

Cumberland County Fire Chief's Association

Minutes of July 26, 2010 Monthly Meeting

The meeting was hosted by EMS. We thank Dr. Miekley and his staff for their hospitality.

Opening Prayer: Chief J.F. Hall provided the opening prayer.

Roll Call: Roll call was conducted with 18 departments and 7 associate members present.

Members Absent: Cotton, Hope Mills, Pope AFB, Spring Lake, Westarea #15

Associate Members Absent: FTCC, County Commissioner, SBI, Hope Mills PD, Fort Bragg EMS

Approval of Minutes: Minutes from the June 28, 2010 meeting were approved as presented.

Guests: Dr. Miekley was introduced as the Interim Director for EMS.

Vendors Present: None.

Treasurer's Report: The report was approved as presented.

Meeting Point of interests:

Next Chief's Meeting will be held August 23, 2010 at Eastover Fire Department. The meeting will begin at 7:00 pm.

- President Johnson advised the members that the NC Firefighters Annual Meeting and Expo will be held August 11-15, 2010 in Raleigh NC.
- President Johnson handed out packets which contained; budget information, Treasurers report, and old foam unit agreements.
- President Johnson stated that the Hoke County Ethanol plant tour is scheduled for July 31, 2010 at 1000 hours. He has requested that all those that could attend to please do so. Call President Johnson for directions and further information

OLD BUSINESS:

- President Johnson discussed the disbursements of the special fire tax fund. The County Commissioners are requesting additional oversight over the funding. Please send President Johnson your total income for 2010 and last year's distribution information

- President Johnson stated that the Welcome Fire Department in Davidson County came by and looked at the old safety house and are making arrangements to pick same up. They expressed their appreciation for the donation.
- President Johnson stated that the foam trailers need to be weighed to ensure the CCFM vehicles will be able to haul same.
- President Johnson discussed issues with the 800 system, whereas the system continues to be busy and not allowing emergency traffic. This presents a firefighter safety concern that needs immediate attention. The problem has been consistent since the switch to VIPER and appears to be across the board with some Chief's reporting problems while others are not. However stations with high call volume experience busy signals on a regular basis. Deputy Emergency Services Director Timmy Mitchell stated that coordination is being made to add additional channels on several towers to eliminate the problem. He will keep us informed. President Johnson stated that we either switch back to analog or VHF until the problem is solved. He asked Chief's that experience problems to make a command decision and place their firefighters on a radio system that works, i.e. the old 800 or VHF.

NEW BUSINESS:

- President Johnson requested that members of the FFD Honor Guard be present at the next meeting, so that gratitude can be made to the members of this team for the service that they provide to the County Fire Departments. These members sacrifice their own time to attend funerals for our members and provide an excellent service for the occasions that is recognized by both family members and those in attendance.

COMMITTEE REPORTS:

ID CARD COMMITTEE Lt. Tara Whitman (Stoney Point) Chairperson

- **FYI.** Fire Chiefs are required to send a signed letter or memo with a firefighter requesting an ID Card. For any questions or an appointment contact 424-0694 or e-mail at tara@stoneypointfire.com

FIRE PREVENTION/EDUCATION COMMITTEE Chief J. F. Hall (Bethany) Chairperson

- No report

COMMUNICATIONS COMMITTEE Chief B. Bullard (Stedman) Chairperson

- There was discussion on having the dispatchers to slow their voice communications down some during the pre-alert phase and to also include the station number if possible.

STANDARDS & POLICY COMMITTEE Chief K. Hall (Cumberland Road) Chairperson

- No report.

MEMORIAL COMMITTEE Chief R. Marley (Pearce's Mill) Chairperson

- No report.

AUTOMATIC AID/MUTUAL AID COMMITTEE Chief Ake (Beaver Dam) Chairperson

- No report.

FINANCE COMMITTEE Deputy Chief Freddy Johnson Jr. (Stoney Point) Chairperson

- No report.

RESCUE COMMITTEE Deputy Chief Freddy Johnson Jr. (Stoney Point) Chairperson

- No report

BULK PURCHASE COMMITTEE Chief (EMS) Chairperson

- No report.

ASSOCIATE MEMBERS REPORT

EMERGENCY SERVICES DIRECTOR/ ECC-911 Kenny Currie, Director

- Timmy Mitchell stated that a meeting was needed with Firehouse Software and the County IT representatives to discuss some issues with the system. The County and the City Communications centers are combining. The County Commissioners are expected to approve the Hope Mills Police Department dispatching duties combining with County Communications

EMS DIRECTOR: Vacant, Director

- Assistant Chief Bullard advised that EMS is in the process of filling some vacant positions and completing the AVL closest unit response protocol.

HAZMAT BC Brian Mims, FFD - POC telephone for HAZMAT is 433-1729

- No report

FORESTRY DISTRICT Andrew Synder, County Ranger

- An additional plow with an operator is now in service within Cumberland County.

FTCC Ernest Ward, Director

- No report.

SHERIFF'S OFFICE Sheriff Butler

- Sgt. Hodges thanked the personnel who worked the Murder / Arson Fire at Star Lane for their professionalism and efforts. If you have an issue whereas you only need to file a police report, please ensure that the dispatchers know that an arson investigator is not needed.

HIGHWAY PATROL

- No report.

CHRISTIAN FIREFIGHTERS Chaplain Casanova

- No report.

COUNTY COMMISSIONERS Fire Commissioner Ed Melvin

- No report.

FOR THE GOOD OF THE ASSOCIATION:

- President Johnson stated everyone should take pre-cautions with the current heat wave.
- Chief JF Hall advised all members to look at the churches within your communities and beware of the hazards that are there. If you need inspection assistance, please contact the CCFM office.
- Chief Kevin Herndon advised the members that if you are ordering signs from a local company to please inspect same before it is accepted or installed.

