

MINUTES OF THE MEETING OF THE
BOARD OF LAW EXAMINERS

January 17, 2020

1. Call to Order/Determination of Quorum. The meeting of the Board of Law Examiners was convened in open session by Augustin Rivera, Jr., Chair, on Friday, 1/17/20, at 9:18 AM, in the Tom C. Clark Building, 205 W. 14th Street, 1st Floor Conference Room, Austin, Texas.

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

2. Approval of Minutes and Certified Agendas. Upon motion made by Ellis and seconded by McKim, the Board unanimously voted to approve the minutes and/or certified agendas of the following meetings:
 - a. 10/24/19 Hearings Panel (Giltner)
 - b. 11/15/19 Hearings Panel (Orr)
 - c. 11/15/19 Hearings Panel (Odom)
 - d. 12/6/19 Hearings Panel (Soltero)
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. Investment Report. Rod Shaheen presented and the Board reviewed the Investment Report for the period ending 11/30/19.
 - b. Financial Report. Shaheen presented and the Board reviewed the Financial Report for the period ending 11/30/19.
5. Report of the Executive Director.
 - a. Calendar Update. Executive Director Susan Henricks stated that all Board of Law Examiners staff would participate in de-escalation training on 2/5/20. The training is to provide tools to deal with stressful situations that may arise during administration of the bar exam. Board Members are invited to attend the training. Executive Assistant Laurie Gonzales will distribute the scheduling details to all Board Members via an email.

Henricks will attend the NCBE Technology Committee Meeting in March.

The NCBE National Conference, to which all Board Members are invited, is 4/30 – 5/2/20 in New Orleans. Gonzales will distribute details about the conference as information becomes available.

- b. General agency operations. BLE staff are continuing to prepare for the February 2020 Texas Bar Exam. There are approximately 1,200 applicants for that exam administration. Overall, staff anticipate it will be slightly smaller registration than February 2019.

Henricks provided an update on the grade release issue initially discussed during the November 2019 Board Meeting. Upon investigation, ILG determined that because grade release recipients receive an email letting them know they have a message the majority of recipients attempt to log in simultaneously and the high traffic substantially slows or even crashes BLE's server. ILG and OCA agree on ILG's recommendation to move the BLE servers to ILG's hosted environment vendor, RackSpace. The hosted environment would provide cloud-based service that is more flexible than BLE's current in-house servers. Most other ILG jurisdictions use RackSpace. Initial stress testing has been positive. BLE asked for a higher test load of 3,000 hits in five minutes. Results showed the system could withstand the likely level of traffic during grade release. RackSpace will be more expensive than BLE's current service with OCA, but still less than \$10,000 annually. Staff believes that moving to RackSpace, even with the additional cost, is necessary.

BLE began accepting UBE transfers on 12/1/19. Since that date, the agency has received 93 UBE transfer applications, of which 55 are already licensed and 37 live in Texas. Of these applicants, 35 are law students and 27 of those live in Texas. Three of the UBE transfer applicants are foreign trained attorneys.

Henricks is continuing to solicit competing bid for the business operations efficiency contract that was discussed during the November 2019 Board Meeting.

- c. Communications with Supreme Court Liaison. Henricks, Rivera, Jr., and Giltner had a lunch meeting with Justice Brett Busby, BLE's Liaison to the Supreme Court to answer questions and provide orientation on the BLE.

Henricks has been notified by the Supreme Court that it would prefer to continue administering the Texas Bar Exam in San Antonio and Waco in July 2020, so those sites will be reinstated. This is in response to a complaint submitted by Acting Dean Vincent Johnson. BLE staff is currently working to locate facilities in San Antonio and Waco for the July 2020 examination.

NCBE is hosting a UBE prep course for law schools in Lubbock in February, which Director of Eligibility and Examinations Nahdiah Hoang will attend. While in Lubbock, she will also review potential examination sites.

Henricks provided an update on changes to Rule 4(d)(2) regarding applicants with felonies that was approved during the November 2019 Board Meeting. She said that the Supreme Court received the proposed change and has referred the matter to the Supreme Court Advisory Committee. Henricks will meet with that committee during an upcoming meeting regarding the issue.

