

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 1117 Session of 2018

INTRODUCED BY DERMODY, D. MILLER, HARKINS, FRANKEL, A. DAVIS, DONATUCCI, YOUNGBLOOD, KINSEY, PASHINSKI, SIMS, HANNA, M. QUINN, GALLOWAY, GAINNEY, MURT, BRIGGS, READSHAW, SOLOMON, BARRAR, DAVIS, SCHLOSSBERG, J. McNEILL, HILL-EVANS, DRISCOLL, DEASY, SNYDER, NEILSON, BURNS, BIZZARRO, MARKOSEK, LONGIETTI, BARBIN, SAINATO, GOODMAN, STURLA, CALTAGIRONE, CONKLIN, FREEMAN, MULLERY, SCHWEYER, MADDEN, MATZIE, CARROLL, KAVULICH, O'BRIEN, THOMAS, COMITTA, FITZGERALD, BULLOCK, McCLINTON, KIRKLAND, HAGGERTY, VAZQUEZ, DeLISSIO, TAI, KORTZ, DeLUCA, WARREN, FLYNN, RABB, DALEY, KIM, McCARTER, W. KELLER, ROZZI, RAVENSTAHL, D. COSTA, P. COSTA, CEPHAS, BRADFORD, DEAN, DAWKINS, ROEBUCK, WHEATLEY, V. BROWN, BOYLE, CRUZ AND J. HARRIS, OCTOBER 2, 2018

REFERRED TO COMMITTEE ON RULES, OCTOBER 2, 2018

A RESOLUTION

1 Amending the Ethical Conduct Rules of the House of
2 Representatives, further providing for definitions and for
3 conduct, providing for professional conduct and further
4 providing for committee on ethics.

5 RESOLVED, That the title of the Ethical Conduct Rules of the
6 House of Representatives be amended to read:

7 ETHICAL AND PROFESSIONAL CONDUCT RULES OF
8 THE HOUSE OF REPRESENTATIVES

9 RESOLVED, That the opening paragraph of House Rule 1 E of the
10 Ethical Conduct Rules of the House of Representatives be amended
11 and the section be amended by adding definitions to read:

12 ETHICAL CONDUCT RULES OF
13 THE HOUSE OF REPRESENTATIVES

RULE 1 E

Definitions

The following words and phrases when used in the Ethical and
Professional Conduct Rules of the House of Representatives shall
have the meanings given to them in this Rule unless the context
clearly indicates otherwise:

* * *

"Employer." The term includes the following:

(1) An officer of the House.

(2) The Office of the Speaker of the House of
Representatives.

(3) The House Republican Caucus.

(4) The House Democratic Caucus.

* * *

"Gender identity or expression." The gender-related
identity, appearance, mannerisms, expression or other gender-
related characteristics of an individual regardless of the
individual's designated sex at birth.

"Harassment." Unwelcome conduct that is based on race,
color, religion, sex (including pregnancy), sexual orientation,
gender identity or expression, national origin, age, disability
or genetic information. The term includes sexual harassment.

* * *

"Sexual harassment." Unwelcome sexual advances, requests for
sexual favors or other verbal or physical conduct of a sexual
nature.

"Sexual orientation." Heterosexuality, homosexuality or
bisexuality.

* * *

RESOLVED, That the title and subsection (1)(k) of House Rule

2 E of the Ethical Conduct Rules of the House of Representatives
be amended and the rule be amended by adding a subsection to
read:

RULE 2 E

Ethical Conduct

(1) No campaign activity may be conducted by a House
employee on House work time. No campaign activity may be
conducted in a House office or with House resources or House
funds. The following shall apply:

* * *

(k) A House employee who refuses to participate in a
campaign activity or to make a campaign contribution shall
not be [sanctioned] subject to retaliation for that refusal.

* * *

(8) The following shall apply:

(a) No member or officer of the House shall retaliate
against a House employee or another member or officer of the
House in response to any of the following actions taken in
good faith:

(i) Filing a complaint of:

(A) unethical conduct under the Legislative Code
of Ethics or Rules of the House; or

(B) unethical or illegal conduct with the
Pennsylvania State Ethics Commission or a law
enforcement agency.