ADJOURNMENT: A motion was made to adjourn by Deputy Chief Tracy Smith, seconded by Assistant Chief Kevin Murphy. The meeting was adjourned at 2000 hours

Respectfully Submitted By:

Freddy L. Johnson
Freddy L. Johnson Sr. CFO
Fire Chief / President

Mark A. Melvin
Mark Melvin, CFO
Deputy Fire Chief / Secretary

7 Enclosures

1. Treasurer's report
2. Legal briefs
3. Adopted Funding Memorandum dated July 1, 2010 CCFCA
4. Foam Agreements
5. NFA weekend document
6. EMS Memo
7. CCFCA Attendance Roster for June 28, 2010

ENC 1
2 PGS

CCFCA BALANCE SHEET

(Includes unrealized gains)

As of 7/26/10

7/26/10

Page 1

Account	7/26/10 Balance
ASSETS	
Cash and Bank Accounts	
Checking	92,958.69
Savings	0.00
TOTAL Cash and Bank Accounts	92,958.69
TOTAL ASSETS	92,958.69
LIABILITIES & EQUITY	
LIABILITIES	0.00
EQUITY	92,958.69
TOTAL LIABILITIES & EQUITY	92,958.69

CCFCA CATEGORY SUMMARY

7/1/09 Through 6/30/10

7/26/10

Page 1

Category Description	7/1/09- 6/30/10
INCOME	
City Of Eastover	13,204.82
COUNTY OF CUMBERLAND	227,954.90
Hope Mills	3,000.00
Interest On Checking Account	27.18
Other Inc	1,195.20
REFUND	57,164.20
Tax Refund	491.93
TOTAL INCOME	303,038.23
EXPENSES	
Uncategorized	0.00
3% Money	149,009.38
AIR SYSTEMS	62,926.50
ASSOC. SUPPLIES	327.12
Bank Analysis Service Charge	301.33
Education	678.64
FIRE PREVENTION	654.05
FOAM TRAILERS	27,109.29
GENERAL FUND	25,060.30
800 Mhz	5,100.00
TOTAL GENERAL FUND	30,160.30
LEGAL	4,299.00
MeMBERSHIP DUES	1,600.00
Memorial Service	331.58
NETWORK SYSTEM	19,258.04
OSHA REQUIREMENTS	8,698.00
PHONE SERVICE	206.40
TOTAL EXPENSES	305,559.63
OVERALL TOTAL	-2,521.40

QuickZoom Report
7/1/09 Through 6/30/10

Date	Account	Num	Description	Memo	Category	Cl	Amount	
9/2/09	Checking	1810	B.B.&T. Deposit Slip / Check Charge	Fee for Deposit Slip Booklet	GENERAL FUND	R	-9.01	
9/10/09	Checking	1812	S & D FLORIST	Sall Hall Flowers	GENERAL FUND	R	-264.43	
9/17/09	Checking	1822	STEDMAN FIRE DEPT. STA. 23	Reimbursement for Decon trailer Sh...	GENERAL FUND	R	-1,209.62	
10/26...	Checking	1827	THE TROPHY HOUSE	Dr. Reed Retirement Plaque	GENERAL FUND	R	-91.77	
12/29...	Checking	1835	SMITH'S ADDRESSING SVC.	ID Machine	GENERAL FUND	R	-6,085.44	
2/3/10	Checking	1836	U.S. POST OFFICE	Post Office Box	GENERAL FUND	R	-148.00	
2/9/10	Checking	1838	S & D FLORIST	Flower funds	GENERAL FUND	R	-341.61	
2/22/10	Checking	1839	TROPHY HOUSE	Plaque for Patty Strahan	GENERAL FUND	R	-109.35	
2/28/10	Checking	1841	BREECE MONUMENTS	Memorial Court Repair	GENERAL FUND	R	-783.46	
3/5/10	Checking	1845	SMITH'S ADDRESSING SVC.	Printer Ribbon	GENERAL FUND	R	-368.00	
3/12/10	Checking	1854	TROPHY HOUSE	Plaque for Grays Creek # 18 Dep. C...	GENERAL FUND	R	-115.95	
6/1/10	Checking	1855	S & D FLORIST	FF. Wallace Smith	GENERAL FUND	R	-108.00	
6/1/10	Checking	1858	SMITH'S ADDRESSING SVC.	MAINT. CONTRACT	GENERAL FUND	R	-805.66	
6/2/10	Checking	1859	VISIONARY SYSTEMS, LTD	Fire House Software	GENERAL FUND	R	-190.00	
6/2/10	Checking	1859	VISIONARY SYSTEMS, LTD	Fire House Software Maint. Contract	GENERAL FUND	R	-14,430.00	
TOTAL 7/1/09 - 6/30/10								-25,060.30
TOTAL INFLOWS								0.00
TOTAL OUTFLOWS								-25,060.30
NET TOTAL								-25,060.30

Legal Briefings for Fire Chiefs

How fire chiefs, fire commissioners, and other fire service officers use the law to protect their communities... their departments... their officers... and themselves.

Vol. 23, No. 7

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July 2010

In This Issue

U.S. Supreme Court Case—Hiring Practices Challenged

The district court decides that a written examination had an unlawful disparate impact on minority candidates. The court of appeals reversed, concluding that the claims were filed well beyond the 300-day statute of limitations. The Supreme Court reverses again, deciding that the *continuing violation* theory applies. Page 2

Muslim Firefighter—Choose Your Job or Your Religion!

