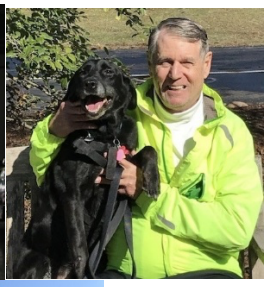
UNIVERSITY OF Cincinnati

MAY 2025 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]


Pet therapy dog FRYE

Lawrence T. Bennett, Esq.
Professor-Educator Emeritus
Cell 513-470-2744
Lawrence.bennett@uc.edu

20 RECENT CASES

Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

OR: HOMELESS - REMOVE NATIONAL FOREST – FIRES
IN: WIFE HAD FF MURDERED – CONV. UPHELD / 90 YRS
PA: FF EX-WIFE CONV. – GARAGE FIRE – HER FACEBOOK

Chap. 2 – Line Of Duty Death / Safety

IN: WIFE HAD FF MURDERED – CONV. UPHELD / 90 YRS
AK: FF/ OTHERS - FORMIC ACID - $75M JURY EXCESSIVE

NY: HEAD INJURY – ENGINE HIT BUMP – ROAD REPAIR CO.
OH: DRIVER STRUCK / KILLED FF –16-YRS-LIFE – RE-SENT.

Chap. 3 – Homeland Security, incl. Active Shooter, Cybersecurity

TX: VENEZUELAN ALIENS - DEPORTATIONS INJUNCTION

Chap. 4 – Incident Command, incl. Training, Drones, Communications

Chap. 5 – Emergency Vehicle Operations

TX: AMBULANCE – TRAFFIC / LEFT SHOULDER - IMMUNITY
IL: AMBULANCE – NO STOP / STOP SIGN – IMMUNITY
NC: MOTORCYCLIST INTO ENGINE – TURNING - IMMUNITY

Chap. 6 – Employment Litigation, incl. Work Comp., Age, Vet Rights

WV: FF KNEE – 40 LBS SUPPLIES UP STAIRS – WORK COMP

Chap. 7 – Sexual Harassment, Hostile Workplace, Preg. Discrimination, Gay Rights

Chap. 8 – Race / National Origin Discrimination

TX: FF FIRED / IRAQI / 3 DOC. "PERFORMANCE NOTES"

Chap. 9 – Americans With Disabilities Act

Chap. 10 – Family Medical Leave Act, incl. Military Leave

Chap. 11 – Fair Labor Standards Act

NC: FLSA – SOME WEEKS UNDERPAID / OVERPAID - NO CASE

Chap. 12 – Drug-Free Workplace, inc. Recovery

Chap. 13 – EMS, incl. Comm. Param., Corona Virus

CA: AMR LOSES COUNTY CONTRACT – STATE CT CASE
NY: EMT FACING REV. LICENSE – CAN HAVE JURY TRIAL

Chap. 14 – Physical Fitness, incl. Heart Health

NY: VOL. FF - "PARTIALLY DISABLED" – DIDN'T TELL FD

Chap. 15 – Mental Health, incl. CISM, Peer Support

AR: FF PTSD – RESPONDED 2 SHOOTINGS - NO WORK COMP
MI: FF WITH PTSD – NO RIGHT TO BRING HIS DOG TO WORK

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing

MI: FF WHISTLEBLOWER – TIMECARD FRAUD - PROCEED

Chap. 17 – Arbitration, incl. Mediation, Labor Relations

MA: FF – SUSP. 4 TOURS – UNION E-MAIL FIX SIDEWALK

Chap. 18 – Legislation

OTHER ONLINE RESOURCES

- **2025: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters: **https://doi.org/10.7945/j6c2-q930.**

  Updating 18 chapters of my textbook, FIRE SERVICE LAW (Second Edition; 2017): **http://www.waveland.com/browse.php?t=708**

- **2025: FIRE & EMS LAW – CURRENT EVENTS**: **https://doi.org/10.7945/0dwx-fc52**

- **2025: AMERICAN HISTORY – FOR**

- **FIRE & EMS**: **https://doi.org/10.7945/av8d-c920**

File: Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

OR: HOMELESS - REMOVE NATIONAL FOREST - FIRES

On May 1, 2025, in Theresa Bradshaw, et al. v. Holly Jewkes, Bend-Fort Rock Ranger District, Deschutes National Forest, et al., U.S. District Court Judge Michael J. McShane, United States

District Court for the District of Oregon, Eugene Division, rejected the request of an organization on behalf of 150 homeless to stop U.S. Forest Service from closing a portion of the National Forest called China Hat. There has been a significant increase in forest fires because of the homeless. https://ktvz.b-cdn.net/2025/05/TRO-ruling.pdf

The Court wrote:

> "Beginning May 1, 2025, the Project will involve the use of machinery and prescribed burns to restore damaged habitat and reduce fire hazards in this fire-prone area…. To ensure the safety of all involved, Defendants intend to close a portion of the forest to public access so the Forest Service can fell trees and implement prescribed burns…. The notice of closure occurred in January of 2025…. As noted by Defendants, there has been a significant increase in human-caused fires in the area that 'directly correlate[s] with the increase of the long-term homeless population that resides within the project area.' Between 2020 and 2024, there were 90 human-caused fires in the China Hat area. *** The Court is sympathetic to the circumstances faced by Plaintiffs and the dozens of others who have called China Hat home and will need to employ significant efforts to relocate. As Plaintiffs note, the majority of China Hat residents are not there by choice, but because of personal disabilities, wide-ranging policy choices, and costs of living that are outside of their control. Defendants' apparent compliance with NEPA does not diminish the community's need to provide better support to houseless and disabled people. Despite Plaintiffs' very real struggles, the balance of equities does not tip sharply in Plaintiffs' favor, nor is an injunction in the public interest. This Project will serve the public by preventing 'uncharacteristic large-scale loss of forest habitat' and increasing public and firefighter safety…. The public's significant interest in restoring natural habitats preventing catastrophic wildfires, and preserving the overall health of Deschutes National Forest is not outweighed by the interest of 150 or so individuals in residing on this particular plot of land."

Legal Lesson Learned: Public interest in prevention of forest fires outweighs the interest of homeless.

> Note: See this May 2, 2025 article, "US Forest Service starts clearing homeless camp in Oregon national forest, where some have lived for years." https://www.cnn.com/2025/05/02/us/oregon-deschutes-national-forest-eviction-hnk

File: Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

IN: WIFE HAD FF MURDERED – CONV. UPHELD / 90 YRS

On May 1, 2025, in Elizabeth Joanne Fox-Doerr v. State of Indiana, the Court of Appeals of Indiana held (3 to 0; unpublished opinion) that there was sufficient evidence for jury to find that she arranged for the murder of Evanston firefighter Robert Doer on February 26, 2019, and the

trial court properly sentenced her to 90 years in prison. Larry Ali Richmond, Sr. was indicted for shooting Robert Doer. https://www.aol.com/trial-delayed-man-accused-fatally-135028116.html . Elizabeth Fox-Doerr was tried first and convicted by a jury of aiding, inducing, or causing murder of her husband; they were only married for about six months (this was her third or fourth marriage). At some point prior to February of 2019, Larry Ali Richmond's son had observed Richmond and Fox-Doerr kissing. On Feb. 26, 2019, firefighter Robert Doer worked a partial shift, returned home at 7:04 pm and was shot three times. https://cases.justia.com/indiana/court-of-appeals/2025-24a-cr-01673.pdf?ts=1746121391

