

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

January 11, 2018

1. Call to Order/Determination of Quorum. The meeting of the Board of Law Examiners was convened in open session by Al Odom, Chair, on Thursday, January 11, 2018, at 9:44 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: Al Odom, Augustin Rivera, Jr., Sandra C. Zamora, Teresa Ereon Giltner, Barbara Ellis, Anna McKim, Cynthia Eva Orr, C. Alfred Mackenzie, and Dwaine Massey. All members were present.

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:

November 16, 2017 Hearings Panel (Ellis)
November 17, 2017 Hearings Panel (Mackenzie)
November 17, 2017 Finance Committee
November 17, 2017 Board Meeting; and
December 8, 2017 Hearings Panel (Ereon Giltner)

3. Report of Accountant.

- a. Investment Report. Rod Shaheen presented and the Board reviewed the Investment Report dated November 30, 2017.
- b. Financial Reports. Shaheen presented and the Board reviewed the Financial Report for the period September 1, 2017 through November 30, 2017.

4. Report of Executive Director.

- a. Proposal for Pro Bono Service Requirement for Non-Chemical Dependency Probationary Licenses. Susan Henricks asked the Board to consider requiring that non-chemical dependency Probationary Licensees complete Pro Bono hours as part of their conditional license. She introduced Briana Stone of the State Bar of Texas Legal Access Division, who presented resources and opportunities available for attorneys to provide Pro Bono services. In particular, one program can match Probationary Licensees with an experienced attorney mentor, a preferred practice area, and preferred location so that Probationary Licensees can gain relevant legal experience while providing services to low-income individuals. Another program allows attorneys to answer legal questions online or by telephone. Stone noted that participating mentor attorneys are eligible to earn up to five hours of Continuing Legal Education credit, including one hour of ethics, per year; that participants have free access to legal resources and malpractice coverage; and that participants in volunteer legal

service programs work on cases that have already been through an intake process to reduce the number of cases without merit.

Mackenzie asked how the Pro Bono program contributions could be quantified so that the requirement can be incorporated into Probationary Licenses, and Stone indicated that the program could be quantified by hours worked, number of cases assigned, or number of questions answered online or by telephone.

The Board asked staff to present a recommendation for incorporating a Pro Bono service requirement for non-chemical dependency Probationary Licenses. Henricks thanked Stone and Stone departed the meeting at 10:05 a.m.

- b. Calendar Update. Henricks reviewed the 2018 calendar and asked that Board Members notify staff of any conflicts or coverage issues as soon as possible.
- c. Agency Operations. Henricks reported that Mackenzie noticed an unknown individual had access to the BLE's secure portal used for posting exam questions, but that the individual appears to have been inactive on the portal since 2013 and never had the BLE's passwords necessary to access confidential information. Staff have asked the Office of Court Administration to provide a list of users who accessed confidential information and instructed all users to change their passwords. Staff will research moving the secure portal to Office 365 to be more secure.

Henricks reminded Board Members and staff that the NCBE Annual Bar Admission Conference will be held in Philadelphia, Pennsylvania in April.

- d. Complaint Resolution Report. Henricks reported that no complaints have been received since the November Board Meeting.
- e. Administratively-Determined Waiver Report. Henricks reviewed the report on waiver requests contained in the meeting book.
- f. Update on Alternative Recording Arrangements for Hearings. Henricks reported that the BLE purchased two audio recording devices to record hearings rather than hiring court reporters to transcribe hearings. The recording devices will be used in addition to a court reporter during the January 12, 2018 hearings panel, and audio files will be reviewed to determine whether the BLE should permanently adopt the use of recording devices.
- g. Articles of Interest. Henricks referred to articles of interest including: the American Bar Association's sanction of several law schools for lax admission standards including Texas Southern University; the acceptance of the GRE in lieu of the LSAT as an admission test by several law schools in an effort to attract diverse students; the case for graduated or tiered licensing; the increased numbers of law school applications and enrollment; the confirmation of BLE liaison Texas Supreme Court Justice Don Willett to the U.S. Court of Appeals for

the Fifth Circuit; and a review of the least expensive law schools in the U.S. News Top 100 including Texas A&M University School of Law.

- h. Recognition of service. Henricks recognized Zamora on completion of her service as Chair and for ten years of service to the Board.

5. Report on Task Force on Texas Bar Exam. Rivera reported that May 31, 2018 is the deadline by which the Committee must submit its final report to the Supreme Court. Henricks reported that she, Nahdiah Hoang, Rivera, Dean Stephen Sheppard, and Dean Bradley Toben met with staff members of the National Conference of Bar Examiners and political scientist Dr. Christopher Zorne in Madison, Wisconsin to discuss issues before the Task Force.

Some members of the Task Force would like to request raw score data from the NCBE and BLE as well as data regarding ethnicity and gender, which the BLE does not collect. Some members also may support multiple tracks of admission to the Bar of Texas other than passing the bar exam or qualifying for admission without examination, such as diploma privilege. These issues are raised by questions regarding whether the bar exam has a disparate impact on minority applicants; whether the bar exam is the best method to determine if an individual will be a competent attorney; and whether our passing score is appropriate.

Henricks reminded Board Members that they previously responded to a Supreme Court request regarding shortening the bar exam grading timeline, and their proposals included hiring additional graders and reducing the number of essay questions from twelve to six. Odom asked if we can evaluate whether reducing the number of essay questions would affect the pass rate.

