

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

**January 18, 2019**

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, January 18, 2019, at 9:23 AM, in the Tom C. Clark Building, 205 W. 14<sup>th</sup> Street, 1<sup>st</sup> Floor Conference Room, Austin, Texas.

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

The chair recognized and welcomed Carlos Soltero as the newest Board member who was attending his first meeting of the Board.

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 8, 2018 Board Meeting

October 12, 2018 Hearings Panel (Giltner)

October 12, 2018 Hearings Panel (Rivera)

November 8, 2018 Finance Committee

November 8, 2018 Uniform Bar Exam Evaluation Committee

November 9, 2018 Hearings Panel (McKim)

3. Consider Communications from the Public. There was not a participant present for the meeting, but a member of the public provided a written comment to BLE Director of Eligibility and Examination Nahdiah Hoang that was included in the Board meeting book.

4. Report of the Accountant.

- a. Investment Report. Rod Shaheen presented and the Board reviewed the Investment Report for the period ending November 30, 2018.

- b. Financial Reports. Shaheen presented and the Board reviewed the Financial Report for the period ending November 30, 2018, and the Variance Report for the period ending November 30, 2018. The financial reports showed a net positive variance of \$102,000 for the first quarter, primarily due to timing of applicants for re-examination.

5. Report of the Executive Director.

- a. Calendar Updates.

The Annual Bar Admission Conference is scheduled May 2 – 5, 2019, in San Francisco. For all board members and staff interested in attending, Laurie will provide hotel and transportation assistance as soon as registration information is made available by NCBE.

Two law school 1L orientations are scheduled over the next few weeks. Henricks will speak to the students about the bar admission process. Board members are encouraged to

attend as well. For the upcoming orientation sessions, BLE will add a slide regarding UBE to the existing PowerPoint presentation to address questions that may arise.

Henricks is scheduled to meet with Texas law school associate deans on February 22, 2019. Chris Ritter of the Texas Lawyers' Assistance Program meets with associate deans annually to discuss wellness and support of law students. He has invited Henricks to join the deans for lunch during their upcoming meeting.

The March board meeting agenda will focus on developing the Texas Law Course to be offered in 2020 as part of the requirements for admission with a UBE score. The Board will most likely skip question review in March, but instead hold a planning session of the Texas Law Course to discuss topics, subtopics, and potential faculty to teach the course. Development of the Texas Law Course must precede creation of the Texas Law Test, designed to test familiarity with the Course material.

The Board will take a moment during the March meeting to sit for a group photo. The photographer is scheduled for March 22, 2019.

The BLE will host the Bar Admission Forum, scheduled for May 13, 2019, following the swearing in ceremony. Henricks is seeking input on the speaker topic, although she is strongly considering UBE. She proposed a panel discussion to include a BLE staff member (most likely herself), a board member (Mackenzie as the UBE Committee Chair) and a representative from NCBE to discuss all aspects of the UBE, including what it is, implementation, and the state law component. Please submit any comments or suggestions regarding the Bar Admission Forum speaker(s) directly to Henricks.

b. General Agency Operations.

All BLE staff positions are filled.

There was a clerical error in grader compensation for the July 2018 examination. Due to transposition of two numbers, each Texas essay grader was overpaid for 90 exams, averaging approximately \$400 per grader, but the exact payment differs by grader because of varying compensation levels. All graders that were overpaid in July 2018 will be providing services in February 2019, so the February 2019 total payment will be adjusted to recapture the July 2018 overpayment. To avoid these types of issues in the future, BLE will now calculate compensation based on data from ATLAS, which will provide an electronic calculation of the number of essays graded, instead of a handwritten report. BLE staff Strunc and Hoang will make personal phone calls to the affected graders, as well as draft a letter to be mailed as soon as possible. Board members will receive a copy of the letter. The MPT graders were not included in the overpayment.

Executive staff have been focused on planning for the UBE. General Counsel Allan Cook has contributed a substantial amount of time and effort on proposed rules amendments and formatting, and the document is now in excellent shape.

An upcoming board meeting agenda may include proposed policies on LLM waivers and procedures in joint Character and Fitness hearings. This will most likely be in March or June 2019. Rivera stated that he is glad there will be an agenda item because he wants the board to establish policies about Character and Fitness hearing that implicate two applicants involving the same facts. Orr agreed that BLE rules do not provide for joint proceedings, but asked if they should. Mackenzie asked if applicants could testify for or against each other if they're heard separately. Ellis stated that the Board needs to establish rules on hearings for alleged co-conspirators. Henricks indicated that Cook is working on written policies to address these procedural matters.

