CoEqual

GUIDE TO

Oversight Procedural Rules in the U.S. House of Representatives

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I. INTRODUCTION

This manual summarizes the major procedural rules and precedents that govern oversight and investigations by committees of the House of Representatives. It also provides commentary on strategies for applying these rules and discusses methods for asserting procedural rights during committee proceedings.

The primary source of procedural rules is the Rules of the House of Representatives. Under House rule XI clause 1(a)(1), the House rules are binding on all House committees. Specifically, this rule provides that "the Rules of the House are the rules of its committees and subcommittees so far as applicable."

The committee rules form a second important source of guidance. House rule XI clause 2(a)(1)(B) provides that standing committees must adopt written rules governing their procedure, provided that such rules "may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of the Rules of the House."

The *House Rules and Manual* provides the principal source of information on the rules of the House. In addition to the House rules, the volume contains the Constitution of the United States, the text of various important rule-making statutes, and voluminous annotations throughout. *Jefferson's Manual of Parliamentary Practice*, written by Thomas Jefferson to apply to the Senate, is also included in the *House Rules and Manual* and is another source of information on interpreting House procedure. Under House rule XXIX, the practices prescribed in *Jefferson's Manual* "shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House."

Other important sources of House procedure are the numerous volumes describing the precedents of the House: *Hinds' Precedents*, *Cannon's Precedents*, and *Deschler's Precedents*. In 2018, the House Parliamentarians began compiling these precedents in a new series called *Precedents of the U.S. House of Representatives*, the first volume of which was released in 2018. In addition, a valuable summary of the rules of the House is the volume entitled *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, most recently updated in 2017, by the House Parliamentarian's office.

The interrelationships between the House and committee rules can be complex; specific questions should be addressed to the House Parliamentarian for an authoritative response.[1]

[1] This document draws on and updates procedural manuals compiled by the staff of Co-Equal when they served on the House Committee on Oversight and Government Reform and the House Committee on Energy and Commerce under Rep. Henry A. Waxman.

II. OVERSIGHT HEARING PROCEDURES

A. Seven Days of Notice for Hearings

House rule XI clause 2(g)(3) requires that a chair provide at least one week (in calendar days) of notice before the commencement of any committee hearing. Under the House rules, the notice period can be shortened in two ways: (1) by the chair and the ranking minority member of the committee, acting jointly, where there is "good cause," or (2) by a majority vote of the committee.

Committee rules may require that the chair provide members with a memorandum in advance of the hearing with additional details about the hearing, such as its purpose and the witnesses who will be testifying.

B. Witness Requirements in Advance of Appearance

House rule XI clause 2(g)(5) provides that committees must "to the greatest extent practicable" require witnesses to submit in advance of hearings written statements of proposed testimony. With respect to witnesses appearing in a nongovernmental capacity, this submission must include "a curriculum vitae and disclosure of any Federal grant or contracts, or contracts or payments originating with a foreign government received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing."

Committee rules often specify a time frame in advance of a hearing under which witnesses must file copies of their testimony with the committee. They may also provide the chair authority to waive the advance submission requirements when not practicable.

Practice Note: Some chairs have interpreted the clause in the House rule allowing for disclosure to the "greatest extent practicable" to allow witnesses representing entities that have a large number of contracts and grants with the government to focus the disclosure on those contracts and grants in which the witness has been directly involved or that concern the subject matter of the hearing.

C. Witness Seating

House rules do not address the order of witness seating at hearings. There is no motion available for members to challenge the chair's decisions regarding witness seating.

Practice Note: In many committees, the general practice is to seat government witnesses on their own panel at the beginning of the hearing. There have been exceptions, however, when government witnesses have been seated on panels with nongovernment witnesses,[2] or when they have been placed on panels subsequent to the first panel.[3]

[2] *See, e.g.,* House Committee on Energy and Commerce, Subcommittee on Energy and Power (Feb. 9, 2011) (at which the Administrator of the Energy Information Administration was seated on the same panel with witnesses including representatives of Deutsche Bank, Louisiana Mid-Continent Oil & Gas

Generally, when a cabinet secretary testifies, he or she is seated on his or her own panel. Cabinet secretaries have testified at both the full committee level and the subcommittee level.[4]

D. Quorum Requirements

House rule XI clause 2(h)(2) authorizes committees to specify the quorum requirement for "taking testimony and receiving evidence," which cannot be fewer than two members. Committee rules generally provide that two members shall constitute this "testimonial quorum."

