

123 CMR 2.00: INVESTIGATIONS, INSPECTIONS, AUDITS, AND REVIEWS

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2.01: Purpose

- (1) The Office of the Veteran Advocate (OVA) was created by St. 2022, c. 144 codified in part as M.G.L. c. 115B. OVA safeguards the wellbeing, dignified treatment, rights, and benefits of veterans in the care of, or receiving services from the Commonwealth; ensuring these veterans and their families receive compassionate, timely, and effective services. OVA collaborates to facilitate access to federal and state benefits and conducts thorough investigations to enhance care and services provided to veterans.
- (2) The Office of the Veteran Advocate is authorized to receive complaints and information; initiate audits and investigations; conduct inspections; review legislation and regulations and make recommendations thereon; recommend policies or practices which will assist in its mission; and, when warranted, report or refer its audit or investigative findings to appropriate investigative, prosecutorial, or otherwise interested public agencies. 123 CMR 2.00 is promulgated pursuant to M.G.L. c. 115B. They have been adopted to guide OVA in the fair and effective discharge of its statutory function, to inform interested persons of the policies and practices employed by OVA, and to protect the rights of witnesses, complainants, informants, or other individuals or public bodies affected by OVA's proceedings.

2.02: Scope

123 CMR 2.00 governs the conduct of the activities of OVA. An activity or procedure not expressly covered by 123 CMR 2.00 is permissible if within the jurisdiction of OVA and permitted by law.

2.03: Definitions

- Complainant. Any person who files a complaint pursuant to 123 CMR 2.00.
- Complaint. A report of an incident or condition filed pursuant to 123 CMR 2.00, regardless of whether the incident or condition is also required to be reported to any other entity pursuant to law or policy.
- Conditions. Refers to any medical, psychiatric, or other health-related states or circumstances that pose a significant risk of death to an individual. These conditions are critical and severe enough that, without immediate and effective intervention, they could lead to death. However, in cases of near fatality, these conditions ultimately do not result in death due to timely and life-saving measures.
- Critical Incident. An incident where a person suffers a fatality, near fatality, serious bodily injury, emotional injury, or there is an imminent risk of harm.

2.03: continued

Dangerous. Posing a danger or the potential danger to the health or safety of a client.

Day. Monday through Friday excluding any legal holiday observed by the state.

Emotional Injury. An injury to the mental or psychological capacity or emotional stability as evidenced by a substantial and observable impairment in a person's ability to function within a normal range of performance and behavior as testified to by a qualified mental health professional.

Evidence. Anything material or real, and information relevant to an investigation and used for proving or disproving violations of law or establishing the facts, truths, or falsity of assertions surrounding such violations. Evidentiary material can be testimonial, documentary, demonstrative, electronic, or physical in nature.

Fatality. A death resulting from an incident or medical condition.

Failure in Duty to Care. Any act or omission by an executive agency, its constituent agencies, or employees thereof, that deviates from accepted norms of practice in the agency's professional community and causes a physical or emotional injury to a veteran or their eligible dependents or imminent risk of such injury. Failure in Duty to Care includes the failure to provide humane and dignified treatment, timely, safe, and effective services, and the necessary coordination with local, state, and federal agencies to ensure veterans receive all available benefits and proper care.

Illegal. A violation of state or federal statute, regulation, case law or other law.

Imminent Risk. The immediate and significant likelihood that an event will occur. Imminent Risk is used to indicate that there is a pressing and urgent danger that requires prompt action to prevent the anticipated harm or injury.

In the Care of the Commonwealth. Any situation where someone or something is under the responsibility or guardianship of the government or state. Therefore, when someone is In the Care of the Commonwealth, it means that they or their affairs are being managed, overseen, or provided for by the government.

Incident. An event or occurrence that directly contributes to or causes a death. Incident can include accidents, acts of violence, neglect, abuse, or any other external factors that result in fatal harm to the veteran. An incident typically implies that the death was due to an unforeseen or preventable event rather than natural causes.

Inhumane. Demeaning a client or inconsistent with the proper regard for human dignity.

Inspection. Refers to a systematic and formal evaluation or examination of facilities, processes, and operations to ensure compliance with established standards, regulations, and best practices. The purpose of an inspection is to identify deficiencies, verify adherence to protocols, assess the quality of services provided, and ensure the safety and well-being of individuals within the inspected environment.

Interrogation. A systematic process of questioning an individual; with the primary goal of eliciting information, admissions, or confessions pertinent to an investigation or case. It is characterized by a controlled environment where the questioner exercises authority and employs various techniques to obtain specific facts or confirm suspicions of wrongdoing.

Interview. A structured conversation between two or more parties, where one party (the interviewer) asks questions to gather information, insights, or opinions from the other party (the interviewee). It is designed to collect relevant data, understand experiences, or obtain detailed responses in a non-confrontational and voluntary manner.

2.03: continued

Investigation. Refers to a systematic and detailed examination or inquiry conducted to uncover facts, gather evidence, and analyze information regarding a specific incident, allegation, or issue. The purpose of an investigation is to establish the truth, determine the circumstances surrounding the matter in question, identify any violations or misconduct, and provide a basis for informed decision-making and corrective actions. The action of investigating something or someone; formal or systematic examination or research.

