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CLEAVES' MANUAL OF THE LAW AND PRACTICE IN REGARD TO CONFERENCES AND CONFERENCE REPORTS [1]

[NOTE.—The figures in parentheses at the end of rules refer to sections of Hinds' Parliamentary Precedents (H.R. Doc. 576, 55–2), where decisions and proceedings may be found. The notes and references inserted are additional to those in the work, and not found therein.]

CONFERENCES

1. Parliamentary law relating to conferences as stated in Jefferson's Manual, Section XLVI: **200**

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers. (3 Hats., 31; 1 Grey, 425.) **200.1**

Conferences may either be simple or free. At a conference simply, [2] written reasons are prepared by the House asking it, and they are read and delivered without debate, to the managers of the other House at the conference, but are not then to be answered. (4 Grey, 144.) The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them not satisfactory and ask a conference on the subject of the last conference, where they read and deliver, in like manner, written answers to those reasons. (3 Grey, 183.) They are meant chiefly to record the justification of each House to the nation **200.2**

[1] Collated and prepared by Thomas P. Cleaves, Clerk to the Committee on Appropriations, United States Senate, and reported to the Senate by Mr. Allison, First Session, Fifty-seventh Congress, under the following resolution of June 6, 1900:

"*Resolved,* That the Committee on Appropriations cause to be prepared for the use of the Senate a manual of the law and practice in regard to conferences and conference reports."

This manual is included for historical purposes and has not been updated to reflect current law and practice in regard to conferences. For current practice, see the "Conferences and Conference Reports" section of Riddick and Frumin, RIDDICK'S SENATE PROCEDURE: PRECEDENTS AND PRACTICES.

[2] So in original.

at large and to posterity, and in proof that the miscarriage of a necessary measure is not imputable to them. (3 Grey, 225.) At free conferences the managers discuss, *vivi voce* and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two Houses together. And each party reports in writing to their respective Houses the substance of what is said on both sides, and it is entered in their journals. (9 Grey, 220; 3 Hats., 280.) This report can not be amended or altered, as that of a committee may be. (Journal Senate, May 24, 1796.)

200.3 A conference may be asked before the House asking if it has come to a resolution of disagreement, insisting or adhering. (3 Hats., 269, 341.) In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding; for, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions and upon terms of impossibility to persuade." (3 Hats., 226.) So the Commons say, "an adherence is never delivered at a free conference, which implies debate." (10 Grey, 137.) And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons, that nothing was more parliamentary than to proceed with free conferences after adhering (3 Hats., 369), and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing (3 Hats., 251, 253, 260, 286, 291, 316, 349); of insisting (ib., 280, 296, 299, 319, 322, 355); of adhering (269, 270, 283, 300), and even of a second or final adherence. (3 Hats., 270.) And in all cases of conference asked after a vote of disagreement, etc., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them they were left on the table in the conference chamber. (Ib., 271, 317, 323, 354; 10 Grey, 146.)

200.4 After a free conference the usage is to proceed with free conferences, and not to return again to a conference. (3 Hats., 270; 9 Grey, 229.)

200.5 After a conference denied a free conference may be asked (1 Grey, 45.)

When a conference is asked the subject of it must be expressed or the conference not agreed to. (Ord. H. Com., 89; 1 Grey, 425; 7 Grey, 31.) They are sometimes asked to inquire concerning an offense or default of a member of the other House. (6 Grey, 181; 1 Chand., 204.) Or the failure of the other House to present to the King a bill passed by both Houses. (8 Grey, 302.) Or on information received and relating to the safety of the nation. (10 Grey, 171.) Or when the methods of Parliament are thought by the one House to have been departed from by the other a conference is asked to come to a right understanding thereon. (10 Grey, 148.) So when an unparliamentary message has been sent, instead of answering it, they ask a conference. (3 Grey, 155.) Formerly an address or articles of impeachment, or a bill with amendments, or a vote of the House, or concurrence in a vote, or a message from the King, were sometimes communicated by way of conference. But this is not the modern practice. (1366.) **200.6**

[Senate Manual, 1902, p. 137; House Manual, 56th Cong., 2d sess., p. 207.]

CHARACTER OF CONFERENCES

2. Conferences may either be simple or free. **201**

[Jefferson's Manual, Sec. XLVI.]

NOTE.—This rule and the definition and description of the two kinds of conferences are found in the foregoing section. Vice President Hamlin, in ruling upon a question of order in the Senate in the Thirty-eighth Congress, stated the rule and the distinction between free and simple conferences as follows:

"Conferences are of two characters, free and simple. A free conference is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their vote, not, however, including any action upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is simple—is that which confines the committee of conference to the specific instructions of the body appointing it." (38th Cong., 1st sess., Congressional Globe, pt. I, p. 900.)

