

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2023-172 Rule Number Rko 100 and Rko 200

<p>1. Agency Name &amp; Address:</p> <p><b>Office of the Right to Know Ombudsman Room 313, State House Annex 25 Capital Street Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>RSA 91-A: 7-d</u></p> <p>3. Federal Authority: <u>NA</u></p> <p>4. Type of Action:</p> <p><input checked="" type="checkbox"/> Adopt</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Organizational and Procedural Rules**

6. Contact person for copies and questions:

Name:	<b>Thomas F. Kehr</b>	Title:	<b>Right to Know Ombudsman</b>
Address:	<b>Room 313, State House Annex 25 Capital Street Concord, NH 03301</b>	Phone #:	<b>(603) 271-3277</b>

7. The rulemaking notice appeared in the Rulemaking Register on **August 10, 2023**

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING: (optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.
9. A report or summary of the public comments received on the Initial Proposal and an explanation of how they were addressed in the Final Proposal as required by RSA 541-A:12, II(e).
10. Yes  N/A  Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.
11. Yes  N/A  Agency form(s) as required by RSA 541-A:12, II-a which this rule incorporates by reference or whose requirements are set forth in the rule pursuant to RSA 541-A:19-b.
12. Yes  N/A  The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).
13. Yes  N/A  The amended fiscal impact statement pursuant to RSA 541-A:5, VI because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS), or there is an error in the original FIS which must be corrected.

## INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

In Item 7 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

Items 9 through 13 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Items 8 and 9 are required in every filing, and therefore are listed without a check-box. Items 10 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachments are required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 8. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 9. A report or summary of the public comments received on the Initial Proposal and an explanation of how they were addressed in the Final Proposal pursuant to RSA 541-A:12, II(e).
- Item 10. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 11. Agency form(s) as required by RSA 541-A:12, II-a which this rule incorporates by reference or whose requirements are set forth in the rule pursuant to RSA 541-A:19-b.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement, or there is an error in the original FIS which must be corrected. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

Notice Number 2023-172

Rule Number Rko 100 and Rko 200

<p>1. Agency Name &amp; Address:</p> <p><b>Office of the Right-to-Know Ombudsman Room 313, State House Annex 25 Capital Street Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>RSA 91-A: 7-d</u></p> <p>3. Federal Authority: <u>NA</u></p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>
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5. Short Title: **Organizational and Procedural Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

**As required by RSA 541-A:16 and RSA 91-A: 7-d, these rules adopt the organizational and procedural rules of the Office of the Right-to-Know Ombudsman, a single-person agency first staffed on January 27, 2023, which is presently set to expire on July 1, 2025. See Laws 2022, Ch. 250: 6,7. These rules implement the existing provisions of RSA 541-A as they relate to the conduct of adjudicative and pre-adjudicative proceedings in contested cases brought before the executive branch. They further establish the Office of the Right-to-Know Ombudsman’s general methods of operation, address requests for information to the agency, retention of records, the disposition of cases in the event of termination of the office (or in the case of the death or disability of the Ombudsman), explain how rulemaking is conducted or requested, address declaratory rulings, and specify how explanations of adopted rules and waiver of rules may be requested.**

6. (b) Brief description of the groups affected:

**These proposed rules would affect:**

- **The Right-to-Know Ombudsman himself;**
- **Persons who wish to pursue a claim for an alleged violation of RSA 91-A through the Office of the Right-to-Know Ombudsman, rather than through the New Hampshire Superior Court;**
- **Governmental units (including but not limited to municipalities and the state itself) against which a claimant chooses to pursue a claim under RSA 91-A: 7-b; and**
- **Witnesses, party representatives, and others appearing or involved in proceedings before the Office of the Right-to-Know Ombudsman, including hearings, pre-adjudicative and adjudicative proceedings, public comment hearings, requests for declaratory rulings, inquiries to the Office of the Right-to-Know Ombudsman, and requests for explanations of adopted rules.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Statute
Rko 101.01	RSA 541-A: 7
Rko 102.01	RSA 91-A: 7-b; RSA 541-A: 16, I(a)
Rko 102.02	RSA 541-A: 16, I(a)
Rko 102.03	RSA 541-A: 16, I(a)

<b>Rule</b>	<b>Statute</b>
Rko 102.04	RSA 541-A: 16, I(a), (b)
Rko 103.01	RSA 541-A: 16, I(a), (b); RSA 91-A
Rko 103.02	RSA 541-A: 16, I(a); RSA 91-A
Rko 201.01	RSA 541-A: 16, I(a)
Rko 201.02	RSA 541-A: 16, I(a)
Rko 201.03	RSA 541-A: 16, I(a)
Rko 201.04	RSA 541-A: 16, I(a)
Rko 201.05	RSA 541-A: 16, I(a), (b) RSA 541-A: 30-a, III(j)
Rko 202.01	RSA 541-A: 16, I(a)
Rko 202.02	RSA 311:7; RSA 541-A: 16, I(a)
Rko 202.03	RSA 541-A: 16, I(b); RSA 91-A: 7-a, I; RSA 541-A:36
Rko 202.04	RSA 541-A: 16, I(b)
Rko 202.05	RSA 541-A: 16, I(a), (b)
Rko 203.01	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, I; RSA 541-A: 30-a, III(a)
Rko 203.02	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, I
Rko 203.03	RSA 541-A: 16, I(a), (b); RSA 91-A: 7 II, VI; RSA 541-A: 30-a, III(a)
Rko 203.04	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, I
Rko 203.05	RSA 541-A: 16, I(a), (b);
Rko 203.06	RSA 541-A: 16, I(a), (b)
Rko 203.06 (c)	RSA 510:10; RSA 541-A: 16, I(a), (b)
Rko 203.07	RSA 91-A: 7-b, II; RSA 541-A: 16, I(a), (b); RSA 541-A: 1, VII-a, XV; RSA 541-A:19-b
Rko 203.08	RSA 91-A: 7-b, IV; RSA 541-A: 16, I(a), (b)
Rko 203.09	RSA 91-A: 7-b, IV; RSA 91-A: 8, I; RSA 541-A: 16, I(a), (b)
Rko 204.01	RSA 541-A: 16, I(a), (b)
Rko 204.02	RSA 541-A: 16, I(a), (b); RSA 541-A: 29, II; RSA 91-A: 7-b, I
Rko 204.03	RSA 541-A: 16, I(a), (b); RSA 541-A: 29, II; RSA 91-A: 7-b, I
Rko 205.01	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, IV(b); RSA 541-A: 30-a, III(f)
Rko 206.01	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b; RSA 541-A: 30-a, III(a)
Rko 206.02	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a)
Rko 206.03	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a)
Rko 207.01	RSA 541-A: 16, I(a); RSA 541-A: 30-a, III(b)
Rko 207.02	RSA 541-A: 16, I(a), (b); RSA 541-A: 1, VII-a, XV; RSA 541-A:19-b; RSA 541-A: 30-a, III(b)
Rko 207.03	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(b)
Rko 207.04	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, IV; RSA 541-A: 30-a, III(b)
Rko 207.05	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, IV; RSA 541-A: 30-a, III(b)
Rko 207.06	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, IV; RSA 541-A: 30-a, III(b)
Rko 207.07	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, IV; RSA 541-A: 30-a, III(b)
Rko 207.08	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(b)
Rko 208.01	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a)
Rko 208.02	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a), (h)
Rko 208.03	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a); RSA 91-A: 7-b, V
Rko 208.04	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a); RSA 91-A:7-b, V
Rko 208.05	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, III(b); RSA 541-A: 30-a, III(a)
Rko 208.06	RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(a), (j)
Rko 209.01	RSA 541-A: 16, I(a), (b); RSA 541-A: 29; RSA 91-A: 7-b, II
Rko 209.02	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, I
Rko 209.03	RSA 541-A: 16, I(a), (b)

<b>Rule</b>	<b>Statute</b>
Rko 210.01	RSA 541-A: 31; RSA 91-A: 7-b, III(c); RSA 541-A
Rko 211.01	RSA 541-A: 16, I(a), (b); RSA 91-A:1; RSA 541-A: 30-a, III(c)
Rko 211.02	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, III(b); RSA 541-A: 30-a, III(c)
Rko 211.03	RSA 91-A:1; RSA 541-A: 30-a, III(c)
Rko 211.04	RSA 541-A: 31(c); RSA 541-A: 16, I(a), (b); RSA 541-A: 30-a, III(c); RSA 91-A:7-c, III; RSA 541-A:31, V (d)
Rko 211.05	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-b, IV
Rko 212.01	RSA 91-A: 1; RSA 541-A: 16, I(a), (b)
Rko 212.02	RSA 91-A: 1; RSA 541-A: 16, I(a), (b)
Rko 212.03	RSA 541-A: 16, I(a), (b); RSA 541-A: 1, XIV
Rko 212.04	RSA 541-A: 30-a, III(k)
Rko 212.05	RSA 541-A: 16, I(a), (b); RSA 541-A: 33, I
Rko 212.06	RSA 541-A: 16, I(a), (b)
Rko 213.01	RSA 541-A: 31, I; RSA 541-A: 29; RSA 541-A: 1, I, IV
Rko 213.02	RSA 541-A: 30-a, III(d), (e)
Rko 213.03	RSA 541-A: 33, II
Rko 213.04	RSA 541-A: 30-a, III(c)
Rko 213.05	RSA 541-A:31, IV; RSA 541-A:16, I(a); RSA 541-A:33, I
Rko 213.06	RSA 541-A: 30-a, III(c)
Rko 213.07	RSA 541-A: 30-a, III(c); RSA 541-A: 16, I(a), (b)
Rko 213.08	RSA 541-A:35; RSA 541-A: 16, I(a), (b)
Rko 213.09	RSA 91-A:7-b, IV; RSA 541-A 16, I(a), (b)
Rko 214.01	RSA 541-A: 30-a, III(i); RSA 541-A:16, I(a), (b)
Rko 214.02	RSA 541-A: 30-a, III(i)
Rko 214.03	RSA 541-A: 30-a, III(i)
Rko 214.04	RSA 541-A: 35
Rko 214.05	RSA 91-A: 7-b, V
Rko 214.06	RSA 541-A: 30-a, III(i); RSA 541: 3-5
Rko 214.07	RSA 541-A: 30-a, III(i); RSA 541: 3-5
Rko 214.08	RSA 541-A: 16, I(b)
Rko 214.09	RSA 91-A:7-c
Rko 215.01	RSA 541-A: 16, I(a), (b)
Rko 216.01	RSA 541-A:32
Rko 216.02	RSA 541-A:32
Rko 216.03	RSA 541-A: 16, I(a); RSA 541-A:30-a, III(g)
Rko 217.01	RSA 541-A: 38; RSA 541-A: 16, I(a), (b)
Rko 217.02	RSA 91-A: 7-b, III(b); RSA 541-A: 16, I(a), (b)
Rko 218.01	RSA 5:40; 541-A: 30-a, III(l), VII
Rko 218.02	RSA 541-A: 16, I(a), (b); Laws 2022, Ch. 250:6, 7; RSA 91-A: 7-c
Rko 218.03	RSA 541-A: 16, I(a), (b); RSA 91-A: 7-a
Rko 219	RSA 541-A: 16, I(b), (3); RSA 541-A: 16, I(c)
Rko 220	RSA 541-A: 16, I(b), (3); RSA 541-A: 16, I(c)
Rko 221	RSA 541-A: 16, I(d)
Rko 222	RSA 541-A: 11, VII; RSA 541-A: 16, II(a)
Rko 223	RSA 541-A: 30-a, III(j); RSA 541-A: 16, I(a), (b); RSA 541-A: 22, IV

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Thomas F. Kehr** Title: **Right-to-Know Ombudsman**  
Address: **Room 313, State House Annex** Phone #: **(603) 271-3277**  
**25 Capital St.** Fax#: **(603) 271-6316**  
**Concord, NH 03301** E-mail: **Thomas.kehr@sos.nh.gov**  
TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, September 13, 2023, 4:30 PM**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, September 6, 2023, 1:00 PM**  
Place: **Room 405, State House Annex**  
**25 Capital St.**  
**Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 23:178, dated 8/02/2023

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

Not applicable as these are new rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

There is no cost or benefit attributable to the proposed rules. The \$25 filing fee is attributable to RSA 91-A:7-b,I.

**A. To State general or State special funds:**

None

**B. To State citizens and political subdivisions:**

None

**C. To independently owned businesses:**

None

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**These rules implement the provisions of Laws 2022, Ch. 250, which establishes the existence of the Office of the Right-to-Know Ombudsman as a simpler and less expensive alternative to the Superior Court. Whether to pursue a claim against a political subdivision for an alleged violation of RSA 91-A in this new forum, or instead pursue it in the Superior Court, is within the control of the person making such a claim. These proposed rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivisions in such a way as to necessitate additional local expenditures by political subdivisions.**

**Adopt Rko 100 and Rko 200 to read as follows:**

CHAPTER Rko 100 ORGANIZATIONAL RULES

PART Rko 101 DEFINITIONS

Edit. Here and throughout, remove the extra space after the colon in statutory citations: "RSA 541-A:1, II." etc.

Rko 101.01 Definitions. For the purposes of these rules:

(a) “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541-A: 1, I, namely “the procedure to be followed in contested cases, as set forth in RSA 541-A: 31 through RSA 541-A: 36;”

Edit. Delete.

(b) “Amicus brief” means a written document filed with the office by a person who is neither a party nor an intervenor in the case in which the brief is filed, as further addressed in Part Rko 215 below;

(c) “Appearance” means a written notification to the office that a party, an intervenor, or the representative of a party or intervenor, intends to actively participate in a case before the office, which contains the information required by Rko 207.02;

(d) “Case” means a matter which has resulted in the filing of a complaint with the office pursuant to RSA 91-A: 7-b;

(e) “Claimant” means the person submitting a complaint to the office pursuant to RSA 91-A: 7-b, which person claims to have been aggrieved by a violation of RSA 91-A by a public body or agency;

(f) “Complaint” means the document initiating proceedings with the office containing the information required by RSA 91-A:7-b;

(g) “Complaint form” means the form described at Rko 203.05;

(h) “Conference” means an informal proceeding before the office in which the parties and the ombudsman confer regarding a matter;

(i) “Contested case” means "contested case" as defined in RSA 541-A: 1, IV, namely, "a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing;"

(j) “Declaratory ruling” means a ruling by the ombudsman as to the specific applicability of any statutory provision relating to the office or of any rule or order of the office, as further described in Part Rko 221;

Edit. Delete extra space.

(k) “Filing fee” means the fee required by RSA 91-A: 7-b, I;

(l) “Final order” means an order which is intended to terminate proceedings which are then pending before the office;

Edit. Fix indentation.

(m) “Hard copy” means, unless otherwise provided in these rules, in physical form, on paper no larger than 8 ½” by 11” in size, with written material appearing on a single side;

← Edit. delete extra space.

(n) “Hearing” means an adjudicative proceeding, an oral argument on a motion, or a proceeding other than a conference between the parties and the office, not including public comment hearings addressed in Part Rko 220, in which a person’s position on a particular topic is orally presented to the ombudsman according to established procedures;

(o) “In camera review” means a form of private documentary review by the ombudsman in which the contents of the documents under review are not shared with all parties and in which the documents submitted are not open to public inspection;

(p) “Interview” means, unless otherwise specified, the process described at Rko 217.02;

(q) “Inquiry” means a potentially disputed matter brought to the attention of the office by a potential party prior to the filing of a complaint, or a general question presented to the office regarding its procedures or matters issues involving RSA 91-A-;

← Edit. be sure to remove annotation at adoption.

(r) "Intervenor" means a person without the status of a party but participating in a case to the extent permitted by the presiding officer acting pursuant to RSA 541-A:32;

(s) “Matter” means a case or an inquiry;

(t) "Motion" means a request to the presiding officer for an order or ruling directing some act to be done in favor of the proponent of the request, which includes a statement of justification or reasons for the request;

(u) "Nonadjudicative process," commonly known as a “proceeding,” means, pursuant to RSA 541-A:1, X, “all agency procedures and actions other than an adjudicative proceeding;”

(v) “Natural person” means an individual not acting on behalf of an organization, corporation or other entity;

(w) "Office" means, unless otherwise indicated, the office of the right-to-know ombudsman established by RSA 91-A: 7-a, commonly known as the “RKO;”

(x) "Ombudsman” means the officer described in RSA 91-A: 7-a who has been commissioned to perform the duties set forth in RSA 91-A: 7-b;

(y) “On the record” means, in the case of oral proceedings, recorded verbatim;

(z) "Party" means "party" as defined by RSA 541-A: 1, XII, namely, "each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party;"

(aa) “Person” means “person” as defined by RSA 21: 9, namely, a term that “may extend and be applied to bodies corporate and politic as well as to individuals;”



(bb) “Preponderance of the evidence” means a form of proof of a fact or legal conclusion by admissible evidence, demonstrating that the fact or legal conclusion is more probably true than not;

(cc) "Presiding officer" means the ombudsman, or, pursuant to RSA 541-A:1, XIV, “that individual to whom the agency has delegated the authority to preside over a proceeding, if any”;

(dd) “Proceeding” means any adjudicative or nonadjudicative process held by the office;

(ee) “Public comment hearing” means a proceeding held pursuant to RSA 541-A:11;

(ff) "Record" means, in a contested case, the materials set forth in RSA 541-A:31, VI;

(gg) “Respondent” means the party against whom a complaint is filed;

(hh) “Rulemaking petition” means a petition made pursuant to RSA 541-A:4, I, as further described in Part Rko 219;

(ii) “RKO” means the office;

Edit. Delete this as the definition is already included in "office" above. Thus, this is unnecessary.

(jj) “State” means, unless otherwise indicated, the state of New Hampshire;

(kk) “Sua sponte” means action taken of the ombudsman’s own volition, without the request of a party or intervenor;

(ll) “Verified mail” means, pursuant to RSA 21:53, “any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing;”

(mm) “With prejudice” means a form of dismissal of a claim, allegation, or other matter which precludes the party making the claim or allegation from again requesting its consideration by the office;

(nn) “Without prejudice” means a form of dismissal of a claim, allegation, or other matter which does not preclude the party making the claim or allegation from again requesting its consideration by the office;

## PART Rko 102 DESCRIPTION OF AGENCY; ANNUAL REPORTS

### Rko 102.01 Purpose and Nature of Office.

(a) Pursuant to RSA 91-A:7-a and b and Laws 2022, Ch. 250:1, the RKO is an independent state agency attached to the secretary of state for administrative purposes, and is charged with acting as an alternative to the superior court in resolving disputes arising under RSA 91-A, so as to provide the public with a simpler, less expensive, and faster process in resolving such disputes.

