

I MINA'TRENTA NA LIHESLATURAN GUÅHAN

2010 (SECOND) Regular Session

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Resolution No. 340-30 (2v)

Introduced by:

J.P. Guthertz, DPA

[Signature]

Relative to Adding a New Section (29.04.05) to 'Rule XXIX. Code of Ethics and Standards for the Legislative Branch,' of *Mina'Trenta Na Liheslaturan Guåhan Otden Areklamento.*

1 **BE IT RESOLVED BY THE COMMITTEE ON RULES OF *I MINA'TRENTA***
2 ***NUEBI NA LIHESLATURAN GUÅHAN:***

3 **WHEREAS**, pursuant to Section 29.04 of Rule XXIX of *Mina'Trenta Na*
4 *Liheslaturan Guåhan Otden Areklamento*, the Honorable Judith T. Won Pat, Speaker of *I*
5 *Mina'Trenta na Liheslaturan Guahan*, on August 24, 2009, appointed members of *I*
6 *Liheslaturan Guahan* to serve on the Committee on Ethics and Standards; and

7 **WHEREAS**, members of the Committee on Ethics and Standards adopted, via
8 majority vote on November 3, 2009, the Committee's 'Interim Rules of Procedure;' and

9 **WHEREAS**, members of the Committee on Ethics and Standards adopted, via
10 majority vote on January 25, 2010, the Committee's 'Rules of Procedure' hereafter listed;
11 and

12 **WHEREAS**, a new section 29.04.05 is hereby added to Rule XXIX of *Mina'Trenta*
13 *Na Liheslaturan Guåhan Otden Areklamento*, Code of Ethics and Standards for the
14 Legislative Branch:

1 "Section 29.04.05: Rules of Procedure for the legislative Committee on Ethics and
2 Standards.

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9 **COMMITTEE ON ETHICS AND STANDARDS Thirtieth Guam Legislature**

10 **RULES OF PROCEDURE**

11 **RULE 1: Purpose of Rules**

12 These rules for the Committee on Ethics and Standards are established to provide for its
13 operation in a manner which will enable it to execute properly the powers and duties
14 vested in it, including the conduct of hearings in a fair and impartial manner, consistent
15 with protection of the constitutional rights of person involved in the proceedings and
16 the preservation of the public good. *Source 2 GCA §4101*

17 **RULE 2: Definitions**

18 AS USED IN THESE RULES:

19 "Committee" means the 30th Guam Legislature's Committee on Ethics and Standards.

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

24 "Meeting" means the convening of the Committee for which a quorum is
25 required in order to make a decision or to deliberate toward a decision on any matter.

1 "Respondent" means a Senator or employee of the Legislature against whom a
2 complaint of misconduct has been brought before the Committee.

3 "Witness" means a person who testified to what he or she has seen, heard or
4 otherwise observed.

5 "Counsel" means an attorney admitted or licensed to practice before the Courts
6 of Guam or specially admitted *pro hac vice*.

7 **RULE 3: Nature and Confidentiality of Proceeding**

8 The Committee, in conducting business, shall be guided by the provisions of the
9 Standard of Conduct for Elected Officers, Appointed Officers, and Public Employees of
10 the Government of Guam as codified in 4 G.C.A. §15100 *et. seq.* , and the Code of Ethics
11 and Standards for the Legislative Branch as set forth in Rule XXIX, Standing Rules of
12 the Guam Legislature.

13 **RULE 4: Committee Functions**

14 Pursuant to Rule XXIX of the 30th Guam Legislature Standing Rules, the Committee:

15 a. May investigate and / or hear all complaints of any alleged violation of the
16 Code of Ethics and Standards by a Senator or employee of the Legislature brought by
17 any source, or on its own motion.

18 b. After any investigation, shall report and make recommendations to the
19 Legislature regarding what action, if any, should be taken.

