

Substantial Disruption



Why We Need A Workplace Bullying Law (Part II)

By Mike Tully

When Pima County Sheriff's Sergeant Kevin Kubitskey filed a complaint against Sheriff Chris Nanos in early 2016, the County's [workplace bullying policy](#) had been in effect for three years. Through investigations and training, County employees and managers began to monitor employee behavior through the lens of the policy, and the County's workplace culture benefited from the change. Cases brought under the policy quickly came to dominate the Human Resources investigative docket, validating the unanimous vote by the Board of Supervisors to adopt it. Unfortunately, since the policy is not fortified by state law, there is no requirement for public accountability. That flaw was illustrated in the case against Sheriff Nanos, who had been appointed to the position when his predecessor retired and was running for election in 2016.

When Sgt. Kubitskey submitted a series of incidents in support of his claim I was assigned to investigate his allegations. Pima County's workplace bullying policy defines bullying as "intentional behavior with the purpose of creating an abusive work environment." Sheriff Nanos not only provoked and humiliated Sgt. Kubitskey (in front of a witness), he also confronted and embarrassed him in an incident in the Sheriff's Department cafeteria and personally attacked him in an email message delivered to the entire Department staff. The Sheriff admitted many of the facts alleged against him when I interviewed him, as well as in an interview with Tucson Police. I concluded that "There is sufficient evidence to substantiate that Sgt. Kubitskey was a victim of workplace bullying as defined by Board of Supervisors Policy D 23.1." It was not a close call and my two immediate supervisors concurred and referred the report to the chain of command. The Director of Human Resources agreed that the facts supported the finding of bullying, but suggested the Policy did not apply for technical reasons. The report was hand-delivered to Deputy County Administrator Tom Burke on July 28th.

Mr. Burke then attempted to derail the process. He ignored the report for two weeks, then requested audio recordings of the investigative interviews. Then he requested that I provide a typed version of my investigator's notes, which are largely in notehand and difficult to read. He then requested typed transcripts of the investigative interviews. He also told the Deputy Director of Human Resources that he was going to delay the process until after the election, suggesting favoritism on behalf of the Sheriff. Meanwhile, Sgt. Kubitskey became agitated and repeatedly demanded that the County release the report, finally submitting a Public Records request on October 12th. The report was provided to Sgt. Kubitskey on October 17th, after early voting was already underway. Sheriff Nanos ultimately lost the election, but the workplace bullying finding was not his only problem. His Chief Deputy was [indicted on felony charges](#), and former Surgeon General Richard Carmona had [denounced him publicly](#).

The investigation into the Kubitskey complaint is the second against an elected official. (The first concerned a complaint by a Member of the Board of Supervisors that a fellow Board member bullied her staff. That complaint was investigated and the allegation was unsubstantiated.) However, it is the first time an investigative report was deliberately concealed by a high-ranking County official. Had Sgt. Kubitskey not submitted a records request for the report, it might never have been released. And, if the Sheriff had not been up for election, he would have gotten away with bullying an employee and faced no consequences.

The reality in Pima County is that the workplace bullying policy is effective -- unless the person being investigated has rank. Sheriff Nanos was not the only one to benefit from favoritism. The former Public Fiduciary bullied a disabled employee so severely that she sued the County and won a substantial settlement. He was also found to be in violation of the Policy in two Human Resources investigations. He never faced any consequences for his behavior and ultimately retired on his own schedule. The message from both cases is clear: if you are an elected official in Pima County, or a Director, you are free to bully your employees and there is nothing anybody can do about it.

When high-ranking administrators and elected officials bully employees, there should be consequences. While rank-and-file employees should not be called on to investigate elected officials and directors within the same jurisdiction, the investigation could be referred elsewhere, perhaps to Human Resources professionals from other jurisdictions, such as [Butte County, California's Appeal Panel](#). If the prohibition against workplace bullying were based on state law there would be legal protections against favoritism and selective enforcement. This is another reason Arizona needs a law against workplace bullying.