

**AMERICAN BAR ASSOCIATION  
YOUNG LAWYERS DIVISION  
COUNCIL**

**STANDING RULES**

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Frequently, bills are brought to the Council of Ministers without being indicated on the agenda, and subsequently are sent to Parliament in a text different from the one approved by the Council; meetings are convened suddenly and without an agenda; incomplete or even fictitious texts are approved by the Council; minutes of Council meetings are incomplete and are kept secret; meetings are held infrequently . . . .

Cassese, "Is There a Government in Italy?"

## **Rule 1 General Provisions**

### **§ 1.1. Bylaws incorporated**

**Bylaws.** These bylaws and action taken under their authority are the basis for the conduct of all business in the Division.

Bylaws § 1.3(b)

These rules incorporate the bylaws, including the meaning of terms defined in the bylaws.

### **§ 1.2. Assembly rules incorporated**

**Organization.** The Council is the Assembly's administrative agency and shall draft and submit for the Assembly's consideration the Assembly's order of business, standing rules, and any necessary special rule of order, and shall correct and approve the Assembly's minutes. . . .

Bylaws § 4.3(e)

The Assembly's standing rules as drafted under § 4.3(e) of the bylaws, to the extent that they are not inconsistent with these rules or with any other applicable rule, policy, or procedure, shall govern the proceedings in Council.

*Comment.* The "Assembly's standing rules as drafted under § 4.3(e) of the bylaws" refers to the permanent standing rules which the Council "shall draft and submit for the Assembly's consideration," as distinct from the Assembly's standing rules at any particular annual meeting. The Assembly at a particular annual meeting may adopt its own standing rules different from those drafted and submitted by the Council, but "[n]o such amendment binds the Assembly at any future annual meeting unless it is incorporated into the permanent standing rules that the Council drafts under section 4.3(e) of the bylaws." Assembly, Standing Rules, § 10.1 comment. Thus, even while the Council is sitting at an annual meeting where the Assembly has adopted its own standing rules different from those that the Council drafted and submitted, it is the permanent and not the actual standing rules of the Assembly that govern the proceedings in Council.

### § 1.3. Flexibility

These rules are intended to provide an efficient, fair, and flexible process for the effective and expeditious consideration and disposition of business before the Council. The Chair may relax these rules to further this intent, provided that these rules shall be strictly enforced upon the demand of any councilor.

## Rule 2 Councilors

- (a) **Voting members.** The Council consists of—
- (1) the officers (§ 6.1);
  - (2) the immediate past Chair;
  - (3) the constitutional representatives (§ 8.1);
  - (4) the directors (§ 10.1(a));
  - (5) the chair of the ABA Law Student Division, or his or her proxy;
  - (6) the district representatives (§ 3.4(b)); and
  - (7) a representative from each national affiliate (§ 3.1(b)), who is a member of that affiliate. These bylaws and action taken under their authority shall apply to each such representative in the same manner as they apply to a district representative with respect to removal.
- No person shall become a councilor unless he or she is a member. No councilor shall vote in more than one capacity.
- (b) **Nonvoting members.** The Council may provide for nonvoting members, who shall likewise serve as nonvoting members in the Assembly.

Bylaws § 5.2

### § 2.1. Member, councilor defined

For these rules' purposes:

- (a) A “member” means a member in good standing of the Division, unless the context clearly suggests otherwise.
- (b) A “councilor” means a member of the Council. A “councilor” includes a nonvoting councilor, unless the term “voting councilor” is used.

### § 2.2. Nonvoting councilors

**Directors and coordinators.** The Chair shall appoint up to ten directors and up to five coordinators among whom he or she shall delegate responsibility for affiliate outreach, bar leadership, committees, communications, districts, liaisons, meetings, membership, professional development, and other programs. Each director or coordinator shall administer the program for which he or she is responsible and shall perform such other duties as the Chair or the Council prescribes.

Bylaws § 10.1(b)

The coordinators appointed under § 10.1(b) of the bylaws shall be nonvoting councilors.

