

Reporter's Handbook

on Covering
Kentucky Courts

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*Reporter's Handbook on
Covering Kentucky Courts
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Introduction

It does not take a sensational trial for the courts to make news. The justice system is a constant source of public interest and popular entertainment; therefore, coverage of the courts remains a vital part of the media's responsibility to the public.

Accurate and insightful reporting on the courts requires learning the judicial process. Critical information is available to the reporter who knows where and how to find it, but the tried and true reporter's admonition applies to this as it does every other beat: *Don't be afraid to ask questions!* To know what you don't know is critical, particularly with a subject as complex as the courts. It is far better to admit your lack of knowledge up front than to have it proven in print or on the air. Remember, judges may not be as imposing as they seem and attorneys often will explain the intricacies of the law when asked.

This handbook is meant to help the reporter understand the courts of Kentucky. Written in lay language, it provides insight on court organization, the trial process, lawyer and judge cooperation, and background information. Reporting tips in the handbook are for your information and are *not* intended to take the place of advice by your editor or your organization's attorney.

We hope this handbook promotes richer reporting on the administration of justice throughout our great Commonwealth.

A Reporter's Access to Judicial Proceedings

The Supreme Court of Kentucky said in support of media access to court proceedings:

“The principle that justice cannot survive behind walls of silence is so deeply imbedded in our Anglo-American judicial system as to give our people in today’s modern society a deep distrust of secret trials ... One of the strongest demands of a democratic system is that the public should know what goes on in their courts. This demand can only be met by permitting them to be present in person and by permitting the press, who have the facilities to properly inform them, to be present upon their behalf.”

Johnson v. Simpson, Ky.,
433 S.W.2d 644, 646 (1968)

Access to Civil Proceedings

What civil court proceedings are open to the public?

Alert: Civil proceedings differ from criminal proceedings. They are usually personal legal actions relating to and affecting rights of the litigants.

- The U.S. Supreme Court and Kentucky courts have held that civil court proceedings are *presumed to be open to the public*, but that presumption may be overcome in limited circumstances.

- Journalists have the same right of access to civil judicial proceedings as any other member of the public.

When can a civil court proceeding be closed to the public?

- Although civil court proceedings and records are presumed to be open for inspection to the public, courts have limited authority to close proceedings and seal records. To close civil proceedings or seal records, a court must weigh the interests of the party seeking closure against the public's right of access to the proceeding.
- The party seeking closure must demonstrate:
1) Right or interest is sufficiently important to warrant closure. 2) Less-restrictive alternatives to closure will not be sufficient. 3) Right or interest will be protected by a closed proceeding or sealed record.

What can you do if you believe a civil court proceeding or record is or has been wrongfully closed?

- Voice your objection to the judge when the motion is made to close; ask for a hearing and time to call your attorney. But if the judge overrules your objection, you must leave the courtroom if the proceeding is closed.
- If you want to contest closure of a court proceeding or the sealing of records, consult your editor and/or an attorney. Your attorney should make a motion to intervene to open the court proceeding and request a hearing. During this hearing, the court will balance the public's right of access against the party's reasons for closure. While balancing these interests, the

court must consider whether there are compelling reasons to close the proceeding and whether viable alternatives to closure exist.

- If the court denies the motion to intervene or refuses to grant a hearing, you may immediately bring an action in an appeals court by a writ of prohibition or a mandamus.

Access to Criminal Proceedings

What proceedings are open to the public?

Alert: Criminal court proceedings differ from civil court proceedings as the prosecution of crimes is always a government action rather than one of private parties. Further, the First Amendment rights of the press may be weighed against the Fourth, Fifth and Sixth Amendment rights of a defendant to a fair criminal trial.

- Criminal court proceedings are presumed to be open to the public, but may be closed in limited circumstances.
- This presumption applies to any pretrial proceedings, such as pretrial suppression hearings (when a party seeks to refuse to allow evidence to be produced for use in litigation).
- Journalists have the same right of access to criminal judicial proceedings as any other member of the public.

When can a criminal court proceeding be closed to the public?

- Although criminal court proceedings and records are presumed to be open for inspection to the public, courts do have limited authority to close proceedings or seal material that has been stricken from the record or to seal documents that are part of the record. To close a proceeding or seal court records, a court must weigh the interests of the party seeking closure against the public's right of access to the information.

- The party seeking closure must demonstrate:
1) Right or interest is sufficiently important to warrant closure. 2) Less-restrictive alternatives to closure will not be sufficient. 3) Right or interest will be protected by a closed proceeding or sealed record.

- A defendant's constitutional right to an impartial jury is a factor to be considered in balancing the right of access to a court proceeding.

What can you do if you believe a criminal court proceeding has been wrongfully closed or a record wrongfully sealed?

- The same procedures outlined concerning the closure of a civil court proceeding would apply.

Miscellaneous & Other Kinds of Court Proceedings

Are juvenile proceedings open to the public?

- No. KRS 610.070 provides for closed juvenile proceedings and confidential records.

Are grand jury proceedings open to the public?

- No. By law, grand jury proceedings are closed to the public.

Are Family Court proceedings open to the public?

- Family Court proceedings, such as divorce, custody, child support and domestic violence are generally open to the public. But KRS 403.310 does allow the court to exclude the public from a custody hearing if the court determines that a public hearing may be detrimental to the child's best interests. A Family Court judge may also seal records or close proceedings for the same reasons as civil proceedings or records may be closed or sealed.

- Family Court proceedings for dependency, neglect, abuse, termination of parental rights and adoptions *are not* open to the public.

Access to Jurors

What are the limitations on access to jurors?

- The court proceedings where potential jurors are questioned in court (voir dire) during the selection of the jury is presumed to be open.
- Once jurors are selected, they are sworn not to discuss the matter with anyone and to inform the judge if anyone asks them about the case. This would also apply to a reporter asking them questions. Such questioning of a juror might require the trial to be canceled or other sanctions applied.

- Jury deliberations are *not* open to the public.
- During a trial, the court has the power to restrict access to jurors.
- Once a trial is over, a state court no longer has any power to restrict access to jurors, but a judge may tell jurors they do not have to talk to reporters. That does not prevent the reporter from trying.

Cameras & Other Recording Devices in the Courtroom

Are cameras or recorders allowed in the courtroom?

- **Federal Courts:** Federal courts do not allow still or video cameras or audio recorders in the courtroom, and often ban them from the courthouse.
- **State Courts:** In state courts, judges have broad discretion to allow cameras and audio recorders. Kentucky allows video and still cameras in the courtroom at the discretion of the judge.
- Shooting video or still pictures must take place from a fixed location and be unobtrusive.
- Microphones are not permitted to pick up audio of attorney-client conversations, conversations among co-counsel, or conferences at the judge's bench.
- Requests for camera coverage, which need not be in any particular form, should be made

to the presiding judge. Generally only one video camera is allowed in the courtroom. The media must make pool arrangements to conform to the judge's coverage orders.

- For more specific rules on sound, light, location of cameras in the courtroom, courtroom light sources and impermissible uses of media material in the courtroom, see the Supreme Court of Kentucky's *Standards of Conduct and Technology Governing Electronic Media and Still Photography Coverage of Judicial Proceedings*.

The Structure of Kentucky Courts

www.kycourts.net

There are four levels of court in Kentucky. The appellate courts include the Supreme Court and the Court of Appeals. The trial courts are divided into Circuit Court, which has general jurisdiction, and District Court, which has limited jurisdiction. Kentucky's four-tier court system was established by the passage of the Judicial Article to the Kentucky Constitution in 1975, which went into effect July 15, 1976. The Judicial Article created the Court of Justice as an independent branch of government separate from the Executive and Legislative branches and from local county and city governments.

Kentucky's trial courts first hear the facts and issue judgments on those facts. Appeals courts may be asked to review the judgment of another court to see if a mistake was made. An appeals court generally cannot hear any new evidence and must rule on what was presented to the

trial court. Kentuckians have the right to one appeal per lawsuit. Beyond this one “matter of right” appeal, further appeals are discretionary and the appellate court may refuse to review such cases.

District Court

District Court, often referred to as “the people’s court,” has limited jurisdiction. “Limited jurisdiction” means District Court may handle those kinds of cases the Kentucky General Assembly has, by statute, said may be heard in District Court. Juvenile matters, city and county ordinances, traffic offenses, probates of will, felony preliminary hearings and civil cases involving \$4,000 or less are all heard in this court. Cases involving guardianship, conservatorship, voluntary or involuntary commitment, child abuse and neglect, and domestic violence are also heard in District Court. Appeals from District Court decisions are made to the local Circuit Court.

Judicial districts vary in size and number of judges based on population and caseload. Judicial districts vary from single-county, multiple judges to four-county districts served by a single district judge who travels the district hearing cases. There may also be trial commissioners appointed to handle emergency or preliminary judicial duties, particularly where a judge does not reside in a county.

District judges serve four-year terms.

Circuit Court

Circuit Court is the court of general jurisdiction and can hear all types of cases unless the General Assembly has given exclusive jurisdiction of particular kinds of cases to another court to handle, such as District Court.

Circuit Court hears civil matters involving more than \$4,000, capital offenses and felonies, divorces, adoptions, termination of parental rights, land dispute title problems and contested probates of will. Circuit Court has the power to issue injunctions and writs of prohibition and mandamus to compel or prohibit acts, and to hear appeals from District Court and administrative agencies.

Judicial circuits vary in size and number of judges based on population and caseload, from single-county, multiple judges to four-county districts served by one judge who travels the circuit. Circuit judges may be assisted by master commissioners on property matters and by domestic relations commissioners on divorce and custody matters in counties with no Family Court. Appeals from Circuit Court are made to the Court of Appeals.

Circuit judges serve eight-year terms.

Family Court

Family Court is a division of Circuit Court and became a permanent part of the court system when the Family Court Amendment was overwhelmingly passed in the 2002 general election.

