# OCTOBER 2025 – FIRE & EMS LAW NEWSLETTER

**[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]**


Prof. Bennett with his pet therapy dog - FRYE

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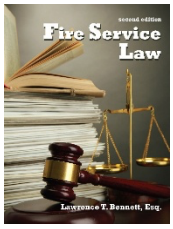
## 29 RECENT CASES

**UPDATING MY TEXTBOOK: "FIRE SERVICE LAW"**
http://www.waveland.com/browse.php?t=708




**Chap. 1 – American Legal System, incl. Fire Codes, Arson Investigations 194 case reviews in the free online library:** https://doi.org/10.7945/j6c2-q930

- **Article - "EYES IN THE SKY: Do Cities Need Warrants for Drones?"**
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**Chap. 3 – Homeland Security, incl. Active Shooter, Cybersecurity, Immigration 81 cases**

- RI: FEMA – DISASTER GRANTS – SANCTUARY STATES INJUN
- PA: "GEOFENCE" WARRANT – CELL PHONES AT SHOOTING
- NJ: NO FIREAMS "SENSITIVE PLACES" – LAW UPHELD

Chap. 4 – Incident Command, incl. Training, Drones, Communications **51 cases**
- MT: INCIDENT COMM – WILDFIRE – HOMES AT RISK

Chap. 5 – Emergency Vehicle Operations **53 cases**

Chap. 6 – Employment Litigation, incl. Work Comp., Age Discrim., Vet Rights **168 cases**
- NC: FF AGE 54 FIRED – COMMENTS AGE - CASE PROCEED
- MD: WORK COMP – JURY FF 63% WORK COMP – NOT 3%
- NY: WIDOW – CARDIAC / HEART BILL – EVEN IF COCAINE

Chap. 7 – Sexual Harassment, incl. Pregnancy Discrim., Gay Rights **82 cases**
- NY: FD 20 YRS – NO FEMALE FF – CONSENT DECREE / CPAT
- NY: FEMALE COMPLAINT - B/C TRANSFER - NO RETALIATION

Chap. 8 – Race / National Origin Discrimination **83 cases**
- KS: PROMOTION 4 D/C – PANEL RATED BLACK LOWEST

Chap. 9 – Americans With Disabilities Act **51 cases**
- NH: PSTD – FF REQ. MEETING WITH CHIEF – CASE PROCEED

Chap. 10 – Family Medical Leave Act, incl. Military Leave **18 cases**

Chap. 11 – Fair Labor Standards Act **58 cases**

Chap. 12 – Drug-Free Workplace, inc. Recovery **34 cases**
- CT: MEDICAL MJ – FF VIOL. LAST CHANCE AGREEMENT

Chap. 13 – EMS, incl. Community Paramedicine, COVID-19 **228 cases**
- AR: OVERDOSE – CALL MEDICAL HELP – CAN'T PROSECUTE
- PA: PD PAT-DOWN – PRIOR EMS TRANS - STRAW / DRUGS
- WA: COVID19 – NO RELIGIOUS ACCOMMODATION REQUIRED
- AL: EMS IMMUNITY – GOOD SAMAR. LAW – STOPPED CPR

Chap. 14 – Physical Fitness, incl. Heart Health **8 cases**

Chap. 15 – Mental Health, incl. CISM, Peer Support, Pet Therapy **42 cases**

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing **136 cases**
- NC: FF AFFAIR – WOMAN TOLD FD "STALKING" – FF FIRED
- FL: FORMER CHIEF – SEX HIS MINOR CHILD – LIFE PRISON
- LA: CAPT TRANF - NOT "DISCIPLINE" – FF BILL OF RIGHTS
- VA: FACEBOOK POSTS / TRANSGENDERS – CAPT FIRED

Chap. 17 – Arbitration, incl. Mediation, Labor Relations **56 cases**
- GA: FD WENT PART-TIME - NO BENEFITS – EVEN WK 40 HRS

Chap. 18 – Legislation, incl. Public Records **31 cases**

- **OH: ETHICS COMMISSION – KEEP FREQUENT FLYER MILES**

## FREE ONLINE RESOURCES

- **2025: FIRE & EMS LAW** - monthly review of recent court decisions, including drones and other cases on Homeland Security [send e-mail if wish to be added to our free listserv]: https://ceas.uc.edu/academics/departments/aerospace-engineering-mechanics/fire-science/fire-service-law.html
- **2025: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters: https://doi.org/10.7945/j6c2-q930
- **2025: FIRE & EMS LAW – CURRENT EVENTS**: https://doi.org/10.7945/0dwx-fc52
- **2025: AMERICAN HISTORY – FOR FIRE AND EMS**: https://doi.org/10.7945/av8d-c920

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**UC – New "Online Certificate in Fire Administration" -** https://online.uc.edu/certificates/fire-administration/

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

### ARTICLE: "EYES IN THE SKY: Do Cities Need Warrants for Drones?"

September 24, 2024, Homeland Security Today, by Lawrence T. Bennett https://www.hstoday.us/subject-matter-areas/unmanned-vehicles/eyes-in-the-sky-do-cities-need-warrants-for-drones/ [Personal thank you to Megan Norris for her very thorough and helpful editing of my first article for Homeland Security Today: https://www.norriseditorial.com.]

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

### MI: INTER. FIRE CODE - FIRE CHIEF NO LONGER "AT WILL"

On September 19, 2025, in Ronald Lammers v. City of Riverview, U.S. Federal District Court Judge Shalina D. Kumar, United States District Court, Eastern District of Michigan (Southern Division) denied the City's motion to dismiss the former Fire Chief's lawsuit, based on a provision in International Fire Code which city had adopted in 2022.

**THE COURT HELD**: "And since Lammers became the City's fire chief in 2018 and held that position when it adopted the IFC in 2022, it can be reasonably inferred that he was familiar with the IFC and its just-cause provision because his position required him to 'adhere to the provisions of the 2015 International Fire Code (IFC) as identified in the city ordinances.' … The fact that this section of the IFC includes the mandatory provision 'shall not' indicates that the City promised not to terminate Lammers absent just cause. As such, Lammers contends that it was reasonable for him to have a legitimate expectation of just-cause employment with the City, and to have an opportunity to be heard by the city council prior to his termination."

https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ips4C6WkUGp0KzACPcngYbWmPTLfIWMstLJyRryzc8Dq?utm_medium=email&_hsenc=p2ANqtz-94X9-jvo7aphxCTddVbMuFo0h95bmcaFpGEwlnAd6pPwVsx4xOyg-iR7W5WKYYvAnlQWrH3LVFVTBhWCeJd3O3dSBjuA&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

**KEY FACTS:**

> "Lammers began working for the City in 2007….In 2018, he was appointed the City's fire chief by the mayor and city council…. Dobek was appointed the city manager in 2022…. In January 2024, the fire department's supervisor group organized a union of which the deputy fire chief was a member…. Two months later, Dobek informed Lammers that he intended to eliminate the deputy fire chief position due to budgetary constraints…. Lammers disagreed with this decision and told Dobek, human resources, and city council members that this decision was not cost-effective and contrary to public safety…. Thereafter, Dobek advised Lammers in writing to bring any concerns directly to him and to cease voicing his disagreement regarding the decision to terminate the deputy fire chief position to others…. Dobek verbally eliminated Lammers' employment with the City in July 2024, without providing him notice or a hearing beforehand.
>
> ***
> Here, Lammers does not allege that he had a written employment contract with the City. Rather, he claims that the City's adoption of the IFC [International Fire Code, adopted by city in 2022] created a legitimate expectation of just-cause employment…. Lammers claims that Section 103.2 of the IFC designated him as a just-cause employee. That Section reads:
>
> > The *fire code official* shall be appointed by the chief appointing authority of the jurisdiction; and the *fire code official* shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority."

**Legal lesson learned: City's adoption of International Fire Code "created a legitimate expectation of just-cause employment."**

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

## GA: DRONE / CODE OFFICER - WARRANT AFTER HIS VISIT

On September 18, 2025, in Dunn Terrious Bradford v. State of Georgia, the Court of Appeals of Georgia, Third Division held (3 to 0) held that trial court properly denied the property owner's motion to suppress evidence obtained in a civil forfeiture proceeding for operating a dog fighting operation (forfeiture of both his real estate property, and two rifles, a shotgun, a handgun, ammunition, and cash).

**THE COURT HELD**: "As a threshold matter, we assume without deciding that the drone flight that observed Bradford's property was an unauthorized search without a warrant. So the question before us is whether the warrant that authorized the search of Bradford's home was based on an independent source of probable cause, such that the warrant was not derived from the drone flight. *** Thus, the warrant affidavit did not mention the drone flight or any information gleaned from the drone flight. The warrant affidavit merely described the scene encountered by the investigator and code enforcement officer during their in-person visit to Bradford's residence a week later. That information, which was not discernable from the drone flight, presented evidence of animal cruelty and illegal dogfighting, which provided probable cause to issue a warrant to investigate those activities." https://cases.justia.com/georgia/court-of-appeals/2025-a25a0954.pdf?ts=1758208974

**KEY FACTS:**

> "[T]he record shows that on February 15, 2024, a Mitchell County Sheriff's Department investigator received a call from the sheriff, who had received a call from a 'concerned citizen.' The caller reported a noise complaint due to a large group of dogs constantly barking at a property on Pinewood Lane. Approximately seven residences are located along the road, and based on the call, the investigator 'went and met with a guy that lives right down the road and got permission to get on his property. [The investigator] flew [a] drone over the tree line of the property and observed a large amount of dogs in a wooded area in the back of the residence" at 600 Pinewood Lane, where Bradford lives. Using the drone's camera, the investigator saw 'approximately 40 to 50' dogs on the property. He was not able to discern their condition, and he pursued no further investigation or criminal action at that time.
>
> A week later, on February 22, 2024, the sheriff received a second call from a neighbor on the same street stating that 'one of the dogs had gotten loose and come up to their property and he looked malnourished.' Based on this, the investigator contacted the county code enforcement officer to conduct a welfare check regarding the loose dog. The investigator testified that, 'when we rode down [Pinewood Lane], we didn't observe any dogs at any of the other residences until we got to the end and observed' two dogs in the front yard of Bradford's property. The two dogs were visible from the road, and one dog was confined in a small cage similar to a rabbit cage, and the other dog was attached to a heavy logging chain. The caged dog was 'almost bigger than the cage it was in,' such that its confinement appeared inhumane. Also audible from the road was the sound of a large number of dogs barking from the back of Bradford's property.
>
> ***
> In light of the grim scene, the investigator determined that he would seek a warrant to search for evidence of crimes pertaining to animal cruelty. After obtaining the search warrant, police discovered contraband leading to Bradford's indictment for drug crimes, dog fighting, cruelty to animals, firearm violations, and commercial gambling, as well as the forfeiture of property involved in this appeal."

**Legal lesson learned: When using a drone for code enforcement, avoid flying over target property until search warrant is obtained.**

> Note: See also see this April 17, 2025 Illinois decision where Sheriff wisely obtained search warrant to use a drone to film run down hotel to support condemnation. "On July 24, 2023, with judicial approval, the Winnebago County Sheriff's Office used a drone to make a video of the Hotel. At trial, as the video was played, Henthorn pointed out to the circuit court the vandalized entryway, water damage and mildew on the walls and ceiling, the nonfunctioning plumbing, the lack of electrical service, and the unsecured and vacant condition of the Hotel." The City of South Beloit, Illinois v. The New Chapter Group, et al., Appellate Court of Illinois. April 17, 2025. https://legal.iml.org/file.cfm?key=29946

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

## OH: LIQUOR LICENSE NOT RENEWED – FD / PD TESTIMONY

On September 12, 2025 in City of Sharonville v. Ohio Liquor Control Commission, et al., the Court of Appeals of Ohio, Tenth District held (2 to 1) that trial court judge, after testimony from Acting Fire Chief and Police Chief, properly reversed the Commission and liquor license of the "Cove 51" bar was not renewed.

**THE COURT HELD:** "The Sharonville Fire Department's Acting Chief [John Mackey] testified that the operation of Cove 51 had substantially affected the delivery of emergency services to the business. The parking lot was frequently overcrowded and difficult to navigate, and patrons have confronted EMS teams with weapons while they were treating patients. As a result, EMS personnel have been required to wear ballistic vests when responding to the area, and have been instructed to transport patients away from the area for any treatment….Further, the operations commander of the Sharonville Police Department testified about numerous incidents requiring police intervention traceable to Cove 51, including 118 documented calls and 43 calls over the course of a single year, including assaults, shots fired incidents, thefts, trouble runs, criminal damaging, and disruption of other area businesses. *** Chief Mackey's testimony as stated above also shows that Cove's patrons' conduct has also had a significant impact on the City's fire department not only for runs to Cove, but to all calls on Chester Road. *** The [trial] court's review of the facts is very thorough and completely reasonable, and its partial reversal of the OLCC's decision is appropriate on these facts. And given our own limited standard of review, we cannot conclude that review of the facts and partial reversal constitutes an abuse of the common pleas court's discretion." **https://cases.justia.com/ohio/tenth-district-court-of-appeals/2025-24ap-255.pdf?ts=1757620491**

**KEY FACTS:**

> "On May 25, 2021, Sharonville's City Council adopted an emergency resolution stating its position that 'the liquor permit issued to Elizabeth Iloegbunam for Klass Entertainment, dba Cove 51, should not be renewed,' and requested a hearing 'before

the Ohio Department of Liquor Control [sic] to prove the authenticity of these findings and to document the fact that the liquor permit should be cancelled.'

***

The denial was supported by extensive evidence, both regarding the nature of the neighborhood where Cove 51 is located and of the incidents with public safety and law enforcement that prompted Sharonville's objection to renewal of Iloegbunam's permit. Representatives of three nearby hotels described regular disruptions by Cove 51's patrons on their properties, which included excessive late-night noise, unauthorized use of private parking lots, fights, discarded and broken alcohol containers, abandoned litter, and used condoms. One of the managers testified that a Cove 51 patron had run through their hotel lobby brandishing a gun, and the director of guest services for another hotel testified that the hotel had lost the business of traveling sports teams because of 'shots fired' incidents at Cove 51 and the required police response to those incidents. Id. Sharonville's City Director testified that the area surrounding those hotels had been a subject of revitalization and investment efforts over the past few years, and also that Sharonville had planned to borrow nearly $20 million over the next quarter to expand the Sharonville Convention Center, which is in that same area on the same side of the street and just south of Cove 51."

**Legal lesson learned: Excellent example of fire and police testimony leading to revocation of liquor license.**

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

## WY: ARSON TRAILER – CIR. EVID. / BLEACH ON SHIRT

On September 12, 2025, in Andrew Lee Boyer v. The State of Wyoming, the Supreme Court of Wyoming held (5 to 0) there was sufficient circumstantial evidence when jury found him guilty of first-degree arson (sentenced to 8-14 years).

