Minutes of the Meeting of
the Texas Board of Law Examiners
June 14, 2024

1. **Call to order, determine quorum, and consider requests for excused absences – Rivera**

   Chair Augustin Rivera, Jr. called the meeting to order at 9:02 AM. As allowed by Texas Gov't Code sec. 551.127, the meeting was conducted via videoconference. Rivera and Vice Chair Teresa Giltner were physically present. Board members attending remotely with two-way audio and video communication were Barbara Ellis, Anna McKim, Carlos Soltero, Al Odom, and Alfred Mackenzie. Board members absent with prior approval were Al Odom and Dwaine Massey. The meeting was recorded in its entirety.

   Also attending were Board of Law Examiners Executive Director Nahdiah Hoang, Director of Admissions Michael Sullivan, Director of Investigations Allison Drish, Assistant Director of Admissions Ky Strunc, and Executive Assistant Laurie Gonzales.

2. **Consider communication from the public, if any – Rivera**

   No members of the public were present.

3. **Report from staff – Hoang, Sullivan**

   3.1. Update on NextGen Bar Exam test development, NCBE concordance tables and standard setting activities, and other jurisdictions' announcements concerning NextGen – Hoang

   Hoang provided the Board with an update to the NextGen adoption map included in the Board Book, namely that Oklahoma has adopted the NextGen Bar Examination effective July 2027. Rivera noted that brings the total to 20 jurisdictions who have adopted the NextGen examination, including Guam.

   3.2. Update on Surpass – Sullivan

Sullivan provide an update on the NCBE's development of software that will be used to administer, take, and grade the NextGen bar exam

3.3. Articles of interest – Hoang

Hoang presented the Board with articles of interest, including NextGen Research Brief: Pilot Testing. Hoang reminded the Board that BLE will participate in prototype testing, scheduled for October 2024, in Houston and in Dallas. Hoang shared that staff are eager to administer a paperless examination.

Hoang also touched briefly on California's exploration of creating its own examination.

4. Report on BLE NextGen Work Group – Rivera

Rivera provided an overview of the work completed by the NextGen Work Group, which was comprised of Dean Michael Barry, South Texas College of Law; Dean Jack Nowlin, Texas Tech School of Law; Dean Patty Roberts, St. Mary's School of Law; Rivera, Odom, and McKim. He said that the group was focused on three issues: (1) Whether to adopt NextGen; (2) If so, when; and (3) Possible changes to the Texas Law Component.

The Work Group was unanimously in favor of adopting the NextGen examination no earlier than February 2027 and no later than February 2028.

5. Consider report to Supreme Court of Texas on adoption of NextGen Bar Examination – Rivera

Rivera stated that the Court has requested a recommendation from the Board regarding adoption of the NextGen Bar Examination.

Rivera first asked the Board if there was any objections to adopting the NextGen Bar Exam. The Board had no objections to adoption of the NextGen Bar Exam.

The Board then discussed an adoption date, taking into consideration the

Work Group's recommendation; the time to allow NCBE time to work out any issues; the time to allow law schools, law students, and "bar prep" companies to prepare; and the impact on stakeholders of continuing to administer the UBE when a NextGen Exam is available.

Soltero moved that the Board recommend to the Court that it adopt NextGen as of the July 2027 administration. McKim seconded, the Board voted unanimously to adopt the NextGen Bar Examination as of the July 2027 administration.

The Board then discussed issues that might arise with adding an exam to the Texas Law Component, including when to offer the exam and whether to exempt applicants from all or part of the TLC if they take certain courses in law school.

Soltero moved that the Board recommend that the Court continue to require a Texas Law Component with NextGen, with modification to the current component as directed by the Court. Mackenzie seconded, and the Board voted unanimously to recommend to the Court that TLC continue to be required with modifications to the component as directed by the Court.

6. **Adjourn – Rivera**

   With no additional business to discuss, Rivera adjourned the meeting at 10:27 AM.

7. **Recommendation**

   After the meeting adjourned, Rivera submitted the Texas Board of Law Examiners Report and Recommendations to the Supreme Court of Texas on the NextGen Bar Examination to Supreme Court Liaison Justice Brett Busby.

   Respectfully Submitted by:

   Nahdiah H

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   Nahdiah Hoang, Executive Director

Approved by:

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Augustin Rivera, Jr., Chair

June 14, 2024

Texas Board of Law Examiners Report and Recommendations to the Supreme Court of Texas on the NextGen Bar Examination

Background

Texas has relied on bar exam materials from the National Conference of Bar Examiners (NCBE) since 1974, when the Supreme Court of Texas adopted the NCBE's Multistate Bar Exam (MBE) as an integral part of the Texas Bar Exam. In 1984, the Court added a passing score on the NCBE's Multistate Professional Responsibility Exam (MPRE) as a licensing requirement. In 1998, the NCBE's Multistate Performance Test (MPT) was added to the Texas Bar Exam. And in 2018, the Court decided to adopt the NCBE's Uniform Bar Exam (UBE) as the Texas Bar Exam and require examinees to complete a separate Texas Law Component. The UBE consists of the MBE, the MPT, and the Multistate Essay Exam (MEE). Texas administered its first UBE in February 2021.