- d. Conference with Supreme Court Advisory Committee on proposed Rule on In House Counsel Registration. The Supreme Court is considering the proposed in-house counsel rule. Staff are working on revisions and will meet with State Bar Board to discuss the proposal. The proposed rule has been shared with the UPL Committee, and that group has expressed interest in a rule since there are currently no statutes regulating unlicensed in-house counsel practice in Texas. Henricks estimated that thousands of attorneys are practicing as in-house counsel in the state without Texas licensure. This is based on information from other states who have recently adopted in-house counsel registration rules.
 - e. Complaint Resolution Report. There was one complaint submitted between 11/1/19 and 1/6/20 from Dean Vincent Johnson of St. Mary's. The complaint was discussed during agenda item 5C.
 - f. Report on Administratively-Determined Waiver Decisions. BLE received 45 waiver requests during the period 11/1 – 12/31/19, the majority of which were for fees. Of the waivers that were submitted, 2 were duplicates. All but 4 of the waiver requests were granted in whole or in part.
 - g. Articles and communications of interest to Board Members. Henricks referenced an article that was not included in the Board Book, but was a publication she'd recently received from Marcia Griggs, the former bar preparation professor at TSU. The article is entitled "Building a Better Bar Exam." BLE has a printed copy available and a digital copy will be emailed to all Board Members. Additionally, included in the Board Book is an ABA article regarding the newly adopted 75% bar examination pass rate for law school accreditation. TSU is discussed in the article, although the new standard is not expected to adversely impact any Texas law school. Henricks also mentioned an article in the Board Book that analyzed ABA 509 report data and showed that the qualifications of law school applicants are improving.
6. Report of Texas Law Course Committee. Soltero stated that the Texas Law Course development is progressing well. The videos for all segments have been completed and the majority of the

hurdle questions have been submitted, with further review of those questions scheduled for the end of today's Board Meeting. The committee anticipates having hurdle questions completed by February 2020 and the final product available in March 2020. Henricks mentioned that the transcripts of the videotaped segments are not available yet for question preparation, but they will be provided to the Board as soon as the State Bar of Texas completes the transcribing. BLE staff will review the transcripts to ensure questions match the presentations, in both content and segment. Rivera thanked the committee members and Henricks for such commitment to the process.

7. Consider Proposed Grade Reporting Policy Updates. This agenda item was discussed during 5B.
8. Consider Adoption of Proposed Policy Delineating Roles of Board and Staff. This item is a continuation of discussion started during the November 2019 Board Meeting. Orr had a question regarding the 3rd sentence of the last paragraph of the 1st page of the proposed policy that states that the Executive Director has discretion for managing the agency and making administrative decisions within "their" authority. Orr wanted clarification of who "their" specifies. Henricks explained that the use of "their" is a writing style that does not assign gender identity. It was agreed that "their" would be changed to "the executive director". Rivera mentioned that he'd like to add "the Board provides professional expertise in exam construction and question writing." Ellis requested formatting changes for consistency throughout the document. Rivera asked that page 62, Sec. A.2.b be changed to "reports to board on operational matters and any identified needs of the agency." Soltero motioned to approve with the stated amendments, which was seconded by Odom. The measure passed unanimously.
9. Consider Adoption of Proposed Informal Settlement Conference Procedures. Henricks opened by stating that this is a proposed procedural change that could be adopted under Rule 20 without approval from the Supreme Court. Based on feedback she has received from some Board Members, Henricks understands that many Board Members believe some applicants could be approved by staff without need for a hearing. BLE staff has therefore proposed procedures for informal settlements conferences. Henricks said the proposed process is based on similar procedures used by almost all other Texas licensing agencies. Henricks said the policy would offer an informal conference to all applicants, making it essentially voluntary dispute resolution. The proposed policy allows applicant to bring a lawyer, but no witnesses. The applicant may also bring hearsay statements and guests, but the guests may not participate. The intent of the informal settlement process is an abbreviated, face-to-face discussion to renew the positions of the applicant and the agency and then determine if a full hearing is necessary.