Family Court judges are judges of the Circuit Court. Family Court hears only cases involving families and children and its jurisdiction includes dissolution of marriage; spousal support and equitable distribution; child support and visitation; paternity; adoption; domestic violence; dependency, neglect and abuse; termination of parental rights; and runaways and truancy (status offenses). Appeals from Family Court are made to the Court of Appeals.

Today Family Court serves nearly 2 million Kentuckians in 42 counties and the program is considered a national model. There are plans to implement Family Court in all 120 counties within 10 years of the passage of the amendment, as funding allows.

As Circuit Court judges, Family Court judges serve eight-year terms.

Specialty Courts

“Specialty Courts” are actually divisions of either District Court or Circuit Court which collect and hear cases of a particular type to improve case management, either for reasons of efficiency or to provide special services or attention to those kinds of cases.

Small Claims Court (District Court)

Small claims is a division of District Court. It is an informal, inexpensive means for people to file claims in disputes that involve money or personal property valued at \$1,500 or less. Parties involved in small claims actions can represent themselves without an attorney.

Juvenile Court (District Court)

Juvenile Court is a division of District Court. Cases involving children under the age of 18 are handled in Juvenile Court. Cases filed in Juvenile Court include dependency; neglect and abuse; status offenders, such as runaways; children who are consistently tardy from school and those who have behavioral problems or are beyond adult control; and public offenders (delinquency), which include children charged with misdemeanors and felonies. In jurisdictions where there is a Family Court division of Circuit Court, the Family Court will hear matters of dependent, neglected and/or abused children, as well as status offenses when no public offense is pending. All other juvenile matters remain within the jurisdiction of Juvenile (District) Court.

Children charged with more serious felonies, such as rape or murder, may be transferred from Juvenile Court to Circuit Court to be tried as adults and, if convicted, imprisoned first in a juvenile facility and later in an adult prison.

In most cases, the first contact the child has with delinquency proceedings is through a court designated worker (CDW). CDWs interview children, review charges filed against them and advise the children of their rights. Unlike other District Court and Circuit Court hearings, which are open to the public, Juvenile Court hearings are closed to the public. However, once a juvenile has been transferred to Circuit Court to be tried as an adult, those Circuit Court proceedings are open to the public as any other Circuit Court criminal proceeding.

Drug Court (Circuit, Family and District Courts)

Drug Court is a form of intensive judicial supervision of individuals with drug problems. Instead of immediate incarceration for drug use, Drug Court participants must regularly report before the judge regarding compliance with a drug rehabilitation program.

Drug Court has had a significant impact on reducing rearrest, reconviction and reincarceration rates. The program has saved the Commonwealth more than \$14.5 million for the first 1,000 Drug Court graduates, based on outcome evaluations. Drug Court is supported by federal and state funds.

Court of Appeals

With a few exceptions, most cases appealed from Circuit Court go to the Court of Appeals. Nearly all cases go to the Court of Appeals on appeal of a trial decision of the Circuit Court or on appeal of a decision of the Circuit Court of a District Court judgment.

The case is not retried at the appeals level. Instead, the original trial record is reviewed, with attorneys presenting the legal issues to the court for a decision. Fourteen judges, two elected from each of the seven appellate districts, serve on the Court of Appeals for terms of eight years.

Court of Appeals judges are divided into panels of three to review and decide cases, with the majority deciding the outcome. The panels do not sit permanently in one location, but move

about the state to hear appeals. The Court of Appeals occasionally “publishes” its rulings on cases, such that those rulings become the governing case law for all such similar cases in the trial courts of Kentucky.

Supreme Court of Kentucky

The Supreme Court is the state court of last resort and the final interpreter of Kentucky law. The Supreme Court may order a ruling or opinion “to be published,” meaning that the ruling becomes the case law governing all similar cases in the future in Kentucky.

Appeals involving the death penalty, life imprisonment or imprisonment for 20 years or more go directly from Circuit Court to the Supreme Court. All other appeals must first be heard by the Court of Appeals, except those so exceptional that the Supreme Court will grant a request to bypass the Court of Appeals. Appeals from the Court of Appeals, except workers’ compensation appeals, reach the Supreme Court only with the court’s permission.

Seven justices sit on the Supreme Court and all seven justices rule on appeals before the court. The justices are elected from seven appellate districts and serve eight-year terms. A chief justice, chosen for a four-year term by fellow justices, is the administrative head of the state’s court system and is responsible for its operation. In addition, the Supreme Court establishes rules of practice and procedure for all Kentucky judges and attorneys.

Federal Courts

www.uscourts.gov

Federal courts include Magistrate Court, District Court, Bankruptcy Court, the Circuit Courts of Appeals and the U.S. Supreme Court.

U.S. Magistrate Court

U.S. Magistrate Court is similar to Kentucky's District Court in that it is a court of limited jurisdiction and is normally the preliminary entry point for criminal cases into the federal system. Magistrate judges are appointed by a majority of the active District Court judges in the district and serve eight-year terms.

A magistrate judge's jurisdiction varies by district because specific duties are established by each District Court's local rules and orders. Generally, magistrate judges conduct preliminary proceedings in criminal cases; conduct trials and dispose of misdemeanor cases with the defendant's consent; and hear pretrial motions, discovery issues, evidentiary hearings, pretrial conferences and other proceedings involving civil and criminal cases.

U.S. District Court for the Western and Eastern Districts of Kentucky

www.kywd.uscourts.gov

www.kyed.uscourts.gov

U.S. District Court is similar to Kentucky's Circuit Court. It has general jurisdiction of civil and criminal cases. Kentucky is divided into two districts and is in a four-state "circuit" under the jurisdiction of the Sixth Circuit Court

of Appeals. Nationally, there are 94 districts and 12 circuits.

The Western District of Kentucky covers 53 counties and is headquartered in Louisville. Other District Court sites are in Owensboro, Bowling Green and Paducah.

The Eastern District of Kentucky covers 67 counties and is headquartered in Lexington. Other District Court sites are in London, Frankfort, Ashland, Covington and Pikeville. U.S. district judges are appointed by the president of the United States with the advice and consent of the U.S. Senate. They serve for life.

U.S. Bankruptcy Court for the Western and Eastern Districts of Kentucky

www.kywb.uscourts.gov

www.kyeb.uscourts.gov

The U.S. Bankruptcy Court is part of the U.S. District Court that deals exclusively with bankruptcy proceedings. Bankruptcy judges are appointed by a majority of the District Court judges in the U.S. District Court of Appeals and serve 14-year terms. There is no state equivalent because all bankruptcy proceedings must be conducted in federal courts.

U.S. Sixth Circuit Court of Appeals

www.ca6.uscourts.gov

Appeals of U.S. District Court decisions are heard by the Sixth Circuit Court of Appeals in Cincinnati, Ohio. The Sixth Circuit has jurisdiction over Kentucky, Ohio, Tennessee

and Michigan. Circuit judges are appointed by the president, with the advice and consent of the U.S. Senate. They serve for life.

Normally a three-judge panel hears an appeal, although in rare, important cases all of the judges will sit together to rule on a case (*en banc*). The Sixth Circuit may order an opinion published, which means the case law of that opinion becomes the governing law for all federal courts within the Sixth Circuit states of Kentucky, Ohio, Tennessee and Michigan.

U.S. Supreme Court

www.supremecourtus.gov

After a case is decided by the Circuit Court or a state supreme court, a party may appeal the decision to the United States Supreme Court. For most cases, the U.S. Supreme Court has discretionary review and decides which cases it will hear. It is extremely rare for the Supreme Court to accept a lower court case for review, but all of the rulings of the Supreme Court are published and become the governing law for all federal and state courts on the issues decided.

Court Process

How Things Get Done in Court

Civil Cases

Civil cases in both federal and state courts involve a legal dispute between two or more parties. A plaintiff may seek money to compensate for an injury or may ask the court to order the defendant to stop conduct that is causing harm. The court may also order other

types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation.

Alert: Court process in civil cases is different from that in criminal cases.

Complaint

To begin a civil lawsuit, the plaintiff files a complaint with the court and serves a copy of the complaint, along with a summons, on the defendant. The complaint contains allegations describing the plaintiff's injury, how the defendant caused the injury and asks the court to order relief. The complaint generally includes all of the plaintiff's theories of recovery – some of which may contradict each other – as well as the amount of money or other relief sought. Once filed, the complaint is assigned a case number and a presiding judge. Amended complaints are often filed later to reflect changes in the allegations, claims or relief sought.

Removal

Civil cases are sometimes “removed” to federal court from a state court. If a civil case is initiated in state court and involves a federal legal question (involving, for example, a federal statute or the U.S. Constitution), the defendant may remove the case to be adjudicated in federal court. Also, if the parties are from different states and the case involves at least \$75,000, the case can be removed to federal court under the court's “diversity” jurisdiction. However, if any of these issues that create jurisdiction are removed from the case, such as a ruling by the court, the case can be sent back to state court.

Answer

Once the complaint is filed, the court issues a civil summons or “process” to be served upon the defendant. The defendant has a limited time to respond to the complaint’s allegations in an answer. The answer addresses each allegation of the complaint and raises affirmative defenses, such as that the statute of limitations has run out.

Discovery

To prepare a case for trial, the litigants may conduct discovery. In discovery, the litigants must provide information to each other about the case, such as the identity of witnesses and copies of any documents related to the case. The purpose of discovery is to prepare for trial by requiring the litigants to assemble their evidence and prepare to call witnesses. Each side also may file requests, or motions, with the court seeking rulings on the discovery of evidence or on the procedures to be followed at trial. One common method of discovery is the deposition. In a deposition, a witness is required to answer under oath questions about the case asked by the lawyers in the presence of a court reporter, who transcribes verbatim the responses. Reporters are not generally allowed to attend deposition sessions.

Settlement

Litigants often decide to resolve a civil lawsuit by settlement. Settlement may be achieved in an informal setting or by mediation or arbitration in lieu of trial. If a case is settled, the plaintiff usually signs a release and dismisses the claim against the defendant. Many releases

and settlement agreements contain confidentiality clauses that prohibit the parties from discussing the case.

