

**MINUTES OF THE MEETING OF THE  
BOARD OF LAW EXAMINERS  
September 16, 2016**

1. Call to Order/Determination of Quorum/Excused Absences. The meeting of the Board of Law Examiners was convened in open session by Sandra Zamora, Chair, on Friday, September 16, 2016 at 9:03 a.m. in the Tom C. Clark Building, 205 W. 14th Street, 1<sup>st</sup> Floor Conference Room, Austin, Texas.

Members present and constituting a quorum were: Sandra Zamora, Al Odom, Augustin Rivera, Jr., Teresa Ereon Giltner, John Cayce, Jr., Barbara Ellis, Anna McKim, Cynthia Orr and C. Alfred Mackenzie.

Susan Henricks welcomed Task Force Members Stephen Sheppard, Dean of St. Mary's University School of Law (Chair), Bradley Toben, Dean of Baylor University School of Law and Ward Farnsworth, Dean of University of Texas School of Law. Dean Darby Dickerson with Texas Tech University School of Law and Dannye Holley with Texas Southern University Thurgood Marshall School of Law listened to the meeting via teleconference but did not participate in any discussion.

2. Task Force Discussion. Nahdiah Hoang, Director of Eligibility & Examination presented an overview of the Texas Bar Exam, with a visual display. The presentation addressed essay question subjects, drafting procedures, grading procedures, scoring procedures, grading logistics, grade release, grade reports and statistics, publication of selected answers, bar exam results, and informal and formal review procedures.<sup>1</sup>

Dean Sheppard thanked Nahdiah Hoang for the presentation and acknowledged Board members for taking the time to meet with Task Force members. Dean Sheppard reviewed the Task Force mission given by the Supreme Court of Texas to study the Texas Bar Exam and the seven specific questions to be addressed. Board members, Task Force members and staff discussed the subjects presented, a summary of which follows:

1. Grading process - examinee numbers are randomly assigned, all exams are graded as one group, calculating scores involves standard deviation and raw scores
2. Regrading - for any exam scored within 6 points of passing (669-674), the written portions are automatically regraded.
3. Details of bar exam preparation.
4. Grading starts approximately second week after bar exam is given.
5. For a July exam, raw scores are delivered in mid-October and regrading begins by Board members.

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<sup>1</sup> Copy of Overview of Texas Bar Examination is attached.

6. Unsuccessful examinees receive a detailed report with breakdown information of their test scores while successful examinees only receive their bar exam score and MBE scaled score.
7. Exam statistics are released to Law Schools at the time of grade release.
8. Examinees may choose not to allow release of their individual exam information identified by their name to law schools.
9. Current percentile statistics report was devised in collaboration with law schools and may be modified if requested by law schools.
10. Informal and Formal Reviews - what are the benefits?
11. Do psychometricians think formal reviews are helpful?
12. Bar exam process - there are no trick questions. No extraneous facts are intended. Every question needs to be addressed and answered and every fact is important to the question presented.
13. Concerns the Board has about the review process.
14. Reasons examinees fail.
  - a. Working full-time, not taking time off to study.
  - b. Need to study every subject every time.
  - c. Some bar review courses may provide misleading information.
  - d. Students do not study all subjects in law school covered by the exam.
  - e. Law schools may need to better prepare students for the exam by providing classes needed.
  - f. Missing the call of the question.
15. Benefits of bar review courses, either online or live lectures.
16. Can the Board gather information from participants at the formal review to be shared with law school deans in an effort to identify common issues or factors affecting bar passage?

At approximately 9:52 a.m., Osler McCarthy, Information Officer with the Supreme Court of Texas arrived.

After discussion by Board and Task Force Members, Dean Sheppard asked if specific questions should be addressed to the Board or to staff members. Chair Sandra Zamora asked that the Task Force work with the Executive Director in requesting information about the Bar Exam. Task Force goal is to study the seven questions asked by the Supreme Court and respond no later than May 31, 2017.

Task Force Members will meet with Sandra Zamora, Board Chair, and Susan Henricks, Executive Director, before the final report is submitted to the Supreme Court.

At approximately 10:33 a.m., Sandra Zamora called for a brief recess before continuing the Board meeting.

At 10:40 a.m. the meeting reconvened with all Board members present.