**THE COURT HELD**: "We find there was substantial evidence to support Mr. Boyer's conviction. While there was no direct evidence linking Mr. Boyer to the fire, there was plenty of circumstantial evidence to support the jury's verdict. Mr. Boyer was the last person to be seen in the trailer. The doors to the trailer were locked, the windows were shut, and there was no sign of a break-in. Ms. Haglund [neighbor] smelled and observed smoke just thirty minutes after Mr. Boyer left her home. Ms. Haglund saw him walk toward the main road after borrowing her lighter. The fire started in two or three spots and was lit on purpose. Mr. Boyer was covered with bleach, which can be used to manipulate evidence. Mr. Boyer discarded his bleach covered shirt before returning to his trailer. Contrary to Mr. Boyer's story that his dogs ran away, officers found Mr. Boyer's dogs nearby, and Mr. Boyer said they often got out and would come back. A jury could reasonably conclude that Mr. Boyer started the fire, let his dogs out, and used the fact

they got out as a pretense to give the fire time to burn and give him time to leave the scene." https://cases.justia.com/wyoming/supreme-court/2025-s-24-0295.pdf?ts=1757689246

**KEY FACTS**:

> "Mr. Boyer owned a trailer home located at 1605 Echeta Road, Lot 21 in Gillette. On the morning of August 2, 2022, Charlene Haglund was smoking a cigarette outside of her trailer home, directly across from Mr. Boyer's trailer home. Mr. Boyer approached Ms. Haglund and asked if he could borrow her lighter. He lit his cigarette, made some small talk, and walked toward the main road. Ms. Haglund said Mr. Boyer was wearing a dark-colored polo shirt. About thirty minutes later, Ms. Haglund smelled and saw smoke coming from Mr. Boyer's trailer home. She had her boyfriend call 911 to report the possible fire. Ms. Haglund did not see anyone else exit Mr. Boyer's trailer that morning.
>
> After leaving Ms. Haglund's home, Mr. Boyer stopped at JB Auto Glass. Mr. Boyer was wearing shorts, flip-flops, and a black T-shirt. He had a dog with him. He asked Joseph Billington, owner of JB Auto Glass, if he could use the restroom. Mr. Billington gave him permission. Mr. Billington noticed a strong bleach odor coming from the restroom after Mr. Boyer finished using it. Mr. Boyer was covered in bleach when he came out of the restroom, and his shirt had bleach spot stains all over it. There was also bleach on his flip-flops. Mr. Billington asked Mr. Boyer what happened and if he was alright. Mr. Boyer told him not to worry about it. Mr. Boyer grabbed his dog and left on foot, in the opposite direction he came from. The bleach had been in a spray bottle. There was bleach on the floor when Mr. Billington went into the restroom afterwards.
>
> ***
> Regarding the bleach, Mr. Boyer said the restroom at JB Auto Glass did not have soap or paper towels, but there was a bottle of 409 cleaning spray on the shelf. He figured it was safe to use on hands and proceeded to wash his hands with it. He then dried his hands on his shirt. After he left the restroom, Mr. Boyer noticed he had bleach stains all over his shirt and told Mr. Billington it "wasn't a big deal." While continuing walking to Ms. Exley's house, Mr. Boyer decided to throw away his shirt because it was hot outside and it was a throwaway shirt he wore for work. According to Mr. Boyer, his son gave him a gray tank top to wear."

**Legal lesson learned: Circumstantial evidence can lead to arson conviction.**

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

## SC: RESTAURANT $3.9M – GREASE FIRE – BATTLE EXPERTS

On September 2, 2025, in Axis Surplus Insurance Company v. Pye-Barker Fire and Safety, LLC, U.S. District Court Judge Richard Mark Gergel, United States District Court for the District of South Carolina (Charleston Division) held that most of the experts for both sides in this litigation may testify as experts under *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579, 589 (1993). Case will no proceed to jury trial. The plaintiff, Axis Surplus Insurance Company, provided

insurance coverage for its insured, Hospitality Management Group, Inc., for damages suffered from a fire at one of Hospitality's properties, Magnolias Restaurant, located in Charleston, South Carolina. Plaintiff reimbursed its insured in excess of $3.9 million for damages from the fire and was subrogated to its insured's right of recovery against any at fault third party.

**THE COURT HELD:** "The bottom line is that both Plaintiff's and Defendant's experts have offered plausible explanations for the causes of the fire damage. The course of the Magnolias Restaurant fire and its impact on the fire suppression system are hotly contested by the parties, and there is circumstantial evidence sufficient to support both the Plaintiff's and Defendant's scenarios. Like many unwitnessed fire cases, the experts, often able and experienced, offer distinctly different opinions on critical issues of in the case. Under the present circumstances, a jury needs to hear the full case and determine which scenario more likely than not caused the extensive fire damage on August 7, 2021."
https://cases.justia.com/federal/district-courts/south-carolina/scdce/2:2024cv02173/290787/65/0.pdf?ts=1756990440

**KEY FACTS:**

> "This action was brought by Plaintiff Axis Surplus Insurance Company, which provided insurance coverage for its insured, Hospitality Management Group, Inc., for damages suffered from a fire at one of Hospitality's properties, Magnolias Restaurant, located in Charleston, South Carolina. Plaintiff reimbursed its insured in excess of $3.9 million for damages from the fire and was subrogated to its insured's right of recovery against any at fault third party. Plaintiff sued Defendant for negligence and breach of contract related to the performance of its duties to inspect, test, and maintain a fire suppression system, which Plaintiff alleges failed to properly operate to suppress the fire.
>
> The Magnolia's Restaurant fire occurred in the early morning hours on August 7, 2021. There were no eyewitnesses to the outbreak of the fire. The parties agree that the fire began when a restaurant employee left a plastic dish rack on a two burner range in the prep kitchen, which subsequently melted from the heat of the burner range's pilot light. Beyond that fact, the parties and their experts disagree about whether the fire suppression system failed due to improper maintenance by the Defendant (Plaintiff's view) or whether excess grease near the burner range ignited and produced a massive fire outside the area of the fire suppression system (Defendant's view).
>
> ***
> Plaintiff's expert, Daniel Arnold, is a professional engineer who has four decades of experience in fire protection engineering and design of fire suppression systems. (Dkt. No. 43-1 at 19-20). Arnold opines that the restaurant's fire suppression system, which was designed to disperse a chemical retardant to suppress a fire, failed because Defendant improperly placed a critical piece of the system known as the fusible link. Arnold further opines that had the suppression system performed properly, the August 21, 2025 fire would have been caused only limited damage in the immediate area of the two burner range. (Id. at 15).
> ***

Defendant's expert Jeffrey Berino is a fire origin and cause investigator with forty years of experience as a firefighter and significant experience investigating fires. (Dkt. No. 46-2 at 2-6). Berino opines that the fire was initially caused by a restaurant employee leaving a plastic object on a two burner range and the melted plastic ignited extensive grease residue and deposits on the floor and in the nearby area. Berino further opines that the fire from the ignited grease migrated to the area of fire suppression system's control box, which caused the system to fail. (Id. at 18-19).

***

The Court finds that the testimony of the parties' respective expert witnesses meet Rule 702 standards and should not be excluded under Rule 403."

**Legal lesson learned: The case may now go to a jury, where the experts can testify.**

Note: Under Federal Rule of Evidence 702, the Court acts as a gatekeeper "to verify that expert testimony is based on sufficient facts or data" The expert testimony must be shown to be "not only relevant, but reliable.' *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579, 589 (1993).

## Chap. 2 – Line Of Duty Death / Safety

## NY: LODD - BDG INSPEC ARRESTED - FALSE STATE REPORTS

On September 2, 2025, in Raymond Canario v. The County of Rockland, et al., U.S. District Court Judge Kenneth M. Karas, United States District Court for the Southern District of New York, dismissed the false arrest lawsuit by the former Assistant Building Inspector, who was charged with submitting false reports to the state about building inspections in Spring Valley, NY. He was arrested and indicted but at bench trial was found not guilty since no intent to defraud. The investigation of building inspections was launched by District Attorney after the March 23, 2021 fire at the Evergreen Court Home for Adults, which killed a firefighter (volunteer Jared Lloyd**)** and a resident. In September 2023, two rabbis, a father and son, were sentenced to probation following a plea deal; they had used a blowtorch to clean the kitchen and utensils of traces of forbidden food before Passover.

**THE COURT HELD:** "Even drawing inferences in Plaintiff's favor, the totality of the circumstances supports the existence of probable cause to arrest Plaintiff for offering a false instrument for filing in the first degree. These discrepancies may reasonably be seen as false statements or false information, and there is no dispute that the New York Department of State is an entity covered by the statute…. Accordingly, because there was probable cause to arrest, the Court dismisses Plaintiff's false arrest claims." https://cases.justia.com/federal/district-courts/new-york/nysdce/7:2024cv04470/623029/85/0.pdf?ts=1756903853

**KEY FACTS:**

"In April 2019, Plaintiff was hired as Assistant Building Inspector by the mayor of Spring

Valley, New York…. 19 N.Y.C.R.R. § 1203 requires that municipalities like Spring Valley 'annually submit to the [New York] Secretary of State . . . a report of its activities relative to administration and enforcement of the [New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Construction Code].' … These reports are also called "1203 Reports."… Plaintiff was assigned to file 1203 Reports…. Plaintiff, who had no prior experience as a building inspector, was supposed to report to the Building Inspector, a position that was vacant…. Plaintiff had difficulty completing the 1203 Reports, … and based his reporting 'upon charts noting inspection status provided by the staff [and] not from personal visits and investigations,' which Plaintiff "believe[ed] . . . accurately reflected . . . [building] inspections,' ….. Plaintiff characterized the information contained in the 1203 Reports that he submitted as 'an estimate.'

***

The 1203 Reports list information including, for example, the number of building permits issued by building type, the number of buildings by type and how many of each were inspected in the last year, and the number of new constructions complete and percentage thereof that are at least 90% compliant….

On March 23, 2021, a fire ignited at the Evergreen Court Home for Adults, killing a firefighter and a resident…. The Spring Valley Police Department investigated the fire and concluded its investigation without making any arrests….Plaintiff alleges that, after the police department's investigation concluded, the DA's Office 'took up the criminal investigation,' at least partly because '[t]he local media was pressuring [District Attorney] Walsh to punish someone for the deadly fire.'

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On June 28, 2021, Chief Criminal Investigator Walker signed a felony complaint that charged Plaintiff with three counts of offering a false instrument for filing in the first degree and three counts of falsifying business records in the second degree…. On June 29, 2021, Plaintiff was arrested and given a desk appearance ticket…. Wayne Ballard, another building inspector, was also arrested.

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A bench trial was held before Judge Russo in March 2023…. The exact duration of the trial is unclear. On March 14, 2023, Judge Russo dismissed Counts 1, 2, 3, 7, 8, and 9 for lack of evidence going to Plaintiff's intent to defraud. (March 14 Trial Tr. at 467:13–25.) On March 17, 2023, Plaintiff was found not guilty on Counts 4, 5, and 6. (See March 17 Trial Tr. at 565:20–24.)"

**Legal lesson learned: Building inspection reports must be accurate; submitting reports are "mere estimates" can lead to arrest and prosecution, and civil litigation.**

Note: See September 21, 2023 article and TV VIDEO, "Father, son sentenced to probation in deadly Spring Valley fire that killed 2 people."

https://www.nbcnewyork.com/news/local/father-son-sentenced-to-probation-in-deadly-spring-valley-fire-that-killed-2/4696054/

## Chap. 2 – Line Of Duty Death / Safety

# IN: POLICE "25-FT BUFFER ZONE" – CAN'T "INTERFERE"

On August 5, 2025, in Reporters Committee For Freedom of The Press, et al. v. Todd R. Okita, Attorney General of Indiana, et al., the United States Court of Appeals for 7th Circuit (Chicago) held (3 to 0) that U.S. District Court Judge James R. Sweeney II properly issued a preliminary injunction to enjoin enforcement of the buffer law. Indiana's original "buffer law" effective July 1, 2023, makes it a crime for a person to knowingly or intentionally approach within 25 feet of a law enforcement officer who is "lawfully engaged in the execution of the law enforcement officer's duties after the law enforcement officer has ordered the person to stop approaching." Indiana Code (I.C.) § 35-44.1-2-14. Wisely, while this appeal was pending, Indiana has now enacted a new law, effective July 1, 2025, where police may only order an individual to stop approaching if he "reasonably believes that a person's presence" within 25 feet "will interfere with the performance" of his "duties."

**THE COURT HELD:** "As the plaintiffs point out, the problem is more upstream: the [original 223 ] buffer law offers no 'guidance to the officer deciding whether [a do-not-approach] order should issue' in the first place…. Without such guidance, any on-duty officer can use the buffer law to subject any pedestrian to potential criminal liability by simply ordering them not to approach, even if the pedestrian is doing nothing more than taking a morning stroll or merely walking up to an officer to ask for directions…. As the Supreme Court explained 60 years ago, a law that effectively says 'a person may stand on a public sidewalk in [a city] only at the whim of any police officer of that city' is too vague to satisfy due process. Shuttlesworth v. City of Birmingham, 382 U.S. 87, 90 (1965). The buffer law does just that. The Fourteenth Amendment will not tolerate a law subjecting pedestrians to arrest merely because a police officer had a bad breakfast—no matter how bitter the coffee or how soggy the scrambled eggs."
https://www.rcfp.org/wp-content/uploads/2025/08/2025-08-05-RCFP-v.-Rokita-Seventh-Circuit-opinion.pdf

**KEY FACTS:**

> "Indiana's 'buffer law' makes it a crime for a person to knowingly or intentionally approach within 25 feet of a law enforcement officer who is 'lawfully engaged in the execution of the law enforcement officer's duties after the law enforcement officer has ordered the person to stop approaching.' Indiana Code (I.C.) § 35-44.1-2-14.
> The plaintiffs, who are various media and media-related organizations, argue that the buffer law is unconstitutionally vague under the Fourteenth Amendment's Due Process Clause because it is susceptible to arbitrary or discriminatory enforcement by the police. The district court concluded that the plaintiffs were likely to succeed in their Fourteenth

Amendment challenge to the buffer law, so the court issued a preliminary injunction blocking its enforcement. For the reasons below, we affirm the district court's decision to preliminarily enjoin enforcement of the buffer law."

