



Cumberland County Fire Chief's Association
Minutes of March 26, 2012 Monthly Meeting



The meeting was hosted by the Grays Creek Fire Department # 18 and we thank Fire Chief Kevin Herndon and his staff for their hospitality.

Opening Prayer: Deputy Chief J.D. Pone Assistant Chaplain provided the opening prayer.

Roll Call: Roll call was conducted with 21 departments and 5 associate members present.

Members Absent:

Fire Departments: EMS

Associate Members: Christian Firefighters, Sheriff's Office, FTCC, Forestry, Life Link, and Retired Chief Officers

Approval of Minutes: Minutes from the February 2012 meeting were approved with minor updates.

Guests: Rita Cox – requesting support for District Court Judge
Billy King – requesting support for Senate District 21

Vendors Present: None.

Treasurer's Report: None.

Meeting Point of interests:

Next Chief's Meeting will be April 23, 2012 at EMS base.

- President Johnson advised that the Vander Fire Department will pick up air truck coverage and duties in April 2012.
- President Johnson provided hand-out packets and material to all members.
- President Johnson announced that our Emergency Services Director Kenny Currie is retiring and we will present a plaque to him during his county retirement ceremony, whereas his entire family can benefit by his recognition during his ceremony. Once that ceremony is announced President Johnson will disseminate the information to the entire membership.

- President Johnson briefly addressed the IAMRESPONDING text message issues that are being duplicated numerous times. This is being addressed.
- President Johnson advised that the MDT's had been ordered, The firehouse upgrade was proceeding, Vander FD will be the beta test site for this endeavor with the training sessions to be conducted at Pearce's Mill FD. Dates to be announced.
- President Johnson reminded everyone that common firehouse codes within certain modules will be required to make this data base work. In order to affect this he will appoint a Firehouse Steering Committee chaired by Chief TJ McLamb (2201). Chief McLamb has extensive Firehouse knowledge and will be leading a versatile team of personnel in this endeavor. The committee will look at all the various Firehouse Modules currently in use that will be affected by the upgrade. Please contact Chief McLamb or any of the listed committee members with your thoughts, concerns or recommendation. If you would like to serve on the Committee please call Chief McLamb at 910-436-0337 or at the below listed e-mail.

The following personnel have volunteered or have been placed on the Firehouse Committee by their perspective leadership.

Chief McLamb – Chairman - Spring Lake FD	tmclamb@spring-lake.org
Chief Bullard (2301) Member	sfd2301@aol.com
Chief Mike Hill (1601/FFD)	mhill@ci.fay.nc.us
Assistant Chief Spiller (0503) Member	cffd503@nc.rr.com
Commander Ronald Lewis (FFD-Code Enforcement)	rlewis@ci.fay.nc.us
Captain Alvarez (FFD-Planning & Research)	MAlvarez@ci.fay.nc.us
Lieutenant Tara Whitman (1307) Member	tara@stonepointfire.com
David Wilkes – County IT Representative	dwilkes@co.cumberland.nc.us
Timmy Mitchell – County Emergency Services	tmitchell@co.cumberland.nc.us

- President Johnson is continuing to follow up on the Oxygen contract with EMS Director Pearce.

OLD BUSINESS

None

NEW BUSINESS:

1. A request was made for the CCFCA to provide support for the Chaplains 101 class. A motion was made by Chief Hodges, seconded by Chief Pone to assist with this endeavor by making a \$750 dollar donation to cover some of the projected cost. The motion passed unanimously by a roll call vote.
2. Chief Marley has requested that we think about a new numbering system for Chief Officers. More information to follow and Chief Marley was instructed to

address this request through the Standards Committee. Chief Herndon would like the association to consider STOP / DROP and ROLL for the use of tanker operations verbiage.

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 Retired Chief J.F. Hall, Chairperson

- No report.

COMMUNICATIONS COMMITTEE Chief B. Bullard (Stedman) Chairperson

- No report.

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 Hank Harris (Cotton FD) Chairperson

- No report.

BULK PURCHASE COMMITTEE Chief Pierce (EMS) Chairperson

- No report.

SPECIAL RESPONSE TIME COMMITTEE - Chief Hill (WCFD/FFD) Chairperson

- No report.

ASSOCIATE MEMBERS REPORT

EMERGENCY SERVICES DIRECTOR/ ECC-911 Kenny Currie, Director

- Director Currie expressed his gratitude to the association for their support for the many years.

EMS DIRECTOR: Brian Pearce, Director

- No report.

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

- No report.

FORESTRY DISTRICT Andrew Synder, County Ranger

- No report.

FTCC Ernest Ward, Director

- No report.

SHERIFF'S OFFICE Sheriff Butler

- No report.

HIGHWAY PATROL

- Lt. Johnson advised everyone that the SHP has a CISD team available for use by the Fire Departments at no cost. Please contact him if you need the services.

CHRISTIAN FIREFIGHTERS Chaplain Cassanova

- No report.

COUNTY COMMISSIONERS Fire Commissioner Ed Melvin

- Commissioner Melvin announced that he supported Billy King for Senate seat District 21.

FOR THE GOOD OF THE ASSOCIATION:

- None

ADJOURNMENT: A motion was made to adjourn by Chief Herndon, seconded by Chief McLamb. The meeting was adjourned at 2015 hours.

