



Cumberland County Fire Chief's Association
Minutes of September 24, 2012 Monthly Meeting



The meeting was hosted by the Westarea #20 Fire Department and we thank Chief Godwin and his staff for their hospitality.

Opening Prayer: Deputy Fire Chief J.D. Pone, provided the opening prayer.

Roll Call: Roll call was conducted with 18 departments and 6 associate members present.

Members Absent:

Fire Departments: EMS, Hope Mills, Spring Lake-Excused

Associate Members: Christian Firefighters, Forestry, Life Link, FB EMS, Retired Chief Officers

Approval of Minutes: Minutes from August 2012 meeting were approved.

Guests: George Tatum, candidate for NC Senator 19th District, talked about several issues and requested support for his run for office.

Vendors Present: Michele Ellis, Farm Bureau sales representative discussed insurance options

Treasurer's Report: Available at Chiefs only meeting.

Meeting Point of interests:

Next Chief's Meeting will be October 22, 2012 hosted by EMS Base. The meeting will begin at 7:00 pm.

- President Johnson advised that the Fayetteville Fire Department will pick up air truck coverage and duties in October 2012.
- President Johnson provided a packet with legal briefs and various advertisements.
- President Johnson briefly updated the membership on the Mobile Data Terminal (MDT's) installation. He explained that some departments were experiencing a loss of service. Especially our departments in the more rural areas of the county. This may be resolved with a Verizon booster. President Johnson needs everyone to report their issues to him, Chief McLamb and Director Randy Beeman. He also

asked everyone should expect to experience some IT issues as we go through this new endeavor. The computer boosters in the Godwin – Falcon area are not making a difference as of yet but IT is still working on the project. We will wait and see how it works out in Godwin-Falcon and then move to fix others with similar problems.

- President Johnson advised that we are trying to get Captain West with NCSHP to come in and update us on the P-25 issues at the October or November meeting. Captain West has requested that we submit specific questions to him.
- Deputy Chief Johnson briefly discussed the items needed to expand the VIPER radio system. He is encouraging all Fire Chiefs to talk to their Legislative representatives and let them know that enhancements are needed to the VIPER system to allow for more users. The costs are 54 million dollars in order to double the current 65 thousand users to 130 thousand state wide. Legislatures removed the 54 million dollars originally slated for VIPER upgrade from the SHP budget. SHP does not want to attach user fees per radio and instead is asking to contact our legislatures to re-fund this critical upgrade in the upcoming budget.
- President Johnson advised that no feedback was received on the Communications SOG. Since we have already implemented our mobile data communications system the Communications SOG will go into effect on October 1, 2012.

OLD BUSINESS

1. President Johnson re-affirmed to everyone that we must continue to encourage our political leaders of how important the Workers Compensation fund is to the survival of our operations. We will receive an update next month during the Chief's only meeting.

NEW BUSINESS:

1. The membership accepted the communications committee's minutes and recommendations with a vote of 18 for and 1 abstained. This recommendation will be effective December 1, 2012. Chief Bullard will make the necessary revisions. These recommendations will be implemented into our current SOG format.

COMMITTEE REPORTS:

I D 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@stonepointfire.com

FIRE PREVENTION/EDUCATION COMMITTEE Retired Chief J.F. Hall, Chairperson

- Assistant Fire Chief Hieu Sifford, Fayetteville FD, handed out a flyer on the County-Wide Fire Safety Day scheduled for October 6, 2012 at the Cross Creek Mall. For questions call Inspector Jeff Fogle.

COMMUNICATIONS COMMITTEE Chief B. Bullard (Stedman) Chairperson

- No further report. See new business section.

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

- No report.

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

- President Johnson asked all the members to mark their calendars for Saturday October 13th, 2012. This is the annual Memorial Service at FTCC Memorial Site. The Service will begin at 1100 hours and will last about 20 to 25 minutes. All departments need to be represented with personnel and apparatus.

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 Pearce (EMS) Chairperson

- No report.

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

No report.

ASSOCIATE MEMBERS REPORT

EMERGENCY SERVICES DIRECTOR/ ECC-911 (Randy Beeman, Director)

- Director Beeman advised that the meeting for the low wealth departments was forthcoming.

EMS DIRECTOR: Brian Pearce, Director

- No report.

HAZMAT BC Calvin Bishop, FFD - POC telephone for HAZMAT is 433-1729

- Chief Bishop asked all departments to be aware that the contractors for Piedmont Gas Company were not outfitted with the proper PPE. This issue is being worked, but all Chiefs need to be aware of this safety issue.

FORESTRY DISTRICT Andrew Synder, County Ranger

- No report.

FTCC Ernest Ward, Director

- Mr. Ward advised that effective Jan1, 2013 all Instructor Methodology and Fire Officer classes will be tested by the State Fire Rescue personnel in Raleigh or at a site to be determined based on attendance.

SHERIFF'S OFFICE Sheriff Butler

- No report.

CHRISTIAN FIREFIGHTERS Chaplain Cassanova

- No report.

NC HIGHWAY PATROL

- No report

COUNTY COMMISSIONERS Fire Commissioner Ed Melvin

- No report.

FOR THE GOOD OF THE ASSOCIATION:

- Chief Godwin advised that the Westarea #20 would be hosting the Crossroads Festival on October 27, 2012 at the Fire Station in Linden.
- President Johnson advised that posters and advertisement cards for Stoney Points annual Trail of Terror are in your packets and asked all the Chief's to please post the posters on their bulletin boards. The trail will run every weekend through Halloween night.

ADJOURNMENT: A motion was made to adjourn by Chief Mark Melvin, seconded by Chief Bill Bullard. The meeting was adjourned at 2030 hours.