- c. Complaint Resolution Report. All complaints for this period were related to processing of licenses.
- d. Report on Administratively-Determined Waivers Decisions. Henricks approved one late filing waiver because the applicant had made a timely attempt to file in ATLAS, although she was not able to complete the filing before the deadline. She claimed to have technical difficulties.

Rivera motioned that the printed Report on Administratively Determined Waiver Decisions include only applicants' initials. The motion was seconded by McKim and unanimously passed. The staff will implement this change with the next waiver report.

- e. Articles and Communications of Interest to Board Members. Most of the articles included in the meeting materials were related to increases in the number of law school applications and LSAT performance, including the number of LSAT takers. Exam results in July 2018 were the lowest in history. That result coincides with 2015's smallest number of 1Ls and the lowest LSAT score averages for the bottom quartile.

Henricks also referenced reports on the Bolus study on performance changes in the California bar examination, which he conducted at the same time as he was creating the Texas Bar Examination studies. Bolus found that law school GPA is the best predictor of exam performance, compared to the LSAT. Bolus found that the LSAT remains a strong predictor of law school performance and that undergraduate GPA is also a strong predictor of exam performance. The two factors together are extremely strong indicators of bar exam performance. Bolus found that changes in these two factors do not entirely explain the decline in the pass rate on the California bar examination beginning in 2014, however.

- f. Committee Assignments. With the departure of Sandra Zamora, the Finance Committee was in need of a new member. Rivera nominated Massey to chair the Finance Committee, which was seconded by Soltero. The proposal was unanimously approved.

Odom posed the idea of creating a new committee related to UBE implementation. He suggested it might be beneficial to have a separate committee of three or more to oversee

the Texas Law Course, but said the existing UBE Committee might also take on that responsibility. Ellis stated that creation of a new committee should be based on the UBE committee members' availability to take on the additional responsibility. Odom suggested creation of a new committee or subcommittee be addressed under the UBE agenda item, scheduled for later in the meeting. Rivera suggested that BLE staff could continue to direct the Texas law component. The issue was tabled for discussion during the March 2019 board meeting.

- g. Sunset Update. BLE has received confirmation of compliance with all recommendations and statutory change adopted in 2017. As published in *Sunset's Implementation of 2017 Sunset Recommendations*, BLE is fully compliant. Henricks did note that although SB 303 passed, it did not fully implement the Sunset Commission recommendation to establish deadlines for character and fitness by Supreme Court rules. The rules have been adopted and the BLE is following the deadlines established by the Court. Henricks may seek to correct the error in S.B. 303 with legislation this session.
6. Report of the Uniform Bar Exam Committee. The UBE Committee met on December 17, 2018, with the full committee in attendance. Also attending were Supreme Court General Counsel Nina Hess Hsu, Supreme Court Rules Attorney Jaclyn Daumerie and State Bar of Texas Attorney Don Jones. The attendees worked through an entire draft of rule changes put together by BLE staff. With input from the UBE Committee and the Rules Attorney, the staff has drafted proposed rule changes that were distributed to all board members prior to the board meeting.

In the distributed draft, blanks were included as space-holders for specific implementation dates (see page 10 of the proposed rules). The Supreme Court met on January 17, 2019, and has decided on UBE implementation beginning with the February 2021 test administration. Henricks has prepared a timeline for implementation in February 2021. Mackenzie suggested circulating that timeline to all board members and staff, and including a March 2019 planning session for the Texas Law Course in the timeline.

A passing score on the Texas Bar Examination is valid for two years, during which time all remaining requirements for admission to the Bar must be completed, including payment of state bar dues and swearing in, unless that limitation is waived by the Board. Daumerie questioned why Texas would accept transfer of a UBE score older than two years. The staff agreed that the validity of the scores should be parallel and the UBE Committee recommends that a UBE score be transferable up to two years from the date it was earned, a modification of the current draft that makes a UBE score transferable for up to three years, regardless of the applicant's licensure or experience. The staff proposes revision to the draft rules to allow an applicant with a UBE score older than two years but less than five years to be admitted with evidence of active and substantial practice for two of the past three years.