Speaker Reed, in his Manual of General Parliamentary Law, chapter XV, section 242, states that "A free conference is one where the conferees meet and present not only the reasons of each House, but such arguments and reasons and persuasions as seem suitable to each member of the committee. Instead of being confined to reasons adopted by either House, each member may present his own. A conference may therefore be a free conference though each House may have instructed its members and limited them to the terms of the agreement. This method of conference is the only one known to our parliamentary law; at least, it is the only one now in practice. When two legislative bodies in this country have a conference, it is a free conference * * *"

REQUEST FOR CONFERENCE

202 3. The request for a conference must always be made by the House in possession of the papers. (1366.)

[Jefferson's Manual, Sec. XLVI.]

203 4. The motion to ask for a conference comes properly after the motion to disagree, insist, or adhere. (1367.)

204 5. A conference may be asked before there has been a disagreement. (1366.)

[48th Cong., 1st sess., S. Jour., pp. 628, 642–643; Jefferson's Manual, Sec. XLVI.]

205 6. After one House has adhered the other may recede or ask a conference, which may be granted by the other House. (1358–1361.)

[23d Cong., 1st sess., S. Jour., p. 112; S. Jour., vol. 2, pp. 70, 71; S. Jour., vol. 5, pp. 657, 661; Jefferson's Manual, Sec. XLVI.]

206 7. The House may agree to a conference without reconsidering its vote to adhere. (1362.)

207 8. Instances have occurred where one House has adhered at once and has even refused a conference. (1363.)

NOTE.—In section XLV, Jefferson's Manual, it is stated that "Either House is free to pass over the term of insisting, and to adhere in the first instance, but it is not respectful to the other. In the ordinary parliamentary course there are two free conferences, at least, before an adherence."

208 9. Where one House has voted at once to adhere, the other may insist and ask a conference; but the motion to recede has precedence. (1364.)

209 10. One House may disagree to the amendment of the other, leaving it for the latter House to ask for the conference as soon as the vote of disagreement is passed. (1368.)

210 11. The amending House may insist at once upon its amendments, and ask for a conference. (1370–1371.)

[48th Cong., 1st sess., S. Jour., pp. 628, 642, 643; Congressional Record, pp. 3974–4098.]

211 12. The request of the other House for a conference may be referred to a ,committee.

[19th Cong., 1st sess., S. Jour., p. 302; 49th Cong. 1st sess., H. Jour., pp. 2292, 2293; Congressional Record, p. 7332.]

212 13. Where a conference committee is unable to agree, or where a report is disagreed to, another conference is usually asked for and agreed to. (1384–1388.)

213 14. Before the stage of disagreement has been reached, the request of the other House for a conference gives the bill no privilege over the other business of the House. (1374, 1375.)

15. The conference on a disagreement as to Senate amendments to a House bill having failed, the Senate reconsidered its action in amending and passing the bill, passed it with a new amendment, and asked a new conference. **214**

[55th Cong., 3d sess., Congressional Record, pp. 317, 439, 628, 631, 2303, 2360, 2362, 2770.]

16. The motion to insist and ask a conference has precedence of the motion to instruct conferees. (1376–1379.) **215**

CONFEREES

APPOINTMENT OF CONFEREES

17. Statement of principles governing the selection of conferees on the part of the House (1383), namely: **216**

NOTE.—These principles and provisions are also applicable to the Senate and in harmony with its practice.

The House members of conference committees, called the managers on the part of the House, are appointed by the Speaker. **216.1**

NOTE.—The Senate members of conference committees, called the managers on the part of the Senate, are appointed by the Presiding Officer, by unanimous consent, under the custom of the Senate. Rule XXIV provides that chairman and other members of committees of the Senate shall be appointed by resolution unless otherwise ordered.

They are usually three in number, but on important measures the number is sometimes increased. In the selection of the managers the two large political parties are usually represented, and, also, care is taken that there shall be a representation of the two opinions which almost always exist on subjects of importance. Of course the majority party and the prevailing opinion have the majority of the managers. * * * **216.2**

It is also almost the invariable practice to select managers from the members of the committee which considered the bill. * * * But sometimes in order to give representation to a strong or prevailing sentiment in the House the Speaker goes outside the ranks of the committee. * * * **216.3**

The managers of the two Houses while in conference vote separately, the majority determining the attitude to be taken toward the propositions of the other House. When the report is made the signatures of a majority of each board of managers are sufficient. The minority managers frequently refrain from signing the report, and it is not unprecedented for a minority manager to indorse his protest on the report. **216.4**

217 18. When conferees have disagreed or a conference report has been rejected, the usual practice is to reappoint the managers, although it seems to have been otherwise in former years. (1383.)