Ellis said she believes that hearings are the most important aspect of Board Members' duties. She agrees that many hearings that are scheduled could be decided by staff, especially for minor criminal history issues, but often in hearings the demeanor or character of the applicant impacts

the outcome and she worries this wouldn't be considered in an informal settlement meeting. Henricks explained to the Board that factors such as demeanor would be considered as part of the informal conference. Ellis said she feels strongly about this, and that she would sit on more hearings panels if that allowed other board members to lessen their BLE obligations.

Soltero agreed with the value of hearings, but he said he thinks that ultimately it's the result that is most important, not the process, and if applicants agree to informal conferences resulting in fewer hearings, he feels it's a better use of resources for applicants, staff and board.

Orr said she fears that the way in which the proposal is written will have the unintended consequence of every applicant previewing their case with a "trial run" and staff will become inundated with informal conferences that will still result in hearings. Orr further stated that the Board has discussed holding longer hearings panels scheduled the day or days prior to board meetings, rather than having monthly meetings, as that could potentially ease scheduling and budgeting and would allow panels to be more experientially-focused. She asked if that is a proposal that the Board should revisit.

Rivera requested clarification on outcomes from the process. Henricks said there are 3 potential outcomes: 1) the applicant is certified; 2) proposal for issuance of a probationary license, which could be rejected by the applicant; 3) proposal for denial, which would automatically lead to a hearing.

Ellis suggested having more hearings during each panel, rather than turn the issues over to staff. She said that use of stipulations could shorten hearings.

Staff Attorney Lynn Bradshaw said she is in favor of informal dispute resolution as mediation is favored by the court system and we operate as an arm of the Texas Supreme Court. In general, looking at the statistics, 40% of cases are approved and another 27% get some type of approval. Informal resolution would allow for many of these cases to be resolved without a formal hearing, thus allowing more time to focus on the more serious cases in the formal hearing setting.

Odom said this process would help weed out applicants who clearly don't need a hearing, making it more efficient for all parties. He said if the Board is not comfortable giving the choice for an informal conference to all applicants, perhaps the staff attorneys could make the determination on whether an applicant is offered informal conference or a hearing. Giltner suggested a trial period for the process would make sense.

McKim expressed concern about issues that sometimes come up during hearings that were not previously known, such as mental health or chemical dependency. She asked if an informal panel would be in depth enough to catch those discrepancies. She further stated that because of these types of situations, she cannot give broad support to the informal settlement process,

preferring a more detailed list of what types of issues would lead to an informal conference rather than a hearing.

Odom said that staff are typically stricter with applicants than are Board Members so he doesn't have concerns that non-qualifying applicants would be licensed.

Bradshaw noted the cost of hearings to applicants; attorney costs can be in the tens of thousands of dollars. Giltner said that this could only add to the cost because attorneys could now charge additional fee for informal settlement meetings. Bradshaw thought that applicants may forego an attorney if they are offered an informal settlement conference.

Soltero pointed out that with two Board Members not present today, he would not be comfortable voting on the issue. He suggested the topic be tabled until a future meeting when all Board Members are present. Rivera agreed. The proposal was tabled for a future meeting.

Open session was stopped for a break by Chair Augustin Rivera, Jr., at 10:45 AM. Open session reconvened and was called to order at 10:55 AM by Chair Augustin Rivera, Jr.

10. Discuss Current Regrading Policy. To allow for full Board consideration, this item was tabled to a future meeting.
11. Report of the Director of Character and Fitness. Assistant Director of Character and Fitness Kendelyn Schiller presented the conversion report, which included only one probationary licensed converted to full licensure.
12. Report of the Director of Eligibility and Examinations.
 - a. Review Board Member coverage for February 2020 Bar Exam. Henricks confirmed that Soltero and Ellis would provide Board representation at the February 2020 exam in Austin.
 - b. Confirm graders, question assignments, shipping address and delivery date for iPads. Henricks stated that this agenda item is routinely included. Unless the Board had any changes to note, it did not require discussion. Board Members confirmed that all grader information is the same as for July 2019.
 - c. Consider general guidelines for decision-making on requests to waive application of the Rules Governing Admission to the Bar. During the most recent Sunset Review, BLE was advised to develop guidelines for waiver decisions. BLE staff created guidelines for the most common waiver types did not do so for every potential waiver request. BLE recently had two applicants request waivers for which the agency does not have established guidelines and their waiver denials resulted in litigation. In order to address the Sunset legislation provision, staff recommends adopting general guidelines that

