

**MINUTES OF THE MEETING OF THE  
BOARD OF LAW EXAMINERS  
JANUARY 11, 2013**

1. Call to Order/Determination of Quorum/Excused Absences. The meeting of the Board of Law Examiners was convened in open session by John Simpson, Chair, on Friday, January 11, 2012, at 9:01 a.m. in the Board's offices, located in the Tom C. Clark Building, 205 W. 14th Street, Suite 500, Austin, Texas.

Members present and constituting a quorum were: John Simpson, Michael Sokolow, Dan Pozza, Lee Parsley, Sandra Zamora, Al Odom, Augustin Rivera, Jr., Teresa Ereon Giltner and Laura R. Swann.

2. Approval of Minutes and Certified Agendas. Upon motion made and seconded, the Board voted to approve the minutes and/or certified agendas of the following meetings:

October 12, 2012 Hearings Panel (Parsley);  
November 8, 2012 Hearings Panel (Odom);  
November 8, 2012 Hearings Panel (Ereon Giltner);  
November 9, 2012 Board Meeting; and  
November 9, 2012 Certified Agenda of Executive Session Proceedings.

3. Review Audit Reports. John Simpson introduced Darrell Rupert of Rupert & Associates, who introduced his colleague Cecilia Webb, who performed many of the audit tasks on behalf of the firm. Ms. Webb presented the Independent Auditor's Report, which indicated that BLE received an unqualified "clean" opinion with the highest level of attestation available. The auditors found that BLE's Annual Financial Report fairly represents its financial activity for fiscal year 2012 in all respects. There were no audit adjustments of any kind. Ms. Webb explained the Examination of Compliance with the Public Funds Investment Act (PFIA) and Examination of Internal Controls which covered Information Resources. BLE was found to be in compliance with PFIA and its internal controls were found to be sufficient.

Mr. Rupert announced that audit partner Jaye Stepp had recently departed the firm and that Rupert & Associates will no longer accept engagements to perform future internal audits. Mr. Rupert stated that his firm has had excellent experiences working with the Board of Law Examiners in the past, and he regrets the firm cannot work with BLE on future audits. He agreed to provide Rod Shaheen, Accountant, with names of other CPA firms that he would recommend.

Chairman Simpson thanked Mr. Rupert and Ms. Webb and they departed the Board meeting at 9:17 a.m.

4. Investment Report. Rod Shaheen summarized, and the Board reviewed, the Investment Report dated November 30, 2012. Mr. Shaheen distributed an updated Investment Report removing outdated Wells Fargo information since the Board is not currently invested with Wells Fargo.

5. Financial Reports. Rod Shaheen explained, and the Board reviewed, the Financial Reports for the period September 1, 2012 through November 30, 2012.
6. Briefing by Stephen Klein, Ph.D. Julia Vaughan presented a brief overview of Dr. Klein's credentials and previous work with the Board, including his March 2007 report contained in the meeting book. Mr. Simpson noted that Dr. Klein would join the meeting at 10:15 a.m. by conference call.
7. Report of Executive Director.
  - a) NCBE Meeting. Ms. Vaughan reported that the Spring NCBE Meeting will be held in Boston on April 18 - 22, 2013. Board members Dan Pozza, John Simpson and Michael Sokolow will attend as designated representatives. Board members Lee Parsley, Al Odom, Augie Rivera and Laura Swann will also attend, as well as several staff members. Ms. Vaughan asked Board members to let Becky Henly know as soon as possible if they will be attending so travel arrangements can be made and all requests to register and for lodging can be fulfilled.
  - b) iPad grading project update. Darrell Eichman reported on the iPad grading project. Mr. Eichman explained that his recent survey of Board members indicated that additional information should be added to the iPad program before the next bar exam. He explained that he would send a graphical report to Board members to assist in keeping up with graders' progress. Mr. Eichman will contact Board members not currently grading via the iPad to conduct training for themselves and their graders prior to the February bar exam.

Lee Parsley asked if Mr. Eichman had formed any impression about grader consistency or whether graders become stricter or more lenient on scoring as they go through grading the exams. Members discussed whether Dr. Klein should be consulted to review grader consistency over time.

