

RULE III.

DUTIES OF THE CLERK.

1. The Clerk shall, at the commencement of the first session of each Congress, call the Members to order, proceed to call the roll of Members by States in alphabetical order, and, pending the election of a Speaker or Speaker pro tempore, preserve order and decorum, and decide all questions of order subject to appeal by any Member.

§ 637. Clerk's duties at organization.

This portion of the rule was framed in 1880, on a basis furnished by a rule of 1860 (I, 64), and amended in 1911.

As rules are not usually adopted until after the election of Speaker, this rule is not in force at the time of organization of a new House. The procedure at organization does, however, follow a practice conforming to the terms of the rule (I, 81), although the House may depart from it. Since the 97th Congress, for example, the House has permitted by unanimous consent the alphabetical roll call of Members by States to be conducted by electronic device to establish a quorum (Jan. 5, 1981, pp. 93-96). For a discussion of procedure in the House before the adoption of rules, including the procedure by which the Clerk conducts the election of the Speaker, see §§ 27 and 60, *supra*.

While the Speaker ceases to be an officer of the House with the expiration of a Congress, the Clerk, by old usage, continues in a new Congress (I, 187, 188, 235, 244).

The roll of Members is made up by the Clerk from the credentials, in accordance with a provision of law (I, 14-62; VI, 2; 2 U.S.C. 26). A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that a State Supreme Court had issued a writ restraining the Secretary of State from issuing such certificate (Jan. 3, 1949, p. 8). The call of the roll may not be interrupted, especially by one not on that roll (I, 84), and a person not on the roll may not be recognized (I, 86). A motion to proceed to the election of Speaker is of higher privilege than a motion to correct the roll (I, 19-24). The House has declined to permit enrollment by the Clerk to be final as to prima facie right (I, 376, 589, 592).

The Clerk, in presiding before the election of Speaker, recognizes Members (I, 74).

The Members-elect have, before the election of Speaker or adoption of rules, authorized the Clerk and Sergeant-at-Arms of the last House to pre-

serve order (I, 101); but usually such action has not been taken, although an occasion might arise to make it necessary (I, 76, 77).

In early years the authority of the Clerk to decide questions of order pending the election of a Speaker was questioned (I, 65), and the Clerks often declined to make decisions (I, 68-72; V, 5325), although in 1855 occur exceptions to this theory (I, 91). But in 1860 the provisions of the present rule were adopted (I, 64), with a further rule that the rules of one House should apply in the organization of its successor (V, 6743-6747); and under this arrangement the Clerks have made rulings (I, 76, 77; VI, 623). In 1890 the theory that the rules of one House may be made binding on its successor was overthrown (V, 6747). In a case of vacancy arising after the adoption of rules, this rule would be operative and conclude questions as to the Clerk's authority. The Clerk having died, and in the absence of the Sergeant-at-Arms, the Doorkeeper of the 79th Congress presided at organization of the 80th Congress (Jan. 3, 1947, p. 33).

2. He shall make and cause to be printed and delivered to each Member, or mailed to his address, at the commencement of every regular session of Congress, a list of the reports which it is the duty of any officer or Department to make to Congress, referring to the act or resolution and page of the volume of the laws or Journal in which it may be contained, and placing under the name of each officer the list of reports required of him to be made.

§ 640. Clerk furnishes a list of reports.

This rule was adopted in 1822 (I, 252).

3. He shall note all questions of order, with the decisions thereon, the record of which shall be printed as an appendix to the Journal of each session; and complete, as soon after the close of the session as possible, the printing and distribution to Members, Delegates, and the Resident Commissioner from Puerto Rico of the Journal of the House, together with an accurate and complete

§ 641. Clerk's duty as to Journal and documents.

index; retain in the library at his office, for the use of the Members, Delegates, the Resident Commissioner from Puerto Rico and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; send, at the end of each session, a printed copy of the Journal thereof to the executive and to each branch of the legislature of every State as may be requested by such State officials; deliver or mail to any Member, Delegate, or the Resident Commissioner from Puerto Rico an extra copy, in binding of good quality, of each document requested by that Member, Delegate, or the Resident Commissioner which has been printed, by order of either House of the Congress, in any Congress in which he served; attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House; and certify to the passage of all bills and joint resolutions.

§ 642. Attests and seals process and certifies passage of bills.

Former provisions of this clause directing the Clerk to make all contracts, keep contingent and stationery accounts, and pay officers and employees were stricken by section 3 of the House Administrative Reform Resolution of 1992 (H. Res. 423, 102d Cong., Apr. 9, 1992, p. —), to relieve the Clerk of functions to be transferred to the Director of Non-legislative and Financial Services pursuant to section 7 of that resolution (see § 651e, *infra*). A clerical correction was effected at the beginning of the 104th Congress (sec. 223(f), H. Res. 6, Jan. 4, 1995, p. —). Later in the 104th Congress the requirement to send a printed copy of the Journal to each branch of every State legislature was changed to an authorization to send such copies on request (H. Res. 254, Nov. 30, 1995, p. —).