(ii) Participating in an investigation in connection
with or proceeding resulting from the filing of a
complaint under subparagraph (i).

(b) Nothing under subparagraph (a) shall prevent action
against a member or officer of the House who is the subject

1 of a complaint of unethical or illegal conduct.

2 RESOLVED, That the Ethical Conduct Rules of the House of
3 Representatives be amended by adding a section to read:

4 RULE 2.1 E

5 Professional Conduct

6 (1) No Member or officer of the House shall do any of the
7 following:

8 (a) Use the submission to or rejection by a House
9 employee of conduct constituting sexual harassment or other
10 forms of harassment as a basis for an employment decision
11 affecting the employee.

12 (b) Make submission to conduct constituting sexual
13 harassment or other forms of harassment, either explicitly or
14 implicitly, a term or condition of a House employee's
15 employment.

16 (c) Engage in conduct constituting sexual harassment or
17 other forms of harassment that is so frequent or severe that
18 it creates a hostile or offensive work environment for a
19 House employee or another Member or officer of the House.

20 (2) No Member or officer of the House shall retaliate
21 against a House employee or another Member or officer of the
22 House in response to any of the following actions taken in good
23 faith:

24 (a) Filing:

25 (i) a complaint of sexual harassment or other forms
26 of harassment under Rules of the House or the policies
27 and procedures of an employer;

28 (ii) a charge of sex discrimination relating to
29 sexual harassment or other forms of harassment with a
30 government agency or commission charged with enforcing

1 laws relating to sex discrimination and harassment;

2 (iii) a civil action relating to sexual harassment
3 or other forms of harassment in a court of competent
4 jurisdiction; or

5 (iv) a criminal complaint relating to sexual
6 harassment or other forms of harassment with a law
7 enforcement agency.

8 (b) Participating in an investigation in connection with
9 or proceedings resulting from the filing of a complaint or
10 proceeding under paragraph (a).

11 (3) Nothing under subsection (2) shall prevent action
12 against a member or officer of the House who is the subject of a
13 complaint or proceeding relating to sexual harassment or other
14 forms of harassment.

15 RESOLVED, That House Rule 3 E of the Ethical Conduct Rules of
16 the House of Representatives be amended to read:

17 RULE 3 E

18 COMMITTEE ON ETHICS

19 The Committee shall consist of eight Members, four of whom
20 shall be members of the majority party appointed by the Speaker,
21 and four of whom shall be members of the minority party
22 appointed by the Minority Leader. From the Members appointed to
23 the Committee, the Speaker shall appoint a chair, vice-chair and
24 secretary for the Committee. The chair shall be a member of the
25 majority party, and the vice chair shall be a member of the
26 minority party.

27 The members of the Committee shall first meet upon the call
28 of the chair and perfect its organization. A majority of the
29 Committee shall constitute a quorum for it to proceed to
30 business. Unless otherwise provided in this rule, a majority of

1 the Committee shall be required to take any action authorized by
2 this rule. The Committee shall have the power to promulgate
3 rules not inconsistent with this rule or Rules of the House that
4 may be necessary for the orderly conduct of its business.

5 The chair of the Committee shall notify all members of the
6 Committee at least 24 hours in advance of the date, time and
7 place of meetings and, insofar as possible, the subjects on the
8 agenda. Meetings may be called from time to time by the chair of
9 the Committee as the chair deems necessary. A member of the
10 Committee may request that the chair call a meeting for a
11 specific purpose. If the chair refuses to call a meeting upon
12 such request, a majority of the Committee may vote to call a
13 meeting by giving two days' written notice to the Speaker of the
14 House setting forth the time and place for such meeting. Such
15 notice shall be read in the House and posted in the House
16 Chamber by the Chief Clerk or a designee. Thereafter, the
17 meeting shall be held at the time and place specified in such
18 notice.

