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Police promotion lawsuit continued as both sides seek mediation

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The city was given a continuance in a lawsuit filed in 2005 by a police sergeant who said his free speech rights were violated, provided both sides enter mediation.

Sgt. John McCarthy filed suit in federal court in South Boston on Dec. 9, 2005, after he was passed over for promotion to lieutenant despite having the highest score on the promotion exam. The case, which lists Mayor John Bell, police Chief John Beaudette and the City of Gloucester as defendants, was to go to trial this month.

Bell, City Solicitor Linda Lowe and Harold Lichten, McCarthy's attorney, said the city's attorney working on the case, Leonard Kesten, asked for the motion because he has another trial beginning now. Federal Judge George O'Toole granted the request.

Lichten said McCarthy opposed the motion because "we really think John has a great case."

"We're desirous of trying this case," Lichten said. "If this gets resolved (in mediation), then we'll be happy with that. This isn't about money. It's about getting him the promotion that he lost."

Mediation is scheduled to begin at the John Joseph Moakley courthouse in South Boston on May 4.

Lowe said both sides had been seeking mediation. Kesten, who, did not return a phone message seeking comment last week, is an attorney the city's insurance provider brought on to represent Gloucester in the case.

"We're here to represent the best interests of the city, and we'll do that through counsel," Bell said. "This is a legal proceeding John has brought against the city."

McCarthy claims he was overlooked in 2005 because of his involvement in the Superior Officers Association. He has served as the group's president since 1999.

The lawsuit says an administrative assistant of Bell's in October told McCarthy he would likely not be promoted "specifically because of his public advocacy of union issues."

The suit seeks the missed promotion, back pay, emotional distress damages, punitive damages, attorneys fees, and interest, and requests a jury.

The suit says McCarthy scored an 85 on the exam for the lieutenant's position in 2004, ranking him first on the civil service list, and five points ahead of Michael O'Hanley, who was promoted to lieutenant in October 2005.

As part of his duties in the union, the suit says McCarthy has often been at odds with Beaudette and Bell.

McCarthy interviewed with both Bell and Beaudette for the position after the exam but was told in September the two were discussing bypassing him for the position due to his union activities, the suit says.