The firefighter claimed he was *retaliated* against and exposed to a hostile work environment. Threats were made of unspecified consequences to other Muslim firefighters. The city and fire department filed a motion to dismiss the claims. The motion was denied. Page 3

Female Firefighter Alleges Sexual Harassment

Does the court have jurisdiction? Are there administrative remedies that the claimant should have pursued *prior to suing* the city? This case demonstrates an apparent waste of legal costs by both parties. Page 5

Firefighter or Lineman? Salary Rate Challenged

The applicant was issued an identification card certifying his status as a firefighter, but he was not assigned as a first responder. Injured on the job, he applied for disability retirement benefits. The town refused, maintaining that the applicant was *not* a firefighter. Page 6

Bid for Post Traumatic Stress Disorder Benefits

The claim was denied because there was no physical injury associated with the claim for workers' compensation benefits. The court looked to the exact wording of the statute. Page 8

In The Next Issue

Refused Drug Test – Firefighter Terminated – Reinstatement Demand

After a minor traffic accident, the firefighter is ordered to provide a urine sample for drug screening. The nurse concludes that the test was *not valid*, but the firefighter refuses to submit to another test. After being terminated, he appeals, contending that proper procedures were not followed. Do not miss this commentary!

Termination – Police Report and Internal Affairs Division Investigation

The former firefighter was suspended, then re-employed based on a settlement agreement. During the first year of his re-employment he was considered a *probationary* firefighter. The termination decision came after an incident with another firefighter at a union meeting.

Legal Briefings for Fire Chiefs

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Hiring Practices Challenged

U.S. Supreme Court rules the claim was
NOT time barred

Lesson Learned:

If a fire department adopts and continues to use a discriminatory hiring policy or custom, a court may decide that there is a continuing violation of Title VII of the Civil Rights Act of 1964. Thus, each time the policy or custom is applied, the statute of limitations clock is reset and starts to run once again. In this case, exam results are repeatedly used to make hiring decisions, a continuing violation.

This important case was brought by African-American applicants for firefighter positions with the City of Chicago ("City"). An essential element of the selection process was a written examination ("Exam"). In 1995, the City received applications from over 25,000 firefighter candidates. All candidates were required to take the Exam and receive a passing grade to be considered for employment.

In order to manage the large number of candidates, the City announced in 1996 that candidates would be selected randomly, as long as they scored between 89 and 100 on the Exam. It should be noted that a score of 65 was considered a passing grade. The City sorted all candidates, based on their scores; as "not qualified", "qualified", and "well qualified."

In 1997, about 6,000 African-American candidates ("Petitioners") took the Exam and scored between 65 and 88. The Petitioners were considered "qualified", but were told that it was unlikely that they would be called for further processing. These applicants were not included in the pool of candidates who scored 89 or higher on the Exam; who would be randomly selected for hire.

The Petitioners filed a claim with the Equal Employment Opportunity Commission, alleging that the Exam had a disparate impact on African-American applicants who scored a passing grade, but were not included in the pool of candidates who would be randomly selected for hire. Petitioners further alleged that the use of the Exam was a violation of *Title VII* of the *Civil Rights Act of 1964*.

The District Court first certified the Petitioners as a class of all African-American firefighter candidates who scored between 65 and 88 on the examination and were not hired. Then, the court examined the merits of the claim. The City tried to have the case dismissed by filing a motion for summary judgment. Here, the City noted that the Petitioners filed their complaint well after the 300-day statute of limitations. The court denied the motion, and ruled that the City's "ongoing reliance" on the 1995 Exam scores constituted a *continuing violation* of *Title VII*.

The Petitioners prevailed on the merits, and the City appealed, again contending that the claims were time-barred.

The Seventh Circuit Court of Appeals reversed the judgment, deciding that the suit was not timely filed. The circuit court reasoned that the discriminatory act occurred when the City sorted the candidates' scores, and that this act took place more than 300 days before the case was filed. The court also concluded that later hiring decisions made based on the Exam

Continued on the next page ➤

scores were an “automatic consequence of the test scores, not new discriminatory acts.”

The Petitioners appealed.

Decision: Reversed and remanded for further proceedings.

The Supreme Court’s role in this case was not to consider a violation by the City of *Title VII*. Rather, their task was to determine whether or not the claim was time-barred.

In deciding whether the Petitioners’ claim was timely, the Supreme Court must “identify precisely the unlawful employment practice of which [they] complain.” *Delaware State Collage v. Ricks, 449 U.S. 250 (1980)*.

A prima facie disparate impact claim will be established by demonstrating that the City “uses a particular employment practice that causes a disparate impact on one of the prohibited bases.” *Ricci v. DeStefano, 557 U.S. (2009)*.

The Petitioners prevailed. Since the City continued to use the same hiring practice that initially was found to be unlawful, the Supreme Court applied the *continuing violation* theory.

The City requested that the case be remanded, and the Supreme Court agreed. We will have more on this important case as soon as further decisions are made.

Citation: Lewis, et al., v. City of Chicago, certiorari to the U.S. Court of Appeals for the Seventh Circuit, No. 08-974 (2010).

**Muslim Firefighter—
Choose Your Job or Your Religion!
Religious discrimination and
threats of retaliation**

Lesson Learned:

Here, the fire department may not be sued for religious discrimination because it is an agency within a municipal government. Claims against the municipality itself, however, may proceed.

Tarick Ali is a firefighter and an emergency medical technician with the District of Columbia Fire and Emergency Medical Service (“DC Fire and EMS”). At all times relevant to this narrative, Ali was a practicing Muslim.

On June 15, 2006, Ali was finishing a prayer session at the fire station with a co-worker, when his supervisor, Lieutenant Michael Malinowski, rang the fire house bells, alerting all firefighters that they were to line up for a training drill. Ali alleged that Malinowski singled he and his co-worker out by “berating them for allegedly reporting to the floor approximately 30 seconds after the unit was placed out of service for the training drill.”

