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New Rules of Practice and Procedure Effective date November 23, 2018

The purpose of this advisory is to highlight the addition of two new rules to OCB's Rules of Practice and Procedure ("OCB Rules") and outline how parties practicing before the Board of Certification and Board of Collective Bargaining should utilize these new rules.

I. OCB RULE § 1-12(l): Motions to Dismiss in Lieu of an Answer

In OCB Rule § 1-12(l), entitled "All other motions" the following sentence has been added:

"Permission from the Director or the Director's designee shall be required prior to filing and serving a motion to dismiss in lieu of an answer."

When is a Motion to Dismiss in Lieu of an Answer appropriate?

These types of motions typically rely upon all the relevant facts asserted in the petition and should only be filed when there are no relevant disputed facts. In addition, the legal issues raised in the Motion should be dispositive of all or significant aspects of claims such that prevailing on the motion will either result in dismissal of the petition or a significant portion of the petition.

What will the Director consider in ruling on a Request for Permission to file a Motion to Dismiss in Lieu of an Answer?

The Director will evaluate whether there are issues of fact that require a hearing prior to addressing any dispositive legal issue. The Director will also evaluate whether the dispositive legal issues the moving party seeks to address will resolve all or part of the petition and whether it is a beneficial use of OCB's resources to resolve only a portion of the case in an interim decision.

What should the Request for Permission contain?

The request for permission to file a motion to dismiss in lieu of an answer can be made in a letter and should contain a statement representing that there are no relevant disputed facts upon which the motion to dismiss is based. In other words, the request should either assume that all the facts alleged in the petition are true or reference the specific facts in the petition that are undisputed. The request should also contain a clear statement of the moving party's dispositive legal claims and at least some legal support for such claims. A full legal brief of the issues is not necessary. As with all case correspondence, the request should be served on all opposing counsel.

The moving party is free to file its full motion and legal argument with the request for permission or it may file a less complete statement as outlined above.

When should a Request for Permission be made?

A request for permission to file a motion to dismiss in lieu of an answer should be filed well before the answer is due. Consideration of a request to file a motion to dismiss in lieu of an answer will not automatically extend the time that a party is given to answer a petition and is not intended to delay the response process set forth elsewhere in the OCB Rules. *A request for permission to file a motion to dismiss filed on or immediately before the date the answer is due will not toll the time to file an answer.*

How will the matter be processed after a Request for Permission is made?

The Director will make every effort to rule on the request promptly. A response to the Request for Permission by the non-moving party is not necessary, unless requested by the Director.

If the request is denied, the moving party will be directed to file an answer on the due date. The remaining pleadings and case processing will be governed by § 1-02 or § 1-07 of the OCB Rules.

If the request is granted, the moving party will be directed to file and serve its motion and legal argument on the day the answer is due. Pursuant to OCB Rule § 1-12(1), answers to the motion must be filed and served within 10 business days of service of the motion.

If the full motion and legal argument are filed with the request and the request is granted, the non-moving party's time to answer pursuant to OCB Rule § 1-12(1) begins to run when permission to file the motion has been granted.

II. OCB RULE § 1-12(o): Amicus Curiae Briefs

OCB Rule §1-12(o) provides that a non-party may request permission from the Director to file an amicus curiae brief in any matter pending before the Board of Certification or the Board of Collective Bargaining. "The non-party's brief must be submitted with the request for leave to file and served on the parties. Leave to file may be granted in the discretion of the Director, after notice and an opportunity to be heard has been given to the parties."

What must the Request for Permission to File an Amicus Curiae Brief contain?

Unlike the request for permission to file a motion to dismiss in Rule 1-12(1), the party's brief **must** be filed with request. The request for permission need only address the basis of the non-party's interest in the case, not the legal issues that it seeks to argue.

How will the matter be processed after a Request to File an Amicus Curiae Brief is made?

Unlike the request for permission to file a motion to dismiss in OCB Rule § 1-12(1), once a request to file an amicus curiae brief has been made, the parties to the case will be advised that they can submit a response by a date certain. After receiving any responses, the Director will promptly notify the parties whether the non-party's request is granted.