

JOINT BOARDS OF FISHERIES AND GAME
#2011-33-JB

FINDINGS FOR THE MAY 13, 2011 ACTIONS OF THE
JOINT BOARDS OF FISHERIES AND GAME ON REQUESTS FOR
REMOVAL OF ADVISORY COMMITTEE MEMBERS FOR CAUSE

I. Introduction.

On May 13, 2011, the Joint Boards of Fisheries and Game (Joint Board) held a meeting to discuss requests for removal of three advisory committee (AC) members, two from the Anchorage AC and one from the Juneau AC. The two Anchorage AC members were alleged to have engaged in misconduct during and outside of AC meetings. The Juneau AC member was alleged to have been convicted of a crime. The Joint Board met to consider whether the requests for removal presented enough evidence to warrant the initiation and scheduling of adjudicatory procedures for removal. The substance of the allegations against the AC members was discussed in executive session as authorized by AS 44.62.310(c)(2) as “subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion.” None of the accused AC members requested that a public discussion take place during the Joint Board’s meeting on the subject. The two Anchorage AC members specifically requested the Joint Board discuss the requests for removal in executive session. The Juneau Douglas AC member was made aware of the request for executive session, expressed no opposition, and did not request public discussion. After deliberations on the issues, the Joint Board voted down motions to initiate adjudicatory procedures for the removal of the AC members.

The purpose of these findings is to explain the Joint Board’s decisions and to give guidance to ACs in the future application of meeting and disciplinary procedures under Robert’s Rules of Order.

II. Legal Framework for Removal of Advisory Committee Members.

Removal of advisory committee (AC) members is governed by 5 AAC 96.060. Subsection (n) of that regulation states:

Removal for cause. The joint board will, in its discretion, remove any member of a committee for cause. As used in this subsection, “cause” includes¹

- (1) unjustifiable absence from three consecutive meetings;
- (2) conviction of a crime or administrative disciplinary action for behavior inconsistent with the responsibility of committee or council membership within the preceding five years;

¹ AS 01.10.040 (b) provides: “When the words “includes” or “including” are used in a law, they shall be construed as though followed by the phrase “but not limited to.”

- (3) disregard for or violation of the provisions of 5 AAC 96 or 5 AAC 97 governing the committee or council system; or
- (4) failure, at any time, to meet the qualifications for committee membership.

As to the Anchorage AC members, it was alleged that the two members collectively engaged in the following: loud, abusive and aggressive personal attacks during debate; interrupting other members and failing to obey rulings of the chair; deliberate delaying and disruptive tactics to avoid votes and subvert meetings; purporting to represent the committee to the public and media with no authority to do so; and intimidating other members. The Joint Board does not condone such behavior during AC meetings by anyone present.

As to the Juneau AC member, it was alleged that the member had been convicted of a crime for behavior inconsistent with the responsibility of committee membership.

The normal pattern for removal under this subsection is for a committee or an individual to file a request for removal of an AC member with the joint board. The joint board would then review the information provided and decide whether to initiate an adjudicatory procedure for the member's removal. An adjudication process is required because both boards' administrative adjudications are subject to the formal procedures of the Administrative Procedures Act. AS 44.62.330(24)-(25).

Another section in 5 AAC 96.060 also provides a potential vehicle for removal when a committee member disregards or violates the rules of operations the committees are required to follow. Subsection (r) states: "Meetings of a committee must be conducted according to the latest edition of Robert's Rules of Order." Robert's Rules' Chapter XX, Section 60 deals with disciplinary procedures. Section 60 notes that punishments that an organization can impose for conduct injurious to the organization or its purposes generally fall under the headings of reprimand, suspension, or the most extreme penalty: expulsion.

The Joint Board believes that, while the remedies under Robert's Rules provide proper authority for disciplinary measures to regulate the conduct of AC members during meetings, the existence of 5 AAC 96.060(n)'s provision on removal for cause reflect a regulatory intent that permanent removal of AC membership should be carried out under that subsection by the joint board rather than under Robert's Rules by the advisory committee. That does not mean that an AC could not suspend a person from participation in a meeting for a certain amount of time.

