

Harville Law Offices, PLLC  
2527 Nelson Miller Pkwy, Suite 102  
Louisville, KY 40223  
**(502) 245-2333**  
[harvillelaw.com](http://harvillelaw.com)



Harville  
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The Louisville Accident Lawyer Journal

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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

### 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

## The Mediation Process

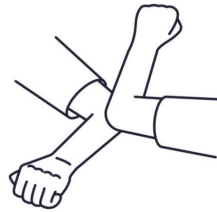
In mulling over this month's cover topic, I realized that although I've mentioned mediation in past issues, I've never really explained what mediation is.

It is high time I did. Mediation is how most lawsuits get settled instead of going to trial. In personal injury lawsuits, mediation is successful in getting around 90% of cases settled. Even in those cases that don't settle at mediation, it can still lay the groundwork for getting cases settled before trial. Mediation is the main reason why personal injury cases don't go to trial nearly as much as they used to when I started practicing law in 1985.

So what is mediation, anyway? Mediation is where both sides of a case agree to hire a neutral third-party, usually another lawyer or a retired judge, to listen to both sides of the case and try to get the parties to reach a settlement agreement. In the pre-COVID days, the parties would normally meet at the office of either the plaintiff's attorney or the defendant's attorney. Since the pandemic, the only mediations I have done have been remotely.

Either way, the mediation process has stayed pretty much the same. Prior to the date of the mediation, the lawyers for each side will send the mediator a letter summarizing the case so the mediator is familiar with the facts and issues involved. The actual mediation usually begins with all of the parties gathered together in one roundtable session, which used to

be in a conference room, but is now usually done via Zoom.



Today's version of a handshake

The mediator will introduce him- or herself, explain the advantages of settlement versus the uncertainties and costs of a jury trial, and encourage both sides to negotiate in good faith. Each party then has an opportunity to present their side of the case, usually an opening statement by the lawyer, although opening statements are sometimes waived.

Now, when I talk about the parties to the case, who am I talking about? In your typical car wreck injury case, the parties at the mediation will be the plaintiff and his/her lawyer, the defendant's lawyer, and the adjuster for the defendant's insurance company. The actual defendant is never there. Why is that? Because the defendant's insurance company is the one that will be writing the check if the case settles, not the defendant. Thus, the plaintiff is usually the only person at the mediation who has never had any previous experience with this process.

The initial roundtable session concludes after each side has had their say. The parties then split into "breakout sessions," which used to mean they went into different rooms, but now means they go into separate Zoom sessions. The mediator will then talk to each side, usually starting with the plaintiff, to discuss

their initial settlement demand and expectations. The mediator will then take the plaintiff's demand into the defendant's room to find out how much the defendant's insurance company is willing to counteroffer.

At this point, the mediator becomes more or less a horse trader, taking each demand and counteroffer back and forth to each room, trying to work each side to reach a figure that both can agree upon. It's not as arbitrary as it might sound. The lawyers on each side, as well as the insurance adjuster, will have a sense as to where the settlement range should be. The plaintiff's lawyer is trying to get the insurance company to pay something at the higher end of this range, and the insurance company, which already knows how much it is willing to pay, will be inching toward the lower end of the range. The mediator's job is to keep the negotiations going until the insurance company reaches its top dollar, and then attempt to persuade the plaintiff and his/her attorney to accept that figure, or at least something close to it, and see if the insurance company will pay a little more.

Mediations have been so successful over the years that courts routinely order mediation in nearly all civil cases before they go to trial. In fact, with the courts backlogged due to COVID-19, they are probably more important than ever to getting cases in litigation resolved.

• BDH

## THINGS TO BE THANKFUL FOR - 2020 EDITION

Maybe this is a good year to remember that when the Pilgrims held the first Thanksgiving in 1621, it wasn't because they had a great year.

The *Mayflower* set sail from England some 400 years ago in September, 1620. On board were 30 crew members and 102 passengers. Among the passengers were some 35 members of a radical Puritan faction known as the English Separatist Church, which had illegally broken off from the Church of England.

It was a rough voyage. It took the *Mayflower* 66 days to cross the Atlantic. The colonists finally landed at Plymouth Harbor on December 16, 1620, and began building their town. Many of them fell ill, probably from scurvy and pneumonia caused by a lack of shelter in the cold, wet weather. Only 52 of them survived that first year. In March, 1621, they met the native people, the Wampanoag, and formed a treaty with them. One of them, Squanto, who had been taken captive by English sailors and lived for a time in London, came to live with the colonists and taught them how to grow Indian corn.



The first Thanksgiving itself was a 3-day festival of prayer, a harvest-time tradition that the Pilgrims brought with them from Europe. There are only two original source documents that provide a firsthand account of the celebration. This one is from Edward Winslow, a Separatist who was among the senior leaders of the colony:

*“Our corn did prove well, and God be praised, we had a good increase of Indian corn, and our barley indifferent good, but our peas not worth gathering, for we feared they were too late sown. They came up very well, and blossomed, but the sun parched them in the blossom. Our harvest being gotten in, our governor sent four men on fowling, that so we might after a special manner rejoice together, after we had gathered the fruits of our labors; they four in one day killed as much fowl, as with a little help beside, served the company almost a week, at which time amongst other recreations, we exercised our arms, many of the Indians coming amongst us, and amongst the rest their greatest king Massasoit, with some ninety men, whom for three*

*days we entertained and feasted, and they went out and killed five deer, which they brought to the plantation and bestowed on our Governor, and upon the Captain and others. And although it be not always so plentiful, as it was at this time with us, yet by the goodness of God, we are so far from want, that we often wish you partakers of our plenty.”*

Now, I don't want to sound like Matt Bevin and say we've all gone soft, but I think the point of revisiting the Thanksgiving story is to remind ourselves that we have much to be thankful for, even if we feel like (and many of us do), overall, 2020 really sucks.