The Court wrote:

> "The evidence in this case was sufficient to meet the low bar of proving that a conspiracy existed between Fox-Doerr and Richmond by a preponderance of the evidence. Fox-Doerr knew that Richmond had previously killed a man and, on one occasion in her presence, had said that 'it only takes a couple of pops to get rid of somebody.' … Richmond and Fox-Doerr had been seen kissing in or around January of 2019. Additionally, Richmond and Fox-Doerr had exchanged fifteen telephone calls between December 26, 2018, and February 26, 2019, i.e., the day of Robert's murder. Most significantly Richmond had called Fox-Doerr at 6:46 p.m. on February 26, 2019, and they had spoken for a little over four minutes. Approximately fifteen minutes later, Robert was ambushed and murdered as he stood in his driveway. The overwhelming evidence indicated that Richmond had shot and killed Robert. *** The evidence supports the inference that Richmond and Fox-Doerr had conspired to kill Robert; that Fox-Doerr had aided, induced, or caused Richmond to commit the murder; and that the two had engaged in a collaborative relationship prior to and after Robert's murder. In challenging the sufficiency of the evidence, Fox-Doerr effectively requests this court to reweigh the evidence, which we will not do

Legal Lesson Learned: The Court will not "reweigh the evidence" of conspiracy presented at trial.

> Note: Watch her sentencing on June 17, 2024. "Convicted killer and wife of Evansville firefighter sentenced [TV VIDEO]. https://www.14news.com/2024/06/17/convicted-killer-evansville-firefighter-set-be-sentenced-this-afternoon/
>
> Aug. 18, 2022: "Wife and convicted murderer both charged in death of Evansville firefighter." https://www.14news.com/2022/08/18/wife-convicted-murderer-both-charged-death-evansville-firefighter/

File: Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

PA: FF EX-WIFE CONV. – GARAGE FIRE – HER FACEBOOK

On April 29, 2025 in Commonwealth of Pennsylvania v. Nia C. Stallworth, the Superior Court of Pennsylvania held (3 to 0; non-precedential decision) that trial court judge in bench trial properly allowed into evidence a Facebook posting by the ex-wife of a Philadelphia firefighter, Timothy Rawls. It was a screenshot of a Facebook post … with two photographs of Rawls' damaged garage and captioned "These mutha Fuckas know I'm fucking crazy!! Yeah I set your shit on [fire emoji] bitch." The trial court judge found her guilty of criminal mischief, graded as a felony of the third degree, based upon her causing a pecuniary loss in excess of $5,000; but not guilty of arson, and sentenced her to two years' probation.
https://cases.justia.com/pennsylvania/superior-court/2025-76-eda-2024.pdf?ts=1745952844

The Court held:

> "At trial, the complainant [Timothy Rawls] testified that after he and his wife smelled smoke in the house, he went downstairs to follow the smoke patterns…. Complainant is a fireman…. He found a fire in the garage, the garage door was blasted open, and the fire was crawling up the walls…. He testified the garage door itself was about $1,200 and the fire estimate he received from 911 Restoration for repair was $5,940.
>
> ***
>
> Appellant is Rawls' ex-wife and mother of his children…. Their relationship has been contentious since the divorce…. At some point before the fire, Rawls suspected that Appellant drove her vehicle into his garage, causing extensive damage…. The night before the fire, Appellant and Rawls' current wife were in a fight during a custody exchange.
>
> ***
>
> Within a week or two of the fire, Rawls' wife received a text message from her cousin…. It was a screenshot of a Facebook post by Consuela Stall Worth with two photographs of Rawls' damaged garage and captioned "These mutha Fuckas know I'm fucking crazy!! Yeah I set your shit on [fire emoji] bitch." Id., Exhibit C-1. Rawls believed that the Facebook post was authored by Appellant because (1) the profile picture was of Appellant; (2) Appellant's middle name is Consuela and she had utilized social media accounts with that name in the past; (3) the language used in the post matched the way Appellant speaks; and (4) the photographs were of his damaged garage…. However, Rawls was unable to confirm whether the post was on Facebook because he blocked her on social media, and vice versa ….While Rawls never interacted with Appellant on the 'Consuela Stall Worth' account, he testified, without further explanation, that he had seen Appellant use that account.
>
> ***
>
> [T]he Facebook post in the instant case provided ample circumstantial evidence and contextual clues that Appellant authored the post: (1) the user name utilized Appellant's middle and last names; (2) the profile picture was Appellant; (3) the language used was similar to how Rawls knew Appellant to speak; (4) Rawls and Appellant had a

contentious history; (5) Appellant and Rawls' current wife were in a fight the day before the fire; and (6) the photographs were of Rawls' damaged garage. Therefore, the trial court did not abuse its discretion in finding the Commonwealth sufficiently authenticated the Facebook post as being written by Appellant."

Legal Lesson Learned: The Facebook post by ex-wife was authenticated.

File: Chap. 2 – Line Of Duty Death / Safety

AK: FF / OTHERS - FORMIC ACID - $75M JURY EXCESSIVE

On April 30, 2025, in Old Dominion Freight Line, Inc., and Aaron Marvel Foster v. Frank McMillion, Allen Jones, Carlton Pettus, Hunter Bokker, Bengi Bokker and Zack Billingsley, the Court of Appeals of Arkansas, Division II held (3 to 0) that the jury's combined award of $75 million for six plaintiffs was excessive and must be retried given the limited injuries suffered. The six plaintiffs included two law enforcement officers, and a 4-person crew from a tow-truck company, including off-duty firefighter Carlton Pettus who was awarded $5 million. On April 20, 2018 a pick-up truck that ran head on into an Old Dominion semi carrying one barrel of formic acid weighing 565 pounds. The semi-truck was on fire and the Old Dominion driver, Aaron Marvel Foster, falsely told responders that there were no hazardous materials on board. There also was no HAZMAT placard displayed since the load was less than 1,000 pounds. The six plaintiffs all experienced at the scene difficulty breathing and had burning sensations in their noses, throats, and eyes, and various breathing difficulties thereafter.
https://cases.justia.com/arkansas/court-of-appeals/2025-cv-22-305.pdf?ts=1746026138

The Court held:

> "7. Carlton Pettus
>
> The jury awarded Carlton Pettus $5 million, and the circuit court entered judgment for that amount. Pettus testified that during the exposure, his eyes and nose were burning and he could not breathe. He felt like someone put a sack over his face during the exposure. Pettus went to the emergency room the night of the accident and to a pulmonologist approximately one year after. He said he experienced shortness of breath and wheezing and had nasal problems for a few months after the exposure. He currently works as a firefighter. The only specific incident he testified about that showed a continued effect on his life was that he had to sit down and catch his breath after doing 20–30 minutes of chores while carrying his one-year-old daughter. Dr. Manaker diagnosed him with worsening rhinosinusitis and worsening asthma. Like those above, Pettus's award of $5 million shocks the conscience. There was no evidence presented of future medical expenses, and the medical bills related to this exposure totaled $5,405. Although Dr. Manaker testified that the injuries are permanent, the only seeming effect is that he had to catch his breath after exerting himself during chores. His permanent injuries are also linked to his preexisting conditions. Pettus is still able to work as a firefighter. He does not have any loss of earning capacity or scars. Further, his only real

testimony about pain was that he had pain at the time of the exposure. Given these factors, Pettus's verdict shocks the conscience and demonstrates prejudice and passion on the part of the jury.

