

§ 1103.1

1103.14 Private communications with the Board are prohibited.

THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES TOWARD A CLIENT

- 1103.15 The practitioner's duty to clients, generally.
- 1103.16 Adverse influences and conflicting interests.
- 1103.17 Joint association of practitioners and conflicts of opinion.
- 1103.18 Withdrawal from employment.
- 1103.19 Advising upon the merits of a client's cause.
- 1103.20 Practitioner's fees and related practices.
- 1103.21 How far a practitioner may go in supporting a client's cause.
- 1103.22 Restraining clients from improprieties.
- 1103.23 Confidences of a client.

THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES REGARDING WITNESSES, OTHER LITIGANTS AND THE PUBLIC

- 1103.24 Use of adverse witnesses.
- 1103.25 Treatment of witnesses, litigants and other counsel.
- 1103.26 Discussion of pending litigation in the public press.
- 1103.27 Candor and fairness in dealing with other litigants.
- 1103.28 Negotiations with opposing party.
- 1103.29 Public communication and solicitation.
- 1103.30 Acceptance of employment.
- 1103.31 Responsibility for litigation.
- 1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.
- 1103.33 Responsibility when proposing a person for admission to practice before the Board.
- 1103.34 Intermediaries.
- 1103.35 Partnership or professional corporation names and titles.

AUTHORITY: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

SOURCE: 47 FR 49549, Nov. 1, 1982, unless otherwise noted.

Subpart A—General Information

§ 1103.1 Register of practitioners.

The Board maintains a register containing the names of all non-attorneys entitled to practice before it. The register is maintained according to the individual non-attorney practitioner's name and not by corporate or firm name. Corporations and firms are not admitted or recognized as practitioners before the Board.

49 CFR Ch. X (10–1–07 Edition)

§ 1103.2 Attorneys-at-law—qualifications and requirements to practice before the Board.

Any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia may represent persons before the Board.

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Board.

(a) *In general.* Any citizen or resident of the United States, not an attorney-at-law, who files an application for admission to practice, accompanied by the payment of the fee prescribed by rule or order of the Board, and who successfully completes the practitioners' examination, and shows that applicant possesses the necessary legal and technical qualifications to enable applicant to render valuable service before the Board and that applicant is competent to advise and assist in the presentation of matters before the Board, may be permitted to practice before the Board.

(b) *Qualifications standards.* A non-attorney applicant for admission to practice must meet one of the following requirements:

(1) An applicant must have completed 2 years (60 semester hours or 90 quarter hours) of post secondary education and must possess technical knowledge, training or experience in the field of transportation which is regarded by the Board as the equivalent of 2 additional years of college education;

(2) An applicant must have worked in the field of transportation for at least 10 years;

(3) An applicant must have received a bachelor's degree with at least 12 semester hours or 18 quarter hours in transportation or business; or

(4) An applicant must have received a bachelor's degree and worked in the field of transportation for at least one year. An applicant's statement of college education must be supported by a transcript of records attached to the original application. Transcripts from any college accredited by the U.S. Department of Education will be accepted without question. With all other institutions, the burden of proof is on the

applicant to establish that the formal education satisfies the standards set forth above. The qualifications standards are intended as general guidelines. Individual situations that vary from the standards will continue to be evaluated on their own merits.

(c)(1) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice shall be submitted between January and May 1 of the year in which the examination is to be taken. The application is to be completed in full on the form provided by the Board, and shall be addressed to the Secretary, Surface Transportation Board, Washington, DC 20423, to the attention of the room number indicated on the form.

(2) *Certification:* All applicants must complete the following certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by the non-refundable fee in the amount set forth in 49 CFR 1002.2(f)(100). Payment must be made either by check, money order or credit card payable to the Surface Transportation Board. Cash payment will not be accepted.

(e) *Additional certification.* (1) When an application meets the required standards, a copy will be referred to the Association of Surface Transportation Board Practitioners for a report to the Board as to the reputation and character of the applicant. Inquiry also will be made by the Board of the sponsors as to their knowledge of the applicant's legal and technical qualifications as contemplated by the Board's Rules of Practice. If the Board is satisfied as to the applicant's qualifications, reputation and character, then applicant will be considered eligible to take the examination.

(2) The Board may require an applicant's sponsors to provide a detailed statement of the nature and extent of

their knowledge of applicant's qualifications. Upon consideration of this material, if the Board is not satisfied as to the adequacy of applicant's qualifications, the applicant will be notified by registered mail. Applicant may then request a hearing to prove his qualifications. If applicant makes such a request, the Board will allow a hearing. In the absence of a request for a hearing within 20 days after receipt of the notice, the application will be considered withdrawn.

(f) *Scope of examination.* If applicant meets the educational and experience standards, and is found to be of good character, the applicant will be permitted to take the examination. The examination tests the applicant's experience and knowledge of the principal regulations, laws, and economic principles in the field of transportation as well as knowledge of the Board's Rules of Practice and Canons of Ethics.

(g) *Time and place of examination.* The examination will be conducted once a year on the second Tuesday in July. Notice of the time and place to appear for the examination will be mailed to qualifying applicants approximately 30 days prior to the date of the examination.

(h) *Location of examination.* Examinations will ordinarily be conducted in selected cities where Board offices are located. A listing of the available sites will be attached to the application form. Applicants may select their preferred examination site. If a group of prospective applicants (three applicants or more) wishes to take the examination at a location not listed, a 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.

§ 1103.4

49 CFR Ch. X (10–1–07 Edition)

(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 the Secretary 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-attorney 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]

§ 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 Secretary of the Board stating that practitioner is authorized to represent a party. The party represented, their address, and the docket number of the proceeding must also be identified at the time of the initial appearance.

§ 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