

SPEC. COM. REP. NO. **1-22**

Honolulu, Hawaii

**APR 29**, 2022

RE: SPECIAL COMMITTEE TO  
CONSIDER MISCELLANEOUS  
COMMUNICATION NOS. 1001 AND 1002

Honorable Scott K. Saiki  
Speaker, House of Representatives  
State Legislature  
Regular Session of 2022  
State of Hawaii

Sir:

The Special Committee to Consider Miscellaneous Communication Nos. 1001 and 1002 begs leave to report as follows:

The Special Committee to Consider Miscellaneous Communication Nos. 1001 and 1002 ("Special Committee" or "Committee") was formed pursuant to Rule 14 of the Rules of the House of Representatives of the Thirty-First Legislature ("House Rules") and memorandum dated March 18, 2021, by Speaker of the House of Representatives Scott K. Saiki ("Speaker's Memorandum"). The Special Committee was charged with investigating whether Representative Sharon E. Har's ("Representative Har") conduct involving alleged incidents of driving while intoxicated, driving without an auto insurance policy, and driving the wrong way on a one-way street on February 22, 2021, violated House Rule 62, which sets forth the body's Code of Legislative Conduct.

The following six members of the House were appointed to the Special Committee: Della Au Belatti, Chair (Majority Leader); Mark M. Nakashima, Vice-Chair (Committee on Judiciary Chair); Linda Ichiyama (Committee on Pandemic & Disaster Preparedness Chair); Scot Z. Matayoshi; Lauren Matsumoto (Minority Floor Leader); and Amy A. Perruso.

The Special Committee was tasked with convening as soon as practicable and, after notifying Representative Har, investigating the matter. See Rule 4, Speaker's Memorandum. The Special Committee was required to "review relevant written documentation

and other evidence submitted by the petitioner[s] and affected member." Id. The Special Committee was also required to "consider evidence that is clear and convincing" in making its findings, recommendations, and report. See Rule 5, Speaker's Memorandum.

The Chair of the Special Committee was given the discretion to "conduct hearings where the petitioner[s] and the affected member, or their respective attorneys, shall each be provided an opportunity to make statements and answer questions from the Special Committee." See Rule 4, Speaker's Memorandum.

At the conclusion of its investigation, the Special Committee was obligated to write and submit this report of its findings and recommendations to the House of Representatives. See Rule 6, Speaker's Memorandum. The House shall affirm or reject the report, or take such other action as it determines. Id.

#### I. Issues for Consideration by the Special Committee

The House of Representatives and any committees established under it are obligated to operate under and apply constitutional and statutory provisions, as well as abide by the House's own internal rules. See Spec. Com. Rep. No. 2-15, Re: Special Committee to Consider Misc. Communication No. 1003, dated Feb. 27, 2015 (2015 Spec. Com. Rep. No. 2-15), p.2.

As noted above, the Special Committee was charged with investigating whether Representative Har's conduct involving alleged incidents of driving while intoxicated, driving without an auto insurance policy, and driving the wrong way on a one-way street on February 22, 2021, violated House Rule 62.

The relevant provisions of House Rule 62 applicable to the investigation of the Special Committee are the following:

Rule 62.1: Members should conduct themselves in a respectful manner befitting the office with which they as elected officials have been entrusted, respecting and complying with the law and acting at all times in a manner that promotes public confidence in the integrity of the House.

Rule 62.2: Members should not lend the prestige of public office to advance the private interests of themselves or others[.]

Rule 62.4 (8): To the extent reasonably possible, members should. . . (8) Refrain from using, or permitting the use of, the privileges and prestige of their public office to derive undue personal, professional, or financial benefits for themselves[.]

After conducting its investigation and determining whether Representative Har's conduct violated House Rule 62, the Special Committee is authorized by Article III, Section 12, of the Hawaii State Constitution to determine the punishment, if any, to be imposed on Representative Har. Article III, Section 12, of the Hawaii State Constitution provides in relevant part:

*Each house . . . shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member. (Emphases added.)*

Accordingly, the issues presented to the Special Committee in its investigation are as follows:

- A. Whether Representative Har's conduct related to the events of February 22, 2021, violated House Rule 62; and
- B. What action, if any, is appropriate as a result of the investigation?