A "majority quorum," or a majority of the committee's total membership, must be present for certain specific actions. Oversight-related actions that require a majority quorum include:

(1) closing a hearing for reasons other than that the evidence or testimony may tend to defame, degrade, or incriminate (rule XI clause 2(g)(2));
(2) taking testimony in open session despite an assertion that it may defame, degrade, or incriminate (rule XI clause 2(k)(5));

Association, Citizens for Affordable Energy, and Apollo Alliance, and a Minister-Counselor from the Province of Alberta); House Committee on Energy and Commerce, Subcommittee on Health, *Hearing on Expanding Health Care Options* (May 25, 2011) (at which the Director of the Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, was seated on the same panel with a professor from the University of Minnesota and representatives of the American Legislative Exchange Council, the Manhattan Institute, and the Cancer Action Network); House Committee on Energy and Commerce, Subcommittee on Energy and Environment, *Hearing on HomeStar: Job Creation through Home Energy Retrofits* (Mar. 18, 2010) (at which the Assistant Secretary, Office of Energy Efficiency and Renewable Energy, Department of Energy, was seated on the same panel as representatives of the National Association of Manufacturers, Owens Corning, and other nongovernment entities).

[3] *See, e.g.,* House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on EPA's Greenhouse Gas Regulations and Their Effect on American Jobs* (Mar. 1, 2011) (at which the first panel consisted of representatives from industry groups and the second panel consisted of the Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency); House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations and Subcommittee on Energy and Environment, *Joint Hearing on the Role of the Interior Department in the Deepwater Horizon Disaster* (July 20, 2010) (at which the first panel consisted of Gale Norton and Dirk Kempthorne, both former secretaries of the Department of the Interior, and the second panel consisted of Ken Salazar, the current Secretary of the Department of the Interior); House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Hearing on Response by Toyota and NHTSA to Incidents of Sudden Unintended Acceleration* (Feb. 23, 2010) (at which the first panel consisted of consumers and nongovernment experts, the second panel consisted of the President and Chief Operating Officer of Toyota Motor Sales, U.S.A., Inc., and the third panel consisted of Secretary of Transportation Raymond LaHood).

[4] *See, e.g.,* House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Hearing on the Solyndra Failure: Views from DOE Secretary Chu* (Nov. 17, 2011); House Committee on Energy and Commerce, Subcommittee on Health, *Hearing on FY 2012 HHS Budget and the Implementation of Public Laws 111-148 and 111-152* (Mar. 3, 2011) (at which Secretary of Health and Human Services Kathleen Sebelius testified); House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Hearing on the Role of the Interior Department in the Deepwater Horizon Disaster* (July 20, 2010) (at which Secretary of the Interior Salazar testified).

(3) authorizing and issuing a subpoena by vote of a committee (rule XI clause 2(m)(3)(A)(i)); and
(4) releasing or making public evidence taken in executive session (rule XI clause 2(k)(7)).

Most standing committees are permitted by House Rule XI clause 2(h)(3) to constitute a "working quorum" of not less than one-third of the membership to take any action except actions that are required to be taken by a majority quorum. Oversight-related actions that could be addressed by a working quorum include defeating a motion to adjourn (see part II.N) and deciding an appeal of the ruling of the chair (see part IV.D).

Practice Note: Hearings as a practical matter may be conducted by one member because no other member is at the hearing to object to a lack of quorum. However, the absence of a proper quorum may subsequently raise issues regarding the committee's authority to impose penalties on witnesses for contempt or for potential perjurious testimony. Further, while the House quorum rules do not require the presence of both parties, often committee practice is that the chair will wait for a minority representative as a courtesy before commencing proceedings.

E. Opening Statements

The House rules do not address the common practice of opening statements by members at hearings, except for the provision under House rule XI clause 2(k)(1) that requires that "[t]he chair at a hearing shall announce in an opening statement the subject of the investigation." Committee rules often limit chair and ranking member opening statements to five minutes each and provide that each may designate another member to give an opening statement of not more than five minutes. Chairs also have discretion to provide additional members the opportunity to make opening statements.

F. Participation by Off-Committee Members

House rule XI clause 2(g)(2)(C) provides to all members of the House the right to nonparticipatory attendance at any hearing of a committee or subcommittee, except hearings of the Committee on Standards of Official Conduct. This right also applies to any hearings closed by a vote of a committee, unless the full House has specifically authorized the committee to close a hearing to members.

Under House rule XI clause 2(j)(2)(A), only a member of a committee (or the subcommittee in the case of subcommittee hearings) is entitled to ask questions at a hearing. Other members may not participate if an objection is raised.

Practice Note: Where a committee allows its members to participate in hearings of subcommittees on which they do not formally serve, such members are usually allowed to ask questions of witnesses after members of the subcommittee have asked their questions, but they do not give opening statements or vote and are not counted for a quorum. This courtesy has also on occasion been extended to members off of a

committee. For example, participation by a non-committee member can occur where that member is providing testimony and the committee agrees by unanimous consent that the member may also ask questions of the other witnesses.

G. Swearing in Witnesses at Hearings

House rules do not address the practice of swearing in witnesses at hearings, and it is within the chair's discretion whether to swear in a witness.

Practice Note: Some chairs have a practice of swearing in witnesses at investigative hearings but not at legislative hearings. Members of Congress who testify at hearings generally are not sworn in.

