

RESOLUTION NO. 18-07

RESOLUTION OF REPRIMAND AND CENSURE

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, the members of the New Mexico Public Employees Retirement Board (Board) serve as the trustees of the Public Employees Retirement Association (PERA); 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 I (A) 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 members, retirees and 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, retirees and beneficiaries and not to obtain personal benefits or pursue private advantage incompatible with these interests. Board Members ... shall conduct themselves in a manner that justifies the confidence placed in them by PERA members and retirees, at all times maintaining their integrity and discharging their responsibilities ethically in the course of their association with the PERA; and

WHEREAS, the Board Policies at Section I (E) (5) 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 VI. (A) 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;
and

WHEREAS, the Board Policies at Section VI (C) (2) further mandate that:

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

WHEREAS, the Board Policies in Section VI 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 I (D) (5) 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 Patricia French (“Member French”) is currently serving on the Board for a fourth consecutive four-year term that commenced January, 2017; and

WHEREAS, upon information and belief the Board has determined that during the course of her most recent term Member French 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. In or about March, 2017, Member French violated the PERA Act and Board Policies by attending the NASP Day in Private Equity Conference in Los Angeles, CA without seeking or receiving prior approval and then failing to disclose her attendance at the Conference. Member French further violated the PERA Act, Board Policies and its Code of Conduct by accepting a gift of free Conference registration offered to trustees when non-trustee conference attendees were charged and paid a Conference registration fee of \$595.00; and,
2. On May 11, 2017, PERA’s General Counsel met with Member French to discuss her alleged failure to comply with the PERA Gift Prohibition (NMSA 1978, Section 10-11-130.1, as incorporated into the Board Policies at Section III.E) when she attended the NASP conference. During the meeting PERA General Counsel clearly stated that acceptance of the complimentary Conference registration fee is impermissible under paragraphs (A)(1) and (A)(4) of Section 10-11-130.1, which prohibit acceptance of anything of value from the four categories of persons or entities listed therein; and,

3. The PERA Gift Prohibition is intended to prevent both actual conflicts of interest and the appearance of a conflict, both of which are also longstanding prohibitions of the PERA Board, the Governmental Conduct Act, the Public Employees Retirement Association, and the New Mexico Office of the Attorney General; and
4. After receiving a letter from the PERA General Counsel memorializing their May 11, 2017 conversation, Member French failed to timely respond and instead waited over one month to respond by letter dated June 22, 2017 in which she stated, among other things: “[o]n reflection, I should have notified PERA of my intentions and gotten board approval”; and “[i]t is my intent to do whatever is necessary to comply with the PERA Gift Prohibition”; and,
5. Member French’s written response raised significant concerns in light of the fact that she acknowledged her failure to pay the Conference registration fee and acknowledged that she accepted gifts of a pre-conference dinner and a conference breakfast/lunch. Although denying she attended any Conference sessions, other than the panel portion of the Conference, Member French was photographed at numerous conference sessions.
6. Although stating in her response her intention to “do whatever is necessary to comply...”, Member French failed to cooperate with the Board’s inquiry and failed to provide full disclosure of the facts, resulting in the Board’s need to fulfill its duties by hiring an investigative firm at an unwarranted cost of time and expense to the Trust fund to review and report on the matter.
7. On or about September, 2017, instead of cooperating with the Board’s inquiry regarding the allegations of her potential misconduct, Member French sought to thwart the Board’s abilities to gain the information necessary to determine if Board Policies were violated and filed a lawsuit against the Executive Director and the then Board Chair, without good cause, which lawsuit was summarily dismissed by the Court at a cost of time and expense to the trust fund;
8. On or about October 5, 2017, seemingly in retaliation for PERA’s General Counsel’s advice that Member French fully disclose the circumstances regarding her attendance at the unauthorized Conference, Member French filed a Disciplinary Complaint with the State of New Mexico Disciplinary Board against the PERA General Counsel, without good cause, which complaint the Disciplinary Board found was unsubstantiated and therefore summarily dismissed;
9. After several months and the dismissal of member French’s lawsuit, the Board initiated its investigation into the questionable acts of Member French. The independent investigation revealed a pattern and practice by Member French of acting solely in her own self-interest and in disregard for the fiduciary duties of PERA Board Members and the legitimate concerns of the trust fund, including the following findings and conclusions:

