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CHAPTER 3
LEGISLATIVE INVESTIGATIVE POWERS

SOURCE: This entire Chapter was Repealed/Reenacted by P.L. 25-147:2.

- § 3101. Definitions.
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- § 3114. Special Committees.

§ 3101. Definitions.

The following words shall have the meanings as forth in this Chapter:

- (a) '*Citation*' shall mean '*Citation for Legislative Contempt*.'
- (b) '*Committee*' shall mean a Standing Committee of *I Liheslaturan Guåhan*, its authorized subcommittee, or a Special Committee formed by a Legislative Resolution.
- (c) '*Committee on Rules*' shall mean the Standing Committee designated as such, or its nearest equivalent as set forth in the current version of the legislative Standing Rules.
- (d) '*Document*' shall mean a paper, report, book, letter, memorandum, contract, article, receipt, invoice, audio or video tape, recording, other written or electronic material, or object.
- (e) '*Fee*' shall include witness and mileage fees.
- (f) '*Hearing*' shall be synonymous with and equivalent to 'meeting,' by which a Committee conducts its legislative business, which may include, but is *not* limited to, oversight and investigatory proceedings.

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(g) '*Judicial Officials*' shall mean any full or part-time employee of the Judicial Branch of the government of Guam, including Justices, Judges and Referees.

(h) '*Member*' shall be a Senator in the current *Liheslaturan Guåhan*.

(i) '*Petitioner*' shall mean either the Committee or *I Liheslaturan Guåhan* itself.

(j) '*Presiding Officer*' shall mean the Speaker of *I Liheslaturan Guåhan*.

(k) '*Witness*' is a person appearing before a Committee or *I Liheslaturan Guåhan*, whether the person is summoned to testify or bring documents, or otherwise.

(l) '*Subpoena*' shall mean a legal document and process commanding the recipient to appear at a time and place, and to provide testimony.

(m) '*Subpoena duces tecum*' shall mean a legal document and process commanding the recipient to appear at a time and place, and to provide testimony and document(s).

§ 3102. Authority.

The Committee and *I Liheslaturan Guåhan* itself shall have the authority to issue subpoenas and subpoenas duces tecum in order to compel the attendance of witnesses or the production of documents before it, or both. The Committee and *I Liheslaturan Guåhan* shall have the standing, authority and jurisdiction to determine and impose Legislative Contempt and to make such further orders as it deems appropriate to effectuate its powers under this Chapter, and additionally to apply to the Superior Court of Guam for an order to compel the attendance or the production of documents, or both, before it.

The Committee and *I Liheslaturan Guåhan* may continue the requirement of attendance of a witness, to provide testimony or to provide for additional, supplementary document production by that witness, or both, at the hearing at which the witness was ordered to attend.

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§ 3103. Legislative Contempt.

For purposes of this Chapter, a witness shall be deemed in Legislative Contempt against a Committee or *I Liheslaturan Guåhan* for any of the following reasons:

(a) disorderly, contemptuous or insolent behavior toward the Committee or *I Liheslaturan Guåhan* while holding a hearing or Session, tending to interrupt the due course of the legislative proceeding;

(b) a breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a legislative proceeding;

(c) abuse of the process or proceedings of a Committee or *I Liheslaturan Guåhan*, or falsely pretending to act under authority of a resolution, an order or process of the Committee or *I Liheslaturan Guåhan*;

(d) disobedience to any lawful order or process of a Committee or *I Liheslaturan Guåhan*;

(e) any other unlawful interference with the process or proceedings of a Committee or *I Liheslaturan Guåhan*;

(f) failing or refusing to appear in compliance with a subpoena, or to produce documents when requested, or, having appeared, fails or refuses to testify under oath or affirmation or to produce documents;

(g) failing or refusing to answer any relevant question, or failing or refusing to furnish any document subpoenaed; or

(h) intentionally misrepresenting the truth or a fact while under oath before a Committee or *I Liheslaturan Guåhan*.

§ 3104. Compelling Discovery Through Superior Court.

(a) Jurisdiction. Upon the noncompliance with a subpoena or subpoena duces tecum issued by a Committee or *I Liheslaturan Guåhan*, including the failure to provide all the documents requested by a subpoena duces tecum, the Committee or *I Liheslaturan Guåhan* shall have the standing, jurisdiction and authority to petition to the Superior Court of Guam for a timely Court order to compel the attendance of a witness before that Committee or *I Liheslaturan Guåhan*, or a Court order for the immediate production of documents by the witness, or both. The Court order shall set

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forth the time and place for compliance before either the Committee, *I Liheslaturan Guåhan* or the Court, to be determined by the Petitioner.