***

As discussed in the analysis above, the verdicts were excessive, and the damages were not supported by substantial evidence. They were so great as to shock the conscience and demonstrate passion or prejudice on the part of the jury. For these reasons, we conclude that the circuit court abused its discretion in denying the motion for new trial or remittitur."

Legal Lesson Learned: The jury with $75 million judgment "sent a message" to Old Dominion Company and their truck driver that they must disclose hazardous materials to responders.

File: Chap. 2 – Line Of Duty Death / Safety

NY: HEAD INJURY – ENGINE HIT BUMP – ROAD REPAIR CO.

On April 23, 2025, in Vincent Inglese, et al. v. City of New York and Vall Industries, Inc., the Supreme Court of New York, Second Department held (4 to 0) that trial court properly held that the injured FF may sue Vall Industries for personal injury suffered when his head hit the ceiling as the fire truck went over the raised section of road that Vall Industries was hired to repair. The "Fireman's Rule" was modified in New York. https://law.justia.com/cases/new-york/appellate-division-second-department/2025/2023-00001.html

The Court held:

"On September 15, 2019, Vincent Inglese (hereinafter the injured plaintiff), a New York City firefighter, was a passenger in a City-owned fire truck as the truck was driven across a section of roadway in Brooklyn that had previously been repaired by the defendant Vali Industries, Inc. (hereinafter the defendant). The defendant's repairs allegedly resulted in the grade of the repaired section of road being substantially higher than the unrepaired road. This difference in road height allegedly caused the fire truck to lift off the road and suddenly drop as it crossed over the repaired section of road, causing the injured plaintiff to strike the top of his head on the ceiling of the truck.

***

The firefighter's rule, which bars recovery in negligence for injuries sustained by a firefighter [or a police officer] in the line of duty, was abolished by General Obligations Law § 11-106, except as to actions against municipal employers and fellow police officers….

***

> Since the defendant does not claim to be either a municipal employer or co-employee of the injured plaintiff, the proposed amendment was palpably insufficient and patently devoid of merit (*see Spence v City of New York*, 202 AD3d at 1126; *Caldara v County of Westchester*, 197 AD3d at 608). The defendant's contention that pursuant to General Municipal Law § 205-e the plaintiffs were required to assert a statutory violation is without merit, as the plaintiffs did not assert a cause of action pursuant to General Municipal Law § 205-e but instead seek to recover damages based on common-law negligence principles."

Legal Lesson Learned: A road repair company can be sued by the firefighter for negligence.

File: Chap. 2 – Line Of Duty Death / Safety

OH: DRIVER STRUCK / KILLED FF –16-YRS-LIFE – RE-SENT.

On April 14, 2025, in State of Ohio v. Leander Bissell, the Ohio Supreme Court declined to hear the State's appeal [requires at least 4 of 7 Justices] after Court of Appeals set aside his felony murder conviction for lesser charge of involuntary manslaughter. Bissell will be resentenced; he is currently serving 16 years to life. Bissell on Nov. 19, 2022 at accident scene on I-90, in Cleveland drove through at a speed between 45 and 60 m.p.h., hitting and killing firefighter [Johnny] Tetrick. The impact knocked firefighter Tetrick across three lanes of traffic into the berm on the right side of the highway. Bissell did not stop and fled the scene. On Nov 7, 2024, the Eighth District Court of Appeals [2 to 1] vacated Bissell's felony-murder conviction, modified the verdict to a finding of guilt on the lesser included offense of involuntary manslaughter under R.C. 2903.04(A), and remanded the matter to the trial court for resentencing.
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2024/2024-Ohio-5317.pdf .
On April 14, 2025, only three Ohio Supreme Court Justices agreed to hear the State's appeal; Justice Jennifer Brunner wrote a dissenting opinion.
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2025/2025-Ohio-1296.pdf

Justice Brunner wrote:

> "This case is of great interest to the public given the frequency of traffic slowdowns, along with the gravity of risks to first responders, who by the very nature of their work, are placed in harm's way. Because the trial court's judgment was based on a firsthand view of the evidence and the three appellate-court judges' review of the trial court's judgment involved differing legal standards, not only would our review of this case provide the public and first responders with a cogent application of the law, a decision from this court would serve as a guide for other courts faced with analyzing cases often involving similar facts.
>
> It is common for drivers to become annoyed, stressed, anxious, or curious about an

accident that impedes their travel on a highway. The motoring public is all too familiar with this scenario. Hitting and killing a first responder with a motor vehicle when that first responder is working the scene of a traffic accident is a horror no driver would want to face, and the grief borne by the deceased's family and community is unspeakable. For the sake of first responders and the motoring public, we should accept jurisdiction over this case and make clear to the public the difference between reckless conduct and knowing conduct. The State's appeal is an opportunity to do that, and for this reason, I strongly believe we should accept jurisdiction over this case. Because a majority of this court disagrees, I respectfully dissent."

Legal Lesson Learned: Hopefully the defendant gets a substantial new sentence.

File: Chap. 3 – Homeland Security, incl. Active Shooter, Cybersecurity

TX: VENEZUELAN ALIENS - DEPORTATIONS INJUNCTION

On May 1, 2025, in J.A.V., et al. v. Donal J. Trump, et al., U. S. District Court Judge Fernando Rodriguez, Jr., United States District Court for Southern District of Texas, Brownsville Division, held that President does not have the lawful authority under the 1798 Alien Enemies Act ("AEA") to deport Venezuelan aliens without a hearing and order by an Immigration judge. https://d3i6fh83elv35t.cloudfront.net/static/2025/05/gov.uscourts.txsd_.2000771.58.0_1.pdf

The Court held:

> "While the [Trump] Proclamation references that TdA [Tren de Aragua] members have harmed lives in the United States and engage in crime, the Proclamation does not suggest that they have done so through an organized armed attack, or that Venezuela has threatened or attempted such an attack through TdA members. As a result, the Proclamation also falls short of describing a "'predatory incursion' as that concept was understood at the time of the AEA's enactment. *** For these reasons, the Court concludes that the President's invocation of the AEA through the Proclamation exceeds the scope of the statute and, as a result, is unlawful. Respondents do not possess the lawful authority under the AEA, and based on the Proclamation, to detain Venezuelan aliens, transfer them within the United States, or remove them from the country."

Legal Lesson Learned: The Trump Administration will likely appeal this decision to the 5th Circuit Court of Appeals in New Orleans and ultimately may seek review by the U.S. Supreme Court.

