

**HOUSE . . . . . No. 03718**

an Order (filed by Mr. Jones of North Reading and other members of the House) amending House Rules 16, 16A, 17 and 18A concerning ethics.

The Commonwealth of Massachusetts



PRESENTED BY:

*Bradley H. Jones, Jr.*

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In the Year Two Thousand Eleven  
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**Ordered**, that, the rules of the House of Representatives for the years 2011-2012 be amended by striking Rule 16 and Rule 16A and inserting in place thereof the following:

“Ethics

16. There shall be appointed a committee on Ethics as authorized by Rule 17. The committee shall consist of eight members, four of whom shall be appointed by the Speaker, four of whom shall be appointed by the Minority Leader.

A member appointed to the committee shall not be considered to be a member of the committee subsequent to the declaration of candidacy for any other state or federal elective office.

The committee shall investigate and evaluate, at the direction of the Speaker, by a sworn written complaint filed and delivered by a member, officer or employee to the chairman, or by a majority vote of the members appointed to the Ethics committee, any matters relative to alleged violations of Rule 16A by a member, officer or employee.

Upon the receipt of said sworn written complaint, at the direction of the Speaker or by a majority vote of the members appointed to the Ethics committee, the committee shall notify any person named of the nature of the alleged violation and a list of prospective witnesses, and also shall notify said person of the final disposition and the recommendations, if any, of the committee.

Any member, officer, or employee of the House named relative to an alleged violation shall be afforded the opportunity to appear before the committee on Ethics with counsel.

All proceedings including the filing of the initial complaint shall be considered confidential information.

If the alleged violation received in the manner described above is deemed to have merit by a majority vote of the members appointed to the committee, the committee shall file a report with the Clerk of the House. Said report shall be a public document. The committee shall not disclose any allegation deemed to be frivolous or without merit.

If a majority appointed finds that any member of the House, officer, or employee has violated any provision of Rule 16A, a majority appointed may, in the case of a member, recommend a reprimand, censure, removal from a chairmanship or other position of authority, or expulsion; and in the case of an officer or employee, a majority appointed may recommend a reprimand, suspension, or removal from employment.

Should such an alleged violation be filed with the committee regarding a member or members of the House Ethics committee, said member or members shall not participate in the committee deliberations on said alleged violation.

Any member, officer, or employee of the House may request in writing from the House committee on Ethics an advisory opinion concerning any contemplated personal action or potential personal conflict. The committee on Ethics shall issue written advisory opinions and clarification in response to said written request. The committee shall respond within sixty days of receipt of such a request, unless the General Court has prorogued. In that event, the committee shall respond within thirty days following the opening of the new session.

No member, officer, or employee of the House shall be penalized in any manner for having acted within the guidelines of an advisory opinion, provided that all pertinent facts are stated in the original request for an advisory opinion. Any advisory opinion issued by the committee on Ethics shall be valid only for biennial session in which it was issued.

The chairman of the Ethics committee may convene the committee at any time.

The chairman shall also convene the committee at the written request of at least five members of the committee.

The Committee may, upon the written and signed report of two-thirds of the members of the committee, file a special report containing legislation without said legislation being founded upon petition which shall be referred under the provisions of Rule 24 and consistent with the provisions of Joint Rule 13, to the appropriate joint standing committee. Any special report containing legislation filed pursuant to this paragraph shall be germane to subject matters regularly considered by the committee. The committee shall not include in any such special report a bill that would have a fiscal impact as described in Rule 33.

Upon convening of the first annual session of the General Court and after the adoption of rules, all members, officers and employees of the House shall be provided with a current copy of the Code of Ethics contained in Rule 16A.

At the end of each biennial legislative session, the committee shall file a report with the Clerk disclosing the number of complaints received, the number of complaints determined to have merit, the number of complaints determined to be without merit, and the dates of all committee meetings held during the session; provided, that the committee's report shall not contain any

information sufficient to identify the source of or person named in any complaint received by the committee or any other confidential or personal identifying information.

