

Lex Parliamentaria

Law meets Parliamentary Procedure

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Discussion of how non-parliamentarian
lawyers approach parliamentary problems

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Tale from the Field

- ✿ *Obiku v. Hernandez*, 2022 Ill. App. (1st) 201365-U, 2022 WL 669532 (Ill. 1st District, Sixth Div. 3/4/22)
- ✿ Unpublished case, no Westlaw key numbers

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Facts

- ✿ Plaintiff Ohiku was board member of Lakeview East Cooperative
- ✿ Board receives report from HUD that Plaintiff doesn't live in district and has misused funds
- ✿ Board sets special meeting to remove her
- ✿ 107 members present, a quorum
- ✿ League of Women Voters are present to oversee vote

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Background

- Parliamentary authority is not stated — probably not in the bylaws
- Attorneys with law firm are present at the meeting but participation isn't known

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Vote results

- 66 for removal; 33 against removal; 1 blank ballot; 1 ballot says “abstain” [total of 101 ballots; 99 returned with preference]
- League originally stated that required two-thirds vote was met but there was challenge for not taking into account the other two ballots
- President announced that “everything will be reviewed” and decision made in seven days

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And then . . .

- League can't decide, turns question over to law firm and board
- Board defers to law firm

Drum roll

- Law firm concludes that the vote to remove was sufficient based on bylaws, state law, “Robert’s Rules of Parliamentary Procedure”* (Robert’s Rules), and consultation with “independent parliamentary resources.”
- *“Its proper title is Robert’s Rules of Order, and we will continue to reference it as Robert’s Rules to avoid confusion. Robert’s Rules has many authors, editions and publishers; therefore, we decline to cite to a specific one since the parties do not.”

Suit filed

- Plaintiff sues, asking for preliminary injunction to prevent her removal, asking court to stop use of this “arbitrary maneuver” to remove her
- Plaintiff alleges board’s decision was conclusory and only focused on following procedure and business judgment
- Plaintiff alleges bad faith and makes big point of not being able to cite to the bylaws for authority that vote was sufficient

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Response

- LEC’s attorneys respond that abstentions were not counted because of requirement of being “present and voting”
- Attorneys reference Robert’s Rules, basic parliamentary procedure, and the Standard Code of Parliamentary Procedure (for which they give an accurate citation)
- Attorneys contend president sought legal advice and therefore the business judgement rule validates decision

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Decision

- ✿ Court of Appeal affirmed district court's approval of the removal, finding proper use of informed, good faith business judgment by president
- ✿ Irrelevant comment: plaintiff is still suing, now has been evicted from the property as well

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Challenge

- ✿ Ask your lawyer friends results of the vote to remove plaintiff
- ✿ Note if they know the answer intuitively
- ✿ Note if they know how to look it up in a parliamentary or legal manner
- ✿ Note if they know to ask a parliamentarian!

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What Went Wrong???

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How Could This Be Done Quicker, Better, Cheaper?

- Case assumes lawyers can advise on parliamentary procedure
- Bylaws and certainly the meeting appear to have no adopted parliamentary authority or rules for that meeting or the removal action
- No appearance of a parliamentarian at any point (not at meeting, not as advisor, not as expert witness)
- Would have been better to have completed the removal at the meeting
- Complete misunderstanding of which “book” to use

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What does a lawyer need to do?

- ✿ Obtain all governing documents
- ✿ Obtain correct version of the parliamentary authority
 - ✿ And should be able to cite to it and use it as a learned treatise
- ✿ Know how to find applicable statutes
- ✿ Know how to find applicable or persuasive cases
- ✿ Know how to find a great expert witness

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What do lawyers usually do?

- ✿ Immediately start searching for cases with similar facts
- ✿ Look for the equities of the particular situation
- ✿ Parse the language to get at correct meaning
- ✿ Might try to get overview of subject
 - ✿ Might look at Am Jur or CJS or key numbers
 - ✿ Westlaw key number is 286 — not very helpful

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Same misunderstanding as general public

- ✿ Bylaws are just a guide
- ✿ Parliamentary procedure is form over substance
- ✿ Lawyers somehow know parliamentary procedure
- ✿ One parliamentary manual is as good as another
- ✿ Parliamentarian rules (if they know the term at all, that is)

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Specific areas of dangerous ignorance

- ✿ Proper content and approval of minutes
- ✿ Definitions of voting thresholds
- ✿ Right version of the parliamentary authority
- ✿ Use of small board rules
- ✿ Right definition of majority, sine die, ex officio
- ✿ Reconsideration
- ✿ Adjourned meetings

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How do you research a parliamentary issue?

- ✿ There is a headnote, American Jurisprudence coverage — not very helpful
- ✿ Much better headnotes for terms, quo warranto, quorum, municipal, etc
- ✿ Use various restricted searches, remembering “Robert’s Rules” is most common authority cited
- ✿ Read the references under the statutes (particularly nonprofit, condo, union)

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Frequency of Terms

- ✿ 502 returns on “parliamentary law”
- ✿ 412 returns on “parliamentary procedure”
- ✿ 535 returns on “Robert’s Rules”
- ✿ 13 returns on The Standard Code of Parliamentary Procedure
- ✿ 3 returns on “professional parliamentarian”

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How can ACPL members help?

- ✿ Continue to talk to your legal peers about function of a parliamentarian
- ✿ Be ready to prepare lawyer for litigation, briefing, or argument about parliamentary procedure
- ✿ Write outstanding parliamentary opinions
- ✿ Show colleagues “the book” or at least Body of Knowledge
 - ✿ (And GIVE them RONRiB)

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Questions?
Comments?

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