

§ 200.11 Filing; service

(a) The term *filing*, as used in this Chapter, except as otherwise specifically provided, shall mean delivery to the board or an agent thereof, or the act of mailing to the board, or deposit of the papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, before the latest time designated by the overnight delivery service for overnight delivery.

(b) The term *service*, as used in this Chapter, except as otherwise specifically provided, shall mean delivery to a party or the act of mailing to a party, or deposit of the papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, before the latest time designated by the overnight delivery service for overnight delivery. Personal service is complete upon delivery. Service by mail or by overnight delivery is complete at the time of sending. Except as otherwise directed by the board or one of its designees, where a paper described in this Chapter is served by regular mail, the due date of any response will have five calendar days added to the time specified in this Chapter. In the case of service by overnight delivery, an additional day will be added to any prescribed time in which any responsive pleadings, papers, or other required act triggered by the service is calculated.

(c) *Overnight delivery service* means any delivery service which regularly accepts items for overnight delivery to any address in the state.

(d) *Proof of Service* shall mean evidence that any document required to be filed with the Board or any of its agents was delivered to all other parties or other mandated recipients as required by these rules or by the Act. Proof of service shall consist of an affirmation by the individual who served the document, specifying the document served, the person or persons upon whom it was served, and the means by which it was served. Such affirmation shall be signed and shall state “I

affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” Proof of service may also take the form of a United States Postal Service tracking receipt or report, or by other United States Postal Service issued document establishing the date of mailing, the identity and address of the recipients, or an acknowledgment of receipt, whether sworn or unsworn, by the party or parties upon whom service is required, or by an agent thereof.

§ 200.12 Electronic filing and service

(a) All filings under this Title, except proof of the showing of interest in representation matters, may be submitted electronically. Instructions for electronic filing shall be available on the board’s website. Parties wishing to file and receive pleadings, memoranda, correspondence and any case-related information in paper form must file an application with the board. Such application will only be granted if the party demonstrates hardship, inability to comply with the procedure, or other good cause. Application forms shall be available on the board’s website.

~~Notwithstanding any provisions of this Chapter to the contrary including section 200.11 of this part, the director or administrative law judge before whom a matter is pending may permit the electronic filing and electronic service of any or all pleadings or related documents by and upon a party to a proceeding if such party expressly so consents to electronic service in a form provided by the board. Such permission and consent must be on notice to all parties.~~

(b) ~~Notwithstanding any provisions of this Chapter to the contrary including section 200.11 of this part, the chairperson, in consultation with the board, may generally authorize the electronic service and/or filing of any documents for any or all proceedings before it or before an~~

~~administrative law judge provided that: such general authorization is posted on the board's website and such general authorization becomes effective no sooner than sixty days from the date of such posting; provision is made to permit unrepresented individuals to choose to file and receive all pleadings, memoranda, correspondence and any case-related information in paper form; and the board or its designees retain discretion in determining whether to grant the application of a party to file and serve in paper form due to hardship, inability to comply with the procedure, or other good cause shown.~~

(c) The term electronic filing as used in this Chapter, shall mean a document submitted by means specified by the agency on its website. Such documents shall be: (i) in a format that can be read using software that is readily available and is in widespread use by government, businesses, and individuals; and (ii) electronically searchable unless the party providing the document certifies in a written attachment to document served and/or in any required proof of service that it does not have the capacity to produce a searchable file.

(d) The term electronic service as used in this Chapter, shall mean delivery before the latest time designated for service by electronic mail to a party sent to an electronic mail address designated by the recipient. Electronic service is deemed complete upon sending unless an error message or other notification that the served document has not been successfully dispatched or received is returned, in which case the service is null and void.

§ 200.14 Affirmations

Any affirmation submitted pursuant to these rules shall be signed and shall state “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of

law.” The board will prescribe forms consistent with this section. Any requirement in this Chapter for an affirmation may alternatively be satisfied by submitting a writing signed and sworn to before any person authorized to administer oaths.

§ 201.2 Petition; filing

(a) A petition to investigate a question concerning representation of public employees under the act (hereinafter called a petition for certification), or a petition alleging that an employee organization which has been certified or is being currently recognized should be deprived of representation status as to all or part of a unit (hereinafter called a petition for decertification), may be filed by one or more public employees or any employee organization acting in their behalf, or by a public employer, provided that individual employees may not file a petition for certification.

(b) A petition may be filed at any time by a public employer or a recognized or certified employee organization to clarify whether a position is encompassed within the scope of an existing unit (hereinafter called a unit clarification petition), or to determine the unit placement of a position (hereinafter called a unit placement petition). The filing and processing of the petition shall be in accordance with sections 201.5(c), 201.5(d), 201.7, 201.8(a) and (g), and 201.10 of this Part, and Part 212. Section 201.4 of this Part shall not apply. In determining the unit placement of a position, the administrative law judge shall consider whether the placement would be consistent with the criteria set forth in section 207 of the act. The administrative law judge may decline to make any clarification or placement not otherwise consistent with the purposes or policies of the act. Exceptions to any determination of the administrative law judge may be filed pursuant to Part 213.

(c) Petitions under this section shall be on a form prescribed by the board. In cases filed by paper filing, a signed original [~~and four copies~~] of the petition shall be filed with the director. In electronically filed cases, a signed [~~paper original~~] copy will be submitted [~~in addition to the electronically filed petition~~]. Prior to an administrative law judge issuing a decision, a petition may be withdrawn only with the consent of the director. After the issuance of a decision by the administrative law judge, the petition may be withdrawn only with the consent of the board. Whenever the director or the board, as the case may be, approves withdrawal of any petition, the case shall be closed.

§ 201.4 Showing of interest

(a) A showing of interest shall be filed simultaneously with a petition or motion to intervene.

(b) In determining whether the evidence submitted to establish a showing of interest is timely, the director shall accept evidence of current membership. The director shall also accept dues

deduction authorizations, original designation cards, or petitions on a form prescribed by the board, all of which were signed and dated within one year of their submission. A showing of interest may consist of any combination of the foregoing evidence, membership lists, dues deduction authorizations. Designation cards shall be submitted in alphabetical order.

The director may require that an alphabetized listing of the names of the signatories on individually signed and dated petitions be filed within a reasonable period of time after submission of the showing of interest petitions. If such an alphabetized listing is required, the person or persons filing the listing shall simultaneously file with the director a signed attestation that the listing sets forth only the names of the signatories on the showing of interest petitions.

(c) A determination by the director that a showing of interest is timely and that it is numerically sufficient is a ministerial act and cannot be reviewed by the board.

(d) A declaration of authenticity shall be filed by the petitioner or, in the case of a motion to intervene, the movant, with the director simultaneously with the filing of the showing of interest.

Such declaration shall contain the following:

- (1) the name of the individual executing the declaration, and a statement of the declarant's authority to execute it;
- (2) a declaration that, upon the declarant's personal knowledge or upon the declarant's inquiries, the persons whose names appear on the evidence submitted have themselves signed such evidence on the dates specified thereon, and that the persons specified as current members are in fact current members and, that inquiry was made regarding their inclusion in the negotiating unit which is the subject of the representation petition. If the declaration is upon inquiries the declarant has made, and not upon the declarant's personal knowledge, the declarant shall specify the nature of those inquiries; and

(3) a signed affirmation stating, “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.”

(e) The director may direct an investigation and, if necessary, a hearing to ascertain whether the evidence submitted is accurate. If it is determined after investigation or hearing that the evidence is fraudulent or that the declaration is false, such reasonable action as is appropriate to protect the integrity of the procedures of the board in connection with the pending matter shall be taken. Such a determination and such action taken shall be reviewable by the board pursuant to Part 213.

§ 201.5 Contents of petition for certification; contents of petition for decertification; contents of petition to clarify existing unit or to determine unit placement of positions; response to petition

(a) A petition for certification shall contain the following:

- (1) the name, affiliation, if any, and address of petitioner;
- (2) the name and address of the public employer involved;
- (3) a description of the negotiating unit which the petitioner claims to be appropriate;
- (4) the names and addresses of any other employee organizations which claim to represent any public employees within the allegedly appropriate unit. If there is any contract covering public employees in such unit, petitioner shall specify the duration, the parties, and the unit involved in the contract, or attach a copy of the contract, and the date of the commencement of the fiscal year of the employer;

- (5) the number of employees in the allegedly appropriate unit;
- (6) if an employee organization, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Part, is met;
- (7) if an employee organization is seeking to represent a unit of unrepresented employees, the date on which it asked the public employer for recognition;
- (8) if an employee organization, an affirmation that petitioner and the employee organization, if any, with which it is affiliated does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike; and
- (9) a clear and concise statement of any other relevant facts.