Respectfully Submitted By:

Freddy L. Johnson

Freddy L. Johnson Sr. CFO
Fire Chief / President

Mark A. Melvin

Mark Melvin, CFO
Fire Chief / Secretary

4 Enclosures

1. Roll Call
2. Motion / Roll call voting results
3. Legal briefs
4. DOT information

**CUMBERLAND COUNTY FIRE CHIEF'S ASSOCIATION
ROLL CALL 2012**

MEMBERS PRESENT (22)	20	22	21																
ASSOCIATES PRESENT (11)	8	9	5																
CC Fire Chiefs																			
DEPARTMENT ORGANIZATION																			
* Chief's Only Meeting	23-Jan-12	23-Feb-12	26-Mar-12																
MEMBERS																			
BEAVER DAM STA 26	P	P	P																
BETHANY STA 12	P	P	P																
CEDAR CREEK STA 8	P	P	P																
COTTON STA 4	P	P	P																
CUMBERLAND ROAD STA 5	A	P	P																
EASTOVER STA 1	P	P	P																
EMS EMERGENCY MEDICAL SERVICES	P	P	A																
FAYETTEVILLE FIRE DEPT	P	P	P																
FORT BRAGG FIRE DEPT	P	P	P																
GODWIN - FALCON STA 17	P	P	P																
GRAYS CREEK STA 18	P	P	P																
GRAYS CREEK STA 24	P	P	P																
HOPE MILLS STA 21	A	P	P																
PEARCE'S MILL STA 3	P	P	P																
SPRING LAKE STA 22	P	P	P																
STEDMAN STA 23	P	P	P																
STONE POINT STA 13	P	P	P																
STONE POINT STA 19	P	P	P																
VANDER STA 2	P	P	P																
WADE STA 16	P	P	P																
WESTAREA STA 15	P	P	P																
WESTAREA STA 20	P	P	P																
	P	P	P																
ASSOCIATE MEMBERS																			
HAZMAT	P	P	P																
SHERIFF'S OFFICE	P	P	A																
HIGHWAY PATROL	P	P	P																
CC EMERGENCY SERVICES	P	P	P																
FORESTRY	P	P	A																
FTCC	A	P	A																
COUNTY COMMISSIONERS	P	P	P																
CHRISTIAN FIREFIGHTERS	A	A	A																
LIFE LINK	P	P	A																
FORT BRAGG EMS	P	A	P																
RETIRED CHIEF OFFICERS		P	A																

Special Notes:

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

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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.

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March 2012

In This Issue

Terminated Firefighter Ordered to be Reinstated

The firefighter was fired for incorrectly responding to a dispatch and for failing to take command at the fire scene. The termination was appealed while the firefighter applied for and received retirement benefits. The court finally ordered reinstatement with back pay and attorney fees. Page 2

Disciplined for Speaking Out – First Amendment Violation?

Responding to tight budget problems, the fire department cut the dive team. Later, there were two drownings. A firefighter who was a member of the dive team spoke at a city council meeting during which he contended that the cuts will result in future deaths. He was disciplined pursuant to the progressive discipline policy. Was this *protected* speech?..... Page 3

Accidental Disability Retirement Benefits – Fistfight

Firefighter demanded accidental disability benefits which are tax free. His injury came from a fist fight with another firefighter at the fire station during a New Years Eve brawl when some of the firefighters were allegedly consuming alcohol at the station..... Page 4

Firefighter Responds to Brush Fire – Runs Over Wheelchair Victim

The firefighter claimed that he was responding to an emergency and that he had *discretion* as to when to activate the siren and emergency lights. Was the brush fire an emergency? Was immunity waived? Page 5

Firefighters Assaulted with Firearm

Four firefighters forced their way into an apartment when they became concerned that the tenant needed medical attention. As they broke down the door, they were met with the tenant holding a firearm pointed directly at them. Page 7

Fire Chief Position Eliminated

The thirty year veteran was given a one-year position as "project coordinator." At the end of the one year tenure, the former fire chief applied for unemployment compensation benefits. The benefits were awarded, and the township appealed at several levels. Page 8

In The Next Issue

Paramedics Excluded from Bargaining Unit – Appeal Followed

Are paramedics assigned to fight fires? Are their duties considered part of the firefighting effort? After paramedics were excluded from the bargaining unit, the firefighter local successfully argued that paramedics actually participate in firefighting and, thus, should be included in the bargaining unit.

Legal Briefings for Fire Chiefs

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Termination – Job Performance Appealed

Hearing officer reverses decision – reinstatement denied—consequences?

Editor's Note: The termination of a firefighter must be well documented and supported by the facts. If, upon review, the termination is reversed for any reason, the firefighter is entitled to be reinstated after the entire appeal process is concluded. If the local government ignores a court order for reinstatement, the court may award not only back pay but attorney fees as well.

On February 2, 2010, Sell Caldwell (Caldwell), a fire captain with the DeKalb County Rescue Department, ("County"), was terminated by a former fire chief based on allegations that he failed to locate a proper dispatch address while responding to a fire and that he failed to take command of the fire suppression operation while at the scene.

Caldwell was advised of his right to appeal his termination to the DeKalb County Human Resources and Merit System Department by filing a written request for appeal within ten days of his termination. He followed this advice and filed an appeal within the ten days.

Caldwell applied for early retirement on February 10, 2010 in an effort to mitigate his loss of income. His retirement benefits started coming in during March 2010.

A hearing was held on the termination, and the hearing officer concluded that the evidence did not support the termination. Here, the County did not apply the facts to the cited violations. Thus, the hearing officer reversed the termination.

The County sought review of the decision by bringing the matter to the Merit System Council ("Council"), alleging that the hearing officer's factual findings were not consistent with his conclusion. The Council affirmed the decision of the hearing officer, but the County continued to refuse reinstatement of Caldwell.

The County did not appeal the Council's decision.

Caldwell brought this action asking the court for an order that he be reinstated to his former rank of fire captain with back pay and associated legal costs. Caldwell's claim came in the legal form of a writ of mandamus.

The trial court ruled that Caldwell had a clear right to reinstatement and ordered that Caldwell be reinstated. The court also declared that the County had been stubbornly litigious in this matter and awarded attorney fees.

The County appealed, contending that mandamus was not a proper remedy because Caldwell did not have a clear right to be reinstated. The County reasoned that Caldwell had sought and received retirement benefits and could not be a fire captain while in a state of retirement.

Decision: Affirmed.

