



**Harville**  
LAW OFFICES, PLLC

*The Louisville Accident Lawyer Journal*

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OVER 30 YEARS EXPERIENCE

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- We are counselors, not just attorneys
- We meet with our clients personally - not caseworkers
- We want you to understand how the legal system works as it applies to your case
- We will keep you informed and guide you every step of the way

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# What Happens at a Civil Jury Trial

Many of us have had to serve on jury duty. Some of us may have had to sit through a jury trial. If so, chances are it was a criminal trial, not a civil trial, since more criminal cases go to trial. So the odds of anyone sitting on a jury in a civil personal injury case are pretty slim, especially with the decline in the number of civil trials these days (see page 2).

This means that if you are a plaintiff in a personal injury case, and your case is one of the few that ends up going to trial, you likely have no idea what actually happens in a civil personal injury trial.

Well, the process is similar in most jurisdictions. I've probably tried over 100 jury trials in Kentucky (I lost count a long time ago) and a few more in Southern Indiana. There are some distinct differences, but the phases of the trial are pretty much the same.

But before I talk about each of these phases, it's worth remembering where the order of trial comes from in the first place. Lawyers have a rulebook called "Rules of Civil Procedure." Ky. Rule 47.01 provides for examination of jurors,

and Rule 43.02 contains the order of trial once a jury has been sworn.

Thus, civil trials, like criminal trials, generally begin with examination of prospective jurors. The Court will summon enough jurors from a jury pool to allow for those who can't (or shouldn't) serve and those who are stricken from the jury by the lawyers (called "strikes") in order to come



"The Jury" by John Morgan, 1861

up with a jury of 12 jurors (and usually 1 alternate). All of the prospective jurors are seated in the courtroom, and the lawyers for each side usually provide some overview of what the case is about and ask questions to determine whether any juror has any preconceived ideas or bias that might prevent him or her from rendering a fair verdict.

Once a jury is seated, the real trial begins. Plaintiff's attorney begins with an opening statement, in which he/she tells the jury what the evidence

in the trial will be and what he/she hopes to prove. Defendant's attorney will follow with his/her version of the evidence and what he/she thinks it will prove. Plaintiff then presents his/her proof, by calling witnesses to the stand for direct and cross-examination and introducing exhibits. Once the Plaintiff has completed his/her proof, the Court will often hear (and usually overrule) motions for directed verdict as to whether Plaintiff has sustained his/her burden of proof for a jury to decide the case. Defendant then presents his/her witnesses for direct and cross examination, along with exhibits, and then closes his/her side of the case. Instructions are then prepared and read to the jury, and the jury then retires to the jury room to deliberate and render its verdict.

Most civil jury trials take at least 2 days. I have had juries take as little as 15 minutes and as long as 8 hours to render a verdict.

There are new and fascinating insights into strategies for each phase of jury trials when representing personal injury clients. More about those in future newsletters. • BDH

## Why a Newsletter?

We hope you will find this newsletter to be entertaining and informative. We thought it would be a great way to stay in touch with people who have had a relationship with our firm. We care about the people we have helped and we want you to know that our relationship with you is very valuable to us, even if your case is over.

The reason you are receiving this newsletter is because you are an existing or past client of our firm, or you have contacted us about prospective representation. For this reason, this newsletter is not considered to be an "advertisement" under Kentucky Supreme Court Rule 3.130-7.02 (1)(h). (But this doesn't mean you can't give it to someone you

know!)

We hope to share a little more about who we are and what we do, and not just in our law practice. We would love to hear from you if you like our newsletter!

Our best to all of you!

Brad Harville Dana Skaggs

BRADLEY D. HARVILLE LAW OFFICES PLLC

# 20 Questions about Kentucky No-Fault

The key to understanding how the legal and medical system works in personal injury cases resulting from motor vehicle accidents in Kentucky.

## Current Trends - Declining Trial Practice

The Kentucky Bar Association's magazine for all of its members is called the "Bench & Bar" magazine. The most recent issue contained a very well-written article by Ky. Supreme Court Justice Daniel Venters.

