



EMPLOYEE DISCIPLINE

I. Introduction

- A. This outline describes the disciplinary process under Article 8 of the current Agreement. Questions should be directed to your Business Agent or Vice-President.
- B. Discipline is an issue NYSCOPBA takes very seriously. Every member served with a disciplinary charge (NOD) will be given legal representation at the union's expense. NYSCOPBA's goal is to make sure every member gets the most thorough and aggressive defense possible.

II. Overview of Article 8

- A. Article 8 replaces the statutory disciplinary process set forth in *Civil Service Law* (CSL § 75).
- B. "Just cause" is required for discipline (*See*, Article 8.2(a)). "Just cause" is defined by arbitral decisions under this and other labor contracts. See IV (F) (3) of this section for a list of seven tests of just cause.

III. Criminal activity

- A. The Union does not generally provide legal representation in criminal cases. NYSCOPBA has, however, created a Legal Defense Fund. (A copy of this policy is available in the steward training manual and on the NYSCOPBA website.)
- B. Members who have criminal charges filed against them, or who believe they may be accused of a crime, should be advised to consult with a private attorney who specializes in criminal law.
- C. As stewards, your discussions with members are not protected by any legal privilege and you can be subpoenaed to testify against a member in a civil or criminal case. Be careful what you discuss with a member if the case has criminal implications. [Management cannot force you to disclose information you obtained in your capacity as a steward. This would violate the *Taylor Law*.]
- D. Where a member is up on criminal charges and a related NOD, we will coordinate defense with member's criminal attorney.

IV. Article 8 disciplinary procedure

- A. Service of notice of discipline
 - 1. The NOD is personally delivered or served by certified mail.
 - 2. The grievant will get two copies.
 - 3. NYSCOPBA will get notice of the name of the accused employee within 24 hours. NYSCOPBA will automatically file a grievance to protect time limits. [Note: The member “owns” the disciplinary grievance and decides whether to settle.]
- B. A disciplinary grievance must be filed within 14 calendar days of service of NOD. (Article 8.2(c).) This is automatically done by NYSCOPBA.
- C. Agency level meeting
 - 1. The contract says it should be held within 14 calendar days of receipt of the grievance.
 - 2. The agency level meeting is handled at sector level by VP, BA or grievance steward. The VP, BA or grievance steward will have access to attorney at this stage, if needed.
 - 3. The purpose of this meeting is to present the employee's position with respect to the charges; it is also to ask management for evidence and witness statements.
 - 4. The purpose should also be to try and settle the case. The member decides whether to accept any settlement. Be prepared to give reasons why the employer should settle — know what the defenses to the charge are and know the weaknesses in the employer's case.
 - 5. The agency level decision is to be issued within 7 days of the meeting, by certified mail to the Union representative who was present.
- D. Appeal to arbitration
 - 1. The appeal is filed by personal service or certified mail to PERB.
 - 2. The appeal must be filed within 14 calendar days of service of the agency level decision. (Filing will be handled by NYSCOPBA.)

3. The union representative should fax a copy of the agency level decision to NYSCOPBA for filing of appeal to arbitration, which will be done in Albany, designating Lippes Mathias Wexler Friedman LLP as the attorney.
4. Pursuant to NYSCOPBA policy, an attorney will be assigned.
5. The member can choose private representation, but he/she will be responsible for all costs, including arbitrator's fees.

E. Suspensions without pay

1. If a member is charged with the commission of a crime, he/she can be suspended before the NOD is issued, but the NOD must be issued within thirty (30) calendar days following suspension or within seven (7) days from notification of the employer that the charges have been resolved, whichever is first. (Article 8.4(a)(2).)
2. An employee can also be suspended, without a criminal charge, if the employer determines there is probable cause to believe the member's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations. In such cases, the NOD must be issued within seven calendar days of suspension. (Article 8.4(a)(1).)
3. A suspended employee can waive the agency level meeting and proceed directly to arbitration. (Article 8.4(4).)
4. Suspended members can use leave credits to cover suspension (Article 8.4(a)(3)).
 - a. Based on a full contract arbitration decision in *Inglee*, leave credits used to cover a suspension pursuant to this section are not used to satisfy a penalty of a period of suspension without pay assessed by a disciplinary arbitrator following a hearing. Therefore, if a member uses leave credits when initially suspended, proceeds to a disciplinary arbitration, and the arbitrator issues a penalty of a period of suspension without pay, the accruals used, pursuant to Article 8.4(a)(3) are not restored and a separate period of suspension without pay is implemented. It should be noted that, generally, if an employee enters into a settlement agreement that includes a penalty, leave credits used pursuant to Article 8.4(a)(3), can be used to satisfy the penalty.
5. Members may be eligible for unemployment insurance benefits — determined on a case by case basis by the Department of Labor.

6. During a period of suspension without pay pursuant to a suspension under § 8.4 of the Agreement, the State shall continue to pay its share of the cost of the employee's health, dental and vision coverage under Article 12, which was in effect on the day prior to the suspension provided that the suspended employee pays his or her share.
7. A new "suspension review" provision was added to the most recent CBA. This suspension review provides the union with an opportunity to argue to an arbitrator that even if the allegations in the NOD are true, no part of the allegation(s) meet the requirements for suspension before notice of discipline under 8.4(a)(1), which is "probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with its operations."

When the union chooses to bring a case to suspension review, the arbitrator and the agency are notified (within 5 days of NYSCOPBA receiving the NOD) and then written submissions (no more than 2 pages) are submitted by both sides. If the arbitrator determines that the State did not meet the grounds for suspension before NOD, the employee is placed back on the payroll.

F. Arbitration Hearing

1. Selection of arbitrator
2. Witnesses and documentary evidence
3. Seven Tests for Just Cause:
 - a. **NOTICE:** "Did the Employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?"
 - b. **REASONABLE RULE OR ORDER:** "Was the Employer's rules or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer's business, and (b) the performance that the Employer might properly expect of the employee?"
 - c. **INVESTIGATION:** "Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?"
 - d. **FAIR INVESTIGATION:** "Was the Employer's investigation conducted fairly and objectively?"

- e. **PROOF:** “At the investigation, did the judge obtain substantial evidence or proof that the employee was guilty as charged?”
 - f. **EQUAL TREATMENT:** “Has the Employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?”
 - g. **PENALTY:** “Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee’s *proven* offense, and (b) the record of the employee in his service with the Employer?”
4. Contents of the personnel file admissible
 5. Range of penalties the arbitrator may impose
 6. Final and binding decision
 7. Concept of progressive discipline
 8. Progressive discipline does not apply in cases of serious misconduct, such as drug use, relationship with inmate, or criminal activity (for example, theft, domestic violence, etc.)

G. Expedited Disciplinary Arbitration

An expedited disciplinary arbitration procedure for cases in which members are suspended without pay was established in a prior negotiation as a pilot program and now has been made permanent. The procedure has mandatory disclosure provisions; a hearing process that should be completed within 90 days; and a rotating panel of arbitrators to hear and decide cases and issues that arise during the process.

Procedure:

1. The employee or the Union must file a disciplinary grievance within 14 calendar days of the date of the Notice of Discipline.
2. Within 14 calendar days of the date the disciplinary grievance is mailed, notice must be provided to the department or agency head or designee that the grievance is submitted to the expedited arbitration procedure.
3. If the department of agency cannot accept the submission for expedited arbitration, the department or agency has 7 calendar days of receipt of the notice to inform the Union or employee, if not represented by the union, of the reason that the matter cannot be accepted for expedited arbitration or agree to extended timeframes that are mutually acceptable to the parties if

the department or agency can accommodate such request to extend such timeframes. If the agency opts out, the Union may request that the Director of GOER review the reasons for such opt out and, if found lacking, order the case to proceed to Expedited Arbitration.

4. A list of witnesses must be provided to the Union within 15 business days of receipt of the notice of expedited arbitration, copies of written statements and documentation. NYSCOPBA must also provide information to the employer within 15 business days from receipt of the information from the employer but, in any event, no fewer than 5 calendar days prior to the hearing.
5. A hearing must be completed within 90 days. If there are disputes, it will be decided by the arbitrator who has the authority to put employees on the payroll. If the delay is caused by the employee, the arbitrator can also toll back wages. The arbitrator shall make an award within 10 business days of the close of the hearing or receipt of closing arguments, where applicable. However, the parties may mutually agree to extend any of the time limits.