**Legal lesson learned: Fire and EMS must allow press reasonable access to scenes, but can cover patients to protect their identity.**

Note: See August 6, 2025 article, "7th Circuit: Indiana's police 'buffer zone' law is unconstitutional." https://www.rcfp.org/indiana-buffer-zone-law-7th-circuit/

See also March 11, 2025 article, "Buffer zone' clarification heads to governors desk."https://indianacapitalchronicle.com/briefs/buffer-zone-clarification-heads-to-governors-desk/

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

## RI: FEMA – DISASTER GRANTS – SANCTUARY STATES INJUN

On September 24, 2025, in State of Illinois, et al. v. Federal Emergency Management Agency, Senior U.S. District Court Judge William E. Smith, United States District Court for the District of Rhode Island, granted permanent injunction; 20 states and the District of Columbia challenged President Trump's Jan. 30, 2025 Executive Order that directed DHS to "ensure that so-called 'sanctuary' jurisdictions do not receive access to federal funds." On July 23, 2025 FEMA advised the Court that DHS had made a "final determination" that the contested conditions would not apply to forty of the grants listed in the Amended Complaint related is disaster relief.

**THE COURT HELD**: "[T]he grants at issue fund programs such as disaster relief, fire safety, dam safety, and emergency preparedness…. The record shows that states rely on these grants for billions of dollars annually in disaster relief and public safety funds that cannot be replaced by state revenues. Denying such funding if states refuse to comply with vague immigration requirements leaves them with no meaningful choice, particularly where state budgets are already committed…. Here, DHS required states to provide 'cooperation' and participate in 'joint operations' and 'information sharing,' but without defining what compliance entails. Likewise, the prohibition on operating programs that 'benefit illegal immigrants' or 'incentivize illegal immigration' provides no meaningful standards and is hopelessly vague…. The holding in *Trump v. Casa* restricted universal injunctions, but the Court expressly left unaffected the APA's command to 'set aside' unlawful agency action. 606 U.S. 831, 847 n.10 (2025) ('Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate agency action.'). vacatur under the APA remains, for now, a valid remedy. Based on its findings above, the Court declares that the contested conditions are both arbitrary and capricious under the APA and unconstitutional under the Spending Clause. As such, the contested conditions are vacated. In light of this holding, a permanent injunction enjoining

Defendants from enforcing the contested conditions against Plaintiff States is also appropriate." https://rhodeislandcurrent.com/wp-content/uploads/2025/09/IL-v.-FEMA-1.pdf

**KEY FACTS:**

> "DHS Secretary Kristi Noem issued a memorandum on February 19 titled 'Restricting Grant Funding for Sanctuary Jurisdictions.' … This memorandum instructed DHS's sub-agencies to "review all federal financial assistance awards" to identify funds being distributed to sanctuary jurisdictions, and report compliance within thirty days…. Cameron Hamilton, then serving as the Senior Official Performing the Duties of FEMA Administrator subsequently sent a memorandum to Secretary Noem identifying twelve FEMA programs that, in his view, could lawfully be withheld from sanctuary states. He recommended against applying limiting conditions to disaster grants, non-disaster mitigation grants, fire departments, and similar organizations.
>
> On March 27, DHS revised the standard terms and conditions governing all federal grants it oversees, adding provisions requiring state and local recipients to certify that they will assist in enforcing federal immigration law…. A revised version of these terms and conditions was issued on April 18; that version remains in effect today…. Plaintiff States filed this action on May 13, seeking declaratory and injunctive relief on the grounds that the contested conditions are unlawful….
>
> Shortly thereafter, on June 6, Defendants submitted an affidavit from David E. Richardson, Senior Official Performing the Duties of Administrator for FEMA, declaring that DHS had decided the contested conditions would not apply to twelve of the grants identified in the Complaint, 3 and that the applicability of the conditions to other grants remained under review.
>
> > [Footnote 3]: A second declaration by Richardson filed on July 23, in support of Defendants' Motion for Summary Judgment, noted that DHS had made a 'final determination' that the contested conditions would not apply to forty of the grants listed in the Amended Complaint.
>
> At a June 9 status hearing, Plaintiff States raised concerns that this change in position had not been formally reflected in DHS's standard terms and conditions, which continued to state that the contested conditions applied to all new grants in Fiscal Year ('FY') 2025.
>
> After that hearing, DHS amended its website to state that 'not all of DHS's Standard Terms and Conditions apply to every DHS grant program,' directing applicants to review program Notices of Funding Opportunity (NOFOs) to determine which conditions applied…. In subsequent filings, Defendants asserted they had made a 'final determination' that the contested conditions would not apply to forty of the grant programs identified in the Amended Complaint.
>
> According to Plaintiff States, Between July 25 and August 1, DHS issued twenty-four NOFOs, all of which included the standard terms and conditions, and six of which

> expressly warned that 'an immigration term and condition may be material' and DHS 'may take any remedy for noncompliance' including 'termination.'"

**Legal lesson learned: The Government will likely appeal this decision to the First Circuit Court of Appeals, and if necessary seek review by the U.S. Supreme Court.**

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

## PA: "GEOFENCE" WARRANT – CELL PHONES AT SHOOTING

On September 18, 2024, in Commonwealth of Pennsylvania v. Keith Anthony Choice, the Superior Court of Pennsylvania held (3 to 0) that trial court properly denied motion to suppress the cell phone information from Google, obtained by PA State Police through court ordered search warrants for "geofence" cell phone location history; a road rage incident where one motorist shot another motorist. Search warrants obtained for cell phones used at "Route 309, between 9:20 p.m. to 9:27 p.m. on January 23, 2019." The defendant was convicted in bench trial of aggravated assault, and sentenced to 6 to 23 months' incarceration, followed by two years' probation.

**THE COURT HELD**: "Because pervasive cell phone possession and cell phone service usage is a matter of common knowledge, and because law enforcement combined this common knowledge with specific factual circumstances regarding the time and place of the crime, we reject Appellant's argument that the December 2020 search warrant relied upon 'categorical assumptions." https://cases.justia.com/pennsylvania/superior-court/2025-1252-eda-2024.pdf?ts=1758220361

**KEY FACTS:**

> "The trial court summarized the facts underlying this appeal:
>
> > At approximately 9:58 p.m. on January 23, 2019, Pennsylvania State Police (PSP) troopers] responded to a call into Montgomery County 911 dispatch center of a possible shooting on northbound State Route 309 ('[Route] 309'). The troopers were dispatched to the Fort Washington Toll Plaza on the Pennsylvania Turnpike, Upper Dublin Township in Montgomery County. There they met with [the victim, John Cramer (Cramer),] and Upper Dublin Township [police] officers who were securing the scene while [emergency medical services (EMS) personnel] provided aid [EMS personnel] determined that Cramer had a graze wound on his upper right arm[,] after having been shot with a firearm. When Cramer exited his silver 2014 Toyota Tundra [(Tundra)], a

single copper-jacketed bullet fell to the ground and was recovered by a [t]rooper. ([Search Warrant] Affidavit of Probable Cause presented to the Honorable William R. Carpenter[… Trooper Eugene J. Tray …was assigned as the primary investigator [after] the [Upper Dublin Township Police Department] requested [the PSP] to assume the primary role in this investigation.

***

After conducting additional investigation not relevant to this appeal, Trooper Tray applied for the December 2020 search warrant, seeking solely LH 'data generated from devices [] report[ing] a location with a geographical region bounded' by latitude/longitude coordinates, and within dates and times, set forth in the affidavit.

***

After execution of the December 2020 search warrant, on February 9, 2021, Trooper Tray received email correspondence from Google's "law enforcement portal" providing the requested anonymized list of device IDs. N.T., 10/5/23, at 10. At the suppression hearing, Trooper Tray testified that he identified only one device ID within the anonymized list that was relevant to his investigation. Id. at 11. Trooper Tray explained that, upon his request, Google "provided more descriptive location information for that particular device that I found to be pertinent to my investigation." Id. at 12.

***

On February 16, 2021, utilizing the anonymized information provided by Google, Trooper Tray prepared a second search warrant, admitted into evidence at the suppression hearing as Commonwealth Exhibit C-2 (Exhibit C-2 or the February 2021 search warrant), seeking the identity of "the user or subscriber of that particular device ID." Id. at 12. On November 3, 2021, Google responded to the February 2021 search warrant by providing Trooper Tray with a 'one-page subscriber identity document that stated the G[]mail account associated with that device ID, a phone number associated with the device ID, and a name and a date of birth inputted by the user at the time of their Google account creation[.]' Id. at 13. Using this deanonymized information, Trooper Tray conducted additional investigation that led him to charge Appellant with terroristic threats and aggravated assault."

**Legal lesson learned: This is the first appeals court in PA to review "geofence" search warrants for cell phone location history. Arson investigators could likewise use search warrants to locate an arsonist.**

Note: The Court reviewed Google's three-step process when it receives a geofence search warrant.

"The first step of the geofence process, whenever law enforcement submits a [search warrant] to us, we take it, we analyze it, wepack it, extract the data, and then package it together, and submit it. [We a]nonymize the data and then submit

it back over to law enforcement through our law enforcement respondent coordinator (Step 1). The next step is Step 2, and this is additional contextual [LH] data. …. This is data that is anonymized still, and it just provides a little more context to the original Step 1 data (Step 2), The third step is when we actually unmask and identify this data and produce that to law enforcement[ (Step 3)."

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

## NJ: NO FIREAMS "SENSITIVE PLACES" – LAW UPHELD

On September 10, 2025, in Ronald Koons, Second Amendment Foundation Inc., et al. v. Attorney General of New Jersey, et al., the United States Court of Appeals for Third Circuit (Philadelphia) held (2 to 1) that the trial court judge improperly issued a preliminary injunction for most provisions of the 2022 New Jersey law. Subject to minor exceptions, carrying a firearm in of these sensitive places (including bars, medical facilities, public parks, schools) constitutes a crime of the third degree, which carries a maximum sentence of five years' imprisonment and a presumptive sentence of four years' imprisonment. There is also a $300,000 liability insurance requirement. The Court did, however, agree with District Court injunction against the requirement that those who transport guns in their private vehicles must unload their firearms and keep them locked in a secured container or the vehicle's trunk. "Because § 2C:58-4.6(b)(1)'s requirement as to private vehicles contradicts our Nation's history and tradition, Plaintiffs are likely to succeed on the merits of their challenge to that particular restriction."

**THE COURT HELD**: "Today, we must decide a question of immense public importance: whether it is likely that provisions of New Jersey Public Law 2022, Chapter 131, which impose certain firearms-permitting requirements and prohibit the carrying of firearms in certain 'sensitive places,' passes constitutional muster. For the most part, we agree with New Jersey and join our sister circuits that have upheld similar sensitive-places laws. *** Two terms ago, in *United States v. Rahimi*, the Supreme Court elaborated on Bruen. 602 U.S. 680 (2024). There, the Court rejected a challenge to the constitutionality of 18 U.S.C. § 922(g)(8), which bars a person subject to a domestic violence restraining order from possessing a firearm if he is found to pose a credible threat to his partner. *** [BARS] Plaintiffs' challenge to N.J. Stat. Ann. § 2C:58-4.6(a)(15) (proscribing firearms in 'a bar or restaurant where alcohol is served, and any other site or facility where alcohol is sold for consumption on the premises') fares no better…. Just as the Second and Ninth Circuits concluded in evaluating nearly identical laws, we hold that New Jersey's statute is entirely consistent with the principle that legislatures may prohibit the carry of firearms in locations where they may be especially susceptible to misuse. *** [HEALTH CARE FACILITIES] We next turn to Plaintiffs' challenge to N.J. Stat. Ann. § 2C:58-4.6(a)(21)'s prohibition on carrying firearms at any 'health care facility[.]'… As the Second Circuit recently concluded, 'statutes of Maine, Massachusetts, and Rhode Island, which prohibited those with mental illness, intellectual disabilities, and alcohol addiction from serving in militias,' which 'were aimed at protecting vulnerable populations from either misusing arms or having arms used

against them,' embody a longstanding tradition of firearm regulation in locations where vulnerable populations are present.' Id. at 1010–11. We agree and join our sister circuit in recognizing this principle of our Nation's regulatory tradition."
https://www2.ca3.uscourts.gov/opinarch/231900p.pdf

**KEY FACTS:**

> "For many decades, New Jersey required anyone who wanted to carry a handgun in public to show a 'justifiable need' for self-protection. In 2022, the Supreme Court held in *New York State Rifle & Pistol Association v. Bruen, 597 U.S. 1 (2022),* that a similar New York law violated the Second Amendment of the U.S. Constitution. In response, the New Jersey legislature in 2022 enacted a measure known as Chapter 131, which excised the "justifiable need" requirement and added new licensing provisions and locational restrictions. N.J. Stat. Ann. § 2C:58-4.6(a), prohibits carrying a firearm in twenty-five "sensitive places," including:
> - within 100 feet of a place where a public gathering, demonstration or event is held for which a government permit is required, during the conduct of such gathering, demonstration or event;
> - a school, college, university or other educational institution, and on any school bus;
> - a bar or restaurant where alcohol is served, and any other site or facility where alcohol is sold for consumption on the premises.
> - a health care facility, including but not limited to a general hospital, special hospital, psychiatric hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, assisted living center, home health care agency, residential treatment facility, residential health care facility, medical office, or ambulatory care facility."

**Legal lesson learned: This case does indeed involve a "question of immense public importance." The dissenting Circuit Judge, however, described the impact on law abiding citizens, including EMS who wish to carry firearms off duty.**

> Note: The dissenting Circuit Judge, David J. Porter, discussed impact of the statute on a former EMT and current Medical Reserve Corps volunteer.
>
> "This case is different because Plaintiffs are already experiencing harm. Siegel, a former Emergency Medical Technician and current New Jersey Medical Reserve Corps volunteer … often carried his handgun, lawfully, for self-defense in his medical work. Now he doesn't carry out of fear of arrest and prosecution…. Like most people, Siegel frequents strip malls, museums, zoos, libraries, public parks, movie theaters, concerts, sporting events, and restaurants where alcohol is served. He rides public transportation. He sometimes visits casinos to gamble and attend shows. He takes continuing education courses, sometimes in hospitals and training centers. In these and other places where

Siegel normally goes, he would ordinarily carry a handgun, but now he refrains from doing so out of fear of arrest and prosecution."

https://www2.ca3.uscourts.gov/opinarch/231900p.pdf

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

## MT: INCIDENT COMM – WILDFIRE – HOMES AT RISK

On Sept. 11, 2025, in McDonough Family Land, LP, et al. v. The United States of America, Judge Elaine D. Kaplan, United States Court of Federal Claims held, after a four-day trial on liability in Missoula, Montana in December 2024, that the government not liable to ranchers for loss of timber and other property. Massive fire; could not allow it to just burn.