Mandamus is an appropriate remedy to compel reinstatement of a firefighter who was suspended in violation of the Civil Service Act. *McAfee v. Board of Firemasters of Atlanta, 197 SE 801 (1938).*

The County was found to have steadfastly refused to abide by the order

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of the hearing officer, as affirmed by the Council on appeal. Thus, Caldwell has demonstrated that he has a right to reinstatement.

The court addressed the County's contention that since Caldwell was retired, he should not receive back pay. The court responded that Caldwell would offset his back pay award with the amount he received in benefits during this action.

The trial court did not abuse its discretion in awarding legal fees.

Citation: Ellis, et al., v. Caldwell, S11A1748, Supreme Court of Georgia (2012).

Discipline – Speaking Out

Free speech violation? – Matters of Public Concern?

Editor's Note: When a firefighter speaks out in a public meeting about matters of public concern, that speech may be protected by the First Amendment, even though the same speech is viewed as insubordinate and inciting by his superiors. The onus of proving any falsehoods in the speech rests in the local government, not the disciplined firefighter.

Ron Westmoreland ("Plaintiff"), a firefighter with the City of Bay Village, Ohio ("City") brought this action against the City and its mayor, Deborah Sutherland ("Defendants") alleging that he was unlawfully disciplined for having exercised his *First Amendment* rights of free speech.

The City was facing an extremely tight budget prompting a series of deep cuts in the fire department and other city department budgets. Overtime for firefighters was slashed and the emergency dive team was eliminated. City officials reasoned that the dive team cost over \$10,000 in overtime, and over \$20,000 in equipment. Further, the dive team never actually saved any lives and was deployed less than one time per year.

Plaintiff was a member of the dive team and a sixteen year veteran of the fire department. He was an instructor and lectured other dive teams in the area.

Since the dive team has been dropped, there have been two drownings. One of the drownings occurred while Plaintiff was on duty.

On September 15, 2008, Plaintiff spoke as a private citizen and a Bay Village City Council meeting, which was two weeks after the most recent drowning. He spoke for eight minutes during which he opined that the decision to cut the dive team resulted in the two deaths. He asked, "How many children have to die before Council and administration understands," and claimed that they have been warned that it would be "not if, but when" there would be a loss of life because of the cuts.

Plaintiff further stated that the City Council was partly responsible for "condemning that child to death..." He made other statements that caused great indignation among City Council members.

Mayor Sutherland, who was running for City County Commissioner at the time, decided to discipline Plaintiff pursuant to the department's progressive discipline policy. She suspended Plaintiff on the grounds that his statements at the City Council meeting constituted "insubordination, malfeasance, misfeasance, dishonesty, failure of good behavior, and conduct unbecoming an officer." The Notice of Disciplinary Action also

Mission Statement

Our intention is to report legal matters and the outcomes of lawsuits to fire service officers in order that they learn from the experiences of their colleagues. We do not give legal or any other professional advice, nor do we guarantee the accuracy of our content. Rather, we strongly urge subscribers to have access to competent, experienced attorneys. We hope that this information will help you avoid needless litigation; successfully defend against legal claims that are unavoidable; and use the law to protect your community.

Laws and court decisions are frequently changed, and what you may read in this and other publications might not pertain to all jurisdictions and may have been superseded by new laws, a more current decision, or a different interpretation of the law. Case law and statutes change without notice. Thus, you should not rely on this or other services without first seeking advice from your attorney.

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Around the Nation

Settlement – Failure to Hire - \$800,000

Female applicant claimed gender discrimination

Editor's Note: In many cases of gender discrimination liability, the root cause is a lack of sufficient training, particularly to supervisors who might be tempted to "keep it local" when an alleged incident of discrimination occurs. Many states have adopted rules that provide if such information is kept away from the employer by lower management personnel, the employer does not escape potential liability. The best way to address any form of discrimination claim is quickly and decisively, working with both the claimant and the attorney representing the fire department. While there is no evidence that anyone "sat" on a discrimination claim in this case, there must have been substantial evidence of some form of retaliation and hostile work environment.

In mixed volunteer/ active fire department, a female volunteer firefighter applied for a position as a paid full-time member of the department and was denied. Claimant later argued that she was retaliated against and subjected to other treatment that amounted to a hostile behavior.

Claimant sued the fire department alleging she was subjected to this treatment as she was attempting to be hired. The case went to trial, and the court finally decided in Claimant's favor. She was awarded \$1,000,000 in damages.

Later, the parties negotiated a settlement wherein the judgment was reduced by \$200,000, reducing the award down to \$800,000. Some of the parties in the case were not happy with the result but were quick to put the incident behind them.

The fire department agreed to make

(Continued on next page)

provided that Plaintiff's statements were fabrications, not supported by facts, insulting, and insightful.

The suspension followed a letter of reprimand for Plaintiff's statements to a group of juveniles as a community diversion program.

Plaintiff filed a grievance, contending that his speech was protected because it was relevant to a matter of public concern. The Mayor affirmed the suspension as she continued to contend that Plaintiff's statements included many falsehoods. While Plaintiff was waiting for a decision on the grievance, he demanded binding arbitration. In July 2009, the arbitrator affirmed the suspension, deciding that the speech had no constitutional protection.

Plaintiff filed this action in federal court alleging violations of the *First Amendment*, arguing that he spoke as a private citizen about matters of public concern. Defendants filed a motion for summary judgment, which was granted. This appeal followed. Defendants responded by stating that Plaintiff was motivated by his loss of overtime compensation.

Decision: Reversed and remanded.

The substance of Plaintiff's statements was clearly matters of public concern, even though the same statements were highly critical of the Mayor and the City Council. The focus of his statements was to express his opinion about the elimination of the dive team and what he considered would be the possible consequences. *Weisbarth v. Geauga Park District*, 499 F.3d 538, 544 (2007).

