actions to be taken if there is a finding of a violation of a Board Member's fiduciary or other duties.

If a majority (2) of the E&E believes there may be such an ethical, fiduciary, or legal duty violation, then the E&E will turn over whatever relevant evidence it has to an independent neutral Third Party selected by the ARRL to investigate the matter and determine if, in fact, there is any violation. The subject of the investigation also has the right to present relevant evidence that no violation has occurred. If the Third Party finds no violation, then the investigation is terminated. If the Third Party finds there was a violation, then the Third Party makes a recommendation as to remediation action to be taken. Based upon the Third Party finding of a violation, the E&E may also recommend a remedial action different than that recommended by the Third Party. The E&E presents the results of the Third Party investigation and the remediation recommendation(s) to the full ARRL Board. The full Board may accept the remediation recommended by the Third Party or the E&E or impose a different action, including dismissing the findings and recommendations, as it finds appropriate.

If the E&E preliminarily finds there was no violation, upon the request of at least 5 Directors to the ARRL President, the President will refer the matter to the Third Party selected by the ARRL for investigation. This, in effect, overrides the E&E finding.

2. Proposed Bylaw 42. The substance of Bylaw 42 remains unchanged with the exception of adding wording setting out the process for investigating possible violation of any ethical, fiduciary, or other legal duty by a Board Member. Bylaw 42 has an added provision that if an E&E Committee member is the subject of an investigation, that person is recused from E&E temporarily until the conclusion of the investigation. The revised Bylaw includes the definition of an independent neutral Third Party to be used in investigations of violations of ethical, fiduciary, or legal duty or other duty as well as in reviewing candidate appeals to E&E election decisions. Also, Bylaw 42 was rearranged to set out provisions dealing with ethics and another for the provisions dealing with elections. In other words, all the provisions dealing with ethic, fiduciary, or other legal duties are grouped together and the provisions dealing with elections are grouped together.

3. Proposed Bylaw 46. The proposed bylaw incorporates the Board Member Statement on Authority, Responsibility, and Expectations into the ARRL Bylaws. The proposed bylaw also provides that candidates for Director or Vice Director must certify through their signature at the end of the Board Member Statement that they have read, understood, and agree to comply with the provisions of the Board Member Statement to be considered for election eligibility by the Ethics and Elections Committee. Officers, Directors and Vice Directors must annually recertify through their signature at the end of the Board Member Statement that they have read, understand, and agree to comply with the ARRL Board Member Statement. The proposed Bylaw 46 also sets out the procedure to be used in the event there is an allegation that an Officer, Director or Vice Director has violated any fiduciary, ethical or legal duty.

The committee is also proposing a change to clarify Article 7 of the Articles of Association to state, in one place, what constitutes a vacancy on the Board.

There was some concern about the selection process for the neutral and independent third party who will be reviewing E&E decisions finding a candidate ineligible and for determining if there has been a violation of a fiduciary, ethical or legal duty. The committee will present a motion to add a Standing Order to the current standing orders that sets out who is to be selected to serve as a neutral 3rd party and how the specific 3rd party is chosen to handle a matter. The motion will be made if the changes recommended by the committee are adopted.

As chair, I have begun searching for possible candidates to serve as the neutral and independent third party under the proposed procedure. At this point, the committee has reviewed the credentials of one potential candidate who has agreed to act as a neutral third party. Additional candidates will be added after the Board implements the proposed changes.

Rod Stafford W6ROD, Chair of the Special Committee on Bylaw 46
First Vice President McIntyre
Director Zygielbaum
Director Lippert
Director Norris
Director Luetzelschwab
Director Ryan
Director Baker
Director Yonally