

**PARLIAMENTARY LAW  
IN  
REAL-LIFE MEETINGS**

Brian Melendez<sup>1</sup>

Friday 9 December 2011  
8:30 a.m. – 11:40 a.m. (basic)  
1:30 p.m. – 4:00 p.m. (advanced)

Hennepin County Bar Association  
390 Minnesota Law Center  
600 Nicollet Mall  
Minneapolis

Basic Topics

- I. Parliamentary Procedure as “Law”
- II. Basic Parliamentary Concepts
- III. Procedure: 84 Motions in Eight Minutes
- IV. Ethics
- V. Tips, Tricks, and Traps

Advanced Topics

- VI. Structuring a Meeting
- VII. Structuring an Organization
  - A. Constitution / Bylaws
  - B. Committees
  - C. Elections

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## I. Parliamentary Procedure as “Law”

- A. Parliamentary procedure as “law”
- B. Sources of parliamentary law
  - 1. Common or “general” parliamentary law<sup>2</sup>
  - 2. Public law: constitutions, statutes, ordinances
    - a) Public law applicable to public bodies
      - (1) Federal constitution<sup>3</sup>
      - (2) State constitution<sup>4</sup>
      - (3) Statute<sup>5</sup>
      - (4) Municipal charter or ordinance
    - b) Public law applicable to private bodies<sup>6</sup>
      - (1) Business corporations<sup>7</sup>
      - (2) Political parties<sup>8</sup>
      - (3) Savings associations<sup>9</sup>
  - 3. Private “law”
    - a) Constitutions, charters, bylaws

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<sup>2</sup>See generally Robert at xxix–l.

<sup>3</sup>See, e.g., U.S. Const., art. I, § 5 (quorum, journals, meetings, adjournment); *id.*, § 7 (procedure in passing bills and resolutions).

<sup>4</sup>See, e.g., Minn. Const., art. IV, § 7 (rules of government); *id.*, §§ 13-26.

<sup>5</sup>See, e.g., Minn. Stat. § 365.56 (parliamentary procedure in town meeting).

<sup>6</sup>See generally Dominga Rivera-Rivera, *Judicial Interpretation of Parliamentary Procedure in Associations and Clubs* (AIP); “Court Citations,” in George Demeter, *Demeter’s Manual of Parliamentary Law and Procedure*, ch. 15 (1969).

<sup>7</sup>Minn. Stat. ch. 302A.

<sup>8</sup>Minn. Stat. § 202A.18 (“All questions concerning the manner in which a caucus is conducted or called that are not covered by statute shall be determined by *Robert’s Rules of Order* (revised) unless specified by party rules.”).

<sup>9</sup>Minn. Stat. § 51A.03, subd. 2(1) (“All meetings of the members and of the board of directors shall be conducted in accordance with *Robert’s Rules of Order*.”).

- b) Rules
- c) Precedent, custom and usage
- 4. Parliamentary authorities
  - a) *Robert's Rules of Order*<sup>10</sup>
  - b) Other parliamentary authorities
    - (1) Thomas Jefferson, *Manual of Parliamentary Practice* (1801)
    - (2) Luther S. Cushing, *Manual of Parliamentary Practice* (1925, reprinted 1961)
    - (3) George Demeter, *Demeter's Manual of Parliamentary Law and Procedure* (1969)
    - (4) Lewis Deschler, *Deschler's Rules of Order* (1976)
    - (5) Hugh Cannon, *Cannon's Concise Guide to Rules of Order* (1995)
    - (6) Ray E. Keeseey, *Modern Parliamentary Procedure* (1994)
    - (7) Floyd M. Riddick & Miriam H. Butcher, *Riddick's Rules of Procedure: A Modern Guide to Faster and More Efficient Meetings* (1985, reprinted 1991)
    - (8) National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* (2000)<sup>11</sup>
    - (9) Alice Sturgis, *Standard Code of Parliamentary Procedure* (4th ed. 2001)

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<sup>10</sup>Henry M. Robert et al., *Robert's Rules of Order Newly Revised* (11th ed. 2011) [cited as "Robert"].