(b) Petitions for decertification shall contain the following:

- (1) the name, affiliation, if any, and address of petitioner;
- (2) the name or names of the employee organization(s) which have been certified or are currently recognized by the public employer and which claim to represent the employees in the unit involved, the expiration date of any contract covering such employees, and the date of the commencement of the fiscal year of the employer;
- (3) the name and address of the public employer involved;
- (4) whether the employee organization(s) which have been certified or are currently recognized by the public employer have engaged in a strike or have caused, instigated, encouraged or condoned a strike against any government;
- (5) the grounds upon which decertification or revocation of recognition is sought;
- (6) a description of the unit, including the number of employees;

(7) if an employee organization, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Part, is met; and

(8) a clear and concise statement of any other relevant facts.

(c) Petitions filed pursuant to section 201.2(b) of this Part shall contain the following:

(1) the name, affiliation, if any, and address of the recognized or certified employee organization;

(2) the name and address of the public employer involved;

(3) a description of any affected existing negotiating unit, a copy of any applicable certification or recognition, and the date thereof;

(4) the number of employees in the existing unit and in the unit proposed in the petition;

(5) the job description and classification of each position;

(6) the name and address of any other employee organization which claims to represent the position;

(7) a copy of any contract affecting the position; and

(8) a statement by the petitioner setting forth the details of the desired clarification or placement and the reasons therefor.

(d) Response. Except for the petitioner, all parties shall file [~~either an original and four copies of~~ a response to the petition~~], or, in electronically filed cases, a paper original in addition to the electronically filed copy,~~] with the director within 10 working days after receipt of a copy of the petition from the director, with proof of service of a copy thereof upon all other parties. The response shall include a specific admission, denial or explanation of each allegation made by the petitioner, a description of the unit claimed to be appropriate by the responding party for the purpose of collective negotiations and a clear and concise statement of any other facts which the

responding party claims may affect the processing or disposition of the petition, along with a signed declaration of its truthfulness by an identified representative of the responding party.

(e) Notice of filing of petition. In any case in which the director determines that notice in accordance with this section may be reasonably given by a party filing a petition for certification or a petition under section 201.2(b) of this Part, which seeks a review of a managerial or confidential designation made pursuant to section 201.9 of this Part, that party shall mail or, in electronically filed cases, electronically mail, notice thereof in conformity with the director's determination to each managerial or confidential designee named in the petition and state in writing to the director that it has mailed or electronically mailed the notice of filing in accordance with this section. The notice shall include the date the petitioner filed the petition with the director and a copy of the petition and such attachments thereto as pertain to the named designee.

(f) The director or designated administrative law judge may permit an amendment of a petition at any time prior to the issuance of a decision, for good cause shown and under such terms as may be deemed just and proper, filed and served consistently with the method of filing and service of the original petition, and proof of service on all other parties provided, however, that petitions filed pursuant to § 201.3 of this Part, or motions to intervene in such matters, may not be amended where such amendment is not supported by the showing of interest accompanying the original petition or motion to intervene.

§ 201.8 Investigation and election

(a) Initial review and processing.

(1) Investigation. After the filing of a petition, the director shall direct an investigation of all questions concerning representation, including, if applicable, whether the showing of

interest requirement, as set forth in sections 201.3 and 201.4 of this Part, has been satisfied; whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit; and whether there is agreement among the parties as to the appropriateness of the proposed unit.

(2) Pre-hearing Conference The director may direct all parties to attend a pre-hearing conference pursuant to the procedures specified in Part 212 of this Chapter.

(3) Hearing The director may direct that a hearing be conducted by an administrative law judge, in which event a notice of hearing specifying the time and place of the hearing shall be served upon the parties. The conduct of the hearing shall be in accordance with the procedures specified in Part 212 of this Chapter.

(b) Determination of representatives on consent. Subject to the director's approval, the parties in a representation case may agree on a method by which the director may determine the question of representation.

(c) Action by director. After completing the investigation or hearing, as the case may be, or upon the consent of the parties, the director shall dispose of the questions concerning representation.

(1) Certification without an election. If the choice available to the employees in a negotiating unit is limited to selecting or rejecting a single employee organization, that choice may be ascertained by the director on the basis of dues deduction authorizations and other evidence instead of by an election. In such case, the employee organization involved will be certified without an election if a majority of the employees within the unit have executed a showing of interest pursuant to section 201.4 (b) of this Part which remains current as defined in that section. Any new or additional evidence of majority support shall be accompanied by a declaration of authenticity, as defined in section 201.4

(d) of this Part. The determination by the director that the indications of employee support are not sufficient for certification without an election is a ministerial act and will not be reviewed by the board. The director shall inform all parties in writing if the director determines that the indications of employee support are sufficient for certification without an election. The director's determination in this respect is reviewable by the board pursuant to a written objection to certification filed with the board by a party within five working days after its receipt of the director's notification. An objection to certification shall set forth all grounds for the objection with supporting facts and shall be served on all parties to the proceeding. A response to the objection may be filed within five working days after a party's receipt of the objection. A copy of any response shall be served on all other parties.

(2) Direction of an election. An election will be held whenever the choice available to the employees within a negotiating unit includes more than one employee organization, or when the only employee organization seeking certification does not produce indications of employee support sufficient for certification without an election. If the director determines that an election shall be held, such election shall be conducted by an agent of the board at such time and place and upon such terms and conditions as the board, the director or the agent may specify.

(d) Election procedure.

(1) Unless otherwise directed by the board, the director shall conduct and supervise all elections. All elections shall be by secret ballot. Absentee ballots will not be permitted. A motion to intervene in any such election may be filed pursuant to section 212.1 of this Chapter, as long as notification of such desire is given to the director within what the

director deems to be a reasonable time prior to the scheduled date of the election.

Whenever two or more employee organizations are included as choices in an election, any participant may, upon prompt request to and approval by the director, have its name removed from the ballot; provided, however, that with respect to a petition for decertification, the employee organization certified or currently recognized may not have its name removed from the ballot without giving due notice in writing to all parties and the director, disclaiming any representation interest among the public employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the director may prescribe. Any party or the board's agent may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the tally of ballots shall be provided to the parties.

(2) Any party may file with the director [~~an original and four copies of~~] objections to the conduct of the election or conduct affecting the results of the election within five working days after its receipt of a final tally of ballots. Such objections shall contain a clear and concise statement of the facts constituting the bases for the objection, including the names of the individuals involved and the time and place of occurrence of each particular act alleged. The objections shall be in writing and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law." Copies of such objections shall simultaneously be served upon each of the other parties by the party filing them, and

proof of service shall be filed with the director. [~~Should the chairperson authorize electronic filing of objections, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~]

(3) An [~~original and four copies of an~~] answer shall be filed with the director within five working days after receipt from the director of notice of processing of the objections, with proof of service on all other parties. The answer shall contain a specific admission, denial or explanation of each allegation of the objection and a clear and concise statement of any other relevant facts. The original shall be signed and shall contain a signed affirmation stating, “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” [~~Should the chairperson authorize electronic filing of objections, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~]

If a party fails or refuses to file an answer, such failure or refusal may be deemed to constitute that party’s admission of the material facts in the objections and a waiver by that party of a hearing.

(4) If objections are filed to the conduct of the election or conduct affecting the results of the election, or if challenged ballots are sufficient in number to affect the results of the election, the director shall investigate such objections or challenges, or both, and shall

take the appropriate action which may include the direction of a hearing in accordance with the provisions of Part 212 of this Chapter and the issuance of a decision.

(e) Runoff election.

(1) The director may conduct a runoff election without further order of the board when an election in which the ballot provides for not less than three choices (i.e., at least two employee organizations and “neither”) results in no choice receiving a majority of the valid ballots cast. Only one runoff shall be held pursuant to this section, unless the board directs otherwise.

(2) The ballot in the runoff election shall provide for a selection among the two or more choices receiving the largest number of votes, the sum of whose votes aggregate at least one more than half of the total votes cast. Upon the conclusion of the runoff election, the provisions of subdivision (d) of this section shall govern insofar as applicable.

§ 201.9 Employer applications for designation of persons as managerial or confidential

(a) Application; parties

(1) An application by a public employer seeking a designation by the board of certain persons as managerial or confidential as defined in section 201.7(a) of the act shall be on a form prescribed by the board for that purpose and shall be filed with the director.

~~[Unless the board has mandated or permitted electronic filing with respect to such applications, an original and four copies of the application shall be filed with the director.]~~ Prior to the issuance of a decision by the administrative law judge pursuant to section 201.10 of this Part, an application may be withdrawn only with the consent of the director. After the issuance of a decision by the administrative law judge, the application may be withdrawn only with the consent of the board. Whenever the director or the

board, as the case may, be approves withdrawal of any application, the case shall be closed. [~~Should the chairperson authorize electronic filing of applications, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~]

(2) The parties are the applicant and the persons who are within any of the job titles which the public employer is seeking to have designated as managerial or confidential; provided, however, that if any such persons are represented by a recognized or certified employee organization, such employee organization is a party in their stead.

