

MINUTES OF THE MEETING OF THE
BOARD OF LAW EXAMINERS

November 14, 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 Thursday, 11/14/2019, at 9:35 AM, 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, Teresa Ereon Giltner, Barbara Ellis, Anna McKim, C. Alfred Mackenzie, Dwaine Massey, Cynthia Orr, and Carlos Soltero. With prior approval for a late arrival, Augustin Rivera, Jr. joined the meeting at 9:44 AM.

2. Approval of Minutes and Certified Agendas. Upon motion made by McKim and seconded by Massey, the Board unanimously voted to approve the minutes and/or certified agendas of the following meetings:
 - a. 3/21/2019 Hearings Panel (Ellis)
 - b. 4/26/2019 Hearings Panel (Mackenzie)
 - c. 5/17/2019 Hearings Panel (Soltero)
 - d. 6/20/2019 Hearings Panel (McKim)
 - e. 6/20/2019 Hearings Panel (Soltero)
 - f. 6/21/2019 Board Meeting
 - g. 6/21/2019 Accommodations Review Committee
 - h. 6/21/2019 Texas Law Course Committee
 - i. 7/19/2019 Hearings Panel (Massey)
 - j. 7/19/2019 Hearings Panel (Rivera, Jr.)
 - k. 9/20/2019 Hearings Panel (Orr)
 - l. 9/20/1029 Hearings Panel (Soltero)
 - m. 10/25/2019 Texas Law Course Committee
 - n. 10/25/2019 Hearings Panel (Mackenzie)
3. Consider Communications from the Public. There were no public communications submitted for this meeting and no members of the public were present.
4. Report of Accountant.
 - a. Report of the Auditor. Rebecca Goldstein, from the external auditor Weaver, presented the audit report. Goldstein said she had spent approximately one week in early October on-site performing review and analysis of BLE's financial documentation for the annual audit. Goldstein confirmed that for the year ending 8/31/2019, it is Weaver's opinion that BLE's accounting records and reporting are in accordance with reporting requirements of the Texas Comptroller of Public Accounts. The Board received and reviewed the report.

- b. Investment Report. Rod Shaheen presented and the Board reviewed the Investment Report for the period ending 8/31/2019.
 - c. Financial Report. Shaheen presented and the Board reviewed the Financial Report for the period ending 8/31/2019.
- 5. Consider Approval of Policy for Investment of Board Funds. The Finance Committee presented a recommendation to approve a new policy for investment of Board funds, as is required every two years by the Texas Public Funds Investment Act. The proposed policy and a resolution approving the policy were provided to the Board. The proposed policy differed from the current policy as it simply requires solicitation of competitive rates for Certificates of Deposit, consistent with actual practice. Massey moved to approve the policy. McKim seconded. The Board unanimously approved the new policy for investment of Board funds and the associated resolution.
- 6. Consider Approval of Proposed Budget Amendment. Executive Director Susan Henricks stated that this topic relates to issues to be discussed later in the meeting as part of the Complaint Resolution Report and the Report of the Director of Character and Fitness, with regards to the time required to process Admission without Examination (AWOX) applications. Henricks explained that after delays in processing were raised by AWOX applicants, BLE staff has implemented new procedures for application processing. Since adopting the ATLAS system three years ago, it has become apparent that there are additional efficiencies that could be attained in the application process. As such, Henricks, Allison Drish and Nahdiah Hoang met with Steve Spyropolous of Reunion Consulting, an IT consultant, regarding business process improvements that could be implemented in BLE. Reunion Consulting has proposed a consulting engagement intended to improve efficiency through improvements and revisions to the electronic bar admission system and the way it is utilized by BLE staff. As a computer programmer, he also proposes to communicate proposed revisions to ILG to aid with implementation.

To obtain additional quotes for the business process improvement project and select a vendor, Henricks requested that the Board approve a proposed \$25,000 budget amendment order for consideration by the Supreme Court. Henricks noted that BLE's contract with ILG already includes programming changes, so she does not anticipate additional costs from ILG. Massey moved to approve the proposed budget amendment request, which was seconded by Orr. Eight members approved, one member dissented (Ellis), so the motion passed. Henricks told the Board that she would submit the budget amendment order to the Supreme Court.

- 7. Report of Executive Director.
 - a. Henricks introduced two new staff members; Staff Attorney Lynn Bradshaw and Administrative Assistant Lindsey Marr.
 - b. General Agency Operations
 - i. The Supreme Court named Justice J. Brett Busby as BLE's new Court Liaison.

