

MINUTES OF THE MEETING OF THE BOARD OF LAW EXAMINERS

November 13, 2015

1. Call to Order/Determination of Quorum. The meeting of the Board of Law Examiners was convened in open session by Sandra Zamora, Chair, on Friday, November 13, 2015, at 9:04 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: Sandra Zamora, Augustin Rivera, Jr., Teresa Ereon Giltner, John Cayce, Jr., Barbara Ellis, Anna McKim and Cynthia Orr.

Board members Al Odom and Alfred Mackenzie were absent and excused from the meeting.

2. New Board Member. Sandra Zamora announced that new Board Member Alfred Mackenzie was recently appointed by the Supreme Court of Texas.

Sandra Zamora announced that Sunset Advisory Commission staff members Amy Tripp and Kay Hricik were in attendance, as well as members of the public, Andrea Canales and Carlos Martinez.

Nahdiah Hoang introduced Adisa Harrington, new examination question editor for the Board. Ms. Harrington gave a brief overview of her previous experience and expressed her enthusiasm for the opportunity to work with Board members on examination questions.

3. 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:

July 10, 2015 Hearings Panel (Rivera);
September 10, 2015 Hearings Panel (Rivera);
September 11, 2015 Board Meeting;
October 9, 2015 Finance Committee; and
October 9, 2015 Hearings Panel (Ellis).

4. Report of Accountant.

- a. Investment Report. The Chief Accountant, Rod Shaheen, explained and the Board reviewed the Investment Report dated August 31, 2015.
- b. Financial Reports. Rod Shaheen explained and the Board reviewed the Board's Annual Financial Report for the period September 1, 2014 through August 31, 2015, together with the variance report, and additional profit and loss comparison details. Upon motion made and seconded, the Annual Financial Report was unanimously approved by the Board. Rod Shaheen advised that the audit report on the FY 2015 financial statements will be presented by the auditor at the January 8, 2015 Board meeting.

5. Finance Committee Report. Teresa Ereon Giltner advised that there was no report from the Finance Committee.

6. Investment Policy. Susan Henricks explained the Policy for the Investment of Board Funds, as required by the Public Funds Investment Act (PFIA). After discussion by the Board, and upon motion made and seconded, the Board unanimously approved the Investment Policy in the form attached¹, and approved continuing to use Independent Bank as the Board's authorized broker for PFIA investment transactions.

¹ Policy for the Investment of Board Funds.

7. Report of Executive Director.
- a. Calendar Update. Susan Henricks reviewed the calendar for the remainder of 2015 and the proposed 2016 calendar. Teresa Ereon Giltner will represent the Board at the November 16, 2015 swearing in ceremony and Cynthia Orr volunteered to represent the Board at the May 23, 2016 swearing in ceremony.
 - b. Sunset Update. Ms. Henricks directed the Board's attention to a copy of the power point presentation made to Sunset Advisory Commission and legislative staff at the agency overview on October 8, 2015.
 - c. Agency Operations. Ms. Henricks reported on working with Office of Court Administration (OCA) Information Technology staff to develop a proposal for a new electronic bar admission system. She is working on a potential agreement for OCA to host the Board's email services and provide technical support.
 - d. Articles of Interest. Ms. Henricks pointed out articles of interest, including reports and public commentary on pass rates for the July 2015 bar exam in various states. Ms. Henricks also noted the ACLU letter acknowledging the Board for its policy of making courtesy arrangements for breast feeding mothers taking the Texas bar exam.

Ms. Henricks congratulated Augie Rivera on his new position as general counsel at Del Mar College in Corpus Christi, Texas.

Susan Henricks updated Board members on the number of states that have adopted the Uniform Bar Exam (UBE). She noted that most of the remaining states are studying the possibility of adopting the UBE.

Nahdiah Hoang and Barbara Ellis discussed whether exam questions should be sent through the OCA portal rather than email, password or USB key.

- e. Waiver decision making procedure. Susan Henricks discussed the current waiver request decision making procedures. She explained that waiver requests are intended to be decided in an open meeting, based on the written submission, without a hearing. The Board usually allows applicants for waivers who appear at the open meeting to speak to the panel. Ms. Zamora and Ms. Ereon Giltner proposed a three minute time limit for individuals to speak; only one person in attendance may speak on each waiver request, and only if time permits. After discussion by Board members, Nahdiah Hoang was directed to add language to this effect to the Waiver Request form.
- f. Susan Henricks reviewed current hearing decorum. The Board discussed suggestions to provide copies of the Preliminary Determination Letter to the panel in advance of the hearing and the possibility of entering into agreements for stipulated facts with applicants' counsel. The intention is to reduce the amount of exhibits offered to prove undisputed facts and allow more time for the panel members to focus on testimony or evidence on disputed issues. Ms. Henricks suggested that the staff attorneys may attempt to offer Agreed Stipulations for one of their cases scheduled in December or January, as a trial effort.
- g. Request for Offer for Electronic Bar Admission System. Ms. Henricks reviewed the proposed Request for Offer prepared by the staff to solicit bids for the new electronic bar admission system. Ms. Henricks explained that this system would replace the "Solar" and Efast data management systems now used by the Board. The requested system would improve the electronic functionality of the Board's operations and would facilitate on line communication and filing for applicants. Ms. Henricks explained that this expense is not included in the fiscal year budget and the estimated start-up cost is approximately \$60,000.

