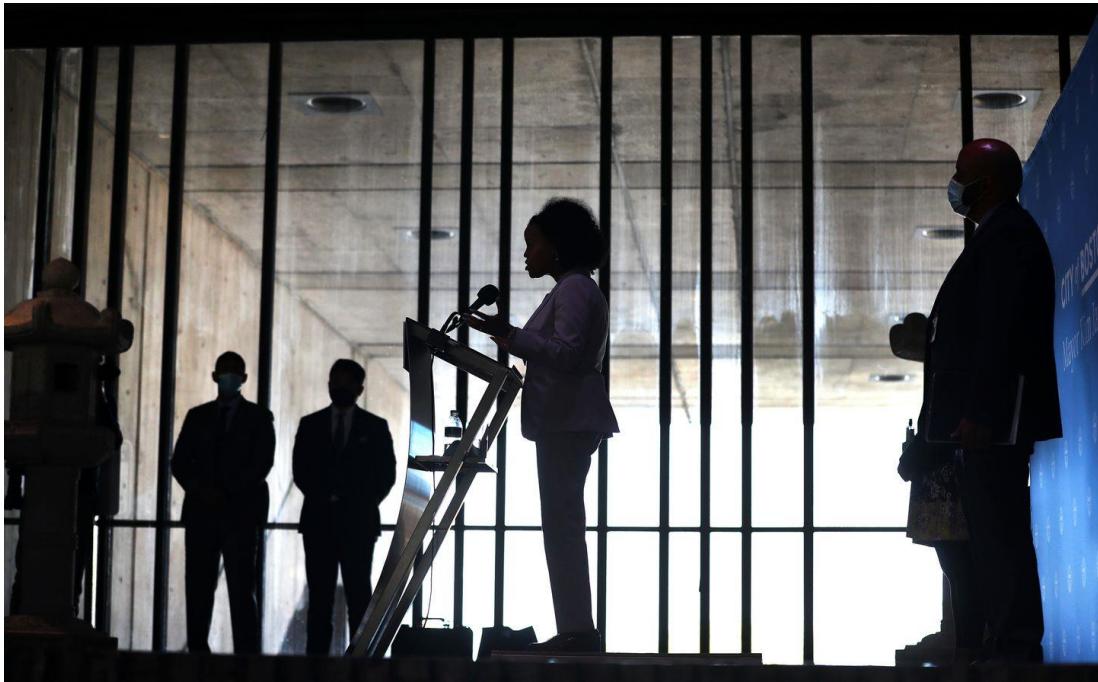


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The Dennis White-Kim Janey legal standoff brings with it a host of questions

By [Danny McDonald](#) Globe Staff, Updated May 17, 2021, 7:32 p.m.



Acting Boston Mayor Kim Janey said Monday she was scheduling a hearing “as soon as the court allows to remove” Dennis White from his post as commissioner. DAVID L. RYAN/GLOBE STAFF

Boston Acting Mayor Kim Janey's attempt to oust police Commissioner Dennis White late last week and White's countermoves have raised a host of thorny legal questions for the city, and the resulting standoff has left the leadership of the nation's oldest police force in a strange limbo.

White thwarted Janey, at least temporarily, Friday by filing a request for a restraining order and preliminary injunction in Suffolk Superior Court to stop his removal. Janey said Monday she will press on in her attempts to dismiss White as the city's top cop.

White's attorney, Nicholas B. Carter of Todd & Weld, is arguing that any removal requires a hearing and cause, and there is no cause to remove White.

Carter has also asserted that Janey predetermined White's fate as commissioner before having a hearing on the matter, saying in court documents that a "hearing where the decision has already been made is no hearing."

Martin J. Walsh, Boston's former mayor, appointed White in late January, then suspended him days later amid Boston Globe inquiries into White's past. An independent investigation followed, the result of which was publicly released Friday. The report from that probe was scathing, detailing a pattern of alleged domestic violence by White and a culture of fear and coverup within the Boston Police Department.

There is a court hearing scheduled for Thursday on White's requested preliminary injunction to block Janey from firing him. On Monday, Janey said she hoped a judge would rule on the injunction this week. Until then, the city would not have "much more to share on that."

"The report has been released, I think everyone here has seen it, and I believe it speaks for itself," Janey said in response to a reporter's question during a news conference on Monday. "I am scheduling a hearing as soon as the court allows to remove this current commissioner."

She said her intent is to move the Police Department forward.

"There is a lot of work that we have to do in our city and we can't have the officers who are doing good work every day wonder that if they speak up that somehow there will be some retaliation," said Janey. "We saw that there was a clear culture of fear and silence with this report, and we can't have that continue."

