



**G A B R I E L &
A S H W O R T H , P . L . L . C .**

Attorneys At Law

CONFIDENTIAL INVESTIGATION REPORT

TO: Lake Mohave Ranchos Fire District Board of Directors

FROM: Barrie Stachel

DATE: December 20, 2018

RE: *Interim Fire Chief Tony DeMaio's Complaint Against Board Director Charlotte Kiffer*

Scope of Investigation

This investigation was undertaken to investigate Interim Fire Chief Tony DeMaio's complaint against Board Director Charlotte Kiffer. DeMaio accuses Kiffer of harassing him and his Administrative Assistant Karen Jackson.¹ DeMaio further accuses Kiffer of giving him a poor annual review in retaliation for his complaint against Kiffer. Kiffer denies the allegations.

Investigation Process

The investigation involved interviewing the individuals listed on Exhibit "A" to this report, and reviewing DeMaio's complaint and EEOC Charge, Kiffer's rebuttals, DeMaio's response to Kiffer's rebuttal, and extensive background documentation supplied by DeMaio, Kiffer, and other witnesses. Additionally, this investigator conducted a limited review of videotape recordings of District Board meetings. The documentation and audio recordings are available upon request.

Background

The District hired DeMaio as a firefighter in approximately August 2015. He was promoted to Interim Fire Chief in March 2016 and remains in this status today. Deb Cass, Charlotte Kiffer and Eric Terrill were elected to the Board in May 2016 and joined Chairman Steve Berg on the

¹ The scope of this investigation was limited to DeMaio's complaint that Kiffer is mistreating him. Although other individuals interviewed as part of this investigation complained of unprofessional treatment (including Karen Jackson against Kiffer and the Board; Board Director Cass against Kiffer; Kiffer against DeMaio; and Board Director Terrill against DeMaio and staff), these allegations were not investigated.

Board in June 2016. Mike Karash joined the Board in early 2017. His term ended in November 2018.

As discussed below, DeMaio initially submitted his complaint of unfair treatment against Kiffer to Chairman Karash in December 2017. In the following months, Kiffer and DeMaio submitted rebuttals and responses in support of their respective positions.

On March 26, 2018, the Board issued DeMaio his annual review. Four Board Directors rated his performance. Their collective ratings were averaged and he received an overall rating of 2.8, which is between “approaching” and “expected” performance standards. Kiffer gave him an overall rating between “unacceptable” and “approaching” and Board Director Terrill gave him an overall rating between “approaching” and “expected.” Board Directors Cass and Karash gave him overall ratings between “expected” and “commendable.” DeMaio challenged Kiffer’s negative assessment of his performance as retaliatory for his December 2017 complaint against her.

In approximately April 2018, DeMaio and Kiffer agreed to settle their differences and move on, but as noted below, their “truce” did not last.

DeMaio filed his EEOC Charge on September 23, 2018, alleging unlawful retaliation under Title VII of the Civil Rights Act. The EEOC has indicated no action is required of the District in response to the Charge.

Allegations and Findings

DeMaio’s Harassment Complaint against Kiffer

DeMaio accuses Kiffer of harassing him since Spring 2017. The harassment takes the form of: repeated voluminous requests for revisions (both substantive and spelling/grammatical errors) to the Board minutes, publicly disparaging his competence and integrity, and micromanaging him. He alleges that Kiffer’s intrusion into his job exceeds the scope of her authority as a Board Director. DeMaio reports that the stress and anxiety caused by this difficult relationship has taken a toll on his health and has distracted him from focusing on District business.

Although DeMaio and Kiffer agreed in April 2018 to settle their differences, he claims the harassment resumed after a short hiatus. He points to two incidents in particular. First, at the August 27, 2018 Board Meeting, the District’s financial advisor, Gabe Buldra, stated he would prepare a Board travel reimbursement form. In response, Kiffer commented that she was happy Mr. Buldra could prepare forms because the District has professionals in the office who cannot do forms. DeMaio believes this comment was directed at him. Kiffer does not recall making this comment, but witness testimony and a videotape recording confirm Kiffer made this comment in a sarcastic tone. While this statement was unprofessional, this investigator does not find that it rises to the level of harassment.