H. New Article 8.9 – Tripartite Panel.

The new collective bargaining agreement also includes a set of special procedures and certain mandatory penalties for three specific types of allegations:

1. excessive force;
2. sexual offenses;
3. distributing (or possession with intent to distribute) drugs or other dangerous contraband.

In these cases, a tripartite panel consisting of a neutral arbitrator, a panel member appointed by the employer, and a panel member appointed by the union, will hear and decide the case. For cases under (2) and (3) above, if the employee is found guilty, the penalty must be termination. For excessive force cases, if the panel finds that the injury rises to a “serious physical injury” as defined by the penal law, and the actions of the employee were malicious and sadistic, then the penalty must be termination. If the panel finds that the actions of the employee were taken in a good faith effort to maintain or restore discipline, the panel may impose a penalty less than termination.

At this time, this provision of the CBA is not yet being used. Arbitrators must first be chosen and trained.

V. Investigation and Preparation

- A. Stewards may be asked to assist our attorneys, Vice-Presidents and Business Agents in preparing the member's defense. Please make sure that the member contacts the assigned attorney.
- B. Personal history folder (Article 10).
 - 1. We will need to know about prior discipline, counseling, commendations, length of service, etc.
 - 2. We will need copies of some documents from file.
 - 3. This information can be obtained under Article 10.
- C. Witnesses we will need: who are they, where and when can they be reached, and what can they testify about. (Subpoenas)
- D. We will need copies of any relevant local agreements or policies.

VI. Settlements

- A. In a disciplinary case, the Grievant will be the one who decides whether to accept a settlement.
- B. It is the obligation of the Union representatives to properly advise the grievant about the settlement offer; the likelihood of success on the grievance; all the implications of settlement; and particularly that the grievant's acceptance of settlement is voluntary.
- C. Grievants who have not yet been assigned an attorney should also be advised that they can speak to a NYSCOPBA attorney before deciding whether to accept a settlement offer.
- D. A settlement will become part of the grievant's record, and can be used in subsequent disciplinary action to justify higher penalties (progressive discipline), unless the settlement includes a provision keeping the NOD, settlement and related records out of the grievant's file.

VII. The Justice Center

A. Investigation/Disciplinary Process:

- 1. The Justice Center can stand in the shoes of the employer for purposes of investigating and pursuing disciplinary matters, but only with respect to certain agencies that employ NYSCOPBA Law Enforcement members. This means that the Justice Center can question members regarding an incident,

they can be a part of the drafting and/or issuing of a Notice of Discipline (“NOD”) against members, and they can act as the prosecutor of disciplinary matters at arbitration hearings.

2. When the Justice Center acts in this manner, they are treated the same as if your employer was doing the questioning or prosecuting the NOD. All of the rights of the collective bargaining agreement are to be provided (i.e. BOR for representation and notice, and Article 8 procedures for NOD’s), as well as the rights to representation contained in the *Taylor Law*. Frequently, an individual from the employing agency will also be present for each of the steps.

B. Report of Substantiated Finding/Staff Exclusion List Charges:

The Justice Center also has the authority to issue a Report of Substantiated Abuse or Neglect Findings against a member. (Again, only in certain agencies, specifically those that employ our NYSCOPBA Law Enforcement members.)

- a. Such Reports are separate charges from a Notice of Discipline and proceed through a separate process. This procedure is often referred to as “Staff Exclusion List Charges.”
- b. Following a report called into the Justice Center of suspected abuse or neglect, the Justice Center must investigate and issue a finding. This investigation is often the same investigation that can or does lead to a Notice of Discipline (because the Justice Center and the agency are interchangeable for investigation/disciplinary purposes.)
- c. If the Justice Center finds that the report is “substantiated,” a notice indicating this is mailed to the member’s home. This notice will be entitled “Report of Substantiated Finding.” There are separate procedures to appeal these charges. These charges are not the same as disciplinary charges. If the report remains “substantiated,” depending on the category of the offense, the member could be placed on a list – called the staff exclusion list – that could affect potential employment outside of the member’s current facility in the future. Due to the NYSCOPBA collective bargaining agreement, a member cannot be terminated (or otherwise disciplined) based on these charges. But, the outcome of these charges could potentially affect future employment.
- d. Due to the differences in these two types of charges, it is possible for a member to receive both a NOD and a Report of Substantiated Finding charge based on the same incident. **Unlike NODs, Reports of Substantiated Finding charges are not sent to NYSCOPBA and there is no automatic appeal of these charges.** If a member receives a Report of Substantiated Finding in the mail, and the member wishes to appeal, it is his/her obligation to do so in a timely manner. Appeals must be received by the Justice Center within 40 days of the date of the report. If the member wishes to seek

NYSCOPBA's assistance in an appeal, the member must formally request NYSCOPBA's assistance by immediately providing a copy of the letter to the Regional Vice President.

- e. When the allegations in the NOD and in the Report of Substantiated Finding charges are identical (or at least stem from the same incident), we do have an argument that a determination in one hearing necessarily impacts the second proceeding based on a legal theory of *res judicata* and collateral estoppel. As such, we frequently like to proceed with the disciplinary arbitration first.

**Article 8
Side Letter on Suspension Review**

Attachment D

For only those suspensions without pay under Article 8.4(a)(1) that are not cases subject to Article 8.9 or cases under Article 8.4(a)(2) where the employee is charged with the commission of a crime, the following review process may be invoked:

- (1) Within five (5) business days of an employee's suspension or NYSCOPBA's receipt of the NOD, NYSCOPBA may request that the Article 7 "triage" arbitrator review, as quickly as can be scheduled, the reasons for the suspension under Article 8.4(a)(1) to see if such suspension should be initially upheld and continue.
- (2) For the purpose of such review, the Article 7 "triage" arbitrator shall accept as true the contents of the NOD and shall limit review to the reasons the suspension does or does not meet the contractual standard.
- (3) To request a review, NYSCOPBA shall email the "triage" arbitrator (copying the employer's representative and GOER), advising of its request and attaching a copy of the notice of suspension and a copy of the NOD (where issued). If no NOD has been issued, the arbitrator shall be emailed a copy of the NOD by the employer upon issuance.
- (4) Within five (5) business days of NYSCOPBA's request for a review, the employer's representative and NYSCOPBA shall each email to the arbitrator a statement of no more than two (2) pages, stating their position as to whether or not the contractual standard has been met. The opposing party and GOER shall be copied on the submission.
- (5) At the next scheduled contract "triage" session after receipt of such request for review or as soon thereafter as is practicable, the arbitrator shall review the documents and the arguments of the parties. If the arbitrator feels the need to hear from the employer and NYSCOPBA, the arbitrator may hold a conference call or meeting with both sides. The arbitrator shall render a short email decision to the parties stating that probable cause for the suspension under Article 8.4(a)(1) has, or has not, been met.
- (6) Where the arbitrator determines that probable cause has not been met, the employee will be restored to the payroll or have leave credits restored, as the case may be, retroactive to the date of suspension.
- (7) Nothing herein shall restrict the authority of the Article 8 arbitrator who hears an NOD from deciding guilt or innocence of an employee and if guilty, what the appropriate penalty may be. The Article 8 arbitrator shall simply be informed that the individual is suspended without pay or is not suspended without pay.
- (8) In cases where the "triage" arbitrator determines that there was probable cause for the suspension, nothing herein shall restrict the Article 8 arbitrator from determining, at the conclusion of the case and after all evidence has been considered, whether there was probable cause for the suspension.
- (9) In cases where the "triage" arbitrator determines there was not probable cause for the suspension, the Article 8 arbitrator who hears the NOD shall not be authorized to consider the lack of a suspension in determining an appropriate penalty.

The parties hereby establish a Labor/Management committee to address any issues arising out of the implementation of this side letter, including, but not limited to, the impacts upon the time and attention of the "triage" arbitrator.