(b) The office is quasi-judicial in nature and does not provide advocacy services for, nor legal advice to, a claimant, a respondent, or a potential claimant or respondent.

(c) The office is not a forum for resolving disputes involving laws other than RSA 91-A and is not an arbiter of claims arising solely under NH CONST, Part 1, Article 8.

Rko 102.02 Location and Hours of the Office.

(a) The office is located at Room 313, 25 Capitol Street, State House Annex, Concord, NH 03301.

(b) In the event of a change in office location, the office may be contacted in care of the New Hampshire secretary of state, New Hampshire State House, 107 North Main St., Concord, NH 03301.

(c) The normal business hours of the office are weekdays from 8:00 AM to 4:30 PM, excluding state holidays.

Edit. Fix the indentation.

Rko 102.03 Telephone Number of Office.

(a) The telephone number of the office is (603) 271-3277.

Edit. Delete.

(b) In the event of a change in telephone number, the office may be contacted through the office of the New Hampshire S secretary of state, (603) 271-3242.

Rko 102.04 Annual Reports. Each year, on or before February 15, the office shall submit a report of its operations in the preceding calendar year to:

(a) The governor of New Hampshire and the executive council;

(b) The New Hampshire senate and house judiciary committees; and

(c) The chief justices of the New Hampshire supreme and superior courts.

PART Rko 103 OBTAINING INFORMATION FROM THE OFFICE

Rko 103.01 Purpose of this Part. This part is intended to establish rules for requests for information made to the office. It is not intended to establish rules applicable to other units of government.

Rko 103.02 Requests for Information.

(a) Documentary, audio, or video information held by the office which is available for public inspection may be reviewed at the office at an agreed-upon, mutually acceptable time during normal business hours, subject to the limitations, exemptions, and restrictions of RSA 91-A.

(b) Pursuant to RSA 91-A: 4, VII, requests for information which would require the office to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by the office shall be denied.

Edit. "which does not include the cost..."

(c) Paragraph (b) above shall not prohibit the office from compiling, cross-referencing, or assembling information into a form which the ombudsman concludes would be beneficial to the operations of the office and consistent with operative law.

(d) Subject to paragraph (e) below, hard copy documents that are existent and available for public inspection may, subject to the limitations, exemptions, and restrictions of RSA 91-A, be photocopied by the office, but not by the requester themselves, at the cost of copying to the office, not including the cost of the office's labor, provided that the cost shall not be greater than \$0.25 per page, to be paid by the requester in advance of the delivery of the information.

(e) In the case of requests which, if copied, would result in the provision of pages larger than 8 ½" by 11" inches, the copying charge shall be the cost of such copying to the office, not including the cost of the office's labor, to be paid by the requester in advance of the delivery of the information.

(f) Notwithstanding paragraphs (d) and (e) above, a person wishing to copy hard-copy documents that are existent and available for public inspection under RSA 91-A, may themselves copy such documents by photographic or similar means, provided that:

(1) The document has been reviewed by the office for any necessary redactions, and those redactions have been made; and

(2) The means of copying is not likely to result in:

a. Alteration of, or damage to, the document; or

b. Disclosure of information which is confidential in nature under RSA 91-A or other applicable law.

Edit. If postage is meant, just say that.

(g) If the copies described in (d) and (e) above are picked up at the office, there shall be no additional charge for providing the copies.

(h) If the copies described in (d) and (e) above are provided by mail, the requester shall, in addition to the copying charge, be charged the cost of postage, to be paid in advance of the delivery of the information.

(i) The existence of a hard-copy or electronic document which is subject to public disclosure shall not impose upon the office an obligation to post that item online.

(j) In the case of audio information which is not in digital format, such as recordings on magnetic tape, materials which are subject to public disclosure shall be available for listening at the office at a mutually agreed-upon time, during normal business hours, subject to the limitations, exemptions, and restrictions of RSA 91-A.

(k) In the case of requests that involve information which is available only in an electronic format, information which is subject to disclosure shall be provided to the requester in the form of a computer disk, thumb drive, or other portable electronic medium at the actual cost of the disk, drive, or other portable electronic medium to the office, plus postage, if any, if that information can be placed on the medium by the office with appropriate redactions, if any.

(l) Information which is available in electronic form shall be provided in hard copy if one or more of the following factors would render provision of the material in an electronic format impractical to the office:

(1) Unavailability of office staff with sufficient expertise to make any necessary and complete electronic redactions;

(2) Unavailability of proper equipment to accomplish the transfer with appropriate redactions, if any; or

Edit. Indent.

(3) Other matters which make it impractical for the office to provide available information in electronic format.

(m) In lieu of the provision of material in hard copy form under the circumstances described in (l) above, a requester may obtain the requested material in electronic format upon payment of the actual cost to the office for achieving the transfer of data, with all appropriate redactions.

(n) Requests for information made to the office under RSA 91-A shall be open to public disclosure, subject to the restrictions of RSA 91-A.

Rko 103.02 Case Information.

(a) Without limiting the availability of other information which may be subject to disclosure under applicable law, unless otherwise ordered in a particular case, materials filed with the office, including but not limited to, complaints, responses, appearances, motions, amicus briefs, and all information contained therein, or attached thereto, shall be open to public disclosure.

(b) If a person making a filing with the office claims that any material or information filed, or any portion of a filing, should be exempt from public disclosure, that person shall, at the time of making the filing, submit to the office a motion requesting that the information not be publicly disclosed, identifying:

Edit. Fix the indentation. Shouldn't be aligned with (b).

(1) Such laws, if any, which would protect the information from disclosure; and

(2) The specific facts of the movant's case which differentiate it from other cases, if any, in which the same information is subject to disclosure.

(c) Failure to make a request under (b) above shall constitute a waiver of any argument that the information submitted is exempt from public disclosure.

(d) A motion under (b) above shall be granted if the ombudsman concludes that the identified redactions or limitations are required by law, based upon the facts of the particular case.

(e) A general belief by a person making a motion that filings made with the office, or portions thereof, should not be subject to public disclosure shall not, standing alone, constitute good grounds for granting a motion under (b) above.

PART Rko 201 PURPOSE, SCOPE, APPLICABILITY, CONSTRUCTION, WAIVER AND SUSPENSION

Edit. Insert a comma.

Rko 201.01 Purpose. The purpose of this chapter is to establish rules for the conduct of proceedings before the office, including adjudicative proceedings in contested cases, motion hearings, nonadjudicative proceedings such as public comment hearings, rulemaking petitions and issuance of declaratory rulings, as well as other matters which may arise under RSA 91-A:7-b.

Rko 201.02 Scope. In regard to complaints, pursuant to RSA 91-A:7, II and RSA 91-A:7-b, these rules address procedures for the pursuit of grievances involving an alleged violation of RSA 91-A in lieu of pursuit of such matters in the New Hampshire superior court.

Rko 201.03 Applicability. These rules shall apply to matters first arising after the effective date of these rules.

Edit. Insert a comma.

Rko 201.04 Construction of Rules. These rules shall be applied by the office so as to foster the just, accurate and efficient resolution of complaints in such a manner as to advance the objectives set forth in:

- (a) New Hampshire Constitution, Part 1, Article 8;
- (b) RSA 91-A:1;
- (c) Laws 481, Ch. 250:1; and
- (d) RSA 541-A:38.

Rko 201.05 Waivers and Suspension of Rules.

(a) Upon the petition of any party or intervenor pursuant to Part Rko 223, or acting sua sponte, the ombudsman shall waive or suspend any provision of these rules if the ombudsman concludes that the waiver or suspension is necessary:

- (1) To comply with the law relative to the topics set forth in the matter;
- (2) To advance the purposes of RSA 91-A:7-b; or
- (3) To lend effect to the provisions of RSA 91-A.

PART Rko 202 PROCEEDINGS BEFORE THE OFFICE

Rko 202.01 Conduct of Participants in Proceedings.

(a) All persons involved in any proceeding before the office shall treat the process and all other participants, including the presiding officer, agency staff, witnesses, parties, intervenors, representatives, and persons filing amicus briefs, with respect and fairness.

(b) Parties, intervenors, representatives, and persons filing amicus briefs shall not:

- (1) Make a claim or assertion unless there is admissible evidence to support that claim or assertion;
- (2) Knowingly dispute a claim or assertion of another person unless there is a reason to do so that is supported by admissible evidence or argument;
- (3) Personally, or through another person, make a false or misleading statement of material fact or law;
- (4) Personally, or through another, knowingly conceal, destroy, preclude, or delay access to evidence which is relevant to the proceeding;
- (5) Knowingly attempt to introduce evidence which is not relevant to, or admissible in, the proceeding;
- (6) Assert personal knowledge of facts at issue unless appearing under oath;
- (7) Offer opinion as to matters at issue except in opening or closing statements, when testifying as an expert witness or as otherwise allowed by the presiding officer in the particular case;
- (8) Attempt to influence the presiding officer on an ex parte basis in a manner contrary to these rules or other law;
- (9) Engage in disruptive behavior during the course of a proceeding, including but not limited to:
  - a. Making frivolous claims or motions;
  - b. Using tactics that have no purpose other than to embarrass, burden, or offend any participant;
  - c. Speaking when another person who has been recognized by the presiding officer is attempting to speak;
  - d. Speaking when the presiding officer is making a statement or posing a question;
  - d. Speaking or acting in a manner that is abusive to other persons; or
  - e. Attempting to delay the proceedings solely for the sake of delay; or
- (10) Directly contact, outside of the presence of the representative, a party or intervenor who is known at that time to be represented in the proceeding, unless:
  - a. The contact at issue is not related to the subject matter of the pending case; or
  - b. The contact has been agreed to by the representative.

Rko 202.03 Ex Parte Communications.

(a) Parties, intervenors, representatives, and persons who have submitted amicus briefs in a case shall not engage in ex parte communications with the ombudsman that are prohibited by RSA 541-A: 36.

(b) So as to foster the provisions of (a) above, neither parties, intervenors, persons filing amicus briefs, nor persons involved in matters which might become a case shall contact the office by telephone, letter, e-mail, text, or in person to discuss or address issues relating to the substance of a matter on an ex parte basis unless:

Edit. Be sure to remove the annotation at adoption.

(1) These rules or other law so directs;

(2) The ombudsman so instructs; or

(3) The office is staffed by an individual or individuals in addition to the ombudsman who is authorized by the ombudsman to speak for the office in regard to those matters.

**Edit.** Consider rewriting this sentence to include the proper salutation for a female ombudsman. "Mrs." Should the office continue after 2025 the ombudsman might be a woman in the future.

Rko 202.04 Form of Address. In proceedings before the office, the form of address in oral communication and written salutation to the ombudsman shall be "Mr."

Rko 202.05 Location and Method of Proceedings.

(a) Proceedings before the office, including conferences and hearings, shall be held live, in-person, in Concord, NH, provided that a party or intervenor may move to alter the method or location of proceedings.

(b) The ombudsman shall grant a motion to alter the method or location of proceedings, or shall alter them sua sponte, if the ombudsman concludes that to do so would be more beneficial to the following than would the application of standard processes:

(1) The efficient accomplishment of the work of the office; and

(2) The fair and effective resolution of the case.

(c) In making a determination under (b) above, the ombudsman shall consider:

(1) The distance from Concord to the normal location of witnesses;

(2) The location of relevant documents and exhibits;

(3) The availability of appropriate technology and its relative ease of use by office personnel;

(4) The perceived importance of conducting in-person proceedings;

(5) Costs to witnesses and to the ombudsman;

(6) The perceived importance of maintaining uniform, standard office procedures;

Edit. Fix indentation.

- (7) The impact that an alteration of standard procedures in the case at hand might have upon other cases or the office’s work prioritizations; and
- (8) Any other matter which may bear upon whether or not the alteration of standard procedures would be beneficial to the operations of the office, if allowed in the particular case.

#### PART Rko 203 INITIATION OF PROCEEDINGS

Rko 203.01. Initial Submissions. A person claiming a violation of RSA 91-A may pursue a claim under RSA 91-A:7-b by submitting to the office:

- (a) A signed, written, hard-copy complaint, containing the information set forth in Rko 203.05;
- (b) If applicable, pursuant to RSA 91-A:7-b, I, the request served on the public agency or official and the written response of the public agency or official;
- (c) The fee established by RSA 91-A:7-b, I, unless a request is submitted with the complaint to waive the fee pursuant to Rko 203.04, due to an alleged inability to pay; and
- (d) 2 legible copies of (a) and (b) above.

Rko 203.02 Payments.

- (a) Payment of the fee established in RSA 91-A:7-b, I shall be in the form of:
  - (1) A check or money order payable to “Treasurer, State of New Hampshire;” or
  - (2) Cash, in the exact amount of the fee.
- (b) If, after the effective date of these rules, the ombudsman establishes within the office a system for the secure receipt of electronic payments and the verifiable electronic submission of complaints and attachments, payment of the fee established by RSA 91-A:7-b I, and submission of complaints and attachments may be made by use of that system.

Rko 203.03 Effect of Filing. Pursuant to RSA 91-A:7, II, a person’s decision to file a complaint with the ombudsman forecloses the ability to petition the superior court until the ombudsman issues a final ruling or the deadline for such ruling has passed.

Rko 203.04. Inability to Pay; Waiver of Fee.

- (a) A party who wishes to file a complaint with the office but who claims that they are unable to pay the required fee shall, at the time of the filing of the complaint, submit with the complaint a motion requesting that the ombudsman waive the fee.



(b) A claim of inability to pay shall be based upon a claimant's actual financial inability to submit the fee, and not upon any professed inability of the claimant to pay the fee as the result of:

- (1) The necessity of submitting payment by a method other than that which is desired by the claimant;
- (2) Any delay which may be caused by submission of the payment in the form required by Rko 203.02 (a);
- (3) A disagreement with the legislature's imposition of a filing; or
- (4) Any matter not relating to the claimant's actual present financial situation.

(c) In addition to such argument as the claimant believes supports their claim of an inability to pay, a motion requesting waiver of the fee shall include or attach a financial statement containing the following information:

- (1) The claimant's:
  - a. Name;
  - b. Address;
  - c. Telephone number;
  - d. Date of birth;
  - e. Marital status;
  - f. Statement of the names and addresses of members of the claimant's household, whether or not related by blood or marriage;
  - g. Statement of the names and ages of all persons whom the claimant believes are dependent upon the claimant for financial support;
  - h. Weekly wages or salary, together with the name and address of any employer;
  - i. Cash on hand;
  - j. Cash in any accounts, together with the name and address of the entity holding those accounts;
  - k. Stocks, bonds, trusts, certificates of deposit and similar investments;
  - l. Funds received from any other source within the prior 6 months;
  - m. Monthly housing costs and the name and address of the entity to whom those costs are owed;

- n. Monthly utility costs, together with the name of each utility;
- o. Monthly loan payments, including minimum payments due on consumer debt, and the name and address of the payee;
- p. Credit available through consumer credit organizations, bank lines of credit or other sources, and the name and address of the credit source;
- q. Monthly payments not accounted for above; and
- r. Real property owned, together with its address, its current value, the outstanding amount of any mortgage, and the name and address of the mortgagee;

(2) Statement that the financial information provided is true and accurate at the time of the filing of the complaint; ← Edit. ";and".

(3) Statement of:

- a. Whether the claimant has spoken to others about:
  - 1. The potential for a loan or gift of the filing fee; or
  - 2. The potential for indigent representation before the office by another person; and
- b. What, if any, response was received to the above inquiries.

(d) In lieu of submitting the financial information noted in (c) above, a claimant may submit to the office a financial affidavit, executed within the 6 months prior to filing the motion for waiver of the fee, which form is used by the New Hampshire judicial branch for the purposes of determining either:

- (1) A criminal defendant's indigency; or
- (2) A party's assets in the context of a marital case.

(e) If applicable, the claimant shall include with or in the claimant's motion to waive the fee any updates or corrections to information submitted under (d) above so as to render it accurate as of the time of the filing of the complaint.

Edit. Fix indentation.

(f) ← A claimant shall not be required to provide a copy of a motion for waiver of the filing fee to the respondent.

(g) Upon receipt of a motion for waiver of the filing fee, the ombudsman shall:

- (1) Advise the respondent in writing, copied to the claimant, that such a motion has been filed;
- (2) Inquire of the respondent whether it objects to the waiver of the fee in the particular matter; and

- (3) Advise the respondent that if it poses an objection, a notice of objection must be submitted to the office and served upon the claimant within ten days.

(h) Should the claimant desire a hearing on the request for waiver of the fee, the claimant shall clearly request a hearing in the motion.

(i) In the absence of a clearly stated request for a hearing on a motion to waive the fee, the matter shall be decided by the ombudsman on the basis of the information provided by the claimant in writing and any independent verification conducted by the office, unless the ombudsman, acting sua sponte, concludes that there are questions concerning the motion which could best be addressed by a conducting a hearing.

(j) ~~A request for a hearing on a motion to waive the fee shall be granted if the ombudsman concludes that such hearing would be beneficial to the ombudsman's better understanding of the claimant's allegation of an inability to pay.~~

Edit. Fix.

(k) ~~Hearings on motions to waive the fee shall be:~~

- (1) Conducted on an ex parte basis;
- (2) Closed to the public; and
- (3) Conducted on the record, provided, however, that the recording of the hearing on a motion to waive the fee shall not be subject to public disclosure.

(l) The ombudsman shall grant a motion to waive the fee if the ombudsman concludes that it is more probable than not that the claimant is in fact unable to pay the fee without irreparable damage to the person's present financial situation.

(m) The denial of a request to waive the fee shall result in the dismissal of the complaint without prejudice.

(n) The ombudsman shall inform the respondent whether the motion to waive the fee has been granted or denied.

Rko 203.05 Complaints.

Edit. Fix.

(a) ~~Complaints and any attachments thereto shall be written in typescript or clearly printed in ink.~~

(b) ~~A claimant may submit a complaint to the ombudsman by using a complaint form which is available from the office.~~

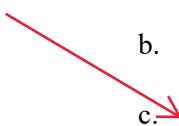
(c) ~~Whether or not using the form provided by the office, a claimant shall provide the following information in their complaint:~~

- (1) The claimant's first, middle, and last name;
- (2) The claimant's address;

Edit. The form's edition date will need to be updated. It currently says: 6/2/2023.