Note:

1. Judge Rodriguez confirmed that deportations can continue under the Immigration and Nationality Act, after a hearing and order by an Immigration judge. Judge Rodriguez wrote: "To the extent that J.A.V., J.G.G., and W.G.H., or any member of the certified class, have been detained or are detained in the future pursuant to the Immigration and Nationality Act, they have not sought and do not obtain any relief. In addition, the conclusions of the Court do not affect Respondents' ability to continue removal proceedings or enforcement of any final orders of removal issued against J.A.V., J.G.G., and W.G.H, or against any member of the certified class, under the Immigration and Nationality Act." Read this article: https://www.pbs.org/newshour/politics/what-is-the-legal-process-for-deporting-u-s-green-card-and-visa-holders

2. See April 10, 2025 Statement by U.S. Supreme Court Justice Sonia Sotomayor in another case challenging removal of alien: Kilmar Armando Abrego Garcia. "United States removed Kilmar Armando Abrego Garcia from the United States to El Salvador, where he is currently detained in the Center for Terrorism Confinement (CECOT). The United States acknowledges that Abrego Garcia was subject to a withholding order forbidding his removal to El Salvador, and that the removal to El Salvador was therefore illegal. *** In the proceedings on remand, the District Court should continue to ensure that the Government lives up to its obligations to follow the law." https://www.supremecourt.gov/opinions/24pdf/24a949_lkhn.pdf

3. Judge Rodriguez was appointed by President Trump during his first Term and assumed office on June 12, 2018.

File: Chap. 5 – Emergency Vehicle Operations

TX: AMBULANCE – TRAFFIC / LEFT SHOULDER - IMMUNITY

On April 24, 2025, in City of Houston v. Sokmen Chourng, the Court of Appeals of Texas, Fourteenth District held (3 to 0) that trial court improperly denied the City's motion to dismiss that case. The ambulance was transporting a stabbing victim, with red lights and siren, and because of heavy traffic moved to far left shoulder. A police officer following the ambulance to the hospital observed plaintiff's vehicle move from left lane into the shoulder area, colliding with the ambulance. https://cases.justia.com/texas/fourteenth-court-of-appeals/2025-14-24-00251-cv.pdf?ts=1745499568

The Court held:

> "The evidence is sufficient to show that [firefighter / ambulance diver Dennis] Sanders was responding to an emergency call or reacting to an emergency situation at the time of the collision…. Therefore, the City retains its immunity unless Chourng raised a fact issue that either (1) Sanders' actions violated laws or ordinances applicable to the emergency response exception or (2) Sanders' actions were reckless.

***

Jordan Patton, one of the responding officers from the HPD, followed the ambulance to Ben Taub Hospital…. Patton stated that after Ambulance M10 moved to the far left shoulder, Chourng's truck started to move left toward the shoulder, into the path of the ambulance, instead of moving right to yield the right-of-way to the ambulance. Patton saw the ambulance slow down and attempt to move as far left as possible in response to Chourng's movements into its lane in order to avoid a collision. However, Ambulance M10 did not have much room because of the concrete barrier bordering the left shoulder. Patton asserted that the ambulance was not able to stop before Chourng's truck moved partially into the left shoulder and into the path of the ambulance. Therefore, Ambulance M10 collided into the back of Chourng's truck. At the point of impact, the ambulance was traveling approximately 30-40 miles an hour. Ambulance M10 did not stop after the collision with Chourng's truck in order to get the stabbing victim to the hospital. Upon arriving at the hospital, the stabbing victim was taken into critical care and received medical treatment. Patton later learned that Chourng's truck rear-ended a car in front of him after the impact from the ambulance.

***

We reverse the trial court's order denying the City's plea to the jurisdiction and no-evidence summary judgment motion, and we render judgment granting the plea and motion and dismissing the lawsuit for want of jurisdiction."

Legal Lesson Learned: Passing traffic on the left shoulder requires great care.

File: Chap. 5 – Emergency Vehicle Operations

IL: AMBULANCE – NO STOP / STOP SIGN - IMMUNITY

On April 22, 2025, in GinaM. Postula v. Tyler D. Blackwell and City of LaSalle, the Court of Appeals of Illinois, Third District held (3 to 0) that trial court properly dismissed the lawsuit alleging negligent conduct by the ambulance EMT driver for not stopping at stop sign before entering intersection and striking side of plaintiff's vehicle, causing personal injury. The EMT had lights and siren activated, and slowed down before entering the intersection. Under state law, emergency responders and their public employers have immunity on an emergency run, except for "willful or wanton conduct." The case was dismissed without pre-trial discovery, and trial court denied the plaintiff's request to file an amended complaint alleging willful or wanton conduct, since prior case law has held that failure of emergency responder to stop at stop sign was not willful or wanton misconduct. https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/95e9af0e-d4e6-4f14-9f68-6c313ea57cfa/Postula%20v.%20Blackard,%202025%20IL%20App%20(3d)%20240464-U.pdf

The Court held:

"On April 27, 2023, shortly before 1 p.m., plaintiff was traveling in her vehicle westbound on Third Street in La Salle Township, La Salle County, Illinois. As she entered into the intersection of Third Street and Sterling Street, her vehicle was struck by an ambulance that was traveling southbound on Sterling Street. The ambulance was owned by the City fire department and was being driven by Tyler D. Blackard, a licensed emergency medical technician. Blackard was working for the City at the time of the accident and was acting within the course of his employment. The intersection where the accident occurred did not have a stop sign in plaintiff's direction of travel but did have a stop sign in Blackard's direction of travel. According to plaintiff, Blackard failed to stop at the stop sign and failed to yield the right of way. Plaintiff suffered injuries as a result of the crash.

***

Defendants filed a motion to dismiss the complaint pursuant to section 2-619(a)(9) of the Code, alleging that they were immune from liability under the Tort Immunity Act and the EMS Act for plaintiff's negligence claims. As supporting documents, defendants attached to the motion the affidavits of Blackard and of Dale Tieman. In addition to some of the information already provided above, Blackard stated in his affidavit that on the date in question, just prior to the accident, he and his partner had been dispatched to provide an emergency health evaluation. As Blackard approached the intersection of Third Street and Sterling Street, the ambulance's lights were activated and Blackard slowed down to check for oncoming traffic. After Blackard did so, he proceeded into the intersection and an impact occurred between the front passenger side of the ambulance and the rear passenger side of plaintiff's vehicle. A copy of the dispatch report was attached to Blackard's affidavit.

***

The general policy underlying the limited immunity provided in section 5-106 is that if ambulance or other emergency vehicle operators were haunted by the possibility of facing devastating personal liability for negligence for decisions that they made or actions that they took in responding to an emergency, the performance of those operators would be hampered."

Legal Lesson Learned: While not required by law in most states, some fire and EMS departments have adopted a "full stop" policy for stop signs and red lights to help avoid personal injuries as occurred in this case.

File: Chap. 5 – Emergency Vehicle Operations

NC: MOTORCYCLIST INTO ENGINE - TURNING – IMMUNITY

On April 16, 2025, in Robert Dustin Smith v. Teresa Lane, City of Raleigh Firefighter and City of Raleigh, the Court of Appeals of North Carolina held (3 to 0) that trial court judge improperly denied the defense motion to dismiss this lawsuit on basis of governmental immunity. The

immunity was not waived when the City purchased two excess insurance policies for combined total of $10 million. On October 22, 2022, firefighter Teresa Lane was returning to Fire Station 9, and plaintiff was in right lane. He claims that Lane moved from right lane to center lane, but went back to right lane pulling int the station without a signal; he crashed into the side of the engine, and sustained serious injuries, including amputation of one leg above the knee. https://cases.justia.com/north-carolina/court-of-appeals/2025-24-790.pdf?ts=1744808209

The Court held:

> "Driving a firetruck on return to the station is clearly a governmental function entitled to immunity. As Plaintiff has failed to "allege and prove" Defendants had waived their immunity as required in N.C. Gen. Stat. § 160A-485(a) the trial court erred in its denial of Defendants' motion to dismiss under N.C. Gen. Stat. § 1A-1, Rule 12(b)(2). We therefore reverse and remand for dismissal.
>
> ***
>
> A firetruck's departure from its station by necessity requires its return. Therefore, a firetruck on return to a Fire Station fulfills a governmental function because a city or municipalities' operation of a fire department is clearly a governmental function. We conclude governmental immunity applies sub judice.
>
> ***
> Plaintiff contends that Defendants waived their liability by purchasing two insurance plans whose exclusionary clause does not explicitly address governmental immunity. The purchase of excess insurance does not waive a governmental entity's immunity when the insurance policy contains language that preserves the entity's immunity and excludes coverage for claims to which immunity applies."

