

NYCB CODE OF ETHICAL CONDUCT - DISCIPLINARY PROCEDURES

This document becomes effective June 1, 2012 and will be used to direct investigations of all ethics complaints received by the NYCB. All NYCB certified individuals are required to observe the NYCB Code of Ethical Conduct at all times and are subject to the procedures outlined in this document.

CONFIDENTIALITY OF PROCEEDINGS

Except as is otherwise provided herein, all information received and all reports, decisions files, transcripts, or any other documents of any kind generated or received during the course of a disciplinary proceeding, shall be kept confidential by the NYCB and the respondent except as may be required by law.

POSSIBLE SANCTIONS FOR VIOLATION OF THE CODE OF ETHICAL CONDUCT

A. Possible sanctions for violation of the Code of Ethical Conduct include but are not limited to: denial of an application for certification; written caution; public reprimand; suspension of a credential; revocation of a credential.

Any certification revoked hereunder shall be revoked for the lifetime of the formerly certified professional without the possibility of reinstatement.

NYCB may impose educational, supervisory, training, and treatment requirements in conjunction with any of the above disciplinary actions.

B. Past disciplinary actions taken by the NYCB or a licensing authority against a certified professional may be considered in setting sanctions. Two or more written cautions or reprimands issued against a certified professional in a two-year period shall result in a suspension or a revocation of the credential.

C. Except as may be provided for in a consent order, in all cases where a public reprimand, suspension, or revocation is issued by the NYCB, it shall be cited in the NYCB Newsletter and the NYCB web site the name of the respondent, the sanction imposed, and the Rule(s) violated. The same information may be referred to the IC&RC. Further, notwithstanding anything to the contrary stated or implied herein, NYCB may disclose information relative to disciplinary actions to other pertinent organizations such as but not limited to the NY Department of Health, the NY OASAS, and other appropriate bodies.

D. Sealed records will only be opened with a court order.

1. COMPLAINTS

A. Persons wishing to file a complaint against a certified professional or against a person under NYCB jurisdiction seeking certification may do so by detailing their complaint, in writing, to the NYCB.

B. All complaints must contain the complainant's full name, address, and a phone number where the complainant can be contacted. The complainant must sign and date the complaint document.

C. In order for ethical complaints to be considered by NYCB, all complaints must be filed within four (4) years from date offense occurs.

Complaints shall be sent in an envelope marked "Confidential" to:

Attention: Ethics Committee
New York Certification Board
c/o ASAP
11 North Pearl Street, Suite 801
Albany, New York 12207

D. NYCB shall not consider verbal or anonymous complaints except for anonymous complaints made on the basis of publicly available information, such as but not limited to, newspaper articles, court records, or information on web sites that is made available to or secured by NYCB.

2. INVESTIGATION PROCESS

(i) Investigation by Executive Director

A. The Executive Director shall conduct an initial review of all complaints filed with the NYCB and shall initiate and direct an investigation, to the extent the Executive Director deems sufficient, of all instances of possible professional misconduct by a certified professional. In supervising investigations, the Executive Director may use investigators where deemed appropriate. Except as otherwise provided herein all NYCB investigatory information is confidential. If during the course of the investigation it appears that criminal behavior may have occurred, the NYCB's Executive Director may report the alleged criminal behavior to the appropriate authority.

B. If a complaint has been filed, the Executive Director may, at his or her discretion, proceed with an investigation even if the complainant subsequently requests that the complaint be withdrawn.

C. If cases where, upon initial review, the Executive Director deems that no violation has occurred and that no further investigation is warranted, this conclusion shall be reported to the Ethics Committee for its review within thirty (30) working days [see the 30 day requirement below] of the submission of the report by the Executive Director. The Ethics Committee may either return the matter to the Executive Director for further investigation or appropriate action or affirm the Executive Director's decision that no further investigation or action is warranted. If there is no further investigation, the Executive Director shall send a notice to the complainant, informing him or her that the complaint is dismissed.

D. The Executive Director shall, at the outset of the investigation, send the respondent a copy of the complaint through both certified and regular first class mail, thereby notifying said respondent of the name of the complainant(s) and the alleged violation(s) pertaining to this NYCB Code of Ethical Conduct. The Respondent may submit a typed response within thirty (30) days from the date of the notice. The Executive Director may in his or her discretion allow a respondent additional time if such is requested.

E. During the investigation, the respondent shall disclose all facts and circumstances pertaining to the alleged misconduct, as well as the respondent's interpretation of the situation or conduct which is the subject of the investigation. Misrepresentation by a respondent, failure to provide information, or failure to cooperate with the investigation shall be independent grounds for disciplinary action.