could be applied to any waiver request that is not addressed by a specific guideline. Because the entire Board was not present, the Chair tabled this discussion for the March 2020 meeting.

- d. Report on Sites for administration of the July 2020 Bar Examination. This item was discussed during agenda item 5C.

13. Report of Staff Attorneys.

- a. Litigation Report. Pursuant to Tex. Gov't Code, Sec. 551.071, this agenda item was discussed in executive session called at 11:05 AM by Chair Augustin Rivera, Jr. The meeting resumed in open session at 11:15 AM.

14. Report on Current NCBE Events and Activities. Rivera asked that all Board Members note their calendars for the NCBE National Conference scheduled to begin on 4/30/20 in New Orleans.

Rivera said that when he joined the Board of Trustees of NCBE, he was appointed to several committees, including the MBE Policy Committee. Through the MBE Policy Committee, Rivera became acquainted with members of the NCBE drafting committee utilized by NCBE to develop exam questions. As part of Rivera's responsibilities for the MBE Policy Committee, he will be involved in peer review of the drafted MBE questions. Rivera said he appreciates being part of the process, as it gives him insight into test development.

Rivera extended his thanks and appreciation to staff and especially Henricks as he has come to realize how well regarded and respected Texas is as a jurisdiction within NCBE.

15. Consider Issues Arising from Reports of Executive Director, Director of Character & Fitness, Director of Eligibility & Examination, and Staff Attorney. Giltner opened discussion by mentioning two applicants for admission without examination (AWOX) who had recently contacted her with concerns about the length of time it takes for AWOX licensure. Both are licensed in multiple other states and both compared Texas unfavorably in the length of time it's taken to complete the process. Henricks said she wants to know about all of these issues, so asked Board Members to please direct any inquiries to her directly. Giltner said that neither applicant wants to be identified pre-licensure, but they did tell Giltner they would share more specific information regarding their experiences once they are licensed, which she will share with Henricks and the Board.

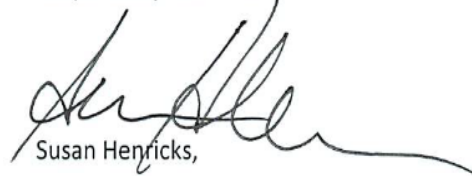
Ellis expressed concern about UBE grading process and asked for information on when the Board will learn more about the entire process, including scheduling of training on the UBE. Henricks is anticipating inclusion of this topic on the March 2020 Board meeting agenda.

Ellis relayed to the Board that during the 1/16/20 hearings panel, there were 18 waiver requests, many dealing with the 5-time examination attempt rule and a few related to MPRE scores. Ellis

then asked if hearings panels must allow applicants to be present during waiver discussion, especially those who bring attorneys. She stated waivers are supposed to be based solely on the written materials submitted by the applicant. Rivera explained that waivers decision are made in open meetings, so the Board cannot deny attendance to anyone. Rivera then stated that the Board currently allows a courtesy speaking time for waiver applicants who appear in person, but the Board limits public comment to one speaker for 3 minutes per item. So that all Board Members could have input regarding waiver decision making, Rivera proposed that the item be included on the March 2020 Board Meeting agenda.

16. Conduct Review of Questions to be Used for the Texas Law Course. Pursuant to Tex. Gov't Code, Sec. 82.003B, this agenda item was discussed in executive session called at 11:42 AM by Chair Augustin Rivera, Jr.
17. Adjourn. The meeting adjourned at 2:05 PM.

Respectfully Submitted,



Susan Henricks,
Executive Director

Approved:



Augustin Rivera, Jr., Chair