(b) Expedited Process to Obtain Order. The petition to the Superior Court of Guam hereunder shall be in the form of a summary, Special Proceeding case designation which shall be expedited and heard by the Court within five (5) calendar days. The witness may appear and answer at the hearing set forth in the notice to appear. In the event that notice is given and the witness fails to appear at the hearing, the Court shall immediately grant an order compelling compliance. The Court shall maintain jurisdiction over the case and continue proceedings until compliance with the subpoena or subpoena duces tecum is had, including if the Court determines that additional time should be given to the witness for compliance. A final determination of the Court shall be immediately appealable to the Supreme Court of Guam, which shall hear the appeal on an expedited basis.

(c) Imposition of Sanctions. The Court shall impose contempt of court for any violation of its order obtained hereunder, which may include, but is not limited to, imprisonment until compliance or monetary fines, or both. Application for an order finding contempt of court shall be made by the Petitioner in the form of an “Order to Show Cause RE: Contempt of Court.

§ 3105. Compelling Discovery Through *I Liheslaturan Guåhan* and Imposing Sanctions.

(a) Jurisdiction. Upon the noncompliance by a witness with a subpoena or subpoena duces tecum issued by a Committee or *I Liheslaturan Guåhan*, including the failure of a witness to provide all the documents requested by a subpoena duces tecum, the Committee or *I Liheslaturan Guåhan* shall have the jurisdiction and authority to make a finding of Legislative Contempt against a witness and determine the appropriate action and sanction to impose

(b) Finding Legislative Contempt. Legislative Contempt may be against a Committee or against *I Liheslaturan Guåhan* itself, both of which shall constitute contempt against *I Liheslaturan Guåhan*.

(1) Finding Legislative Contempt Against *I Liheslaturan Guåhan*. In the event that the Speaker or a Member believes a Legislative Contempt has occurred, the Speaker or the Member may apply to the legislative Body during legislative Session, or during the Committee of the Whole for a finding of Legislative Contempt against the witness or an order specifying action(s) to be taken by the witness,

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or both. The Body shall thereafter vote by a majority of its Members for the issuance of a 'Citation for Legislative Contempt' ('Citation') for the purpose of determining Legislative Contempt and imposing sanctions or crafting an order of compliance, which may include imprisonment, imprisonment until compliance or a fine, or all the sanctions. At that Session the Speaker shall identify when the next Session will be conducted to hear the Citation, thereby affording the witness an opportunity to explain and defend. *I Liheslaturan Guåhan* may also make specific orders in furtherance of its authority under this Chapter.

The Citation shall summon the witness to appear before *I Liheslaturan Guåhan*, during a convening of the Committee of the Whole for such purpose, at a specific place and time to answer the Citation. The Citation shall also contain within it a brief description of the facts causing the issuance of the Citation. No notice need be given to the public, except as was announced at the Session authorizing the Citation's issuance. The Citation shall also advise the witness of the potential penalties which may be imposed, including imprisonment or fine, or both, and shall be immediately served by the legislative Sergeant-at-Arms, an Assistant Sergeant-at-Arms, or with the assistance of the Superior Court of Guam Marshals.

At the hearing for Legislative Contempt the witness may have counsel present, shall be heard if the witness chooses, and may answer questions of the Members. After the hearing *I Liheslaturan Guåhan* shall vote by a two-thirds (2/3) majority of its Members during Session in order to find if Legislative Contempt occurred and impose sanctions, be they imprisonment or fine, or both. *I Liheslaturan Guåhan* may also craft an order of compliance. The decision(s) of *I Liheslaturan Guåhan* shall be reduced to a Legislative Resolution during the Session either finding Legislative Contempt and setting forth the remedy, or not. The final determination of Legislative Contempt shall not be appealable in the Superior Court of Guam, however, the Speaker may at any time after the approval of sanctions rescind said sanctions, at the Speaker's sole election.

(2) Finding Legislative Contempt Against a Committee. In the event that the Chairperson or a Member of the Committee believes a Legislative Contempt has occurred, the Chairperson or a Committee Member may apply to the Committee for a finding of Legislative

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Contempt against the witness and an order specifying action(s) to be taken by the witness. The Committee shall thereafter vote by a majority of its Members during any hearing for the issuance of a 'Citation for Legislative Contempt' ('Citation') to find Legislative Contempt and then impose sanctions or craft an order of compliance, or both. The sanctions may include imprisonment, imprisonment until compliance or a fine, or all the sanctions. At that hearing the Chairperson shall identify when the next hearing will be conducted to hear the Citation, thereby affording the witness an opportunity to explain and defend. The Committee may also make specific orders in furtherance of its authority under this Chapter.