Respectfully Submitted By:

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

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

8 Enclosures

1. Roll call
2. Legal brief's
3. Roll call vote for communications recommendations
4. Communications SOG
5. Farm Bureau document
6. Fall Safety day document
7. Memorial Document
8. SPFD Trail of Terror advertisement

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

MEMBERS PRESENT (21)	20	22	21	20	20	18	19	21	18			
ASSOCIATES PRESENT (11)	8	9	5	5	5	9	8	7	6			
CC Fire Chiefs	23-Jan-12	23-Feb-12	26-Mar-12	23-Apr-12	21-May-12	25-June-12	23-July-12	27-August-12	24-Sept-12			
DEPARTMENT ORGANIZATION												
* Chief's Only Meeting												
MEMBERS												
BEAVER DAM STA 26	P	P	P	P	P	P	P	P	P			
BETHANY STA 12	P	P	P	P	P	P	P	P	P			
CEDAR CREEK STA 8	P	P	P	P	P	P	P	P	P			
COTTON STA 4	P	P	P	P	P	P	P	P	P			
CUMBERLAND ROAD STA 5	A	P	P	P	P	P	P	P	P			
EASTOVER STA 1	P	P	P	P	P	P	P	P	P			
EMS EMERGENCY MEDICAL SERVICES	P	P	A	A	P	A	P	P	A			
FAYETTEVILLE FIRE DEPT	P	P	P	P	P	P	P	P	P			
FORT BRAGG FIRE DEPT	P	P	P	P	A	P	P	P	P			
GODWIN – FALCON STA 17	P	P	P	P	P	P	P	P	P			
GRAYS CREEK STA 18	P	P	P	P	P	P	P	P	P			
GRAYS CREEK STA 24	P	P	P	P	A	P	A	P	P			
HOPE MILLS STA 21	A	P	P	P	P	P	A	P	A			
PEARCE'S MILL STA 3	P	P	P	P	P	P	P	P	P			
SPRING LAKE STA 22	P	P	P	A	P	P	P	P	E			
STEDMAN STA 23	P	P	P	P	P	A	P	P	P			
STONE POINT STA 13	P	P	P	P	P	P	P	P	P			
STONE POINT STA 19	P	P	P	P	P	P	P	P	P			
VANDER STA 2	P	P	P	P	P	P	P	P	P			
WADE STA 16	P	P	P	P	P	P	P	P	P			
WESTAREA Stations 15,20,25	P	P	P	P	P	A	P	P	P			
ASSOCIATE MEMBERS												
HAZMAT	P	P	P	P	P	P	P	P	P			
SHERIFF'S OFFICE	P	P	A	A	P	P	A	P	P			
HIGHWAY PATROL	P	P	P	P	P	P	P	A	P			
CC EMERGENCY SERVICES	P	P	P	P	P	P	P	P	P			
FORESTRY	P	P	A	P	P	P	P	P	A			
FTCC	A	P	A	A	A	P	A	A	P			
COUNTY COMMISSIONERS	P	P	P	A	A	P	A	A	P			
CHRISTIAN FIREFIGHTERS	A	A	A	A	A	A	P	A	A			
LIFE LINK	P	P	A	A	P	P	P	P	A			
FORT BRAGG EMS	P	A	P	P	P	P	P	P	A			
RETIRED CHIEF OFFICERS		P	A	A	P	A	P	P	A			

Special Notes:

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

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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In This Issue

Belligerent Owner Blocks Fire Suppression

The owner started a fire in his back yard and meets firefighters with profanities and threatening actions. Law enforcement officers are called in while firefighting is delayed until the safety of firefighters is assured. The subsequent inspection of the home revealed serious fire hazards inside the house.Page 2

Fired! – Job Abandonment – Claims ADA Protection for Drug Usage

The former firefighter, previously treated for “severe depressive episode,” sued the county and firefighter’s union alleging constitutional violations when he was fired. The fire department pointed to legitimate reasons for the decision, while the former firefighter claims to have been disabled due to drug usePage 3

Demotion – President of Firefighter’s Union – Mised Investigators?

There was an alleged incident where firefighter equipment was tampered with. A firefighter was charged with making misleading statements to the police detective conducting an investigation. Was there sufficient proof?Page 4

Fatal Injury During Training Exercise

A recruit firefighter suffered fatal thermal injuries during a live burn, which was part of her training. The estate of the deceased recruit brought this action claiming a *substantive due process* violation. There are other state court actions pending.Page 5

Immunity – Volunteer Firefighter Runs Red Light Responding to Call

The firefighter was driving his own automobile with lights flashing, and no siren. As he drove through a red light, the firefighter struck a civilian automobile causing injuries. Was the firefighter within the scope of employment? Is he immune from liability?Page 6

Open Air Burnings – Fire Department Seeks Injunction

Open air burnings are not lawful unless the property owner is engaged in agriculture and has the permission of the fire chief. In this instance, the owner sought to develop the land, but when plans floundered, he changed to agriculture. Open air burnings caused numerous complaints, and the fire department asked the court to enjoin future burnings. Page 8

In The Next Issue

Discontinue Firefighter Union Recognition – Union Challenge

The town board decided to no longer negotiate with the firefighter’s union or even recognize it. The union local challenged the decision under the legal theories of *laches* and *equitable estoppel*. All of these efforts failed.

Legal Briefings for Fire Chiefs

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Belligerent Owner – Attempt to Block Fire Suppression

Firefighters team with law enforcement to defuse unpredictable emergency fire call

Editor's Note: Firefighting is not law enforcement. When firefighters encounter recalcitrant property owners who stand in the way of fire suppression activities, police officers should be called in immediately. Even though the owner's exact language does not express a threat to do physical harm, the court will consider the statements in addition to the threatening demeanor of the owner.

On January 26, 2010, firefighters from Lancaster, California responded to an emergency fire call at the residence of Margarito Iboa ("Defendant").

Upon arrival, the responding firefighters found a large fire in Defendant's backyard. A 10-12 foot pile of debris was on fire with flames reaching 10 feet in the air.

Defendant was found lying on the ground to the side of the fire, apparently asleep. Firefighter Joseph Carvahlo woke Defendant who grabbed a hose in an attempt to help put down the fire.

When Fire Captain Jim De'Evelyn tried to ask Defendant how the fire started, an argument erupted. Firefighter Carvahlo observed the confrontation and thought that Defendant looked at Fire Captain De'Evelyn in a menacing manner as if he might strike him. Carvahlo stepped between De'Evelyn and Defendant.

Firefighter Christopher Brown also observed the confrontation, and thought that Defendant was approaching De'Evelyn aggressively, with "just maybe kind of a little physical threat, kind of a little body force."

Defendant then ran into the house. Concerned that Defendant was intent upon getting some type of weapon, the firefighters were directed to leave the property even though the fire had not been completely put down. Defendant emerged from the house and was heard to say, "I'll take care of you guys" or "You'll see what happens."

Defendant demanded that firefighters who were responding to the fire call leave his property. In Defendant's own words, he stated, "get the fuck" off his property along with many other epithets and profanities.

