

**MINUTES OF THE MEETING OF THE
BOARD OF LAW EXAMINERS**

November 17, 2017

1. Call to Order/Determination of Quorum. The meeting of the Board of Law Examiners was convened in open session by Sandra C. Zamora, Chair, on Friday, November 17, 2017, at 9:16 a.m., in the Tom C. Clark Building, 205 W. 14th Street, 1st Floor Conference Room, Austin, Texas.

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

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:

June 15, 2017 Hearings Panel (Orr)
June 16, 2017 Uniform Bar Exam Evaluation Committee
July 7, 2017 Hearings Panel (Rivera)
July 7, 2017 Accommodations Review Committee
September 14, 2017 Hearings Panel (Rivera)
September 14, 2017 Hearings Panel (Odom)
September 15, 2017 Board Meeting
October 13, 2017 Hearings Panel (Mackenzie); and
October 13, 2017 Hearings Panel (Ereon Giltner)

3. Review Audit Report. Chief Accountant, Rod Shaheen, introduced Adam McCane and Tony Emadi with Weaver & Tidwell LLP, accounting firm, who recently performed the BLE's annual audit. McCane presented the Independent Auditor's Report, indicating that the BLE received a "clean" opinion with the highest level of attestation and found that the Annual Financial Report fairly represents its financial condition in all aspects. McCane also advised that the BLE is in full compliance with the Public Funds Investment Act (PFIA). He raised one issue with a check that was issued twice, but noted that it was a low-level issue and that staff has already implemented additional oversight during the check approval process to avoid a recurrence. McCane reported that staff's cooperation made the audit process efficient and effective.

Chair Zamora thanked McCane and Emadi and they departed the Board meeting at 9:25 a.m.

4. Report of Accountant.

a. Investment Report. Shaheen explained there was not an Investment Report at this time.

- b. Financial Reports. Shaheen presented and the Board reviewed the Board's Unaudited Annual Financial Report for the period September 1, 2016 through August 31, 2017, together with profit and loss comparison details. The agency income exceeded expenses by over \$100,000.

5. Finance Committee Report. Susan Henricks reported that the Finance Committee met and recommended that the Board continue to use Independent Bank as the Board's investment broker for future investment purposes.

Henricks explained that the Finance Committee recommended that the Board approve the proposed *Policy for the Investment of Board Funds*.

Shaheen asked the Board to consider changing the auditor bid process from occurring annually to occurring every three years. Odom clarified that the Board may bid for an auditor in the interim years if it chooses and that the Board may choose an auditor on the basis of overall qualifications. The Board agreed to this change.

6. Investment Policy. Henricks presented the proposed *Policy for the Investment of Board Funds*, as required by the Public Funds Investment Act (PFIA). The policy is unchanged from the one adopted in 2016. After discussion by the Board, and upon motion made and seconded, the Board unanimously approved the Investment Policy in the form attached¹, and approved using Independent Bank as the Board's authorized broker for PFIA investment transactions. The Board Chair and Executive Director were authorized to execute a Certificate of Resolution confirming this action.

At 9:39 a.m., Chair Zamora declared a 15-minute break.

Members McKim, Mackenzie, and Massey joined the meeting, which reconvened at 9:55 a.m. Odom was absent and excused.

7. Report of Executive Director.

- a. Calendar Update. Henricks reviewed the calendar for the remainder of 2017 and the 2018 calendar. Massey will represent the Board at the Swearing In ceremony on November 20, 2017. Henricks asked that Board Members review the 2018 Calendar and notify staff of any conflicts or coverage issues as soon as possible. Nahdiah Hoang noted that several question editing and review deadlines have been added to the calendar.
- b. Agency Operations. Henricks recognized Celine Morones and Noelia Villarreal for five years and ten years, respectively, of service to the State of Texas. She also notified the Board that Allan Cook was hired as General Counsel, and that Staff Attorney Georgette Oden and Licensure Analyst Apoorva Mahajan had resigned.

¹ Policy for the Investment of Board Funds.

Henricks reported that the July 2017 Texas Bar Exam had no major incidents or issues and that the overall pass rate increased. However, the BLE website crashed due to unusually high traffic when staff posted the pass list for the July 2017 Texas Bar Exam. Massey and Mackenzie requested that staff consult with the IT contractor, ILG, about ways to prevent a website crash due to high traffic on grade release days. The Board discussed possible changes to grade release to ameliorate high website traffic.