H. Questioning Witnesses at Hearings

House rule XI clause 2(j)(2) provides that "each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness."

There is no House rule that governs the order of questioning. Committee rules, however, often provide that the right to question witnesses alternates between the majority and minority members and that the chair shall recognize members based on the seniority of the members present when a hearing is called to order and after that on the time of their arrival. (This practice is sometimes referred to as the "early-bird rule.") Other committees recognize members strictly based on seniority.

Under the rules of the House, the right to question witnesses under the five-minute rule applies to each witness, not to each panel of witnesses. The longstanding practice in committees, however, is that the chair has discretion to determine whether to permit a second round of questioning of a panel.

The rules regarding extended questioning are discussed in the next section.

I. Extended Questioning

House rule XI clause 2(j)(2) provides committees with additional flexibility in allocating time for questioning at hearings. The rule provides that "[a] committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness . . . shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate." Also, under this rule, "[a] committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods of time" for up to one hour, equally divided between the majority and the minority.

J. Scope of Hearing Questions

The subject matter of a hearing is determined by the notice required under House rule XI clause 2(g)(3) and the chair's opening statement required under House rule XI clause 2(k)(1). Members may object to questions on the basis that they are not relevant to this subject matter.

The chair initially rules on the relevance of any questions, but an appeal of the chair's ruling may be made to the committee. Under House rule XI clause 2(k)(8), "[t]he committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing."

K. Questions for the Record

The House rules do not address the practice of submitting questions for the record. A common practice for committees, reflected in some committees' rules, is that any member may submit to the chair of the committee or subcommittee additional questions for the record to be answered by witnesses who have appeared within a time certain following a hearing. The general practice is that the chair transmits such questions to witnesses on behalf of the member submitting them.

L. Placing Material in the Hearing Record

House rule XI clause 2(k)(8) makes a committee the sole judge of the pertinence of testimony and evidence introduced at hearings. Under this rule, statements or documents can be included in a hearing record only by order of the committee.

Practice Note: In practice, members normally ask unanimous consent to include statements or documents in a hearing record. However, if there is an objection, the chair must recognize a motion to include the material, thereby allowing the committee to judge the pertinence of the material. The quorum requirement for such a motion is a testimonial quorum since it relates to the receiving of evidence (see section I.D above). Such a motion could lead to a request for a roll call vote, which cannot be postponed.

M. Closing a Hearing

Under House rule XI clause 2(g)(2), committee hearings are normally conducted in open session, except when the committee determines that disclosure of matters to be considered would (1) endanger national security, (2) compromise sensitive law enforcement investigations, (3) defame, degrade, or incriminate any person, or (4) otherwise violate any law or rule of the House. House rule XI clause 2(g)(2) concerns procedures for closing a hearing in scenarios (1), (2), and (4). House rule XI clause 2(k)(5) sets for procedures for closing a hearing in scenario (3).

Under House rule XI clause 2(g)(2), any member can move to close a hearing and proceed in executive session on the basis that disclosure of testimony, evidence, or other

matters to be considered at a hearing would endanger national security, compromise sensitive law enforcement information, or would otherwise violate a law or a rule of the House. A majority quorum is required to close the hearing.

House rule XI clause 2(k)(5) provides that both witnesses and members can assert that evidence or testimony or evidence may defame, degrade, or incriminate any person. After such an assertion is made, the committee may only continue in open session if a majority quorum is present and the committee determines that such evidence or testimony will not defame, degrade, or incriminate any person. The quorum requirement for closing the hearing is merely a testimonial quorum.

Practice Note: If the required majority quorum cannot be assembled to vote to proceed in open session and there are not sufficient votes to close the hearing, a standstill could be reached. Some options available to the chair could be to recess the proceeding until additional members can be located or to direct that the questioning proceed on other matters that would not defame, degrade, or incriminate.

N. Recessing or Adjourning a Hearing

Motion to Recess. Under House rule XI clause 1(a)(2), there is only one type of motion to recess: a motion to recess from day to day. This motion, which is non-debatable and of high privilege, would carry pending business over until the next day, and it may be offered by any member. There is no other type of motion to recess in committee that is recognized under the rules (e.g., "I move to recess until 3 P.M." or "I move to recess subject to the call of the chair" could not be offered without unanimous consent). A working quorum is required to vote on a motion to recess.

Practice Note: It is common for the chair to recess committee proceedings after consulting with the ranking member without objection from committee members. The chair usually states a specific time that the committee will reconvene or states the committee will reconvene after a series of House floor votes has concluded. In some committees, the chair in a statement at the outset of a proceeding obtains unanimous consent that the chair may call recess at any time, precluding the need for individual unanimous consent motions for recesses during a proceeding.