20 c. Shall recommend to the Legislature any changes in existing law or rules or
21 additions to said law or rules which the Committee shall determine to be necessary or
22 desirable to ensure observance of the Code of Ethics and Standards. *Source: Rule 28,*
23 *Twenty-Third Guam Legislature Standing Rules*

24 **RULE 5: Finance and Staff**

25 The Committee may employ for the duration of its business professional, technical,
26 clerical or other personnel as necessary for the proper performance of its duties, to the

1 extent of funds made available to it by the Committee on Rules for such purpose and
2 subject to such restrictions and procedures relating thereto as may be provided by law
3 or any applicable rules of the Legislature. *Source: 2 GCA §4105*

4 **RULE 6: Membership, Quorum, and Voting**

5 a. The committee shall be composed of six (6) members of the Legislature. Four
6 (4) members of the Committee shall be members of the Majority Party, appointed by the
7 Speaker. Two (2) members of the Committee shall be members of the Minority
8 appointed by the Minority Leader. The Committee shall select a Chairperson and Vice
9 Chairperson from among its members.

10 b. Vacancies in the membership of the Committee shall not affect the authority of
11 the remaining members to execute the functions of the Committee, and shall be filed in
12 the same manner in which the original appointments were made.

13 c. Four (4) members of the Committee shall constitute a quorum for the
14 transaction of business.

15 d. No action shall be taken by the Committee at any meeting unless a quorum is
16 present. Except as prohibited by Rule XVIII, Section 18.05, of the Standing Rules of the
17 30th Guam Legislature, action may be taken by affirmative vote of no less than four
18 members present and voting at a meeting at which there is a quorum.

19 e. Pursuant to Section 18.05 of Rules XVIII of the Standing Rules of the 30th
20 Guam Legislature, the affirmative vote of a majority of all members of the Committee
21 shall be required to introduce a resolution out of committee. For purposes of this
22 section, a vote by a member "to report out" or "to report out only" or abstain or any
23 other qualified vote shall not be considered an affirmation vote to report such bill or
24 resolution out of Committee.

25 f. Subject to concurrent dismissal by the Speaker, any member may be removed
26 by the Speaker for two unexcused absences from meeting or hearing noticed pursuant

1 to these rules. The Speaker shall then appoint a new member. *Source: Twenty-Fifth Guam*
2 *Legislature Standing Rules, §29,04-29.04.02*

3 **RULE 7: Hearings and Meetings**

4 a. The Committee may hold hearing or meetings as it deems appropriate for the
5 performance of its duties at such time and places as it determines.

6 b. Members of the Committee shall be given at least three (3) days' notice of any
7 hearing or meeting to be held concerning any procedural matter. Members of the
8 Committee shall be given at least (7) days' notice of any hearing or meeting to be held
9 concerning any substantive matter. The Chairperson shall deliver to the Executive
10 Director of the Guam Legislature the notice setting forth the Committee's name, time
11 and place, and a statement of the subject matter of the hearing or meeting. A hearing or
12 meeting, and any action there taken, shall not be deemed invalid solely because notice
13 was not given in accordance with this requirement. A hearing can be recessed by the
14 Chairperson or majority vote of the members present to continue the following working
15 day or to a date certain in the future.

16 c. A hearing or meeting shall not be conducted by the Committee unless a
17 quorum is present. The Committee may by majority vote, establish a subcommittee,
18 consisting of not less than three (3) members who shall be members of the Committee.
19 The Chairperson of the Committee shall be an ex officio member of all subcommittees.
20 A Subcommittee may hold working sessions without a quorum as long as evidence is
21 not received.

22 d. A meeting shall be open to the public unless the Committee, by a vote of two-
23 thirds of all the members present, closes the meeting; provided that all meetings
24 regarding a complaint against a member of the Legislature shall be public.

