

RESOLUTION NO. 22-15

RESOLUTION OF REPRIMAND AND CENSURE

WHEREAS, the members of the New Mexico Public Employees Retirement Board (Board) serve as the trustees of the Public Employees Retirement Association (PERA); and

WHEREAS, the legislature created the Board pursuant to the Public Employees Retirement Act and provided powers to the Board at §10-11-130 (A) which states: “The Board has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts...”; and

WHEREAS, under its statutory authority, in March 2001, the Board adopted Policies and Procedures (“Board Policies”). The Board Policies, as amended, are in effect now and were in effect at all times pertinent to the provisions of this Resolution; and

WHEREAS, the Board Policies at Section 1.10 provide, in pertinent part:

As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA’s active, deferred, and retired members and their beneficiaries. ... In order to maintain the respect, trust and confidence of its members and retirees, all Board Members ... must use the powers and resources of their office only to advance the interests of PERA members and beneficiaries and not to obtain personal benefits or promote private interests incompatible with members’ interests. Board Members ... shall conduct themselves in a manner that justifies the confidence placed in them by PERA members and beneficiaries, and at all times maintain their integrity and discharge their responsibilities ethically in the course of their public service with PERA; and

WHEREAS, the Board Policies at Section 1.60 further provide, in pertinent part:

The Board shall establish and communicate Board policies and priorities and then monitor performance. The Board recognizes that the achievement of its goals requires self-discipline by the Board as a whole and by individual Board members to abide by the policies articulated herein and to govern in a manner consistent with the Board’s value statement. The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and Committee levels and between the Board and PERA management; and

WHEREAS, pursuant to statute at NMSA Section 10-16-11, the Board adopted a Code of Conduct prescribing standards of conduct for Board Members, and which, if violated, constitutes cause for sanctions or discipline, including suspension or dismissal of an offending Board Member; and

WHEREAS, the Board Policies at Section 9.10 create a duty for the Board to act as follows:

Any breach of fiduciary duty, violation of this policy or other conduct that falls below

the high ethical standard this Board expects of itself, shall be looked into by the Board or its designee; and

WHEREAS, the Board Policies at Section 9.32 further mandate that:

... [V]iolation of the Governmental Conduct Act or this policy is grounds for discipline...; and

WHEREAS, the Board Policies in Section 9.0 provide for “Sanctions and Enforcement” of those Policies and include the Board’s authority to impose disciplinary measures ranging from removal of a Board member to the following:

1. Formal reprimand and public censure by the Board, which shall be permanently recorded in the Board minutes.
2. Suspension from participation on the Board or a particular Board activity for a specified period of time not to exceed one year; and

WHEREAS, the Board Policies at Section 1.57 provide that, among their duties:

...b. Board Members and the Executive Director have a duty to use reasonable care to prevent co-trustees from committing a breach. c. Board Members and the Executive Director have a duty to compel performance or redress a breach; and,

WHEREAS, Board Member Loretta Naranjo-Lopez (“Member Naranjo-Lopez”) is currently serving on the Board for a third consecutive four-year term that commenced on January 1, 2020; and

WHEREAS, upon information and belief the Board has determined that during the course of her most recent term Member Naranjo-Lopez violated Board Policies and its Code of Conduct by engaging in conduct that is detrimental to the trust fund, the Board and PERA and falls below the high ethical standards the Board expects of its members, as provided below:

1. On October 5, 2021 Member Naranjo-Lopez sent a letter to the Investment and Pension Oversight Committee of the New Mexico Legislature expressing her opposition to replacing the elected PERA Board with an appointed Board. In her letter she made various unsubstantiated allegations of embezzlement, fraud, bribery, kickbacks and other unidentified financial crimes at PERA. The letter also alleges that the Office of the Governor of New Mexico helps “known criminals evade oversight and avoid prosecution.” Among other allegations, the letter repeats prior allegations against Director Trujillo of cheating on his job interview and implies that New Mexico State Treasurer Tim Eichenberg engaged in undue influence and bribery.
2. On October 28, 2021 then Board Chair Francis Page appointed an Ad Hoc Committee to look into the conduct of Board Member Loretta Naranjo Lopez. The Ad Hoc Committee engaged an independent investigator, the law firm of Duran and McDonald LLC, to investigate questionable acts of Member Naranjo-Lopez, specifically the allegations she made in her letter to the IPOC.

