

MINUTES OF THE MEETING OF THE  
BOARD OF LAW EXAMINERS

March 27, 2020

1. Call to Order/Determination of Quorum. The meeting of the Board of Law Examiners was convened in open session by Augustin River, Jr., Chair, on Friday, March 27, 2020, at 1:03 PM via videoconference as authorized by Order of Governor Greg Abbott, suspending Application of Tex. Gov't Code Sec. 551.127(b). The meeting was conducted through Skype at <https://join.skype.com/Q9B8rr4199ys>. All Board Members were present for the meeting.
2. Consider Approval of the Minutes and Certified Agendas. Mackenzie moved to approve all submitted minutes and agendas. Orr seconded to approve acceptance of the minutes and agendas. The motion passed unanimously.
3. Consider Communications from the Public. No members of the public were in attendance.
4. Report of the Accountant.
  - a. Review Investment Reports. Under rules of the Public information Act, the Board of Law Examiners investment reports must be presented to the Board at least once quarterly. The Board reviewed the submitted materials. By agreement of the Board, any questions related to the investment report would be deferred to a future meeting.
  - b. Review Financial Reports. This agenda item was deferred to a later meeting.
5. Report of the Executive Director. Executive Director Susan Henricks relayed to the Board that Austin is currently under a shelter in place directive. As such, all staff are working primarily from their homes, with a few staff members regularly providing on-site services for tasks that must be performed at BLE headquarters. Henricks said that approximately three weeks prior to the official shelter in place, BLE began preparing for an emergency situation by confirming that all staff had access to the agency's VPN connectivity and had the necessary equipment to work remotely. All staff were ready for work-from-home when BLE issued the work-from-home directive on January 13, 2020.

Through email, phone calls, texts, and Microsoft Teams, the BLE staff stay in constant contact and directors are obtaining daily updates. Henricks mentioned that BLE is fortunate that the agency's electronic database allows all staff to work from home somewhat seamlessly. She explained that some states are not as fortunate, so those jurisdictions' operations are at a standstill.

Henricks recommended that anyone needing to contact BLE staff please utilize email. Staff have limited access to voice mails and have been asked to not use their personal phones when

replying to phone calls, making email and direct messaging through ATLAS the most efficient method of communication.

BLE staff are continuing to prepare for the July 2020 exam. Staff began ordering supplies early, as soon as it became evident that there may be difficulty obtaining materials. BLE is ready to hold the July 2020 exam if it is administered on schedule.

NCBE has established May 5, 2020, as their deadline for determination on their scheduling of the July 2020 exam. The Supreme Court has indicated they want to issue a decision regarding the Texas Bar July 2020 Exam no later than May 1, 2020. While it is ultimately the Supreme Court's decision, BLE Liaison Justice Brett Busby has asked BLE to provide a recommendation that he may relay to the Court. There is considerable discussion among representatives of various admissions agencies and NCBE about establishing an alternate date in the Fall, possibly an additional exam or a replacement exam, but Henricks said she felt it's premature to make that decision. However, preparatory steps are being taken, including soliciting site availability, for any contingencies that may happen.

Soltero asked what factors that would be weighed in determining postponement versus cancellation. Henricks said NCBE has technical considerations in terms of whether the exam size is large enough to be psychometrically valid; NCBE requires a certain sample size to compare cohorts. New York, a UBE state, has already publicly stated that it cannot do the exam. They are also a jurisdiction that cannot function remotely. Another issue is that UBE jurisdictions that cancel would result in applicants moving to another UBE jurisdiction, which could become chaotic for those jurisdictions that choose to move forward with an exam. Henricks told the Board that NCBE does have two version of an exam available at all times, so NCBE is prepared for a replacement in case of cancellation or with a second exam if jurisdictions hold the exam at different times.

For Texas, for the July 2020 examination, enrollment numbers are lower than previous July administrations. Henricks said she believes this is because many applicants may be taking a UBE exam in another jurisdiction or applicants will transfer an existing UBE score.

Henricks informed the Board that BLE's cash reserves are more than adequate, so there is little likelihood of any type of financial crisis due to the ongoing pandemic.

For the February 2020 Texas Bar Examination, a few of the graders have already completed their grading. BLE anticipates all grading will be completed by April 8, 2020.

The May 2020 New Lawyer Induction (Swearing-In) is not expected to take place as the Frank Erwin Center has cancelled all events through the end of May. The Swearing-In Ceremony is not a requirement in Texas. An applicant may be sworn in by any notary once they have the

necessary paperwork in place. Because there will be no Swearing-In, BLE will not host a bar admission forum, but will consider rescheduling to accompany the Fall 2020 Swearing-In.

All BLE staff will participate in a virtual staff meeting on Monday, 3/30/20. Henricks expressed appreciation for how readily staff made the transition to work from home and how effortlessly the process has been. She said she wanted to publicly thank the entire BLE team for their considerable efforts during such a challenging time.