#### CODE OF ETHICS.

##### 16A. (1) General.

(i) Purpose and Applicability. The people of the Commonwealth of Massachusetts expect and deserve legislators and legislative staff who maintain the highest ethical standards to ensure public trust, respect and confidence in state government. Members and legislative staff have a solemn responsibility to refrain from conduct that is unbecoming to the General Court or inconsistent with the ability of the House of Representatives to maintain the trust, respect and confidence of the public we serve. These rules shall be construed and enforced by the House Ethics Committee. Nothing in these rules shall excuse Members from complying with all other applicable constitutional and statutory requirements regarding criminal law, conflicts of interest, Statements of Financial Interest, campaign finance reports, and state and federal income tax returns or other ethical compliance as required by law. These rules, however, hold Members and legislative staff to a higher standard of ethical conduct than prescribed by statute and constitute an additional obligation and responsibility for Members and legislative staff. As used in these rules, “staff” shall include all legislative staff as well as House employees other than Members. These rules impose an additional condition of employment for all staff.

(ii) Inherent Obligation of Ethical Conduct. Written rules of conduct cannot anticipate or define every possible act or circumstance that may create ethical issues or breaches by Members or staff, so Members and staff have an inherent obligation of ethical and honorable dealings with the public and with their colleagues and employees and shall promote an atmosphere in which ethical conduct is readily recognized as a priority of the House and is practiced continually without exception. Nothing in these rules shall prevent the Ethics Committee or the House from taking appropriate action in the event a Member or staff engages in conduct inconsistent with their public office, violates state or federal criminal law, or causes the House to fall into public disrepute.

(iii) Professional Conduct and Civility. The House requires an atmosphere of professional conduct and civility among its Members and staff and shall not tolerate harassment, invidious discrimination, or offensive behavior based on race, color, religion, national origin, gender, age, disability, or sexual orientation. Members and staff shall refrain from sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other verbal, non-verbal or physical conduct of a sexually harassing nature, when (1) submission to the harassment is made either explicitly or implicitly a term or condition of employment or other employment determination, or (2) the harassment has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.

(iv) Enforcement. These rules shall be enforced by the House upon report of the Ethics Committee, except that with a Member’s or staff’s consent and in appropriate circumstances the Ethics Committee may issue a private admonition to said Member or staff without any report to

or further action of the House. The Ethics Committee shall have the exclusive jurisdiction to ensure compliance with these rules of conduct by investigation and report to the House.

(2) Principles of Public Service. The following principles shall guide Members and staff in their conduct in office and shall guide the Ethics Committee in construing and applying the Code of Conduct.

(i) Public Office as a Public Trust. Members and staff shall treat their office or position as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or other private interest incompatible with the public good.

(ii) Exercise of Independent Objective Judgment. Members and staff shall use independent objective judgment in performing their duties, deciding all matters on the merits free from real or reasonably perceived conflicts of interest and free from real or reasonably perceived improper influences.

(iii) Public Accountability. Members and staff shall assure that government is accountable to the people and that the business of government is conducted openly, equitably and honorably. Provided, however, that Members may vote to conduct business in Executive Session or to comply with rules of procedure adopted by vote in open session.

(iv) Ethical Standards and Private Life. Members and staff have the right to privacy and the conduct of their personal lives is outside the purview of these rules, except where a Member's or staff's personal life becomes the subject of general public notice as a result of the Member's or staff's own conduct or activity which the Member or staff reasonably should have foreseen would be made public by others. The conduct of a Member's or staff's family is outside the purview of these rules.

(v) Collective Responsibility for Ethics. Every Member and staff shall have an ethical duty to report unethical or criminal conduct by any other Member or staff to the Chair and Ranking Minority Member of the Ethics Committee forthwith in writing.

(3) Prohibited Conduct. Members and staff shall not engage in the following specific instances of conduct, nor shall any Member cause or direct any staff to engage in the following specific instances of conduct, without first disclosing in writing any anticipated such conduct to the Ethics Committee and receiving 2/3 approval in writing from the Ethics Committee regarding the same.

(i) Quid Pro Quo. No Member or staff may accept any economic opportunity, other than lawful compensation for public duties, where he knows or reasonably should know from the circumstances that there a substantial possibility that the opportunity is being afforded to him with the intent to influence his conduct in the performance of his official duties.

(ii) Excessive Compensation in Private Employment. No Member or staff may charge or accept from a person known to have a legislative interest a price, fee, compensation, or other consideration for the sale or lease of any property or furnishing of services which is substantially in excess of that which is the Member or staff would charge in the ordinary course of business or which is significantly in excess of the fair market value of such property or services.

(iii) Nepotism. Neither the House nor any Member shall employ any person who is related to any Member of the General Court by blood or marriage as an immediate family member, including parents, children, spouses, siblings, grandparents, grandchildren, aunts, uncles, nieces or nephews. Provided, however, that any such person employed in the General Court as of the date this rule is adopted may continue to be employed if the Member having such relationship promptly makes written disclosure of such relationship to the Ethics Committee which shall file with the House Clerk a list of all such persons so exempt from the immediate application of this rule, including a description of the relationship and the name of the employee. And further provided, however, that no employee of the General Court whose employment predated the election of a related Member shall be subject to this rule.