The Citation shall summon the witness to appear before the Committee at a specific place and time to answer the Citation. The Citation shall also contain within it a brief description of the facts causing the issuance of the Citation. The hearing shall be within five (5) calendar days of the Committee hearing authorizing the Citation, and no notice need be given to the public, except as was announced at the hearing authorizing the Citation's issuance. The Citation shall also advise the witness of the potential penalties which may be imposed, including imprisonment or fine, or both, and shall be immediately served by the legislative Sergeant-at-Arms, an Assistant Sergeant-at-Arms, or with the assistance of the Superior Court of Guam Marshals.

At the Committee hearing for Legislative Contempt the witness may have counsel present, shall be heard if the witness chooses, and may answer questions of the Committee Members. After the hearing the Committee shall vote by a two-thirds (2/3) majority of its Members in order to find Legislative Contempt and impose sanctions, be they imprisonment or fine, or both. The Committee may also craft an order of compliance. The decision(s) of the Committee shall be reduced to a Committee resolution either finding Legislative Contempt and setting forth the Committee's remedy, or not. A Committee resolution finding Legislative Contempt shall immediately thereafter be submitted to the Speaker of *I Liheslaturan Guåhan* and the Chairperson of the Committee on Rules for their discretionary concurrence, and if approved thereafter certified by the Legislative Secretary. The final determination of Legislative Contempt, approved by the Speaker and the Chairperson of the Committee on Rules, shall not be appealable in the Superior Court of Guam, however, the Speaker may at any time

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after the approval of sanctions rescind said sanctions, at the Speaker's sole election.

(c) Imposition of Sanctions. In the event of a finding of Legislative Contempt, the certified resolution shall thereafter be filed with the Superior Court of Guam via a Petition which shall include the approved and certified resolution finding Legislative Contempt and identifying the sanction(s) or legislative order(s), or both. The Petition shall be entitled a 'Petition for Imposing Sanctions for Legislative Contempt,' which shall be a Special Proceedings case expedited and heard by the Court within five (5) calendar days. Notice shall be given to the witness who was found to be in Legislative Contempt. A judicial bench warrant may be issued for failing to appear at the court hearing once notice is duly served. The Court's jurisdiction shall be limited to only administering the imposition of the sanction(s) or order(s), or both, provided in the resolution, and the Court shall maintain jurisdiction until such time as the sanction(s) or order(s), or both, is completely executed.

The execution of the sanctions imposed under this Section shall include utilizing the assistance of Court's Marshals and the Department of Corrections, in coordination with the legislative Sergeant-at-Arms.

§ 3106. Separate and Distinct Dual Remedies.

The Committee and *I Liheslaturan Guåhan* shall have the right to seek an order compelling compliance with the subpoena or subpoena duces tecum before the Superior Court of Guam, and at the same time to seek Legislative Contempt, and sanction(s) and other legislative order(s) to ensure compliance with its investigative powers set forth in this Chapter.

Any violation of a court order obtained under this Chapter shall be deemed a separate and distinct offense punishable by the Court for violating its order, separate and apart from a finding of Legislative Contempt and the ensuing sanction(s) or order(s).

§ 3107. Privileges Not Applicable by Government of Guam.

Notwithstanding any other provision of law, no privilege or defense, other than set forth herein, shall apply nor be assertable by a witness in the service of the government of Guam against any subpoena or subpoena duces tecum issued under this Chapter when issued to a witness in their government of Guam capacity. No information or documents within the government of Guam's custody or control shall be free from discovery by *I Liheslaturan Guåhan*, absent documents in the custody of judicial officials

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under court seal. Defenses which are not applicable to persons in the service of the government of Guam shall include, but are not limited to, privacy or confidentiality of documents in the government's possession, be they of a government or non-government character, and the attorney-client privilege for government of Guam attorney-client relationships.

§ 3108. Content of Process.

A subpoena issued by a Committee or *I Liheslaturan Guåhan* is sufficient if it:

- (a) is addressed to the witness;
- (b) states whether the proceeding is before *I Liheslaturan Guåhan* or a Committee thereof;
- (c) requires the attendance of the witness at a reasonable date, time and place certain;
- (d) states the general nature of the proceeding;
- (e) is signed by the Speaker of *I Liheslaturan Guåhan* or the Chairperson of the Committee; and
- (f) contains a statement that failure to comply with the subpoena, or subpoena duces tecum, if the case be, may result in a finding of Legislative Contempt punishable by a fine or imprisonment, or both, as well as may constitute a misdemeanor punishable by a fine of up to One Thousand Dollars (\$1,000.00) or incarceration up to one (1) year in prison, or both.