## II. Procedural History

### A. Committee Meeting of March 30, 2021

On March 30, 2021, the Special Committee convened a publicly noticed meeting at which Petitioners Michael Golojuch, Sr., ("Petitioner M. Golojuch, Sr.") and Carolyn M. Golojuch, MSW ("Petitioner C. Golojuch"), Representative Har, and Howard Luke, Esq., ("Mr. Luke") counsel for Representative Har, participated

virtually. See 3/30/2021 Meeting Transcript ("3/30/21 Meeting"), p.3. At the outset, the Chair explained that the Committee would be guided by principles of fairness and impartiality consistent with the protection of constitutional due process rights. Id., p.4. This initial meeting was limited to reviewing rules, process, and procedures of the Committee and did not involve a discussion of the merits of the matter. Id., pp.4 & 7.

The parties and the public were advised that the range of possible outcomes of the Special Committee's investigation could include recommendations that no action be taken to recommendations of censure, suspension, or expulsion pursuant to Article III, Section 12, of the Hawaii State Constitution. Id., p.8.

Mr. Luke informed the Special Committee that an arraignment and plea date of April 20, 2021, was scheduled by the District Court for the criminal charges against Representative Har. Id., p.14. This date was subsequently continued a number of times. See section II, B, infra.

In order to conduct a fair and impartial investigation that did not interfere with the criminal and administrative proceedings or jeopardize Representative Har's due process rights, the Special Committee stayed its investigation until after these proceedings were concluded; provided that if these proceedings or related appeals were delayed beyond the legislative biennial calendar, the Chair would notice a Committee meeting to address the delay. See 3/30/21 Meeting, pp.15-16, & 18-24. The parties did not object to the stay of the Committee's investigation. Id.

#### B. Resolution of Criminal and Administrative Proceedings

On March 2, 2021, the District Court dismissed without prejudice the alleged violation of Hawaii Revised Statutes ("HRS") Section 431:10C-104, relating to no motor vehicle insurance. The alleged violation was later dismissed with prejudice by the District Court on December 6, 2021.

On March 2, 2021, the Administrative Driver's License Revocation Office issued its Notice of Administrative Review Decision. This Decision sustained the automatic two-year revocation of Representative Har's license and privilege to operate a vehicle based on her February 22, 2021, refusal to

submit to a breath test after being informed of the sanctions of the administrative revocation process.

On March 3, 2021, Representative Har filed a Request for Administrative Hearing appealing the administrative revocation of her license. A hearing on this matter was set for March 18, 2021, and was subsequently continued until February 3, 2022.

On March 29, 2021, the District Court dismissed with prejudice the alleged violation of Section 15-10.01 of the Revised Ordinances of Honolulu, relating to driving the wrong way on a one-way street.

Between April 16, 2021, and October 6, 2021, Representative Har's arraignment, plea, and criminal trial dates were continued six times for various reasons. On December 6, 2021, Representative Har's jury-waived trial began on the charge of operating a vehicle under the influence of an intoxicant (OVUII) in violation of HRS Section 291E-61(a)(1). The trial was continued to January 10, 2022.

On January 10, 2022, immediately after the Deputy Prosecuting Attorney rested his case, Representative Har's defense counsel made the following two oral motions: (1) a motion to dismiss with prejudice based on a December 10, 2021, decision by the Hawaii Supreme Court in State v. Thompson, 150 Hawaii 262, 500 P.3d 447 (2021); and (2) a motion for a judgment of acquittal based on the failure of the State to present beyond a reasonable doubt a prima facie case that Representative Har had violated HRS Section 291E-61(a)(1). The District Court granted both motions, entered a judgment in favor of Representative Har, and acquitted Representative Har of the OVUII charge.

On January 24, 2022, Representative Har withdrew her Request for Administrative Hearing and ended her appeal challenging the administrative revocation process. The two-year revocation of Ms. Har's driver's license was affirmed by the Administrative Driver's License Revocation Office. According to Representative Har, she is required to have an ignition interlock in her vehicle for two years. See Representative Har's Written Response to Special Committee Questions ("4/18/22 Rep. Har Written Responses"), no.1, dated April 18, 2022.

C. Committee Meeting of February 11, 2022

On February 11, 2022, the Special Committee conducted a publicly noticed and broadcasted videoconference meeting advising the parties that the Committee would resume its work inasmuch as the criminal and administrative proceedings had been resolved. Both Petitioners and Mr. Luke were virtually present at this meeting.

A briefing schedule was discussed and confirmed with the parties. Petitioners were directed to provide their submittals by February 25, 2022. Representative Har was directed to provide her responsive submittals by March 11, 2022.

The Chair advised the parties that the Special Committee would be considering reliable and trustworthy supporting evidence from the parties. The Chair further announced that the Committee reserved the right to question the parties once all submittals had been received or to issue a recommendation based solely on the parties' submittals.