3. Approval of Minutes and Certified Agendas Upon motion made and seconded, the Board voted to approve the minutes of the following meetings:

- June 16, 2016 Hearings Panel (Ellis);
- June 16, 2016 Hearings Panel (Zamora);
- June 17, 2016 Accommodations Review Committee;
- June 17, 2016 Board Meeting;
- July 8, 2016 Accommodations Review Committee;
- July 8, 2016 Hearings Panel (Ereon Giltner); and
- July 8, 2016 Hearings Panel (McKim).

4. Report of Accountant - Investment Report.

Rod Shaheen, Accountant, summarized, and the Board reviewed the Investment Report of August 31, 2016.

5. Report of Executive Director.

a. Proposed amendments to Rule XVIII - fee equalization. Susan Henricks reviewed the proposed amendment to Rule XVIII and explained that currently Texas law school graduates pay more to be admitted than out-of-state law school graduates pay, when the cost of filing the Declaration of Intention is included in the calculation. Reducing the application fee Texas law students pay by \$20 and increasing the amount Out-of-State Law Students pay by \$55 would result in all student applicants paying the same amount. After discussion, and upon motion made and seconded, the Board unanimously voted to present the proposed Amendment to Rule XVIII to the Court.

b. Proposed Waiver Delegation Policy. Susan Henricks reviewed a proposed Waiver Delegation Policy as recommended by the Sunset Advisory Commission. The Commission recommends that the Board delegate decision making on "routine" waiver requests to the Executive Director to increase efficiency and consistency and to reduce the burden on Board members who must otherwise decide all waiver requests. Supreme Court Rule XX currently allows delegation of decisions to staff other than a final determination that an applicant lacks character and fitness for admission. Nahdiah Hoang analyzed recent history of applicants seeking waiver requests. There was a discussion about the definition of "indigence" and the language in the proposed policy at section B. 3. This language should be revised to read "Applicants seeking waiver of fee payment requirements must submit a fully complete sworn financial status form with any supporting documentation." Augustin Rivera asked that Ms. Henricks provide a quarterly report to Board members of waiver decisions made in order to maintain a record. After discussion by the Board and upon motion made and seconded, the Board unanimously approved the Waiver Delegation Policy.

c. Calendar update. Susan Henricks referred Board Members to the 2016 Board calendar and proposed 2017 Board calendar. Ms. Henricks asked that Board Members review the proposed 2017 Calendar and update Becky Henly with any conflicts or coverage issues as soon as possible. Upon motion made and seconded, the Board unanimously approved the 2017 Board calendar.

d. Update on Sunset Review. Ms. Henricks reported that staff members along with John Cayce, Barbara Ellis and Cynthia Orr attended the public hearing before the

Sunset Advisory Commission on June 22. She also reviewed the Decision Meeting Materials from the August 22, 2016 Sunset Advisory Commission meeting which she attended. Ms. Henricks explained that the Commission adopted all of the Sunset staff proposals and the BLE's proposal to amend the statute to change the end date of Board member terms from August 31 to May 31. The Commission also recommended adoption of Sunset's standard Board member training requirements which will require distribution of a training manual and documented receipt on an annual basis. The proposal to increase the statutory fee ceilings was not approved by the Commission as a recommendation to the Legislature.

e. General Agency Operations. Ms. Henricks announced that the February 2017 Bar Exam would be consolidated and held at the Palmer Events Center in Austin, Texas. Testers with accommodations will be located at the Texas Law Center.

Ms. Henricks advised Board members that the Supreme Court had approved the Fiscal Year 2017 Budget.

Susan Henricks updated the Board on the ILG transition, with no complaints from applicants, and all applications now being received electronically. Ms. Henricks also noted that ILG has been sued by several Georgia law students who previously took the Georgia bar exam and failed, when in fact they should have passed. ILG denies that it was responsible for any negligence or error in the grade reports and the Georgia bar admissions office has not assigned any blame to ILG.

Ms. Henricks noted the new grading module created by the Office of Court Administration for graders is working well. Staff is very pleased with OCA's IT services. Barbara Ellis requested a report on actual grading progress compared to the recommended pace. Nahdiah Hoang will prepare that report for Board members.

Ms. Henricks welcomed Board members to attend Law School orientations in the future and stated that she would inform them when presentations are planned in their respective cities.

