

## PRO SE GUIDE FOR VERIFIED IMPROPER PRACTICE PETITIONS

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

- You can review 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”). The NYCCBL and the OCB Rules describe the law and procedures regarding improper practice claims. Complete copies of both are available at <http://www.ocb-nyc.org/general-info/law-rules/>.
- You can review prior Board of Collective Bargaining (“Board”) decisions that interpret the NYCCBL to consider how the law may apply to your claim. Board decisions are available at <http://www.ocb-nyc.org/general-info/search-our-cases-advanced/>.
- You can review OCB’s Website at <http://www.ocb-nyc.org>.
- You can speak to an OCB Pro Se Officer by calling (212) 306-7160. 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 may help you determine if your claim is one which the Board can hear and may answer procedural questions which relate to the filing and processing of your claim. You may, but are not required 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) **Using numbered paragraphs**, state the facts of your case. Be as specific as possible; the more relevant details you provide, the better. Include such facts as names, dates, times, 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 the document(s), 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 if the Board rules in your favor. 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 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 first class mail, certified mail, overnight mail, email, or in person during business hours. Keep a copy for your records. If you file by email, send your petition and any attachments to [nyc-ocb@ocb.nyc.gov](mailto:nyc-ocb@ocb.nyc.gov). 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 each 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 on OCB’s website at <http://www.ocb-nyc.org/general-info/designated-agents/>. See OCB Rule § 1-07(c)(1)(iv). You may serve documents on respondents in person during business hours or by first class mail, certified mail, overnight delivery, or email.

• **Proof of service:** 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 the designated agent for each respondent 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 the designated agent for each respondent. This statement must be signed and notarized. An affidavit of service form is available on our website. <http://www.ocb-nyc.org/uploads/files/AFFIDAVIT-OF-SERVICE-002-qiU.pdf>. Keep a copy for your records.

(4) **Email:** If you serve by email, either simultaneously copy (“cc”) [nyc-ocb@ocb.nyc.gov](mailto:nyc-ocb@ocb.nyc.gov) or attach to the petition a copy of the email transmitting the document that includes the email address of the recipient(s) and the sender, the date and time of transmission, and any attachments. *See* OCB Rule § 1-12(a)(5).

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

• **Docket number:** Your petition will be assigned a docket number. You will receive an email or letter acknowledging that the petition was filed that contains the docket number. Always refer to 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 the designated agent for each respondent.**

• **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 the preliminary review, you will be so advised and the respondent(s) will be given 10 business days from the date of service of the Executive Secretary’s sufficiency letter to file a verified answer. The date of service

is generally the date of the sufficiency letter. 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.** Your reply should discuss any new facts or issues raised in the answer(s), but you may not raise any new claims or facts in the reply; if you do, they may be disregarded. *See* OCB Rule § 1-07(c)(4).

- **Serving and filing your verified reply:** You must file your verified reply, with proof of service, 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 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 contact the opposing 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: In the event this guide conflicts with the NYCCBL or the OCB Rules, the NYCCBL and/or the OCB Rules will take precedence.**