- ii. BLE received a thank you note from an examinee thanking Board Member Giltner specifically, for his formal review, and the Board generally, after he passed the bar examination. A copy of the card was included in the meeting book.
 - iii. BLE received an honorary law license request from the family of a deceased Baylor law school graduate who did not pass the examination. Since BLE does not license, the request was routed to the Supreme Court. The Court voted to approve the license, but it will be listed as honorary.
- c. Complaint Resolution Report.
- i. Claire Kowarsky previously submitted a request to waive two eligibility requirements under Rule 13 requests, both of which were approved. She then decided to take a later examination, which shortened her practice experience, and required a third waiver request that was denied. She has since renewed her foreign law license but would still require an LL.M. to be eligible to take the examination. She filed a written complaint objecting to the denial of the second practice experience waiver request.
 - ii. AWOX applicant Daniel Edmunds submitted a complaint alleging excessive delay in processing his application. Henricks addressed his concerns and staff have implemented new practices to reduce delays in initial processing of AWOX applications.
- d. Report on Administratively Determined Waiver Decisions. Of 43 waivers that were requested, 35 were granted in whole or in part. The majority of the waiver requests were fee-related. Several of the approved waivers were DNT applicants who had their previous application fees applied to new applications.

Supreme Court Liaison Justice J. Brett Busby joined the meeting via a conference call. To accommodate Justice Busby's schedule, the Board agreed to discuss grade release out of order from the posted agenda.

8. Grade Reporting of the July 2019 Examination Results. Director of Examinations and Eligibility Nahdiah Hoang announced that the July 2019 first-time taker pass rate for the July 2019 examination was 81.47%, which is up from July 2018. She mentioned that the overall pass rate increased, as well. Grade release for the July 2019 examination was anticipated for 11/1/2019, but BLE had the results earlier so started distribution of results on 10/24/19, which is the earliest date that July grades have ever been released. At approximately 3:15 PM on the release date, BLE began distribution of results letters to examinees through ATLAS. The practice has been to deliver letters to examinees before the release of the pass list. Almost immediately upon release of the initial results letter release, ATLAS slowed dramatically and ultimately crashed completely. BLE contacted both our on-site IT provider in the Office of Court Administration (OCA) and ILG, who supports ATLAS. By approximately 9:00 PM on 10/24/19 all notifications to examinees of grade availability had been delivered, but access to ATLAS accounts was still intermittent throughout the night and into the following day. While ATLAS

was experiencing difficulties, after consulting with Justice Busby, it was decided to post the pass list on the BLE, State Bar of Texas, and Texas Supreme Court websites. By mid-afternoon of Friday, 10/25/2019, all examinees received their grade report letters.

Because of the difficulties experienced by examinees in obtaining their results, BLE was the subject of an unflattering article in Above the Law. Board Chair Al Odom assisted staff in drafting a public statement addressing some of the issues from the article and the frustration felt by examinees. BLE did not receive any written complaints from examinees or the general public regarding the grade release issues, however. BLE has asked OCA and ILG to investigate why the system crash occurred to avoid a recurrence. ILG's partial analysis indicates it was the sudden surge in traffic and the resources required for response that caused the crash. ILG informed BLE that it takes 15 MB of data for each examinee to log in for a letter, but that they have come up with a .027 MB solution. The Staff will continue to evaluate and determine the best solution.

Massey questioned why a one-page notification letter was seemingly so large a file. Hoang explained that it is the process of accessing the applicant's ATLAS account to open the letter. ILG has proposed that BLE send a link to open the letter without having to access the ATLAS account. Odom asked if that is secure. Hoang responded that it would be a unique link of 32 independent characters, so considered secure by OCA and ILG. Giltner asked Hoang how other states notify examinees, to which Hoang responded that they use the postal service; some of the largest states are still sending results via paper letters. Busby proposed that the pass lists continue to be posted on multiple websites. He also requested a written timeline of the steps BLE will follow to publish examination results, including when the Supreme Court would receive the pass list, as the Justices would prefer to receive the pass list prior to examinees being notified so that the Justices have a copy to refer to when responding to calls and inquiries.

Justice Busby's also reported concerns raised by successful examinees who may contact the State Bar immediately upon receiving their examination results, when the Bar did not yet have confirmation of their eligibility to be licensed.

Before moving forward with implementing solutions, Massey asked that BLE and ILG conduct further investigation into the security of a link in an email. Mackenzie stressed that BLE should continue releasing statistics several days after publication of the pass list, to allow staff time to confirm the final numbers. Odom directed staff to come up with a grade release recommendation for discussion at a future meeting.