Mackenzie said he also wanted to applaud the staff and Henricks on how well BLE has continued to function. He then added in no short part because of staff efforts, the Texas Law Component is ready for release. He said Board Members may access the video if they'd like to review it before it's released. Board Members should contact Mackenzie for instructions on how to access the video. For testing purposes, staff selected six applicants to review the course and then give feedback. The few issues that were submitted were easily corrected. Henricks said she believes the Texas Law Component could be released as early as next week.

Ellis asked Henricks and the Board if law schools are moving forward with online courses and if they will hold graduation ceremonies. Rivera said that law schools are doing online instruction, as is the general move in higher education during the pandemic. Rivera said it is his understanding that many law schools are planning to do pass/fail grades. Henricks confirmed that all Texas law schools are moving forward with instruction and that several deans have expressed concern regarding the July 2020 exam. More specifically, the deans have shared with Henricks that they do not want the July exam cancelled, and if/when the exam is held that it be the Texas Bar Exam, not the UBE. Deans have shared with Henricks that students feel their law school education has prepared them for Texas Bar Exam. BLE is moving forward under the assumption that the July 2020 Texas Bar Exam will be administered as scheduled, but anything other than that will require instruction from the Supreme Court.

Orr asked if BLE is looking at larger spaces for social distancing if the July 2020 exam is held as scheduled. Henricks replied that the staff are having difficulties locating larger facilities because of the many unknowns, including the number of examinees, any governmental regulations that may be in place, and social distancing space limitations. Fortunately, many of the venues already reserved for July 2020 are large enough to accommodate social distancing of examinees if the facility is able to provide additional tables. Henricks mentioned that a contingency plan would be to seat 1 person at a 6-foot table, rather than 2 examinees at an 8-foot table, but no firm plans are in place until the Supreme Court issues its decision.

Rivera and Ellis brought up a recent publication drafted by a group of law school faculty and deans that outlined different options to licensure with or without an exam. Henricks reiterated that the Supreme Court is looking to BLE for input on that topic. To address that request, Rivera nominated himself, Odom, Giltner, and Mackenzie to work with staff in developing a suggested solution to offer the Supreme Court. Odom, Giltner, and Mackenzie accepted and it was agreed

that a meeting would be set for the near future. Henricks solicited suggestions from the entire Board and encouraged them to submit any options that they may have directly to her so that she may share at the upcoming meeting.

Massey asked Henricks how many applicants she believes will register for the July 2020 exam. Henricks said her best guess would be approximately 2,000, which is 2/3 of the normal number of July examinees. Henricks said it's difficult to predict what impact the UBE would have on final enrollment. Henricks originally thought there would be approximately 2,500 July 2020 examinees, but based on current enrollment numbers it now looks to be closer to 2,000. The currently reserved July 2020 venues have sufficient capacity, but the challenge may be in locating proctors. Since BLE will not put anyone in jeopardy, be it staff, examinees, facility personnel, or proctors, Henricks said it's truly wait-and-see at this point.

Character and Fitness Hearings for March 2020 and April 2020 have been cancelled. BLE doesn't have facilities available to conduct videoconference hearings and would need agreement of applicants and their council to conduct remotely.

Henricks suggested it might be advantageous revisit the informal conference procedures that were introduced during the January 2020 Board meeting, but deferred to a later meeting when all Board Members were present. Henricks said that an informal conference (IC) could allow applicants who are waiting for a hearing but have already passed the exam to be expedited, as the only hindrance to licensure is approval of the character and fitness. Currently there are 7 applicants in this situation. BLE staff could use IC to vet applicants to determine if the applicant needs to meet with the Board, if the applicant could be certified, or if the applicant needs a probationary license to be approved at the next available hearing or board meeting. Henricks stated that IC will help manage the character and fitness hearings docket, especially for those who have passed the exam and are only awaiting approval of their character and fitness, especially with the large backlog that is developing during the pandemic. Henricks said she would like to pilot the IC with the seven applicants who have passed the exam but are awaiting character and fitness certification. BLE could hold the IC by videoconference or telephone conference, with video the preferred mode.

Soltero expressed support, saying he thinks ICs are a good idea, by either video or phone. He further expressed his belief that this is an especially advantageous time to pilot the program as it's almost necessary at this point in time.

Ellis said she maintains her position from the January 2020 Board meeting, that she is opposed to ICs as the routine procedure. However, she said that because of the challenges related to coronavirus, she would like to support a pilot program to be used only during this emergency period with assurances that this will only be a test run that will be revisited at a future board meeting.

Ellis moved to use as the proposed Informal Conference Procedures for an unknown length of time, only until the disaster period is complete. Odom seconded to the motion. Mackenzie posed a procedural question regarding creating a procedure that doesn't have a finite ending. Mackenzie moved to amend the motion to reflect that the Informal Conference Procedures be implemented on a trial basis through the January 2021 Board Meeting and that the Board would review the pilot during the January 2021 meeting. Ellis stated she felt that was too long a pilot, that she would prefer something sooner, perhaps the September 2020 Board Meeting. Odom questioned why the motion has to be tied to a finite date to revisit. Orr expressed a preference that a revisit date be established as part of the motion. Soltero suggested revisiting in September 2020, as that would provide six months for the pilot while still dictating a specific time frame to eliminate the concerns of some Board Members. Soltero reminded the Board that it's a voluntary resolution for applicants and that the applicant could decline in lieu of a hearing. Soltero said he believes six months provides a substantial amount of time to test the program with sufficient feedback from staff, applicants, and board in evaluating the continuing use of the program. Rivera said he wanted to reiterate that there would be a Board Member involved, although not three as is usual. Ellis made a motion with an amendment to put the process Informal Conference Procedures in place until the September 2020 Board Meeting. The motion was seconded by Soltero and was unanimously approved by the Board.

