

March 2024 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]



Lawrence T. Bennett, Esq.
Professor-Educator Emeritus
Program Chair, Fire Science & Emergency Management
Cell 513-470-2744
Lawrence.bennett@uc.edu

- **2024: FIRE & EMS LAW – MONTHLY NEWSLETTERS:** monthly review of recent court decisions [send e-mail if wish to be added to our free listserv]: [Case summaries from monthly newsletter](#)
- **TEXTBOOK:** Updating 18 chapters of my textbook (2018 to current). [FIRE SERVICE LAW \(SECOND EDITION\), Jan. 2017](#)

14 RECENT CASES

Feel free to use in training and in Fire & EMS Law classes, including these [National Fire Academy, FESHE model courses](#):

- BACHELOR: Political and Legal Foundations for Fire Protection (C0258)
- ASSOCIATE: Legal Aspects of Emergency Services (C0270)

CASE REVIEWS / CURRENT EVENTS POSTED IN SCHOLAR@UC:

- [RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED \[2018 –Feb. 2024\]](#);
- [CURRENT EVENTS \[2022 – Feb. 2024\]](#).

Chap. 1 – AMER. LEGAL SYSTEM, INCL. FIRE CODES, INVESTIGATIONS, ARSON

MI: FIREWORKS – CITATION / \$150 FINE SET ASIDE – CITY CAN'T REQ. STORE GIVE OUT FLYER ON STATE / FED. LAWS

On Feb. 15, 2024, in People of the City of Sterling Heights v. Robert Bahke, the Court of Appeals of Michigan held (3 to 0) that the fireworks Safety Act preempts city ordinance because the ordinance directly with the state law; the Manager of Pro Fireworks store won this appeal after losing before a City Magistrate, a District Court judge and a Circuit Court.

See Case Summary: [Scholar@UC](#) - Case 1-145

CURRENT EVENTS

- Feb. 25, 2024: CO - CO Could Allow More Single-Stair Apartment Buildings; Fire Chiefs Worry About Safety.
- Feb. 20, 2023: RI - Station Nightclub Fire: Lessons, Code Changes Follow Tragedy.
- Feb. 13, 2024: PA - Firefighters Rescue Residents From PA Fire Caused By Lithium-Ion Battery.
- Feb. 16, 2024: NY - F.B.I. Searches Homes Of Fire Dept. Chiefs In Corruption Investigation.
- Feb. 13, 2024: NJ - N.J. Serial Arsonist Painted 'Let's Play' At Fire Scenes.

Chap. 2 – LINE OF DUTY DEATH / SAFETY

WI: FF INJURED KNEE CARRYING CHILD DOWN STEPS – BOTTOM RISER WAS 10-11” / MAX IS 8” - CASE PROCEED

On Feb. 22, 2024, in Bradley J. Herring and Kerry L. Hering, et. al. v. Rural Mutual Insurance Company and Edward Bruenig, the Court of Appeals of Wisconsin (District IV) held (3 to 0; unpublished opinion) that trial court mistakenly granted summary judgment to the building

owner and his insurance company; the bottom step had apparently settled over time to 10-11 inches, and the Wisconsin statute barring lawsuits 7 years after a building was installed with unknown “structural defect” did not apply to steps or sidewalk settling.

See Case Summary: [Scholar@UC](#) - Case 2-64

CURRENT EVENTS

- Feb. 23, 2024: KY - Covington Fire Chief Resigns Amid Tensions Between Union, City.
- Feb. 22, 2024: KY - Covington Reinstates Firefighter Staffing Requirement In Response To Safety Concerns.
- Feb. 21, 2024: NC – N.C. Fire Instructor Sues Simulation Company Over Live Burn Injuries.
- Feb. 20, 2024: MN - FF/Medic In Minn. Shooting Died Trying To Save Wounded Officer.
- Feb. 13, 2024: DC - OSHA’s Emergency Response Standard Update Threatens Volunteer Fire Departments.
- Feb. 12, 2024: CA - Guilty Plea In Calif. Gender-Reveal That Caused 2020 Wildfire, LODD.
- Feb. 8, 2024: PA - Pa. Officers Wounded, 6 People Missing In Standoff, House Fire.
- Feb. 1, 2024: IL - After Three Deaths In Two Years, Chicago Officials Are Told To Stop Sending Firefighters Alone Into Burning Buildings

Chap. 3 – HOMELAND SECURITY, INCL. ACTIVE SHOOTER, CYBER SECURITY, IMMIGRATION

DC: U.S. CAPITOL INVASION - RET. AIR FORCE LT. COL. 2 YRS PRISON – MUST BE RESENTENCED, IMPACT OTHERS

On March 1, 2024, in United States of America v. Larry Rendall Brock, the U.S. Court of Appeals for the District of Columbia upheld his conviction, but required him to be re-sentenced since he received more prison time for interference with “administration of justice” which does not apply to interference with the legislative process of certifying electoral votes.