Trial

If a case is not settled, the court will schedule a trial. In a wide variety of civil cases, either side is entitled to a jury trial. If the parties waive their right to a jury, then the case will be heard by a judge without a jury, otherwise known as a bench trial. At a trial, witnesses testify under the supervision of a judge. Witnesses are kept out of the courtroom, or sequestered, until it is time for them to testify. A court reporter keeps a record of the trial proceedings. A deputy clerk of court also keeps a record of each person who testifies and marks for the record any documents, photographs or other items introduced into evidence.

At the conclusion of the evidence, each side gives a closing argument to demonstrate that the evidence supports their side of the case. In a jury trial, the judge will explain the law that is relevant to the case and the decisions the jury needs to make. This is done through the process of instructing the jury and the jury will be given written instructions that explain what they must do.

The jury generally is asked to determine whether the defendant is responsible for harming the plaintiff in some way and then to determine the amount of damages the defendant will be required to pay. In a civil case, the plaintiff must convince the jury by a “preponderance of the evidence” (more likely

than not) that the defendant is responsible for the harm the plaintiff has suffered. This “burden of proof “ is less than that required in a criminal case.

Criminal Cases

In federal criminal prosecutions, the U.S. attorney represents the United States as the prosecutor. Criminal cases in Kentucky are filed by the Commonwealth or individual counties against individuals or organizations suspected of committing crimes. The Commonwealth or counties, represented by the Office of the Kentucky Attorney General, commonwealth’s attorney or county attorney, is responsible for filing charges against defendants and prosecuting such cases.

Grand Jury

The grand jury reviews evidence presented by the prosecutor and decides whether there is sufficient evidence to require a defendant to stand trial. If there is, then the grand jury indicts the defendant. Grand jury proceedings are closed to the public.

Initial Appearance & Bail

At an initial appearance (which may also be the arraignment), a judge advises the defendant of the charges filed and considers what conditions will ensure appearance at trial or if the defendant should be held in jail. Defendants who cannot afford to hire a lawyer are advised of their right to a court-appointed lawyer.

Alert: A defendant has the benefit of the presumption of innocence at this point. There

is a right to a reasonable bail so a defendant will not be imprisoned prior to a determination of guilty or not guilty. Both federal and state laws support the release of a defendant pending trial unless significant evidence is presented that he or she will abscond.

This process begins with consideration of release on recognizance, or personal promise, to return to court. The state's power to detain a defendant, while presumed innocent, is restricted and consideration of release on his or her promise to appear is a primary consideration. Misunderstanding the nature and requirements for bail and pretrial release has been a point of contention among lawyers, journalists and judges.

Arraignment

The defendant enters a plea to the charges brought by the prosecutor at a hearing known as an arraignment. Many defendants plead guilty rather than go to trial in return for the government agreeing to drop certain charges or to recommend a lenient sentence. If the defendant pleads guilty, the judge may impose a sentence at that time, but usually will schedule a separate sentencing hearing. If the defendant pleads not guilty at the arraignment, the judge will schedule further action on the case. In District Court these proceedings may be recorded on audiotape or digital CD. In Circuit Court they may be recorded by a court reporter or videotape.

Preliminary Hearing in District Court

If a person is arrested and charged with a felony, he or she is entitled to a preliminary hearing in

District Court. This is to determine if there is probable cause that he or she committed that crime and should be bound over to the grand jury to consider an indictment and be held in jail, or placed on bail pending grand jury action.

Evidence relating to the offense may be presented to the court if the defendant asks at the hearing, but sometimes a defendant may “waive” having a hearing (such as with the agreement that he or she will be released on bail pending action by the grand jury). And, if the grand jury indicts a defendant before the preliminary hearing, that establishes probable cause and no hearing is held. The defendant next appears for his or her arraignment in Circuit Court.

District Court does not have jurisdiction to decide felony cases. Even if District Court finds there is no probable cause a felony was committed, a grand jury may later indict a defendant for that same crime. But sometimes the prosecutor will reduce a felony charge to a lesser included misdemeanor and the case will then be handled in District Court. Depending on the facts, the double jeopardy protections may prevent any further prosecution of that crime. An example is in vehicular homicide cases where a defendant will quickly plead to a traffic offense and avoid a possible felony homicide prosecution.

Discovery & Motions to Exclude Evidence (Suppression)

Criminal cases include pretrial discovery, but it is much more limited than in civil cases. And federal criminal discovery is much more limited

than in Kentucky state prosecutions, where prosecutors will often permit “open file” discovery by defense counsel.

The attorneys also may file motions, which are requests for rulings by the court before the trial. For example, defense attorneys often file a motion to suppress evidence, which asks the court to exclude from the trial evidence that the defendant believes was obtained by the government in violation of the defendant’s constitutional rights.

Plea Bargain

The plea bargain is the equivalent of the settlement of a civil case. Most criminal cases result in a plea bargain in which the defendant pleads guilty to lesser charges or to a lesser sentence. Plea bargains are often reduced to writing and filed in the court record.

Trial

In a criminal trial, the burden of proof is on the government. Defendants do not have to prove their innocence. Instead, the government must provide evidence to convince the jury of the defendant’s guilt “beyond a reasonable doubt.” If a defendant is found not guilty by a jury, the defendant is released and the government may not appeal. Nor can the person be charged again with the same crime in a federal court. The Constitution prohibits “double jeopardy,” or being tried twice for the same offense.

In federal court, lawyers may define for the jury what “beyond a reasonable doubt” means. In state court this is prohibited.

In very rare cases, a judge will make a summary ruling that there is insufficient evidence to find a defendant guilty. In state court this is called a “directed verdict.” The judgment may not be appealed and is final, but the prosecutor may take up the issue on appeal to have the appeals court tell the Circuit Court it was wrong. In federal court this is called a “judgment of acquittal,” but the judgment is not final and the prosecutor may appeal the judgment. If the case wins on appeal, it is sent back to the trial court for a trial.

Guilty Verdict & Sentencing in Federal Court

www.ussc.gov

If the verdict is guilty in a federal criminal case, the judge determines the defendant’s sentence according to guidelines issued by the United States Sentencing Commission for the year the crime was committed. These guidelines are available at **www.ussc.gov**.

The probation office prepares a report for the court that applies the sentencing guidelines to the individual defendant and the crimes for which he or she has been found guilty. During sentencing, the court may consider not only the evidence produced at trial, but all relevant information that may be provided by the pretrial services officer, the U.S. attorney and the defense attorney. Even crimes of which the defendant was acquitted may be considered for sentencing. A sentence may include time in prison, fines of up to \$250,000 per felony to be paid to the government and restitution to be paid to crime victims.

Guilty Verdict & Sentencing in State Court

If the verdict is guilty in a Kentucky criminal case, then the court conducts a sentencing phase of the trial wherein the jury (or judge in a bench trial) may hear additional evidence and then recommend a sentence to the judge. Usually a final sentencing hearing is later set, giving time for the preparation of a pre-sentence report.

Because Kentucky does not have extensive guidelines as in federal court, a Kentucky judge has greater sentencing discretion than a federal judge. Within statutory limits, the judge imposes the final sentence and may lessen the sentence recommended by the jury after reviewing a pre-sentence report of the defendant's background prepared by the Department of Corrections.

Victims may submit a Victim Impact Statement to the probation officer to be included in the pre-sentence report. A sentence may include time in prison; fines up to \$10,000 or double the gain from the crime, to be paid to the government; and restitution to be paid to crime victims.

Information on crimes and sentencing options is available at www.lrc.state.ky.us (click on Legislative Resources, KY Revised Statutes, Title & Chapter). Primary criminal statutes are under Title L, the Penal Code, but many crimes and punishments are scattered throughout the Kentucky Revised Statutes.

Guilty Verdict & Sentencing in Capital Cases

In all cases where a defendant may receive the death penalty, a *jury* must make that decision and recommend that the death penalty be given.

Judicial Records

The Supreme Court of Kentucky has stated:

“We recognize that the government belongs to the people, that its activities are subject to public scrutiny, and that the news media is a primary source for protecting the right to public access. This right includes the public’s ‘right to inspect and copy public records and documents, including judicial records and documents.’”

Courier-Journal & Louisville Times Co. v. Peers,
Ky., 747 S.W.2nd 125, 128 (1988)

Civil Court Records

What civil court records are available for inspection by the public?

- The U.S. Supreme Court and Kentucky courts have held that all civil court records are presumed to be open for inspection by the public. The term “court record” generally refers to all documents filed with the court and maintained by the court in the court file.

- The entire court record is generally open for inspection. This usually includes all pleadings (such as complaint, answer, motions), court orders and discovery that have been filed with the court.

- Other documents filed with the court, such as findings of an arbitration panel, are also usually open for inspection by the public.
- Even though records of proceedings in Juvenile Court are generally closed to public access, a juvenile's medical, mental or psychological records *are* open to the public, but only when they are presented as evidence in a proceeding in Circuit Court.

Where can you find civil court records that are open to the public?

- Court records are generally found in the Office of Circuit Court Clerk for the county in which the case is pending.
- If a case is no longer active, the records will remain for a period of time in the circuit court clerk's office for the county in which the case was pending. After a case file has been removed from the clerk's office, you can request a copy of the case file from the state archives. This request can be made through the circuit court clerk's office.
- You can search records located in a circuit court clerk's office by using the public access computer in that office. Records may be searched either by using the party's name or the docket number. It is recommended that you search by the docket number, if you have access to that information, because simply using a party's name can pull up cases involving other people. The clerk's office should provide written directions on how to use the computer system.

What civil court records are closed to the public?

- Although civil court records are presumed to be open to the public for inspection, courts have limited authority to seal material that has been stricken from the record or to seal documents that are part of the record. To seal civil court records, a court must weigh the interests of the party seeking closure against the public's right of access to the information.