<sup>11</sup>Updating Paul Mason, *Manual of Procedure for Legislative and Other Governmental Bodies* (1970).

5. Majorities: “Each society decides for itself the meaning of its bylaws”<sup>12</sup>
  6. Parliamentarians
    - a) American Institute of Parliamentarians  
(<http://www.parliamentaryprocedure.org/>)
    - b) National Association of Parliamentarians  
(<http://www.parliamentarians.org/>)
  7. Commentary
    - a) *AIP: Parliamentary Journal*
    - b) *AIP: Parliamentary Opinions*
    - c) *NAP: National Parliamentarian*
- C. Hierarchy of authority
1. Federal law
  2. State law
  3. Organizational governing documents
    - a) Charter
    - b) Articles of association / incorporation / organization
    - c) Constitution
    - d) Bylaws
    - e) Special rules of order
    - f) Precedent, custom, and usage
    - g) Parliamentary authority

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<sup>12</sup>Robert § 56 at 588–89.

## II. Basic Parliamentary Concepts

- A. **Assembly:** A body that transacts business according to parliamentary law.
1. “It is a group of people, having or assuming freedom to act in concert, meeting to determine, in full and free discussion, courses of action to be taken in the name of the entire group.”
  2. “The group meets in a single room or area or under equivalent conditions of opportunity for simultaneous aural communication among all participants.”
  3. “Persons having the right to participate — that is, the members — are ordinarily free to act within the assembly according to their own judgment.”
  4. “In any decision made, the opinion of each member present has equal weight as expressed by vote — through which the voting member joins in assuming direct personal responsibility for the decision, should his or her vote be on the prevailing side.”
  5. “Failure to concur in a decision of the body does not constitute withdrawal from the body.”
  6. “If any members are absent — as is usually the case in any formally organized assembly such as a legislative body or the assembly of an ordinary society — the members present at a regular or properly called meeting act for the entire membership, subject only to such limitations as may be established by the body’s governing rules . . . .”<sup>13</sup>
- B. **Meeting:** The event of a deliberative assembly’s convening for the purpose of transacting business, which begins with a call to order and continues until the assembly adjourns.

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<sup>13</sup>Robert § 1 at 1–2.

- C. **Member:** One of the individuals of whom an organization or a deliberative assembly consists, and who enjoys the full rights of participating in the organization — including the rights of making, debating, and voting on motions — except to the extent that the organization reserves those rights to certain classes of membership.
- D. **Motion:** A proposal made in a meeting, in a form suitable for its consideration and action, that the meeting (or the organization for which the meeting is acting) take a certain action or view. • A motion may be a *main motion* or a *secondary motion*. A motion technically becomes a “question” when the chair states it for the meeting’s consideration but, for most purposes, the parliamentary terms “motion” and “question” are interchangeable.
1. **Main motion.** A motion that brings business before a meeting. • A main motion may be an *original main motion* or an *incidental main motion*. — Also termed *principal motion*, *proposition*.
    - a) **Original main motion.** A main motion that relates to a substantive rather than a procedural matter; a main motion that is not an incidental main motion. — Also termed *ordinary main motion*, *substantive main motion*, *substantive motion*.
    - b) **Incidental main motion.** A main motion that relates to a procedural rather than a substantive matter; an otherwise secondary motion, made when no main motion is pending. — Also termed *procedural main motion*, *quasi-main motion*, *specific main motion*.
  2. **Secondary motion.** A motion that does not itself bring business before the meeting, and is therefore in order when a main motion is pending. • A secondary motion may be either an *incidental motion* (although not an *incidental main motion*), a *privileged motion*, or a *subsidiary motion*.
    - a) **Incidental motion.** A secondary motion that relates to the procedure under which other business is considered. See *secondary motion*.