Medical Condition. Refers to an illness, disease, or chronic health issue that contributes to, or directly causes the death of a veteran. Medical Condition encompasses both acute and chronic health issues that can lead to fatality.

Near Fatality. An event in which an individual suffers injuries or conditions that post a significant risk of death but ultimately does not result in death. Near Fatality can include situations where life-saving measures are necessary to prevent death

Receiving Services from the Commonwealth. Refers to any interaction between a veteran and a "public or private facility".

Serious Bodily Injury. Any injury which:

- (a) Requires hospitalization for more than 48 hours, commencing within seven days from the date of the injury was received;
- (b) results in a fracture of any bone (except simple fractures of fingers, toes, or nose);
- (c) causes severe hemorrhages, nerve, muscle, or tendon damage;
- (d) involves any internal organ; or
- (e) involves second- or third-degree burns, or any burns affecting more than 5% of the body surface.

Veteran means:

- (a) any person:
 - 1. whose last discharge or release from their service as defined in 123 CMR 2.00, was under honorable conditions and who;
 - 2. served in the army, marine corps, navy, air force, space force, coast guard, commissioned corps of the public health service or commissioned corps of the national oceanic and atmospheric administration of the United States; or
 - 3. on full time national guard duty under Titles 10 or 32 USC or under M.G.L. c. 33, §§ 38, 40 and 41 for not less than 90 days active service, at least one day of which was for wartime service; provided, however, that any person who was awarded a Purple Heart, or a service-connected disability by the Veterans Administration, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding their failure to complete 90 days of active service.
- (b) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy;
- (c) any person:
 - 1. whose last discharge from active service was under honorable conditions; and
 - 2. served in the army, marine corps, navy, air force, space force, coast guard, commissioned corps of the public health service, or commissioned corps of the national oceanic and atmospheric administration of the United States for not less than 180 days active service; provided, however, that any person who was awarded a Purple Heart, or a service-connected disability by the Veterans Administration, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding their failure to complete 180 days of active service.
- (d) a current member of any reserve component of the US Armed Forces.

2.04: Initiation of Investigations, Inspections, Audits or Reviews

(1) General.

- (a) The Veteran Advocate, on their own motion, or in response to information or complaints received, may initiate investigations, inspections, audits, or reviews of legislation, regulations, policies or practices related to safeguarding the wellbeing, dignified treatment, rights, and benefits of veterans in the care of, or receiving services from the Commonwealth; ensuring these veterans and their families receive compassionate, timely, and effective services; facilitating access to federal and state benefits and enhancing care and services provided to veterans.
- (b) The Office of the Veteran Advocate shall periodically review, report, and make recommendations, as appropriate, with respect to system-wide improvements that may increase the effectiveness of the care and services provided to veterans and suggested legislative and regulatory changes.
- (c) The Veteran Advocate, on their own motion, or in response to information or complaints received, may initiate investigations into any Critical Incident occurring that involves a veteran in the care of the Commonwealth.
- (d) The Veteran Advocate, on their own motion, or in response to information or complaints received, may initiate investigations into any incident where an Executive or Constituent Agency "failed in its duty to care" for a veteran or any other incident falling within the scope of OVA's statutory mandate.
- (e) The initiation of any investigation, inspection, audit or review shall be within the discretion of the Veteran Advocate.

(2) Reporting Requirements.

(a) Standard Reporting Requirements.

- 1. All executive, constituent and independent agencies of the Commonwealth shall report the number of veterans currently receiving services, housed at, or in their care, to OVA monthly, no later than the 5th day of each month *via* a dedicated reporting and data collection system.
- 2. All agencies, companies, organizations and municipalities that received funding, and/or provide care or services to veterans, to include but not be limited to the housing, incarceration, and rehabilitation, from the Commonwealth of Massachusetts shall report the number of veterans that reside in, receive services from, or are housed at their facilities, to OVA on a monthly basis, no later than the 5th day of each month *via* a dedicated reporting and data collection system.

(b) Critical Incident Reporting Requirements.

- 1. All executive, constituent, and independent agencies of the Commonwealth shall report all critical incidents involving a veteran in the care of or receiving services from the Commonwealth to the Office of the Veteran Advocate immediately upon discovery or occurrence of the incident, *via* predetermined reporting methods. These agencies shall include, but not be limited to, the Massachusetts Department of Corrections, the Massachusetts Department of Public Health, the Massachusetts Department of Mental Health, and the Massachusetts Executive Office of Veterans Services, to include all their sub-agencies, departments, and affiliates.
- 2. All agencies, companies, organizations and municipalities that received funding, and/or provide care or services to veterans, to include but not be limited to the housing, incarceration, and rehabilitation, from the Commonwealth of Massachusetts shall report all incidents meeting the definition of critical incident found in 123 CMR 2.00 to the Office of the Veteran Advocate immediately upon discovery or occurrence of the incident *via* predetermined reporting methods. These agencies/organizations shall include, but not be limited to, All Massachusetts County Sheriff's Offices, Jails and Correctional Facilities, National Veterans Services Organizations (DAV/VFW/*Etc.*), and all Local, county, and regionalized Veterans Services Organizations.