### § 2.3. Proxies

Any councilor entitled to appoint a proxy may do so by written notice to the Chair, in which case the proxy will enjoy all the councilor's rights and privileges under these rules.

## Rule 3 Meetings

(a) **Regular.** The Council shall regularly meet in conjunction with each meeting of the Assembly and each national affiliate-outreach conference (§ 3.2(b)).

(b) **Special.** The Council may provide by rule for special meetings.

Bylaws § 5.3(a)-(b)

### § 3.1. Time and place

The Council shall meet at the Chair's call in conjunction with each meeting of the Assembly and each national affiliate-outreach conference.

### § 3.2. Agenda

Each meeting's agenda shall be reports under rule 6; special orders; reports from committees on resolutions previously referred; unfinished business; general orders; and, if there is time, new business. The Chair may, notwithstanding this agenda, place an informational report or program anywhere in the order of business, in which case the report or program shall outrank and suspend all other business.

*Comment.* The second sentence parallels Assembly rule 5.4, which is already incorporated under rule 1.2, but is repeated here both for emphasis and in order to avoid any argument that this rule 3.2 is inconsistent with Assembly rule 5.4.

### § 3.3. Decorum

(a) The Assembly's standing rules as drafted under § 4.3(e) of the bylaws shall govern decorum in Council.

*Comment.* Although “[t]he Assembly’s standing rules as drafted under § 4.3(e) of the bylaws” are already incorporated under rule 1.2, this rule specially emphasizes the rule relating to decorum, of which a few councilors are persistently unobservant:

**Rule 2**  
**Decorum**

§ 2.1. **Attire**

The proper attire for a meeting is business attire that is suitable for an appearance in court.

§ 2.2. **Promptness**

Each delegate is asked to be present and ready to proceed to business five minutes before the scheduled call to order.

§ 2.3. **Conversation**

No delegate shall converse, make loud noise, or create any other intrusive sensation that may disturb another delegate. Any delegate who does so shall stop at the request of any delegate who claims to be disturbed thereby, or shall withdraw from the floor (or, if necessary, from the hall) in order to continue.

§ 2.4. **No smoking**

There shall be no smoking on the floor or in the hall.

- (b) The Chair may relax the rule relating to attire if appropriate.

§ 3.4. **Minutes**

**Secretary-Treasurer.** The chief clerical, recording, and financial officer is the Secretary-Treasurer, who shall (1) serve as secretary to the Assembly and the Council, whose proceedings he or she shall carefully and faithfully record . . . .

Bylaws § 6.3(c)

- (a) The Secretary-Treasurer shall carefully record the proceedings, and shall circulate these minutes to each councilor after the meeting. The minutes shall contain at least the text of each resolution as adopted, and shall record such other action or information as the Chair or the Secretary-Treasurer prescribes.
- (b) The Executive Committee shall correct and may approve the minutes after they have been circulated.
- (c) The minutes (as corrected, if corrected) shall again be circulated with the next meeting’s agenda. The minutes may be further corrected by simple majority at that meeting.

**§ 3.5. Votes between meetings**

- (a) The Chair, the Executive Committee, the Executive Board, or any seven voting councilors may, by written notice to the Chair, put a resolution to a vote between meetings. The Chair shall act under this rule 3.5 in consultation and cooperation with the mover.
- (b) Within three days after he or she receives it, the Chair shall refer the resolution to the appropriate committee or committees, which shall report within two weeks unless the mover grants an extension. The mover may elect expedited consideration by the Executive Committee, in which case that committee shall report within one week, and that report shall discharge any other committee still considering the resolution.

*Comment.* A resolution is always referred “to the appropriate committee or committees” under this rule’s first sentence, even if the mover elects “expedited consideration” under its second sentence. The mover may elect expedited consideration as soon as he or she first puts the resolution to a vote, or at any time thereafter until the committee(s) to which the resolution has been referred have reported. Under expedited consideration, what discharges the committee(s) otherwise considering the resolution is the Executive Committee’s report within one week, not the mere election of expedited consideration; therefore, if the committee(s) otherwise considering the resolution report before the Executive Committee does, then each such report is also circulated with the resolution under subsection (c).