Motion to Adjourn. A motion to adjourn differs from a motion to recess in that it terminates the pending proceeding. The motion to adjourn derives from the Constitution, is highly privileged in the House under rule XVI clause 4, is not debatable, and takes precedence over all other motions. The Constitution provides that while a quorum in the House is required to conduct business, "a smaller [n]umber may adjourn from day to day." Therefore, an affirmative vote on the motion to adjourn does not require the presence of any type of quorum and can be accomplished by the members who may be present.

A working quorum is required to defeat a motion to adjourn. If a motion to adjourn is defeated, another motion to adjourn can be made after any intervening business or debate (such as a round of questioning by a member under the five-minute rule) occurs.

Practice Note: If there are not enough votes in the room to defeat a motion to adjourn, there are several steps a chair may take to ensure members have the opportunity to participate in a vote. If an adjournment vote is anticipated, the chair's staff can alert members of the probability that the chair may call members for a vote on short notice. Once a motion occurs, committee staff can ask member services to send out an alert that a vote is needed in committee. A vote can be taken first by voice vote. If the chair determines that the motion to adjourn fails by voice vote and a member requests a roll call vote, the chair must determine whether there is a sufficient second for the requested vote, which requires one-fifth of those present to raise their hands to request the vote.

Once the roll call is ordered, the chair can control the pace of the voting. According to *House Practice*, Chapter 58, Voting, § 20, "The Chair has the discretion … to allow additional time for Members to record their votes." The committee clerk may call out individual names at a slow pace like what is used on Senate floor roll call votes, call out for absent members a second time, and take latecomers at the direction of the chair. Committee staffs on committees that are holding simultaneous hearings where the committees have overlapping members should consider consulting with each other in advance about logistics for gathering members for any anticipated motions to adjourn.

Note also that on occasion a member seeking to halt an oversight hearing have attempted to offer a "motion to postpone." While this motion is available under House Rule XVI, clause 4, in a markup setting to postpone consideration of a measure indefinitely or to a date certain, it is not in order for an oversight hearing.

O. Separate Day of Hearings with Minority Witnesses

At any committee hearing, a majority of the minority members are entitled by House rule XI clause 2(j)(1) to demand at least one separate day of hearings to allow witnesses selected by the minority to testify on the subject of the hearing. Under the rule, minority members must submit a request in writing to the chair before the end of the hearing.

Practice Note: In practice, the minority normally requests in advance of any hearing that its desired witnesses appear as part of the main hearing and negotiates the details with the majority. The right to a minority day of hearings is usually formally invoked only if the chair has refused to call the witnesses requested by the minority. If this minority right is invoked, the chair must schedule another day of hearings at which the witnesses requested by the minority must be invited to testify, but the chair retains the discretion to determine the timing of the hearing. The chair may also call witnesses at any such hearing.

III. OTHER RULES REGARDING OVERSIGHT AND INVESTIGATION

A. Subpoenaing Documents and Witnesses

House rule XI clause 2(m)(3)(A) authorizes any committee or subcommittee to authorize and issue subpoenas in the conduct of any investigation. Such subpoenas can be authorized by a majority vote of a committee or subcommittee. Under this rule, committees can also delegate their subpoena authority to the full committee chair.

Committee rules differ regarding procedures for issuing a subpoena. Some committee rules provide that the chair may issue subpoenas unilaterally (e.g., Financial Services Committee rule 3e); others state that the chair of the full committee may do so only after consultation with the ranking minority member (e.g., Judiciary Committee rule IV); while others require majority vote of the committee (e.g., Armed Services Committee rule 12b). In 2009, the House Energy and Commerce Committee adopted a rule that provided the ranking member an opportunity to secure a committee vote if the ranking member objected in writing to the issuance of the subpoena (Energy and Commerce Committee rule 16 (111th Congress)).

In addition, House rule XI clause 2(k)(6) provides that at hearings, "the chair shall receive and the committee shall dispose of requests to subpoena additional witnesses." Under this rule, any member may move at an investigative hearing to subpoena additional witnesses and obtain documents from such witnesses. Such subpoena must be relevant to the subject matter of the hearing. Any such motion must be decided by the committee by vote by the end of the hearing. A majority quorum is required to approve a subpoena.

Practice Note: When a chair receives a motion to subpoena an additional witness at a hearing, he or she can either move forward immediately with debate and vote on the merits, move to table the motion, or hold in abeyance the motion until a point a the hearing the chair deems appropriate, such as at the end of the testimony.

B. Enforcing Subpoenas

An enforceable committee subpoena must be signed by the committee chair or member designated to sign subpoenas under applicable committee rules and must be served on the subject of the subpoena. To enforce a committee subpoena, a committee must vote on whether the person who disobeyed a subpoena should be cited for contempt. If the committee votes to cite the witness for contempt, the committee reports a resolution to the House. The House must then vote on whether to approve the resolution. If the House approves the resolution, the matter is referred to a U.S. Attorney, who may seek a fine or imprisonment under the provisions of 2 U.S.C. § 192. *House Practice*, Contempt Power § 2.