(3) Complaints, Information or Referrals.

- (a) Complaints, information or referrals may be received by the Office of the Veteran Advocate from any source.

2.04: continued

- (b) An executive or constituent agency shall inform the Office of the Veteran Advocate of any critical incident immediately upon discovery or occurrence of the critical incident to ensure a timely response and investigation.
- (c) Complaints, information or referrals received, including the identity of the complainant or informant or referral source, are records of the Office of the Veteran Advocate. Such records are not public records within the meaning of M.G.L. c. 4, § 7 clause 26 and shall be kept confidential unless disclosure is deemed necessary in the performance of the duties of the Office.
- (d) Notwithstanding the provisions of 123 CMR 2.04(2)(b) or (d) or 2.04(3), disclosure of the existence or content of a complaint or information or the identity of a complainant or informant may be made by the Veteran Advocate to the Veteran Advocate General Counsel.
- (e) A complainant or informant, other than a public employee covered by 123 CMR 2.04(3) may request anonymity or nondisclosure of their identity to specified persons or organizations.
 - 1. Such requests shall be in writing and shall be honored by the Veteran Advocate and their agents and employees unless the Veteran Advocate determines that such disclosure is necessary in relation to an investigation, audit or review, notice or referral being planned or conducted by OVA.
 - 2. Nonconsensual disclosure shall only be authorized when deemed necessary.
 - 3. Prior to making a nonconsensual disclosure, the Veteran Advocate shall cause to be mailed, by certified mail, to a complainant or informant at their last and usual address, if known, notice of such nonconsensual disclosure. Upon such mailing the Veteran Advocate may make the nonconsensual disclosure.
- (f) Complaints or Information from Public Employees.
 - 1. For purposes of 123 CMR 2.04(3), "public employee" is a person performing services for, or holding an office, position, employment or membership in a federal, state, county or municipal agency, whether by election, appointment, contract for hire or engagement, whether serving with or without compensation, on a full time, regular, part time, intermittent or consultant basis.
 - 2. The identity of a complainant or informant who is a public employee shall not be disclosed without the written consent of such public employee unless the Veteran Advocate determines that such disclosure is unavoidable or necessary in relation to an investigation, audit or review, notice or referral being planned or conducted by OVA.
 - 3. Such written consent may specify certain individuals or organizations to whom disclosure is authorized and exclude others or specify other limitations or conditions on disclosure. Such consent shall be signed by the public employee and shall be maintained as part of the case file or other pertinent record maintained by the Office of the Veteran Advocate.
 - 4. If the Veteran Advocate determines that nonconsensual disclosure is unavoidable or necessary, the public employee shall be notified in writing at least seven days prior to such disclosure.
 - 5. In the event that a public employee complainant or informant is subject to an adverse personnel action related to their complaint or disclosure of information to the Office of the Veteran Advocate, the Veteran Advocate or their designee may present evidence concerning the circumstances or content of the complaint or information or the circumstances and scope of the disclosure of the identity of the complainant or informant in any forum or tribunal considering or determining the rights of the complainant or informant under M.G.L. c. 12A, § 14(c).

2.05: Conduct of Investigations, Inspections Audits or Reviews

- (1) General.
 - (a) The scope, duration, conduct and disposition of any investigation, inspection, audit or review undertaken by OVA shall be within the lawful discretion of the Veteran Advocate; provided however, that the Veteran Advocate and/or General Counsel shall approve requests for summonses for testimony under 123 CMR 2.06(2) and referrals of investigative or audit findings to public agencies other than the Attorney General of the Commonwealth or United States Attorney under 123 CMR 2.09(3).

2.05: continued

(b) In conducting an investigation, inspection, audit or review, the Veteran Advocate or their employees or agents are authorized to conduct interviews, interrogations, take statements and testimonies, examine books, records (including medical records), files, documents or other materials; seek to compel production of testimony or documents; collect physical and documentary evidence, or take any other action deemed necessary for the conduct of such investigation, inspection, audit or review that is permitted by law and the provisions of 123 CMR 2.00.

(c) When conducting an investigation, inspection, audit, or review, the Veteran Advocate, or their employees or agents shall follow and abide by the Office of the Veteran Advocate Investigative Framework, Inspection Framework, and all other applicable Office of the Veteran Advocate policies and procedures.

(2) Interviews.

(a) The Veteran Advocate, their employees, or agents may interview any person who the Veteran Advocate believes may have information relevant to any matter under investigation, inspection, audit or review. The person to be interviewed shall be informed of their constitutional rights, and rights to union representation relating to said interview.

(b) A person to be interviewed may have counsel present at said interview. OVA shall not appoint or provide counsel.

(c) If the party being interviewed holds a union covered position, they shall be given opportunity to consult with union representation if so requested. If said request is made prior to an interview, the interview may not begin until representation is available. If made after the commencement of the interview, the interview shall be suspended until union representation is available.

1. OVA shall make all reasonable efforts to accommodate a request for representation.

2. Union representation shall not be unreasonably delayed in such a manner as to interfere with the purpose of the interview.