The truthfulness of the Plaintiff's statements is not relevant to whether they were matters of public concern. However, such statements need not be proven to be incorrect. "A public employee is not required to prove the truth of his speech in order to secure the protections of the *First Amendment*." *Chappel v. Montgomery County Fire Prot.*, 131 F.3d 564, 576 (1997).

Here, Plaintiff did offer evidence to support his statements. He submitted an affidavit which stated that it took more than an hour to respond to one of the drownings and that any rescue effort would be futile.

The court noted that it is the responsibility of Defendants to prove that the statements were not only false, but they were made with intentional or reckless disregard for the truth.

Citation: Westmoreland v. Sutherland, No. 10-3766, U.S. Court of Appeals for the Sixth Circuit (2011).

Demand for Accidental Disability Retirement Benefits

Firefighter injured during fight with another firefighter

Editor's Note: This case involved an incident that occurred over eight years ago during an incident at a fire station on New Years Eve. Some of the firefighters were allegedly consuming alcohol at the fire station, which fueled an altercation resulting in a serious injuries and several shattered careers.

We have been reporting the many facets of this case as they evolve.

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On New Year's Eve in 2003, a number of firefighters of the Fire Department of New York engaged in prohibited alcohol consumption in the kitchen area of a fire station in the New York City area.

As we reported a few years ago, a verbal altercation quickly became a physical confrontation between firefighter Robert Walsh ("Walsh") and another firefighter. Verbal taunting finally led to an assault when a firefighter grabbed a metal chair and struck Walsh over the head causing a serious injury.

The disciplinary aspects of the case were previously reported in this service, and one firefighter was criminally charged.

Walsh's traumatic head injury was so serious that he was unable to return to work as a firefighter. He was diagnosed with a "postconcussional disorder, entailing sensory nerve dysfunction on his face and leg, headaches, and memory, concentration and sleep disturbance."

In May 2005, the Fire Commissioner submitted an application on behalf of Walsh for ordinary disability retirement benefits through the New York City Fire Department Pension Fund, which is administered by the Board of Trustees ("Board").

In 2007, Walsh filed an application for accidental disability retirement benefits, which provides greater benefits than those filed by the Fire Commissioner.

In order to be eligible for such benefits, Walsh must prove to the Pension Fund's Medical Board ("Medical Board") that "such member is physically or mentally incapacitated for the performance of city service as a natural and proximate result of an accidental injury received in such city service while a member, and that such disability was not the result of willful negligence on the part of such member and that such member should be retired."

In March 2008, the Medical Board did not agree with Walsh's argument and recommended to the Board that only ordinary accidental medical disability benefits be awarded. In the end, the Board was deadlocked and Walsh's application was denied, and he retired with the lower benefits.

Walsh appealed by bringing this action against the Fire Commissioner, the Pension Fund, the Board of Trustees and the City of New York ("City").

The New York Supreme Court affirmed the decision, deciding that as a matter of law, it could not find that Walsh's disability was the natural and proximate result of a service related accident, and thus, Walsh's assault was not an accident.

The court also decided that the decision was rationally based and was not arbitrary or capricious.

Walsh appealed.

Decision: Affirmed.

The court may not set aside the denial of accidental retirement simply because the Board submitted a tie vote.

Walsh suffered his injury as a result of an altercation with another firefighter rather than the performance of his firefighter duties.

Thus, the court may not consider or decide whether his injuries were caused by the intentional act of a third party within the meaning of the applicable statute.

Citation: Walsh v. Scopetta, No. 225 Court of Appeals of New York (2011).

Around the Nation

changes in the manner in which candidates are hired.

It was clearly noted that this settlement had no effect on the judgment of the case that was decided against the fire department.

Settlement - Fire Because of Gender - \$10,000

Probationary firefighter

Editor's Note: A settlement of this size would be considered rather small. This would lead one to believe that it was a fairly close case. Obviously going to trial on such a case would be costly, especially to the fire department. In such cases, a fire department will inevitably weigh the costs of litigation against the lower cost of settling without admitting any guilt or liability.

Claimant was hired as a firefighter and was required to complete an 18-month probationary period. During her probationary period, Claimant had a death in the family and also suffered a back injury. She did not complete the 18-month training period and asked for an extension. The fire department refused her request and terminated her when she failed to complete the full probationary program.

Claimant went to the Equal Rights Division of the state of Department of Workforce Development, which assigned an investigator to examine the particulars of the case. He decided that there was probable cause to conclude that the fire department discriminated against Claimant.

Claimant sued the city and fire department, alleging she was terminated because of her gender and that she was subjected to vulgar treatment by male co-workers.

In the end, the city and Claimant reached a settlement in the amount of \$10,000, which was to go to

(Continued on next page)

Around the Nation

Claimant's attorney. Claimant also agreed that she could no longer seek any form of employment with the city. City officials refused to admit any liability in this case.

Settlement – Disability Discrimination - \$500,000

Gradual diminishing eyesight – terminated

Editor's Note: The Americans with Disabilities Act ("ADA") makes it extremely difficult for employers to terminate employees, even firefighters for any disabilities. There must be a legitimate reason for the termination unless there is a direct connection between the disability and the duties to be performed by the firefighter.

Claimant, a 53 year old veteran firefighter started working as a emergency medical technician in 1994. His eyesight problems started in 1992 when he was diagnosed with muscular degeneration, which made it impossible for him to read small print unless he had available some type of magnifying glass. Soon thereafter, he had restrictions placed on his driver's license.

Claimant's condition apparently worsened over the years. He took an eye examination during a routine medical test. The results indicated serious deterioration of Claimant's eyesight. Later, the assistant fire chief decided to terminate Claimant. However, this decision was reversed when Claimant asked for a Veteran's Preference Hearing as well as his rights under the Americans with Disabilities Act.

A few weeks later, Claimant was assigned to light duty which resulted in a substantial reduction in pay and benefits. He argued that the new job was visually strenuous in the training department.