(b) Time for filing of application. An application may be filed at any time; provided, however, that with respect to any persons who are in a unit for which an employee organization has been recognized or certified, only one application which has been processed to completion may be filed during a period of unchallenged representation status.

(c) Notice of filing of application Simultaneous with the filing of an application under this section, notice thereof, including the date when such application was filed with the director, shall be served by the public employer upon each of the persons who are within any of the job titles which the public employer is seeking to have designated as managerial or confidential, and upon any employee organization which has been recognized or certified to represent any of them.

(d) Contents of application An application shall contain the following:

- (1) the name and address of the public employer filing the application;
- (2) the name and address of the attorney or representative of the public employer;
- (3) each of the job titles that the public employer seeks to have designated as managerial or confidential, and the number of persons in each job title;

(4) a statement as to whether any of these job titles are within a unit presently represented by a recognized or certified employee organization or whether an employee organization is presently seeking to represent the persons occupying any of these job titles and the name of the employee organization;

(5) if there is any contract covering the persons within the job titles which it claims are managerial or confidential, the public employer shall specify the duration, the parties, and the unit involved in the contract;

(6) a statement as to whether the employer has ever filed a previous application seeking the designation of any of these job titles as managerial or confidential;

(7) a statement as to whether copies of the relevant job descriptions are attached;

(8) a statement that notice of the filing of an application has been mailed to each of the persons who are within any of the job titles which it is alleged are managerial or confidential, and to any employee organization which has been recognized or certified to represent any of them; and

(9) a clear and concise factual statement in support of the application, which shall identify job duties performed which allegedly form the basis for the designation sought.

(e) Response. The parties, as defined by paragraph (a)(2) of this section, except the applicant, shall file with the director within 10 working days after receipt of a copy of the application from the director, ~~[an original and four copies of]~~ a response to the application containing a signed declaration of its truthfulness by an identified representative of the responding party, with proof of service of a copy thereof upon all other parties. ~~[Should the chairperson authorize electronic filing of applications, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements~~

~~herein contained.]~~ The response shall include a specific admission, denial or explanation of each allegation made by the applicant and a clear and concise statement of any other facts which may bear on the application. If a responding party objects to the processing of an application on the ground that it was filed earlier than the time provided in subdivision (b) of this section, the response shall include a specific, detailed statement of why the application is untimely. Such objection to the processing of the application, if not duly raised, may be deemed waived.

(f) **Withdrawal of applications.** Before the issuance of a decision by the administrative law judge pursuant to section 201.10 of this Part, an application may be withdrawn only with the consent of the director. After the issuance of a decision by the administrative law judge, the application may be withdrawn only with the consent of the board. Whenever the director or the board, as the case may be, approves withdrawal of any application, the case shall be closed.

(g) **Investigation.** After the filing of an application, the director shall direct an investigation of all questions raised by the application.

(h) **Pre-hearing Conference.** The director may direct all parties to attend a pre-hearing conference pursuant to the procedures specified in Part 212 of this Chapter.

(i) **Hearing.** A hearing may be conducted by an administrative law judge, in which event a notice of hearing specifying the time and place for the hearing shall be served on the parties. The conduct of the hearing shall be in accordance with the procedures specified in Part 212 of this Chapter.

§ 202.2 Petitions; filing

A petition to review a question concerning the certification of an employee organization under procedures established by a local government pursuant to section 206.1 of the act (hereinafter called a petition for review), may be filed by one or more public employees within the affected

negotiating unit or any employee organization acting in their behalf, or by a public employer; provided, however, that individual employees may not seek certification. Petitions under this section shall be in writing and signed ~~and~~ and ~~[-An original and four copies of the petition]~~ shall be filed with the director. Petition forms will be supplied by the board upon request, or will be available on the agency's website. ~~[Should the chairperson authorize electronic filing of petitions, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~ Before the submission of a case to the board pursuant to section 202.8 of this Chapter, the petition may be withdrawn only with the consent of the director. After the submission of a case to the board, the petition may be withdrawn only with consent of the board. Whenever the director or the board, as the case may be, approves withdrawal of any petition, the case shall be closed.

§ 203.1 Application for approval; filing

An [~~original and four copies of an~~] application may be filed by a local government which, acting through its legislative body, has adopted or amended by local law, ordinance or resolution its own provisions and procedures, for a determination by the board that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules. Applications under this section shall be in writing and signed. [~~Should the chairperson authorize electronic filing of applications, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~] Application forms will be supplied by the board upon request, and will be available on the agency's website. Such an application may be filed at any time after the applicant has given public notice of its intention to so file, and may be withdrawn by the applicant at any time before disposition of it by the board and after giving public notice of such withdrawal. Such public notice shall be by posting in a conspicuous place at suitable offices of the applicant for not less than five working days, and inclusion in a public advertisement in a newspaper of general circulation in the area of the applicant for not less than one day.

§ 203.8 Procedures for the review of implementation of local government procedures under section 212 of the act

(a) The fact that a local government has not adopted rules and regulations within 45 days after the board has determined that its provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and this Chapter shall be prima facie evidence that the local government has not implemented its provisions and procedures in a manner substantially equivalent to the provisions and procedures set forth in the act and this Chapter.

(b) Petitions: filing. A petition to review the question of whether provisions and procedures of a local government are being implemented in a manner substantially equivalent to the provisions and procedures set forth in the act and this Chapter (hereinafter called a petition for review) may be filed by any person. Petitions under this section shall be in writing and signed. ~~[An original and four copies of the petition shall be filed with the board.] [Should the chairperson authorize electronic filing of such petitions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~ Petition forms will be supplied by the board upon request and will be available on the agency's website. The petition may be withdrawn only with the consent of the board. Whenever the board approves withdrawal of any petition, the case shall be closed.

(c) Time for filing of petitions. A petition for review may be filed within 60 days after the act or inaction complained of occurred or failed to occur.

(d) Contents of petitions for review. A petition for review shall contain the following:

- (1) The name, affiliation, if any, and address of petitioner.
- (2) The name of the local government involved.
- (3) The names and addresses of any employee organizations which have been certified or recognized to represent any public employees under the local government provisions and procedures.
- (4) The names and addresses of any other employee organizations which claim to represent any public employees under the jurisdiction of the local government involved.
- (5) A clear and concise statement of the grounds for alleging that the local government provisions and procedures, as implemented, are not substantially equivalent to the provisions and procedures set forth in the act and this Chapter.

(e) Notice of pending petitions. Upon the filing of a petition under this section, notice thereof, including the date when such petition was filed and the name and address of petitioner and the local government involved, shall be posted by an agent of the board on the public docket maintained by the board at its principal office.

(f) Investigation and hearing. The board shall direct an investigation of any questions raised by the petition. In conducting such an investigation, the board or its agent may require affirmations or direct a hearing. Any affirmation shall contain the language set forth in section 200.14 of this Title. If a hearing is directed, the board or its agent shall prepare and cause to be served upon petitioner and all other parties a notice of hearing before the board or an administrative law judge at a time and place fixed therein. Any hearing will be conducted in accordance with the procedures set forth in Part 212.

(g) Determination by the board. After receipt of a report and recommendations from its agent and of the record of proceedings of any hearing which may have been held, or upon the completion of its own investigation, and upon such exceptions as may have been filed pursuant to Part 213 of this Chapter, the board shall decide the issues and make such disposition of the matter as it deems appropriate.

§ 204.1 Charge

(a) Filing of charge.

(1) A~~n original and four copies of a~~ charge that any public employer or its agents, or any employee organization or its agents, has engaged in, or is engaging in, an improper practice may be filed with the director by one or more public employees or any employee organization acting in their behalf, or by a public employer, within four months of when the charging party first knew, or reasonably should have known, of the alleged improper

practice. [~~Should the chairperson authorize electronic filing of such charge, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~]

(2) If the facts constituting the alleged improper practice also are alleged to support a claim by an employee organization that a public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for a strike, then the charge may not be filed after the date on which the employee organization is required to file its answer to the strike charge pursuant to section 206.5 of this Chapter.

(3) The charge shall be in writing on a form provided by the director and shall be signed and shall contain a signed affirmation stating, “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.”