- Kentucky statutes also grant courts limited discretion to seal records involving child custody, child support and domestic violence. A court may seal such records if the court determines that disclosure of the information could be harmful to the custodial parent or to the child.

- You should be cautious of documents sealed in envelopes within a court file. Any time you encounter documents filed in a sealed envelope in a court file, you should proceed with the course of action outlined in the section on contesting the closure of civil court records. Do not open sealed records without a court order giving you permission to do so.

- Often parties to a lawsuit will agree to settle a lawsuit before it goes to trial. The parties will file a motion dismissing the case with the court, but will not file the settlement agreement with the court. The parties often incorporate into the settlement agreement a confidentiality clause that they will not disclose the terms of the settlement. Because this agreement is not filed with the court, and therefore is not a court record, such a clause is generally acceptable.

What can you do to contest the closure of civil court records?

- Should you want to contest closure of civil court records, consult with your editor and/or attorney. Your attorney should make a motion to intervene in the civil suit and to unseal the records and request a hearing. During this hearing, the court will balance the public's right of access against the rights of the party seeking closure of records. While balancing these interests, the court must consider whether there are compelling reasons to close the records or whether viable alternatives to closure exist.
- If the court denies the motion to intervene or refuses to grant a hearing, you may immediately bring an action in an appellate court by a writ of prohibition or mandamus.

Criminal Court Records

What criminal court records are open to the public?

- The U.S. Supreme Court and Kentucky courts have held that all criminal court records are presumptively open to the public for inspection.

Where can you find criminal court records that are open to the public?

- Criminal court records are generally found in the Office of Circuit Court Clerk. The circuit court clerks in Kentucky also serve as the clerks of District Court.
- You may search the records by using the public access computer terminal located in the clerk's office. Cases can be found by using any

combination of the following search criteria: defendant's name, defendant's last known address, defendant's Social Security number and case docket number.

- The computer terminals are generally located in the Office of Circuit Court Clerk. Each office should provide directions for using its computer system. There is also limited docket information available for pending cases by county at dockets.kycourts.net.

What criminal court records are closed to the public?

- Although criminal court records are presumptively open to the public, a court has the limited discretion to seal criminal court records if it determines the defendant's right to an impartial jury outweighs the public's right of access to the information.

What can you do to contest the closure of criminal court records?

- The same procedures outlined for the closure of civil court records apply to contesting the closure of criminal court records.

Juvenile Court Records

Are Juvenile Court records open to the public?

- As a general rule, Juvenile Court records are closed to the public. The exceptions to this general rule are outlined as follows:

- Kentucky statutes open a limited class of Juvenile Court records to the public for

inspection. The petition, order of adjudication and disposition of cases where a juvenile is adjudicated for committing the following offenses are open to the public for inspection:

1) An offense that would constitute a capital offense or a Class A, B or C felony if the child were an adult.

- Class A felony requires a jail sentence between 20 and 50 years.

- Class B felony requires a jail sentence between 10 and 20 years.

- Class C felony requires a jail sentence between five and 10 years.

2) An offense in which a deadly weapon was used or displayed.

Miscellaneous

- Keep in mind that the Kentucky Open Records Act *does not* govern judicial records. It governs only records maintained by state public agencies. It is the First Amendment and common law that require judicial records to be open to the public.

- The circuit court clerk is the keeper of the records of the courts. Good relations with the clerk and deputy clerks can help you learn how the records are kept and how to access them.

- Work on cases occurs at different times and places. Depending on case activity, a case file and the documents therein may be in the courtroom, the judge's office, the judge's secretary's office, the clerk's office, on a deputy clerk's desk or in the main filing area. Be patient in looking for this information.

Professional Conduct of Lawyers & Judges

It is important for the reporter to know the rules of conduct judges and lawyers must follow. Rules governing lawyer conduct can be found at:

www.kybar.org

(Click on Public Access, Legal Resources,
Supreme Court Rule 3, Index.)

The Kentucky Rules of Professional Conduct set minimum standards of conduct for lawyers and can be found in Supreme Court Rule (SCR) 3.130. The Kentucky rules were adopted in 1990 and are based on the American Bar Association Model Rules of Professional Conduct, though there are some variations. The prior rules were known as the Code of Professional Responsibility, and some lawyers and judges still use that terminology to refer to the current rules. Violation of the Rules of Professional Conduct may result in professional discipline, including permanent disbarment.

The Rules of Professional Conduct describe the multiple obligations of lawyers – as representatives of clients, officers of the court and public citizens with a special responsibility for the quality of justice. The rules cover a broad range of subjects, including fees, advertising, *pro bono* service and conflicts of interest, but those that reporters most likely will encounter relate to public statements about pending matters, client confidentiality, candor to the tribunal and fairness to third persons.

Public Statements

Because lawyers play such an important role in the legal process, they may be subject to restrictions on their public statements which could not be imposed on ordinary citizens. A lawyer is an advocate who also has a responsibility to preserve the right to a fair trial.

Thus, Kentucky Rule of Professional Conduct 3.6 prohibits lawyers from making extrajudicial statements likely to be disseminated to the public that will have a substantial likelihood of materially prejudicing a legal proceeding. Of particular concern are statements made in connection with civil cases where juries are involved, or any criminal matter or other proceeding that might result in incarceration.

Client Confidentiality

One of the fundamental principles of the attorney/client relationship is confidentiality. In order for the relationship to be fully developed, the client must be assured that he or she can be candid with the lawyer and that the lawyer will not disclose information acquired in the course of the representation.

The duty of confidentiality is reflected in Kentucky Rule of Professional Conduct 1.6, which provides that a lawyer shall not reveal "information relating to the representations of a client." This rule applies to all information, not just information obtained from the client. There are exceptions. The client can either give express consent or implied consent to the release of information. In addition, a lawyer may reveal certain confidential information

when necessary to prevent the client from committing a crime that may result in death or substantial bodily harm, or when the lawyer becomes involved in a dispute or charges involving the representation of the client and disclosure is necessary to establish a claim or defense.

There also may be situations in which a lawyer is *required* to disclose otherwise confidential information to avoid assisting in the commission of fraud or perjury. It should also be noted that, in addition to the ethical rules that protect client information, the evidentiary rule of attorney/client privilege generally protects against compelled testimony by the lawyer regarding communications between the lawyer and the client.

When Confidentiality May Take Second Place

While the rules recognize the importance of confidentiality in the attorney/client relationship, they also recognize there are circumstances where the lawyer's duty as an officer of the court may override his or her obligation to protect client confidences.

Rule of Professional Conduct 3.3 describes the lawyer's duty of "candor to the tribunal." The lawyer is prohibited from making false statements to the court, from misleading the court or from offering false evidence. In some cases, if false evidence has been offered (as where a client or witness has testified falsely) and the lawyer learns of the falsity before the conclusion of the proceeding, the lawyer must take "reasonable remedial measures."

In some cases, if the witness or the client refuses to correct the false evidence, the lawyer may be obligated to advise the court, even if in doing so the lawyer has to disclose otherwise protected information. On the other hand, this may conflict with the lawyer's duties to his client. This is one of the most difficult areas of legal ethics for lawyers.

Duty to Third Parties

Although the lawyer's primary obligation is to the client, he or she does have ethical responsibilities to third parties. For example, Rule 1.2 provides that a lawyer shall not counsel or assist a client in conduct that is criminal or fraudulent. Rule 3.4 requires the lawyer to treat others fairly in the trial process, and Rule 8.3 makes it professional misconduct for a lawyer to engage in conduct involving fraud, deceit or misrepresentation. This latter provision authorizes discipline for dishonest conduct unrelated to the practice of law.

Ethics Advice to Lawyers

The Kentucky Bar Association Ethics Hotline Committee answers inquiries from lawyers regarding their own contemplated conduct. Although a hotline opinion is only advisory, it will insulate the lawyer from discipline if he complies with the advice. The Ethics Committee also drafts formal ethics opinions on matters of general interest to the bar. The KBA Board of Governors must approve formal opinions before publication.

Admission and Discipline of Lawyers

The Supreme Court of Kentucky has the exclusive authority to set the standards for

admission to the bar. The basic requirements include graduation from an American Bar Association accredited school, possession of good moral character and general fitness, and passage of the Kentucky Bar Examination, including the Multistate Professional Responsibility Examination. The Supreme Court has delegated its responsibility for administration of the admissions process to the Kentucky Board of Bar Examiners.

The Supreme Court also has responsibility for establishing the rules of the profession and for disciplining lawyers who violate those rules. The Supreme Court has delegated much of the responsibility for discipline to the Kentucky Bar Association, which processes complaints alleging unethical conduct by lawyers. Although the procedures may vary from case to case, the typical case involves a complaint by an individual (often a former client), which is filed with the Kentucky Bar Association. Following an initial investigation, the matter is referred to the Inquiry Commission. The commission (or a three-person panel), comprised of both lawyers and nonlawyers, determines whether the complaint should be dismissed or a charge should be filed.

If the commission determines that probable cause exists, then a charge is prepared and served on the lawyer. If there are factual questions, then there is a full hearing before a trial commissioner, appointed by the Supreme Court, who makes findings and recommendations with regard to the charge and discipline, if any. If either party appeals the

recommendations of the trial commissioner, the matter is reviewed by the Kentucky Bar Association's Board of Governors, which, for this purpose, includes four nonlawyers. Ultimately, all discipline cases end up before the Supreme Court, which issues the final order. Discipline may range from private admonishment to permanent disbarment.

Rules Governing Judicial Conduct

The Kentucky Rules of Judicial Conduct set minimum standards of professional conduct for judges. The rules can be found in SCR 4.300 and are based on the 1972 American Bar Association model. The code contains five "canons," followed by rules and commentary. The judicial rules focus primarily on judicial independence, impartiality, conflicts of interest, and judicial elections and political activities. Because the public confidence is critical to the maintenance of a strong judiciary, the rules govern not only judicial activities but also extrajudicial activities as well.