Notice of Discipline Process

1. When a member is issued an NOD, they will receive 2 copies and the agency will generate a copy to NYSCOPBA headquarters, attention the President.
2. When NYSCOPBA receives an NOD from the agency, a disciplinary grievance is automatically filed on behalf of the member, so the agency who issued it cannot impose the penalty they are seeking. A copy of the NOD and the grievance is simultaneously sent to the regional representatives and the member. The Chief Sector Steward is **not** sent a copy of the NOD due to possible confidentiality issues surrounding the charge. **(The member owns the NOD and the grievance, NOT the UNION. The member has the choice with whom to share the NOD and grievance information.)**
3. The regional representative will schedule an agency Level hearing, unless the member desires to waive the agency hearing and proceed to arbitration. If the NOD cannot be resolved at the above mentioned hearing, the Grievance Department, upon receipt of the Agency Level denial, will forward the NOD to NYSCOPBA legal counsel so they can file a demand for arbitration with the NYS Public Employment Relations Board (PERB).
4. Throughout the disciplinary process, the regional representative may be able to negotiate a settlement (only with the full consent of the grievant) with the agency and bring resolution to the NOD. If a settlement is not possible, the NOD will proceed before an independent arbitrator who will issue a decision that is final and binding. Disciplinary grievances involving employee suspension under article 8.4 may be eligible for the expedited disciplinary arbitration process.
5. The member can choose to have either NYSCOPBA's legal counsel represent them for the NOD arbitration at no cost, or they can choose to have private legal counsel **at their own expense, including half of the arbitration cost.**



Disciplinary Grievance Form
New York State Correctional Officers & Police Benevolent Association, Inc.
Security Services Unit
 102 Hackett Blvd. • Albany NY, 12209 • (518) 427-1551
 www.nyscopba.org • nyscopba@nyscopba.org

Instructions to Employee and Agency: This form must be used by employees to start a disciplinary grievance according to Article 8 of the Agreement. Employees must be given a chance to obtain representation (either New York State Correctional Officers and Police Benevolent Association (NYSCOPBA), or an attorney of the employee's choice) in proceedings brought under Article 8 and before executing any settlement of a disciplinary grievance. In the event that any employee against whom disciplinary charges are brought by the Employer elects to be represented by any party other than the Union, such employee shall be individually responsible for all expenses which are incurred in connection with such disciplinary proceeding. No employee can be represented in such a disciplinary proceeding by any officer, executive board member, delegate, representative or employee of any actual or claimed employee organization or affiliate thereof other than NYSCOPBA.

PLEASE PRINT OR TYPE

AGENCY _____ WORK LOCATION _____ SHIFT ASSIGNMENT _____ DATE _____

EMPLOYEE'S NAME _____ HOME PHONE _____

HOME ADDRESS _____ ZIP CODE _____

EMPLOYEE'S REPRESENTATIVE: NYSCOPBA NAME _____

ATTORNEY ADDRESS _____

TELEPHONE _____

I wish to grieve the Notice of Discipline issued to me on _____ pursuant to Article 8 of the Agreement. (Employee may use this space to support this grievance.)

Remedy sought: **Dismissal of all charges and penalty sought.**

 Aggrieved Employee's Signature

Instructions to Employee: To be considered, this form must be filed with your Department or agency head or designee within 14 days* following the date of the Notice of Discipline.

Date received _____

By _____
 Agency Representative

AGENCY DECISION
(SEE ATTACHED)

Date received _____

By _____
 Agency Representative

* Days shall mean calendar days

SETTLEMENT AND CERTIFICATION OF OFFER OF RIGHT TO REPRESENTATION (IF APPLICABLE)

Instructions: This form may be used to record settlements of disciplinary grievances as provided for in the Agreement, Article 8.3, Settlements. A disciplinary grievance may be settled at any time following the service of a notice of discipline. The terms of the settlement shall be reduced to writing. An employee offered such a settlement shall be offered a reasonable opportunity to have his attorney or a Union representative present before he is required to execute it. The Union grievance representative at the appropriate level shall be provided with a copy of any settlement within 24 hours of its execution.

THIS SETTLEMENT HAS BEEN MADE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 8 OF THE AGREEMENT. WE CERTIFY THAT THE REQUIRED OPPORTUNITY FOR REPRESENTATION WAS OFFERED AND THAT NO THREATS OF REPRISAL OR PROMISES OF SPECIAL CONSIDERATION WERE MADE BY AGENCY REPRESENTATIVES AS AN INDUCEMENT TO EXECUTE THIS SETTLEMENT, THE FULL TERMS OF WHICH ARE INCLUDED ABOVE.

 Employee

 Agency Representative

 Employee's Representative

 Date

SECURITY SERVICES UNIT

APPEAL TO DISCIPLINARY ARBITRATION

(Do not complete if you have executed a settlement on the reverse side)

Instructions to Employee or Representative: To appeal the agency decision to disciplinary arbitration, the employee or the President of the union must submit a copy of this form with this section filled out to the New York State Public Employment Relations Board and to the agency representative who signed the agency decision within 14 days of the service of the agency decision.

I wish to appeal this matter to disciplinary arbitration according to the provisions of Article 8 of the Agreement.

I will be represented in the arbitration by: NYS COPBA Attorney Personal Attorney

Name of Union Representative or Attorney _____

Address

Telephone Number (_____) _____

THE HEARING OF THIS MATTER WILL BE HELD IN THE LOCATION BELOW WHICH IS CLOSEST TO THE EMPLOYEE'S WORK STATION.

This proceeding should be held in (indicate one of the following):

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> ALBANY | <input type="checkbox"/> NEW YORK CITY |
| <input type="checkbox"/> BINGHAMTON | <input type="checkbox"/> PLATTSBURGH |
| <input type="checkbox"/> BUFFALO | <input type="checkbox"/> POUGHKEEPSIE |
| <input type="checkbox"/> CANTON | <input type="checkbox"/> ROCHESTER |
| <input type="checkbox"/> ELMIRA | <input type="checkbox"/> SYRACUSE |
| <input type="checkbox"/> HAUPPAUGE | <input type="checkbox"/> WATERTOWN |
| <input type="checkbox"/> MIDDLETOWN | <input type="checkbox"/> UTICA |

A copy of this appeal to arbitration has been sent to the agency representative shown on the front side of this form.


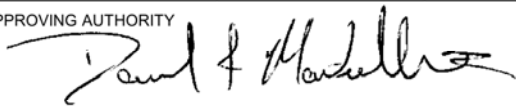
Employee Representative (optional)

Employee's Signature

Date

Date received by PERB

PERB Representative

 Corrections and Community Supervision DIRECTIVE	TITLE Drug Tests for Employees		NO. 2115
			DATE 09/27/2018
SUPERSEDES DIR #2115 Dtd. 05/23/2018	DISTRIBUTION A	PAGES PAGE 1 OF 8	DATE LAST REVISED
REFERENCES (Include but are not limited to) Public Health Law Section 575; Civil Service Law; Correction Law Section 77, OTETA, Employee Manual 2.12; ACA Expected Practices: 4-4063, 4-JCF-6D-03	APPROVING AUTHORITY 		

- I. **PURPOSE:** The purpose of this directive is to establish a written policy and procedure for conducting drug tests of employees within the Department of Corrections and Community Supervision (DOCCS) when:
- A. There is a reasonable suspicion that such employee is under the influence of or using illegal drugs or controlled substances, or abusing prescription drugs; or
 - B. The employee is being tested pursuant to federal or state law; or
 - C. The employee regularly comes into contact with illegal drugs or controlled substances through their assignments with the Department's Office of Special Investigations Narcotics Unit and/or K-9 Units.
- II. **POLICY STATEMENT:** The use of illegal drugs or controlled substances or abuse of prescription drugs by an employee, regardless of the position held, adversely affects the Department's ability to safely confine and supervise inmates, returned parole violators, and adolescent offenders. Additionally, it impairs the efficiency of the workforce and endangers the lives and security of employees, inmates, parolees, adolescent offenders, and the community. The use of illegal drugs and/or abuse of prescription drugs undermine public trust and are, therefore, strictly prohibited by the Department. In order to identify possible illegal drug or controlled substance usage or abuse of prescription drugs, and to curtail the introduction of illegal drugs or controlled substances into Department facilities or its offices, procedures to test for the use of illegal drugs or controlled substances shall be established. DOCCS, however, will not engage in random drug testing of its employees except as required by federal and/or state law, or for staff who regularly come into contact with illegal drugs or controlled substances.
- DOCCS, as part of its concern for its employees, recognizes that the use of illegal drugs or controlled substances causes problems which may have a far reaching negative effect on the security of the Department's facilities, its offices, the community, and on the health, well-being, and productivity of the workforce. It was with problems such as these in mind that DOCCS established its Employee Assistance Program (EAP). The Department fully supports EAP and encourages employees who are addicted to illegal drugs or controlled substances or abusing prescription drugs to seek the confidential services of EAP at their workplace. Information concerning the use of illegal drugs or controlled substances revealed to EAP representatives by an employee cannot be used against the employee for any purpose.