218 19. Conferees having been appointed, it is too late to reconsider the vote whereby the House has disagreed to a Senate amendment. (1205.)

DISCHARGE OF CONFEREES

219 20. While a conference asked by the House was in progress on the House's disagreement to Senate amendments, by a special order the House discharged its conferees, receded from its disagreement, and agreed to the amendments. (1373.)

NOTE.—Similar action was taken by the Senate under like circumstances in the Forty-second Congress (42d Cong., 2d sess., S. Jour., p. 1028).

INSTRUCTIONS TO CONFEREES

220 21. It is in order to instruct conferees, and the resolution of instruction should be offered after the House has voted to insist and ask a conference and before the conferees have been appointed. (1376–1379.)

[38th Cong., 2d sess., S. Jour., p. 268; 39th Cong., 1st sess., S. Jour., p. 782, 784; 40th Cong., 2d sess., S. Jour., p. 119.]

221 22. It is not the practice to instruct conferees before they have met and disagreed. (1380.)

222 23. It is not in order to give such instructions to conferees as would require changes in the text to which both Houses have agreed. (1380.)

223 24. The House having asked for a free conference, it is not in order to instruct the conferees. (1381.)

224 25. The motion to instruct conferees is amendable. (1390.) [40th Cong., 2d sess., S. Jour., p. 119.]

225 26. A conference report may be received although it may be in violation of instructions given to the conferees. (1382.)

CONFERENCE COMMITTEES AND REPORTS

AUTHORITY OF CONFERENCE COMMITTEES

226 27. A conference committee is practically two distinct committees, each of which acts by a majority. (1401.)

227 28. Conference reports must be signed by a majority of the managers on the part of each House. They are made in duplicate for the managers to present to their respective

Houses, the signatures of the managers of each House appearing first on the report that is to be presented to the House they represent.

NOTE.—See form of conference report appended.

29. Conferees may not include in their report matters not committed to them by either House. (1414–1417.) **228**

[50th Cong., 1st sess., S. Jour., pp. 1064, 1065; 54th Cong., 2d sess., S. Jour., pp. 90, 91, 96.]

In the House, in case such matter is included, the conference report may be ruled out on a point of order. (See Rule 50, below.) **228.1**

In the Senate, in case such matter is included, the custom is to submit the question of order to the Senate. **228.2**

NOTE.—In the Fifty-fifth Congress, first session, Vice-President Hobart, in overruling a point of order made on this ground against a conference report during its reading in the Senate, stated that the report having been adopted by one House and being now submitted for discussion and decision in the form of concurrence or disagreement, it is not in the province of the Chair during the progress of its presentation to decide that matter has been inserted which is new or not relevant, but that such questions should go before the Senate when it comes to vote on the adoption or rejection of the report. (55th Cong., 1st sess., S. Jour., pp. 171, 172; Congressional Record, pp. 2780–2787.) See also Congressional Record, p. 2827, 56th Cong., 2d sess., when the Presiding Officer (Mr. Lodge in the Chair) referred with approval to the foregoing decision of Vice-President Hobart, and stated that when a point of order is made on a conference report on the ground that new matter has been inserted, the Chair should submit the question to the Senate instead of deciding it himself, as has been the custom in the House. No formal ruling was made in this case, however, as the conference report, after debate, was, by unanimous consent, rejected. (56th Cong., 2d sess., Congressional Record, pp. 2826–2883.)

30. Conferees may not strike out in conference anything in a bill agreed to and passed by both Houses. (1321.) **229**

[Jefferson's Manual, Sec. XLV.]

31. Conferees may include in their report matters which are germane modifications of subjects in disagreement between the Houses and committed to the conference. (1418–1419.) **230**

32. A disagreement to an amendment in the nature of a substitute having been referred to conferees, it was held to be in order for them to report a new bill on the same subject. (1420.) **231**

33. A conference committee may report agreement as to some of the matters of difference, but inability to agree as to others. (1392.) **232**

[29th Cong., 1st sess., S. Jour., pp. 523–524.]

233 34. In drafting a conference report care should be taken in stating the action of the conferees on amendments to observe the parliamentary rule that neither House can recede from or insist on its own amendment with an amendment; and in case pages and lines of the bill or amendments are referred to in the report, the engrossed bill and amendments only should be used.