- (3) The claimant's preferred mailing address, if different from (c) (2) above.
- (4) The claimant's telephone number;
- (5) The claimant's e-mail address, if any;
- (6) A specification of whether the claimant's anticipated representative in the case is:
  - a. The claimant personally;
  - b. Another person;
  - c. Not known at the time of the filing;
- (7) Whether the person has attached to the complaint an appearance as described in Rko 207.02, and if not, why not;
- (8) The name and address of the entity against which the claimant is making the claim, including the particular department, division, or office of the respondent with which the claimant has to date been communicating about the matter at issue;
- (9) A brief written description of the claim;
- (10) An identification of each of the following topics that the claimant believes best synthesizes the nature of the claim:
  - a. Failure to respond;
  - b. Unreasonable delay;
  - c. Improper claim of exemption from disclosure;
  - d. Unreasonable cost;
  - e. Improper meeting; or
  - f. Another issue, identifying that issue;
- (11) A statement of whether or not the filing fee required by RSA 91-A:7-b has been filed along with the complaint and, if not, why not;
- (12) A statement of whether a written request was made to the respondent and, if so:
  - a. Whether a copy of that written request has been attached to the complaint, and:
  - b. If not, why not;

Edit. Fix the spacing and a. is not aligned with the others.



- (13) A statement of whether the public agency or official that is the subject of the complaint provided a written response to the request identified in (9) above, and if a written response was provided:
  - a. Whether it has been attached to the complaint; and
  - b. If not, why not;
- (14) If applicable, an identification of the documents, if any, that the claimant is requesting from the respondent at the time of the filing of the complaint;
- (15) A statement of the date of the claimant’s last communication about the matter at issue with the respondent, together with the name of the person with whom the claimant communicated, if known;
- (16) A statement of the specific action or actions that the claimant wishes the ombudsman to take in regard to their claims against the respondent;
- (17) A statement that:
  - a. The claimant understands that the submission of the complaint to the ombudsman forecloses the ability to petition the New Hampshire superior court about the matter until the ombudsman issues a final ruling or the deadline for such ruling has passed;
  - b. The claimant understands that if they make a false statement in the complaint, that they do not believe to be true, such false statement may be punishable by law; and
  - c. The statements made in the complaint are true and accurate, to the best of the claimant’s knowledge and belief.

(d) Complaints shall:

- (1) State the date of execution of the complaint;
- (2) Be signed by the claimant; and
- (3) State the claimant’s name in print.

Rko 203.06 Initial Action by Office.

(a) Pursuant to RSA 91-A: 7-b, II, as soon as is practicable following receipt of a complaint and assignment of a docket number in accordance with Part Rko 204, but no later than 3 days following receipt of the filing, the office shall provide to the entity complained against:

- (1) An unredacted copy of the complaint, with any attachments;
- (2) A response form as described in Rko 203.07 below;

Edit. Fix the alignment.

- (3) An appearance form as described in Rko 207.02 below; and
  - (4) A forwarding letter from the office which, based upon the time frames set forth in RSA 91-A:7-b II, clearly states the calendar date upon which the respondent's answer, the parties' appearances, and correction of any deficiencies under Rko 204.02 are due.
- (b) The items in (a) above shall be forwarded to the parties by:
- (1) First class US Mail;
  - (2) Verified mail;
  - (3) Hand-delivery by messenger.
- (c) The items in (a) above that are sent to the respondent shall be addressed to:
- (1) In the case of the state, the head of the agency complained against;
  - (2) In the case of a county, one of the county commissioners and the treasurer of the county;
  - (3) In the case of a city either:
    - a. The mayor or one of the aldermen and the city clerk; or
    - b. In a city which has a city manager, the city manager and the city clerk;
  - (4) In the case of a town, one of the selectmen and the town clerk;
  - (5) In the case of a school district, one of the members of the school board and the clerk of the district;
  - (6) In the case of a village district, ~~upon~~ one of the commissioners and the clerk of the district; or
  - (7) In the case of another entity, or in a matter in which the individual or individuals identified above cannot be readily ascertained by the office from a review of the pleadings or an official website of the respondent, such person or persons as the ombudsman concludes are likely to provide the respondent with actual notice that a claim has been filed against it.
- (d) The claimant shall be provided with a copy of the communication described in (a) above and shall be instructed to file an appearance by the date of the respondent's answer.
- (e) The respondent shall file an acknowledgment and answer in accordance with RSA 91-A:7-b, II and Rko 203.07 within 20 days, as specified by the date appearing in the office's forwarding letter described in Rko 203.06 (a) (4) above.

Edit. Remove annotations prior to adoption.

Edit. Fix alignment.

Rko 203.07 ~~Response Form~~

Edit. Remove underline.

Edit. The edition date on the form will need to be updated.

Edit. "complete and submit"

(a) In answering a complaint, a respondent shall, unless an electronic system has been instituted pursuant to Rko 203.02 (b), ~~submit~~ to the office a fully executed response form containing:

- (1) The case name and RKO docket number, as described in Rko 204.01;
- (2) The name of the respondent, consisting of the name of the entity complained against, including any department, division, committee, or other office;
- (3) The first, middle, and last name of the person answering the complaint;
- (4) Whether the individual identified in (a) (3) above is authorized by the respondent to act on its behalf and to serve as its duly authorized representative in the answering the complaint, and if not, why not;
- (5) Whether an appearance, as described in Part Rko 207, is attached on behalf of the respondent, and if not, why not;
- (6) The position or title that the person identified in (a) (3) above holds with the respondent, if any, including the department, division, committee or office of the respondent in which the person is employed;
- (7) The respondent's mailing address;
- (8) The respondent's telephone number;
- (9) The respondent's e-mail address, if any;
- (10) A written statement of what the person identified in (a) (3) above understands the claimant's request to be;
- (11) A brief response to the claim, including, pursuant to RSA 91-A: 7-b, II:
  - a. Applicable law; and
  - b. If applicable, a justification for any refusal to, or delay in, producing the requested governmental records, access to meetings open to the public, or otherwise comply with the provisions of RSA 91-A;
- (12) An indication of which of the following the person identified in (a) (3) above believes best synthesizes the nature of the claimant's allegations against the respondent:
  - a. Failure to respond;
  - b. Unreasonable delay;
  - c. Improper claim of exemption from disclosure;

- d. Unreasonable cost;
  - e. Improper notice of a meeting; Edit. Insert "or" after e. and remove annotation on f.
  - ~~f. Another issue, identifying the issue;~~
- (13) A statement of what additional issues, if any, the person identified in (a) (3) above believes are involved in the claim.
- (14) A statement certifying that:
- a. The person identified in (a) (3) understands that if they make a false statement in the response, that they do not believe to be true, such a false statement may be punishable by law; and
  - b. The statements made in the response are true and accurate, to the best of the person's knowledge and belief. Edit. Delete and replace with a semicolon.
- (15) The signature of the person identified in (a) (3) above;
- (16) The name of that person in print; and
- (17) The date that the response was executed.

Edit. Delete.

Rko 203.08 Extension of Response Date.

(a) If, upon being advised of the complaint by the office, the respondent believes that more than 20 days is required to provide a response to the allegations contained in the complaint, the respondent shall **forthwith** file a motion with the office, copied to the claimant, requesting an extension of time for the submission of a response.

(b) The ombudsman shall grant the motion for extension of response date if the ombudsman concludes that:

- (1) The motion is not submitted solely for the purpose of delay; and
- (2) It appears from the written pleadings that:
  - a. If the motion were not granted, the entry of a conditional default would be likely;
  - b. Granting the extension is likely to assist in reaching a fair and just resolution of the case; or
  - c. The extension would afford the parties a reasonable opportunity to explore the possibility of an informal resolution of the case.



(c) If a hearing is requested in regard to a motion to extend the response date, that request shall be clearly stated in the motion or objection.

(d) Motions for extension of the response date shall be submitted at least 10 days prior to the date upon which the response would otherwise be due.

(e) Objections to motions to extend response dates shall be in conformity with Rko 208.01.

(f) A hearing shall not be held on a motion to extend a response date unless the ombudsman concludes that a hearing would be beneficial to the ombudsman's understanding of issues involved in the motion or objection.

Rko 203.09. Conditional Default for Failure to File Answer.

(a) If a respondent fails to file an answer as required under these rules, the respondent shall be in conditional default.

(b) A conditional default for failure to file an answer shall be issued either in response to a motion for conditional default or sua sponte.

(c) A respondent wishing to strike a conditional default for failure to answer shall, within 10 days of the date of the order of conditional default, file:

(1) An answer that is in conformity with these rules and RSA 91-A:7-b, II; and

(2) A motion to strike the conditional default which explains the reasons for the initial failure to answer the complaint.

(d) A motion to strike a conditional default for failure to answer shall be granted if:

(1) The motion establishes that the failure to answer was the result of accident, mistake, or misfortune, and not:

a. Neglect;

b. An effort to delay the resolution of the case; or

c. Pursuant to RSA 91-A:7-b, IV, a purposeful disregard of orders that were issued during the review process; and

(2) An answer is submitted which demonstrates that there are:

a. Material issues of fact to be resolved, such that the claimant's allegations should not be deemed as admitted; or

b. Issues of law which must be addressed in order to properly resolve the case.

Edit. Use 1/4" indentation for a.-c. as was done for (2) below.

(e) No hearing shall be held on a motion to strike a conditional default for failure to answer unless the ombudsman concludes that to hold such a hearing would be beneficial to the ombudsman’s understanding of the issues raised in the motion or any objection thereto.

(f) A respondent’s failure to move that a conditional default be stricken under paragraph (c) above shall result in:

Edit. Fix this alignment.  
(see (b) below).

(1) → The factual allegations contained in the complaint being deemed true; and

(2) → Pursuant to RSA 91-A:7-b, IV and RSA 91-A:8, I, the rebuttable negative inference that the respondent has engaged in a purposeful violation of RSA 91-A.

#### PART Rko 204 CASE NAMES, NUMBERING AND ISSUANCE OF INITIAL NOTICES

##### Rko 204.01 Docketing of Cases.

(a) The office shall assign a docket number to each complaint received by the office.

(b) Docket numbers shall consist of:

(1) The calendar year in which the matter was submitted to the office; and

(2) A numerical suffix representing the number of cases, including the matter at issue, submitted to the office during that calendar year.

(c) The office shall assign a case name to each complaint filed with the office.

(d) Case names shall consist of:

(1) The preliminary statement “In Re”;

Edit. Fix alignment for (d)  
(1)-(3) and (f)(1)-(3).

(2) → The name of the entity complained against, including, if known, the particular department, division, or office of the respondent; and

(3) A numerical suffix indicating the number of actual complaints that have been submitted to the office concerning that respondent since January 27, 2023.

(f) Inquiries which are made to the office shall:

(1) Not be assigned a case name or number, unless they result in the filing of a complaint;

(2) Be documented on a list maintained by the office; and

(3) Be identified by a numerical identifier preceded by the letter “I.”

##### Rko 204.02 Notification of Deficiencies.

(a) Within 3 days of receipt of a complaint, the office shall notify the claimant of deficiencies in the following material required for further processing of the complaint:

- (1) The filing fee, including the absence or inadequacy of the fee, or other problems identified by the office regarding the payment presented;
- (2) The failure to attach, if applicable, the request served on the public agency or official and the written response of the public agency or official, as required by RSA 91-A:7-b, I; and
- (3) If applicable, the absence of a separate motion to waive the filing fee under Rko 203.04 or expedite a ruling under Rko 208.03.

Rko 204.03 Time of Issuance of Orders of Notice.

(b) The office shall issue an order of notice as described in Rko 210.01:

Edit. Don't use superscript. "21st".

- (1) Pursuant to RSA 91-A:7-b, not earlier than the 21<sup>st</sup> day after the filing of a complaint; and
- (2) Pursuant to RSA 541-A:29, II, not later than 60 days from the filing of a complaint.

PART Rko 205 TIME PERIODS

Rko 205.01 Computation of Time.

Edit. Fix alignment for (a)-(d) as well as (d)'s subparagraphs.

(a) Unless otherwise specified, the unit of time for periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in this chapter shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) Unless otherwise specified in these rules, or by other applicable law relating to the period in which an action must be performed, if the last day of the period so computed falls on a Saturday, Sunday, or a federal or state legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

(d) Paragraph (c) above shall not apply to the time periods set forth in:

- (1) RSA 91-A:4, IV (b);
- (2) RSA 91-A:7-b,II;
- (3) RSA 91-7-b:V; or
- (4) Where calendar days are specified by law.

PART Rko 206 FILING, **FORMAT** AND DELIVERY OF DOCUMENTS

Edit. Insert a comma.

Rko 206.01 Date of Issuance or Filing.

Edit. Fix alignment. here and subsequently.

(a) All documents governed by this chapter shall be rebuttably presumed to have been issued on the date noted by the office on the document.

(b) The office shall state the date of actual receipt of hard copy documents by the ombudsman by marking that date on the document.

(c) The requirement of (b) above shall not apply to materials originally received in e-mail form, regardless of whether printed by the office as a hard copy document.

(d) All documents governed by this chapter shall be rebuttably presumed to have been filed with the office on the date of receipt, if evidenced by a date placed on the document by the office in the normal course of business under (b) above.

(e) In the instance of filings with the office which must be accomplished by a specified date, or within a specified time period, the filing shall be considered timely if it is either:

(1) Actually submitted to and received by, the ombudsman in hard copy, at the address listed in Rko 102.02 on or before the specified date; or

(2) Submitted to the ombudsman by e-mail at [Thomas.kehr@sos.nh.gov](mailto:Thomas.kehr@sos.nh.gov), by the close of business on the specified date, provided that:

a. The e-mail submission states that a hard copy is being submitted and that hard copy is actually received by the office within 3 business days of the e-mail submitted; or

b. The e-mail submission was made in conformity with an order regarding e-mail submissions that was issued in that particular case.

Rko 206.02 Format of Documents.

Edit. Insert a comma.

(a) All correspondence, pleadings, and motions filed with the office, other than the initial complaint and any accompanying motion, shall include the title and docket number of the case, if known.

(b) Unless electronic filing is available pursuant to Rko 203.02, all documentary materials submitted to the office, including complaints, responses, attachments, appearances, correspondence, motions and other pleadings, shall be:

(1) Typewritten or clearly printed on durable paper 8 1/2 by 11 inches in size;

(2) Submitted on single-sided sheets;

(2) Signed by the proponent of the document, or, if the proponent appears by a representative, by the representative; and

(3) Except in the case of the initial complaint, include a statement certifying that a copy of the document and all attachments have been delivered to all parties and intervenors in compliance

Edit. Fix numbering.

Edit. Fix alignment.

with Rko 206.03, unless the pleading contains information which is understood by the office to be confidential in nature, such as a motion to waive the fee under Rko 203.04 or an in camera submission under Rko 208.05.

Edit. Remove annotation.

(c) In the case of materials submitted for in camera review, the party submitting the materials shall certify in a filing accompanying the materials that those materials have been submitted to the office and that all persons who have filed an appearance have been so advised.

(d) The signature of a party, intervenor, the representative of a party or intervenor, ~~or the~~ submitter of an amicus brief on a document filed with the office shall constitute certification that:

- (1) The signer has read the document;
- (3) The signer is authorized to file it;
- (4) To the best of the signer's knowledge, information, and belief the statements made are true and accurate;
- (5) To the best of the signer's knowledge, information, and belief, there are good and sufficient grounds to support the statements made; and
- (6) The document has not been submitted for purposes of delay.

Rko 206.03 Delivery of Documents.

(a) Unless otherwise specified by these rules or by order of the presiding officer:

- (1) Copies of all motions, exhibits, memoranda, or other items filed with the office shall be delivered to all other persons who have filed an appearance, unless disclosure of the material at issue, or a portion thereof, or disclosure to a particular recipient:
  - a. Would be prohibited by law;
  - b. Would be prohibited by an enforceable code of professional conduct to which the person making the filing is subject; or
  - c. Is claimed by the party making the filing to be confidential as to a person who has filed an appearance, and an order has been issued in the case which acknowledges that fact.

(b) Unless otherwise agreed between the persons, delivery to other persons in a case shall be made by:

- (1) Depositing the communication into the United States mail in an envelope bearing:
  - a. The name of the person intended to receive the document;
  - b. The mailing address provided to the office on the person's appearance, if any;
  - c. The return address of the sender; and

d. Sufficient, prepaid postage for the mailing.

(2) Hand – delivery; or

(3) Verified mail.

Edit. Delete and replace with a semicolon.

(c) All notices, orders, decisions or other documents issued by the presiding officer to one party in a case shall be copied delivered to all parties and intervenors, or their representatives, if any, unless the disclosure of the material at issue, or a portion thereof:

(1) Would be prohibited by law; or

(2) Involves information that is confidential in nature;

Edit. Delete and replace with a period.

(d) Unless electronic filing is available pursuant to Rko 203.02, delivery of documents to the office shall be made by:

(1) Hand-delivery at the office location specified in Rko 102.02;

(2) Verified mail; or

(3) Depositing the communication into the United States mail in an envelope bearing:

a. The name of the person intended to receive the document;

b. The office’s address as set forth in Rko 102.02;

c. The return address of the sender; and

d. Sufficient, prepaid postage for the mailing.

(e) Documents deposited into the United States first class mail as specified in paragraph (d) above and not returned to the sender shall be rebuttably presumed to have been received.

(f) When a party or intervenor appears through a representative, delivery of a document to the party or intervenor’s representative, either in hand or by delivery to the address stated on the appearance filed by the representative, shall constitute delivery to the party or intervenor.

## PART Rko 207 APPEARANCES

### Rko 207.01 Appearances.

(a) No later than the time established in Rko 203.06(a)(4), the claimant, or the claimant’s representative, and the respondent’s intended representative in proceedings before the office shall file an appearance containing the information set forth in Rko 207.02 below.

Edit. Delete. Just say: "shall file".

(b) A claimant who chooses to represent themselves shall nevertheless file an appearance identifying themselves as their representative by no later than the date established under Rko 203.06 (a) (4).

(c) An intervenor in a matter under Part Rko 216 below shall submit an appearance at the time of the filing of a motion to intervene, but such appearance shall not become effective unless the motion to intervene is granted.

