

MINUTES OF THE MEETING OF
THE BOARD OF LAW EXAMINERS

August 24, 2020

1. Call to order, determine quorum, and consider requests for excused absences.
Board Chair Rivera called the meeting to order at 10:03 AM. In light of the COVID-19 pandemic crisis, the Meeting was held virtually via Zoom and Youtube in accordance with guidance from the Offices of the Texas Governor and Attorney General and the suspension of certain requirements of the Texas Open Meetings Act. All members were present, so a quorum was met.
2. Consider approval of minutes and certified agendas of June 26, 2020, July 2, 2020, and July 16, 2020 board meetings.
Minutes review was deferred to the next Board Meeting.
3. Consider communications from the public, if any.
Public comments were submitted by Pearl Cruz, Kate Willis, Rohit Dar, Allen Braddock, Dean Michael Barry, Cody Miller, Hayden Carlos, Anya (no last name provided on Zoom login), Brandi Wolfe, Michael Aragon, Gwendolyn Bennet, Thomas Samuelson, and Ryan Mak.
4. Report of Executive Director.
 - a. General agency operations.
Executive Director Susan Henricks noted that most staff continue to work remotely, but more individuals have been onsite to prepare for the September examination. Social distancing is being required by Texas Facilities Commission for all building occupants, so staff are following those requirements closely.
 - b. Report on the September and October 2020 Texas Bar Examinations.
Plans are in place for both examinations and are moving forward as planned. Proctors are still being recruited for the September examination, and a staffing agency will be utilized to help fill available proctor openings.

Contracts for the examination are in place for both September and October. Recently administered examinations in other jurisdictions have bolstered confidence that both Texas examinations will be able to move forward without difficulty.

There will be no live proctoring for the October examination. Video will be evaluated by artificial intelligence, but any questionable video will be reviewed by staff. Ultimately, staff will make any determinations if additional action is required related to potential impropriety.

c. Report on July in person examination in other jurisdictions.

5,678 examinees in 23 separate jurisdictions took the July 2020 examination. Texas has received no reports of any infections directly linked to participation at any of the July sites. This provides some evidence that an in-person examination may be administered safely.

d. Consider plan for remote administration of October 2020 Texas Bar Examination, including consideration and possible action on online software vendor.

As previously discussed, the ExamSoft contract is in place and will be executed shortly.

e. Retirement announcements.

General Counsel Allan Cook postponed his previously announced retirement so that operations could continue throughout the pandemic. He will now retire October 31, 2020. BLE is preparing to recruit for the vacated general counsel position. Henricks thanked Cook personally for extending his employment.

Henricks announced that she will retire effective December 31, 2020, as has been planned for quite some time. She stated her intention to officially notify the Board of that date.

Rivera thanked Cook and Henricks for their dedication to BLE and wished them both well.

f. Deans' Letter to Supreme Court of Texas.

Rivera said that all input that was discussed at the 8/19/20 meeting related to the Deans' proposed regarding apprenticeship was relayed to the Supreme Court of Texas. The Supreme Court relayed their thanks for the Board providing input and will review the proposal presented by the Deans.

River opened the floor to any additional comments from discussion that took place during the previous meeting. No additional comments were offered.

5. Report of Director of Character and Fitness.

a. Consent agenda: Proposed Agreed Order(s) recommended by Informal Settlement Conference Panels. Deliberation may be conducted in executive session on motion approved by the Board pursuant to Rules Governing Admission to the Bar, Rule 7(b) and Texas Gov't Code, Sec 82.003(c).

Director of Character and Fitness Allison Drish mentioned two agreed orders to be approved and considered by the Board; one order for HP and one order for JP. Applicants have agreed to and signed the proposed orders.

Rivera stated that if deliberation is required, executive session would be required. Orr moved to approve both orders without deliberation. Odom provided a second to that motion. The motion carried unanimously and both orders were approved.

