

2017 OCB RULES REVISION SUMMARY			
SECTION	PROPOSED REVISION	EXPLANATION	OTHER AFFECTED SECTIONS
<b>GLOBAL CHANGES</b>			
	Eliminate Requirement to file three (3) copies of each document.	<p>We already scan all submissions and store them electronically and do not need to waste paper.</p> <p><b>Exception: injunctive relief petitions. § 1-07(d)(3)</b>            Since these matters are processed quickly, it is more efficient for us to have the original and three copies if it is being filed in person.</p>	§1-02(b) §1-02(i) §1-02(j)(3) §1-02(m)(1), (5) §1-02(r) §1-02(u)(1), (4) §1-02(v)(1) §1-05(m)(2)(ii) §1-05(m)(3) §1-07(c)(2)(ii) and (iii) §1-07(c)(3)(ii) and (4) §1-07(d)(5) §1-08(e) and (f) §1-08(h) §1-10(h) §1-12(k), (l)
	Eliminate facsimile as a method of acceptable filing and/or service.	<p>Currently, facsimile is rarely used. Most filing and service is accomplished by mail, email, or hand-delivery. OCB's e-filing system will provide another easy alternative method.</p>	§1-02 (c)(1)(i),(ii) & (v) §1-02 (d)(1),(5) §1-02 (e)(1)(i),(ii) §1-02(m)(2)(i), (v) §1-02(u)(2)(i) §1-02(v)(1)(i) and (viii) §1-03(b)(1) and (2) §1-04(a)(1) §1-05(b)(1) §1-07(c)(1)(i)(A) and (B) §1-07(d)(2)(i) and (ii)

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			§1-07(d)(5), (6), (7) §1-08(c)(1) §1-08(d)(1)
	Require Petitioners to list an email address.	The majority of our business communication is currently conducted by email.	§1-02 (c)(1)(i) §1-02 (d)(1) §1-02 (e)(1)(i) §1-02(m)(2)(i) §1-02(v)(1)(i) §1-03(b)(1) and (2) §1-04(a)(1) §1-05(b)(1) §1-07(c)(1)(i)(A) §1-07(d)(2)(i) §1-08(c)(1) §1-08(d)(1)
	Conforming time limits to business days, instead of calendar days	In representation cases, the time to answer a petition varied based on the subtype of petition. Using 20 business days after service of the notice makes the response time uniform.  In other instances, where the difference between business and calendar days is not significant, response times have been modified to “10” business days.	§1-02(c), (h), (i) §1-02(m)(2), (3) §1-02(m)(5) §1-02(u)(1), (4) §1-02(v)(1), (3) §1-03(b), (d) §1-04(a)
	Additional/Improved Cross References	In several places, cross-references have been added to assist the reader in navigating through the requirements of the Rules. This includes reference to e-filing in the “paper” filing sections.	§1-05(b), (g) §1-06(b)(1)(i) §1-06(c)(3) §1-07(b)(2)(i) §1-07(b)(3) §1-07(c)(1)(i) §1-07(c)(1)(i)(F)(ii)

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			§1-10(h) §1-12(a)(4) §1-12(c) and (d)
	Made uniform the words used to describe filing a document with OCB.	There was significant variation in the words used to describe filing a document with OCB. All now conform to either “shall be filed, with proof of service, with the Board” or “shall be in writing, signed, and filed with the Board.”	§1-02(b) §1-02(u)(1) §1-02(v)(1) §1-05(m)(2)(ii) §1-05(m)(3)(ii) §1-05(m)(4) §1-07(c)(1)(F)(i) §1-07(c)(3)(ii) §1-08(e), (h) §1-10(h) §1-12(l)
	Service by email by the Board is permitted.	Expanding how all documents can be served to include email.	§1-07(c)(2)(i) §1-07(d)(9)(v) §1-12(c)
	Filing is permitted by email and by internet intake.	Expanding how all filings can be made to include email and internet intake (“e-filing”).	§1-07(d)(3)
	Service by email by a party is permitted.	Expanding how all documents can be served to include email.	§1-07(d)(3), (5), (6) §1-12(d)
<b>§1-02 REPRESENTATION PROCEEDINGS</b>			
§1-02(c)(1)(iii)	Eliminate requirement to include “classes” of titles in Representation petitions.	OCB needs to know the titles at issue, not the “classes of titles.”	§1-02(d)(3) §1-02(m)(2)(iii) §1-02(u)(1) §1-02(u)(2)(iii)
§1-02 (c)(2)(ii)	Correct showing of interest rules to reflect 2005 NYCCBL Amendment.	Prior to the 2005 Amendment, the showing of interest requirement referenced NYCCBL §12-307(a)(2), (3), and (5). Since the 2005 Amendment renumbered subparagraph (5) to	§1-02 (e)(2)(ii) §1-02(t)