III. APPLICATION

- A. An employee of the Department may be ordered to submit to testing to determine the presence of illegal drugs or controlled substances or abuse of prescription drugs, where reasonable suspicion to believe illegal substance abuse exists, as required by federal and/or state law, or where staff regularly comes into contact with illegal drugs or controlled substances. Refusal to submit to testing may result in suspension and disciplinary charges.
- B. Random Drug Tests: Pursuant to state law governing employees who work at adolescent offender facilities, federal law governing employees who operate motor vehicles that qualify under the Omnibus Transportation Employee Testing Act (OTETA) and staff who regularly come into contact with illegal drugs or controlled substances through their assignments with the Department's Office of Special Investigations Narcotic Unit and/or K-9 Units will be randomly selected for drug testing.
- C. Balance of Interests: In determining whether to order a test in a particular case, the Department must balance an employee's reasonable expectations of privacy from unreasonable intrusions against the Department's interest in assuring the integrity and fitness of its employees and the safety and security of its facilities, offices, and the community; as well as the requirements of federal and/or state law that requires the random drug testing of an employee and for those staff who regularly come into contact with such substances through their assignments with the Department's Office of Special Investigations Narcotics Unit and/or K-9 Units.
- D. Justifications: The order for a urinalysis must be justified by law or based upon a reasonable suspicion that the employee has reported for duty under the influence of illegal controlled substances, is abusing prescription drugs, or is engaging in the use, distribution, or sale of illegal drugs or controlled substances either on or off duty; and, where staff regularly come into contact with such substances through their assignments with the Department's Office of Special Investigations Narcotics Unit and/or K-9 Units.
- E. Reasonable Suspicion Definition: While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches, or intuitive feelings do not meet the standard. Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.
- Reasonable suspicion may be based upon, among other matters: observable phenomena, such as direct observation of use and/or the physical symptoms of using or being under the influence of illegal drugs or controlled substances such as, but not limited to, slurred speech, disorientation, a pattern of abnormal conduct or erratic behavior, or information provided either by reliable and credible sources or which is independently corroborated. The Department will not test solely on the information of inmates or anonymous sources unless the information is corroborated by reliable and credible sources or objective evidence.

- F. Notice While Off Duty: Employees who are off duty at the time they are ordered to submit to a suspicion based test are required to promptly report to the designated workplace to submit a specimen, as directed and outlined in this directive. Failure to promptly comply with such an order may lead to disciplinary action, which may include suspension from duty without pay.
- NOTE: Employees who are off duty at the time they are selected for a random based drug test will NOT be ordered to report to the designated workplace; however, they will be tested upon their return to work.
- G. Members of the Office of Special Investigations Narcotics Unit will be subject to random selection for drug testing.
- H. Members of the Department K-9 Unit will be subject to random selection for drug testing.
- I. If an employee has requested EAP assistance for his or her abuse of an illegal drug or controlled substance or prescription drug, prior to any incident leading independently to the determination of the existence of reasonable suspicion of use of an illegal drug or controlled substance, or the employee's arrest for use, possession, or distribution of an illegal drug or controlled substance, and such employee is following the EAP program, that employee will not be subject to drug testing under this policy for such prior use, but this policy will apply with full force to any subsequent incident where reasonable suspicion is found.

IV. PROCEDURE

- A. Whenever an employee has been randomly selected, or when a supervisor reasonably suspects based on his or her own observations, that an employee has reported for duty in an impaired condition due to the use of an illegal drug or controlled substance or the abuse of prescription drugs, such information should immediately be communicated to the Superintendent, Regional Director, Unit Head, or their designee. Such communication should be made as confidentially as reasonably possible.
- Section IV, paragraphs B through K outline the procedures to be implemented in the event of a reasonable suspicion test. Paragraphs L through O outline the procedure to implement a random drug test. For employees being tested under the OTETA, the specific procedures outlined in the statute will be followed.
- B. Investigation: The Superintendent, Regional Director, Unit Head, or the Officer of the Day will assign a supervisor to act as an investigator to conduct an investigation of the allegation. The purpose of the investigation is to determine if the available facts objectively indicate that reasonable suspicion exists to pursue the inquiry. If the allegation is based on someone's observation of the suspected employee, the investigator must personally observe the suspected employee. If there is any reason to believe the suspected employee is trafficking illegal drugs or controlled substances, the fact shall be immediately communicated to the Office of Special Investigations. The investigation should be conducted with a degree of discretion that will ensure, as much as possible, the dignity and privacy of the employee.

- C. Assessment of Facts: When the Superintendent, Regional Director, Unit Head, Officer of the Day, or Deputy Chief or above from the Office of Special Investigations determines the available facts objectively indicate that reasonable suspicion exists and that a test of the employee would yield a positive result for the presence of an illegal drug or controlled substance or its metabolites, documentation of such facts shall be maintained. The investigator shall be instructed to complete Sections I and II of [Form #1240](#), "Request for Alcohol or Drug Testing of Employee." In completing Section I, the investigator shall exercise care and accurately document the objective facts contributing to and forming the basis for the reasonable suspicion. These facts must include a description of the employee's appearance and demeanor, the observations of witnesses, and the nature and source of the information.

Where the employer's source of information constituting reasonable suspicion that a chemical test for a particular employee would likely yield a positive result consists in whole or in part of observations made by a "confidential informant" (confidential informant meaning a full time employee or agent of a governmental law enforcement agency), the source of that part of the information shall be deemed to be sufficiently identified by recording the name and location of the governmental law enforcement agency involved without disclosing the name of the "confidential informant."

In disciplinary proceedings based on refusal to submit to drug testing or upon testing positive for use, the Department cannot be compelled to reveal the name of any "confidential informant" nor can evidence of the contents of the report of such "confidential informant" be suppressed because of the Department's refusal to reveal the name of such "confidential informant."

- D. Requesting Authorization: The Superintendent, Regional Director, Unit Head, Officer of the Day, Deputy Commissioner/Chief of Investigation, Assistant Commissioner/Assistant Chief of Investigations, Deputy Chief, Assistant Deputy Chief from the Office of Special Investigations, or higher ranking authority shall communicate all such information to an attorney assigned to the Office of the Deputy Commissioner and Counsel for a determination that facts required to establish reasonable suspicion are present and have been properly documented. The Communications Control Center shall be contacted in order to assist in locating an attorney during hours when these offices are closed. The attorney's determination shall be recorded on [Form #1240](#).
- E. Authorization: If the attorney determines that reasonable suspicion does not exist to order testing, no testing shall occur, no documentation of the request may be kept in the employee's personnel records, and evidence of the incident may never be used against any employee in any subsequent disciplinary proceeding or for any other purpose. When an attorney finds that reasonable suspicion exists, the attorney's name shall be included in the documentation, and the testing procedures below shall be followed.
- F. Notice of Rights: An employee of the Department ordered to submit to testing shall be advised that he or she has the right to consult with counsel or a union representative, and the employee shall be afforded an opportunity, if he or she requests, to consult with counsel or a union representative provided that counsel or the union representative responds without undue delay. Reasonable efforts to assist the employee in contacting a union representative or counsel, if the employee desires, shall be made.

The employee shall also be given a verbal explanation, in the presence of counsel or a union representative if requested, of the factual basis for the reasonable suspicion including a description of the conduct leading to the formation of a reasonable suspicion, the employee's acts, the relevant dates, places and times thereof, and the source of information (see limitation on disclosure of "confidential informant" in Section IV-C above). The Superintendent, Regional Director, Unit Head, Officer of the Day, or their designee shall either read the summary of objective facts to the employee as recorded on the appropriate form by the attorney or reiterate the objective facts to the employee as verbally communicated by the attorney pursuant to Section IV-D.

