

MEMORANDUM

**TO: Justice Debra Stephens, Chair
Bench-Bar-Press Committee**

**FROM: Judge Richard Okrent
Fire Brigade Chief, Bench-Bar-Press Committee**

DATE: January 2024

RE: Fire Brigade Annual Report, 2023

This year the composition of the Fire Brigade has changed once again due to the August 2023 retirement of King County Superior Court Judge Judith Ramseyer. As the long time Fire Brigade Chief, Judge Ramseyer's knowledge and stewardship of the Fire Brigade will be deeply missed. The current members of the Fire Brigade are current Chief Judge Richard Okrent (Snohomish County), Judge Kristin Richardson (King County), Judge Robert Jourdan (Chelan County), and newly appointed Judge Brandon Johnson (Walla Walla County) who replaced outgoing Judge Cadine Ferguson Brown (Mason County).

May 2023. Under Judge Ramseyer's leadership, the Fire Brigade participated in the Bench Bar Press Committee's seminar: "Why Can't We Be Friends?" a one-of-a-kind statewide forum aimed at improving court-media relations. The seminar was designed to create improved methods for the media and judiciary to work together to promote open courts and to provide judges with the tools needed to promote public justice. The seminar was informative and featured court and media panelists outlining their views of how the public perception and trust of the courts and media can be enhanced. The seminar was well attended across the state thanks to the cooperation of local community colleges in Seattle, Spokane, Wenatchee, Pasco, Vancouver, Tacoma, and Mount Vernon. Future programs are being planned.

August-September 2023. Superior Court Judges' Association President Judge Samuel Chung (King County) had two inquiries that the Fire Brigade was asked to comment on:

1. Thurston County Sheriff's criticisms of bail decision. This is a story out of Thurston County, where an 18-year-old was eluding police and involved in a high speed chase. The defendant was released without bail, and the Thurston County Sheriff was very openly critical of the judge's decision to not set bail. King 5 TV followed up, asking the judge to respond, who declined to speak to the reporter. **Note: since this inquiry, issues regarding sheriff/police comments on bail and release decisions have been coming up more frequently across the state.**

2. DSHS Civil Conversion lawsuit in Pierce County. A number of counties recently filed a civil suit against Department of Social and Health Services for its decision to not follow RCW 10.77.086(5) regarding civil conversion cases. The suit was filed in Pierce County. A Fox news reporter asked the SCJA for comment, because the complaint cites a letter from SCJA to DSHS on this issue.

The Fire Brigade was asked to evaluate whether SCJA, any court, or even a retired judge can respond to the media inquiries in any way.

The Fire Brigade conferred with Tom Creekpaum, the AOC Legal Services manager and current ethics advisor, who gave the following response:

“Thanks for reaching out with your question yesterday. As I looked into the advisory opinions, there are very few discussing CJC Rule 2.10. None were even close to providing helpful guidance to this issue.

Respondent’s comments questioning the merits of a case over which he was presiding and that was pending before a jury – broadcast to the general public over YouTube – could reasonably undermine public confidence in his impartiality, fairness, and objectivity. To his credit, Respondent acknowledged his error when it was brought to his attention, recognizing that his comments did ‘damage to the integrity of the rulings I made previously.’ Respondent’s statements criticizing the prosecution for bringing the case to trial also reasonably created an appearance of bias against the City.

The idea of issuing a statement on an issue that concerns pending litigation in a superior court is problematic. Especially if the statement is issued by the SCJA, likely appearing to speak on behalf of superior court judges in the state. I did see the matter is set for a hearing in Pierce superior. There is some wiggle room in Rule 2.10(A)- ‘...reasonably be expected to affect the outcome or impair fairness...’ & ‘Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures...’ CJC Rule 2.10(D).

So, if a statement is issued, the language will be very important. Yet, the appearance of impropriety is still a concern. Even if the words in the statement, on their face, do not technically impact the outcome or impair fairness, it may create an appearance of impropriety.

Perhaps a consideration should be whether the risks of providing a public statement on this matter outweigh the benefits. I tend to think it may not be worth the risk.”

The Fire Brigade concurred with Mr. Creekpaum on both issues. As there is a case pending, judges should not comment to the press regarding courts views, nor should any retired judge make any statements on behalf of the SCJA for the same reasons. It is best not to comment on these issues until they are resolved.

November 2023. An inquiry was made to the Fire Brigade Chief by KOMO TV, regarding Snohomish County, and whether KOMO TV photojournalists can capture video but not be allowed to record audio of a criminal proceeding. A quick response corrected this problem. General Rule 16 allows for both video and audio access to all court proceedings and is presumed to be permitted unless any limits to such access are deemed to be compelling. This is an ongoing problem across the state when it becomes difficult for the court to distinguish between legitimate media and those posing as journalists.

A second inquiry was made to the Fire Brigade by a Seattle journalist as to access to King County's Civil Motions calendars. The journalist was looking for a comprehensive civil motions list of all cases in King County on particular days. Fire Brigade member King County Superior Court Judge Kristin Richardson handled this question. She responded, "In King County, judges on civil rotation handle their own calendars and setting of motions' each case on their caseload. Fridays usually are summary judgement days where the judges hear the motions on their own cases. There is no master motion calendar...." The journalist was referred to the court administrator who handles these issues.

December 2023. The Fire Brigade was contacted by San Juan County Superior Court regarding criticisms of the court's bail decision. The Fire brigade responded as in the previous Thurston County inquiry. The basic rule is not to comment on these statements while a case is ongoing. However, educational press releases by the court that explain the legal process, without mentioning specifics, are permitted but should proceed with caution.