Judges are obligated to avoid improper conduct and the "appearance of impropriety." Like the rules applicable to lawyers, the Code of Judicial Conduct prohibits a judge from making public comments on pending or impending matters that might affect the fairness of a trial. This rule *does not* prohibit a judge from making public statements in his or her official capacity or from making statements that would assist the public in understanding the procedures of the court. Judges who violate the judicial code may be sanctioned under the procedures set out in SCR 4.000–4.290. Possible sanctions include private

reprimand, censure, suspension, retirement or removal.

Commissions & Committees Governing Judicial Conduct, Process

Judicial Conduct Commission

The Judicial Conduct Commission (JCC) is the only entity under the Kentucky Constitution authorized to take disciplinary action against a sitting Kentucky judge. This commission, composed of appellate, circuit and district judges, lawyers and nonlawyer citizens of the Commonwealth, investigates and reviews complaints against judges and, where warranted, conducts hearings regarding the alleged misconduct where evidence is presented. Possible sanctions for misconduct range from private, confidential reprimands for minor technical violations to removal from office for major misconduct. The decisions of the JCC are reviewed directly by the Kentucky Supreme Court.

Judicial Nominating Commission

The Judicial Nominating Commission is responsible for coordinating the replacement of judges who leave the bench due to resignation, retirement or death. The process to appoint a replacement judge between election cycles is as follows:

The executive secretary of the Judicial Nominating Commission sends a notice of vacancy to all attorneys in the judicial circuit or the judicial district affected. Attorneys can recommend someone or nominate themselves.

Once that occurs, the individuals interested in the position return a questionnaire to the Office of Chief Justice. The chief justice then meets with the Judicial Nominating Commission to choose three nominees. The credentials of these three nominees are sent to the governor for review. The names of the applicants are not released. However, once the Judicial Nominating Commission has determined the names of the three finalists to be sent to the governor for selection, these names are made available to the public and the media. When the governor appoints the replacement, the governor's office makes that announcement.

Judicial Ethics Committee

The Judicial Ethics Committee consists of three judges and two attorneys. The Kentucky Bar Association Board of Governors appoints the attorneys. The judges represent District Court, Circuit Court and the Court of Appeals, and are either appointed or elected. The committee serves in an advisory capacity by giving judges and judicial candidates guidance on prospective conduct.

The committee responds to inquiries regarding a variety of matters, including permissible campaign conduct, when disqualification from a case is necessary, and other possible conflicts of interest in financial and personal matters. The committee issues formal opinions only for matters of statewide importance. Recent published opinions can be found at www.kycourts.net (click on Administrative Office of the Courts, State Law Library, Judicial Ethics Opinions), while opinions going back to 1978 are housed in the Capitol.

Senior Status Program for Special Judges

The Senior Status Program for Special Judges resulted from legislation adopted by the 2000 General Assembly. Senior status judges are often appointed to handle a single case or multiple cases when a sitting judge is unable to preside for a variety of reasons such as illness, vacation or a conflict of interest. Senior judges may also be assigned by the chief justice to assist in clearing caseloads in areas that experience heavy court activity. The assignment is temporary but can extend for several weeks or months depending upon the circumstances.

Judges whose age and years of service equals or exceeds 75 may elect senior status upon retirement, which means they are open to accepting these temporary, short-term assignments. The Senior Status Program for Special Judges allows experienced judges to continue contributing to Kentucky's court system. These judges are often available on short notice to travel wherever needed throughout the Commonwealth.

Judges serving in the Senior Status Program for Special Judges must agree to serve 120 days a year for five years. Senior status judges do not receive a salary, only an enhanced retirement benefit.

Guide to the Kentucky Court of Justice

www.kycourts.net

The Administrative Office of the Courts (AOC) supports the activities of more than 3,300 Kentucky Court of Justice personnel, including the elected offices of justices, judges and circuit court clerks. Nearly 200 of the employees work at the Central Office in Frankfort with the remaining employees working at offices throughout the state.

The AOC director works closely with the chief justice to ensure the Court of Justice fulfills its statutory duties as stated in the Kentucky Constitution:

- Act as fiscal agent of the Court of Justice.
- Provide citizens with safe, efficient, cost-effective judicial facilities.
- Maintain data processing systems.
- Disperse and maintain supplies and equipment for the court system.
- Administer personnel policies and payroll.
- Oversee pretrial and juvenile services programs.
- Provide continuing education programs for judges, circuit court clerks and support staff.
- Prepare and print stationery, manuals, forms and other materials.
- Supervise the State Law Library.
- Handle media requests and public information for the courts.

Reporter's Tips for Writing Court-Related Stories

Trial Courts

Covering a trial can be daunting. Here are some tips to make the task easier:

- Theoretically, reporters should be able to review most of a defendant's criminal case file and any motions by going to the Office of Circuit Court Clerk. However, legal briefs on motions sometimes do not make their way into a criminal file, so reporters may have to seek out copies directly from a judge's chambers or by contacting the prosecutor or defense lawyer. Arguments on motions are conducted in open court.
- Work in the courthouse whenever possible. Time spent in the courthouse will help you cultivate sources who can send important tips and information your way. Because there are few schedules of courthouse hearings, a helpful staffer can be your best ally in covering the courts.
- If your newsroom does not subscribe to a database service, you may want to consider it to help cover criminal cases. Voluminous information is available in seconds, including addresses, past addresses, neighbors and former neighbors, and unlisted phone numbers of the people you are researching. This kind of quick access is especially helpful in the hours and days following big news events such as homicides.

- It may help to know as much as possible about a lawyer before seeking an interview. Newspaper archives are helpful, as are online resources such as **www.martindale.com**.

- Remember that attorneys are advocates. In discussing a client's case, they have their client's best interests in mind. Don't be afraid to ask them to explain unfamiliar procedures or points of law as they walk you through a case. Do not make the dangerous mistake of assuming or guessing.

- Lawyers who shy away from the media should be reminded that their "no comment" could result in one-sided coverage that would not serve their clients well in the court of public opinion.

- Lawyers often ignore some details that are important to journalists. Their written briefs usually do not include ages or hometowns, specific locations of accidents or relevant information on what has occurred since the incident at issue or since the lawsuit was filed. Remember to ask.

- During pretrial activities, one side or the other □□□—or the court on its own motion—may get the idea that a case would be easier to conduct without the news media present. Know your rights and protest if a judge tries to close the courtroom. Ask for time to inform your supervisor and seek legal counsel.

- Get copies of everything in the case record and read it before the trial begins.

- Before the trial begins, introduce yourself to the judge and the attorneys for both sides. This will make it easier to approach them later if you have questions.

- Jury selection – the legal term is *voir dire* – is open to the public. Attend if time permits. It can provide insight into the attorneys' trial strategies.

Alert: A criminal defendant has a constitutional right to a fair and impartial jury. This is so fundamental that a trial, at additional expense and inconvenience, may be moved to another county from that where the case began. Be aware that this can happen where there has been extensive, current news reporting on a case of significance to the community.

- Some judges will permit reporters to attend motion hearings in their chambers during a trial. Ask the judge if you may attend. Important motions entered during such hearings may influence a trial's outcome.

- In criminal cases, all jurors must agree to reach a verdict. But the rules are different for civil cases. In Circuit Court civil cases, three-fourths of the jurors (nine of 12) must agree to return a verdict. In District Court civil cases, five-sixths of the jurors (five of six) must agree to return a verdict.

- When writing court-related stories, avoid legal jargon. Use plain language. Readers are not attorneys. If you do not understand a legal term or procedure, ask an attorney to explain it

in plain language by walking you through it. Do not assume or guess what something means. Ask!

- While a defendant typically pleads “not guilty” to a charge, the style for most news outlets has been to use “innocent,” avoiding an easily made mistake of dropping the word “not” before “guilty.” The Associated Press Stylebook, a guide followed by most newspapers, changes this recommendation in its 2004 edition to say: “When possible, say a defendant was acquitted of criminal charges. Otherwise, not guilty is preferable to innocent, because it is more precise legally. (However, special care must be taken to prevent omission of the word not.)” Reporters are advised to consult with their editors to determine their organization’s preference.

- When writing a crime story, with an arrest, you need to know the following: What happened (details of the crime)? Was someone arrested? Who was arrested (name, age, hometown)? Does apprehended or “taken into custody” mean arrested? When will charges be filed and where? Has an initial appearance before a judge been held? If so, where? Is the person being held? Where and on what charges? Be clear on whether someone has been charged. If a person has been arrested on the basis of a warrant that charges them with a crime, say so in your story.

- If writing a crime story where a formal charge has been issued, the same basics apply: Who was arrested? What are they accused of doing?

What is the formal charge? In which court was the charge filed? What are the possible penalties for conviction? When is the next court appearance? What happens then? Where is the defendant being held? Or has he or she been released on bail or personal recognizance? Has the defendant entered a plea? Who is your source? Be sure you quote someone who is in a position to know. Quote your source by name and title.

- If police say someone confessed, ask them to elaborate. Carefully weigh the value of reporting an alleged confession because the odds are good the defense attorney will ask to have it thrown out.

- Make every effort to contact a defendant for comment, even if he or she is in jail. If not successful, note in the story what efforts were made.

- Make the story interesting by quoting the police, the attorneys involved, prosecutors, neighbors and crime scene witnesses. Use police reports, court papers and affidavits filed in court to provide important details and color.

- Identify the police agencies investigating a crime. Be specific as to which agencies are involved. Don't just say "police."

- Make a distinction between the person who committed the crime and the arrested person who is presumed innocent until proven guilty.

- Use of the word "allegedly" provides little real protection from libel. "Accused" is a better

word. **BAD:** The former professional wrestler, who allegedly strangled his wife and three neighbors, was charged Thursday with four counts of murder. **BETTER:** The former professional wrestler, accused of strangling his wife and three neighbors, was charged Thursday with four counts of murder.