D. Documents Submitted and Reviewed by the Special Committee

The Committee reviewed various submittals by the parties. Miscellaneous Communication Nos. 1001 and 1002 were received by the House on March 10, 2021, and March 12, 2021, from Petitioners M. Golojuch, Sr., and C. Golojuch, respectively. Both Communications petitioned the House to investigate the conduct of Representative Har related to the events of February 22, 2021, and take appropriate actions.

In Miscellaneous Communication No. 1001, Petitioner M. Golojuch, Sr., in relevant part, cited to conduct related to the "alleged DUI incident" that "is not the behavior we expect of our elected officials." He also cited to Representative Har's statements on and after February 22, 2021, and "numerous conflicts between her and the police reports. . . , including the footage of the body cameras." Petitioner M. Golojuch, Sr., describes Representative Har's statements as "unprofessional, and in direct opposition of her initial statements."

In Miscellaneous Communication No. 1002, Petitioner C. Golojuch cited to House Rules 46.1 and 46.2 and petitioned the House to investigate the conduct of Representative Har. Petitioner C. Golojuch ostensibly based her complaint on Representative Har's alleged conduct of driving while intoxicated and driving without a motor vehicle insurance policy.

Following the conclusion of the criminal and administrative proceedings, Petitioners submitted the following documents in support of their Petitions by the February 25, 2022, deadline:

1. A signed statement dated February 10, 2021, [sic] from Petitioner M. Golojuch, Sr., alleging that "Representative Har conducted herself in a way that didn't benefit her office or provide public confidence in the House" and pointing out the differences in Representative Har's statements after the incident to the House of Representatives and to her District, newspaper and television reports, and Honolulu Police Department ("HPD") body camera footage. Petitioner M. Golojuch, Sr. attached a compilation of video links, including links to portions of body camera footage, and a compilation of statements from various news stories and letters to the editor to his signed statement;
2. A signed statement dated February 10, 2022, from Petitioner C. Golojuch, and the same attachments of video links, statements from news stories, and letters to the editor previously provided by Petitioner M. Golojuch, Sr.; and
3. A statement dated February 25, 2022, from Petitioner C. Golojuch presenting questions to the Committee purportedly challenging Representative Har's judgment and conduct in going out during the pandemic and having "a beer on top of her prescription medication" while dealing with "an upper respiratory disease."

Representative Har submitted the following documents on March 11, 2022:

1. A signed Response to Petitioners' Submittals, dated March 11, 2022, requesting that the Committee:
  - a. Adopt the facts set forth in Representative Har's attached Declaration and Exhibits;
  - b. Dismiss the Petitions inasmuch as the evidence at trial thoroughly discredited the factual allegations in the Petitions and reopening the evidence would be futile and tantamount to a violation of Representative Har's right to be free from double jeopardy;
  - c. Recommend that no further action be taken against Representative Har; and
  - d. Discharge the Special Committee;
2. A signed Declaration by Representative Har, dated March 11, 2022, "illustrat[ing] where and in what context the true facts of the events regarding the incident that occurred on February 22, 2021." See 3/11/22 Representative Har Declaration at p.2. This Declaration was based upon attached trial exhibits and numerous excerpts of the pretrial and trial transcripts; and
3. The attached Exhibits supporting Representative Har's above Declaration:
  - a. Exhibit A: Speaker's Memorandum dated March 18, 2021;
  - b. Exhibit B: A copy of the March 29, 2021 State of Hawaii Judiciary's eCourt Kokua minutes dismissing with prejudice Case No. 1DTI-21-043783, relating to the one-way street violation;
  - c. Exhibit C: A redacted copy of Representative Har's vehicle insurance card showing an active vehicle insurance policy for February 22, 2021;



- d. Exhibit D: A redacted copy of the District Court's Notice of Entry of Judgment and/or Order, filed on December 6, 2021, in Case No. 1DTA-21-00387, dismissing with prejudice the charge related to motor vehicle insurance, HRS Section 431:10C-104(a); and
- e. Exhibit E: A copy of a January 19, 2022, Honolulu Star Advertiser editorial commentary authored by Mr. Luke, Representative Har's trial defense attorney, provided to refute the Prosecuting Attorney's "highly unusual [post-trial] press conference that completely misrepresented the evidence adduced at trial." See 3/11/22 Representative Har Declaration at p.2.

On April 7, 2022, pursuant to a request made to the District Court, the Committee received official transcripts of the December 6, 2021, pretrial and trial proceedings, and January 10, 2022, trial proceedings in 1DTA-21-00387, State of Hawaii v. Sharon Ellie Har.

