

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

March 23, 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 Friday, March 23, 2018, at 9:07 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:

January 11, 2018 Board Meeting

January 12, 2018 Hearings Panel (Massey)

February 9, 2018 Accommodations Review Committee (Odom)

February 9, 2018 Hearings Panel (McKim)

3. Report of Accountant.

a. Investment Report. Rod Shaheen presented and the Board reviewed the Investment Report dated February 28, 2018. A typographical error in the interest income was noted for correction to \$1,356.

b. Financial Reports. Shaheen presented and the Board reviewed the Financial Report for the period September 1, 2017 through February 28, 2018.

4. Report of Executive Director

a. Calendar Update. Henricks reviewed the 2018 calendar.

b. General Agency Operations. There have been a number of personnel changes, including: Allison Drish replacing Lori Adelman as Director of Character and Fitness; Kendelyn Schiller replacing Allison Drish as Assistant Director of Character and Fitness; Laurie Gonzales replacing Kendelyn Schiller as Executive Assistant; Alexandra Anderson replacing Valeria Reyes as Administrative Assistant; Valeria Reyes being promoted to Licensure

- Analyst; and April Sheehan being promoted to Senior Licensure Analyst. The senior licensure analyst position is newly created within the agency.
- c. **Complaint Resolution Report.** There were no complaint resolutions to discuss. There will be a complaint resolution slated for the June 2018 Board meeting.
 - d. **Report on Administratively-Determined Waiver Decisions.** There were no deadline waivers to report, and this is most likely due to the deadline change to the 1st of month and the addition of the new "really late" filing period ending May 1st. There were 29 fee waiver requests.
 - e. **Articles and communications of interest to Board Members.** Henricks provided articles of interest, including: Older Attorneys Make Up a Growing Percentage of State Bar Membership; Law Grads have Grown Skeptical of JD's Value; Young Law School Grad Again Outpaces the Pack by Launching Her Own Firm; Baylor Law to Launch Litigation Management LL.M.; Cyberthieves are ready... is your practice?; Surprise Findings on Laptop Use in Law School Classrooms; LSAC reports increase in law school applications; Student Participation in Externships Does Not Affect Bar Passage; Contempt motion filed over handling of ADA accommodations for LSAT; What Does it Mean to be a Lawyer? These 5 Techniques Show the Way; ABA Crackdown: Thomas Jefferson On Probation, Valparaiso May Close, Others Censured; What It Takes To Pass Today's Bar Exam; Civil Rights Attorney Signs Final Consent to Lawsuit for Unauthorized Practice of Law; Law School Debt Charts; One Texas Law School Is Doing the Heavy Lifting When It Comes to Diversity Efforts; Council that administers the LSAT is held in contempt, ADA consent decree is extended; Review – the Gatekeepers Tests – Myths abound about the SAT and ACT, but the research is clear: They provide an invaluable measure of how students are likely to perform in college and beyond; and, Three Texas Schools Among Top 50 Go-To Law Schools;
 - f. **Update on Swearing In Ceremony and Bar Admissions Forum on May 14, 2018.** Henricks confirmed the Swearing In Ceremony will take place at Frank Erwin Center, followed by the Bar Admissions Forum. Bree Buchanan of the Texas Lawyers Assistance Program will present on lawyer well-being. Rivera volunteered to attend the Swearing In Ceremony on behalf of the Board.
 - g. **Review Letter from Texas law school deans requesting modification of Rule 2(a)(5).** In a letter sent from law school deans to Board Chair Odom, they requested that the requirement that an applicant satisfy the requirement of Rule 2(a)(5) to be eligible for licensure be removed. According to the letter, Rule 2(a)(5) could prevent approximately 50 other-wise qualified applicants from being licensed who are in the DACA program. Zamora suggested that instead of eliminating the rule, perhaps the Board could waive the requirement at time of licensure, as it is understood that the BLE Board has discretion to waive rules as provided in Rule 20(e). Henricks confirmed that the BLE Board does have that authority. Odom indicated that the Board

needs to formulate a response to the letter, and asked that BLE staff draft the response. Zamora motioned that BLE staff draft the response and Odom take action on behalf of the Board. The motion was seconded by Orr. All approved.