**THE COURT HELD:** "The Court concludes that the Ranches failed to show that had the government just allowed the fire to take its natural course, their property would not have burned. In fact, both the evidence and common sense are to the contrary. The Alice Creek Fire was ignited by a lightning strike. It is indisputable that had there been no firefighting response at all, it would have spread naturally based on the available fuel, weather conditions, and topography. The evidence shows that at the end of August and beginning of September 2017, Montana was experiencing extreme drought conditions. It further shows that the fuels in the area were dry. There were a series of red flag warning days marked by gusty winds. There were reasons to fear that the winds would cause the fire to spread to the east toward homes and infrastructure, threatening the community of Augusta, Montana…. On the basis of the foregoing, the Clerk is directed to enter judgment for the government." https://cases.justia.com/federal/district-courts/federal-claims/cofce/1:2020cv00368/40658/107/0.pdf?ts=1757681305

**KEY FACTS:**

> "Plaintiffs, McDonough Family Land, LP, and Ingersoll Ranch, FLP, ("the Ranches") own real and personal property in Wolf Creek, Montana. They brought this action under the Fifth Amendment's Takings Clause to secure compensation for the appropriation of certain range forage and timber, which the government used as fuel to conduct firing operations in response to the 2017 Alice Creek Fire. See generally Am. Compl., ECF No. 36.
>
> The firing operations ("intentional burns") were conducted by the Silver City Hotshots ('the Hotshots'), a highly trained and experienced hand crew that uses intentional burns, among other techniques, to suppress the spread of wildfires. The Hotshots were called on to the scene at the direction of an incident management team led by Russell ('Russ') Bird, an employee of the United States Forest Service ('USFS'). See McDonough Fam. Land, LP v. United States, 172 Fed. Cl. 414, 421 (2024) ('McDonough I') (describing role of incident management team and USFS in directing the actions alleged to constitute a taking in this case).

***

On or around July 22, 2017, a lightning strike ignited the Alice Creek Fire in the Helena-Lewis and Clark National Forest, sixteen miles northeast of Lincoln, Montana. Am. Joint Stip. Of Facts ('SOF') ¶ 1, ECF No. 79. The fire was fueled by the severe drought conditions that prevailed in the region that summer. There were also '[s]ignificant fuel accumulations from dead trees' which were 'drier than normal for [that] time of year.' JX29, at 9, ECF No. 99-27 (Wildland Fire Decision Support System ("WFDSS") Incident Decision, August 25, 2017).

***

By September 2, the fire had grown to 11,500 acres, with fire and weather conditions producing an increased risk of fire danger. SOF ¶¶ 23, 24. Dry strong winds from the west were expected to move the main fire east, JX11, at 5, ECF No. 99-11; spot fires persisted as a concern for additional spread, Tr. 767:22–768:2 (Cornwell). The fire behavior forecast predicted even 'more active' fire behavior, with 'stronger winds' potentially driving even farther spot fire ignitions. JX11, at 5."

**Legal lesson learned: Incident commanders with U.S. Forest Service kept detailed records of fire growth, and their efforts to save property.**

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

## NC: FF AGE 54 FIRED – COMMENTS AGE - CASE PROCEED

On September 3, 2025, in Walter Kevin Carpenter v. The City of Newton, et al., U.S. Magistrate Judge Susan C. Rodriquez, United States District Court for Western District of North Carolina (Statesville Division) issued a report and recommendation recommended that city's motion to dismiss be denied in part (age discrimination claim). On June 22, 2022, the first day after Plaintiff returned from vacation, the City terminated Plaintiff for "abusive and/or threatening language to a supervisor. He claims he was joking, when heading out for vacation he texted to his Battalion Chief, "In the famous words of Cody Lawing, F U and F U and I am out of here."

**THE MAGISTRATE WROTE**: "The undersigned finds Plaintiff has alleged sufficient facts that the employer took an adverse employment action under circumstances giving rise to an inference of age discrimination. Plaintiff has alleged certain derogatory comments made related to his age by those in the supervisory chain … and that Plaintiff was terminated within a month of certain comments…. This, combined with Plaintiff's allegations related to the different responses to the similar conduct of Plaintiff and Lawing, create an inference of age discrimination at this initial stage." https://www.govinfo.gov/content/pkg/USCOURTS-ncwd-5_24-cv-00192/pdf/USCOURTS-ncwd-5_24-cv-00192-1.pdf

**KEY FACTS**:

> "Plaintiff alleges that Defendants made several ageist comments toward him in public, such as his supervisor, Battalion Chief Kenneth Huffman ('Huffman'), saying, 'We're going to push you down the steps and you won't recover.' … On approximately June 4, 2022, Huffman ordered Plaintiff to respond on the ladder truck to a structure fire…. Huffman chose to put on his turnout gear and assist with the fire…. After the call, Defendant Whitener reprimanded Plaintiff for not putting on his turnout gear. Id. Plaintiff contends that he did not have an opportunity to put on his turnout gear. Id. The following day, Chief Yoder criticized Plaintiff, allegedly saying, 'You think you don't have to do anything but run the truck . . . [a]ll of the younger guys go in and actually fight fires….'
>
> ***
>
> On or about June 15, 2022, when Plaintiff was preparing to take leave for vacation, he texted Huffman: 'In the famous words of Cody Lawing, F U and F U and I am out of here.' … Cody Lawing ('Lawing'), an employee under the age of forty, used this phrase often to joke with various members of the Fire Department, stating the full explicative when doing so, and, at times, directing his words toward Huffman…. Lawing, however, was never terminated or reprimanded for using this language as it was known to be made in jest…. Plaintiff claims he sent the text to Huffman jokingly, and Huffman admitted he perceived the text as a joke, not a threat….
>
> On June 22, 2022, the first day after Plaintiff returned from vacation, the City terminated Plaintiff….The City referenced personnel policy IV.10(b)(18), which prohibits 'abusive and/or threatening language to a supervisor' in terminating Plaintiff."

**Legal lesson learned: Age-related comments can lead to litigation.**

> Note: On September 18, 2025, U.S. District Court Judge Kenneth D. Bell adopted the Magistrate's recommendation https://www.govinfo.gov/content/pkg/USCOURTS-ncwd-5_24-cv-00192/pdf/USCOURTS-ncwd-5_24-cv-00192-3.pdf

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

## MD: WORK COMP – JURY FF 63% WORK COMP – NOT 3%

On September 2, 2025, in Prince George's County, Maryland v. Bradley Schroder, Court of Special Appeals of Maryland held (3 to 0; unreported decision) that firefighter Bradley Schroeder was properly awarded workers' compensation by a jury of 63% prominent partial, overturning the Work Comp Commission award of only 3%.

**THE COURT HELD:** "We do not hold that a finding by the jury of 63% permanent partial disability was grossly excessive and the trial court therefore did not abuse its discretion in denying the County's motion for a new trial."
https://www.courts.state.md.us/sites/default/files/unreported-opinions/1098s22.pdf

**KEY FACTS:**

> "While working for the Prince George's County Fire Department, Bradley Schroeder, the Appellee, suffered an injury to his back during a training exercise. Based on his injuries, the Appellee filed a worker's compensation claim. The Worker's Compensation Commission found that the Appellee had a 3.5% permanent partial disability. The Appellee appealed this ruling to the Circuit Court for Prince George's County. After a trial, the jury returned a verdict of 63% permanent partial disability. The Prince George's County Government, the County, filed a Motion for a New Trial, arguing that this verdict was grossly excessive, which the trial court denied. The County appealed the judgment to this Court.
>
> ***
> The Appellee began working for the Prince George's County Fire Department in June of 2015. On January 9, 2019, he participated in a training exercise at an abandoned building. Part of the training involved a series of tasks performed with full gear, with the final task being a simulation of the ceiling falling on the firefighter. This simulation involved a heavy six-foot by ten-foot chain-link fence coming down directly on top of the firefighter. When the Appellee got to this part of the simulation, the other firefighters put the fence down on him. The Appellee threw it off and knelt on all fours on the ground. The instructor then jumped on the Appellee's back and the Appellee flattened out on the floor, held down by the others until he called for a mayday on his radio. The Appellee's back began to hurt immediately after this exercise.
>
> ***
> The Appellee filed a worker's compensation claim. A hearing was held by the Workers' Compensation Commission on September 25, 2020. By this time, the Appellee had returned to his full duties. However, he was not working any voluntary overtime like he had prior to his injuries because he needed to rest his back. His injuries prevented him from playing softball and golf. The Appellee said that at the time of the hearing his symptoms had not resolved. The Appellee said he still had pain during 24-hour shifts, especially when he was crawling around. The pain was shooting pain down his back and he experienced stiffness between his shoulder blades."

**Legal lesson learned: Maryland law provides for jury to increase Work Comp award.**

# NY: WIDOW – CARDIAC / HEART BILL – EVEN IF COCAINE

On Aug. 26, 2025, in Deborah Morrison-Morgan v. Robert Tucker, The Board of Trustees of the New York City Fire Department, the Supreme Court, Justice Jeffrey H. Pearlman, Supreme Court, New York County held (unpublished decision) that the widow is entitled to line-of-duty death benefits under the Heart Bill's statutory presumption, even if autopsy revealed cocaine.

**THE COURT HELD:** "[W]hen Decedent joined the FDNY, he passed his physical examination … revealed no heart conditions. Decedent died while serving as an FDNY firefighter and his autopsy report listed cardiomegaly and coronary atherosclerosis, moderate, both heart diseases…. These facts plainly qualify Petitioner for the statutory presumption that the Heart Bill provides." https://cases.justia.com/new-york/other-courts/2025-2025-ny-slip-op-33207-u.pdf?ts=1757714614

**KEY FACTS:**

> "Petitioner is the widow and beneficiary of FDNY Firefighter John P. Morgan ('Decedent'). Decedent served as a Firefighter in the FDNY from August 5, 2007 continuously until his death on July 4, 2024. On June 17, 2023, the FDNY Bureau Of Health Services ('BHS') examined Decedent due to a service connected injury. Pet. Exh. A., NYSCEF Doc. No. 3. In BHS's Examination Report, decedent's blood pressure reading was 157/98, a reading consistent with Stage II Hypertension. Id. On July 1, 2023, a BHS Clinic-Triage report measured Decedent's blood pressure at 157/98, also consistent with Stage II Hypertension…. Decedent died on July 4, 2023, during active service; an autopsy reported the cause of death as 'cardiomegaly with recent cocaine use" with pathological diagnoses including' coronary atherosclerosis, moderate….'
>
> Petitioner filed an Application for Administrative Line-of-Duty Pension with the FDF on September 11, 2023…. On January 2, 2024, the FPF Medical Board declined Petitioner's application on the grounds that it was 'not possible to define the basis for [Decedent]'s death ... [as] cardiomegaly ... does not define the etiology of his death.' … The Medical Board further cited 'evidence of recent cocaine use' as a factor obscuring Decedent's cause of death. Id. On May 29, 2024, the Board of Trustees denied Petitioner's application based on the Medical Board recommendation."

**Legal lesson learned: The statutory presumption in the Heart Bill controls, even if there is evidence of cocaine use.**

# NY: FD 20 YRS – NO FEMALE FF – CONSENT DECREE / CPAT

On September 26, 2025, in Brittany Montana v. City of Mount Vernon, U.S. District Court Judge Kenneth M. Karas, United States District Court for Southern District of New York, denied Ms. Montana's motion for summary judgment; must prove discrimination at trial using statistical evidence. She took written exam on March 8, 2014 and scored the highest, but her times on physical fitness agility ranked her 119 on eligibility list (never hired during 2015 – 2019 list period). After pre-trial discovery in this case, plaintiff sought summary judgment based on fact that Mount Vernon Fire Department has not hired any female firefighters in 25 years. The Court "is certainly troubled by the lack of women hired by MVFD, this fact, alone, demonstrates nothing more than a "bottom line [gender] imbalance." On Dec, 23, 2024, the United States filed a motion to amend its two consent decrees (entered 1981) with the fire department, and on June 3, 2025, with concurrence of Vulcan Society of Westchester County, the consent decree now requires use of Candidate Physical Ability Test (CPAT) in future testing.

**THE COURT HELD:**

> "Plaintiff, who is a woman … took the written exam on or about March 8, 2014…. She passed the written examination and then took the physical agility test…. The physical agility test was composed of several tasks, some of which were pass/fail and some of which were timed….Those with the highest scores (i.e., those who had the fastest times) on the agility test were ranked highest on an 'eligibility list.',,, Based on her performance in the agility test, Plaintiff ranked 119th on the "eligibility list….' That performance made her the highest scoring female on the examination …., but because she was not a top ranked candidate on the eligibility list, she was not interviewed for a position at MVFD… The eligibility list remained in use from 2015 to 2019 ….and no female firefighters were hired from that list …. In fact, MVFD has not hired a female firefighter in 25 years.
>
> ***
>
> In the instant case, Plaintiff 'has not come forward with a statistical analysis of any kind.' … She has not demonstrated a statistically significant disparity in the hiring of women versus men based on the testing regime at issue. Instead, she contends that the fact that MVFD has not hired a single woman in nearly 25 years is 'a fact that by itself is sufficient to support an inference of discrimination.' … Although the Court is certainly troubled by the lack of women hired by MVFD, this fact, alone, demonstrates nothing more than a 'bottom line [gender] imbalance,' *United Prob. Officers Ass'n*, 2022 WL 875864, at *6, and is therefore insufficient to allow the Court to conclude that Defendants' testing practices violate Title VII and the NYSHRL as a matter of law, *see Hopkins v. Bridgeport Bd. of Educ*., 834 F.Supp.2d 58, 69 (D. Conn. 2011) ('[The p]laintiff has only demonstrated that at the bottom line there is a [gender] imbalance in the workforce which could be the result of any number of factors. Plaintiff has failed to provide evidence that links this bottom line imbalance to Defendant's purported practice or policy ....')."
> https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Iuq7qc0gfVcydq4UksJKYaPvhn

QoV2Tur9kW43Sd%2BCHWkw1LFd5eYMpsqupxEAJwLBiVNyDEOcfOyFpt494LsV4%3D?utm_medium=email&_hsenc=p2ANqtz-9JDPujkqcb7TpRksmi2p_USQgVGerxf-hzLRNOYIOWKeqjT-lj5XLhttLuYWUDIXmtoE1M_nS89zbeKXXmbJi1pvu4VQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

**KEY FACTS:**

"At the time of Plaintiff's application, applicants to MVFD were required to pass a written exam and a physical agility test before they could be considered for employment…. The written test was pass/fail….If an applicant passed the written test, they were permitted to take the physical agility test….The physical agility test was composed of several tasks, some of which were pass/fail and some of which were timed….Those with the highest scores (i.e., those who had the fastest times) on the agility test were ranked highest on an 'eligibility list….'

The Civil Service Commission pulled its applicants to interview for open positions from the eligibility list in rank order…. Thus, the applicants who performed best on the agility test were most likely to be asked to interview for an open position. This testing structure was mandated by two consent decrees entered into by Defendants with the Department of Justice in 1981. See generally Vulcan Soc. of Westchester Cnty., Inc. v. Fire Dep't of City of White Plains, 505 F.Supp. 955 (S.D.N.Y. 1981)."