Legal Lesson Learned: Governmental immunity continues even if city has purchased excess insurance policies.

File: Chap. 6 – Employment Litigation, incl. Work Comp., Age, Vet Rights

WV: FF KNEE – 40 LBS SUPPLIES UP STAIRS – WORK COMP

On April 29, 2025, in City of Wheeling v. Cody Melsop, the West Virginia Intermediate Court of Appeals held (3 to 0) that the Workers Comp Board properly reversed the claim administrator; the injury was work related since he was carrying a tote with 40 pounds of supplies up 17 steps at the fire station when he felt pain in his right knee. While an MRI revealed significant cartilage

loss, the injury occurred on duty. https://cases.justia.com/west-virginia/intermediate-court-of-appeals/2025-24-ica-379.pdf?ts=1745964757

The Court held:

> "Mr. Melsop stated that on December 21, 2023, he was carrying a large tote with about forty pounds of supplies from the laundry room, which is downstairs, and he proceeded up the stairs. Mr. Melsop testified that about halfway up the stairs he felt an excruciating pain in his right nee and immediately following it felt like he had no stability and his knee was weak. Mr. Melsop stated that he couldn't put a lot of weight on it, and he felt that his knee was getting worse as he continued to go up the stairs. Mr. Melsop testified that he iced his knee and was able to finish his shift, and after his shift, he went to Urgent Care.
>
> ***
> [The City of] Wheeling also argues that Mr. Melsop did not testify that he was carrying a forty-pound tote at the time of the injury until four months after the injury, thus, his testimony is not credible. We disagree.
>
> ***
>
> Here, the Board determined that there is a direct causal connection between Mr. Melsop's work and his right knee injury, as he was performing his job duties at the time of the injury. The Board found that Mr. Melsop's injury is attributable to a definite, isolated fortuitous occurrence in the course of and resulting from his employment. The Board further found that Mr. Melsop was not merely walking when his injury occurred. The Board noted that, at the time of the injury, Mr. Melsop was carrying a forty-pound tote up a flight of approximately seventeen stairs. The Board found that Mr. Melsop carrying forty pounds up a long flight of stairs constituted an increased risk for Mr. Melsop, which was 'qualitatively peculiar to his employment,/ and that he faced an increased quantity of a risk.
>
> Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Melsop's injury is attributable to a definite, isolated fortuitous occurrence in the course of and resulting from his employment as he was performing his job duties at the time of the injury. Further, we find that the Board was not clearly wrong in determining that Mr. Melsop faced an increased risk of injury while carrying a forty-pound tote on a flight of stairs."

Legal Lesson Learned: The firefighter was injured performing fire station duties.

File: Chap. 8 – Race / National Origin Discrimination

TX: FF FIRED / IRAQI / 3 DOC. "PERFORMANCE NOTES"

On May 1, 2025, in Safealdean Alusi v. City of Frisco, Texas, the U.S. Court of Appeals held (3 to 0; unpublished decision) that the trial court properly granted the City's motion for summary judgment after pre-trial discovery was completed in claims of hostile work atmosphere and national origin discrimination. The FF was fired on May 6, 2020; he had completed his one year probationary period on December 2018, but by July 11, 2029 he had received three "performance note[s]" in response to various instances of alleged deficient performance, was shortly thereafter moved to a new station, and required to restart a training program "to improve his paramedic skills.'" https://cases.justia.com/federal/appellate-courts/ca5/24-40626/24-40626-2025-05-01.pdf?ts=1746120629

The Court held:

> "Appellant Safealdean Alusi, an ethnic Iraqi, sued the City of Frisco after being terminated from his position as a City firefighter. Based on alleged national origin discrimination, Alusi brought federal claims for a hostile work environment, unlawful termination, and retaliation. The district court granted the City's motion for summary judgment, ruling Alusi made no prima facie case as to any claim. Alusi appeals. We have reviewed the briefs, the record, and the applicable law and have heard oral argument. We find no reversible error."

Legal Lesson Learned: The FD documented performance deficiencies prior to termination.

> See the trial court's Aug. 24, 2023 decision allowing pre-trial discovery to proceed. https://cases.justia.com/federal/district-courts/texas/txedce/4:2022cv00397/214410/28/0.pdf?ts=1692978420%20https://www.google.com

File: Chap. 11 – Fair Labor Standards Act

NC: FLSA – SOME WEEKS UNDERPAID / OVERPAID - NO CASE

On March 31, 2025, in Sara A. Conner, on behalf of all others similarly situated v. Cleveland County, Noth Carolina, Chief U.S. District Court Judge Martin Reidinger, United States District Court for the Western District of North Carolina, Asheville Division, held that the EMS personnel were fully paid despite a "technical violation" of FLSA and therefore the case was dismissed. Sara Conner has been a fulltime paramedic with Cleveland County EMS [CCEMS] since 2017, annual salary of 2016 of $35,820, and she worked a 24/48 hour schedule. Per their pay plan (since changed in 2018), Conner was paid base "hourly rate" of $12.23 (her annual salary divided by total annual hours 2,928). Her overtime rate was $18.35 (1.5 times her base rate). https://www.carolinajournal.com/wp-content/uploads/2025/04/cleveland-ot-128-033125-courtorder.pdf

The Court held:

"In any given seven-day workweek, CCEMS employees on the 24/48 schedule work either 48 or 72 hours. This results in a three-week recurring cycle whereby an employee will work a 48-hour week the first week, a 72-hour week the second week, and a 48-hour week the third week.

***

Conner was paid twenty-four times per year, with paychecks issued on the 15th day of each month…. Therefore, some semi-monthly pay periods accounted for three weeks of work, while other pay periods accounted for two weeks of work…. Each pay period, Conner was paid (1) her base "revised semi-monthly rate," and (2) her overtime based on the number of overtime hours on her time sheets multiplied by her overtime rate.

***

This payment scheme created discrepancies in Conner's pay. Because CCEMS paid a set 'revised semi-monthly rate' each pay period for all of her non-overtime work, during the pay periods that accounted for three weeks of work CCEMS paid Conner substantially less per hour than the hourly rate devised in the Section 14 Pay Plan. During the pay periods that accounted for two weeks of work, however, CCEMS paid Conner incrementally more than the hourly rate devised in the Section 14 Pay Plan.

***

Even though over the course of a year the Plaintiffs were routinely shorted in their base pay during the four pay periods comprised of three work weeks, the Plaintiffs were overpaid during the other twenty pay periods, which made up the difference—usually in advance. As such, even though the Court concludes that there is a technical violation of the FLSA by the Defendant's Section 14 Pay Plan arrangement, the Plaintiffs have no resulting overtime gap time claim losses. As a result, the Plaintiffs shall recover nothing by way of this action. The Court concludes, however, that the undisputed evidence shows that the Plaintiffs have no loss arising from such technical FLSA violation, and therefore they shall recover nothing from the Defendant."