19 The Committee shall not continue to exist after sine die
20 adjournment of the General Assembly. Proceedings on matters
21 before the Committee that have not been concluded or disposed of
22 by October 31 of the second year of a legislative term shall
23 cease on such date and all documents, reports, communications,
24 transcripts and other materials compiled by the Committee for
25 such matters shall be collected, organized and submitted to the
26 Chief Clerk under seal for transition to the reconstituted
27 Committee consisting of Members appointed from the incoming
28 General Assembly. These materials shall be held in a secure
29 manner and nothing in this rule shall authorize the Chief Clerk
30 or any other person to view such materials. Within 30 days

1 following the reconstitution of the Committee in the next
2 succeeding legislative term, the Committee shall review such
3 materials and determine whether or not to proceed with one or
4 more of the matters under review by the former Committee. Any
5 time period required for any actions of the Committee or others
6 under this rule shall be tolled until the reconstituted
7 Committee has made a determination whether or not to proceed.
8 If the Committee determines to proceed with a matter, the
9 Committee shall continue from the stage in the consideration of
10 the matter where the former Committee ended.

11 The Committee shall compile, update and distribute a Members'
12 Handbook on Ethics for Members and House Employees on matters
13 regarding the ethical conduct of their legislative duties. Each
14 Member shall complete two hours of ethics education and training
15 and one hour of sexual harassment and discrimination in the
16 workplace education and training each legislative term. A Member
17 shall be excused from one hour of ethics training for any full
18 year the Member was absent due to illness, injury, military
19 service or any other permissible excuse under General Operating
20 Rule 64(a). The Committee shall be responsible for planning and
21 offering [ethics] the foregoing education and training programs.

22 The Committee shall issue to a Member upon the Member's
23 request an advisory opinion regarding the Member's duties under
24 Rule 2E relating to legislative nonprofit organizations. The
25 opinion shall be issued within 14 days following the request. No
26 Member who acts in good faith on an opinion issued under this
27 paragraph shall be subject to any sanctions for so acting if the
28 material facts are as stated in the request. Opinions issued
29 under this paragraph shall be public records and may from time
30 to time be published. Notwithstanding the foregoing, the Member

1 requesting the opinion may request that an opinion undergo
2 deletions and changes necessary to protect the identity of the
3 persons involved, and the Committee shall make such deletions
4 and changes.

5 The Committee may issue other advisory opinions with regard
6 to questions pertaining to other legislative ethics or decorum
7 at the request of a Member or House employee. An opinion issued
8 under this paragraph shall be confidential and shall apply
9 exclusively to the requestor. No requestor who acts in good
10 faith on an opinion issued under this paragraph shall be subject
11 to any sanctions for acting in accordance with the opinion if
12 the material facts are as stated in the request.

13 The Committee may receive complaints against Members and
14 House employees alleging unethical conduct under the Legislative
15 Code of Ethics or the Rules of the House and complaints against
16 Members and officers of the House for violations of Rule 2.1 E.
17 A complaint must be in writing and be signed by the person
18 filing the complaint under penalty of law under 18 Pa.C.S. §
19 4904 (relating to unsworn falsification to authorities). The
20 complaint must set forth in detail the actions constituting the
21 alleged unethical conduct or violation. No person shall disclose
22 or acknowledge to any other person any information relating to
23 the filing of a complaint or the proposed filing of a complaint,
24 except as otherwise authorized under this rule or Rule 2.1 E,
25 for the purpose of seeking legal advice, as otherwise required
26 by law or to carry out a function of the Committee.

27 The Committee shall not have jurisdiction over, shall not
28 accept for review or action and shall return to the complainant
29 with a notice explaining the Committee's lack of jurisdiction
30 any of the following:

1 (1) a complaint filed later than five years following
2 the occurrence of the alleged unethical conduct or violation;

3 (2) a complaint filed against a former Member or former
4 House employee unless required by Section 7(c) of the
5 Legislative Code of Ethics; or

6 (3) a complaint filed against a Member during a
7 restricted period.

8 A five-year limitations period that expires during a
9 restricted period shall be tolled until the day following the
10 election occurring at the expiration of the restricted period.

