

Institute for Local Government Lawyers

Herding Cats:
Things about Parliamentary Procedure
They Didn't Teach you in Law School

by

A. Fleming Bell, II
Professor of Public Law and Government
Institute of Government
University of North Carolina
Chapel Hill, North Carolina

A. Fleming Bell, II is a Professor of Public Law and Government in the Institute of Government at the School of Government of The University of North Carolina at Chapel Hill, and a 2003-2004 Ethics Fellow of the Institute for the Arts and Humanities at the University. He received his undergraduate and law degrees from Duke University, where he was elected to Phi Beta Kappa and was first in his law school class. He received a master's degree in regional planning from The University of North Carolina at Chapel Hill. Mr. Bell has worked at the Institute of Government for over twenty-two years, teaching, writing, and answering questions for a variety of public officials and citizens, including city and county attorneys, city clerks and managers, newspaper reporters, and local governing boards. He specializes in local government law and procedure and government ethics, including the law of governmental contracts and conflicts of interest.

2005 IMLA Conference
Savannah, Georgia
September 25, 2005

A. Fleming Bell, II
School and Institute of Government
The University of North Carolina
at Chapel Hill

HERDING CATS: THINGS ABOUT PARLIAMENTARY PROCEDURE THEY DIDN'T TEACH YOU IN LAW SCHOOL

A. Does This Describe Your Board?

1. The board often acts informally.

2. The board generally wants to allow active participation by all members.

3. The board has continuous existence

4. The board members may not be able or willing to learn and follow complex procedural rules

B. Some Underlying Principles of Parliamentary Procedure

1. The board must act as a body.

2. The board should proceed in the most efficient manner possible.

3. The board must act by at least a majority.

4. Every member must have an equal opportunity to participate.

5. The board's rules of procedure must be followed consistently.

6. Decisions should be based on the merits, not on manipulation of the rules.

C. Procedural Rules and Tips to Help You Through Some Difficult Areas

1. Under most standard rules of procedure, a motion is required before discussion may occur. However, most small boards want to "discuss first, and move later."

Rule 8. Action by the Board*

The board shall proceed by motion, except as otherwise provided for in Rules 3, 4, and 25. Any member, including the chair, may make a motion.

---

*Rule excerpts are taken from A. Fleming Bell, II, *Suggested Rules of Procedure for Small Local Government Boards*, 2d ed. (Chapel Hill, N.C.: School of Government, 1998).

Comment: Under standard parliamentary practice, a motion must be on the floor before a board may proceed with discussion or action. Rule 8 allows two variations, one based on Rule 4 and the other on Rules 3 and 25.

Rule 4 allows items to be placed on the agenda "for discussion and possible action." General discussion of the agenda item may precede the making of a motion. See Rule 4 and the accompanying *Comment*.

Rules 3 and 25 specify that the board is to make appointments using an election method, rather than by motion, in order to allow all board members to express their preferences. This method applies both to internal board appointments and to appointments to other bodies. The procedures to be followed are explained in Rule 25 and the accompanying *Comment*.

Traditionally, if the chair wishes to have a motion made, instead of making it personally, he or she states, "The Chair will entertain a motion that. . . ." This custom is sound if the chair may vote only in the case of a tie; if the chair may vote in all cases, he or she may make a motion as any other member would.

Rule 4. Agenda

(a) Proposed Agenda. The board's [clerk] [secretary] [chief administrative officer] shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received at least [two] working days before the meeting. Any board member may, by a timely request, have an item placed on the proposed agenda. A copy of all proposed [orders] [policies] [regulations] [resolutions] shall be attached to the proposed agenda. [An agenda package shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce.] Each board member shall receive a copy of the proposed agenda [and **the** agenda package] and [it] [they] shall be available for public inspection and/or distribution when [it is] [they are] distributed to the board members.

(b) Adoption of the Agenda. As its first order of business at each meeting, the board shall, as specified in Rule 6, discuss and revise the proposed agenda and adopt an agenda for the meeting. The board may by majority vote add items to or subtract items from the proposed agenda, except that the board may not add items to the agenda of a special meeting unless (a) all members are present and (b) the board determines in good faith at the meeting that it is essential to discuss or act on the item immediately. If items are proposed to be added to the agenda, the board may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all board members.

The board may designate certain agenda items "for discussion and possible action." Such designation means that the board intends to discuss the general subject area of that agenda item before making any motion concerning that item.