- G. Order to Submit Urine Specimen - Location, Collection, and Documentation: The Superintendent, Regional Director, Unit Head, or their designee shall order the employee to proceed to the Superintendent's office, Bureau Chief's office, or other secure and private location with toilet facilities, free from inmate or public scrutiny, escorted by a supervisor. Where reasonably practical, the supervisor shall be of the same gender as the person to be tested. An investigator may also serve as the escort employee. Where reasonably practical, the investigator shall be of the same gender as the person to be tested. The escorting employee shall bring the appropriate form authorizing such testing to the Superintendent, Bureau Chief, Unit Head, or their designee. Specimen collection shall occur in a private setting free of any substances which may be used to contaminate the specimen. The escorting employee will provide the employee to be tested with a container to be used to collect the sample. Visual observation of urination will not be required or permitted, except in emergencies where no other means are possible, to ensure the integrity of the sample. When visual observation is permitted, the observer will be of the same gender as the employee. If the employee is unable to provide a specimen when requested, he or she will be given a reasonable time period considering all relevant circumstances to provide the sample. The employee shall be paid for all of his or her time including overtime where applicable. The specimen will be provided by the employee being tested and the filled container will be immediately given to the escorting employee, who will examine the sample to determine that it is the appropriate color, clarity, temperature, and volume. The specimen will be immediately sealed and tagged in three separate containers; two of which the Department will maintain in custody and the third will be delivered to the employee. The Department will maintain secure custody of the two specimen containers in such a way so that they can be later tested for the presence of illegal drugs or controlled substances. Chain of custody documentation for each specimen shall be maintained from receipt to destruction. Urine specimens obtained from an employee assigned to a Community Supervision field office shall be transferred to a correctional facility within 24 hours for secure storage in accordance with established procedures. Any urine specimen not immediately transferred to a correctional facility shall be secured in a locked and secure location in the office of the Bureau Chief.
- The chain of custody will reflect the date and time the specimen was secured and by whom it was secured. The employee and his or her counsel or union representative shall be permitted to be present to observe the sealing and tagging of the specimen containers.

In the event that the Superintendent's or Bureau Chief's office is not available, an alternate location shall be selected. Care should be taken in all cases to ensure that the privacy of the employee is considered and that every reasonable effort is made to respect the dignity of the employee. The alternate location shall be selected so as to minimize the possibility of public attention. A supervisor in all cases shall ensure the integrity of the testing procedures, including placement of the specimen in the containers and the surrender and transfer of the specimen.

Throughout all aspects of these procedures, including transportation and the actual obtaining of the sample, every reasonable effort must be made to ensure the dignity and privacy of the employee. All reasonable efforts shall be made to avoid public attention, and these procedures shall be carried out as discreetly as reasonably possible.

- H. Testing Urine Specimens: The first specimen container will undergo a laboratory testing by gas chromatography with mass spectrometry or an equivalent scientifically accepted method that provides quantitative data about the detected drug or drug metabolites. Only a laboratory licensed pursuant to Section 575 of the Public Health Law shall be used to analyze and report on samples. Any positive result of said test will be retested for verification by a confirming test conducted by the laboratory testing the first sample. The confirming test will also be gas chromatography with mass spectrometry or an equivalent scientifically accepted method.
- I. Employee Right to Confirmation Testing: If the results of the confirming test of the original specimen are positive, the employee will have the right, within ten working days of the employee's notification in writing of the results of the confirming test, to have the second specimen tested by a licensed laboratory of his or her choice for testing by gas chromatography with mass spectrometry or an equivalent scientifically accepted method at State expense. A copy of the lab report of such test will be provided to the employee.
- J. If the test of the second specimen is confirmed positive, or if the employee does not exercise his or her right to have the second specimen tested where the confirming test of the first sample has been positive, the employee will be notified and will be given the opportunity to present evidence and/or information that the positive test resulted from prescribed or over the counter drugs or that special circumstances may have affected the test results. The employee will be required to sign a Health Insurance Portability and Accountability Act (HIPAA) compliant release of information in the event that a physician must be contacted for clarification or verification.
- K. If the results of either of the two confirming tests are negative, the request for testing, the finding of reasonable suspicion, as well as results of said test will not be kept and Section IV-E of this directive will apply. If both confirming tests are positive, or if the first confirming test is positive and the employee waives his or her right to request a second confirming test, the employee may be suspended by the Director of Labor Relations pending disciplinary charges, provided such suspension is appropriate under the applicable collective bargaining agreement, and law, rule, or regulation.
- L. Employees assigned to an adolescent offender facility who are randomly selected for drug testing, consistent with state law, will be directed to submit to a presumptive test utilizing a saliva test kit. The saliva test will be administered without regard to gender. Test kit instructions will be implemented consistent with the manufacturer's directions.

Facility employees subject to testing, other than members of the facility Executive Team, will be tested by a designated member of the facility Executive Team. Facility Executive Team members will be subject to testing by the HUB Supervising Superintendent or an Assistant Deputy Chief or higher from the Office of Special Investigations. All efforts will be made to avoid the appearance of any conflict of interest. Additionally, Executive Team members who fraternize with subordinate staff (i.e. dating, married, co-habit, etc.) shall not administer a saliva test of the subordinate. Failure to act in a manner that avoids the appearance of a conflict of interest may lead to disciplinary action.

- M. Employees assigned to the Office of Special Investigations Narcotics Unit and the Department K-9 Unit who are randomly selected for drug testing will be directed to submit to a presumptive test utilizing a saliva test kit. The saliva test will be administered without regard to gender. Test kit instructions will be implemented consistent with the manufacturer's directions. Employees assigned to these units who are subject to such testing will be tested by a unit supervisor at a salary grade level of M-2 or equivalent/above. Unit supervisors will be subject to testing by the Assistant Commissioner with oversight of the unit. All efforts will be made to avoid the appearance of any conflict of interest. Additionally, unit supervisors and Executive Team members who fraternize with subordinate staff (i.e., dating, married, co-habit, etc.) shall not administer a saliva test of the subordinate. Failure to act in a manner that avoids the appearance of a conflict of interest may lead to disciplinary action.
- N. Saliva test results will be immediately reported to the Director of the Bureau of Labor Relations. If the saliva test results in a presumptive positive, reasonable suspicion exists to administer a urine test as specified in Section IV, paragraphs F through K. If the presumptive saliva test result is negative, no further action is required. Regardless of the outcome of the saliva test, the employee may take possession of the test if they so desire; however, presumptive positive test results will be photographed by the employer as evidence of reasonable suspicion and a basis to order the employee to submit a urine specimen for testing.
- O. The Bureau of Labor Relations will notify the appropriate Superintendent, HUB Supervising Superintendent, the Office of Special Investigations, or Special Operations regarding which employee(s) have been randomly selected for a saliva test. The Bureau of Labor Relations will maintain a record of the employees that are randomly selected and the test results for the purpose of compliance review with applicable federal and state law.

V. GENERAL PROVISIONS

- A. Refusals: An employee's refusal to submit to ordered testing, or his or her refusal to cooperate in all aspects of the testing procedures, shall be communicated to the Director of Labor Relations and may subject the employee to suspension and severe disciplinary charges, as appropriate, under the applicable collective bargaining agreement, and law, rule, or regulation.
- B. At the conclusion of the testing procedures, the employee may be suspended if the facts independent of the test results justifies the actions and constitute a basis under the applicable collective bargaining agreement or law.

In a case where an employee is judged too impaired to continue work, he or she is to be assisted with making arrangements for transport home. The employee is also to be strongly encouraged not to drive. If the employee insists on driving, the facility Superintendent, Regional Director, Unit Head, or other appropriate authority should be immediately notified.

- C. Results: When written reports of the laboratory tests are received by the Superintendent, Regional Director, or Unit Head, a copy shall be forwarded to the employee who was tested and an additional copy forwarded to the Bureau of Labor Relations.
- D. Other: Each test ordered under this policy shall be reviewed by the Bureau of Labor Relations to ensure compliance with all applicable procedures.
- E. Laws, Rules, Regulations, Negotiated Agreements: Where any provision of this policy is determined to be in conflict with the applicable collective bargaining agreement or law, statute, rule, or regulation, including Civil Service Law Section 72 and Section 75, said collective bargaining agreement, law, statute, rule, or regulation will control. It is not the intent of this policy to abridge any rights an employee may have under applicable collective bargaining agreements, laws, statutes, rules, or regulations including Civil Service Time and Attendance Rules, and any rights that an employee may have for discretionary treatment under the Civil Service Time and Attendance Rules.
- F. Disciplinary Action: If the investigation results in a just cause for discipline as defined in the applicable collective bargaining agreement, discipline shall be imposed with regard to the circumstances of each case. Time in service and prior offenses or lack thereof may be considered in determining appropriate penalties.
- G. Records: Records concerning positive tests for suspicion and random based drug testing will be maintained confidentially in the employee's medical file. Administrative records of the random selection drug testing will be maintained by the Bureau of Labor Relations for purposes of compliance review with established laws, rules, and regulations.
- H. Defenses: An employee who claims to have been tested under this policy without reasonable suspicion, or in a manner inconsistent with this policy or federal/state law, can assert such claim as a defense in any disciplinary proceeding brought against him or her. Nothing in this policy shall be construed to deprive an employee of any other appropriate defenses or arguments in a disciplinary arbitration.

