

Stewart A. Estes

Of Counsel

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Bio

Stew Estes is Of Counsel at Keating, Bucklin & McCormack, Inc., P.S. He joined the firm in 1992 after working for the Office of the Attorney General.

Since 1987, he has defended and counseled state and local government officials and agencies, and private companies and individuals. His practice focuses primarily on the defense of damage trials involving Civil Rights Act violations, police misconduct, sexual assault, and employment discrimination. He also handles issues such as training, risk management, and government-specific matters such as Public Disclosure, and coroner's inquests. He is a frequent lecturer at CLE seminars and police training events, and has served on several WSBA committees.

Stew also has an active appellate practice. He was the Chair of the Washington Defense Trial Lawyers (WDTL) Amicus Committee for 20 years, from 1998 to 2017, and has argued dozens of appellate cases. His numerous published decisions are set out below. Stew is a member of the Washington Appellate Lawyers Association (WALA). He is a co-author, along with Bryan Harnetieaux of the Amicus Practice Chapter of the Washington Appellate Practice Deskbook (4th ed 2016).

Representative Cases

Police Defense

Stew has defended over 100 cases of police officers accused of 1) excessive force through firearms, impact weapons, OC spray, and handcuffs; 2) improper vehicular pursuit; 3) false arrest; 4) malicious prosecution; 5) wrongful warrant application; and 6) wrongful seizure of property. He has handled numerous Coroner's Inquests involved officers who have employed deadly force. He recently obtained a rare victory in the Ninth Circuit, with the Court of Appeals reversing the District Court's refusal to dismiss the case on summary judgment in a fatal police shooting case.

For the past 10 years, Stew has been working to design and implement a statewide program for police officers in the area of Crisis Intervention Team (CIT) training for dealing with the mentally ill. He served on the Governor's CIT Training Steering Committee, which created a pilot program, and has been a presenter at the Criminal Justice training Commission on the topic. In 2007, Stew along with Andy Cooley and Kimberly Waldbaum, received a complete defense verdict after a five week federal court Class Action jury trial. This case is believed to be the largest civil rights class action case to go to verdict in U.S. history. The suit was brought by over 160 named plaintiffs representing a class of up to 800 Washington State University students and

faculty members. The plaintiffs sought damages of over \$30 million, plus punitive damages, and compensatory damages for the hundreds of class members as well. The mostly African-American Plaintiffs claimed that the use of Oleoresin Capsicum (pepper spray) by City of Pullman police officers to break up a violent night club brawl among WSU football players and others constituted excessive force, Due Process violations, negligence and was motivated by racial animus. The jury rejected all claims. A recent police shooting case received media attention.

"Lakewood says attorneys for unarmed man killed by police are lying about what witnesses saw," News Tribune,
<http://www.thenewstribune.com/news/local/article211199069.html>

Discrimination Cases

Sexual Harassment: Defended police commanders, public works officials, and private business managers accused of sexual or racial harassment and discrimination. Cases have been dismissed on motion, or settled for minor amounts.

Private Workplace Investigator: Defended claims of improper investigation made by Western State Hospital risk manager who was fired after client's investigation into years of his alleged sexual assault and abuse of female employees. Case dismissed on summary judgment. Successfully sued business insurance broker for failure to obtain proper insurance coverage.

Arrest of Deaf Suspect: Defended federal court lawsuit against Police Department accused of wrongfully arresting deaf female domestic violence suspect. A state statute declared that the officers' actions were unlawful because they had failed to obtain an ASL interpreter to read her Miranda rights or to interview her, and it was alleged that the ADA was violated as well. We first had the case certified to the Washington Supreme Court who invalidated the statute as unconstitutional. Next, on remand we obtained dismissal of the ADA claims relieving the officers of all liability.