General Counsel Allan Cook has agreed to postpone his retirement until such time as BLE is able to complete the hiring process of a new general counsel. Interviews are currently in progress, but the hiring process has been put on hold until BLE returns to its regular work schedule. Henricks said in addition to hiring a new general counsel, BLE plans to hire a legal assistant who will be tasked with testing accommodations and to help with hearing preparations. The legal assistant will be supervised by the general counsel.

6. Report of the Director of Character and Fitness. The printed Recommendations of Probationary Licenses to be Converted to Regular Licenses. The printed report was provided to the Board.
7. Report of the Director of Eligibility and Examination. Rivera expressed that there is much anxiety surrounding the July 2020 examination, specifically if it will be held. He clarified that the Board is not equipped to resolve the issue during this, the March meeting, but stated as previously established in the meeting, the Board will prepare a suggested plan of action to the Supreme Court. Rivera anticipates that there may be need of another full Board meeting to address the July 2020 examination.

Henricks reiterated that there are currently no changes planned for the July 2020 and that BLE is moving forward with planning for six sites for July 2020, although exam registrations are currently 700 fewer than at this time in 2019.

Director of Eligibility and Examination Nahdiah Hoang mentioned that the final number for the February 2019 exam was 996 examinees, which is the fewest examinees since Hoang began her

position with BLE. Hoang said she is working on contingencies for July 2020, but noted that it's been challenging to find large spaces in the best of times for previous exams and almost impossible to find any venues for a Fall exam with such short notice. Hoang did mention that BLE has been able to locate one available site, Kay Bailey Hutchison Convention Center, located in Dallas. Thus far BLE staff have been able to locate any available venues in Houston and Austin regardless of date. San Antonio has some availability, but it depends on the date that is selected. At this point, BLE staff are unsure of the location and/or number of venues that would be scheduled if the test is postponed.

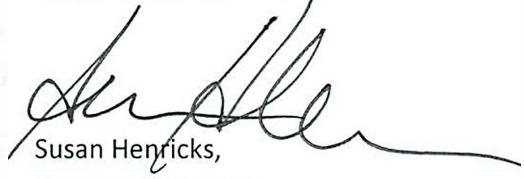
Odom asked Rivera if the Board should plan to revisit the issue on or around May 1, 2020. Rivera stated that the Board is expected to provide input to the Supreme Court no later than May 1<sup>st</sup> and that the COVID response committee he'd named earlier would meet as soon as possible to work on recommendations that would be presented to the full Board.

8. Report of the General Counsel. In regards to the ongoing Block litigation, the 5<sup>th</sup> Circuit approved dismissal of the petitioner's case. Cook thanked Summer Lee of the Attorney General's office for her adept representation of BLE throughout the proceedings.
9. Consider General Guidelines for Decision-Making on Request to Waive Application of the Rules. This topic was first discussed during the January 2020 Board Meeting and was deferred to the April meeting to allow Board Members time to thoroughly review the materials. Henricks told the Board that the proposed General Guidelines stem from a Sunset Commission recommendation that all waivers have guidelines for the Board to follow. Because of the multitude of possible waiver requests, the staff developed a set of general guidelines that could be used for non-standard waiver requests. Henricks told the Board that the proposed guidelines included in the March 2020 meeting materials are the same as were presented at the January 2020 Board Meeting, with no changes or edits. Cynthia moved to approve the proposed General Guidelines for Decision-Making on Requests to Waive Application of the Rules. Massey seconded the motion. The motion passed unanimously.
10. Consider Issues Arising from Reports of the Executive Director, Director of Character and Fitness, Director of Eligibility and Examination, and Staff Attorney. Rivera indicated he would like to reconvene in April, suggesting April 17, 2020, as that was the date that had been set aside for Waiver Hearings and Character and Fitness Hearings that have now been cancelled. Ellis proposed 10:00 AM on Friday, April 17, 2020. McKim seconded the proposal. The Board agreed to hold a videoconference on Friday, April 17, 2020, at 10:00 AM. An agenda and meeting URL will be distributed at least 7 days prior to that date.

Rivera opened the floor to any new business, but none was presented. Rivera thanked BLE staff for all of their hard work and expressing his gratitude to Henricks for making preparations before the pandemic reached such a critical level.

11. Adjourn. The meeting adjourned at 2:07 PM.

Respectfully Submitted,



Susan Henricks,  
Executive Director

Approved:



Augustin Rivera, Jr., Chair