

Harville Law Offices, PLLC
2527 Nelson Miller Pkwy, Suite 102
Louisville, KY 40223
(502) 245-2333
harvillelaw.com



The Louisville Accident Lawyer Journal

SEPTEMBER 2019 • VOLUME 9 OVER 30 YEARS EXPERIENCE

We gladly accept
and appreciate
your referrals

- 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

Why a Newsletter?

You are receiving this newsletter because you are an existing or past client of our firm, or have contacted us about representation. For this reason, this newsletter is not an "advertisement" under Ky. Supreme Court Rule 3.130-7.02(1)(h). It is our way of staying in touch with people who have had a relationship with our firm. We care about the people we have helped and want you to know your relationship is valuable to us, even after your case is over. We hope you find it entertaining and informative, and would love to hear from you if you enjoy it! Our best,
Brad Harville
Dana Skaggs

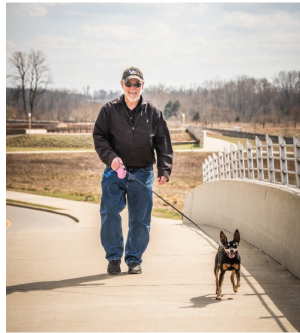
More Thoughts on Lawyer Advertising

I have railed against the constant barrage of lawyer TV commercials any number of times in this newsletter, most recently in my May issue. But people can only make decisions based upon the information known to them. And I realize that over the years, these firms

have managed to "brand" themselves as being the firms most people will call if they have a personal injury case, because most people don't know any lawyers and don't know anything about personal injury cases. So these TV lawyer commercials manage to scoop up the "low-information" folks out there to handle their claims.

Why do I have a problem with this? Because, after 34 years of practice, I know too much about these firms from independent sources, as well as my own experience. One of the top TV advertising firms has a reputation for taking insurance companies' first offer and being unwilling to litigate cases. Another has a reputation for gouging its clients for unnecessary overhead fees, such as "conference room rental." I have personally sued another one, years ago, for missing an additional \$100,000 policy in a brain injury case.

Another common denominator among most of these firms is that



My upcoming print ad

the client typically deals with a case worker, and speaking directly with a lawyer tends to be the exception rather than the rule.

Of course, my biggest gripe about the TV lawyer ads is that they poison the minds of the general public into believing that all personal injury cases are just a big money grab, and all of the personal injury lawyers out there are just greedy bastards, including yours truly (even though I've never run a TV ad and never will).

Mind you, I am well aware that I am constantly treading water to stay above the rising tide. Ever since Morgan and Morgan came to Ky. a few years ago, the spending on TV commercials has gone through the roof, like I talked about in my May issue. I can't (and won't) compete with that.

But, that doesn't mean I don't advertise. I have my own website, and I pay for listings on lawyer referral websites, such as Avvo.com, martindale.com, and lawyers.com. This year, I have also paid for print ads in local community magazines, in

Let us walk you through the legal process

Talk to a lawyer, not a case worker. Over 50 years of combined experience.

particular Middletown, St. Matthews and Jefferson-town. The message I have tried to get across in my marketing is that I am devoted to individual client relationships for those people well-informed enough to know they want a lawyer who will educate them about the legal process, instead

of a case worker who has never seen the inside of a courtroom. You can call me a hypocrite if you like for my disdain for lawyer TV commercials, while at the same time I market my practice online as well as through local print media. But I don't feel that my marketing efforts cheapen the dignity of the profession, unlike the TV commercials. And my marketing is directed toward people looking for a lawyer, as opposed to the unwanted intrusion of yet-another TV commercial.

One thing is for sure: If I didn't do anything, my practice would be dead in the water. If you're not online, you might as well fold your tent. But I love what I do, and I want to keep on doing it.

That is why I am extremely grateful anytime you are kind enough to refer someone you know to our office. Please explain to them the difference. Otherwise, they will probably call one of the law firms they see on TV. • BDH

THINGS THAT JURIES AREN'T ALLOWED TO HEAR

Whenever a personal injury case goes to trial, there are rules of evidence and case law that prevent lawyers from mentioning certain items



of information, or making certain kinds of arguments. The idea behind these rules is that if the jury heard about this information, or was allowed to hear these improper arguments, they would be unable to fairly decide the case.