- b) ***Privileged motion.*** A secondary motion that does not relate to other business, but rather to the organization, the meeting, its members, and their rights and privileges, and is thus entitled to prompt attention in preference over other pending business. See *secondary motion*.
  - c) ***Subsidiary motion.*** A secondary motion that directly affects the main motion's form or consideration. See *secondary motion*.
- E. ***Amendment:*** A motion that changes another motion's wording. • The forms of the motion to amend include striking out, inserting (or adding), and striking out and inserting (or substituting).
- 1. ***Friendly amendment:*** An amendment that the mover of the motion being amended supports, and to which no other member objects. • “The term ‘friendly amendment’ is often used to describe an amendment offered by someone who is in sympathy with the purposes of the main motion, in the belief that the amendment will either improve the statement or effect of the main motion, presumably to the satisfaction of its maker, or will increase the chances of the main motion's adoption. Regardless of whether or not the maker of the main motion ‘accepts’ the amendment, it must be opened to debate and voted on formally (unless adopted by unanimous consent) and is handled under the same rules as amendments generally.”<sup>14</sup>
- F. ***Committee:*** A subordinate group to which a deliberative assembly or other organization refers business for consideration, investigation, oversight, or action. • “One of the outstanding characteristics of membership organizations the world over is the powerful role played by committees in setting policy and in carrying out their objectives. The Congress, state legislatures, business associations, and countless clubs and societies have traditionally conducted their work through committees of their members.”<sup>15</sup>

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<sup>14</sup>Robert § 12 at 162.

<sup>15</sup>Lewis Deschler, *Deschler's Rules of Order* § 103 at 189 (1976).

- G. **Majority:** Any number greater than half. • A majority always refers to the numerator of some defined or assumed set — usually either all the possible memberships, including vacancies; all the actual members, disregarding vacancies; the members present, whether or not they vote; or the members voting, excluding blanks and abstentions. A “majority” without further qualification usually means a simple majority.
1. **Simple majority.** A majority of the members who vote, a quorum being present, disregarding absent members, members who are present but do not vote, blanks, and abstentions. — Also termed *ordinary majority*.
    - a) **Half plus one.** An inexact (and often inaccurate) approximation for a majority. • For a body with 100 members, a majority is indeed half (50) plus one, or 51. But for a body with 101 members, assuming no fractional votes, a majority is still only 51, but half (50.5) plus one is 51.5 — which means that 52 votes are necessary for “half plus one.” A provision for majority rule should simply refer to “a simple majority” rather than “half plus one.”
  2. **Supermajority.** A fixed proportion greater than half, such as two-thirds. • Such a majority is needed for certain extraordinary actions, such as ratifying a constitutional amendment or approving a fundamental corporate change. — Also termed *extraordinary majority*.
  3. **Absolute majority.** A majority of all those who are entitled to vote in a particular election, whether or not they actually cast ballots.
  4. **Majority of all the members.** A majority of all the actual members, disregarding vacancies. — Also termed *constitutional majority*, *majority of the entire membership*, *majority of the membership*.
  5. **Majority of all the memberships.** A majority of all the possible memberships, including vacancies. — Also termed *majority of the fixed membership*.

6. ***Plurality.*** The greatest number, regardless of whether it is a simple or an absolute majority. — Also termed *plural majority*.

**Basis for Determining a Voting Result:**

**n**

—

**d**

where

n = the proportion of votes cast

d = the set of members or votes counted

<b>n→</b> <b>d↓</b>	<b>1/5</b>	<b>1/2</b>	<b>3/5</b>	<b>2/3</b>	<b>3/4</b>
<b>Members voting</b>	Order roll-call vote in Congress	<b>Standard default</b> Pass law in Congress	Endorse candidate in Minn. political convention	Override veto	
<b>All members</b>		Pass law in Minn. Legislature Amend Minn. Constitution	End filibuster in U.S. Senate	Pass general banking bill in Minn. Legislature	Amend U.S. Constitution