(d) A party or intervenor wishing to submit more than one simultaneous appearance on its behalf shall file a motion requesting permission to do so.

(e) No party or intervenor shall submit more than one simultaneous appearance unless granted permission to do so under (f) below.

(f) A motion to file more than one simultaneous appearance shall be granted if the presiding officer concludes that to do so would not, in itself:

- (1) Result in procedural delays that detrimentally impact the fair, efficient, and timely resolution of the matter;
- (2) Create irreparable harm to any party or intervenor previously admitted in the matter; or
- (3) Result in undue confusion of the case.

(g) If a motion to file more than one simultaneous appearance is granted, the ombudsman shall impose such restrictions upon the simultaneous representatives as the ombudsman concludes are necessary to advance proceedings in an orderly, efficient, and just manner.

(h) A person filing an appearance in a case shall, in proceedings before the office, serve as the representative of the person upon whose behalf the appearance has been filed.

Rko 207.02 Appearance Form.

Edit. The form's edition date will need to be updated to March 2023. (Applies to all the forms in this proposal.)

(a) An appearance form shall be available from the office.

Edit. Fix the alignment for (b) & (c).

(b) Appearances shall contain the information set forth in (c) below, regardless of whether the appearance form in (a) above is used.

(c) The person submitting the appearance shall provide the following information:

- (1) If assigned, the name of the matter, established by the office pursuant to Part Rko 204;
- (2) If assigned, the docket number established by the office pursuant to Rko 204;
- (3) The name of the person submitting the appearance;
- (4) Whether the person submitting the appearance is doing so on behalf of:

Edit. "a." etc.

- i. The claimant;
- ii. The respondent; or
- iii. Another person or entity, identifying the name of that person or entity;

(5) Whether the person filing the appearance is an attorney, and, if so, whether the person is licensed to practice in New Hampshire;

(6) The person filing the appearance’s mailing address;

(7) The person filing the appearance’s daytime telephone number;

(8) The person filing the appearance’s e-mail address, if any;

(9) An indication of whether a copy of the appearance has been forwarded to all parties and intervenors in the matter and if not, why not; and

(10) If a copy has been forwarded to other parties and intervenors, the name and address of the person or persons to whom a copy was forwarded;

Edit. The last paragraph was "(c)". So start with (d) here.

Edit. Delete and replace with a period.

(g) Appearances shall be written in typescript or legibly printed in ink

(h) The person submitting an appearance shall:

- i. Sign the appearance;
- ii. State their name in print; and
- iii. State the date that the appearance was executed.

Edit. "(1)" etc.

**Note to Agency.** The requirement in (i) is not a direct requirement on the person submitting the form. As written (i) doesn't have a direct requirement that the person shall provide copies to all other persons. Also, the form itself does not affirmatively require it as the language being used is indirect. Consider: "Unless otherwise ordered by the ombudsman, copies of any item filed with the office, shall also be provided to all other persons who have filed an appearance in the matter." Here and on the form.

(i) The appearance form in (a) above shall bear a notice stating that, unless otherwise ordered by the ombudsman, copies of any item filed with the office must also be provided to all other persons who have filed an appearance in the matter.

Edit. Fix the alignment here and subsequently.

(j) No attorney, non-attorney, or self-represented person shall participate in cases before the office by submitting or objecting to motions, by conducting questioning, by offering evidence in an adjudicative proceeding, by arguing a position, or by engaging in other similar conduct which is traditionally associated with service as an advocate, until that person’s appearance has been filed with, and accepted by, the office.

(k) Persons participating in cases solely as a witness, and not as a party or intervenor, and persons submitting amicus briefs, shall not be required to submit an appearance.

Rko 207.03 Withdrawal of Appearances.

(a) If at any time in proceedings before the office, a party or intervenor wishes to change the individual who will serve as their representative:



- (1) The new representative shall file an appearance; and
- (2) The individual whom the person wishes to replace as their representative shall file a motion to withdraw their appearance, stating therein the representative's reasons for withdrawal.

(b) The withdrawal of an appearance may be made without a motion to withdraw if:

- (1) An appearance by another individual is on file for the party or intervenor represented;
- (2) No motions are pending; and
- (3) No adjudicative proceedings, hearings, or conferences are scheduled;

(c) In circumstances other than those described in (b) above, an appearance may be withdrawn only upon motion granted by the ombudsman.

(d) The ombudsman shall grant a motion to withdraw an appearance if:

- (1) An appearance by another individual is on file for the represented person; and
- (2) The ombudsman concludes that:
  - a. Granting the motion would not in itself result in a delay of the proceedings;
  - b. It does not appear that irreparable harm would occur to any other party or intervenor if the motion to withdraw were granted; and
  - c. The grounds for withdrawal given in the representative's motion are either:
    1. Not of such a nature that they appear to be the result of an effort to interfere with the efficient resolution of the case; or
    2. Of such a nature that they would be likely to result in the more efficient resolution of the case.

Rko 207.04 Conditional Default for Failure to File an Appearance.

(a) If a party fails to file an appearance as required or ordered, or fails to file it by the time required or ordered, that party shall be in conditional default.

(b) A conditional default for failure to file an appearance may be requested by motion of any person who has filed an appearance, or may be issued by the ombudsman acting sua sponte, at any time that it appears that a required appearance is not of record.

(c) A hearing shall not be held on either motions for conditional default for failure to file an appearance nor on motions to strike such a conditional default.

(d) An order of conditional default for failure to file an appearance shall:

(1) Briefly state the reason that the conditional default is being issued, with citation to applicable rules or orders of the office; and

Edit. Delete.

(2) Instruct the defaulting party that if an appearance is not received within 10 days of the date of the order, the judgment ~~will~~ shall become final under Rko 207.05, Rko 207.06 or Rko 207.07 below.

Edit. Insert a comma.

(e) A motion for conditional default for failure to file an appearance shall be granted if it appears from the record that the required appearance was not filed.

(f) A motion to strike a conditional default shall be granted if:

(1) It is accompanied by the required appearance; and

(2) The motion establishes that the failure to file an appearance was the result of accident, mistake, or misfortune, and not:

a. Neglect;

b. An effort to delay the resolution of the case; or

c. Pursuant to RSA 91-A: 7-b, IV, a purposeful disregard of orders that were issued during the review process.

Rko 207.05 Conditional Default for Respondent's Failure to File an Appearance. A conditional default entered for the respondent's failure to file an appearance shall operate as a final default judgment against the respondent unless:

(a) Within 10 days of the date appearing on the notice of conditional default, the respondent moves to strike the conditional default;

(b) Within 10 days of the date appearing on the notice of conditional default, the respondent files the required appearance; and

(c) After receipt of the items noted in (a) and (b) above, the motion to strike the conditional default is granted.

Rko 207.06 Conditional Default for Claimant's Failure to File an Appearance. A conditional default entered for the claimant's failure to file an appearance shall operate as the dismissal of the case without prejudice unless:

(a) Within 10 days of the date appearing on the notice of conditional default, the claimant moves to strike the conditional default;

(b) Within 10 days of the date appearing on the notice of conditional default, the claimant files the required appearance; and

(c) After receipt of the items noted in (a) and (b) above, the motion to strike the conditional default is granted.

Rko 207.07 Conditional Default for Intervenor’s Failure to File an Appearance. A conditional default entered for an intervenor’s failure to file an appearance shall operate to rescind the intervenor’s status as an intervenor unless:

(a) Within 10 days of the date appearing on the notice of conditional default, the intervenor moves to strike the conditional default;

(b) Within 10 days of the date appearing on the notice of conditional default, the intervenor files the required appearance; and

(c) After receipt of the items noted in (a) and (b) above, the motion to strike the conditional default is granted.

Rko 207.08 Rejection of Appearances. The ombudsman shall reject an appearance if:

(a) The appearance does not contain the information required by Rko 207.02;

(b) The appearance does not clearly and accurately identify the person, organization, or other entity which the person filing the appearance intends to represent; or

(c) The appearance is filed on behalf of another person; and

Edit. This is not drafted as introductory language for the subdivisions

(1) The person filing the appearance has in the past been admonished for conduct occurring in another proceeding before the office and:

- a. Such conduct was not rectified as of the conclusion of the proceeding in which the person previously appeared; and
- b. The appearance filed in the subsequent case is not accompanied by a letter addressed to the ombudsman and copied to all other persons whose appearances are of record which explains what steps will be taken to avoid the situation previously resulting in an admonition;

(2) The person filing the appearance has in the past been subject to sanctions for conduct occurring in an official proceeding before another agency or branch of government while that person was serving as a representative; and

- a. Such sanctions have not been fulfilled; and
- b. The appearance is not accompanied by a letter addressed to the ombudsman and copied to all other persons whose appearances are of record which explains what steps will be taken to avoid the situation previously resulting in a sanction; or

- (3) The person filing the appearance is an attorney who is presently disbarred or suspended from practice in any jurisdiction.

PART Rko 208 MOTIONS AND OBJECTIONS

Rko 208.01 Motions; Objections to Motions; Ruling on Motions.

- (a) A motion, as defined by Rko 101.01 (t), shall be filed with the office in hard copy form unless:
- (1) Otherwise specified in these rules;
  - (2) Otherwise specified in an order in a case; ~~or~~
  - (3) Made in response to a matter asserted for the first time at a hearing or conference, or based upon information that was not received in time for the person filing the motion to prepare a written document in advance of the hearing or conference; or
  - (4) An electronic system has been instituted pursuant Rko 203.02 (b).
- (b) Oral motions and any oral objections to such motions shall be on the record.
- (c) If the presiding officer finds that an oral motion requires additional information in order to be fully and fairly considered, the presiding officer shall direct the proponent to submit the motion in writing and provide supporting information.
- (d) Unless otherwise specified by these rules or in an order of the presiding officer, objections to written motions shall be filed within 10 days of the date of the motion.
- (e) Rko 208.01 (d) shall not apply to motions for rehearing or reconsideration pursuant to Rko 214.06.
- (f) Objections to motions for rehearing or reconsideration pursuant to Rko 214.06 shall be due within 5 days of the filing of the motion
- (g) Unless otherwise provided in these rules, failure by an opposing party or an intervenor to object to a motion shall not in and of itself constitute grounds for granting the motion.
- (h) Persons requesting a hearing on a motion or an objection thereto shall so state in their motion or objection.
- (i) When the presiding officer concludes that it is necessary to obtain additional information or to clarify an issue relating to a motion, the presiding officer shall grant a request for a hearing or hold a hearing on the motion sua sponte.

Rko 208.02 Motions to Continue.

Edit. Underline entire title.

Edit. remove annotation.

Edit. Insert a period.

(a) Any party or intervenor may make an oral or written motion that a proceeding, other than a public comment hearing, be delayed or continued to a later date or time.

(b) A motion for a delay or a continuance in a hearing or conference, other than a public comment hearing, shall be granted if the presiding officer determines that a delay or continuance would:

- (1) Likely assist in resolving the case fairly, such as by allowing for the presence of a necessary party or witness who was unavoidably unavailable at the scheduled time; and
- (2) Not be contrary to law.

(c) If the later date, time, and place to which the hearing or conference under (b) above will be delayed or continued are known at the time of ruling on a motion, that information shall be stated on or in the record.

(d) If the later date, time, and place to which the hearing or conference under (b) above will be delayed or continued are not known at the time of a ruling on a motion, the presiding officer shall, as soon as practicable thereafter, issue a written scheduling order stating the date, time, and place of the delayed or continued hearing or conference.

Rko 208.03 Motions for Expedited Proceedings or Rulings.

(a) Upon motion or sua sponte, the ombudsman shall expedite proceedings or rulings when the ombudsman concludes that:

- (1) It is necessary to address a likely future violation of RSA 91-A;
- (2) It is necessary to fairly and efficiently resolve a case; or
- (3) Only high prioritization of a ruling could avoid a clearly articulated, irreparable, and substantial future harm.

(b) In considering whether to expedite proceedings, the ombudsman shall consider:

- (1) The nature and complexity of the case;
- (2) The likelihood and magnitude of irreparable harm if the proceeding is not expedited;
- (3) The likely impact of expedited procedures upon other work of the office;
- (4) The necessity of ex parte action; and
- (5) Any other matter which bears upon whether the proceeding at hand should be afforded greater priority than other work of the office;

(c) A person's desire to receive a swift order or otherwise expedite proceedings so as to address a deadline which is not imposed upon that person by law shall not, standing alone, be sufficient grounds for granting a motion for expedited action by the ombudsman.

Rko 208.04 Requests for Expedited Rulings on Complaints.

(a) Pursuant to RSA 91-A:7-b, V, should a claimant contend that an expedited ruling on a complaint is necessary, the claimant shall file a motion for expedited ruling at the time of the filing of, or answer to, a complaint, or, if submitted by an intervenor, at the time of the motion to intervene.

(b) Requests for expedited rulings shall clearly state why the ruling must be expedited, including reference to relevant dates and laws.

Rko 208.05 Motions for In Camera Review.

(a) Pursuant to RSA 91-A:7-b, III, a party or intervenor who believes that issues or issues in a case could best be addressed by the presiding officer's in camera review of documents that are claimed to be confidential may file a motion requesting such review.

(b) The motion shall be granted if the ombudsman concludes that to conduct such a review would aid in the efficient and fair resolution of the case in accordance with applicable law.

(c) If an in camera review is ordered, and if the order of the presiding officer does not otherwise specify, the identified materials shall be submitted to the office not less than 14 or more than 30 days from the date of the order, unless an expedited processes is ordered under Rko 208.03.

(d) The party, intervenor, or witness filing material with the office for in camera review shall, at or before the time of filing, deliver to all persons who have filed an appearance, and provide to the office, a list identifying each document submitted for review, which list shall include an identification of the number of pages submitted for review.

(e) The presiding officer shall place an identifying mark on any item submitted for in camera review, indicating that the item has been reviewed by the presiding officer.

(f) Pursuant to RSA 91-A:7-b, VI, the presiding officer shall maintain the confidentiality of records delivered for in camera review and shall return the records that were provided to the office when the review is complete.

Rko 208.06 Motions for Alternate Procedures

Edit. Insert a period.

(a) Any party or intervenor may request the application of procedures other than those established in these rules, including a motion to allow alternative filing procedures in the particular case, by filing a motion that so requests.

(b) Motions for alternate procedures shall:

- (1) Be specific to the circumstances of the case and not be used as a substitute for a rulemaking petition under Rko 219.02;
- (2) Identify with specificity the alternative procedures requested, such as a request that participation in the proceeding be conducted electronically;

- (3) Specify what, if any, rules would require waiver under Part Rko 223 if the alternate procedure were instituted; and
  - (4) Specify how the case at hand differs from other cases filed with the office so as to warrant the application of alternative procedures in the particular case;
- (c) A motion for alternate procedures shall be granted if the ombudsman concludes that:
- (1) The case at hand is sufficiently unique so as warrant an adjustment to the normal processes of the office;
  - (2) It is unlikely that the alternate procedure proposed would cause irreparable harm to another party or intervenor;
  - (3) Application of the alternate procedure would not be detrimental to the efficient operation of the office; and
  - (4) The procedure would be workable in light of the structure of, technology and equipment possessed by, and other work being performed by, the office.
- (d) A motion for an alternate procedure shall not be granted solely on the basis that the person filing the motion believes that the alternate procedure, such as filing documents by e-mail, would be more convenient for them.

## PART Rko 209 DISMISSAL OF COMPLAINTS

### Rko 209.01 Sufficiency of Complaints.

(a) Pursuant to RSA 91-A:7-b, I, a complaint shall be deemed sufficient if, on its face, it states facts which, if true, and if viewed in a light most favorable to the claimant, would constitute a violation of RSA 91-A.

(b) Complaints which do not, on their face, state facts which, if true, would constitute a violation of RSA 91-A shall, upon motion, or sua sponte, be dismissed.

(c) A complaint which solely alleges a violation of NH CONT., Pt. 1, Art. 8, or other law, and not a violation of RSA 91-A itself, shall be subject to dismissal following the submission of a motion to dismiss, or sua sponte pursuant to Rko 102.01 (c).

### Rko 209.02 Summary Dismissal.

(a) The ombudsman shall summarily dismiss a complaint, without hearing, either sua sponte or upon motion, if the respondent identified in the complaint is part of:

- (1) The government of a nation other than the United States;
- (2) The United States federal government;

Edit. See (a)(3) on the next page. Be consistent in method of citation.

Edit. Delete annotation.

- (3) The government of a state other than the ~~S~~state of New Hampshire;
- (4) The government of a municipality which is not a political subdivision of the state of New Hampshire; or
- (5) The judicial branch of New Hampshire state government.

Rko 209.03 Dismissal Following Hearing.

(a) The ombudsman, upon motion or acting sua sponte, shall dismiss a complaint following a hearing if it appears that:

- (1) The respondent identified in the complaint is a private person not acting with the authority of a public body, agency, or official at the time of the actions alleged;
- (2) The respondent identified in the complaint is an entity to which the provisions of RSA 91-A do not apply;
- (3) The complaint alleges a violation of Part 1, Art. 48 of the State Constitution or other law, but not a violation of RSA 91-A; or
- (4) A motion to dismiss, or legal assessment by the office, establishes that there are reasons for dismissal which are consistent with law.

(b) Dismissal under (a) (3) above shall not, in itself, preclude the claimant from pursuit of a constitutional claim in a court of competent jurisdiction.

(c) If practical in view of the procedural posture of a case, motions to dismiss shall be heard at the time of a prehearing conference.

Rko 210 ORDERS OF NOTICE INITIATING ADJUDICATIVE PROCEEDINGS

Rko 210.01 Contents of Orders of Notice.

(a) An adjudicative proceeding shall be commenced by an order of notice issued by the ombudsman containing at least the following information:

- (1) The title and docket number of the matter;
- (2) The names of the parties and their representatives, together with the addresses of representatives;
- (3) The name and title of the presiding officer;
- (4) A statement of the nature of the hearing;
- (5) A short and plain statement of the issues presented;



- (6) The date, time, and place of the hearing;
- (7) The date, time, and place of a prehearing conference;
- (8) The date for the mandatory pre-hearing disclosure of witnesses and exhibits pursuant to Rko 213.04, which date shall be no less than 5 days before the hearing;
- (9) A statement of the legal authority under which the hearing is to be held;
- (10) A reference to applicable statutes and rules; Edit. Delete annotation.
- (11) A statement of how the rules and statutes which **will** shall apply to the hearing may be obtained;
- (12) A statement that:
  - (a) Each party has the right to representation by an attorney at the party's own expense; and
  - (b) If not already accomplished, each party shall file an appearance pursuant to Part Rko 207. Edit. Delete and replace with a semicolon.
- (13) Information regarding:
  - a. Requests for alteration of times and dates;
  - b. Burden of proof;
  - c. Requests for modification of issues or alternative processes;
  - d. Informal resolution;
  - e. Filings and ex parte communications;
  - f. The public or nonpublic nature of the hearing; and
  - g. Conduct at the hearing; Edit. Delete annotations.
- (14) The date of issuance of the order of notice; and
- (15) The signature of the **Θ**ombudsman.

