

Volume

1

BOB BENNETT & ASSOCIATES

Board of Law Examiners Handbook

Navigating a Board of Law

Examiners Hearing

BOB BENNETT & ASSOCIATES

Board of Law Examiners Handbook

© Bob Bennett & Associates
515 Louisiana St • Suite 200
Houston, TX 77002
Phone 713.225.6000 • Fax 713.225.6001
contactus@bennettlawfirm.com
www.BennettLawFirm.com

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Introduction to the Firm

Bob Bennett & Associates P.L.L.C concentrates on representing attorneys, doctors, and judges who have professional discipline issues and find themselves the subject of federal and state investigations. This includes representation of both law students and medical students who have run afoul of the Texas Board of Law Examiners (BLE) or Texas Medical Board. Medical students and doctors who have issues with the United States Medical Licensing Examination, the National Board of Medical Examiners, or the Federation of State Medical Boards have retained the Firm. Whether the matter involves a grievance hearing before the State Bar of Texas' Office of Chief Disciplinary Counsel (OCDC) or a privilege hearing before a hospital committee, the Firm is known for aggressive representation and success.

We have compiled this information to shed some light on the complicated, and often times non-transparent, BLE hearing process. Too often attorneys and law students think they can represent themselves before the BLE, but the

results of *pro se*, or self-representation, can be disastrous. We hope this information will be helpful to you. If you should have any questions, feel free to contact us to discuss your case. You can find additional information on our website at www.BennettLawFirm.com or see us on YouTube by searching “Texas Board of Law Examiners.” Bob Bennett can be reached at 713-225-6000.

What does the Board of Law Examiners Do?

After four years in college and three years in law school, you have passed the bar exam and just as you are agreeing to work for the Smith & Smith Law Firm in Centerville, you get the BLE letter that tells you that your failure to properly disclose an arrest history to your law school, or your record of 5 MIPs and DWI's is problematic, or both your good moral character and your fitness to practice law are called into question. Maybe after communicating with a Staff Attorney from the BLE, you get a preliminary determination letter and you wisely decide to set the matter for a hearing. What do you do next? Do you follow the statement of BLE that states: "At this hearing, you are entitled to be represented by an attorney and to present evidence and witnesses on your behalf?" What should you do? Do you know how to present the particular evidence and witness testimony necessary to prevail, especially if one of the witnesses is yourself? In

this handbook, we will explain the procedures, issues, and consequences of a hearing before the BLE and why you should hire an experienced lawyer to get through this process successfully. Not knowing what the BLE does or how the Panel Hearing is conducted may be stressful and very confusing. Do you really want to present yourself as a witness and be subject to cross-examination? Not only will the attorney for BLE ask you probing and difficult questions, but the three panel members may also want to ask you questions.

Preliminary Determination Letter

The BLE tells you that you fail to meet the standards of good moral character and fitness. Is all hope lost in the discretionary purview of the Board? Most applicants for admission to the State Bar of Texas will tell you their greatest fear is that they will fail the examination. However, there are those applicants who will tell you there is a worst-scene scenario: The BLE informs you that you fail to meet the standards of good moral character and fitness, and therefore you are not eligible to practice law as a licensed attorney.

Even if you already are licensed in another state or country, you still have to pass muster on the "good moral character and fitness" requirement. Is your Texas legal career over before it starts? What do you do? Don't panic— hire good counsel. While the BLE has wide discretion, not all is a total mystery. Understanding the burden of proof and making a good presentation of the circumstances, mitigating factors and strong testimonial support by noteworthy individuals in the community may save the day.

The Texas Supreme Court ruled in 1994 *Board of Law Examiners v. Stevens*, 868 S.W. 2d 773 (1993), there must be “substantial evidence” of a “clear and rational connection between character trait of the applicant and the likelihood that the applicant would injure a client (or violate the Texas Disciplinary Rules of Professional Conduct) if the applicant were licensed to practice law.”

Most applicants to law school run afoul of the BLE and a law school's Admissions Disclosure Committee in responding to the inquiry regarding any legal matters other than minor traffic violations for which they were "arrested, cited, ticketed or charged" within the 10 years preceding filing their applications, even if the charges were later dismissed or the applicants were found not guilty. Additionally, cases where the applicant was found guilty, pleaded guilty or nolocontendere (no contest), or had any other adverse disposition, including a fine, sentence of probation or restitution, or a grant of deferred adjudication must be disclosed.

