

Board of Law Examiners

Appointed by the Supreme Court of Texas

Hearing Procedures

1. Adoption

- 1.1. The Texas Board of Law Examiners (BLE) adopted these Hearing Procedures on January 14, 2023, under Rule 15(l) of the Supreme Court of Texas Rule Governing Admission to the Bar of Texas.
- 1.2. These Hearing Procedures replace the following:
 - Rule of Procedure: Documentary Evidence, Adopted February 13, 1998
 - Rule of Procedure: Requiring Election of Open Hearings, adopted July 8, 2003
 - Rule of Procedure: Witnesses, adopted March 22, 2019
 - Prior policies on motions for continuance
- 1.3. If these Hearing Procedures conflict with the Rules Governing Admission to the Bar of Texas, the latter prevail.

2. Definitions

- 2.1. “BLE attorney” means the attorney assigned to present Staff’s evidence at a Hearing. The BLE attorney will be named in the Preliminary Determination Letter. (*See* 2.13 and 2.16 below).
- 2.2. “Board” means the Texas Board of Law Examiners.
- 2.3. “Candidate” means
 - a declarant;
 - an applicant for admission by taking the Texas bar exam;
 - an applicant for admission without examination;
 - an applicant for admission by transfer of a UBE score;
 - any other applicant for admission to the Texas bar;
 - a person seeking redetermination of their present good moral character or fitness under Rule 15(j), an applicant for certification as a Foreign Legal Consultant (FLC); or
 - an applicant seeking renewal of an FLC certification.

- 2.4. “Day” means calendar day.
- 2.5. “Fitness” has the meaning set out in Rule 4. (*See* 2.15 below)
- 2.6. “Foreign Legal Consultant” has the meaning set out in Rule 14. (*See* 2.15 below.)
- 2.7. “Good moral character” has the meaning set out in Rule 4. (*See* 2.15 below).
- 2.8. “Hearing” means a Hearing conducted under Rule 15. (*See* 2.15 below).
- 2.9. “Hearing Procedures” means this document.
- 2.10. “Notice Letter” means Staff’s written notice to a Candidate of the time and place for a Hearing.
- 2.11. “Order” means a written order issued by a Panel under Rule 15. (*See* 2.15 below).
- 2.12. “Panel” means the Board members who conduct a Hearing. A Panel is ordinarily comprised of three Board members. The chairperson of the Panel is the “Panel Chair.”
- 2.13. “PDL” or “Preliminary Determination Letter” means the written notice required by Rule 8 or Rule 10 (*see* 2.15 below) to a Candidate of Staff’s (*see* Rule 2.16 below) adverse preliminary determination regarding the Candidate’s present good moral character or fitness.
- 2.14. “Receipt” and “delivery” of a document is deemed to occur:
 - At the time it is sent through ATLAS, except if that time is after 5 p.m. Central Time, then at 8 a.m. Central Time the following business day.
 - At the time an email is received in the recipient’s inbox, except if that time is after 5 p.m., then at 8 a.m. Central Time the following business day.
- 2.15. “Rules” means the Rules Governing Admission to the Bar of Texas, adopted by the Supreme Court of Texas, and “Rule” refers to one of those Rules.
- 2.16. “Staff” means the Staff of the Board.
- 2.17. “Texas Bar” means the State Bar of Texas.
- 2.18. “We,” “us,” and “our” refer to Staff.
- 2.19. “You” means a Candidate or a Candidate’s attorney.

3. Delivery of written communication and documents

- 3.1. If you are not represented by an attorney, you and the BLE attorney must deliver all written communication and documents through your ATLAS portal unless you and the BLE attorney agree in writing to other delivery methods.
- 3.2. If you are represented by an attorney, your attorney and the BLE attorney must deliver all written communication and documents by email unless your attorney and the BLE attorney agree in writing to other delivery methods.

4. Character and Fitness Investigation

The Board is charged with determining whether a Candidate meets the requirements set forth in the Rules. Rule 4(a) provides: “No one shall be eligible for admission to the Texas Bar or for certification as a Foreign Legal Consultant until the investigation of such person’s moral character and fitness has been completed, and it has been determined by the Board that such individual possesses present good moral character and fitness.”

Staff investigates each Candidate’s moral character and fitness, and either certifies that the Candidate possesses the requisite good moral character and fitness or makes a preliminary determination that the Candidate does not possess the requisite good moral character and/or fitness.

5. Preliminary Determination Letter (PDL)

If our investigation indicates that you may lack the present good moral character or fitness required by the Rules, we will deliver a Preliminary Determination Letter (PDL) to you. (*See* Rules 8 and 10.) The PDL will contain:

- A detailed analysis of the results of Staff’s investigation;
- An objective list of actions, if any, which you may take to correct the deficiencies and to become qualified for admission to the Bar after completing all other requirements for admission; and
- The name, phone number, and e-mail address of the BLE attorney assigned to your matter.