3. Rather than cooperate with the Board's inquiry regarding the allegations of potential misconduct, Member Naranjo Lopez sought to block the investigation and activities of the Ad Hoc Committee by filing two lawsuits without good cause, the first of which has already been dismissed by the Court, causing unwarranted cost of time and expense to the trust fund,
4. The independent investigation included the following findings and conclusions:
 - a. Member Naranjo Lopez's allegation in the October 5, 2021 IPOC made the allegation of Member Eichenberg working on behalf of "George Munoz, likely in exchange for a bribe." She also stated that "Elected PERA board members (only) have identified and disclosed more than 1,000 financial crimes, law violations and misconduct at PERA, including 100+ felonies (for example, embezzlement, fraud, *bribery and kickbacks*)." (emphasis added). Member Naranjo Lopez also mentioned the *appearance of bribes* against a fellow member/chair from the executive director in a prior meeting. (emphasis added).
 - b. Member Naranjo Lopez's allegations go further than discourse and banter and are prevalent throughout prior board meetings. The allegations specifically regarding bribery are concerning for the potential impact of undermining the confidence in the governance and investment of the fund. The duty of prudent care requires her, and all members, "to act with the care, skill, prudence, and diligence under the circumstances... Good faith does not excuse failure to use prudent care in the administration of the PERA Fund." (See Board Policies Section 1.55).
 - c. Member Naranjo Lopez's allegations regarding bribes and illegal conduct are currently viewed as baseless and her belief that she is acting in good faith for the administration of the fund dictates that another Board duty be enforced, Duty to Be Educated (See Board Policies Section 1.55). As stated in 1.55, "(t)he complexities of sound management of the assets and liabilities of the PERA Fund impose a continuing responsibility for all Board Members ... to attend educational conferences, seminars, and other events that are required to conduct the business of PERA, or that will better prepare them to perform their fiduciary duties." Education for all members, including Member Naranjo Lopez, should be focused on prudent governance.
5. Member Naranjo Lopez failed to respond to the investigator's inquiry, failed to provide supporting evidence of her serious allegations of misconduct and criminal activities and declined to be interviewed so there is no finding on how she views or interprets her actions.
6. The reckless assertions of Member Naranjo Lopez, followed by her failure to cooperate with the Board's attempts to meet its fiduciary duty to investigate the allegations and determine if a violation of Board Policies occurred resulted in unnecessary expense to the Fund, unnecessary conflict within the Board and between certain Board Members and PERA staff and reflects poorly upon the Board and the Association and creates concerns for PERA members and beneficiaries, as well as with PERA's legislative oversight agencies and the public;
7. The actions of Member Naranjo Lopez have disrupted the prudent conduct of PERA's business, jeopardized the Board's ability to fulfill its duties and exposed the Board and trust fund to potential liability.

WHEREAS, Member Naranjo Lopez's unfounded allegations published to the IPOC committee may have caused reputational harm to the named individuals and to the PERA Board and Association as a whole and undermine the public confidence and trust, and

WHEREAS, the Board now determines that Member Naranjo Lopez's failure to cooperate with the Board's independent investigation of possible violation of the Board Policies and her obstructive conduct in filing two baseless lawsuits constitute behavior that falls below the highest ethical standards required of a fiduciary; that the actions have adversely affected the mission and duties of the Board, the administration of PERA and consequently the interests of the members, retirees and beneficiaries of the retirement systems for which the Board Members are trustees; and in light of the fact that the Board has previously counseled and sanctioned Member Naranjo Lopez for a pattern and practice of behavior that falls below the highest ethical standards required of a fiduciary, it is incumbent upon this Board to publicly reprimand and sanction Member Naranjo Lopez for these violations; and

WHEREAS, the Board Policies authorize the Board to sanction a Board Member under the circumstances presented in this Resolution by suspending the Board Members' participation in certain Board activities for a specified period of time not to exceed one year.

NOW THEREFORE, BE IT RESOLVED that pursuant to the Board's authority under applicable law and policy, the Board takes the following actions:

- A. Member Naranjo Lopez is hereby publicly reprimanded and censured for her conduct in violation of the PERA Act, Board Policies and Code of Conduct.
- B. Member Naranjo Lopez is hereby suspended and removed from serving in any capacity on the Board's Audit and Budget Committee, Rules and Administration Committee, SmartSave Committee, Investment Committee and all other committees of the Board, for a period of one year, commencing on the effective date of this Resolution. Member Naranjo Lopez shall not receive statutory per diem or be reimbursed for any expenses if she attends committee meetings during the suspension period.
- C. Member Naranjo Lopez is hereby suspended from any Board authorized out-of-state education and travel activities, and shall not be reimbursed for any Board-related expenses, for a period of one year, commencing on the effective date of this Resolution. This suspension does not relate to entitlement to statutory per diem and approved expenses directly connected with attendance at official Board meetings and in-state Board education sessions and retreats in compliance with Board Member educational requirements under
- D. Further violations of the law, Board Policies, Code of Conduct or fiduciary duty may lead to further sanctions and dismissal of Member Naranjo Lopez from the Board.

ADOPTED AND APPROVED THIS DAY OF July 28, 2022, by the following vote:

AYES: 6

NOES: 1

ABSTENTIONS: 1

ABSENT: 4

**RETIREMENT BOARD OF THE
PUBLIC EMPLOYEES RETIREMENT
ASSOCIATION OF NEW MEXICO**

BY:



CLAUDIA ARMIJO, PERA BOARD CHAIR

ATTEST:



GREG TRUJILLO, EXECUTIVE DIRECTOR