(b) Contents of charge. The charge shall include the following:

(1) the name, address and affiliation, if any, of the charging party, and the title of any representative filing the charge;

(2) the name and address of the respondent or respondents and any other party named therein;

(3) a clear and concise statement, preferably in numbered or lettered paragraphs, of the facts constituting the alleged improper practice, including the names, and, where known

or relevant, the titles and work locations of the individuals involved in the alleged improper practice; the date and the place of the occurrence of each particular act alleged; and the subsections of section 209 a of the act alleged to have been violated. Evidentiary exhibits may be attached but will not relieve the charging party of the requirement to provide sufficient factual particulars as set forth herein;

(4) if the charge alleges a violation of section 209-a.1(d) or section 209-a.2(b) of the act, whether the charging party has notified the board in writing of the existence of an impasse pursuant to section 205.1 of this Chapter; and

(5) a statement that the charging party is available to participate in the prehearing conference and the formal hearing immediately.

(c) Scope of negotiations cases. Where the primary basis of the dispute between the parties is alleged to be a disagreement as to the scope of negotiations under the act, either party may request of the director or an assigned administrative law judge that the matter be accorded expedited treatment.

(d) Amendments. ~~[The director or administrative law judge designated by the director may permit a]~~ A charging party may file a motion to amend the charge upon good cause shown ~~[before, during or after the conclusion of the hearing]~~ at any time prior to the issuance of the administrative law judge's decision and recommended order, upon such terms as may be deemed just and consistent with due process. The motion shall include a statement of good cause to justify the amendment, a proposed amended charge, and proof of service upon all other parties. A respondent may file a response to the motion within five working days after its receipt thereof, with proof of service of the response on all other parties.

(e) Withdrawals. A charge may be withdrawn by the charging party before issuance of a decision and recommended order based thereon upon approval by the director. Thereafter, a charge may be withdrawn only with the approval of the board. Requests to the director to withdraw a charge or to the board to withdraw a charge will be approved unless to do so would be inconsistent with the purposes and policies of the act or due process of law. Whenever the director approves the withdrawal of a charge, or the board approves the withdrawal of the charge, the case will be closed without consideration or review of any of the issues raised by the charge.

§ 204.3 Answer

(a) Filing. The respondent shall file ~~[with the director] [an original and four copies of]~~ an answer to the charge, with proof of service of a copy thereof on all other parties within 10 working days after receipt of a copy of the charge ~~[from the director]. [Should the chairperson authorize electronic filing of such answer, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~ The original shall be signed and shall contain a signed affirmation stating, “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.”

(b) Motion for particularization of the charge. If the respondent believes that a charge is so vague and indefinite that it cannot reasonably be required to frame an answer, the respondent may, within 10 working days after receipt of a copy of the charge ~~[from the director,] file[, in the same manner as would be applicable to the filing of an answer,]~~ a motion with the administrative law judge, with proof of service on all other parties, for an order directing the charging party to file a

verified statement supplying specified information. The charging party may likewise file a response to the motion within five [~~seven~~] working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The filing of such motion will extend the time during which the respondent must file and serve its answer until 10 working days after receipt of the ruling of the administrative law judge on the motion, or until such later date as the administrative law judge may set. The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

(c) Contents.

(1) The answer shall include a specific admission, denial or explanation of each allegation of the charge or, if the respondent is without knowledge thereof, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly meet the circumstances of the allegation.

(2) The answer shall include a specific, detailed statement of any affirmative defense, including but not limited to an allegation that the violation occurred more than four months before the filing of the charge. A clear and concise statement of the facts supporting any affirmative defense, including the names of the individuals involved and the date and place of the occurrence of each particular act alleged, shall be set forth. An answer to an alleged violation of section 209-a.1(g) of the act shall identify the statute, interest arbitration award, collectively negotiated agreement, policy, or practice that forms the basis of the employer's affirmative defense, if any.

(d) Motion for particularization of the answer. If the charging party believes that the statement of facts supporting any affirmative defense is so vague and indefinite that such charging party cannot reasonably be expected to address them in an expeditious manner at a hearing, such charging party may, within 10 working days after receipt of the answer, file ~~[with the administrative law judge in the same manner applicable to the filing of the charge]~~ a motion with the administrative law judge for an order directing the respondent to file a verified statement supplying specified information. The respondent may file a response to the motion within five~~[seven]~~ working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute grounds for precluding the respondent from offering any evidence as to the matters dealt with by the order.

(e) Amendment. ~~[The administrative law judge may permit the]~~ A respondent may file a motion to amend the answer upon good cause shown ~~[at any time before or during the hearing, or]~~ at any time prior to the issuance of the administrative law judge's decision and recommended order, upon such terms as may be deemed just, consistent with due process. The motion shall include a statement of good cause to justify the amendment, a proposed amended charge, and proof of service upon all other parties. A charging party may file a response to the motion within five working days after its receipt thereof, with proof of service of the response on all other parties.

(f) Admission by failure to answer. If the respondent fails to file a timely answer, the administrative law judge may deem such failure to constitute an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing.

(g) A public employer which is made a party to an improper practice charge pursuant to section 209-a.3 of the act may file responsive pleadings in accordance with subdivisions (a)-(e) of this

section. The administrative law judge may deem the public employer's failure to file any responsive pleading to constitute a waiver of the public employer's right to participate in any hearing held on the allegations of impropriety set forth in the charge.

§ 204.7 Application for injunctive relief

(a) Filing of application. A party filing an improper practice charge pursuant to Part 204 of this Chapter may apply to the board for injunctive relief pursuant to section 209-a.4 of the act by filing with the office of counsel at the board's Albany office either by electronic or hardcopy mail, ~~or by filing an original and two copies of a signed application for injunctive relief~~. ~~[An application filed]~~ The post office and electronic mailing addresses designated by the board for the purpose of filing an application for injunctive relief are published on the agency's website. To file by electronic mail, a party shall file a signed application for injunctive relief with the email address designated by the board for such purpose. To file by hardcopy mail, a party shall file an original signed application by mail or overnight delivery service, which shall be filed in an envelope or container prominently bearing the legend "INJUNCTIVE RELIEF APPLICATION" in capital letters on its front. An application that is filed by electronic mail ~~[at an address designated by the board for such purpose and published on the agency's website]~~ shall state in the subject line "APPLICATION FOR INJUNCTIVE RELIEF." An application, in any format, received by the office of counsel after 5:00 p.m. on the day of filing shall be deemed filed when processed on the next business day and the ten-day review period referenced in section 204.9 of this Part shall not commence until the application has been processed on the next business day.

(b) Application form. The application shall be filed on a form prescribed by the board which shall give notice of the right to respond pursuant to section 204.8 of this Part. The application form shall include the following:

(1) the name, address, telephone number, and electronic mail address~~[, fax number,]~~ and affiliation, if any, of the charging party;

(2) the name, title, address, telephone number, and electronic mail address~~[, and fax number]~~ of any representative filing the application on behalf of the charging party;

(3) the name, title, address, telephone number, and electronic mail address~~[, and fax number]~~ of any attorney or other representative who will represent the charging party during the processing of the application, if different from the representative named in response to paragraph (2) above;

(4) the name, address, electronic mail address ~~[if known]~~, and telephone number of any public employer or employee organization named as a party to the improper practice charge, including the name, address, electronic mail address, and telephone number for the Chief Legal Officer upon which the application has been delivered, as referred to in section 204.7 (c)(4) of this Part;

(5) the date when the improper practice charge was filed; and

(6) the case number of the improper practice charge, if available.

(c) Additional contents of application . The charging party shall attach to the application form the following documents:

(1) a copy of the improper practice charge;

(2) an affirmation or affirmations stating, in a clear and concise manner: (i) those facts personally known to the deponent that constitute the alleged improper practice, the date

of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (ii) why the alleged injury, loss, or damage is immediate, irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted by the court, and why there is a need to maintain or return to the status quo in order for the board to provide meaningful relief. Such affirmations shall be signed and shall state “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” If filed electronically, the affirmation or affirmations shall be in text searchable format~~[-and shall not be scanned copies of the original documents];~~

(3) copies of any documentary evidence in support of the application;

(4) proof of service on all parties to the charge and proof that a copy of the completed application for injunctive relief and all supporting documents was delivered to the respondent’s chief legal officer in an envelope bearing the legend “ATTENTION: CHIEF LEGAL OFFICER” in capital letters on its front, and the method and date that such delivery was made~~[-and proof of service on all other parties to the charge].~~ If delivery to respondent’s chief legal officer is made by electronic mail, the email shall state in the subject line “APPLICATION FOR INJUNCTIVE RELIEF.” If delivery to the respondent’s chief legal officer is not by electronic mail or personal service, proof of delivery must establish when the respondent’s chief legal officer actually received the completed application and all supporting documents. An application for injunctive relief

filed without proof of service on respondent and delivery to respondent's chief legal officer will be rejected [Delivery by facsimile or by electronic mail will not be accepted, unless the charging party provides a written acknowledgment from the respondent's chief legal officer that such officer accepts delivery by that means, and when such officer received the completed application and all supporting documents]; and

(5) charging party may file, at its option, a memorandum of law in support of the application for injunctive relief. If filed electronically, the application for injunctive relief shall be in text searchable format[and shall not be scanned copies of the original documents].