Laura Swann asked how much training time graders will need to become proficient in using the iPad. Mr. Eichman said he could schedule training sessions for graders and Board members in Austin or travel to their locations and provide as much training and support as they may require to become proficient.

Formal Review update. Ms. Vaughan discussed planning all formal reviews on Friday afternoon/evening in the future in light of numerous last minute cancellations such that all reviews could have been consolidated if enough advance notice had been given. After discussion by the Board, it was recommended that a second and fairly strict confirmation process be put in place that would require all formal review applicants to confirm their attendance and establish consequences for failure to do so. This should occur sufficiently early for staff to consolidate these reviews and more accurately project attendance.

- c) Public Posting of Bar Exam Pass List. Julia Vaughan reviewed background information concerning public posting of the bar exam pass list and included in the meeting book a letter from Chief Justice Wallace Jefferson dated May 18, 2007 to the Senate Committee considering a proposed bill to alter the method of releasing bar results. The Chief Justice's letter stated the Court's desire that it take the lead on dissemination of bar results and that the Court was opposed to changing the status quo.
- d) ABA Model Court Rule on Provision of Legal Services following Major Disasters. Ms. Vaughan reported on experience in Texas with Hurricanes Katrina and Rita and the recent letter to Chief Justice Jefferson from the American Bar Association concerning ABA Model Court Rule on Provision of Legal Services following determination of Major Disaster. Chief Justice Jefferson has referred this matter to a Task Force chaired by Denise Davis.
- e) Site Administrators Standards and Guidelines. Ms. Vaughan reviewed the Site Administrators Standards and Guidelines for emergencies with Board members. Sandra Zamora explained that at a previous bar exam she was unsure whether to confront a possible cheater. After discussion by Board members, it was agreed that staff would continue our practice of confrontation only after the exam has been completed; preferably without involving the Board member on site in case a hearing becomes necessary at a later date.

Al Odom asked that the Exit Texts cover a decision as to whether laptop computers should remain in the room, or be taken by the examinee under the various scenarios. Ms. Vaughan will review the different scenarios and attempt to revise accordingly.

Lee Parsley expressed appreciation for including these materials in the meeting book and an interest in a training session for Board members to cover this topic in greater depth.

Augie Rivera asked about security at test centers. Mr. Henslee reported that all sites, except Waco and Lubbock, currently have uniformed police officers on duty. After discussion by the Board, it was determined that a security officer should be present at all sites during the exam. John Simpson will contact Texas Tech and arrange for a University officer to remain onsite during the bar exam and Mr. Henslee will contact Baylor University about providing security at their location.

- f) General Agency Operations. Ms. Vaughan announced that Mary Ann Larson had been hired as a Licensure Analyst.

Mr. Simpson discussed the recent death of Editor Max Roesch. Josh Henslee informed the Board that Mr. Roesch's office administrator had already returned all BLE materials. Ms. Vaughan reported on her conversation with Mr. Roesch's widow and office staff. Mr. Simpson explained that the Board will need to decide whether to find a replacement. The consensus of the Board was to ask Ms. Vaughan to research finding a replacement Texas editor.

8. Report of Director of Character and Fitness - Conversion of Licenses. Lori Adelman, Director of Character and Fitness, summarized the report on the conversion of Probationary Licensees to Regular Licensees, as contained in the meeting book.
9. Psychometric Report of Dr. Stephen Klein. At approximately 10:15 a.m., Ms. Vaughan initiated a telephone call to Dr. Stephen Klein to discuss his March 2007 psychometric review of the Texas Bar Exam and to discuss a possible future psychometric study for the Board.

Dr. Klein reviewed the Decision Consistency Chart distributed at the meeting and explained that the table shows how pass/fail "decision consistency" is related to score reliability and the passing rate. Dr. Klein considered the essay portion to be somewhat less reliable than the Multistate Bar Exam. Lee Parsley asked if the Procedure and Evidence questions were more reliable than the essay questions; Dr. Klein wasn't sure but would like to review this matter because he doesn't have a clear idea at this time. Michael Sokolow asked if examinees tend to study less and disregard the Criminal Procedure and Evidence portion of the exam; Dr. Klein considered that to be a possibility although he was uncertain. Lee Parsley asked if graders can be evaluated to confirm whether they are consistent with their grading over the several weeks of grading. Dr. Klein offered suggestions about the calibration process to improve consistency, including setting benchmarks to be reviewed before each grading session.