Sexual Abuse and Assault Cases

Defended over 50 lawsuits brought against employers, licensors, supervising agencies, and spouses accused of negligence in sexual abuse and assault suits. Example clients and cases include:

- Department of Corrections: Negligent supervision of Level 3 sex offenders.
- Department of Children Youth and Families: Negligent investigation of child sexual and physical abuse.
- Churches and Religious Orders: Defended these organizations on claims that pastors or nuns sexually abused children.
- Group Homes: Defended the "OK Boys Ranch" lawsuits involving almost 50 claims of sexual and physical abuse by staff, other boys, and community members.
- Foster Parent defense: Defended allegations of physical "shaken baby syndrome" and sexual abuse.
- Individuals: Defended wives accused of negligently allowing their husbands to sexually abuse children.

Public Records Act

- Stew has provided day to day advice and defended lawsuits involving the Public Records Act. In 2002 he obtained the first known injunction against a citizen for his abuse of the PRA, and an assessment of sanctions.

APPELLATE CASES

Constitutional and Civil Rights Law

- *Beveridge v. City of Spokane*, 2021 WL 3082003, at *2 (9th Cir. 2021) (Court of Appeals affirmed Rule 12(c) dismissal of lawsuit by bounty hunters against police department who arrested and charged them with assault of bailee, holding in part that Brady does not apply to plea bargains and plaintiffs who plead guilty have no Fourteenth Amendment claims; *Heck v. Humphrey* barred some Civil Rights Act claims; and one who pleads guilty cannot sue for malicious prosecution);
- *Medvedeva v. City of Kirkland*, Washington, 720 Fed. Appx. 384 (9th Cir. 2018) (Ninth Circuit affirmed defense verdict for police officers in case that alleged they violated the constitutional rights of a mentally ill woman. The court held that the officers had probable cause to enter her apartment without a warrant and arrest the plaintiff for obstruction, and did not use excessive force in so doing, and that the officers did not arrest the plaintiff for expressing her First Amendment rights. The court also affirmed the trial court's jury instructions on the Americans with Disabilities Act);
- *Lewis v. English*, 739 Fed. Appx. 458 (9th Cir. 2019) (court affirmed the dismissal of constitutional and state law tort claims brought against the Seattle School District by protestors who had occupied a school building on the basis of res judicata);
- *Wright v. Pierce County*, 189 Wn. App. 1047 (2015) (court affirmed dismissal of Black school principal's suit alleging negligent training, negligent retention, outrage, malicious prosecution and abuse of process, defamation for his prosecution for rape, claiming prosecutors destroyed evidence and falsely swore to facts, defamed him in the media, and that detectives used suggestive interview techniques. The court held that the Deputy Prosecutors had absolute immunity and the detectives' actions, even if improper did not cause any harm because the chain of causation was broken by the prosecutor's independent decision to charge);
- *Wright v. Pierce County*, C11-5154 BHS, 2013 WL 4522463, (W.D. Wash. Aug. 27, 2013) (dismissing analogous federal law claims and remanding state law claims to above court).
- *Watson v. City of Bonney Lake*, 506 Fed. Appx. 555, 558 (9th Cir. 2013) (officers not entitled to qualified immunity on either claim if plaintiff's factual account is accepted. Defense verdict on remand).
- *Campbell v. State of Washington Dep't of Soc. & Health Servs.*, 671 F.3d 837, 839 (9th Cir. 2011), cert. denied, 568 U.S. 883 (2012) (holding that Defendant caregivers had no constitutionally required duty of care towards woman who drowned in their care because (1) there was no special relationship between woman and the state and (2) there was no state-created danger).
- *Torres v. Wilkinson*, 610 F.3d 546 (9th Cir. 2010) (holding as a matter of law that police officer who shot and killed fleeing suspect did not violate his constitutional rights regarding excessive force);
- *Des Moines Marina Assn v. City Of Des Moines*, review denied, 154 Wn.2d 1018, 113 P.3d 1040 (2005) (Imposition of higher moorage rates on non-resident tenants of marina does not violate Equal Protection clause; no standing by association to sue on behalf of tenants; and City has statutory authority to charge market rates for moorage);
- *Benjamin v. Washington State Bar Assn.*, 138 W.2d 506, 978 P.2d 742 (1999)(implied right of action under free speech clause of Washington Constitution);
- *Edgar v. City of Tacoma*, 129 Wn.2d 621, 919 P.2d 1236 (1996) (right to jury trial and the 1993 amendments to the Tort Reform Act);