25 e. A special meeting may be called at any time by the Chairperson or by a
26 majority of the members of the Committee, by delivering personally or by mail written

1 notice to each Committee member. Notice shall also be given to each newspaper of
2 general circulation and broadcasting station within Guam. Such notice must be
3 delivered personally or by mail at least twenty-four (24) hours before the time of such
4 meeting as specified in the notice. The call and notice shall specify the time and place of
5 the special meeting and the business to be transacted. No other business shall be
6 considered at such meeting by the Committee. *Source: 2 GCA §4107/4110*

7 **RULE 8: Form of Complaints**

8 Complaints must be in writing and signed by the Complainant. Complaints and
9 information about Senators and employees of the Legislature need not be verified or in
10 any particular form. The complaints must provide sufficient information enabling the
11 identity of the complainant to be readily ascertainable. The complaint should include
12 the complainant's address, telephone number, and shall not include the Complainant's
13 social security number. A complaint must clearly state in writing that it is intended as
14 an Ethics complaint before the Chairperson treats it as such. In addition, the
15 Chairperson may inquire into such and forward a copy of this file to any complainant
16 not in compliance. Nothing in these rules shall be construed to limit or prohibit the
17 initiation of a proceeding by the Committee by any lawful means not provided therein.
18 *Source: Twenty-Third Guam Legislature Standing Rules, § 28.04.03*

19 **RULE 9: Screening of Complaints**

20 a. Immediately upon receiving a complaint or information about a Senator or
21 employee of the Legislature, the Chairperson shall refer the matter to the Committee's
22 legal counsel to screen it to determine whether the alleged facts, if true, would
23 constitute a violation of the legislature's Code of Ethics and Standards. Legal Counsel
24 shall within thirty days report back to the Chairperson whether the allegations
25 constitute prohibited conduct under the legislature's code of Ethics and Standards.

26 b. After committee legal counsel has screened the complaint or

1 information and before the investigation of such complaint or information has
2 commenced, the Committee legal counsel shall report to the Committee with his or her
3 preliminary findings. The Committee shall thereupon, by majority vote of its members,
4 determine whether or not the complaint or information screened by the Committee
5 legal counsel warrants further investigation or action by the Committee or committee
6 legal counsel. If not enough votes are obtained, then the item remains on agenda until
7 the committee votes to either go forward, refer to inactive file, or dismiss.

8 c. The Chairperson may release information regarding a pending complaint to
9 the news media or the general public and the legal Counsel shall have no authority to
10 do so. *Source: Twenty-Third Guam Legislature Standing Rules §28.04.03*

11 **RULE 10: Investigation by Committee legal Counsel**

12 Upon the authorization and instruction of the Committee, as provided in Rule 9,
13 committee legal counsel shall investigate any complaint or information that concerns a
14 Senator or employee of the Legislature and alleges facts which, if true, would constitute
15 misconduct. Committee legal counsel or his or her designee, including a qualified
16 investigator under committee legal counsel's supervision may interview witness and
17 gather evidence in the course of the investigation. At any time during the course of the
18 investigation upon learning of facts or circumstances clearly exonerating the
19 respondent, the Committee's legal counsel shall inform the Committee of such
20 information and immediately recommend a dismissal of the proceeding. *Source: Twenty-*
21 *Third Guam Legislature Standing Rules, §28.04.03*

22 **RULE 11: Notice of Respondent**

23 a. Committee Legal Counsel shall not recommend a disposition of a matter other
24 than by dismissal without first notifying the respondent in writing of the substance of
25 the complaint, affording respondent the opportunity to appear before the legal counsel
26 to present respondent's position, and Committee Legal Counsel must include, in any of

1 such counsel's reports to the Committee, the substance of the Respondent's position on
2 the complaint.

3 b. Immediately upon receiving a complaint the Chairperson shall notify the
4 Respondent by giving Respondent a copy of the complaint. The Chairperson shall then
5 release the complaint to the news media and general public no sooner than ten days
6 excluding weekends and holidays after the Respondent receives the copy of the
7 Complaint provided by the Chairperson. The day before the media release, the
8 Chairperson shall make an announcement to the media that the Chairperson will be
9 releasing information about an ethics complaint the next day, but shall not name the
10 Respondent, or the complaint, or describe the subject matter of the complaint. *Source:*
11 *Twenty-Third Guam Legislature Standing Rules, §28.04.04*