(ii) The Hearing Process

A. A hearing may be held at any point in the investigatory or decision-making process at the discretion of the Ethics Committee. The hearing is typically undertaken in those cases wherein there is sufficient evidence for the allegation of an ethics code violation but there remain undetermined details of the case that the committee believes might be resolved through the hearing process. A hearing may also be requested by a respondent after exhausting the appeal process (see appeal process). Should a respondent request a hearing in response to the decision of the Appeal Committee, a hearing date and time shall be established and the NYCB shall provide Complainant and Respondent with a written notice of the hearing. That notice shall advise the respondent and the complainant of the following:

1. The date, time, and the location of the hearing.
2. Both the respondent and the complainant may be represented by counsel at the hearing at their own expense.
3. Both parties to the complaint may present and rebut evidence and present and cross-examine witnesses.
4. The Hearing Panel shall not be bound by common law or statutory rules of evidence, and the Hearing Panel may consider all evidence having reasonable probative value, but a decision to impose discipline may not be based solely on a declarant's oral hearsay statement unless it would be admissible under common law or statutory rules of evidence.
5. The Hearing Panel will base its decision as to whether a violation of the Code of Ethical Conduct has occurred solely upon the evidence presented at the hearing and gathered during the investigatory process.
6. At the respondent's own expense, the respondent may have a registered court reporter present to transcribe the proceedings, provided that the NYCB is notified of such election at least 5 days prior to the hearing and is timely supplied with a copy of the transcript at no cost.
7. No discovery shall be permitted, and no access to NYCB files shall be allowed to the respondent, the complainant, or their representatives.
8. Except in the most emergent of circumstances, no postponement requested less than 48 hours prior to a scheduled hearing will be considered.
9. There shall be no contact prior to the hearing between the complainant and the respondent, nor shall the complainant or the respondent be in contact with any NYCB member for the purpose of discussing in any way the complaint or influencing the decision of the Hearing Panel.
10. The hearing shall be presided over by a Hearing Officer, and the Officer shall resolve objections concerning evidence.
11. The hearing shall be closed to the public.

B. Failure of either the complainant or the respondent to attend the hearing shall be deemed a waiver of his or her right to a hearing. In such cases, the hearing may proceed with disciplinary action being taken or be dismissed as determined by NYCB. The Hearing Panel shall make a decision based on the evidence presented through the investigatory process.

C. Within 30 days after the completion of the hearing, the Hearing Panel shall prepare a written decision containing Findings of Fact and a Conclusion as to whether any of the ethical principles or rules of the Code of Ethical Conduct have been breached. If the Hearing Panel determines that the respondent did breach the Code of Ethical Conduct, the panel shall impose an appropriate disciplinary sanction, which shall be specified in the panel's decision. The Hearing Panel shall mail a copy of the decision to the respondent and the complainant by certified mail and regular first class mail. The decision of the Hearing Panel shall be deemed that of the NYCB, shall be effective upon issuance or at such date as the Hearing Panel shall specify, and shall be final, without further action by the NYCB.

3. ACTION BY THE ETHICS COMMITTEE

A. In cases in which an investigation has been completed by the Executive Director, the Executive Director shall, no sooner than forty (40) days after the notice provided in Section 2(i)(D) above, submit an investigation summary report to the Ethics Committee inclusive of the following: any and all written materials associated with the investigation; a summary of any further communications with either the complainant or the respondent; an outline of alleged code violation(s), if any, and a recommendation for dismissal, or a recommendation of the sanction or sanctions to be imposed, or a recommendation for an ethics hearing.

B. At the conclusion of the review of the evidence provided in the case by the Executive Director, the Ethics Committee will make their final decision by majority vote for dismissal, imposition of a sanction, or to conduct further investigation by way of a hearing.

C. Within 30 days of the close of any hearing convened in a case or the recommendation for a sanction or dismissal from the Executive Director, the Ethics Committee shall issue a decision concerning the complaint, based on the materials provided by the Executive Director or gleaned from the hearing.

D. In those cases wherein the findings support a decision by the Ethics Committee to impose a sanction or sanctions upon the respondent, NYCB will forward to the respondent a written document summarizing the rule(s) violated, the findings of fact, and the disciplinary action being taken.

E. The decision shall include Findings of Fact, a Conclusion as to which Rules of Conduct, if any, have been violated, and any sanction to be imposed. The decision shall recite the nature of the complaint, the investigation conducted, and the respondent's rebuttal to the complaint. Within 7 days after the issuance of the Hearing Panel's decision, the Executive Director shall mail a copy to the respondent, by certified mail and regular first class mail, together with a notice of the right to appeal any Hearing Panel's decision which calls for disciplinary action.

F. If a request for an appeal is timely filed, any disciplinary action imposed by the Hearing Panel shall be stayed pending the decision of the Appeal Committee. However, in the event that a request for appeal is not filed within the time period prescribed hereafter, the decision of the Hearing Panel shall be final, and any disciplinary action imposed shall take effect upon passage of the prescribed time period. When any disciplinary action takes effect, the Executive Director shall notify the complainant of the results of the disciplinary process.

4. APPEAL PROCESS

A. If disciplinary action is taken, the respondent may appeal the decision by submitting a request for an appeal to the NYCB. Request for an appeal must state reason for the appeal. Such requests shall be mailed to the NYCB by certified mail and postmarked no later than 30 days after mailing of the decision. Appeal requests should be addressed to:

President, Board of Directors
New York Certification Board
c/o ASAP
11 North Pearl Street, Suite 801
Albany, New York 12207

B. If a timely request for an appeal is submitted to the NYCB, the Board shall appoint from the NYCB a three-person Appeal Committee. No member of the Appeal Committee shall be a member of the Ethics Committee, nor shall anyone be appointed to the Appeal Committee who has a potential conflict of interest with either the complainant or the respondent. All potential conflicts of interest will be discussed prior to the appointment. Within 30 days after the NYCB receives a request for an appeal, a review into the facts contained in the decision of the Hearing Panel shall be scheduled. The review shall be scheduled within 60 days from the date of receipt of the request.