At 10:25 Justice Busby excused himself from the meeting.

At 10:29 AM, Odom called the meeting into Executive Session to consult with litigation counsel from the Office of the Attorney General, pursuant to Texas Government Code, Sec. 551.071

At 11:04 AM, the meeting returned to open session, but immediately broke for lunch.

At 11:23 AM, the meeting resumed in open session, returning to Agenda Item 7.

7. Report of Executive Director.

- e. Articles of Interest. Henricks noted that the Above The Law article on grade release referenced earlier was included in the meeting book.
- f. New Rules, Including Military Spouse Rule. The Supreme Court has approved new rules for implementation of the Uniform Bar Examination (UBE). New rule books incorporating changes effective 12/1/2019 are available.

The new rules also include a provision for temporary licensure of military spouses in Rule 23. This rule was prompted by recent passage of SB 1200 that requires state executive agencies to allow military spouses who are holders of out of state occupational and professional licenses to practice in Texas. SB 1200 required agencies to adopt rules for implementation by 12/1/2019. As such, BLE staff proposed Rule 23 to the Supreme Court and It was approved 11/13/2019. BLE will have an application available in ATLAS as of 12/1/2019 which will require no fees for the temporary license that will be valid for three years or until the attorney no longer resides in Texas, whichever comes first.

BLE had previously proposed a new rule to provide for registration of out of state attorneys as in-house counsel. Henricks met with the Supreme Court Advisory Committee to discuss this proposal. After that discussion, the Committee indicated that it would be submitted to the Supreme Court. Jackie Daumerie, Rules Attorney for the Supreme Court, will work with Henricks on additional revisions to the in-house counsel rule, that may be adopted as Rule 24.

- g. Rule 4(d)(2). Under the current Rule 4(d)(2), an applicant with a felony conviction cannot submit a declaration of intention or application until five years after completion of any sentence imposed by the court for that felony. The proposed change to Rule 4(d)(2) eliminates the five-year presumption of lack of good character based on a felony. It makes it a rebuttable presumption. An applicant would be allowed to submit a declaration or application with mitigating evidence. This rule change would allow persons convicted of a felony to apply before five years after completion of any sentence. The Supreme Court would like BLE to make a recommendation for the Court's consideration. Soltero moved to approve the proposed rule change as written, which was seconded by Rivera. The motion carried unanimously. The proposed rule change will be submitted to the Supreme Court as written.
- h. Board and Staff Roles and Responsibilities. Henricks noted a provision in Texas Government Code, Sec. 82.0073(a) that directs the BLE to adopt a policy delineating respective roles of board versus staff. Henricks has drafted a proposed policy statement

on roles and responsibilities. Odom asked the Board to review the proposal for discussion at the next Board meeting.

- i. BLE Calendar. Henricks presented the proposed 2020 calendar, mentioning that with the UBE the Board might reconsider the calendar for 2021, when the work schedule will no longer be focused on preparation of bar examination questions. She also suggested inclusion of a September meeting starting on the 2020 calendar, to eliminate the large gap in time between June and November meetings. Rivera moved to accept the proposed calendar, which was seconded by Ellis. With a unanimous vote, the 2020 Board Calendar was approved.
- j. Consider Approval of Proposal by Reunion Consulting. Henricks declined to present this topic as BLE will solicit additional bids for the project.

9. Report of the Director of Character and Fitness

- a. Recommendations of Probationary Licenses to be Converted to Regular Licenses. Three probationary licenses were approved for conversion to regular licenses since the June 2019 Board Meeting.
- b. Year-End Hearings Statistics. 2020 hearings statistics were presented. The statistics were consistent with prior years.
- c. Report on Application Processing Standards and Progress. Drish stated that although a backlog in applications may have occurred, the BLE is not missing deadlines for completion of investigations. Drish also reported that BLE receives between fifty and seventy applications for admission without examination (AWOX) on a monthly basis and while licensure analysts are using an electronic system, the processes were designed for paper applications. BLE has considered ways to improve the process, including reallocating staff. Applications are now assigned by application type, instead of alphabetically according to the applicant's last name. Specifically, the two most senior licensure analysts are assigned the more complex application types, such as AWOX, NTA, and foreign-trained applicants. BLE fully implemented this change September 1, 2019 and the team of five analysts handling the more common application types caught up immediately. The two senior analysts handling the more challenging application types still had a backlog, so the entire licensure analyst team continued to perform initial processing of all applications.