A subpoena duces tecum issued by a Committee or *I Liheslaturan Guåhan* is sufficient if, in addition to the foregoing, also includes:

- (g) a reasonable identification of the document(s) to be produced at the date, time and place identified in the subpoena duces tecum.

§ 3109. Service.

The legislative Sergeant-at-Arms, Assistant Sergeant-at-Arms, Superior Court of Guam Marshals or any person over twenty-one (21) years of age may serve a subpoena or subpoena duces tecum issued under this Chapter, or any other document requiring service under this Chapter, along with either the fee or a voucher, if applicable, as provided for under this Chapter.

§ 3110. Fees and Vouchers.

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A witness not in the service of the government of Guam who is subpoenaed to appear before *I Liheslaturan Guåhan* or a Committee thereof, whether to produce documents or otherwise, shall only be allowed a fee at the rate of Six Dollars (\$6.00) per day or Three Dollars (\$3.00) for each half day, or fraction thereof, that the witness attends. Witnesses in the service of the government of Guam who are subpoenaed shall not be entitled to any fees for their attendance before *I Liheslaturan Guåhan*, whether to produce documents or otherwise.

Upon the presentation of a voucher by a witness to the Treasurer of Guam, certified by the Speaker of *I Liheslaturan Guåhan*, along with a copy of the subpoena or subpoena duces tecum, the Treasurer of Guam shall promptly pay the fee identified in the voucher to the witness..

§ 3111. Oaths or Affirmations.

The Speaker of *I Liheslaturan Guåhan*, or the Chairperson of a Committee, or their designee, including the legislative Sergeant-at-Arms or Assistant Sergeant-at-Arms, may administer oaths or affirmations to a witness in any matter under examination in furtherance of a legislative proceeding, whether he is under subpoena or not, except that oaths *shall* be administered to all witnesses whenever fiscal matters are under examination.

SOURCE: Amended by P.L. 29-002:VI:38 (May 18, 2007).

§ 3112. Witness Immunity.

No person sworn and examined before *I Liheslaturan Guåhan*, or a Committee, shall be immune from criminal prosecution by reason thereof, nor shall any document or thing produced by such witness be excluded by reason of such production from use in any subsequent criminal proceeding; provided, however, that *I Liheslaturan Guåhan*, or Committee, may, by majority vote of all its respective Members, grant partial or absolute immunity to such witness who shall thereafter be compelled to testify on penalty of contempt. No witness so compelled shall be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which the witness is required to testify, nor shall any document or thing produced by such witness be competent evidence in any criminal proceeding against the witness. Nothing in this Section exempts any witness from prosecution and punishment for perjury committed by the witness on examination.

§ 3113. Criminal Penalty, Attorney General Duties.

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Every witness who neglects or refuses to obey a subpoena or subpoena duces tecum, or appearing, neglects or refuses to testify, or produce upon reasonable notice any document in the witness' possession or under the witness' control, without lawful excuse, is guilty of a misdemeanor, punishable by up to one (1) year imprisonment or up to a One Thousand Dollar (\$1,000.00) fine, or both.

Upon any possible violation of this Chapter, the Chairperson of the Committee may request the Speaker, or the Speaker may himself, notify the Attorney General, who shall immediately conduct an investigation into the matter and take appropriate action to enforce this Chapter.

The Attorney General shall advise the Speaker in writing as to the status of the criminal investigation within thirty (30) days of receipt of notice by the Speaker of the possible criminal violation, and thereafter as to the final disposition of the matter.

In addition to the Attorney General having the responsibility and authority to enforce the provisions of this Act, the Legislative Counsel shall also have the authority to appear before the Superior Court of Guam to represent *I Liheslaturan Guåhan* in order to enforce the civil remedies set forth under this Chapter.

§ 3114. Special Committees.

(a) **Creation.** *I Liheslaturan Guåhan* may by Legislative Resolution create a Special Committee, apart from the Standing Committees, for the purpose set forth in the Legislative Resolution. A Special Committee shall not limit, restrict nor otherwise prevent the authority of a Standing Committee to exercise its jurisdiction and powers as provided for under the Standing Rules of *I Liheslaturan Guåhan* or under this Title, including its powers to oversee government operations and investigate matters.

(b) **Powers.** The powers of a Special Committee shall be as provided for in the Legislative Resolution, the Standing Rules and as set forth in this Chapter. The Legislative Resolution shall state the Special Committee's purposes, powers, duties, duration, the subject matter and scope of its creation and number of Members. After its creation the Special Committee shall develop its rules and regulations consistent with this Chapter and the Standing Rules for governing its operations, which shall be submitted to *I Liheslaturan Guåhan* in Legislative Resolution form.
