

## **If You Are Contemplating Filing an Improper Practice Petition with the Office of Collective Bargaining (“OCB”):**

- **You can review OCB’s Law and Rules:** The New York City Collective Bargaining Law (Chapter 3, Title 12 of the Administrative Code of the City of New York) (“NYCCBL”) and the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”) describe the law and procedures regarding improper practice claims. Complete copies of the NYCCBL and OCB Rules are available at <http://www.ocb-nyc.org/general-info/law-rules/>.
- **You can review prior Board of Collective Bargaining (“BCB”) decisions:** You can research BCB decisions that may pertain to your claim at <http://www.ocb-nyc.org/general-info/search-our-cases-advanced/> or at OCB, for which an appointment must be made in advance
- **You can speak to an OCB Pro Se Officer:** Call (212)-306-7160 to speak to an officer. Not every workplace action that you view as unfair constitutes a violation of the law which OCB administers. While OCB cannot represent you, the Pro Se Officer can help you determine if your claim is one which the Board can hear and answer procedural questions that relate to the filing and processing of your claim. You may, but do not have to, be represented by legal counsel; however, each respondent in your case will most likely be represented by an attorney.

## **If You Decide to File, Below Are Instructions to Help You Complete Your Petition:**

- **Item 1 - Petitioner Information:** You are the petitioner. You must provide your correct contact information and advise OCB and all parties if it changes.
- **Item 2 - Respondent Information:** The respondent is the union or employer-agency about which you are complaining. In this space, do not name individual people such as a specific supervisor or union delegate as respondents because an individual cannot commit an improper practice in his or her personal capacity. However, under the NYCCBL, a public employer or a public employee organization may be held responsible for the acts of its agents and you may identify specific individuals and discuss their conduct in your description of the nature of the controversy. *See* Item 4(b) below.
- **Item 3 - Additional Respondent Information:** If your claim involves both a union and an employer, list one in Item 2 and the other in Item 3 on the petition.

**IMPORTANT:** If you believe that your union has violated its duty of fair representation in a case involving an alleged breach by your employer of an applicable collective bargaining agreement, you must name both the

union and the employer as respondents. See NYCCBL § 12-306(d) and OCB Rule § 1-07(c)(1)(iii).

• **Item 4 - Nature of the Controversy (failure to provide the following may result in your petition being delayed or dismissed)**

(a) identify the specific subsections of NYCCBL § 12-306(a) or (b) that you claim have been violated. Note: subsection (a) applies to employers and subsection (b) applies to unions;

(b) state the facts of your case **in numbered paragraphs**. Be as specific as possible; the more relevant details you provide, the better. Include such facts as times, names, dates, and locations. You may attach documents that support your facts but your statement may not consist solely of such attachments. If you attach exhibits, explain why they are significant and refer to them in your statement. Each document should be labeled as an exhibit (“Exhibit A” or “Exhibit 1,” etc.) and must accompany all copies of the petition. **Do not send original documents;**

(c) if your case relates to a collective bargaining agreement, executive order, or written rules/policies, identify the specific provisions that apply and attach, if available, to all copies of your petition;

(d) explain how the facts in your case constitute a violation of the sections of NYCCBL you have identified;

(e) state how you want your case to be remedied. Remember that the jurisdiction of the Board is limited to remedying improper practice charges. It may not award such remedies as punitive damages.

- **Item 5 - Verification:** You are required to affirm or swear before a notary, under penalty of perjury, that all of the facts in the petition are true to the best of your knowledge.

**How to File and Serve Your Verified Petition:**

- **Filing:** File the original and three copies of the petition with attached exhibits with OCB no later than *four months* after the alleged improper practice occurred. If you file more than four months following the event in question, your petition may be dismissed. You may file with OCB by mail or in person during business hours. Keep a copy for your records. See OCB Rule §§ 1-07(b)(4) and 1-12(e).
- **Serving the designated agent:** Serve a copy of the petition with attached exhibits on each respondent. **The petition must be served on the respondent’s designated agent,**

**if one exists.** Failure to properly serve the designated agent may result in delay or dismissal of your petition. A list of designated agents is available at <http://www.ocb-nyc.org/general-info/designated-agents/> . See OCB Rule § 1-07(c)(1)(iv).