Licensure analysts no longer clear problem files first. Now, licensure analysts address less complex files first. Reporting capability of ATLAS is being used to monitor processing times. BLE is also building checklists of required documents for applicants to use in managing their applications. These revisions are intended to improve processing time on less complex applications.

10. Report of the Director of Eligibility and Examinations.

- a. Question Editing Timeline. Following the open session, the Board will review February 2020 bar examination questions. After a full Board review of the questions,

BLE staff will post print ready questions on the private portal for final review by Board members.

Assistant Director of Eligibility and Examination Ky Strunc advised that OCA has informed BLE that the portal used to share confidential documents will soon be discontinued. OCA has suggested use of the application Board Book It software. Strunc asked Board Members to please provide any recommendations for software to securely distribute information.

- b. Report on July Bar Examination and Grade Release. Hoang reported that after the July 2019 grade release, she was contacted by an unsuccessful applicant who wanted to check her grade on the MPT. The examinee explained problems she had with her laptop during the MPT portion of the exam. Hoang explained that only "0" scores are re-checked by staff. Hoang investigated and determined that the examinee's complete MPT answer had not been graded because the examinee had inadvertently deleted part of her answer. The examinee had consulted with an on-site ILG technician who told her that her deleted answer had been auto-saved and could be retrieved by ILG. The technician did not notify BLE. ILG uploaded her partial answer but did not retrieve the incorrectly deleted portion as she had requested. Hoang was able to access her autosaved MPT answer files, which were rescored, resulting in an overall passing grade. The examinee then posted news of her updated pass status on social media. This generated multiple requests for checking by other examinees. Hoang personally checked the answer files for every person who called or emailed but found no other issues. ILG acknowledged its failure to report the issue reported to it by the applicant at multiple junctures. BLE will now receive a report from ILG on such irregularities identified by technicians at examination sites, and other steps will be taken to require reporting to BLE on technical problems with electronic answer files.
- c. February Bar Examination. As of 11/13/2019, for the February 2020 Texas Bar Examination, BLE has received approximately 100 fewer applications than last year. This difference may be due to some applicants opting to take the UBE in another jurisdiction. In addition, some applicants will soon be eligible to transfer their UBE score in lieu of taking the examination.
- d. Year End Statistical Report on Accommodations. Presented by General Counsel Allan Cook, he reported that the total number of applications for accommodations continues to increase. Full grants for accommodations requests are running slightly fewer than previous years, while partial grants have increased.
- e. Review of Calibration Procedures for Examination Grading. Hoang reminded Board Members about use of calibration procedures in grading the bar examination. New calibration requirements will be necessary with the UBE. Because there will be more than one grader per question, the graders will be required to calibrate with their grading partners. Initial calibration will be the same, although grading will likely be done on a 6-point scale. The Board members will use NCBE grading guidelines to calibrate with the graders initially and graders will re-calibrate as they continue grading. ILG Exam360 includes features to assist in performing calibration between

graders. BLE will conduct a grading conference to train Board Members and Graders on the new calibration requirements.

- f. NCBE Launches Bar NOW. Hoang suggested that Board Members inform applicants in formal reviews about new examination preparation materials available through NCBE. Known as Bar NOW, these materials are an affordable resource for preparation. Hoang noted that Bar NOW is intended to be a supplement, not a substitute for an intensive bar review course.
- g. Communication from Hon. John McClellan Marshall. BLE received a letter from John McClellan Marshall proposing an eligibility rule similar to New York's rule for foreign-trained attorneys. New York does not require such applicants to hold a foreign law license. Rule 13(4) does require foreign licensure, for certain foreign trained applicants seeking admission without complying with the law study requirement, and applicants often request waiver of that requirement. Hoang said based on Marshall's letter, the person about whom it was written could request a waiver. Odom said no action needed to be taken by the Board, but he did ask that Hoang or Henricks reply to Marshall's letter. Hoang indicated that she would reply to Marshall, including in her response that his issue was brought up to the Board but they chose to take no action because of the existing waiver policy. Hoang would also outline the waiver request procedure.

