

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W12-08

Title	Action Requested
Judicial Council: Parliamentary Procedures for Meetings	Review and submit comments by January 24, 2012
Proposed Rules, Forms, Standards, or Statutes	
N/A	
Proposed by	Contact
Parliamentary Procedures Working Group Hon. Harry E. Hull, Chair	Mark Jacobson, 415-865-7898 mark.jacobson@jud.ca.gov

Summary

Public comments are being sought on a proposed new Appendix E to the California Rules of Court, which would set forth parliamentary procedures to be used by the Judicial Council at council meetings. These procedures were adopted by the council effective October 28, 2011, before being circulated for public comment because the council had no formal parliamentary procedures in place. The council now seeks public comment on the procedures. After the public comment period, the working group will return to the council with any further recommendations based on comments received.

Discussion

The Chief Justice appointed the Parliamentary Procedures Working Group to develop a proposed set of rules that would govern procedure at council meetings.¹ The working group members are all members of the Judicial Council. One of the members, Presiding Judge David Rosenberg, Yolo County Superior Court, has developed a set of parliamentary rules, known as “Rosenberg’s Rules of Order,” based on his experience chairing and serving on committees, teaching classes on parliamentary procedure, and serving as parliamentarian for large and small entities.

In addition to Rosenberg’s Rules of Order, the working group considered other sources addressing parliamentary procedure, such as Robert’s Rules of Order. The working group

¹ The members of the Parliamentary Procedures Working Group are Justice Harry E. Hull, Jr., of the Court of Appeal, Third Appellate District (chair); Commissioner Sue Alexander of the Superior Court of Alameda County; Judge Teri L. Jackson of the Superior Court of San Francisco County; Judge Burt Pines of the Superior Court of Los Angeles County; and Presiding Judge David Rosenberg of the Superior Court of Yolo County.

developed the attached Parliamentary Procedures for the Judicial Council of California by adapting Rosenberg's Rules of Order and adding information about council voting requirements, including the recently adopted requirement that the council must have 11 votes to take action.

Based on these sources, the working group agreed that any document setting forth parliamentary procedure for the council should cover the following topics:

- What constitutes a quorum,
- The role of the chair,
- Various types of motions,
- How to handle multiple motions pending simultaneously,
- How to count votes (including how to count abstentions), and
- Courtesy and decorum.

In addition, the working group concluded that it would be useful to include information about council voting requirements, such as:

- The number of votes necessary for the council to take action,
- Voting by proxy,
- Voting and appearing at meetings by telephone, and
- Early voting.

The procedures are intended to apply only to Judicial Council meetings, not to internal committees of the council or its advisory committees and task forces.

After discussing whether to recommend adoption of the procedures as a rule of court, the working group agreed that the detailed provisions do not appear to be appropriate for a rule of court because they pertain to internal meeting procedures of the council. The working group concluded that they should instead be adopted as Appendix E to the California Rules of Court.



Parliamentary Procedures for the Judicial Council of California

APPROVED BY THE JUDICIAL
COUNCIL ON OCTOBER 28, 2011

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Parliamentary Procedures for the Judicial Council of California

I. Introduction

These parliamentary procedures are a set of rules for conducting business at Judicial Council meetings.

II. Establishing a Quorum

A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The Judicial Council abides by a rule providing that a quorum is one more than half the *voting* members. Because there are 21 voting members on the council, there must be 11 voting members present to legally transact business. Even if the council has a quorum to begin the meeting, it can lose the quorum during the meeting when a member departs. When that occurs, the council loses its ability to transact business until and unless a quorum is reestablished.

III. The Role of the Chair

While all members of the council should know and understand the rules of parliamentary procedure, it is the Chair who is charged with applying the rules in the conduct of the meeting. The Chair, for all intents and purposes, makes the final ruling on the rules every time he or she states an action. In fact, all decisions by the Chair are final unless overruled by the council itself.

Because the Chair conducts the meeting, it is usual courtesy for the Chair to play a less active role in the debate and discussion than other members of the council. This does not mean that the Chair should not participate in the debate or discussion. On the contrary, the Chair as a member of the council has the full right to participate in the debate, discussion, and decision making of the council. What the Chair should do, however, is strive to be the last to speak at the discussion and debate stage, and the Chair should not make or second a motion unless he or she is convinced that no other council member will do so at that point in time.