C. Such review shall be limited to the issues and charges contained in the decision of the Hearing Panel previously served on the respondent and procedural issues relevant to the case. Within 30 days of the decision by the Appeal Committee, respondent will be notified in writing of said decision. The decision of the Appeal Committee will be considered final.

5. PROCEDURES AND REINSTATEMENT FOLLOWING DISCIPLINARY ACTION

A. If a respondent's NYCB credential has been suspended or revoked and the respondent does not appeal the Hearing Panel's decision, or if the Appeal Committee upholds the respondent's suspension or revocation, the respondent shall return his or her credential certificate to the NYCB Office no later than twenty-one (21) days after the suspension or revocation takes effect. The NYCB credential certificate remains the property of the NYCB.

B. NYCB credential reinstatement following a suspension: Upon expiration of the suspension period, the Ethics Committee shall authorize reinstatement of the professional for the balance of his/her certification period, unless:

1. another suspension or revocation of the respondent's certification has occurred; or
2. the respondent has committed another violation of the Code of Ethical Conduct; or
3. the respondent has failed to remit the recertification fees or make an application for recertification in a timely manner, according to the respondent's recertification date; or
4. the respondent has failed to comply fully with the terms of his or her suspension.

Revocation shall be effective for the lifetime of the formerly certified professional without the possibility for reinstatement.

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CERTIFIED PROFESSIONAL COMPLAINT FORM

This form is to be filled out by any person registering a complaint with the New York Certification Board concerning an actively certified professional with the NYCB or a person applying for certification.

Part I

1. Name of person registering complaint (Mr./ Ms.):

Last

First

Middle

Address

City

State

Zip

Telephone:

Home

Business

2. Give the name of the certified professional or applicant against whom the complaint is being registered:

Last

First

Middle

Business Address

City

State

Zip

Telephone

3. Nature of complaint (Check each one that is appropriate)

☐ Improper treatment practices

☐ Discriminatory practices

☐ Violation of the New York Certification Board's Code of Ethical Conduct

☐ Violation of applicable Federal or State Law

☐ Other: _____

CERTIFIED PROFESSIONAL COMPLAINT FORM

Part II

Please describe in as specific detail as possible the facts, circumstances, situation, and allegations concerning the complaint.

Submit any written materials, data, or other documents which you think are relevant to your complaint.

Part III

In order to determine if you have registered a complaint in a timely manner, the following information is requested:

a. On what date(s) did the action complained of occur? _____

b. When were you first aware of the matter about which you are complaining? _____

What is the most recent date of which you know of the alleged conduct prompting the complaint?

CERTIFIED PROFESSIONAL COMPLAINT FORM

Part IV

Please answer the following questions: Do you know of others who have knowledge of the alleged conduct?

[] Yes [] No

Please provide the following information about them:

Last	First	Middle
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Address

City	State	Zip
------	-------	-----

Telephone

Last	First	Middle
------	-------	--------

Address

City	State	Zip
------	-------	-----

Telephone

a. Did you speak to the person against whom the complaint is being filed? [] Yes [] No

If yes, please explain details and date of communication:

b. Has the person against whom the complaint is being filed given you any explanation for such alleged conduct?

[] Yes [] No If yes, please state all such explanations:

How do you view the explanations given to you?

Part V

1. Have you filed this complaint with any Federal, State, or Local Government agency? [] Yes [] No

If yes, name of agency and address:

Date of filing:

CERTIFIED PROFESSIONAL COMPLAINT FORM

If not, do you intend to file with another agency? [☐]Yes [☐] No If yes, name of agency and address:

2. Have you pursued resolution of your complaint through any internal grievance procedures of an institution or agency?
[☐]Yes [☐]No

If yes, what is the status of your complaint and the name of the grievance procedure?

3. Have you discussed the complaint with a supervisor? [☐]Yes [☐]No

If yes, what is the name of your supervisor and when did you report this to your supervisor?

4. Have you commenced civil or administrative action or proceeding in the Federal courts based on this complaint? [☐]
Yes [☐]No If yes, what is the status?

Part VI

In the event CCB is unable to locate you to discuss this complaint, please provide the following information concerning a person who knows where to contact you:

Last	First	Middle
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Address

City	State	Zip
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Telephone

I understand that the person against whom the complaint is being registered shall be fully informed concerning this formal complaint process and will be given a copy of this complaint form in order to allow the individual the opportunity to submit rebuttal information and/or materials concerning the complaint.

I have completed this complaint form to the best of my knowledge and am willing to participate in a full investigation of all allegations noted in the complaint.

I, _____, swear that the information contained herein enclosed herewith is true and correct.

Signature: _____ Date: _____