- Avoid using terms such as “accused killer” or “alleged killer.” Instead, use a neutral term such as “arrested man” or “defendant.” Terms such as “suspect” or “person of interest” should be avoided.
- Avoid use of racial descriptions unless relevant to the story.
- Remember that lawyers (and sometimes judges) want to “use” the media to win public attention to some aspect of a case. Be aware of when such information may require checking with other sources before publication.

Appellate Courts

A good story is worth repeating – the appeal of a trial court decision is another opportunity for reportage. Although an appeal is technically a review of claims of mistakes made by the trial court, lawyers may argue their entire case to persuade the appeals court of the justice of their case.

- The “appellant” is the loser before the trial court, usually on the entire case but occasionally on just one issue. The appellant wants the trial court’s adverse ruling overturned or changed by the appeals court, usually on claims that the

trial judge made a mistake that incorrectly led to the “bad” ruling or judgment. The “appellee” is usually the winner before the trial court. The appellee will usually argue that the trial judge did not make a mistake at trial or, if one did occur, it did not contribute to the final ruling or judgment.

- Appeals proceed on written briefs filed by the parties arguing their positions. Sometimes the lawyers will give brief oral arguments to the appeals court. Thereafter an opinion is issued. This may offer a follow-up story.

- **The Court Record:** With the appeal, the record is collected and transmitted to the appellate court. This record includes all documents filed in the case; the videotape or written transcript of all the proceedings; a videotape log, if video is used; and sometimes the exhibits. This means the record may be at the Court of Appeals office in Frankfort. The Court of Appeals is located at 360 Democrat Dr., just off of I-64 at Exit 58 and can be reached at 502-573-7920. The Supreme Court is located on the second floor of the Capitol and can be reached at 502-564-5444. The record may also be in the office of the judge assigned to write the opinion on the case. A call to the court can help you locate the record.

- The videotape record, though not of broadcast quality, is often sufficient for insertion in a story, either video or audio, or videocapture for photo-like shots of the trial. The videotape log can help locate testimony and witnesses of interest on the videotape. The courts are moving to CD digital recording of trials.

- **The Briefs:** The opposing attorneys set out in their briefs three useful sections about the case. The first is a **brief procedural summary** that is useful for quickly learning the status of the case.

The second is a **statement of the case** that relates the facts of the trial, at least from the perspective of that attorney. The opposing attorney may file a competing statement of the facts of the case or adopt the statement of the other side. Either way, the statement of the case is useful to gain a sense of the details of trial testimony without having to read or watch transcripts or videos. There should also be specific page or videotape references for fact statements, so you can more easily find where particular facts were testified to at trial and verify that the evidence is as the attorney claims it is.

The third section is the **argument of the lawyers**, for and against. It is in this section that the most colorful statements about the case are made and the lawyers spin their sides of the story. The arguments will include statements of facts and where those facts are found in the case record. Some of those facts may not be in the statement of the case. In any event, the arguments set up a dramatic conflict between the parties on the case itself.

- **Oral Argument:** Sometimes the lawyers are called to orally argue the appeal and answer questions. They are given 15 minutes each to make their case. The appellant goes first, the appellee then responds and the appellant may then give a brief closing response. The oral

arguments may offer additional insight into how the lawyers and the judges feel about the case. The oral arguments are recorded on videotape.

- **The Opinion:** The appeals court will render a decision on the appeal. This opinion will contain the appeals court's statement of the facts of the case as it sees them, and the legal conclusions regarding any claims made that the case should be reversed or otherwise corrected. This, again, offers another telling of the story as well as the verdict of the appeals court on the appeal. Supreme Court and Court of Appeals opinions are available at rendition time on www.kycourts.net (click on Supreme Court or Court of Appeals, Searchable Opinions).

- The majority of the time, the appeals court does not change the ruling of the trial court, but affirms the trial court's ruling or judgment. Even if a trial mistake is shown, if the appeals court feels it did not affect the final outcome, the case is affirmed.

- In those cases where a trial mistake is proven and it is shown to have badly affected the court's ruling or judgment, the case is "reversed" and then sent back to the trial court for a new trial or other court proceedings, in accordance with the appeals court ruling. Only in *exceptionally rare cases* does the appeals court act to, in effect, directly rule on a matter in place of the trial court.

- Appeal opinions may be “published” and “unpublished.” A published opinion is distributed in the official law reports and becomes part of the common law or interpretive law of Kentucky. An unpublished opinion only determines the matter in that particular case and is not distributed in the official law reports.
- As a “published” opinion actually becomes the law of the land, published opinions have a special significance and can, in their own right, be grounds for reporting that improves public understanding of the laws of the Commonwealth.

Other Resources for Court Information

Kentucky Court of Justice Resources
www.kycourts.net

There are several ways the Administrative Office of the Courts, the administrative operation of the Judicial Branch, can assist journalists and media outlets:

Liaison to the Court of Justice

The AOC Office of Public Information is available to assist media outlets by serving as a liaison to the Kentucky Court of Justice.

Media Access to Court of Justice Data

The media has widespread access to Kentucky court records through several avenues.

- **Customized Reports:** Reporters can request customized reports on aggregate data from the AOC's Research & Statistics Department at no charge. To request a report, you can e-mail the parameters of the report to lhiatt@kycourts.net or fax it to the attention of the public information officer at 502-573-0177. Include your name, the name of the media outlet you represent, the purpose for the data being requested and your deadline. Depending on the complexity of the report and the volume of work being handled by the Research Department at the time of your request, the turnaround time may take from a few days up to two weeks.

The AOC asks all reporters requesting a report to provide the exact Uniform Offense Reporting (UOR) Codes they want the report to include. The Kentucky Uniform Offense Reporting Codes are listed on the AOC Web site at www.kycourts.net (click on Administrative Office of the Courts, Research and Statistics, UOR Code List).

- **Background Checks:** Reporters can request copies of online court records, such as background checks, through a phone call, fax or e-mail to the Records Department at the Administrative Office of the Courts. Information is generally turned around in 30 minutes to an hour and sent back to the reporter by fax. The cost is \$15 per record and the fee is paid through an account set up for the media outlet. This service is available Monday through Friday from 7 a.m. to 11 p.m. To order a record, contact:

AOC Records Department

502-573-1682 or 800-928-6381

Fax 502-573-1669

pretrialcustomerservice@mail.aoc.state.ky.us

Please note that the data obtained from CourtNet, the AOC's online database, is not an official public record. Prior to use, media outlets should verify the online records against the original paper copy kept in the circuit court clerk's office. Due to the chance of human error each time the information is transferred from paper copy and keyed into CourtNet, the paper copy kept by the circuit court clerk is considered the definitive record.

- **Official Court Records:** Reporters can request copies of paper records from the circuit court clerk at each county courthouse. There is a 25-cent charge per page to cover the staff time spent retrieving court records and the cost of copying.
- Reporters can also obtain a variety of information from the Court of Justice Web site at www.kycourts.net. Anyone can access all state court dockets at www.kycourts.net (click on Online Services, Court Dockets).
- It is also possible to search for opinions released by the Supreme Court of Kentucky at www.kycourts.net (click on Supreme Court, Searchable Opinions), and search for Supreme Court case information at www.kycourts.net (click on Supreme Court, Case Information).

Unified Court Database System

Kentucky has a unified court database system, which means that court statistics from all 120 counties are centrally accessible through a database housed at the Administrative Office of the Courts in Frankfort. Only a few states operate under this type of sophisticated system. The other states continue to house their court records in individual counties.

Open Records Law

Court records are under the control of the Supreme Court of Kentucky and as such are not subject to the Open Records Law. However, the Administrative Office of the Courts does release limited information when appropriate.

Interpretation of Rules of Practice

The courts operate under the Rules of Criminal and Civil Procedure, Supreme Court Rules and Administrative Procedure. The Administrative Office of the Courts provides support for the Court of Justice. In that capacity, the AOC does not attempt to interpret the rules of practice for outside entities.

Federal Courts Web Sites

Administrative Office of the U.S. Courts
www.uscourts.gov

The Administrative Office of the U.S. Courts maintains this site and serves as a clearinghouse for information related to the Judicial Branch of the federal government.

U.S. Supreme Court

www.supremecourtus.gov

From past decisions to the argument calendar, this site includes all things related to the nation's highest court.

U.S. Sixth Circuit Court of Appeals

www.ca6.uscourts.gov

This site reviews appeals from U.S. District Court in Kentucky, Michigan, Ohio and Tennessee, and from the U.S. Tax Court and certain federal administrative agencies where the nongovernmental parties are from the states that comprise the Sixth Circuit. Some parts of the site are not free and require a login and password; see the Web site for additional information about the PACER system. A searchable database of Sixth Circuit opinions also can be found at **www.findlaw.com** (click on US Law: Cases and Codes, 6th).

Federal Judicial Center

www.fjc.gov

The Federal Judicial Center is the education and research agency for the federal courts. Congress created it in 1967 to promote improvements in judicial administration in U.S. courts. The site contains the results of Federal Judicial Center research on federal court operations and procedures as well as court history.

U.S. District Court for Eastern Kentucky

www.kyed.uscourts.gov

U.S. District Court for Western Kentucky

www.kywd.uscourts.gov

These sites include hearing schedules, information about judges, contact information

for clerks and other information related to the courts in the specific districts. Additional case information can be accessed for a fee through the PACER service. For more information, call the PACER Service Center at 800-676-6856.

U.S. Bankruptcy Court for the Eastern District of Kentucky
www.kyeb.uscourts.gov

U.S. Bankruptcy Court for the Western District of Kentucky
www.kywb.uscourts.gov

These sites offer information and opinions related to bankruptcy cases filed in Kentucky.

State Courts Web Sites

Kentucky Supreme Court
www.kycourts.net (click on Supreme Court)

Kentucky Court of Appeals
www.kycourts.net (click on Court of Appeals)

Kentucky Administrative Office of the Courts
www.kycourts.net (click on Administrative Office of the Courts)

Kentucky Court of Justice
www.kycourts.net
This is a thorough guide to Kentucky courts, sponsored by the Administrative Office of the Courts.

