

Rules of Decorum – RONR and Beyond

Attorney Andy Phillips

Milwaukee County Board of Supervisors

September 28, 2023

Object of Rules of Order

To facilitate the smooth functioning of the assembly

- Provides order
- Provides a firm basis for resolving questions of procedure
- Provides organizational stability

(NOTE: Rules of Order are intended as a shield and NOT a sword...)



Principles Underlying Parliamentary Law

Rules based on regard for the rights:

- of the majority;
- of the minority, especially a strong minority;
- of individual members;
- of absentees; and
- of all these together

Why RONR?

- The application of parliamentary law is the best method yet devised to enable assemblies of any size, with due regard for every member's opinion, to arrive at the general will on the maximum number questions of varying complexity in a minimum amount of time and under all kinds of internal climate ranging from total harmony to hardened or impassioned division of opinion.
- The usual method by which an ordinary society now provides itself with suitable rules of order is therefore to include in its bylaws or ordinances a provision prescribing that the current edition of a specified and generally accepted manual of parliamentary law shall be the organization's parliamentary authority, and then to adopt only such special rules of order as it finds needed to supplement or modify rules contained in that manual.
- The object of rules of order is to facilitate the smooth functioning of the assembly and to provide a firm basis for resolving questions of procedures that may arise.
- It is unwise for an assembly or a society to attempt to function without formally adopted rules of order.
- Customs of formality that are followed by the presiding officer and members under parliamentary procedure serve to maintain the chair's necessary position of impartiality and help preserve an objective and impersonal approach, especially when serious divisions of opinion arise.



Rules of Decorum
(Debate)

Debate on the Question

- Members remarks must be **germane to the question before the assembly**
- Speakers must address their remarks to the chair, maintain a courteous tone, avoid injecting a personal tone into the debate
- Member has a right to speak twice in the same question
- Can speak no longer than 10 minutes in total

Address the Chair

- Address all remarks through the chair – not the body, gallery or TV cameras
- Members cannot address one another directly
- Direct questions to other supervisors through the chair

Avoid Use of Member's Names

- Presiding officer should not be referred to by name
- Presiding officer speaks of himself/herself in the third person
- Avoid mentioning another's name when the person can be described in another way

Duties of the Chair



- All persons at a meeting have an obligation to obey the presiding officer
- Members using parliamentary procedure for obstructive purposes should not be recognized or ruled out of order
- **Enforce the rules relating to debate, order and decorum**
- Remind members to confine remarks to the merits of the question

Duties of the Chair

- **Announces issues and keeps members on track**
- **Restates motion to place before the body and for clarity**
- **Recognizes members**
- **Asks for votes on each side and announces outcome**
- **Responds to requests and rules on points of order**

Chair Speaking in Debate



- Presiding officer should relinquish the chair if entering the discussion
- Officer should not return until the pending question is disposed of
- Exception with small boards and committees
- What about elected supervisors that serve as chair? Do those constituents have a voice?

Committee-Debate



General rule is to have motion first then discussion



In committee it is recognized and generally acceptable to have discussion first then a motion

Committee-Debate

Members may raise a hand instead of standing when seeking the floor

Members may remain seated during debate and discussion

Informal discussion is permitted before a motion is pending

Members may generally speak as often and as long as they like, subject to the rule of the chair



Committee Chair

- The chair may, without stepping down, discuss, debate and vote on all questions
- The chair need not rise when putting a motion to a vote

Point of Order

- Member states when he/she feels rules of the assembly are being violated
- Takes precedence over pending question
- In order when another has the floor
- Does not require a second
- Is not debatable
- Ruled upon by the chair

Appeal the Ruling of the Chair

Any two members have the right to appeal from the ruling of the presiding officer – one makes the Appeal the other seconds

The question is taken from the chair and vested in the assembly

No member is allowed to speak more than once except the presiding officer who is not limited and need not leave the chair



Censure

- **Defined:** An official reprimand or condemnation; to criticize harshly.
- **RONR:**
 - An organization ultimately has authority to adopt its own rules and to require that its members refrain from conduct injurious to the organization or its purposes.
 - May take the form of a Motion of reprimand or strong opinion of disapproval; an exception to the general rule that a motion must not use language that reflects on a member's conduct or character

Limitations on Censure: Freedom of Speech?

Houston Community College System v. Wilson, 142 S. Ct. 1253 (2022):

- Houston Community College System Board of Trustees member censured for a variety of misbehaviors, including publicly criticizing other Board members and filing multiple lawsuits challenging Board actions.
- The Supreme Court of the United States (SCOTUS) recognized that since “colonial times, the power of assemblies to censure their members was assumed.”
- Claim: The Board’s censure of Mr. Wilson violated his First Amendment right to free speech.