As the fire continued to burn, Los Angeles County Deputy Sheriffs Ryan Valento and Gabriel Frias arrived at the scene. Deputy Fria approached Defendant who said, "Fuck you guys. You need a warrant; I can burn whatever I want."

The situation deteriorated further as Defendant displayed his gang tattoos.

More deputies arrived at the scene and chased Defendant into the house, when the firefighters were directed to continue fire suppression activities. The fire was put down quickly.

The house was searched the following day, and officers found Defendant living there with two other adults and three children. Not only was the house squalid, but serious fire hazards were noted including

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exposed wires and sparks emitting from light switches.

A considerable amount of evidence was found inside the house. Defendant was later charged and convicted of seven counts of deterring or preventing, by means of any threat or violence, an executive officer from performing a duty imposed by law.

Defendant appealed, contending that the convictions must be reversed because his speech to firefighters and deputies, however profane and threatening, was protected by the *First Amendment*. He also argued that the jury should have been instructed that his threat must have been “a serious expression of intention to inflict bodily harm.”

Decision: Affirmed.

There is sufficient evidence the Defendant’s threatening language, coupled with his obvious threatening demeanor and physical behavior, shows that his conviction did not run afoul of the *First Amendment*.

Further, the trial court did not err by not instructing the jury that a threat under *Penal Code section 69* must be “a serious expression of intention to inflict bodily harm.” The court noted that this is not an element of the crime.

Citation: People v. Iboa, B230342, Court of Appeal of the State of California, Second Appellate District Division Three (2012).

Fired - Misconduct

Job abandonment – claims ADA violation – drug usage – “cat’s paw” theory

Issue: Was there a legitimate reason for the termination? Was there a violation of the Americans with Disabilities Act (“ADA”)? Was the termination due to alleged drug use? Does drug addiction qualify as a disability and protection under ADA?

Walter Dulaney (“Dulaney”) a firefighter employed by Miami-Dade County (“County”) and a member of the International Association of Fire Fighters Local 1403 (“Union”), was terminated from employment for the alleged reason of job abandonment.

Dulaney brought this federal lawsuit against the County and Union (“Defendants”) alleging he was fired in violation of the Americans with Disabilities Act (“ADA.”) Here, Dulaney claimed that his termination was based on disability discrimination due to his perceived drug use.

Prior to the termination, Dulaney was alleged to have suffered a series of medical events including at least one severe depressive episode for which he was ordered to undergo a psychiatric evaluation.

There is a disagreement as to who was to arrange the evaluation. Dulaney claims that it was the responsibility of the County’s Risk Management Department, while County officials argue that it was Dulaney’s responsibility.

The appointment was never made, and Dulaney contended that the Union inaccurately informed County officials that his problems came from his illegal drug use. Thus, as part of Dulaney’s legal claim, he charged that the Union discriminated against him by “deliberately acquiescing” in the County’s discriminatory conduct by advising County officials that he was a

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.

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Around the Nation

Disability Retirement Benefits

Injured climbing onto fire truck – conflicting medical opinions

Issues: Is the injury work-related? Was the firefighter's arthritic condition the actual cause of the disability?

In March 2007, firefighter William Dunn ("Dunn") claimed that he suffered an injury as he climbed onto a fire truck while on duty.

Dunn alleged that he "twisted and injured his lower back when his right foot hung up on a step of the fire truck [causing him to grab] a rail on the truck in an attempt to regain his footing and balance."

Claiming that he was permanently disabled due to this injury, Dunn applied for performance of duty disability retirement benefits.

Dunn introduced the testimony of Dr. Frederick Fletcher, a board-certified orthopedic surgeon who had performed both hip replacement surgeries on Dunn.

Dr. Fletcher explained that Dunn's pain was caused by an injury to his sacroiliac joint that he was permanently incapacitated due to the pain in this same joint which resulted from the March 2007 injury at the fire station.

The State responded by presenting the testimony of Dr. Patrick Connolly, also a board certified orthopedic surgeon who examined Dunn and concluded that his permanent condition was not attributable to the March 2007 accident. Rather, Dr. Connolly opined that Dunn suffered from severe osteoarthritis of both hips and a preexisting degenerative disc disease.

Dr. Connolly also testified that the March 2007 accident was not the type of significant trauma that would produce the alleged injury in the subject

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drug addict.

County officials answered that the recommendation to terminate Dulaney came from Chief Christine Rogers. Chief Rogers passed the recommendation to Chief Herminio Lorenzo who made the ultimate decision. The recommendation was based on the fact that Dulaney was released to return for work, but he failed to do so for over one year.

Dulaney alleged that the County is liable under the "cat's paw" theory, wherein the non-decision maker's (Chief Rogers) animus may be imputed to a neutral decision maker (Chief Lorenzo) who had not taken part in any investigation of the allegations of misconduct. *Stimpson v. City of Tuscaloosa*, 186 F.3d 1328 (1999).

Here, Chief Rogers admitted to have known of rumors of Dulaney's drug use. The theory simply means that the recommender is using the decision maker as a conduit, or "cat's paw" to give effect to the recommender's discriminatory animus.

Defendants filed a motion for summary judgment, which was granted. Dulaney brought this appeal.

Decision: Affirmed.

Dulaney failed to establish that he was disabled, which is the first of a two prong test when alleging an ADA violation. He also failed to provide any proof that Chief Lorenzo was aware of any rumors of drug usage.

Being regarded by some as a drug user does not mean that Dulaney was disabled. Thus, he failed to establish a prima facie case. Rather, Chief Rogers pointed to a legitimate reason for the termination that had nothing to do with alleged drug usage.

Citation: Dulaney v. Miami-Dade County, et al, No. 11-12585, D.C. Docket No. 1:09-cv-23259-JAL, U.S. Court of Appeals for the Eleventh Circuit (2012).

Demotion – President of Firefighter's Union

Demands reinstatement with full back pay and benefits

Issue: Was there sufficient evidence to support the disciplinary action?

Plaintiff served as a captain in the Village of Johnson City Fire Department ("Fire Department.") At all times relevant to this commentary, Defendant also served as the president of the firefighters' union of the Fire Department.

In 2010, there were several alleged incidents of tampering with firefighter equipment, especially airpacks that were to be used by firefighters. Fire Chief Stephen Hrustich became aware of this and started an investigation.

Plaintiff reported to Chief Hrustich that his personal gear had been "rifled through," although he denied having said that his own airpack was among the items that were disturbed.