- (c) Within three days after the Chair receives the committee report or after consideration by committee is dispensed with, the Chair shall circulate the resolution, together with the committee report (if any), to each councilor.
- (d) Any councilor may move to amend the resolution, or may submit a statement supporting, opposing, or otherwise commenting upon it, by written notice to the Chair received within ten days after the Chair circulates the resolution under paragraph (c). The Executive Committee, with the mover’s consent, may—
  - (1) dispense with this paragraph (d), in which case the resolution’s circulation under paragraph (c) shall also constitute its circulation under paragraph (e); or
  - (2) provide for a further opportunity for amendment and commentary.
- (e) At least ten days after the Chair circulates the resolution under paragraph (c), he or she shall circulate it (together with any amendment or commentary received under paragraph (d)) for a vote. The Chair shall instruct each councilor when and how to vote by telephone, by telecopy, or by postal or electronic mail.
- (f) The result shall be determined by the votes received after

- (1) at least ten days (or, if the Chair and the mover concur that urgent action is essential, five days) after the resolution has been circulated under paragraph (e), and
  - (2) a quorum has voted,
- whichever is later. The Chair shall promptly publish the result.

#### **Rule 4 Presiding Officer**

##### **§ 4.1. Chair**

- (a) **Chair.** The chief executive, operating, and administrative officer is the Chair, who shall (1) chair the Council . . . .
- (b) **Chair-Elect.** The Chair-Elect shall (1) advise and assist the Chair however possible; and (2) act as Chair whenever the incumbent is unable or unwilling to do so.

Except as this Rule 4 otherwise provides:

- (a) The Chair shall preside over each meeting.
- (b) The Chair-Elect shall serve as vice-chair, and shall preside if the Chair relinquishes the chair.

##### **§ 4.2. Coordinator**

- (a) The Chair shall appoint a coordinator or director with responsibility for managing the Council and the district representatives, to whom the Chair may delegate any duty under these rules. For these rules' purposes, the "Coordinator" means the coordinator or director so appointed.
- (b) Subject to the Chair-Elect's right to preside, the Chair may let the Coordinator preside.

##### **§ 4.3. Chair pro tem**

The Chair, Chair-Elect, or Coordinator may appoint a chair pro tem, who shall preside until the Chair, Chair-Elect, or Coordinator reclaims the chair.

## **Rule 5 The Floor**

### **§ 5.1. Hall**

The staff, as directed by the Chair in his or her discretion, shall reserve and arrange a suitable hall for the Council to meet in.

### **§ 5.2. Seating**

The hall shall include a head table for the officers and the Coordinator, with—

- (a) a podium in the center, with a microphone for the presiding officer;
- (b) seats on the right side of the presiding officer for the Coordinator, the Speaker, and the Clerk; and
- (c) seats on the left side of the presiding officer for the Chair (when he or she is not presiding), the Chair-Elect, and the Secretary-Treasurer.

## **Rule 6 Reports**

**Review.** The Assembly may review any action (other than an election, an appointment, or an award) by the Council or any other board, committee, subcommittee, officer, representative (other than any young-lawyer member-at-large on the ABA Board of Governors), or other elected or appointed agent. The power of review is a plenary power to direct and instruct an agent, which includes the right to remand, modify, or vacate any action by the agent, or to act directly in his, her, or its place.

Bylaws § 4.1(b)

Subject to the Assembly's review, the Council enjoys the same powers of review and delegation as the Assembly.

Bylaws § 5.4

### **§ 6.1. Reports generally**

The Council shall receive at each meeting an informational report from the Executive Committee, the Executive Board, and from each other board, team, committee, officer, constitutional representative, director, coordinator, liaison, or other elected or appointed agent about the matters within his, her, or its charge. Each reporting agent shall submit a written report, due thirty days before the meeting or at such other time as the Chair prescribes.