- h. Proposal for technical reporting on psychometric characteristics of Texas Bar Examination. Henricks reported that she has been consulting with Dr. Roger Edward Bolus regarding psychometric characteristics of the Texas Bar Examination, and has spent less than \$2,000 on these consults. Bolus's CV reflects extensive experience consulting with numerous states on psychometric matters. Bolus participated in a psychometric audit done on the 2013 Texas Bar Exam administration. Henricks tasked Bolus to develop an analysis of psychometrics for the Texas Bar Exam. Bolus suggested he could do a historical report for the past 6 exams; 3 each from February and July of 2015, 2016, and 2017. The cost would be \$9,600. Another proposal would include that report, but would also include ongoing studies evaluating future exams. If BLE commits to 2 more years, the '15-'16-'17 report would cost \$7,400 and each new report would be \$2,400 per exam. Regardless of which option is selected, Bolus would verify inter-grader consistency and provide information about examinee populations and their performances. Bolus would also include a reliability coefficient to show the degree of correlation between different components of the exam. He could evaluate what effect it would have if BLE administered the UBE, such as the effect of reducing the number of essays to 6, weighting the MBE at 50%, and administering 2 MPT questions versus 1. Odom asked if Bolus was contracted, would the Board need to decide what service Bolus would provide. Henricks suggested staff decide. After discussion of the extent of the study, Odom motioned that Bolus be contracted for a 3 year study, with BLE selecting the years. The motion was seconded by Rivera. All approved.
- i. Recognize staff for years of service. Allison Drish, Director of Character and Fitness, was recognized for 20 years of service to BLE.

5. Report on Task Force on Texas Bar Exam. Mackenzie reported that the Task Force had a productive meeting approximately a month ago, at which the meeting participants used an envisioning process to discuss the issues. Each of the seven questions in the Supreme Court's order establishing the Task Force was assigned to working groups to prepare draft reports. All first draft reports were due to the Task Force by March 23rd, and a review meeting was scheduled for Monday, 3/26/18, to review 1st drafts. A follow up session is scheduled for the 2nd week of April to review 2nd drafts.

- a. Board discussion on Task Force study items. Henricks was asked about Dr. Zorn's data request. She said BLE held a special meeting on 2/9/18, and she followed with a letter to Dean Sheppard on February 15, 2018. Henricks then

set up conference call for Friday, 2/23/18, to discuss the request with Dr. Zorn and Nahdiah Hoang. Unfortunately, Dr. Zorn said he had not received her letter. It was a cordial conversation, discussing specific aspects of the study and Dr. Zorn was asked for a more detailed description of the proposed study and written security protocols. It was requested he reply by the week of March 5th. Since the reply was not received, Henricks contacted Zorn again on March 13th and Zorn promised a reply by the end of that week. No response from Zorn had been received as of the time of the Board Meeting.

Mackenzie said with or without the data, the Task Force will make recommendations to the Supreme Court. BLE staff will be expected to implement any changes approved by the Court.

6. Report of Director of Character and Fitness.

- a. Recommendations of probationary licenses to be converted to regular licenses. Allison Drish reviewed the report contained in the meeting book regarding conversions from probationary licensure to regular licensure and modifications to existing probationary licenses.
- b. Review proposed guidelines on determinations on character and fitness and probationary licenses. Henricks reported that the recent Sunset review had resulted in changes to the Government Code that required the Board to draft written non-binding guidelines for final decisions related to Character and Fitness. In developing the guidelines, staff looked at those used by TCEQ, as well as those adopted by other state bar examiners. The overall goal was to give flexibility, but also guidance in what factors would be considered when evaluating character and fitness. Henricks said the guidelines needed to be adopted by September, so should be voted on at the June Board meeting. Odom asked Board members to submit comments and edits to Henricks for further review at the June meeting.

7. Report of the Director of Eligibility and Examination

Report on February 2018 consolidated bar exam in Houston. Director of Eligibility and Examination Nahdiah Hoang reported that the February 2018 administration of the exam in Houston was only the third time to have a consolidated offering, and the first time not in Austin. BLE used new exam software, ILG Exam 360, and the testing went fairly smoothly. Hoang mentioned an approximately 45-minute period after the exam on Tuesday, 2/27/18, during which some applicants had difficulty uploading their exam answers. ILG had technicians on site who were able to repair the matter quickly.

The Board is in the process of grading 1,183 tests, using new grading software. Hoang mentioned that ILG created an iPad app for the Board to use as part of the grading software. Because the new grading software is cloud-based, graders can easily switch between the iPad app and a desktop or laptop.

8. Report of Board Attorneys

a. Litigation Report. Allan Cook reviewed the pending litigation involving BLE.

Andrew Glueck's action against the BLE has been dismissed without prejudice.

No action has been taken on the case filed by Edward Malone since the January 2018 Board Meeting.