Legal Lesson Learned: There was no loss of wages so case dismissed.

File: Chap. 13 – EMS, incl. Comm. Param., Corona Virus

CA: AMR LOSES COUNTY CONTRACT – STATE CT CASE

On April 30, 2025, in American Medical Response of Inland Empire v. County of San Bernardino, the U.S. Court of Appeals for the 9th Circuit (San Francisco) held (3 to 0; not for publication decision) that the trial court properly dismissed the lawsuit claiming the County violated federal antitrust law by awarding all EMS services in a designated county area to

Consolidated Fire Agencies ("ConFire"), based in part on anticipated faster response times. AMR is also seeking relief in a state court case.
https://cdn.ca9.uscourts.gov/datastore/memoranda/2025/04/30/24-3195.pdf

The Court held:

> "Plaintiff-Appellant American Medical Response of Inland Empire ('AMR') is an emergency medical services provider that has served San Bernardino County since the late 1970s. In December 2022, San Bernardino County and Inland Counties Emergency Medical Agency ('ICEMA') (collectively, 'County Defendants'), publicized a Request for Proposal ('RFP') to select a single ambulance provider in a designated geographic area in the County. AMR and Consolidated Fire Agencies ('ConFire') submitted proposals, and the County Defendants awarded the contract to ConFire.
>
> ***
>
> Moreover, the County Defendants articulated how ConFire presented the 'greatest value' to the County, namely, by being eligible for supplemental state funding, by improving public safety through closer integration or coordination of services, and by promising faster response times than AMR.
>
> ***
>
> AMR brought suit in federal court alleging a claim under the Sherman Act, 15 U.S.C. § 1, which the district court dismissed for lack of subject matter jurisdiction because the 'County Defendants are immune from liability.' AMR timely appealed…. We affirm… The [U.S.] Supreme Court held in *Omni* that a local government was entitled to *Parker* immunity even when the nature of its regulation was allegedly substantively or procedurally defective. 499 U.S. at 371. And this court has similarly held that a local government does not "forfeit" *Parker* immunity merely because it imperfectly exercises its power under state law.
>
> ***
>
> Footnote 3: We note that the state court may be a more appropriate forum to litigate AMR's challenges to the County Defendants' execution and administration of the RFP…. Indeed, AMR has already filed a lawsuit in San Bernardino County Superior Court, which enjoined performance of the County Defendants' contract with ConFire. See Am. Medical Response of Inland Empire v. County of San Bernardino, et al., Case No. CVSB2416492."

Legal Lesson Learned: Loss of an EMS contract can be litigated in state court.

File: Chap. 13 – EMS, incl. Comm. Param., Corona Virus

NY: EMT FACING REV. LICENSE – CAN HAVE JURY TRIAL

On April 14, 2025, in Justin Ball v. The New York State Department of Health, N.Y. Supreme Court Justice Thomas Marcelle held that the EMT, facing loss of his license for improperly handling an patient with "scorn and ridicule" is entitled to a jury trial, rather than administrative hearing before the Department of Health.
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Is2I8rRwTfjCfRHKXDbkrv4kAFYcKBlD0x5crlzrU3i2?utm_medium=email&_hsenc=p2ANqtz-9dYMi7UwD9BhCu5RL9ZekFOFX5OSMsM0gz9mwPl9bxCHrdHXWsdcugDm6CF8BNmoN4GCpma6aiutqSBNbbJQYKB7ms_w&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court held:

> "Petitioner Justin Ball (Ball), an emergency medical technician (EMT), responded to a call for help; and trouble soon began. What happened, at least according to Respondent Department of Health's (DOH) telling, is a disturbing story.
>
> A 63-year-old man had fallen and couldn't get up. Ball believed that the patient was faking. As a result, he lacked any modicum of sympathy. Instead, Ball heaped scorn and ridicule upon the patient. Further, he provided little assistance for the patient's efforts to get down the stairs and into the ambulance. And what assistance he did provide was physically rough. The patient, who was unsteady and moved with great difficulty, injured himself getting to and entering the ambulance.
>
> Upon arriving at the hospital, it turned out the patient was not feigning sickness; he was quite ill. Ball quickly realized that his mistreatment of the patient might spell trouble for him. So, he decided to secretly record a conversation with the patient where he attempted to cajole the patient into casting Ball's actions in a favorable light. The gambit failed. Upon a complaint by the patient outlining the above allegations, DOH lodged charges against Ball.
>
> DOH set in motion the bureaucratic machinery to fine Ball and to revoke his license. DOH scheduled a hearing; but Ball did not like this forum. Instead of adjudication by DOH, Ball wants a jury to decide if he did these horrid things. Accordingly, he commenced this action asking the court to declare that DOH's administrative hearing would violate his right to a civil jury trial (US Const, 7th Amend).
>
> ***
>
> Turning first to the nature of the claim, DOH has levied seven counts against Ball. They all correspond to a common law tort: (1) physical abuse of a patient is a battery (*Waxter v State,* 33 A.D.3d 1180, 1182 [3d Dept 2006]); (2-3) psychological abuse of a patient amounts to intentional infliction of emotional distress (*see Howell v New York Post Co.*, 81 N.Y.2d 115, 120 [1993] [citing to Professor William Prosser's tracing the common law origins of this tort]); (4-6) neglect, negligence and incompetence doubtlessly sound in

basic common law negligence (*Knight v State*, 127 A.D.3d 1435, 1435 [3d Dept 2015]); and (7) breach of patient confidentiality, which is a statutory duty owed to the patient, at minimum, constitutes negligence per se (*Howell v City of New York*, 39 N.Y.3d 1006, 1026, n 11 [2022] [Wilson, J, dissenting]). Thus, the wrongdoing of which Ball is accused resembles common law torts. Consequently, the first factor suggests that Ball is entitled to a jury trial.

***

However, even if revoking Ball's license is an equitable remedy, DOH still cannot evade a jury trial. As noted, fining Ball is a legal remedy entitling him to a jury trial (*Jarkesy*, 603 U.S. at 125). Thus, his right to a jury trial cannot be impaired by adding a demand for equitable relief grounded in the same fact pattern as the legal action. Where a 'legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim *as incidental to* the equitable relief sought' (*Curtis,* 415 U.S. at 196, n 11). Therefore, even if the taking of Ball's license is an equitable remedy, it may not be used to defeat his constitutional guarantee to a jury trial (*Tull v United States*, 481 U.S. 412, 425 [1987])."

Legal Lesson Learned: A novel decision; State of NY is likely to appeal.

File: Chap. 14 – Physical Fitness, incl. Heart Health

NY: VOL. FF - "PARTIALLY DISABLED" – DIDN'T TELL FD

On April 30, 2025, In the Matter of Robert Correra v. Millwood Fire District, et al., the Supreme Court of New York, Second Department, held (4 to 0) that the trial court properly adopted the report and recommendation of the Hearing Officer, which found the volunteer firefighter (volunteer since 2003; terminated Jan. 17, 2022) guilty of two charges: (1) provided false information regarding his failure to disclose his designation by the Workers' Compensation Board as 'permanently, partially disabled' on a form in connection with the 2020 physical examination; and (2) misconduct and insubordination, for improperly obtaining a physical examination while his operational privileges were suspended and for failing to provide a medical provider with the current job performance requirements for a firefighter.
https://cdn.ca9.uscourts.gov/datastore/memoranda/2025/04/30/24-3195.pdf

The Court held:

"The record demonstrates, among other things, that the petitioner knowingly provided false answers on his medical questionnaire regarding his failure to disclose his designation as permanently, partially disabled by the Workers' Compensation Board and

> improperly obtained a medical examination when his operational privileges were suspended and failed to provide the medical provider with the current job performance requirements for a firefighter.
>
> In light of the fact that the petitioner, inter alia, knowingly made false statements on a medical questionnaire regarding his physical condition, which, under the circumstances, demonstrated a disregard for the safety of other firefighters and the general public, the penalty of termination was not so disproportionate to the offense as to be shocking to one's sense of fairness."