3. If the relevant union refuses or fails to provide representation within a reasonable time after the request for representation, the interview shall continue.

(d) A person interviewed by an employee or agent of OVA may, at their own cost, provide that the interview be recorded by hand, video recording, sound recording, or stenographic means.

(e) During an interview or interrogation, The Veteran Advocate, their employees, or agents may take written, oral, and sworn statements and testimonies from any individual possessing information pertinent to an ongoing investigation, inspection, audit, or review.

(f) Interviews may be taken under oath or affirmation and if so, shall be recorded by hand, video recording, sound recording, or stenographic means. If an interview taken under oath or affirmation is recorded by hand, the interviewee shall read the interview record and indicate, by the signing of a jurat, that it is true and that the record accurately reflects the content of the interview. The accuracy of interviews taken under oath or affirmation and recorded by video recording, sound recording, or stenographic means shall be attested to by the stenographer or transcriptionist preparing the transcript. Oaths shall be administered by a notary public or other person authorized to administer oaths under the laws of the Commonwealth.

(3) Access to Records, Information and Assistance from Public Bodies.

(a) The Veteran Advocate, their employees or agents, shall have access to records, documents or other materials related to the programs and operations within the jurisdiction of OVA, which are maintained by or available to any public entity of the Commonwealth or political subdivision thereof; or private entity that receives funding from the Commonwealth or political subdivisions thereof; excepting records under the provisions of M.G.L. c. 66, § 18 as defined in M.G.L. c. 66, § 3.

(b) The Veteran Advocate, their employees or agents, shall have access to information related to the programs and operations within the jurisdiction of OVA which is possessed by or available to persons employed by or acting on behalf of any public body. The Veteran Advocate, their employees or agents shall, upon request, be entitled to interview or question employees, agents or representatives of such public body.

2.05: continued

(c) The Veteran Advocate, their employees or agents, may require from any public or private entity such assistance as may be necessary for carrying out their duties and responsibilities.

(d) Upon request of the Veteran Advocate, their employees or agents, the person in charge of the governing body of any public entity of the Commonwealth or political subdivision thereof; or private entity that receives funding from the Commonwealth or political subdivisions thereof, shall provide the Veteran Advocate or their designee with the records, information or assistance requested, unless provision of such records, information or assistance is in contravention of any law applicable to such entity.

(e) When records, information or assistance requested under 123 CMR 2.05(3)(a), (b) or (c) are, in the judgment of the Veteran Advocate, unreasonably refused or not provided, the Veteran Advocate may report the circumstances to the appropriate state secretariat, municipal governing body, other authority, or seek judicial relief.

(4) Access to Records, Information or Testimony of Private Individuals or Entities. The Veteran Advocate, their employees or agents, may request production of records, documents, information or testimony from any private person, firm or other nongovernmental entity which relate to any investigation, audit, review or other activity within the jurisdiction of OVA.

(5) Access to Contractor Records.

(a) For the purposes of 123 CMR 2.05, the words contractor, contract, records, statement of management, and financial statement shall have the meaning and content defined in M.G.L. c. 30, § 39R.

(b) All contractors shall make available for inspection upon request of the Veteran Advocate or their designee any books, documents, papers or records of the contractor and/or the records of any subcontractor that directly pertain to, and involve transactions relating to, transactions between the contractor and subcontractor.

(c) All contractors holding contracts with the Commonwealth within the meaning of M.G.L. c. 30, § 39R(a)(2), shall in addition to 123 CMR 2.05(5)(b), make available for inspection upon request of the Veteran Advocate or their designee, all financial statements or statements of management required by M.G.L. c. 30, § 39R with accompanying exhibits. The Veteran Advocate or their designee may, in addition, request and obtain such information from the appropriate awarding authority.

(d) Failure to make, retain or produce for inspection the records and statements required by M.G.L. c. 30, § 39R may be grounds for disqualification or debarment under M.G.L. c. 149, § 44c. The Veteran Advocate shall report instances of noncooperation or noncompliance with the provisions of M.G.L. c. 30, § 39R, to the Division of Capital Asset Management and Maintenance (DCAMM) and the awarding authority for appropriate action.

(6) Production of Records of Testimony. The Veteran Advocate, or their employees or agents, may request that records, documents or testimony sought under 123 CMR 2.05(2) through (5) be delivered or produced at the offices of the Veteran Advocate, examined on site, or at a place and time mutually agreeable to the parties.

(7) Confidentiality of Records. All records of the Office of the Veteran Advocate are confidential and shall not be disclosed or made public by OVA, unless disclosure or publication is deemed necessary for performance of the statutory duties and responsibilities of OVA pursuant to the requirements of M.G.L. c. 12A.

2.06: Summonses

(1) Summonses for Records and Documents.

(a) The Veteran Advocate may issue summonses requiring the production of any records, reports, audits, reviews, papers, books, documents, recommendations, correspondence or other material relevant to any matter under investigation, audit or review by OVA; excepting records subject to the provisions of M.G.L. c. 66, § 18 as defined in M.G.L. c. 66, § 3.

(b) A summons issued pursuant to 123 CMR 2.06(1)(a) may be issued to any person, private organization or public body, including, without limitation, any officer, partner, proprietor, employee, or custodian of records of any private organization or public body.

