

## § 1103.4

letter stating the preferred test site should be included with the application. The Board will make every effort to administer the test at the requested location.

(i) *Cancellation of examination.* If the Board determines that there is an insufficient number of applicants to warrant conducting the examination, the Board will cancel the examination for that year. Notice of the cancellation will be mailed to applicants on or before June 15 and the application fee will be refunded. The Board will conduct the examination the next year following the cancellation of the examination.

(j) *Examination results.* Results will be released within 90 days after the examination. Individual results will be forwarded to the applicants at least 1 week before being publicly released. To protect the privacy of those taking the examination, individual grades will not be released over the telephone to anyone. Requests for grades may, however, be submitted in writing to the Office of Public Assistance, Governmental Affairs, and Compliance to the attention of the address stated in the application form.

(k) *Failure to appear for examination.* Applicants who have failed to appear for, or postponed taking an examination, a total of three times without showing good cause will have any subsequently filed application returned.

(l) *Failing or postponing the examination.* Applicants who fail the examination may reapply by submitting a request in writing with an additional filing fee in the amount set forth in 49 CFR 1002.2(f)(100). Applicants who postpone taking the examination three times without showing good cause will have their applications returned.

(m) The filing fee in the amount set forth in 49 CFR 1002.2(f)(100) is not refundable.

(n) Any application resubmitted to the Board after being returned must be accompanied by a filing fee in the amount set forth in 49 CFR 1002.2(f)(100).

(o) *Content and grading of examination.* The Employee Board on Education and Practice is responsible, under the general supervision of the Vice-Chairman, for the examination of non-attor-

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ney applicants, for the preparation of examination questions, and for grading examinations. The Board consists of two attorneys and one non-attorney appointed by the Chairman with the approval of the Board. Under the supervision of this Board, a seven-member Committee of Examiners will grade the examination questions. The members of this Committee must have at least 2 years experience with the Board and are appointed for a 2 year term by the Chairman, with the approval of the Board. Members may be reappointed and, to the extent possible, no more than three members of the Committee will be replaced at one time.

(p) *Applicant's oath.* No applicant shall be admitted to practice before the Board until applicant shall subscribe to an oath or affirmation that applicant will conduct practice uprightly and according to the law, as a practitioner before the Board, and that applicant will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Board.

[47 FR 49549, Nov. 1, 1982, as amended at 49 FR 38614, Oct. 1, 1984; 52 FR 46483, Dec. 8, 1987; 54 FR 48250, Nov. 22, 1989; 56 FR 1374, Jan. 14, 1991; 64 FR 53267, Oct. 1, 1999; 74 FR 52906, Oct. 15, 2009]

### § 1103.4 Initial appearances.

Practitioners shall file a declaration that they are authorized to represent the particular party on whose behalf they appear at the time of making an initial appearance, in all proceedings. This requirement can be met by:

(a) Entering the practitioner's name as the representative of an applicant in the appropriate space on an application form;

(b) Signing any complaint, petition, protest, reply or other pleading with a designation following the practitioner's signature that he is the representative of a party;

(c) Entering an appearance at any hearing on the form provided; or

(d) Filing a letter with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board stating that practitioner is authorized to represent a party. The party represented, their address, and the docket number of the proceeding

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must also be identified at the time of the initial appearance.

[47 FR 49549, Nov. 1, 1982, as amended at 74 FR 52906, Oct. 15, 2009]

### § 1103.5 Discipline.

(a) A member of the Board's bar may be subject to suspension, disbarment, or other disciplinary action if it is shown that the practitioner:

(1) Has been suspended or disbarred from practice in any court of record;

(2) Violated any of the Board's rules including the Canons of Ethics set out in §§ 1103.10 through 1103.35; or

(3) Engaged in conduct unbecoming a member of the bar of the Board.

(b) The practitioner will be afforded an opportunity to show why he should not be suspended, disbarred, or otherwise disciplined. Upon the practitioner's timely response to the show cause order after any requested hearing, or upon failure to make a timely response to the show cause order, the Board shall issue an appropriate decision.

## Subpart B—Canons of Ethics

### § 1103.10 Introduction.

The following canons of ethics are adopted as a general guide for those admitted to practice before the Surface Transportation Board. The practitioners before the Board include (a) lawyers, who have been regularly admitted to practice law and (b) others who have fulfilled the requirements set forth in § 1103.3. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer. The canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply similarly to all practitioners before the Board, but do not negate the applicability of other ethical codes. The canons are organized under three headings, The Practitioner's Duties and Responsibilities to the Board, The Practitioner's Duties and Responsibilities to the Client, The Practitioner's Duties and Responsibilities to Other Litigants, Witnesses and the Public.

### THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES TOWARD THE BOARD

#### § 1103.11 Standards of ethical conduct in courts of the United States to be observed.

These canons further the purpose of the Board's Rules of Practice which direct all persons appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States. Such standards are taken as the basis for these specifications and are modified as the nature of the practice before the Board requires.

#### § 1103.12 The practitioner's duty to and attitude toward the Board.

(a) It is the duty of the practitioner to maintain a respectful attitude toward the Board and for the importance of the functions it administers. In many respects the Board functions as a Court, and practitioners should regard themselves as officers of that Court and uphold its honor and dignity.

(b) It is the right and duty of the practitioner to submit grievances about a member or employee of the Board to the proper authorities when proper grounds for complaint exists. In such cases, charges should be encouraged and the person making them should be protected.

(c) It is the duty of the practitioner to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

#### § 1103.13 Attempts to exert political or personal influence on the Board are prohibited.

(a) It is unethical for a practitioner to attempt to influence the judgment of the Board by threats of political or personal reprisal.

(b) Marked attention and unusual hospitality on the part of a practitioner to a Board Member, administrative law judge, or other representative of the Board, which is unwarranted by the personal relationship of the parties, is subject to misconstruction of motive and should be avoided.