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RKO General Procedural Order 1 (Pre-Rulemaking)

(March 17, 2023)

This is a General Procedural Order applicable to all cases now pending before the Office of the Right to Know Ombudsman.

As all claimants and respondents in all cases now pending before the office have been advised, the RKO is currently developing procedural rules, and until such time as those rules can be adopted (a formal statutorily-mandated procedure that is likely to take a minimum of several months), the processes which guide proceedings before this office will be informed by the provisions of RSA 91-A: 7-b and, pursuant to RSA 541-A: 30-a, V, the model procedures relating to adjudicative proceedings adopted by the NH Department of Justice in the administrative rules known as “Jus 800.” These rules may be found on the nh.gov website by clicking “laws and rules,” then clicking “Code of Administrative Rules” and then scrolling down to the link entitled “Jus.” The statutory underpinnings for these rules may be found at RSA 541-A: 31 – 36.

The Jus 800 rules are not specific to the operations of the office established under RSA 91-A: 7-a and, in all cases, the provisions of operative statutes would take precedence over any administrative rule. Interim adjustments in the application of the Jus 800 rules may be in order while this office deals with cases pending prior to the adoption of RKO rules. RSA 91-A:7-b imposes certain time frames which direct application of Jus 806.01 (c) may render incapable of ordered application. That rule provides that objections to written motions shall be filed within 30 days of the motion (a motion being a “request to the presiding officer [*here, the Ombudsman*], for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.” See Jus 802.01 (d). Unlike Jus 800, New Hampshire Superior Court Rule 13 (a) provides that objections to motions must be filed within ten (10) days. The Ombudsman concludes that a general ten (10) day response period is more conducive to the expeditious operations of this office than is the 30 day period of Jus 800, and therefore establishes 10 days as the normal objection period in cases pending before this office prior to the adoption of its administrative rules.

The formulation of RKO administrative rules is informed in part by proceedings occurring in this office prior to formal RKO rule adoption. Pursuant to RSA 541-A: 11, this office held an optional public comment hearing on subject matters of possible rulemaking on March 1, 2023, with a public comment deadline of March 15, 2023. Input received during that optional process will be assessed by the RKO in formulating its initial rulemaking proposal. When that Initial Proposal is finalized, it will be presented for further public comment through the normal rulemaking processes of RSA 541-A. See NH Drafting and Procedure Manual for Administrative Rules, Chapter 3, Part 2 (*available on the website of The Office of Legislative Services, Administrative Rules, under the link to “Resources”*). Notice of rulemaking proceedings will be issued through the standard processes of RSA 541-A, and will also be posted on the evolving RKO website.

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