§ 204.8 Response to application for injunctive relief

(a) Filing of response. A party to whom an application for injunctive relief is delivered pursuant to section 204.7 of this Part may file with the office of counsel by either electronic or hardcopy mail within five days after the application was served on respondent and delivered to its chief legal counsel; or, if service and delivery were effected on different dates prior to filing, the five day response period runs from the latter date. [an original and two copies of a response to the application, with proof of service of a copy on all parties within five days after the application was actually delivered. Alternatively, an original and one copy of a response, with proof of service on all parties, may be filed with the office of counsel by either electronic mail at an electronic mail address designated by the board for that purpose, or by fax at a fax number designated by the board for that purpose within five days after delivery of the application. If the response is filed by fax, the responding party shall mail or deliver an original and two copies of the response to the office of counsel by the next working day.] Unless otherwise authorized by the office of counsel, copies of the response shall be served on all other parties in the same

manner in which the application is filed with the office of counsel; or, if consent for alternative service has been given by the applicant, it shall be the responsibility of respondent to notify the office of counsel of the same. The response shall be signed and shall contain a signed affirmation stating, “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” The response shall be deemed filed when received by the office of counsel and any response, in any format, received by the office of counsel after 5:00 p.m. on the day of filing shall be deemed filed when processed the next business day.

(b) Contents of response.

(1) The response, if any, shall assert any defense that the responding party, at the time of filing, believes it could rightfully assert in an answer or responsive pleading to the improper practice charge, including any affirmative defenses pursuant to section 204.3(c)(2) of this Part. The response shall not constitute an answer or responsive pleading to the improper practice charge pursuant to section 204.3 of this Part, and asserting or not asserting any affirmative defense or other defense in the response shall not prejudice any party with regard to defenses or affirmative defenses that party may plead or not plead in an answer or responsive pleading filed pursuant to that section.

(2) Any affirmation submitted in support of the response shall be made on the basis of personal knowledge of the relevant facts and documentary evidence attached to the affidavit. Such affirmation shall be signed and shall state “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before

the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” If filed electronically, the affirmation or affirmations shall be in text searchable format[~~and shall not be scanned copies of the original documents~~].

(3) The response may be accompanied by a memorandum of law in opposition to the application for injunctive relief. If filed electronically, the affidavit or affidavits shall be in searchable format and shall not be scanned copies of the original documents.

(c) Accelerated response. Upon presentation of clear evidence of a compelling need for determination of an application for injunctive relief in fewer than 10 days from its receipt by the board, and upon a determination by the office of counsel that such compelling need exists, the office of counsel may direct that a response, if any, be filed within a specified time earlier than otherwise required by this section.

§ 204.9 Review of application for injunctive relief

Within 10 days after receipt by the office of counsel of a completed application for injunctive relief, the board, by its office of counsel, shall determine whether a sufficient showing has been made pursuant to section 209-a.4 of the act. If a sufficient showing has been made, the board, by its office of counsel, shall petition supreme court for injunctive relief upon notice to all parties or shall issue an order, with notice to all parties, permitting the charging party to seek injunctive relief by petition to supreme court. Where a sufficient showing has not been made, notice of that determination, stating the reasons for it, shall be issued by the board by its office of counsel to all parties within 10 days after receipt of the application by the board. Orders permitting the charging party to seek injunctive relief by petition to supreme court and notices to the parties that a sufficient showing has or has not been made may be issued by[~~fax or~~] electronic mail.

§ 205.4 Compulsory interest arbitration; petition

(a) Filing. A~~[n original and three copies of a]~~ petition requesting the director of conciliation to refer an impasse to a public arbitration panel may be filed by an employee organization or public employer after 15 days have elapsed following appointment of a mediator to such impasse by the director of conciliation. A copy of the petition shall also be served upon the other party to the impasse simultaneously. ~~[Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~

(b) Contents. Such petition shall contain the following:

(1) The name and address of the public employer and the employee organization involved in the impasse.

(2) The name, title, address, telephone number, fax number and electronic mail address, if known, of the representative of each party to whom correspondence shall be directed.

(3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:

(i) terms and conditions of employment that have been agreed upon; and

(ii) petitioner's position regarding terms and conditions of employment not agreed upon.

Proposed contract language presented during negotiations must be attached.

(4) The name of the mediator and the number and dates of mediation sessions held.

(5) The name, address, telephone number, fax number and electronic mail address if any, of the individual that the petitioner is appointing to the public arbitration panel, and the same information for the individual who will be representing the petitioner before the public arbitration panel.

(6) Proof of service upon the respondent party.

§ 205.9 Determination and award

The determination and award of the arbitration panel shall be in writing, signed and acknowledged by each member of the arbitration panel, and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. Within five working days of rendering the determination and award, the arbitration panel shall file ~~[two copies of]~~ the determination and award with the director of conciliation.

§ 205.10 Compulsory interest arbitration pursuant to section 209.5 of the act

Sections 205.11 through 205.20 of this Part relate to impasses in collective negotiations between **any of the entities** ~~[the New York City Transit Authority and Metropolitan Transportation Authority and their subsidiaries and recognized or certified employee organizations]~~ covered by the provisions of section 209.5 of the act.

§ 205.14 Petition

(a) Either party to the impasse may file ~~[an original and three copies of]~~ a petition requesting the director of conciliation to refer their dispute to a public arbitration panel after 15 days have elapsed following appointment by the director of conciliation of a mediator to such dispute. ~~[Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~

(b) Such petition shall contain the following:

- (1) the name and address of the public employer and the employee organization involved in the impasse;

- (2) the name, title, address, telephone number, fax numbers and electronic mail addresses, if known, of the representative of each party to whom correspondence shall be directed;
- (3) the name of the mediator and the number and dates of all mediation sessions held;
- (4) a statement that a voluntary resolution of the contract negotiations between the parties cannot be effected; and
- (5) the name, address, telephone number, fax number and electronic mail address, if any, of the individual that the petitioner is appointing to the public arbitration panel, and the same information for the individual who will be representing the petitioner before the public arbitration panel; and
- (6) a statement of each of the terms and conditions of employment raised in the negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon; and
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon. Proposed contract language presented during negotiations must be attached; and
- (7) proof of service upon respondent.

§ 205.16 Response

(a) Response. A~~[n original and three copies of a]~~ response shall be filed within 10 working days of receipt of the petition requesting arbitration. A copy of the response shall be simultaneously served, by the same means as the petition was served, upon the petitioning party.

(b) Contents of response. Such response shall contain respondent's position specifying the terms and conditions of employment that were resolved by agreement and as to those that were not agreed upon, respondent shall set forth its position. Proposed contract language presented during negotiations shall be included. If the respondent has filed an improper practice charge or a declaratory ruling petition relating to the petition for interest arbitration, the response shall contain a reference to such charge or petition. The response must include the name, address, telephone number, fax number and electronic mail address if any, of the individual that the respondent is appointing to the public arbitration panel, the same information for the individual who will be representing the respondent in the interest arbitration, and proof of service upon the petitioning party.

~~(b)~~ (c) Cross-response. A petitioner filing an objection to arbitrability under Section 205.17(b) of this Part must file a cross-response notifying the director of conciliation of such filing. Such cross-response shall be filed within 10 working days of receipt of the response.

§ 205.20 Determination and award

The determination and award of the arbitration panel shall be in writing, signed and acknowledged by each member of the arbitration panel and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. Within five working days of rendering the determination and award, the arbitration panel shall file ~~[two copies]~~ one copy of the determination and award with the director of conciliation.

§ 206.2 Filing of charge

(a) A charge that any employee organization or agent thereof is engaging in, causing, instigating, encouraging or condoning a strike may be ~~made~~ filed by the chief legal officer of the government involved or ~~the~~ counsel for the board on its ~~upon his or her~~ own motion. A charge shall be filed electronically with the board at its Albany office. Instructions for filing electronically shall be available on the board's website. Such a charge shall be in writing and signed and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law." A strike charge shall be filed with the board~~[. An original and four copies of the charge,]~~ with proof of service upon the employee organization respondent, ~~[shall be filed with the board,]~~and, if the charging party is ~~the~~ counsel for the board, such counsel shall simultaneously deliver ~~[serve]~~ a copy of the charge ~~to~~ ~~[on]~~ the chief legal officer of the government involved. Charge forms ~~[will be supplied by the counsel upon request, and/or will be]~~ shall be available on the agency's website. ~~[Should the chairperson authorize electronic filing of the charge, the filing of a signed paper original consistent with this section and electronic filing and service of a copy to an address specified by the agency on its website shall constitute compliance with the filing and service requirements herein contained.]~~

(b) The chief legal officer of a government involved or counsel for the board may intervene as a party in any proceeding initiated by the other pursuant to section 212.1 of this chapter.