12 **RULE 12: Preliminary Recommendation by Committee Legal Counsel**

13 The Preliminary recommendation for disposition of a complaint following investigation
14 by the legal counsel shall be either the complaint warrants a full investigation and
15 hearing by the Committee or that the facts and circumstance clearly exonerate the
16 Respondent and the complaint should be dismissed. Committee Legal Counsel's
17 preliminary recommendation shall be made not later than thirty (30) days after the
18 referral is made by the Committee, unless extended by the Chairperson or the
19 Committee. *Source: Twenty-Third Guam Legislature Standing Rules §28.04.03*

20 **RULE 13: Resolution Prior to Hearing**

21 If committee Legal Counsel recommends a full investigation and hearing, and the
22 Committee approves the preliminary recommendation, a proposed resolution shall be
23 drafted, approved by the Committee and forwarded to the committee Legal Counsel for
24 the commencement of a full investigation and hearing.

25 **RULE 14: Hearing**

1 If the Committee passes a resolution authorizing a full investigation and hearing of the
2 matter, the Committee shall conduct a full investigation and hearing. The hearing shall
3 commence no later than thirty (30) days after receipt of the resolution by the committee
4 Legal Counsel.

5 **RULE 15: Issuance of Subpoenas**

6 a. By majority vote of its members, the Committee may issue subpoenas,
7 including subpoenas duces tecum, requiring the appearance of persons, productions of
8 relevant records, and the giving of relevant testimony.

9 b. A person subpoenaed to attend a hearing of an investigating committee shall
10 receive the same fees and allowance as a person subpoenaed to give testimony in an
11 action pending in the Superior Court of Guam

12 c. Subpoenas may be issued under the signature of the Chairperson or any
13 members designated by the Chairperson, and may be served by any person designated
14 by the Chairperson or member. Source: 2 GCA §4108

15 **RULE 16: Notice to Witnesses**

16 a. Service of a subpoena shall be made in the manner provided by law for the
17 service of subpoenas in civil actions at least seven (7) days prior to the time fixed in the
18 subpoenas for appearance or production of records unless a shorter period of time is
19 authorized by majority vote of the members of the Committee in a particular instance
20 when, in their opinion, the giving of seven (7) days' notice is not practicable; but if a
21 shorter period of time is authorized, the person to whom the subpoena is directed shall
22 be given reasonable notice consistent with particular circumstances involved.

23 b. Any person who is served with a subpoena also shall be served with a copy of
24 the resolution authorizing the investigation and a copy of these rules, a general
25 statement informing him or her of the subject matter of the Committee's investigation or

1 inquiry and, if personal appearance is required, a notice that he or she may be
2 accompanied by counsel of his or her own choosing. *Source: 2 GCA §4109*

3 **RULE 17: Conduct of Hearings**

4 a. All hearings of the Committee shall be public unless the Committee, by
5 majority vote of all of its members, determines that a hearing should not be open to the
6 public in a particular instance.

7 b. The Chairperson of the Committee, if present and able to act, shall preside at
8 all hearings of the Committee and shall conduct the examination of witnesses or
9 supervise examination by other members of the Committee, and members of the
10 Committee's staff who have been authorized to examine witnesses. In the
11 Chairperson's absence or disability, the Vice-Chairperson shall serve as presiding
12 officer.

13 c. No hearing, or part thereof, shall be televised, filmed or broadcast except upon
14 approval of the Committee by majority vote of the members.

15 d. The Chairperson of the Committee or the Chairperson's designee may
16 administer oaths to witness. *Source: 2 GCA §4110*

17 **RULE 18: Rights to Counsel and Submission of Questions**

18 a. Every witness at a Committee hearing may be accompanied by counsel of his
19 or her own choosing who may advise the witness as to his or her rights; provided that
20 limitations may be prescribed by the Committee to prevent obstruction of or
21 interference with the orderly conduct of the hearing.