2.06: continued

(c) A summons issued pursuant to 123 CMR 2.06(1)(a) shall be served in the same manner as summonses for the production of documents in civil cases issued on behalf of the Commonwealth.

(d) Books and papers produced pursuant to a summons issued under 123 CMR 2.06(1)(a) shall be retained by the Office of the Veteran Advocate for so long as needed for completion of the investigation, audit or review being conducted. A person who has produced records pursuant to such a summons issued under 123 CMR 2.06(1)(a) may request the Veteran Advocate to provide access to the records for inspection or copying at the party's expense. Such access shall be permitted at any reasonable time except only when it unduly interferes with OVA or its staff.

(e) A summons issued pursuant to 123 CMR 2.06(1)(a) shall be approved and issued by the Veteran Advocate or their designee. For purposes of 123 CMR 2.06(1)(e), the designees of the Veteran Advocate shall be restricted to the General Counsel or Veteran Safety Advisor.

(f) The person to whom a summons is issued pursuant to 123 CMR 2.06(1)(a) may seek modification of the scope or conditions for compliance with the summons by applying in writing within five calendar days to the Veteran Advocate or their designee identified on the summons. Such application shall state with particularity the extent of the requested modification and the reasons thereof. The scope or conditions for compliance with a summons may be modified only by the Veteran Advocate or their designee.

(g) In the case of public bodies or officials, records, documents or other material shall ordinarily be sought first by request for voluntary production rather than by issuance of a summons under 123 CMR 2.06(1)(a), unless doing so would, in the judgment of the Veteran Advocate, unduly interfere with the investigation, inspection, audit, or review being conducted.

(h) Neither the issuance of a summons nor any record or document produced under 123 CMR 2.06(1) shall be made public by the Veteran Advocate or any officer, employee or agent of OVA.

(2) Summonses for Attendance, Testimony and Production of Books and Records.

(a) The Veteran Advocate may issue summonses requiring any person to attend and testify under oath or affirmation at a private session or to attend and testify under oath at a private session and to produce books and records, if the Veteran Advocate has reason to believe that such person has information relevant to any matter under investigation, inspection, audit, or review by OVA.

(b) If the Veteran Advocate has determined that it is necessary to the conduct of the investigation, inspection, audit or review to provide the prospective witness with less than 48 hours notice of the requirement to attend and testify at a private session or to attend and testify and produce books and records, they shall include a statement of reasons for the necessity of a shortened notice period and a recommended date and time for the convening of the private session.

(c) Upon issuance of a summons under 123 CMR 2.06(2)(a) by the Veteran Advocate, the Advocate shall determine those persons before whom the prospective witness shall attend and testify under oath or affirmation at a private session. The Veteran Advocate shall select at least one person to participate in the taking of such testimony. It may, in its discretion, select more than one person. The person or persons selected by the Veteran Advocate shall be the Office of the Veteran Advocate General Counsel or their designee; or the Office of the Veteran Advocate Veteran Safety Advisor or their designee; or another member or members of the staff of the Office of the Veteran Advocate. The Veteran Advocate shall designate at least one employee of OVA, who is an attorney admitted to practice in the Commonwealth, to participate in the taking of testimony at such private session. The designee of the Veteran Advocate shall be approved by the Veteran Advocate.

(d) Summonses issued pursuant to 123 CMR 2.06(2)(a) shall be served in the same manner as are summonses for witnesses issued on behalf of the Commonwealth in a civil case.

(e) A person summonsed under 123 CMR 2.06(2)(a) to attend and testify and produce books and records shall produce such books and records at the private session if directed to do so, or at any other time and place required or agreed upon by the Veteran Advocate or other employee of OVA selected to participate in the taking of testimony at the private session and the prospective witness or their attorney.

2.06: continued

(f) A witness required by summons to attend and testify, or attend and testify and produce books and records, shall be provided with the following:

1. No less than 48 hours notice of the time and place of the private session, except as provided in 123 CMR 2.06(2)(b);
2. Notification of the matter under investigation concerning which the witness will be asked to testify;
3. A copy of 123 CMR 2.00;
4. Notification that his or her testimony will be taken at a private session;
5. Notification that the issuance of the summons was approved by the Veteran Advocate;
6. Notification as to whether the witness is the subject of an investigation;
7. Notification that the witness has a right to consult with and have an attorney present at the time such testimony is taken, and that they have a constitutional right not to furnish or produce evidence which may tend to incriminate him.

(g) Failure to provide any notice or information required by 123 CMR 2.06(2)(f) shall render the summons invalid.

(h) Any request by a prospective witness for a change of the date or time of their appearance to attend and testify or to attend and testify and produce books and records at a private session must be received by the Office of the Veteran Advocate no later than 24 hours before the witness is scheduled to testify. The request must be in writing and must state the reasons for the requested change. The request must be addressed to the attention of the Veteran Advocate, who shall refer it to the persons selected or approved by the Veteran Advocate to participate in the taking of testimony at the private session. Such persons shall have discretionary authority to grant such a request. A request will ordinarily be allowed if it is not made for purposes of delay and if allowing the request will not unduly interfere with the conduct of the investigation or audit.

