

MEMORANDUM

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

**FROM: Judge Judith H. Ramseyer
Fire Brigade Chief, Bench-Bar-Press Committee**

DATE: November 6, 2020

RE: Fire Brigade Annual Report, November 2019 - 2020

In this most unusual and challenging year of 2020, there have been few formal inquiries to the Fire Brigade, perhaps because courts across Washington have been consumed with extinguishing fires in their respective jurisdictions caused by COVID-19. 2020 has been notable for many reasons, but perhaps most pertinent here has been the extremely high degree of cooperation and collaboration within courts and throughout our communities. As is so often true, a crisis will quickly clarify priorities. For courts, this has been figuring out how to provide the best services possible under extremely difficult conditions.

November 22, 2019 – The Fire Brigade was contacted by a Pierce County Superior Court Judge regarding an email he had received from KIRO asking him to comment on a case. KIRO had run a story reporting that the Judge had asked a WSP Officer not to arrest a suspect for DUI. That, of course, was not true.

The Judge had been on warrant duty. He was contacted around 4:00 a.m. asking for a probable cause finding to arrest a suspect for driving under the influence. The facts reported to the Judge are that the car slowed but did not pull over when the Trooper passed him, so he was pulled over to the side of the road. The driver's tie was on the passenger seat, and in response to questions he reported he was "coming from work." The Trooper asked where he worked, and he would not say, other than to say "the government." The suspect refused to take a field sobriety test.

The Judge found no probable cause, as there were no allegations of impairment. He also noted he may know the individual – a former prosecutor who now works for the Attorney General – which possibly could explain coming from work after 3:00 a.m. The Judge made clear he was not certain this was the individual, and he had no concern about acting as a neutral magistrate.

When the Judge received the email inquiry from KIRO, it already had reported its story. He could not comment on a case and the story had aired. The Judge sought advice about whether he should respond at all or simply not respond. The Fire Brigade suggested he respond to state politely he could not comment on the matter, and to let the reporter know he had received and was not ignoring the inquiry. This is what he intended to do.

July 15, 2020 – The Fire Brigade was contacted by Rowland Thompson, lobbyist for Allied Daily Newspapers of Washington. Mr. Thompson had gotten an inquiry from a reporter with a Lincoln County, WA newspaper. She complained that the Superior Court Judge had scheduled a criminal jury trial, but it was not available to observe on-line. To report on the trial, the reporter expressed concern she would have to attend in person, have her temperature taken to enter the courthouse, wear a mask, and social distance, per the court’s instructions. The reporter takes issue with both the unavailability of an on-line option and the temperature and mask requirement to attend in-person. Mr. Rowland contacted the newspaper’s editor to discuss the situation.

Mr. Rowland did an excellent job of arguing the court’s challenges and obligations. He explained to the editor that the court proceeding was open to the public and the press, but that the court also has an obligation to protect the health and safety of all court participants, which includes parties, lawyers, court staff, and the public. Additionally, the court must comply with public health mandates that require the wearing of masks and social distancing where possible. The presiding judge cannot know who those entering the courtroom are or where they have come from; he cannot know their current health status. The only way to safely and responsibly conduct an open court proceeding is to require that health measure be observed. That the reporter objects or prefers not to comply with those measures does not warrant an exception.

Mr. Thompson contacted the Fire Brigade Chief just to provide notice that the issue was brewing in Lincoln Co, and to suggest the Presiding Judge be given a heads up if he was not already aware of it. Fire Brigade Chief spoke with the Presiding Judge, who was aware of the concern raised. He was confident about proceeding with trial as had been arranged. No further action was taken.

September 23, 2020 – Mr. Rowland Thompson, Allied Daily Newspapers of Washington, contacted the Fire Brigade in anticipation of a hearing being held in Whatcom County Superior Court in a case that had attracted national attention. Post-conviction, the Whatcom County Public Defender’s Office was asking to be removed from appeal of the case due to a potential conflict that had emerged. Mr. Thompson had been contacted by a local newspaper reporter who understood from discussion with persons involved in the case that the hearing on the motion may be closed. Mr. Thompson was concerned that the Judge presiding over the matter be knowledgeable about the requirements of *State v. Bone-Club*, 128 Wn.2d 254, 906 P.3d 325 (1995), before the hearing began.

Fire Brigade Chief contacted the Judge, who is very familiar with *Bone-Club* and its requirements. No party had asked to have the hearing closed and he had no concern about conducting an open hearing. Should someone ask for a closure, the Judge was prepared to conduct a thorough *Bone-Club* analysis before making his determination. No closure was requested.

Open Courts Guidelines During Pandemic Limitations

As a result of public health measures required to respond to the COVID pandemic, public access to the courts and maintaining open court proceedings has been a major challenge. Historic

courthouses were not built with social distancing in mind nor wired for remote proceedings. Jury trials, which by their nature gather groups of people together in confined spaces for a period of time, require creativity and flexibility to conduct safely in a post-COVID environment. Courts across Washington are tackling these challenges, but practices and methodologies vary depending on resources and characteristics unique to each jurisdiction.

Consequently, in July 2020 the Fire Brigade prepared guidelines that review the law governing the open courts doctrine in Washington and offer alternatives courts may use to ensure public access while pandemic-related limitations apply to court proceedings (attached). These guidelines were distributed to judicial officers and court administrators across all jurisdictions. Informed choices about how to ensure public access will continue to evolve as courts grow toward a new environment that adopts innovations to offer more efficient, more responsive, and more just services to the public.