

Notice Number 2024-75

Rule Number Per102.46 & Per 1001.01

1. Agency Name & Address:

**Division of Personnel
Dept. of Administrative Services
54 Regional Drive, #5
Concord, NH 03301**

2. RSA Authority: RSA 21-I:43, II(j) & (o)
3. Federal Authority: n/a
4. Type of Action:
Adoption X
Repeal _____
Readoption _____
Readoption w/amendment _____

5. Short Title: **Memos of Counsel**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

The Division of Personnel, Department of Administrative Services proposes to adopt Per 102.46, defining “memo of counsel”, and Per 1001.01, titled “Memo of Counsel”, in a new Part Per 1001 titled “Non-Disciplinary Communications for Purposes of Corrective Action or Counsel.” The existing chapter heading for Per 1000 is titled “Investigations, Discipline, and Non-Disciplinary Removal”, and is being changed to “Investigations, Discipline, Non-Disciplinary Communications, and Non-Disciplinary Removal”. The existing Per 1001 through Per 1003 are also being renumbered as Per 1002 through Per 1004 to accommodate the new rules.

The existing rules in Per 1000 address various methods by which appointing authorities can address employee performance and conduct, including but not limited to investigation, demotion, suspension, letters of warning, and dismissal. In many instances, an appointing authority finds it necessary to communicate with an employee regarding performance or conduct without escalating matters to the point of imposing discipline upon the employee. Long established practice in those circumstances is to provide the employee with what is known as a “memo of counsel”, which informs the employee of deficiencies. However, the existing rules lack sufficient guidance regarding such pre-disciplinary measures and the issuance, use, impact, and removal of such memos has been inconsistent between agencies. During the collective bargaining process for the 2021-2023 collective bargaining agreement between the state and the State Employees Association, the parties agreed to engage in a task force to address the proper management of memos of counsel. This proposal is the product of those collaborations between the parties.

The proposal would define a memo of counsel in Per 102.46, and in Per 1001.01 would (1) specify the circumstances for their issuance, (2) specify the content, and (3) and specify how such memos are placed into and removed from the employee’s personnel file.

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

Executive branch classified employees, agency human resources staff, agency management, and staff within the Division of Personnel

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

Rule	State Statute(s) Implemented
Per 102.46	RSA 21-I:42, I, IV(a) & (d), & XIII
Per 1001.01	RSA 21-I:42, I, IV(a) & (d), & XIII

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

Name: **Kate Mulleavey** Title: **HR Business Partner**
Mailing Address: **Dept. of Administrative Services** Phone #: **(603) 271-8295**
Division of Personnel Fax#: **(603) 271-1422**
54 Regional Drive, Suite #5 E-mail: **kate.e.mulleavey@das.nh.gov**
Concord, NH 03301

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: **4:00 p.m. on Friday, May 24, 2024**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, May 17, 2024 at 1:30 pm**
Physical Location: **Room 104 DOP Offices 54 Regional Drive, Concord, NH**
Electronic Access (if applicable): **n/a**

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

FIS # 24:061, dated 03/29/2024

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):

The proposed rules create definitions and procedures for non-disciplinary communications for purposes of corrective action or counsel. These new rules will have no cost or benefits to state citizens, political subdivisions, or independently owned businesses, nor does impact state funds.

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:

The rules do not affect political subdivisions. The proposed rules thus do not create, expand, or modify any program or responsibility in such a way as to necessitate additional local expenditures by political subdivisions, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.