(i) Any objections of a witness to a summons issued pursuant to 123 CMR 2.06(2)(a) must be made in writing, must state the reasons for the objection, must be addressed to the attention of the Veteran Advocate, and must be received by the Office of the Veteran Advocate no later than 24 hours before the witness is scheduled to attend and testify, or to attend and testify and produce books and records.

(j) A witness who is required by summons issued pursuant to 123 CMR 2.06(2)(a) to attend and testify, or to attend and testify and produce books and records at a private session, may file a sworn written statement with respect to any facts which the witness wishes to bring to the attention of the Office of the Veteran Advocate. Such statement shall be made part of the record of the private session. Such statement may be filed in advance of the private session, at the time of the taking of testimony, or within five days after the private session has been concluded or adjourned.

(k) The issuance of a summons under 123 CMR 2.06(2)(a) shall not be made public by the Veteran Advocate, any officer or employee of OVA, any member of the Veteran Advocate Council, or any person designated to hear testimony under 123 CMR 2.06(2)(c). Unauthorized disclosure of the issuance of a summons shall be subject to criminal penalties pursuant to St. 1980, c. 388, § 2.

2.07: Enforcement of Summons

(1) Motions to Quash. Any person, private organization or public body summonsed to produce books and records pursuant to 123 CMR 2.06(1)(a) or any person summonsed to attend and testify or attend, testify and produce books and records pursuant to 123 CMR 2.06(2)(a) may object to the summons, in advance of its return date, by the filing of a motion to quash in the Superior Court for Suffolk County. The filing of a motion to quash shall stay all proceedings before the Office of the Veteran Advocate with respect to the pending summons until further order of the Superior Court.

(2) Motions for Enforcement. If any person, private organization, or public body refuses or fails to comply with a summons issued by the Veteran Advocate pursuant to 123 CMR 2.06(1)(a) or (2)(a), or fails to answer questions asked at a private session convened pursuant to a summons issued under 123 CMR 2.06(2)(a), the Veteran Advocate may apply to any justice of the Superior Court for an order compelling the attendance of the witness and the giving of testimony under oath or affirmation at a private session or the production of items, books and records.

2.07: continued

(3) Contempt. As provided by M.G.L. c. 12A, § 9 and St. 1980, c. 388, § 2, failure to obey any order of the Superior Court with respect to any summons issued by the Office of Veteran Advocate may be punished by the court as contempt.

(4) In Camera Hearings. If a justice of the court compels any witness to answer before the court any questions previously put to the witness in a private session, the Veteran Advocate shall apply to such justice for an order that the public be excluded from such sitting of the court and that all related books, records or other papers and reproductions thereof be impounded.

2.08: Conduct of Private Sessions

General.

- (a) Private sessions shall be held to take the testimony of persons who are required to attend and testify under oath or affirmation pursuant to 123 CMR 2.05(2)(a).
- (b) The testimony of a witness at a private session shall be taken under oath administered by a notary public or other person authorized by the laws of the Commonwealth to administer oaths.
- (c) Testimony at a private session shall be recorded by a stenographer employed or engaged by the Office of the Veteran Advocate.
- (d) Private sessions shall be governed by the same provisions as secrecy that govern proceedings of a grand jury. No person shall be allowed to be present during a private session other than those persons designated to receive testimony pursuant to 123 CMR 2.05(2)(e), other staff of OVA if authorized by the Veteran Advocate, the witness, counsel for the witness, and stenographers or interpreters employed or engaged by the Office of the Veteran Advocate.
- (e) Counsel from the Office of the Veteran Advocate designated to hear testimony at a private session shall inform each witness, before the witness testifies, that the witness has the right to exercise their privilege against self-incrimination in response to any question.
- (f) A witness may be questioned by any person selected or approved by the Veteran Advocate Council to hear testimony or by any other employee of OVA designated by the Veteran Advocate.
- (g) A witness shall be permitted to be represented at a private session by counsel of their choice. Counsel shall file a written notice of appearance with OVA before representing a witness at a private session. The Office of the Veteran Advocate shall not be responsible for providing or funding any witness' counsel.
- (h) Failure to obtain counsel or to have counsel present at a hearing will not excuse a witness from attending or testifying in response to a summons issued under 123 CMR 2.05(2)(a), unless the witness shows that they have made a good faith effort to obtain counsel and to have counsel present and has been unable to do so for reasons beyond the witness's control, and the witness promptly notifies the Veteran Advocate or other person designated to hear testimony at the private session of their inability to obtain counsel or to have counsel present at the private session.
- (i) The witness shall be notified that they have a constitutional right not to answer questions which may tend to incriminate himself or herself. If a witness claims the privilege, they shall not be required to answer the question at that time.
- (j) The examination of witnesses pursuant to summons shall be governed by the same provisions which govern proceedings of a grand jury.
- (k) Counsel for the witness shall not be permitted to examine or cross-examine the witness, but the witness shall have the right to consult with counsel.
- (l) At the close of their testimony, a witness may make a closing statement. A witness may be asked additional questions after their closing statement. As provided in 123 CMR 2.05(2)(e) a witness may, in addition, file a sworn statement for inclusion in the record of the private session.
- (m) Complete transcripts shall be prepared of all testimony taken at a private session. The transcript of a witness's testimony shall be made available to the witness for inspection at the Office of the Veteran Advocate. The witness may obtain a copy of the transcript at cost from OVA or directly from the stenographer.