- c. CBAA Conference Report. Henricks reported that she and Allison Drish attended the November 2017 CBAA Conference in Palm Springs, California. Every state reported increasing numbers of applicants applying for testing accommodations. Multiple states are considering adoption or have recently adopted the Uniform Bar Exam. California decided not to raise their bar exam cut score, but may study the content validity of their exam. The NCBE has suggested that jurisdictions not allow examinees to enter the exam room with their admission tickets or that tickets should be inspected. Henricks proposed other means to reduce the opportunity to cheat on the Texas Bar Exam, such as recording the duration of bathroom breaks, only taking a photo ID to the bathroom, and hiring additional proctors.

Odom re-entered the meeting at 10:22 a.m.

- d. Complaint Resolution Report. Henricks reviewed the complaint report contained in the meeting book. She noted that only three complaints have been received since the September Board Meeting and she described the nature and resolution of each complaint.
- e. Administratively-Determined Waiver Report. Henricks and Hoang reviewed the report on waiver requests contained in the meeting book.
- f. Proposed Guidelines for Decision Making for Character and Fitness. Henricks and Lori Adelman presented proposed guidelines for identifying: issues that may indicate the lack of good moral character and fitness or the existence of chemical dependency; mitigating and contributing factors; evidence of rehabilitation; and the standard of conduct which attorneys are expected to meet. These guidelines are required by amendments made to Government Code Chapter 82, which became effective on September 1, 2017, and are intended to make character and fitness determinations more consistent. Mackenzie asked if the Board would be required to follow the guidelines during character and fitness hearings; Rivera and Orr were similarly concerned. Henricks stated that adherence to the guidelines is not required.
- g. Proposed Alternative to Recording Arrangements for Hearings. Henricks asked the Board to consider purchasing audio and visual recording equipment to record hearings rather than hiring court reporters. Henricks explained that court reporters are increasingly expensive and unwilling to cover the BLE's hearings because we do not routinely order transcripts. An audio-visual system would be

a one-time cost and the BLE would be able to retain the record with the applicant's file. The BLE would still hire court reporters to transcribe the recording if we required a transcript, and the applicant would be permitted to hire a court reporter at his or her own expense. Rivera expressed concern regarding video recording and asked that the BLE conduct research to determine if other jurisdictions video record their hearings. Upon motion made and seconded, the Board unanimously approved audio recording of character and fitness hearings, with the possibility of implementing video recording in the future.

- h. Proposed Agreement to Provide Services as a Texas Bar Examination Grader. Henricks presented a proposed agreement stating requirements and best practices to be signed by attorneys providing grading services for each exam cycle. McKim and Mackenzie suggested minor edits to the agreement. Upon motion made and seconded, the Board unanimously approved the *Agreement to Provide Services as a Texas Bar Examination Grader*, which will now be required to be executed by all graders on future examinations, prior to each assignment.

Henricks informed the Board that the BLE will use ILG, rather than ExamSoft, as its exam software provider beginning with the February 2018 Texas Bar Exam. She noted that as part of this change, graders would no longer be able to use tablets to grade exam answers due to software incompatibility and would have to use their personal computers. Several Board members raised concerns about privacy, security, and portability and suggested that this change may result in experienced graders declining to continue grading for the BLE. Hoang raised the possibility of the BLE purchasing laptops for graders, but noted that if graders use their personal equipment, the BLE would no longer incur the cost of shipping electronics to graders and that grading time could possibly be shortened by a couple of days. The staff will evaluate options and consult with graders.

- i. Update on Implementation of Rules Governing Admission to the Bar of Texas. Henricks informed the Board that no issues have been raised by the implementation of the revised *Rules*. Hoang reported that the BLE has received applications for the February 2018 Texas Bar Exam during the new late filing period from November 2nd – December 1st and that she will provide the final number of applications received during this period at the January Board Meeting.

- j. Articles of Interest. Henricks referred to articles of interest including: the retirement of Dean Royal Furgeson, Jr. from the University of North Texas Dallas College of Law; bar exam passage rates in Texas and other jurisdictions; the decision by the California Supreme Court to maintain their current exam cut score and reactions from California law school deans in response to that decision; average loan debt by Texas law school graduates; the acceptance of the GRE in lieu of the LSAT as an admission test by several law schools including Texas A&M University School of Law; and the increased numbers of people taking the LSAT.