PRESENTATION AND PRIVILEGE OF CONFERENCE REPORTS

234 35. A conference report is made first to the House agreeing to the conference.

NOTE.—This rule seems to follow from the principle laid down by Jefferson (Manual, Sec. XLVI), that "in all cases of conference asked after a vote of disagreement, etc., the conferees of the House asking it are to leave the papers with the conferees of the other," thus putting the agreeing House in possession of the papers, and has been the usual practice in Congress.

235 36. Conference reports are in order in the Senate under Rule XXVIII, as follows:

The presentation of reports of committees of conference shall always be in order, except when the Journal is being read or a question of order or motion to adjourn is pending, or while the Senate is dividing; and when received, the question of proceeding to the consideration of the report, if raised, shall be immediately put, and shall be determined without debate.

NOTE.—It has been held in the Senate that the presentation of a conference report includes its reading, unless by unanimous consent the reading is dispensed with (54th Cong., 1st sess., S. Jour., p. 334; Congressional Record, p. 5511).

236 37. Conference reports are in order in the House under Rule XXVIII, as follows:

The presentation of reports of committees of conference shall always be in order except when the journal is being read, while the roll is being called, or the House is dividing on any proposition. And there shall accompany any such report a detailed statement sufficiently explicit to inform the House what effect such amendments or propositions shall have upon the measures to which they relate.

NOTE.—Paragraph 4 of rule XXVIII of the Standing Rules of the Senate requires a conference report to be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the Senate. (See Senate Manual Section **28.4.**)

237 38. A conference report may not be received by the House if no statement accompanies it. (1404–1405.)

39. Whether or not the detailed statement accompanying a conference report is sufficient to comply with the rule (XXVIII) is a question for the House, and not for the Speaker, to determine. (1402–1403.) **238**

40. A conference report may be presented after a motion to adjourn has been made or when a Member is occupying the floor for debate, but the report need not be disposed of before the motion to adjourn is put. (1393–1395.) **239**

41. A conference report is in order pending a demand for the previous question. [55th Cong., 3d sess., Congressional Record, p. 867.] **240**

NOTE.—In the Senate the previous question is not in use.

42. A conference report has been given precedence over a question of privilege. (1397.) **241**

43. A conference report may be presented during the time set apart for a special order for the consideration of another measure. (1400.) **242**

44. A conference report may be presented after a vote by tellers and pending the question on ordering the yeas and nays. (1399.) **243**

45. A conference report has precedence of the question on the reference of a bill, even though the yeas and nays have been ordered. (1398.) **244**

46. The consideration of a conference report may be interrupted by the arrival of the hour previously fixed for a recess. (1396.) **245**

47. The question on the adoption of a final conference report has precedence of a motion to recede and concur in amendments of the other House. **246**
[55th Cong., 3d sess., Congressional Record, p. 2927.]

REJECTION OF CONFERENCE REPORTS, EFFECTS OF, ETC.

48. A bill and amendments having been once sent to conference, do not, upon the rejection of the conference report, return to their former state so that the amendments may be sent to the Committee of the Whole. (1389.) **247**

49. The rejection of a conference report leaves the matter in the position it occupied before the conference was asked. (1390.) **248**

50. When a conference report is ruled out on a point of order in the House it is equivalent to a negative vote on the report, and the Senate is informed by message that the House has "disagreed" to the report. (1417.) **249**

AMENDMENT OF CONFERENCE REPORTS

250 51. It is not in order to amend a conference report, and it must be accepted or rejected as an entirety. (1366.)

[Jefferson's Manual, Sec. XLVI; 4th Cong., 1st sess., S. Jour., p. 270.]

NOTE.—Various instances are found where conference reports agreed to by both Houses were amended and corrected by concurrent resolution or order. (43d Cong., 2d sess., S. Jour., pp. 372, 373, H. Jour., p. 610; Congressional Record, p. 1990; 44th Cong., 1st sess., S. Jour., pp. 581, 708, H. Jour., pp. 1087, 1252; 48th Cong., 1st sess., S. Jour., p. 859.)

REFERENCE AND RECOMMITMENT OF CONFERENCE REPORTS

251 52. A conference report may not be referred to a standing committee. (1413.)

252 53. A conference report may not be referred to the Committee of the Whole, although in the earlier history of the House this was sometimes done. (1410, 1411.)

253 54. It is not in order in the House to recommit a conference report to the committee of conference. (1412.)