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		(6), the rule must be modified to reference NYCCBL §12-307(a)(6).	
§1-02 (f)	Permit submission of electronic showing of interest in representation cases.	We have been accepting showing of interest gathered electronically for several years.	
§1-02(g)	Clarification of window period for filing representation petitions.	Proposed language clarifies the existing rule to conform with the Board's interpretation of the 30-day filing period in <i>LEEBA</i> , 78 OCB2d 9 (BOC 2009).	
§1-02(h)	Modify Notice posting requirements to: (i) Reflect how OCB creates and posts the Notice to Employees; (ii) Allow for posting by contemporary communication/ distribution methods; (iii) Clarify that the public employers must certify that the notice has been posted or distributed to employees; certifications do not need to be signed.	OCB prepares only one notice of petition that is sent to the employer for distribution and posted on OCB's website, where it is most easily accessible to the public.  OCB has been permitting employers to fulfill the requirement to post notices of representation petitions in the manner that they customarily communicate information to employees. This may include bulletin boards, email, intranet posting, etc.  Language being proposed conforms to posting requirements in §1-02(o) and (u).	§1-02(m)(3) §1-02(o) §1-02(u)(3)
§1-02 (j)(2)	Refer to all representation matters as petitions.	Certain matters were referred to as motions, but were processed in the same way as petitions.	§1-02(s) §1-02(u)
§1-02 (j)(3)	Set a time frame for responses to Appeals of the Director of Representation's dismissal of a petition.	In practice, the non-moving party is given the opportunity to respond to an appeal of the Director of Representation's dismissal of a petition. The insertion codifies the practice and sets 10 business days from service of the appeal to respond.	
§1-02(m)(5)	Objection period for Voluntary Recognition petitions shortened to two weeks.	Rule allowed 20 calendar days or nearly a month to object. Objections to Voluntary Recognition are rare; parties like these petitions processed quickly.	

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§1-02(o)	Clarify election provision to acknowledge use of a broad scope of election procedures.	The old rule uses terms unique to in-person elections, i.e. “hours the polls will be open.” Elections are now conducted over phone, web, and by mail.	§1-02(p)(1)
§1-02(u)(1)	Eliminate requirement for an affidavit accompanying a petition to amend certification and language describing types of amendments; eliminate service requirement.	Affidavits and service are not required for other types of representation petitions and are not necessary for petitions to amend certification.  The BOC has construed this rule to liberally allow amendments to certification; the language is being modified to clarify and comport with those BOC rulings.	§1-02(u)(5)
§1-02(u)(2)(iii)	Eliminated requirement to supply effective date of new title; Added requirements to specify agencies where employees work and number of employees.	Effective date was not relevant to all types of petitions amending certification. New information being sought is applicable to all petitions amending certification and is more useful to OCB in the docketing and processing of the petition.	
§1-02(u)(4)	Lengthens response time to oppose a petition to amend certification from 10 to 20 business days from service of the Notice of Filing.	Conforms to response times for other representation petitions.	
§1-02(v)	Clarify language to refer to employees and eliminate service requirements.	Service is not required for other types of representation petitions and is not necessary for petitions to designate employees managerial/confidential.	
§1-02(v)(3)	Eliminate time limit on intervention and affidavit requirement for intervention.	§1-12(k) provides that intervention must be made timely; no need to have existing language different from §1-12(k). Affidavits are not required for other types of representation petitions and are not necessary for intervention in a managerial confidential petition.	

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<b>§1-05 IMPASSE PANELS</b>			
<b>§1-05(e)</b>	Objection to Director’s recommendation on impasse to be made within three days of notice of the recommendation.	Language modified to be internally consistent. Rule does not require the notice of recommendation to be in writing.	
<b>§1-06 ARBITRATION</b>			
§1-06(b)(iii)	Conform waiver requirement in rule to language in amended statute.	The waiver provision in the NYCCBL was amended in 2012. Language in rule modified to reflect statute.	
§1-06(c)(1)	Clarification of when a petition challenging arbitrability may be filed.	A petition challenging arbitrability is due within 10 business days after service of the Request for Arbitration and Waiver. Additional language added to clarify that the time to file is triggered by service of the last filed document.	
<b>§1-07 PROCEEDINGS BEFORE THE BOARD OF COLLECTIVE BARGAINING</b>			
§1-07(c)(1)(iv)	Clarify that it is the employer/union’s responsibility to keep their designated agent for service up to date.	Not previously stated in the rules; new language states how this provision had been administered. Service on a party listed on OCB’s current designated agent list is proper service.	
§1-07(c)(2)(iii)	Clarify that objections to deficiency letters must also be filed within 10 business days after service of the deficiency letter.	This change reflects how the rule has been interpreted.	
§1-07(c)(5)	Require service of briefs simultaneously with the petition, answer, or reply, unless prior permission to file separately granted.	Current rule is silent on when brief is due, although the rules require pleadings to contain “an argument with citations to legal authority.” In most cases, briefs are filed simultaneously with the pleading. This is OCB’s preference.	

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<b>§1-12 GENERAL PROVISIONS</b>			
§1-12(a)	New definitions for “filing,” “electronic filing,” “service,” and “proof of service.”	The proposed amendments relocate the definition of Filing to this section and add language to clarify what is sufficient filing. Definition of e-filing added. Definition of service also moved to this section and the ability to serve by email has been added. New definition of proof of service added and addresses service by email.	§1-12(c) §1-12(d) §1-12(e)
§1-12(d)(2)	Eliminating requirement to also serve by mail things that were served by email.	For some time, many of our parties have been accepting service of process by email. We do not think service of a hard copy is necessary any longer.	
§1-12(e)(1)	Clarification of how papers can be filed with OCB.	Any type of mail or email allowed. Proof of service, where required, should accompany filing.	
§1-12(e)(2)	New Section governs use of OCB’s internet based intake platform.	Matters can be initiated using OCB’s internet intake from its website. To the extent possible [a petitioner], can also use this intake system to submit responsive pleadings. Submissions via this system do not require service and are deemed filed on the date submitted [up until midnight.]	
§1-12(g)	Eliminating five additional days for response time to documents served by regular mail; clarification of when service is complete.	Because most documents will be served by email, additional five days for mail service is not needed. To extent additional response time is needed, the parties ask for extensions. Clarifying that service is complete when mailed [in the old rule] and when an email is sent.	
§1-12(l)	Permission to file a motion to dismiss is required	The rules do not expressly provide for motions to dismiss. This section has been used to file them in lieu of an answer. They are not appropriate in all cases and therefore, to avoid unnecessary work, permission to file should be obtained.	