Later, Malinowski allegedly told Ali that he “needed to choose between his job or his religion.”

Ali also claims that he filed an “internal complaint” alleging

Continued on the next page ➤

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Around the Nation

Historic WTC Settlement — \$575 Million

Respiratory Injuries suffered by emergency responders

One law firm representing about 10,000 firefighters, police officers and laborers who responded to the World Trade Center 9/11 scene has apparently agreed to the terms of a historic settlement of numerous claims of respiratory and other physical ailments allegedly caused by toxic exposure during recovery operations at Ground Zero.

New York City officials have claimed immunity protection, but decided to drop that defense against liability. However, City officials also claimed to have spent over \$200 million in defending against these claims.

The settlement must be agreed to by 95% of the claimants. Payment sums will depend on a number of parameters. There will be a sliding scale of recovery from claimants who have either died or who have suffered severe complications, such as lung cancer, to those parties who have no qualifying injury at this time, but who might in the future. This would be similar to many Vietnam veterans who suffered respiratory injuries from exposure to Agent Orange, but the symptoms have not manifested for several years after exposure.

It was also noted that the \$575 million settlement could rise to over \$650 million if there are additional claims filed.

\$20,000 Settlement – Sick Leave

Town ordinance considered vague

In 2006, a firefighter asked to take

(Continued on next page)

discriminatory treatment, claiming that “defendants harassed and retaliated” against him by directing that he “sign in his release in the journal signing out equipment, which is a task that was not part of a routine practice” and which was required of no other employees.

Ali met with Malinowski and Battalion Fire Chief Dove on July 5, 2006, restating his opposition to the way he had been treated. At some point during the meeting, Malinowski allegedly admitted to asking Ali “what’s more important to you. ... your religion or the job of the fire department?” Ali also alleged that Malinowski stated: “It don’t work, the two things, religion on this side, job on this side, clash.” And, “Hey, Tarick, you need to make that decision. What’s more important to you, because if they clash, you know there’s going to be ramifications and all that.”

Ali also alleged that during the meeting Dove threatened that if Ali pursued his harassment claims, his “Islamic co-workers would be placed on charges as ‘ramifications’ for his action.”

Finally, Ali charged that Dove later retaliated against him by “making the decision to require all employees to file a special report, which created a hostile work environment.”

Ali filed a charge with the Equal Employment Opportunity Commission (“EEOC”), claiming discrimination and retaliation in violation of *Title VII* and the *DC Human Rights Act* (“DCHRA”). Ali named the District of Columbia (“The District”) and DC Fire and EMS.

The District and DC Fire and EMS filed a motion to dismiss all claims, asserting that DC Fire and EMS is an entity of the District and may not be sued.

Decision: DC Fire and EMS may not be sued because it is an agency within the District of Columbia government. Ali’s claims against the District of Columbia itself may proceed.

Ali’s claims are framed around allegations of disparate treatment and hostile work environment. The disparate treatment claim is framed around Title VII of the Civil Rights Act of 1964, wherein DC Fire and EMS or the District treated other firefighters differently because Ali is a member of a protected class.

Stated another way, were Ali’s employer’s actions motivated by discriminatory intent? Here, it is important to note that discriminatory intent may be proven by either direct or circumstantial evidence.

The court conceded that Ali’s discrimination claims may not ultimately prove to be meritorious. However, he has alleged enough at this stage of the proceedings to continue litigation.

Ali’s retaliation claims are also sufficient to survive the District’s motion to dismiss. In order for his claim to be successful, Ali must establish that he engaged in a protected activity as a consequence of which his employer, the District, took a materially adverse action against him. *Taylor v. Solis*, 571 F.3d 1313 (2009).

Ali has alleged that his superiors threatened him with unspecified “ramifications” and that he would have to make a choice between his job and his religion.

The court decided that it would not conclude that fear of the possibility of losing Ali’s job would not deter a reasonable employee from continuing to pursue a discrimination claim.

Citation: Ali v. District of Columbia Government et al., CA 08-01950 (HHK) (2010).

Female Firefighter Alleges Sexual Harassment

Sues City for harassment and discrimination

Lesson Learned:

If a plaintiff plans to bring a civil claim against her city employer, she must exhaust her administrative remedies first. Otherwise, courts have no jurisdiction to hear the claim.

Brenda Lee ("Plaintiff"), who is an African-American lesbian, became a firefighter with the Los Angeles Fire Department in 1993. After nine years of service, Plaintiff obtained a transfer to Fire Station 96, where she served under Captain Richard Elder, and Captain Christopher Hare.

Before Plaintiff began work at Station 96, Elder called her and suggested she withdraw her transfer request. Elder informed her he did not want her to work at the station and proceeded to make disparaging remarks about her race and sexual orientation.

On several occasions during Plaintiff's tenure at Station 96, Hare made derogatory comments in her presence. For example, Hare would watch basketball games and make racist comments about African-Americans, and refer to women as "whores" and "sluts."

When returning from days off, Plaintiff would confront horrible smells coming from the women's restroom. She discovered, despite the availability of four male toilets at the station, that the men would defecate in the women's toilet and not flush.

The offensive conduct continued despite Plaintiff's repeated requests to Elder and Hare that it stop. Plaintiff feared retaliation if she complained, so she delayed reporting any discrimination and harassment. In June 2004, Plaintiff confided in a colleague that her life at Station 96 had become a "living hell."

Finally, on June 16, 2004, Plaintiff filed a charge with the California Department of Fair Employment and Housing ("DFEH") alleging harassment, discrimination, and retaliation. Plaintiff claimed that racial comments, derogatory comments and threats by Elder, Hare, and other Station 96 firefighters were the reasons for her complaint. She asserted the basis of this illegal conduct as sex, religion, race, sexual orientation, association, and retaliation.