If the House is not in session when a committee votes to cite the witness for contempt, a statement of the committee action is filed with the Speaker. According to a 1966 court decision, the Speaker then has discretion to refer the matter to a U.S. Attorney. *Wilson v.*

United States, 369 F.2d 198 (D.C. Cir. 1966). No Speaker since then has used this authority to refer a contempt citation to a U.S. Attorney without a vote of the House.

On several occasions, the Justice Department has taken the position that it has discretion whether to present the congressional contempt citation to a grand jury.[5] One example involved a contempt citation to enforce subpoenas issued by the House Committee on the Judiciary to White House Counsel Harriet Miers for testimony and documents and to White House Chief of Staff Joshua Bolten for documents in the Committee's investigation of the resignation of nine United States Attorneys. In this instance, the Attorney General notified the Speaker that the Department of Justice was declining to bring the citations before the grand jury or take other action to prosecute Ms. Miers and Mr. Bolten.

The House had anticipated the Attorney General's action and had passed a resolution authorizing the House Counsel to file, if necessary, a civil action in the United States Court for the District of Columbia to enforce the subpoenas through a declaratory judgment and other appropriate relief.[6] The district court ruled in the House's favor, declaring that the executive branch should "produce all non-privileged documents requested" by the subpoenas and provide a "specific description of any documents withheld from production on the basis of executive privilege" and that Ms. Miers "is not immune from compelled congressional process" and is "legally required to testify" although she "may invoke executive privilege" in response to specific questions.[7]

In the 114th Congress, the House amended the House rules to add language to House Rule II clause 8(b) that states that "the Bipartisan Legal Advisory Group composed of the Speaker and the majority and minority leaderships speaks for, and articulates the institutional position of, the House, in all litigation matters." The position of the House Rules Committee Chairman is that the BLAG may authorize civil litigation to enforce a committee's subpoenas.

C. Releasing Information Obtained by Subpoena

House rule XI clause 2(m)(3)(A) provides that the power to issue subpoenas resides in the committee. The chair can issue a subpoena when the authority to do so has been expressly "delegated" by the committee to the chair. In 1997, the House Parliamentarians interpreted this to mean that documents received under a subpoena belong to the committee and should be released with committee approval. *See* Letter to

[5] Congressional Research Service, *Congress's Contempt Power: Law, History, Practice, and Procedure* (Apr. 15, 2008) (RL34097).

[6] Congressional Research Service, *Congress's Contempt Power: Law, History, Practice, and Procedure* (May 12, 2017) (RL34097).

[7] *Comm. On the Judiciary, U.S. House of Representatives v. Miers,* 558 F. Supp. 2d 53 (2008 U.S. Dist. LEXIS 120465) (D.D.C. July 31, 2008). For additional history regarding congressional contempt citations, *see* Congressional Research Service, *Congress's Contempt Power: Law, History, Practice, and Procedure* (May 12, 2017) (RL34097).

Dan Burton, Chairman of the Committee on Government Reform, from Minority Members (Mar. 10, 1997).

Practice Note: Committees under Republican leadership on occasion have released subpoenaed materials without committee backing.[8] The continued viability of this rule is unclear.

D. Releasing Information Obtained in Executive Session

House rule XI clause 2(k)(7) provides that "[e]vidence or testimony taken in executive session . . . may be released or used in public session only when authorized by the committee." Under this rule, members are entitled to vote on whether confidential or privileged materials taken in executive session may be released to the public. The House Parliamentarians have specifically advised that "the chairman has no unilateral authority, not possessed by any other member, to release such material." *House Practice*, Committees § 16.

E. Depositions

Under the House rules enacted for the 116th Congress (H. Res. 6, Section 103), chairs on the majority of House committees have authority to order the taking of depositions by staff counsel or committee members. This grant of deposition authority states that depositions are "subject to regulations issued by the chair of the Committee on Rules."

The Rules Committee Chairman in January 2019 issued procedural regulations applicable to all committees that have deposition authority under H. Res. 6.[9] Practices addressed by these regulations include, among others:

(1) *Notice*: A chair must consult with the ranking minority member and provide committee members three days' written notice before a deposition is taken;
(2) *Outside Counsel*: Witnesses have the right to have personal, nongovernmental counsel present, while "[o]bservers or counsel for other persons, including counsel for government agencies, may not attend;"
(3) *Questioning*: The majority and minority have equal time to ask questions and must ask questions in rounds not to exceed 60 minutes per side, with the majority questioner asking questions first;

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[8] *See, e.g.,* Letter from Ranking Minority Member Elijah Cummings and Ranking Member Jerrold Nadler to Chairman Trey Gowdy and Chairman Robert Goodlatte (July 11, 2018) (documenting multiple examples of the release of documents provided by the Department of Justice without Committee consultation); House Committee on Government Reform and Oversight, *Investigation of Political Fundraising Improprieties and Possible Violations of Law,* Additional and Minority Views, vol. 4, at 3956-57 (H. Rept. 105-829) (describing multiple examples where the Committee Chairman violated the House Committee on Government Reform and Oversight's protocol on document release).