§ 206.4 Notice of hearing

After receipt of a charge filed by the chief legal officer of a government involved or [the] counsel for the board, the board shall issue to the parties a notice setting forth the time and place of the hearing, which time shall be not less than eight working days after the receipt of the notice.

§ 206.5 Answer

(a) The employee organization against whom the charge is issued shall file electronically [in the same manner as the petition] an answer, with proof of service of a copy on all other parties [~~by such means as the petition was served,~~] within eight days after receipt of a copy of the charge; or, if consent for alternative service has been given by the charging party, it shall be the responsibility of the employee organization to notify the board of the same.

(b) The answer shall be in writing and signed and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law."

(c) The answer shall contain a specific denial of each allegation of the charge contravened by the public employee organization, or of any knowledge or information thereof sufficient to form a belief. An allegation of the charge not specifically denied in the answer, unless the party affirms that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and may be so found by the board. The answer shall also contain a statement of the facts constituting the grounds of defense. Allegations of any facts in the answer shall be deemed denied without the necessity of a reply.

(d) If the party against whom the charge is issued fails to file an answer within the time or in compliance with the manner herein provided, such failure shall constitute an admission of the material facts alleged in the charge and an admission that the party violated subdivision (1) of section 210 of the act. Such failure shall also constitute a waiver of any claims which the party must raise by its answer under paragraph (f) of subdivision (3) of section 210 of the act. Upon such failure, a hearing shall be held only for the purpose of fixing the duration of the forfeiture.

§ 206.6 Hearing

~~[(a)]~~ The board may designate an administrative law judge to conduct a hearing pursuant to Part 212 of this Chapter.

§ 207.4 Demand for arbitration; submission to arbitrate

(a) Demand for arbitration (request made by one party to the other). Petitioner shall serve on the respondent a demand for arbitration which shall serve as notice of intention to arbitrate pursuant to CPLR section 7503. Such notice shall be served in the same manner as the summons or by registered or certified mail, return receipt requested. In addition, ~~[two copies]~~ one copy of the demand for arbitration shall be filed with the director of conciliation together with proof of service on the respondent. ~~[Should the board permit or mandate electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~

(b) Contents of demand for arbitration. A demand for arbitration shall include the following:

- (1) date;
- (2) name of petitioner;
- (3) name of respondent;

(4) name, title, address and telephone number of the representative of each party to whom correspondence from the director of conciliation shall be directed;

(5) effective date and expiration date of agreement;

(6) identification of the provision(s) in the agreement providing for arbitration, together with a copy thereof;

(7) identification of the provision(s) in the agreement claimed to be violated, together with a copy thereof;

(8) a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name(s) of the grievant(s);

(9) the following language, quoted verbatim, except that the board may, at its discretion, designate a different address than that provided below on the agency's website: "THE

UNDERSIGNED, A PARTY TO A WRITTEN AGREEMENT WHICH PROVIDES FOR ARBITRATION AS DESCRIBED HERewith, HEREBY DEMANDS

ARBITRATION. YOU ARE HEREBY NOTIFIED THAT COPIES OF THIS

DEMAND FOR ARBITRATION ARE BEING FILED WITH THE DIRECTOR OF CONCILIATION, NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS

BOARD, EMPIRE STATE PLAZA, AGENCY BUILDING 2, 20th FLOOR, ALBANY,

NEW YORK 12220 WITH THE REQUEST THAT THE ADMINISTRATION OF THE VOLUNTARY ARBITRATION RULES OF PROCEDURE BE COMMENCED.

PURSUANT TO THE NEW YORK ARBITRATION LAW, ARTICLE 75, SECTION

7503, CIVIL PRACTICE LAW AND RULES, YOU HAVE TWENTY (20) DAYS

FROM DATE OF SERVICE OF THIS DEMAND TO APPLY TO STAY THE

ARBITRATION OR BE PRECLUDED FROM SUCH APPLICATION."

(10) signature and title of the representative serving the demand for arbitration.

(c) Submission to arbitrate (joint request). Parties to an arbitration agreement may jointly request arbitration by forwarding a submission to arbitrate to the director of conciliation.

(d) Contents of submission to arbitrate. A submission to arbitrate shall include the following:

(1) date;

(2) name of public employer and employee organization;

(3) name, title, address, electronic mail address, and telephone number of the representative of each party to whom correspondence from the director of conciliation shall be directed;

(4) the provision(s) in the agreement claimed to be violated, together with a copy thereof;

(5) a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name(s) of the grievant(s);

(6) the following language, quoted verbatim: “THE PARTIES NAMED HEREIN
HEREBY JOINTLY REQUEST BINDING ARBITRATION OF THE DISPUTE
DESCRIBED HEREIN UNDER THE VOLUNTARY ARBITRATION RULES OF
PROCEDURE OF THE NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS
BOARD.”

(7) signatures and titles of the representatives filing the submission to arbitrate.

~~§ 207.17 Publication of award~~

~~In the absence of objection by either party, all awards shall be made available for publication.]~~

§ 210.1 Petition; filing

(a) Filing of petition. Any person, employee organization or employer may file with the director ~~[an original and four copies]~~ one copy of a petition for a declaratory ruling with respect to the

applicability of the act to it or any other person, employee organization or employer, or with respect to the scope of negotiations under the act. The petition shall be in writing on a form provided by the director and contain a signed affirmation stating, “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” [~~Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~]

(b) Contents of petition. The petition shall include the following:

- (1) the name, address and affiliation, if any, of the petitioner, and the title of any representative filing the petition;
- (2) a complete statement of the relevant facts and the grounds prompting the petition, including a full disclosure of the petitioner’s interest;
- (3) if the petition raises a question with respect to the scope of negotiations under the act, a statement whether such question is the subject of a charge brought under Part 204 of this Chapter;
- (4) the names and addresses of any other persons, employee organizations or employers whose interests are reasonably likely to be affected by the ruling; and
- (5) at the option of the petitioner, a proposed ruling.

§ 211.3 Request for subpoena

(a) The administrative law judge may issue a subpoena only when the party applying for it files a written affirmation[~~, with four copies, unless the chairperson has authorized electronic filing of~~

~~such requests~~], conforming to the requirements of this Part~~[- in which case the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained]~~. The affirmation shall be signed and shall state “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.”

(b) Contents of affirmation for a witness subpoena. Such affirmation must specify: (1) the name and address of each individual for whom the subpoena is sought; [and] (2) facts sufficient to establish the relevancy of the testimony to be adduced pursuant to the subpoena; and (3) that a copy of the subpoena request and affirmation has been served upon all other parties.

(c) Contents of affirmation for subpoena requiring the production of books, papers, documents or other objects~~[- response]~~. Such affirmation must specify: (1) the books, papers, documents or other objects to be produced pursuant to the subpoena; (2) facts sufficient to establish the relevancy of the materials to be produced; and (3) that a copy of the subpoena request and affirmation has been served upon all other parties.

(d) A party may file with the administrative law judge a response to the subpoena request, with proof of service upon ~~[copy to]~~ all other parties, within five working days after its receipt of the subpoena request.

~~(e[d])~~ Nothing in this section shall in any way affect any rights of any person or entity under law.

§ 212.1 Intervention

(a) One or more public employees, an employee organization acting in their behalf, or a public employer may be permitted to intervene in an improper practice charge or representation

petition. The intervenor must file with the administrative law judge [~~an original and four copies~~] one copy of a motion setting forth the grounds for the intervention, with proof of service of such motion on all other parties. [~~Should the chairperson authorize electronic filing of motions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Upon receipt of a motion to intervene, the administrative law judge shall set a schedule for the parties to respond to the motion.~~] Any party to the proceeding may file a response to the motion within five working days after its receipt thereof, with proof of service of the response on all other parties.

(b) Unless filed by a public employer or by an employee organization that is the recognized or certified representative of employees in a unit claimed to be appropriate by one of the parties to the proceeding, a motion to intervene in a proceeding for certification and/or decertification shall be supported by a showing of interest of at least 30 percent of the employees in such a unit or in a unit alleged to be appropriate by the intervenor. The showing of interest shall comply with the requirements specified in section 201.4 of this Chapter.

(c) A motion to intervene filed by an employee organization which seeks certification shall be accompanied by the affirmation required by section 207.3(b) of the act.

§ 212.3 Offers of proof and pre-hearing motions to dismiss.

(a) At any stage of the proceeding, the administrative law judge may request an offer of proof from a party on an issue(s) upon such schedule and manner as the administrative law judge shall set.