In the BLE suit against the Attorney General of Texas to challenge a public information ruling on release of grader identifying and contact information, BLE has filed a declaratory judgement challenging the decision, based on new rules adopted by the Supreme Court. Both parties have agreed to a settlement that grader information shall remain confidential. Mr. Jamar Osborn, who filed the original open records request for grader information, has a right to intervene. That right runs through April 2, 2018. There will be a hearing on or after April 3rd on the settlement.

b. Staff Proposal Regarding Handling of Hearing Documents and Board Orders.

In response to a Board request at the January 2018 Board Meeting concerning confidential character and fitness hearing materials, staff attorney Kristin Bassinger presented a written proposal that all hearing exhibits stay in the exhibit room for shredding. Anyone needing exhibits could email BLE, and staff would upload the specific exhibit(s) to BLE's secure portal in folders set up for the specific hearing.

c. Staff Proposal Regarding Board Orders Style Guidelines. In response to a Board request at the January 2018 Board Meeting, BLE staff have developed a style guide for Board orders. Bassinger asked Board Members to review the proposed guidelines and then provide her with red-line versions, so that a definitive style guide could be distributed prior to the April hearings.

9. Consider issues arising from Reports of Executive Director, Director of Character and Fitness, Director of Eligibility and Examination, and Staff Attorney. Rivera stated that he attended the Bar Exam administration on 3/28/18, and was positively impressed. He was aware of no issues, stating there were "zero problems". Rivera said anxiety

was high, but he was very impressed with staff. He wanted to personally say thanks. Odom mentioned that he'd received two compliments from test takers and no complaints. He, too, was appreciative of how smoothly the Examination was administered.

10. Consider Communications from the public, if any. Members of the public Mark Klecka, Marty Orr, and Dean Martin Pritikin attended the meeting.

Mark Klecka spoke first. He said that he received his JD from Concord Law School. Concord Law School is located in California. It is not accredited by ABA or by California. It is an on-line law school. Under California rules, Klecka was able to take the California bar, and become licensed in California. However, under Texas Rules, his JD is not recognized, and he cannot take the Texas bar exam or become licensed in Texas. He introduced Marty Orr and Dean Martin Pritikin of Concord.

Dean Pritikin stated that Concord Law School's JD is a fully on-line program. He requested that the Board favorably consider petitions for waivers of requirements of Rule 13 (2)(b), which allows an applicant who does not have a JD from an ABA-approved law school to take the Texas Bar Exam if the applicant is licensed in another state, has 3 years of practice, and has a JD from a law school that is accredited by the state in which it is located and that is not based primarily on distance learning. Pritikin noted that Concord is registered with the Bar of California, and that graduates of Concord can take the California Bar Exam and become licensed in California, but California only accredits schools that are brick and mortar. Concord is working with the State of California to change that policy, but because it is a legislative matter, it is very time consuming. While working towards accreditation in California, Pritikin asked if Texas would allow Concord graduates to sit for the Texas Bar Exam. Pritikin explained that granting waivers to Concord graduates would not add significant competition for Texas attorneys, as there are only about 20 Concord alumni from Texas.

Pritikin went on to say that granting waivers could allow better access to legal education for Texas residents. Residents of Texas may live hundreds of miles from a Texas law school, limiting their enrollment options. He said that this, in turn, could give more Texans access to justice. He noted that Concord's enrollment tends to be more inclusive with regards to ethnicity and gender. The average student is 43 years old, half are women, half are minority, and many are active duty military.

Pritikin said that Concord rejects more applicants than it accepts. Its average GPA is comparable to the average of all part-time programs across the nation, and rivals the rigor of ABA rules. Because of the rigor of the program and the quality of the graduates, Concord is requesting that its graduates be given the opportunity to sit for the Texas Bar Exam.

In response to the Board Member's question, Pritikin said that Concord's bar exam pass rate for first-time takers was about 30%.

After Pritikin, Klecka, and Orr left the meeting, Massey asked if the Board should discuss whether to support the requested waiver. Odom said that because it was not an agenda item, any action would need to be on a future agenda. Rivera suggested that staff make a recommendation. Henricks said that this subject would be included on the June 2018 Board Meeting agenda.

11. Conduct review of questions to be used for future Texas Bar Examinations. At approximately 11:16 AM, Odom called for a break. At approximately 12:00 PM, Odom declared the meeting closed to the public, pursuant to the provisions of the 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.

12. Adjournment/Formal Reviews. There being no further business, the meeting of the Board of Law Examiners was adjourned upon completion of question review.

Respectfully Submitted,



Susan Henricks,
Executive Director

APPROVED:



At Odom, Chair
Augustin Rivera, Jr., Vice Chair