[9] *116th Congress Regulations for Use of Deposition Authority,* Congressional Record, H1216-17 (Jan. 25, 2019).

(4) *Objections to Questions*: Witnesses may not refuse to answer a question except to preserve a privilege. Members and staff facing a witness objection or refusal to respond may either proceed with the deposition, seek a ruling from the chair in real time by phone or otherwise, or seek a ruling at a subsequent time. If the chair overrules the witness objection the witness shall be ordered to answer the question that was subject to the objection. A committee member may appeal the chair's ruling and must do so in writing within three days of the ruling;
(5) *Release of Testimony*: The chair and ranking member must consult regarding release of deposition testimony, and if either objects in writing to a proposed release, the committee shall resolve the matter.

F. Granting Immunity

18 U.S.C. §§ 6002 and 6005 provide that a witness that refuses to testify before a congressional committee on grounds of self-incrimination may be granted immunity and ordered to testify by a court. Under this statute, the request to the court for an order of immunity must be supported by a vote of two-thirds of the committee. *See House Practice*, Committees § 25. Under the statute, a committee must give the Attorney General ten days of notice before requesting an order of immunity from a court.

G. Examining Committee Records

House rule XI clause 2(e) provides that a committee's "hearings, records, data, charts and files" are the property of the House and all members of the House have the right to examine them. Materials received in response to a committee request or a subpoena issued by a committee are considered part of the committee's records. According to *House Practice*, Committees § 16, "Committees may prescribe regulations to govern the manner of access, such as limiting examination to committee rooms."

Practice Note: Limitations on access that the Parliamentarians have approved include setting time limitations on access or imposing limitations on staff access and note-taking.

H. Investigative Reports

Section 412 of Jefferson's Manual provides that "papers" before a committee must be read by the clerk and then opened for amendment. This provision applies to investigative reports. Thus, when a proposed investigative report is brought before a committee, members have the right to have the report read and to amend the report, just as they do with legislation.

The reading requirement can be waived by unanimous consent. In addition, under House rule XI clause 1(b)(2), an investigative report will be considered as read if the report is available to committee members 24 hours in advance (excluding Saturdays, Sundays and legal holidays except if the House is in session).

The report is considered to be open for amendment at any point following its reading.

I. Supplemental, Minority, or Additional Views to Investigative Reports

House rule XI clause 2(l) provides committee members the right to two additional days to include supplemental, minority, or additional views in any investigative report that is approved by a committee. In addition, under House rule XI clause 1(b)(4), members must be given seven days to file supplemental, minority, or additional views if the investigative report is filed after sine die adjournment of the last session of a Congress.

J. "Tanner Rule" Oversight Requirements

In the 111th Congress, the House amended its rules to add language proposed by Rep. John Tanner (known as the "Tanner Rule") to promote vigorous congressional oversight. Under these provisions (House rule XI clause 2(n), (o), and (p)), each committee must (1) hold at least one hearing during each 120-day period following the establishment of the committee on the topic of waste, fraud, abuse, or mismanagement in government programs under the committee's jurisdiction; (2) hold at least one hearing in any session in which the committee receives disclaimers of agency financial statements from auditors of any federal agency under the committee's jurisdiction; and (3) hold at least one hearing on programs or operations under its jurisdiction identified in the "high-risk series" of reports issued by the Comptroller General. The Tanner Rule has been retained in successive congresses including the 116th Congress.

K. Resolutions of Inquiry

Resolutions of inquiry can be introduced by any member of Congress. They are generally directed to the President or a cabinet officer and can request information, including documents on both foreign and domestic issues. House Practice, *Resolutions of Inquiry,* §§ 1, 2, and 3. They must seek facts and cannot request information that requires an investigation or calls for an opinion. House Practice, *Resolutions of Inquiry,* § 7.

Resolutions of inquiry are privileged. Once introduced, the committee to which a resolution of inquiry is referred must consider it within 14 legislative days, exclusive of day of introduction and day of discharge. If a committee fails to report the resolution within this time, any member of Congress can make a motion to discharge the resolution, which is privileged for consideration on the House floor (this is different from a "discharge petition," which requires obtaining signatures from the majority of members to discharge a bill from a committee). A motion to table may follow such a motion. If a committee reports the resolution favorably, disfavorably, or without recommendation within 14 legislative days of its introduction, only an authorized member of that committee may call up the resolution for consideration. House Practice, *Resolutions of Inquiry,* § 5.

In the past, the executive branch has generally complied with resolutions of inquiry. There are no specific mechanisms for enforcing resolutions of inquiry, however.