(iv) Misuse of State Resources. No Member or staff may use public funds, facilities, equipment, services, mailing lists, data bases, or other governmental assets or resources for a non-legislative purpose, including but not limited to the support or opposition to partisan political activity or for the private benefit of the Member or staff, or another person. Provided, however, that the following limited uses of public resources may be used for Members' or staffs' personal benefit excluding partisan or campaign purposes:

1. Telephones and Email. Members or staff may use telephones and email for personal communication on a minimal basis, where the majority of such use relates solely to legislative duties and where the Member or staff earns or receives no financial compensation from such use;
2. Computer System. Members and staff may use computer equipment, search engines, and websites for personal communication on a minimal basis, where the majority of such use relates solely to legislative duties and where the Member or staff earns or receives no compensation from such use. The Ethics Committee may periodically request and receive a list of URL addresses and duration of visits to confirm compliance with this rule. Provided, however, that no Member or staff shall use the computer equipment or system to access online gambling or pornography;
3. Copier/Scanner/Fax. Members and staff may make use of photocopiers, scanners and fax machines for personal communication on a limited basis not to exceed ten pages per week.
4. Holiday Cards and Communication. Members and staff may use public databases or constituent databases for purposes of holiday cards as well as periodic newsletters to constituents and persons who have contacted the Member's office.
5. Public Availability. If any public resource is generally available to the public, any Member or staff may use and enjoy such resource to the same extent and on the same terms as the general public.

(v) Contribution Linkage. No Member or staff shall state or imply that the Member or staff will perform or refrain from performing a lawful constituent service based on a person's decision to provide or not to provide any political contribution, donate or not donate to a cause or candidate favored by the Member or staff, or provide or not to provide a thing of value.

- (vi) Arms-Length Transactions. No Member shall knowingly engage in any business transaction with any person who has any direct financial interest in any pending special legislation.
- (vii) Disclosure of Confidential Information. No Member or staff may knowingly make an unauthorized disclosure of information that is confidential by law and which was acquired in the course of official duties.
- (viii) State Ethics Commission Disclosures. Any Member or staff who files any disclosure with the State Ethics Commission, excluding the Statement of Financial Interest, shall simultaneously file a copy of such disclosure with the Ethics Committee.
- (ix) Payment for Official Duties. No Member or staff shall solicit or accept any compensation or political contribution other than that provided for by law for the performance of official legislative duties.
- (x) Service as Legislative Agents. No Member or staff shall serve as a legislative agent as defined in Chapter 3 of the General Laws regarding any legislation before the General Court.
- (xi) Improper Influence. No Member or staff shall receive any compensation or permit any compensation to accrue to his or her beneficial interest by virtue of influence improperly exerted from his or her official position in the House.
- (xii) Use of Confidential Information for Private Gain. No Member or staff shall willfully and knowingly disclose or use confidential information gained in the course of his or her official position to further his or her own economic interest or that of any other person.
- (xiii) Voting Procedure. Except as provided in Rule 49, no Member shall cast a vote for any other Member, nor shall any officer or employee vote for any Member, except that the Clerk or an assistant Clerk may record a vote for a Member who votes late under the provisions of Rule 52, or is prohibited from voting from his desk due to a malfunction of the electronic roll call voting system; provided the Clerk's action shall not be construed as voting for said Member.
- (xiv) Uncivil Conduct. No Member shall use profane, insulting, threatening, or abusive language in the course of public debate in the House Chamber or in testimony before any committee of the General Court.
- (xv) No Show or Low Show Employment. No Member shall employ anyone from public funds who does not perform tasks which contribute substantially to the work of the House and which are commensurate with the compensation received; and no full-time staff shall engage in any outside business activity during regular business hours, whether the House is in session or not. All staff are assumed to be full time unless their personnel record indicates otherwise.
- (xvi) Honoraria. No Member or staff shall accept or solicit an honorarium for a speech, writing for publication, or other activity from any person, organization or enterprise having a direct interest in legislation or matters before any agency, authority, board or commission of the Commonwealth which is in excess of the usual and customary value of such services.
- (xvii) Gifts. No Member or staff shall knowingly accept any gifts from any legislative or executive agent. No Member shall accept any gift from any person or entity having a direct interest in legislation before the General Court (For the purpose of this paragraph, the definitions

of “gift” and “person” are defined in subsections (g) and (m) of section 1 of chapter 268B of the General Laws).