11 Within 30 days following receipt of a complaint over which
12 the Committee has jurisdiction under this rule, the Committee
13 shall do one of the following:

14 (1) dismiss the complaint if it:

15 (a) alleges facts that do not constitute unethical
16 conduct or a violation of Rule 2.1 E;

17 (b) is objectively baseless;

18 (c) is insufficient as to form;

19 (d) is a frivolous complaint; or

20 (2) initiate a preliminary investigation of the alleged
21 unethical conduct or violation.

22 If the Committee initiates a preliminary investigation, it
23 shall, promptly upon voting to proceed, send the subject a
24 letter setting forth each allegation in the complaint. Within 15
25 days after receipt of the letter, the subject may file a written
26 response with the Committee. Failure of the subject to file a
27 response shall not be deemed to be an admission, or create an
28 inference or presumption, that the allegations in the complaint
29 are true, and such failure shall not prohibit the Committee from
30 either proceeding with the preliminary or a formal investigation

1 or dismissing the complaint. The Committee may engage an
2 independent counsel to assist in a preliminary investigation.
3 The subject may be represented by counsel of the subject's
4 choosing at any point during an investigation under this rule.

5 If the Committee initiates a preliminary investigation of a
6 complaint of a violation under Rule 2.1 E, it shall also send to
7 the appropriate employer a copy of the letter sent to the
8 subject setting forth each allegation in the complaint. Upon the
9 request of the complainant, the employer shall make adjustments
10 to the complainant's work hours, assignment or duties or
11 location that may be appropriate under the circumstances of the
12 allegations in the complaint. The adjustments may include:

13 (1) removing the complainant or the subject from the
14 physical work location of the complainant;

15 (2) allowing the complainant to be placed on
16 administrative leave with continued pay and benefits, if
17 applicable; or

18 (3) any other reasonable accommodation agreed to by the
19 employer and the complainant.

20 The employer shall keep the letter and the fact of the
21 initiation of a preliminary investigation confidential but may
22 disclose necessary information to Members, officers of the House
23 or House employees as needed in order to implement the foregoing
24 adjustments. No House employee shall retaliate or take adverse
25 action against the complainant in response to the filing of a
26 complaint of a violation of Rule 2.1 E with the Committee.

27 A member of the Committee who is the complainant, the subject
28 or a witness to the unethical conduct or violation alleged in a
29 complaint shall not participate in any Committee consideration
30 of the complaint. The Member shall be temporarily replaced on

1 the Committee in a like manner as his or her original
2 appointment.

3 Within 30 days following the initiation of a preliminary
4 investigation, the Committee shall vote to dismiss the complaint
5 for lack of probable cause to support the alleged unethical
6 conduct or violation or to proceed with a formal investigation
7 because it finds that probable cause exists. If a majority of
8 the Committee is unable to agree on either course of action, the
9 Committee shall dismiss the complaint. The Committee shall
10 promptly notify the subject in writing of the result.

11 If the Committee votes to proceed with a formal
12 investigation, the Committee shall engage an independent counsel
13 unless the Committee determines that the alleged unethical
14 conduct or violation raised in the complaint does not warrant
15 the expense of engaging an independent counsel. If the Committee
16 does not engage an independent counsel, the Committee shall be
17 represented in the investigation and any hearing conducted under
18 this rule by Committee staff attorneys, including at least one
19 from each party.

20 The Committee, including Committee staff attorneys, and any
21 independent counsel engaged by the Committee shall have the
22 power to conduct investigations and hearings under the
23 guidelines set out in this rule. Where a provision of this rule
24 conflicts with another Rule of the House, the provision of this
25 rule shall govern. This rule shall be construed to empower the
26 Committee and its independent counsel to do all of the
27 following:

- 28 (1) act as a neutral fact-finder;
29 (2) protect due process and other constitutional rights
30 of a subject;

1 (3) fully investigate and deter unethical conduct or a
2 violation of Rule 2.1 E; and

3 (4) protect the public trust.

4 The Chief Clerk shall pay the fees and expenses of an
5 Independent Counsel engaged by the Committee under this rule.

6 The Committee may issue subpoenas for documents or testimony
7 as part of a preliminary investigation, a formal investigation
8 or in connection with a hearing before the Committee.