6. Requesting a Hearing

- 6.1. To contest our adverse preliminary determination, you must deliver a written request for a hearing to the BLE attorney named in the PDL within 30 days of receiving the PDL. (*See* Rule 15(a)(1).)
- 6.2. Hearings are generally docketed for one hour, allowing each side 30 minutes to present evidence. If you believe you will need more than 30 minutes to present your evidence, you should contact the BLE attorney as soon as possible. If you

and the BLE attorney cannot agree on how much time to docket for the Hearing, you may include a request for additional docket time with your Hearing request as set out in paragraph 9.

7. Right to proceed *pro se* and right to counsel

- 7.1. You have the right to proceed *pro se*. If you choose to represent yourself, you should continue to communicate with us through your ATLAS portal.
- 7.2. You have the right to retain counsel. If you retain counsel, your attorney should contact us as soon as possible. If you have already received a Notice Letter, your attorney should contact the BLE attorney named in the Notice Letter.
- 7.3. If we receive a letter of representation, we will only communicate about the Hearing with your attorney. Once you tell us you are represented by counsel, we will no longer communicate about the Hearing directly with you, and we will no longer communicate about the Hearing through your ATLAS portal.

8. Notice Letter

If you timely request a Hearing, you will receive a Notice Letter containing:

- The date, time, and location of your Hearing;
- The total time docketed for your Hearing; and
- The name, phone number, and e-mail address of the BLE attorney assigned to your matter.

9. Request for additional docket time

- 9.1. If you expect to need more than one-half of the total time docketed for your Hearing as stated in the Notice Letter, you must notify the BLE attorney no later than five days after receiving the Notice Letter.
- 9.2. If you and the BLE attorney agree on the amount of time to be docketed for the Hearing, then the BLE attorney will send you written confirmation of the docketed time. If you are unable to agree, the BLE attorney will forward your request to the Panel Chair, and the Panel Chair will rule on your request. The BLE attorney will notify you of the Panel Chair's decision.
- 9.3. The Panel Chair's decision is final, cannot be appealed, and will not be reconsidered except in extraordinary circumstances. The Panel Chair may consult and deliberate with other members of the Panel before ruling on your request.

10. Expert witness disclosures

- 10.1. At least 15 days before your Hearing, each side must deliver to the other side the following information about any expert witness who they plan to call at your Hearing:
- a) the expert's name, address, and telephone number;
 - b) the subject matter on which the expert will testify;
 - c) the general substance of the expert's mental impressions and opinions and a summary of the basis for them;
 - d) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;
 - e) the expert's qualifications, including a list of all publications authored in the previous 10 years; and
 - f) a list of all other matters in which, during the previous four years, the expert testified as an expert at trial, hearing, or by deposition; and
 - g) a statement of the compensation to be paid for the expert's preparation and testimony in this matter.
- 10.2. The Panel Chair must, upon objection or at the Panel Chair's discretion, exclude expert witnesses for whom the required disclosures were not timely made unless the Panel Chair finds that (1) there was good cause for the untimely disclosure; or (2) the untimely disclosure will not unfairly surprise or unfairly prejudice the other party.
- 10.3. No later than seven days after receiving expert witness disclosures, each side must deliver to the other side the disclosures outlined in 10.1 for any rebuttal expert(s) proposed to be called at the Hearing.

11. Witness list

- 11.1. At least 10 days before the Hearing, each side must deliver to the other side the name of and contact information for each witness they intend to have testify at the Hearing.
- 11.2. The Panel Chair must, upon objection or at the Panel Chair's discretion, exclude witnesses who were not timely disclosed unless the Panel Chair finds that (1) there was good cause for the untimely disclosure; or (2) the untimely disclosure will not unfairly surprise or unfairly prejudice the other party.

12. Open hearing election

Rule 15(c) provides that hearings, deliberations, and determinations relating to your

moral character and fitness are closed to the public and records relating to these subjects are confidential. You have the right to have the Hearing open to designated persons, upon written request. At least 10 days before the Hearing, you must deliver to the BLE attorney the names of anyone, other than witnesses, whom you will wish to attend your Hearing even if you do not intend these persons to testify at the hearing.

13. Exhibits

- 13.1. At least 10 days before the Hearing, each side must deliver to the other side a list of proposed exhibits.
- 13.2. The Panel Chair must, upon objection or at the Panel Chair's discretion, exclude exhibits that were not timely submitted to the other side unless the Panel Chair finds that (1) there was good cause for the untimely disclosure; or (2) the untimely disclosure will not unfairly surprise or unfairly prejudice the other party. The Panel Chair may consult and deliberate with other members of the Panel before ruling on any objections.
- 13.3. Objections to any proposed exhibits must be submitted to the other side within five days of receipt of the objectionable exhibits. Any objections not timely made are considered waived. The BLE attorney will forward all timely objections to the Panel Chair, who will rule on all objections before the Hearing.
- 13.4. The Panel will not consider any motions *in limine*.