IV. Voting Requirement for Judicial Council Action

To take any substantive action, a majority of all voting members of the Judicial Council must vote in favor of the action. (See Gov. Code, § 68508.) Because there are 21 voting members on the council, there must be a quorum of at least 11 members voting to take any action, and a vote on a substantive motion (as defined below) requires 11 affirmative votes to pass.

Advisory members of the council may make or second motions and may fully participate in discussion and debate, but are not counted for purposes of quorum, and may not vote. (See Cal. Rules of Court, rule 10.3(b).)

V. Motions in General

Motions are made in a simple two-step process. First, the Chair should recognize the council member. Second, the member makes a motion by preceding his or her desired approach with the words, “I move . . .” A typical motion might be: “I move that we adopt the committee’s recommendation.”

The Chair usually initiates the motion by doing one of the following:

1. Inviting the council members to make a motion. “A motion at this time would be in order.”
2. Suggesting a motion to the members. “A motion would be in order that we adopt the committee’s recommendation.”
3. Making the motion. As noted, the Chair has every right as a council member to make a motion, but should normally do so only if he or she wishes to make a motion on an item but is convinced that no other member is willing to step forward to do so at a particular time.

After a vote is taken, the Chair should announce the result of the vote as well as the vote count. For example, the Chair might say: “The motion to create a five-member working group to develop parliamentary procedures for the council has passed. The vote was 11 in favor, 9 opposed, and 1 abstention.” By announcing the result and the vote count, the Chair clarifies what the council has done for the benefit of the council and the public.

A. Substantive Motions

There are three substantive motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the council’s consideration. A basic motion might be: “I move that we create a five-member working group to develop parliamentary procedures for the council.”

The motion to amend. If a member wants to change a basic motion that is before the body, he or she would move to amend it. A motion to amend might be: “I move that we amend the motion to have a ten-member working group.” A motion to amend takes the basic motion that is before the council and seeks to change it in some way. The council would first vote on whether the motion should be amended. If that motion passes, the council would then vote on the motion itself as amended.

The substitute motion. If a member wants to completely do away with the basic motion that is before the council and put a new motion in its place, he or she would move to

make a substitute motion. A substitute motion might be: “I move that we impose a moratorium against appointing new working groups.”

Motions to amend and substitute motions are often confused. But they are quite different, and their effect (if passed) is also quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it. The decision on whether a motion is really a motion to amend or a substitute motion is left to the Chair. So if a member makes what that member calls a motion to amend, but the Chair determines that it is really a substitute motion, the Chair’s designation governs.

The basic rule of substantive motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible for full discussion by the council. The debate can continue as long as council members wish to discuss an item, subject to the decision of the Chair that it is time to move on and take action.

For a substantive motion to pass, it requires the affirmative concurrence of a majority of voting members of the council. In other words, 11 voting members of the council must vote in favor of a substantive motion for it to pass. An abstention does not constitute a vote in favor of a motion.

The order in which various motions are considered is addressed in section VI, Multiple Motions Before the Judicial Council, on pages 5–6.

B. Friendly Amendments

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time, and avoids bogging down a meeting with numerous formal motions. It works as follows: During the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I would like to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accept the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, the proposer can formally move to amend.

C. Procedural Motions

In contrast to the substantive motions described above, which result in the council voting whether to take action, there are several types of procedural motions. These motions differ from substantive motions in both the applicability of the rule of free and open debate on motions and in the number of votes required to pass the motions. The procedural motions, all of which indicate a desire of the council to move on, are *not* debatable. Thus, when the motion is made

and seconded, the Chair must immediately call for a vote without debate on the procedural motion.

As for votes on these motions, while substantive motions require the concurrence of 11 voting members, procedural motions require either a majority or a two-thirds vote (depending on the motion) of voting members who are present. For example, if 15 voting members are present, 8 votes are required to pass a motion that requires a majority vote, and 10 votes are required to pass a motion that requires a two-thirds vote. (The counting of votes is discussed in greater detail in section VII, Counting Votes, on pages 7–8.)

Procedural motions that require a **majority vote** include:

Motion to adjourn. This motion, if passed, requires the council to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote of those present and voting to pass.

