

**RULES OF THE SENATE SPECIAL INVESTIGATIVE COMMITTEE TO CONDUCT
AN INVESTIGATION OF THE WORKPLACE SAFETY OF PSYCHIATRIC
WORKERS AND ALLEGATIONS OF ADMINISTRATIVE IMPROPRIETIES AND
FAILURE TO CONFORM TO ESTABLISHED EMPLOYMENT POLICIES AND
PRACTICES AT THE HAWAII STATE HOSPITAL.**

Preface

The purpose of these rules is to enable the special investigative committee to perform properly the powers and duties invested in the committee, including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

Part I. Definitions

1.1 Definitions. (a) As used in these rules, and unless a different meaning is clearly intended by the context in which the word is used:

"Authorized membership" means the total number of members appointed to the committee by the presiding officer of the Senate.

"Chair" includes the two co-chairs designated in the Senate resolution establishing the Committee, or in the absence of one of the co-chairs, the remaining co-chair, or in the absence of both co-chairs, the member who is selected by the majority of the authorized membership who are present at the meeting.

"Committee" means the Senate Special Investigative Committee established by Senate Resolution No. 3, Regular Session of 2014, Establishing a Senate Special Investigative Committee to Conduct an Investigation of the Workplace Safety of Psychiatric Workers and Allegations of Administrative Improprieties and Failure to Conform to Established Employment Policies and Practices at the Hawaii State Hospital, adopted by the Senate of the State of Hawaii, Regular Session of 2014, as an investigating committee pursuant to chapter 21, Hawaii Revised Statutes.

"Executive session" means a session at which only members of the committee, staff personnel, the witness, and counsel for the witness are permitted to be present. An executive session may be convened by two-thirds vote of the authorized membership.

"Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by the committee for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.

"Interested person" means any person whose name is mentioned or who is otherwise identified during a hearing of the committee, and who, in the opinion of the committee, may be adversely affected thereby.

"Member" means any member of the Senate appointed to serve on the committee by the presiding officer of the Senate.

"Public hearing" means any hearing open to the public, or the proceedings of which are made available to the public.

"Quorum" means a majority of the authorized membership.

(b) Unless otherwise specifically stated, the terms used in these rules shall have the meanings ascribed to them under chapter 21, Hawaii Revised Statutes.

Part II. Rules of Procedure

2.1 Committee Action. No action shall be taken by the committee at any meeting unless notice of the meeting was duly given and a quorum is present. The committee may act by a majority vote of the members present, constituting a quorum, except as otherwise provided by these rules or by any statute requiring an affirmative vote by a larger number or proportion of the members of the committee.

2.2 Issuance of Subpoena. (a) The investigative committee may issue, by majority vote of all its members, subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of books, documents, or other evidence, in any matter pending before the committee.

(b) The form of subpoenas, the manner of service, and witness and service fees shall be as provided in section 21-8, Hawaii Revised Statutes.

(c) Every subpoena and subpoena duces tecum authorized to be issued by the committee shall be issued under the signature of the chair and shall command each person to whom it is directed to attend and give testimony at a time and place thereon specified, and if requested by the committee, to produce the books, papers, documents, or tangible things designated therein.

(d) The committee may delegate to the chair the authority to specify the time and place at which the person subpoenaed is to attend and give testimony and to designate the books, papers, documents, or tangible things required by the committee to be produced.

2.3 Hearings. The committee may hold hearings appropriate to the performance of its duties at such times and places as the committee determines. The committee shall not conduct a hearing unless the appropriate notice of the meeting is given and a quorum is present.

2.4 Notice Requirements. (a) All notices of meetings shall be in writing and shall include a brief statement of the subject matter of the hearing, and the date, time, and place of the meeting.

(b) Notice to members of hearings and of executive sessions shall be given to each member at least 72 hours before any hearing or executive session to be held while the Legislature is in session, and at least seven days before any hearing or executive session to be held while the Legislature is not in session; provided that the time periods of this rule may be waived by the chair for good cause, and such waivers shall not invalidate any action taken by the committee.

(c) Notice to witnesses shall be given by service of a subpoena requiring the attendance of the person at a hearing of the committee at least ten days prior to the date of the hearing. The chair may waive the ten days notice if the witness so agrees.

(d) Any person served with a subpoena requiring attendance at a hearing of the committee shall also be served with a copy of the resolution establishing the committee, a copy of these rules, a general statement informing the person of the subject matter of the committee's investigation or inquiry, a list of or copies of the principal documents about which that witness may be questioned, and a notice that the person may be accompanied at the hearing by counsel of the person's own choosing.

(e) Notice of public hearings shall be given by publicly posting the notice at least 72 hours before any public hearing to be held while the Legislature is in session, and at least seven days before any public hearing to be held while the Legislature is not in session, provided that the time periods of this rule may be waived by the chair for good cause, and such waivers shall not invalidate any action taken by the committee.

2.5 Conduct of Hearing. (a) All hearings of the committee shall be public unless the committee, by two-thirds vote of the members present, constituting a quorum, determines that a hearing should not be open to the public in a particular instance and should be held in executive session.

(b) The chair shall preside at all hearings of the committee and shall conduct the examination of witnesses alone or supervise examination by other members of the committee, the committee's counsel, or members of the committee's staff who are so authorized. Any official position or statement of the committee shall be made by the chair or have received approval from the chair prior to its issuance.

(c) No member shall ask more than two questions on the same subject or of a witness without leave of the chair. The posing of a first question of a member shall not exceed three minutes and not more than two minutes for any subsequent question on the same issue or of the same witness without leave of the chair; provided that any member may yield his or her option or time to question to another member.