Robert's Rules contemplate an approach of progressive discipline, with initial or less serious misconduct treated more informally with lighter discipline and more serious actions if misconduct persists. These disciplinary measures by the organization range from

- pointing out the fault and advice to avoid it,

- after warning, a call to order with potential loss of speaking privileges,
- after repeated warnings, “name” the offender, direct the secretary to take down objectionable or disorderly words,
- imposition of a penalty by the organization, such as, in order of seriousness,
 - require an apology,
 - censure the member,
 - require that the member leave the hall during the remainder of the meeting or until an apology is received,
 - suspension of rights of membership for a time, or
 - expulsion from the organization (requires a 2/3 vote)².

The offender should be allowed to present a defense before imposition of a penalty. Lighter penalties with opportunities to change misbehavior should be applied before more serious penalties are levied. At any point in the process, if an offender reasonably demonstrates a willingness to apologize and a commitment to reform his conduct, the Joint Board would expect an AC to accept such a demonstration and commitment to the extent the AC member follows through in good faith.

The Joint Board expects ACs to resolve all but the most serious cases of disagreement and misconduct on their own. The ACs should provide to the Joint Board clear evidence of the application of appropriate and progressive discipline with opportunities to reform misconduct when it receives a request for permanent removal of an AC member for cause for “disregard for or violation of the provisions of 5 AAC 96 or 5 AAC 97 governing the committee ... system” under 5 AAC 96.060(n)(3).

The Joint Board is aware that the potential exists for litigation against advisory committee and joint board members individually and personally in cases such as these, where slander, libel, and other character related allegations may be pursued by the offender against the accuser. The potential for such exposure is cause for serious concern and prompted the Joint Board to carefully weigh the risks in the course of its May 13 deliberations. Because personal reputations are at stake in disciplinary proceedings, the Joint Board urges advisory committees to proceed with caution in the course of conducting meetings, exercising progressive discipline, and bringing requests for permanent removal to the Joint Board.

In the case of request for removal for conviction of a crime under 5 AAC 96.060(n)(2), the AC should provide to the joint board documented proof of a conviction for a crime, within the preceding five years, for behavior clearly inconsistent with the responsibilities of committee membership. Normally, that would include crimes that reflect a callous disregard for the fish and game resources of the state or criminal behavior that reflected a lack of ability or desire to keep personal conduct within appropriate boundaries at a public meeting.

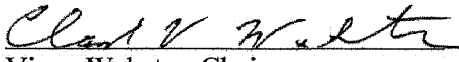
² Expulsion (permanent removal) is a final step in the progressive discipline process outlined in Roberts Rules of Order. However, as noted earlier and due to the state administrative regulation on point, expulsion is considered a remedy most appropriately exercised by the joint board rather than the advisory committees.

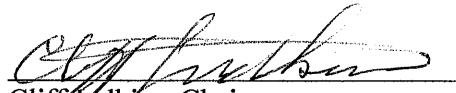
III. Decisions in Current Cases.

The Joint Board found in the present cases as follows:

1. Anchorage AC Members: While the Joint Board strongly discourages inappropriate behavior at AC meetings, it was not convinced that the actions alleged warranted permanent removal³. The Joint Board also found that progressive discipline as provided for in Roberts Rules of Order should be exercised by the ACs when misconduct occurs. Only in the most egregious cases and only after all steps in the progressive discipline process have been exhausted should a request for permanent removal be brought before the Joint Board.
2. Juneau AC Member: The conviction referenced in the request for removal did not meet the regulatory standards in 5 AAC 96.060(n)(2).

Findings adopted this 26th day of August, 2011:


Vince Webster, Chair
Alaska Board of Fisheries
Vote: 6 - 1


Cliff Judkins, Chair
Alaska Board of Game
Vote: 4-0⁴

³ The dissenting members believed that an adjudicatory hearing was necessary to obtain the evidence necessary to make an informed final determination on permanent removal.

⁴Three Board of Game members did not participate in the May 13 meeting.