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SEXUAL ASSAULT CLAIMS INCLUDED JUDGE RULES IN SUIT OF EX-POLICE CHIEF RACE BIAS CLAIM ALLOWED

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Allegations that retired Lexington Police Chief Larry Walsh sexually assaulted a female police officer and grabbed the buttocks of another will be allowed at a sexual discrimination lawsuit to be tried this month, Chief Fayette Circuit Judge Gary Payne ruled yesterday.

Payne also said he would allow the plaintiff, retired Capt. Melinda Massarone, to present evidence of racial discrimination in the police department, including a tape recording of Walsh referring to a black victim of a police shooting as a "nigger."

The city, which is a target of the lawsuit alongside Walsh and Assistant Chief Sandra Devers, objected, saying the evidence was not relevant to Massarone's claim.

"It's a bunch of evidence that's not relevant, often hearsay and highly prejudicial," Keith Moorman, who is representing all three defendants, told Payne.

Payne said he would rule on defense and plaintiff's motions for a summary judgment next week, but indicated he was unlikely to grant either side a pretrial victory.

"I can tell you that both of you are going to have trouble convincing me," Payne told Moorman and Massarone's attorney, **Robert Abell**.

In a document filed Thursday, Moorman added that the suit Massarone was building against the city amounted to "a three-ring circus focusing on 'rape,' 'racism,' and a 'regime of sexual harassment and discrimination.'"

Massarone worked for the police department for 20 years and was the second woman to attain the rank of captain. She claims Walsh harbored ill will toward her after she rejected a sexual advance from him in the early 1980s. Walsh made a few inappropriate remarks over the years, Massarone said, and he and Devers conspired to "bury" her in the communications division after she made captain. The city, Walsh and Devers deny the allegations.

Walsh insists that he never tried to kiss Massarone and that she was promoted every time she was eligible for a rise in the ranks.

After he heard she was unhappy in communications, Walsh even offered to transfer her to another division, Moorman said -- but at that point, Massarone was seeking disability retirement as a result of emotional problems she said stemmed from her inability to transfer earlier.

Payne agreed with Moorman on tossing some evidence: Out will be an allegation that Walsh and Devers, who is in charge of general services, including fleet assignments, favored Walsh's daughter, Pam Walsh, by allowing her to keep a patrol car when she was pregnant despite departmental regulations barring her from having one while on "light duty."

The judge also barred evidence from two female officers, Marcy Davis and Deanna Bradley, who have testified in depositions that they had been approached by a third officer with the message that Walsh found them desirable and wanted them to call him.

The most explosive allegation in the case comes from Anna Rathke Phillips, a former police officer who swore in a deposition earlier this month that Walsh had forced himself on her sexually in 1991 when he came to her apartment.

The incident came a few weeks after she had gone to Walsh's farm in Campbellsville, where he had invited her for shooting lessons and, Phillips says, put his hands down her pants and talked about people being out to get him.

Walsh, who was chief for 11 years and was publicly admired for his administration before he left in 2001, swears that any sexual relationship he had with Phillips was consensual.

Moorman told Payne that allowing the claim would turn the trial from a quest to find out "what happened to Melinda Massarone to a shock-value about what happened to this woman."

"It has turned this case into a circus. We can see that already," Moorman said, referring to a flurry of radio and TV stories about Phillips' allegation and others after a Herald-Leader story was published yesterday.

Abell disagreed. "It demonstrates, in an unmistakable way, a discriminatory attitude toward women. It is powerful evidence."

Phillips, who now lives in North Carolina, never filed an official complaint about the incident but said she did give a sworn statement to former Fraternal Order of Police attorney Ron Green about the encounter. Green said yesterday he could not comment because of attorney-client privilege, but confirmed he did represent Phillips at the time.

Moorman vociferously objected to the introduction of a tape recording Sgt. Phil Vogel made of Walsh discussing officer Ginger Garrison, who fatally shot Freeman Norman Jr. as Norman attacked her and another officer with a knife in 1989.

The tape is barely audible, and Walsh denies making the statements that Abell attributes to him extolling the use of nightsticks. Abell's transcription quotes Walsh using an epithet for blacks and says that, if Garrison and her partner had used nightsticks, Norman would be alive. Then, he adds: "I don't give a that they had to kill him, but, but, let's be ... honest about it."

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