*** * ***

Comment to (a) and (b): Because of the volume and complexity of the matters they must consider, most boards use agendas for their meetings. Some small government boards use agendas only to organize the materials they must consider and to give themselves an opportunity to study the issues before they meet. These boards generally allow last-minute additions to the agendas of regular meetings by general consent. This rule takes that approach.

Other small boards use their agendas to control the length of their meetings. In that case the board will often hold an agenda meeting or a work session before the regular meeting to ask questions and thoroughly explore the proposals that must be voted on at the regular meeting. Note that such an agenda meeting or work session is considered a meeting of the board for purposes of the open meetings law and is subject to the regular or special meeting requirements in these rules. Generally, these boards take a stricter approach and do not allow late additions to regular meeting agendas unless an emergency exists.

These rules require a stricter approach for agendas of special meetings, because of open meetings law concerns. Under this approach, items may be added to the agenda of a special meeting only if all members

are present and the board determines in good faith that it is essential to discuss or act on the item immediately. This restriction avoids surprise and is consistent with the spirit of the open meetings law, although neither requirement is actually part of the law. See the statement of public policy underlying the law in G.S. 143-318.9. For further discussion of adding items to special meeting agendas, see the *Comment* to Rule 2(a).

Rule 4(a) requires that longer or more complex proposals be in writing and attached to the agenda, so that board members will have a clear idea of the issues with which they will be dealing. The board may choose what sorts of proposed orders, policies, regulations, resolutions, or other items it wishes to make subject to this requirement. The board may also require that copies of relevant documents be provided to all board members when additions to the agenda are proposed at the meeting.

Some boards also use an agenda package to provide background information about proposed agenda items to the board members. The use of such a package is optional.

Small boards frequently desire to discuss an issue informally, attempting to reach a group consensus, before a formal motion is proposed. While standard parliamentary practice requires that a motion be made before any discussion can occur, conducting discussion first can be very useful to a small board. Such discussion may be especially important if the board does not hold agenda meetings or work sessions at which the members can discuss issues among themselves, before the more formal meetings at which the board generally takes action. This rule authorizes the practice of "discussing before moving" by permitting the board to designate particular agenda items "for discussion and possible action." If a motion is later made, discussion on the motion is then in order.

The board's clerk, secretary, or chief administrative officer may find it convenient to maintain a mailing list of interested parties who wish to receive a copy of the proposed agenda and/or agenda package regularly. Since the background materials included with the proposed agenda in the agenda package may be quite voluminous, the board may wish to charge those receiving the full agenda package for the cost of reproduction. At the very least, the board should make provision for the public to inspect and copy the agenda package in the offices of whoever provides administrative services for the board, since the agenda package is a matter of public record open to public inspection.

2. There can only be one "substantive," "main," or "principal" motion (pick any of the three names) under consideration at once, but there can be several procedural motions pending at the same time.

Rule 11. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

Comment: This rule sets forth the basic principle of parliamentary procedure that distinct issues will be considered and dealt with one at a time, and a new proposal may not be put forth until action on the preceding one has been concluded.

RONR does not refer to *substantive* motions as such; instead it refers to *main* or *principal* motions. The words *substantive motion* are used here to underscore the distinction between this type of motion and the various procedural motions listed in Rule 16. Basically, a substantive motion is any motion other than the procedural motions listed in Rule 16. A substantive motion may deal with any subject within the board's legal powers, duties, and responsibilities. Indeed, since Rule 8 provides that the board shall proceed by motion, the substantive motion is the only way the board can act, unless it has adopted a special rule to deal

with a particular situation. (See, for example, the provisions of Rule 25 on appointments.) The procedural motions detailed in Rule 16 set forth the various options the board has in disposing of substantive motions.

Rule 16. Procedural Motions

(a) Certain Motions Allowed. In addition to substantive proposals, only the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

Comment: Rule 2(a) reflects substantial departure from the rule in *RONR*. Each procedural motion in *RONR* was reviewed to determine whether it was appropriate for use by a small board; substantial modifications and deletions were the result. The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, then it is not available.

Procedural motions are frequently used to "act upon" a substantive motion by amending it, delaying consideration of it, and so forth. They are in order while substantive motions are pending as well as at other times.

In addition, as in *RONR*, several procedural motions can be entertained in succession without necessarily disposing of the previous procedural motion. The order of priority establishes which procedural motion yields to which—that is, what procedural motion may be made and considered while another one is pending. The procedural motions are summarized in table form in Appendix B.

3. Seconds to motions serve no real purpose on small boards, and may keep a minority member from being heard. I recommend not using them.