On July 20, 2004, the DFEH issued Plaintiff a right-to-sue notice. On July 19, 2005, Plaintiff filed a civil complaint against the City of Los Angeles ("City"). The City defended against the claim by saying that Plaintiff failed to exhaust her administrative remedies and moved for summary judgment. The court denied the motion, and a three week trial ensued.

Following trial, the jury returned a verdict in favor of Plaintiff and awarded her over six million dollars in damages. The City filed motions for judgment notwithstanding the verdict, and for a new trial. The court denied both motions, and the City now appeals.

Decision: Reversed and remanded.

Continued on the next page ➤

Around the Nation

23 months of accumulated sick leave before he retired. Based on his salary at the time, he would have been paid \$79,000.

The city refused that amount, and the firefighter sued the city. In the end, the parties reached a settlement in the amount of \$20,000.

Attorneys representing the city reasoned that the city would be exposed to considerably more than \$20,000 if the matter was litigated.

The pivotal issue in the case was the applicable ordinance at the time of the firefighter's retirement. One of the parties claimed that the terms of the ordinance could be open interpretation.

In an effort to resolve the ambiguities in the ordinance, the language was revised in 2007.

\$50,000 Settlement – Fired For Union Leadership Activities

Fire district must also pay attorney fees

The president of a firefighter union local and a former secretary alleged in a lawsuit that they were terminated for their union leadership activities.

The lawsuit was filed by the union on behalf of the firefighters and demanded reinstatement with monetary damages to include any back pay, benefits, and other entitlements. The same lawsuit demanded punitive damages, wherein the terminated firefighters claimed that their reputations were damaged and that they also suffered humiliation and emotional distress.

When the case was settled, none of the parties admitted any wrongdoing. The fire district was directed to pay the firefighters' attorney fees in excess of \$100,000.

Around the Nation

Settlement - \$10,500 to Fire Chief

Legal bills to defend against criminal charges

A fire chief and a police officer became embroiled in a heated argument at the scene of a fire at a senior citizen housing complex. The police officer allegedly complained to the fire chief about the way he was allegedly shouting at a senior resident. The confrontation allegedly resulted in the fire chief striking the police officer with a closed fist.

In the end, the fire chief was arrested and charged with aggravated assault of a police officer and resisting arrest.

The local grand jury conducted a hearing and decided to drop all charges against the fire chief.

The fire chief then demanded that the county pay his legal fees in the amount of \$7,500. Later, the fire chief hired another law firm and his legal fees continued to climb.

The county finally agreed to pay \$10,500 to cover the legal fees incurred by the fire chief.

Former Deputy Fire Chief Sues Chief and City

Demands \$5 million and reinstatement

Hired three years ago after a thirty year career in law enforcement and fire fighting, a deputy fire chief ("Claimant") has been terminated. He now demands his job back and has filed a lawsuit against the fire chief and the city.

The fire chief and city officials have refused to comment on the case, other than to say the dismissal was due to the Claimant's "conflicting management style."

(Continued on next page)

The *Fair Employment and Housing Act* ("Act") mandates that before filing a civil claim for violation of the Act, an employee must exhaust her administrative remedies by filing a complaint with DFEH and must obtain from DFEH a notice of right-to-sue in order to be entitled to file a civil action in court. *Romano v. Rockwell Internat., Inc.* (1996), 14 Cal.4th 479. If a complaint regarding the alleged unlawful practice is not filed with DFEH, the court is without jurisdiction to consider the employee's claim. *Baker v. Children's Hospital Medical Center* (1989) 209 Cal.App.3d 1057, 1062.

A person claiming to be aggrieved by an unfair employment practice must file a written complaint with DFEH. Once a plaintiff files a complaint, the DFEH must investigate it promptly and attempt to resolve the matter, in confidence, by conference, conciliation, and persuasion.

All of the allegations in Plaintiff's complaint concern unlawful employment practices for which an administrative remedy is provided by the Act. She named Elder and Hare as the major perpetrators of the illegal acts and provided details.

These charges likely would have led DFEH to investigate the harassment Plaintiff suffered at the hands of Hare and Elder. However, Plaintiff did not fill out the DFEH form properly to allow the DFEH an opportunity to fully investigate her claims. The court felt it was unreasonable to assume the DFEH would have had an opportunity to fully investigate Plaintiff's claims after issuing the right-to-sue letter so shortly after her filing.

Therefore, the court determined that the trial court had no jurisdiction to hear allegations concerning acts which are not included within the scope of the DFEH investigation.

Citation: Lee v. City of Los Angeles, B202865, Court of Appeals of California, Second Appellate District, Division Two, (2010).

Firefighter or Lineman? Salary Rate Challenged

Received no formal firefighting training

Lesson Learned:

In determining the status of an injured employee, courts will look at the exact wording of the statute, as well as other important documents.

Everett M. McCain was hired by the Town of North Providence, Rhode Island ("Town") as a firefighter pursuant to a memorandum from the Office of the Mayor to Fire Chief Steven Catanza which stated: "Everett M. McCain has been hired as a Firefighter 3rd Class, with the Communications Department...effective July 23, 2001. He shall receive any and all benefits associated with this position."

McCain was not required to complete the Town's fire academy training, nor was he issued any protective fire-fighting equipment. He was, however, issued an identification card certifying his status as a member of the North Providence Fire Department.

Continued on the next page ➤

McCain was never assigned duty as a first responder. Rather, he was directed to report to fire scenes only after the fire was successfully put down and only when the fire caused damage to communications cabling or equipment associated with the Town.