#### PART Rko 211 PREHEARING AND OTHER CONFERENCES

Rko 211.01 Recording of Conferences. Prehearing and other conferences shall be on the record unless the ombudsman concludes that holding the conference, or a portion thereof, on the record:

(a) Would be detrimental to:

- (1) Productive informal discussion between the parties and the ombudsman; or
- (2) The ultimate resolution of the case; or

(b) Would conflict with operative law, including those provisions of RSA 91-A protecting the confidentiality of records.

Rko 211.02 Scheduling of Prehearing and Other Conferences. A prehearing or other conference shall be scheduled at the request of any party or intervenor, or sua sponte, if the presiding officer concludes that to do so would:

- (a) Facilitate orderly and productive proceedings; or
- (b) Likely encourage resolution of the case.

Rko 211.03. Public Nature of Conferences.

(a) Prehearing and other conferences shall be open to public observation, but not to public participation, unless the ombudsman concludes that opening the conference to public observation, in whole or in part, would likely be detrimental to the orderly, productive, and efficient resolution of the matter in accordance with operative law, including those provisions of RSA 91-A protecting the confidentiality of records.

(b) A participant in a prehearing or other conference who wishes the conference to be closed to public observation shall request that the conference be closed, in whole or in part, identifying the reasons for the request.

Rko 211.04. Matters Addressed at Conferences.

- (a) A prehearing or other conference shall address one or more of the following:
  - (1) Possibilities for the settlement of the dispute;
  - (2) The nature of the office's functions;
  - (3) Simplification of the issues;
  - (4) Stipulations or admissions as to issues of fact or proof;
  - (5) The application of the burden of proof;
  - (6) Limitations on the number of witnesses;
  - (7) Standard hearing procedures and any alterations thereto;

- (8) Consolidation of examination of witnesses;
- (9) Adherence to orders issued or agreements made; or
- (10) Any other matters that would advance:
  - a. The efficiency of, or aid in the disposition of, the proceedings; or
  - b. The purposes of RSA 91-A.

(b) Following a prehearing or other conference the presiding officer shall issue a prehearing order addressing matters determined at the conference.

Rko 211.05 Failure to Appear for Conferences.

(a) A party's failure to appear at a conference shall result in that party being deemed in conditional default unless, based upon the allegations and responses in the case, as well as the procedural history of the matter, the ombudsman concludes that justice would be better served by issuance of an alternative order, such as the rescheduling of proceedings, or entry of a final judgment against the party which did not appear.

(b) A conditional default entered under (a) above shall operate as a final default judgment against the party unless:

- (1) Within 10 days of the entry of the conditional default, the party moves to strike the conditional default;
- (2) The motion establishes that the failure to appear was the result of accident, mistake, or misfortune, and not:
  - a. Neglect;
  - b. An effort to delay resolution of the case; or
  - c. Pursuant to RSA 91-A:7-b, IV, a purposeful disregard of orders that were issued during the review process; and
- (3) The motion is granted.

(c) An intervenor's failure to appear at a conference shall result in the entry of a conditional default against the intervenor unless, based upon the allegations and responses in the case, the intervenor's interest in the action, as well as the procedural history of the matter, the ombudsman concludes that justice would be better served by issuance of an alternative order, such as rescheduling of the proceedings or entry of a final judgment against the intervenor.

(d) A conditional default entered under (c) above shall operate to revoke the person's status as an intervenor unless:

- (1) Within 10 days of the entry of the conditional default, the intervenor moves to strike the conditional default;
- (2) The motion establishes that the failure to appear was the result of accident, mistake, or misfortune, and not:
  - a. Neglect;
  - b. An effort to delay resolution of the case; or
  - c. Pursuant to RSA 91-A:7-b, IV, a purposeful disregard of orders that were issued during the review process; and
- (3) The motion is granted.

(e) No hearing shall be held on a motion to strike a conditional default for failure to appear at a conference unless the ombudsman concludes that to do so would be beneficial to the ombudsman’s understanding of issues raised in the motion or any objection thereto.

#### PART Rko 212 HEARINGS

Edit. delete

##### Rko 212.01 Public Nature of Hearings.

(a) Hearings in adjudicative proceedings, shall be open to the public subject to such limitations as may be allowed by with law.

(b) Hearings, other than public comment hearings under Part Rko 220, which are open to public participation, shall be open only for the purposes of observation, and not participation, unless the person wishing to participate:

- (1) Is a party or intervenor whose appearance is of record in the case;
- (2) Is appearing as a witness, and then only in the capacity of a witness; or
- (3) Has been granted permission by the ombudsman to participate for an identified limited purpose, such as to present oral argument regarding an amicus brief.

##### Rko 212.02 Recording of Hearings.

(a) Unless another procedure is required by law, the presiding officer shall record hearings electronically or by any other method that will provide a verbatim record.

(b) Recordings and transcripts available to the public shall be subject to such redactions as required by RSA 91-A, these rules, other law, or orders issued in the case.

(c) If any person requests a transcript of the recording of a hearing, the office shall:

(1) Cause a transcript to be prepared, provided that, in accordance with RSA 541-A: 31, VII, the person making the request first pays all anticipated costs for the making of the transcript; and

(2) Following receipt of the transcript and payment therefor, provide a copy of the transcript to the person making the request.

Rko 212.03 Presiding Officer.

Edit. Delete.

(a) Hearings shall be conducted by the ombudsman or the ombudsman's designee, acting as a presiding officer.

(b) At any hearing other than a public comment hearing, which is addressed in **Part** Rko 222, including in an adjudicative proceeding, the presiding officer shall, as necessary:

- (1) Regulate and control the course of the hearing and any related conferences;
- (2) Pursuant to RSA 541-A:31, V. (a) and RSA 541-A:38, facilitate settlement of the dispute that is the subject of the hearing, including by taking such actions as the presiding officer concludes are necessary and authorized by RSA 91-A:7-b, III or other law;
- (3) Administer oaths and affirmations;
- (4) Receive relevant evidence or argument and exclude irrelevant, immaterial, unduly repetitious or otherwise inadmissible evidence or argument;
- (5) Rule on procedural issues, at the request of a party or sua sponte;
- (6) Question anyone who testifies or presents argument to the extent required to make a full and fair record;
- (7) Arrange for recording the hearing as specified in RSA 541-A:31, VII;
- (8) Schedule and structure such conferences and additional hearings as are necessary to advance the proceeding or resolve matters or issues related to the proceeding;
- (9) Issue such lawful orders as are necessary to advance the proceeding or resolve matters or issues related to the proceeding;
- (10) Evaluate evidence and make such factual findings or legal rulings as the presiding officer believes necessary;
- (11) In accordance with RSA 541-A:33, V, and to the extent that the ~~presiding~~ officer concludes is necessary, take official notice of facts that are common knowledge;
- (12) Take any other action consistent with applicable statutes, including RSA 91-A:7-b, case law, and these rules, that the presiding officer concludes is necessary to conduct the hearing, advance the proceeding, resolve matters or issues related to the proceeding and establish the record in a fair and timely manner.

Edit. ";and".

Rko 212.04 Withdrawal of Presiding Officer.

(a) Either sua sponte or upon the motion of any party or intervenor, the presiding officer shall withdraw from any hearing for good cause.

(b) Good cause shall exist if the presiding officer:

(1) Has a direct interest in the outcome of the matter, including but not limited to a financial or family relationship with any party or intervenor;

(2) Has made statements or engaged in behavior which objectively demonstrates that the presiding officer has prejudged the facts of the case; or

(3) Personally believes that:

a. The presiding officer cannot fairly or accurately judge the facts of the case; or

b. The presiding officer's involvement in the matter would, under all of the circumstances, create an impression of bias which cannot be overcome without probable loss of public confidence in the fairness of the process.

(c) Mere knowledge of the issues involved in the matter, acquaintance with any party, intervenor, witness or representative, or employment by the office, shall not constitute good cause for withdrawal.

Rko 212.05 Oaths and Affirmations. Pursuant to RSA 541-A:33, I, the presiding officer shall administer an oath or affirmation to all persons who wish to present testimony in any hearing.

Rko 212.06 Waiver or Suspension of Rules by Presiding Officer. Upon the motion of any party or intervenor, or acting sua sponte, the presiding officer shall suspend or waive any requirement or limitation imposed by this chapter when the suspension or waiver:

(a) Appears to be lawful; and

(b) The presiding officer concludes that to do so would be more likely to promote the just, accurate, and efficient resolution of the pending dispute in accordance with the law than would adherence to the particular requirement or procedure sought to be waived.

PART Rko 213 ADJUDICATIVE PROCEEDINGS

Rko 213.01 Commencement of Adjudicative Proceedings.

(a) An adjudicative proceeding shall be initiated at any time if:

(1) The ombudsman concludes that to issue notice of such a proceeding would be beneficial to reaching a fair and expeditious resolution of the case;

(2) The matter has reached a stage at which it is considered a contested case; and

(3) The ombudsman issues an order of notice pursuant to Part Rko 210 above.

(b) An adjudicative proceeding shall be initiated upon the request of a party or intervenor if:

(1) A party or intervenor files a motion requesting such a proceeding; and

(2) The ombudsman concludes that granting the motion would be beneficial to reaching a fair and expeditious resolution of the case.

Rko 213.02 Standard and Burden of Proof. A party or intervenor claiming that an action or inaction is invalid, improper, or contrary to law shall bear the burden of proving that proposition by a preponderance of the evidence, unless another standard or burden is required by law.

Rko 213.03 Rules of Evidence.

(a) Pursuant to RSA 541-A:33, II, the formal rules of evidence which are generally applied in court proceedings shall not apply in adjudicative proceedings before the office.

(b) Any oral, documentary, or other evidence may be received by the office, but the presiding officer may exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(c) The presiding officer shall:

(1) Give effect to rules of privilege recognized by law;

(2) In ruling of the admissibility of evidence, give consideration to constitutional principles of due process; and

(3) In considering the evidence submitted, give the evidence offered the weight which the presiding officer believes that the nature of the evidence warrants.

(d) All objections to the admissibility of evidence shall be stated as early as possible in the proceeding, but not later than the time when the evidence is offered.

(e) Persons submitting testimony, documents, materials, and objects which they believe to be exempt from public disclosure under RSA 91-A:5 or other applicable statutory or case law shall so advise the presiding officer in advance of offering the evidence.

Rko 213.04 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits.

(a) At least 5 days before the hearing in an adjudicative proceeding, the parties and intervenors, or their representatives, shall provide to the other parties and intervenors or their representatives:

(1) A list of all witnesses to be called at the hearing, containing the names of the witnesses, their addresses and their telephone numbers;

- (2) Brief summaries of the testimony of the witnesses to be called;
  - (3) A list of documents and other exhibits to be offered as evidence at the hearing;
  - (4) A copy of each document to be offered as evidence at the hearing, except to the extent that disclosure of some or all of a document is claimed to be contrary to law, in which case:
    - a. The document shall be identified by name and date only; and
    - b. A ruling shall be sought from the presiding officer on the document's use; and
  - (5) An offer to allow the inspection of non-documentary exhibits to be offered as evidence at the hearing either:
    - a. At a time and in a place that is convenient to the parties and intervenors; or
    - b. At a place that is convenient to the place of the hearing, at a convenient time prior to the hearing.
- (b) At least 5 days before the hearing, the parties and intervenors shall provide to the presiding officer the items listed in (a) above.
- (c) To the extent known to exist prior to the time of a hearing, disputes regarding mandatory disclosures shall be presented to the presiding officer in advance of the hearing.
- (d) A party or intervenor shall not be required to call a witness, or to submit a document or exhibit, simply because that document or witness was listed on the person's mandatory disclosure, but such witnesses and documents shall be available for the immediate of other parties, intervenors and the presiding officer at the time of the hearing.
- (e) The presiding officer shall take such action in regard to a failure to comply with mandatory disclosure requirements as the presiding officer concludes is required for the just, accurate and efficient resolution of the case, such as:
- (1) Exclusion of some or all of the testimony or exhibits from evidence;
  - (2) Admission of some or all of the testimony or exhibits into evidence;
  - (3) Admission of the testimony, document, or exhibit into evidence with limitations;
  - (4) Allowance of another party or intervenor to submit testimony, documents, or exhibits not contained or described in his or her prehearing disclosures;
  - (5) Allowance of a party or intervenor to recall a witness;
  - (6) Postponement or delay of the hearing; or



(7) Any other action not prohibited by law that would advance the just, accurate, and efficient resolution of the matter.

Rko 213.05 Order of Testimony; Cross-Examination.

(a) Any individual offering testimony, evidence, or argument shall state for the record his or her name and role in the hearing.

(b) If the individual offering testimony, evidence, or argument is representing another person, the person being represented shall also be identified.

(c) Testimony on behalf of the parties shall be offered in the following order:

(1) The testimony of the party or parties bearing the overall burden of proof and such witnesses as such party or parties may call; and

(2) Thereafter, the testimony of the party or parties opposing the party who bears the overall burden of proof and such witnesses as such party or parties may call.

(c) The testimony of intervenors and such witnesses as intervenors may be allowed to call shall be offered at the time directed by the presiding officer.

(d) Each party may cross-examine any witnesses offered against that party.

(e) The presiding officer shall call witnesses not called by the parties if their testimony is required for a full and fair adjudication of the issues.

(f) Pursuant to RSA 541-A:32, III, the right of an intervenor to cross-examine witnesses and to use the other procedures of participation accorded to parties shall be determined by the presiding officer.

(g) The presiding officer shall allow such redirect examination, recross examination, opening and closing argument or summation as he or she concludes will advance the just, accurate, and efficient resolution of the case.

Rko 213.06 Voluntary Production of Information in Proceedings.

(a) Each party and intervenor shall attempt in good faith to make complete and timely response to requests for the voluntary production of information and documents relevant to the hearing.

(b) When a dispute arises concerning a request for the voluntary production of information or documents, any party or intervenor may file a motion under Rko 213.07 to compel the production of the requested information or documents.

(c) Motions under (b) above shall be intended to address the gathering of information relevant to the hearing at issue and shall not be used as a method of submitting additional or expanded requests to a governmental unit under RSA 91-A, nor as a method of reiterating the request for information which gave rise to the case.

Rko 213.07 Motions to Compel Production of Information and Documents.

(a) Any party or intervenor in a case may make a motion seeking an order for compliance with an information or document request made to another party or intervenor in that case.

(b) The motion shall be filed at least 30 days before the date scheduled for a hearing, or as soon as possible after receiving the notice of the hearing, if such notice is issued less than 30 days in advance of the hearing.

(b) A motion to compel shall:

(1) Set forth in detail those facts which justify the request for the information or documents, together with its intended use at the hearing; and

(2) List with specificity the information or documents being sought.

(c) Objections to motions to compel shall be filed within 10 days of the delivery of the motion, or as soon as possible prior to the hearing if the motion was received less than 10 days before the hearing.

(d) The presiding officer shall grant the motion to compel if its proponent has demonstrated that:

(1) An order for compliance is necessary for a full and fair presentation of evidence at the hearing;

(2) The disclosure is not otherwise precluded by law or by rules of privilege recognized in the state of New Hampshire;

(3) The motion is not a reiteration of any request which gave rise to the case under consideration; and

(4) The request is not intended to substitute for a new or expanded request under RSA 91-A.

(e) The presiding officer shall take such action in regard to a failure to comply with an order for compliance as he or she may take for a failure to make mandatory disclosures under Rko 213.04.

Rko 213.08 Proposed Findings of Fact and Rulings of Law.

(a) Any party or intervenor may submit proposed findings of fact and rulings of law.

(b) Each proposed finding of fact and ruling of law shall be numbered.

(c) The presiding officer shall require the submission of proposed findings of fact and rulings of law, and specify a deadline after the close of the hearing for their submission, when:

(1) Any party or intervenor has requested such action; or

(2) The presiding officer determines that proposed findings of fact and rulings of law would serve to clarify the issues involved in the hearing.

Edit. There are two (b)s. Reletter.

Edit. (d). There's already a (c).

→ (c) In any case where a party or intervenor submits proposed findings of fact and rulings of law, the presiding officer shall include in the presiding officer's decision a ruling on the proposals submitted.

Rko 213.09 Failure of a Party or Intervenor to Attend or Participate in the Hearing.

(a) A party or intervenor shall be in default if the party or intervenor:

- (1) Has the burden of proof on the issue or issues involved in the adjudicative proceeding;
- (2) Has been given notice of the hearing; and
- (3) Fails to attend or participate in the hearing.

(b) Unless, based upon the facts of the particular case, the ombudsman concludes that another order is required by law or would better serve the ends of justice:

- (1) If a claimant is in default under (a) above and does not file a request that the default be stricken within 10 days of the date of the notice of default, the case shall be dismissed with prejudice;
- (2) If a respondent is in default under (a) above and does not file a request that the default be stricken within 10 days of the date of the notice of default, the facts in the case shall be deemed decided in favor of the claimant; and
- (3) If an intervenor is in default under (a) above and does not file a request that the default be stricken within 10 days of the date of the notice of default, the intervenors status as an intervenor shall be deemed revoked.

(c) The ombudsman shall strike a default under (a) above if it appears that the failure to appear or participate was the result of accident, mistake or misfortune, and not:

- a. Neglect;
- b. An effort to delay the resolution of the case; or
- c. Pursuant to RSA 91-A:7-b, IV, a purposeful disregard of orders that were issued during the review process.

(d) If a party or intervenor who does not have the burden of proof on an issue or issues in a case fails to attend or participate in the hearing, the testimony and evidence of any other parties or intervenors shall be received and evaluated by the presiding officer.

PART Rko 214 POST-HEARING PROCEEDINGS

Rko 214.01 Submission of Cases. For the purpose of RSA 91-A:7-b, V, a case shall be considered submitted after the parties have presented such evidence or argument regarding their positions as is anticipated under these rules or orders of the ombudsman, whether after an adjudicative proceeding or after such other procedure as may be established in the case.