### III. Procedure: 84 Motions in Eight Minutes

- A. You already know more parliamentary procedure than you realize
  - 1. You can learn the first nine-tenths in an hour
  - 2. You already understand far more than you will ever memorize
  - 3. Parliamentary procedure makes sense — and you can usually solve a parliamentary problem by thinking it through
- B. You need only six critical faculties in order to fully participate in a deliberative society:
  - 1. Attend
  - 2. Express
  - 3. Listen
  - 4. Think
  - 5. Persuade
  - 6. Decide
- C. Six fundamental principles of parliamentary procedure
  - 1. Public law, and the organization's governing documents, trump all parliamentary rules
    - a) A governing document defines or organizes an organization, or grants or establishes its authority and governance.
    - b) An organization's governing documents may include a charter, articles of incorporation or association, a constitution, bylaws, and rules.
    - c) A charter or articles of incorporation or association, if they have been granted or adopted, are an organization's most authoritative governing document, followed by the constitution, bylaws, and rules, in that order.
  - 2. Action can be taken only at a valid meeting

3. Any motion is debatable — unless there is a good reason for an exception
  4. Any motion is amendable — unless there is a good reason for an exception
  5. Any motion takes a simple majority — unless there is a good reason for an exception (for example, if the motion interferes with somebody's rights or expectations)
  6. Decision follows debate: All ideas are equal until the assembly votes
- D. Four elements of a valid meeting: call, notice, assembly, and quorum
1. Call
  2. Notice
  3. Assembly
    - a) The assembly acts by simple majority unless an applicable rule provides otherwise
      - (1) Simple majority = yeases outnumber noes
        - (a) disregards absentees
        - (b) disregards blanks and abstentions
      - (2) Other bases for determining result
    - b) No absentee voting
    - c) No proxies
  4. Quorum
    - a) Setting the quorum
      - (1) Proportional quorum: buying in, signaling danger
        - (a) Default = simple majority of all the members<sup>16</sup>

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<sup>16</sup>See Robert § 40 at 346.

- (2) Interest-based quorum: representing constituencies
  - (3) Notice-based quorum: “The world is run by those who show up”
  - b) Presumption of quorum
  - c) Disappearing quorum
  - d) Action in a quorum’s absence<sup>17</sup>
    - (1) Fix the time to which to adjourn
    - (2) Adjourn
    - (3) Recess
    - (4) Take measures to obtain a quorum (Call of the House)
    - (5) Minnesota corporation statutes (the “Bert Black rule”): “If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.”<sup>18</sup>
- E. Undebatable motions (subject to exception)
- 1. Adjourn
  - 2. Recess (undebatable, but amendable)
  - 3. Motions relating to debate
    - a) Close debate (= previous question)
    - b) Limit or extend the limits of debate

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<sup>17</sup>Robert § 40 at 347–48.

<sup>18</sup>Minn. Stat. § 302A.235, *enacted by* 1981 Minn. Laws ch. 270, § 39 (eff. 7/1/82); *accord* Minnesota Nonprofit Corporation Act, Minn. Stat. § 317A.235, *enacted by* 1989 Minn. Laws ch. 304, § 40 (eff. 8/1/89).

4. Point of order (but Appeal is debatable)
  5. Withdraw, Modify
  6. Suspend the rules
- F. Unamendable motions (subject to exception)
1. Adjourn
  2. Close debate (but limit or extend is amendable)
  3. Point of order, Appeal
  4. Withdraw, Modify
  5. Suspend the rules
- G. Motions that take a supermajority: motions that interfere with rights or expectations
1. Parliamentary law protects the rights of:
    - a) the majority,
    - b) the minority,
    - c) the individual member,
    - d) the absentee, and
    - e) all of them together.<sup>19</sup>
  2. Suspending the rules interferes with the rights of whatever group is protected by the rules being suspended
  3. Closing or limiting debate interferes with the right to debate
  4. Extending the limits of debate interferes with the right to resolve a matter and proceed to the next order of business, which is established whenever a time limit is set

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<sup>19</sup>Robert at li.

