

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement Operations</u> STATEMENT NUMBER <u>5.17</u>
SUBJECT: DELIVERY OF ATTORNEY MAIL/ PROTECTED LEGAL MATERIALS PROPONENT: <u>Colon Forbes, Director</u> <i>Name/Title</i> <u>Commissioner's Office</u> <u>271-5604</u> <i>Office</i> <i>Phone #</i>	EFFECTIVE DATE <u>07/01/12</u> REVIEW DATE <u>07/01/13</u> SUPERSEDES PPD# <u>5.17</u> DATED <u>05/15/07</u>
ISSUING OFFICER: <hr/> <i>William Wrenn, Commissioner</i>	DIRECTOR'S INITIALS: _____ DATE: _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

- I. **PURPOSE:**
 To establish a policy and procedure to provide for the secure and confidential direct delivery of attorney-client privilege-protected legal materials and documents from attorneys of record to inmate clients at Department of Corrections' facilities.
- II. **APPLICABILITY:**
 To all inmates, staff and attorneys with clients at Department of Corrections' facilities
- III. **POLICY:**
 It is the Policy of the NH Department of Corrections (NHDOC) to provide a means for the secure and confidential direct delivery of attorney-client privilege-protected legal materials and documents from attorneys of record to inmate clients at Department of Corrections' facilities.
- IV. **PROCEDURES:**
 Attorney-client privilege-protected legal materials, and documents, may be directly delivered by attorneys of record to inmate clients as follows:
- A. **Attorney Delivery**
 1. Personally to the inmate; or
 2. Letters from third parties, stamps, money or money orders are examples of non-privileged materials which will be confiscated as contraband.
 - B. **Non-Attorney Delivery**
 1. All direct deliveries are subject to the provision of all applicable laws and the New Hampshire Code of Administrative Rules including:
 Cor 306.04 Inspection of Material Subject to an Attorney-Client Privilege. "Material whose confidentiality is protected by an existing or past attorney-client privilege is, never the less, subject to some inspection, as outlined below, to insure the absence of contraband. In order to accommodate the recognized confidentiality necessary to effectuate legal representation consistent with the prison's need to insure prison

security, the following special procedures shall apply to attorneys seeking entry to any Department of Corrections facility.

- a. Prior to entering the prison, all visiting attorneys (including paralegals, law clerks, or other persons designated by an attorney as their agent), will be required to certify in writing on a form provided by the prison staff that no written or textual contraband, as described in said form, is contained in any material brought into the prison by their attorney or agent. (Attachment 1)
- b. Prior to entering the prison, all visiting attorneys (including paralegals, law clerks, or other persons designated by an attorney as their agent), shall submit their persons and all books, briefcases, folders, files or other containers of whatever description being carried by them to a search, as herein defined, by the appropriate Corrections Officer.
- c. Prior to any search, the attorney or agent shall designate which materials in their possession, if any, are subject to an attorney/client privilege of confidentiality.
- d. The inspecting officer shall search all material except that designated as coming within the scope of attorney/client privilege. Material designated as privileged shall only be inspected in the manner detailed in paragraph (e) and in the immediate presence of the visiting attorney or their agent.
- e. The inspecting officer shall not read or attempt to read any writing designated as privileged nor shall the officer search or view privileged material for, or in any way attempt to discover therein, contraband which is dependent upon its written or textual content for its contraband character, (i.e., written or textual contraband). Specifically, the inspecting officer shall not scrutinize any material designated as privileged or textual contraband. Rather, the attorney shall place the privileged material or file face down or text side down on a flat surface designated by the officer. The officer shall then by touching or mechanical means inspect the privileged material to ensure the absence of concealed physical contraband other than textual contraband. For purposes of this section, physical contraband includes but is not necessarily limited to;
 1. Weapons;
 2. Drugs;
 3. Drug paraphernalia;
 4. Clothing;
 5. Cash; or
 6. Implements of disguise or escape.

Such inspection can include a page-by-page separation of and pat down of the privileged written material provided the inspected material is examined text side down and in the presence of the visiting attorney. The attorney shall ensure that no attempt to read any confidential material occurs, and shall report any suspected violations to the Warden or designee immediately, and the Warden or designee shall initiate immediate and appropriate administrative action against any officer violating any provision of this rule. Mail carried by the attorney from other persons is not privileged.

- f. The procedures set out herein pertaining to the inspection of privileged material sought to be introduced into the prison shall also be applicable to privileged material upon departure from the prison.”

Source. #7446, eff 2-6-01

Cor 305.04 Debarment from Department of Corrections Facilities. “Visitors or others who fail to follow the rules pertaining to departmental facilities or areas shall be barred from re-entry thereon by the commissioner, or person in charge of the facility or their agent, by notifying them in person or in writing of the

debarment, the reasons therefore, and the duration of the debarment. Persons found to be in violation of the debarment order shall be reported to law enforcement authorities for possible prosecution under the provisions of RSA 635:2, or other appropriate statutes. All debarred persons shall have the right of appeal pursuant to Cor 200.”

[Source.](#) (See Revision Note at chapter heading for Cor 300)
#7448, eff 2-6-01

- C. Inmates may deliver legal materials to attorneys during visits, subject to security checks for contraband.
- D. Search of Inmate Legal Papers
 - a. If feasible, the inmate shall be present during the review.
 - b. Staff shall attempt to replace all papers inspected in the inmate’s cell during a cell search in the same condition and the same order that they were in prior to the cell search or inspection.
 - c. An inventory shall be made and a copy of this inventory will be provided to the inmate of documents not returned to the inmate.
 - d. Attorney-client privileged documents shall not be read, but shall only be inspected for contraband.

REFERENCES:

Standards for the Administration of Correctional Agencies
Second Edition Standards

Standards for Adult Correctional Institutions
Third Edition Standards

Standards for Adult Community Residential Services
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services
Third Edition Standards

Other: **COR 305.04**
COR 306.04
RSA 635:2

FORBES/pf

Attachment

CERTIFICATION

I, _____, attorney for _____
(Print Attorney's Name) (Print Client's Name)

certify that no written or textual contraband (i.e. maps, sketches, or drawings of the Prison or its grounds or of the City of Concord); pornography or pictures of people unclothed; identification documents, licenses and credentials not in the possession of the person to whom properly issued; money or negotiable instruments; lock-picking instructions; documents concerning on-going or planned business enterprises or escape plans; is in my possession or that designated by myself as coming within the scope of an attorney-client privilege.

DATE: _____

(Signature of Attorney)

(Signature of Officer on Duty)

FORWARD FOR FILING IN CLASSIFICATION FILE