

Minutes of the Meeting  
of the Board of Law Examiners  
January 13 – 14, 2023

**Friday, January 13, 2023**

**1. Welcome, call to order, determine quorum, and consider requests for excused absences – Chair**

At 9:38 a.m., Chair Augustin Rivera, Jr., convened the meeting of the Board of Law Examiners.

All Board members were present.

Also in attendance were:

- Justice Brett Busby, Supreme Court of Texas Liaison (remote attendance)
- Nahdiah Hoang, Executive Director
- Ciara Parks, General Counsel
- Allison Drish, Director of Investigation
- Michael Sullivan, Director of Admissions
- Kendelyn Schiller, Assistant Director of Investigation
- Ky Strunc, Assistant Director of Admissions
- Laurie Gonzales, Executive Assistant
- Rod Shaheen Accountant (remote attendance),
- Dr. Barry Lubin, Medical Review Officer, Affinity
- Michael Barry, Dean, South Texas College of Law-Houston and
- Zoe Niesel, Associate Dean of Academic Affairs, St. Mary's University School of Law

**2. Consider communications from the public, if any – Chair**

No member of the public asked to present comments.

**3. Presentation on use of drug testing – Dr. Barry Lubin**

Dr. Barry Lubin, Medical Director of Affinity, presented on toxicology and drug testing, including an overview of testing administered by Affinity on behalf of the Board of Law Examiners as part of probationary licensee monitoring.

*At 10:55 a.m. Justice Busby left the meeting, and the Chair recessed the meeting for a break.*

*At 11:03 a.m. the Chair reconvened the meeting in open session.*

**4. Report of General Counsel – Parks**

*At 11:04 a.m., upon motion made by Soltero and seconded by Massey, the Chair closed the meeting for executive session per Tex. Gov't Code §551.071.*

The Chair has certified an agenda for this closed executive session.

*At 11:29 a.m., the Chair reconvened the meeting in open session and no action was taken.*

**5. Presentation on on-line legal education – Chair**

Michael Barry, Dean of the South Texas College of Law-Houston, and Zoe Niesel, Associate Dean for Academic Affairs at St. Mary's University School of Law, presented about the ABA-approved on-line J.D. programs offered by their schools.

*At 12:27 p.m., Barry and Niesel left the meeting, and the Chair recessed the meeting for a break.*

*At 12:40 p.m., the Chair reconvened the meeting in open session.*

**6. Report of Accountant – Shaheen (Zoom)**

6.1. Review investment reports

Chief Accountant Rod Shaheen presented the investment report for period ending 11/30/2023.

6.2. Review first quarter financial report

Shaheen presented the financial report for period 9/1/2023 – 11/30/2023.

*At 12:51 p.m., the Chair recessed the meeting for lunch.*

*At 2:10 p.m., the Chair reconvened the meeting in open session.*

**7. Report of Director of Investigations – Drish**

Based on the presentation given by Lubin, Director of Investigations Allison Drish suggested the Board consider a future discussion item regarding marijuana and CBD use guidelines.

7.1. Recommendations of probationary licenses to be converted to regular licenses and for minor modifications to probationary licenses.

Drish presented the report of the conversion of probationary licenses to regular licenses and minor modifications to active probationary licenses.

**8. Report of Director of Admissions – Sullivan**

8.1. Review Board Member coverage for February 2023 Bar Exam

Ellis will represent the Board at both days of the February 2023 Texas Bar Examination and will deliver verbal instructions to the examinees.

8.2. Confirm graders for February 2023 Bar exam

Director of Admissions Sullivan requested that Board members contact him directly if they wanted to change their graders for any future exam.

Sullivan will load confidential exam materials for the February 2023 exam to each Board member's Dropbox.

8.3. Discuss adding graders

Sullivan solicited input from the Board regarding retaining additional graders for future examinations for the purpose of reducing the amount of time needed to score exams and release results to examinees. After discussion, the Board asked staff to develop a proposal if, after further investigation, research, and analysis, staff determines that additional graders would be beneficial.