Chief Hrustich went to the Village of Johnson City Police Department to ask for help in conducting the investigation. During the initial

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conversation, Chief Hrustich stated that Plaintiff's airpack was among the airpacks that had been tampered with, even though Defendant denies having said that to Chief Hrustich.

Plaintiff was interviewed by a police detective during the investigation and denied that his airpack was among those that were tampered with. Immediately after stating this, the detective allegedly stated that "we don't need to ... discuss it any further."

Plaintiff was then faced with a disciplinary action for failing to disclose information about other officers' complaints related to airpack tampering. Plaintiff was also charged with making false statements to Chief Hrustich and the police detective that his own airpack had not been tampered with.

The hearing officer who conducted the disciplinary hearing made a recommendation to the Village Mayor who decided to demote Plaintiff from the rank of captain to firefighter first class.

Plaintiff brought this action to appeal his demotion. He steadfastly denied having intentionally found any tampering of airpacks himself. He also noted that airpacks were kept in vehicles which he had no occasion to inspect.

Decision: Hearing officer's determination is annulled. Plaintiff is reinstated to the rank of captain with full back pay.

The disciplinary charges against Plaintiff are based on his "failure to disclose information that was neither solicited nor relevant to the conversation, and under no reasonable view of the evidence can it be said that his silence was willful or indicative of a dereliction of duty." *Matter of Ridge Rd. Fire District v. Schiano*, 16 NY3d 494 (2011).

Even though the hearing officer concluded that Plaintiff did, in fact, discuss the airpack tampering matter with Chief Hrustich, this does not constitute "such relevant proof as a reasonable mind may accept as adequate to support" the conclusion that Plaintiff intentionally misled the detective.

Citation: Meaney v. Village of Johnson City, 513922, Appellate Division of the Supreme Court of the State of New York (2012).

Fatal Training Accident

Family sues - substantive due process violation?

Issues: Did fire officials exhibit deliberate indifference to a dangerous training activity? Did the actions of training officers "shock the conscience"? What is the critical element to establishing a substantive due process violation by the fire department?

Rachael Wilson ("Wilson") was a new firefighter recruit with the Baltimore City Fire Department ("Fire Department"), when she took part in a live burn training exercise on February 9, 2007. The exercise involved intentionally setting fire to an abandoned three story building. Training officials removed all of the wall boards and ceilings. They then stuffed the walls with highly flammable excelsior.

Once the structure was ready, instructors set multiple fires on the different levels of the building. After letting the structure burn for a short

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Around the Nation

joint.

Dr. Connolly also noted that one of the hip replacements became infected prompting another total joint replacement. This was the more likely cause of Dunn's pain.

The claim was denied, and Dunn brought this action to appeal.

Decision: Affirmed.

Dunn had the burden of "demonstrating that he was incapacitated from the performance of duty as the natural and proximate result of a ...disability sustained in service." *Monachelli v. DiNapoli*, 84 AD3d 1687 (2011).

The hearing officer considered conflicting medical testimony. He found Dr. Connolly's testimony "rational, fact-based" and provided sufficient evidence to support the decision that Dunn's condition was not caused by the March 2007 incident.

The court found no basis to disturb the denial of benefits.

Citation: Dunn v. DiNapoli, 513962, Appellate Division of the Supreme Court of the State of New York (2012).

Citizen Injured at Fire Scene

Sues the city – immunity?

Issue: Under what circumstances may a fire department or the local government its serves be responsible for injuries sustained by citizens at the scene of a fire?

A fire erupted at the apartment building of Annette Miserendino ("Claimant") located in the City of Mount Vernon, New York ("City"). The Mount Vernon Fire Department was called to the scene and conducted fire suppression activities.

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Around the Nation

Claimant was injured as she tripped over a fire hose that was being used by firefighters who were attempting to extinguish the fire..

Claimant and her husband ("Appellants") sued the City and Fire Department ("Respondents") to recover from the injuries sustained by Claimant.

The City filed a motion for summary judgment on the grounds that both the firefighters and police officers at the scene were performing *discretionary* governmental functions and that they owed *no special duty* to the injured Claimant.

The trial court granted the motion in favor of Respondents. This appeal followed.

Decision: Affirmed.

We have frequently reported that local government officials performing discretionary duties are generally entitled to governmental immunity unless there are constitutional issues involved. Ministerial duties, where there is no discretion, are not protected by immunity.

In this instance, Respondents provided sufficient evidence that the firefighters at the scene and those who placed the fire hose in the location which precipitated the accident were performing a discretionary act.

Moreover, they owed no special duty to Claimant at that time. Finally, there was *no special relationship* between Claimant and the Fire Department that would give rise to any special duty. *McClean v. City of New York*, 12 NY3d 199.

Citation: Miserendino, et al., v. City of Mount Vernon, et al., 2011-04959, Index No. 28816/09, Supreme Court of the State of New York Appellate: Second Judicial Department (2012).

while, Wilson and other recruits were instructed to enter the building and simulate looking for potential victims and then to conduct fire suppression exercises.

Wilson was directed to proceed to the third floor and, in doing so, to carry a fire hose to that level.

By the time Wilson reached the third floor, it was apparent that "severe fire conditions" existed at that level, and the team of recruits realized that their "lives were in danger."

The training exercise quickly turned into a rescue event. The team of recruits was ordered to evacuate the building from a second floor window that led out to a rear roof area.

Wilson managed to get to the second floor, and, with the help of other firefighters, was able to get through the window. However, she quickly became unconscious.

Wilson was taken to the nearest hospital where she was pronounced dead on arrival. An autopsy followed which revealed that Wilson succumbed to thermal injuries and asphyxia.

Representatives of Wilson's estate ("Plaintiff") sued the City and named officials in federal court alleging that Wilson's death was avoidable with adequate precautions and that the Fire Department "created unduly dangerous conditions in staging the exercise. Among the specific allegations, are that (1) the building was unsafe because the walls and ceilings were torn out and left in piles while highly flammable excelsior was inserted into the walls, (2) the recruits were not equipped with appropriate protective clothing, (3) the instructors were not equipped with radios and were not trained to supervise a live burn, (4) contrary to NFPA standards, multiple fires were ignited in the structure, (5) the instructors allowed the fire to burn too long before recruits were sent into the building, and (6) the water supply was inadequate to fight the fire."

