



Special Edition: Case Law

Quick Notes is an ICAC communication that will give you quick, timely links to recent news items impacting arson prevention, investigations, litigation and training. We trust that Quick Notes will be an easy way for you to remain current in news concerning arson control.

Upcoming Webinar

2014 ICAC Webinar Series:
NFA 1033/921



An ICAC Event | December 10, 2014 | 3:00 pm EST

IMPROVING FIRE INVESTIGATIONS WHILE GIVING MORE AMMUNITION TO TRIAL ATTORNEYS: A FRESH LOOK AT THE 2014 EDITIONS OF NFA 1033 AND 921

Presented by Rick Hammond & Terry-Dawn Hewitt



In 2014, and for the first time in sixteen years, the NFPA published in the same year new editions of both NFPA 1033 Standard for Professional Qualifications for Fire Investigator and NFPA 921 Guide for Fire and Explosion Investigations. While the changes in the new editions of these industry standards have tremendous potential to improve the quality of fire investigations, they also provide additional ammunition to attorneys wanting to challenge investigators in court. In this webinar, two fire attorneys will share their insights into the most significant of these changes from a litigation perspective.

In this webinar, you will learn:

- How NFPA 1033 and NFPA 921 are directly relevant in challenging the qualifications and reliability of expert evidence under Daubert and state equivalents;
• Revisions in the 2014 editions that effectively merge NFPA 1033 and NFPA 921, together making them more powerful than ever in the hands of skilled trial attorneys;
• Implications of the expansion of NFPA 1033's infamous "list of 13" minimum knowledge requirements to a "list of 16;" and the correlation between this "list of 16" and NFPA 921, which together raise the bar for fire investigators;
• The heightened standing that both NFPA 1033 and NFPA 921 give to ASTM standards, making these standards mandatory for a reliable investigation.

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Case Law

UNITED STATES OF AMERICA v. FINLEY

Before the Court is a motion in limine, which seeks to exclude certain testimony of government witnesses at trial. For the reasons explained, the motion is denied. In arguing that the testimony is inadmissible, Defendant muddies the distinction between weight and admissibility of the evidence. The weight of the evidence goes to the issue of sufficiency, not admissibility.

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BEDNARZ v. CASTLE KEY INDEMNITY COMPANY

Insurers filed a joint partial motion for summary judgment, arguing that the intentional acts exclusions bar coverage under both policies, based on husband's involvement in the fire. Plaintiff has filed a partial motion for summary judgment arguing that the intentional acts exclusions do not apply, and even if they do, insurer is required to pay the mortgagee; and that insurer may not rely on failure to cooperate as a defense to coverage because she substantially complied with the investigation and insurer has failed to demonstrate that it suffered any prejudice. Also involved are questions of policy term ambiguity and the mental state of plaintiff's husband at and after the time of the fire.

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PEARSON v. TRAVELERS HOME & MARINE INSURANCE COMPANY

A detailed case overruling a lower court decision and awarding insurer summary judgment on circumstantial evidence as to whether the plaintiff committed or directed the commission of arson and as to whether the plaintiff possessed an intent to deceive when she misrepresented as to material facts in her policy claim.

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UNITED STATES OF AMERICA v. TRUMAN

Interesting case on interstate mail fraud involving the sending of the insurance claim packet to insurers attorney, located in Buffalo, New York, and to insurers adjuster, located in Mechanicsburg, Pennsylvania. "The courts, when construing the mail fraud statute in the context of schemes to defraud an insurance company, have consistently held that defendants `caused' mailings that are part of the ordinary claims process."

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