9 Notwithstanding the provision of any other Rule of the House,
10 subpoenas issued under this rule shall be in the name of the
11 Committee, shall be signed by the chair of the Committee and
12 shall be attested by another member of the Committee who voted
13 in favor of authorizing the subpoena.

14 A subpoena issued by the Committee may be served upon any
15 person and shall have the force and effect of a subpoena issued
16 out of the courts of this Commonwealth. Subpoenas shall be
17 served by the Sergeant-at-Arms of the House or another person
18 designated by the Committee when directed to do so by the
19 Committee. Each subpoena shall be addressed to the witness and
20 shall state that such proceeding is before a Committee of the
21 House for which the witness is required to attend and testify at
22 a specified time and place; or to produce books, papers,
23 records, accounts, reports, documents and data and information
24 produced and stored by any electronic data processing system; or
25 both, as the Committee may also require. Mileage and witness
26 fees shall be paid by the House to such witness in an amount
27 prescribed by law. Unless addressed to and served on the
28 subject, a copy of a subpoena issued by the Committee shall be
29 provided to the subject and the subject's counsel, if
30 applicable. A person who willfully neglects or refuses to comply

1 with a subpoena issued by the Committee shall be subject to the
2 penalties provided by the laws of this Commonwealth with respect
3 to such willful neglect or refusal. Notwithstanding the
4 foregoing, a recipient of a subpoena issued by the Committee may
5 object to the subpoena by serving notice of such objection on
6 the signatory to the subpoena and the Committee. The Committee
7 may quash or modify the subpoena if it finds the subpoena to be
8 overly broad or without proper purpose. Each member of the
9 Committee shall have the power to administer oaths and
10 affirmations to witnesses appearing before the Committee.

11 All subpoenaed books, papers, records, accounts, reports,
12 documents, data and information shall be returned to the person
13 from whom such material was subpoenaed when the Committee has
14 completed its examination of such material, but in no event
15 later than the date of final disposition of the matter.

16 Following the completion of a formal investigation, the
17 Committee shall conduct a hearing if:

18 (1) the independent counsel engaged by the Committee
19 recommends that a hearing be conducted and the Committee
20 votes to adopt the recommendation; or

21 (2) an independent counsel was not engaged by the
22 Committee but the Committee finds that the testimony and
23 documents reviewed by the Committee during the formal
24 investigation indicates more likely than not that the
25 unethical conduct or violation alleged in the complaint
26 occurred.

27 If a hearing is to be conducted, the Committee shall provide
28 the subject and the subject's counsel, if applicable, with
29 written notice consistent with constitutional principles of due
30 process. The Pennsylvania Rules of Evidence shall apply during

1 the hearing, unless the Committee determines otherwise.
2 Notwithstanding the foregoing, the Committee may not infringe on
3 the right of the subject to present evidence, cross-examine
4 witnesses, face his or her accuser and be represented by counsel
5 at a hearing conducted under this rule.

6 Witnesses called to appear at a hearing under this rule,
7 including a subject, may be accompanied by his or her own
8 counsel for the purpose of advising him or her concerning his or
9 her constitutional rights. Counsel may interpose legal objection
10 to any and all questions which in the opinion of counsel may
11 violate the constitutional rights of his or her clients.

12 The proceedings of a hearing conducted under this rule shall
13 be either stenographically or electronically recorded. The
14 Committee shall determine which parts of such recorded
15 proceedings, if any, shall be transcribed.

16 The burden shall be on the independent counsel, if one has
17 been engaged by the Committee, or the Committee staff attorneys,
18 if an independent counsel has not been engaged, to prove, by
19 clear and convincing evidence, that the unethical conduct or
20 violation alleged in the complaint occurred. Within 30 days
21 following the conclusion of the formal investigation and
22 hearing, the Committee shall make a determination as to whether
23 the burden was met and shall submit its finding to the House. If
24 the Committee finds that the burden was met, the Committee may
25 make one or more of the following recommendations to the House:

- 26 (1) a reprimand of the subject;
27 (2) a censure of the subject;
28 (3) expulsion of the subject from the House; or
29 (4) the denial or limitation of any right, power or
30 privilege of the Member granted by Rules of the House and not

contrary to the Pennsylvania Constitution.

