



Legislative Update

John Eggum

Foran Glennon Palandech Ponzi & Rudloff P.C., Chicago

House Rules—No, You Don't Have a Right to Be Heard

Big ideas—whether or not they have any chance of becoming law in the short term—have recently been the rule of the day in the Illinois General Assembly, as election year politics have overtaken more typical legislative activity. Many core issues of interest to our membership have taken a back seat to the Democratic and Republican primary platforms, and the legislative agenda items that are prioritized by the respective party leadership. Compromise is in short supply as a campaign-oriented approach to daily legislative work is the current norm.

Against this backdrop, the IDC held its annual legislative day on April 17, 2018, in Springfield. A sizable group of IDC board members and legislative committee members attended and met with legislators at the Statehouse during the session day. That evening, the IDC held its annual Legislative Reception. IDC members had the opportunity to speak with a number of legislators regarding issues affecting the defense bar, the judiciary, and the state of Illinois, generally. We appreciate that so many General Assembly members made time in their schedules to attend and engage with our members on a wide variety of important issues affecting our state.

With regard to the legislative calendar and bills filed this year, the IDC Legislative Committee has reviewed hundreds of bills this session and closely monitored at least 45 bills that could potentially impact the judiciary and/or civil practice here in Illinois (a current list is available to members on the IDC website under “Legislative Watch.”) Very few of these bills have moved on from committee. Many of the bills have stalled in the House “Rules” Committee, which has an innocuous name, but is extremely consequential.

Readers would be forgiven for thinking that elected members of the Illinois House of Representatives have the right to file bills and get an up-or-down vote on those bills. Given that millions of Illinois citizens are represented by only 118 individuals in the House, it might seem sensible that each representative would have a guaranteed right to be heard on matters important to their respective constituencies. A representative democracy might demand that representatives are able to put forth their ideas—even if those ideas are likely or definitely going to be rejected by the majority party, or by a majority of the elected representatives. That is not how Illinois works.

Each session, the House adopts a set of rules that govern how it will conduct business. House Rule 10 creates the Rules Committee as a permanent committee of the chamber. The House Rules provide that: “All House Bills and Senate Bills, after being initially read by the Clerk, are automatically referred to the Rules Committee.” *See* House Rule 18(a). The five committee members (3 appointed by the Speaker/majority political party and 2 appointed by the Minority Leader/opposing political party) have control over what happens to those bills next. By majority vote, each bill may be assigned to a substantive or “standing” committee, such as the Judiciary Committee, the Insurance Committee, the Fire & Emergency Services Committee, or such other committee as the Rules Committee decides is appropriate for the subject matter. *See* House Rule 18(b). The Rules Committee also has the authority to skip the committee assignment process and advance legislation to the House floor for consideration by the full House of Representatives. *See* House Rule 15(d).

While this assignment process may seem like a ministerial or administrative matter, it is much more significant. The Rules Committee has a third choice with regard to filed legislation – it can do nothing. There is no deadline for assigning a bill to a standing committee or otherwise moving it forward, out of the Rules Committee. The Rules Committee can just decline to act on a bill, and let it linger until the House session deadlines for consideration of new legislation have expired. Such bills are a dead letter. Better luck next session.

The House Rules do give members an option if the Rules Committee declines to advance their legislation. Under Rule 18(g), the Principal Sponsor of a bill may file a motion to advance the bill. Under Rule 18(g), the motion must be “signed by no less than three-fifths of the members of both the majority and minority caucuses.” So if 60% of the sponsoring representative’s party *and* 60% of the opposing party support the measure, it can advance to a vote. Of course, if 60% of the opposing party were happy to support a measure, the chances for the measure to advance by normal affirmative vote of the Rules Committee would likely be high. So prospects for the Rule 18(g) motion process to carry the day are very slim.

Notably, this subversion of representative democracy appears to have been utilized by both parties over the years to their respective advantages. At election time, incumbents of the majority caucus usually do not have to worry that their opponent will argue they voted against measures that could be politically problematic, because as the majority caucus, those measures died a silent death in the Rules Committee before they could be voted upon.

Is this really a pervasive problem? Well, at the time this column was written, there were over 5,800 bills listed on the General Assembly’s website as pending in the Rules Committee. While certain of those bills may be pending there for conventional reasons (they are truly about to be assigned to a standing committee), or strategic reasons (perhaps they are standing by for consideration as part of a potential legislative deal), most are there because the legislation is not favored by the majority party. Against these 5,800 legislative proposals, compare the substantive/standing committees: the Judiciary Committee has five bills identified as pending, the Insurance Committee had none, and the Fire & Emergency Service Committee has three.

Somewhat surprisingly, neither the press, nor legislators, nor citizen groups appear to have spent much time calling for elimination of the Rules Committee. Articles noting the chilling effect it has on political debate are few, and some simply acknowledge that it is where bills go to die. See Jim Nowlan, *Illinois political parties morally bankrupt*, 2018 WLNR 11188901, Sauk Valley Newspapers (April 14, 2018) (commenting on the Rules Committee and its procedures, stating it “makes an absolute mockery of democracy”); State Rep. Steve Andersson, *Return power of House to all members*, 2017 WLNR 2296420, State J.-Reg. (January 23, 2017) (“We are supposed to be a representative democracy, where all Illinois residents from every House district are represented equally. . . . Unfortunately, that is not the case in the Illinois House of Representatives. . . . Nothing may advance any further through the legislative process unless the Rules Committee approves it.”); Ryan Voyles, *Should Illinois townships go away?*, 2018 WLNR 15464996, Herald & Review (May 19, 2018) (discussing a bill and noting that the “bill is currently in the Rules Committee, a panel from which many pieces of legislation do not advance.”)

The Rules Committee creates an anti-democratic, chilling effect that limits citizen participation in government. The citizens of a district can campaign diligently for a candidate that supports their interests, and that candidate, if elected, can sponsor bills in support of those interests. And that is the end of process if the Rules Committee so decides. No debate on the House floor, or even in a standing committee. No ability to gauge whether that legislation or some similar legislation might be capable of obtaining sufficient votes to pass out of the chamber. Simply done.



Stopping the exchange of ideas is not good policy, particularly for Illinois, which could certainly use some invigorating ideas to help it move forward on a better path.

About the Author

John Eggum is a partner at *Foran Glennon Palandech Ponzi & Rudloff P.C.*, where he concentrates his practice on insurance coverage matters and commercial litigation. He represents insurers, TPAs, brokers, and captive managers in professional liability disputes, and also litigates cyber/technology liability claims. Mr. Eggum's law degree was obtained, with distinction, from The University of Iowa College of Law, and following law school, he served as the law clerk to the Hon. Bruce A. Markell in the United States Bankruptcy Court for the District of Nevada, in Las Vegas. Mr. Eggum serves as the Vice-Chair of the IDC Legislative Committee and the Vice-Chair for the IDC's Young Lawyers Division.

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org.