- *Patrice v. Murphy*, 136 Wn. 2d 845, 966 P.2d 1271 (1998) (legislative bill title requirements of Washington Const., Art. II, Section 19; and, interpreters for deaf suspects in police investigations);
- *Bankruptcy Estate of Hansen v. City Of Kent*, 81 Wn. App. 270, 914 P.2d 127, review denied, 130 Wn. 2d 1008 (1996)(res judicata and collateral estoppel in Civil Rights Act case, and proximate cause for judge's erroneous issuance of search warrant);
- *Ochsner v. Board of Trustees of Community College Dist. No. 17*, 61 Wn. App. 772, 811 P.2d 985 (1991) (breach of educational contract by arbitrary & capricious assignment of a failing grade).

Tort Law

- *Gerlach v. Cove Apartments, LLC*, 97325-3, 2020 WL 5048574 (Wash. Aug. 27, 2020) (interpreting the intoxication affirmative defense);
- *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 540, 442 P.3d 608, 609 (2019) (holding that the fact that an officer's conduct may constitute assault and battery does not preclude a negligence claim premised on her alleged failure to use ordinary care to avoid unreasonably escalating the encounter to the use of deadly force);
- *Husted v. State*, 187 Wn. App. 579, 590, 348 P.3d 776, 781, review denied, 184 Wash.2d 1011 (2015) (concluding that where an offender absconds from supervision and a warrant is issued for his or her arrest, the requisite continuing relationship no longer exists and the duties associated with the take charge relationship are terminated unless and until the person is apprehended. Accordingly, the State had no duty to control the offender's behavior);
- *Jones v. City of Seattle*, 179 Wn.2d 322, 327, 314 P.3d 380, 382 (2013), as corrected (Feb. 5, 2014) (finding that the trial court erred in excluding testimony by the late-disclosed witnesses, but such error was harmless);
- *Collings v. City First Mortgage Servs., LLC*, 177 Wn. App. 908, 923, 317 P.3d 1047, 1055 (2013), review denied, 179 Wash.2d 1028 (2014) (trial court did not abuse its discretion by denying defendant a new trial based on the lack of disclosure of the plaintiff's Mary Carter agreement);
- *Worthington v. City of Bremerton*, 176 Wn. App. 1035 (2013) (medical marijuana patient's claims for negligence, conversion, trespass to land, nuisance for seizure of plants are barred by the statute of limitations despite allegations of fraudulent concealment of facts by drug task force);
- *Barton v. State, Dep't of Transp.*, 178 Wn.2d 193, 199, 308 P.3d 597, 601 (2013) (plaintiff's concealment of "Mary Carter" covenant not to execute did not warrant a new trial, only sanctions for plaintiff's counsel);
- *Lowman v. Wilbur*, 178 Wn.2d 165, 171, 309 P.3d 387, 391 (2013) (holding that if vehicle passenger's injuries were in fact caused by the placement of the utility pole too close to the roadway, then they cannot be deemed too remote for purposes of legal causation);
- *M.R.B. v. Puyallup School District.*, 169 Wn. App. 837, 839-40, 282 P.3d 1124, 1126 (2012) (affirming defense verdict and summary judgment in suit based on high school's student newspaper publishing an issue featuring articles on oral sex and quoting students, claiming invasion of privacy, negligent hiring and supervision, negligence, and outrage);