14. Request to appear by Zoom or other teleconferencing means

- 14.1. The Panel expects you, your attorney, and your witnesses to appear in person for the Hearing so that the Panel can most effectively communicate with Hearing participants. The Panel Chair has discretion to allow appearances by Zoom for good cause. Mere convenience is not good cause.
- 14.2. If you would like to request to appear by Zoom, you must deliver a written request and all supporting documentation to the BLE attorney as soon as practicable but, except in extraordinary circumstances, not later than 15 days before your Hearing.
- 14.3. The BLE attorney will deliver the Zoom request to the Panel Chair, who will rule on the request, with or without input from the other Panel members. The BLE attorney will deliver the Panel Chair's decision to you as soon as practicable.
- 14.4. The Panel Chair's decision is final, cannot be appealed, and will not be reconsidered except in extraordinary circumstances.

15. Request for continuance

- 15.1. If you cannot proceed with your scheduled Hearing due to unexpected and unavoidable circumstances, you can request a continuance as follows:
 - a) Deliver a written request to the BLE attorney as soon as practicable but, except in extraordinary circumstances, not later than 15 days before your Hearing;
 - b) Describe with particularity in the request your reasons for seeking a continuance; and
 - c) State whether you have asked to continue any previous hearings and the reason(s) for these prior continuance requests.
- 15.2. The BLE attorney will deliver your continuance request to the Panel Chair, who will decide the request, with or without input from the other Panel members. The BLE attorney will deliver the Panel Chair's decision to you as soon as practicable. You should continue to prepare for the scheduled Hearing until you receive notice that your continuance request has been granted.
- 15.3. The Panel Chair's decision on continuance requests is final, cannot be appealed, and will not be reconsidered except in extraordinary circumstances.

16. Conducting your Hearing

16.1. Time and place

Hearings are set for an 8:30 a.m. docket call, unless otherwise specified in your Notice Letter. Your Hearing will be held in the location stated in your Notice Letter.

16.2. Duration

Your Hearing is docketed for the time set out in your Notice Letter, unless the Panel Chair has agreed to allocate additional time (*see* 9 above).

The Panel Chair has discretion to conclude your Hearing if you take longer than your docketed time.

16.3. Panel members

The Hearing will be conducted before three Board members. One Panel member will serve as Panel Chair. All Panel members will have been cleared for any known conflicts before your Hearing.

- 16.4. The Panel Chair has discretion to determine how the Hearing is conducted, will determine objections to evidence including whether evidence is cumulative, and make other procedural rulings. The Panel Chair may consult and deliberate with other members of the Panel in connection with procedural rulings.

- 16.5. Hearings are usually conducted like a bench trial in court and proceed as follows:
- a) The Panel Chair calls the matter and asks if each side is ready to proceed.
 - b) The Panel Chair swears in witnesses.
 - c) The Panel Chair asks each side to make a brief opening statement of what they reasonably expect the evidence will show.
 - d) In most cases, the BLE attorney has the initial burden of proof and, therefore, presents the Board's evidence first. The BLE attorney may call witnesses and present documentary evidence. The BLE attorney may call you as a witness.
 - e) You will then present your evidence. You may call witnesses and present documentary evidence. If you are a witness in your own matter, you may ask the Panel Chair's permission to testify in the narrative.
 - f) The Panel Chair may allow each side to present rebuttal evidence.
 - g) Each side may make a brief closing argument, beginning with the BLE attorney if the BLE attorney has the burden of proof.
 - h) After closing arguments, the Panel Chair will conclude the hearing.
 - i) In cases where you have the burden of proof, you will proceed first to make your opening statement, put on your case in chief, and make your closing argument.
- 16.6. Panel members may ask questions of you, other witnesses, your attorney, or the BLE attorney at any time during the Hearing.
- 16.7. Although Panel members may receive the exhibits before a Hearing, they may continue to review documents during witness testimony as the basis for understanding such testimony and formulating questions for Hearing participants.
- 16.8. Character and fitness hearings, although like bench trials, are **not** governed by the Texas Rules of Evidence or the Texas Rules of Civil Procedure. Although those rules provide a rough framework for conducting panel hearings, evidence that would not be admissible in a trial may be admitted and considered at the discretion of the Panel Chair if it is of a type on which a reasonably prudent person commonly relies in the conduct of a person's affairs (*See* Rule 15(f)(2)).

17. Deliberations and decision

- 17.1. After the Hearing is over, the Panel will deliberate in closed session. This usually occurs after all hearings scheduled for that day are concluded.
- 17.2. After deliberating, the Panel will return to open session, vote, and announce a decision by docket number to protect confidentiality. Generally, the BLE attorney will phone you to let you know the Panel's decision.

17.3. The Rules do not allow motions for reconsideration. The Panel will not accept, admit, or consider evidence or argument after it has deliberated and voted on your case.

18. The Order

After a decision is made in your case, the Panel will issue a written Order, setting out the Panel's decision, findings of fact, conclusions of law, and other information required by Rule 15. The BLE attorney will deliver the Order to you.

19. Appealing the Order

You may appeal the Order under Rule 15 by filing a petition for review in a Travis County, Texas, district court within 60 days after the Order is sent to you.

The standard for judicial review of a Board order on present good moral character and fitness is whether the Board's decision is reasonably supported by substantial evidence. The district court's review is limited to the certified record created at the Board hearing, and no new evidence may be submitted to or considered by the district court.

The district court may either affirm the Board's action or remand the matter to the Board for further proceedings. (*See* Rule 15(k).)