To that end, allow me make another historical point: When did Thanksgiving become a national holiday? The answer is October 3, 1863, when President Lincoln proclaimed that November 26 of that year would be “a day of Thanksgiving and Praise to our beneficent Father who dwelleth in the Heavens.”

So, November 26, 1863 was the first “official” Thanksgiving. How does 1863 compare with 2020? I can answer that one, too: It was unimaginably worse. There was this thing called the Civil War going on, where about 750,000 men were killed, slavery still existed, there was no such thing as modern medicine, there were draft riots in New York, and horrible battles were fought at Murfreesboro, Chancellorsville, Vicksburg, Gettysburg, Chickamauga and Chattanooga. There were no sports on TV, either! And yet, despite being in the thick of the darkest period in American history, Lincoln called for a day of Thanksgiving.

What was going on in Lincoln's mind? His announcement was made out of gratitude for the Union victory at Gettysburg. In the wake of that victory, he was starting to see some light at the end of the tunnel that the national conflict might soon be over, although it dragged on for another 18 months until the South finally surrendered.

So, you can at least be grateful you're not living in 1621 or 1863. You are, after all, living in the United States of America, and whether you lean left or right, you are living in the greatest democracy and the greatest economy in the history of the world. If you are healthy, count your blessings. If a loved one has a serious illness, try to be grateful for the time you have with them. If you've got food in your house, be grateful. If you've got running water and soap, be grateful. If you've got heating and cooling in your house, be grateful. If you've got a dog or cat, be grateful. A lot of people in the world don't have these things. Oh, and be grateful for no more political ads after Election Day!

I know I am much better off than I deserve. For that I am extremely grateful to the good Lord above, and I know that I don't express that gratitude nearly enough.

I hope this helps! Happy Thanksgiving!

## Current Trends in Personal Injury Law

The list goes on and on of industries that have been clobbered by the coronavirus. Among those that come to mind are restaurants, airlines, hotels, movie theaters, and live sports.

Here's one you may have forgotten: ride-sharing. When is the last time you thought of taking an Uber or a Lyft? Before the pandemic started, it seemed like everybody was using Uber or Lyft, say, if you needed a ride to the airport. They were well on their way to putting the taxi companies out of business.

Where are they now? According to a July article in [Forbes](#), Uber and Lyft ridership has plummeted be-

tween 70 to 80%. Uber's stock is currently around \$33/share, down from nearly \$42/share in February. Lyft has fared worse, currently around \$23/share, down from \$54.50/share in February. Uber has weathered the storm a little better thanks to Uber Eats, which has been going strong.

Of course, fewer drivers on the road, including fewer Uber and Lyft drivers, has resulted in fewer traffic accidents. Accidents involving a ride-sharing company, however, are somewhat unique due to the insurance issues they raise. Both Uber and Lyft provide certain insurance coverages, including liability, if drivers are on the app. However, these

coverages can vary depending on whether the driver is waiting on a ride request, or is en route to pick up a rider or driving a rider to a destination. Drivers' personal auto policies will usually not apply while the driver is on the app, due to an exclusion of coverage while driving a vehicle for business purposes.

In short, if a Uber or Lyft driver or his/her passenger is seriously injured in an accident, the insurance issues can be a little more complicated than usual, and will probably require the advice of a lawyer. That's something to keep in the back of your mind, because ride-sharing will be making a strong comeback once the pandemic is over.

## Stupid-Easy Recipe of the Month

*A hot toddy  
on a cold  
Autumn day!*

### Slow Cooker Caramel Apple Cider

This one is a fave around the house on cold fall days! You will need:

- ½ cup of jarred caramel sauce
- 12 cups of apple juice
- 6 cinnamon sticks
- Whipped topping or cream



#### Directions:

In a slow cooker, heat juice and cinnamon sticks on low-medium for 3-4 hours. The cinnamon sticks will soften and start to uncurl. Remove the sticks. Add the ½ cup of caramel and stir. Serve with whipped cream in your favorite mug or coffee cup.

NOTE: For the 21 and over crowd, this is delicious with a touch of spiced rum!

## Favorite Pets of the Month

Benny and Penny are approximately 5 years old and the bonded pair are favorites at the rescue. They get along great and love to explore the play yard together in typical beagle fashion – noses to the ground! They have a special adoption rate and would be wonderful additions to any family with room in their home and hearts.

Visit [www.barktownrescue.org](http://www.barktownrescue.org) to fill out an application and make Benny and Penny your new BFFs!

Dana serves on the Board of Directors at Barktown Rescue.

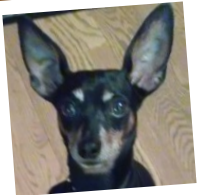
Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to [bdh@harvillelaw.com](mailto: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 was the first Kentucky governor born in Kentucky?

- A. Isaac Shelby
- B. James Turner Morehead
- C. Beriah Magoffin
- D. John Y. Brown

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!



Benny and Penny



Anchorage Office Plaza  
2527 Nelson Miller Parkway  
Suite 102  
Louisville, KY 40223

Phone: 502-245-2333  
Fax: 502-245-2399

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please call (502) 245-2333

**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.**



E-mail: [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) [dts@harvillelaw.com](mailto:dts@harvillelaw.com)

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