



October 2024 - Editor of the Month – Megan M. Coluccio



I am thrilled to serve as Editor of the Month for the Federation’s Civil Rights and Public Entity Committee’s monthly newsletter *Civil Writes*. This month we are examining developments in police pursuit legislation. This is a topic that is top of mind in some recent cases in our office given recent changes to Washington State law. I want to give my colleague John Barry at Baker Sterchi a hearty thanks for assisting me in putting together this update.

The Committee Chairs are grateful for the contributions and feedback from many of our members and are appreciative that the newsletter has been so well received.

We hope you enjoy!

Committee Chair - Nathaniel Jordan

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A monthly newsletter from the Civil Rights and Public Entity Committee

FEATURED SECTION MEMBER

Bob Christie



I would be remiss if I did not take the opportunity to acknowledge the person who has laid the groundwork and giving me invaluable “at bats” in the realm of civil rights and public entity cases, my law partner and mentor Bob Christie. Bob is an Equity Member at Baker Sterchi Cowden & Rice in Seattle, Washington and a former President of FDCC.

Prior to our recent merger with Baker Sterchi, Bob was the founding principal of Christie Law Group, PLLC. A trial lawyer for over 42 years, Bob has tried over 100 cases throughout Washington State and the U.S. District Courts in Washington and Alaska, argued appeals in all divisions of the Washington Court of Appeals, the Washington State Supreme Court, the Ninth Circuit Court of Appeals, the Federal Circuit Court of Appeals, and the U.S. Supreme Court (on briefs). Bob is widely recognized as one of the foremost lawyers defending police officers and their agencies in civil rights cases in Washington. He also represents professionals, individuals, and companies in litigation ranging from malpractice, products liability, transportation liability, road design, premises liability, commercial litigation, employment, construction, and many other categories of civil disputes. He works extensively in cases involving death and serious injury and is often called to serve as trial counsel in defense of significant claims.

Bob is an amazing trial lawyer. Our first introduction to one another took place about a decade ago, when we were at different firms and were both thrown in



to try a quadriplegic case for the City of Mercer Island in Washington State. We have plenty of war stories from that case, not limited to our opposing counsel at trial, Mr. Reptile Theory himself, Don Keenan, but the friendship and mutual respect we developed are the most enduring.

I gave Bob a call a few weeks after that trial and asked if I could leave big firm life and come practice with him. As a young attorney, I wanted to learn from the very best trial lawyer in town. It was the best decision I ever made. We have tried score of trials together since (all defense verdicts!), and always having fun and wondering how the heck we are so lucky that we get paid to do this for work. Always hungry to learn and evolve, recently, we embarked on a new chapter together, merging the Christie Law Group with Baker Sterchi, an excellent firm with strong FDCC ties, deepening and strengthening our collective bench. Our office serves as the Pacific Northwest base of Baker Sterchi, serving Washington, Oregon, and Idaho.

Bob is also renowned for his adept use of technology which he seamlessly integrates into all aspects of presentation. He has a prolific understanding of the key role technology plays in our profession and stays up-to-date on updates and tools to utilize. With Scott Kreamer, another former FDCC president and our managing partner at Baker Sterchi, Bob helped develop the FedTechU, a two-day training course for FDCC members to master the integration of technology (apps and software) into presentation. This program is perhaps the most valuable investment one could make in their practice, and worth attending again and again as these tools evolve at a rapid pace.

A world class lawyer, Bob is also a world class athlete outside of the office. He finds passion and purpose in competitive rowing alongside his teammates on the Ancient Mariners Rowing Club in Seattle. Over the years he has racked up countless gold medals in some of the most famous regattas in the world, including the Head of the Charles. Last month, after years of planning and months of training, Bob and his teammate competed as a pair in the World Masters Rowing Regatta in Brandenburg, Germany and took home the gold medal.

Bob is a fantastic leader and resource in the bar, and to the FDCC. I am incredibly grateful to call Bob my law and business partner, friend, and mentor. He makes me a better attorney, leader, mentor, and person. He exemplifies the best of



our profession and our practice. Always hungry for adventure, Bob keeps the practice of law exciting and always at the highest level. If you ever are facing an odd issue or have a question about trial practice, reach out to him. He is always eager to pass along his wisdom, tips, tricks, and war stories abound.

ISSUE OF THE MONTH

To Pursue or Not to Pursue: A Liability Perspective

It comes as no surprise to anyone practicing in the law enforcement arena that legislation to public opinion to jury verdicts are rapidly evolving and dynamic across the country. In the Pacific Northwest, over the last five years we have seen a surge of legislative efforts at the state law level particularly aimed at placing restrictions on law enforcement officers use of force options including their tools and techniques.