2.08: continued

(n) The witness or counsel for the witness shall be notified by OVA when a transcript of testimony is available. The witness shall have ten days (excluding Saturdays, Sundays and legal holidays) to indicate to OVA any inaccuracies in the transcript. Counsel for the Office of the Veteran Advocate, in their discretion, may agree to correct the transcript as requested. If counsel fails or refuses to change the transcript, the witness's proposed list of inaccuracies shall be appended to the transcript.

(o) Transcripts of testimony taken at a private session shall be kept confidential subject to the same provisions with reference to secrecy which governs grand jury proceedings. Disclosure of such testimony may be made to members of the staff of the Office of the Veteran Advocate if necessary to assist the Veteran Advocate in the performance of their duties. Unauthorized disclosure of testimony taken at a private session shall be subject to criminal penalties pursuant to St. 1980, c. 388, § 2.

2.09: Report and Referral of Investigative or Audit Findings(1) Reports of Possible Criminal Violations.

(a) When the Veteran Advocate has reasonable cause to believe that a person under investigation or audit has violated state or federal criminal law, they shall so report and refer relevant investigative or audit findings to the Attorney General for the Commonwealth or appropriate United States Attorney.

(b) The Veteran Advocate, may upon request of the Attorney General for the Commonwealth or United States Attorney, continue to provide investigative or other assistance after such report and referral.

(c) Prior to such time as the Veteran Advocate has, through investigation, inspection, or audit, developed sufficient information to justify a report or referral of findings to the Attorney General for the Commonwealth or the United States Attorney, they may confer or consult with these officers or their designees as to the conduct or scope of the investigation.

(2) Referral of Possible Civil Recovery Action.

(a) When the Veteran Advocate believes that a matter may be appropriate for civil action to recover monies on behalf of the Commonwealth, they shall report to the Attorney General for the Commonwealth and refer relevant investigative or audit findings.

(b) The Attorney General shall determine what further action is appropriate.

(3) Referrals to Public Agencies other than the Attorney General for the Commonwealth or United States Attorney.

(a) After an investigation or audit, the Veteran Advocate may refer investigative or audit findings and underlying evidence to the State Ethics Commission, or to any other federal, state or local agency which has an interest in such findings.

(b) The Veteran Advocate may provide notice of the existence or content of complaints or information received by OVA of preliminary investigative or audit information developed by OVA, to interested federal, state or local agencies.

1. Such notice shall not be deemed a referral within the meaning of 123 CMR 2.09(3)(a).

2. Notice is appropriate if the subject of the complaint or information is not within the jurisdiction of OVA or if the Veteran Advocate has determined that the matter shall not be subject to full investigation, audit or review by OVA and may be appropriate for administrative action by another public agency.

3. Notice of the identity of the complainant or informant is subject to the provisions of 123 CMR 2.04(2) or (3).

(4) Disclosure of Investigative or Audit Findings and Data. The report, referral or disclosure of investigative or audit data or findings pursuant to 123 CMR 2.09(1)(a) or (c), 2.09(2)(a) or 2.09(3)(a), including the identity of complainants or informants, shall not be deemed a disclosure of records of OVA subject to the provisions of 123 CMR 2.04(2) or (3) and the requirements of M.G.L. c. 12A.

2.10: Veteran Advocate Reports

- (1) Annual and Interim Reports on the Activity of OVA.
 - (a) In accordance with M.G.L. c. 115B, § 4, the Office of the Veteran Advocate shall file an annual report. The Veteran Advocate may, in addition, issue interim reports on the activities of OVA, significant problems encountered and recommendations for change.
 - (b) The Veteran Advocate may convene *ad hoc* or ongoing joint investigative, audit, and/or inspectional activities with any other public or private bodies, including law enforcement agencies.
 1. In any joint activity with a law enforcement entity or entities, the law enforcement entities involved shall determine the lead agency.
 2. In all other matters, the Office of the Veteran Advocate shall serve as the lead agency in any matter in which the gravamen of the investigation, audit, and/or inspection concerns a matter enumerated in M.G.L. c. 115B.
 3. Annual and interim reports shall be forwarded to the governor, the senate president, the speaker of the house of representatives, the senate and the house committees on ways and means, and the joint committee on veterans and federal affairs and shall be made available to the public.
 - (c) The Veteran Advocate may issue special reports relating to the prevention or detection of fraud, waste and abuse in programs and operations within the jurisdiction of OVA. Such special reports shall be disseminated to the public and, in addition, to the responsible official or governing body of any public body which is the subject of such report. In the case of a state agency, a copy of a special report shall be forwarded to the appropriate state secretariat. Such special reports may include specific recommendations of the Veteran Advocate for policies and practices which will assist in safeguarding the wellbeing, dignified treatment, rights, and benefits of veterans in the care of, or receiving services from the Commonwealth; ensuring these veterans and their families receive compassionate, timely, and effective services.
 - (d) If any annual, interim or special report of the Office of the Veteran Advocate contains findings critical of the practices, policies or procedures of any public body related to, the Veteran Advocate may request a written response to such critical findings. The head or governing body of a public body from whom the Veteran Advocate requests a response shall have 30 days from the date of issuance of the report to submit such a written response. The response shall be forwarded to those officials to whom a copy of the original report was disseminated.
 - (e) If any annual, interim or special report of the Office of the Veteran Advocate makes specific recommendations for the elimination, modification, or implementation of the practices, policies or procedures of any public body related to the wellbeing, dignified treatment, rights, and benefits of veterans in the care of, or receiving services from the Commonwealth, ensuring these veterans and their families receive compassionate, timely, and effective services, the Veteran Advocate may require a periodic reporting from the affected public body as to action taken in response to such recommendations.