REQUEST FOR ALCOHOL OR DRUG TESTING OF EMPLOYEE

DATE: _____ FACILITY/FIELD OFFICE: _____

SECTION I: SUBJECT OF INVESTIGATION

NAME: _____ TITLE: _____ SHIELD/ID#: _____

TYPE OF TEST REQUIRED: ALCOHOL DRUG

SOURCE OF INFORMATION: _____

CORROBORATION: _____

WITNESS: _____

INVESTIGATOR'S OBSERVATION AND BASIS FOR REQUEST: _____

HAS EMPLOYEE TAKEN ANY MEDICATION IN THE PAST FOUR WEEKS? YES NO

IF YES, LIST MEDICATIONS, QUANTITY, AND LAST DATE TAKEN: _____

NAME OF INVESTIGATOR: _____ TITLE: _____

SIGNATURE: _____

SECTION II: AUTHORIZATION

ATTORNEY CONTACTED: _____ ATTORNEY'S DETERMINATION: TEST DO NOT TEST

NAME OF ESCORT ACCOMPANYING SUBJECT: _____ TITLE: _____

SIGNATURE: _____

SECTION III: CHAIN OF CUSTODY

STARTING WITH STAFF OBTAINING SPECIMEN. ATTACH ADDITIONAL PAGES, IF NEEDED.

FROM: _____ TO: _____ DATE: _____ TIME: _____

FROM: _____ TO: _____ DATE: _____ TIME: _____

FROM: _____ TO: _____ DATE: _____ TIME: _____

FROM: _____ TO: _____ DATE: _____ TIME: _____

SECTION IV: RESULTS OF TEST

LABORATORY TESTS WERE: POSITIVE NEGATIVE

SUBSTANCE DETECTED WAS: _____

COPY OF LABORATORY REPORT FORWARDED TO EMPLOYEE ON: _____

COPY OF LABORATORY REPORT WAS ATTACHED AND FORWARDED TO LABOR RELATIONS AND THE SUPERINTENDENT ON: _____

NAME: _____ TITLE: _____

SIGNATURE: _____

RAINY DAY FUND POLICY

NYSCOPBA has created a Rainy Day Fund for its members. The purpose of the Rainy Day Fund is to provide supplemental income for qualifying members who are suspended without pay for disciplinary reasons for incidents that occur while on duty. For those members who do not utilize the Rainy Day Fund during their careers, a Separation Benefit is also established under this fund. The NYSCOPBA Executive Board, in its discretion, based on the facts and circumstances of each case, shall determine whether the actions occurred while the member was engaged in the lawful performance of his or her duties and that providing supplemental income during that period of suspension shall be consistent with the overall interests of the general membership. The NYSCOPBA Executive Board shall consider the following criteria:

Eligibility

Any active dues paying member in the New York State Correctional Officers & Police Benevolent Association, Inc. Union can participate in the Rainy Day Fund upon fulfillment of each of the following three criteria:

- a. Filing with the Plan Administrator a properly completed application.
- b. Approval of the application by the Rainy Day Fund.
- c. Commencement and continuation of the required contribution to the Rainy Day Fund.

Benefits under the Fund

Supplemental income during suspension

The Fund benefits described below are only available to members who receive a Notice of Discipline and are suspended without pay for incidents that occur while on duty. The NYSCOPBA Executive Board in its sole discretion shall determine whether the conduct alleged in the Notice of Discipline occurred while the member was engaged in the performance of his or her duties.

There is a fourteen (14) calendar day "waiting period" from the time the member is suspended without pay before the member becomes eligible for Fund benefits. In addition to the 2 week waiting period, a member who is approved to receive Rainy Day Funds must first exhaust all vacation and personal accruals prior to receiving funds.

All Fund benefits will cease if the member agrees to settlement of the Notice of Discipline.

All Fund benefits will cease if a member is found guilty of any or all charges imposed upon him/her within the Notice of Discipline immediately as of the date of the arbitrator's

decision. The Fund will not pay supplemental income during any going forward penalty period assigned by the arbitrator and/or agreed to by the member.

All Fund benefits will cease if the member admits guilt, resigns from their position or lack of active participation from the member in the pending case.

Amount of Coverage

The maximum benefit is the lesser of \$1,300 or the members' bi-weekly salary, payable every two weeks while the member is suspended, excluding the waiting period.

Each payment will coincide with the regular pay schedule currently in place. All payments will be pro-rated based on the actual number of day(s) suspended after the member satisfies the fourteen (14) day waiting period and the exhaustion of all vacation and personal accruals credited to the member.

All funds paid by the Rainy Day Fund are subject to both Federal and State income taxation.

Separation Benefit

As of November 20, 2018, the separation benefit has been suspended and will remain as such until or unless a Motion is passed by the Executive Assembly reinstating the separation benefit.

Exclusions from Coverage

The Fund does not cover acts or omissions as the result of off-duty conduct or while on a leave of absence, including but not limited to domestic incidents, outside drug and/or alcohol charges, and theft.

In addition, if the Plan Administrator determines that Fund benefits have been provided to a member as a result of misrepresentations of that member, and/or a member does not cooperate with the Plan Administrator during the course of such member's claim for benefits, payment of such benefits may cease and the Fund will have the right to seek reimbursement from the member of any benefits already paid.

Termination of Benefits

Except insofar as to the acts or omissions giving rise to the claim occurred prior to such termination of coverage, the benefits will automatically terminate when one or more of the following situations occur:

- a. Individual ceases to be a member of NYSCOPBA;

- b. Employment terminates; or
- c. The Rainy Day Fund is terminated

Claims Procedures

Upon receiving a Notice of Discipline and/or suspension notice, the member must submit a copy of the Notice of Discipline and or suspension notice to the Regional Vice President of his or her Region who is acting as representative for the Plan Administrator for purpose of accepting the member's application.

NYSCOPBA shall provide the member with an application and the member must submit the application to the Recording Secretary who shall forward the request to the NYSCOPBA Executive Board to determine whether the member qualifies for the benefit. The NYSCOPBA Executive Board shall determine whether the member meets the criteria for the benefit.

In order to ensure timely processing of a member's claim application, the Rainy Day Fund Application should be completed accurately, including providing sufficient information for the Plan Administrator to determine that the member's conduct alleged in the Notice of Discipline occurred while the member was engaged in the performance of his or her duties.

The member must also agree that if the member is, by settlement, arbitration or other means, restored to the payroll for any period of time for which he/she received payment from the Fund, the member shall reimburse to NYSCOPBA the amount paid to the member during his/her period of suspension. The member must execute a signed agreement before receiving any payments, and as a condition thereof, if he/she receives his/her back pay, the member shall reimburse NYSCOPBA.

Benefit Claims and Review

A member is only treated as filing a claim for Fund benefits when the member submits a Rainy Day Fund Application to the Plan Administrator. For purposes of the Fund's claims and review procedures, a member is not treated as filing a claim for Fund benefits when the member or the member's representative asks the Plan Administrator by telephone if coverage is available to the member for a particular incident.

The Plan Administrator will notify a member in writing if the member's claim for Fund benefits is denied, within the time periods described below. The notice will set forth:

- The specific reason or reasons for the denial;
- Reference to the specific Fund provisions on which the denial is based;

- A description of any additional material or information necessary for the Participant to perfect the claim and an explanation of why the material or information is necessary; and
- A description of the Fund's review procedures and the time limits applicable to the review procedures, including a statement of the Participant's right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if the claim for benefits is denied on review.

The Plan Administrator will provide the written notice to the member as soon as possible, but not more than 90 days after the Plan Administrator receives the Participant's claim, unless the Plan Administrator determines that an additional period of time, not to exceed 90 days, is required because of matters beyond the control of the Plan. If an additional period of time is required, the Plan Administrator will notify the Participant in writing of the circumstances requiring the extension of time and the date by which the Plan Administrator expects to render a decision.