E. Committee Meeting of April 4, 2022

Following the submittals of the parties, the Chair determined that a hearing was necessary to hear from and ask questions of the parties. See Rule 4, Speaker's Memorandum. At the Committee's third publicly noticed meeting on April 4, 2022, an in-person hearing before the Committee was scheduled with the parties' consent for April 13, 2022. The Chair announced that according to past practice, each side would have 20 minutes to make a presentation to the Special Committee, followed by questions from Committee members. See, e.g., 2015 Spec. Com. Rep. No. 2-15, p.8.

The Chair also noted that the Special Committee was working to obtain the official transcripts of Representative Har's pretrial and trial proceedings and that it was the intent of the Committee to resolve the issues raised by Petitioners before adjournment of the Regular Session of 2022. Id., at 21:43-22:30. As noted supra, the Committee received official transcripts of the December 6, 2021, and January 10, 2022, pretrial and trial proceedings, that were reviewed in advance of the April 13, 2022 hearing.

F. Committee Hearing of April 13, 2022

Pursuant to standard practices of the Legislature developed and adopted beginning in 2020 and through 2022, the April 13, 2022, hearing was conducted in-person and broadcasted publicly via the House YouTube channel. Committee members, Petitioners, Mr. Howard Luke, Esq. ("Mr. Luke"), and Mr. Daniel Luke, Esq., on behalf of Representative Har, were present in person at the hearing. Also in attendance virtually was a legal reporter who transcribed the April 13, 2022 hearing. See 4/13/2022 Hearing Transcript ("4/13/22 Hearing"), at pp.1-4.

1. Petitioners' Presentation and Responses

Petitioners presented their position to the Committee, utilizing approximately 11 of the 20 available minutes. Petitioner M. Golojuch, Sr. explained that the decision to file Miscellaneous Communication No. 1001 was made after a meeting of the District 42 Council where "a majority of the District Council members voted to file a complaint with the Speaker of the House" pursuant to the House of Representatives procedures for filing a complaint. Id., at pp.6-7.

Petitioner M. Golojuch, Sr. also acknowledged Representative Har's request that both petitions be dismissed because the District Court judge acquitted her of the criminal OVUII charge. Id., p.7. However, Petitioner M. Golojuch, Sr. asserted that the proceeding before the Committee was "an administrative procedure and not a court of law" and that similar to his experience as a former hearings officer where his "job was to review cases against individuals independently of any judicial action or acquittal," the House "has its own rules about how representatives should present themselves or act in public." Id.

He also asserted Petitioners' belief that "the written and recorded documentation of Representative Har's behavior on the evening of February 22nd, 2021 does not reflect the professional standards that all representatives should follow." Id., pp.7-8. Petitioner M. Golojuch, Sr. then pointed out several discrepancies in the statements made by Representative Har "telling the police that she did not take any medication" in contrast to the statement "that the reason for the incident was taking cold medication and one beer." Id., p.8; compare nine HPD body camera videos of Representative Har's traffic stop and arrest on Feb. 22, 2021 with

Statement of Representative Sharon Har, Haw. H. Journal, 31<sup>st</sup> Leg., Reg. Sess., Day 23, Feb. 24, 2021, at p.206 ("2/24/21 Rep. Har Floor Statement") to Feb. 2021 District 42 Newsletter. Lastly, Petitioner M. Golojuch, Sr. acknowledged, "[t]hat is not my district's call" and "[i]t's up to her peers to decide what, if any, action should be taken after its Special Committee completes its investigation of facts, findings, and conclusions." See 4/13/22 Hearing, p.8.

Petitioner C. Golojuch echoed the statements of Petitioner M. Golojuch, Sr. and stated that she was "not asking for any undue reprimands" but that she was "asking that the rules pertain to Representative Har." Id., p.10.

Following Petitioners' presentation, the Special Committee asked several questions of Petitioners for another 10 minutes. The Committee requested that Petitioners provide a copy of Representative Har's District Newsletter that was cited in Petitioners' submittals as having been received by Representative Har's constituents. Id., pp.12-13.

The Committee also asked clarifying questions about who submitted the petitions, and Petitioners responded that Petitioner M. Golojuch, Sr. brought the petition on behalf of members of the Democratic Party in House District 42 or the "District 42 Council," while Petitioner C. Golojuch brought her petition on her own behalf. Id., pp.13-14.