Hoang also suggested future discussion regarding implementation of a pay increase for graders.

8.4. Filing statistics, including breakdown of applications by type and information on UBE transfers

Sullivan provided statistics related to Uniform Bar Exam score transfers into and out of Texas. Rivera asked staff to prepare a written presentation of these and other statistics for possible publication.

**9. Discuss best practices for conducting formal reviews – Chair**

Board members discussed their experience in conducting formal reviews and shared ideas on especially effective approaches.

Board members requested that, in addition to the current materials staff prepares, staff also prepare the following for Board members to use for formal reviews:

- Create a chart of the examinee's past scores
- Deliver materials in individual folders labeled with the examinee's last name

Rivera asked that staff prepare a written description of how the Board conducts formal reviews.

**10. Presentation on Foreign Legal Consultants – Hoang**

Hoang provided the Board with an overview of Foreign Legal Consultants (FLCs). She noted that the Rules Governing Admission to the Bar of Texas were amended in 2014 in response to the Final Report of the Task Force on International Law Practice in Texas. She reviewed Rule 14 and relevant portions of the Texas Disciplinary Rules of Professional Conduct.

To help FLCs better understand these rules and policies, Hoang is developing FAQs to publish on the Board's website.

An ad hoc subcommittee comprised of Soltero, Giltner, and Massey will work with Hoang on this issue.

**11. Consider revisions to Hearing Procedures – Hoang**

Hoang will distribute the proposed Hearing Procedures immediately after the meeting. The Board will discuss the proposed changes when the meeting continues on Saturday, January 14<sup>th</sup>.

**12. Adjourn – Chair**

At 3:45 p.m., with no further business to conduct for the day, Rivera adjourned the meeting until Saturday, January 14, 2023, 9:00 a.m.

**Saturday, January 14, 2023, begins on the next page.**

**Saturday, January 14, 2023**

**13. Welcome, call to order, determine quorum, and consider requests for excused absences – Chair**

Chair Augustin Rivera, Jr., convened the meeting of the Board of Law Examiners at 9:04 a.m. All Board Members were present.

Also in attendance were staff members Nahdiah Hoang, Allison Drish, Michael Sullivan, Kendelyn Schiller, Ky Strunc, and Laurie Gonzales.

**14. Consider communications from the public, if any – Chair**

No member of the public asked to present comments.

**15. Consider approval of minutes and certified agendas of Board Meetings, Hearings Panels, and Waivers Panels – Chair**

Prior to the meeting, Board Members were provided with draft minutes, including:

- March 2022 Board Meeting
- June 2022 Board Meeting
- November 2022 Board Meeting
- May 2021 Hearing Panel
- June 2021 Waivers and Hearing Panel
- December 2021 Hearing Panel
- January 2022 Hearing Panel
- October 2022 Hearing Panel
- November 2022 Hearing Panels

Soltero moved to accept all minutes as submitted. Massey seconded. The Board voted unanimously to accept all minutes as submitted.

**16. Report of Executive Director – Hoang**

**16.1. General agency operations**

Hoang thanked the Board for their attendance. She noted a few administrative changes to the BLE website and minor updates to a few Board member biographies. Board members are encouraged to review their biographies on the BLE website and submit edits to Hoang.

**16.2. Calendar update, including date(s) for February 2023 Formal Reviews and March 2023 Board meeting, and proposals for calendar year 2024**

Hoang provided the Board with a draft 2024 calendar, as it contains proposed changes to meeting months for Board meetings.

The November 2023 Board meeting will be moved to the afternoon of the Monday on which the New Lawyer Induction and Bar Forum are held, and hearings and waivers will be moved to the Tuesday following that Monday. (The date for the New Lawyer Induction had not been confirmed by the State Bar of Texas as of the date of the Board meeting.)