If the Plan Administrator notifies a Participant that the Plan Administrator has denied all or part of the Participant's claim, the Participant may request a review of the denial. The Participant or the Participant's authorized representative must notify the Review Panel of the Plan Sponsor in writing of the Participant's request for a review of the denial within 60 days after the Participant receives written notice of the denial from the Plan Administrator.

The Review Panel will give the Participant or the Participant's authorized representative the opportunity to submit written comments, documents, records, and other information relating to the Participant's claim for Fund benefits.

Upon request and free of charge, the Participant or the Participant's authorized representative will be provided reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits.

The Review Panel's review will take into account all comments, documents, records, and other information submitted by the Participant or the Participant's authorized representative relating to the claim, without regard to whether the information was submitted or considered by the Plan Administrator.

The Review Panel will notify a Participant in writing of the Review Panel's decision upon review. The notice will set forth:

- The specific reason or reasons for the decision;
- Reference to the specific Fund provisions on which the decision is based;
- A statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits; and

- A statement of the Participant's right to bring an action under Section 502(a) of ERISA.

The Review Panel will make its decision no later than 60 days after the date the Review Panel received the request for review. However, if the Review Panel determines that special circumstances require an extension of time for processing the review request, the Review Panel will notify the Participant in writing before the end of the initial 60-day period. The notice to the Participant will indicate the special circumstances requiring the extension of time and the date as of which the Review Panel will make its decision, which must be within 120 days after the date the Review Panel received the request for review.

THE RAINY DAY FUND APPLICATION AND AGREEMENT

To: _____
(Recording Secretary)

Date: _____

From: _____
(Your Name)

Title: _____
(Your Title)

Agency and Facility: _____
(Your Agency & Work Location)

Email: _____
(Please Print)

Telephone: _____
(Home Phone)

(Cell Phone)

All information and documents below are REQUIRED

Specify how the conduct alleged in the Notice of Discipline (NOD) occurred while you were engaged in the performance of your duties under your specialized official title.

The Rainy Day Fund (RDF) began March 1, 2016. This Application and Agreement shall comply with the terms of the RDF Policy. In the event this Application and Agreement conflicts with the terms of the RDF Policy, the terms of the RDF Policy shall prevail.

Before being eligible to participate in the RDF, I must execute this Application and Agreement. Applications will be submitted to NYSCOPBA’s Executive Board for monthly review.

If approved, a member MUST fully exhaust vacation and/or personal accruals while on suspension prior to being eligible to receive funds. The availability of funds may revert back to the date of application, but no sooner than fourteen days from the date of suspension or the full use of all vacation and/or personal accruals, whichever occurs later.

I hereby understand that by submitting this signed Application and Agreement; if I am restored to the payroll for any period of time for which payment is received from the RDF whether by settlement, Arbitrator decision, or other means; I shall immediately reimburse to NYSCOPBA the amount paid to me during my period of suspension. Additionally, I understand that, if payment is received from RDF after the date of settlement or Arbitrator decision, I shall reimburse to NYSCOPBA the amount paid to me after settlement or decision. As a condition to receiving benefits under this fund, I hereby assign NYSCOPBA any back pay I subsequently receive, whether through settlement, arbitration award or otherwise; to the extent of the benefits received under this Fund.

Upon demonstrating that I am suffering a hardship, and am unable to immediately reimburse NYSCOPBA; NYSCOPBA in its sole discretion may agree to offer applicant a payment plan in an effort to satisfy the balance due.

In the event (a) I violate the terms contained in the RDF Policy or the RDF Application and Agreement or (b), fail to make payment as set forth herein or set forth in the payment plan authorized by NYSCOPBA; I agree to pay interest on the outstanding balance at a rate of 9% per annum until the balance is paid in full and reasonable attorney fees, collection fees and/or costs incurred in recover of the outstanding obligation herein.

****MONEY APPROPRIATED THROUGH THIS FUND IS CONSIDERED TAXABLE INCOME **** Proper tax documentation will be filed with appropriate taxing authorities

I also acknowledge that I have been provided a copy of the RDF policy and fully understand the terms set forth therein.

****Please note that the address noted on the issued NOD will be where the RDF checks are mailed if approved. If no address is noted on the NOD the RDF checks will be mailed to the address currently on file with your payroll department. If you would like the check(s) mailed to a different address you must note the address on this application.**

Please check off the method of delivery to receive your funds, if approved.

Mail paper check

Direct Deposit – Please provide the following;

Routing Number (9 -Digits) _____

Account Number (3-17 Digits) _____

Bank Name - _____

Name on Account - _____

- Please include a voided check with your application if choosing Direct Deposit

Signed: _____ Date: _____

PLEASE MAIL ALL APPLICATIONS TO: NYSCOPBA, 102 HACKETT BLVD., ALBANY, NY 12209 – ATTN: Chris Summers, RECORDING SECRETARY

OUTLINE OF POLICY AND PROCEDURES FOR REPRESENTATION WHEN A MEMBER RECEIVES A NOTICE OF DISCIPLINE (NOD) AND FAILS TO COOPERATE IN HIS/HER DEFENSE

Discipline is an issue NYSCOPBA takes very seriously. Every member served with a disciplinary charge (Notice of Discipline) is provided legal representation at the Union's expense. NYSCOPBA's goal is to make sure every member gets the most thorough and aggressive defense possible.

In order to achieve this goal, it is imperative that the member who receives the Notice of Discipline cooperates in his/her defense. If the member fails to cooperate in his/her defense, the NYSCOPBA Executive Board, in its discretion, based on the facts and circumstances of each case, shall determine whether it is appropriate to continue to represent the member and pay for his/her legal representation, including the costs associated with arbitration. The following procedures shall be followed by the NYSCOPBA Executive Board prior to rendering a determination not to represent the member:

- 1) The assigned attorney writes a letter to the member at the last known address as listed on NYSCOPBA's database advising the member that he/she is represented by the attorney. The letter shall ask the member to contact the attorney. The Vice President and/or Business Agent of the region and Chief Sector Steward will be provided a copy of the letter.
- 2) If the attorney does not hear from the member, the Vice President/ Business Agent and/or Chief Sector Steward shall contact the member and ask him/her to contact his/her assigned representative.
- 3) If NYSCOPBA does not hear from the member, a second letter will be sent by either the assigned attorney and/or the Vice President and/or Business Agent of the region. Additionally, the regional representative and local steward shall attempt to contact the member and advise him/her to contact the assigned NYSCOPBA representative.
- 4) If the member fails to cooperate, a third letter shall be sent to the member advising the member that unless he/she contacts NYSCOPBA, a recommendation will be made to the Board that NYSCOPBA is unable to represent the member. The member will be advised that NYSCOPBA's Board will address his/her situation and the Executive Board may authorize the attorney to resign from the case. The letter will also advise the member that he/she will have to retain representation at his/her own expense which includes the cost of the hearing.
- 5) The Board has the authority to take appropriate action including, but not limited to, advising the member that since he/she has failed to assist in his/her representation, NYSCOPBA is unable to represent the member in the defense of the Notice of

Discipline. The member will be responsible for the payment of his/her attorney fees and the cost associated with the hearing.

- 6) A final letter will be sent to the member advising the member of NYSOCPBA's determination and/or any other actions the NYSCOPBA Board chooses to make based on the facts and circumstances of the particular matter.
- 7) The arbitrator and the State's representative will be notified that NYSCOPBA is not representing the member in the disciplinary grievance.

August 8, 2012
Executive Assembly Meeting

Policy was adopted with objectors

Luther, Sing Sing; VP Perez, Southern Region; Patterson, Edgecombe;
Hale, Bedford Hills; Lashua, Greene

LEGAL DEFENSE FUND POLICY

NYSCOPBA has created a Legal Defense Fund for its members. The NYSCOPBA Executive Board, in its discretion, based on the facts and circumstances of each case, shall determine whether the actions occurred while the member was engaged in the lawful performance of his or her duties and that assisting in such legal defense shall be consistent with the overall interests of the general membership. The NYSCOPBA Executive Board shall consider the following criteria:

1. Eligibility

Any active dues paying member in the New York State Correctional Officers & Police Benevolent Association, Inc. Union can participate in the Legal Defense Fund upon fulfillment of each of the following three criteria:

- a. Filing with the Plan Administrator a properly completed application.
- b. Approval of the application by the Legal Defense Fund.
- c. Commencement and continuation of the required contribution to the Legal Defense Fund.