Pleas, Drugs & Alcohol

Any matters involving drugs or alcohol, no matter when they occurred, must also be disclosed. In most instances, the applicant is fresh out of undergraduate school (or in the final stages of completing undergraduate work) and approaches the question from a layman's perspective,

considering himself or herself to be a good, honest and moral individual.

Woe to the individual who completes the application in a hurry and/or simply does not remember one or more incidents. Did you have a failure to appear on a traffic violation, a warrant was issued but you later took care of and dismissed from your mind? Did you bounce a check, even for a minor amount, due to an accounting error, took care of the matter and dismissed it from your thoughts? After all, it's not like you purposely wrote a bad check.

The above scenarios that result in a criminal record apply equally to the application to take the bar exam sent to the BLE, whether you are a law student or seek admission to the Texas Bar having already been licensed in another jurisdiction. Haste and belated memory causes more problems than a carefully thought out initial disclosure.

Financial Responsibility

Another criterion that falls under the rubric of good moral character and fitness is the issue of financial responsibility. Questions regarding outstanding child support, bankruptcy, and default on student loans or unsatisfied judgments can also raise questions regarding financial responsibility and professional conduct (if you already are licensed in another jurisdiction). They may be considered indicative of the character traits of deceptiveness, dishonesty, lack of trustworthiness in carrying out responsibilities and a lack of financial

responsibility, which are undesirable in one who wishes to be licensed to practice law, become an officer of the court and who may be entrusted with client funds.

Due Process, Rehabilitation, & Disclosure

In each scenario, the questions presented are primarily ones of due process and rehabilitation. There are constitutional arguments, under the U.S. Constitution and Texas Constitution, on the due process issue. As to rehabilitation, the Texas Bar has no written standards on what constitutes evidence of rehabilitation. A requirement to show that one is "clearly and convincingly rehabilitated" requires a higher standard than substantial evidence or preponderance of the evidence used to determine good moral character. The result is that the Texas Bar has a high evidentiary standard with no guidelines for interpretation, which could lead to arbitrary and capricious decisions.

Whether you are a law student or already licensed in another jurisdiction, when completing your application for admission to law school or your application to take the bar examination, take the time to think back carefully over "past misadventures." Ask your immediate family or a trusted friend if there is anything you might have forgotten or left out.

According to the law schools and the BLE, when in doubt, you should always err on the side of full disclosure. If you think there is something that is going to

be a problem, make full disclosure and consult counsel with experience working with the BLE. That ounce of protection is definitely worth a pound of cure.

Why You Should Hire an Attorney

You may have been on the champion moot court team in your law school and topped the evidence class, but do you really want to be your own advocate and witness at the same time during the BLE Hearing? On your own do you want to be deciding who will be your witnesses and what documents you will submit along with deciding which document from the BLE is objectionable? Are you familiar with the BLE Rules of Procedure? You have spent more than \$60,000 and maybe considerably more to get your law degree and with your 30+ year legal career tittering on the brink, do you really want to go through a hearing on your own? Remember the adage about a lawyer who represents himself? One distinct advantage of having an attorney with you is that attorneys and their clients move to the head of the line when the hearings start. Here are some other reasons you may want to hire an attorney for this process:

1. Knowing the System: Any process is easier when you know the system. Obtaining an attorney means you have the advantage of their previous experience. Your attorney will know where to be, who to talk to, and how to manage your hearing. Try to find out how familiar your prospective attorney is with the BLE. Does your attorney represent clients before the BLE on a regular basis? Does your attorney know the staff attorneys and does the BLE know your attorney? Do you really want to be making decisions about what evidence to present, which witnesses to call, and facing cross examination on your own?

2. Organize your Defense: Properly preparing for your hearing is arguably the most important thing you can do. In some cases this can include gathering and presenting extensive amounts of materials to be presented to the Board as evidence or exhibits. In some cases it is also important to obtain witnesses who can attest to your character or fitness or both. An attorney will be able to properly organize your defense by helping you and any witnesses prepare for the possible questions that will be asked in your hearing. If you have never done this before, how do you know what questions the BLE staff attorney will ask you and what is the best way to answer the tough questions? Further, an attorney will also know what kinds of evidence will be most appreciated by the BLE. The Board is made-up of attorneys who appreciate a streamlined presentation and if you are in the room by

yourself, the hearing may drag on as you try to figure out what the staff attorney is doing and how best to persuade the BLE. This may hinder a positive result.