(b) At any time after the conference, the administrative law judge may authorize the filing of a prehearing motion to dismiss by a party and shall permit a response from the opposing parties or parties upon such schedule and manner as the administrative law judge shall set.

(c) The basis to request an offer of proof or authorize a pre-hearing motion to dismiss shall be whether it appears to the administrative law judge that there is a substantial question as to whether the allegations, if true, constitute a viable legal claim or defense. Whether to request an offer of proof or authorize a motion to dismiss shall be at the discretion of the administrative law judge.

(d) The administrative law judge may make rulings and decisions based upon such offers of proof or pre-hearing motions to dismiss.

§ 212.4 [3] Conduct of hearings

Hearings shall be open to the public unless otherwise ordered by the administrative law judge. It shall be the duty of the administrative law judge to inquire fully into all matters at issue and to obtain a full and complete record.

§ 212.5[4] Formal hearing

(a) A formal hearing for the purpose of taking evidence relevant to the proceeding before the agency shall be conducted as necessary by the administrative law judge designated by the director. At any time, an administrative law judge may be substituted by the director for the administrative law judge previously assigned.

(b) ~~[The hearing will not be adjourned unless good and sufficient grounds are established by the requesting party, who shall file, consistent with the manner in which the petition was filed, with the administrative law judge an application, on notice to all other parties, setting forth the factual circumstances of the application, and the previously ascertained position of the other parties.]~~

The failure of a party to appear at the hearing may, in the discretion of the administrative law judge, constitute grounds for dismissal of the absent party's pleading and a default determination.

(c) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the administrative law judge shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath.

(d) Stipulations of fact may be introduced into evidence with respect to any issue. The administrative law judge is authorized to administer oaths and affirmations, and to exercise discretion in regulating the course of the proceeding, including, but not limited to, sequestering witnesses, and controlling the order and method of presentation of relevant evidence. In exercising this discretion, the administrative law judge may require oral or written offers of proof, and may direct the production of supporting documentary evidence as exhibits to such offers of proof. The administrative law judge may entertain motions based upon such offers of proof. Interlocutory appeal of a decision, ruling, or order of an administrative law judge that does not resolve the entirety of a case shall be permissible only as provided in section 213.4 of this Part. All such non-dispositive decisions, rulings, or orders of an administrative law judge may be appealed to the board in exceptions pursuant to section 213.2 of this Part to a final decision rendered by the administrative law judge.

(e) Stipulations of undisputed facts or stipulations regarding the authenticity of documents to be admitted into evidence may be introduced with respect to any relevant issue.

(f) Except as to the rules of privilege recognized by law, compliance with the technical rules of evidence shall not be required.

(g) A party shall, upon offering an exhibit into evidence at the hearing, simultaneously furnish copies to all other parties, unless excused by the administrative law judge.

~~[(h) (1) An administrative law judge may recuse himself/herself from a case whenever he/she believes it to be appropriate. (2) Any party to a proceeding may file a motion with the assigned administrative law judge requesting that the administrative law judge recuse himself/herself from further participation in that case. A motion for recusal shall be made as soon as reasonably possible after the basis for such motion becomes known to the party making it. Unless made at a hearing, such motion shall be filed with the administrative law judge in the same manner as was the petition, shall set forth all of the known grounds for the motion, and shall be accompanied by proof of service of a copy thereof upon all other parties. Unless such motion is made at a hearing, any party may file in the same manner with the administrative law judge a response to such motion within three working days of its receipt of a copy thereof, with proof of service of a copy of the response on all other parties, unless otherwise directed by the administrative law judge. Motions for recusal made at a hearing, and responses thereto, shall be made upon such terms as the administrative law judge shall direct. The administrative law judge's ruling on the motion shall be made either in writing or on the record at the hearing and the ruling, the recusal motion and any response shall be part of the record of the proceeding.]~~

(h[i]) All motions and rulings made at the hearing shall be part of the record of the proceeding and, unless expressly authorized by the board, shall not be appealed directly to the board, but shall be considered by the board whenever the case is submitted to it for decision. Any objection to the conduct of a hearing, including an objection to the introduction of evidence, may be oral or written, must be accompanied by a short statement of the grounds for such objection, and shall

be included in the record. Any objection not duly taken at the hearing shall be deemed waived, unless excused because of extraordinary circumstances.

(i[j]) The refusal of a witness to answer any question which has been ruled to be proper shall, at the discretion of the administrative law judge, be grounds for striking all testimony previously given by such witness on related matters, or the basis of an adverse inference on the subject of the question.

(j[k]) At the discretion of the administrative law judge, the hearing may be continued from day to day or to a later day or another place, by announcement thereof at the hearing or by other appropriate notice.

(k[l]) A motion may be made to dismiss an improper practice charge, or the administrative law judge may dismiss a charge, on the ground that the alleged violation occurred more than four months prior to the filing of the charge, but only if the failure of timeliness was first revealed during the hearing. An objection to the timeliness of the charge, if not duly raised, shall be deemed waived.

§ 212.6[5] Oral Summations and Briefs [and proposed findings]

(a) At the conclusion of the hearing, while on the record, the parties will be afforded the opportunity to present oral summations setting forth proposed findings of fact and conclusions of law to the administrative law judge.

(b) [Any party shall be entitled upon request made before the close of the record to file as directed by the administrative law judge a brief or proposed findings and conclusions of fact and conclusions of law, or both, within such time as fixed by the administrative law judge.] The administrative law judge may, in lieu of oral summations, direct the filing of briefs when requested by a party or where [the submission of briefs is] warranted by the nature of the

proceeding or [the] particular issues therein. Any such brief shall set forth [or] proposed findings [and conclusions] of fact and conclusions of law, and shall be [filed with the administrative law judge must be] accompanied by proof of service [of a copy thereof] upon all other parties. Reply or supplemental briefs, however denominated, will not be permitted without prior request to and approval by the administrative law judge. Such requests will not be approved unless the opponent's brief properly raises issues for the first time which are material to the disposition of the matter.

§ 212.7[6] Decision and order

Upon completion of a proceeding, the administrative law judge shall issue a decision and order, ruling or report and recommendations as appropriate to the proceeding.

§ 212.8 Recusal

(a) An administrative law judge may recuse themselves from a case whenever they believe it to be appropriate.

(b) Any party to a proceeding may file a motion with the assigned administrative law judge requesting that the administrative law judge recuse themselves from further participation in that case. A motion for recusal shall be made as soon as reasonably possible after the basis for such motion becomes known to the party making it. Unless made at hearing, such motion shall be filed with the administrative law judge with proof of service of a copy upon all other parties and shall set forth all the known grounds for the motion. Unless such motion is made at a hearing, any party may file a response to such motion within five working days of its receipt of a copy thereof, with proof of service of a copy of the response on all other parties, unless otherwise directed by the administrative law judge.

(c) Motions for recusal made at a hearing, and responses thereto, shall be made upon such terms as the administrative law judge shall direct. The administrative law judge's ruling on the motion shall be made either in writing or on the record at the hearing. The ruling, the recusal motion and any response shall be part of the record of the proceeding.

§ 213.2 Exceptions

(a) Within 15 working days after receipt of a final decision or report by the director, the director of conciliation, an assistant director or administrative law judge, a party may file with the board a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings and a separate brief in support thereof, along with proof of service on all other parties. Exceptions and supporting briefs shall be filed electronically. Instructions for electronic filing shall be available on the board's website. [~~by mail or overnight delivery service.~~] [~~An original and four copies shall be filed, to be accompanied with an original and four copies of a separate brief in support thereof, along with proof of service on all other parties. Should the chairperson authorize electronic filing of exceptions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. A copy of such exceptions and briefs shall be simultaneously served upon all other parties.~~]

(b) The exceptions shall:

- (1) set forth specifically the questions or policy to which exceptions are taken;
- (2) identify that part of the decision, report, order, ruling or other findings or determinations to which exceptions are taken;
- (3) designate by page citation the portions of the record relied upon; and

(4) state the grounds for exceptions. An exception which is not specifically urged is waived.

(c) the board shall not determine violations of the act and affirmative defenses that were not properly pled.

§ 213.3 Cross-exceptions; responses; replies

Within seven working days after receipt of exceptions, any party may file [~~in the same manner as the exceptions were filed,~~] a response thereto, or cross exceptions and a brief in support thereof, together with proof of service of copies of these documents upon each party to the proceeding.

Responses and cross exceptions shall be filed electronically. Within seven working days after receipt of cross exceptions, any party may file [~~in the same manner as the cross exceptions were filed~~] a response thereto, together with proof of service of a copy thereof upon each party. No pleading other than exceptions, cross-exceptions or a response thereto and no brief other than that filed in support of such pleading will be accepted or considered by the board unless it is requested by the board or filed with the board's authorization. If any additional pleading or brief is requested or authorized by the board, the board shall notify the parties regarding the conditions under which that pleading will be permitted.

