

HOUSE No. 3718

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

House of Representatives, [Journal Date]



In the Year Two Thousand Eleven

1 **Ordered**, the rules of the House of Representatives for the years 2011-2012 be
2 amended by striking Rule 16 and Rule 16A and inserting in place thereof the following:

3 “Ethics

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

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

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

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

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

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

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

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

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

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

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

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

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

47 The Committee may, upon the written and signed report of two-thirds of the members of the
48 committee, file a special report containing legislation without said legislation being founded
49 upon petition which shall be referred under the provisions of Rule 24 and consistent with the
50 provisions of Joint Rule 13, to the appropriate joint standing committee. Any special report
51 containing legislation filed pursuant to this paragraph shall be germane to subject matters

52 regularly considered by the committee. The committee shall not include in any such special
53 report a bill that would have a fiscal impact as described in Rule 33.

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

57 At the end of each biennial legislative session, the committee shall file a report with the Clerk
58 disclosing the number of complaints received, the number of complaints determined to have
59 merit, the number of complaints determined to be without merit, and the dates of all committee
60 meetings held during the session; provided, that the committee's report shall not contain any
61 information sufficient to identify the source of or person named in any complaint received by the
62 committee or any other confidential or personal identifying information.

63 CODE OF ETHICS.

64 16A. (1) General.

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

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

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

98 (iv) Enforcement. These rules shall be enforced by the House upon report of the Ethics
99 Committee, except that with a Member's or staff's consent and in appropriate circumstances the
100 Ethics Committee may issue a private admonition to said Member or staff without any report to
101 or further action of the House. The Ethics Committee shall have the exclusive jurisdiction to
102 ensure compliance with these rules of conduct by investigation and report to the House.

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

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

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

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

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

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

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

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

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

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

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

156 1. Telephones and Email. Members or staff may use telephones and email for personal
157 communication on a minimal basis, where the majority of such use relates solely to legislative
158 duties and where the Member or staff earns or receives no financial compensation from such use;

159 2. Computer System. Members and staff may use computer equipment, search engines, and
160 websites for personal communication on a minimal basis, where the majority of such use relates
161 solely to legislative duties and where the Member or staff earns or receives no compensation
162 from such use. The Ethics Committee may periodically request and receive a list of URL
163 addresses and duration of visits to confirm compliance with this rule. Provided, however, that no
164 Member or staff shall use the computer equipment or system to access online gambling or
165 pornography;

166 3. Copier/Scanner/Fax. Members and staff may make use of photocopiers, scanners and fax
167 machines for personal communication on a limited basis not to exceed ten pages per week.

168 4. Holiday Cards and Communication. Members and staff may use public databases or
169 constituent databases for purposes of holiday cards as well as periodic newsletters to constituents
170 and persons who have contacted the Member's office.

171 5. Public Availability. If any public resource is generally available to the public, any
172 Member or staff may use and enjoy such resource to the same extent and on the same terms as
173 the general public.

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

178 (vi) Arms-Length Transactions. No Member shall knowingly engage in any business
179 transaction with any person who has any direct financial interest in any pending special
180 legislation.

181 (vii) Disclosure of Confidential Information. No Member or staff may knowingly make an
182 unauthorized disclosure of information that is confidential by law and which was acquired in the
183 course of official duties.

184 (viii) State Ethics Commission Disclosures. Any Member or staff who files any disclosure
185 with the State Ethics Commission, excluding the Statement of Financial Interest, shall
186 simultaneously file a copy of such disclosure with the Ethics Committee.

187 (ix) Payment for Official Duties. No Member or staff shall solicit or accept any
188 compensation or political contribution other than that provided for by law for the performance of
189 official legislative duties.

190 (x) Service as Legislative Agents. No Member or staff shall serve as a legislative agent
191 as defined in Chapter 3 of the General Laws regarding any legislation before the General Court.

192 (xi) Improper Influence. No Member or staff shall receive any compensation or permit
193 any compensation to accrue to his or her beneficial interest by virtue of influence improperly
194 exerted from his or her official position in the House.

195 (xii) Use of Confidential Information for Private Gain. No Member or staff shall willfully and
196 knowingly disclose or use confidential information gained in the course of his or her official
197 position to further his or her own economic interest or that of any other person.

198 (xiii) Voting Procedure. Except as provided in Rule 49, no Member shall cast a vote for any
199 other Member, nor shall any officer or employee vote for any Member, except that the Clerk or
200 an assistant Clerk may record a vote for a Member who votes late under the provisions of Rule
201 52, or is prohibited from voting from his desk due to a malfunction of the electronic roll call
202 voting system; provided the Clerk's action shall not be construed as voting for said Member.

203 (xiv) Uncivil Conduct. No Member shall use profane, insulting, threatening, or abusive
204 language in the course of public debate in the House Chamber or in testimony before any
205 committee of the General Court.

206 (xv) No Show or Low Show Employment. No Member shall employ anyone from public
207 funds who does not perform tasks which contribute substantially to the work of the House and
208 which are commensurate with the compensation received; and no full-time staff shall engage in
209 any outside business activity during regular business hours, whether the House is in session or
210 not. All staff are assumed to be full time unless their personnel record indicates otherwise.

211 (xvi) Honoraria. No Member or staff shall accept or solicit an honorarium for a speech,
212 writing for publication, or other activity from any person, organization or enterprise having a
213 direct interest in legislation or matters before any agency, authority, board or commission of the
214 Commonwealth which is in excess of the usual and customary value of such services.

215 (xvii) Gifts. No Member or staff shall knowingly accept any gifts from any legislative or
216 executive agent. No Member shall accept any gift from any person or entity having a direct
217 interest in legislation before the General Court (For the purpose of this paragraph, the definitions
218 of "gift" and "person" are defined in subsections (g) and (m) of section 1 of chapter 268B of the
219 General Laws).

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

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

225 (xx) Confidentiality of Ethics Committee. No Member or staff shall violate the confidentiality
226 of any proceeding before the Ethics Committee. Provided, however, that the Ethics Committee

227 Chair and Ranking Minority Member may disclose information to the other Members of the
228 Ethics Committee and the Ethics Committee may engage investigators as needed

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

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

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

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

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

264 person observing the Member's or staff's conversation to know that the person participating in
265 the conversation is a legislative agent.

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

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

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

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

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

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