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Fatal Accident – Immunity?

Victim was driving a motorized wheelchair

Editor's Note: If a firefighter is involved in an accident during an official duty, he is immune from liability. Since this immunity is referred to as official immunity, the city he/she serves would also be immune.

San Antonio Firefighter David Johnson ("Johnson") was returning to the fire station from a cancelled call when he received another call from the dispatcher to assist a station that was attempting to put down a brush fire.

Johnson pulled into a parking lot of a bank so as to look at a map book to help locate the brush fire and to switch to the other fire station's dispatcher to retrieve more information. He was driving an emergency vehicle designed to fight brush fires which was equipped with a siren and emergency lights. At the time, his head lights were on as were the marker lights, although he had not as yet actuated the siren or emergency lights.

Once Johnson retrieved sufficient information, he checked his mirrors and departed the parking lot. There were two witnesses at the scene who saw Johnson turn in front of Shawn Rosenbaum ("Rosenbaum"). The two witnesses offered different testimony as to whether the emergency lights and siren were actuated.

Johnson was apparently unaware that he struck Rosenbaum, and her body was ejected from under the brush truck. The motorized wheelchair became lodged under the truck, and it was only after Johnson noticed sparks from under the truck that he pulled over to investigate.

Members of the Rosenbaum family ("Appellees") sued the City of San Antonio ("City") for damages resulting from the death of Rosenbaum.

The City declared it was immune from liability and that the trial court thus lacked jurisdiction. Alternatively, the City argued that the official immunity of Johnson shielded the City from liability. The trial court disagreed, deciding that under two theories, the City essentially waived immunity. Both exceptions were applicable to emergency situations.

The City appealed, contending that this was an emergency situation and thus immunity applied. Appellees responded that it was not an emergency because the siren and emergency lights had not been actuated at the time of the accident.

Decision: Reversed.

Whenever there is a plea for sovereign immunity the jurisdiction of the trial court to hear the case is challenged. *State v. Holland, @221 S.W.3d 639, 642 (2007).*

There are situations during which immunity is waived, such as through the operation or use of a motor vehicle. However, when an emergency exists the waiver of immunity is overridden. *City of San Antonio v. Hartman, 201 S.W. 3d 667 (2006).* Here, the City points to two waivers. The first is when an employee is responding to an emergency call or reacting to an emergency situation if "the action is in compliance with the laws and ordinances applicable to the situation."

The second case would be when a "claim arises from an action of an employee that involves providing 9-1-1 service or responding to a 9-1-1 emergency call if the action does not violate a statute"

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Since the City asserted two emergency exceptions, the Appellees now had the burden to plead and prove that the actions taken by Johnson actually violated a law or ordinance.

Here, the Appellees noted that Johnson had not as yet actuated his siren or emergency lights, thus there was no emergency.

Johnson responded that he had discretion as to when to actuate the siren and lights. He noted that he would not actuate the siren inside the fire station while responding to an emergency. Rather, he would wait until he was on a road heading to the scene.

Appellees provided no evidence that rebutted the notion that Johnson had complete discretion as to when to actuate the siren and emergency lights.

Johnson's argument is supported by an applicable statute. Thus, whether or not the lights and siren and emergency lights were actuated, he was responding to an emergency.

Since he was performing an official task at the time of the accident, he was immune from liability. It follows that the City is also immune.

Citation: City of San Antonio v. Rosenbaum, No. 04-11-00498-CV, Court of Appeals of Texas (2011).

Assaulting a Firefighter

Routine call turns into life threatening incident for four firefighters

Editor's Note: Firefighters are trained to enter dangerous places, often times a building in flames in an attempt to protect or save a life. In most cases, whether a building is on fire or not, firefighters do not know what or who is on the other side of the door. Firefighters might find a victim needing medical or other assistance, or they could encounter dangerous criminal activity such as a deranged person holding a weapon or suspects engaged in narcotics activities.

On September 2007, firefighters (Sprull, Lacewell, Chadwick, and Comer) from the Wilmington (North Carolina) Fire Department responded to a 911 call reporting a large water leak at an apartment building.

After determining the source of the water and where it was going, the firefighters became concerned about the occupant, Thomas Starr ("Starr") of one unit in the apartment building.

The firefighters decided to enter Starr's unit thinking he might need medical assistance. The firefighters were joined by number of police officers, and they knocked on the door. After not hearing a response, the firefighters decided that the only alternative was to conduct a forced entry.

They used a Halligan tool to jimmy a crack in the door. They also used an axe to break the lock.

As the door slowly opened, firefighter Sprull heard a "pop" just prior to entering. At that instant, Sprull clearly saw Starr standing about twelve feet away as he pointed a firearm at him. Sprull shouted, "He's got a gun!" and quickly exited the apartment unit. Chadwick also noticed Starr standing inside the apartment pointing the weapon in a menacing manner.

Continued on the next page ➤

Around the Nation

Claimant challenged these assignments in various forums. He was finally terminated in February 2009. In April 2009, the state Department of Human Rights investigated the case and found evidence that the city engaged in retaliation and unlawful disability discrimination.

Claimant then filed a complaint with the Civil Service Commission, which affirmed that Claimant's termination was unlawful.

At that point, Claimant filed a lawsuit against the city. The parties agreed to a settlement in the amount of over \$500,000 with a substantial portion going to Claimant's legal fees.

Lawsuit Filed – Wrongful Termination

Firefighter owns a company that does work for the city – ethics violation?

An 18 year veteran firefighter was fired on two occasions based on allegations that he violated the ethics policies of his city. The termination was based on the fact that the firefighter owned a company that did business with the same city he served as a firefighter. There is an ethics rule that prohibits employees from gaining financially from doing business with the city.

The termination was reversed by an appeals board, but the mayor had the final say and decided to affirm the previous termination.