Finally, the fire department's 2008 Table of Organization provided that "Linemen" are listed separately from "Firefighters." On the fire department seniority list, McCain is listed as a "Civilian/Lineman" rather than a "Firefighter."

McCain is a member of Local 2334 International Association of Fire Fighters, AFL-CIO ("Local 2334"). While the collective bargaining agreement provided that McCain was not eligible for overtime and that he could not be "utilized as a working Fire Fighter when on duty," it also provided that "... any employee who shall become wholly or partially incapacitated by reason of injuries received ... in the performance of their duty, shall, during the incapacity receive full salary or wages and medical expenses from the Town..."

On June 23, 2006, McCain suffered a concussion as he was climbing out of a bucket truck. He received injured-on-duty benefits until July 2009. However, his demand for disability retirement benefits were denied. In the end, the Town ceased payments to McCain, reasoning that he was not a firefighter within the limits of the applicable statute.

McCain brought this action, asking the court for a declaratory judgment that he was a firefighter at the time of the injury. He also asked for a writ of mandamus to order the Town to pay him disability retirement benefits.

The Town continued to argue that McCain was not a firefighter and pointed to a 2007 amendment to the applicable statute, which provides that firefighters are defined only as fire responders.

Decision: Declaratory judgment granted; writ of mandamus denied.

The Town memorandum states clearly that McCain was hired as a Firefighter 3rd Class. Further, the identification card issued to him certifies his status as a firefighter.

The court noted the Town's argument, but responded that the applicable statute at the time of the injury controls without reference to any future amendments. *Delicato v. Board of Review, Department of Employment and Training, 643 A.2d 216 (1994)*.

Since McCain was employed by the fire department at the time of his injury, he is to be considered a firefighter at the time of his injury.

The court refused to grant the writ of mandamus, which would require the Town to pay disability retirement benefits. Here, the court reasoned that there are other available remedies McCain should pursue, such as filing a grievance.

It should be noted that a writ of mandamus, which is a court order, is only rarely granted, because such an order is issued before the completion of litigation. In this instance, McCain must demonstrate to the court that he has exhausted all available administrative remedies before such an order may be issued. Are there any personnel or civil service boards he may appeal to? May he file a grievance?

A writ of mandamus is considered an extraordinary remedy. There must be a strong and compelling argument before a court would even consider granting one.

Citation: McCain v. Town of North Providence, CA No. PC 2009-4878, Superior Court of Rhode Island (2010).

Around the Nation

The Claimant points to his record of service as the acting fire chief and his pivotal role in leading a team of city firefighters to a world fitness competition.

Claimant alleges that he was fired after an in-camera meeting attended by the fire chief and members of the city council. He is demanding records of that meeting.

In the lawsuit, Claimant alleges breach of contract, loss of pension and other benefits, defamation, and other claims. He also alleges that his long career as a fire service officer is now at an end because of his dismissal.

Claimant is divorced, and he alleges that the fire chief acted on uncorroborated defamatory information from women with whom he has had relationships. He claims that the information provided to the fire chief is false and has nothing to do with his ability to perform his duties as deputy fire chief.

Finally, the Claimant alleges he was led to believe that he would succeed the present fire chief, but now his career is in shambles.

Discrimination Lawsuit Filed

18-year veteran firefighter

An African-American veteran firefighter has filed a federal lawsuit against his fire department and the fire chief, alleging that he was the target of systematic harassment by his superior officers.

The firefighter claims he was frequently assigned to less desirable duties than white firefighters. He also claims his requested transfers were denied. Rather, he alleges, he was assigned to work with other firefighters who were known to engage in racially biased conduct.

Bid for Post Traumatic Stress Disorder Benefits

Exposure to life threatening and stressful incidents sufficient?

Editor's Note:

In this case, the claim for benefits for the mental condition of post traumatic stress syndrome was denied because there was no physical injury associated with the incidents which caused the condition. However, other jurisdictions might decide otherwise.

Robert Cocking, a 25-year veteran firefighter for the City of Montgomery, Alabama ("City"), applied for benefits, alleging he contracted the "occupational disease of post traumatic stress disorder" due to a number of "incidents occurring on the job."

After the filing, Cocking responded to interrogatories wherein he claimed that two specific incidents contributed to his mental condition. The first was a tragic case involving the death of a young child that Cocking was unable to revive. In another incident, a 52-year old woman died while he was administering CPR on her.

Cocking attested that his condition resulted from "continuous exposure to stressful, life threatening trauma and death to members of the community."

This lawsuit alleges that the City refused to pay him any benefits for his condition.

Cocking's application for benefits was filed pursuant to the *Alabama Workers' Compensation Act* ("Act").

The City responded by filing a motion for summary judgment, contending that the claim was not compensable because Cocking's post-traumatic stress disorder resulted from purely nonphysical stimuli. Further, mental disorders that are not proximately caused by physical injury to the body fall outside the scope of coverage of the occupational-disease article of the Act.

Cocking responded with his own brief that purely mental diseases are compensable under the plain language of the occupational-disease article of the Act.

The trial court dismissed the case in favor of the City, and Cocking appealed.

Decision: Affirmed.

The court examined the "occupational disease" provision of the Act. The Act states that a mental disease that otherwise meets the criteria for an occupational disease will not be covered unless there is a physical injury.

The Act was enacted in 1971, and in the Act "accident" required "injury to the physical structure of the body..."

The plain and explicit language of the Act indicates that if there is no physical injury, a mental injury will not be compensable. *Blansit v. Cornelius & Rush Coal Co.*, 380 So.2d 854 (1979).

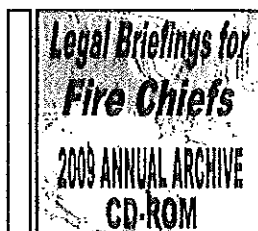
The court also noted that the Act was amended in 1992 with the definition of "injury" to exclude purely mental injuries. The Act now provides "Injury... shall not include a disease in any form, except for an occupational disease or where it results naturally and unavoidably from the accident... Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body."