## § 6.2. **Written reports**

Each such report is expected in writing in advance. Each officer may deliver an oral report. The reporting agent will otherwise report orally to the Council only if—

- (a) he or she has asked for action on a written recommendation,
- (b) a councilor asks a question about the written report, or
- (c) the Chair or the Executive Committee finds that it merits the Council's attention.

*Comment.* The Council has historically devoted most time in session to oral reports from literally every officer, constitutional representative, director, and coordinator in sight, which ordinarily consumed nearly the whole meeting, turning the councilors into mere sponges for announcements. Most reporting agents, knowing that they could just circulate a handout or deliver an impromptu oral report at the meeting, did not bother to submit a written report in advance. The short-term result was

- oral reports that were, at best, hastily cobbled together at the last minute, and at worst were whatever happened to be drifting down the reporting agent's stream of consciousness when it came his or her turn to report; and
- long, rambling speeches from the overprepared, who practically reported their day-by-day activities and were often just repeating their written reports aloud.

The long-term result was boredom and frustration that seriously hampered real business for the rest of the meeting, such as those resolutions that had actually been submitted in writing in advance. The purpose of this rule is to require each report in writing, in advance, to limit resolutions to those into which some forethought (as evidenced by a written recommendation) has gone, and to spare the Council from hearing trivia about which nobody but the reporting agent really wants to know.

## § 6.3. **Questions**

Whenever the Council receives an informational report (or, if no report has been submitted, at the time when such a report would be in order), any councilor may ask a question concerning the report or any other matter within the reporting agent's responsibility, in which case the reporting agent shall directly answer the question to the best of his or her knowledge. Any councilor may file a prepared question with the Chair, who shall arrange for an appropriate answer. Any prepared question shall be answered first, followed by any question from the floor. The time for questions and answers shall continue until each question has been answered, or for fifteen minutes, whichever occurs sooner, subject to limitation or extension by simple majority. Each reporting agent shall answer any unanswered question in his or her report at the next meeting, or in an earlier report to the Council.

## § 6.4. **Review**

A main motion that offers advice or instruction with respect to an informational report (including any matter about which a question has been asked under rule 6.3,

regardless of whether the question has been answered) is in order during or immediately after the report or at any later time during the same meeting when no other motion is pending, notwithstanding rule 7. Any such motion applies only in the particular instance, and does not apply generally or prospectively or otherwise become policy, unless considered in the manner for which rule 7 provides.

*Comment.* The power of review generally implies the same power that an appellate court enjoys with respect to an inferior court. A “board, team, committee, officer, constitutional representative, director, coordinator, liaison, or other elected or appointed agent” is therefore subject to the same standard of review as an inferior court: when the agent under review is interpreting or applying settled law or rules, the reviewer may act virtually *de novo*; when the agent under review is exercising discretion or judgment, the reviewer will not disturb it unless there has been an abuse of discretion.

An “abuse of discretion” is a term of art that concerns the standard of review. An appellate court will not reverse a trial judge for “mere error” or “harmless error” but only for “clear error,” and will not disturb a trial judge’s exercise of discretion unless there has been an abuse of discretion:

“Abuse of discretion” is synonymous with a failure to exercise a sound, reasonable, and legal discretion. . . . It does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge but means the clearly erroneous conclusion and judgment . . . . A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. . . . A judgment or decision by an administrative agency or judge which has no foundation in fact or in law. “Abuse of discretion” by trial court is any unreasonable, unconscionable and arbitrary action taken without proper consideration of facts and law pertaining to matter submitted.

Black’s Law Dictionary 10-11 (6th ed. 1990). As a rule of thumb, there has been no abuse of discretion if the reviewer would not have decided the matter as the decisionmaker did; there has only been an abuse of discretion if *no reasonable person* would have decided the matter as the decisionmaker did.

## **Rule 7** **Business**

### **§ 7.1. Introduction**

Any councilor or committee may introduce a resolution for the Council’s consideration by submitting its written text to the Chair. The Council shall consider any resolution introduced at least thirty days before a meeting, or by such earlier date as the Executive Committee prescribes with notice to each councilor. Each such resolution shall be distributed to each councilor before the meeting.