The pivotal issue when charging a government entity, as here, with a violation of substantive due process is whether there was any arbitrary action (s) which were intentional by the government entity against an individual [Wilson]. In this instance, Plaintiff does not allege any intentional acts. Rather, Plaintiff contends that the Fire Department officials demonstrated *deliberate indifference*.

Ordinarily, to establish a substantive due process violation there would be an *intentional* act resulting in injury or death. Here, Plaintiff attempted to demonstrate that the deliberate indifference is sufficient to establish a substantive due process violation.

Apart from cases involving custody, the *deliberate indifference* standard – the fire instructors created a dangerous condition – has never been successfully argued. Here, Wilson was not in custody at the time of the accident, nor was there any specific intent on the part of instructors that the accident and injuries would occur.

The federal district court found in favor of the City and named parties ("Defendants"). Plaintiff brought this appeal.

Decision: Affirmed.

Wilson was engaged in voluntary employment at the time of the accident. She was not in custody. Plaintiffs have not alleged *arbitrary* or *conscience shocking* conducts because they did not assert that Fire Department officials intended to harm Wilson. Intent to harm is an essential element in establishing a substantial due process violation. *Collins v. City of*

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Harker Heights, 503 U.S. 115 (1992).

There remain state court claims that must be litigated, and this decision will in no way affect the outcomes during these actions.

Citation: Slaughter, et al., v. Mayor and City Council of Baltimore, et al., 10-2436, United States Court of Appeals for the Fourth Circuit (2012).

Immunity – Automobile Accident

Volunteer firefighter runs red light answering call

Issue: Was the volunteer firefighter acting within the scope of employment? If so, is he immune from liability resulting from an accident while responding to an emergency call?

Parnell Burditt (“Burditt”), a volunteer firefighter with the Okauchee Fire Department (“OFD”), responded to a dispatch on June 8, 2008. The call came in after dark and during a rain storm.

Volunteer firefighters generally report to either the fire station or the scene of the emergency. In this instance, Burditt opted to proceed to the fire station. He drove his own unmarked automobile and activated his emergency lights but not his audible siren.

Burditt approached an intersection and slowed but did not come to a complete stop as he drove through a red light. He later testified that he looked for other traffic but saw none.

Burditt safely proceeded to the middle of the intersection and noticed one other automobile pull over to the side of the road. Burditt then kept going in the direction of the fire station when he struck another automobile driven by Frank Brown. Both passengers, Marilyn Brown and Delores Schwartz (“Plaintiffs”), were injured in the accident.

At the time of the accident, Burditt was a lieutenant with the OFD, and served as the Emergency Medical Services Director. His intention was to go to the fire station and receive orders to the emergency scene, to stand by, or to be released. At that time, he had no idea whether his services would be needed.

Plaintiffs brought this action against Burditt, the OFD, and other named parties, alleging that Burditt’s negligence was a substantial factor causing the collision.

Burditt filed a motion for summary judgment, contending that he was immune from personal liability for the accident. He pointed to *WIS STAT. § 893.80 (4) (2009-10)*, because he claims he was acting within the scope of his duties for the fire department at the time of the accident. That statute provides “...no suit may be brought ...against ...a volunteer company or against its officers, agents or employees for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.” The trial court ruled in favor of Burditt. Later, the OFD filed a similar motion claiming immunity. That motion was also granted.

Plaintiffs appealed, arguing that Burditt was not acting within the scope of his employment because he had, as yet, not reported to the fire

Continued on the next page ➤

Around the Nation

Age Discrimination Filed

Was removal based on performance or age?

Claimant has been a firefighter since 1982. While his actual age has not been reported, any age discrimination case involves alleged adverse employment actions for employees over 40 years of age.

In this case, Claimant continues to serve as a firefighter and paramedic. The basis of his federal lawsuit is that he was removed from his position as the fire department’s public education officer in 2009.

Claimant points to “ageist” statements allegedly made by superior officers which essentially encouraged Claimant to retire from the public education officer position in addition to his involvement in the open house and school programs.

Claimant has already filed claims with the Equal Employment Opportunity Commission (“EEOC”) and the state’s Department of Human Rights.

City officials have not responded to this lawsuit, other than denying that age had anything to do with its decision. Rather, Claimant’s removal was based on performance only.

City officials also noted that the same position is currently occupied by someone older than Claimant.

Claimant is seeking reinstatement to his prior position with any lost back pay along with reimbursement of attorney fees related to this case

Settlement - \$150,000

Union and city officials come to terms over pay dispute

A lawsuit involving a firefighters’ union and city officials related to the proper calculation of pay raises has finally reached a settlement.

The issue in the case is the manner in which supplemental pay was to be factored into across the board pay raises going back six years. The parties engaged in negotiations before finally reaching an agreement which the city is expected to sign off on without any delay.

station when the collision occurred. They cited the “going and coming” rule which provides that one is not acting within the scope of employment when going to or returning from a place of employment. *DeRuyter v. Wisconsin Electric Power Co.*, 546 N.W. 534 (1996).

Decision: Affirmed.

The purpose of governmental immunity is to “protect public officers from being unduly hampered or intimidated in the discharge of their functions by threat of lawsuit or personal liability ... ensure that courts will refuse to pass judgment on the policy decisions made by coordinate branches of government.” *Johnson v. City of Edgerton*, 558 N.W.2d 653 (1996).

OFD is the decision maker when a call goes out. Once volunteer firefighters respond to a call, they must obey the orders of their commanding officers.

Thus, Burditt was acting within the scope of his employment as soon as he answered the call. When he made the decision to go through a red light, Burditt was performing a discretionary act. Discretionary acts are protected as an “exercise of legislative functions which is protected by immunity.”

Plaintiffs contended, unsuccessfully, that Burditt was performing a ministerial duty (involving no judgment or decision making) which is not protected by immunity. Even though Burditt was declared immune, the court assessed a fine for not using an audible signal in addition to a visual signal.

Citation: Brown, et al., v. Acuity, a Mutual Insurance Company, et al., Appeal No. 2011AP583, Cir. Ct. No. 2010CV 520, State of Wisconsin in Court of Appeals District II (2012).

Open-Air Burning – Injunction Sought

Was the burning residential or agricultural?

Editor’s Note: Open air burnings, especially in spring time are frequent causes of concerns for fire departments. In most local communities, property owners must receive permission from designated fire officials, if not the fire chief, to conduct open air burnings. In this case, the state prohibits open air burnings with one exception - agricultural burnings. However, approval from the fire department remains a requirement.