- a. Member French was in a position to clear this matter up early on in the process and she elected not to do so. Instead, she hired an attorney, filed a legal action against the Executive Director and then Board Chair, refused to provide the requested receipts, and stated “make this go away” to the then Board Chair and Vice Chair while they were at a conference in Florida.
 - b. Member French, through her attorney, failed to respond to the investigator’s requests to interview Member French.
 - c. Member French failed to receive the approval of the PERA Board to attend and represent PERA at the March 2017 NASP Conference.
 - d. As evidenced by documents regarding her attendance at a previous NASP conference held in Chicago in June 2015, Member French had received Board approval in the past to attend a NASP conference. Based on interviews with Board members, the investigator stated it appeared the Board would have approved Member French’s participation as a moderator at the March 2017 NASP Conference.
 - e. Member French’s failure to receive the PERA Board’s approval violated the Board Policies and Procedures regarding individual board member conduct and Board travel; and,
10. The actions of Member French, specifically her failure to seek or receive approval to attend the NASP Conference, followed by her failure to fully disclose the circumstances surrounding her attendance at that conference, 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, followed by her failure to cooperate with that investigation 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, the Association and creates concerns for PERA members and beneficiaries, as well as with PERA’s legislative oversight agencies and the public;
 11. The actions of Member French 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 French’s attendance at the NASP conference and acceptance of the complimentary conference cost violated paragraphs (A) (1) and (A) (4) of Section 10-11-130.1, and her failure to disclose or seek Board approval of her attendance creates, at minimum, an appearance of impropriety; and

WHEREAS, when certain Board members were found to have violated the PERA Gift Prohibition in 1999, the Board unanimously voted to require those Board members to repay expenses related to their unauthorized conference attendance and to ban the members’ participation on evaluation committees for which the conference sponsors would be potential bidders; and

WHEREAS, when faced with a possible violation of the PERA Gift Prohibition in 2002 and prior to formal Board action, a then Board member voluntarily resigned his seat on the PERA Investment Committee and recused himself from voting on the selection and retention of any investment manager for a period of twelve months and stated that his resignation and recusal were intended to “*minimize negative repercussions to the Board...and preclude any potential perception of conflict.*”

WHEREAS, the Board now determines that the foregoing actions illustrate a pattern of violations of Board Policies and Code of Conduct; that Member French’s failure to fully disclose the circumstances surrounding her unauthorized attendance at the NASP Conference and failure to cooperate with the Board’s independent investigation of possible violation of the PERA Act, and Member French’s obstructive conduct escalated rather than diminished in the face of the investigation; that the violations by Member French establish a pattern and practice of behavior that falls below the highest ethical standards required of a fiduciary; that the violations 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 that, as illustrated by her continued and escalated inappropriate conduct, it is incumbent upon this Board to publicly reprimand and sanction Member French 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 French is hereby publicly reprimanded and censured for her conduct in violation of the PERA Act, Board Policies and Code of Conduct.
- B. Member French is hereby suspended and removed from serving in any capacity on the Board’s Smart Save Committee, Rules and Administration Committee, and all other committees of the Board, for a period of one year, commencing on the effective date of this Resolution. Member French shall not receive statutory per diem or be reimbursed for any expenses if she attends committee meetings during the suspension period.
- C. Member French 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 NMSA 1978, §10-11-133 (F) and 2.80.200.21 NMAC.

D. Further violations of the law, Board Policies, Code of Conduct or fiduciary duty may lead to further sanctions and dismissal of Member French from the Board.

ADOPTED AND APPROVED this day of May 31, 2018, by the following vote:

AYES: 5

NOES: 3

ABSTENTIONS: none

ABSENT: 4

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

BY: _____


JAMES MAXON, PERA BOARD CHAIR

ATTEST:



**WAYNE PROPST
EXECUTIVE DIRECTOR**