3. Dispassionate Response: In the hearing, the staff attorney and the Board are likely to ask you questions that are personal and very direct in order to strenuously explore your background and character. Serving as both a witness (to your own character) and your advocate, can be too much even for a practiced attorney. These stressful and potentially embarrassing situations can cause cloudy judgment and result in unclear answers to the Board's questions. Having an attorney with you means you have someone that can make sure the best information comes to light in your defense. Through practicing how the staff attorney will cross examine you and proper preparation of your defense, your attorney will make sure you give clear and appropriate answers that present the best "picture" of you. Hearing the questions for the first time in the hearing room can lead to disastrous results.

4. Stipulation of Facts: An important part of proper organization is knowing what facts to stipulate. Do you really want to contest an arrest record that you have already admitted was correct to demonstrate your knowledge of the business records rule? Your attorney can provide valuable insight into how the Board will generally rule and which battles to fight and which to let

pass. Disclosure and candor are of the utmost importance in building rapport with the BLE, but in some cases, it is appropriate to oppose certain evidence presented against you. An attorney will be able to ensure that your hearing proceeds and concludes in a timely fashion, while preserving every opportunity to defend your character and seek the most advantageous outcome. This is especially important for law students who are unfamiliar with how the BLE operates and may feel intimidated or embarrassed by what happens in the hearing room.

5. Professional Relationships: One of the greatest advantages an attorney can offer you is the professional relationships he or she has built with the staff, attorneys, and Board's panel members. Obtaining an attorney who is familiar with the people involved in this process is very important. A professional relationship with the staff attorneys will help streamline the flow of information between parties, facilitate stipulations and agreements as to facts and help create a seemingly less hostile environment. The professional relationship established between the BLE and your attorney by handling numerous cases together can act as a doorway to bring about a fair and desirable outcome.

6. Hiring an Attorney Shows the Board You Take This Hearing Seriously: A hearing in front of the BLE is a serious matter. The Board is charged with the mandate to

protect the public from potential attorneys who do not have good moral character and/or the fitness that pertains to your mental and emotional health — i.e. would you be a threat to the public for whatever reason the Board is considering? Not only will an attorney help prepare your defense, the attorney's presence will help to show the Board that you take the matter seriously and that you are taking a proactive approach in your own defense.

7. Subpoenas: One of the more difficult aspects of a BLE hearing is obtaining subpoenas. The Board has the authority to subpoena witnesses to testify at a hearing; however, the Board tries to use this power sparingly. This can be an especially difficult situation for law students who were previously employed by a judge and may want to have the judge testify either by phone or in person. In many cases, past employers can provide invaluable testimony to your character and fitness, and a judge's testimony certainly goes a long way. However, in order to uphold the Judicial Cannons, judges cannot provide testimony unless subpoenaed. Through their previous experience and personal relationships, your attorney will have greater avenues to properly petition the BLE in order to obtain the subpoenas necessary for your defense.

8. Motion in Limine:

An experienced attorney will determine if a Motion in Limine should be filed in your case. If arrest records have been expunged or the acts in question happened as a juvenile or more than five years ago, consideration should be given to a Motion in Limine.

9. Reconsideration of Negative Preliminary Determination: The cases that come before the BLE generally involve a “Predetermination of Lack of Fitness or Good Moral Character to Practice Law.” In some cases the Board may be willing to reconsider their predetermination before a hearing is set if all curative measures have been met. If appropriate, a written presentation can be submitted in order to petition the Board to reconsider. This course of action can be advantageous because it can settle the matter without a hearing before the Board, saving you a great deal of time and money. Having an attorney during this process is of equal importance as at the hearing since this is the one opportunity to convince the Board of Law Examiners before a formal hearing that you have the good moral character to practice law. Your attorney can analyze if it would be appropriate to advocate having the negative determination withdrawn, and prepare the best possible presentation to provide the best opportunity for this to happen.

10. Emotion is a Factor From Start to Finish: A hearing with the Texas Board of Law Examiners can be stressful, especially in hearings pertaining to character and fitness to practice law. This process will lead you to feel overwhelmed when you first receive the predetermination letter and that feeling will not go away. You have spent four years as an undergraduate, probably three years in law school, and your future livelihood is being decided on facts that happened when you were younger. Having an attorney can make sure the stress and the emotions involved do not harm the preparation that is necessary to properly present your side of the story. Will you be prepared to make objections during the hearing and be the best advocate for your right to practice law?