The former firefighter has filed a lawsuit alleging defamation wherein he accused the city of libel and slander.

These charges were dismissed just prior to the case was scheduled to be heard.

The new mayor decided to reinstate former firefighter with instructions that he be reprimanded and given a brief on the ethics policy of the city.

Another “pop” type sound was heard before a number of police officers entered with guns drawn. Starr was disarmed and arrested.

Later, Starr was charged with assaulting four firefighters with a firearm. He pleaded not guilty but was convicted. Starr was sentenced to two consecutive terms of nineteen to twenty-three months, suspended for thirty-six months with supervised probation.

Starr appealed over a procedural matter, but the appeal was denied.

We report many, many cases involving firefighters responding to 911 calls only to come upon evidence of criminal activities. This case is rather unique, however a more frequent and equally dangerous scenario would be responding to fire or explosion at the crystal methamphetamine lab. The materials used in the process are highly explosive and will inevitably pose a considerable risk to firefighters who in the area.

Citation: State v. Starr, No. 64PA11, Supreme Court of North Carolina, (2011).

Fire Chief Position Eliminated

Former chief applied for unemployment compensation

Editor's Note: tight budgets in smaller fire departments will inevitably consider eliminating firefighting positions. In this case, the position was the full-paid fire chief.

James Sheppard (“Appellee”) served as the fire chief for Lafayette Township (“Township”) for almost thirty years. In 2008, due to tight financial budget conditions, the Township decided to eliminate the full-time fire chief position. Thus, Sheppard’s career was about to come to an end.

The Township and Sheppard entered into an agreement providing that Sheppard would serve as the Township’s “project coordinator” for a period of one year, starting on August 1, 2008 and ending on July 31, 2009.

On August 6, 2009, after the one-year tenure expired, Sheppard filed an application for unemployment compensation benefits. The case was considered by the Ohio Department of Job & Family Services (“Department”), and a decision was made that Sheppard was entitled to benefits. The Department reasoned that there was sufficient evidence of a “lack of work.”

The Township filed timely appeal, but the appeal was denied.

The Township then appealed to the Unemployment Compensation Review Commission (“UCRC”). A hearing was conducted on March 2, 2010, and the hearing officer affirmed the decision, agreeing that Sheppard was separated due to a lack of work and that he was entitled to unemployment compensation.

The Township continued to appeal and the case was transferred to the common pleas court (“trial court”) which denied the Township’s appeal and affirmed the decision of the UCRC.

The Township continued its appeal on two grounds. First, Sheppard failed to establish “just cause” for his resignation and that the finding of a lack of work was not supported by competent and credible evidence. Second, the trial court erred in considering new testimony supporting Sheppard’s case.

Decision: Affirmed.

The Township contended that Sheppard was not let go for lack of work. Rather, He voluntarily “resigned his position.” Sheppard responded that his one-year contract had expired and that the Township had eliminated his position.

The hearing officer simply found the testimony of Sheppard more credible than that of Township officials.

The court’s role is to review the decision of the UCRC and whether or not its decision is supported by substantial evidence. The UCRC decision would not be reversed if the court would decide differently. Here, the court decided that the UCRC decision was supported by substantial evidence. The court also noted that the Township failed to challenge the new testimony supporting Sheppard at the trial court. Thus, that evidence was not appealable.

In the coming months, we anticipate that many financially strapped local governments will be faced with decisions like this. In most fire departments, payroll accounts for between seventy to eighty percent of the fire department budget. The easiest way to reduce budgets will inevitably be to eliminate firefighter positions. What will be the criteria? What will be the reaction of the firefighter union?

Citation: Lafayette Township v. Sheppard, et al., C.A. No. 10CA0124-M. Case No. 10CIV0690, Court of Appeals Ninth Judicial District (2011).

Cumberland County Fire Chief's Association

Roll Call Vote Document

Motion TO SUPPORT CHAPLAIN 101 CLASS IN AMOUNT
OF \$750.00 @ FFD #14, JUNE 15-16, 2012

Department	Yes	No	Abstain	Other
Beaver Dam #26	✓			
Bethany #12	✓			
Cedar Creek #8	✓			
Cotton #4	✓			
Cumberland Road #5	✓			
Eastover #1	✓			
EMS				ABSENT
Fayetteville FD	✓			
Fort Bragg FD	✓			
Godwin-Falcon #17	✓			
Grays Creek #18	✓			
Grays Creek #24	✓			
Hope Mills #21	✓			
Pearce's Mill #3	✓			
Pope Air Force Base FD				
Spring Lake #22	✓			
Stedman #23	✓			
Stoney Point #13	✓			
Stoney Point #19	✓			
Vander #2	✓			
Wade #16	✓			
Westarea #15	✓			
Westarea #20	✓			

Date _____ Motion Carried _____ Motion Denied _____



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

March 15, 2012

MEMORANDUM

TO: Cumberland County Highway Incident Management Team

FROM: L. K. Langdon
Assistant Division Traffic Engineer

SUBJECT: Cumberland County Highway Incident Management Inter-Agency
Team Meeting Minutes



Attached are the minutes from the Cumberland County Highway Incident Management Inter-Agency Team meeting held on March 7, 2012. Please review and be prepared to offer any corrections at our next meeting.

Everyone's attendance and participation at the meeting is greatly appreciated. Thank you for your support.

If you have any questions regarding the above, contact Kent Langdon at (910) 486-1452.