Northeast Concepts, Inc. (“Northeast”) is the owner of land located in the Town of Holland, Massachusetts. Northeast purchased the land with the intention of constructing a residential complex for persons over the age of fifty-five.

This project never came to pass, and Northeast decided to sell part of the property in lots and use the remaining portion of the property for agricultural purposes. Here, Northeast intended to raise cattle and chickens and to grow forage.

Two lots were sold, and Northeast started clearing the remaining land by harvesting trees and selling the lumber. It also started burning brush in order to create pasturage for cattle. These activities raised a number of complaints not only from local citizens but the Fire Department of Holland (“Fire Department.”) During 2009, the Fire Department was called to the property a number of times. On one occasion, it took firefighters at least an hour to put down the fire. No permits were ever issued to conduct these burns. Based on the concerns for public safety, the Fire Department brought this action against Northeast asking the court to enjoin Northeast from conducting any future open air burnings.

Open-air burnings are prohibited by an applicable state statute, but there is one exception, which applies if the burning is for agricultural purposes. In order to qualify for the exception, the burning must be “the direct result of the normal commercial pursuit of agriculture... and shall be allowed subject to the permission of the local fire chief which need not be in writing.” Such permission must also be based on meteorological conditions to ensure safe burns. The trial court considered the evidence and found for Northeast. The Fire Department appealed, maintaining that the burnings conducted by Northeast were not related to commercial agriculture.

Decision: Affirmed.

The jury properly found that Northeast was engaged in agriculture. The Fire Department maintained that the open air burns were not related to agriculture, but it offered nothing other than a bold conclusory assertion without any proof.

Had the Fire Department offered proof that Northeast was burning construction materials or anything that was not directly related to agriculture, the decision in this case might have been different. The court also noted that the permission of the fire chief remains a pre-requisite for open air burnings.

Citation: Fire Department of Holland v Lamountain, et al., 11-P-1166, Commonwealth of Massachusetts Appeals Court (2012).

Cumberland County Fire Chief's Association

Roll Call Vote Document

Motion TO ACCEPT COMMUNICATIONS RECOMMENDATIONS
W/ REVISIONS. ADOPT DEC. 1, 2012

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

Date 9-24-2012 Motion Carried 18 Motion Denied _____

ABSTAINED 1

CCFCA Communication Committee

Minutes of the September 19th meeting.

Place: Cumberland Road Fire Dept.

The committee met to discuss several topics and there will have to be several meetings to cover all the items. First on the agenda was to re-instate the policy of assigning "TAC" Channel according to geographical area. The assignments would be as follows;

Eastern area: including Godwin-Falcon 17, Wade 16, Eastover 1, Vander 2, Bethany 12, Stedman 23 and Beaver Dam 26, would work all assignments on Channels 4A and 5A.

Western and Southern areas: including Stoney Point 13 and 19, Hope Mills 21, Pearce's Mill 3, Cotton 4, Cumberland Road 5 and Gray's Creek 18 and 24 would work all assignments on Channels 8A and 9A.


Northern area: including Westarea Stations 15, 20 and 25, Spring Lake 22, and Fort Bragg would work all assignments on Channels 10A and 11A.

Keep in mind that all communications with ECC will still have to be done on Channel 3.

All stations should also be cautioned about using channels on the "B" zone as these channels, with the exception of the EMS channels, are not recorded.

Other topics covered included cutting back on un-necessary radio traffic, EMS and Fire working on the TAC channels, doing away with the use of "TAC" channels and just using channel 4A – 5A -etc. and the use of disposition codes.

The ultimate goal is to cut back on radio traffic and ease the load of the dispatchers.

Communications		Page 1 of 2
	Cumberland County Fire Chief's Association	<i>REFERENCES:</i>
		<i>FORMS:</i>
Communications Call Processing and Dispatch		
<i>APPROVED BY:</i>		<i>EFFECTIVE: 08/01/12</i>

1.0 PURPOSE:

The Cumberland County Fire Department's Service Delivery is based on the dispatch and response of the each Department's response to control the situation. All personnel involved in the dispatch and response process must base initial judgments on both received information and the potential escalation during the cascading of events. The timely response and effective management of rescue and fire control situations represents the most immediate priority of our department. Upon receipt of adequate information (location and nature), Communications will dispatch the appropriate assignment and will continually upgrade the response as requested until the situation is effectively stabilized.

1. PROCEDURE:

1. All Fire Dispatch communications shall utilize clear text. **(No ten codes)**

1. Dispatchers assigned to work Fire and EMS shall utilize consoles that are side by side, so as to maintain both voice and visual contact with each other at all times.

2.1.2 Dispatchers assigned to Fire or EMS shall only monitor the Fire and EMS Groups in CAD. Information needed to reference the status of Law Enforcement should be obtained from the Dispatcher assigned to the corresponding Law Enforcement Channel.

Dispatch will be in the following sequence:**2.2 Call receipt**

The call receipt can be defined as the initial request for assistance. The call may be received in multiple ways to include, but not be limited to, public 911, radio request from fire or police unit, or an inter-facility transfer from another communications center.

2.2 Call Processing

Call processing can be defined as the efforts taken by the Call Taker from call receipt until call dispatch. The primary responsibility of the Call Taker is to determine, without delay, the location, telephone call back number and nature of the emergency, and to verify entry of the information into CAD. During Call Processing, the Call Taker shall use the *Priority Dispatch (Pro QA)* protocol for Emergency Fire Dispatch (EFD) or Emergency Medical Dispatch (EMD), to determine and assign a Nature Code based on the information gathered from the caller. (Pro QA Card Sets shall be used in the event of CAD or *Priority Dispatch Program* or Software failure). This protocol has been designed to protect against liability while increasing call processing effectiveness and assuring measurable standards of equalized care to the public. Call processing shall follow NFPA 1221, Standard for Installation, Maintenance, and Use of Emergency Services Communications Systems.

2.2.1 Pre-Alert

Upon verifying the address and determining the general nature of the Incident, the Dispatcher will initiate a pre-alert over the Cumberland County Fire Departments (CCFD) Dispatch Chanel 2-A. The pre-alert will consist of the single alert tone followed by the general nature of the incident and address. This transmission shall be broadcasted one (1) time, and will precede the actual dispatch of the call.