Motion to recess. This motion, if passed, requires the council to immediately take a recess. Normally, the Chair determines the length of the recess, which may be a few minutes or an hour. It requires a simple majority vote of those present and voting to pass.

Motion to fix the time to adjourn. This motion, if passed, requires the council to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at 5 p.m.” It requires a simple majority vote of those present and voting to pass.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the council: “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the council will have to be taken at a future meeting. A motion to table an item (or to bring it back to the council) requires a simple majority vote of those present and voting to pass.

Procedural motions that require a **two-thirds vote** include:

Motion to object to consideration of an item. Normally, such a motion is unnecessary since the objectionable item can be tabled or simply defeated. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It requires a two-thirds vote of those present and voting to pass.

Motion to limit debate. The most common form of this motion is to say: “I move the previous question” or “I move the question” or “I call the question” or simply “Question.” As a practical matter, when a member calls out one of these phrases, the

Chair can expedite things by treating it as a “request” rather than as a formal motion. The Chair can then simply inquire, “Is there any further discussion?” If no one wishes to discuss it further, the Chair can proceed to a vote on the underlying matter. On the other hand, if even one council member wishes further discussion and debate on the underlying matter, the Chair must treat the “call for the question” as a motion and proceed accordingly.

When a council member makes such a motion, he or she is really saying, “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the Chair should ask for a second, stop debate, and vote on the motion to limit debate. Note that a motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” A motion to limit debate requires a two-thirds vote of those present and voting to pass.

D. Motions to Reconsider

There is a special and unique motion that requires a separate explanation: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate, and a vote, there must be some closure to the issue. Thus, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made and passed.

A motion to reconsider is a procedural motion that requires only a majority vote of those voting members who are present to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting at which the item was first voted upon. A motion to reconsider made at a later time is untimely.

Second, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider. (Any other council member may second the motion.) If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, the item could be brought back to the council again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

VI. Multiple Motions Before the Judicial Council

There can be up to three motions on the floor at the same time. The Chair can reject a fourth motion until he or she has addressed the three that are on the floor and has resolved them. This

rule has practical value. More than three motions on the floor at one time tends to be too confusing and unwieldy for most everyone, including the Chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that was made. So, for example, assume the first motion is a basic motion to appoint a 5-member working group to develop parliamentary procedures for the council. During the discussion of this motion, a member might make a second motion to amend the basic motion so that a 10-member working group would be appointed instead of a 5-member working group. And perhaps, during that discussion, another member makes yet a third motion as a substitute motion to impose a moratorium against appointing new working groups. The proper procedure would be as follows:

First, the Chair would address the third (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the council of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion failed, the Chair would address the second (now, the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (whether the committee should be 5 members or 10 members). If the motion to amend *passed*, the Chair would now move to consider the main motion (the first motion) *as amended*. If the motion to amend *failed*, the Chair would now move to consider the main motion (the first motion) in its original format, not amended.

VII. Counting Votes

A. Number of Votes Needed to Take Action

As noted above, for substantive motions, a minimum of 11 voting members must be present to constitute a quorum, and a minimum of 11 votes are needed to pass such substantive motions. For procedural motions, a minimum of 11 voting members must be present to constitute a quorum, and there must be either a majority vote or a two-thirds vote of voting members, depending on the motion, to pass such procedural motions.

When a majority vote is needed to pass a motion, one vote more than 50 percent of those voting is required. If a two-thirds vote is needed to pass a motion, there is a formula to determine how many affirmative votes are required. The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. So, for example, if 6 members vote “no,” then the “yes” vote of at least 12 members is required to achieve a two-thirds majority vote to pass the motion.

In the event of a tie vote, the motion always fails because an affirmative vote is required to pass any motion. For example, if the vote is 10 in favor and 10 opposed, with 1 member absent, the motion is defeated.

B. Abstentions

Members sometimes prefer to abstain from voting. Members who abstain are counted for purposes of determining whether there is a quorum, but the abstention votes on the motion are treated as if they do not exist. In other words, an abstention is not treated as either a “yes” vote or a “no” vote.

