

# Preface

Throughout the history of the Oklahoma House of Representatives, the Presiding Officers simply relied upon “institutional memory” when making rulings on questions of parliamentary procedure arising from a point of order or a parliamentary inquiry. Specifically, it was the unwritten customs and precedents of the House that the Presiding Officer looked to for guidance. As time passed, the number of “rulings” to be recalled increased significantly, making it difficult for the Presiding Officer to successfully remember and accurately apply the “precedents” of the Oklahoma House of Representatives.

As a result, Representative Fred Morgan (R) of Oklahoma City offered a motion in the course of the Forty-Eighth Oklahoma Legislature which, as adopted, required the Chief Clerk to record all rulings of the Chair based on “House precedent.” For the first time, the Oklahoma House of Representatives began to formally note the parliamentary rulings made on such a basis. During the Forty-Ninth Oklahoma Legislature, the Chief Clerk’s office compiled a collection of “points of order” and “rulings by the Chair.” The procedural rules adopted by the House at the beginning of the Fiftieth Oklahoma Legislature explicitly called for a “book of precedents” providing that “the Speaker may publish...substantive rulings in a volume of precedents.”

To understand why precedent is important to the Oklahoma House of Representatives, one must look to the historical origins of the British Parliament and the common law system developed in Great Britain and later imported by British colonists to the American colonies prior to the American Revolution. After only a cursory examination, two historic realities become apparent. First, the common law system is a system based upon precedent. Second, parliamentary procedure as employed by the U.S. Congress and the state legislatures is also based largely upon precedent. In fact, parliamentary procedure itself is the product of a very special branch of the common law developed in the English Parliament centuries before the American Revolution.

So, what exactly is “common law” and why does precedent matter? Most historians agree that the idea of a “common law” has its origins in Anglo-Saxon history. In this context, the pre-Conquest definition of “common law” could be stated as the unwritten, local customs observed by different communities throughout England rather than law that was “common” to the whole realm of England.

Not long after the Norman Conquest in 1066 A.D., the king’s caseload increased such that he had to appoint itinerant judges to travel about the countryside to hold court. Due to the fact that there was not a well-developed body of statutory law covering routine matters of law and procedure, judges throughout England had to resolve legal questions in an ad hoc fashion and without meaningful statutory guidance.

In making such decisions, early jurists tended to follow precedents established in similar previous cases, giving rise to the principle of “stare decisis” meaning “stand by decisions and do not move that which is quiet.” Over time, judges compiled their decisions into a body of written judgments or “common law” which was more national in scope. Like the royal administrators preceding them, these early judges followed precedent for reasons of efficiency and to avoid deciding each

case de novo (or anew) each time a similar dispute arose. Besides facilitating efficient disposition of individual cases, decisions based upon precedent provided order and stability within the English legal system which, in turn, promoted greater stability within English society.

As the common law system developed throughout England, elemental aspects of modern representative democracy began to slowly move together. In the year 1215 A.D., King John accepted the Magna Carta, or Great Charter, which among other things, required the king to “obtain general consent of the realm” before he assessed an “aid” meaning that the king could not tax the nobility without their consent.

After 1215 A.D., English kings began to summon the nobility for “parley.” At these “parleys” the king would attempt to convince the nobility of his need for financial support, and in turn the assembled nobles had a forum in which to air their individual and collective grievances against the crown. In theory, each participant could “parle ment” or “speak his mind.” Besides considering matters of taxation, these assemblies also served as a judicial body assisting the king in questions of particular gravity or difficulty.

Over the centuries, Parliament as we have come to know it, evolved from these gatherings of nobles called together by the king. The House of Lords developed first. Later, in the fourteenth century the House of Commons, the direct ancestor of the U.S. House of Representatives and ultimately the Oklahoma House of Representatives, began to appear as well. It was during this time frame and in this atmosphere that parliamentary procedure, a unique yet still precedent-based branch of the common law, began to appear.

Like in any judicial or deliberative body, Parliament needed an orderly process by which to conduct business. Parliament’s origins as a court of law strongly suggest that early “parliamentary procedure” was merely modified judicial procedure and, as such, naturally depended upon precedent. As Parliament evolved into a predominantly legislative body, continued reliance upon precedent supplied the same order, efficiency and predictability enjoyed in the contemporary common law courts of England.

As centuries passed, the customs followed in Parliament, although not necessarily written down in the beginning, began to be thought of as a set of firm rules or “parliamentary law.” As circumstances and needs changed, Parliament set new precedents which, as followed over time, established new customs and procedures. These procedures were brought to the New World, thus providing the rich procedural tradition known within the British colonies in America and passed down to each American legislative body in existence today, including the Oklahoma House of Representatives. It is this dynamic process of establishing new precedents and customs that propels the ongoing development of legislative procedure.

In the Oklahoma House, a precedent may arise in at least one of three ways: (1) the rulings or decisions of the Speaker arising from a point of order; (2) the decisions or conclusions made by the House itself on a question; and (3) precedents *sub silentio*. *Sub silentio* is defined in *Black’s Law Dictionary, 6<sup>th</sup> Edition* as “under silence” or “without notice being taken.” Precedents of this type could arise in the case of some practice or procedure being followed by the House as a matter of course and without objection. From the point of view of the members and the public, the most

visible precedents are those which result from an interpretation of the House rules by the presiding officer arising from a point of order.

The format for the heading of each precedent is as follows: House precedents begin with a heading that indicates which House Rule the precedent is interpreting; the heading will include a number which shows how many precedents have been issued by the Speaker pertaining to that specific House Rule; the heading will also indicate if that precedent is interpreting another precedent issued within the same Legislature; and finally, the heading will include the year that the precedent occurred along with a short description of the subject matter of the precedent.

The heading will consist of the following: the first paragraph will contain either the full House rule or a sufficient portion of the House rule to allow the reader to easily ascertain what language in the rule is being interpreted; following the “rule” paragraph, the next paragraph will contain the history of the ruling; following the “history” paragraph, the next paragraph will provide the Speaker’s ruling; and finally, the reasoning behind the ruling will be provided with sufficient detail to guide a future presiding officer faced with the same or similar circumstances. If appropriate, a House precedent will include a citation to the House Journal for the day the precedent was established.

By having its own written “volume of precedents,” the Oklahoma House of Representatives continues to define and record its own traditions, precedents and customs resulting in a more open and predictable legislative process for the people of Oklahoma.