Rule 9. Second Not Required

A motion does not require a second.

Comment: The philosophy underlying the requirement of a second is that if a proposal does not have at least some minimum level of support, it is not worth the time necessary to consider it. In a group of 100 persons, for example, requiring a second ensures that at least 2 percent of the group wishes to consider the proposal. On a five-member board, on the other hand, a proposal supported by one member already has the backing of 20 percent of the board membership. Since the board is small, efficient use of the board's time is not impaired by allowing consideration of a proposal that initially has the support of only one member. If a board wishes to retain the requirement of a second, however, it is free to do so.

This rule is consistent with the *RONR* concept that motions need not be seconded in meetings of smaller groups (*RONR* § 48, p. 477). Moreover, even if a board uses seconds, *RONR* notes that "after a debate has begun or, if there is no debate, after any member has voted, the lack of a second has become immaterial and it is too late to make a point of order that the motion has not been seconded" (*RONR* § 4, p. 36).

4. Motions to reconsider are frequently a source of controversy, especially if a public hearing was held prior to the vote, or if the motion is made at a later meeting. I recommend not allowing motions to reconsider after the final conclusion of the meeting at which the original motion was made.

Motion 15. To Reconsider. The board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority, except in the case of a tie; in that case the

"nos" prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through [recess] [adjournment] to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Comment: According to *RONR*, this motion may be made at the same meeting as the vote being reconsidered or on the next legal day and may interrupt deliberation on another matter. To avoid placing a measure in limbo, these rules restrict the availability of the motion to the same meeting as the original vote, including any continuation of that meeting if it is recessed or adjourned to a time and place certain pursuant to Rule 2(c) and Rule 16(b), Motion 2. If a member wishes to reverse an action taken at a previous meeting, he or she generally may make a new motion having the opposite effect of the prior action. The motion to reconsider is permitted under these rules only when action on a pending matter concludes.

5. The procedural motion "To call (or move) the previous question" is a motion to end debate. It must be voted on and passed like any other procedural motion before debate is ended and the main motion is put to the board for a vote.

Motion 10. Motion for the Previous Question. The motion is not in order until there have been at least [20] minutes of debate and every member has had an opportunity to speak once.

Comment: This motion differs from the motion of a similar name in *RONR*. The *RONR* motion is always in order, is not debatable or amendable, and requires a two-thirds vote for adoption. Thus it may be used to compel an immediate vote on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly. With a small board, however, a minimum period of debate on every proposal that comes before it strikes a better balance between efficiency and effective representation by all board members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.

Note that this rule avoids the practice followed by some boards of allowing any member to end debate by simply saying "call the question," without the board actually taking a vote on that procedural issue. Such a practice is contrary to regular parliamentary procedures. In addition, it allows individual members to impose their will unilaterally on the group, in defiance of the principle of majority rule on which these rules are based.

6. Appointments to boards will go more smoothly if handled through an election, rather than a motion, process.

Rule 25. Appointments

[This paragraph states North Carolina law.] The board may consider and make appointments to other bodies, including its own committees, if any, only in open session. The board may not consider or fill a vacancy among its own membership except in open session.

The board shall use the following procedure to make appointments to various other boards and committees: [The appointment committee of the board shall report on nominations received and reviewed and make its appointment recommendations, if any.] The chair shall [then] open the floor for nominations, whereupon the names of [other] possible appointees may be put forward by the board members. The names submitted [by the committee and by

individual board members] shall be debated. When the debate ends, the chair shall call the roll of the members, and each member shall cast his or her vote.

[The nominee(s) receiving the highest number of votes shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes as there are slots to be filled. A member must cast all of his or her votes and cast them for different nominees.]

[The voting shall continue until one nominee receives a majority of the votes cast, whereupon he or she shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes in each balloting as there are slots to be filled, and votes from a majority of the members voting shall be required for appointment. During each balloting, a member may cast all of his or her votes or fewer than all of them, but he or she shall not cast more than one vote for a single candidate.]

Comment: The first paragraph of this rule states some of the requirements of the [North Carolina] open meetings law concerning appointments by public bodies. The options presented in the following paragraphs detail some of the possible methods that may be used to make appointments. If the board wishes to vote by written ballot, it should consult Rule 13, which states the requirements of the [North Carolina] open meetings law for use of written ballots by public bodies.