**Legal lesson learned: The CPAT has been approved in numerous cases.**

Note: "The IAFF/IAFC Fire Service Joint Labor-Management Wellness-Fitness Task Force was established in 1997 to address the need for a holistic, non-punitive approach to wellness and fitness in the fire service. Recognizing that some municipalities were hiring candidates who lacked the physical capacity for a successful career, the Task Force unanimously agreed to create a standardized pre-employment test. This effort led to the development and validation of the Candidate Physical Ability Test (CPAT), now the industry standard for hiring fire fighters." https://www.iaff.org/cpat/

## Chap. 7 – Sexual Harassment, incl. Pregnancy Discrim., Gay Rights

## NY: FEMALE COMPLAINT - B/C TRANSFER - NO RETALIATION

On September 22, 2025, in Michael McGraff v. Fire Department of City of New York and the City of New York, U.S. District Court Judge Nicholas G. Garaufis, United States District Court for Eastern District of New York, granted the City's motion for summary judgment. Female medic filed complaint on April 3, 2015 with FDNY EEO. Battalion Chief McGrath's was transferred from Battalion 47 in Far Rockaway, Queens to Queens Borough Command. On May

16, 2016, McGrath filed his own complaints with the FDNY EEO, alleged he "was transferred and demoted due to his race (Caucasian) and gender (male), and that Arroyo received differential treatment because she is female and Hispanic." On August 15, 2016, the FDNY EEO Office issued a memorandum to the Fire Commissioner Daniel A. Nigro substantiating Arroyo's sexual harassment complaint against McGrath. November 10, 2016, McGrath's complaint was dismissed with a "no probable cause" determination. He filed this lawsuit on March 15, 2017, against the female medic and the FD, alleging "racial discrimination and retaliation under federal, state, and local laws, violation of his free speech rights, and several tort and contract claims."

**THE COURT HELD**: "Based on this extensive investigation, the FDNY EEO Office determined as follows:

> [T]he evidence shows that it is more likely than not that: McGrath and Arroyo spent time together after work hours in a non-platonic manner; Arroyo advised McGrath that she did not wish to purse a relationship; McGrath confronted Arroyo about unsubstantiated rumors of sexual misconduct in the workplace without addressing such alleged misconduct within his, and Arroyo's, chain of command; suggested and/or threatened Arroyo with a transfer to a different station; and recommended to Arroyo's supervisors that she be transferred to a different station. Viewing the totality of circumstances, such conduct constitutes sexual harassment in violation of the EEO Policy.

***

The evidence shows that the FDNY EEO Office substantiated Arroyo's complaint against McGrath and brought disciplinary charges against McGrath not as a result of McGrath's Agency Complaints, but because of the FDNY EEO Office's extensive fact-finding that validated Arroyo's sexual harassment allegations. McGrath's scant evidence showing a causal link between his protected activity and the alleged retaliatory actions is insufficient to defeat Defendants' motion for summary judgment."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ith2qIaSeggCoLDpY1bED9tguFhWPV6Zo6qPtk3o63Z4?utm_medium=email&_hsenc=p2ANqtz-_k3-Q52FXjJQN9NeOgWdHNDXhdU7FtsE1Qhtjng3_RTOztkpkvOWiDZxLNU-kndNaS-F1RaBe3KZirW8vwSyzK6BF9eQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

**KEY FACTS**:

> "Michael McGrath is a white, male, retired FDNY officer…. McGrath began his career as a fireman at the FDNY in 1979 and was employed by the FDNY until he retired on February 15, 2018…. Throughout his career at the FDNY, he was promoted several times, eventually becoming Battalion Commander for FDNY Battalion 47 in Far Rockaway, Queens in 2003…. Two years into his command of FNDY Battalion 47, Battalion 47 became a 'joint facilit[y]' housing both Fire Operations and EMS Operations…. The court refers to the joint facility where McGrath worked as the

‘Firehouse.’ Both Fire Operations and EMS Operations housed in the Firehouse share common areas, including a gym, terrace, locker rooms, and bathrooms….

In January 2014, McGrath met Marilyn Arroyo, an EMS Paramedic, when Arroyo was involved in a motor vehicle accident to which McGrath responded…. It is undisputed that McGrath and Arroyo met several times after they first met … but the parties dispute whether these meetings were dates or ‘merely two co-workers getting together because Arroyo asked for job-related advice due to having family members interested in applying to the FDNY,’ …. McGrath claims that shortly after meeting Arroyo, he began hearing rumors that Arroyo was having sex with a firefighter inside of the Firehouse…. McGrath first approached Arroyo's supervisor Chief Steven Russo with the allegations; Russo told McGrath that he would speak with Arroyo and get back to McGrath by the end of the day…. Russo did not get back to McGrath that day…. On March 15, 2015, McGrath approached Arroyo and discussed the allegations with her…. McGrath then brought the allegations to Assistant Chief Edward Baggott and Division Commander James DiDomencio…. DiDomenico told McGrath that while the FDNY Bureau of Investigations and Trials (‘BITs’) was not going to investigate the allegations, Arroyo's EMS supervisor would speak with her…. Shortly thereafter, DiDomenico instructed all Battalion Commanders (including McGrath) to give ‘drills on inappropriate behavior.’

***

1. Arroyo FDNY EEO Complaint

On April 3, 2015, Arroyo submitted a complaint to the FDNYs Equal Opportunity Employment (‘EEO’) Office alleging that McGrath sexually harassed her…. The Arroyo FDNY EEO Complaint alleged that on March 15, 2015, McGrath asked Arroyo to meet him in the Firehouse's mechanical room, where McGrath ‘informed [Arroyo] that firemen's wives were making complaints about [Arroyo] with regard to rumors of inappropriate behavior with numerous firefighters from Battalion 47 as well as police officers from the local precincts.’ …Arroyo alleged further that McGrath ‘claimed that the wives were unhappy with [Arroyo] having a personal relationship with a 35 year old fireman from E268.” … Arroyo claimed that McGrath said he could ‘make this all go away’ if she agreed to transfer to another EMS Station and gave her until the following day to let him know her decision.

***

In March or April 2015, the FDNY reassigned McGrath to Queens Borough Command….. McGrath alleges that he was reassigned ‘without warning’ and ‘stripped of his duties.’

***

2. McGrath Agency Complaints

> On May 16, 2016, McGrath filed his own complaints with the FDNY EEO Office, the New York State Department of Human Rights ('NYSDHR'), and the United States Equal Employment Opportunity Commission ('US EEOC') (collectively, 'Agency Complaints')…. According to an internal FDNY memorandum, McGrath's FDNY EEO complaint alleged that McGrath 'was transferred and demoted due to his race (Caucasian) and gender (male), and that Arroyo received differential treatment because she is female and Hispanic.' (Nguyen Mem.)
>
> ***
>
> On September 9, 2016, BIT served McGrath with four charges under the FDNYs internal rules and regulations relating to sexual harassment, making false statements, and general conduct."

**Legal lesson learned: FD conducted thorough investigation.**

## Chap. 8 – Race / National Origin Discrimination

# KS: PROMOTION 4 D/C – PANEL RATED BLACK LOWEST

On Sept. 3, 2025, in Brently Dorsey v. City of Topeka, Kansas, U.S. District Court Judge Holly L. Teeter, United States District Court for District of Kansas, granted defense motion for summary judgment after close of discovery concerning Black Captain's allegations of race discrimination and violation of Americans with Disabilities Act. He had been on light duty for leukemia. Seven candidates were interviewed for the four open District Chief positions. They were interviewed by panel of four (3 outside the FD ). Plaintiff scored lowest (117 points); four highest were promoted (174; 168; 164; 161).

**THE COURT HELD:** "He scored seventh out of seven and there were only four open Division Chief positions. The promotions went to the top four scorers…. In sum, Dorsey points to almost nothing that would allow a factfinder to believe that the stated, non-discriminatory reason for the promotions was unworthy of belief…. But there is nothing in the record that [Fire Chief Randy] Phillips (white male) or [Deputy Antony] Standifer (Hispanic male) have any racial animus toward Dorsey or anyone else. Dorsey is not entitled to a trial for race discrimination simply because there have been historical issues or because other firefighters have brought claims of race discrimination unrelated to this case. Mere conjecture that race discrimination is afoot is not enough to defeat summary judgment." https://cases.justia.com/federal/district-courts/kansas/ksdce/2:2023cv02422/149254/113/0.pdf?ts=1756979784

**KEY FACTS:**

> "Dorsey was not promoted to Division Chief in 2022 and contends the decision not to promote him was discrimination based on race and disability. The City contends it did not promote Dorsey because he received the lowest scores. The City notes that Dorsey and

six others interviewed for four open positions. Dorsey scored the lowest; the top four scorers were promoted into the four open positions. The City moves for summary judgment on all claims. Doc. 97.

The Court grants the motion and enters judgment in favor of the City. Dorsey's claim for race discrimination fails because he has not come forward with evidence of pretext. Dorsey's claim for disability discrimination fails because he can't show discrimination or pretext. Dorsey's claim for constructive discharge fails because he voluntarily retired. And Dorsey's failure-to-accommodate claim fails because a promotion is not a reasonable accommodation and because hewas otherwise accommodated until he voluntarily retired."

"**Legal lesson learned: The promotion process was fair; plaintiff had no evidence of race discrimination or disability discrimination.**

## Chap. 9 – Americans With Disabilities Act

## NH: PSTD – FF REQ. MEETING WITH CHIEF – CASE PROCEED

On Sept. 10, 2025, in John Powers v. Town of Durham, U.S. District Court Judge Steven J. McAuliffe, United States District Court for the District of New Hampshire, denied the city's motion for summary judgment.

**THE COURT HELD**: "[A] reasonable jury could find on this record that Powers made requests for reasonable accommodation [one on one meeting], was using a reasonable accommodation already in place, and complained about discriminatory conduct. There is no dispute that Durham imposed adverse employment actions against Powers. The timing of these events and the evidence of Chief Emanuel's unusual familiarity with Powers's disability and his possible use of Powers's disability against him could support findings in his favor on the elements of his ADA retaliation claim. For that reason, summary judgment is not appropriate."
https://www.govinfo.gov/content/pkg/USCOURTS-nhd-1_23-cv-00327/pdf/USCOURTS-nhd-1_23-cv-00327-0.pdf

**KEY FACTS:**

"The summary judgment record in this case presents unusual, if not unique, circumstances from which a jury could find that Durham, through the Durham Fire Department's Chief, David Emanuel, was fully aware of Powers's disability due to PTSD and its symptoms. Emanuel and Powers worked together in the Durham Fire Department from 2011 to 2016. Powers had PTSD when he was hired, a condition the fire department was aware of when he was hired. Indeed, Durham allowed Powers time for weekly therapy sessions during his working hours. Emanuel knew that Powers suffered from PTSD and that he attended weekly therapy sessions.

***

Powers left Durham in 2016 to work for the Rochester Fire Department. Powers and Emanuel remained close friends and continued to communicate after Powers's move to Rochester. In 2018, Chief Landry left the Durham Fire Department and Emanuel became chief. Powers then returned to Durham to work under Chief Emanuel. By the fall of 2019, however, their relationship began to deteriorate. Emanuel was concerned about Powers's work performance, including complaints about his driving while in a fire department vehicle, the tone of some of his work communications, and his failure to attend several meetings without first communicating that he would be unavailable. Powers considered it difficult to communicate with Emanuel, which he believed was triggering his PTSD symptoms. By early 2020, Powers thought his relationship with Emanuel had become adversarial.

On January 17, 2020, Powers asked to meet with Emanuel one-on-one to discuss their communication issues and Emanuel's expectations of him. Powers says that meeting never occurred. In a different meeting among Chief Emanuel, Powers, and a consultant, who was hired to improve the fire department's working culture, Powers attempted to raise those same communication and expectation issues. The consultant responded that Powers was causing problems and undermining Emanuel's authority as Chief.

Emanuel prepared a Performance Improvement Plan ('PIP') for Powers, which he presented to Powers at a 'Chief's Meeting' on February 27, 2020, without prior warning. Emanuel explained later that he surprised Powers with the PIP because otherwise Powers would have avoided that conversation. Powers was surprised and uncomfortable when Emanuel began to read the PIP to him aloud at the meeting. Powers twice asked Emanuel to stop reading and to allow him to take the PIP to read to himself and respond, but Emanuel continued to read the PIP aloud. When Emanuel read a section of the PIP that required Powers to be at the station during all days and all business hours, Powers became distraught because he understood that requirement revoked his leave to attend weekly therapy sessions for PTSD during work hours. Powers was obviously agitated and shaking and excused himself from the meeting. After the meeting, Emanuel drafted a memo that questioned Powers's state of mind after the PIP meeting. Powers responded to a text from Emanuel that evening, saying that he made it home safely but was not 'okay.'

The next day, Emanuel informed Powers that he was suspended from the department because of his reaction to the PIP. Emanuel ordered Powers to have a fitness for duty ('FFD') evaluation. The evaluation was scheduled. Powers submitted a grievance to Emanuel challenging the PIP and the ordered evaluation. Emanuel thought Powers was out of line by filing the grievance and notified Powers that there was no grievable issue. He required Powers to return and finish listening to Emanuel read the PIP. Powers attended the scheduled FFD evaluation but would not release the results to Durham while his grievance was pending. Emanuel, in turn, fired Powers on March 19, 2020, because he did not submit the results of the FFD evaluation. The town administrator notified Powers the next day that his grievance was not valid."

**Legal lesson learned: ADA requires both sides to communicate, seeking mutually acceptable reasonable accommodation.**

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

# CT: MEDICAL MJ – FF VIOL. LAST CHANCE AGREEMENT

On June 11, 2025, in Thomas Eccleston, III v. City of Waterbury, Judge Kiberly P. Massicotte, Superior Court of Connecticut, Judicial District of Waterbury, Waterbury, held after a bench trial on February 20, 2025 that the city properly fired the firefighter for violation of Las Chance agreement. On November 19, 2015, to avoid termination, the plaintiff signed a "last chance agreement" after the plaintiff was arrested for domestic violence; the agreement prohibits use of alcohol or a controlled substance. He tested positive in random drug test on March 20, 2018 (obtained medical marijuana card March 6, 2018).