22 b. Any witness at a hearing, or his or her counsel, may submit to the Committee
23 proposed questions to be asked of the witness or any other witness, or a written or
24 verbal statement, relevant to the matters upon which there have been questions or
25 submission of evidence, and the Committee shall ask such of the questions or any other

1 questions as it may deem appropriate to the subject matter of the hearing. *Source: 2 GCA*
2 *§4111*

3 **RULE 19: Testimony**

4 a. The Committee shall cause a record to be made of all proceedings in which
5 testimony or other evidence is received or adduced, which record shall include rulings
6 of the Chairperson, questions of the Committee and its staff, the testimony or responses
7 of witnesses, sworn written statements which the Committee authorizes a witness to
8 submit, findings of facts, and such other matters as the Committee or Chairperson may
9 direct.

10 b. All testimony given at a hearing shall be under oath or affirmation unless the
11 requirement is dispensed with in a particular instance by majority vote of the
12 Committee members present at the hearing.

13 c. Any member of the Committee may administer an oath or an affirmation to a
14 witness.

15 d. The Chairperson at a hearing of the Committee, may direct a witness to
16 answer any relevant question or furnish any relevant book, paper, or other document.
17 Unless the direction is overruled by majority vote of the Committee members present,
18 disobedience shall constitute grounds for citation for contempt, except that production
19 of any book, paper or other document may be required only by subpoena.

20 e. A witness at a hearing, or his or her counsel, with the consent of a majority of
21 the Committee members present at the hearing may file with the Committee for
22 incorporation into the record of the hearing sworn written statements relevant to the
23 purpose, subject matter and scope of the Committee's investigation or inquiry.

24 f. A witness at a hearing, upon his or her advance request and at his or her own
25 expense, shall be furnished a certified transcript of his or her testimony.

1 g. Testimony and other evidence given or adduced at a hearing closed to the
2 public shall not be made public unless authorized by majority vote of the committee,
3 which authorization shall also specify the form and manner in which the testimony or
4 other evidence may be released. Nothing herein shall be construed to prevent a witness
5 or other supplier of evidence from disclosing such of his or her own testimony or other
6 evidence concerning matters which only he or she could claim a privilege against
7 disclosure. *Source: 2 GCA §4112*

8 **RULE 20: Final Argument**

9 a. Respondent or Respondent's counsel shall be permitted to present to the
10 Committee oral comments on all evidence received by the Committee. Respondent's
11 arguments to the Committee shall be limited to commenting on the evidence received
12 and shall not include argument on recommended punishment. Final argument by
13 Respondent shall take place after all evidence is received by the Committee and as soon
14 thereafter as Respondent may be heard.

15 b. The Chairperson of the Committee, if present and able to act, shall preside at
16 Respondent's presentation and shall control the manner and length of Respondent's
17 final argument.

18 **RULE 21: Final Disposition**

19 The Committee may direct that Committee Legal Counsel shall recommend a final
20 disposition of the matter not later than thirty (30) days after the completion of the full
21 investigation and hearing and the later submission of any evidence agreed to be
22 received by the Committee. The final disposition shall include, but not be limited to, the
23 following

24 a. Name of Respondent;

25 b. Act or acts Respondent committed, if any, which violated the Code of Ethics
26 and Standards;

- 1 c. Conclusions of law upon which Committee Legal Counsel bases the violation;
2 d. If Committee Legal Counsel determines that a violation has occurred, the
3 recommended punishment for the violation or violations.

4 **RULE 22: Approval of Disposition**

5 The Committee shall review the recommendation for final disposition submitted by
6 Committee Legal Counsel and may approve, disapprove, or modify the final
7 disposition.

8 **RULE 23: Resolution**

9 The Committee shall prepare a resolution containing the following information and
10 upon approval by the Committee, submit it to the body of the Legislature for its
11 passage:

12 a. Name of respondent

13 b. The act or acts respondent committed, and whether any such acts violated the
14 Code of Ethics and Standards;

15 c. If the Committee determines that a violation has occurred, the punishment
16 recommended by the Committee for the violation or violations.

17 **RULE 24: Notification of Complainant and Respondent**

18 The Complainant and the Respondent shall be notified in writing, within a reasonable
19 time, of the final disposition of the matter following investigation by the Committee.