Pre Alert Examples:

- --- ALERT TONE --- “ Station 22 – 69 Structure Fire, 607 Main St”
- --- ALERT TONE --- Station 22 – 29 Vehicle Crash, 607 Main St”.

2.2.2 Immediate Dispatch (Fast Track)


All Fire Department calls for service, with the exception of calls that fall within the 26 and 53 categories, will be fast tracked and dispatched while EMD or EFD is ongoing. At the completion of EMD or EFD, the fast tracked incident will be upgraded with the Nature Code determined by Pro QA, and the dispatcher will determine if additional units are required. Pressing the recommend button after changing the code will show if and what additional units are to be added to the First Alarm Assignment. Any change shall be announced over the radio, and the recommended units dispatched.

2.2.3 Calls Spawned from Law Enforcement Incidents

2.2.3.1 Law Enforcement Request for CCFD

When a call is initiated or spawned as a result of a Law Enforcement Agency request, the ability to implement the Pro QA EFD or EMD protocol to obtain a Nature Code may not be an option. In such cases, the *Secondary Emergency Notification of Dispatch Protocol* (SEND) shall be utilized to determine the nature of the request. The following information shall be obtained from an Officer /Deputy requesting a response from CCFD.

SEND™ Protocol
Secondary Emergency Notification of Dispatch™



The EMS/Ambulance service relies on you to provide the following information:

1. **Chief Complaint and incident type?**
 - a. Is there more than one person injured?
2. Approximate age?
3. Conscious: Yes / No...or alert?
4. Breathing: Yes / No...or difficulty?

5. (Illness case – age 35 or over):
Is there chest pain?
6. (Accident or injury case):
Is there severe bleeding (spurting)?
7. (Response mode):
Do you need a lights-and-siren response?

NAEM

©2004, Medical Priority Consultants, Inc., Salt Lake City, Utah, USA
The National Academy EMD Protocol System™

- Chief Complaint and Incident Type?
- Approximate age?
- Conscious: Yes/No? Alert: Yes/No
- Breathing: Yes/No Difficulty: Yes/No
- Is there Chest Pain?
- Is there Severe Bleeding (spurting)?
- Do you need Lights-and-Siren Response?

2.3.1 Unit Selection

CAD automatically recommends the required unit(s) based on the Nature Code entered. Once the call is prompted for dispatch, the CAD system recommends units pre-determined for the Nature Code, based on availability, unit function and run order for Fire District, to fulfill the Response Force requirements.

2.3.1.1 Dispatch Sequence

- Pre-Alert
- Activate Station Pagers
- Announce Unit(s)
- Announce Nature Code – response determinant code followed by the descriptive nature code (i.e., 69 Delta 1 Structure Fire, 29 Delta 4 – Vehicle accident with Pin In.)
- Give Address (**repeated twice**)
- Advise Cross street(s)
- Assign Tactical Channel (assigned by dispatcher)
- **Once all units are enroute, repeat the tactical channel and give any additional information related to the call on CCFD Channel 3-A.**

2.3.1.2 Dispatch Acknowledgement

Upon receipt of dispatch information all CCFD units will acknowledge by depressing the appropriate key on the apparatus Mobile Computer Terminal (MCT) and providing verbal acknowledgement in accordance with the procedures described below:

Primary Unit - The primary unit responding will give their call numbers, acknowledge responding and repeat the address of the incident. (example: *“Cumberland, 2232 responding to 155 Ruth St”*).

Arrival on Scene - Upon arriving on scene of an incident, the first arriving unit will give a scene size-up and establish command..

2.3.1.3 Working Fire

When a unit arrives on location and finds an advanced fire condition in a structure, the term **“working fire”** shall be transmitted over the radio (on Channel 3A. Hearing this should prompt the Dispatcher to do the following:

- Transmit on Channel 3-A and VHF pagers exactly what the first arriving unit transmitted
- Dispatch local Law Enforcement for traffic control and to assist with scene security.
- Dispatch an Ambulance or QRV to provide medical monitoring of personnel. **NOTE: An ambulance should be requested immediately following the dispatch of Fire Units to any “Life Hazard” incident, or incidents where there are injured victims.**
- Contact the Electric Utility Company (PWC, Duke/Progress Energy, Lumbee River, South River etc) to send a representative to pull the meter. It may be necessary to get conformation from Incident Command as to which agency to contact.
- Be prepared to contact the Red Cross to set up temporary shelter for any displaced occupants

2.4 Upgrading Response in CAD

On occasion it may be necessary to upgrade a dispatched call to a higher level response based on additional caller information or a request from a unit in the field. CAD has been built with this in mind and has the ability to upgrade responses by utilizing the RECOM button.

Example: A 52C03 Commercial Fire Alarm is dispatched. The first arriving unit confirms a fire and advises to upgrade the call to a Structure Fire. To upgrade the call, follow the steps listed below:

- Change to the appropriate Nature Code
- Press the RECOM button on the CAD Call Window
- Dispatch the Units Recommended on Channel 2-A/VHF

Example: A 69D06 House Fire is dispatched. While the units are responding, a Fire Officer advises to upgrade to a Commercial response. To upgrade the call, follow the steps listed below:

- Change to the appropriate Nature Code
- Press the RECOM button on the CAD Call Window
- Dispatch the Units Recommended on Channel 2-A/VHF

Example: A 69D03 Commercial Structure Fire is dispatched. Units are on scene and a 2nd Alarm is requested. To upgrade to a 2nd Alarm follow the steps listed below:

- Change to the appropriate Nature Code
- Press the RECOM button on the CAD Call Window
- Dispatch the Units Recommended on Channel 2-A/VHF

2.5 Status Checks

CAD is programmed with a timer in place that is set to activate if specific time limits are exceeded. To support efficient and safe operations, this timer (watchdog timer) is set to prompt the dispatcher to check unit/situation status during the following situations:

2.7.1 Receipt of Dispatch

A CCFD unit shall acknowledge dispatch within five (5) minutes of dispatch. In the event that a unit has not acknowledged the dispatch within five (5) minutes, the dispatcher should attempt to contact a unit by radio, and monitor the response of personnel in *IamResponding*. If there is no contact by radio, no visible response in *IamRespondin*, or response of a fire unit the dispatcher shall dispatch a second time along with the next Station recommended by the CAD.

2.7.2 Unit Arrival on Scene of Incident

The primary units should strive to arrive on scene within 14 minutes of dispatch. If a unit has not acknowledged that they are on scene within nine (9) minutes after leaving the Station, the dispatcher shall contact the unit by radio and verify status.