Legal Lesson Learned: A firefighter's failure to disclose that he is "permanently, partially disabled' is threat to fellow firefighters and the public.

File: Chap. 15 – Mental Health, incl. CISM, Peer Support

AR: FF PTSD – RESPONDED 2 SHOOTINGS - NO WORK COMP

On April 29, 2025, in Shawn Lawless v. The Industrial Commission of Arizona, and the Northern AZ Consolidated Fire District, the Court of Appeals of Arizona, First Division, held (3 to 0) that a firefighter was properly denied workers comp since responding to shooting is not "unexpected, unusual, or extraordinary." Shawn Lewis has had PTSD since 2017 when working for another Lake Havasu City FD when he responded to a fatal watercraft. In April 2020, while working for Northern AZ Consolidated Fire District [NAFD] he responded to two shootings. April 1, 2020: he and firefighter / EMT Dillon Haskell were dispatched to Mohave Community College, where police had shot 'one of the subjects' involved in the shooting of the DPS officer earlier that day. On April 7, 2020, he and Haskell were dispatched to a scene of a random shooting that happened at a stop sign. When they arrived, they saw that the driver of a car was dead from "multiple" gun shots "in the chest." In both incidents, the hearing officer concluded they were not "unexpected, unusual or extraordinary." A.R.S. § 23-1043.01(B). https://cases.justia.com/arizona/court-of-appeals-division-one-published/2025-1-ca-ic-24-0009.pdf?ts=1745946035

The Court held:

> "Battalion Chief Kenneth Cameron testified that he was at the scene of the shooting of the DPS officer on April 1. He testified that law enforcement officers from '[m]ultiple agencies,' including DPS, were there. When asked if the scene appeared safe, he replied, 'I didn't see any threat when I arrived.' Cameron testified he was dispatched, later that same day, to the community college, where 'one of the suspects that was supposedly in the vehicle that had shot the DPS officer . . . had been shot.' When he arrived, he saw 'at least four or five different' patrol cars on the scene. He heard no gunfire and did not fear for his own safety.
>
> ***

> Chief Hoke [NAFD Chief Dennis Hoke] who has 40 years' experience as a firefighter/paramedic, testified that firefighters and paramedics are routinely called to shooting scenes where law enforcement officers are present. Hoke further testified that he reviewed Lawless's testimony and heard the testimony of Haskell and Cameron, and that, in his opinion, the calls for service on April 1 and April 7 were 'completely mundane.'
>
> ***
>
> After the hearing, the ICA Administrative Law judge (the 'ALJ') issued a [14-page] ruling summarizing the evidence in detail and making extensive findings…. he ALJ further determined that Lawless's position with NAFD was 'inherently quite stressful' because it 'require[ed] regular encounters with traumatic scenes' involving gunshot wounds inflicted by suspects who were still at large. The stress related to the events of April 1 and April 7, the ALJ found, 'was not unexpected, unusual, or extraordinary" for one with Lawless's job duties, and so the ALJ denied Lawless's claim.
>
> ***
>
> Lawless has not shown that the ALJ abused his discretion in determining that Lawless failed to establish that he suffered mental injury caused by unexpected, unusual, or extraordinary stress. Accordingly, we affirm the award denying compensability."

Legal Lesson Learned: It is very difficult to prove that responding to a shooting was "unexpected, unusual, or extraordinary."

File: Chap. 15 – Mental Health, incl. CISM, Peer Support

MI: FF WITH PTSD – NO RIGHT TO BRING HIS DOG TO WORK

On April 29, 2025, in Aaron Fisher v. City of Lansing, U.S. District Court Judge Paul L. Maloney, United States District Court for Western District of Michigan, Southern Division, granted the City's motion for summary judgment, since the City established that Plaintiff could perform his duties at the fire station without a service animal. The firefighter / engineer joined the FD in 2004; he started suffering from PTSD around 2010. In March 2020 he asked his Battalion Chief if he could bring his personal dog, "Chet" to work. This was unofficially authorized, and he did this for four months. On July 30, 2020, the City issued a notice to all fire department employees stating that employees were not allowed to bring pets of any kind to work. In mid-August 2020, Plaintiff submitted his request for "service animal" using the City's approved form, and submitted a letter from Dr. Ronald Fandrick, a licensed clinical psychologist, who concluded that Plaintiff needed an "emotional support animal" during work hours at the fire station…. Around August 26, 2020, Kathy Woodman, the City's Health and Wellness Director, met with Plaintiff for over an hour to discuss his request; near the end of September, Defendant denied Plaintiff's request for accommodation. https://hr.cch.com/ELD/FisherLansing042925.pdf

The Court held:

"Plaintiff's medical evidence does not create a genuine issue of material fact. Dr. Fandrick recommended an emotional support animal for its calming effect. His conclusions do not support a claim under the ADA. The regulations for Titles II and III of the ADA authorize the use of service animals but do not authorize the use of emotional support animals. *See C.G. v. Saucon Valley Sch. Dist.*, 571 F.Supp.3d 430, 441 (E.D. Pa. 2021) (noting that animals that merely provide emotional support, comfort or companionship do not qualify as service animals under the ADA) (citation omitted); *see, e.g., Riley v. Bd. of Comm'rs of Tippecanoe Cnty.*, No. 4:14cv63, 2017 WL 4181143, at *5 (N.D. Ind. Sept. 21, 2017) (requiring the plaintiff, for his ADA claim, to show that his dog qualified as a service animal 'as opposed to, e.g., untrained or emotional support animals'). The definition of service animal in the regulations implementing Title II supports the distinction.

***

To prevail on a failure to accommodate claim, Plaintiff Fisher needs to establish that his requested accommodation was reasonable and necessary. The proposed accommodation must address a key obstacle that prevented Plaintiff from perform an essential function of his position. Defendant City of Lansing has established that Plaintiff could perform his duties at the fire station without a service animal. Plaintiff's evidence does not create a genuine issue of material fact that he needed a service animal in order to do his job at the fire station. The clinical psychologist recommended that Plaintiff have access to an emotional support animal, not a service animal. And, the psychologist did not conclude that Plaintiff could not perform the essential duties of his job at the fire station without the assistance of an animal. While the record demonstrates that Plaintiff benefitted from the presence of his dog, that evidence does not support an ADA claim for a failure to accommodate."

Legal Lesson Learned: The ADA applies to employees who need a "service animal" to perform work duties, not "emotional support animals."