- *Todd v. City of Auburn*, 425 Fed. Appx. 613, 615 (9th Cir. 2011) (affirming dismissal of class action of citizens fined by multiple cities' automated red lights or school speed zones cameras, arguing that the fines they received for these infractions exceed limits set by statute and that payment provisions in the cities' contracts with the camera companies violate statutory restrictions on the form of compensation).
- *Fisk v. City of Kirkland*, 164 Wn.2d 891, 194 P.3d 984 (2008) (public duty doctrine case prevents city liability for negligent maintenance of water supply system);
- *Stiefel v City of Kent*, 132 Wn. App. 523; 132 P.3d 1111 (2005), review dismissed, __ Wn 2d __ (2006) (public duty doctrine case prevents city liability for negligent maintenance of water supply system);
- *Joyce v. State*; 155 Wn. 2d 306, 119 P.2d 825 (2005)(negligent parole supervision suit; agency policies do not establish duties);
- *Tegman v. Accidental and Medical Investigations*, 150 Wn.2d 102; 75 P.3d 497_ (2004)(segregating damages between negligent and intentional tortfeasors);
- *Kloepfel v. Boker*, 149 Wn.2d 192, 66 P.3d 630 (2003) (elements of the tort of outrage);
- *Estate of Lowry v. City of Auburn*, 111 Wn. App. 1026 (2002) (under the "Fireman's Rule," or assumption of risk, an officer who allowed an armed man to leave scene despite his assaultive behavior is not liable to a SWAT officer in a different jurisdiction who was killed entering the man's house to arrest him);
- *Cox v. Spangler*; 141 Wn.2d 431, 5 P.3d 1265 (2000) (burden of segregating indivisible injury in successive tort-feasor case, and collateral source rule);
- *Hiner v. Bridgestone/Firestone, Inc.*, 138 Wn. 2d 248, 978 P.2d 505 (1999) (application of Tort Reform Act comparative fault to Product Liability Act);
- *Welch v. Southland Corp.*, 134 Wn. 2d 629, 952 P.2d 162 (1998) (apportionment of fault to an intentional tortfeasor under Tort Reform);
- *Savage v. State of Washington*, 127 Wn.2d 434, 899 P.2d 1270 (1995) (qualified immunity for public employees and employers);
- *Samuelson v. Community College District No. 2*, 75 Wn. App. 340 877 P.2d 734 (1994), review denied, 125 Wn. 2d 1023 (1995) (discovery rule exception to statute of limitations, and duty of oversight agency to inform professors of retirement plans);
- *Anderson v. City of Seattle*, 123 Wn.2d 847, 873 P.2d 489 (1994) (joint and several liability with a bankrupt defendant under Tort Reform Act of 1986);
- *Noakes v. City of Seattle*, 77 Wn.App. 694, 895 P.2d 842, review denied, 127 Wn.2d 1021 (1995) (public duty doctrine and 911 dispatches).

Public Records Act

- *Nissen v. Pierce County*, 183 Wn.2d 863, 869, 357 P.3d 45, 49 (2015) (case of first impression considering whether the PRA applies when a public employee uses a private cell phone to conduct government business, and creating a process for an employee to search their private electronic records and determine if anything they wrote within the scope of their

employment and relating to the conduct of government, and if not to submit a declaration to their employer stating the records are private).

Wrongful Death

- *Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004) (non-financially dependent parents precluded from suit for wrongful death of adult child).

Disability & Discrimination Law

- *Hill v. BCTI Income Fund-1*, 144 Wn 2d 172, 23 P.2d 440 (2001) (Age, race and disability discrimination suit analyzing the pretext-plus standard; no medically necessary asthma accommodation required; and age was not a substantial factor in decision to terminate plaintiff);
- *Patrice v. Murphy*, 43 F.Supp. 2d 1156 (W.D. Wash. 1999) (application of the ADA to the arrest and interrogation of a deaf criminal suspect);
- *Newlun v. Dept. of Retirement Systems*, 53 Wn. App. 809, 770 P.2d 809, review denied, 113 Wn. 2d 1014 (1989) (LEOFF Act: Jurisdiction; and, psychiatric disability for undercover narcotics detective using drugs).

Child Sex Abuse

- *CJC v. Corporation of The Catholic Bishop*, 138 Wn. 2d 699, 985 P.2d 262 1999)(application of the statute of limitations in a childhood sexual abuse case against a third-party non-perpetrator);
- *E.R.B. v. Church of God*, 89 Wn App.670, 950 p.2d 29 (1998), reversed, 138 Wn 2d 699, 985 P.2d 262 (1999) (same).

Land Use

- *Spring Spectrum, L.P., v. City of Medina*, 924 F.Supp. 1036 (W.D. Wash. 1996) (lawfulness of cell tower moratorium under new Telecommunications Act. First published decision in U.S. under TCA);
- *Brutsche v. City of Kent*, 78 Wn. App. 370, 898 P.2d 319, review denied, 128 Wn. 2d 1003 (1995) (statute of limitations for challenge to municipal land use decisions).