- **Proof of service:** You may serve documents on respondents by mail or in person during business hours. Provide OCB with proof that you have properly served each respondent, meaning the “designated agent” if one exists. See OCB Rule § 1-12(d). You may use one of the following methods:

(1) **Certified mail:** If you send your petition “certified mail return receipt requested,” you will receive from the post office a "green card," which shows that the petition has been delivered to the respondent or its designated agent. Send OCB the original green card and keep a copy for your records.

(2) **Hand delivery:** Personally deliver the petition to each respondent or its designated agent along with an additional copy and have the receptionist sign or stamp the extra copy acknowledging that the petition was received. Send OCB the signed or stamped copy and keep a copy for your records.

(3) **Notarized affidavit:** Provide OCB with a sworn statement containing the date and manner (first class mail, United Parcel Service, express mail, in person, etc.) in which you served each respondent or its designated agent. This statement must be signed and notarized. Keep a copy for your records.

### **What Happens after You Serve and File Your Verified Petition:**

- **Docket number:** Your petition will be assigned a docket number; always use this number when writing or calling OCB. See OCB Rule § 1-12(b).
- **OCB review:** OCB will determine whether you have properly served the respondent or its designated agent with the petition. **Your petition cannot be processed until you provide OCB with proof that you have served each respondent or its designated agent.**
- **Executive Secretary review:** Your petition will be reviewed by the Board’s Executive Secretary for timeliness and sufficiency of facts. If your petition does not pass this preliminary review, you will be advised of the deficiency or you will receive a decision dismissing the petition. If your petition does not pass this preliminary review, you will be advised by OCB how to proceed. See OCB Rule § 1-07(c)(2).

- **Verified answers:** If your petition passes preliminary review, you will be so advised and the respondent(s) will be given 10 business days from the time of service of the Executive Secretary's sufficiency letter to file a verified answer. At this stage, respondent(s) are given an opportunity to tell their side of the story. Each respondent must serve you with a copy of its verified answer. *See* OCB Rule § 1-07(c)(3).
- **Verified reply:** You have the right to reply to the answer(s). You will have 10 business days, from the time the respondent(s) serve you with verified answer(s), to file and serve a verified reply (sworn before a notary). You are not required to file a reply. **However, additional facts or new matter alleged in the answer shall be deemed admitted by you unless you deny them in a reply.** You may discuss any facts or issues raised in the answer(s). However, you may not raise any new claims or facts; if you do, they may be disregarded. *See* OCB Rule § 1-07(c)(4).
- **Serving and filing your verified reply:** You must file an original and three copies of your verified reply with OCB. If an attorney has served and filed an answer on behalf of a respondent, you must serve a copy of your verified reply on that attorney rather than on the respondent or its designated agent. *See* OCB Rule § 1-07(c)(2).
- **Proof of service:** As with the verified petition, you must provide OCB with proof that you served the verified reply on each respondent using one of the three methods stated above.
- **Extensions of time:** Reasonable requests for extensions of time to file answers and replies may be granted. To obtain an extension of time, the requesting party should first call the parties and ask for their consent. Then the party seeking the extension files a written request with OCB and advises whether the other parties have consented. The decision about whether to grant an extension will be made by OCB, not the parties.
- **Always copy all parties:** A copy of all correspondence sent to OCB concerning your case, such as requests for extensions of time, documents, additional information, etc., **must** be sent to all parties or their attorney so that they may review the materials and, if appropriate, respond. Respondents must also send you copies of their correspondence with OCB. You should indicate on your submission to OCB to whom you sent copies.
- **Conferences:** Your case will be assigned to a Trial Examiner who will review all of the papers and schedule a conference at OCB. All parties are expected to attend the conference in order to discuss the case and determine whether the matter can be settled, or whether a hearing or additional documents are necessary before your case can be decided by the Board. *See* OCB Rule § 1-07(c)(6)(i).
- **Hearings:** A hearing is not held in every case. You will be advised by the Trial Examiner whether a hearing is necessary and what it will involve.

## **The Board's Decision:**

- **Review by the Board:** The length of time that it takes the Board to review a case depends upon many factors. When your case is scheduled to be discussed by the Board in executive session, you will receive a letter as well as a copy of the agenda for that meeting. **The letter is advisory only.** The parties are not permitted to attend Board meetings unless special circumstances exist and they have been so notified.
- **Final decision:** After the Board rules on your case, you will receive a copy of the signed decision by certified mail.

NOTE: This guide is not a legal document. In the event this guide conflicts with the NYCCBL or the OCB Rules, the NYCCBL and/or the OCB Rules will take precedence.