Rko 214.02 Closing the Record. After the conclusion of the hearing and the filing of such post-hearing submissions as ordered by the presiding officer, the record shall be closed and no additional evidence shall be received into the record except as allowed by Rko 214.03 or Rko 214.06.

Rko 214.03 Reopening the Record.

(a) If no decision has yet been issued, any party or intervenor may move to reopen the record for the inclusion in the record of additional specified evidence or claims of law.

(b) A motion pursuant to (a) above shall be granted if:

- (1) There is no objection from any other party or intervenor;
- (2) The evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently, and without fault on the part of the person making the claim, omitted; and
- (3) The presiding officer determines that:
  - a. The evidence or claim of law is relevant, material and non-duplicative; and
  - b. The inclusion of the evidence or claim of law in the record is necessary to a full and fair consideration of the issues to be decided.

(c) If there is an objection from a party or intervenor to a motion made pursuant to (a) above, the hearing shall be reopened for the purpose of receiving evidence, permitting cross-examination and permitting argument on the issue of whether the record should be reopened.

(d) The presiding officer shall grant a motion made pursuant to (a) above if, after the hearing described in (c) above, the presiding officer determines that:

- (1) The evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently, and without fault on the part of the person making the claim, omitted;
- (2) The evidence or claim of law is relevant, material and non-duplicative; and
- (3) The inclusion of the material in the record is necessary to a full and fair consideration of the issues to be decided.

(e) If the presiding officer permits the reopening of the record for the admission of specified evidence or claim of law, the presiding officer shall extend the hearing for the purpose of receiving evidence, permitting cross-examination and permitting argument on the substance of the evidence or on the claim of law.

Rko 214.04. Issuance of Final Rulings.

- (a) No later than 30 days after the submission of a case, the ombudsman shall:
  - (1) Issue a dated, written decision in accordance with paragraph (b) below;
  - (2) Provide, by means of U.S. first class mail, certified mail, registered mail, or personal delivery, a copy of the decision to:
    - a. The parties; and
    - c. Intervenors; or

(b) Issue an order pursuant to RSA 91-A: 7-b, V indicating the existence of good cause for extension of the decision date.

- (c) A decision under (a) above shall:
  - (1) Be in writing;
  - (2) Be dated;
  - (3) Set forth the reason or reasons for the determination; and
  - (4) Contain, in narrative or individually numbered form, such findings of fact and rulings of law as are necessary to the determination.

Rko 214.05. Extension of Time Period for Final Rulings.

Edit. Move this sentence up so that it occurs after the title.

The 30 day time period for the issuance of a final ruling set forth in RSA 91-A: 7-b V and Rko 214.04 shall be extended for good cause if:

- (a) The parties request or agree to extend the period for final ruling beyond the 30-day period; or
- (b) The ombudsman concludes that:
  - (1) Extension of the period for decision would assist in fostering the parties' ability to resolve the case by mutual agreement;
  - (2) Other work priorities of the office render it unlikely that the ombudsman could devote the amount of time and attention to the decision that the ombudsman believes is warranted by the nature of the case; or
  - (3) Circumstances beyond the control of the ombudsman render it unlikely that the decision can be issued within the 30-day period.

Rko 214.06 Requests for Rehearing or Reconsideration.

(a) No later than 30 days from the date appearing on a decision, a party may file with ombudsman a request for rehearing or reconsideration.

(b) Requests for rehearing or reconsideration shall:

- (1) Be in the form of a written motion addressed to the ombudsman;
- (2) Be delivered to the presiding officer, all persons who have filed an appearance in the case and any person who has filed an amicus brief;
- (3) Specify all grounds upon which it is claimed that the original decision is unlawful or unreasonable; and
- (4) Identify the issues to be addressed upon rehearing or reconsideration.

Rko 214.07 Review of Requests for Rehearing. If a request for rehearing is filed within 30 days of the date of the presiding officer's decision, the ombudsman shall, within 10 days of the receipt of the request, grant a rehearing, if it appears from the record that:

(a) The decision was unlawful or unreasonable; and

(b) Receipt of additional evidence, argument, or analysis is necessary to reach a decision that is lawful and reasonable.

Rko 214.08 Review of Requests for Reconsideration. If a request for reconsideration is filed within 30 days of the date of the presiding officer's decision, the ombudsman shall, within 10 days of the receipt of the request, reconsider the decision, if it appears from the record that the decision was unlawful, unreasonable, or otherwise erroneous.

Rko 214.09 Appeals to Superior Court. Pursuant to RSA 91-A:7-c:

(a) Any party may appeal the ombudsman's final ruling to the New Hampshire superior court by filing a notice of appeal in superior court no more than 30 calendar days after the ombudsman's ruling is issued; and

(b) The ombudsman's final rulings which are not appealed may be registered in the superior court as judgments and enforceable through contempt of court.

PART Rko 215 AMICUS BRIEFS

Rko 215.01. Submission of Amicus Briefs.

(a) A person who is not a party or an intervenor in a case pending before the office may file an amicus brief on an issue or issues in a case if:

- (1) The brief is filed in response to a solicitation for such briefs by the office pursuant to these rules; and
- (2) The ombudsman grants the person’s petition to file an amicus brief pursuant to these rules.

(b) The office shall solicit the submission of amicus briefs if the ombudsman concludes that such solicitation would likely result in the receipt of written submissions that would assist the ombudsman in formulating a better understanding of the issues, subsidiary issues, or matters relating to a particular case.

(c) In determining whether to solicit the submission of amicus briefs, the ombudsman shall consider:

- (1) The facts and issues in the case;
- (2) The prioritization of the work of the office;
- (3) The office’s available resources;
- (4) Whether the solicitation would be detrimental to the timely and efficient resolution of a pending case; and
- (5) Such other factors as may relate to the fair and accurate determination of issues arising under RSA 91-A.

(d) Amicus briefs shall be solicited by the office by placing notices inviting the submission of petitions to file such briefs in at least 2 appropriate places, which may include the office’s Internet website, at least 7 days prior to the due date for submissions.

(e) A person wishing to respond to a solicitation of amicus briefs shall do so by submitting a petition which contains:

Edit. insert a comma.

- (1) The name, address, and telephone number of the person filing the petition, and the person who wishes to submit the brief;
- (2) An identification of the person, organization, or entity, if any, on whose behalf the person wishes to file a brief;
- (3) A brief description of the background of the person who wishes to submit the brief, including that person’s education and experience in the topics to be addressed;
- (4) The title and docket number of the case in which it is to be filed;
- (5) An identification of the topic upon which the brief will focus;
- (6) The general position which will be argued in the brief; and
- (7) The person’s reasons for believing that the brief would be beneficial to the ombudsman in addressing the issue or issues noted.

(f) A petition to file an amicus brief shall:

- (1) Be no more than 10 pages in length;
- (2) Not have the brief itself appended thereto;
- (3) Contain a statement certifying that it has:
  - a. Not been submitted for the purposes of delay; and
  - b. Has been served on all persons who have filed an appearance in the case; and
- (4) Be processed by the office in accordance with RSA 541-A:29.

(g) A petition to submit an amicus brief shall be granted if:

- (1) It is submitted in response to a solicitation under (a) and (b) above; and
- (2) The ombudsman concludes from the petition that the brief is:
  - a. Likely to assist the office in the efficient and just resolution of the matter in accordance with law;
  - b. Not likely to be duplicative of other pleadings or briefs filed in the case

(h) If the ombudsman grants the petition to submit an amicus brief, the ombudsman shall set forth in the order the date by which the brief shall be filed.

(i) The granting of a petition to submit an amicus brief shall not:

- (1) Afford the person filing the brief the status of a party or intervenor;
- (2) Constitute permission to file subsequent briefs in the same or a different matter;
- (3) Entitle any other person or entity which is not a party or intervenor to file a reply brief;
- (4) Compel a ruling by the ombudsman on any matter raised in the brief;
- (5) Entitle the person to be heard on any matter raised in the brief; or
- (6) Entitle the person submitting the brief to receive direct notice of all proceedings in the case.

## PART Rko 216 INTERVENTION AND ROLE OF AGENCY STAFF

### Rko 216.01 Intervention Procedure.



(a) Petitions to intervene in a case shall:

- (1) Describe in writing the petitioner's particular interest in the subject matter of the proceedings;
- (2) Be submitted to the presiding officer; and
- (3) Be delivered in hard copy to all persons who have filed an appearance in the matter.

(b) In accordance with RSA 541-A: 32, a petition for intervention shall be granted by the presiding officer if the petitioner has complied with paragraph (a) above at least 3 days before any scheduled hearing and the presiding officer determines that:

- (1) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities, or other substantial interests might be affected by the proceedings or the petitioner otherwise qualifies as an intervenor under law; and
- (2) The intervention sought would not impair the interests of justice and the orderly and prompt conduct of the proceedings.

Rko 216.02 Effect of Intervention and Rights of an Intervenor.

(a) Approval of intervention by the presiding officer shall apply only to the proceeding in which the petition for intervention is granted.

(b) Notwithstanding the provisions of this chapter, an intervenor's right to participate in an adjudicative proceeding shall be subject to any limitations or conditions imposed by the presiding officer pursuant to RSA 541-A: 32, III.

(c) An intervenor shall take the proceedings as he or she finds them and no portion of the proceeding shall be repeated based solely upon the fact that an intervention has occurred.

Rko 216.03 Role of Agency Staff.

(b) Agency staff, if any, shall have no role in hearings unless:

- (1) Designated as the presiding officer;
- (2) Assigned to render clerical or administrative support in connection with the proceeding; or
- (3) Called as a witness.

PART Rko 217 SETTLEMENTS AND USE OF INTERVIEWS

Rko 217.01 Settlements.

(a) Pursuant to RSA 541-A:38, the office shall encourage resolution of disputes by agreement between the parties.

(b) Should the parties fully resolve a case pending before the office by mutual agreement:

- (1) The parties shall submit a written stipulation to that effect, signed by all parties and intervenors; and
- (2) The ombudsman shall issue an order dismissing the case, either with or without prejudice.

(c) In determining whether a settled case should be dismissed with or without prejudice, in whole or in part, the ombudsman shall consider:

- (1) The nature of the settlement;
- (2) The procedural history of the case; and
- (3) The likely impact of the order upon other cases.

(d) The stipulation submitted under (b) above shall indicate whether each party or intervenor wishes the case to be dismissed with or without prejudice.

Rko 217.02 Use of Interviews.

(a) The office shall conduct an interview with, or communicate with, a party, intervenor, witness, or potential witness outside of the presence of all persons who have filed an appearance when:

- (1) All persons who have filed an appearance assent to such a process;
- (2) To do so is necessary to confirm facts contained in a request for a waiver of the fee under Rko 203.04;
- (3) Pursuant to RSA 91-A:7-c, III such communication is to verify compliance with a ruling issued by the office;
- (4) In cases in which expedited action has been requested, the ombudsman concludes that such action is necessary to communicate the office's general understanding of the law, in an effort to prohibit a potential future violation of RSA 91-A; or
- (5) All persons who have filed an appearance have been:
  - a. Advised of the anticipated use of this procedure, in advance;
  - b. Informed that the ombudsman concludes that an interview with a person is necessary in order to advance the case in a fair and efficient manner, for example to:
    1. Discuss confidential materials with a witness or potential witness;

Edit. Remove annotation.

2. Communicate with a potential witness who is unable to attend a hearing;
  3. Communicate with a person whom the ombudsman believes is necessary to call as a witness, but whom the parties have determined not to call; and
- c. Given an opportunity to state any objections on, or in, the record.

(b) The office shall document the fact of a communication under (a) above in writing made available to all persons who have filed an appearance.

#### PART Rko 218 RETENTION OF DECISIONS; MATTERS PENDING IN EVENTUALITY OF CESSATION OF OFFICE OPERATIONS

##### Rko 218.01 Retention of Decisions and Verbatim Recordings of Adjudicative Proceedings.

(a) The office shall keep all decisions and orders which it has issued in its records for at least 5 years following the date of issuance, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

(b) Pursuant to RSA 541-A:30-a, VII, the office shall retain a verbatim recording of all oral adjudicative proceedings for at least 30 days after the opportunity for all administrative and judicial appeals has been exhausted.

##### Rko 218.02 Matters Pending Without Determination in Eventuality of Office Expiration on July 1, 2025.

(a) If, by June 1, 2025, no provision has been established by law to continue the office in existence beyond July 1, 2025, the ombudsman shall issue an expedited final ruling in all pending cases.

(b) Expedited final rulings under (a) above shall become effective at 11:59 PM on June 30, 2025.

(c) An expedited final ruling under (a) above shall be in the form of a brief order setting forth:

- (1) The name and docket number of the matter;
- (2) Whether the final ruling is that the case is:
  - a. Dismissed with prejudice;
  - b. Dismissed without prejudice;
  - c. Concluded in favor of the respondent; or
  - d. Concluded on another stated basis.

(d) If, following issuance of a final order under (a) - (c) above, provisions are established by law which in fact continue the office in existence beyond the date of July 1, 2025, any party or intervenor in a matter in which an expedited final order has been issued may request reconsideration of the order, provided that:

- (1) The request is made by no later than July 30, 2025; and
- (2) No appeal is then pending.

(e) All cases existing at midnight on June 30 for which no final ruling has been issued shall, without further action by the ombudsman, be deemed dismissed without prejudice.

Rko 218.03 Matters Pending Without Determination in Eventuality of Ombudsman Death or Incapacity.

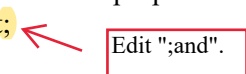
(a) If the ombudsman becomes incapacitated for more than 30 days, or dies while in office, and should no provisions at that time exist for the continuation of office operations by another individual, all pending cases shall be deemed dismissed without prejudice.

(b) In the case of the termination of an incapacity under (a) above, the office shall post a notice in 2 appropriate places, one of which may be the office's website, within 7 days of the date, if any, that the ombudsman believes that the incapacity has passed.

PART Rko 219 RULEMAKING

Rko 219.01 Additional Notice of Rulemaking.

(a) In addition to the notice of rulemaking required by RSA 541-A:6, at the time of the filing of an initial proposal, the ombudsman shall:

- (1) Post a copy of the initial proposal on the office's website, together with a solicitation for public comment; 
- (2) Provide a copy of the initial proposal to the New Hampshire department of justice for comment.

(b) The receipt of comments under (a) above shall not require the ombudsman to act upon those comments.

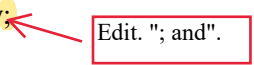
(c) Following the publication of a rulemaking notice from the office in the Rulemaking Register described in RSA 541-A:9, the office shall post a link to that issue of the Register on the office's website.

Rko 219.02 Petitions for Rulemaking.

(a) Pursuant to RSA 541-A:4, any person may petition the ombudsman to adopt, amend, or repeal a rule.

(b) The petition shall:

- (1) Be in legible, written, hard copy form;

- (2) Be addressed to the ombudsman;
- (3) State the petitioner's:
  - a. Name;
  - b. Mailing address;
  - c. Telephone number; and
  - d. E-mail address, if any;
- (4) Be submitted to the office at the address set forth at Rko 102.02;
- (5) Be signed and dated by the petitioner;
- (6) If the request is made on behalf of an organization or entity other than the petitioner acting as a natural person:
  - a. State the name, address, and telephone number of the organization or entity on whose behalf it is filed; and
  - b. Contain a statement certifying that the person filing the petition is authorized to speak on behalf of the organization or entity; 
- (7) State at a minimum:
  - a. Whether the petition requests the adoption, amendment, or repeal of a rule;
  - b. If repeal of a rule is sought, the specific section number and the precise text of the existing rule that the petitioner seeks to repeal;
  - c. If amendment of a rule is sought, the specific section number of the rule for which amendment is sought and the precise new language proposed, written in such a way as to conform to the requirements of the drafting and procedure manual described in RSA 541-A: 8;
  - d. If adoption of a rule is sought, the new section number proposed and the precise text of the proposed rule;
  - e. The specific statutory provision that authorizes the rulemaking, for example, RSA 91-A:7-d, I, RSA 91-A:7-d, III or RSA 541-A:16, I (c);
  - f. Pursuant to RSA 541-A:3-a, the specific statutory provision or provisions, other than the rulemaking authority cited in e. above that the proposed adoption, amendment or repeal is intended to implement, for example RSA 91-A:7-b, IV or RSA 541-A:16, II (a); and

- g. The reason or reasons that the petitioner believes that the proposed adoption, amendment or repeal should be instituted.

(c) Within 15 days of the receipt of a petition for rulemaking, the ombudsman shall notify the petitioner if the petition is incomplete or if additional information is required in order to reach a determination on the petition.

(d) If, within 15 days of a notification under (c) above, the petitioner does not submit a completed petition or the information, if any, requested, the ombudsman shall deny the petition.

(e) The ombudsman shall respond to a completed petition within 30 days by either denying the petition in writing and stating the reasons for the denial or by initiating a rulemaking proceeding under RSA 541-A: 4.

(f) The petition shall be denied unless the ombudsman concludes that:

- (1) It is within the office’s authority to take the action requested;
- (2) The requested action is consistent with statutory and case law affecting the office; and
- (3) The requested action would better implement the laws affecting the office, or be desirable in order to fulfill the functions of the office in accordance with applicable law, than do the existing rules.

(g) The denial of a petition for rulemaking shall not:

- (1) Entitle the petitioner to a hearing; or
- (2) Preclude the ombudsman from pursuing alternative rulemaking.

## PART Rko 220 PUBLIC COMMENT HEARINGS

Rko 220.01 Purpose. The purpose of this part is to provide uniform procedures for the conduct of public comment hearings held pursuant to RSA 541-A: 11.

### Rko 220.02 Public Access and Participation.

(a) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Rko 220.03 and Rko 220.04.

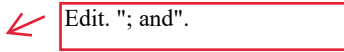
(b) Persons who wish to testify shall write on a card or speaker's list provided by the presiding officer:

- (1) Their full names and addresses; and
- (2) The names and addresses of the organizations, entities, or other persons, if any, on whose behalf they wish to speak.