5. Amending something previously adopted interferes with the rights of absentees, so such an amendment takes either—
- a) a two-thirds vote,
  - b) a majority plus notice, or
  - c) a majority of all the members<sup>20</sup>

<b>n→</b> <b>d↓</b>	<b>1/5</b>	<b>1/2</b>	<b>3/5</b>	<b>2/3</b>	<b>3/4</b>
<b>Members voting</b>		With prior notice		Without prior notice	
<b>All members</b>		Without prior notice			

H. Other characteristics of motions

1. Rank: What does it take precedence of? What does it yield to?
2. Is it in order when another has the floor? Can it interrupt a speaker?
3. Does it need a second?
4. Can it be reconsidered?
  - a) Reconsider = rewind

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<sup>20</sup>Robert § 35 at 306.

#### IV. **Ethics**<sup>21</sup>

- A. A chair's primary duty: let the majority figure out what it wants to do (especially when it doesn't know)
  - 1. Elicit relevant information
  - 2. Elicit both sides, balance the debate
  - 3. Recognize when a consensus forms
    - a) Anyone who has not made up his or her mind?
    - b) Anything that anyone can say that may change someone's mind?
    - c) If not, then close debate.
  - 4. Keep an open mind yourself
- B. Meetings without parliamentary procedure: "Too cool for the rules"
  - 1. No such thing
    - a) Many (always inexperienced) presiding officers try to curry favor with their members by holding themselves out as "too cool for the rules" or by pretending that they can run a smoother, smarter, or shorter meeting by short-circuiting parliamentary procedure
    - b) This tactic does sometimes result in a short-term gain in the presiding officer's popularity, but it inevitably results in disaster, just as if a new driver was showing off by disobeying road signs and speed limits
  - 2. Fostering such disrespect for the rules generally results in any of several undesirable consequences:
    - a) The chair loses control of the meeting to a member or group who take advantage of the lack of procedure
    - b) The members cannot tell what they are voting on

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<sup>21</sup>I am using the term "ethics" in its general sense, not in connection with the rules of professional conduct.

- c) The majority (or a loud minority) shout out the other members in order to get their way without bothersome deliberation
  - d) The meeting dissolves into hopeless confusion, and usually anger, as soon as a controversial matter reaches the floor
  - e) The results are called into question
- C. Other unintended consequences
- 1. Usurping the meeting's voice
  - 2. Undermining the institution's legitimacy
  - 3. Inconsistency
    - a) Favoritism (or the appearance of favoritism)
    - b) Conspiracy theories
  - 4. Dictatorship of the chair
    - a) Tyrants of genius are inevitably succeeded by scoundrels
    - b) What goes around, comes around

## V. Tips, Tricks, and Traps<sup>22</sup>

- A. Minutes: A formal motion is normally unnecessary [§ 41 at 354]
- B. Reports
  - 1. An informational report, such as a treasurer’s report, “requires no action by the assembly” [§ 48 at 459; *accord id.* at 461]
  - 2. An auditor’s report does require adoption, since it “has the effect of relieving the treasurer of responsibility for the period covered by his report, except in case of fraud” [§ 48 at 479–80]
- C. Main Motions
  - 1. Voting down a main motion does *not* adopt the negative result as policy — if the assembly does not adopt a motion, then it has taken no position on the matter
    - a) A negative vote *may* reflect a member’s view on the merits
    - b) But a member may also vote against a motion because he or she believes that it is an improper subject for the assembly’s consideration — such a member would also vote against a motion adopting the opposite policy
    - c) A member may also vote against a motion for technical reasons — for example, even though the member agrees with the motion’s substance, the member may believe that it needs further study or may disagree with the means of implementing it
  - 2. A motion is out of order if adopting it leaves you in the same status quo as not adopting it [§ 10 at 104–05]. For example:
    - a) “That the assembly take no position”
    - b) “That the report not be adopted”
    - c) “That the existing policy be reaffirmed”

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<sup>22</sup>The bracketed citations refer to Robert.