**THE COURT HELD:**

> "The [Last Chance] Agreement provides: 'WHEREAS, Thomas F. Eccleston has issues with alcohol abuse and domestic violence; WHEREAS, the parties wish to enter into this stipulated agreement, in lieu of Thomas F. Eccleston's termination, setting forth the terms and conditions of Thomas F. Eccleston's continued employment with the City; and WHEREAS, Thomas F. Eccleston accepts responsibility for the issues and acknowledges the need for immediate improvement.' … The condition relevant to this case is that the plaintiff agreed that he may be subject to immediate termination '[i]f Thomas F. Eccleston tests positive for alcohol (at the level of 0.04 or above) or a controlled substance.'
>
> ***
> This can only mean that the plaintiff waived his rights under PUMA. His agreement to waive his rights under PUMA did not run contrary to state law because the sound reasons for prohibiting the use of marijuana under the circumstances leave no room, without more, for the claim that the plaintiff's status as a qualifying patient was the sole reason for discharge pursuant to the Agreement. The plaintiff contractually agreed that he could be terminated for testing positive for the use of marijuana. He did so to save himself for other alleged and cumulative misconduct including substance abuse. Having done so, he cannot now invoke the statutory protections of PUMA which he effectively surrendered." https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1It2Tjmgxo5hSPIplN9zr2RKL3xaZLK1Vh5eTa9w8Wk8pfXZv57sP%2BSheWcKHfFgy9Ah5Ev5ZnvIAKgdp6Yn%2FiQI%3D?utm_medium=email&_hsenc=p2ANqtz-_xr08pWLevFeFI8Ge2XvipIP7qRBaDeRzA2aeNOeAMxf3drkc7WBb-blscAE4MgKHVvRlF4GyH0W6s2eAyYhQEv9ZP9w&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

**KEY FACTS:**

> **“**The plaintiff obtained a medical marijuana card on March 6, 2018. During a random drug test on March 20, 2018, the plaintiff tested positive for marijuana. On March 30, 2018, Dr. Leela Panoor declared him fit for duty. On April 23, 2018, the plaintiff was terminated. The parties stipulated that the plaintiff obtained a valid medical marijuana card under PUMA, but the plaintiff did not tell his employer that he had the card until after he tested positive for marijuana and before he was terminated.
>
> ***
>
> The plaintiff testified, and the court takes as true for the purpose of this motion, that he was diagnosed with PTSD on September 20, 2017. His doctor recommended medical marijuana as a treatment. He obtained two additional opinions. He talked to his crew about taking marijuana for medical treatment. He subsequently received all state law requirements necessary to obtain prescribed marijuana for the treatment of his PTSD on March 6, 2018. He took measures to prevent the possibility of being under the influence at work by not taking the prescribed marijuana the day before or the day of work. As an added measure, he asked his immediate supervisor to keep an eye on him because ‘if he was under the influence, how would he know?’ Testimony, Thomas Eccleston, 2/20/25. He was not accused of being under the influence at work, nor was he accused of taking marijuana during work hours. The plaintiff testified that it was his understanding that if one ingested marijuana, one could test positive for it up to 30 days later. The plaintiff challenged his termination through administrative processes available to him. He was unsuccessful in his challenge and the termination was upheld. When he appealed the administrative decision upholding his termination to court, the case was dismissed because the union named the wrong party.”

**Legal lesson learned: The firefighter might have avoided termination if he informed the fire department of his medical condition and need for prescribed marijuana, and they worked out a reasonable accommodation plan (including no use of marijuana for specific period of time before reporting for duty).**

> Note: See this article, “Medical Marijuana and Firefighters: Creating a Medical Marijuana Use Policy” Dec. 15, 2022; https://www.fireengineering.com/firefighting/medical-marijuana-and-firefighters-creating-a-medical-marijuana-use-policy/

## Chap. 13 – EMS, incl. Community Paramedicine, COVID-19

## AR: OVERDOSE – CALL MEDICAL HELP – CAN’T PROSECUTE

On September 25, 2025, in State of Arizona v. Corinthian Jerry Johnson, the Court of Appeals of Arizona, First Division held (3 to 0) that trial court properly dismissed possession and use of

narcotic charges, since casino Security Guard called 911 when he observed the defendant passed out in his car.

**THE COURT HELD: "**In response to Johnson's motion, the State insisted that A.R.S. § 13-3423(B) confers immunity only to defendants who are actively overdosing at the time the evidence supporting their charges is discovered. The State conceded that Johnson was overdosing by the time he was treated by the hospital, but it claimed that a question of fact still existed as to whether Johnson was overdosing during the welfare check. The State argued that dismissal would therefore be inappropriate without an evidentiary hearing to determine the timing of Johnson's overdose…. Here, undisputed facts established each element of A.R.S. § 13-3423(B). The police officer discovered Johnson's drug paraphernalia due to the security guard's request for a welfare check. The officer suspected that Johnson needed medical care for an overdose and sought medical care accordingly. And Johnson did experience an overdose and did need medical assistance, as his hospital treatment later confirmed." https://jpr.azcourts.gov/Portals/0/OpinionFiles/Div1/2025/1%20CA-CR%2024-0549%20Johnson.pdf

**KEY FACTS**:

> "In December 2022, a security guard was patrolling a casino's parking garage at around 1:00 a.m. when he noticed Johnson 'passed out' in the front seat of a parked car with a glass pipe in his left hand and a lighter in his right hand. The guard requested a welfare check on Johnson. When a police officer arrived, an emergency medical technician ('EMT') from the casino advised him that Johnson was breathing but appeared to be asleep.
>
> The officer opened the car's unlocked passenger door and startled Johnson awake. As the officer helped Johnson step out of the car, he noticed Johnson 'had very ridged [sic] muscle tone ([c]ommonly observed with persons that have used methamphetamine)' and appeared to have trouble maintaining his balance.
>
> The officer arrested Johnson and searched his pockets, finding a lighter, box cutter, glass tube, and piece of foil. The officer then placed Johnson in his patrol car and asked Johnson his name, but Johnson refused to answer and appeared to be incoherent. Suspecting Johnson was overdosing on fentanyl, the officer contacted the Peoria Fire Department and asked the EMT to continue monitoring Johnson's medical condition. In the meantime, the officer searched Johnson's vehicle and found a pouch containing another glass pipe, several blue pills, several empty plastic baggies with residue, and pieces of foil. In the foil pieces, he found more blue pills and a white crystalline substance."

**Legal lesson learned: Many states have enacted statutes to encourage overdose victims and others to call 911.**

> Note: Arizona Revised Statutes ("A.R.S.") section 13-3423(B), states:

> "A person who experiences a drug-related overdose, who is in need of medical assistance and for whom medical assistance is sought . . . may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia if the evidence for the violation was gained as a result of the person's overdose and need for medical assistance."

## Chap. 13 – EMS, incl. Community Paramedicine, COVID-19

## PA: PD PAT-DOWN – PRIOR EMS TRANS - STRAW / DRUGS

On September 19, 2025, in Commonwealth of Pennsylvania v. Andre N. Fulton, the Superior Court of Pennsylvania held (3 to 0) that trial court properly granted defense motion to suppress a straw found in patient's pocket during pat-down, and narcotics found inside the black plastic bag in the patient's vehicle. Patient at PA Turnpike restaurant not feeling well; he consented to Troopers looking for his keys and cell phone in his car before EMS transport to hospital.

**THE COURT HELD**: "The Commonwealth argues the suppression court erred by finding police unlawfully (1) performed a pat-down search of Appellee's person, where he was not under arrest and police had no suspicion he was armed or dangerous; (2) exceeded the scope of Appellee's consent, when conducting a warrantless search of Appellee's vehicle for certain items that Appellee asked police to retrieve; and (3) seized contraband from an opaque plastic bag in Appellee's vehicle that police discovered during the search. After careful review, we affirm.

***
ln this case, there was no reasonable belief that [Appellee] was armed and dangerous. Thus, the pat-down was unlawful. Without probable cause to arrest, or without reasonable suspicion that [Appellee] had weapons on him, the pat-down was illegal and unconstitutional[; accordingly,] the item seized, namely the straw, was properly suppressed. Suppression Court Opinion, 4/1/25, at 16-17…. The suppression court's foregoing analysis is supported by the record and the law, and we agree with its determination." https://www.pacourts.us/assets/opinions/Superior/out/J-S30019-25o%20-%20106515413327511102.pdf?cb=1

**KEY FACTS**:

> "The suppression court summarized the evidence presented at Appellee's suppression hearing in its order granting suppression:
>
> On March 16, 2023, at 12:45 a.m., [Pennsylvania State Police] Trooper Adam Shutter [(Trooper Shutter)] and Trooper Curtis Matthews [(Trooper Matthews) (collectively, 'the Troopers')] received a report of a male having a medical emergency at the Peter J. Camiel Service Plaza, [a] Pennsylvania Turnpike rest area [(the Plaza). N.T. (suppression hearing), 2/10/25, at 6, 21]. [Appellee] was seated at a table inside the Plaza. [Id. at 6-7, 22.] Trooper Shutter testified at [the suppression hearing] … that [Appellee] was sweaty and said he had taken an ecstasy pill earlier in Philadelphia, and was not feeling well. [Id. at 22; see also id. at 8 (Trooper Matthews's consistent testimony).] [Appellee] requested

emergency medical [services] ('EMS'). [Id. at 8, 22.] EMS [personnel] arrived and determined that [Appellee] needed to be transported to Reading Hospital for treatment. [Id. at 8, 24.] Trooper Shutter testified that he [performed] a 'pat down' of [Appellee's] person to ensure he had no weapons before he got into the ambulance. [Id. at 24-25.]

Both Trooper Matthews and Trooper Shutter testified that [Appellee] stated he did not have his cell phone and keys [to his vehicle ('keys' or 'key')] with him in the Plaza. [Id. at 10 (Trooper Matthews confirming that Appellee was 'the first person to bring up his cell phone and his keys.'); id. at 26 (Trooper Shutter's consistent testimony).] [Appellee] requested that [the Troopers] enter his vehicle to locate the cell phone and keys. [See id. at 11, 26-27.]2 [The Troopers walked to Appellee's car, discovered it was unlocked, and opened the driver's side door. Id. at 29.] [Trooper Matthews immediately] found [Appellee's] cell phone on the [driver's seat] floor. [Id.] [The Troopers continued] search[ing] the vehicle for [Appellee's] keys and found a [black] plastic [grocery] bag … on the rear floor. Id. at 30.]3 The contents of the bag were not visible. [Id. at 44.]4 Trooper Shutter [immediately] opened the bag and found white powder in the bag. Id. at 32. Trooper Shutter found the keys to [Appellee's] vehicle underneath an ashtray in the center console. [Id.] The [white powder was] seized and entered into evidence. [Id. at 34.] [Appellee's] vehicle was towed and entered into evidence. [Id. at 35.] On March 17, 2023, police obtained a search warrant to search [Appellee's] vehicle. [Id. at 35-36.] The seized [white powder was subsequently] tested and identified as heroin,fentanyl and xylazine."

**Legal lesson learned: Pat-down by police prior to EMS transport is an excellent safety practice; PD and EMS should consider having a written protocol.**

Note: Pat downs can save EMS lives.
See Commonwealth of Massachusetts v. Raymond J. Verrier (September 8, 2025): Mental patient. "It is undisputed that before placing the defendant in an ambulance, Chelsea police officer Timothy McCarthy pat frisked the defendant, finding a loaded firearm. Officer McCarthy then placed the defendant under arrest and searched him incident to that arrest, finding drugs on his person."
https://www.mass.gov/doc/commonwealth-v-verrier-ac-g24p446/download

## Chap. 13 – EMS, incl. Community Paramedicine, COVID-19

# WA: COVID19 – NO RELIGIOUS ACCOMMODATION REQUIRED

On September 2, 2025, in David Peterso, et al. v. Snohomish Regional Fire and Rescue; Kevin O'Brien, Chief, the United States Court of Appeals for 9th Circuit (San Francisco) affirmed the district court's summary judgment in favor of Snohomish Regional Fire and Rescue (SRFR). The FD could not "reasonably accommodate" the 8-plaintiff firefighter's proposed religious accommodation (no vaccination, frequent testing) "without undue hardship on the conduct of" its business. 42 U.S.C. § 2000e(j).

**THE COURT HELD:** "Dr. Lynch is a board-certified physician in infectious disease, Professor of Medicine at the University of Washington School of Medicine, and Associate Medical Director at Harborview Medical Center…. Dr. Lynch explained in some detail why Plaintiffs' proposed accommodation—testing, masking, and social distancing in lieu of vaccination— was inadequate. Regular COVID-19 testing was 'not sufficient' because tests are not always accurate and unvaccinated people subject to testing were 'among positive cases that . . . caused outbreaks in' Washington. Dr. Lynch described PPE, like masks, as 'complements, not substitutes, for getting vaccinated,' since '[m]asks shore up protection on the outside,' and vaccines do so on the 'inside.' According to Dr. Lynch, vaccines are 'effective around the clock,' and masks are not because 'a work-based masking requirement applies only while employees are at work.' He cited various studies that supported these conclusions."
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/09/02/24-1044.pdf

**KEY FACTS:**

> "SRFR provided its firefighters with information about the vaccination requirement and the process for requesting exemptions. Forty-six of SRFR's 192 firefighters requested exemptions, including the eight Plaintiffs. All the firefighters served in various firefighting and emergency medical technician (EMT) positions, and all held EMT or paramedic certifications. SRFR's Human Resources staff met with each employee who requested an exemption to discuss their request and any possible accommodation. SRFR simultaneously negotiated with the International Association of Fire Fighters, Local 2781 (the Union) regarding the vaccination requirement, and eventually 'approved a Memorandum of Understanding ('MOU') that modified the collective bargaining agreement to provide accommodation options for firefighters if [SRFR] determined they could not be accommodated in their healthcare roles.'
>
> In these circumstances, the MOU explained that unvaccinated firefighters could use their accrued paid leave while remaining employed. After exhausting that leave, firefighters could take a one-year leave of absence without pay. The MOU also provided that if any firefighters chose to leave SRFR, they could be added to the disability rehire list, which gave them 'priority'—meaning that they would not lose their rank, seniority, or benefit accrual status if they returned to SRFR within two years. Additionally, the MOU 'specified that the unvaccinated frontline employees could return to work during their period of absence if [the] Proclamation . . . was updated and amended to that effect.
>
> In October 2021, SRFR determined that it could not accommodate unvaccinated firefighters in their firefighting roles without imposing an undue hardship on its operations. SRFR explained that because a firefighter's work requires interfacing with the public, it did not have alternative positions for those seeking exemptions, nor could it facilitate their requested accommodation—masking, testing, and social distancing. SRFR encouraged all forty-six employees to use their accumulated leave days first and then apply for a one-year leave of absence. SRFR approved all such requests."