Some boards use an appointment committee. The committee receives nominations from the board members and perhaps from other persons, reviews the nominees' qualifications, and reports its recommendations to the full board. This procedure is provided for by the optional language in the second paragraph of the rule. Many boards also use public advertisements to solicit applications for appointment from citizens. See Rule 26 concerning the applicability of the [North Carolina] open meetings law to all board committees, including the appointment committee.

7. If a board member keeps bringing up the same issue at meeting after meeting, and no one else wants to talk about it again, the "motion to prevent reconsideration" may be useful. Under this procedural rule, immediately after a substantive motion is defeated and at no other time, a member may move to prevent reconsideration of that matter for a specified period of time not extending beyond the next election. This type of motion is sometimes called a "clincher" motion.

Motion 17. To Prevent Reintroduction for [Six] Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to [a majority] [two-thirds] of the entire membership of the board. If adopted, the restriction imposed by the motion remains in effect for [six] months or until the next organizational meeting of the board, whichever occurs first.

Comment: This is a "clincher" motion to prevent the same motion from being continually introduced when the subject has been thoroughly considered. There is no comparable motion in *RONR*, although the objection to consideration of a question accomplishes much the same purpose.

Because this motion curtails a member's right to bring a matter before the board, a vote equal to either a majority or two-thirds, at the board's option, of the entire membership is required. See the *Comment* to Rule 16(b), Motion 5, for an illustration of how this requirement works.

As with every other motion, a clincher motion may, in effect, be dissolved by a motion to suspend the rules [see Rule 16(b), Motion 5]. Six months is merely a suggested time; the board may shorten or lengthen the time as it sees fit. In order to give a new board a clean slate, the motion is not effective beyond the next organizational meeting of the board.

8. The presiding officer should generally relinquish the chair if he or she wishes to participate in a debate. This helps to avoid the appearance of giving one side an advantage over the other. He or she should also alternate in recognizing proponents and opponents during the debate.

Rule 7. Presiding Officer

The chair of the board shall preside at board meetings if he or she is present, unless he or she becomes actively engaged in debate on a particular matter. The chair [shall have the right to vote only when there is a tie] [may vote in all cases]. In order to address the board, a member must be recognized by the chair.

If the chair is absent, the [vice-chair] [another member designated by vote of the board] shall preside. [If both the chair and vice-chair are absent, another member designated by vote of the board shall preside.] The vice-chair or another member who is temporarily presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the chair becomes actively involved in debate on a particular matter, he or she [may] [shall] designate another board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

Comment: The chair ordinarily presides at board meetings. In his or her absence, the vice-chair, if there is one, presides. If there is no vice-chair or if both the chair and vice-chair are absent, the board typically selects a temporary presiding officer.

Boards may choose whether the chair always votes or votes only to break a tie. Someone who is temporarily presiding in the chair's place is still a full member of the board and thus is entitled to make motions and to vote.

Good leadership depends, to a certain extent, on not taking sides during a debate. On a small board this may not always be feasible or desirable; yet an unfair advantage accrues to the side whose advocate controls access to the floor. This rule is designed to ensure even-handed treatment to both sides during a heated debate. Ordinarily the chair should ask the vice-chair, if there is one, to preside in such a situation, but if he or she is also engaged in the debate, the chair should feel free to call on some other board member in order to achieve the purpose of this rule.

9. While the presiding officer controls the meeting, his or her power is not absolute. The rules of procedure are the board's. The rules should easily allow any member to appeal any ruling of the chair to the membership.

Rule 7. Presiding Officer (continued)

The presiding officer shall have the following powers:

To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
To entertain and answer questions of parliamentary law or procedure;
To call a brief recess at any time;
To adjourn in an emergency.

A decision by the presiding officer under any of the first three powers listed may be appealed to the board upon motion of any member, pursuant to Rule 16, Motion 1. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

> **Comment (continued):** The chair or anyone presiding in the chair's place has substantial procedural powers, but those powers are not absolute. **Under this rule and Rule 16, Motion 1, any board member is entitled to make a motion to appeal to the other members concerning the presiding officer's decisions on motions, decorum in debate, and most other procedural matters.** Such a motion replaces *RONR*'s "question of order and appeal."
>
> There are two exceptions to this right of appeal. A chair or other presiding officer may adjourn without the board's vote or appeal in an emergency, and he or she may also call a brief recess without a vote at any time, when necessary to "clear the air" and thus reduce friction among the members. *RONR*, in contrast, allows a recess to be taken only with the approval of the members.