Practice Note: When resolutions of inquiry are introduced by a member of the minority, committees have often disposed of these measures by reporting them disfavorably.[10]

L. Maintaining Decorum in the Hearing Room

House Rules require orderly conduct by all present in a hearing room, including members, staff, witnesses, media, and the public. House Rule XI clause 4(c) requires that "the general conduct of each meeting … and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations."

The Capitol Police can be helpful in addressing disruptions by spectators. The Capitol Police are charged with protecting the safety of members and witnesses in the hearing room. At the request of the chair of a committee, they can remove disruptive spectators from the room.

Committee chairs have several mechanisms for maintaining decorum among members. A chair may admonish a member who is engaging in a "verbal outburst," by informing the member that he or she is violating House rules and asking the member to refrain. In addition, under House Rule XVII clause 1, any member including a chair may move to "take down" a member's words if they are unparliamentary. For additional discussion of the involved with a motion to take down words, *see* Part IV.H.

Other measures may be available to the chair, to be employed depending on the severity of the circumstances. For example, a chair may threaten to bring a resolution of "reprimand" before the full House.[11]

Practice Note: Where the conduct of a member belies intentional disruptiveness, such as repeated interruption of witness questioning by other members with unfounded points of order speeches in the guise of "parliamentary inquiries," the chair may want to consider providing a warning or implementing incrementally punitive measures to attempt de-escalation. One strategy to consider is for the chair to make a general statement, at the outset of a hearing or the beginning of disruptive behavior, noting his or her expectation of order and civility while making clear that he or she is aware of and willing to use the variety of authorities available to address disruption if necessary.

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[10] *E.g.,* House Judiciary Committee, *Resolution of Inquiry Directing the Attorney General to Transmit Certain Documents to the House of Representatives Relating to the Financial Practices of the President* (H. Rept.115-28) (reporting the measure disfavorably 18-15).

[11] Constitution, Jefferson's Manual, and Rules of the House, at §§ 62-68, pp. 28-31 (discussing measures established to interpret the provision in the Constitution at Article I, section 5, clause 2, regarding Senate and House discipline and punishment).

IV. METHODS OF ASSERTING PROCEDURAL RIGHTS

A. Making a Parliamentary Inquiry

The House and Committee rules do not require the chair to recognize members for parliamentary inquiries. However, as a matter of practice, the chair generally recognizes members seeking recognition to make a parliamentary inquiry as an initial step in asserting or preserving a right, prerogative, or protection. If recognized by the chair, the member may then ask the chair to clarify to the committee members what the rights of the members are.

Practice Note: In circumstances where members appear to be using "parliamentary inquiries" as a mechanism for interrupting the flow of a hearing rather than for the purposes traditionally used in practice, a chair may refuse to recognize those members or state that he or she will recognize a parliamentary inquiry at the conclusion of a question round or rounds.

B. Making (or Reserving) a Point of Order

Points of order are the basic method of enforcing order in the House and in its committees. House Rule I clause 5 requires that the Speaker decide "all questions of order, subject to appeal by a Member." This rule carries over to committee chairs. Under this rule, the chair must recognize any member raising a point of order.

A point of order against consideration of a matter should be raised when the underlying matter is presented to the committee for consideration, not after debate on the matter has begun. Debate on the point of order is permitted in the discretion of the chair. After the point of order is raised, the committee generally cannot proceed to consider the underlying matter until the point of order is disposed of. *House Practice*, Points of Order §§ 4, 8, 9. If the point of order is not essential to the consideration of the underlying matter, however, the chair may take the point of order under advisement.

As an alternative to raising a point of order before debate commences, a member may inform the chair that the member wishes to reserve a point of order. If a point of order is reserved, the member may then raise (or withdraw the reservation of) the point of order after hearing debate on the matter. When a member seeks to reserve a point of order, the chair has the discretion to decide whether to permit the reservation of the point of order or to insist that the member make the point of order. *See House Practice*, Points of Order § 3. If one member reserves a point of order, the reservation "inures" to other members, meaning that any member may raise another point of order on that issue until the reserved point of order is resolved and debate has recommenced. *See House Practice*, Amendments § 33.

Practice Note: On occasion chairs have faced circumstances where a member or members appear to be raising repeated unfounded points of order in order to disrupt the proceedings. One approach a chair may consider in such a situation is to make a brief

statement on the chair's commitment to ensuring fair application of House and committee rules that also flags that he or she will not hesitate to execute powers of the chair as necessary to address breaches of decorum by committee members. Such powers include stating that the point of order is not a valid point of order and proceeding to recognize another member.

C. Specific Points of Order

Certain points of order alleging violations of House rules related to committee procedure can affect the ultimate disposition of a matter in the House, possibly causing a bill or a report to be ordered recommitted to the committee by the Speaker. To raise a point of order on the House floor, the point of order must generally have been raised and improperly rejected in the committee. Thus, House rule XI clause 2(g)(5) provides that on the House floor no point of order may be made against a measure on the grounds that hearings were not properly conducted unless the point of order (1) is made by a member of the committee; (2) was made and was timely in the committee; and (3) was improperly overruled or not properly considered in the committee.

