



Rules of Order Adapted for Grand Juries



Purpose

Penal Code §916 authorizes each grand jury to set its own “rules of procedure.” The Civil Grand Jurors’ Association (CGJA) often gets requests from jurors for advice about adopting procedures to ensure that meetings run smoothly. All grand juries want a deliberative process that is fair and decisions that are properly made and documented.

Some jurors with previous experience as members of boards or commissions have expertise in operating under formal meeting procedures or parliamentary rules, such as **Robert’s Rules of Order**. Such expertise can be helpful, but adhering to formal rules can also stifle or intimidate jurors who lack familiarity with them. In addition, some parliamentary rules designed for large legislative bodies or public meetings would rarely, if ever, apply to grand jury deliberations.

CGJA has developed this short primer of our best practices advice on rules of order to assist grand juries to establish some reasonable rules to govern meetings in a collegial and professional manner. Your grand jury can modify or simplify these rules to meet your needs – or write your own rules of order.

Objectives

This primer has four primary objectives:

1. Provide a foundation in formal meeting procedures for a new juror who has no previous experience with rules of order
2. Give forepersons and committee chairs a refresher on the basic principles of meeting conduct and democratic governance
3. Identify situations when the standard parliamentary rules may not meet the needs and unique responsibilities of the grand jury
4. Discuss the four categories of motions and briefly explain how they are used in deliberation and decision making

Whose Job Is It?

It is important that the foreperson of the jury know how to run a successful meeting, keep the discussion on track, and ensure that everyone has a chance to be heard. However, it is often difficult for the foreperson alone to keep track of all the details of the agenda, the action items for discussion, and the rules.

A grand jury can empower someone else to assist the foreperson with some or all of these meeting management tasks. Monitoring the meeting guidelines or rules of order can be part of the job of the pro tem, the secretary, or a sergeant-at-arms. The jury can also designate someone to be parliamentarian.

Acknowledgement

*These Rules of Order were adapted for CGJA based, in part, on the book **Robert’s Rules Simplified** by Arthur T. Lewis and Henry M. Robert (Dover Publications ©2006)*



Rules of Order Principles

1. The will of the group supersedes the interest of any individual member.
 2. All members are equal in terms of proposing issues, discussing grand jury matters, and voting.
 3. Only one thing should be discussed at a time and only one person should speak at a time.
 4. There should be full and fair discussion of an issue before action is taken.
 5. Discussion should be objective and professional, not directed at individuals.
 6. Certain “privileged motions” can direct or interrupt discussion.
 7. A “supermajority” vote is required to conduct or terminate investigations, approve reports, or change the rules of procedure.
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It is not the intention of rules of procedure that meetings be conducted in such a rigid form that matters cannot be discussed informally. Their purpose is to ensure that the grand jury's business is conducted efficiently, professionally, and without personal disputes.

Informal v. Formal? It Depends!

Informal Consensus

The term “consensus” is used to identify situations when the jury can govern itself by general agreement on issues rather than a formal motion and vote. Consensus governance is typical in working groups such as investigative and administrative committees. Consensus works well as long as the foreperson or chair ensures that the basic principles are maintained and care is taken to allow everyone an opportunity to be heard.

Examples of consensus decisions include:

- Setting dates, times, and duration of meetings
- Developing procedures for review of agendas and minutes
- Calling the meeting to order and adjourning the meeting
- Establishing time limits for discussions and scheduling breaks

If consensus doesn't appear to be yielding a fair and equitable opportunity for discussion by all members, any juror can request that an issue be brought to a vote of the full group. If a second juror concurs, then the foreperson or the committee chair must deal with the issue on a more formal basis.

Formal Procedures and Rules of Order

Certain actions that the grand jury takes must be governed by more formal motion and voting procedures to ensure that its business is conducted in accordance with the law or best practices. Examples include:

- Approval or amendment of rules of procedure
- Approval of a topic for investigation
- Termination of an investigation
- Approval of every grand jury report



Main Motions

Main motions are substantive in nature and contain the intended actions of the grand jury. All public actions* of the grand jury and the adoption or amendment of the jury's rules or approval of its reports must properly be made in this manner. Further, a main motion must meet certain criteria and be approved in accordance with a prescribed process.