11. Report of Staff Attorneys. Cook asked to revisit a previously discussed issue of archiving exhibits used in hearings, especially those submitted by the applicant. Cook suggested requiring exhibits to be submitted in electronic format prior to the hearing. BLE currently requires that exhibits be shared eight days prior to hearing and objections lodged four days prior, so that electronic versions could be provided at that four-day deadline. Odom questioned if there is an issue of impartiality if panel members receiving evidence before a hearing. Cook made the argument that sending exhibits before the hearings would speed the process and allow for better focus during hearings. Soltero suggested providing panels with exhibits when they are admitted, with a set amount of time to review those materials, before continuing the hearing. Rivera stated that while he doesn't feel there is a need for a recess to review exhibits, he'd certainly use it if available. Soltero recommended that Panelists scheduled for the 11/15/19 hearings pilot the proposal by taking a brief recess at each hearing to review exhibits. The Board agreed that panel chairs may try this procedure to assess its effectiveness.

12. Report of the Texas Law Course Committee. During its most recent meetings, the Texas Law Course (TLC) Committee has completed the faculty roster for the lectures. Most of the faculty submitted written outlines and/or PowerPoints and several have already completed filming. The State Bar of Texas is handling the video filming and production and the filming should be completed by 12/4/2019. State Bar agreed to make transcripts of the segments available to BLE by mid-December. The Board members will use the transcripts to create hurdle questions for their assigned topics. The TLC Committee needs twelve hurdle questions for each lecture segment. Mackenzie asked that Board Members submit completed hurdle questions by

1/6/2020 so that they may be reviewed by staff, compiled and reviewed by the Board at the 1/17/2020 Board Meeting.

After production of the TLC video is complete, the State Bar of Texas will provide ongoing support services. BLE needs approval of an Interagency Contract with the State Bar for production and hosting of the course for a fee of \$10,000. The TLC Committee recommends approval of the interagency contract with State Bar of Texas, but with corrections to deliverable dates in the draft version.

Rivera requested clarification on Paragraph 8 of the draft agreement reads, "State bar shall have the right to access and use the course for its business purposes." Rivera suggested the paragraph should be rewritten to further clarify more specifically what the "use and access" allows. Massey stated that he doesn't believe the State Bar of Texas will use the TLC for continuing education and/or try to monetize the course, he doesn't believe contractual changes are necessary. Massey also noted that the contract doesn't properly identify the primary renewal term, as the contract cannot terminate and automatically renew. Rivera moved that the Board conditionally approve the contract with authorization of the Executive Director to amend the agreement as discussed, which was seconded by Mackenzie. The measure passed unanimously.

13. Report on Changes to the MPRE Administration. NCBE has switched to computer-based MPRE testing. This requires examinees to take the examination at a testing site. The new testing protocol was implemented successfully in August, and it has been going very well.
14. Report on NCBE Testing Task Force. NCBE Testing Task Force is a 3-year study of the bar exam to determine if it accurately tests knowledge needed to be an effective attorney in the 21st century. The study included a survey that received over 30,00 responses, of which almost 1,000 were from Texas. Judge Cindy Martin of Missouri chairs the Task Force.
15. Consider Approval of the 2020 Board of Law Examiners Calendar. This item was approved unanimously during the Executive Director's Update.
16. Consider Issues Arising from Reports of Executive Director, Director of Character & Fitness, Director of Eligibility & Examination, and Staff Attorneys. Mackenzie requested that an agenda item discussing BLE's regrading policies and procedures be added to a future meeting.
17. Election of Chair, Vice Chair and Member-at-Large of the Accommodations Review Committee (ARC). Massey nominated Vice Chair Rivera for Chair, which was seconded by Mackenzie. Ellis nominated Giltner for Vice Chair, which was seconded by Orr. Ellis nominated McKim to continue as ARC Member-At-Large, which was seconded by Soltero. Because all positions were unopposed, Odom motioned for a vote, which was seconded by Massey. The Board voted unanimously for Rivera as Chair, Giltner as Vice Chair, and McKim as ARC Member-At-Large.

Odom thanked the Board for always being supportive of him as Chair and said it had been his pleasure to serve. He then vacated his chair to Rivera.

Rivera's first order as Chair was to call a break at 1:30 PM, with the meeting continuing in executive session upon return.

The Board reconvened at 1:45.

18. Conduct Review of Questions to be Used for Future Texas Bar Examinations. Pursuant to Texas Government Code 82.003(b), Rivera called a closed session, whereupon the Board proceeded to meet in executive session for the purpose of drafting questions for future Texas Bar Examinations.
19. Adjournment. There being no further business, the meeting of the Board of Law Examiners was adjourned upon completion of question review at 4:15.

Respectfully Submitted,



Susan Henricks,
Executive Director

Approved:



Augustin Rivera, Jr., Chair