When the House issues an order or warrant, the Speaker must issue the summons under his hand and seal, and it must be attested by the Clerk; but when the power is granted to a committee to send for persons and papers under clause 2(m) of rule XI, a summons signed by the chairman of the committee is sufficient (III, 1668).

The Clerk is required to make certain reports on receipts and expenditures (2 U.S.C. 102, 103, 113), which are available to the public. But members of the public have no statutory or constitutional right to examine the actual financial records which are used in preparing such reports (*Trimble v. Johnston*, 173 F. Supp. 651, D.C. Cir., 1959).

4. He shall, in case of temporary absence or disability, designate an official in his office to sign all papers that may require the official signature of the Clerk of the House, and to do all other acts, except such as are provided for by statute, that may be required under the rules and practices of the House to be done by the Clerk. Such official acts, when so done by the designated official, shall be under the name of the Clerk of the House. The said designation shall be in writing, and shall be laid before the House and entered on the Journal.

§ 647a. Official to act as Clerk upon designation.

In 1880 several rules, adopted at different periods from 1794 to 1846, were consolidated into this rule; which was amended in 1892 (I, 251) and January 3, 1953, p. 16. Section 3 was amended January 22, 1971 (H. Res. 5, pp. 140–44) to make it clear that the Delegate from the District of Columbia and the Resident Commissioner from Puerto Rico, as well as Members, are entitled to the services rendered the House by the Clerk. It was again revised in 1972 (H. Res. 1153, Oct. 13, 1972, pp. 36013–15), effective at the beginning of the 93d Congress, to extend the services of the Clerk to all Delegates, including those provided for the Territories of Guam and the Virgin Islands by a law enacted in the 92d Congress. Section 4 was adopted January 18, 1912 (VI, 25) and was amended January 3, 1953, p. 16.

Various other administrative duties, similar to those specified in this rule, are imposed on the Clerk by law (I, 253; Legislative Reorganization Act of 1946, 60 Stat. 812); and the law also makes it his duty to furnish stationery, blank books, etc., to the committees and officers of the House (V, 7322); to exercise discretionary authority as to reprinting of bills and documents (V, 7319); to receive the testimony taken in election contests (I, 703, 705; *see also* Federal Contested Election Act, P.L. 91–138, 83 Stat. 284), and to serve as an ex officio member of the Federal Election Commission established pursuant to Public Law 94–283; 2 U.S.C. 437c. Form of

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designation of a Clerk pro tempore (VI, 26). Instance of Clerk serving temporarily also as Sergeant-at-Arms (July 8, 1953, p. 8242).

§ 647b. Authority to receive messages.

5. The Clerk is authorized to receive messages from the President and from the Senate at any time that the House is not in session.

Clause 5, providing standing authority for the Clerk to receive messages, was added in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98–113). In the case of *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974) (see § 113, *supra*, accompanying Const., art. I, sec. 7, cl. 2) a United States Court of Appeals held that a bill could not be pocket-vetoed by the President during an “intrasession” adjournment of Congress to a day certain for more than three days, where the House of origin has made appropriate arrangements for the receipt of presidential messages during the adjournment. Under this clause the Clerk may receive messages during recesses as well as during adjournments (Dec. 22, 1987, p. 37966).

6. He shall supervise the staff and manage any office of a Member who is deceased, has resigned, or been expelled until a successor is elected and shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the Member representing such district or other reason. Whenever the Clerk is acting as a supervisory authority over such staff, he shall have authority to terminate employees; and he may appoint, with the approval of the Committee on House Oversight, such staff as is required to operate the office until a successor is elected. He shall maintain on the House payroll and supervise in the same manner staff appointed pursuant to section 800 of Public Law 91–665 (2 U.S.C. 31b–5) for sixty days following the death of a former Speaker.

§ 647c. Administration of vacant Member's office.

This clause was added in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). It was amended in the 104th Congress to reflect the new name of the Committee on House Oversight (sec. 202(b), H. Res. 6, Jan. 4, 1995, p. —).

7. In addition to any other reports required by the Speaker or the Committee on House Oversight, the Clerk shall report to the Committee on House Oversight not later than forty-five days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Clerk. Each report shall include financial statements, a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

§ 647d. Semi-annual reports.

8. The Clerk shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

§ 647e. Cooperation with others.

Clauses 7 and 8 were added in the 104th Congress (sec. 201(b), H. Res. 6, Jan. 4, 1995, p. —).

RULE IV.

DUTIES OF THE SERGEANT-AT-ARMS.

1. It shall be the duty of the Sergeant-at-Arms to attend the House during its sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of a Speaker or Speaker pro tempore, under the direction of the Clerk, execute the commands of the

§ 648. Sergeant-at-Arms enforces authority of House.