Beginning in July 2026, the NCBE will begin offering the NextGen Bar Examination and phase out the UBE. Beginning in July 2028, the NCBE will no longer offer the MBE, MPT, MEE, or UBE—instead, the NCBE will only offer NextGen.

After a careful review, including input from a NextGen Workgroup made up of Board members and Texas law deans, the Board recommends that the Court adopt NextGen as the Texas Bar Exam beginning with the first administration in July 2027 and continue to require completion of a Texas Law Component.

NextGen Bar Examination

NCBE has been studying and developing the NextGen bar exam for over 5 years

In January 2018, the NCBE created the Testing Task Force "to undertake a comprehensive three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities needed for competent entry-level legal practice in a changing profession." The Task Force conducted a nationwide

practice analysis survey in the fall of 2019 to "identify fundamental work activities across the practice areas and settings in which [newly-licensed lawyers] work to determine the appropriate content for a general licensure exam."[1] The Task Force also conducted listening sessions with stakeholders to gather "input on the content, format, timing, and delivery method of the bar exam and the MPRE."[2] The Task Force used the results of the practice analysis survey and the listening sessions to develop recommendations for the content (Substantive Law and Foundational Concepts and Principles) and design of a new bar exam, and the NCBE used the recommendations to develop the NextGen Bar Exam.

The NCBE began pilot testing draft NextGen test items in late 2022. A report on the pilot study is attached. The NCBE conducted field testing of operational items in 2024. Several Texas law schools participated in the pilot and field testing.

The NCBE has scheduled a "prototype exam" for October 2024. The prototype will be a full length NextGen bar exam administered to participants who took a bar exam in July 2023. Board staff plans to participate in administering the prototype exam at two different law schools, South Texas College of Law Houston and Texas A&M.

NCBE will use the prototype exam to develop "concordance tables," which will offer information on how a UBE score relates to a NextGen score. In addition, the NCBE will help jurisdictions conduct standard setting exercises to provide jurisdictions with additional guidance in determining what a passing score on NextGen should be. Both the concordance tables and the standard setting exercises should be complete before July 2026.

As noted above, from July 2026 through February 2028, the NCBE will offer both the UBE and NextGen. Beginning July 2028, the NCBE will only offer NextGen.

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[1] Final Report of the Testing Task Force, https://nextgenbarexam.ncbex.org/reports/final-report-of-the-ttf/#ftoc-heading-10

[2] Id. at

The Board has closely followed the development of the NextGen bar exam

Board members attend the Annual Bar Admissions Conference, hosted by the NCBE, which has included presentations on the Testing Task Force and NextGen Bar Exam for the past several years.

Board Chair Augustin Rivera, Jr., has served on the NCBE's Implementation Steering Committee since 2021, and Executive Director Nahdiah Hoang was a member of the Testing Task Force's Testing Design Committee in 2020 and has served on the NCBE's Jurisdiction Advisory Committee since its first meeting in March 2022. Both Mr. Rivera and Ms. Hoang have kept the Board informed of the work done by these committees.

In November 2022, the Board hosted the Honorable Cynthia Martin, Chief Judge of the Missouri Court of Appeals (Western District) and Chair of the NCBE Testing Task Force, and Marilyn Wellington, Chief Strategy and Operations Officer for the NCBE, at the Board's Bar Forum. They presented information on NextGen to Texas Supreme Court Justices and representatives from all 10 Texas law schools.

In November 2023, the Board hosted Professor Timothy Davis at the Bar Forum. Professor Davis led a discussion with attendees from all 10 Texas law schools about preparing students for the NextGen bar exam.

In December 2023, Chair Rivera assembled the BLE NextGen Working Group to discuss NextGen to assist the Board in making potential recommendations to the Court. Members of the working group include:

- Augustin Rivera, Jr., Chair of the Board
- Michael Barry, President and Dean of South Texas College of Law Houston
- Teresa Giltner, Vice Chair of the Board
- Anna McKim, Board Member
- Jack Nowlin, Dean of Texas Tech University School of Law
- Al Odom, Board Member
- Patricia Roberts, Dean of St. Mary's School of Law

The Work Group met four times to receive NextGen updates from BLE staff and solicited input from all 10 Texas law deans. The Work Group remains

active and available to assist with further deliberation of the Texas Law Component.