C. Examples

Here are a few examples to illustrate vote-counting under different circumstances:

Majority Vote Counting

Assume that 21 voting members of the council are present to vote on a substantive motion, which requires 11 votes to pass. If the vote on the motion is 11 to 10, the motion passes. If the motion is 10 to 10 with 1 abstention, the motion fails because the abstention is not counted as a “yes” vote.

Assume that 18 members are present and voting on a procedural motion that requires only a majority vote to pass (as opposed to 11 votes). If the vote is 10 to 8, the motion passes. If the vote is 9 to 9, the motion fails. If the vote is 9 to 8 with 1 abstention, the motion fails because 10 votes are required for the motion to pass (one vote more than 50 percent). Once again, the abstention vote is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote did not occur.

Two-Thirds Vote Counting

Assume 21 members are present and voting on a motion that requires a two-thirds vote to pass. If the vote is 11 to 10, the motion fails for lack of a two-thirds majority. If the vote is 18 to 3, the motion passes with a clear two-thirds majority. If the vote is 13 to 8, the motion fails. Using the formula discussed above, the “no” votes are counted and doubled to determine whether there are enough “yes” votes to constitute a two-thirds majority. If the vote is 13 to 6 with 2 abstentions, the motion passes because the abstentions are treated as if they don’t exist, and with 6 “no” votes, 12 votes are needed to pass the motion. Therefore, the motion passes with 13 votes.

Abstention

To cast an “abstention” vote, a member either votes “abstain” or says “I abstain.” However, if a member votes “present,” that is also treated as an abstention. The member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.” In fact, any manifestation of intention to vote neither “yes” nor “no” on the pending motion may be treated by the Chair as an abstention.

Absence

Can a member vote “absent” or “count me as absent?” The ruling on this is up to the Chair. The better approach is for the Chair to count this as a vote to abstain if the person does not actually leave the boardroom. If, however, the member leaves the boardroom and is actually absent, the Chair should count the member as absent. That, of course, may affect the quorum.

VIII. Courtesy and Decorum

The rules of order are meant to create an atmosphere where council members and the public can attend to business efficiently, fairly, and with full participation. At the same time, it is up to the Chair and the council members to maintain common courtesy and decorum. It is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the Chair before speaking.

The Chair should always ensure that discussion and debate of an agenda item focuses on the item and the policy in question, not the personalities of the council members. The Chair has the right to cut off discussion that diverges from the agenda item.

Debate and discussion should be focused, but free and open. In the interest of time, the Chair may, however, limit the time allotted to speakers, including council members.

Council members should not interrupt the speaker. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be to say, “Point of privilege.” The Chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be to say, “Point of order.” Again, the Chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting, such as the Chair moving on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the Chair makes a ruling with which a member of the body disagrees, that member may appeal the ruling of the Chair. For example, if the Chair deems a motion to be a substitute motion and a member considers it to be a motion to amend, the member may appeal that ruling. If the motion is seconded and, after debate, it passes by a simple majority vote, the ruling of the Chair is deemed reversed. The motion to appeal the ruling of the Chair is considered a procedural motion.

Call for orders of the day. This is simply another way of saying, “Let’s return to the agenda.” If a member believes that the council has drifted from the agenda, such a call may be made. It does not require a vote. If the Chair discovers that the agenda has not been followed, the Chair simply reminds the council members to return to the agenda item properly before them. If the Chair fails to do so, the Chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the Chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

IX. Alternative Methods of Voting

A. Voting by Proxy

Voting by proxy is not permitted. A Judicial Council member, therefore, may not authorize another person to vote on his or her behalf.

B. Attending Meetings and Voting by Telephone or Teleconference

Council members are permitted to attend meetings and vote by telephone or teleconference.

C. Early Voting

On occasion, a voting member of the Judicial Council may be unable to attend a council meeting or must depart before the presentation of a discussion item or the ensuing exchange is completed. Subdivision (c) of rule 10.5 (Notice and agenda of council meeting) defines the term “business meetings” as meetings “at which a majority of voting members are present to discuss and decide matters within the council’s jurisdiction.” The rule contemplates that members will be present for a discussion of the agenda item. Accordingly, a council member is not permitted to vote before the discussion about the agenda item has ended.

Item W12-08 Response Form

Title: Judicial Council: Parliamentary Procedures for Meetings

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, January 24, 2012

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.