See Case Summary: [Scholar@UC](#) - Case 3-60

CURRENT EVENTS

- Feb. 27, 2024: DC - Feature Article: S&T Tests Cutting-Edge Counter-Drone Technology.
- Feb. 16, 2024: NY - Retired FBI Special Agent In Charge Sentenced For Concealing Information From The FBI.

- Feb. 16, 2024: NY - U.S. Citizen Charged With Providing Material Support To Isis And Receiving Military-Type Training At Isis Fighter Camp.
- Feb. 15, 2024: DC – Justice Department Conducts Court-Authorized Disruption Of Botnet Controlled By The Russian Federation’s Main Intelligence Directorate of the General Staff (GRU).
- Feb. 12, 2024: OH - Columbus Man Who Plotted To Assassinate George W. Bush Sentenced To 15 years In prison.

Chap. 4 – INCIDENT COMMAND, INCL. TRAINING, DRONES, COMMUNICATIONS

TX: MAN INVADES HOME - POLICE EXPLOSIVE DEVICES, SUICIDE – JURY \$60K DAMAGE – REVERSED – EMERGENCY

On Feb. 14, 2024, in Vickie Baker v. City of McKinney, Texas, the U.S. Court of Appeals for Fifth Circuit (New Orleans) refused to re-hear en banc (all the judges; 11 voted against re-hearing; 6 voted for rehearing) the home owner’s appeal to 3-judge panel decision that the City does not need to reimburse her for damage they caused because it was an emergency response to protect the public. Her homeowner’s insurance also denied coverage under the terms of its policy.

See Case Summary: [Scholar@UC](#) – Case 4-37

CURRENT EVENTS

- Feb. 29, 2024: CT - Conn. FD PIO Sues After Arrest For Posting MVA Photos On Social Media.
- Feb. 5, 2024: CO - Forest Service Burn Boss Indicted For Reckless Burning.

Chap. 5 – EMERGENCY VEHICLE OPERATIONS

OK: AMBULANCE SPEEDING WITH PATIENT RUNS INTO TOLLBOOTH – INJURED WORKER – GOVT IMMUNITY

On Feb. 13, 2024, in Jackson County Emergency Medical Service District v. The Honorable Kory S. Kirkland, Judge of the District Court for Grady County, State of Oklahoma, the Supreme Court of Oklahoma held (9 to 0) that trial court improperly denied the Medical District’s motion to dismiss; it is a governmental entity of Jackson County, and under Oklahoma law, when an injured person [Shannon Garst, the injured toll-booth attendant] collected worker’s comp from her employer, American Staff Corporation, she cannot sue government agency.

See Case Summary: [Scholar@UC](#) - Case 5-41

CURRENT EVENTS

- Feb. 28, 2024: CO - \$160K Settlement Approved In Careless Driving, Wrongful Death Lawsuit Against Colo.
- Feb. 28, 2024: OK - One Dead After Crash Involving Oklahoma City (OK) FD Apparatus, Officials Say.
- Feb. 8, 2024: TX - Fort Worth (TX) Firefighter Injured In Rollover Crash To Undergo Surgery; Other Improving.

Chap. 6 – EMPLOYMENT LITIGATION, INCL. WORKERS COMP, AGE, VETERANS RIGHTS

NY: FDNY FF – ALLERGIC REACTION TO COVID 2ND SHOT – FORCED RETIRE – NOT “ACCIDENTAL” DISAB. RETIREMENT

On Feb. 12, 2024, in O'Brian Pastran v. New York City Fire Pension Fund, Judge Arlene P. Bluth, Supreme Court, New York County, held that two Medical Boards voted to award the firefighter “ordinary” disability retirement, not accidental (75%) and there in not sufficient medical basis to reverse the Boards decision.

See Case Summary: [Scholar@UC](#) - Case 6-129

CURRENT EVENTS

Feb. 2, 2024: WI – Bice: Law Firm Defends Request For One-Third Cut Of \$2 Million In Back Benefits For Injured Cops.