The second incident relates to Kiffer omitting DeMaio’s name from a flyer she prepared as Board President of the Dolan Springs Community Council (“DSCC”) to thank volunteers who contributed to and/or participated in DSCC’s 50th anniversary celebration in October 2018.

DeMaio believes this omission was intentional. Kiffer denies this allegation. She explained that Director Terrill (also a DSCC Board member) supplied her the volunteer names to include in the flyer and that the list of names Terrill provided omitted DeMaio. Terrill substantiated Kiffer's explanation and noted that DeMaio had provided Terrill with the list of District firefighters who had volunteered, but DeMaio did not include his own name on that list. DeMaio's allegation that Kiffer intentionally omitted his name from the flyer is not substantiated. Even if the omission was intentional, this incident does not rise to the level of harassment.

DeMaio believes Kiffer's hostile treatment stems from her objection to Jackson working from home starting in about February 2017, and DeMaio's June 2017 complaint to then-Chairman Steve Berg, alleging Kiffer interfered with the District's interview process for an administrative office position.² Kiffer acknowledges the conflict between her and DeMaio began in Spring 2017, but disputes the reason for this conflict. She maintains DeMaio became defensive when she and other Board Directors began questioning Jackson's telecommuting arrangement. Kiffer asserts (and witnesses substantiate) she campaigned for her Board election based on the commitment to ensure the District office was staffed on a full-time basis and therefore, has sought to address this issue during her tenure. Kiffer acknowledges she asks a lot of detailed questions, but claims she does so in pursuit of fulfilling her Board financial oversight duties. She believes DeMaio has misinterpreted her challenging some of his decisions as harassment, when in fact she believes she is simply performing her fiduciary Board functions. Board Director Terrill confirmed that he too asks DeMaio probing questions regarding District business as part of his oversight responsibilities, yet DeMaio has not accused him of harassment.

The witnesses interviewed had differing views of Kiffer and DeMaio's work styles and who is to blame for their tense working relationship. Some witnesses reported that Kiffer is at times pushy, disrespectful, divisive, oversteps boundaries, and unwilling to accept any responsibility for her conflict with District staff and Board members (in contrast to DeMaio who at times has acknowledged and apologized for his mistakes or unprofessional behavior). Other witnesses, however, reported that Kiffer is professional, respectful and acting as a dedicated Board Director when challenging DeMaio's decisions or practices. These witnesses also noted that DeMaio reacts defensively to Kiffer's inquiries.

While this investigator finds that Kiffer's actions towards DeMaio do not amount to harassment, their interactions are at times contentious and uncivil. Most witnesses recalled that DeMaio and Kiffer have yelled at one another on more than one occasion in a public setting. Witnesses report this relationship has created a toxic atmosphere that negatively affects the functioning of the Board and District operations.

DeMaio's Retaliation Charge Against Kiffer

DeMaio filed an EEOC retaliation charge on September 23, 2018, accusing Kiffer of giving him the "lowest score possible" on his March 2018 annual review in retaliation for his December 2017 complaint against her. He initiated the EEOC charge-filing process before September 23,

² DeMaio's June 2017 complaint was not investigated nor resolved at that time and falls outside the scope of this investigation.

2018, but did not finalize the process until after Kiffer's sarcastic comment to Gabe Buldra at the August 2018 Board Meeting. He claims this incident was the last straw that triggered his filing.