Limitations on
Censure: Freedom of
Speech?
*Houston Community
College System v.
Wilson*

Limitation: a government body may not take adverse action in response to protected speech that would not have been taken absent the “retaliatory motive.”

- “Adverse action” is usually dismissal from government employment/position.
- Is the person prevented from doing his or her job? Does it deny the person his or her office? Was it defamatory?
- Censure is not the same as exclusion from office.

Limitations on
Censure: Freedom
of Speech?
*Houston Community
College System v.
Wilson*

- The SCOTUS held that the censure was not a “retaliatory action” against Mr. Wilson and therefore the Board was not prohibited from censuring his conduct.
- Censure itself is a form of speech by other elected officials that concerns conduct of public office.

“The First Amendment promises an elected representative the right to speak freely on questions of government policy, but it cannot be used as a weapon to silence other representatives seeking to do the same thing.”



What about
public
comment?

Public Comment Basics



- The public has no statutory or constitutional right to participate in a meeting of a governmental body
- HOWEVER, board rules may provide a right to public comment, in which case constitutional issues come into play
- Public comment often presents challenges to the orderly transaction of business and maintenance of order at a meeting

Public Comment- Constitutional Considerations

- County board and committee meetings are considered “limited public forums.”
- A board may enact viewpoint-neutral “place, time, and manner” restrictions on speech during a board or committee meeting if there is a “legitimate government interest.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 103 S. Ct. 948, 74 L.Ed.2d 794 (1983)
 - Viewpoint-neutral means we cannot discriminate on the basis of the message advocated
 - Is the interest in an orderly meeting a “legitimate government interest?” (YES!!)

*Steinburg v.
Chesterfield Cty.
Planning Comm'n*, 527
F.3d 377 (4th Cir. 2008)

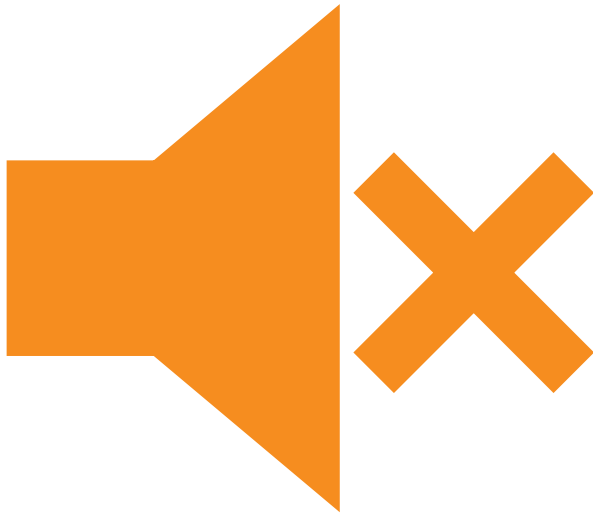
“[I]mposing restrictions to preserve civility and decorum [are] necessary to further the forum’s [i.e., board’s] purpose of conducting public business.” *Id.* at 385.

In *Steinburg*, the court upheld the validity of a rule requiring a speaker during public comment to address only items germane to the agenda.

What about
obscene or
disruptive
speech?

- Speakers during public comment can be silenced if they are being disruptive or threatening, but there is some ambiguity in how courts view speech to be disruptive or threatening.
- If you do NOT have a rule against the use of profanity, can you prohibit it?
 - What if member of the board/committee uses profanity?
- Can “obscenity” be defined by the board/committee chair or should you define it in the board rules?

Time Limits



- Imposing a time limit on a speaker during a public comment period is permissible within the “reasonable time, place, and manner” standard. *Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007).
- When can time limits be imposed?
 - BEST – in the board rules
 - PROBABLY OKAY – at the beginning of a meeting (and announced)
 - NEVER – in the middle of when a person is speaking

Signs, T-shirts and Banners



- This is a very complicated issue.
- The analysis is the same as it relates to speech:
 - Time, place, and manner restrictions are legal
 - Content neutral restrictions
- A board rule establishing parameters is very helpful
- But what is “disruptive?”
 - (This area is a minefield – work with corporation counsel extensively.)

Example of a Rule Upheld by a Court

It shall be unlawful for any person in the audience at a council meeting to do any of the following ... (1) Engage in disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, whistling, making noise, use of profane language or obscene gestures, yelling or similar demonstrations, which conduct substantially interrupts, delays, or disturbs the peace and good order of the proceedings of the council.

(But notice the room for interpretation within this rule...)



We have to stop meeting this way



- Ukrainian Parliament-April 26, 2010
Source: nytimes.com “Ukraine Passes Deal Under Hail of Eggs”



Questions? Comments?

Contact Information



Attolles Law, s.c.

222 E. Erie Street, Suite 210

Milwaukee, WI 53202

414-279-0962

www.attolles.com

ATTOLLES
LAW, s.c.