NOTE.—This rule is founded upon the decision of Speaker Carlisle (49th Cong., 2d sess., Congressional Record, p. 880), which has been affirmed by subsequent Speakers, but prior to that time many instances had occurred of recommitting conference reports to the committee of conference.

254 55. It is in order in the Senate to recommit a conference report to the committee of conference, but not with instructions, according to the later decisions.

[42d Cong., 3d sess., S. Jour., pp. 313, 554–557; 43d Cong., 1st sess., S. Jour., p. 865; 44th Cong., 1st sess., S. Jour., p. 211; 49th Cong., 2d sess., S. Jour., p. 151; 55th Cong., 3d sess., Congressional Record, pp. 2823, 2842–3.]

NOTE.—Inasmuch as concurrent action is necessary for the recommittal of a conference report, the foregoing rule of the House has necessitated a change in the practice, and no effort has been made by the Senate in late years to recommit a conference report. The purpose of a recommittal can be attained, however, by a rejection of the report, when another conference would be ordered, and in accordance with usage the same conferees would be appointed.

TABLING OF CONFERENCE REPORTS

255 56. The House has formally discarded the old practice of allowing conference reports to be laid on the table. (1407–1409.)

NOTE.—The effect of the motion to lay on the table in the House defeats the proposition. It is never taken up again. Hence a conference report can not be laid on the table; otherwise a conference report might be put beyond the reach of either House. (Reed's Parliamentary Rules, Chap. VIII, sec. 115.)

57. The Senate practice allows conference reports to be laid on the table. **256**

[43d Cong., 2d sess., S. Jour., p. 433; Congressional Record, pp. 2205–2206.]

NOTE.—The effect of the motion to lay on the table in the Senate, unlike that in the House, is simply to suspend the consideration of a question during the pleasure of the Senate, which can be again taken up on motion.

58. A motion to reconsider the vote on agreeing to a conference report may be laid on the table in the Senate without carrying the report. **257**

[44th Cong., 1st sess., S. Jour., p. 234; Congressional Record, pp. 1253, 1254; Senate Manual (1901), Rule XIII, clause 1, p. 13.]

WITHDRAWAL OF CONFERENCE REPORTS

59. A conference report may be withdrawn in the Senate on leave, and in the House by unanimous consent. **258**

NOTE.—In the 32d Congress, a conference report having been agreed to in the Senate, the vote was reconsidered, the bill returned from the House on request of the Senate, and the committee of conference had leave to withdraw its report. (32d Cong., 2d sess., S. Jour., p. 420.)

FORM OF CONFERENCE REPORT

——— Congress, ——— Session. H.R. [or S., as may be] No. ——— **259**

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate [or House, as may be] to the Bill [or Resolution, as may be] (H.R. [or S., as may be] ———), [title here] having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate [or House, as may be] recede from its amendments numbered * * *.

That the House [or Senate, as may be] recede from its disagreements to the amendments of the Senate [or House, as may be] numbered * * * and agree to the same.

Amendment numbered ———:

That the House [or Senate, as may be] recede from its disagreement to the amendment of the Senate [or House, as may be] numbered ———, and agree to the same with an amendment, as follows: * * *; and the Senate [or House, as may be] agree to the same.

Amendment numbered ———:

That the Senate [or House, as may be] recede from its disagreement to the amendment of the House [or Senate, as may be] to the amendment of the Senate [or House, as may be] numbered ———, and agree to the same.

Amendment numbered ———:

That the Senate [or House, as may be] recede from its disagreement to the amendment of the House [or Senate, as may be] to the amendment of the Senate [or House, as may be] numbered ———, and agree to the same, with an amendment, as follows: * * *; and the House [or Senate, as may be] agree to the same.

Amendments numbered ———:

On the amendments of the Senate [or House, as may be] numbered ———, the committee of conference have been unable to agree.

(Signatures here)	(Signatures here)
———— ————,	———— ————,
———— ————,	———— ————,
———— ————,	———— ————,
Managers on the part of the ———.	*Managers on the part of the* ———.

260 JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE [1]

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment/amendments of the House/Senate to the bill/joint resolution ( ) submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

* * * * * * *

(Signatures here)	(Signatures here)
———— ————,	———— ————,
———— ————,	———— ————,
———— ————,	———— ————,
Managers on the part of the ———.	*Managers on the part of the* ———.

[1] This statement form replaces that formerly carried in Cleaves' Manual. Rule XXVIII of the Standing Rules of the Senate and Rule XXVIII of the Rules of the House of Representatives provide that "an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate" shall accompany each conference report.