Similarly, the November 2024 hearings and waivers will be moved to the Tuesday after the New Lawyer Induction Ceremony and Bar Forum;

The Board was asked to review the draft 2024 calendar and submit any calendar comments to Gonzales.

The Board discussed rescheduling the March 2023 meeting, but no decision was made. The Chair asked Board members to hold the current date on their calendar, and said that additional information regarding the March 2023 meeting will be forthcoming.

The Board discussed rescheduling the June 2023 Board meeting. No firm decision was made, but the Board was asked to hold June 8<sup>th</sup> – 9<sup>th</sup> as a potential reschedule date. Additional information will be forthcoming.

The Board decided that it will conduct Formal Reviews for the February 2023 Texas Bar Exam by Zoom on May 30<sup>th</sup> and 31<sup>st</sup>, starting at 2:00 p.m. Board members should submit their preferred Formal Review date to Gonzales by April 1<sup>st</sup>.

### 16.3. Report on Administratively Determined Waiver Decisions

Hoang presented the Administratively Determined Waivers report to the Board. She noted the increase in final deadline waiver requests, and that she had denied most of these requests.

### 16.4. Articles of Interest

Hoang presented articles of interest to the Board.

### 16.5. Complaint Resolution Report

No complaints were submitted for period 11/1/2022 – 1/6/2023.

### 16.6. Report on filing statistics – Hoang and Drish

Hoang and Drish have been reviewing filing statistics and are working with ILG to develop reports that reflect these statistics in a clear and easily understandable format. These will be shared at a future meeting.

Based on preliminary data, the Board expressed concern about the fee charged for courtesy seat applications. Hoang will review actual costs for

providing courtesy seats as well as the fee collected from courtesy seat applicants.

*At 9:48 a.m., the Chair recessed the meeting for a break.*

*At 10:03 a.m., the Chair reconvened the meeting in open session.*

#### **17. Presentation on standard setting study for Texas Bar Exam – Sullivan**

Sullivan presented an update on the Standard Setting Study, including items for the Board to consider:

- Standard Setting Study date, currently scheduled for October 27<sup>th</sup> – 29<sup>th</sup>, 2023
- Location – City and Host Facility
- Regrading policy
- Observers
- Number of panelists
- Method to recruit panelists
- Policy guidance for Minimally Qualified Applicant

#### **18. Consider issues arising from presentation on standard setting study – Chair**

The Board delegated authority to staff, working in conjunction with the Standard Setting Study Subcommittee, to set the logistics (host city, hotel, meals, transportation, etc.) for the Standard Setting Study.

The Board reached consensus that the best schedule would be 2.5 days, with panelists arriving on Wednesday 10/25/2023, participating in the panel all day Thursday 10/26/2023, all day Friday 10/27/2023, and a half-day Saturday 10/28/2023, with panelists departing either Saturday 10/28/23 or Sunday 10/29/23.

The Board discussed who should participate as observers.

The Board asked staff to request that the State Bar of Texas award CLE credit to panelists.

Board members were asked to consider the existing regrading policy and bring recommendations regarding that policy to the next Board Meeting.

Board members reviewed the minimum qualified applicant criteria and will discuss at the March/April 2023 meeting.

The Board reached consensus that judiciary could be involved as panelists and that the panel be diverse across all areas, including race, sex, and law school attendance. The Board agreed to recommend at least 10 potential panelists to

Sullivan by February 15<sup>th</sup>, and that Sullivan recruit panelists from those recommendations with the goal of maximizing the diversity of the panel.

*At 11:47 a.m., the meeting was recessed for lunch.*

*At 12:22 p.m., the meeting was reconvened in open session.*

**19. Continuation of Friday 1/13/2023 Agenda Item 11, Consider revisions to Hearing Procedures – Hoang**

Hoang provided Board members with proposed Hearing Procedures, including recent amendments from Soltero. Giltner moved to adopt the Hearing Procedures as Board policy per Rule 15(l). Massey seconded the motion. The Board voted unanimously to adopt the Hearing Procedures.