(xviii) Campaign Funds. No Member shall convert campaign funds to personal use in excess of reimbursements for legitimate and verifiable campaign expenditures. Members shall consider all proceeds from testimonial dinners and other fund raising activities as campaign funds.

(xix) Private Interest. No Member shall serve on any committee or vote on any question in which his/her private right is immediately concerned, distinct from the public interest.

(xx) Confidentiality of Ethics Committee. No Member or staff shall violate the confidentiality of any proceeding before the Ethics Committee. Provided, however, that the Ethics Committee Chair and Ranking Minority Member may disclose information to the other Members of the Ethics Committee and the Ethics Committee may engage investigators as needed

(xxi) Arrest Or Indictment. No Member or staff may engage in criminal conduct. Any Member or staff who is arrested, indicted, criminally charged, or served as a defendant in any action under chapter 209A of the General Laws, shall forthwith in writing notify the Chair and Ranking Minority Member of the Ethics Committee of the fact of such occurrence. Thereafter, such Member or staff shall forthwith provide copies to the Chair and Ranking Minority Member of the Ethics Committee of any discovery documents received by the Member or staff or the Member’s or staff’s legal counsel including but not limited to police reports, complaints, witness statements, and grand jury testimony caption sheets. For purposes of this rule, forthwith disclosure means written disclosure within three business days after such document or discovery has been received by the Member or staff or by the Member’s or staff’s legal counsel.

(xxii) Procurement. No Member or staff may contact any agency or department of the Commonwealth, county, municipality or any independent authority regarding any public procurement that is pending before award or which the Member knows or should know will be pending the foreseeable future. Procurement decisions exceed the proper constitutional role of the legislative branch. Provided, however, that nothing in this rule shall preclude any Member from offering, debating, or voting in committee or on the floor of the House any legislative proposal or amendment that does not accrue to the benefit of any identified person or company except as may be subject to public, competitive procurement after appropriation.

(xxiii) Letters of Recommendation And Job References. Except as provided in this rule, no Member or staff may verbally communicate support for a position of public employment on behalf of another person. Members and staff shall limit job recommendations and references for public employment to written correspondence signed by the Member or staff. Members and staff may be listed as references and may respond to verbal communications initiated by others in response to such references.

(4) Lobbyists. In addition to the requirements set forth in the General Laws and any regulations or guidelines promulgated by the Secretary of State, this rule governs the conduct of Members and staff with respect to legislative agents. For purposes of this rule, Members and staff may reasonably rely after inquiry on the representation of any person regarding their status as a legislative agent unless the Member or staff has actual knowledge to the contrary.

(i) Identification. No Member or staff shall communicate in person with any legislative agent regarding pending or proposed legislation or other legislative business unless the lobbyist is displaying on his outer clothing an identification badge in a form provided by the Ethics Committee. Said badge shall be no smaller than four inches by six inches in size, bearing the words "Registered Lobbyist" in no less than twenty point bold font print. Said badge shall be affixed to the outer clothing of the legislative or executive agent in such a manner to allow any person observing the Member's or staff's conversation to know that the person participating in the conversation is a legislative agent.

(ii) House Chamber. No legislative agent shall be permitted in the House Chamber at any time the House is convened in formal or informal session, except such legislative agents may be present in the House gallery when the gallery is open to members of the general public. Court officers shall be responsible for enforcing compliance with this rule.

(iii) Members' Lounge. No legislative agent shall be permitted at any time in the Members Lounge, except to attend meetings or presentations that are open the general public in the Members Lounge and then only while displaying the lobbyist badge described in paragraph (4)(i). Court officers shall be responsible for enforcing compliance with this rule.

(iv) Transactions with Lobbyists. No Member or staff may engage in any business transaction with legislative agent.

(5) Suspension of Ethics Rules. Rule 16A shall not be suspended except upon roll call vote of approval by 2/3 of the Members in formal session.”;

Ordered further, That, the rules of the House of Representatives for the years 2011-2012 be amended by striking, in Rule 17, the words “A committee on Ethics; (to consist of eleven members)” and inserting in place thereof the following: “A committee on Ethics; (to consist of eight members)”;

Ordered further, That, the rules of the House of Representatives for the years 2011-2012 be amended by striking, in the first paragraph of Rule 18A, the word “three” and inserting in place thereof: “four”.