If a lawyer violates any of these rules, the judge may declare a mistrial. At the very least, any transgression of these rules will give the other side grounds for a new trial if they don't like the outcome.

So what are these rules that are designed to keep such terribly prejudicial information under wraps? Here are four of the biggest ones:

1. Thou shalt not mention "insurance." For decades, Kentucky courts, along with courts everywhere else, have held fast to the time-honored principle that a jury must not be told if a defendant in a personal injury case has liability insurance. The idea behind this rule is that if a jury knew there was liability insurance, they would forget about the merits of the case and just give the plaintiff what they wanted, because nobody likes insurance companies.

So, in your typical Joe Blow vs. Jane Doe automobile accident case, in which Jane was looking down at her cell phone and rear-ended Joe at a stoplight, causing Joe to have to go to the emergency room for neck and back strain, followed by 3 months of treatment and therapy before Joe began feeling like his old self again, the jury's not supposed to know that Jane is being defended by Allstate Insurance Company, which will pay any judgment and her lawyers, too.

Thus, some members of the jury, consciously or subconsciously, may be unsure as to whether poor Jane is having to pay for her lawyers herself, and might have to face paying Joe a judgment out of her own pocket, so they will want to take it easy on her; whereas those concerns would go flying out the window if they knew for certain that insurance was involved.

In the eyes of the law, however, all that matters is Jane's fault and Joe's damages, and the fact of insurance is irrelevant, even though everyone knows you're supposed to have insurance under state law.

2. Thou shalt not mention "health insurance." Unlike the rule against mentioning liability insurance, this rule favors plaintiffs in personal injury litigation. Kentucky, unlike many states, subscribes to the "collateral source" rule, which means that a plaintiff is entitled to claim the face amount of their medical bills against a defendant, and a defendant is not allowed to show whether the plaintiff has any health insurance that has paid those bills, typically at a steep discount. The idea behind this rule is that a defendant shouldn't reap the benefit from the fact that the plaintiff has paid for his/her own health insurance.

In my opinion, this rationale has gotten a little watered-down from the onset of universal health insurance (a.k.a. Obamacare), but health insurance to this day is still such a mess that I don't see this rule going away anytime soon. The fact of the matter is, in many cases, some bills may still be unpaid at trial; just because someone has health insurance doesn't mean those bills have been paid. That's why, in many other jurisdictions that don't follow this rule (such as Indiana), a defendant may be allowed to show what health insurance has actually paid for a particular bill, but not what health insurance might pay or would pay.

3. Thou shalt not mention "settlement." This is another big "no-no," and is a universal rule found in every jurisdiction. Juries are not allowed to know if the liability insurer for the defendant has made any settlement offers to get the case resolved before trial. So a jury has no way of knowing which side is being unreasonable and is causing the case to have to go to trial, whether it's the plaintiff for being too "greedy," or the liability insurer for making nothing more than a "low-ball" offer. Often it's the latter, because insurers know that reasonable jury verdicts are hard to come by in most parts of Kentucky because of pervasive lawyer advertising (TV, billboards, buses, etc.).

4. Thou shalt not argue "The Golden Rule." This is another universal rule. Under the law, a "Golden Rule" argument means that a lawyer cannot ask the members of the jury to put themselves in the plaintiff's (or defendant's) shoes, and ask, for example, "how much money would you take to not have to go through what Joe Blow had to go through if you had been the person rear-ended by the Defendant Jane Doe."

Well, that certainly casts the case in a new light doesn't it? One minute, a juror may be thinking, "well, so what, Joe had to go to the emergency room, he had to go see his doctor two or three times and go for physical therapy maybe 10 or 12 times, he was able to still carry on with his job, it doesn't sound like that big of a deal." But, after hearing the "Golden Rule" argument, that same juror is now thinking, "well, crap, if I were Joe, I sure as heck wouldn't like having to go to the emergency room, having my car smashed up, being sore over the next 3 months and having to go for physical therapy and taking pain pills, you couldn't pay me \$50,000 to have to go through what he went through."