3. A motion from a committee does not require a second [§ 4 at 36]
4. The chair can make and debate a motion in a small board [§ 49 at 488] or committee [§ 50 at 500]

D. Debate

1. “Pro–con” debate: Debate need alternate only “as far as possible” [*see* § 3 at 31; § 42 at 379–80]; debate need not alternate if no contrary speaker is seeking the floor
2. “Friendly” amendments: A “friendly amendment” cannot avoid a formal debate and vote if any member objects [§ 12 at 162]
  - a) The mover controls a motion only until the chair states the question, after which the motion belongs to the assembly and the mover cannot modify it without the assembly’s permission
3. Yielding time: “Rights in regard to debate are not transferable” [§ 43 at 388]
4. You can close debate without a motion if nobody is seeking the floor [§ 43 at 386]
5. You need not recognize a “call for the question” from a member that you have not recognized [*see* § 3 at 29]

E. Exterminating unwanted motions

1. Controlling recognition: “For what purpose does the member rise?”
2. Lay on the table: “It is out of order to move to lay a pending question on the table if there is evidently no other matter urgently requiring immediate attention” [§ 17 at 215]
3. Postpone indefinitely: Debatable, simple majority [§ 11]
4. Objection to the consideration of a question: Undebatable, two-thirds vote [§ 26]
5. Negative vote

<b>Motion</b>	<b>Debatable?</b>	<b>Vote</b>	<b>Special conditions?</b>
Lay on the table	No	Simple majority	Yes
Postpone indefinitely	Yes	Simple majority	No
Object to consideration	No	Two-thirds	No
[Negative vote]	Yes	Simple majority	No

F. Reconsideration

1. Reconsider = rewind [*see* § 37 at 324]
2. The mover must have voted on the prevailing side [§ 37 at 315]
3. The making of the motion suspends “all action that depends on the result of the vote proposed to be reconsidered” [§ 37 at 321]

G. Request for information (point of information)

1. A request for information can only be made in order to seek information, not to volunteer it [§ 33 at 294–95]
2. There is no such thing as a “point of clarification,” which is a thinly disguised form of advocacy, and thus qualifies as debate
3. A point of information may request an objective fact or an expert opinion, but may not request anyone — including the presiding officer, or the mover of a resolution — to say how he or she expects or intends a resolution to be interpreted or applied by the present or a future administration<sup>23</sup>

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<sup>23</sup>The assembly cannot control how a resolution is interpreted or applied, except by the language that it adopts. The kind of subjective expectation or intent that this rule prohibits, although it may sound authoritative (especially if it comes from the chair), is therefore mere speculation and totally nonbinding. Such speculation ought not to turn into a poor substitute for carefully drafted and clearly worded text. A member who wants a resolution to mean something that it does not clearly say cannot rely (or mislead others into relying) on speculation by the mover or the chair, and must instead offer an amendment that properly clarifies the resolution.

## VI. Structuring a Meeting

- A. Order of business *See Ex. A*
1. Opening business
    - a) Call to order
    - b) Ceremonies
    - c) Introductions
    - d) Minutes
  2. Reports
  3. Consent calendar
  4. Special orders
  5. Unfinished business and general orders
  6. New business
  7. Closing business
    - a) Previous notice
    - b) Future meetings
    - c) Announcements
    - d) Adjournment
- B. Planning an effective meeting
1. Coordinate with your fellow officers and leaders
  2. For each motion that can be anticipated, check:
    - a) Have any formal requirements (previous notice, publication, committee approval) been satisfied?
    - b) Is the motion clear and specific? Will the members understand what they are considering?
    - c) Has the matter been considered by each interested officer and committee?
    - d) Has any opposing viewpoint been fairly considered?