Kentucky Revised Statutes

www.lrc.state.ky.us (click on Legislative Resources, KY Revised Statutes). This site includes enactments through the 2002 regular session.

National Center for State Courts

www.ncsc.dni.us

The National Center for State Courts provides information and assistance that helps the legal profession better serve the public. Through research, consulting services, publications and educational programs, NCSC offers technology solutions, collects and interprets data on court operations nationwide, and provides information on best practices.

Other Useful Web Sites

Kentucky Bar Association

www.kybar.org

Louisville Bar Association

www.loubar.org

Kentucky Department of Corrections Offender Search Submission Form

www.corrections.ky.gov (click on KOOL Inmate Search). This is a searchable database of state inmates in the Kentucky prison system.

University of Kentucky College of Law

www.uky.edu (click on Academic Programs, Law)

**University of Louisville Louis D. Brandeis
School of Law**
www.louisville.edu/brandeislaw/

**Northern Kentucky University Salmon P.
Chase College of Law**
www.nku.edu/~chase

American Civil Liberties Union of Kentucky
www.aclu-ky.org
A nonprofit membership organization
dedicated to preserving individual freedoms.

The Louisville Law Newswire
www.louisvillelaw.com/lawwire
Law-related online news items with links to
Kentucky cases, courts and attorney headlines.

**The Reporters Committee for Freedom
of the Press**
www.rcfp.org
A nonprofit organization dedicated to
providing free legal assistance to journalists
since 1970.

Power Reporting: Resources for Journalists
<http://powerreporting.com>
A journalist-run Web site that offers numerous
links on various reporting subjects, including
crime and law.

Martindale-Hubbell
www.martindale.com
Provides information on attorneys nationwide.

Contacts

Federal Telephone Numbers

U.S. District Court Clerk's Office, Eastern

District:

Ashland:	606-329-8652, fax 606-329-2012
Covington:	859-392-7925, fax 859-392-7929
Frankfort:	502-223-5225, fax 502-223-3436
Lexington:	859-233-2503, fax 859-233-2803
London:	606-877-7910, fax 606-877-7915
Pikeville:	606-437-6160, fax 606-432-5964

U.S. District Court Clerk's Office, Western

District:

Bowling Green:	270-393-2500, fax 270-393-2519
Louisville:	502-625-3500, fax 502-625-3880
Owensboro:	270-689-4400, fax 270-689-4419
Paducah:	270-415-6400, fax 270-415-6419

State Telephone Numbers

Kentucky Supreme Court Clerk:

502-564-5444, fax 502-564-5491

Kentucky Court of Appeals Clerk:

502-573-7920, fax 502-573-1590

Circuit Court Clerk Offices by County

Adair:	270-384-2626, fax 270-384-4299
Allen:	270-237-3561, fax 270-237-9120
Anderson:	502-839-3508, fax 502-839-4995
Ballard:	270-335-5123, fax 270-335-3849
Barren:	270-651-2561, fax 270-651-6203
Bath:	606-674-2186, fax 606-674-3996
Bell:	606-337-2942, fax 606-337-8850
Boone:	859-334-3906, fax 859-334-3650
Bourbon:	859-987-2624, fax 859-987-6049
Boyd:	606-739-4131, fax 606-739-5793
Boyle:	859-239-7442, fax 859-239-7000
Bracken:	606-735-3328, fax 606-735-3900
Breathitt:	606-666-5768, fax 606-666-4893

Breckinridge: 270-756-2239, fax 270-756-1129
Bullitt: 502-543-7104, fax 502-543-7158
Butler: 270-526-5631, fax 270-526-6763
Caldwell: 270-365-6884, fax 270-365-9171
Calloway: 270-753-2714, fax 270-759-9822
Campbell: 859-292-6314, fax 859-292-6593
Carlisle: 270-628-5425, fax 270-628-5456
Carroll: 502-732-4305, fax 502-732-8138
Carter: 606-474-5191, fax 606-474-8826
Casey: 606-787-6510, fax 606-787-2497
Christian: 270-889-6539, fax 270-889-6029
Clark: 859-737-7264, fax 859-737-7005
Clay: 606-598-3663, fax 606-598-4047
Clinton: 606-387-6424, fax 606-387-8154
Crittenden: 270-965-4200, fax 270-965-4572
Cumberland: 270-864-2611, fax 270-864-1227
Daviss: 270-687-7327, fax 270-687-7062
Edmonson: 270-597-2584, fax 270-597-2884
Elliott: 606-738-5238, fax 606-738-6962
Estill: 606-723-3970, fax 606-723-1158
Fayette: 859-246-2141, fax 859-246-2530
Fleming: 606-845-7011, fax 606-849-2400
Floyd: 606-886-9902, fax 606-886-9075
Franklin: 502-564-8380, fax 502-564-8188
Fulton: 270-236-3944, fax 270-236-3729
Gallatin: 859-567-5241, fax 859-567-7420
Garrard: 859-792-2961, fax 859-792-6414
Grant: 859-824-4467, fax 859-824-0183
Graves: 270-247-1733, fax 270-247-7358
Grayson: 270-259-3040, fax 270-259-9866
Green: 270-932-5631, fax 270-932-6468
Greenup: 606-473-9869, fax 606-473-7388
Hancock: 270-927-8144, fax 270-927-8629
Hardin: 270-766-5000, fax 270-769-6505
Harlan: 606-573-7114, fax 606-573-5895
Harrison: 859-234-1914, fax 859-234-6787
Hart: 270-524-5181, fax 270-524-7202
Henderson: 270-826-2405, fax 270-831-2710
Henry: 502-845-2868, fax 502-845-6738
Hickman: 270-653-3901, fax 270-653-3989
Hopkins: 270-824-7501, fax 270-824-7032
Jackson: 606-287-7783, fax 606-287-3277

Jefferson: 502-595-3055, fax 502-595-4629
Jessamine: 859-885-4531, fax 859-887-0425
Johnson: 606-789-5181, fax 606-789-4192
Kenton: 859-292-6523, fax 859-292-6611
Knott: 606-785-5021, fax 606-785-3994
Knox: 606-546-3075, fax 606-546-7949
Larue: 270-358-3421, fax 270-358-3731
Laurel: 606-864-2863, fax 606-864-8264
Lawrence: 606-638-4215, fax 606-638-0264
Lee: 606-464-8400, fax 606-464-0144
Leslie: 606-672-2503, fax 606-672-5128
Letcher: 606-633-7559, fax 606-633-5864
Lewis: 606-796-3053, fax 606-796-3030
Lincoln: 606-365-2535, fax 606 365-3389
Livingston: 270-928-2172, fax 270-928-2976
Logan: 270-726-3108, fax 270-726-7893
Lyon: 270-388-7231, fax 270-388-9135
Madison: 859-624-4793, fax 859-625-0598
Magoffin: 606-349-2215, fax 606-349-2209
Marion: 270-692-2681, fax 270-692-3097
Marshall: 270-527-1721, fax 270-527-5865
Martin: 606-298-3508, fax 606-298-4202
Mason: 606-564-4340, fax 606-564-0932
McCracken: 270-575-7383, fax 270-575-7029
McCreary: 606-376-5041, fax 606-376-8844
McLean: 270-273-3966, fax 270-273-5918
Meade: 270-422-4961, fax 270-422-2147
Menifee: 606-768-2461, fax 606-768-2462
Mercer: 859-734-6306, fax 859-734-9159
Metcalf: 270-432-3663, fax 270-432-4437
Monroe: 270-487-5480, fax 270-487-0068
Montgomery: 859-498-5966, fax 859-498-9341
Morgan: 606-743-3763, fax 606-743-2633
Muhlenberg: 270-338-4850, fax 270-338-0177
Nelson: 502-348-3648, fax 502-331-9341
Nicholas: 859-289-2336, fax 859-289-6141
Ohio: 270-298-3671, fax 270-298-9565
Oldham: 502-222-9837, fax 502-222-3047
Owen: 502-484-2232, fax 502-484-0625
Owsley: 606-593-6226, fax 606-593-6343
Pendleton: 859-654-3347, fax 859-654-3405
Perry: 606-435-6000, fax 606-435-6143

Pike:	606-433-7557, fax 606-433-7044
Powell:	606-663-4141, fax 606-663-2710
Pulaski:	606-677-4029, fax 606-677-4002
Robertson:	606-724-5993, fax 606-724-5721
Rockcastle:	606-256-2581, fax 606-256-4569
Rowan:	606-784-4574, fax 606-784-1899
Russell:	270-343-2185, fax 270-343-5808
Scott:	502-863-0474, fax 502-863-9089
Shelby:	502-633-1287, fax 502-633-0146
Simpson:	270-586-4241, fax 270-586-0265
Spencer:	502-477-3220, fax 502-477-9368
Taylor:	270-465-6686, fax 270-789-4356
Todd:	270-265-2343, fax 270-265-2122
Trigg:	270-522-6270, fax 270-522-5828
Trimble:	502-255-3213, fax 502-255-4953
Union:	270-389-2264, fax 270-389-9887
Warren:	270-746-7400, fax 270-746-7501
Washington:	859-336-3761, fax 859 336-9824
Wayne:	606-348-5841, fax 606-348-4225
Webster:	270-639-9160, fax 270-639-6757
Whitley:	606-549-2973, fax 606-549-3393
Wolfe:	606-668-3736, fax 606-668-3198
Woodford:	859-873-3711, fax 859-879-8531

Glossary

A

Accessory. One who aids or contributes in a secondary way.

Acquittal. The legal and formal judgment that a person charged with a crime is not guilty.

Adjudication. The judgment reached in a judicial procedure.

Affidavit. A written statement made under oath before a notary public or other authorized official.

Affirm. The ruling of an appellate court that the judgment of a lower court is proper and should not be overturned.