Note: See article on this case. https://www.vitallaw.com/news/discrimination-disability-w-d-mich-firefighter-with-ptsd-fails-to-show-firehouse-dog-was-reasonable-accommodation/eld0112d25548de2942ffb5b58765cda11301

File: Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing

MI: FF WHISTLEBLOWER – TIMECARD FRAUD - PROCEED

On April 24, 2025, in Craig Williamson v. City of Riverview, the Court of Appeals of Michigan held (3 to 0) that trial court improperly dismissed his current lawsuit for being filed untimely. Craig Williamson worked as a firefighter and officer for the City for "several decades" and

claims he suffered retaliation for reporting in 2015 "what he believed to be timecard fraud among some of his colleagues." On May 30, 2018, plaintiff filed his first complaint in the Wayne Circuit Court, alleging the retaliatory actions taken against him in violation of the Whistleblowers' Protection Act (WPA). In October 2018, the fire department charged plaintiff with violations of staffing policies; after a hearing, the fire department suspended plaintiff for 90 days and demoted him to lieutenant. On November 26, 2018, plaintiff filed a supplemental complaint, alleging additional violations of the WPA related to the staffing issue. Plaintiff alleged that defendant forced him to work alone or with only one other firefighter, had discriminated against him by suspending him on December 23, 2019, because he was asking co-workers to support him in this lawsuit, and had treated him "like a pariah in the workplace" since 2015 and continuing until his recent suspension. Plaintiff alleged that his "work environment has become hostile, intolerable and unsafe for Plaintiff as a result of Defendant's retaliation."
https://cases.justia.com/michigan/court-of-appeals-unpublished/2025-368047.pdf?ts=1745586008

The Court held:

> "In the present case, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition as to the latter two complaints pursuant to MCR 2.116(C)(7) (statute of limitations). We reverse and remand for further proceedings consistent with this opinion.
>
> ***
> Under MCL 15.363(1), a person alleging a violation the WPA 'may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.'
>
> ***
> First, plaintiff's original complaint, filed on November 19, 2019, alleged employment actions that occurred within 90 days before the complaint was filed. Plaintiff alleged that on October 30, 2019, he was written up by the chief for failing to clock out under a new timekeeping system. He alleged three additional write-ups, for petty offenses, after October 30, 2019.
>
> ***
> Second, on March 13, 2020, plaintiff filed a motion to amend his complaint to include allegations that he was placed on suspension on December 23, 2019, and had lost wages as a result. The motion and proposed amended complaint were filed 81 days after the alleged suspension began, within the 90-day period of limitations.
>
> ***
> The third reason plaintiff acted in a timely fashion is that plaintiff's claim regarding the cessation of his pay in late July 2021 was timely."

Legal Lesson Learned: Courts are reluctant to dismiss whistleblower cases until pre-trial discovery is completed.

Note: The Michigan Whistleblower Protect Act prohibits an employer from discharging, threatening, or otherwise discriminating against an employee "regarding the employee's compensation, terms, conditions, location, or privileges of employment" because the employee reported, or was about to report, a violation or suspected violation of law to a public body, "verbally or in writing." MCL 15.362

File: Chap. 17 – Arbitration, incl. Mediation, Labor Relations

MA: FF – SUSP. 4 TOURS – UNION E-MAIL FIX SIDEWALK

On April 18, 2025, in James P. Riley and Boston Fire Firefighters International Association of Firefighters, Local 718 v. City of Boston, et al., U.S. District Court Judge Allison D. Burroughs, United States District Court for the District of Massachusetts, denied the City's motion to dismiss. Firefighter Riley, a 16-year member of the FD, sent an e-mail on September 26, 2023 on his Union e-mail as an Executive Board Member of the Union (with permission of Union President) to city's Chief of Streets Department to repair a sidewalk handicap ramp in front of his Fire Station. His Captain had previously sent five e-mail requests to the FD's Facilities Division (April 21, 2021; February 11, 2022; March 20, 2022; June 16, 2022; April 20, 2023). On Oct. 11, 2023, the FD's Deputy Chief of Personnel suspended Riley for four shifts, claiming he "used his Local 718 Union title in an attempt to intimidate the City of Boston official into action." https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IpPvzvvllZ7Rrt4VKwyGVntYyQb9IRuNiNqVshy4%2Bl2z%2BsY6VEZuB3eEVHjKlzOdk%2FP8W50g7Bl84BsJ%2BT14tOs%3D?utm_medium=email&_hsenc=p2ANqtz-8_cjXUjI5LfLOi5ALG6MFLDFJJrn3rZsNciOMXnsNsHK54iflcoWeqPuq6ELEpSWLnjpVW4QqFeFKVqziKDzXrD-fT4Q&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court held:

> "On or about September 26, 2023, Riley sent an email (the 'September 26 email') from his union email address to the City of Boston Chief of the Streets Department, Jascha Franklin-Hodge, stating:
>
> > I am writing you to ask for assistance with an ongoing issue in front of the firehouse at 746 Cent[re St.] JP. The sidewalk and handicapped ramps have been marked up for replacement by the city since the summer of 2022. To date there have been some hot top placed to help ease the issue but not permanent resolution. Most if not all of the ramps going down Cent[re St.] were repaired and replaced last summer by the city.
> >
> > As a firefighter who proudly works in the neighborhood and spends time outside the firehouse interacting with the constituents[,] we are constantly asked when

this issue is going to be resolved. We have no answer and can only direct them to make a 311 complaint.

I strongly believe [this] is a safety issue for the citizens and guests who walk by here on a regular basis. Is the city going to wait until someone is injured before resolving this public safety issue?

Please see attached photos taken recently for reference.

[T]hanks[,] Jim.'

***

Numerous civilians complained to Riley and the firefighters assigned to the 746 Centre Street firehouse and called the City of Boston's '311 hotline' to request assistance…. As relevant here, their complaints included that a nearby resident had fallen outside the firehouse and sustained an injury when she tripped on the sidewalk cracks; baby strollers had become stuck in the sidewalk cracks, with one almost toppling over with a baby inside; young children were falling and scraping their knees due to the broken concrete apron; and multiple residents in wheelchairs had become stuck while attempting to use the deteriorating handicapped ramp….. Riley and the other firefighters sent these complaints up the chain of command with no resolution.

***

Riley's Complaint does not allege that any actual disruption or harm resulted from the one-time email, nor do the Defendants articulate how Riley's email could have been expected to reasonably cause or in fact did cause any actual disruption to BFD's operations or its chain of command…. For instance, the Complaint does not allege that Riley interrupted his own work or anyone else's work to send the email, nor is the Court even sure at this stage where Riley was when he sent the email. As such, at this juncture, Defendants' interests are weak. To conclude otherwise would require the Court to find that a respectful email about a long-standing public safety issue somehow jeopardized the orderly functioning of the fire department.

***

Here, as discussed *supra,* Riley has adequately pled a violation of his First Amendment right to engage in protected speech and to be free from workplace retaliation. *See* Section III.A.1., *supra*. Riley's 'theory of liability is not so novel that the Court can determine, based on the pleadings alone, that his rights were not 'clearly established' or that a reasonable person would not have been aware of said rights.' *Stone v. Worcester Cnty. Sheriff's Office*, No. 18-cv-10011, 2019 WL 1367768, at *5 (D. Mass. Mar. 26, 2019). Accordingly, the Court denies Commissioner Burke's motion to dismiss to the extent it seeks qualified immunity on the First Amendment claim. Commissioner Burke may raise this defense again when the factual record has been more sufficiently developed."

Legal Lesson Learned: Firefighters have 1st Amendment right to engage in protected speech not disruptive to the fire department.

Note: Read the lawsuit Complaint. https://www.universalhub.com/files/jpfirefighter-complaint.pdf