The rules also propose that the Texas Law Course will be required for all applicants, including applicants seeking admission without examination after February 2021.

To prepare for the UBE, Mackenzie asked that all board members come to the March 2019 board meeting prepared to build a more detailed outline for the Texas Law Course. He asked the BLE staff to develop a more complete timeline of steps required for delivery of the Texas Law Course for review by the Board at the March 2019 meeting.

Mackenzie suggested that the Board discuss a committee or subcommittee charged with managing development of the Texas Law Course, at the next meeting in March. Mackenzie then moved that the board adopt the proposed rules with changes discussed during the meeting, subject to non-substantive and stylistic changes the staff may add prior to submission to the court. Rivera seconded the motion and it was unanimously approved.

7. Report of the Director of Character and Fitness. There were no probationary licenses converted to regular licenses.
8. Report of the Director of Eligibility and Examination.
  - a. The February 2019 Texas Bar Examination will be held at the Austin Convention Center. Ellis and Soltero volunteered to attend. It was agreed that Ellis and Soltero will coordinate schedules to ensure at least one board member is present throughout the examination.
  - b. After discussion regarding the honor pledge's wording and enforcement, the Board asked Hoang to amend the honor pledge to include a notation that a false statement of compliance with the Exam Security Policy may constitute the felony of falsification of a government document.
  - c. BLE's software provider ILG has been creating an iPad grading app, but has determined that it will no longer support it. Instead, grading through iPads must be done using the web-based software, which requires web connectivity for the duration of the session. If graders want to grade offline, they may use their own computer. Odom suggested that it's not sensible to provide iPads to graders if they only allow limited accessibility to the web-based grading site. He suggested that perhaps we should provide different technology than iPads. Hoang suggested that there is a possibility of BLE buying laptops for graders, rather than iPads. Henricks said that BLE is currently in the process of purchasing new computers for executive staff, so BLE could amend the quote to include inexpensive laptops for graders. Odom thought that expense was perhaps unnecessary, but instead we should notify graders of their need for a personally-owned laptop or desktop for grading. Due to security concerns and so that all graders have the same capabilities, Hoang and Strunc would prefer that BLE offer graders an inexpensive laptop, as that would allow BLE staff more control over what is done and how grading is handled.
  - d. For regrades by Board members, there were no changes approved during the November 2018 executive session, so regrades of the February 2019 exam will remain essentially the same as July 2018. The one slight difference is that regrade worksheets now match the order displayed on each Board member's iPad. ILG is working on providing access to

subscores on the grading platform, and Hoang will keep the board posted on the status of that upgrade.

- e. Question review in executive session will start immediately following the January 18, 2019 board meeting.
  - f. Formals are scheduled to start at 2:00 PM on January 18, 2019, immediately following the board meeting executive session, and are scheduled to end by 4:00 PM.
9. Report of General Counsel.
- a. Litigation Report. Pursuant to Texas Government Code §82.003(b), at 11:15 AM Odom called a closed session, whereupon the Board proceeded to meet in executive session to review current litigation involving the Board of Law Examiners.

The Board reconvened in open session at 11:18 AM.

10. Consider issues arising from Reports of the Executive Director, Director of Character and Fitness, Director of Eligibility and Examination, and General Counsel. Rivera, now a member of the NCBE Board of Directors, has attended a few meetings thus far and shared that NCBE is very excited to have Texas join the UBE ranks. Rivera, along with Henricks and Justice Jeff Brown, will be attending a UBE conference in San Antonio scheduled for January 18 – 20, 2019. Rivera expressed his appreciation to Justice Brown for his dedication to BLE and for his continued engagement in the UBE process. Rivera also thanked the board members for their commitment and encouraged board members to participate in NCBE committees. Rivera mentioned that NCBE makes its committee assignments in July and a list of available committees is published on the NCBE website. Rivera invited board members to forward questions about NCBE committees to Drish and/or himself. As a Board Member of NCBE, Rivera stressed how important it is that Texas continues to seek involvement at the national level.

The Board broke for lunch at 11:24 AM.


The Board reconvened at 12:00 PM.

11. Conduct Review of questions to be used for future Texas Bar Examinations. Pursuant to Texas Government Code §82.003(b), Rivera called for a closed session, 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 at 1:55 PM.

Respectfully Submitted,

Susan Henricks,  
Executive Director

Approved:

  
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Harold "Al" Odom,  
Chair