### **§ 7.2. Form**

Any resolution for the Council’s consideration shall be introduced in a form suitable for the Assembly’s consideration. This rule shall be strictly applied in the case

of a resolution that involves legislative or national policy, or that recommends action or needs approval by the Board of Governors, the House of Delegates, or any other entity outside the Division. The Chair may relax this rule in the case of a resolution on which the Council may conclusively act, such as a resolution that makes a rule or adopts a policy or procedure that supplements the bylaws; that directs, instructs, or advises an officer or committee; or that exercises any other explicit power under the bylaws.

### § 7.3. Consideration

- (a) The Chair and the Executive Committee shall take care that—
  - (1) the debate on each resolution is as fully informed as is reasonably possible;
  - (2) any opposing viewpoint is fairly considered; and
  - (3) each matter that reaches the floor has been considered by each interested committee and officer.
- (b) The Chair may refer any resolution to an appropriate committee, which shall report within fifteen days unless the mover grants an extension.
- (c) The Chair shall keep a docket of each resolution and other matter that awaits the Council's consideration, from which docket he or she shall prepare and circulate an agenda for each meeting. A resolution shall ordinarily appear on the agenda of the first meeting held more than fifteen days after the committee to which the resolution was referred under subsection (b) reports or was required to report; but the mover may, by written notice to the Chair, demand that a resolution appear on the agenda of the first meeting held more than thirty days after the demand.

## **Rule 8** **Relationship with the Assembly**

### § 8.1. Policy

The Council shares the Division's government with the Assembly, and each body checks the other according to the formal relationship defined in the bylaws. The Council's policy is to minimize that formal interaction, in favor of a harmonious working partnership between the two bodies through an intelligent division of labor and authority between them. The Council therefore focuses on administration and organization, and expects that the Assembly will focus on substantive policymaking.

*Comment.* The bylaws clearly defines what authority the Assembly and the Council can exercise and the relationship between the two bodies:

The Assembly shall enjoy all the powers that the Division may exercise. Except as these bylaws otherwise provide, the highest policymaking authority within the Division resides in the Assembly, which may act on the Division's behalf in any matter except to the extent that such action is inconsistent with these bylaws.

Bylaws § 4.1(a) (policymaking).

The general executive and administrative authority resides in the Council, which shall enjoy all the powers that the Division may exercise, except those powers (including the authority to amend these bylaws) explicitly reserved to the Assembly. Except as these bylaws otherwise provide, the Council may act on the Division's behalf in any matter except to the extent that such action is inconsistent with these bylaws or with any action by the Assembly within the last six years.

*Id.* § 5.1 (Council's function). The bylaws also recognizes a power of review that the Assembly enjoys generally, even as to the Council:

The Assembly may review any action (other than an election, an appointment, or an award) by the Council or any other board, committee, subcommittee, officer, representative, or other elected or appointed agent. The power of review is a plenary power to direct and instruct an agent, which includes the right to remand, modify, or vacate any action by the agent, or to act directly in his, her, or its place.

*id.* § 4.1(b) (review), and which the Council likewise enjoys, except as to the Assembly:

Subject to the Assembly's review, the Council enjoys the same powers of review and delegation as the Assembly.

*Id.* § 5.4 (review and delegation).

The bylaws thus conceive the Division as a partnership between the Assembly and the Council, with the Assembly the senior partner. Each partner has concurrent power to bind the partnership, although the Assembly as senior partner can undo what the Council as junior partner has done.