At 11:14 a.m., Chair Zamora declared a 10-minute break.

The meeting reconvened at 11:26 a.m.

8. Report of Director of Character and Fitness.

- a. Probationary License Report. Adelman reviewed the report contained in the meeting book regarding conversions from probationary licensure to regular licensure and modifications to existing probationary licenses.
- b. Year End Hearing Statistics. Adelman reviewed the report contained in the meeting book regarding statistics on character and fitness hearings and agreed orders in Fiscal Year 2017. Adelman discussed the overall trend of increased numbers of hearings and applicants choosing to be represented by counsel. Chair Zamora and Odom noted that staff keep statistics of the numbers of applicants choosing to be represented and of determinations that are favorable and unfavorable to applicants, and asked if the Board tracks data showing favorable/unfavorable decisions for applicants who are represented. Adelman stated that staff do not currently track this data, but will begin to do so beginning with Fiscal Year 2018.

9. Report of Director of Eligibility & Examination.

- a. Question Editing Timeline. Hoang reported that no changes have been made to the question editing timeline and noted that related deadlines have been added to the 2018 Board calendar.
- b. Report on November Grade Release. Hoang presented the results of the July 2017 bar exam and noted that the overall July 2017 pass rate increased to 71.78% from 70.52% in July 2016.
- c. Year End Accommodations Statistics. Kristin Bassinger reviewed the report contained in the meeting book regarding statistics on testing accommodations in Fiscal Year 2017. Bassinger discussed the overall trend of increased numbers of applicants requesting testing accommodations.
- d. Report on Survey Regarding Examination Preparation. Hoang reported that the BLE sent a survey regarding examination preparation to all applicants who took the July 2017 Texas Bar Exam and received a 50.7% response rate. She provided the responses as raw data and stated an in-depth report will be presented at the January Board Meeting.
- e. Report on Status of UBE Adoption. Hoang indicated that the UBE Committee has not met since the September Board Meeting, but she provided data showing states that have adopted the UBE, states that administer NCBE exams that have not adopted the UBE, and numbers of UBE scores transferred into and out of jurisdictions that have adopted the UBE.

10. Report on Task Force. Hoang reported that she and Rivera attended a Task Force Sub-Committee Meeting in November in Waco, Texas. Dean Stephen Sheppard of St. Mary's University School of Law raised questions about scaling Texas Bar Exam raw scores to the MBE and about weighting of exam components. The Task Force plans to survey licensed Texas attorneys about exam composition.

Odom and Massey agreed to represent the Board at the February 2018 Texas Bar Exam in Houston, Texas.

11. Litigation Report. Henricks reviewed the Litigation Report regarding pending litigation against the BLE.

Andrew Glueck (aka Luck) filed a motion to amend his complaint to include eight Board members and three staff members as Defendants. The BLE filed a response in opposition of Glueck's motion.

The BLE provided the administrative record regarding Edward Malone to the Office of the Attorney General.

The BLE suit against the Attorney General of Texas to challenge a public information ruling on release of grader information is pending. The suit was filed as directed by the Board.

12. Election of Chair, Vice Chair, and Member at Large of the Accommodation Review Committee. Chair Zamora opened the floor for nominations. Upon motion by Rivera, Odom was unanimously elected as Chair. Upon motion by Zamora, Rivera was unanimously elected as Vice Chair. Upon motion by Zamora, McKim was unanimously elected to serve as Member at Large of the Accommodations Review Committee.

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

14. Question Review. At approximately 12:03 p.m., Zamora called for a break. At approximately 12:10 p.m., Zamora declared the meeting closed to the public, pursuant to the provisions of Texas Gov't Code Sec. 82.003(b), whereupon the Board proceeded to meet in executive session in two groups for the purpose of reviewing and editing questions to be used on future bar examinations.

11. Adjournment. There being no further business, the meeting of the Board of Law Examiners was adjourned upon completion of question review. Group 1 concluded question review at approximately 1:30 p.m. Group 2 concluded question review at approximately 2:00 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Susan Henricks', written over a horizontal line.

Susan Henricks,
Executive Director

APPROVED:

A handwritten signature in blue ink, appearing to read 'Al Odom', written over a horizontal line.

Al Odom, Chair