Amicus (Curiae). Means, literally, friend of the court. A person with strong interest in or views on the subject matter of an action may petition an appeals court for permission to file a brief as an *Amicus Curiae*. Such briefs are commonly filed in appeals concerning matters of a broad public interest, such as civil rights cases.

Answer. The defendant's formal response to allegations in a civil case.

Appeal. Resort to a superior court (appellate) court to review the decision of an inferior (trial) court or administrative agency.

Appellant. The party appealing a lower court decision or judgment to a higher court.

Appellee. The party against whom an appeal is filed.

Arbitration. Dispute resolution by an impartial (third) person chosen by the parties to the dispute who agree in advance to abide by the arbitrator's award issued after a hearing at which both parties have an opportunity to be heard. Intended to avoid the formalities, the delay and the expense of ordinary litigation.

Arraignment. The court appearance of a person accused of a crime to hear the charges against him or her and to enter a plea of guilty or not guilty.

B

Bail. Security, usually in the form of money or property, is posted for the release of a jailed person to ensure his or her appearance in court.

Bailiff. An officer who maintains courtroom order and jury custody.

Bar Association. A collective body of attorneys qualified to practice law in a particular jurisdiction, such as the American Bar Association and Kentucky Bar Association.

Brief. A written or printed document filed in court and prepared by counsel, usually setting forth both facts and law in support of a case.

C

Capital Case. A criminal case in which the death sentence may be imposed.

Chief Judge. The administrative head of a particular division of state court, such as the Court of Appeals, Circuit Court or District Court, who is responsible for the management of individual courts. The Court of Appeals has one chief judge elected by members of the court. Chief judges of the Circuit Court or District Court serve circuits or districts in which there is more than one judge. These chief judges are either appointed by the chief justice or elected by fellow members of their respective courts.

Civil Suit. A personal legal action relating to and affecting only private rights. May require payment of damages, restoration of property or civil rights, or redress of some wrong.

Class Action Suit. A suit involving a group of persons, things, qualities or activities, having common characteristics or attributes.

Closing Argument. A summary of evidence presented to the jury by the attorneys in a trial.

Codicil. A supplement or addition to a will.

Commute a Sentence. The judge's ability to reduce the recommended sentence of a jury.

Compensatory Damages. Compensatory damages are damages that will compensate the

injured party for the injury sustained and nothing more.

Complaint. Statement of allegations that initiates a civil case.

Concurrent Sentences. Sentences that are served at the same time.

Consecutive Sentences. Sentences that follow one another.

Contempt of Court. Disregard or disobedience for the authority of a court of law.

Continuance. The adjournment or postponement of a hearing, trial or other proceeding to a subsequent time.

Conviction. The finding that a person is guilty of a crime beyond a reasonable doubt.

Counterclaim. A claim filed by a defendant against a plaintiff in a civil action.

Criminal Case. Criminal court proceedings differ from civil court proceedings in that the prosecution of crimes is always a government action rather than that of private parties. It is a legal action to enforce laws enacted ostensibly for public protection, the violation of which may be punished by the deprivation of life or liberty in addition to monetary fines.

Cross Examination. Questioning of a witness by opposing counsel.

D

Damages. Compensation that may be recovered in court by any person who has suffered loss. Damages may be compensatory or punitive according to whether they are awarded as the measure of actual loss suffered or as punishment for outrageous conduct and to deter future transgressions. Nominal damages are

awarded for the vindication of a right where no real loss or injury can be proved.

Declaratory Judgment. A binding adjudication of the rights and status of litigants.

Default Judgment. Judgment against a party who fails to plead or to take certain other required steps within the time allowed, or fails to appear at the trial.

Defendant. The person against whom a civil lawsuit is started or a crime is charged.

Deliberations. Jury discussions and consideration of the facts presented prior to reaching a verdict.

De Novo. Literally, “of new.” Usually used to describe a new trial or new review of an issue on appeal.

Deposition. Testimony taken under oath and outside the courtroom.

Direct Examination. Questioning of a witness by counsel who introduced the witness.

Double Jeopardy. Second prosecution after a first trial for the same crime.

Due Process. Constitutional provision guaranteeing fair and impartial treatment by the government.

E

Eminent domain. The government power to take private property for public use.

Ex Post Facto. Literally, “after the fact.” The Constitution prohibits the enactment of *ex post facto* laws – laws that permit conviction and punishment for an act performed before the law was passed.

Extradition. The surrender by one state or country to another of an individual accused or convicted of an offense.

F

Felony. A crime of a graver nature than a misdemeanor that is punishable by death or imprisonment exceeding one year.

G

Gag Order. Order by the court, in a trial with a great deal of notoriety, directed to attorneys and witnesses, not to discuss the case with reporters, such order being felt necessary to assure the defendant of a fair trial. Term may also refer to orders of the court directed to reporters not to report court proceedings or certain aspects thereof. Such latter type orders have been struck down by the Supreme Court as being an unconstitutional obstruction of freedom of the press.

H

Habeas Corpus. A writ (order) to bring a person before the court. In most common usage, the writ is directed to wardens or jailers, commanding them to produce the body of the prisoner or person detained so that the court may determine whether such person is lawfully confined.

Hearsay. Evidence based on out-of-court statements of others rather than the knowledge of a witness. Hearsay is generally inadmissible, but there are many exceptions.

Hung Jury. A jury so irreconcilably divided in opinion that they cannot agree upon any verdict.

I

In Camera. In chambers; in private. A case is said to be heard *in camera* either when the hearing is held before the judge in his private chambers or when all spectators are excluded from the courtroom.

Indictment. An accusation in writing found and presented by a grand jury, charging the person therein with a crime.

Injunction. Court order prohibiting or forcing specific action.

J

Jury. People selected as prescribed by law to render a decision or verdict in a trial.

L

Liable. Responsible for a legal wrong. Civil verdicts generally contain a finding of liability or no liability.

Libel. A knowingly false and unprivileged written communication that defames a third person.

Litigant. Any person or group engaged in a lawsuit.

Litigation. A legal contest in court.

M

Malfeasance. Evil doing; ill conduct. Malfeasance is a wrongful act which a person has no legal right to do.

Miranda Rule. The 1966 Supreme Court decision in Miranda v. Arizona requires that, prior to any custodial interrogation (that is,

questioning initiated by law enforcement officers after a person is taken into custody, the person must be advised: 1) that he or she has the right to remain silent; 2) that any statement may be used as evidence against him or her; 3) that he or she has a right to the presence of an attorney; 4) that if he or she cannot afford an attorney, one will be appointed for him or her prior to any questioning if he or she so desires. Unless and until these warnings or a waiver of these rights are demonstrated, no evidence obtained in the interrogation may be used against the accused.

Misdemeanor. A less serious criminal offense punishable by a fine or imprisonment not to exceed one year.

O

Oath. A written or oral pledge to speak the truth.

Objection. A statement by an attorney opposing specific testimony or admission of evidence.

Opening Statement. An outline of anticipated proof presented to the jury by the attorneys at the beginning of a trial.

Overrule. The court's denial of a motion or objection.

P

Party. Any person, corporation or association who is a plaintiff or defendant in a lawsuit.

Plaintiff. The person or entity filing suit in a court against another person or entity.

Penal Code. A group of laws and penalties relating to crimes.

Peremptory Challenges. The removal of members from a jury for no stated reason or

cause. Attorneys are generally given a limited number of peremptory challenges whereby potential jury members may be removed.

Perjury. Lying under oath.

Pleadings. In a civil case, the complaint and answer.

Prima Facie. On the first appearance; on the face of it.

Probable Cause. A reasonable belief that a crime has been or is being committed; the basis for all lawful searches and seizures, and for the issuance of warrants.

Probate. The legal process of determining the validity of a will.

Probation. Suspending the sentence of a convicted person and granting supervised freedom on the promise of good behavior.

Prosecution. The act of pursuing a lawsuit or criminal trial; the prosecution in a criminal suit is the government.

Prosecutor. The public official who performs the function of a trial lawyer for the government in criminal cases.

Public Defender. An attorney appointed by a court or employed by a government agency whose work consists primarily of defending indigent defendants in criminal cases.

Q

Quash. To vacate, annul or make void, such as to quash an indictment or a subpoena.

R

Rebuttal. The introduction of evidence to discredit statements of witnesses.

Redirect Examination. Follows cross examination and is exercised by the counsel who introduced the witness.

S

Sequester a Jury. To place members of a jury into seclusion until they are able to reach a verdict.

Statute of Limitations. A law setting a time limit on enforcement of rights in certain cases.

Statutes. Laws passed or enacted by the legislature.

Subpoena. A written legal notice requiring a person to appear in court to provide testimony as a witness.

Summary Judgment. Final decision or judgment by the court prior to trial. This occurs when the judge determines that the prevailing party is entitled to judgment as a matter of law either on the pleadings alone or after reviewing the pleadings and other evidence. Summary judgment may be directed toward all or part of a claim or defense.

Summons. A legal notice that one has been sued and must respond.

Suppress. To “suppress evidence” is to keep it from being used in a trial by showing that it was either gathered illegally or that it is irrelevant.

Sustain. The court’s acceptance of any motion or objection.

T

Trial. The examination of issues regarding fact and law before the court.

V

Venire. A group of sworn jurors.

Venue. The locality where a trial is held. The venue can be moved to another location if it is believed that a fair trial cannot be had in the locality where the crime was committed.

Verdict. The final formal trial decision made by a jury, read before the court and accepted by the judge.

Voir Dire Examination. The preliminary questioning of jurors to establish their qualifications or potential biases.

W

With Prejudice. The term as applied to judgment of dismissal is as conclusive of rights of parties as if action had been prosecuted to final adjudication.

Witness. A person testifying under oath, who possesses factual knowledge about a case.

Writ of Mandamus. An order issued by a court of superior jurisdiction commanding performance of a particular act by a lower court or public official.

Writ of Prohibition. An order issued by a court of superior jurisdiction commanding a lower court to vacate a ruling issued in a suit.



Reporter's Handbook on Covering Kentucky Courts
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