Petitioners were then asked if they were alleging that the same conduct violated the House Rules. Petitioner M. Golojuch, Sr. asserted that both petitions alleged similar type complaints, and Petitioner C. Golojuch referred back to her submittals for the conduct she alleged violated the House Rules. Id., pp.14-15.

In further follow up questions, Petitioners were asked if Petitioners reviewed House Rule 62 and whether they were familiar with that Rule. Both Petitioners could not cite specifically to House Rule 62, but Petitioner M. Golojuch, Sr. answered that while he did not "remember it word-for-word," he did "know that there is a standards of conduct" and that at the District 42 meeting, "something was brought up, because that's why we even had the idea of filing the complaint." Id., pp.15-20.

## 2. Representative Har's Presentation and Responses

At the conclusion of the Special Committee's questioning of Petitioners, Mr. Luke, on behalf of Representative Har, presented for approximately 15 of the available 20 minutes, followed by Committee members' questions for another 30 minutes.

Mr. Luke asserted, in relevant part, that the OVUII charge against Representative Har was not dismissed on a technicality and the "judgment of acquittal is a very high standard" whereby the prosecution had failed to meet their burden of proof. 4/13/22 Hearing at p.24. Mr. Luke argued that the District Court thoroughly reviewed all the witness testimony presented at trial, including the testimony of arresting police officers and the AnyPlace Cocktail Lounge staff who served Representative Har, along with all of the body camera video footage of the arrest, and correctly acquitted Representative Har of the OVUII charge. Mr. Luke concluded that this Committee should similarly dismiss the petitions against Representative Har. Id. at pp.25-29.

Following Mr. Luke's presentation, Committee members posed numerous questions for Representative Har. These questions included the following:

- a. What are the requirements Representative Har must comply with as a result of the administrative license revocation process and the two-year administrative revocation of her driver's license? See 4/13/22 Hearing, p.36;
- b. Whether Representative Har made the statement, "Do you know who I am?" at the scene of the incident, as reported; and if the statement was made, an explanation from Representative Har on what she meant by the statement. Id., pp.40-43;
- c. Whether Representative Har was on prescription medication at the time of the incident, and, if so, whether that prescription medication had a warning on it to not consume alcohol while on that medication? Id., pp.47-50;

- d. What were the circumstances surrounding Representative Har's illness at the time she decided to go out the evening of February 22, 2021? Did Representative Har have a transmissible respiratory illness? Id., pp.52-54.
3. Further Follow-Up Requested by the Special Committee

In light of the questions raised during the hearing, the parties were instructed to submit written responses to the questions asked by the Committee by the close of business on April 18, 2022. Petitioners were also instructed to provide a copy of Representative Har's District 42 Newsletter that was mailed to her constituents.

As specified in the hearing notice and relayed in advance to the parties, the Special Committee did not engage in discussion or decision-making at the April 13, 2022 hearing.

G. Documents and Responses Submitted Post-Hearing

On April 18, 2022, Petitioners submitted the following supplemental documents:

1. A two-page written response dated April 17, 2022, to the Special Committee's question about House Rule 62 explaining that "[i]t was the consensus of the [District 42] Council members that Representative Har may have violated 62.1 and/or 62.2" and these Rules were "the primary reason the complaint was filed";
2. A single-page written response dated April 18, 2022, explaining Petitioners' attempts to acquire a copy of Representative Har's District 42 Newsletter and reporting on a February 24, 2021, Makakilo Neighborhood Board No. 34 meeting where a legislative aide read a letter from Representative Har regarding the February 22, 2021 incident;

3. A copy of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 meeting minutes, dated February 24, 2021, documenting that a letter was read by Representative Har's legislative aide regarding the "issuance of a DUI on Monday, February 22, 2021";
4. A copy of Representative Har's February 2021 District 42 Newsletter ("Feb. 2021 District 42 Newsletter"); and
5. A one-page statement providing a link to a news story reporting on Representative Har's verbal apology to the House of Representatives on February 24, 2021, after her arrest for driving while intoxicated.