Justice Venters cited some very interesting statistics in this article about the decline in the number of civil jury trials in Kentucky. To quote from his article:

"Data demonstrates that trials are declining as a mode of dispute resolution. Over the past 15 years in Kentucky, civil case jury trials

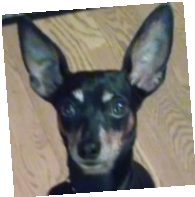
have declined both in absolute number and as a percentage of total civil case dispositions. In 2002, 404 civil jury trials were held; in 2016, we had 93. In 2002, 2,063 bench trials were conducted, compared to 1,279 in 2016. The ratio of civil jury trials to total dispositions declined from 0.90 percent in 2002 to 0.26 percent in 2016. The bench trial to total dispositions ratio declined from 4.61 percent in 2002 to 3.53 percent in 2016."

Justice Venters observes that similar trends have been observed in other states and in the

federal courts. He cites mediation and other forms of alternative dispute resolution as likely factors.

Certainly this has been true in my practice. I do not take cases to trial with nearly the same frequency as 10-15 years ago, when I did mostly defense work.

The truth in most cases is that parties on both sides would rather settle than go to trial and leave their fate in the hands of a jury. However, lawyers should not be in the business of just settling cases. Otherwise, insurance companies, which are risk-averse, will lose respect for the process.



Casey's Kentucky Trivia Question:  
The world record smallmouth bass (11 lbs. 15 oz.) was caught at which Kentucky lake?

- A. Lake Cumberland
- B. Kentucky Lake
- C. Lake Barkley
- D. Dale Hollow Lake

Be the first person to answer correctly by sending an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) and we'll mail you a \$5 Starbucks gift card!



Lola Denney

## Fireworks Safety Tips

From the National Council on Fireworks Safety [website](#), here are some fireworks safety tips:

- Obey all local laws regarding the use of fireworks.
- Know your fireworks; read the caution labels and performance descriptions before igniting.
- A responsible adult SHOULD supervise all firework activities. Never give fireworks to children.
- Alcohol and fireworks do not mix. Save your alcohol for after the show.
- Wear safety glasses when shooting fireworks.
- Light one firework at a time and then quickly move away.
- Use fireworks OUTDOORS in a clear area; away from buildings and vehicles.
- Never relight a "dud" firework. Wait 20 minutes and then soak it in a bucket of water.
- Always have a bucket of water and charged water hose nearby.
- Never carry fireworks in your POCKET or shoot them into METAL or GLASS containers.
- Do not experiment with homemade fireworks.
- Dispose of spent fireworks by wetting them down and place in a metal trash can away from any building or combustible materials until the next day.
- FAA regulations PROHIBIT the possession and transportation of fireworks in your checked baggage or carry-on luggage.
- Report illegal explosives, like M-80s and quarter sticks, to the fire or police department.

## Favorite Pet of the Month

Name: Lola Denney

Owner: Mike Denney

Age: Around 11.

Breed: Italian Greyhound.

Favorite food: Her nightly dental chew!

Favorite activity: Her daily walk and going to public events like the Zombie Walk.

With her unusual good looks and outgoing personality, Lola is the center of attention wherever she goes!

Patience, however, is not one of her virtues. Whenever Mike is in the Thornton's for too long, she honks the horn!

Are you a pet lover? We are!

Dana Skaggs serves on the Board of Directors of [Barktown Rescue](#). Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) with a photo and we'll try to put this in a future issue!

# Accidents Outside your Home State

Lots of traffic passes through Kentucky, especially during the summer. Commuters also go back and forth between Louisville and So. Indiana, as well as No. Kentucky and Cincinnati.

So what happens if you are from out-of-state and are injured in an accident in Kentucky? Or vice versa? This happens every day.

As far as the law is concerned, there are 2 basic ground rules: 1) The tort laws of the state where the accident occurred will generally apply; and 2) the contract laws of the state in which the automobile insurance policy was issued will generally apply.

However, there are exceptions.

If two people from Kentucky are in an accident across the river in Southern Indiana, then you



can still file your lawsuit in Kentucky and Kentucky's tort laws will apply. Because two Kentucky citizens were involved, Kentucky has a "substantial interest" in applying its laws. And vice versa.

It gets a little more complicated with automobile insurance. In Kentucky, if an insur-

ance company is licensed to do business here, then its policy will be deemed to provide Kentucky "no-fault" coverage, even if it's not a Kentucky auto policy.

The biggest difference I often see is with underinsured (UIM) coverage. In Kentucky, you get what you pay for. If you've got UIM coverage, then the full amount of that coverage will apply above the tortfeasor's policy limits. But that's generally not true for Indiana and Illinois policies, which will "set off" UIM coverage against liability coverage, and may leave little or no UIM coverage at all.