LKL/rld

Attachment



CUMBERLAND COUNTY
HIGHWAY INCIDENT MANAGEMENT
INTER-AGENCY TEAM



MEETING MINUTES

March 7, 2012

The Cumberland County Highway Incident Management Inter-Agency Team meeting was held at 9:30 a.m. on Wednesday, March 7, in the City of Fayetteville Traffic Services Conference Room. Those attending were:

Lee Jernigan	NCDOT	ljernigan@ncdot.gov
Kent Langdon	NCDOT	klangdon@ncdot.gov
David Phipps	NCDOT	dhipps@ncdot.gov
Phillip Hart	NCDOT	pjhart@ncdot.gov
Bill Hammond	NCDOT	bhammond@ncdot.gov
Kennie Covington	NCDOT	kwcovington@ncdot.gov
J.D. Aiken	NCSHP	jaiken@ncshp.org
Mark Nottingham	FAMPO	mnottingham@co.cumberland.nc.us
Mike Rutan	FAMPO	mrutan@co.cumberland.nc.us
Brian Pearce	CCEMS/CFVMC	bpearce@capefearvalley.com
Brian Mims	City of Fayetteville Fire Department	bmims@ci.fay.nc.us
Thomas Allen	City of Fayetteville Fire Department	tallen@ci.fay.nc.us
Matthew Dow	City of Fayetteville Police Department	mdow@ci.fay.nc.us
Richard Silverest	City of Fayetteville Police Department	rsilverest@ci.fay.nc.us
Neil Perry	City of Fayetteville Traffic Services	nlperry@ci.fay.nc.us
Gene Booth	Cumberland County Emergency Services	wbooth@co.cumberland.nc.us
Kenneth Williams	Cumberland County Sheriff's Office	kwilliams@ccsonc.org
Ray Goff	DPW - Traffic Engineer	ray.goff@us.army.mil
David Ice	Ft. Bragg DPTMS	david.ice@us.army.mil
Bill Kern	Ft. Bragg DPW	william.h.kern2.civ@mail.mil
SFC J.M. Creager	Ft. Bragg DPW	james.m.creager@us.army.mil
Sey Nam	Ft. Bragg DPW	sey.s.nam.civ@mail.mil
Paul Busch	Ft. Bragg EMS	paul.busch@us.army.mil
Thomas Hines	Ft. Bragg Fire Department	thomas.e.hines@us.army.mil
Dave Servie	Hope Mills Police Department	dmservie@town.hope-mills.nc.us
Mark Norton	Norton's Wrecker service	marknws70@aol.com
Phillip McCorquodale	Phillips Towing Service	phillipm@phillipstowing

Kent Langdon, NCDOT, welcomed everyone to the meeting and thanked them for their participation. Everyone introduced themselves to the group.

Matt Harris, NCDOT Construction, provided the attachment for the following construction projects after the meeting:

Randy Wise, NCDOT Construction, provided the attachment for the following construction projects after the meeting:

Bill Hammond, NCDOT Maintenance, provided the status of the following maintenance projects:

- US 301 Shoulder reconstruction, between SR 1832 (Murphy Rd.) and the Harnett County Line. (Possible start next week)
- SR 1705 - Paving tomorrow. Expect delays and lane closures.

Kennie Covington, NCDOT Bridge, provided the status of the following Bridge Maintenance activities:

- Eastover Area
 - US 301 NBL bridge guardrail repair. Currently underway.
 - US 301 Service Rd. near Middle Rd. - Should be complete next week.

Kent Langdon provided the status of the following contracts:

- Raised Pavement Markers - A list of routes was distributed during the meeting. Placement of markers will be available 1st of April.

The team discussed the following general topics:

- I-95 Corridor Study- The Doubletree Inn in Cedar Creek had a public meeting on Feb. 27th. Information concerning this study may be viewed at www.driving95.com
- Damaged NCDOT Property - Discussed the tagging of signs, guardrails, etc. Bill Hammond to contact Richie Hines for additional tags for distribution to NCSHP and Fayetteville Police Department.
- Murchinson Road Trucks - Local law enforcement patrol the route with limited amount of offenders found.
- Mike Melvin and Kenny Currie Retirements - Congratulations and best of wishes to both of them from the I.M Team of Cumberland County.

The team reviewed the following incidents:

- A. An incident occurred Saturday, January 15th in Cumberland/Harnett Counties. A motorist fled the scene of a checkpoint and struck an officer during the escape. The Spring Lake Police, NCSHP and Harnett County chased the motorist for 20 miles in speeds of excess of 100 mph. The vehicle was shot by officers, eventually crashed and caught fire. Officers pulled the driver from the vehicle. The individual was arrested and charged with four offenses.
- B. The Miami Subs Restaurant at the intersection of Skibo Rd. and McPherson Church Rd. caught fire Tuesday, January 24th. A section of McPherson Church Rd. was closed for a brief period during the incident.
- C. An incident occurred Friday, January 27th on US 301 in Wade. An intoxicated driver rear-ended a stopped school bus. Twelve children were taken to Cape Fear Medical Center to be evaluated and treated.

- D. An incident occurred Sunday, January 29th on I-95 northbound of rest area near mile marker 49. A tractor trailer hauling pork loin was improperly hooked up, detached, ruptured a fuel tank, damaged the pavement in the acceleration lane and caused delays for approximately 3 hours during cleanup.
- E. A pedestrian hit and run incident occurred Tuesday, January 31st on Glensford Drive. Children were crossing in a marked x-walk at the school. A child was hit after pushing his sister out of the way of a vehicle.
- F. An incident occurred Friday, February 2nd on SR 1104 (Strickland Bridge Rd.) at the intersection of SR 1106 (Bailey Lake Rd.). Two officers were responding to a break in when an officer swerved to avoid a vehicle collision at the intersection and slammed head-on into a tree.
- G. An incident occurred on I-95 southbound near exit 64 Tuesday February 7th. A motorist pulling a trailer leaned over to put water into a bowl for animals, lost control, and flipped over.
- H. An incident occurred Tuesday, February 7th on US 401 (Skibo Rd.) near Red Tip Rd. A motorist rear-ended a vehicle that was turning and caused it to flip over.
- I. An incident involving a high speed chase concluded Tuesday, February 14th at the intersection of MLK and Robeson St. The chase ended when the driver crashed into another vehicle at the intersection. The road was closed for approximately 30 minutes during cleanup.
- J. An incident occurred Tuesday, February 14th on US 401 Business (Raeford Rd.) near the intersection of Amigo Dr. A motorist struck a utility pole causing power lines to drop into the road. Crews replaced the pole and reopened the road in approximately 30 minutes.
- K. A fatal incident occurred Friday, February 17th on US 401, near SR 1608. A motorist traveling at an estimated speed of 115 mph, ran off the road to the right, collided with a telephone pole, overturned several times, struck another telephone pole and then struck a tree.
- L. A four vehicular incident occurred Sunday, March 4th on US 301 in Eastover that damaged the concrete bridge rail and the guardrail resulting in the current repair operations of Bridge Department.
- M. A house fire occurred Monday, March 5th that caused Bragg Boulevard to close briefly while firefighters battled the flames. The road was closed due to concerns of a propane tank at the property. The tank was confirmed empty.
- N. A motorcyclist fatality occurred Tuesday, March 6th on US 401 (Raeford Rd.) at the intersection of Sykes Pond Road. A motorist pulled into the path of the motorcyclist. A discussion of vertical alignment, limited sight distance, speed limit and additional apartments to be constructed near this intersection was concerns of the team with request of future improvements at the intersection.