On April 18, 2022, Representative Har, through her counsel, submitted the following supplemental documents:

1. All nine HPD body camera videos recording the stop and subsequent arrest of Representative Har on February 22, 2021, totaling 42 minutes and 48 seconds of video footage; and
2. Written responses to the five questions asked by the Special Committee during the April 13, 2022 hearing. ("4/18/22 Rep. Har's Written Responses")

On April 21, 2022, documents received from the Prosecutor's Office that were admitted into evidence and reviewed by the District Court in the trial proceedings were provided to all members of the Special Committee for their review. These documents included the following exhibits:

1. State's Exhibit No. 10: An image of the South Beretania Street and Piikoi Street intersection with sketches of Representative Har's vehicle's movements before the arrest;
2. State's Exhibit No. 12: A second image of a different angle of the South Beretania Street and Piikoi Street intersection where Representative Har was stopped;

3. State's Exhibit No. 14: An image from the body camera video footage of a HPD officer of Representative Har's vehicle and license plate on February, 22, 2021;
4. State's Exhibit No. 15: An image from the body camera video footage of a HPD officer of Representative Har's vehicle and a HPD vehicle the night of February 22, 2021;
5. State's Exhibit No. 17: A copy of HPD's "Use of Intoxicants while Operating a Vehicle Implied Consent for Testing" form signed and issued by Officer C. Morgado, and signed by Representative Har documenting her refusal to take either an alcohol concentration breath test or blood test on February 22, 2021;
6. State's Exhibit No. 18: A copy of HPD's "Sanctions for Use of Intoxicants while Operating a Vehicle & Implied Consent for Testing" form signed by Officer C. Morgado and Representative Har documenting that Officer Morgado informed Representative Har about sanctions, the choice of taking a blood test, a breath test, or both, or refusing, and Representative Har's refusal to take either an alcohol concentration breath test or blood test
7. State's Exhibit No. 19: A copy of HPD's "Notice of Administrative Revocation" documenting that the Notice was provided to Representative Har by Officer C. Morgado, and Representative Har refused to acknowledge receipt of this Notice on February 22, 2021;
8. State's Exhibit No. 28: A copy of an AnyPlace Cocktail Lounge Ticket, dated February 22, 2021, itemizing the drinks purchased for the table Representative Har was seated at on the night of February 22, 2021;
9. State's Exhibit No. 29: A copy of the Debit Card receipt for the drinks purchased for Representative Har's table on the night of February 22, 2021;

10. State's Exhibit No. 30: A copy of the timesheets of the two servers who waited on Representative Har's table on the night of February 22, 2021;
11. State's Exhibit No. 32: An image of the AnyPlace Cocktail Lounge sign that was posted outside the restaurant the night of February 22, 2021, instructing people not to enter if they have a cough, fever, or do not feel well;
12. State's Exhibit No. 33: An image from the body camera video footage from an HPD officer at the arrest scene;
13. State's Exhibit No. 34: An aerial diagram of the South Beretania Street and Piikoi Street intersection indicating the pathway and movement of Representative Har's vehicle, the site where an HPD officer made his initial observations, and the direction of traffic flow at the time of the initial stop and arrest on February 22, 2021;
14. Defendant's Exhibit A: A copy of a HPD Incident Report with an attachment of a Standardized Field Sobriety Test form documenting Officer S. Tory's observations of Representative Har during the arrest and Representative Har's refusal to take part in the field sobriety test; and
15. Defendant's Exhibit B: A copy of AnyPlace Cocktail Lounge's Menu.

### III. Discussion

The investigatory proceedings initiated by the House pursuant to Miscellaneous Communication Nos. 1001 and 1002 are matters of great significance and first impression for this body. This is the first time that a House committee has been convened to investigate one of its own members for violations of legislative standards of conduct arising from allegations of driving while intoxicated.

In the United States House of Representatives, the authority to investigate and discipline a member "is *in addition* to any



criminal or civil liability that a Member of the House may incur for particular misconduct[.]” See “Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives,” Congressional Research Service, June 27, 2016, Summary (emphasis added). Discipline “is not merely to punish an individual Member[.] Id. “The underlying justification for legislative discipline has traditionally been to protect the integrity and dignity of the legislature and its proceedings[.]” as well the “institutional integrity of the House of Representatives. . .and its reputation.” Id. at Summary & p.1, citing Powell v. McCormack, 395 F.2d 577, J.McGowan concurring, at 607 (D.C.Cir. 1968), rev’d on other grounds, 395 U.S. 486 (1969) (Legislative disciplinary action “was rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government.”)

The Hawaii House of Representatives and any committee established under it are obligated to operate under and apply constitutional and statutory provisions, and abide by the House’s own internal rules. The Special Committee was established to fulfill these constitutional obligations and did not shirk its duties to investigate and determine whether Representative Har’s conduct of February 22, 2021, violated House Rule 62.

In exercising its duties, the Special Committee was guided by the principles of fairness, due process, and past practice of the House of Representatives in handling matters of alleged drunk driving by former members of the House of Representatives.

