

Text added to existing rules in ***bold italics***
Text deleted from existing rules ~~struck through~~

Adopt Per 102.46 and renumber Per 102.46 through Per 102.88 as Per 102.47 through Per 102.89, so that Per 102.46 is cited reads as follows:

PART Per 102 DEFINITIONS

Per 102.46 “Memo of counsel” means any non-disciplinary written communication from an appointing authority, or any person having supervisory authority, to an employee, regardless of the title of that written communication, regarding the employee’s conduct or performance, and which is placed in the employee’s file.

APPENDIX A: STATUTES IMPLEMENTED

Rule	State Statute(s) Implemented
Per 102.46	RSA 21-I:42, I, IV (a) & (d), & XIII

Adopt Per 1001 and renumber Per 1001 through Per 1003 as Per 1002 through Per 1004, so that Per 1001 is cited and reads as follows:

CHAPTER Per 1000 INVESTIGATIONS, DISCIPLINE, *NON-DISCIPLINARY COMMUNICATIONS*, AND NON-DISCIPLINARY REMOVAL

PART Per 1001 NON-DISCIPLINARY COMMUNICATIONS FOR PURPOSES OF CORRECTIVE ACTION OR COUNSEL

Per 1001.01 Memos of Counsel.

(a) An appointing authority, or any person having supervisory authority, may, prior to initiating any discipline in accordance with Per 1003.01, issue to an employee, and place within that employee's file, a memo of counsel informing the employee of any matter related to that employee's performance or conduct that requires improvement or correction.

(b) A memo of counsel issued to an employee in accordance with (a), above, may contain a corrective action plan or other guidance informing the employee of the steps necessary to constitute a correction or improvement of the performance or conduct that is the subject of the memo of counsel.

(c) If a memo of counsel is issued, the appointing authority, or any person having supervisory authority, shall, within 90 days of issuance:

(1) If there has been sufficient opportunity to assess the employee's progress:

a. Issue a subsequent written communication to the employee noting whether or not the performance or conduct that is the subject of the memo of counsel has been corrected; and

b. Attach the subsequent written communication issued in accordance with a., above, to the original memo of counsel; or

(2) Issue additional subsequent communications in accordance with (1), above, if there has been insufficient opportunity to assess the employee's progress, because of:

a. Absence of the employee preventing the employee from performing their regular duties;

b. Absence of the employee's supervisor preventing a proper assessment of progress; or

c. Other reasonable circumstances preventing the appointing authority or other person having supervisory authority from assessing the progress of the employee.

(d) If the appointing authority or any person having supervisory authority has had sufficient opportunity to assess the employee's progress and determines that the employee has not demonstrated improvement, the appointing authority shall:

(1) Issue additional subsequent communications in accordance with (c), above, to allow additional opportunity for improvement; or

(2) Proceed with disciplinary measures under Per 1003.

(e) Subject to (f), below, at the next performance evaluation conducted in accordance with Per 801, occurring after issuance of a memo of counsel, the appointing authority or any person having supervisory authority shall:

- (1) Remove the original memo of counsel and related communications from the employee’s file; and
- (2) If they wish to preserve a record of the employee’s performance or conduct, incorporate the content of the memo of counsel and subsequent related communications into the evaluation and make them a part thereof.

(f) In the event that the employee’s next performance evaluation occurs within 90 days of issuance of a memo of counsel, the appointing authority shall not be required to comply with (e) until the next duly conducted performance evaluation.

(g) A memo of counsel and related communications arising therefrom shall be removed from an employee’s personnel file:

- (1) As specified in (e), above;
- (2) If the appointing authority fails to comply with (c), above; or
- (3) The appointing authority or any person having supervisory authority determines, at any time prior to an evaluation, that the employee has corrected the conduct or performance issues that were the subject of the memo of counsel.

APPENDIX A: STATUTES IMPLEMENTED

Rule	State Statute(s) Implemented
Per 1001.01	RSA 21-I:42, I, IV (a) & (d), & XIII