20 *Source: Twenty-Third Guam Legislature Standing Rules, §28.04.03*

21 **RULE 25: Record-Keeping**

22 a. In matters where the Committee makes a finding of a violation of the Code, the
23 Ethics and Standards by a Senator or employee of the Legislature, the documentation
24 thereof shall not be destroyed and all records thereof shall be placed in both the
25 legislative archives and the official legislative depository.

1 b. in matters where the Committee makes a finding of non-occurrence of
2 prohibited conduct by a Senator or employee of the Legislature, the documentation
3 thereof may be placed in the legislative archives and be destroyed after five (5) years.

4 c. All Legal opinions and Rules and Regulations adopted or prepared for the
5 Committee shall be kept for future reference. These documents shall be placed in
6 legislative archives at the end of term of the Committee.

7 d. All records concerning ongoing cases shall be transmitted to the next
8 legislature with recommendations.

9 **RULE 26: Interested Persons**

10 a. Any person whose name is mentioned or who is otherwise identified during a
11 hearing of the Committee and who, in the opinion of the Committee, may be adversely
12 affected thereby, may, upon such person's request or upon the request of any member
13 of the Committee, appear personally before the Committee and testify in his or her own
14 behalf, or, with the Committee's consent, file a sworn written statement of facts or other
15 documentary evidence for incorporation into the record of the hearing.

16 b. Upon the consent of a majority of its members, the Committee may permit any
17 other person to appear and testify at a hearing or submit a sworn written statement of
18 facts or other documentary evidence for incorporation into the record thereof. No
19 request to appear, appearance or submission of evidence shall limit in any way the
20 Committee's power of subpoena. *Source: 2 GCA §4113*

21 **RULE 27: Contempt**

22 a. A person shall be in contempt if he or she:

23 1. Fails or refuses to appear in compliance with a subpoena, or,
24 having appeared, fails or refuses to testify under oath or affirmation.

25 2. Fails or refuses to answer any relevant question or fails or refuses
26 to furnish any relevant book, paper or other document subpoenaed by or on

1 behalf of the Committee.

2 3. Commits any other act or offense against the Committee which,
3 if committed against the legislature, would constitute contempt.

4 b. The Committee may, by majority vote of the members, apply to the Legislature
5 for a contempt citation. The application shall be considered as though the alleged
6 contempt had been committed in or against the Legislature itself. The Legislature shall
7 vote to determine whether action in court shall be taken to enforce a subpoena.

8 *Source 2 GCA §4114*

9 **RULE 28: Limitation of These Rules**

10 Nothing contained in these rules shall be construed to limit or prohibit the acquisition
11 of evidence or information by the Committee by any lawful means not provided for
12 herein. *Source: 2 GCA §4116*

13 **RULE 29: No Authority to Grant Immunity**

14 The Committee shall have no authority to grant immunity to witnesses or any other
15 person.

16 **RULE 30: Recusal of Committee Members**

17 If a member of the Committee is accused of an ethics violation, he or she shall recuse
18 himself or herself from any participation in the matter. The Speaker shall then appoint a
19 part time member of the Committee to act only in matters regarding that complaint or,
20 if the Speaker is the accused Senator, the Vice Speaker shall appoint the part-time
21 member.

22 **RULE 31: Rights to Counsel**

23 The Respondent shall have the right to counsel at all stages of these proceeding.
24 Counsel shall enter an appearance by serving the Chairperson with a written Entry of
25 Appearance.”

1 **NOW, THEREFORE, BE IT RESOLVED**, that the Committee on Rules of *I*
2 *Mina'Trenta Na Liheslaturan Guåhan* does hereby, on behalf of *I Liheslaturan Guåhan* and
3 the people of Guam, add a new section (29.04.05) to Rule XXIX of *Mina'Trenta Na*
4 *Liheslaturan Guåhan Otden Areklamento*, Code of Ethics and Standards for the Legislative
5 Branch; and, be it further

6 **RESOLVED**, that the Speaker and the Chairperson of the Committee on Rules of
7 *I Mina' Trenta na Liheslaturan Guåhan* certify and the Secretary of the Legislature attest
8 the adoption hereof and that copies of the same be transmitted to the Honorable Felix
9 P. Camacho, *I Maga'lahren Guåhan*.