11. First in Line: One distinct advantage to having an attorney with you is that your name will be moved to the top of the docket. The docket is called at 8:50 a.m., hearings involving character and fitness are held first. Individuals who are represented by attorneys are called first. Individuals who choose to have their hearings *pro se* will be called only after all individuals with representation are heard. (Depending on the day, this could create a very long wait). If you want to get on with your life and your anticipated practice of law, an experienced attorney can help move you along and certainly provide a comfort factor that you will not have by yourself.

Taking the Board of Law Examiners Recommendation for an Attorney

The Texas Board of Law Examiners gives you the following information about hiring a lawyer:

“You have the right to retain counsel for your hearing before the Board of Law Examiners. If you do so, please have your attorney contact the Staff Attorney assigned to your case as soon as possible. If you have retained counsel, all further communications between you and the Board Staff Attorney must be through your attorney. If you prefer to represent yourself, you may do so. In that case, you may continue to communicate directly with the Staff Attorney”

The information provided to you by the BLE fails to explain the potential repercussions of facing the BLE process alone. We have heard about many cases in which a law student fails to hire an attorney or fails to hire an appropriate attorney and their law career gets tarnished with a probated license or a rejected application.

Deciding to represent yourself is a risky proposition. How will you handle being called as an adverse witness? What happens if you don't get the appropriate affidavits? These are the things a lawyer experienced in BLE hearings will know how to answer for you.

Appealing the Order

The BLE states:

“Appeals of the Board’s Order may be instituted in the district courts of Travis County within sixty (60) days after the Order is mailed to you or your attorney. The standard for judicial review of the Board’s order 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; new evidence cannot be submitted or considered by the court. The court can either affirm the Board’s action or remand the matter to the Board for further proceedings. (See also Rule XV(k).)”

Once again, this information fails to detail the process of appealing a BLE decision. How are you to make an appeal? What is the process? What documents will you need? Even an experienced judge may not be familiar

with the BLE's complicated procedures for appeal and how to make the best record possible for an appeal.

Probated Licenses

One of the potential repercussions of a hearing with the BLE is a probated license. This outcome may be avoided with the help of good and experienced counsel. A probated license for a lawyer is generally burdened with the following requirements:

- (1) Report regularly to the department on any matter that is the basis of the probation;
- (2) Limit the license holder's practice to the areas prescribed by the department; or
- (3) Continue or review professional education until the license holder attains a degree of skill satisfactory to the commissioner in each area that is the basis of the probation.

As a new graduate from law school or a lawyer who is new to the state, you deserve and want to have your license with no restrictions. The BLE may make this seem like a good option, but you won't know the possibility of an alternative unless there is someone there

to guide you. As the name indicates a “probated” license means just that — you are on probation. This means that if you do not live up to the terms of your probation, your “probated” license can be revoked. That means that you do not have a law license for a defined period of time, and after that time period expires, you are required to go through the entire application process again. You may even have to take the Bar Exam again. You should be on notice that there are some hidden damages in accepting a probated license.

Irregular Behavior During Bar Examination

We have recently been asked about the Texas State Bar Examination Rules and Procedures. In one case a cell phone that was in a person's pocket went off. A hearing was required to determine if the rules had been broken. In another case, the law student had a series of violations at the test site including not stopping in time and looking at the booklet before the examination started.

Third Year Bar Card

Having a “Third Year Bar Card” allows any law student to establish a good track record before graduation and taking the Texas Bar Examination. It is especially helpful to those who are anticipating a preliminary determination letter from the Board of Law Examiners. Students who have 60 credit hours or more and are not on academic probation are eligible for this privilege. In addition, students with between 45 and 60 credit hours who are working in certain unpaid internship positions or are involved in their school’s clinical program are eligible for the third year bar card. Any graduate who is waiting to take the bar exam, or waiting for results from the exam may apply as well. With this card, students may act in an apprenticeship capacity with a practicing attorney. This is information that a BLE Panel may find helpful. For more information on the process, visit the website below:

http://www.texasbar.com/AM/Template.cfm?Section=Law_Student_Info

Chapter
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Avvo.com Reviews for Bob Bennett

The website avvo.com provides the public with a forum to ask questions, write reviews, endorsements, and research a lawyer’s credibility and expertise. Below we have provided you with some of our latest client reviews. You can find them yourself the www.avvo.com profile for Robert S. Bennett of Houston, Texas.