**20. Update on Next Gen Bar Exam – Hoang**

Hoang provided the NCBE's updated timeline for the Next Gen Bar Exam.

Hoang outlined some of decisions that had been finalized about the Next Gen exam, such as:

- It will be entirely computer based. Exam materials will display on each examinee's laptop, and examinees will use their laptops to enter their answers, including their answers to multiple choice questions.
- Jurisdictions will administer the exam at sites selected and managed by them. The exam will not be administered through testing centers.
- NCBE will provide paper materials that jurisdictions can use as accommodations.

The Board asked staff to consider whether paper materials would be needed for purposes other than accommodations, and who would be responsible for providing laptops to examinees who did not own one.

The Board asked for information on the timeline by which Texas would need to decide whether to adopt the Next Gen Bar Exam. Hoang noted that a very small number non-UBE jurisdictions have already started the process of developing their own examinations. The Board stated the importance of Texas being prepared in case it did not decide to adopt the Next Gen Bar Exam.

Rivera relayed that law school deans have suggested implementation of a working group to review the Next Gen Bar Exam.

**21. Consider outreach to law schools and public – Chair**

Rivera presented his proposal to visit Texas law schools this year for outreach and input purposes. He invited Board members to accompany him to these visits. Rivera is developing a list of discussion topics for these visits, and would



appreciate input from the Board on items they believe should be included.

**22. Consider appointments to and charges for subcommittees for calendar year 2023 – Chair**

The Chair re-appointed members the subcommittees they currently serve on, specifically:

22.1. Subcommittee on Rules and Guidelines

Giltner is chair, Ellis is a member, and Rivera is ex officio

22.2. Subcommittee on Diversity and Inclusion

Odom is chair, Orr is a member, and Rivera is ex officio

22.3. Subcommittee on Bar Exam

Mackenzie is chair, Massey is a member, and Rivera is ex officio

22.4. Subcommittee on Texas Law Component

McKim is chair, Soltero is a member, and Rivera is ex officio

22.5. Ad hoc subcommittee on Board orders

Soltero-, Ellis, and Mackenzie are members, and Rivera is ex officio

In addition, the Board created

22.6. Ad hoc subcommittee on FLCs

Soltero, Giltner, and Massey are members, and Rivera is ex officio

**23. Consider proposed Board calendar for calendar year 2024 – Chair**

This item was completed during Saturday, 1/14/2023, Agenda Item 4.2.

**24. Consider issues arising from reports of Executive Director, Director of Investigations, Director of Admissions, General Counsel, Committees, and Subcommittees – Chair**

Massey asked to revisit Saturday, 1/14/2023, agenda item 7 Hearings Procedures. He noted an additional edit of correction of a typing error and proposed a motion to include that edit. Rivera seconded that motion. The Board voted unanimously to accept the additional edit to Hearing Procedures.

*At 1:23 p.m., upon motion submitted by Soltero and seconded by Odom, Rivera closed the meeting to Executive Session pursuant to Tex. Gov't Code Sec. 551.074.*

**25. Discuss and consider performance review of Executive Director (including duties and compensation) – Chair**


The Chair has prepared a certified agenda for this closed session.

*At 1:28 PM, the meeting was reconvened in open session.*

**26. Adjourn – Chair**

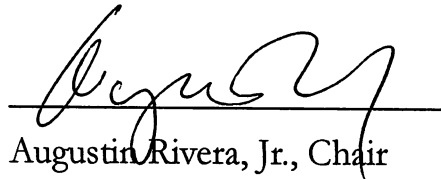
At 1:29 p.m., with no further business to conduct for the day, Rivera adjourned the meeting.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nahdiah Hoang", written over a horizontal line.

Nahdiah Hoang, Executive Director

Approved

A handwritten signature in cursive script, appearing to read "Augustin Rivera, Jr.", written over a horizontal line.

Augustin Rivera, Jr., Chair