The NextGen Bar Exam will be a 9-hour, computer-based exam

Like the UBE, NextGen will be administered by all jurisdictions on the same days in February and July. It will be given in person at jurisdiction-managed exam sites.

Unlike the UBE, NextGen will be 9 hours (rather than 12) and it will be administered over a day and half (rather than two full days).

NextGen examinees will be required to take the exam on their personal laptops, using secure exam software being developed by Surpass, a software vendor. The exam questions will be delivered on laptop, and examinees will type their answers into their laptops. (UBE questions are delivered by paper booklet, and examinees have the option of typing the MPT and MEE answers into their laptops.)

The NextGen bar exam will test more skills and fewer areas of the law

+ In addition to the lawyering skills currently tested on the UBE (legal research, legal writing, issue spotting and analysis, and investigation and evaluation), NextGen will test on the following additional skills: Client counseling and advising

+ Negotiation and dispute resolution

+ Client relationship and management

NextGen will not test on the following subjects:

× Conflict of Laws (currently tested on the UBE as a cross-over essay topic only)
× Family Law (currently tested on the UBE by essay only)
× Secured transactions (currently tested on the UBE by essay only)
× Trusts and estates (currently tested on the UBE by essay only)

Stakeholders expressed concern that NextGen would not test family law or trusts and estates, noting that it was important for the profession to offer services in these areas of the law to increase access to justice. Stakeholders also noted that

new solo attorneys often practice in these areas, so testing competence in these areas was especially important to protect the public. In response, the NCBE announced that NextGen will test substantive Family Law beginning in July 2028. The NCBE has not made any similar announcement about Trusts and Estates.

Beginning July 2026, the subject matter of the UBE and NextGen will be "aligned," which means the UBE essays will no longer test Conflict of Law, Family Law, Secured Transactions, or Trusts and Estates. (As noted, NextGen will test Family Law again beginning in July 2028.)

The NextGen bar exam will test law at two levels

NextGen will test some law in a way that requires examinees to recall the law, and it will test other law in a way that requires examinees to spot the legal issue but does not require them to recall the law.

Board staff has compared the content currently tested on the UBE[3] to the content that will be tested on NextGen.[4] Overall, the content changes appear to be an update and modernization of knowledge and skills required to demonstrate competency.

Portability and other advantages of the NextGen bar exam

Like the UBE, NextGen will allow lawyers to move between participating states without spending the time and money needed to take multiple bar exams.

And like the UBE, NextGen is proving to be a reliable and valid exam with the rigor required to test competence.

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[3] MEE Subject Matter Outline (https://www.ncbex.org/sites/default/files/2023-07/NCBE%20MEE%20Subject%20Matter%20Outline_0.pdf); MBE Subject Matter Outline (https://www.ncbex.org/sites/default/files/2023-01/MBE_Subject_Matter_Outline.pdf)
[4] NextGen Bar Exam Content Scope (https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/)

Recommendations

The Texas law deans recommend that Texas adopt NextGen "no earlier than 2027, and preferably 2028," and the Board recommends starting with NextGen in July 2027

In connection with the review conducted by the BLE NextGen Work Group, the Texas law deans submitted a memo outlining the recommendations and concerns of the deans. The memo is attached in its entirety and is summarized here.

The deans recommend that Texas adopt NextGen, but no earlier than 2027 and preferably not until February 2028.

The deans noted that when law students start law school, they should know which exam they are taking. The deans also emphasized that law schools need time to change their curricula. Similarly, bar exam prep companies also needed information and time to prepare NextGen prep materials.

To minimize uncertainty, the deans emphasize that Texas should announce its plans "earlier rather than later."

After careful consideration of the timing concerns raised by the Deans, the Board concluded that a start date of July 2027 would provide the law schools with a reasonable time to prepare faculty and students for NextGen and allow the Board the opportunity to observe the first two administrations of the exam.

Texas Law Component

The Work Group and Board also discussed the current state of the Texas Law Course and deliberated potential enhancements to this component, including deeper testing on certain Texas law subjects. Other possible approaches were discussed, including exempting Texas law students who successfully complete a tested subject in law school, from any further testing requirement. The Board recommends maintaining a Texas Law Component as a requirement for licensure and is prepared to assist the Court with the development of an appropriate Texas Law test.

Conclusion

The Board concludes that the NextGen bar exam will be a valid and reliable test of the current knowledge and skills that a newly licensed lawyer will need to competently practice law. Adopting NextGen in July 2027 will give Texas law students adequate notice of the bar exam they will be expected to take and will give law schools time to continue to adjust their curricula. Maintaining (and enhancing) the Texas Law Component can address the continued need for Texas lawyers to be knowledgeable of state-specific subjects like family law and trusts and estate law.