Review 1

“Mr. Bennett helped my late son get a probationary license under difficult circumstances and worked on his case again when probationary violations were alleged through the Texas Board of Examiners. My son thought very highly of Mr. Bennett's work and felt he had not only found an excellent lawyer but a friend as well. I certainly shared his view. Based on my son's experience, I would recommend Mr. Bennett enthusiastically and without qualification.”

Review 2

“I hired Mr. Bennett to represent me at a character and fitness hearing in front of the Texas Board of Law Examiners. As I was currently suspended in two other jurisdictions, I felt my case posed unusual challenges that required the assistance of an attorney who was very familiar with both the Board and the law regarding admission to the State Bar of Texas.

Mr. Bennett quickly grasped the issues that would be of primary concern to the Board. He helped focus my efforts to present the case that would be the most responsive to the Board’s concerns. When I walked into the hearing I felt prepared and confident I had chosen the right attorney to represent me before the Board. During the course of the hearing, technical questions regarding the rules arose which would prove crucial to my case. It became apparent the Board respected the opinion of Mr. Bennett as he deftly opined on the rules. His insight and guidance in the presentation of our case helped me gain a probationary license to practice law.

At all times, Mr. Bennett candidly explained his evaluation of my case and the chances I had of obtaining

a license. He helped foster reasonable expectations about both the proceeding and the possible outcome. His representation helped put me at ease at a very stressful and important time of my life. I have had many attorneys try to help me with licensing matters in multiple jurisdictions. I finally found the help I needed in Mr. Bennett. I recommend him to anyone facing a hearing before the Board of Law Examiners without any hesitation.”

Review 3

“I hired Bob on a recommendation. He worked on my case for a little over a year. At times it seemed a little like he was unfamiliar with my case and it put me on edge, but don't worry about this one bit. I felt this way and it made think back to one of best lawyers I know in Louisiana; he operated the same way. What is most important is that Bob arrives prepared and plays at a top level on game day (the day that counts). Just let him know as much about your case as possible and then step back and he will guide you even if it feels last minute (it isn't last minute to him, only to you). Bob is excellent at what he does. Trust him and let him do what he knows how to do...your case will be handled professionally and, although he can't guarantee

results, I imagine he wishes he could, because I think he knows it the first time you sit with him. Bob is a fine lawyer and I will recommend him every time.”

Review 4

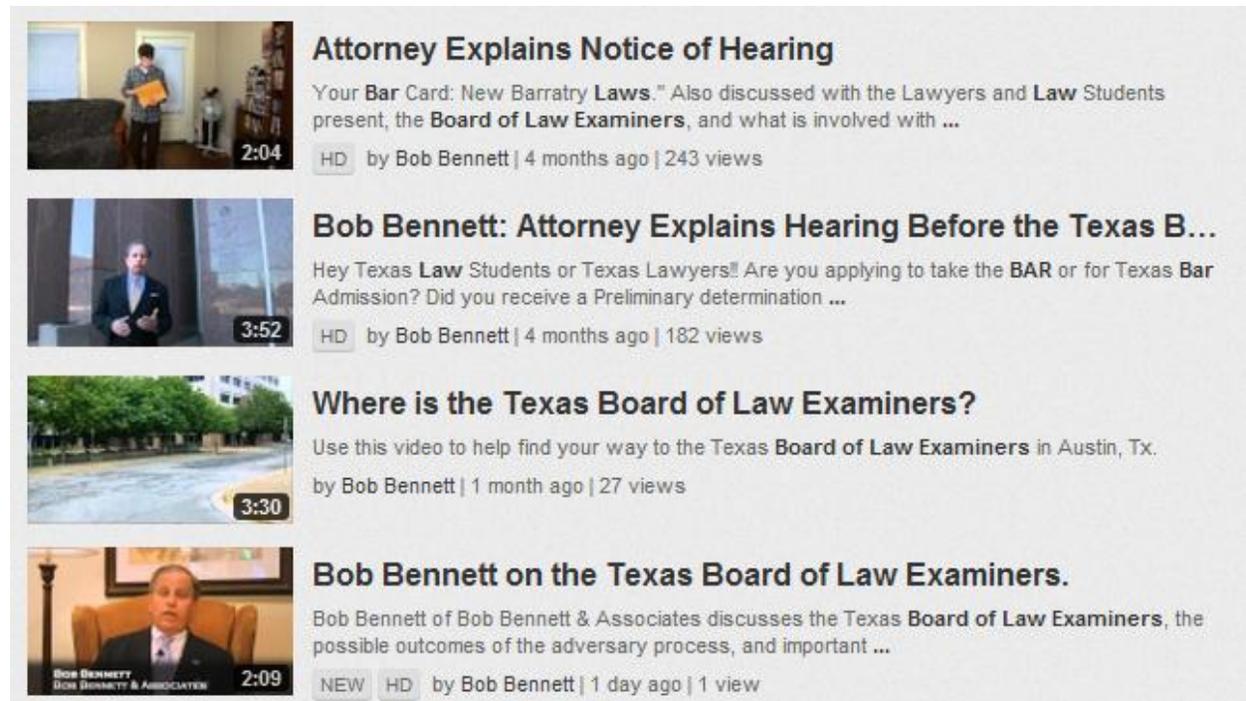
“Bob recently appeared with and assisted by daughter before the Waiver Panel of the Texas Board of Law Examiners. She is and was licensed in Illinois and applied for waiver of taking the Bar exam based on her length and quality of practice. Bob advised her before the hearing and appeared with her and she won! Thanks go out!”

