

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT – 2<sup>ND</sup> DIVISION  
CIVIL ACTION NO. 01-CI-2882

MELINDA J. MASSARONE

PLAINTIFF

vs.

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANTS’  
RENEWED MOTION TO EXCLUDE THE TESTIMONY OF ANNA RATHKE  
PHILLIPS OR, IN THE ALTERNATIVE, TO READ HER STATEMENT AT  
TRIAL, OR FOR A CONTINUANCE**

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT,  
et al

DEFENDANTS

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“Chief Walsh’s actions were grossly inappropriate.”

“I resent being placed in such vulnerable circumstances.”

“I felt under duress due to his position and his aggressive behaviors toward me.”

“I lacked adequate skills to respond effectively for my interest and safety.”

Only someone like defendant Walsh for whom sexual harassment is symptomatic of gender-based hostility, such as a supervisor who uses sexual harassment primarily to subordinate women, to remind them of their lower status in the workplace, and to demean them could view Anna Phillips’ statements as exonerating them. Let this much be clear: the exploitation of a woman’s vulnerability, actions which place her in fear and under duress by virtue of the harasser’s job and behavior and considerations and considerations of how to respond to a harasser’s overtures to preserve her safety are fundamentally emblematic and proof of gender-based hostility. Defendant Walsh says that he does not view his relationship with Phillips the same as her; indeed, Walsh views it from the point of view of a sexual harasser that women are inferior and meant to be demeaned; Phillips views it as a victim.

Contrary to defendant's contentions, defendant's denials of Phillips' allegations do not make them unfairly prejudicial or irrelevant; it does not unduly confuse a jury to decide who is telling the truth – that is their function. Phillips' letter in no way complicates this case. Furthermore, defendants apparently view Phillips' letter as an exoneration, a contention that undercuts the assertion of unfair prejudice which so concerned the Court at the hearing on February 28.

Defendants do not cite any authority in support of their motion to exclude Phillips' testimony. To review: it is axiomatic and an entrenched principle of Kentucky law that sexually discriminatory actions or harassment that defendant Walsh directed at other officers is relevant to proving his discriminatory attitude toward women, that he acted with discriminatory intent toward plaintiff Melinda J. Massarone and that his actions and course of conduct were such to warrant imposition of punitive damages. *See Meyers v. Chapman Printing Co.*, Ky., 840 S.W.2d 814, 822-823 (1992); *Kentucky Center for the Arts v. Handley*, Ky. App., 827 S.W.2d 697, 701 n.5 (1992); *White v. Rainbo Baking Co.*, Ky.App., 765 S.W.2d 26, 30 (1988); *see also Plaintiff's Memorandum Contra Defendants' Motion in Limine 1 – 7* and cases cited therein. Defendants do not contest these authorities.

The probative value of Phillips' testimony is not limited to Walsh's "grossly inappropriate" actions that exploited her "vulnerable circumstances" through use of his job and aggression that left her grappling with how to preserve her "safety." Phillips provided testimony of Walsh's gender-biased references to other women police officers, referring to them as "bitches" and "whores," the discriminatory attitude he manifested, despite his responsibilities to assure compliance by the police department with equal employment opportunity and civil rights

laws, toward minorities. Defendants do not mention this evidence, which has been corroborated by numerous other witnesses.

Defendants claim they should have opportunity to confront Phillips regarding the letter but have otherwise represented that they have no desire to do so.

Plaintiff has no objection to the reading of Ms. Phillips March 6 letter to the jury or to its admission as an exhibit at trial.

Since plaintiff agrees to defendant's alternative relief – presenting the letter to the jury – there is no need for a continuance. Accordingly, plaintiff objects to any continuance of the trial.

Accordingly, the Court should reaffirm its admission of the testimony of Anna Rathke Phillips, which will be via deposition, for the reasons previously stated at the hearing on February 28, 2003, and as set forth *Plaintiff's Memorandum Contra Defendants' Motion in Limine*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was faxed and mailed this \_\_\_\_ day of March 2003 to the following:

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Attorney for Plaintiff