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SUIT: DEPUTY FIRING LACKED HEARING

MICHELE MORGAN BOLTON Staff writer

A sheriff's deputy who was fired and faced criminal charges after allegedly misusing a 1999 sick day was neither confronted by his supervisors nor given the required hearing, according to sworn statements that are part of a \$5 million federal lawsuit.

In a pair of court depositions acquired by the Times Union, Sheriff Dan Keating and Undersheriff Larry Walraed agreed procedure wasn't followed and offered conflicting statements on other issues, including who made the decision leading to road patrol Deputy Tony D'Agostino's prosecution.

Walraed said in May 21 testimony, for example, that Keating -- on instructions from District Attorney Ken Bruno -- moved to prosecute D'Agostino on falsifying records charges following several joint meetings. But Keating testified June 4 he decided on his own.

In the May 2001 lawsuit, D'Agostino claimed he was targeted as payback for openly criticizing the nearly 600 hours of overtime Walraed received annually as road patrol captain at the same time he was denying rank-and-file officers' pay requests.

D'Agostino was accused of calling in sick April 17, 1999, in order to attend a defensive driving class. He'd been reprimanded previously for misusing a sick day and for not wearing his hat.

The PBA union vice president was fired in December 1999 but was rehired in April 2000, after a county grand jury refused to indict him on misdemeanor and felony charges related to allegedly misusing the sick day.

"There's normal police procedures and then there's the Rensselaer County Sheriff's Department," said D'Agostino's lawyer Bob **Keach**. "It's laughable and disgusting," added **Keach**, who in two other federal complaints claims county correction officers regularly beat inmates and conducted illegal strip searches.

Keating spokeswoman Ingrid Gundrum had no comment on the matter: "The sheriff is just completely unwilling to go tit for tat in mudslinging with an ambulance chaser. The proper forum for handling the matter is in a court of law."

Bruno wouldn't discuss something he hadn't seen or read, spokesman Kris Thompson said.

Only command staff have "latitude" to use sick days for personal business, both Keating and Walraed said in the depositions. Three employees besides D'Agostino who were caught skipping work to either play golf or attend political functions were docked a day's pay, they said.

Walraed suspected D'Agostino was at the class, set up surveillance outside the building, had a colleague come on duty to secretly take the deputy's picture as he exited and then allowed D'Agostino to fill out a false time card a week and a half later without confronting him, according to his statements.

Both Walraed and county identification officer Sgt. Jack Smith were earning overtime during the stakeout, according to the deposition in which Walraed also said he's received as much as \$32 an hour in overtime to type and make photocopies.

Walraed is on a current leave of absence from the captain's job that has full civil service benefits should he return to it.

Denying that he was upset with D'Agostino for probing his overtime records, Walraed also said it was Keating who contacted the district attorney's office for possible prosecution and then directed him to prepare accusatory documents: ``I believe the sheriff indicated he was moving ahead with criminal charges at the request of the district attorney."

He also said he never asked county labor lawyer Bryan Goldberger to make a deal with D'Agostino to resign and said Keating told him Goldberger was the one who suggested the deputy be fired.

Lawyer Betsy Dumas, who represents both Walraed and Keating, would not allow Keating to verify the latter claim during his deposition, terming the information ``privileged."

But the sheriff, who retires next year, said Walraed was indeed bothered by D'Agostino's criticisms of overtime accrual, noting: ``He certainly indicated to me he wasn't pleased."

In addition to admitting he didn't know why he suspended D'Agostino with pay that September and never held a hearing, Keating insisted that Bruno never told him to file charges.

He did acknowledge, however, that the district attorney commented in meetings held to discuss the D'Agostino matter that he was upset to hear the deputy allegedly leaked news to the media that he'd recently been picked up for speeding: ``He felt that it shouldn't have been done by an officer."

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