Review 5

“Bob was extremely helpful, professional and effective during a very stressful time for me and my family. His rapport with the BLE was evident and I felt having him on my side added credibility to my case. He communicated clearly and frequently. Bob showed a real personal concern that I felt went above and beyond what was required for the engagement. You definitely want him in your corner for a BLE matter! I was thrilled with the service I got from him.”

YouTube

In an effort to adapt to the ever changing landscape of social media, Bob Bennett has taken to the airwaves on YouTube to provide a cutting edge look into the BLE process. These videos are prepared to be viewed by licensed attorneys and law students. They are not directed toward the general public.



The screenshot displays a list of four YouTube videos. Each entry includes a video thumbnail, a title, a description, and metadata such as video quality, uploader, time, and view count.

- Attorney Explains Notice of Hearing**
Your Bar Card: New Barratry Laws." Also discussed with the Lawyers and Law Students present, the Board of Law Examiners, and what is involved with ...
HD by Bob Bennett | 4 months ago | 243 views
- Bob Bennett: Attorney Explains Hearing Before the Texas B...**
Hey Texas Law Students or Texas Lawyers!! Are you applying to take the BAR or for Texas Bar Admission? Did you receive a Preliminary determination ...
HD by Bob Bennett | 4 months ago | 182 views
- Where is the Texas Board of Law Examiners?**
Use this video to help find your way to the Texas Board of Law Examiners in Austin, Tx.
by Bob Bennett | 1 month ago | 27 views
- Bob Bennett on the Texas Board of Law Examiners.**
Bob Bennett of Bob Bennett & Associates discusses the Texas Board of Law Examiners, the possible outcomes of the adversary process, and important ...
NEW HD by Bob Bennett | 1 day ago | 1 view

How Much Does it Cost?

Mr. Bennett normally charges an initial retainer of five thousand (\$5,000) dollars and bills at \$400.00 per hour. Mr. Jeffery D. Wagon, an “Of Counsel” attorney for the Bob Bennett & Associates firm charges \$350.00 per hour. Law clerks and legal assistants charge considerably less.

Every case is different so it is hard, if not impossible to give a standard fee for a BLE matter. Mr. Bennett has charged as little as \$1,000.00 to meet the applicant on the day of the hearing with no brief submitted or presentation preparation. Some unique cases have cost over \$25,000.00. A budget and reasonable estimate can be delivered with most cases.

In Closing

Whether you decide hire Bob Bennett, another attorney, or go at this process alone, we hope that you found this information helpful. Here at Bob Bennett & Associates we know how difficult this process can be and would like to assist you in a way that is beneficial to all concerned. If you have any questions, comments, or would like to hire us as your counsel, please contact us. For more information about the Board of Law Examiners Hearing Process or your case visit our website or call us.

© Bob Bennett & Associates
515 Louisiana St • Suite 200
Houston, TX 77002
Phone 713.225.6000 • Fax 713.225.6001
contactus@bennettlawfirm.com
www.BennettLawFirm.com