Ms. Vaughan explained that Dr. Klein can be engaged to perform a new psychometric review along the lines of the one he performed in 2007.

At 10:45 a.m., the conference call ended.

Dan Pozza, Michael Sokolow and Lee Parsley continued the discussion about exam reliability and consistency after the phone conference.

After discussion by Board members, it was determined that a psychometric analysis by Dr. Stephen Klein should be commissioned and included in the 2014 Fiscal Year budget.

10. Report of Director of Examination and Eligibility
  - a) Board Coverage of Exam Sites-February 2013. Josh Henslee, Director of Eligibility & Examination, summarized the February 2013 bar exam enrollment and explained the predicted attendance based on attrition rates for past February exams for the last several years. Board members indicated their site administration preferences as follows: Dan Pozza, Augustin Rivera and Sandra Zamora will split coverage in San Antonio; Michael Sokolow and Al Odom will split coverage in Pasadena; Teresa Ereon Giltner will cover Fort Worth; John Simpson will cover Lubbock; Laura Swann will cover Waco and Lee Parsley will cover Austin.
  - b) Bar Admission for Military Spouses. Josh Henslee indicated that he has only been contacted once regarding licensure for Military spouses. However, in light of the Texas Occupations Code, the Resolution of the Conference of Chief Justices, and the Board's

request at the November 2012 meeting for staff to study this further, Mr. Henslee prepared and discussed the memo contained in the meeting book. Ms. Vaughan reported that Chief Justice Jefferson reviewed Mr. Henslee's memo and agreed that handling Military Spouse applications on a case by case basis under the current Admission Without Examination (AWOX) Rule with policy guidelines concerning waivers in appropriate cases, would be preferable to a Rule change unless it appears that such applications prove to be much more numerous and complicated than anticipated. After discussion by the Board, Mr. Simpson requested staff to publish the policy guidelines contained in the meeting book on the website and the Board should handle requests on a case by case basis. The matter can be readdressed in the future, if volume or complexity of these matters appear to warrant a Rule change.

11. Report of Staff Attorney. Bruce Wyatt reviewed Mr. Parsley's suggested changes to standard language currently found in Probationary License Orders. Upon Motion made and seconded, the Board unanimously approved removing the language "conclusively establish" from this type of Board Order and substituting the "gives rise to the presumption" language contained in the meeting book.
12. Communications from the Public. The Chair called for communications from the public. No members of the public were present.
13. Question Review. At approximately 11:22 a.m. John Simpson called for a break and asked Board Members to reconvene at 11:45 a.m. for question review. At 11:45 a.m. John Simpson declared the meeting closed to the public, pursuant to the provisions of Sec. 82.003(b), Tex. Gov. Code Ann., whereupon the Board proceeded to meet in executive session for the purpose of reviewing and editing the questions to be used on future Texas Bar Examinations. All members were present.
14. Adjournment/Formal Reviews. There being no further business, the executive session of the Board of Law Examiners was concluded at 1:50 p.m., the meeting was reconvened in open session, and adjournment was called at 1:50 p.m. The Chair reminded the Board members about their responsibilities beginning at the conclusion of this meeting in conducting Formal Reviews of failing July 2012 applicants' written answers. *(Such reviews are not conducted in a "meeting" of the Board and thus are not open meetings, since each review consists of an individual session in which only one Board member and one or more failing examinees are present.)* See attached list of July 2012 examinees by examination number participating in Formal Reviews of their examination performance in separate sessions with individual Board Members.<sup>1</sup>

Respectfully submitted,

  
Julia Vaughan,  
Executive Director

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<sup>1</sup>Formal Review list of July, 2012 examinees.

APPROVED:

A handwritten signature in black ink, appearing to read "John Simpson". The signature is written in a cursive style with a large initial "J" and "S".

John C. Simpson, Chair