2.6 Oath or Affirmation. (a) All testimony given or adduced at a hearing shall be under oath or affirmation unless the requirement is dispensed with in a particular instance by

a majority vote of the committee members present at the hearing. Any member may administer an oath or affirmation to a witness at a hearing of the committee.

(b) The form of the oath or affirmation shall be: "Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"

2.7 Records. (a) The committee shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record shall include rulings of the chair, questions of the committee and its own staff, the testimony or responses of witnesses, sworn written statements submitted to the committee, and such other matters as the committee or its chair may direct.

(b) For the purpose of recording its proceedings, the committee may contract video recording services and utilize the recordings as a record of its proceedings.

(c) All records of the committee shall be maintained by the Clerk of the Senate.

(d) The committee shall make available to all those entities or persons who were the subjects of or who were witnesses who testified at any hearing a draft report of the committee's findings and/or conclusions concerning any matter that is the subject of its hearings.

(e) Any person or entity to whom a draft report is made available shall be given a period of not less than fourteen days within which to make written responses to the draft findings and/or conclusions. The written responses, if any, shall be included as an appendix to the final report of the committee.

2.8 Contempt. (a) A person shall be in contempt if the person:

- (1) Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;
- (2) Fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper, or other document subpoenaed by or on behalf of the committee; or
- (3) Commits any other act or offense against the committee, which, if committed against the Legislature or either house thereof, would constitute contempt.

(b) The committee may, by majority vote of its authorized membership, report to the Senate any instance of alleged contempt. The President of the Senate shall certify by signature the report of such contempt to the attorney general who shall prosecute the offender in any court of the State. If the Legislature is not in session, a statement of the alleged contempt shall be certified by the chair. An instance of alleged contempt shall be considered as though committed in or against the Legislature or either house thereof.

(c) A person guilty of contempt shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Part III. Rules Governing Rights of Witnesses

3.1 Right to Counsel. Every witness at a hearing of the committee may be accompanied by counsel of the witness's own choosing, who may advise the witness as to his or her rights, subject to reasonable limitations which the committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

3.2 Compelling Testimony. The chair may order a witness to answer any relevant question or furnish any relevant book, paper, or other document, the production of which has been required by subpoena duces tecum. Unless the order is overruled by majority vote of the committee members present, disobedience shall constitute contempt.

3.3 Statements and Proposed Questions. (a) A witness at a hearing or the witness's counsel, with the consent of a majority of the committee members present at the hearing, may file with the committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter, and scope of the committee's investigation or inquiry.

(b) A witness at a hearing or the witness's counsel may submit to the committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the committee shall ask those questions that the committee determines to be appropriate to the subject matter of the hearing.

3.4 Transcript. A witness at a hearing, upon advance request and at the witness's expense, shall be furnished with a certified transcript or record of his or her own testimony; provided that no witness shall be entitled to the executive session testimony of any other witness.

3.5 Privileges. The rules of evidence shall not apply at proceedings of the committee, except that a witness may claim any privilege provided by the state or federal constitution.

3.6 Rights of Interested Persons. (a) Any interested person may, upon the person's request or upon the request of any member of the committee, appear personally before the committee and testify in the person's own behalf, or, with the committee's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record.

(b) With the consent of a majority of its authorized membership, the committee may permit any other person to appear and testify at a hearing or submit a sworn written statement

of facts or other documentary evidence for incorporation into the record; provided that no request to appear, appearance, or submission of evidence shall limit in any way the committee's power of subpoena.

(c) Any person who appears before the committee pursuant to this rule shall have all the rights, privileges, and responsibilities applicable to a witness under these rules.

Part IV. Rules Governing Disclosure

4.1 Disclosure of Proceedings in Executive Session. Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by majority vote of the authorized membership, which authorization shall also specify the form and manner in which the testimony or other evidence may be released.

4.2 Disclosure of Proceedings by Staff. No staff member of the committee shall disclose information regarding testimony given or adduced at any proceeding unless otherwise authorized by the committee.

4.3 Television, Films, and Radio. Hearings may be televised, filmed, or otherwise recorded and made public, unless otherwise determined by majority vote of the authorized membership.

4.4 Confidential Information. All information of a defamatory or highly prejudicial nature received by or for the committee other than in an open or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by majority vote of the authorized membership for legislative purposes, or unless its use is required for judicial purposes.

4.5 Disclosure of Committee Activities to the Public and the Media. All information of official actions, statements, or positions of the committee shall be made by the chair.

Part V. Rules of General Applicability

5.1 Powers of Presiding Officer of the Senate. The Senate President shall have administrative authority over the activities and operations of the committee to: (a) assign appropriate staff or contract with outside parties to direct appropriate services to assist the committee in accomplishing its mandated purpose; (b) adjust the membership of the committee as the Senate President deems necessary; and (c) in the absence of the chair, sign hearing notices or subpoenas and subpoenas duces tecum, as the case may be, as authorized to be issued by the committee.

5.2 Rules Consistent with Applicable Laws and Rules; Severability. These rules govern procedure in and before the committee, and are adopted pursuant to section 21-4, Hawaii Revised Statutes. If any provision of these rules, or the application thereof to any

person or circumstances is determined to be invalid, the invalidity does not affect other provisions or applications of these rules that can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

5.3 Limitations. Nothing in these rules shall be construed to limit or prohibit the acquisition of evidence or information by the committee through any lawful means.