(c) Written comments may be submitted in lieu of, or in addition to, oral testimony, and shall:

(1) Be accepted for 10 days after the adjournment of a public comment hearing, or after the adjournment of a postponed or continued hearing; and

(2) **State:**

- a. The name of the person submitting the comments;
- b. The address of the person;
- c. The person's telephone number;
- d. The person's e-mail address, if any;
- e. If the person is submitting the comments on behalf of another person, organization or entity, that person's, organization's or entity's:
  1. Name;
  2. Address; 
  3. Telephone number;

(3) If submitted on behalf of another person, organization, or entity, contain a certification by the person submitting the comments that they are authorized to make the submission on behalf of the other person, organization, or entity; and

(4) Be signed by the person who submits them.

(d) Written comments may be submitted to the office either electronically or in hard copy.

(e) Pursuant to RSA 541-A:11, I, copies of proposed rules shall be available to the public under RSA 91-A and at least 5 days prior to the hearing.

Rko 220.03 Limitations on Participation.

(a) The ombudsman or the person designated by the ombudsman to preside over a public comment hearing shall:

(1) Refuse to recognize for speaking, or revoke the recognition of, any person who:

- a. Speaks or acts in an abusive or disruptive manner;
- b. Fails to keep comments relevant to the proposed rules that are the subject of the hearing; or

c. Restates more than once what he or she has already stated; and

(2) Limit presentations on behalf of the same organization or entity to no more than 3 persons, provided, however, that all persons present who represent the same organization or entity may enter their names and addresses on a card or list provided by the ombudsman stating that they support the position of those who speak on behalf of the organization or entity;

(b) Public comment hearings shall be open to all persons, including print and electronic media, subject to the following limitations, when such limitations are necessary to allow a hearing to proceed in an orderly manner:

(1) Limitation on the placement of cameras or other items to specific locations within or adjacent to the hearing room;

(2) Prohibition of interviews or conversations conducted within the hearing room before or during the hearing, or of interviews or conversations audible within the hearing room during the hearing; or

(3) Prohibition of behavior that interferes with or disrupts the proceedings.

Rko 220.04 Conduct of Public Comment Hearings.

(a) Public comment hearings shall be presided over by the ombudsman or designee in accordance with RSA 541-A:11, II.

(b) The person presiding over a hearing shall:

(1) Call the hearing to order;

(2) Make available the cards or sheets referred to in Rko 220.02 (b);

(3) Cause a verbatim recording of the hearing to be made;

(4) Identify on the record the date, time, place, and purpose of the hearing;

(5) Identify the proposed rules that are the subject matter of the hearing and, pursuant to RSA 541-A:11, VI, provide copies of them upon request;

(6) Recognize those who wish to be heard;

(7) If necessary, establish limits and prohibitions pursuant to Rko 220.03 above;

(8) If necessary to permit the hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the hearing;

(9) If necessary, postpone, or move the hearing;

(10) Adjourn or continue the hearing; and



(11) Take such other action consistent with applicable law that is necessary to conduct and advance the hearing in an orderly fashion intended to allow for the due consideration of public comment from those present.

(c) A hearing shall be postponed in accordance with RSA 541-A:11, IV when:

- (1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing will be unable to do so;
- (2) The person designated to preside over the hearing is ill or unavoidably absent; or
- (3) Postponement will facilitate greater participation by the public.

(d) A hearing shall be moved to another location in accordance with RSA 541-A:11, V when the original location is not able to accommodate the number of people who wish to attend the hearing.

(e) A hearing shall be continued past the scheduled time or to another date in accordance with RSA 541-A: 11, III when:

- (1) The time available is not sufficient to give each person who wishes to speak on a matter which is not repetitive a reasonable opportunity to do so; or
- (2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend and it is not possible to move the hearing to another location at that time.

**Edit.** Since this is the purpose and scope/ applicability for an entire part, they should be in separate sections. Also, while the purpose section isn't supposed to use "shall", the scope. applicability section must use "shall."

## PART Rko 221 DECLARATORY RULINGS

### Rko 221.01 Purpose, Scope Applicability of this Part.

(a) The purpose of a declaratory ruling under this part is to obtain from the ombudsman a statement as to the specific applicability of a statutory provision governing the office or any rule or order issued by the office.

(b) A declaratory ruling under this part is not an alternative to the filing of a complaint under RSA 91-A: 7-b in which the relief sought is primarily declaratory in nature, but rather is intended as a means to obtain a clear statement of general applicability regarding a statute or rule governing the operations of the office, or of a rule or order issued by the office.

(c) A request for a declaration that a party has violated the provisions of RSA 91-A made in the course of a case shall not be construed by the office as a request for a declaratory ruling under this part, nor are declaratory orders of the ombudsman made in the course of a case a declaratory ruling under this part.

### Rko 221.02 Requests for Declaratory Ruling.

(a) Any person, whether or not a claimant, respondent, or intervenor in a case, may petition the ombudsman in writing for a declaratory ruling under this part.

(b) The petition shall:

- (1) Be in hard copy;
- (2) Be in legible written form;
- (2) Be addressed to the ombudsman;
- (3) Be delivered to the office at the address appearing in Rko 102.02;
- (4) State:

Edit. First clause should use "a."

- c. The name of the person executing the petition;
- d. The person's mailing address;
- e. The person's telephone number;
- f. The person's e-mail address, if any;
- g. If the request is made on behalf of another person, organization, or entity:
  1. The name of the other organization, or entity;
  2. The address of the other organization, or entity;
  3. The other organization's or entity's telephone number;
  4. The organization's or entity's e-mail address; and
  5. A certification by the person executing the petition that they are authorized to file it on behalf of the other person, organization, or entity.

Edit. "; and".

Edit. Renumber.

- (5) Identify the particular statute, rule, or order in question;
- (6) Describe the circumstances which gave rise to a question regarding the applicability of the statute, rule, or order;
- (7) Explain why the language of the statute, rule, or order makes its applicability to the circumstances described unclear; and
- (7) Be signed and dated by the person executing the request.

Edit. Delete and replace with a semicolon.

(c) Within 30 days of the receipt of the petition, the ombudsman shall notify the petitioner if the petition is incomplete or if additional information is required in order to reach a determination on the petition.

(d) Within 60 days of the receipt of a conforming petition, the ombudsman shall respond by stating whether or not the statute, rule, or order at issue applies to the specific set of circumstances presented, and what, if any, other action might be pursued.

(e) In accordance with RSA 541-A:16, II (b), declaratory rulings shall be filed with the director of legislative services on the day of issuance

Rko 221.03 Effect of Declaratory Rulings. A declaratory ruling shall apply only to the person requesting it and shall be confined to the facts presented.

PART Rko 222 EXPLANATION OF ADOPTED RULES

Rko 222.01 Requests for Explanation of Adopted Rules. Pursuant to RSA 541-A:11, VII, any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the ombudsman which request shall include:

- (a) The name of the person making the request;
- (b) The person’s mailing address;
- (c) The person’s telephone number;
- (d) The person’s e-mail address, if any; and
- (e) If the request is being made on behalf of another person, organization, or entity:
  - (1) The name of the other person, organization, or entity;
  - (2) The address of the other organization, or entity;
  - (3) The telephone number of the other organization, or entity;
  - (4) The email address of the other organization, or entity, if any; and
  - (5) A certification by the person executing the request that they are authorized to speak on behalf of the other organization, or entity;
- (f) An identification of the rule at issue;
- (g) An explanation of the person’s understanding of the rule;
- (h) A request for the office’s understanding of the rule; and
- (i) The person’s signature.

Edit. use "includes" to avoid saying "may" and "shall" in the intro language.

Edit. Delete.

Rko 222.02 Contents of Explanation. The ombudsman shall, within 60 days of receiving a request for an explanation of an adopted rule in accordance with Rko 221.01 provide a written response which:

(a) Concisely states the office’s understanding of the meaning of the adopted rule, if necessary correcting errors in the petitioner’s proffered understanding-;

Edit. Delete annotation.

(b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and

(c) States, if applicable, why the ombudsman did not accept arguments and considerations presented against the rule.

#### PART Rko 223 PETITIONS FOR WAIVER OR SUSPENSION OF RULES

Rko 223.01 Petitions. A person affected by a rule of the ombudsman may request that the ombudsman waive or suspend the rule by filing a written request for waiver or suspension containing, at a minimum:

(a) The name of the person making the request;

(b) The person’s address;

(c) The person’s telephone number;

(d) The person’s e-mail, if any;

(e) If the person is making the request on behalf of another person, organization, or entity:

(1) The other person’s, organization’s or entity’s name;

(2) The other person’s, organization’s or entity’s address;

(3) The other person’s, organization’s or entity’s telephone number;

(4) The other person’s, organization’s or entity’s e-mail , if any; and

(5) A certification by the person making the request that they are authorized to speak on behalf of the other person, organization, or entity-;

(f) An identification of the specific rule or rules for which waiver or suspension is being sought;

(g) An identification of third parties who may be affected by the waiver or suspension of the rule or rules;

(h) The reason or reasons that suspension or waiver is sought, together with such facts as will enable the ombudsman to ascertain how the waiver or suspension would impact either the person making the request or third parties.

Edit. Delete and replace with a semicolon.

- (i) If the petition is filed in relation to a case pending before the office, a certification that a copy of the request has been provided to all persons who have filed an appearance in that matter; and
- (j) The person’s signature.

Rko 223.02 Notification to Third Parties. If the ombudsman concludes upon examination of the petition that the proposed waiver or suspension would likely affect persons other than the petitioner, the ombudsman shall require that the petitioner provide notice to those persons and afford those persons the opportunity to request a hearing on the petition.

Rko 223.03 Standard. The ombudsman shall grant a petition for waiver or suspension of a rule if the ombudsman concludes:

- (a) That the petitioner has established that:
  - (1) The petitioner would suffer an unavoidable hardship by application of the rule;
  - (2) Waiver or suspension would not conflict with statutes or case law, or with the purposes of RSA 91-A:7-b;
  - (3) Waiver or suspension would not impose an unavoidable hardship on a third party; and
  - (4) Waiver or suspension is necessary due to factors outside the control of the petitioner; or
- (b) That the petitioner has established that waiver or suspension is necessary to:
  - (1) Comply with the law;
  - (2) Advance the purposes of RSA 91-A:7-b; or
  - (3) Lend effect to the provisions of RSA 91-A.

Rko 223.04 Action on Petitions. The ombudsman shall act upon petitions under this part in accordance with the provisions of RSA 541-A:29.

APPENDIX

Rule	Statute
Rko 101.01	RSA 541-A:7
Rko 102.01	RSA 91-A:7-b; RSA 541-A:16, I(a)
Rko 102.02	RSA 541-A:16, I(a)
Rko 102.03	RSA 541-A:16, I(a)
Rko 102.04	RSA 541-A:16, I(a), (b)
Rko 103.01	RSA 541-A:16, I(a), (b); RSA 91-A

Rko 103.02	RSA 541-A 16, I(a); RSA 91-A
Rko 201.01	RSA 541-A:16, I(a)
Rko 201.02	RSA 541-A:16, I(a)
Rko 201.03	RSA 541-A:16, I(a)
Rko 201.04	RSA 541-A:16, I(a)
Rko 201.05	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(j)
Rko 202.01	RSA 541-A:16, I(a)
Rko 202.02 RESERVED	RESERVED
Rko 202.03	RSA 541-A:16, I(b); RSA 91-A:7-a, I; RSA 541-A:36
Rko 202.04	RSA 541-A:16, I(b)
Rko 202.05	RSA 541-A:16, I(a), (b)
Rko 203.01	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, I; RSA 541-A:30-a, III(a)
Rko 203.02	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, I
Rko 203.03	RSA 541-A:16, I(a), (b); RSA 91-A:7 II, VI; RSA 541-A:30-a, III(a)
Rko 203.04	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, I
Rko 203.05	RSA 541-A:16, I(a), (b);
Rko 203.06	RSA 541-A:16, I(a), (b)
Rko 203.06 (c)	RSA 510:10; RSA 541-A:16, I(a), (b)
Rko 203.07	RSA 91-A:7-b, II; RSA 541-A:16, I(a), (b); RSA 541-A:1, VII-a, XV; RSA 541-A:9-b
Rko 203.08	RSA 91-A:7-b, IV; RSA 541-A:16, I(a), (b)
Rko 203.09	RSA 91-A:7-b, IV; RSA 91-A:8, I; RSA 541-A:16, I(a), (b)
Rko 204.01	RSA 541-A:16, I(a), (b)
Rko 204.02	RSA 541-A:16, I(a), (b); RSA 541-A:29, II; RSA 91-A:7-b, I
Rko 204.03	RSA 541-A:16, I(a), (b); RSA 541-A:29, II; RSA 91-A:7-b, I
Rko 205.01	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, IV(b); RSA 541-A:30-a, III(f)
Rko 206.01	RSA 541-A:16, I(a), (b); RSA 91-A:7-b; RSA 541-A:30-a, III(a)
Rko 206.02	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a)
Rko 206.03	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a)
Rko 207.01	RSA 541-A:16, I(a); RSA 541-A:30-a, III(b)
Rko 207.02	RSA 541-A:16, I(a), (b); RSA 541-A:1, VII-a, XV; RSA 541-A:19-b; RSA 541-A:30-a, III(b)
Rko 207.03	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(b)
Rko 207.04	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, IV; RSA 541-A:30-a, III(b)
Rko 207.05	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, IV; RSA 541-A:30-a, III(b)
Rko 207.06	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, IV; RSA 541-A:30-a, III(b)
Rko 207.07	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, IV; RSA 541-A:30-a, III(b)
Rko 207.08	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(b)

Rko 208.01	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a)
Rko 208.02	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a), (h)
Rko 208.03	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a); RSA 91-A:7-b, V
Rko 208.04	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a); RSA 91-A:7-b, V
Rko 208.05	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, III(b); RSA 541-A:30-a, III(a)
Rko 208.06	RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(a), (j)
Rko 209.01	RSA 541-A:16, I(a), (b); RSA 541-A:29; RSA 91-A:7-b, II
Rko 209.02	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, I
Rko 209.03	RSA 541-A:16, I(a), (b)
Rko 210.01	RSA 541-A:31; RSA 91-A:7-b, III(c); RSA 541-A
Rko 211.01	RSA 541-A:16, I(a), (b); RSA 91-A:1; RSA 541-A:30-a, III(c)
Rko 211.02	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, III(b); RSA 541-A:30-a, III(c)
Rko 211.03	RSA 91-A:1; RSA 541-A:30-a, III(c)
Rko 211.04	RSA 541-A:31(c); RSA 541-A:16, I(a), (b); RSA 541-A:30-a, III(c); RSA 91-A:7-c, III; RSA 541-A:31, V(d)
Rko 211.05	RSA 541-A:16, I(a), (b); RSA 91-A:7-b, IV
Rko 212.01	RSA 91-A:1; RSA 541-A:16, I(a), (b)
Rko 212.02	RSA 91-A:1; RSA 541-A:16, I(a), (b)
Rko 212.03	RSA 541-A: 16, I(a), (b); RSA 541-A: 1, XIV
Rko 212.04	RSA 541-A:30-a, III(k)
Rko 212.05	RSA 541-A:16, I(a), (b); RSA 541-A:33, I
Rko 212.06	RSA 541-A:16, I(a), (b)
Rko 213.01	RSA 541-A:31, I; RSA 541-A:29; RSA 541-A:1, I, IV
Rko 213.02	RSA 541-A:30-a, III(d), (e)
Rko 213.03	RSA 541-A:33, II
Rko 213.04	RSA 541-A:30-a, III(c)
Rko 213.05	RSA 541-A:31, IV; RSA 541-A:16, I(a); RSA 541-A:33, I
Rko 213.06	RSA 541-A:30-a, III(c)
Rko 213.07	RSA 541-A:30-a, III(c); RSA 541-A:16, I(a), (b)
Rko 213.08	RSA 541-A:35; RSA 541-A:16, I(a), (b)
Rko 213.09	RSA 91-A:7-b, IV; RSA 541-A:16, I(a), (b)
Rko 214.01	RSA 541-A:30-a, III(i); RSA 541-A:16, I(a), (b)
Rko 214.02	RSA 541-A:30-a, III(i)
Rko 214.03	RSA 541-A: 30-a, III(i)
Rko 214.04	RSA 541-A:35
Rko 214.05	RSA 91-A:7-b, V
Rko 214.06	RSA 541-A:30-a, III(i); RSA 541:3-5
Rko 214.07	RSA 541-A:30-a, III(i); RSA 541:3-5
Rko 214.08	RSA 541-A:16, I(b)
Rko 214.09	RSA 91-A:7-c
Rko 215.01	RSA 541-A:16, I(a), (b)
Rko 216.01	RSA 541-A:32

Rko 216.02	RSA 541-A:32
Rko 216.03	RSA 541-A:16, I(a); RSA 541-A:30-a, III(g)
Rko 217.01	RSA 541-A:38; RSA 541-A:16, I(a), (b)
Rko 217.02	RSA 91-A:7-b, III(b); RSA 541-A:16, I(a), (b)
Rko 218.01	RSA 5:40; 541-A:30-a, III(l), VII
Rko 218.02	RSA 541-A:16, I(a), (b); Laws 2022, Ch. 250:6, 7; RSA 91-A: 7-c
Rko 218.03	RSA 541-A:16, I(a), (b); RSA 91-A:7-a
Ch. Rko 219	RSA 541-A:16, I(b), (3); RSA 541-A:16, I(c)
Ch. Rko 220	RSA 541-A:16, I(b), (3); RSA 541-A:16, I(c)
Ch Rko 221	RSA 541-A:16, I(d)
Ch. Rko 222	RSA 541-A:11, VII; RSA 541-A:16, II(a)
Ch Rko 223	RSA 541-A:30-a, III(j); RSA 541-A:16, I(a), (b); RSA 541-A:22, IV



## **Attachment to Cover Sheet for Final Proposal 2023-172 (Rko 100 and Rko 200)**

### ***[Item 9 - Summary of public comments received on the Initial Proposal and an explanation of how they were addressed in the Final Proposal as required by RSA 541-A:12, II(e)]***

Although this rulemaking predates the requirement of a summary under RSA 541-A: 12, II (e), it is nonetheless provided in the interests of clarity and office transparency.