In Washington in particular, several recent cases have provided plaintiffs with the opportunity to go all in on state law-based negligence claims premised in part on recent legislation, rather than pairing state law claims with federal civil rights claims. Of course, we still see federal civil rights claims paired with state law claims in the USDC, but plaintiff attorneys tend to reap the benefits of our state courts. What is lost by way of not bringing fee and punitive damages claims in federal court, is made up for with smaller, more liberal jury pools, broader discovery, and a lower bar to clear to defeat summary judgment, all of which lends itself to a risk to defendants of higher verdict values. Oh, and our state court judges are elected, and without question the plaintiffs' bar is active in campaign funding, happy to cut checks. In short, in Washington state court, with our elected benches plaintiffs are often able to play fast and loose with the law and court rules in ways that are simply not tolerated in federal court. End rant.

For all these reasons, we are, and expect to continue to be, finding ourselves in state court more often on what would have traditionally been a purely federal civil rights claim of yesteryear. So now we must add yet another card to our defense decks: policy wonk! Our practice requires that we stay abreast of these recent, and continuously evolving changes to legislation impacting our law enforcement agencies, because these laws stand to have significant impact to litigating these negligence based civil rights claims in state court.



To that end, one case our office recently handled a negligence claim brought in state court involving an alleged police pursuit involving a Seattle police officer. *Harder v. Seattle et al.*, King County Cause No. 22-2-02867-0 SEA. The case involved an intoxicated driver who blew a stop sign, killing a man riding his motorcycle who had the right of way. Plaintiff claimed that a Seattle police officer negligently “pursued” the driver, causing the driver to flee and kill the plaintiff. However, the driver never saw the police officer, never saw the officer’s emergency lights activated, and was never aware of the officer’s attempt to pull him over for a traffic stop. The trial court granted summary judgment to the City of Seattle, agreeing that this was not a “police pursuit.” This issue is now up on appeal. *Harder v. Seattle*, Court of Appeals, Division I, of the State of Washington, Cause No. 85812-2-1.

This case set the stage for a deep dive into some significant changes made by the Washington State legislature with respect to police pursuits. In 2021, the Washington legislature took up the issue of pursuits, narrowing the conditions under which police could pursue suspects. There are many factors to consider in weighing whether to pursue, including unpredictable suspects, the presence of community members and other drivers, and having to real time balance public safety interests.

In Washington, pursuit policies have been historically set by local agencies. But coming out of 2020, and in response to widespread protests regarding law enforcement, the Washington legislature passed a bill, ESHB 1054, severely restricting police pursuits and setting an extremely high threshold for an officer to pursue a suspect. The bill prohibited pursuits unless certain conditions were met:

1. An officer has probable cause for a violent or sexual offense, or
2. Reasonable suspicion that the suspect is driving while intoxicated.

The probable cause standard—familiar to officers and attorneys as the same standard required to arrest—is a high bar in the context of a pursuit. Traditionally, an officer was entitled to stop a driver on reasonable suspicion for *any* crime, and if the driver fled the stop, could pursue them. By raising the standard to “probable cause” for only certain violent or sexually-motivated crimes, the legislature enacted a sea-change in authority for agencies attempting to investigate and prevent crime.



In addition, the bill required the pursuit to be **necessary** to identify or apprehend the suspect, AND the suspect must be an imminent threat to the safety of others, the risk of not apprehending the suspect must **exceed the risk** of the pursuit, and the supervisor authorized the pursuit. This caused significant uncertainty for agencies. The takeaway being **"Never Ever Pursue."**

To no surprise, there was push back from both law enforcement agencies, and the public. Data showed that after 2020, the number of suspects fleeing police in Washington increased significantly—in all probability because they knew the police would not be able to pursue them in most cases. In 2023, the legislature loosened the 2021 restrictions, replacing the probable cause requirement in ESHB 1054 with "reasonable suspicion" and increasing the range of crimes that qualified for a pursuit to include violent offenses, sex offenses, vehicular assault, domestic violence assaults, and escapes. However, the legislature maintained that a pursuit must still be "necessary" and the risk balance must still favor a pursuit. The 2023 amendment also required more coordination, requiring development of a plan to end the pursuit. It also required officers to be pursuit trained.