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the board, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

> **Comment:** Rule 7 allows the ruling of the presiding officer on certain procedural matters to be appealed to the board. This appeal must be made as soon as the presiding officer's decision is announced, so this motion is accorded the highest priority. See Rule 7 and its *Comment* for further discussion of this motion.

10. Rules governing public comment periods, public hearings, and citizens appearing on the agenda should be explained in advance to the participants. If citizens are to follow rules (time limits, selection of spokespeople, etc.), board members must also do so (listening to the comments, not having side conversations, maintaining eye contact).

Rule 5. Public Address to the Board

Any individual or group who wishes to address the board shall make a request to be on the agenda to the board's [clerk] [secretary] [chief administrative officer]. However, the board shall determine at the meeting whether it will hear the individual or group.

> **Comment:** The board may decide as a matter of general policy to set aside part of each meeting for individuals or groups to address the board, although it is not legally required to do so. This rule allows any individual or group to be placed on the proposed agenda, but reserves to the board the right to decide whether there is time to hear its comments. **If the board chooses to open the meeting for public comments on a particular issue, it must be careful not to censor individuals or groups based on their point of view on that issue, in order to avoid violating the speakers' constitutional right to freedom of speech. For further information on public comment during board meetings, see A. Fleming Bell, II, John Stephens, and Christopher M. Bass, "Public Comment at Meetings of Local Government**

Boards," Parts One and Two, *Popular Government* 62 (Summer 1997): 3–14 and (Fall 1997): 27–37, respectively.

Rule 6. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

Discussion and revision of the proposed agenda; adoption of an agenda
Approval of the minutes
Public hearings
Administrative reports
Committee reports
Unfinished business
New business
Informal discussion and **public comment**

By general consent of the board, items may be considered out of order.

Comment: Note that the suggested order of business places public hearings and administrative reports early in the meeting. These are the main items that involve citizens and administrative officials who may not need or wish to be present for the entire meeting. Unfinished business under these rules consists of matters that are carried over from a previous meeting that was adjourned before the board completed its order of business and matters that were specifically postponed to the present meeting [see Rule 16(b), Motion 11].

11. The board must be willing to tolerate a certain amount of anger and foul language when it opens the floor for comment on a particular issue, since it has created a limited public forum for discussion of that issue, and such tactics may be part of some folks' "speech." The board must also hear all viewpoints on that particular issue. While courtesy may be requested, it cannot always be demanded, except perhaps in the case of personal attacks.

See **Comment** to **Rule 5** and article referenced there.

D. References

A. Fleming Bell, II. Suggested Rules of Procedure for a City Council, 3d ed. Chapel Hill, N.C.: School of Government, 2000. 44 pp.

A. Fleming Bell, II. Suggested Rules of Procedure for Small Local Government Boards, 2d. ed. Chapel Hill, N.C.: School of Government, 1998. 38 pp.

Joseph S. Ferrell. Rules of Procedure for the Board of County Commissioners, 3d ed. Chapel Hill, N.C.: School of Government, 2002. 24 pp.

Henry M. Robert. Robert's Rules of Order Newly Revised, 10th ed. Cambridge, Mass.: Perseus Publishing, c2000. 704 pp.

E. Text from Overheads Used in Presentation

Things about Parliamentary Procedure They Didn't Teach You in Law School

 # 1. Motion before Discussion, or Vice-Versa?

 # 2. One Substantive Motion at a Time.

 # 3. Are Seconds to Motions Really Needed?

 # 4. Keep Motions to Reconsider in their Place.

 # 5. The Motion to "Call the Previous Question" Must Be Voted On.

 # 6. Handle Appointments Through An Election Process.

 # 7. Use the "Motion to Prevent Reintroduction" to Keep from Having the Same Subject Brought Up Over and Over Again.

 # 8. The Presiding Officer Should Step Down if S/He Wishes to Debate. Also, Alternating between the Two Sides that are Debating is a Good Way to Go.

 # 9. The Rules Should Allow the Chair's Rulings to be Easily Appealed to the Board Membership. The Rules Are the Board's, Not the Chair's.

 # 10. Explain Rules About Public Comment in Advance to Citizens. The Board Should be Courteous to Citizens Who Speak with It.

 # 11. The Board Must Be Willing to Tolerate Some Anger and Rough Language, and It Must Be Willing to Hear All Points of View on Issues.

F. Contact Information

A. Fleming Bell, II
Professor of Public Law and Government
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27599-3330
(919) 966-4210; bell@iogmail.iog.unc.edu; (919) 962-0654 (fax)