You see what a difference that makes? We as a society have been conditioned to have no sympathy or compassion for a total stranger, especially one who has hired a personal injury lawyer to take his case to court; but, by golly, if we put ourselves in the plaintiff's shoes, and imagine ourselves going through the same experience, we'd be ready to make the other side back up the armored cars and start unloading bags of money. That's human nature.

So why aren't lawyers allowed to argue "The Golden Rule?" The rationale under the law is simply this: *It works too good!*

Current Trends in Personal Injury Law

I have read several articles in lawyer magazines about how trials in personal injury cases are slowly vanishing from the legal landscape. I last wrote about this trend in my July 2017 column, when I discussed an article by Ky. Supreme Court Justice Daniel Venters about how 404 civil jury trials were held in Kentucky state courts in 2002, but only 93 were held in 2016. Our current Ky. Bar Association president, J. Stephen Smith - who practices with the Northern Ky. office of a large Cincinnati firm - spoke to this again in the July 2019 issue of the KBA magazine. He wrote that there are many reasons

for this trend, “including cost, time, and uncertain outcomes, to name a few”; adding: Some see the decline in civil litigation and jury trials as a threat to the American ideal that everyone deserves their day in court, or the right to present their argument to a jury of their peers. Some see it as a naturally occurring efficiency that people run toward, in order to avoid the cost and uncertainty of traditional litigation and juries. Regardless of the view, it is a fact of life. But consider this: Just because there are fewer cases being litigated does not mean there are fewer cases out there. To the contrary, the number

of injury car crashes has skyrocketed in recent years with the rise of cell phone use. So why are fewer cases getting litigated? My answer can be found on the first page of this month’s newsletter. The more that the TV law firms gobble up all of the cases, the fewer the cases that ever get filed in court, because most of these firms are in the business of settling cases as quickly as possible. They don’t want to spend any lawyer time holding out for reasonable value. Which of course feeds into the public’s low perception of personal injury cases in general, and drives jury verdicts lower.

Stupid-Easy Recipe of the Month

Basil Pesto Sauce

You know that fabulous basil plant you’re growing on your patio? Well, there’s only one thing you can do with those leaves, and you’d better pick them before they start to wilt! Here’s the recipe:

Ingredients:

- 1 cup fresh basil leaves
- 3 cloves garlic, peeled
- 3 tablespoons pine nuts
- 1/3 cup freshly grated Parmesan
- Kosher salt and freshly ground black pepper, to taste
- 1/3 cup olive oil

Directions:

Combine basil, garlic, pine nuts and Parmesan in a food processor; season with salt and pepper, to taste. With the motor running, add olive oil in a slow stream until emulsified; set aside.

Great for pasta or for dipping with bread! Keep refrigerated for up to 1 week.



Nothing beats fresh pesto!

Favorite Pet of the Month

How can you resist these faces?

Ben (left) and Penelope (right) are a bonded pair of beagles that someone surrendered after having them for a year.

Are things dull around your house? Do you need some more love in your life? These two will be your new BFFs! Visit www.barktownrescue.org and fill out an application.

Dana serves on the Board of Directors at Barktown Rescue.

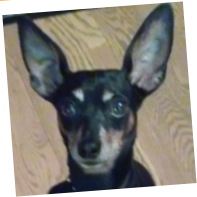
Brad and his family love pets, too!

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

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.



Casey’s Ky. Trivia Question: Who is the all-time winningest UK football coach?

- A. Paul “Bear” Bryant
- B. Fran Curci
- C. Jerry Claiborne
- D. Rich Brooks

Be the first person to answer correctly by sending an e-mail to bdh@harvillelaw.com and we’ll mail you a \$5 Starbucks gift card!



Ben Penelope



Anchorage Office Plaza
 2527 Nelson Miller Parkway
 Suite 102
 Louisville, KY 40223
 Phone: 502-245-2333
 Fax: 502-245-2399

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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E-mail: bdh@harvillelaw.com dts@harvillelaw.com

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