On April 21, 2022, the Special Committee met to discuss and deliberate on the first question raised by Miscellaneous Communication Nos. 1001 and 1002: Whether Representative Har’s conduct related to the events of February 22, 2021, violate House Rule 62.

In its deliberations, the Committee raised concerns about media reports that Representative Har had asked or told arresting police officers, “Do you know who I am?” and that this conduct may have violated House Rules 62.2 and 62.4(8) insofar as she may have “lent the prestige of public office” to “advance [her] private interests” or “derive undue personal benefits” for herself. See

4/21/22 Meeting Transcript, pp.5 & 15; House Rules 62.2 and 62.4(8).

The Committee also raised concerns about whether Representative Har's conduct violated House Rule 62.1 based on: (1) the truthfulness and veracity of Representative Har's numerous statements made about whether she was on prescription medication with codeine due to an upper respiratory illness; (2) her admission that she was eating and drinking indoors with others at a time during the COVID-19 pandemic when there were state and county orders and restaurant signs instructing individuals not to go into indoor establishments if they were experiencing illness; (3) her admission that she drank some amount of alcohol while taking prescription medication; and (4) evidence admitted at trial that she was clearly driving the wrong way down the center of South Beretania Street and that she endangered others, including a moped that swerved to avoid her and other cars that she potentially could have hit. Id. at pp.5-15.

The Special Committee is not a criminal court and engages in a legislative process subject to the House Rules and different standards that are more akin to an administrative hearing. See 4/21/22 Meeting Transcript, pp.15-16. The Committee is bound to consider only "clear and convincing evidence" to support its factual findings. See Rule 5, Speaker's Memo. In applying this evidentiary standard, the Committee's findings must be based on evidence that leaves "a firm belief or conviction that it is highly probable that the factual contentions are true." See 4/21/2022 Meeting Transcript (4/21/22 Meeting), p.15; In the Matter of JK, 149 Hawaii 400, 409 (App. 2021). This evidentiary standard "is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt" that is required in a criminal proceeding. See 4/21/22 Meeting Transcript, pp.15-16; In the Matter of JK, 149 Hawaii at 409.

The Committee acknowledges that the criminal proceeding related to this matter was dismissed and a judgment for acquittal entered by the District Court. However, the Special Committee notes that the issues before it are not an invitation to relitigate the criminal charges against Representative Har, which have since been resolved in her favor. Rather, the task of this Special Committee is to consider whether clear and convincing

evidence before the Committee supports findings of fact that Representative Har's conduct violated House Rule 62.

The Committee further notes that the Notice of Administrative Revocation admitted as State's Exhibit No. 19 in the trial proceedings and consistent with HRS Section 291E-41(d) explains the administrative revocation process as follows:

*If [the Administrative Driver's License Revocation Office] revokes your license pursuant to the Administrative Revocation Process, you shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of your substance abuse or dependence and the need for treatment. You are responsible for all costs for the assessment and treatment. Your license will not be restored upon the expiration of the revocation period. You must apply for a new license or renew your privilege to operate a vehicle after proving that you have complied with the conditions of the administrative revocation imposed by [the Office]. You must successfully complete each requirement for obtaining a new license or renewing your privilege to operate a vessel in the State of Hawaii including payment of all applicable fees. (Emphases added.)*

Despite these clear requirements outlined as part of the administrative license revocation process, the Committee notes that Representative Har's written response to the Committee's inquiry about the requirements she must comply with as a result of the revocation process do not address or disclose whether these requirements include a referral to the driver's education program, an assessment by a certified substance abuse counselor, and the need for treatment.

#### IV. FINDINGS AND RECOMMENDATIONS

After diligent and independent review of the entirety of the nine body camera videos documenting Representative Har's February 22, 2021 arrest, the documents admitted into evidence at the criminal trial, the pretrial and trial transcripts documenting the testimony and arguments presented at the trial including admissions made by Representative Har, Representative Har's

official February 2021 District 42 Newsletter mailed to her constituents, Representative Har's February 24, 2021 Floor Remarks to the House of Representatives, Representative Har's March 11, 2022 Submittals to the Committee, and Representative Har's Written Responses to the Committee's Questions, the Special Committee finds that there is clear and convincing evidence supporting the following findings of fact:

