

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2023-173 Rule Number Rko 300

<p>1. Agency Name & Address:</p> <p>Office of the Right to Know Ombudsman Room 313, State House Annex 25 Capital Street Concord, NH 03301</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: **Ethical Standards**

6. Contact person for copies and questions:

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

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 2023-173

Rule Number Rko 300

<p>1. Agency Name & Address:</p> <p>Office of the Right-to-Know Ombudsman Room 313, State House Annex 25 Capital Street Concord, NH 03301</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: **Ethical Standards**

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

These rules adopt ethical standards for 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. The rules are intended to recognize, to more explicitly set forth, and to implement the applicable ethical standards and continuing education requirements imposed upon the Ombudsman by virtue of the fact that this officer must hold the qualifications set forth in RSA 91-A:7-a.

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

The Right-to-Know Ombudsman.

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

Rule	Statute
Rko 301.01	RSA 91-A: 7-a, I, II; RSA 21-G; RSA 15-B; RSA 15-A; RSA 7-a-b; RSA 541-A: 16, I(a), (b)
Rko 301.02	RSA 91-A: 7-a, III, IV; RSA 541-A: 16, I(a), (b); RSA 541-A:38

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 25 Capital St. Concord, NH 03301	Phone #:	(603) 271- 3277
		Fax#:	(603) 271-6316
		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: 179 , dated 08/02/2023

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):

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 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.

Attachment to Cover Sheet for Final Proposal 2023-173 (Rko 300)

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.

Chapter Rko 300 highlights the various codes of conduct that the Right to Know Ombudsman must know and navigate. All comments received were editorial and accepted in the final proposal.

Date: February 6, 2024

Thomas F. Kehr
Right to Know Ombudsman

Consent Edit.

Adopt Rko 300 to read as follows:

CHAPTER Rko 300 ETHICAL STANDARDS

PART Rko 301 OMBUDSMAN’S ETHICAL OBLIGATIONS

Rko 301.01 Applicable Standards.

(a) The ombudsman shall abide by:

Edit. Low case.

- (1) The Rules of Professional Conduct adopted by the New Hampshire Supreme Court which are applicable to active attorneys in New Hampshire;
- (2) RSA 91-A:7-a through 7-d;
- (3) The executive branch code of ethics set forth in RSA 21-G;
- (4) The statutory restrictions on gifts, honorariums, and expense reimbursements set forth in RSA 15-B;
- (5) The financial disclosure obligations of RSA 15-A; and
- (6) All other codes of ethics or codes of conduct which are required by law to be adhered to by a person in the position of the right to know ombudsman who holds the qualifications set forth in RSA 91-A:7-a.

Edit. Fix the indentation so that it aligns with (a).

(b) The ombudsman shall not serve as the attorney for, represent, or offer legal advice to members of the public, governmental units, other state agencies, or their employees or representatives, concerning any matter pending before the office, or which the ombudsman believes might in the future involve a case before the office.

(c) Rko 301.01 (b) shall not preclude the ombudsman from:

- (1) Offering basic instruction to a person regarding the procedures for filing or responding to a complaint prior to the time that that person becomes a claimant or respondent, provided that no communication is made by the ombudsman regarding the merit or lack of merit of the anticipated case or its defense;
- (2) Presenting or participating in educational programs for the public, for governmental units ~~or for agencies of the state; or~~ Edit. insert a comma.
- (3) Communicating the ombudsman’s general view of the office’s operations or its interpretation of RSA 91-A, including in the context of public comment hearings.

Edit. Align (4) with (3) above.

(4) Pursuant to RSA 541-A:38, the ombudsman shall encourage the parties in cases before the office to explore the possibility of informal resolution by mutual agreement.

Edit. (4) does not follow the intro language. Consider: "Pursuant to RSA 541-A:38, encouraging the parties..."

Rko 301.02 Continuing Education Requirements.

Edit. Use 1/4" indentation.

(a) In addition to the continuing education requirements imposed upon a person holding the credentials of RSA 91-A:7-a, I, the ombudsman shall, pursuant to RSA 91-A:7-a, IV, annually complete a minimum of 3 hours of continuing legal education courses or other training relevant to the provisions of RSA 91-A.

(b) Courses or training used to fulfill the continuing education requirements of the New Hampshire Bar shall, if relevant, be counted towards fulfillment of the 3 hours of education or training required by RSA 91-A:7-a, IV.

APPENDIX

Rule	Statute
Rko 301.01	RSA 91-A:7-a, I, II; RSA 21-G; RSA 15-B; RSA 15-A; RSA 7-a-b; RSA 541-A:16, I(a), (b)
Rko 301.02	RSA 91-A:7-a, III, IV; RSA 541-A:16, I(a), (b); RSA 541-A:38