- e) Who will make the motion? Will he or she be there? Does he or she understand the motion and his or her role in proposing it?
3. Script out an agenda
    - a) Is someone responsible for each item?
    - b) Is the order logical? Are the most important or interesting matters strategically placed at the beginning or end?
    - c) General and special orders
  4. Minimize the preliminary business
    - a) Call the meeting to order promptly
    - b) Reach the action calendar — a resolution on which a vote is expected, or another matter that may warrant significant debate — within 15 minutes after the call to order
    - c) Schedule reports after (or in between) the action calendar
  5. Avoid wasting time
    - a) Circulate the agenda in advance, including any anticipated resolution
    - b) Set the pace with the first item
    - c) Limit reports
      - (1) Circulate each report in writing with the agenda, if possible
      - (2) Allow an oral report only if necessary
      - (3) Any oral report ought to *briefly* notify the assembly that an issue is under consideration and to invite participation in that process, but the consideration of the issue itself belongs in committee

- d) Adjourn promptly
  - (1) Set a customary limit (ordinarily about an hour) and keep it
  - (2) Let the agenda note if the meeting may run later
- 6. Manage your docket
  - a) Actively monitor and manage a docket that consists of each resolution and other matter that awaits consideration
  - b) Schedule one or two significant matters per meeting
  - c) Let a matter reach the floor only after a committee has studied the details, framed the issue at the conceptual level, and reported a written resolution
  - d) Report the state of the docket, including matters for consideration at future meetings
- 7. Record the proceedings See Ex. B
  - a) General rule: “unless the minutes are to be published, they should contain mainly a record of what was *done* at the meeting, not what was *said* by the members”<sup>24</sup>
  - b) Minimum contents
    - (1) Document that a legal meeting was held
    - (2) Summarize the proceedings
    - (3) Notify absentees about what happened
    - (4) Remind members about what they did
  - c) The audience
    - (1) The members who attended
    - (2) The members who were absent
    - (3) Future leaders and members

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<sup>24</sup>Robert § 48 at 468.

(4) The public? Regulators? Litigators? Sarbanes–  
Oxley considerations<sup>25</sup>

C. Impartiality vs. leadership

1. The ethical tension
2. Impartiality in the meeting trumps leadership outside the meeting
3. Motions from the chair: a practical problem and three solutions
  - a) Requesting unanimous consent: “Any objection?”
  - b) “Entertaining” motions
  - c) Designated mover
  - d) A fourth solution: small boards and committees

D. Leading impartially

1. Deal with people, not rules
2. Demystify the rules (without denying them)
3. Make the members comfortable
4. A motion is (almost) never just “out of order”

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<sup>25</sup>See Nell O’Hara, “From Minutes to Advisers, Board Committees Changing Practices,” *Compliance Week*, June 22, 2004, online at [www.complianceweek.com/news/stories/ohara-062204P.asp](http://www.complianceweek.com/news/stories/ohara-062204P.asp); Christopher J. Zinski, “Choose Your Words Carefully: Board Minutes Matter,” *ABA BANKING J.*, Oct. 2006, pp. 22-32.

## VII. Structuring an Organization

- A. Constitution / Bylaws *See Ex. C*
  - 1. Name
  - 2. Objects / Purpose / Mission
  - 3. Members
  - 4. Officers
  - 5. Meetings
  - 6. Parliamentary authority
  - 7. Amen~~de~~ment
  
- B. Committees *See Ex. D*
  - 1. Boards vs. committees
  - 2. Ordinary committees
    - a) Standing committees
    - b) Special committees
  - 3. Committee of the whole
  - 4. Executive committee
  - 5. Subcommittees
  
- C. Elections *See Ex. E*
  - 1. Credentials
  - 2. Nominations
    - a) By notice
    - b) By petition
    - c) By committee
    - d) From the floor
  - 3. Consideration
    - a) Speeches
    - b) Questions-and-answer period

4. Voting
5. Counting

*See Ex. E*