There is no language in the Act that would support Cocking's application for post traumatic stress disorder benefits.

Citation: Cocking v. City of Montgomery, No. 2081198, Court of Civil Appeals of Alabama (2010).

"HOW FIRE CHIEFS WIN IN COURT!"

LEGAL BRIEFINGS FOR FIRE CHIEFS ANNUAL ARCHIVE CD-ROM

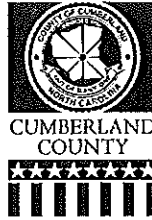


- Hiring policies ... Promotions ... Demotions ... Terminations ...
- Drug testing ... Disability claims ... Retirement benefits ...
- Firefighter grievances ... Progressive discipline ...
- Union negotiations ... Collective bargaining ... *And MORE!*

**Call 800-859-6402, or see this month's insert to order!*

JAMES E. MARTIN
County Manager

AMY H. CANNON
Assistant County Manager




JUANITA PILGRIM
Deputy County Manager

OFFICE OF THE COUNTY MANAGER

5th Floor, New Courthouse • PO Box 1829 • Suite 512, • Fayetteville, North Carolina 28302-1829
(910) 678-7723 / (910) 678-7726 • Fax (910) 678-7717

July 1, 2010

MEMORANDUM

TO: FIRE CHIEF'S ASSOCIATION
FROM: JAMES E. MARTIN, COUNTY MANAGER 
SUBJECT: ADOPTED FUNDING FOR FISCAL YEAR 2010-2011

The budget for your fire district as adopted by the Board of County Commissioners is stated below:

PROJECTED FUNDING FOR FY 2011:	\$ 751,325
SPECIAL RATE FOR FIRE DISTRICT	1.25 cents per \$100 valuation

Seventy percent of the adopted funding is earmarked for the five "low-wealth" fire districts, and the remaining 30% for the Fire Chief's Association. If you have any questions, please contact the budget office at 678-7749 or 678-7750.

ENC 4
3 PGS

CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION
Cumberland County, North Carolina
P. O. Box 2592
Fayetteville, North Carolina 28302-2592

**CUMBERLAND COUNTY FIRE DEPARTMENT'S
STATION AGREEMENT**

1. AGREE TO DO WEEKLY INSPECTIONS ON UNIT.
2. AGREE TO KEEP UNITS READY TO OPERATE AT ANY GIVEN TIME.
3. AGREE TO LET ANOTHER CAPABLE STATION COME INTO YOUR DEPARTMENT AND RESPOND WITH THE UNIT (BACK UP DEPARTMENT).
4. AGREE TO HAVE MAINTENANCE DONE ON THE UNITS IF NEEDED WITH BILLS FORWARDED TO THE COUNTY FIRE CHIEF'S ASSOCIATION TREASURER.
5. AGREE TO HOUSE THE UNIT OUT OF THE WEATHER.
6. AGREE TO SERVICE THE UNIT.
7. AGREE TO KEEP THE UNIT CLEAN.
8. AGREE TO HAVE PEOPLE TRAINED TO OPERATE THE UNIT.
9. AGREE TO NOT DRIVE OVER 45 MPH WHILE RESPONDING WITH THE UNIT.

James S. Hall
 DATE 06-26-95
 CUMBERLAND CO. FIRE CHIEF'S
 ASSOCIATION PRESIDENT
 JAMES E. HALL

Duke P. Piner
 DATE 5-3-95
 FAYETTEVILLE FIRE DEPT.
 FIRE CHIEF
 DUKE P. PINER

CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION

Cumberland County, North Carolina

P. O. Box 2592

Fayetteville, North Carolina 28302-2592

FOAM UNIT AGREEMENTS

1. UNITS THAT WILL RESPOND WITH THE FOAM TRAILER WILL BE PROPERLY EQUIPPED TO DO SO AT NO EXPENSE TO THE RESPONDING DEPARTMENT.
2. TRAINING ON HOW TO OPERATE THE UNIT WILL BE COORDINATED BY THE STATION HOUSING THE UNIT.
3. IT IS SUGGESTED THAT A VIDEO FILM BE MADE ON THE PROPER OPERATION OF THE UNIT.
4. SAMPLING OF THE FOAM STORED IN THE TRAILER WILL BE DONE BY THE FIRE MARSHALL'S OFFICE.
5. TYPE OF FOAM TO BE UTILIZED, UNIVERSAL PLUS 3 & 6 % AFFF ATC, WILL BE PURCHASED THROUGH THE CUMBERLAND COUNTY CHIEF'S ASSOCIATION TREASURER.
6. APPLIANCES WILL BE FURNISHED BY THE CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION.

Stoney Point Fire Department

From: "ricky strickland" <rstrickland@co.cumberland.nc.us>
To: "Stoney Point FD" <st13@co.cumberland.nc.us>
Sent: Thursday, April 18, 2002 11:19 AM
Subject: 1301

Foam Trailer information:

manufactured by United Plastic Fabrication, Inc

built in 1995

original cost (trailer only) \$28,500 each

\$85,500 for 3 units

600 gallon foam tank

(specs will be faxed to you)

Safety House:

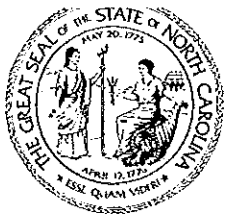
built in 1995

manufactured by Serro, Inc

approx. cost \$16,500

Foam Trailer File

4/17/02



State of North Carolina

WAYNE GOODWIN
COMMISSIONER OF INSURANCE
STATE FIRE MARSHAL

1202 MAIL SERVICE CENTER
RALEIGH, N.C. 27699-1202
800-634-7854
919/661-5880

TIM BRADLEY
SENIOR DEPUTY COMMISSIONER
EXECUTIVE DIRECTOR

North Carolina Weekend at the National Fire Academy

November 19 – 21, 2010

Details are posted on our website at:

http://www.ncdoi.com/OSFM/FireAndRescueCommission/fr_state_weekend.asp

Application Deadline: August 20, 2010

Notification of acceptance or denial will be emailed to individual applicants from ellen.sullivan@ncdoi.gov

Be sure to provide a valid email address!