Ms. Henricks asked the Board to approve publication of the Request for Offer by placement on the statewide procurement portal. The RFO asks for bidders to respond not later than December 29, 2015. Any bids received will be considered by the Board at the January 2016 Board meeting, with the goal being to have a new system in place by June 1, 2016 for applicants taking the February 2017 exam.

After discussion by the Board, upon motion made and seconded, publication of the Electronic Bar Admission System Request for Offer was unanimously approved.

8. Report of Director of Character and Fitness.

- a. Probationary License report. Allison Drish summarized the reports in the Meeting Book on conversions from probationary licensure to regular licensure and modifications to probationary licenses.
- b. Year End Hearing Statistics. Ms. Drish reviewed the 2015 Fiscal Year Summary of Character & Fitness (C&F) Hearings contained in the meeting book.

9. Report of Director of Eligibility & Examination.

- a. Question editing timeline. Nahdiah Hoang discussed the timeline for question editing and reviewed changes to be made in the grading process for the February 2016 exam to reduce the grading time period by 5 days, allowing staff additional time to process grades before the deadline.
- b. Report on November grade release. Nahdiah Hoang presented the results of the July 2015 bar exam. Ms. Hoang indicated that the overall July 2015 pass rate was down to 66.45% from 71.39% in July 2014. Ms. Hoang also reviewed the report on pass rates across the United States.
- c. Pass list publication by examinee number. Ms. Hoang reported on a request from the public to consider publishing the pass list by examinee number, rather than name. Sandra Zamora reminded Board members that the identities of all licensed attorneys are made public on the State Bar website and she referred to a letter written by former Justice Jefferson several years ago that addressed the same issue and stated the Supreme Court's view that the identities of successful examinees should be public information. After discussion by the Board it was determined that no action would be taken on this matter.
- d. Year End statistical report on accommodations. Kristin Bassinger reviewed the 2015 Fiscal Year statistics on testing accommodations as contained in the meeting book. She advised the Board requests for accommodations are generally increasing and that additional expense for that purpose is likely necessarily.
- e. Proposal to publish grading guidelines. Ms. Hoang discussed the possibility of publishing the grading guidelines instead of or in addition to the sample answers to exam questions now posted on the website. Ms. Zamora did not endorse the idea of publishing grading guidelines and no other Board members expressed interest in the idea.
- f. Demonstration of Office of Court Administration secure website portal. Ms. Hoang informed members that a demonstration of the OCA secure website portal would be available for any Board members interested in watching it after the conclusion of the board meeting. The portal is recommended as the most secure means of sharing confidential information about BLE activities.

10. Report of Staff Attorney. Bruce Wyatt summarized the Litigation Update Memo contained in the Meeting book.

11. Executive Session for Personnel matters. At approximately 11:15 a.m. Sandra Zamora, Chair, declared the meeting closed to the public, pursuant to §551.074, Texas Govt. Code, to conduct in Executive Session a personnel evaluation of Susan Henricks, Executive Director. The Board reconvened in Open Session at 11:30 a.m. and unanimously agreed to a 5% pay increase for Ms. Henricks, effective January 1, 2016.

12. Status report of UBE Evaluation Committee. Augustin Rivera reported as a member of the Committee that also includes Al Odom and Teresa Ereon Giltner, that the members met briefly before the Board meeting and elected Al Odom as Chair of the Committee. The Committee has been reviewing information about the UBE provided by staff and will continue to investigate how other states have reviewed the issue and the different approaches taken by states in adopting the UBE. The committee held one organization meeting by telephone conference, where no action was taken.

13. Election of Chair, Vice Chair and Member at Large of the Accommodation Review Committee. Sandra Zamora opened the floor for nominations. Upon motion by Teresa Ereon Giltner, Sandra Zamora was unanimously elected as Chair. Upon motion by John Cayce, Al Odom was unanimously elected Vice Chair. Upon motion by Sandra Zamora, Anna McKim was unanimously elected to serve as member at large of the Accommodations Review Committee.

Ms. Henricks reminded Board members to continue submitting their monthly timesheets to Becky Henly, including travel time, grading, attendance at the Bar Exam and work in developing examination questions.


14. Question Review. At approximately 11:35 a.m., Sandra Zamora, Chair, called for a ten minute break. At approximately, 11:50 a.m., Sandra Zamora 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 in Group 1 (Ereon Giltner, Nahdiah-for Al Odom, Augustin Rivera and Cynthia Orr) and Group 2 (Susan Henricks-for Alfred Mackenzie, Anna McKim, John Cayce and Barbara Ellis) for the purpose of reviewing and editing the questions to be used on future bar examinations. Members of the Sunset Review Commission staff also attended the Group 2 session to observe the question review process, subject to a requirement that all exam question content must remain strictly confidential.

At approximately 11:50 a.m., Sandra Zamora left the meeting.

At approximately 2:00 p.m., Group 1 concluded question review and at approximately 2:05 p.m., Group 2 concluded question review. Augustin Rivera, Acting Chair, declared the executive session concluded and reconvened the meeting in open session with Augustin Rivera, Teresa Ereon Giltner, John Cayce, Cynthia Orr, Anna McKim and Barbara Ellis present and constituting a quorum.

15. Adjournment. There being no further business, the meeting of the Board of Law Examiners was adjourned at 2:10 p.m.

Respectfully submitted,


Susan Henricks,
Executive Director

APPROVED:


Sandra Zamora, Chair