6. Report of Director of Eligibility and Examination.

a. Report on the September and October 2020 Texas Bar Examination grading plans.

Director of Eligibility and Examination Nahdiah Hoang stated that Henricks had previously provided information on the September and October examinations and she had nothing additional to offer.

b. Report on August 22, 2020, grader training.

Brad Rice, a former BLE grader and respected attorney, provided training to all BLE graders so that the September examinations may be graded more quickly. This will allow licensure to take place on an almost-normal schedule, even with the delayed testing. The training was well attended and provided the graders with the tools they need to complete grading on an accelerated schedule.

7. Consider waiving the requirement of successfully completing the Texas Bar Examination for applicants who earn satisfactory scores on bar exams administered remotely by certain other jurisdictions in October 2020.

Several UBE jurisdictions have agreed to administer online examinations with UBE-provided materials, even though NCBE is not recognizing the examination as a full UBE. These jurisdictions will use the UBE scale and standard grading practices, so the minimum required score of 270 on the online “mini” examination would be roughly equivalent to a regular UBE. These scores would not be provided by NCBE, but would come directly from the jurisdictions since NCBE will not be grading the examinations. Because of these grading assurances, Hoang recommends that Texas accept these scores for UBE transfer purposes. Soltero moved to accept the proposal that Texas accept these online examinations for UBE transfer. Massey provided a second to the motion. The motion carried unanimously.

8. Report of Staff Attorneys.

Cook referred to the confidential materials provided to Board Members and asked that they be discussed in executive session.

9. Consider issues arising from reports of Executive Director, Director of Eligibility & Examination, Director of Character & Fitness, and Staff Attorneys.

Mackenzie noted that September and October 2020 examination administrations need to be kept separate from any proposals to consider apprenticeship program or diploma privilege. He doesn't believe it should be an either/or situation, as many of the public commenters seemed to suggest.

Ellis stated that Staff are already inundated and the Supreme Court has not specifically asked for the Board to review an apprenticeship program. Because of that, she'd prefer to table discussion of apprenticeship until after the September and October examinations.

Orr asked staff how far out from a bar exam administration does BLE start planning. Henricks stated that site contracts are up to one year in advance.

Massey asked if the Supreme Court relayed any thoughts regarding the comments shared with them last week. Rivera stated that the Supreme Court had provided no official response. More specifically, Rivera explained that the Supreme Court had not issued any new orders based on the comments provided by Rivera, Henricks, and Hoang, but that Justice Busby indicated the Court would perhaps be taking up the matter in the upcoming week.

Odom stated that it seems to be consensus of Board Members that the Board should not take a position on apprenticeship until invited to do so by the Supreme Court. Rivera confirmed that the Board could take a position, but Odom was unsure of the procedure on how to do that since the Supreme Court issued an order and that order has been implemented. Odom asked if the Board has the ability to propose changes or amendments to that order. Ellis said she felt strongly that it now is up to the Supreme Court to request any additional action, such as apprenticeship, and that the Court would let us know if they needed additional guidance or a proposal. Soltero and Orr agreed that the Board will continue to evaluate all proposals and take action when needed or required.

10. Executive Session.

Pursuant to Tex. Gov't Code §551.071 and Tex. Gov't Code §551.074(a)(1), Rivera called the meeting to Executive Session at 11:15 AM.


The meeting returned to open session at 11:59 AM.

Rivera asked if there would be an opportunity for the Board to meet before the September 2020 meeting. Henricks did not believe a meeting could be scheduled in that timeframe. Soltero recommended moving forward with the September 17, 2020, already scheduled Board Meeting. Due to the current online scheduled, Board Members asked BLE to no longer schedule activities as back-to-back meetings, but rather look at scheduling them throughout the month in a more spaced-out manner.


11. Adjourn.

Rivera closed the meeting at 12:05 PM.

Respectfully Submitted,


Susan Henricks,
Executive Director

Approved:


Augustin Rivera, Jr.