CHAIRMAN:
HARLEY COOK
Mecklenburg County
704/264-9581

MEMBERS:
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Lee County
919/718-4670

KEN BRISCOE
Caldwell County
828/757-2191

CLOYCE ANDERS
Wake County
919/755-1401

WALTER M. GARDNER
Warren County
252/257-3104

DOUG LOWE
Davidson County
336/471-1466

ROBERT POE
Ashe County
336/246-2768

ED DUFFIELD
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336/462-4211

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GARRY COOPER
Pamlico County
252/745-4240

DAVID WRAY
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828/773-4967

PHIL WELCH
Gaston County
704/866-6807

WES GREENE
Iredell County
704/664-1338

RONNIE GRIFFIN
Wayne County
919-736-2538

EX-OFFICIO MEMBERS:
WAYNE GOODWIN
Commissioner of
Insurance

CHERIE BERRY
Commissioner of Labor

REUBEN YOUNG
Crime Control &
Public Safety

ROY COOPER
Attorney General

DR. R. SCOTT RALLS
N.C. Community College
System

DEE FREEMAN
DEHNR

ENC 6



**CUMBERLAND COUNTY/CAPE FEAR VALLEY HEALTH SYSTEM
ADVANCED LIFE SUPPORT PROGRAM
PEER REVIEW/QUALITY MANAGEMENT
MEMORANDUM**

TO: Committee Members
FROM: Kathy Everly, Administrative Coordinator
DATE: July 16, 2010
RE: **Peer Review/Quality Management Committee Meeting**

The meeting for the Cumberland County Advanced Life Support Program Peer Review/Quality Management Committee will be canceled for July 27, 2010 and will be held on August 18, 2010. **Note:** this is a Wednesday. The meeting will be held at the EMS building at 610 Gillespie Street, Fayetteville. If you have any questions, contact Kathy Everly at 615-5629 or email keverly@capefearvalley.com.

If at all possible, reply to me by email. This way I can contact everyone immediately instead of mailing letters.

ENC 7

**CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION
ROLL CALL VOTE**

MEMBERS PRESENT (23)	21	21	21	19	19	23	18						
ASSOCIATES PRESENT (12)	10	11	10	7	7	11	7						
CC Fire Chiefs DEPARTMENT ORGANIZATION * Chief's Only Meeting	25-JAN-10 *	22-FEB-10	22-MAR-10	26- APR 10*	24-MAY-10	28-JUN-10	26-JUL-10*	23-AUG-10	27-SEP-10	25-OCT-10*	22-NOV-10	20-DEC-10	
MEMBERS													
BEAVER DAM STA 26	P	P	P	P	P	P	P						
BETHANY STA 12	P	P	P	P	P	P	P						
CEDAR CREEK STA 8	P	P	P	P	P	P	P						
COTTON STA 4	P	P	P	P	P	P	A						
CUMBERLAND ROAD STA 5	P	A	P	P	P	P	P						
EASTOVER STA 1	P	P	A	A	A	P	P						
EMS EMERGENCY MEDICAL SERVICES	A	A	A	P	A	P	P						
FAYETTEVILLE FIRE DEPT	P	P	P	P	P	P	P						
FORT BRAGG FIRE DEPT	P	P	P	P	P	P	P						
GODWIN - FALCON STA 17	P	P	P	P	P	P	P						
GRAYS CREEK STA 18	P	P	P	P	P	P	P						
GRAYS CREEK STA 24	P	P	P	P	P	P	P						
HOPE MILLS STA 21	P	P	P	A	A	P	A						
PEARCE'S MILL STA 3	P	P	P	P	P	P	P						
POPE AIR FORCE BASE FIRE DEPT	A	A	P	P	P	P	A						
SPRING LAKE STA 22	P	P	A	A	P	P	A						
STEDMAN STA 23	P	P	P	P	P	P	P						
STONE POINT STA 13	P	P	P	P	P	P	P						
STONE POINT STA 19	P	P	P	P	P	P	P						
VANDER STA 2	P	P	P	P	P	P	P						
WADE STA 16	P	P	P	P	P	P	P						
WESTAREA STA 15	P	P	P	P	A	P	A						
WESTAREA STA 20	A	P	P	A	P	P	P						
ASSOCIATE MEMBERS													
HAZMAT	P	P	P	P	A	P	P						
SHERIFF'S OFFICE	P	P	P	A	A	P	P						
HIGHWAY PATROL	P	P	P	P	P	P	P						
CC EMERGENCY SERVICES	P	P	P	P	P	P	P						
FORESTRY	A	P	P	A	A	A	P						
FTCC	P	A	A	A	P	P	A						
COUNTY COMMISSIONERS	P	P	P	P	P	P	A						
CHRISTIAN FIREFIGHTERS	P	P	P	P	P	P	P						
LIFE LINK	P	P	A	P	A	P	P						
SBI	P	P	P	A	P	P	A						
HOPE MILLS POLICE	A	P	P	A	A	P	A						
FORT BRAGG EMS	P	P	P	P	P	P	A						

Special Notes:

CODES: (P) - Present (A)-Absent (E) - Excused