2. Benefit

The purpose of the Legal Defense Fund is to provide legal defense for qualifying members for actions that occur while the member was engaged in the lawful performance of his or her duties. A "member" is an employee of the Security Services Unit of New York State represented by NYSCOPBA.

- a. **Performance of Duty:** The coverage is only for members' acts or omissions that occurred in the course and scope of the members' performance of duty and must be consistent with the overall interests of the general membership. If the member is involved in alleged off-duty conduct, money from the Legal Defense Fund shall not be used (e.g. domestic incidents, outside drug and/or alcohol charges, workers' compensation, theft).
- b. **Former Member:** The member must be an active member, except insofar as the event giving rise to the claim occurred while the individual was an active member.
- c. **Approved Leave of Absence:** If the member is on leave of absence approved by his or her employer, the member will be eligible for benefits under the Legal Defense Fund for events occurring prior to his or her approved leave of absence. Events occurring while the member was on the leave will not be covered.

3. Amount of Coverage

The maximum benefit per occurrence is \$25,000. The \$25,000 shall be broken down in the following manner:

- a. \$5,000 may be provided up to the time of arraignment.
- b. When a criminal information and/or indictment is issued, the member may request from the Legal Defense Fund additional funds in increments up to \$10,000.
- c. The total benefit available from the Legal Defense Fund [for any qualifying incident] may not to exceed \$25,000.

4. Exclusions from Coverage

The Fund does not cover acts or omissions as the result of off-duty conduct or while on a leave of absence, including but not limited to domestic incidents, outside drug and/or alcohol charges, and theft. No benefits under the Fund will be provided with respect to workers' compensation claims, all civil defense, or post-sentencing or appellate review.

In addition, if the Plan Administrator determines that Fund benefits have been provided to a member as a result of misrepresentations of that member and/or a member does not cooperate with the Plan Administrator during the course of such member's claim for benefits, payment of such benefits may cease and the Fund will have the right to seek reimbursement from the member of any benefits already paid.

5. Termination of Benefits

Except insofar as to the acts or omissions giving rise to the claim occurred prior to such termination of coverage, the benefits will automatically terminate when one or more of the following situations occur:

- a. Individual ceases to be a member of NYSCOPBA;
- b. Employment terminates; or
- c. The Legal Defense Fund is terminated.

6. Claims Procedures

- a. If a member seeks an allocation from the Legal Defense Fund, he/she must submit a Legal Defense Fund Application to the Regional Vice President of his or her Region who is acting as representative for the Plan Administrator for purpose of accepting the member's application. The member may initially seek up to \$5,000 up to the time of arraignment as set forth in Amount of Coverage.

- b. After the member has been arraigned, he or she may request additional funds from the Plan Administrator with an explanation of how (i) the action occurred while the member was engaged in the lawful performance of his or her duties and (ii) assisting in such defense shall be consistent with the overall interests of the general membership. The coverage is only for lawful acts or omissions that occurred in the course of employment. The member must make clear in his or her application how his or her request is related to such events. The payments will be made only after the member complies with all requests of the Plan Administrator. If the Plan Administrator approves the member's request, the check will be transmitted directly to the member's criminal attorney. To the extent the member already paid the attorney, the member will need to request reimbursement of fees from the attorney.
- c. In order to ensure timely processing of a member's claim application, the Legal Defense Fund Application should be completed accurately, including providing sufficient information for the Plan Administrator to determine that the member's actions which are the subject of the complaint are within the course and scope of employment covered by the Legal Defense Fund.
- d. The member must also attach documentation that the member applied for reimbursement under NYS Public Officers Law (POL) Section 19.
- e. The member must also agree that if the member is acquitted of the charges or it is determined that the member is entitled to reimbursement of his/her legal fees, the member agrees to cooperate with NYSCOPBA in seeking reimbursement from the NYS Attorney General's Office and return money given from the Fund to NYSCOPBA.

7. Benefit Claims and Review

A member is only treated as filing a claim for Fund benefits when the member submits a Legal Defense Fund Application to the Plan Administrator. For purposes of the Fund's claims and review procedures, a member is not treated as filing a claim for Fund benefits when the member or the member's attorney asks the Plan Administrator by telephone if coverage is available to the member for a particular incident or legal action.

The Plan Administrator will notify a member in writing if the member's claim for Plan benefits is denied, within the time periods described below. The notice will set forth:

- a. The specific reason or reasons for the denial;
- b. Reference to the specific Fund provisions on which the denial is based;
- c. A description of any additional material or information necessary for the Participant to perfect the claim and an explanation of why the material or information is necessary; and

- d. A description of the Fund's review procedures and the time limits applicable to the review procedures, including a statement of the Participant's right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if the claim for benefits is denied on review.

The Plan Administrator will provide the written notice to the member as soon as possible, but not more than 90 days after the Plan Administrator receives the Participant's claim, unless the Plan Administrator determines that an additional period of time, not to exceed 90 days, is required because of matters beyond the control of the Fund. If an additional period of time is required, the Plan Administrator will notify the Participant in writing of the circumstances requiring the extension of time and the date by which the Plan Administrator expects to render a decision.

If the Plan Administrator notifies a Participant that the Plan Administrator has denied all or part of the Participant's claim, the Participant may request a review of the denial. The Participant or the Participant's authorized representative must notify the Review Panel of the Plan Sponsor in writing of the Participant's request for a review of the denial within 60 days after the Participant receives written notice of the denial from the Plan Administrator.

The Review Panel will give the Participant or the Participant's authorized representative the opportunity to submit written comments, documents, records, and other information relating to the Participant's claim for Fund benefits.

Upon request and free of charge, the Participant or the Participant's authorized representative will be provided reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits.

The Review Panel's review will take into account all comments, documents, records, and other information submitted by the Participant or the Participant's authorized representative relating to the claim, without regard to whether the information was submitted or considered by the Plan Administrator.

The Review Panel will notify a Participant in writing of the Review Panel's decision upon review. The notice will set forth:

- a. The specific reason or reasons for the decision;
- b. Reference to the specific Fund provisions on which the decision is based;
- c. A statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits; and
- d. A statement of the Participant's right to bring an action under Section 502(a) of ERISA.

The Review Panel will make its decision no later than 60 days after the date the Review Panel received the request for review. However, if the Review Panel determines that special circumstances require an extension of time for processing the review request, the Review Panel will notify the Participant in writing before the end of the initial 60-day period. The notice to the Participant will indicate the special circumstances requiring the extension of time and the date as of which the Review Panel will make its decision, which must be within 120 days after the date the Review Panel received the request for review.



New York State Correctional Officers & Police Benevolent Association, Inc.

102 Hackett Blvd. - Albany, NY 12209
(518) 427-1551 nyscopba@nyscopba.org



LEGAL DEFENSE FUND APPLICATION

To: _____
(Your Regional Vice President)

Date: _____

From: _____
(Your name)

Title: _____
(Your title)

Agency and Facility: _____
(Your agency and work location)

E-Mail: _____
(Please print)

Telephone: _____
(Home phone)

(Cell Phone)

Amount Requested: _____

All information and documents below are REQUIRED. The application CANNOT be considered by the Executive Board until all three requirements below are met.

- 1. Attach a copy of the information, complaint, accusatory instruments and/or Grand Jury Subpoena.** If you do not have any of the above, attach an additional sheet containing date, time, nature of the arrest and the agency and/or department who arrested you.
- 2. On an attached sheet, state how your alleged act or omission occurred in the course and scope of your lawful performance of duty.** The Executive Board will consider whether assisting in such legal defense is consistent with the overall interests of the general membership.
- 3. Attach documents showing you applied for reimbursement under NYS Public Officer Law §19.** The application for reimbursement is attached to this application and must be sent by you, via certified mail return receipt requested and via regular mail to the Attorney General's Office. Reimbursement under Section §19 of the Public Officers Law is time-sensitive and is conditioned on delivering to the Attorney General's office a written request for reimbursement within ten (10) days after arraignment or after a grand jury appearance. Written evidence (such as a subpoena) of the grand jury appearance is also required. Further, §19 of the Public Officers Law conditions reimbursement upon your full cooperation in the defense of any action or proceeding against the State which might have arisen out of your actions. Reimbursement is left to the discretion of the Attorney General's Office. (Attached is a copy of Public Officer's Law §19 and the policy adopted by the Executive Assembly October 2012.)

Signed: _____

Date: _____