In 2024, the legislature took another at bat, Initiative 2113, further loosening restrictions on pursuits. Third time's the charm! First, the global "reasonable suspicion" standard was once again applied to all criminal conduct, instead of specified crimes as laid out in the prior two iterations of the law. Second, the provision requiring officers to balance the risk of the pursuit against the risk of safety was made more flexible by reducing the amount of "risk" to the public required to trigger a pursuit. The new legislation still requires that a pursuit be "necessary" to either **identify or apprehend** a suspect. Under the revised bill, the fleeing person must only pose a "threat to the safety of others" rather than a "serious risk of harm." Supervisory approval of pursuits is also required when possible. While they failed to define "threat" or "serious risk", we can read between the lines and know that the legislature intended to reduce the threshold of risk required.

This initiative has been codified as RCW 10.116.060 and took effect in June 2024. Crucially, the statute only applies if the encounter meets the "vehicular pursuit" definition meaning:

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24 (5) For purposes of this section, "vehicular pursuit" means an
25 attempt by a uniformed peace officer in a vehicle equipped with
26 emergency lights and a siren to stop a moving vehicle where the
27 operator of the moving vehicle appears to be aware that the officer
28 is signaling the operator to stop the vehicle and the operator of the
29 moving vehicle appears to be willfully resisting or ignoring the
30 officer's attempt to stop the vehicle by increasing vehicle speed,
31 making evasive maneuvers, or operating the vehicle in a reckless
32 manner that endangers the safety of the community or the officer.

Washington law, like that of many states, has long recognized that law enforcement agencies can be civilly liable for harm from pursuits under a negligence theory. While RCW 46.61.035 gives emergency drivers the privilege to ignore certain road rules, a driver may only do so provided he or she “[acts] as a reasonably careful driver” under all circumstances. *Brown v. Spokane Fire Protection Dist. No. 1*, 100 Wn.2d 188, 193, 668 P.2d 571 (1983). In pursuit cases, violation of a statute, regulation, or policy is evidence of negligence.

Washington’s Supreme Court, in *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 551, 442 P.3d 608 (2019), broadened the ability to bring a negligence claim for law enforcement activity. While this is a developing area of the law, the key issue for agencies to evaluate is whether an officer’s conduct causes “direct harm to another” through “affirmative malfeasance.” A negligence-based pursuit claim from a bystander or other motorist is attractive to plaintiff’s lawyers who love to emphasize a “danger to the public” to stoke jury angry and fuel large verdict awards. Throw in growing public awareness of the dangers in pursuits, and you have fertile feeding ground for a large verdict value.

In this respect, Washington’s Supreme Court is participating in (and in some cases, leading) a national trend. Several states have recently broadened the ability to pursue police departments under negligence theories. For example, Wyoming recently articulated a broad duty of reasonable conduct for peace officers, including police. *Cornella v. City of Lander*, 2022 WY 9, 502 P.3d 381, 387 (Wyo. 2022). That duty extends to a duty to investigate with care. *Palm-Egle v. Briggs*, 2024 WY 31, 545 P.3d 828, 833 (Wyo. 2024). Montana has also recognized a duty of care on the part of police officers with respect to use of force decisions. *Bassett v. Lamantia*, 2018 MT



110, 391 Mont. 309, 324, 417 P.3d 299 (Mont. 2018). And as far as pursuits are concerned, other states are also undercutting previously-recognized immunity arguments. *Adesokan v. Town of Bloomfield*, 347 Conn. 416, 297 A.3d 983 (Conn. 2023).

Washington is also not alone in adopting some iteration of a “no chase policy,” and joins California, Oregon, and Massachusetts. California reserves pursuits for situations involving serious offenses presenting an imminent threat. California Penal Code 13519.8. Oregon’s approach is more moderate, designed to curtail unwarranted risks and permitting a pursuit for violent felonies posing a public threat of harm via restrictive policies as opposed to legislation. *See* Portland Police Bureau Policy 0630.05. Massachusetts sets the highest bar via policy, dictating that pursuits made only take place under specific and tightly controlled circumstances.

I am curious, what if any changes are you seeing in pursuit cases in your jurisdiction? What strategies are you implementing in defending these types of claims? Are your state legislatures working on regulating pursuit claims?

HELP WANTED!

We are in need of, and want, new members to the FDCC generally, and our Committee specifically. This includes greater diversity, more insurance professionals and in-house government lawyers. Please make an extra effort to nominate qualified candidates to join us.

We are also in need of (1) volunteers to present at upcoming conferences, and webinars; (2) writers to author articles for our publications; and (3) ideas for topics that would be of interest to our Committee members and/or the Federation. If you have any interest or ideas, please contact Nat or any of the Vice Chairs.