## § 8.2. **Special competence**

The Council generally focuses on matters within its special competence, and otherwise defers to the Assembly. A resolution falls within the special competence of the Council if it relates to—

- (a) a matter that the bylaws commit to the Council's action or discretion;
- (b) a matter that the Assembly has delegated to the Council;
- (c) the bylaws or a rule, policy, or procedure that supplements them, or a matter that a bylaw, rule, policy, or procedure particularly covers;
- (d) the Association's or Division's organization, including but not limited to the creation, continuance, discontinuance, merger, division, reorganization, or administration of an office, board, team, committee, subcommittee, or other entity or program;
- (e) an office, officer, or entity within the Association or the Division, including a resolution that—
  - (1) prescribes, relieves, transfers, or amends a duty (other than a duty to execute or advocate the resolution) or power of such an office, officer, or entity,

- (2) exercises a power of, or reviews an action taken by, such an office, officer, or entity,
- (3) directs, instructs, or advises such an officer or entity, or
- (4) affects the election, appointment, removal, tenure, or status of such an office, officer, or entity;
- (d) representation within the Division, including the Division's presence within or relationship with any region, district, state, or affiliate;
- (e) a local matter that affects a particular region, district, state, or affiliate, to which the Council can contribute a national perspective; or
- (f) a matter that the Council or a committee has recently considered, or on which the Council or a committee has recently undertaken or commissioned a report or study.

*Comment.* The Council voluntarily confines its focus to matters within its special competence, lest it merely presume to volunteer the councilors' personal opinions in the guise of official advice on matters that the Council is not more qualified to judge than the Assembly.

There is no special procedure for enforcing this rule, but this rule may support a motion to postpone indefinitely or an objection to the consideration of a question.

### § 8.3. **Restraint**

- (a) The Council shall act with restraint upon any recommendation involving legislative or national policy or otherwise falling outside its special competence, and shall ordinarily act upon such a recommendation only if the voice of young lawyers may not be heard if the matter awaits the Assembly's action.

*Comment.* There is no special procedure for enforcing this rule, but this rule may support a motion to postpone indefinitely or an objection to the consideration of a question.

- (b) The preceding paragraph notwithstanding, the Council may generally act upon a recommendation involving legislative or national policy if—
  - (1) the Assembly has taken prior consistent action on a related matter, but did not reach the particular issue to which the recommendation relates;
  - (2) another entity has asked that the Division concur in its recommendation, and may want or expect an answer before the Assembly meets; or
  - (3) the relevant policymaker, including a policymaking officer or entity within the Association, may consider the policy before the Assembly meets.

## **Rule 9**

### **Amendment and Suspension**

#### **§ 9.1. Amendment**

The Council may amend these rules by resolution. Such a resolution takes a two-thirds vote, or a simple majority after a favorable report from the Executive Committee.

#### **§ 9.2. Suspension**

A motion to suspend these rules, or any part of them, takes a two-thirds vote. For this rule's purposes, there is no difference between an ordinary standing rule and a rule of order. The Council shall not suspend any other rule, policy, or procedure, except by resolution.

*Comment.* This rule prevents confusion over the difference between an “ordinary” standing rule and a “rule of order,” and removes doubt about whether a rule other than a standing rule can be suspended. See Henry M. Robert, *Robert's Rules of Order Newly Revised* § 25 at 256-57 (10th ed. 2000) (“An ordinary *standing rule* . . . is a rule that does not relate to parliamentary procedure as such . . . . Standing rules . . . can be suspended by a majority vote as they do not involve the protection of a minority of a particular size.”).

Whether a rule is “ordinary” or a “rule of order” is a matter of characterization, subject to dissent and abuse. This rule ignores the difference, and characterizes all such rules uniformly. The minor sacrifice in the freedom to suspend an “ordinary” rule by simple majority is more than offset by the consistency that will result from, and the confusion that will be prevented by, such a uniform treatment.

This rule also prohibits the suspension of a rule other than a standing rule—that is, “any other rule, policy, or procedure”—except by resolution. What this resolution sacrifices in the freedom to suspend such a rule, it more than compensates for in protecting the justified expectations that such a rule creates. There is, furthermore, very little sacrifice even in terms of freedom to suspend such a rule—a majority can still adopt a resolution for suspension, but only in suitable form and after previous notice. This resolution therefore maximizes care and forethought in any suspension of a rule, without much lessening the majority's freedom.