1. On February 22, 2021, Representative Har took prescription medicine which contained codeine to control the symptoms associated with an upper respiratory illness. See Feb. 2021 District 42 Newsletter; & 2/24/21 Rep. Har Floor Statement.
2. On that same day, Representative Har was at AnyPlace Cocktail Lounge, a public bar and restaurant, where she ate and drank some amount of alcohol despite the widely known dangers of mixing any opioid drugs with alcohol. See Feb. 2021 District 42 Newsletter; 2/24/21 Rep. Har Floor Statement; and 12/6/2021 Trial Transcript, pp.218-226.
3. Representative Har was at AnyPlace Cocktail Lounge when she knew she had an upper respiratory illness during a time when the City and County of Honolulu and the State of Hawaii had certain emergency orders in place that advised individuals experiencing illness not to be in public places. See Feb. 2021 District 42 Newsletter; 2/24/21 Rep. Har Floor Statement; 12/6/21 Trial Transcript, p.201; and State's Trial Exhibit No. 32.
4. At some point after leaving AnyPlace Cocktail Lounge, Representative Har was found driving the wrong way on South Beretania Street, a one-way street, which endangered others on the road. See 1/10/22 Trial Transcript, p.15; and Representative Har's Trial Exhibit C.
5. Representative Har was stopped after being found driving the wrong way on South Beretania Street. See 12/6/21 Trial Transcript, pp.72; 1/10/22 Trial Transcript, pp.90-91, 95; and State's Trial Exhibit 34.

6. During this stop, and in accordance with her legal rights, Representative Har refused to take a breath test or a field sobriety test. See 12/6/21 Trial Transcript, p.108; 1/10/22 Trial Transcript, p.66; State's Trial Exhibits Nos. 17 and 18; and Rep. Har's Exhibit A.
7. Representative Har was subsequently arrested for suspicion of driving under the influence of an intoxicant in violation of HRS Section 291E-61. See 12/6/21 Trial Transcript, p.103; and Rep. Har's Trial Exhibit A
8. Based on her refusal to consent to a breath test or a field sobriety test, Representative Har's driver's license was automatically revoked pursuant to the Administrative Driver's License Revocation process. See State's Trial Exhibit No. 19; and 4/18/22 Rep. Har's Written Responses, no.1.
9. Representative Har is required to have an ignition interlock in her vehicle for two years. See 4/18/22 Rep. Har's Written Responses, no.1.
10. In order to have her license restored after two years, Representative Har will be required to either "apply for a new license or renew her privilege to operate a vehicle after proving that she has complied with the conditions of the administrative revocation imposed" and she must "successfully complete each requirement for either obtaining a new license or renewing her privilege to operate a vehicle in the State of Hawaii." See State's Exhibit No. 19; see also HRS Section §291E-41(d).

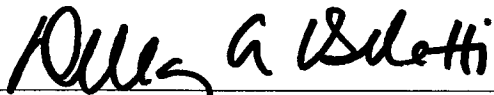
The Special Committee notes that it was not shown by clear and convincing evidence that Representative Har made the statement, "Do you know who I am?" or that any statement she made involving her identity was intended to influence the police officers or curry favor. This statement or statements similar to this were not recorded in any of the nine body camera videos or any police reports admitted into evidence at trial. Accordingly, the Committee did not find clear and convincing evidence supporting a violation of House Rule 62.2 or 62.4 (8).

Based upon the clear and convincing evidence before the Committee that supports the foregoing findings of fact, the Special Committee recommends affirmation of this report and adoption of the following recommendations by the House of Representatives:

1. Representative Sharon Har shall inform the House in writing, in a letter to the Speaker of the House, of all the current conditions she is or has been required to comply with as part of the Administrative Driver's License Revocation Process to date; and

2. Should Representative Har still be a member of the House of Representatives at the time she seeks to renew her license at the end of the two-year revocation period, Representative Har shall inform the House of Representatives, in writing, in a letter to the Speaker of the House, of the specific conditions of the renewal of her license and affirm that she has successfully complied with all the requirements.

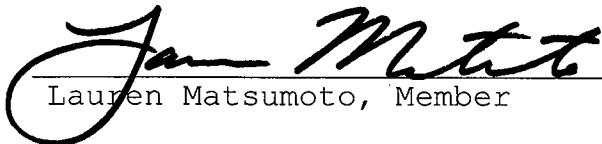
Respectfully submitted,



Della Au Belatti, Chair



Linda Ichiyama, Member



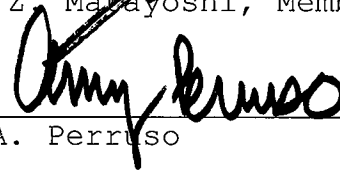
Lauren Matsumoto, Member



Mark M. Nakashima, Vice-Chair



Scot Z. Matayoshi, Member



Amy A. Perruso