



Legislation Text

File #: 2017-228, Version: 1

Resolution - Approval to Reconvene the Complaint Committee in Connection with the Director Oakley Facebook Matter and Consider Other Action(s) as Outlined in the PEC Bylaws for Director Removal - C Clement

Submitted By: Director Cristi Clement

Department: Legal Services

Financial Impact and Cost/Benefit Considerations:

The Board of Directors will discuss the public reprimand issued by the State Commission on Judicial Conduct dated April 27, 2017, regarding the social media post associated with the comment, "tree and a rope," as expressed by Director Oakley through his Facebook account.

WHEREAS, on January 17, 2017, the PEC Board adopted the Complaint Committee's Report and Recommendation dated January 6, 2017, to issue a warning to Director Oakley concerning his behavior relative to the "tree and rope" social media event; and

WHEREAS, the warning clearly identified that: "No Member or employee should be subject to any actual, or perceived, act of retaliation for their individual input into the Cooperative's review of this matter. Retaliation is strictly prohibited under PEC policy; and the Board authorizes and encourages PEC Management to act swiftly under current PEC policy and procedures with the reporting and immediate addressing of any action of retaliation;" and

WHEREAS, Mr. Oakley has been quoted in the media in January 2017: "...I disagree with the process, I disagree with the findings, and I disagree with the recommendation..."; and

WHEREAS, some Directors have received complaints regarding Director Oakley's current personal behavior which may not conform to the non-retaliatory standard required by the Board's warning; and

WHEREAS, on April 27, 2017, the State Commission on Judicial Conduct (CJC) issued a Public Reprimand and Order of Additional Education, to include racial sensitivity mentoring, for Mr. Oakley. The CJC conclusion was "...from the facts and evidence presented that by posting the Facebook Post, Judge Oakley cast reasonable doubt on his capacity to act impartially in the performance of his duties, in violation of Canon 4A (1), and engaged in willful conduct that cast public discredit on the judiciary and the administration of justice, in violation of Article V, 1-a(6)A of the Texas Constitution;" and

WHEREAS, PEC Directors are bound by PEC governance, federal, and state statutes to guide directors', public and personal actions that could impact the Cooperative. Other director conduct standards appear throughout PEC Bylaws and policies. PEC Bylaws specify that a "cause" for director removal includes "the bringing of such disrepute or disparagement to the Cooperative by unacceptable personal conduct;" and

WHEREAS, Director Oakley's potential non-adherence to the disciplinary measures levied by his fellow Board members may not be considered as good faith behavior of a Director of the Cooperative; and

WHEREAS, PEC Bylaws, policies and procedures allows for Directors to police their own body for "cause",

which includes violations of a director's fiduciary duty or Code of Conduct/Ethics policies or the "bringing of such disrepute or disparagement to the Cooperative by unacceptable personal conduct" as stated in the Bylaws, and;

WHEREAS, Directors' fiduciary responsibility is to protect the Cooperative from harm, both reputationally and financially, including risk of costly litigation. Directors are also bound by duty of loyalty to act in good faith and in the best interests of PEC members on an impartial basis, and place PEC interests higher than our own personal interest. Our duty of obedience is to ensure we adhere to all obligations imposed by federal and state rules and regulation;

WHEREAS, the recently departed CEO, John Hewa, addressed the membership and the Board at the PEC May 2017 Board meeting citing his concerns; and

WHEREAS, all allegations of retaliatory or inappropriate behavior by a Board member, should be investigated for any "actual, or perceived act of retaliation" which is the standard contained in the Board's disciplinary warning assessed against Mr. Oakley; and such investigation should also include the standard of "retaliation" under Texas law, or EEOC statute or Title VII of the Civil Rights Act of 1964; and

WHEREAS, this Board now faces the long-term task to eradicate this incident from our culture and reputation. Without additional resources, this Board may not have the commensurate technical expertise to manage this crisis. We must recognize the criticality of this event for a 21st century PEC organization. PEC needs time to heal and move forward and get beyond the damage the Cooperative has suffered to date. To heal, this Board must know the facts of these matters, to ensure appropriate remedies can be put into place, if required;

NOW THEREFORE, BE IT RESOLVED, that considering all items above, the Board of Directors therefore resolves to:

- Reconvene the Complaint Committee as a six (6) member Committee of the Board within 60 days of June 17, 2017;
- That the Board authorize an independent third party forensic investigation to determine any non-compliance with the terms and conditions of the Board's "Warning" issued to Mr. Oakley, to identify any and all violations pertaining to "retaliation, actual or perceived" that is relative to the "tree and rope" incident and such findings to be reported to the Complaint Committee.
- Upon receipt of the investigation, consider additional disciplinary actions, to include removal of Mr. Oakley under PEC Bylaws if deemed appropriate.

BE IT FURTHER RESOLVED, that the General Counsel or designee is authorized to take all such actions as may be necessary to implement this resolution.