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ATTORNEY DEFENDS CRITICISM OF POLICE

MICHELE MORGAN BOLTON Staff writer

An attorney defending Rensselaer County Sheriff's Department officials in a \$5 million federal lawsuit wants a judge to admonish another lawyer for a two-sentence published comment describing her clients' behavior as ``laughable and disgusting."

No way, said civil rights lawyer Bob **Keach**, in a July 12 return letter to U.S. Magistrate David Homer: ``I spend a great deal of time protecting the First Amendment rights of others in this court. I have no intention of allowing another attorney to undermine my personal right to free speech."

At issue is the comment made by **Keach** in a July 4 Times Union article. **Keach** represents road patrol Deputy Tony D'Agostino, who filed the lawsuit. The article detailed sworn statements made by Sheriff Dan Keating and Undersheriff Larry Walraed in which they admitted to never confronting D'Agostino on the alleged abuse of a 1999 sick day, nor offering him the required hearing before firing him.

``There's normal police procedures and then there's the Rensselaer County Sheriff's Department," **Keach** said. ``It's laughable and disgusting."

D'Agostino, a PBA union vice president who faced criminal charges after allegedly calling in sick April 17, 1999, to attend a defensive driving class, filed the lawsuit in 2001. He was rehired in April 2000 after a county grand jury refused to indict him on misdemeanor and felony charges.

D'Agostino claims to have been targeted as payback for openly criticizing the nearly 600 hours of overtime that Walraed received annually as a former road patrol captain at the same time he was denying officers' vacation and pay requests.

``I believe that Mr. **Keach** has violated certain of the ethical canons that govern a lawyer's conduct relating to publicity in connection with a litigated matter," wrote Albany attorney Betsy Dumas in the July 9 letter to Homer.

She criticized **Keach** for allegedly releasing depositions taken from Keating and Walraed to the media in which they each admit they never discussed the sick-day matter with D'Agostino nor gave him the required hearing.

In his letter, **Keach** said Dumas' complaint was nothing more than an attempt to censor public criticism of sheriff's officials under the veil of ethics. He denied crossing the line of ethical behavior and said it's likely he'll utter more inflammatory comments when the case is tried in Syracuse more than a year from now.

``The fact that Sheriff Keating and Undersheriff Walraed were embarrassed by their sworn testimony ... does not represent good cause for a protective order," **Keach** added, addressing Dumas' apparent request that Homer prohibit the media from accessing other documents related to the lawsuit.

And though sheriff's department spokeswoman Ingrid Gundrum described him as an ``ambulance chaser" in the same July 4 Times Union article that has raised Dumas' ire, **Keach** said, ``Ms. Gundrum enjoys the same First Amendment rights as I do and can say anything she likes about my client or I."

Dumas could not be reached for comment Saturday evening.

``I stand by my written submission to the court," **Keach** said.

Walraed and Keating made a number of conflicting statements in the depositions taken May 21 and June 4, respectively.

Walraed admitted he conducted both investigations into D'Agostino's alleged crime, including setting up surveillance outside the driving class and arranging for the deputy to be secretly photographed.

But he pointed to Keating as the one who ultimately chose to prosecute the road patrol deputy.

Keating, in sworn statements, repeatedly said he didn't know why no one discussed the situation with D'Agostino before he was allowed to fill out a false time card. There was no reason why he was never given a hearing, Keating said.

Keach has filed two other federal complaints against the sheriff's department in recent weeks that claim correction officers have a history of beating inmates and regularly conducting illegal strip searches.

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