As an initial matter, DeMaio acknowledges that the alleged retaliation is not based on his status in any legally protected classification, which means the conduct in question is not actionable under Title VII. Although not legally actionable, this investigator finds that Kiffer's poor evaluation of DeMaio's performance was motivated in part by his December 2017 complaint against her. This finding is based on Kiffer's own comments in her evaluation of DeMaio:

12. Interim Chief DeMaio has demonstrated on a couple of occasions 'conduct unbecoming' . . . He also has written a letter of complaint to the Board about me, a letter he admitted he wrote as a knee jerk reaction to an item on a Board Agenda he didn't like. The complaint letter was vague with few specific facts.

Kiffer's consideration of DeMaio's complaint against her as part of her evaluation of him was improper. A District employee's performance should not be evaluated based on the filing of workplace complaint, even if the complaint is ultimately not substantiated. Employees are free to make such complaints and evaluating them negatively for doing so will create an unacceptable chilling effect on their right to raise concerns.

However, the investigator finds that Kiffer would likely have given DeMaio a poor evaluation even without consideration of his December 2017 complaint against her because Kiffer identified several performance issues, many of which preceded DeMaio's complaint. In addition, DeMaio's statement in the EEOC Charge that "all other Board members rated me satisfactorily" is factually inaccurate. Board Director Terrill also gave DeMaio an overall below "expected" rating based on performance concerns unrelated to DeMaio's complaint against Kiffer. Terrill's assessment of DeMaio's performance substantiates that Kiffer had independent grounds to issue DeMaio a subpar evaluation unrelated to his complaint against her.

Conclusion

Based on a careful and objective review of the evidence, this investigator cannot substantiate DeMaio's claim that Kiffer has targeted him for harassment. Kiffer disputes the allegation and maintains she, like Board Director Terrill, is simply carrying out her oversight duties as a Board Director and holding DeMaio accountable for his substandard performance. The witnesses had conflicting views as to who is at fault for the conflict between them and there is no documentary or video evidence that is dispositive on this issue. The investigator also finds that Kiffer's consideration of DeMaio's complaint against her in rating his performance was improper, but that she would likely have issued him a low rating any way based on other performance issues identified. This investigator further finds that DeMaio falsely stated in his EEOC Charge that all Board members rated him "satisfactorily," when Board Director Terrill did not do so. This misstatement undermines his credibility.

Although DeMaio's allegations are unsubstantiated, there is no question that intense conflict exists between him and Kiffer that is creating significant disruption to District operations and division among staff and Board Directors. They both appear to be inflexibly entrenched in the righteousness of their position to the detriment of the District and its constituents. It is unclear

whether they can repair their broken relationship without the intervention of a third-party mediator or HR consultant trained in resolving workplace disputes.

This concludes the investigation.

Encl.

EXHIBIT "A"¹

WITNESSES

Name	Position	Dates of Employment or Service	Interview Date
Berg, Steve	Former Board Chair	2013 - 7/16/17	11/12/18
Buldra, Gabe	District Financial Advisor/CPA	2013 - Present	11/15/18
Cass, Deb	Board Chair	2016 - Present	11/9/18
DeMaio, Tony	Fire Chief	Firefighter: 8/2015 - 3/2016; Interim Fire Chief: 3/2016 - Present	11/8/18; 12/4/18
Karash, Mike	Board Director	1/2017 - 11/2018	11/19/18
Kiffer, Charlotte	Board Director	6/2016 - Present	11/27/18
Koeppen, Theodora	Former Board Director	9/2018-11/2018	11/27/18
Jackson, Karen	Administrative Assistant	11/7/16 - Present	11/12/18
Porzio, Bobby	District Volunteer	2010 - Present	11/12/18
Reh-Bower, Ellen	Administrative Assistant; Board Director	Administrative Assistant: 2013 - 8/2016; Board Director: 12/2018 – Present	12/4/18
Sherwood, Rick	Former Board Director	1/2018 – 6/2018	11/15/18
Terrill, Eric	Board Director	6/2016 - Present	11/20/18

¹ Chuck Waalkens of River Medical, and Pat Kelley-Staub, a District citizen, declined the investigator's requests to be interviewed.