- A motion must be in order. To be "in order" a motion:
 - Must be offered at the right time in the agenda
 - Cannot conflict with the rules established by the jury
 - Cannot conflict with or duplicate another motion adopted at the same meeting
 - Should be stated in the affirmative; motions that are stated in the negative form can cause confusion
- It must be made by a juror who has the floor. To "have the floor" a juror:
 - Must raise their hand to be recognized by the foreperson
 - Indicate their intention to make a motion by saying "I move" and then state the action intended
- It must be seconded by another juror. Any juror may say "I second the motion" without waiting for recognition from the foreperson.
- It must be restated or repeated by the foreperson (or read by the secretary). Once it is restated, it belongs to the jury and cannot be changed or withdrawn without the consent of the jury.
- When a motion is made, seconded, and restated, it is ready for discussion. In many cases, some discussion may precede a motion, but there still must be an opportunity for discussion after the motion is made and seconded.
- Everyone should be given the chance to be heard before concluding debate. Normally, the foreperson allows the discussion to continue as long as any juror wishes to speak. However, any juror may move to "call for the question" (end debate and call for a vote) as long as no one else has the floor. This motion requires a second and is not debatable. The motion to "call for the question" requires a supermajority vote. If the motion passes, the discussion ends and the vote is taken immediately. If the motion fails, then the discussion continues.
- A vote may be taken by voice (ayes and noes), general consent, a show of hands, roll call, or written ballot. If any juror calls for a vote by a show of hands, roll call, or written ballot, that method must be used
- Once a motion is voted on, it may only be discussed again if there is a motion for reconsideration. A motion for reconsideration can only be made by a juror who voted with the majority on the motion initially

* The term "public action" is not defined in the Penal Code, but CGJA believes that public actions include all investigative activities such as interviews, document requests, and site visits. The grand jury may provide blanket approval for a committee to engage in all such activities related to an investigation rather than require a separate vote for each action.

MOTIONS IN BRIEF

There are **four** categories of motions:

- **Main**
- **Subsidiary**
- **Privileged**
- **Incidental**

Only one **main motion** can be discussed at a time, but there may be one or more **subsidiary motions** related to the main motion.

Privileged motions relate to the conduct of the meeting itself or the needs of the jurors.

Incidental motions generally deal with the application of rules of order. There are only a few that are relevant to the grand jury.

All main motions involving a public action* of the jury, such as approval of an investigation or report, must have a supermajority vote. We also suggest that a motion that serves to suspend the jury's rules of procedure, such as closing debate, be subject to the supermajority rule.

Other motions, especially those that do not directly impact the content or disposition of a main motion, may be decided by a simple majority depending on the rules of the jury. In some cases, they may be decided by consensus without a formal vote.



Subsidiary Motions

Subsidiary motions are procedural motions used to modify a main motion or cause it to be redirected in some way. There are seven different types of subsidiary motions, but we will focus on the five most common. They have a priority order, with one (1) being the highest priority and five (5) being the lowest priority. Some subsidiary motions are not subject to debate (1 and 2), the others are debatable (3, 4, and 5).

1. **Close debate/call for the question** – ends the discussion and brings the main motion to an immediate vote
2. **Limit or extend limits of debate** – changes the number of times each juror can speak or the length of time each juror can address the group
3. **Postpone to a definite time** – delays consideration of a main motion until later in the meeting (sometimes due to an interruption or more pressing business), or to a specific future time or date, such as the next meeting
4. **Refer to committee** – sends a main motion to a smaller group of jurors, either an established committee or ad-hoc group, for further consideration
5. **Amend** – changes or modifies the language of a main motion (probably the most common motion)

Subsidiary motions must be seconded, discussed, and resolved in priority order. For example, if there is a **motion to amend** under discussion, it would be superseded by a **motion to refer the matter to a committee**. (See example on page 6)

Privileged Motions

Privileged motions relate to the rights or privileges of the jurors and they are not debatable. While they technically have a ranking, in small groups ranking is rare because these items are usually agreed upon by consensus without the need to vote.

- **Call for order** – requests that the agenda or jury rules be followed
- **Question of privilege** – requests a specific accommodation, such as lowering the room temperature or increasing the volume
- **Recess** – asks for an interruption or short intermission in the meeting
- **Adjourn** – requests to end the meeting immediately
- **Set adjournment time** – requests a specific adjournment time if one is not already set

Incidental Motions

Incidental motions do not have a ranking. Like privileged motions, they are usually handled by consensus unless there is an objection. We have only listed a few that are most likely to be considered by the jury.

- **Point of order** – objects to an action that a juror believes is not in order
- **Point of information** – asks a question about or request the restatement of a motion
- **Suspension of the rules** – requests suspension of an established rule or procedure – but the jury may never waive a required supermajority
- **Division of a question** – objects to any main motion that has multiple parts and should be considered as two or more separate actions
- **Reconsideration** – requests that a previously approved or disapproved action to be discussed again and brought to a new vote (typically based on new information); only a juror who was in the majority on the previous vote may request reconsideration



Voting

Voting on a motion can take various forms, depending on the circumstances. There are five types of votes that are used by grand juries.