Chap 7 – SEXUAL HARASSMENT, INCL. PREGNANCY DISCRIM., RIGHT TO PUMP

NV: FD VISITOR – KISSING IN BUNK ROOM - FF REPORTED TO MGT - NEWSPAPER ARTICLE – CASE DISMISSED

On Feb. 29, 2024 in Eric Scheumann v. City of Las Vegas, Las Vegas Fire & Rescue, U.S. District Court Judge Jennifer A. Dorsey granted the defense motion for summary judgment. “Eric Scheumann brings this employment action against City of Las Vegas Fire & Rescue for events arising from an August 2017 visit to his fire station by guests of a coworker. Scheumann claims that he overheard kissing noises coming from his coworker’s dorm, the same coworker showed him and the visiting guests a 15-second pornographic video of ‘a man’s genitalia

eclipsing the sun' later that same day, and Scheumann suffered retaliation because he reported the incidents and his superiors' inadequate handling of them.”

See Case Summary: [Scholar@UC](#) - Case 7-59

CURRENT EVENTS

- Feb. 21, 2024: OH - 'Take that leap of faith': Meet Cincinnati Fire's First Black Female Captain, And Youngest Female Captain Ever.
- Feb. 12, 2024: AK - Borough Settles Harassment And Discrimination Suit Brought By Former Firefighter.
- Feb. 7, 2024: CA - L.A. County Officials Say Ill-Fitting Gear Endangers Female Firefighters.

Chap. 8 – RACE / NATIONAL ORIGIN DISCRIMINATION

OH: SCBAs – OSHA REQUIRES CLEAN SHAVEN – BLACK FF RETIRED INSTEAD OF SHAVING – NO ADA / RACE DISCRIM.

On Feb. 28, 2024, in Anthony Davis c. City of Cleveland, et al., U.S. District Court Judge Solomon Oliver, Jr., U.S. District Court for Northern District of Ohio (Eastern District) granted the city's motion for judgment on the pleadings.

See Case Summary: [Scholar@UC](#) - Chase 8-58

CURRENT EVENTS

- Feb. 2, 2024: OR - Black Firefighter Files Lawsuit Against Portland Fire Over Racial Discrimination, Harassment.

Chap. 9 – AMERICANS WITH DISABILITIES ACT

IL: ADA – DEPUTY CHIEF – IF EARN BACHELOR DEGREE, PAY BUMP - REFUSED, HEART CONDITION – NO CASE

On Feb. 23, 2024, in Jeffrey Bruno v. Chasity Wells-Armstrong, James Ellexson, and City of Kankakee, Illinois, the U.S. Court of Appeals for the Seventh Circuit (Chicago) held (3 to 0) that trial court properly granted defense motion for summary judgment; attending college was not a requirement of his job and his request waive the college requirement to earn the pump in pay was not a request for reasonable accommodation.

See Case Summary: [Scholar@UC](#) - Case 9-43

CURRENT EVENTS

- Feb. 22, 2024: DC - Unnecessary Law Enforcement Responses To Mental Health Emergencies.

Chap. 10 – FMLA, INCL. MILITARY LEAVE

CURRENT EVENTS

- Jan. 31, 2023: DC – U.S. Department of Labor - 30 Years of Family and Medical Leave.

Chap. 11 - FLSA

CURRENT EVENTS

- Jan. 15, 2024: GA - Lockheed Martin Settles 2022 FLSA Lawsuit With Firefighters For Close to \$1 Million

Chap. 12 – DRUG FREE WORKPLACE, INCL. RECOVERY TX: FORMER DALLAS FF – DRUNK DRIVING, KILLED PREGNANT TEEN – 12 YRS, PLED GUILTY AVOID 40 YRS

On Feb. 20, 2024, in Horace Shaw v. The State of Texas, the Court of Appeals, Fifth District of Texas at Dallas held (3 to 0; unpublished opinion) denied the defendant's appeal based on alleged ineffective counsel; he pled guilty to manslaughter, and if convicted of intoxicated manslaughter he could have sentenced up to 40 years.

See Case Summary: [Scholar@UC](#) - Case 12-24

CURRENT EVENTS

- Feb. 1, 2024: NJ - Jersey City Says Armed Cops Cannot Use Cannabis Off Duty.

Chap. 13 – EMS, INCL. COMMUNITY PARAMEDICINE, CORONA VIRUS

TX: NO “STATE-CREATED DANGER” - 14-YR OLD, CEREBRAL PALSY – EMS NO “DELIBERATE INDIFFERENCE” - IMMUNITY

On Feb. 27, 2024, in Stacey Williams, on behalf of her minor grandson, J.J. v. Andrew Williams and Joe Spradlin, the U.S. Court of Appeals for Fifth Circuit (New Orleans) held (3 to 0) that trial court properly dismissed the lawsuit.