In these cases, it is especially important to hire a lawyer who can sort through which state's laws apply to the various aspects of the client's personal injury claims.

## Stupid-Easy Recipe of the Month

*A refreshing summertime dessert!*

### Strawberry Pie

This is a delicious summer treat! (Note: my wife makes her own pie crust, but then it wouldn't be super easy).

- Ingredients:
- 3/4 cup water
- 1/2 cup sugar
- 1 1/2 Tbs. Cornstarch
- 1/2 box strawberry jello mix
- 1 pint sliced fresh strawberries
- pre-baked pie crust

Directions:

- Mix water, sugar, cornstarch and jello mix in sauce pan on low heat, cook until thick
- Add sliced strawberries to mixture
- Chill in refrigerator
- Pour mixture into pie crust
- Serve with whipped cream!

Enjoy!

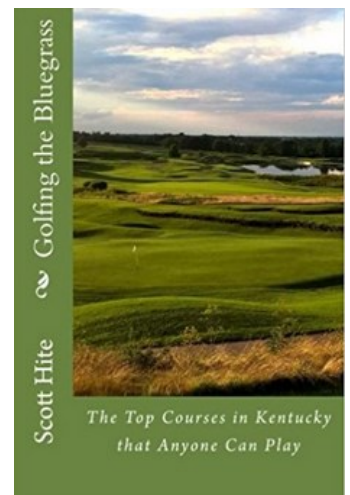


## Golfing the Bluegrass, by Scott Hite

One of the harsh realities in my life that I've had to face over and over again is this: I am a terrible golfer. Not just bad. Terrible. Horrendous. And here's the other problem: I enjoy playing golf. So how do I deal with this dilemma? It's pretty simple. I just avoid playing with other people. That way, I can take all the bad shots I like and there's no one around to snicker at me or run for cover.

Which brings me to this month's feature. I'm not the only lawyer I know who's written a

book. My great friend, Scott Hite, wrote this book in 2015 entitled *Golfing the Bluegrass: The Top Courses in Kentucky That Anyone Can Play*. This book is perfect for me. If I'm going anywhere in the state and want to steal away for 9 or 18 holes, Scott has written about some wonderful course nearby. Of course, this book is great for all Kentucky golfers, not just bad ones like me. You will enjoy reading Scott's book almost as much as you enjoy playing. Check it out on [Amazon.com](http://Amazon.com) and order your copy today!





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**We want to help you secure the best possible outcome out of a difficult situation that you wish had never happened. If you have been injured, our goal is to obtain maximum recovery in the shortest amount of time it takes to get your case resolved.**



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## Strange Happenings at the Ky. DWC ...

Recently there have been three significant developments within the Kentucky Department of Workers' Claims (the "DWC"). One is a good thing and the other two are not so much.

The good news is that the DWC's electronic filing system is almost fully up and running. For lawyers, this means that instead of having to mail filings to Frankfort, which is time-consuming and can mean a lot of copying and extra postage, we can now scan and electronically file most of the documents necessary in representing our clients.

The one exception, however, is with settlement agreements. These still have to be done the old-fashioned way, which takes up a lot of time as the document gets mailed to the other side, the other side has to sign and mail it back, then the client and the lawyer have to sign, mail the agreement for approval, and then wait for it to be approved and mailed back to them. Or so it used to be.



Recently, in a puzzling decision, the Department announced that it would no longer accept settlement agreements signed by claims representatives, on the grounds that signing the document constitutes the "unauthorized practice of law." This means that if you reach a settlement with an insurance company without having to file a claim, the insurance company still has to hire a lawyer to sign for them instead of the claims representative being able to sign for the company. That one blows my mind. If the insur-

ance company isn't preparing the agreement, then I don't see how signing off on a settlement agreement constitutes practicing law. Since when can a company official not sign a contract on behalf of his or her company? By that logic, all of American commerce should come to a screeching halt! It's only been done that way during my entire 31-year career until that screwy decision was announced.

Finally, the DWC has also announced that the hearing site in Louisville is closed. Evidently they lost their lease. Now all workers' comp claims that would have been heard in Louisville have to be heard in Frankfort until further notice. That's at least a 1 1/2 hour, 100 mile round trip for most folks in Louisville. Louisville is 20% of the state population and we don't have a hearing site?

There are some strange things going on with the Ky. DWC. Let's hope it doesn't get any worse. Stay tuned ...