In a court filing last week, Carter said the 1999 domestic abuse allegation that triggered the independent investigation into White was false, and that there was no basis for the probe, which he called biased. He said the investigation's end-product, [the 19-page report that was made public on Friday](#), was based on hearsay and was "utterly unreliable and inadmissible."

Janey, he said in court filing, failed to provide due and meaningful notice to White and there is no cause to fire him, as he did nothing during his two days as active commissioner to warrant his removal.

"The allegations by his ex-wife from 20 years ago, which were resolved in court in 1999 and known to the city and Boston Police Department through the following two decades as he was promoted multiple times, including to Commissioner, do not constitute cause to remove White," said Carter in court documents.

Opinions differ, but some local legal experts are doubtful White will prevail in receiving an injunction this week, which would stave off his firing, but add that he could continue his legal complaint against the city, something that could take years to resolve. Observers note that there does not appear to be much legal precedent, under the applicable statute, of a Boston police commissioner fighting their dismissal. One of the central questions of the legal action will be whether city authorities followed the proper procedure for the hearing where Janey was planning to dismiss him, according to experts.

Nancy Gertner, a retired federal judge and senior lecturer at Harvard Law School, thought the city statute was unclear on the meanings of cause and notice and that gray area of what such terms encompass could matter in the case.

"Did [White] disclose all there was to disclose?" asked Gertner. "If, in applying, he didn't disclose all he should have, that could be an issue."

She said the statute at issue is decades old and she did not think there was any precedent regarding a Boston police commissioner challenging a dismissal under such regulations. This is not a case of a patrolman losing their job, in a situation where there is lots of past litigation. In this case there is no binding arbitration, among other differences.

"It's a discretionary decision that a mayor makes," she said of the police commissioner's post.

Gertner also did not think there was a basis for a preliminary injunction, which judges are supposed to decide on relatively quickly. It's possible that White loses his injunction but that his legal complaint continues, which would nonetheless mean someone else becomes commissioner, said Gertner.

"What is he trying to achieve by the litigation?" she asked. "I think he's trying to get his reputation back; I think it's unlikely he will get the job back."

Chuck Rodman, a Newton employment lawyer not affiliated with the case, said White does have a "legitimate legal claim that the mayor is not properly following the applicable law in exercise of her discretion under the so-called Removal Statute."

According to White's legal filings, that statute guarantees a hearing for a commissioner, which White was going to receive on Friday, but his attorney is arguing by that time his firing was a fait accompli.

"He argues his termination was predetermined and in bad faith," and therefore the hearing that Janey scheduled — only to cancel, when White went to court — would not have passed legal scrutiny, said Rodman.

Critics have focused on the lack of vetting done before Walsh appointed White to the job. Walsh, who was mayor at the time, said Boston police did not notify his office of the allegations before he promoted White to commissioner.

Katie Lev, an adjunct professor of employment and labor law at Suffolk University, said in an interview in March, while the independent probe was still ongoing, that she thought someone at Boston police had to know about the previous allegations about White before he was chosen to head the department.

"You can't take away someone's livelihood because of an allegation that you knew about when you put him in the position," she said, arguing that while a mayor could ask White to step down but not legally fire him. "If they didn't look, that's a bigger story."

Experts also offered differing legal interpretations about the limits her acting status places on Janey's power. Janey, who is the city's first Black and first woman mayor, became the city's acting executive once Walsh left to become US labor secretary. She is one of a half-dozen major candidates running for a full mayoral term in this fall's city elections.

The city charter states that an acting mayor “shall possess the powers of mayor only in matters not admitting of delay, but shall have no power to make permanent appointments.”

Some have argued that this means Janey, while acting mayor, cannot legally appoint a permanent replacement for White. Other attorneys disagree. Yet others have opined that the phrase “not admitting of delay” is open to interpretation.

Such phrasing could constitute a “legal gray area,” said Daniel Medwed, a law professor at Northeastern University. He was surprised that White’s legal filings last week did not present an argument challenging Janey’s authority as acting mayor. Someone could argue that firing the police commissioner was not an emergency and could have waited until after the city’s voters elected a mayor. It’s possible such an argument could become part of White’s case down the road, he said.

Generally speaking, Medwed said, “the bar is pretty high for any type of injunctive relief.”

“You have to show irreparable harm, you have to show a likelihood of success,” said Medwed. “Courts are generally reluctant to stop people from doing something.”

Previous Globe coverage was used in this report.

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