See Case Summary: [Scholar@UC](#) - Case 13-169

CURRENT EVENTS

- March 1, 2024: Aurora Paramedic Gets 5 years In Prison For Elijah McClain’s Death.
- Feb. 29, 2024: PA – HIPAA - Page, Wolberg & Wirth - Small Breach Reporting Deadline.
- Feb. 28, 2024: PA - Pa. Launches \$1M Tuition Reimbursement Program For EMTs, Paramedics.
- Feb. 28, 2024: OH - Pharmacy Owner And Operations Manager Convicted Of \$2.3M Ohio Medicaid Fraud.
- Feb. 25, 2024: IL - Ill. Officials Approve \$500 Lift Fee At Assisted Living Facilities.
- Feb. 14, 2024: CO - Patient Died After Being Placed In Chokehold By CO Paramedic, Federal Lawsuit Claims.
- Feb. 2, 2024: OH - Mom Hands New Baby To Firefighter Under Safe Haven Law.

Chap. 14 – PHYSICAL FITNESS, INCL. HEART HEALTH

CURRENT EVENTS

- Feb. 29, 2024: KY - Kentucky High School Offers CPAT To Next Generation Of Fire Fighters.

Chap. 15 – MENTAL HEALTH, INCL. CISM, PEER SUPPORT, PET THERAPY

NY: PTSD - PERUVIAN FDNY FF – HAZING – HOSTILE WORK ATMOSPHERE – 2015-2021 – FIRED - CASE PROCEED

Jan. 5, 2024, Court granted FDNY motion for protective order (pre-trial discovery extended to March 15, 2024). On March 31, 2023, in Joseph Mendoza v. City of New York, et al., U.S. District Court Judge Lashann Dearcy Hall, U.S. District Court for Eastern District of New York, dismissed most of the plaintiff's claims, but denied the defense motion to dismiss Section 1983 hostile work environment claim.

See Case Summary: [Scholar@UC](#) - Case 15-29

CURRENT EVENTS

- Feb. 27, 2024: NY - Leaders Push For Mental Health Resources After Four Suffolk County Police Officers Die By Suicide In Four Weeks.
- Feb. 20, 2024: NM - AFR Chaplain Writes Song On Destigmatizing Firefighter Mental Health.

Chap. 16 – DISCIPLINE, INCL. CODE OF ETHICS, SOCIAL MEDIA, HAZING

OH: CINCINNATI FIRE CHIEF WAS FIRED – NOT “AT WILL” AFTER 6 MO. PROB. - ONLY “FOR CAUSE” – CASE PROCEED

On Feb. 7, 2023, in Michael Washington v. City of Cincinnati and Sheryl Long, U.S. District Court Judge Douglas R. Cole, U.S. District Court for Southern District of Ohio (Western Division) denied City's motion for dismissal; finding that “Washington has validly pleaded claims for state and federal due process violations, defamation, and entitlement to declaratory relief. Furthermore, based on the allegations in the Amended Complaint, [City Mgr.]Long cannot rely on either qualified or state-law immunity to extinguish the individual-capacity claims against her.”

See Case Summary: [Scholar@UC](#) - Case 16-105

CURRENT EVENTS

- On Feb. 29, 2024 in Eric Scheumann v. City of Las Vegas, Las Vegas Fire & Rescue, U.S. District Court Judge Jennifer A. Dorsey granted the defense motion for summary judgment.

- Feb. 22, 2024: NY- Former NY Fire Chief Used Go-Kart Track To Help Steal \$18,000 From Fire Department, Officials Say.
- Feb. 22, 2024: FL - Report: Tampa (FL) Firefighter Who Decried Racism Fired For Forgery.

**Chap. 17 – ARBITRATION, INCLU. MEDIATION, LABOR RELATIONS
CT: AMR – CUT SHIFTS DURING COVID – UNION REQ. CALL
DATA – CASE BACK TO NLRB – CBA HAS “DISASTER” PROV.**

On Feb. 16, 2024, in American Response of Connecticut, Inc. v. National Labor Relations Board, the U.S. Court of Appeals for the District of Columbia, held (3 to 0) that the NLRB must rehear AMR’s defense that the “Local Disaster” provision in collective bargaining agreement excused company from providing call data and other information to union.

See Case Summary: [Scholar@UC](#) - Case 17-38

CURRENT EVENTS

- Feb. 26, 2024: CA - Calif. FF-Medics Reinstated After Initial Refusal To Enter Care Facility To Treat Patient.
- Feb. 19, 2024: TX - Voters To Decide On Civil Service, Collective Bargaining For Frisco (TX) Firefighters.

Chap. 18 – LEGISLATION, INCLU. PUBLIC RECORDS

CURRENT EVENTS

- Feb. 25, 2024: IL - Ill. Officials Approve \$500 Lift Fee At Assisted Living Facilities.
- Feb. 15, 2024: VT - Bill Would Give Vt. Volunteer EMS Workers Protections To Miss Day Jobs.