§ 213.4 Motions for leave to file interlocutory exceptions in extraordinary circumstances

(a) Within ten working days after any interim decision, order or ruling, a party may, consistent with section 212.4(d) of this Chapter, file with the board [~~an original and four copies of~~] a motion seeking leave to file interlocutory exceptions to such interim decision, order or ruling.

A [~~n original and four copies of a~~] brief in support thereof shall be filed simultaneously as a separate document. A motion seeking leave to file interlocutory exceptions shall be filed electronically. A copy of the motion and briefs shall be served simultaneously upon all other

parties and proof of such service shall be filed with the board. ~~[Should the chairperson authorize electronic filing of such motions and responses thereto, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~

(b) The motion for leave to file interlocutory exceptions shall:

(1) identify the alleged extraordinary circumstances warranting the grant of leave to file exceptions which shall include the factual, legal and/or policy reasons why leave should be granted;

(2) contain the proposed exceptions that shall meet the requirements of section 213.2 of this Part; and

(3) attach copies of pleadings, the decision, order or ruling and relevant excerpts from the record.

(c) Initial review. After a motion for leave to file exceptions is filed, the deputy chair or agent of the board so designated shall review the motion to determine whether it complies with section 213.4(a) and (b) of this Part.

§ 213.5 Responses to motions for leave to file exceptions

Within five working days after notification from the deputy chair or other agent of the board so designated that the motion for leave will be considered by the board, any other party may file ~~[an original and four copies of]~~ a response and brief in opposition as a separate document. A response and supporting brief shall be filed electronically. A copy of the response and brief shall be served simultaneously upon all other parties and proof of such service shall be filed with the board. ~~[Should the chairperson authorize electronic filing of such motions and responses thereto,~~

~~the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~

§ 213.7 Request for extension of time

A request for an extension of time within which to file exceptions, motions for leave to file exceptions, cross-exceptions, responses and briefs shall be in writing, and filed with the board before the expiration of the required time for filing them, provided that the time during which to request an extension of time may be extended because of extraordinary circumstances. A party requesting an extension of time shall notify all parties of its request and shall indicate to the board the position of each other party with regard to such request. Requests for an extension of time shall be filed electronically.

§ 213.9 Amicus curiae procedure

(a) Board Initiated Amicus Procedure

(1) The board on its own motion may issue a notice soliciting non-parties to file amici briefs on a legal and/or policy issue in a pending matter before the board. The notice shall set the schedule for the filing of such briefs as well as the filing of supplemental briefs by the parties.

(b) Non-Party Initiated Amicus Procedure

(1) A non-party seeking to file an Amicus brief in a matter pending before the board may file ~~[an original and four copies of]~~a motion for leave along with a proposed brief with proof of service of one copy on each party. Motions and proposed briefs shall be filed electronically. ~~[Should the chairperson authorize electronic filing of such motions, the filing of a signed paper original consistent with this section and electronic filing and~~

~~service of a copy shall constitute compliance with the filing and service requirements herein contained.]~~

(2) Criteria. A motion for amicus curiae relief shall demonstrate that the movant can identify legal or policy arguments under the act that might otherwise escape the board or that may provide assistance to the board in some other manner.

(3) Positions of the Parties. The parties may file [~~in the same manner as the motion~~] papers in support or opposition to the motion with proof of service on the other parties consistent with the schedule for the motion as set by the board. Papers shall be filed electronically.

(4) Upon receipt of a motion to file an amicus curiae brief, the board shall set a schedule for the parties to respond to the motion.

(5) Should the board grant the motion to file briefs amicus curiae, such briefs will be in the manner and time frame set forth by the board in its order granting the motion.

§ 213.11 Enforcement of board orders

(a) A party may ask the board to seek a judicial order enforcing the board's remedial order as provided by section 213 of the act if the party or parties against whom the order was issued refuses or has failed to comply with the board's order, provided that such order is not, or is no longer, subject to judicial review pursuant to section 213 of the act.

(b) Request for enforcement. A party seeking enforcement by the board must file such a request with the office of counsel electronically. Any request for enforcement must state [~~an original and four copies of a written request stating~~] the reason(s) why a judicial order of enforcement is necessary, supported by [~~an original and four copies of~~] affirmations of persons with personal knowledge of the facts set forth therein, attesting to the alleged refusal or failure to comply with

the remedial order. Such affirmations shall be signed and shall state “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may also be filed in an action or proceeding in a court of law.” [~~Should the chairperson authorize electronic filing of such requests, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.~~] Said request and supporting affirmations shall be accompanied by proof of service on all other parties before the board.

(c) Response. Pursuant to a schedule set by the office of counsel, all other parties before the board may file [in the same manner as the request was filed] with the office of counsel [~~an original and four copies of~~] a written response to the request for enforcement stating why enforcement is not necessary, supported by affirmations of persons with personal knowledge of the facts set forth therein. Such affirmations shall be signed and shall state “I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board and may be filed in an action or proceeding in a court of law.” Said response and supporting affirmations shall be accompanied by proof of service on all other parties before the board.

(d) Action by the board. Following review of a request for enforcement and the response, the board, by its office of counsel, will determine whether a petition for a judicial order of enforcement pursuant to section 213 of the act should be commenced.

[§ 214.1 Misconduct by any person

~~Misconduct by any person at any stage of a case before the board, an administrative law judge or other person designated by the board to conduct proceedings, may be grounds for summary exclusion by the board, administrative law judge, or other designee before whom the misconduct occurred.~~

~~§ 214.2 Suspension or other sanctions Misconduct by an attorney or other representative before the agency, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct, if of an aggravated character, may be grounds for suspension and for prohibiting the attorney or representative from practice before the agency and for other sanctions after due notice and a hearing before the board or its designee. Any order of an administrative law judge imposing discipline under this section will be appealable to the board as part of an appeal of the ultimate disposition of the underlying proceeding pursuant to section 212.4(d) of this Chapter, or, upon a showing of extraordinary circumstances, under § 213.4 of this Chapter.]~~

§ 214.1 Scope.

This Part applies to the required professional and courteous conduct of parties, persons, and witnesses appearing or practicing before the agency. This Part does not include complaints about or against agency personnel.

§ 214.2 Misconduct defined.

The term misconduct, as used in this Part, includes, but is not limited to:

- (a) Repeated, redundant, or frivolous filings of charges, motions, or other submissions which fail to comply with the agency's rules of procedure;
- (b) Repeated disregard of orders, instructions, directives and/or the authority of the board or its designee;

- (c) Submission of fraudulent testimony, documents, or information including but not limited to non-existent legal authority generated by artificial intelligence;
- (d) Physical disruption and/or repeated verbal disruption of agency proceedings; and
- (e) Abusive conduct toward any party, advocate, witness, administrative law judge, board member, agency personnel, or other board designee.

§ 214.3 Misconduct by any party, advocate or other person.

- (a) Misconduct by any party, advocate or other person at any stage of a case before the director, an administrative law judge, board designee, or the board, may be grounds for immediate exclusion of that person from pending agency proceedings; temporary or permanent suspension from practice before the agency; the striking of pleadings, exhibits and/or testimony; imposition of a requirement of pre-approval of submissions; dismissal of the charge or petition; and/or such other remedies and relief as are appropriate under the circumstances.
- (b) Nothing in this Part shall be deemed to limit the authority of the administrative law judge to regulate the course of the proceeding at any time as provided in section 212.4.

§ 214.4 Procedure

- (a) Upon observation of perceived misconduct, or upon the complaint of any person to the administrative law judge, other board designee or board where it appears there are sufficient grounds to believe there has been misconduct, an administrative law judge, other board designee, or the board shall notify in writing the alleged offending party, advocate or other person of the alleged behavior perceived to be misconduct and the proposed action to be taken, and shall allow the alleged offending party, advocate or other person at least ten (10) working days to respond.

- (b) The administrative law judge, other board designee, or board may, in their discretion, request the other parties in the proceeding respond to the notice.
- (c) If material issues of disputed fact exist, a hearing may be held to resolve such issues. In the case of a proceeding before an administrative law judge or other board designee, the administrative law judge or other board designee may, in their discretion, hear the matter or may request that the board appoint a different hearing officer. In the case of a proceeding before the board, the board may designate a hearing officer to conduct a hearing and issue a report and recommendation to the board.
- (d) Upon receipt and review of the response(s), and where necessary after a hearing, the administrative law judge, other board designee, or board shall issue a determination setting forth the misconduct and responsive action. Such determinations will be subject to exceptions to the board pursuant to part 213 of this title or, where a final order of the board, a proceeding pursuant to section 213 of article 14 of the civil service law.