Highway Design

- *Ruff v. King County*, 125 Wn.2d 697, 887 P.2d 886 (1995) (scope of County's duty to update roadways and discretionary immunity);
- *MCCLUSKEY v. Handorff-Sherman and State of Washington*, (PDF, 125 Wn.2d 1, 882 P.2d 157 (1994) (discretionary immunity for highway design decisions by government agencies).

Unpublished Opinions

- Stew has fourteen unpublished cases. In all of them, the trial court's dismissal on summary judgment was affirmed on appeal.

Presentations

Presentations:

Update on King County Coroner Inquest Changes

- Northsound Metro SWAT Executive Board Meeting, Fall 2018

Officer Involved Shooting Litigation Update

- Washington Association of Prosecuting Attorneys, Summer 2018 Training Conference

Officer Involved Shooting Litigation Update

- Washington Association of Prosecuting Attorneys, Spring 2018 Training Conference

The Science of Jury Selection

- Washington State Association of Municipal Attorneys (WSAMA), Fall Conference, 2018

SWAT Liability Issues

- Washington State Tactical Officers Association Annual Conference, 2016

FTO Reporting

- National Association of Field Training Officers' Annual Conference, 2016

Use of Force Training

- Bainbridge Island and Poulsbo Police Departments, 2016

Are private emails generated on a government computer "public records" under the WA PRA?

- Washington Association of Sheriffs and Police Chiefs (WASPC), Spring Exposition and Training Conference, May 2014, Spokane
- Washington Association of Public Records Officers (WAPRO), Spring Training Conference, May 2014, Lynnwood

Current Law Regarding Medical and Recreational Marijuana

- Washington State Association of Municipal Attorneys (WSAMA), Spring Conference, May 2014, Vancouver

Reducing Liability Risks in Field Training Programs,

- National Association of Field Training Officers, Washington Chapter's Annual Conference, CJTC, March 2014

Handling Appellate Cases as Amicus Curiae,

- King County Bar Association, Appellate Section, November 2010

Concussion Management: Standards & Liability,

- University of Washington & Foster Pepper, The Business of Sport Seminar, April 2010

Federal Court Pre-Trial Practice,

- Office of the Attorney General Seminar, January 2010

Annual Tort Law Seminar (Amicus Update),

- Washington Defense Trial Lawyers, December 2007-2012

Public Records - Requests and Disclosures,

- Washington Cities Insurance Authority, Regional City Attorney Seminar, June 2007

Crisis Intervention Team Training - Dealing with the Mentally Ill,

- WCIA Police Command Staff Seminar, August 2006

Qualified Immunity Doctrine;

- Police Liability Seminar, Lorman Educational Services, 2002, 2003, 2004

Ethical Considerations in Police Litigation,

- Police Liability Seminar, Lorman Educational Services, 2002, 2003, 2004

The Defense and Indemnification of Public Employees,

- Washington State Association of Municipal Attorneys, Annual Conference, October 2003;

Municipal Probation Supervision,

- City Attorney Seminar, Washington Cities Insurance Authority, November 2002;

Firearms and Restraining Orders,

- Police Chiefs Seminar, Washington Cities Insurance Authority, April 2000

Conducting Investigations,

- Police Chiefs Seminar, Washington Cities Insurance Authority, April 2000

Dealing with the Effects of Initiative 695 on City Employees,

- Executive Board Education, Washington Cities Insurance Authority, January 2000

Publications:

- The Short Happy Life of Litigation Between Tortfeasors: Contribution, Indemnification and Subrogation After Washington's Tort Reform Acts, 21 Seattle Univ. Law Rev. 101 (1997), quoted with approval, Kottler v. State, 136 W.2d 437, 445-48, 963 P.2d 834 (1998); and, Geurin v. Winston Industries, 316 F.3d 879,883 (9th Cir. 2002)). His article has now been cited by the following: 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 41.04, Comments (6th ed.); Rossella Esther Cerchia, Uno per tutti, tutti per uno. Itinerari della responsabilità solidale nel diritto comparato ("One for all, all for one. Routes of joint liability in comparative law") (Giuffrè Ed, Milano, 2009), at 280; Victor J Torres, Tegman v. Accident & Medical Investigations, Inc.: The Re-Modification of Modified Joint and Several Liability by Judicial Fiat, 29 Seattle U. L. Rev. 729, 741 n. 86 (2005-2006); H Dagan, JJ White, Governments, Citizens, and Injurious Industries, 75 N.Y.U. L. Rev. 354, 384 n. 116 (2000); Carol Sue Janes, Washington Health Law Manual — Third Edition (2011), Chapter 8, Section 8.5.5, at 8-42; 2 Comparative Negligence Manual Ch. 68 (3d ed); and, 3 Bruner & O'Connor Construction Law §§ 10:118, and, 10:128.

- Public Policy and the Deconstruction of Stare Decisis: The Supreme Court Rethinks Qualified Immunity in *Savage v. State*, The Defense Press, Vol. 4, No. 5, Spring/Summer 1996.
- Court Decides Legal Issues Raised by Partially Uncollectible Settlement, WSTLA Trial News, December 1995, Vol. 31, No. 4.
- Where Are You Going, Where Have You Been? The Dust Settles on the Tort Reform Act of 1986, Washington Bar News, April 1995.
- The Helmet Defense: Making the Case for Personal Responsibility, Stewart A. Estes and Andrew G. Cooley, The Defense Press, Vol. 4, No. 3, Spring 1995.
- Compelled and Voluntary Disclosure of Information by Public Agencies: Scylla & Charybdis Revisited, October 1994.
- *Guimont v. Clarke*: The Washington Supreme Court Revises the Presbytery Takings Analysis, The Defense Press, Vol. 3, No. 9, Summer 1993.
- *Powers v. Skagit County*: The Court of Appeals Construes *Lucas v. South Carolina Coastal Council*, The Defense Press, Vol. 3, No. 8, Winter 1993.
- Recent Developments in Government Liability Law, The Defense Press, Vol. 3, No. 7, Fall 1992.
- Learn Something Through Pro Bono, S.A. Estes and M. Elliott, Washington Bar News, October 1991.
- The Government Lawyer and Pro Bono, Washington Bar News, November 1990.
- Washington Real Property Forfeiture: An Examination of the 1989 Amendments to RCW 69.50.505. A handbook for government attorneys and law enforcement officers, July 1989 (updated 1992-1998).

Professional and Community Activities

- Washington State Bar Association (November 1985), Bar Number 15535
- Arizona State Bar Association (July 2018), Bar Number 033824
- Oregon State Bar Association (September 2019), Bar Number 192993
- King County Bar Association
- U. S. Supreme Court Bar Association (November 1994)
- Washington Defense Trial Lawyers
 - Chair, Amicus Committee, 1997- 2017
 - Board of Trustees, 2002-2003
 - Member, 1992 - Present
- Washington State Bar Association

- Court Rules & Procedures Committee, 1997 - 2000
- Civil Rights Committee, 1995 - 1997
- Legal Aid Committee, 1989 - 1992

- Defense Research Institute, 1997 - present
- Arbitrator, King County Superior Court, 1993 - present
- Washington State Brain Injury Foundation, 1994 - 1998
- Government Lawyers Bar Association 1988 - 1992
- Thurston-Mason Pro Bono Program, 1987-1992
- Washington Super Lawyers, since 1999.
- Seattle's Top Lawyers, Seattle Magazine, July 2010 (Civil Rights)
- Washington Appellate Lawyers Association, 2005-Present

Education, Recognition, and Honors

- Stew is a 1982 graduate of the University of Arizona (B.S., Political Science), and a 1985 graduate of the University of New Mexico School of Law, where he was a member of the Law Review.
- Stew was recently named one of Seattle's Top Lawyers in the civil rights area by the Seattle Magazine. He has been named a Super Lawyer for several years, and is AV Rated by Martindale-Hubbell.
- Stew was the Chair of the Washington Defense Trial Lawyers Association Amicus Committee for 20 years (1998-2017). He submitted over 80 amicus briefs in that capacity.