The Committee shall provide a written report of its findings and recommendations, if any, to the subject and shall simultaneously submit a copy of the same to the House. Only findings and recommendations agreed to by a majority of the Committee shall be included in the report. The report may include a minority report. The House shall not take any action on the findings and recommendations submitted by the Committee and shall not make such findings and recommendations public until a period of at least seven days has passed following the Committee's provision of the report to the subject.

The Committee may extend any of the time periods, other than those relating to the jurisdiction of the Committee, required for any actions of the Committee or others under this rule.

Investigations, hearings and meetings of the Committee relating to an investigation and the existence of such investigations, hearings, and meetings shall be confidential. All other meetings of the Committee shall be open to the public.

Notwithstanding the above, except for hearings on complaints of a violation of Rule 2.1 E, the Committee shall conduct a hearing in public upon the written request of the subject unless the Committee determines that evidence or testimony to be received at the hearing may substantially defame, degrade, or incriminate a person other than the subject. In that event, the Committee shall receive such evidence or testimony in executive session. No evidence or testimony taken in executive session may be released to any person or authority or used in public sessions without the consent of the Committee.

The Committee may enter into a consent agreement with the subject at any point in the proceedings.

1 The complaint, response and records of the Committee shall be
2 confidential. Notwithstanding the foregoing:

3 (1) consent agreements and final findings by the
4 Committee of unethical conduct and the Committee's
5 recommendations with respect to such findings shall not be
6 confidential; [and]

7 (1.1) consent agreements and final findings by the
8 Committee of a violation of Rule 2.1 E shall not be
9 confidential, except that at the request of a complainant,
10 the name of the complainant and, unless the House considers a
11 resolution to discipline the subject, any facts that may lead
12 to the identification of the complainant, including the name
13 of the subject, shall be redacted before an agreement or
14 final findings of the Committee are made public; and

15 (2) the subject may, in his or her discretion, make
16 public a finding by the Committee that no unethical conduct
17 or violation of Rule 2.1 E had occurred or that there was
18 insufficient evidence presented to the Committee that
19 unethical conduct or a violation of Rule 2.1 E had
20 occurred[.], except that the subject shall not make public
21 the name of a complainant who filed a complaint alleging a
22 violation of Rule 2.1 E.

23 Any member of the Committee breaching the confidentiality
24 provisions set forth in this rule shall be removed immediately
25 from the Committee and replaced by another Member in a like
26 manner as his or her original appointment.

27 A nondisclosure agreement shall not be imposed on an
28 individual as a condition of the initiation of the procedures
29 available under this rule for the filing and hearing of a
30 complaint of a violation of Rule 2.1 E. The foregoing shall not

1 be construed to prohibit the complainant and the subject from
2 voluntarily entering into a settlement agreement with a
3 nondisclosure provision agreed to by each party as part of the
4 settlement of a complaint or proceeding. Notwithstanding the
5 foregoing, a Member who is the subject of a complaint of a
6 violation of Rule 2.1 E filed with the Committee shall not
7 benefit from a nondisclosure agreement or provision if a
8 completed formal investigation of the Committee finds that the
9 complaint is credible or a final decision by the Committee finds
10 a violation.

11 The Committee may meet with a committee of the Senate to hold
12 investigations or hearings involving complaints against
13 employees of the two chambers jointly or officers or employees
14 of the Legislative Reference Bureau, the Joint State Government
15 Commission, the Local Government Commission, the Legislative
16 Budget and Finance Committee, the Legislative Data Processing
17 Committee or other legislative service agencies. No action may
18 be taken at a joint meeting unless it is approved by the
19 Committee. A member of the Committee who is the complainant, the
20 subject or a witness to the unethical conduct or violation of
21 Rule 2.1 E alleged in a complaint under this paragraph shall not
22 participate in any joint proceedings under this paragraph. The
23 Member shall be temporarily replaced on the Committee in a like
24 manner as his or her original appointment.