- **Voice vote** – This is the most common form of voting and is sometimes called the “ayes and noes” because the vote is determined by first asking for all in favor to respond by saying “aye,” followed by a request for all those opposed to respond by saying “no.” However, this type of voting is not recommended when the foreperson needs to ensure that the motion meets the required number of votes, especially if a supermajority is required.
- **Show of hands** – This is also a common method of voting and is more precise than a voice vote. It requires jurors to raise their hands to indicate approval or disapproval of the motion. Usually, the foreperson, or one of the other officers, counts the hands to record the vote.
- **Roll call** – Calling the names of the jurors and requiring them to say “yes,” “no,” or “abstain” when their names are called is a more formal form of a voice vote.
- **General consent** – This method of voting is used for issues that are routine or noncontroversial, such as approval of the minutes or a decision to adjourn. The foreperson says “If there is no objection, the minutes will stand approved as submitted.” Any juror who objects must speak up and voice their concerns.
- **Written ballots** – Having jurors complete a written (secret) ballot is rarely used, but it may be useful for very sensitive or controversial issues.

There are a couple of other things to remember about voting.

- **Supermajority** – A supermajority is required for all main motions related to the public actions of the grand jury and for any subsidiary motion that would change the rules of procedure established by the jury, such as changing time limits allowed for discussion or closing debate to call for a vote. Most other routine matters, covered by privilege or incidental motions, can be decided by a simple majority.
- **Recusals** – Any juror who recuses due to an actual or perceived conflict of interest must not be present in the room when the jury discusses or votes on that matter.

Regardless of how the grand jury votes, even if a roll call is taken, no record of the actual votes cast by individual jurors is recorded in the minutes. To preserve the confidentiality of individual juror's votes, all the secretary records in the minutes is whether the motion passed or failed. However, the secretary should informally keep track of the votes in order to verify who can move to reconsider a motion.

A Note About Committee Meetings

As a general rule, investigative and administrative committee meetings are much less formal than the plenary meetings of the full grand jury. Nevertheless, committee meetings must be collegial, organized, and productive. The committee chair must ensure that the group adopts basic ground rules that conform to the rules of order principles (page 2). Every juror on the committee must have an opportunity to be heard. An investigative committee should formally vote on the public-action items that they will recommend to the full grand jury for adoption.



Rules in Action – The Social Fund

Chris – As chair of the Social Committee, I would like to make a motion that all jurors contribute \$20 per month to our social fund.

Hector – I second the motion.

Fred (Foreperson) – There is a motion that each juror contribute \$20 per month to the social fund and the motion has been seconded. Is there any discussion?

Nancy (Secretary) – What is the purpose of the social fund?

Chris – It pays for hot and cold beverages and snacks in our break room. It's also intended to pay for our holiday and end-of-term parties.

Louise – Twenty dollars a month is a quite a bit of money. It totals \$380 per month if all 19 jurors contribute. That's a lot of snacks!

Chris – Yes, but remember part of the money will be set aside so that we can have our parties at a restaurant and cover the entire cost for the jurors and their spouses or significant others.

Don – I don't think we should pay for spouses, I'm single so that's unfair as far as I am concerned.

Yoki – What kind of snacks are you going to buy? Will there be something healthy, or just junk food?

Chris – We have not decided what to buy yet, but I assume we will have a variety of snacks and beverages, including some healthy stuff.

Marge – I am on a special diet and I can't eat any snacks, so I shouldn't have to pay the full amount.

Don – I propose an amendment to the motion that participation in the social fund be voluntary.

Fred – There has been an amendment proposed to the motion to make participation in the fund voluntary. Is there a second?

Monique – I'll second the motion.

Fred – The amendment has been seconded. Any discussion?

Nancy – I think that we need a more definitive proposal about this social fund. I make a motion that the Social Committee survey the needs and interests of the jurors regarding snacks and parties and report back to the full jury at our next meeting.

Yoki – I agree; I mean I second the motion.

Fred – Ok, we have a motion to refer the social fund proposal to the Social Committee for further study, including a survey of the jurors. This motion takes priority over the other two. Is there any further discussion?

Chris – I think it is probably a good idea for us to do the survey and come back with a more concrete plan at the next meeting.

Fred – Since there is no further discussion, let's vote on the last motion. All in favor of referring the social fund back to the Social Committee for further study, signify by raising their hands.

Nancy – I count 15 "yes" votes, Fred. The motion to refer this back to the Social Committee for further study has passed.

Fred – Ok, the original motion and the amendment are moot and we will await a more detailed proposal from the Social Committee.

Note: *If the "Refer to Committee" motion had failed, then the "Motion to Amend" would be voted on next, followed by the Main motion.*