#### **Rulemaking history**

The Right to Know Ombudsman (“RKO”) is a single-person agency first staffed and operational on January 27, 2023. Unless renewed, it is scheduled to expire by law on July 1, 2025. The RKO’s duty is to serve as a “simpler, less expensive, and faster” alternative to the NH Superior Court in resolving complaints arising under RSA 91-A (the “Right to Know” Law), applying the processes generally set forth in RSA 91-A: 7-b. See Laws 2022, Ch. 250. By its nature, the office addresses “contested cases.” Accordingly, pursuant to RSA 541-A:30-a, before the adoption of its rules, it has necessarily applied the provisions of Chapter Jus 800 (the model rules for adjudicative proceedings). Immediately upon assuming office, the office undertook the drafting of its own procedural rules, while simultaneously processing actual cases.

As a new agency, the Ombudsman has received numerous comments regarding the functions of the office, both in the course of rulemaking, in the course of hearings, and in general. Actual rulemaking proceedings began with a Request for Advance Public Comment on Subject Matter of Possible Rulemaking. See *Rulemaking Register*, 2/16/23. This optional public proceeding was held on March 1, 2023. The hearing was followed by the drafting of the Initial Proposals for Chapters Rko 100 and 200 (as well as Chapter Rko 300, see Notice 2023-173). The required public comment hearing on the Initial Proposal was held on September 6, 2023. See *Rulemaking Register*, 8/10/23. It was evident from those proceedings that the public desired additional participation and comment on the office’s final rulemaking proposals. Accordingly, in accordance with RSA 541-A: 11, I (c), on January 22, 2024, the RKO held an optional public comment hearing on its draft final proposals. See *Rulemaking Register* of January 11, 2024. In addition to the rules personnel of the Office of Legislative Services (“OLS”), persons or organizations offering oral or written comment over the course of the office’s rulemaking proceedings included members of the public, participants in cases before the office, the New Hampshire Municipal Association, Right to Know NH, the NH Press Association, the New England First Amendment Coalition, and the American Civil Liberties Union of NH.

### Summary of Comments

The majority of comments received during the various rulemaking proceedings stemmed from concerns regarding the Initial Proposal's Part Rko 103, which relates to obtaining copies of items held by the RKO's own office. Those concerns were discussed at the public comment hearing on the Initial Proposal. Based upon oral and written public comment, as well as input from the OLS, the RKO drafted changes to Part RKO 103 regarding copying and copying fees, which are highlighted in the Final Proposal - Annotated Text. For practical reasons (primarily the RKO's personal experiences with individuals making significant document requests and then electing not to make payment for, or receive, the copies already made) no change was made to Initial Proposal Rko 103.01 (d) [Final Proposal Rko 103.02 (d)], which requires advance payment. In regard to a comment that the rules do not mention RSA 91-A:7-c, III ("if the ombudsman's final ruling is not appealed, the ombudsman shall, after the deadline has passed, follow up with all parties, as required, to verify compliance with rulings issued"), the RKO believes that the statute itself is sufficient.

Based upon public comments regarding a provision that allowed for a limitation on the number of persons in a room at a public comment hearing [former proposed Rko 220.03 (b) (1)], that provision was removed from the Final Proposal. A comment was also received regarding the absence of "forms" from the rules. It was explained that the Initial Proposal described the forms, rather than incorporated them by reference. The forms referred to in the rules will, of course, be provided to OLS in the course of this rulemaking.

Annotations to the Initial Proposal by OLS were primarily editorial in nature and all but a few were accepted in the Final Proposal. The RKO did not accept:

1. The suggested editorial deletion of the definition of "RKO" [Rko 101.01 (hh)]. The abbreviation is commonly used in communications from and to the office. It is thus informative to the public, although seldom, if ever, used in the rules themselves.
2. At Rko 202.04, the editorial/clarity annotation stating that "[i]t is unclear why this *[a specification that the RKO shall be referred to as "Mr." in oral and written communications]* needs to be formalized in an administrative rule, and it's a bit shortsighted in that should the office continue after 2025 the ombudsman might be a woman in the future." Based upon experience in actual proceedings, some of which are conducted relatively informally, the RKO believes that his form of address should be specified so as to maintain the authority of the office when addressing contested cases. He does not believe that he should be addressed by his given name in such circumstances. Likewise his formal title is both difficult to conceptualize within the framework of RSA 91-A: 7-b and RSA 541-A: 31 – 36 and,

moreover, is at times difficult to vocalize. He is not a judge (who are referred to as his or her “honor”), and the appellation “attorney” might suggest to some that the RKO is merely another advocate in the case, rather than the presiding officer. The RKO believes that the most suitable form of address for the present presiding officer while engaged in cases filed with his office is the common formal masculine appellation “Mr.” Should the office continue beyond the term of the present RKO and should a future holder of the office believe that an alternative form of address is more suitable to their circumstances, amendment of the rules (a skill with which any future RKO should be adept) would not be difficult.

3. A clarity annotation at Rko 204.01(d) (3). The annotation states that January 27, 2023 is prior to the operative date of the Rko rules. While that is true, it is nonetheless the date from which the number of complaints against a particular respondent are, and have been, counted, as indicated by the rule.
4. Editorial annotations at Rko 203.02, Rko 206.02 (c), Rko 207.02 (c) (6), Rko 217.01(d), Rko 218.03 (b) and Rko 221.01 (c). The RKO believes that the suggested language is open to misinterpretation or changes the meaning of the rules in question.

During the various rulemaking proceedings, as well as in casual commentary, several individuals observed that the rules seemed long and technical. One commentator suggested eliminating the definitions found in the rules. On the other hand, OLS suggested that the *addition* of at least one definition in Part Rko 100 might add to clarity. The RKO noted in rulemaking proceedings that little could be done in the rules themselves to address concerns regarding length and style, since the content of agency organizational and procedural rules, as well as the form and style of rule drafting, are well established in RSA 541-A and the *New Hampshire Drafting and Procedural Manual for Administrative Rules*. In response to the editorial/clarity comment posited by OLS, the RKO added a definition of “conference” at Rko 101.01 (h).

The RKO advised public commentators that he concurred with a suggestion that it might be beneficial for the office to produce an RKO “user’s guide” for persons unfamiliar with the quasi-judicial administrative process described in the rules, but that this would not impact the structure or length of the rules which are under consideration. The RKO noted that he was uncertain when he might himself be able to turn to the creation of a “user’s guide,” given the other duties associated with his one-person office.

Some persons have objected to the imposition of any filing fee for pursuit of a claim before the RKO. See Rko 203.01. One commentator took particular exception to the imposition of the \$25 filing fee if only one or two pages of withheld material (which might cost only cents to copy) are being sought. The fee is established by statute (unless waived “upon a finding of inability to pay”). See RSA 91-A: 7-b, I. Accordingly, the RKO noted that he is without the authority to eliminate or alter the fee provision, and advised commentators that any suggested changes would be a matter for them to

discuss with their representatives in the General Court, rather than in this agency's rulemaking proceedings.

Other persons questioned either the constitutionality of the proposed procedural rules as a whole, or the constitutionality of RSA 91-A itself. The proposed rules have been reviewed not only by the RKO (a New Hampshire attorney since 1986) but also by the attorneys of OLS and the NH Department of Justice. Those entities identified no constitutional concerns relative to the proposed rules.

Still other commentators opined that the RKO should primarily serve in the role of an advocate and that *ex parte* contact by the RKO with participants in cases, or potential cases, should be allowed. Since the RKO is required to serve as a neutral decision-maker in contested cases, however, individual advocacy and *ex parte* contact are precluded by the various legal authorities and codes of conduct which apply to the RKO. See e. g. RSA 541-A: 36; See also proposed Chapter Rko 300 (highlighting ethical rules applicable to the RKO).

General comments were received regarding the fact that the office's hearings are generally conducted in person. The RKO noted that parties are free under the proposed rules to request alternative proceedings. Rko 208.06 was altered to highlight the fact that such requests for alternative proceedings may include requests for electronic participation.

A suggestion was made that the rules should specify when and what "negative inferences" will be drawn in a case. The RKO concluded that such matters are highly case dependent and warranted no adjustment to the rules, particularly in light of the language of RSA 91-A: 7-b, IV. It was also suggested that the RKO include rules on the issuance of "subpoenas." The RKO ascertained no reason to include such language in the rules. RSA 91-A:7-b, III grants the RKO the ability to "order attendance at hearings," but since he has no independent ability to enforce such orders, if such an order is disregarded, the RKO assumes that a party would be required to seek enforcement through the Superior Court.

Comments were received suggesting that the RKO should define the word "citizen" appearing in RSA 91-A: 4, I, so as to limit the availability of documentary materials requested under RSA 91-A to "citizens of New Hampshire." Strong opposition to such specification was also expressed. The RKO concludes that this issue involves matters of statutory and constitutional interpretation that are not best resolved in the context of executive branch rulemaking.

Other commentary suggested that Rko 102.04 should include detail about what will be contained in annual reports, particularly citing the need for information concerning how many complaints have been filed against particular governmental units, and related matters. The RKO noted that the number of complaints received by the office against a particular unit of government, and the total annual number of cases, can be determined by reference to case titles and docket numbers, as described in Rko 204.01. The RKO was hesitant to unnecessarily increase the length of rules, which other commentators suggested were already unduly lengthy, and he is reluctant to

impose detailed mandates as to the content of annual reports, particularly since no annual reports have yet required of, or issued by, the Office. No changes were made to Rko 102.04.

Other changes were suggested, some relating to how administrative rules should be crafted or read. Those have not been incorporated by the RKO, as was shared with the public through the presentation of a draft Final Proposal, at an optional additional hearing thereon. Copies of the draft Final Proposal were made widely available on the RKO website, which linked to the draft rules found in the on-line electronic Rulemaking Register of January 11, 2024.

Commentators identified several typographical errors and a comment was received on the draft final proposal suggesting locations where the rules might be changed to account for the fact that it is possible that the office may one day be able to support electronic filings. A change to Rko 208.01 (a) was made, but the RKO declined to adjust Rko 203.06, which relates to the form of service of a complaint by the RKO himself.

Some commentators expressed dissatisfaction with Rko 202.02 regarding “common representation.” In addition, on January 12, 2024, the RKO received a rulemaking petition seeking to alter as-of-yet unadopted Rko 202.02 by deleting the reference to the number of times a non-attorney may represent another person in proceedings before the RKO in any 2-year period. The Final Proposal deletes Rko 202.02 in its entirety, but its place in the rules has been reserved for potential future consideration. The RKO’s original concern (the creation of a new “cottage industry” of non-attorney representatives in cases brought before the RKO) has not materialized in the first year of the office’s existence, and Rko 202.02 seems unnecessary at this time. The rulemaking petition is a matter separate from these rulemaking proceedings but was filed during the comment period on the proposed rules. Apart from suggestions regarding the deleted Rko 202.02, it also suggested a revision to Rko 102.01 (which relates to the purpose and nature of the office), so as to describe circumstances in which the RKO may “investigate administrative acts of agencies” upon receipt of a complaint. The RKO has not at this time concluded that the proposed language is in accordance with RSA 91-A:7-b or RSA 541-A, and is in any event currently considering the desirability of the proposed language. No adjustments have been made in the Final Proposal on the basis of the rulemaking petition, which petition will be addressed with the petitioner in accordance with RSA 541-A: 4.

Pursuant to RSA 541-A: 12, I, the Rko believes that he has “fully considered” oral and written public comment from all sources, committee/OLS comments, and other relevant information in formulating the text of the Final Proposal.

February 6, 2024

Thomas F. Kehr  
Right to Know Ombudsman

**State of New Hampshire**  
**Office of the Right to Know Ombudsman**

State House Annex, Rm. 313  
25 Capitol Street  
Concord, NH 03301  
Telephone: (603) 271-3277

**APPEARANCE**

*(information must be typewritten or clearly printed; send original to the address above  
An appearance must be entered even if you will be representing yourself)*

1. Name of Matter:
  
2. NH Right to Know Ombudsman Docket Number (if assigned):

**RKO**

3. Name of person submitting this appearance:

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4. Is the person filing this appearance appearing on behalf of

*(Check one)*

- The Claimant;
- The Respondent; or
- Another person or entity (identify)

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5. A. Is the person filing this appearance an attorney?

- Yes
- No

**B.** *If the person submitting this appearance is an attorney, is this person licensed to practice in New Hampshire?*

\_\_\_\_\_ Yes

\_\_\_\_\_ No

**6.** Representative's mailing address:

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**7.** Representative's daytime telephone number:

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**8.** Representative's e-mail address, if any: \_\_\_\_\_

**9. A.** Has a copy of this appearance been forwarded to all other parties to, or intervenors in, this matter?

\_\_\_\_\_ Yes

\_\_\_\_\_ No (if not, explain: \_\_\_\_\_

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**B.** *If so, what is the name and address of the person or persons to whom a copy of this appearance was forwarded?*

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**NOTICE**

Unless otherwise ordered by the Ombudsman, copies of any item filed by you with the Office of the Right to Know Ombudsman must also be provided to all other persons who have filed an appearance in this matter.

**Submitted by:**

\_\_\_\_\_ **Date:** \_\_\_\_\_  
*(signature of the party's representative, as identified on this appearance)*

Name in print: \_\_\_\_\_



**State of New Hampshire**  
**Office of the Right to Know Ombudsman**

State House Annex, Rm. 313  
25 Capitol Street  
Concord, NH 03301  
Telephone: (603) 271-3277

**COMPLAINT**

*(information must be typewritten or clearly printed; send original to the address above)*

1. First, middle and last name of the person making this complaint, (also known as the “claimant”):

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2. Claimant’s address:

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3. Claimant’s preferred mailing address, if different:

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4. Claimant’s telephone number:

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5. Claimant’s e-mail (*if any*):

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6. Which of the following do you anticipate will serve as the your representative in these proceedings (*select one of the following*):

\_\_\_ Myself

\_\_\_ Another person

\_\_\_ I do not know at this time

*Note: Regardless of whether the claimant will be representing themselves, an “appearance” must be filed in this matter.*

7. Is your appearance (or an appearance filed on your behalf) attached to this complaint?

\_\_\_\_\_ Yes

\_\_\_\_\_ No (if not, explain why not)

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8. Name and address of the entity against which you are making a claim (also known as the “respondent”), including in your answer, if known, the particular department, division or office of the respondent with which you have to date been communicating about the matter at issue:

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9. Provide a brief description of your claim (*attach additional pages, if needed*):

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10. Which of the following do you believe best synthesizes the nature of your claim? (*check all that apply*)

\_\_\_\_\_ Failure to respond

\_\_\_\_\_ Unreasonable delay

\_\_\_\_\_ Improper claim of exemption from disclosure

\_\_\_\_\_ Unreasonable cost

\_\_\_\_\_ Improper meeting

\_\_\_\_\_ Another issue (*identify*)

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11. RSA 91-A: 7-b, I requires that a \$25 fee be filed along with this complaint, unless waived.

Have you included the required fee?

\_\_\_\_\_ Yes

\_\_\_\_\_ No (*if not, briefly explain why not*)

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*Note: If your answer to the foregoing question was no, a motion for waiver of the fee must be submitted.*

**12.** RSA 91-A:7-b, I requires that the claimant attach to this complaint “if applicable, the request served on the public agency or official and the written response of the public agency or official.”

**A.** Was a written request made to the respondent?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

**B.** If a written request was made, have you attached a copy of the request to this complaint?

\_\_\_\_\_ Yes

\_\_\_\_\_ No (*if not, briefly explain why not*)

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**13.** Did the public agency or official that is the subject of this complaint provide a written response to the request identified in 9 above?

\_\_\_\_\_ Yes

\_\_\_\_\_ No (*if not, briefly explain why not*)

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14. Identify the documents, if any, that you are requesting from the respondent at the time of the filing of this complaint:

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15. Please state the date of your last communication about this matter with the respondent, together with the name of the person with whom you communicated, if known:

Date: \_\_\_\_\_

Name of Person: \_\_\_\_\_

16. What specific action or actions do you wish the Right to Know Ombudsman to take in regard to your claims against the respondent:

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**NOTIFICATION AND CERTIFICATION**

Pursuant to RSA 91-A:7, IV, I understand that the submission of this complaint to the Right to Know Ombudsman forecloses my ability to petition the New Hampshire Superior Court on this matter until the Ombudsman issues a final ruling or the deadline for such a ruling has passed.

I understand that if I make a false statement in this complaint, that I do not believe to be true, such false statement may be punishable by law.

The statements made in this complaint are true and accurate, to the best of my knowledge and belief.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Name in print: \_\_\_\_\_

State of New Hampshire

Office of the Right to Know Ombudsman

State House Annex, Rm. 313
25 Capitol Street
Concord, NH 03301
Telephone: (603) 271-3277

RESPONSE

(information must be typewritten or clearly printed; send original to the address above)

- 1. Case name and RKO Docket Number:
2. Name of the respondent (Note: the "respondent" is the public body, agency or official for which you are answering this complaint, including the name of any department, division, committee or office):

- 3. First, middle and last name of the individual answering this complaint:

- 4. Is the individual identified in 3. above authorized by the respondent to act on its behalf and to serve as its duly authorized representative in answering this complaint?

Yes
No (if no, explain the reason)

- 5. Is an appearance attached to this response?

Yes
No (if no, explain the reason)

6. Identify the position or title that you hold with the respondent, if any, including the department, division, committee or office of the respondent in which the person is employed:

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7. Respondent's mailing address: \_\_\_\_\_

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8. Respondent's telephone number:

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9. Respondent's e-mail, if any:

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10. What does the individual identified in 3. above understand the claimant's request that is the subject of this complaint to be?

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11. Pursuant to RSA 91-A: 7-b, II, provide a brief response to the claim, including in your answer "applicable law and, if applicable, a justification for any refusal to or delay in producing the requested governmental records, access to meetings open to the public, or otherwise comply with the provisions of this chapter [RSA 91-A]" (attach additional pages, if needed)

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12. Which of the following do you believe best synthesizes the nature of the claimant's allegations against the respondent? (check all that apply)



\_\_\_\_\_ Failure to respond

\_\_\_\_\_ Unreasonable delay

\_\_\_\_\_ Improper claim of exemption from disclosure

\_\_\_\_\_ Unreasonable cost

\_\_\_\_\_ Improper notice of a meeting

\_\_\_\_\_ Another issue (*identify*)

\_\_\_\_\_

**13.** What additional issues, if any, do you believe are involved in the claim?

\_\_\_\_\_

\_\_\_\_\_

**CERTIFICATION**

I understand that if I make a false statement in this response, that I do not believe to be true, such false statement may be punishable by law.

The statements made in this response are true and accurate, to the best of my knowledge and belief.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Name in print: \_\_\_\_\_