**Legal lesson learned: Yet another case holding that undue hardship for FDs to accommodate firefighters who refused to get vaccinated.**

## Chap. 13 – EMS, incl. Community Paramedicine, COVID-19

# AL: EMS IMMUNITY – GOOD SAMAR. LAW – STOPPED CPR

On Aug. 29, 2025, in Carol Rogers, as administratrix of the Estate of Susan Bonner, deceased v. Cedar Bluff Volunteer Fire Department and the Town of Cedar Bluff, the Alabama Supreme Court held (9 to 0) that trial court properly dismissed the lawsuit against the Town and its Volunteer Fire Department. June 6, 2017 motor vehicle accident where drive was submerged in creek; bystander CPR; she died two days later. Under the state's "Good Samaritan Act" the volunteer firefighter / EMT has immunity for negligence, as does his volunteer fire department which is deemed a subordinate entity of the Town. If his conduct was deemed wanton misconduct, the Town and other governmental entities in Alabama are not liable for intentional misconduct of employees and agents.

**THE COURT HELD: "**Based on the foregoing, Rogers failed to demonstrate that a genuine issue of material fact existed as to whether the Town is vicariously immune from liability for Guice's allegedly wanton acts or omissions in this case, and, thus, the summary judgment in its favor is due to be affirmed…. Even if Guice's conduct was not done in 'good faith' and was not done within the 'scope of [his] official functions and duties' as a volunteer firefighter with the CBVFD, thereby preventing him from being entitled to immunity under § 6-5-3236(d)(1) of the VSA, § 11-47-190, which was raised in the Town's filings below, makes clear that the Town could not have been liable for that conduct because it would have been intentional, wrongful conduct." https://cases.justia.com/alabama/supreme-court/2025-sc-2025-0055.pdf?ts=1756474207

**KEY FACTS:**

> "On June 6, 2017, [Susan} Bonner was driving on County Road 45 in Cherokee County when her vehicle left the roadway and ended up submerged in a creek. After Bonner was rescued by passing motorists, a bystander who also happened to be a volunteer firefighter with the McCord's Crossroads Volunteer Fire Department ('the MCVFD') began performing cardiopulmonary resuscitation ('CPR') on Bonner. At some point thereafter, Cherokee County Emergency Medical Services ('Cherokee County EMS') was notified of the accident, and paramedics were dispatched to the scene.
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> Guice [Howard Guice, volunteer firefighter and emergency medical technician with the CBVFD] was nearby, allegedly on a personal errand, and heard the call about the accident on a radio issued to him by the CBVFD. Even though the scene was not within the CBVFD's service area and even though the CBVFD had not dispatched him to the scene, Guice decided to go to the scene to see if he could assist the paramedics. After Guice arrived, the bystander who had been performing CPR on Bonner asked Guice to

take over, but Guice declined. Instead, he advised that all resuscitative efforts should cease and stated over his CBVFD-issued radio that a death had occurred at the scene. Guice then allegedly entered the water to help other bystanders search for a possible second victim in Bonner's submerged vehicle.

Five minutes after the bystander ceased performing CPR on Bonner, Cherokee County EMS paramedics arrived at the scene. They examined Bonner and found that she was warm to the touch, had a pulse, and had responsive pupils. As a result, the paramedics performed CPR on her until she experienced a return of spontaneous circulation. Bonner was transported to the hospital for further treatment but died two days later as a result of anoxic encephalopathy.4

> [Footnote 4.] According to the record, anoxic encephalopathy occurs when blood ceases to flow to the brain.

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Furthermore, Steven Kimmons, the CBVFD's chief, testified during his deposition that he reports directly to the mayor of the Town. Our Court has recognized that this connection between a fire department and a municipality does not prevent that fire department from being deemed a 'volunteer' fire department, thus entitling the municipality to be vicariously immune from liability for the acts of the fire department's volunteer firefighters."

**Legal lesson learned: Continue CPR until ambulance arrives and takes vital signs.**
**https://cases.justia.com/alabama/supreme-court/2025-sc-2025-0055.pdf?ts=1756474207**

## Chap. 13 – EMS, incl. Community Paramedicine, COVID-19

## NY: HEARSAY - EMS CAN TESTIFY - "MY BROTHER DID IT"

On June 27, 2025, in The People of the State of New York v. Bruce Biggs, Judge Dineen Ann Riviezzo, Supreme Court, Kings County, held (unpublished decision) that the "exited utterance" exception to the hearsay rule allows police and EMS to in Second-Degree Murder trial about the dying patient's comments.

**THE COURT HELD:** "Here, based on the above factors, the court finds that the statement qualifies as an excited utterance. Decedent was shot five times and was suffering from traumatic and serious injuries. He made a spontaneous statement only thirteen minutes after the shooting while he was in the ambulance and the EMTs were tending to his multiple injuries. The body worn camera demonstrates that decedent was in the midst of a serious medical event and had no time to reflect so as to deliberately deviate from the truth." https://law.justia.com/cases/new-york/other-courts/2025/2025-ny-slip-op-51480-u.html

**KEY FACTS:**

"On May 2, 2021, at approximately 8:26p.m., Police Officer Christopher Murphy responded to the corner of Putnam and Patchen Avenues in response to reports of a male shot. Officer Murphy was one of the first officers to respond. His body worn camera was activated and captured the entirety of his interaction with decedent at the crime scene, during transport to the hospital and at the hospital.

Officer Murphy approached decedent, who was lying on his stomach, and assessed him for injuries. Decedent rolled over onto his back and Officer Murphy applied a torniquet to his left leg which was bleeding profusely. Officer Murphy placed pressure on a wound to decedent's stomach area. During this time, decedent repeatedly asked for an ambulance, expressed that he was in pain and requested water. Officer Murphy told him to stay awake and to keep breathing. At one point, it appeared that decedent passed out. Officer Murphy asked what had happened, but decedent was unable to answer the most basic questions due to his pain and injuries.

While Officer Murphy was attending decedent's injuries, another officer asked his name, where the shooting occurred, and who shot him. Decedent was unable to answer any of the questions posed. The officers learned his name from someone else on the scene and stopped asking decedent questions.

At approximately 8:33 p.m., an ambulance arrived and the EMTs noted decedent's diminished breathing and low blood pressure. The EMTs encouraged decedent to 'stay with us, stay awake, stay with me.' Decedent was given oxygen and was encouraged to take deep breaths. Decedent requested more oxygen, but the EMTs stated that it was already at a high level. They suggested he breathe through his nose.

At 8:39 p.m., while still inside the ambulance, Decedent stated 'my brother did it, Bruce Biggs. Bruce Biggs shot me.' The statement was spontaneous and not made in response to any questioning by Officer Murphy or the EMTs. Decedent then stated, 'I went to the precinct the other day and told the cop at the desk, a Spanish dude, he wouldn't listen to me. I told him he's after me [inaudible] but he wouldn't listen.' After this statement, Officer Murphy asked 'Who did it?' to which Biggs responded, 'Bruce Biggs.' Officer Murphy clarified by asking 'Bruce Biggs?' and Biggs responded, '74 Bainbridge Street.'"

**Legal lesson learned: EMS should document in their run report the comments by the patient that his brother shot him.**

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

### NC: FF AFFAIR – WOMAN TOLD FD "STALKING" – FF FIRED

On September 15, 2025, in Robert Patterson v. City of Graham, et al., U.S. Magistrate Judge L. Patrick Auld, United States District Court for Middle District of North Carolina, issued an

opinion and recommendation that the U.S. District Court judge dismiss the firefighter's lawsuit claiming age discrimination and hostile workplace.

**THE MAGISTRATE WROTE**: "Plaintiff contends that Defendants terminated his employment because of his age…. [T]he Amended Complaint reveals that Plaintiff experienced his termination (and non-promotion) only after the revelation of his affair with a married woman and the volatile aftermath of the cessation of that affair, which involved allegations of violence and criminally inappropriate conduct by Plaintiff and other community members (*see, e.g.*, Docket Entries 12-2 to 12-4 (confirming the Wrenns' status as members of City community)). These circumstances render implausible any notion that age bias motivated Defendants' termination of Plaintiff's employment, necessitating dismissal of Plaintiff's ADEA discrimination claim. *** A plaintiff must provide objective facts or dates linking his termination[ or non-promotion] to his protected conduct other than his own opinions about a supervisor's motives. Plaintiff provides only his own opinions about the cause of his termination[ and non-promotion], with objective facts and dates that do not align with retaliation as a plausible motive. Thus, Plaintiff falls short of alleging facts sufficient for a retaliation case....
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ilcjd44wj1gOUELzUZUXmDmbuUsOiVZitmDUzsj9wpOSz4ErC%2Bb83%2Bac%2Bxbf2Y5XWbaFtY83bMRM%2FnYjCn7PkRA%3D?utm_medium=email&_hsenc=p2ANqtz-_fx1n9_ms4yphjYB4YK1tT4ojMXKWZyFtyDBkZEK1fupUD4WQ_rkXhMfyPQZmyXGwaNXHPYYCETcsN16Fd9R-eiG6PHw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

**KEY FACTS:**

> "In October 2022 Plaintiff advised Chief Cole that he was involved in an affair that had ended, and that the wife had threatened that her husband would do everything in his power to get him fired. [Plaintiff] also informed [Chief Cole] that: a) the wife was previously in an affair that ended in a murder-suicide in 2009, with the failed suicide attempt on her part; b) the wife attempted suicide again October 18, 2022; and c) he was extremely fearful of what measures this couple would take to have him fired….'On October 25, 2022, an internal affairs investigation was opened against Plaintiff for an affair he had with Mrs. Wrenn that occurred while he was off duty….'
>
> 'On October 28, 2022 Mrs. Wrenn advised the City of Graham Fire Department's Fire Chief, Defendant Cole and City of Graham Investigator, Billy Clayton, that Plaintiff was responsible for the whistleblower complaints against Chief Cole and Capt. Moore.' … 'On October 28, 2022 Mrs. Wrenn also advised Chief Cole and Investigator Billy Clayton that Plaintiff planned to expose Chief Cole and City Manager Megan Garner in their direct attempts to 'poison the well'….After Mrs. Wrenn's involvement with the Plaintiff had been exposed in mid-October 2022, and the involvement between these two parties had ended, Mrs. Wrenn willfully and falsely misled her husband to believe she had been threatened and forced to remain involved with Plaintiff for fear of retaliation….
>
> ***

> ‘Plaintiff received a pre-disciplinary conference notice on May 10, 2023. He was denied an attorney again. He filed a formal complaint against Fire Chief Tommy Cole for retaliation with the City Manager, Megan Garner.’ … Nonetheless: On May 17, 2023, Plaintiff was placed on paid administrative leave and was terminated via email after 8:00 pm that evening. Mrs. Wrenn was contacted that same day by the City of Graham and advised of his termination. He appealed the termination. [City Manager] Garner was the person who presided over his appeals hearing and made the decision to uphold his termination.”

**Legal lesson learned: Affair can lead to ugly allegations and internal investigations.**

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

## FL: FORMER CHIEF – SEX HIS MINOR CHILD – LIFE PRISON

On September 4, 2025, in Jamie Douglas Geer v. Secretary, Department of Corrections, U.S. District Court Judge Kathryn Kimball Mizelle, United States District Court for Middle District of Florida (Tampa Division) held that Geer, former Fire Chief of City of Clearwater, is denied habeas corpus and must serve sentence of life in prison in Florida prison.

**THE COURT HELD**: “Geer, a Florida prisoner, timely filed a pro se second amended petition for writ of habeas corpus under 28 U.S.C. § 2254…. Also, Geer moved for an evidentiary hearing…. Having considered the second amended petition,… the response in opposition … and the reply and the supplemental reply … the petition is denied.”
https://app.midpage.ai/document/geer-v-secretary-department-of-11133637?refG=true

**KEY FACTS:**

> “A state court jury convicted Geer of sexual battery, lewd and lascivious battery, and unlawful sexual activity with a minor…. The state trial court sentenced him to life in prison for the sexual battery conviction, a concurrent fifteen years in prison for the lewd and lascivious battery conviction, and a consecutive fifteen years in prison for the unlawful sexual activity with a minor conviction…. The state appellate court per curiam affirmed the convictions and sentences….
>
> ***
> At trial, the victim, who was nineteen, testified that Geer began to engage in sexual activity with ‘her when she was seven, began to engage in oral sex with her when she was eleven, and began to engage in vaginal sex with her when she was fifteen.’ A state court jury convicted Geer in 2012 of sexual battery, lewd and lascivious battery, and unlawful sexual activity with a minor (started at age 7). The state trial court sentenced him to life in prison for the sexual battery conviction, a concurrent fifteen years in prison for the lewd and lascivious battery conviction, and a consecutive fifteen years in prison for unlawful sexual activity with a minor conviction.”

**Legal lesson learned: Terrible conduct; life in prison appropriate sentence.**

> Note: See April 27, 2012 article, "Ex-fire chief convicted in child sex abuse trial. A former Clearwater fire chief is going to prison for life for having sex with a minor." **https://www.wtsp.com/article/news/local/ex-fire-chief-convicted-in-child-sex-abuse-trial/67-376283027**
>
> See closing arguments [VIDEO]: https://www.youtube.com/watch?v=J9a7dzpchr4

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

## LA: CAPT TRANF - NOT "DISCIPLINE" – FF BILL OF RIGHTS

On Aug. 28, 2025, in Marlan Hyde, Sr. v. New Orleans Fire Department, the Court of Appeals of Louisiana, Fourth Circuit held (3 to 0) that the City Civil Service Commission properly held that the transfer from District Four to District Three, three months after the December 17, 2023 "physical altercation" with another fire captain, Craig Armant, was not a disciplinary action. The pre-disciplinary hearing was conducted on March 20, 2024, and the FD decided to not issue any discipline, to avoid any violation of "60-day rule" of Louisiana Firefighters Bill of Rights Act. "Any investigation of a fire employee . . . shall be completed within sixty days, including the conducting of any pre-disciplinary hearing or conference.

**THE COURT HELD:** In its October 3, 2024 decision, the Commission found that NOFD's transfer of Hyde without any attendant loss in pay "[was] not discipline" under Civil Service Rule II, § 4.13 'so [he] has no right of appeal' and denied Hyde's civil service appeal. This appeal follows…. Accordingly, we find no error in the Commission's determination that Hyde's transfer was not disciplinary in nature, such that he had no right under Civil Service Rule II, § 4.1 to appeal the transfer. We find this assignment without merit… Hyde has failed to demonstrate that his transfer will cause him to suffer any negative effect. Accordingly, the Court finds that Hyde's transfer does not amount to an adverse action under the Firefighters Bill of Rights." **https://cases.justia.com/louisiana/fourth-circuit-court-of-appeal/2025-2025-ca-0114.pdf?ts=1756426619**

**KEY FACTS:**

> "On December 17, 2023, Hyde engaged in a physical altercation with another fire captain, Craig Armant ('Captain Armant'), at a fire station in the Fourth District where they both worked. Following the altercation, NOFD initiated an investigation into the incident.
>
> ***

On January 24, 2024, NOFD charged Hyde with violating its departmental rule RR-25, which provides that, '[t]hreats or acts of physical violence against the public or other members is strictly prohibited.' A pre-disciplinary hearing was conducted on March 20, 2024. At the hearing, Hyde, through his representative, raised NOFD's failure to complete the investigation into the December 17, 2023 incident within sixty days, as required by the Firefighters Bill of Rights, La. R.S.33:2181 et seq., and requested that the disciplinary matter be 'thrown out immediately.' The request was denied.

