

2005 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

Interestingly, the year 2005 was bookended with the Supreme Court taking pertinent and significant actions in its rulemaking capacity. The year began with the newly amended GR 16 taking effect and it ends with consideration of the pending proposal for amendment to GR 15. The first, of course, deals with cameras in court while the latter deals with free access to publicly filed court documents.

Each of these revisions has as its goal the guiding of trial court discretion in a way that will make for more predictable and consistent rulings in the area of openness of court proceedings. Each of the revisions, as well, has origins in the lessons learned through the work of the Fire Brigade over the years. It may be hoped that history will view this year as one in which the Brigade's fire prevention work was more lasting than its firefighting.

This is not to say that the Fire Brigade is likely to soon be put out of business. However, it can be reasonably anticipated that the many confusion-fueled, minor brush fires of the past may be greatly reduced with the Brigade thus afforded more time for polishing the fire engine and perfecting that chili recipe. Metaphorically speaking, of course.

In 2005, the Fire Brigade dealt with matters arising in King, Kittitas, Pierce, Skagit, Snohomish and Spokane Counties. Both courtroom photography and access issues continued to crop up in the generally familiar patterns with, as always, some novel variations.

Cameras in Court.

The new GR 16 took effect on January 4, 2005. Unfortunately, the official 2005 state court rule book that most judges have with them on the bench had been published in late 2004 and did not reflect the amendments. This led to a couple frustrating episodes in which media expectations were dashed on these fossilized rocks.

A more challenging situation occurred when there arose a question about the credentials of someone who did not work for any press outlet but was self-described as a freelance journalist. When he asked to share the video feed at a

criminal trial, no one was quite sure how to handle it. After talking it through, the trial judge and I agreed that an expansive view of what constitutes the “news media” was appropriate these days. It was further agreed that the judge should only forbid access if convinced (or highly suspicious) that the privateer’s motives were impure (e.g., extortion, embarrassment, prurience, etc.) but otherwise should not be involved, leaving it to the pooling outfit to negotiate terms.

File Access.

If there was a theme to the access issues addressed this year, it would have to be well-intentioned orders containing imprecise language thus leaving court clerks quite naturally to hew to the cautious path of keeping papers unnecessarily sealed. For example, a wiretap order said it would remain sealed “until April 1 or further order”. (The language “whichever comes first” may have been implied but it needed to be explicitly stated.) In another case, the judge had directed counsel to prepare an order unsealing most of the exhibits filed with the court in a summary judgment proceeding. The resulting order referred to the exhibits using a different nomenclature than one that the clerk could easily follow. Whether this obfuscation was intended or not, it was regrettably effective until it was eventually overcome.

Proactive Measures.

On December 30, 2004 (after the filing of last year’s Fire Brigade Report), the Seattle Times published an op-ed piece by the undersigned on the public value served by news cameras in court. The hook was the about-to-take-effect new court rule on the subject.

Once again, in February 2005, a representative of the Fire Brigade spoke about its function at the statewide orientation program for new judges.

During the year, Brigade members have been actively involved in the process of amending the language of GR 15 with a view to hastening the demise of the “agreed protective order” which allows litigants to decide what court documents will be filed under seal. It is hoped that the new rule will expressly require an actual judicial balancing of the public interest and the making of case-specific findings to permit any sealing of court documents.

Respectfully submitted,

William L. Downing, Chair