Rivera proposed that the Board respond to the questions which the Supreme Court assigned to the Task Force because the BLE may be asked to make a recommendation to either the Task Force or the Supreme Court.

- a. Proposed consultation with psychometrician on Task Force issues. Henricks asked the Board to consider approving a consultation with psychometrician Dr. Roger Bolus regarding issues raised by the Task Force. Odom suggested that staff should consult with the Task Force and Uniform Bar Exam Committee to determine what to address during the consultation. Upon motion made and seconded, the Board approved the BLE consulting with Dr. Bolus for up to 20 hours.

6. Report on Uniform Bar Exam Committee. Henricks reported that 30 jurisdictions have adopted the UBE, but pointed out that of the five largest jurisdictions by application numbers (California, Florida, Illinois, New York, and Texas), only New York has adopted the UBE. Ellis asked if other large jurisdictions have considered adopting the UBE, and ultimately decided not to adopt it.

Rivera and Ellis asked how the BLE would determine what its passing score would be if

it adopted the UBE; one of the purported benefits of the UBE is portability, but each jurisdiction chooses its own passing score. Ellis suggested researching what the median and modal passing scores in UBE jurisdictions are. Ereon Giltner suggested reviewing passing scores in other jurisdictions to see where Texas bar exam passers can transfer their scores to accurately assess portability.

Rivera proposed that the Board take steps toward making a recommendation whether to adopt the UBE because the Board may be asked to provide input to the Task Force or to the Supreme Court.

7. Report of Director of Character and Fitness.

- a. Probationary License Report. Lori Adelman reviewed the report contained in the meeting book regarding conversions from probationary licensure to regular licensure and modifications to existing probationary licenses.

8. Report of Director of Eligibility & Examination.

- a. Report on February 2018 Exam Administration. Hoang reported that 138 applicants filed February 2018 bar exam applications during the new final deadline period from November 2nd – December 1st. Staff received requests to waive the final deadline, but enforced Rule 9(a)(1)(D), which states, “The Board will not accept an Application for the February examination after December 1 for any reason.”

Hoang provided a report detailing how the reduction of the regrade band from six points to three points would have affected the July 2017 pass rate.

- b. Board Member Coverage at the Exam. Odom and Massey agreed to represent the Board at the February 2018 Texas Bar Exam in Houston, Texas. Rivera and Orr are willing to substitute if necessary.
- c. Grader Question Assignment and Delivery Confirmations. Hoang and Ky Strunc asked Board Members to confirm their graders, grader question assignments, and delivery details for iPads used for grading.

Mackenzie requested copies of the *Agreement to Provide Services as a Texas Bar Examination Grader* signed by his graders. Ellis clarified requirements and best practices set out in the *Agreement*. Mackenzie suggested adopting a Board policy for termination of grading services if graders do not comply with the terms of the *Agreement*, but Ellis suggested evaluating graders on a case-by-case basis.

- d. Demonstration of ILG Exam360 Grading Modules. Hoang and Strunc demonstrated how the ILG Exam360 grading modules work, including special features such as: sending chosen and random exams to Board Members to calibrate grading standards; scrambling the order of exams so that each

question is not graded in the same order; and the ability to grade online and offline. Hoang reminded Board Members to create and review grading rubrics for each question. Graders may continue to use iPads instead of their personal computers.

9. Litigation Report. Allan Cook reviewed the Litigation Report regarding pending litigation against the BLE.

The court denied Andrew Glueck's (aka Luck) motion to amend his complaint to include eight Board Members and three staff members as Defendants. The BLE filed a motion to dismiss Glueck's claim and it is currently pending. This case has been set for a status conference on January 17, 2018.

No action has been taken in the case filed by Edward Malone since the November 2017 Board Meeting.

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

10. Requests by Board Members. Ereon Giltner requested a policy allowing Board Members to take notes during hearings panels so that Board Members can better recall the facts of hearings when writing and editing orders. Odom, Rivera, and Henricks stated that the best practice is to prohibit removal of hearings materials from the BLE office. Mackenzie requested a copy of Preliminary Determination Letters from each hearing, and Ellis suggested that these could be posted to the BLE's secure portal. Odom suggested that staff provide a recommendation to address these requests. Kristin Bassinger reported that Staff Attorneys already modified hearings panel agendas to include space to take notes, and Henricks suggested that these notes could be uploaded to the BLE's secure portal.

Ereon Giltner also suggested that if a combined hearings panel is scheduled to have a long day, staff should consider creating two shorter hearings panels instead.

Ellis requested a style manual for writing orders. Odom and Zamora suggested that changes not necessary to the content of the order should be determined by the Staff Attorney.

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

12. Question Review. At approximately 11:36 a.m., Odom called for a break. At approximately 12:00 p.m., Odom 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 for the purpose of reviewing and editing questions to be used on future bar examinations.


13. Adjournment/Formal Reviews. There being no further business, the meeting of the Board of Law Examiners was adjourned upon completion of question review. Odom announced that Formal Reviews of participating July 2017 examinees would begin immediately and continue until approximately 4:00 p.m. (*Such reviews are not conducted in a "meeting" of the Board and thus are not open meetings because each review consists of an individual session in which only one Board member and one failing examinee are present*). See attached list of July 2017 examinees by examinee number who participated in formal reviews of their examination performance in separate sessions with individual Board Members on Thursday, January 11, 2018.¹

Respectfully submitted,



Susan Henricks,
Executive Director

APPROVED:


Al Odom, Chair

¹ See attached Formal Review list.