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On March 25, 2024, Deputy Chief Larry White verbally informed Hyde that NOFD was transferring him to a fire station in the Third District. Hyde objected to the transfer and requested a meeting with the Superintendent of Fire of NOFD, Roman Nelson, to discuss the transfer. Superintendent Nelson and Deputy Superintendent of Operations Armand Bourdais met with Hyde and his representative the following day at fire headquarters. During this meeting, Superintendent Nelson informed Hyde that no disciplinary action would be taken against him for the December 17, 2023 incident, but that he was being transferred due to safety concerns.

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Hyde was transferred to the Third District effective March 28, 2024. NOFD issued a letter to Hyde on April 18, 2024, informing him that no action would be taken against him due to the expiration of the 60-day period set forth in the Firefighters Bill of Rights."

**Legal lesson learned: Transfer to another station is not discipline in violation of the state's Firefighters Bill of Rights.**

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

## VA: FACEBOOK POSTS / TRANSGENDERS – CAPT FIRED

On June 2, 2025, in Martin Misjuns v. City of Lynchburg, the United States Court of Appeals for the Fourth Circuit (Richmond, VA) held (3 to 0) that the City properly fired the Captain for the offensive Facebook posts. The trial court had granted City's motion to dismiss.

**THE COURT HELD: "**On January 26, 2021, Misjuns posted four cartoons on his public figure Facebook page with the caption "#BidenErasedWomen – Coming to your daughters [sic] high school locker room in the near future." … The cartoons depicted offensive stereotypes of transgender women in bathrooms and participating in sports…. Misjuns became aware of the citizen complaints. On February 1, 2021, he posted a meme to his public figure Facebook page with the caption, 'Let's set something straight for the attacks I've been taking from a local activist group . . ..' The meme stated: 'In the beginning, God created Adam & Eve. Adam could never be a Madam. Eve could never become Steve. Anyone who tells you otherwise defies the one true God. Threatening anyone for believing & saying this is most likely a hate crime."'

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The plaintiff has every right to express his views, hateful though they be. But he has no right to impair the Fire Department's work and efficiency. His transparently bigoted remarks gave rise to a reasonable apprehension on the part of Lynchburg's citizens that the Fire Department's emergency-response tasks would not be carried out in an even-handed and unbiased way.

The city, in turn, was fully justified in responding to the possible corruption of its basic services and to the negative effects on recruitment that the well-known views of a well-known Captain in the Fire Department would likely have. There was nothing pretextual in the City's invocation of the principles of good governance here, and the Supreme Court in Pickering v. Board of Education, 391 U.S. 563 (1968) and its numerous progeny has granted municipalities, in a case such as this, the right to act precisely as the City did." https://cases.justia.com/federal/appellate-courts/ca4/24-1782/24-1782-2025-06-05.pdf?ts=1749150038

**KEY FACTS:**

> "Martin Misjuns was employed as a Fire Captain and paramedic by the City of Lynchburg as part of the Lynchburg Fire Department ("LFD")…. He was also a union representative with IAFF Local 1146, the Lynchburg division of the International Association of Fire Fighters labor union, and Ward I Chair for the Lynchburg Republican City Committee….
>
> Before the events that serve as the basis of this suit, there were already deep-seated tensions between Misjuns and the City. For example, Misjuns alleged that LFD engaged in 'discriminatory training and promotion practices" against him in 2019 and 2020. … He also alleged politically-motivated actions. In spring 2020, IAFF Local 1146 and Misjuns supported Republican candidates for Lynchburg City Council who ran against candidates supported by the Democratic majority on City Council, including Defendants Mayor Mary Dolan and Vice-Mayor Beau Wright…. One of the Deputy Fire Chiefs allegedly 'began a pattern of harassing behavior' against Misjuns, including sending him a text message that he did not approve of Local 1146's post supporting the Republican candidates.
>
> ***
> On March 25, 2021, Misjuns received a letter from Fire Chief Wormser, which he alleged Wormser sent 'in response to instructions from one or more of Dolan, Wright, and Wodicka.' … The letter ordered Misjuns to attend an 'interrogation' on March 29 to discuss several citizen complaints regarding the cartoons and meme…. Wormser also informed Misjuns that he was under investigation for social media statements making political criticisms of Dolan…. The record shows that Wormser provided Misjuns with a notice of the complaints made against him…. On March

29, 2021, the initial 'interrogation' occurred…. Per Misjuns' account, Deputy Fire Chief Robert Lipscomb then began collecting allegedly false reports accusing Misjuns of creating a hostile work environment…. On May 10, 2021, Wormser notified Misjuns of his decision to suspend Misjuns…. On June 27, Lipscomb ordered Misjuns to attend a second 'interrogation,' which occurred on August 2….On October 18, 2021, Wormser notified Misjuns via letter that he was terminated from employment.

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Misjuns appealed his firing in accordance with the City's grievance procedures, including appealing to the City's Employee Appeal Board. J.A. 17. In March 2022, the Board upheld his firing."

**Legal lesson learned: Firefighters and other public employees must exercise extreme care in posting on social media that may offend residents.**

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

## GA: FD WENT PART-TIME - NO BENEFITS – EVEN WK 40 HRS

On September 8, 2025, in David Bibble, et al v. City of Roswell, the Court of Appeals of Georgia, Third Division held (3 to 0) that part-time firefighters, who may voluntarily work over 40 hours, are not entitled to retirement or other benefits of full-time city employees, including retirement. In 2000, FD transitioned from mostly career to part-time.

**THE COURT HELD:** "[T]he City did not require part-time firefighters to work a full-time firefighter schedule of 24 hours on/48 hours off, nor were they were required to work 40 hours per week. Rather, part-time firefighters were required to work one twelve-hour weekday shift per week and one twelve-hour weekend shift per week. They were not required to be on-call, they were not subject to being held over, and they were not required to work if they were unavailable. And they indicated when they were available to work. If any part-time firefighter chose to work more than the minimum requirement, they did so voluntarily…. Although many firefighters in part-time positions often worked more than 40 hours per week, the undisputed facts show that the plaintiffs were employed in part-time positions and worked extra hours voluntarily…. Even if the City's scheduling of part-time firefighters to work additional hours without extending to them the benefits of full-time employment was unfair in some broad sense, 'we are not at liberty to ignore the specific terms of the parties' written agreement and rewrite or revise a contract under the guise of construing it." Copeland v. Home Grown Music, Inc., 358 Ga. App. 743, 750 (1) (856 SE2d 325) (2021) (punctuation and footnote omitted)."
https://cases.justia.com/georgia/court-of-appeals/2025-a25a0947.pdf?ts=1757355224

**KEY FACTS:**

"As relevant to these appeals, '[i]n 2000, the City converted from a system of employing mostly full-time firefighters – with some reliance on volunteer firefighters – to a system

of employing a significant number of 'part-time' firefighters who are not entitled to the same benefits as full-time City employees.' Id. at 828. David Bible and Brian Rogers worked for the City's Fire Department from 1992 until 2017, and from 2006 to 2018, respectively. Id. at 828. In August 2017, Bible and Rogers filed suit against the City seeking to represent a class of similarly-situated firefighters, claiming that although they worked at least 40 hours per week, they were improperly classified as part-time, which deprived them of full-time employee benefits under the City's Human Resources Policies and Procedures Manual ('Policy Manual') Specifically, they sought retirement benefits under the City's Defined Benefit Pension Plan, which covered employees prior to March 1, 2011, and the City's Defined Contribution Plan, which covered employees hired on or after March 1, 2011.

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Since 1983, the Policy Manual, as well as the resolutions implementing it, stated that it could be amended by the City Council at any time. The July 2002 version stated that the 'City reserves the right to amend, modify, change, replace, suspend, or cancel any of its policies and procedures, including this Manual, at any time, with or without notice, for any reason or no reason[.]' Once again, both named plaintiffs acknowledged receiving letters from the City which accompanied the Policy Manual and stated that the Policy Manual was subject to review and change by the City at any time. See OCGA § 13-1-1 ('A contract is an agreement between two or more parties for the doing or not doing of some specified thing.')."

**Legal lesson learned: Part-time personnel who voluntarily offer to work over 40 hours in a work week do not therefore become full time employees entitled to full-time benefits.**

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

## MN: CITY NEW FD - CONTEMPT - $2000 / RECRUITING FF

On August 28, 2025, in City of Long Lake v. City of Orono**,** the Court of Appeals of Minnesota held (3 to 0) that trial court properly issued an injunction (28-page order) against the City of Orono. The Court also upheld contempt citation and $2,000 fine for recruiting of firefighters from Long Lake Fire Department but set aside contempt for planning on building a new fire station next to Station 2. For 20 years LLFD covered both cities under a joint fire protection agreement, but in April 2021 City of Orono gave notice it was forming its own fire department effective when agreement expired December 31, 2025. The July 2023 injunction order specifically enjoins Orono from interfering with an existing fire-service contract between Long Lake and the Village of Minnetonka Beach, 'recruiting Long Lake Fire Department firefighters to work for the Orono Fire Department, seeking a transfer of Long Lake Fire Department firefighters' pension funds,' 'interfering with the work of Long Lake Fire Department firefighters,' and using or hindering the LLFD's use of station 1 and station 2.

**THE COURT HELD:**

"The district court also fined Orono $2,000 for continuing to recruit Long Lake firefighters in violation of the temporary injunction…. Orono challenges the district court's initial finding of contempt for its recruitment of LLFD firefighters and the subsequent imposition of a fine for hiring two LLFD firefighters…. The district court applied this language to the OFD chief's invitation to LLFD firefighters to attend a recruiting event and concluded that his action violated the injunction's prohibition on recruitment…. By inviting LLFD firefighters to an OFD recruitment event, Orono plainly sought to persuade LLFD firefighters to work for the OFD. Thus, the temporary injunction defined with sufficient clarity the prohibited acts.

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Orono also contends that the district court erred by imposing a fine for the OFD's offer to waive the physical- and psychological-examination requirements for LLFD firefighters who wished to join the OFD. Specifically, Orono contends that it was not given notice that its waiver policy would constitute a violation of the temporary injunction and, thus, it had no opportunity to avoid or purge the finding of contempt…. In its March 2024 order, the district court found that Orono's waiver policy is 'a recruitment tool aimed directly at LLFD firefighters.' The district court imposed a fine of $1,000 for each LLFD firefighter hired by the OFD, for a total of $2,000. The district court did not abuse its discretion by ordering Orono to pay a $2,000 fine for Orono's recruitment of two LLFD firefighters to the OFD under this waiver policy." https://cases.justia.com/minnesota/court-of-appeals/2025-a24-1206.pdf?ts=1756478239

**KEY FACTS:**

"For more than 20 years, the Long Lake Fire Department (LLFD) has provided fire-protection services in both cities pursuant to contractual arrangements. In 2021, Orono notified Long Lake of its intent to terminate the contracts at the end of 2025 and establish its own fire department.

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The LLFD operates out of two fire stations: station 1 and station 2. Long Lake and Orono each own half of station 1, the operations of which are governed by the parties' contract for joint ownership, which was entered into in 2001. Under the joint-ownership contract, Long Lake is responsible for the operation and maintenance of station 1 and the land on which it is located. In contrast, Orono wholly owns station 2, the operations of which are governed by a 2011 addendum to the parties' fire-protection contract. Station 2 exists to allow LLFD to provide fire services to the Navarre area of Orono.
In April 2021, Orono served Long Lake with notices of termination of the fire-protection and joint-ownership contracts. As a consequence, both contracts are due to expire on December 31, 2025.

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In September 2022, the Orono City Council passed a resolution establishing the Orono Fire Department (OFD). In October 2022, Orono purchased a fire-ladder truck, which the LLFD had expressed interest in purchasing. Orono also rejected a capital-improvement plan proposed by the LLFD in 2022. In December 2022, Orono hired the

> LLFD fire chief to be the fire chief of the OFD. In February 2023, Orono contacted legislators in an effort to transfer control of the LLFD firefighters' pensions to Orono in 2024. In May 2023, the new OFD chief published a needs assessment, which recommended, among other things, that Orono 'assume control' of station 2 in 2024, 'move the firefighters' pensions from Long Lake to Orono,' and engage in conversations with other cities currently under contract with the LLFD to work with the OFD in the future. In June 2023, the Orono City Council adopted a resolution stating that Orono would assume 'responsibility for the operation and maintenance of [station 2] no later than July 1,2024,' and Orono served Long Lake with notice of its intent to remove the Navarre area from the LLFD service area effective July 1, 2024."

**Legal lesson learned: To avoid contempt fines, legal counsel for both cities should regularly communicate with one another and provide status reports to the court.**

## Chap. 18 – Legislation, incl. Public Records

## OH: ETHICS COMMISSION – KEEP FREQUENT FLYER MILES

On August 4, 2025, the Ohio Ethics Commission approved an Advisory Opinion allowing public officials to keep airline frequent flyer miles earned on official travel.

INFORMATION SHEET: ADVISORY OPINION NO. 2025-02 FREQUENT FLYER MILES AND REWARDS POINTS
https://ethics.ohio.gov/advice/opinions/2025-02.pdf

> Frequent Flyer Miles & Reward Points Advisory Opinion
> https://ethics.ohio.gov/education/newsletters/VOE_25Q3.pdf
> "At its meeting on August 4, 2025, the Ohio Ethics Commission approved Formal Advisory Opinion 2025 – 02 which allows public officials or employees to use frequent flyer miles that were earned during official travel for personal travel. Although the Commission had previously restricted the use of frequent flyer miles accrued during official travel for personal use, this advisory opinion states that public officials and employees may use frequent flyer miles that were earned during official travel for personal travel if they earn the miles under the same conditions as the public and at no additional cost to their public agencies. While this Advisory Opinion primarily references frequent flyer miles, the analysis also applies to other reward points programs.
> ***
>
> The opinion notes that public officials and employees are prohibited from choosing an airline, vendor, or service based solely on whether it provides frequent flyer miles or other rewards points. Additionally, a planner who books a group trip for multiple travelers and could therefore earn a substantial number of frequent flyer miles or reward

points from one event is prohibited from personally using rewards earned in connection to booking the group travel."

**Legal lesson learned: Fire & EMS departments should consider adopting a policy that formally recognizes this Advisory Opinion.**