

## **RESPONSIBILITIES OF THE OFFICE OF PROCEEDINGS**

**Director:** David M. Konschnik  
202-565-1600

The Office of Proceedings is primarily responsible for developing the record in formal cases (or proceedings) filed with the Board, making recommendations to the Board with respect to resolution of the issues presented in those cases, and preparing decisions that would carry out the wishes of the Board regarding those issues.

The Office of Proceedings, which is responsible for the majority of the cases at the Board, has 48 staff persons. There are three Sections in the Office: two are Sections of Legal Counsel, consisting entirely of attorneys and paralegal specialists, and headed by Joe Dettmar and Beryl Gordon; the third section is the Section of Administration, headed by Julia Farr. I will talk a bit more about that Section shortly because many of you will have occasion to speak with personnel in the Section of Administration when you are making filings with the Board. Within the Director's Office, John Sado serves as Assistant to the Director. We also have a Clearance Unit responsible for tabulating votes of Board Members and recording the official outcome of those votes. When a decision is reached by Board Members, the Clearance Unit sees to it that the approved decision is delivered to appropriate staff for reproduction and service and is put on the Board's website. For those with procedural questions, call Joe Dettmar (202-565-1609), Beryl Gordon (202-565-1616), John Sado (202-565-1661), Julia Farr (202-565-1655) (especially with questions about railroad merger proceedings), or Dave Konschnik (202-565-1651). If you have difficulty opening a copy of a served decision on the Board's website, you may call Melinda Collins, the Clearance Unit Supervisor (202-565-1653).

The Section of Administration is responsible for providing the administrative and legal support to the Office of Proceedings.

**MILSS Branch.** Within this Section is our Management Information and Legal Support Services Branch, known as the MILSS Branch, which is led by Branch Chief Barbara Saddler (202-565-1656) and Assistant Branch Chief Ann Newman (202-565-1657). All filings addressed to the Board's Secretary (like applications, petitions, class exemptions, complaints, motions, and letters) are routed by the Board's Mail Room to the MILSS Branch.

The MILSS Branch examines every filing for compliance with filing procedures pursuant to the Board's regulations, which includes checking for proper number of copies, certificate of service, and proper filing fee if applicable. If your filing is not in compliance, you will be notified by a MILSS Branch employee as to how you may perfect your filing. A branch employee will assign a docket number to a new case that has not reserved a docket number prior to filing before the Board. It is preferable for anyone planning to file a new case to reserve a docket number with the MILSS Branch prior to filing. This can easily be done by calling one of the following phone numbers: 202-565-1662, 202-565-1658, or 202-565-1584.

All properly filed documents are scanned by the MILSS Branch and downloaded by

filing date onto the Board's website. There are a series of stamps on the first page of each filing. The MILSS Branch makes sure that the original and all copies have the appropriate stamps on the first page indicating the Filing Date, Filing Fee Received (if appropriate), and Date Entered into the Public Record. Confidential filings are only accessible to the Board staff, not the public, for viewing. There are also a Filing ID number written on each filing. When the MILSS Branch enters data about each filing into the agency's recordkeeping system, the database system assigns a Filing ID number to that filing, which can be tracked to the official record stored in the Public Docket Room. After completing the scanning process, the MILSS Branch forwards the original and a copy to the Public Docket Room, which sends the original to be microfilmed for the official record. The MILSS Branch distributes a copy of all filings to the Board's contractor (Da 2 Da), a copy to each Board Member, a copy to the working attorney or paralegal in the Office of Proceedings through a Branch Chief, a copy to the file room, and a copy to other involved Offices (such as the Office of General Counsel, Section of Economics, and Section of Environmental Analysis). [Items, like letters, either not addressed to the Board's Secretary or not filed pursuant to the Board's regulations, are placed in the correspondence section of the Public Docket.]

**Recordations Unit.** The Board's Recordations Unit is located on the 7th Floor. The MILSS Branch Chief Barbara Saddler is the contact person for recordations. Our recordations clerks enter data about the primary and secondary documents into the Board's Recordation database, which is also accessible to the public on the Board's website. Recordation documents are scanned and attached to the corresponding filing entries on the website. While originals are sent out to be microfilmed for the official record, one copy of each document is available for the public to review in our Recordations Library, which also shelves index books referencing historical and current recordations.

**A. What are the 5 most common mistakes people make in filing papers with the Board?**

1. Not following the regulations. Most attorneys, especially experienced counsel who practice regularly before the agency, are very diligent, but a number of filings we receive, especially notices of exemption and other routine matters, contain errors. Lack of mileposts (or erroneous mileposts) in abandonment cases, failure to recite service on all persons required to be served, and failure to make all required representations are some examples.
2. Not following the latest Board decisions. Sometimes filings, both routine and complex, do not reflect the most recent decisions of the agency in a subject area. There are a number of recent decisions that set new Board policy that should be noted.
3. Filing under the wrong regulation. Especially in the area of class exemptions, petitioners will invoke an inapplicable exemption. Sometimes an exemption applies that they should have invoked. On occasion, no class exemption applies and the party must file a petition for exemption.

4. Submitting a single notice for two or more separate transactions. Each notice invoking a class exemption requires a separate filing.

5. Claiming the proposed transaction is exempt from environmental review.

We see a surprising number of these. It's always a good idea to check with the environmental staff to make sure that the transaction is indeed exempt and that compliance with the environmental regulations is not necessary.

**B. What kind of information would best help the Board make its decisions?**

Supporting every claim or assertion by reference to the record of the case and to applicable Board and court precedent will stand you in good stead. The Board's website and the electronic reading room are useful sources of recent Board precedent.

**C. What is the most effective way to approach the Board?**

An indication that a petitioner or complainant has made a genuine attempt to resolve its problem by negotiation is always appreciated. This is true whether the issue is the subject matter of the case or a minor procedural matter such as seeking an extension of time.

Eliminating makeweight arguments and setting out arguments as clearly and concisely as possible always enhance the effectiveness of any written argument.

**D. Things to keep in mind**

1. Board staff—especially the Public Services Section—is always available to answer your questions.

2. If you require expedited action, give a specific date and state a clear reason. The agency understands that parties before it are subject to constraints and we will try to accommodate your needs. By the same token, mere statements that “expedition is required” are unhelpful and a statement that a decision must be issued by a certain date because a closing has been scheduled are not likely to arouse sympathy or cause a reordering of priorities.

3. If you have an action such as a stay that is going to require fast Board action it is to your advantage to advise the Board promptly that you will be filing, to tell us when you expect to file and to submit your filing as soon as possible.

4. We don't see much “game playing,” but occasionally we see pleadings submitted late on a Friday afternoon before a 3-day weekend involving an action that will occur early the following week. We don't recommend that.