2.7.3 Personnel Accountability Report (PAR)

Most emergency incidents are mitigated within twenty (20) minutes of dispatch. If a unit's status in the CAD does not change within twenty (20) minutes, the dispatcher should contact the Incident Commander and ask for a Personnel Accountability Report (PAR). This shall continue every twenty (20) minutes until the scene is stabilized and personnel are no longer exposed to Immediate Dangerous to Life and Health (IDLH) atmospheres.

2.8 Clearing a Call

At the termination of Command, the primary unit will determine a Disposition Code for the Incident. To close the call in CAD, the code must be transmitted to Communications by radio or entered by MCT. These codes are actual NFIRS Codes, and will populate directly to the Incident Report generated in *Firehouse RMS*. All other units will clear with the code 108, either by radio or MCT. This applies to non-primary units cancelled enroute as well.

2.9 CAD System Failure

Upon notification/discovery of a CAD system failure the following actions will be taken to minimize the impact of the system failure and provide for continuity of dispatch operations.

- The dispatcher will make a single broadcast on CCFD Channel 2-A pre-empted by a single alert tone, advising that the CAD system is down.
- Communications personnel shall implement the utilization of Manual Dispatch Cards the *Priority Dispatch Pro QA* card sets during call processing.
- Cumberland County Emergency Services staff will report to the County Communications center and act in an advisory capacity in support of communications personnel until the CAD system is fully operational.



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Fall Safety Day

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Birthday Cake With Sparky

City of
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Fayetteville Police Department

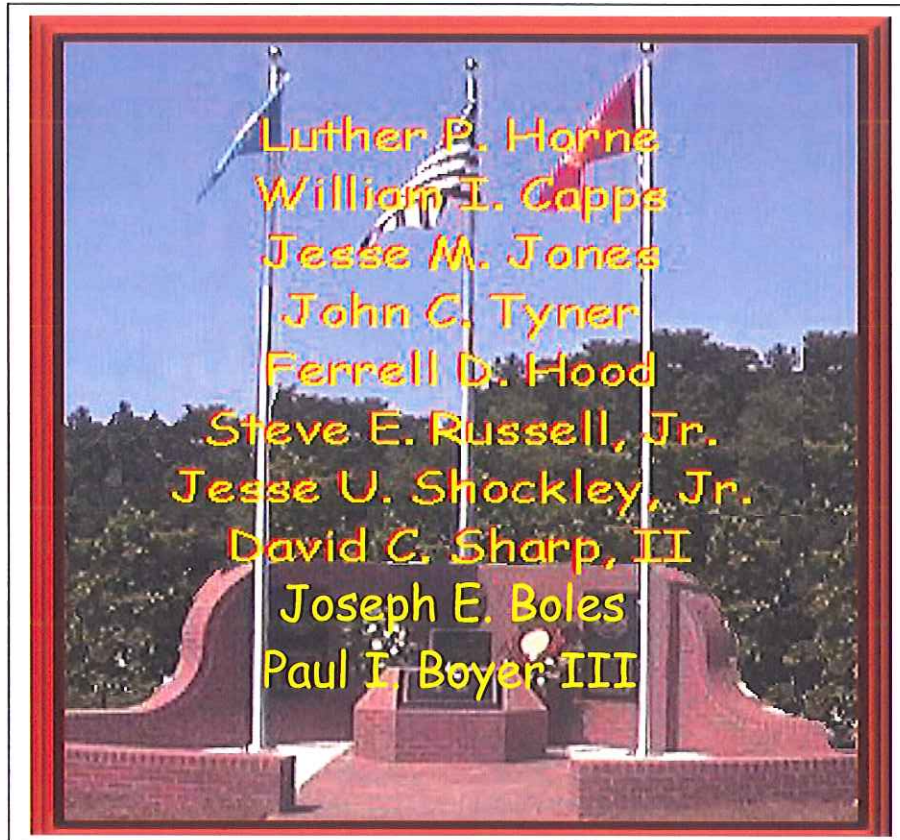
and the Cumberland County Fire Chiefs Association.

For more information, call (910) 433-1730.





CUMBERLAND COUNTY EMERGENCY SERVICES MEMORIAL



All are invited to attend this annual memorial service to honor Firefighters and EMS workers who have sacrificed their lives serving the citizens of Cumberland County and Ft. Bragg.

The memorial site is located on FTCC Main Campus, 2201 Hull Rd, next to Cumberland Hall.

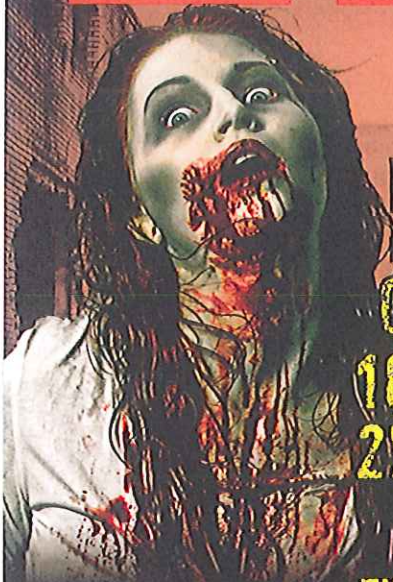
Saturday, October 13, 2012 @ 11:00 am

If you would like to purchase a brick or have one placed in the memorial walkway please visit www.BravetheFire.com and click on the Emergency Services Memorial tab.

Questions? Contact Capt. David Richtmeyer @ drichtmeyer@ci.fay.nc.us or 433-1581

STONEY POINT

TRAIL OF TERROR



TICKETS \$12

OCT 5, 6, 12, 13,
18, 19, 20, 25, 26,
27, 28, 29, 30, 31
8-11 PM

THURSDAYS & SUNDAYS
8-10 PM



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OCTOBER 2012

SUN	MON	TUES	WED	THURS	FRI	SAT
	1	2	3	4	5 8-11	6 8-11
7	8	9	10	11	12 8-11	13 8-11
14	15	16	17	18 8-10	19 8-11	20 8-11
21	22	23	24	25 8-10	26 8-11	27 8-11
28 8-10	29 8-11	30 8-11	31 8-11			

Can-Drive Thursday's

Bring in a can good and get
\$2 Off your ticket price
 Proceeds will benefit the
 Alms House of Hope Mills



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