Examples of possible violations of House rules leading to points of order in the House and possible recommittal of a measure to the committee include:

(1) failure to give at least one week's notice of hearings (rule XI clause 2(g)(3));
(2) violation of the rules requiring open hearings and meetings unless properly closed by committee vote (rule XI clause 2(g));
(3) failure to have a majority quorum present when the measure was reported from committee (rule XI clause 2(h)(1); and
(4) failure to include a proper record of the vote of the committee on bills, amendments, and reports ordered reported by the committee (rule XIII clause 3(b)).

D. Appealing a Ruling of the Chair on a Point of Order

Under House rule I clause 4, rulings of the chair on points of order are "subject to appeal by [any] member." An appeal of a ruling of the chair is debatable under the five-minute rule. *House Practice,* Appeals § 4; *House Practice*, Committees, § 18. A working quorum must be present to decide the appeal (see part I.D). An appeal is subject to a nondebatable motion to table. Requests for a roll call vote can follow such motions.

E. Raising a Question of the Privileges of the House

Another method for raising objections to committee practices that violate the rules of the House or of the committee is to raise a question of the privileges of the House on the House floor under House rule IX. Such questions of privilege can raise matters affecting the rights of the House collectively, its safety, its dignity, and the integrity of its proceedings. To invoke rule IX, a member offers a resolution on the floor describing the matter in controversy and proposing a remedy.

The *House Rules and Manual* details precedents relating to which types of subject matter might qualify as proper questions of the privileges of the House. A resolution offered as a question of privilege is debatable for one hour evenly divided between the two parties. A question of the privileges of the House must be disposed of immediately if raised by the majority or minority leader; if raised by another member, it must be scheduled for consideration within two legislative days. A member opposed to a resolution offered as a question of privilege can move to table the resolution.

F. Raising a Question of Personal Privilege

If committee practices affect the "rights, reputation, or conduct" of an individual member, the member may raise a question of personal privilege on the House floor under House rule IX. A question of personal privilege takes precedence over all other matters except a motion to adjourn. The member who raises the question of personal privilege is entitled to speak for an hour to respond to the committee practices affecting the member's rights, reputation, or conduct. *House Practice*, Questions of Privilege § 22.

There is no requirement in the House rules that a question of personal privilege be recognized in a committee. However, it is likely that any member asserting a question of personal privilege in the committee would be recognized for such purposes.

G. Objecting to (or Reserving the Right to Object to) Unanimous Consent Requests

Chairs and other committee members sometimes seek to waive procedural rights, prerogatives, and protections through unanimous consent requests. Any member of a committee can block such requests by stating an objection. Members who are not present at the time the request is made have no right to object later.

Unanimous consent requests are not debatable and must be disposed of immediately, but the common practice by members wishing to have some discussion before deciding whether to accede to a request is to "reserve the right to object." A member who reserves the right to object may make a statement on the pending request (and may also yield to other members for discussion). When a member reserves the right to object, any member may demand the "regular order," ending discussion and requiring the reserving member either to object or to allow the request to be agreed to.

H. Demanding to Take Down Words

As discussed above in part III.L, any member may demand to take down a member's words on the grounds that the remarks are unparliamentary in violation of House Rule XVII clause 1, which establishes rules of decorum such as the requirement that remarks made by members in debate must be "confined to the question under debate" and avoid "personality." The chair is required to immediately rule on whether the words are in order or out of order. To do so, the chair must read back a transcription of the words at

issue. The chair's ruling on this demand is appealable and debatable under the five-minute rule. Any member may make a motion to table the motion to appeal, which is not debatable under House rule XVI clause 4(b).

If words are taken down during a committee proceeding, the member who spoke the words is prohibited from asking questions or speaking at the remainder of that proceeding under House rule XVII clause 4 and *House Rules and Manual* § 961.

Practice Note: A chair may be able to head off a vote on a motion to take down words by urging members to resolve their differences or apologize.

I. Motions

Whether a chair must recognize a member to make a motion depends on the nature of the motion. Privileged motions, like a motion to adjourn (see part II.N), must be recognized according to their privilege. A motion to close a hearing because testimony or evidence may defame, degrade, or incriminate (see part II.M) must be entertained before the relevant testimony or evidence is given to prevent the motion from being made moot.

In the case of other motions, however, the chair can refuse to recognize the motion until a later time in the hearing. For example, a chair could refuse to recognize a motion at a hearing to subpoena additional witnesses until the end of the hearing (see part III.A). According to *House Practice*, Motions § 3, "there is no appeal from a denial of recognition."

Under House rule XVI clause 1, any motion must be reduced to writing upon the demand of any member. In practice, this writing requirement is most often applied to motions to amend.