The next meeting is scheduled for 9:30 a.m. on Wednesday, April 25, 2012 in the City of Fayetteville Traffic Services Conference Room, 339 Alexander Street.

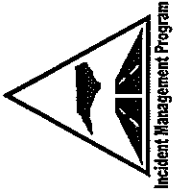
**Division 6 Incident Management
Construction/Maintenance Project Status Report**

Cumberland County

Date: 3/9/2012

TIP #	ROUTE	LOCATION	WORK DESCRIPTION	START DATE	END DATE	CONTACT	COMMENTS
X-2B & U-2519E	Fut I-295	Cumberland Co.	Fayetteville Outer-loop	July, 2009	December, 2012	Randy Wise	Structures and roadway embankments are being constructed between Bragg Blvd. and Murchison Rd. on new alignment. Project is approximately 93% complete
U-4444AA	Murch. Rd.	Cumberland Co.	Widening NC 210 N of future Outer-loop and Interchange with Honeycutt Rd.	January, 2010	July, 2012	Randy Wise	Bridge over Honeycutt is 100% complete. Traffic has been shifted over bridge in the NB lanes. Contractor continuing grading SB lanes and interchange.
W-5000	Ramsey St	Cumberland Co	Median and minor widening from Law Rd. to Farmers Rd.	January, 2011	May, 2012	Randy Wise	Widening and paving is complete from Law Rd. to approximately McArthur Rd. Concrete median work is complete throughout entire project. Final Paving to be completed in early spring.
X-2BC & X-2C	Fut I-295	Cumberland	Fayetteville Outer Loop	April, 2011	April, 2014	Randy Wise	Contractor is working on bridges as well as grading and drainage work throughout the project.

W-5000 (Ramsey Street): Contractor to resume night operations on March 12.
X-2B/U-2519E (NC 210 Murchison Rd): Lane shifts in the NB and SB direction to take place March 12 for embankment fill and for bridge bents.



**NCDOT, DIVISION SIX
HIGHWAY INCIDENT MANAGEMENT PROGRAM**



CONSTRUCTION/BRIDGE/MAINTENANCE
PROJECT STATUS REPORT

DATE: 03/07/2012

COUNTY: Cumberland

TIP #	ROUTE	LOCATION	WORK DESCRIPTION	START DATE	END DATE	CONTACT	COMMENTS
	1-95	Robeson, Cumberland and Harnett Counties	Installation of Dynamic Message Signs & CCTV's	August 19, 2011	April 1, 2012	Jason Salisbury (910) 486-1401	Expect lane closures and delays.
	Various routes in Cumberland and Harnett Counties	2 Sections of US 301, 1 Section of NC-59, NC-210, NC-27, and NC-42, and 39 Sections of Secondary Roads.	Milling and Resurfacing.	March 29, 2011	May, 2012	Jason Salisbury or Matt Harris (910) 486-1401	Expect lane closures and delays as Contractor works to complete this project.
U-2810A	SR 1003 (Camden Rd) from NC 59 to the Hope Mills Bypass	Hope Mills	Widening of SR 1003 (Camden Road) from NC 59 to the Hope Mills Bypass.	March 1, 2010	June 15, 2012	Jason Salisbury or Matt Harris (910) 486-1401	Expect Lane closures and delays from 8:30 AM to 4:00PM Monday through Friday.

Revised July 8, 2010

TIP #	ROUTE	LOCATION	WORK DESCRIPTION	START DATE	END DATE	CONTACT	COMMENTS
U-3849	SR 1363 (Elk Rd) from SR 1132 (Legion Rd) to US 301/Bus 95	Hope Mills	Widening of SR 1363 (Elk Rd) from SR 1132 (Legion Rd) to US 301/Bus 95	May 31, 2010	September 1, 2012	Jason Salisbury or Steve Lucas (910) 486-1401	Expect Lane Closures and delays from 8:30 AM to 3:00 PM Monday through Friday. Clearing right now, work on the project has begun in front of South View Schools.
U-3423	NC 24/87 (Bragg Blvd) from US 401 Bypass to north of SR 1437 (Santa Fe Dr/ Shaw Rd)	Fayetteville	Grading, Drainage, Paving, Widening, Curb and Gutter, Signals, and Overhead Signing.	August 26, 2010	October 1, 2012	Jason Salisbury or Steve Lucas (910) 486-1401	Night work.
U-2519DA	Fayetteville Outer Loop from East of SR-1415 (Yadkin Rd.) to West of NC-24 (Bragg Blvd.)	Fayetteville	Grading, Drainage, Paving, Signing and Structures.	October 31, 2011	July 15, 2015	Jason Salisbury or Steve Lucas (910) 486-1401	