2.11: Cooperation With Public Bodies and Private Entities

- (1) Assistance to Entities. Upon request of a public body or private entity involved in the expenditure of public funds or use of public property, the Veteran Advocate may provide assistance, including the assignment of personnel, to assist such public body for the purpose of safeguarding the wellbeing, dignified treatment, rights, and benefits of veterans in the care of, or receiving services from the Commonwealth; ensuring these veterans and their families receive compassionate, timely, and effective services.
- (2) Development and Recommendation of Policy. The Veteran Advocate may recommend policies for the coordination of efforts by public and private bodies to safeguard the wellbeing, dignified treatment, rights, and benefits of veterans in the care of, or receiving services from the Commonwealth; ensuring these veterans and their families receive compassionate, timely, and effective services. The Veteran Advocate may convene *ad hoc* or ongoing committees or task forces composed of representatives of public bodies, private entities and individuals to advise and assist OVA in the development of policies or procedures related to this mission.

2.11: continued

(3) Coordination with Investigative or Law Enforcement Agencies.

- (a) To avoid duplication of effort and maximize utilization of resources, the Veteran Advocate may enter into memoranda of understanding or other agreements with local, state or federal investigative or law enforcement agencies. Such memoranda or agreements may involve, but are not limited to, matters such as information sharing, declination policy, cross designation of personnel, assignment to task forces or working groups, and coordinated or joint investigations on co-jurisdictional investigations, inspections, or audits.
- (b) Any memoranda or agreement entered under 123 CMR 2.11(3)(a) shall incorporate as a condition of agreement that any information, records or documents of the Office of the Veteran Advocate which are provided by OVA to the cooperating investigative or law enforcement agency shall be treated as confidential.
- (c) When records of the Office of the Veteran Advocate are shared during an investigation or audit with a cooperating investigative or law enforcement agency, officers, employees or agents of such agency shall be bound by all statutes, rules or regulations applicable to OVA regarding confidentiality of records, documents or testimony.

2.12: Requests for Information

(1) Public Information.

- (a) All requests to OVA for public records shall be directed to the Office of the Veteran Advocate Public Records Officer (PRO) who shall initially determine whether the requested documents are public records within the meaning of M.G.L. c. 4, § 7, clause 26.
- (b) The PRO shall make a written report to the General Counsel indicating the reasons for the initial determination.
- (c) If the General Counsel determines that the requested documents are public records, they shall authorize inspection of such records by the requesting party or release of a copy of such records to the requesting party upon receipt of reimbursement for the costs of reproduction.

- (2) Non-public Information. All requests for records or documents not public within the meaning of M.G.L. c. 4, § 7, clause 26 and M.G.L. c. 12A, § 13 shall be directed to the Veteran Advocate who shall respond to such request.

2.13: Delegation by the Veteran Advocate

Unless otherwise prohibited by law, the Veteran Advocate may delegate any power or function granted to him by statute, rule or regulation to any employee or agent of OVA as they deem proper for the necessary performance of their duties.

2.14: Responsibility of Staff

- (1) Confidentiality. It shall be the responsibility of the Veteran Advocate and their staff to ensure proper confidentiality of information concerning matters under investigation, audit or review by OVA pursuant to the requirements of M.G.L. c. 12A.
- (2) Conduct. Employees shall not engage in any conduct which reflects unfavorably upon the Office of Veteran Advocate. They shall always perform their official duties with complete fairness and impartiality. Employees are prohibited from engaging in any conduct which is intended to secure private gain, give preferential treatment to any person or prevent any person from securing benefits to which they are entitled. Employees are further prohibited from engaging in any conduct which creates or tends to create the impression that they will use their office for these purposes.
- (3) Personnel Regulations. All employees of OVA shall abide by the provisions of the Personnel Regulations issued by the Veteran Advocate.

2.15: Amendment or Repeal of 123 CMR 2.00

The Veteran Advocate may seek amendment or repeal of 123 CMR 2.00 or any section thereof in accordance with the procedures of M.G.L. c. 30A or M.G.L. c. 12A, § 6. Recommendations of the Veteran Advocate as to amendment, repeal, or other change in 123 CMR 2.00 shall be included in the annual report filed by the Veteran Advocate.

REGULATORY AUTHORITY

M.G.L. c. 115B, §§ 2 and 4.