Susan Henricks announced that the Bexar County Exhibit Hall is being explored as a possible new site for the July 2017 Exam in San Antonio.

f. Report on NCBE-CBAA Conference. Ms. Henricks reported on the recent NCBE-CBAA conference held in Portland, Oregon in August. Susan Henricks, Nahdiah Hoang and Allison Drish attended with Ms. Henricks making a presentation on information sharing, use of NCBE cross-referencing service, NCBE numbers, and the ABA disciplinary database. These resources have not been used by BLE in the past, but staff is in the process of implementing these services. Allison Drish is in charge of accessing and reporting to the NCBE cross reference service. Lori Adelman is implementing analysts' access to the ABA database for licensed applicants and NCBE numbers are being collected on January 2017 bar exam applications in the new ATLAS system for recording on the MBE answer sheet. NCBE will gather the numbers from the MBE answer sheets.

g. Complaint Resolution. Ms. Henricks reviewed the Complaint Resolution list included in the meeting book which has been revised to more fully describe the nature of each complaint and the resolution.

h. Articles of Interest. Ms. Henricks pointed out articles of interest including announcement that Massachusetts adopted the Uniform Bar Exam; LSAT testers have increased which may indicate the downward trend of Law School enrollment will stop; denial of provisional accreditation for University of North Texas University Dallas College of Law; and Houston College of Law and University of Houston Law name change battle.

6. Report of Director of Character and Fitness - Probationary Licenses. Lori Adelman, Director of Character and Fitness, summarized the report on the conversion of Probationary Licensees to Regular Licensees, contained in the meeting book.

7. Report of Director of Eligibility & Examination.

a. Update on July 2016 Bar Exam. Nahdiah Hoang, Director of Eligibility and Examination reviewed the July 2016 Bar Exam Report with Board members.

Ms. Hoang also noted that future exam preparation will include additional proofreaders, Kristin Bassinger and Susan Henricks, in addition to current staff proofreaders in an effort to eliminate errors.

Ms. Hoang advised that printed answer booklets for the bar exam will be reduced in size to allow for easier handling and distributing. It was determined that essay question numbers will be intentionally rotated in the future, rather than being randomly assigned. .

b. Report on University of North Texas law school. Ms. Hoang reported that University of North Texas Dallas College of Law may not receive provisional accreditation status. The school will attend a hearing with the American Bar Association in October 2016 and if they do not receive provisional accreditation, they can reapply at a later date. The school may ask the Supreme Court of Texas to allow UNT law graduates to take the bar exam in July 2017. About 70 students are expected to graduate in May 2017.

8. Report of Staff Attorney. Bruce Wyatt advised there is no pending litigation to report.

9. Communications from the Public. The Chair called for communications from the public. No additional public comments were offered.

Sandra Zamora reminded Board members and staff that emails should not be used to discuss Board business between all members simultaneously and admonished them not to use "reply all" in responding to every email. Ms. Zamora also reminded Board members to turn off their cell phones and put them away during hearings.

Board members thanked Nahdiah Hoang for her presentation to the Task Force and asked that the presentation be included in future orientations for new board members.

Sandra Zamora asked Board members to share any questions, opinions or concerns they may have about the Task Force with Susan Henricks; and to review any information with Ms. Henricks and Board members on the Task Force.

Board members discussed the possibility of changing the Bar Exam to a two day test and dropping from twelve to six essay questions. Ms. Zamora advised that this would require revision to the Supreme Court Rules Governing Admission to the Bar.

At approximately 11:40 a.m., Sandra Zamora called for a lunch break and asked Board members to reconvene at 12:15 p.m. for question review.

10. Question Review. At approximately 12:20 p.m. Sandra Zamora, Chair, declared the meeting closed to the public, pursuant to the provisions of Texas Government Code, Sec. 82.003(b), whereupon the Board proceeded to meet in Executive Session for the purpose of reviewing and editing the questions to be used on future bar examinations.

Board members present were Sandra Zamora, Al Odom, Augustin Rivera, Jr., Teresa Ereon Giltner, John Cayce, Barbara Ellis, Anna McKim, Cynthia Orr and Alfred Mackenzie.

At approximately 3:25 p.m., Board members concluded question review.

11. Adjournment. At approximately 3:25 p.m., Sandra Zamora, Chair, declared the Executive Session concluded and reconvened the meeting in open session with all Board members present and constituting a quorum. The meeting was adjourned at 3:30 p.m.

Respectfully submitted,



Susan Henricks,  
Executive Director

APPROVED:



Sandra Zamora, Chair