



The Legal Process and Appellate Court Cases: Information for Non-Lawyers

*Prepared by Carol E. Jordan and LaKeysha Singleton
Office for Policy Studies on Violence Against Women*

Each issue of **THE EXCHANGE** will include select recent Kentucky Supreme Court and Court of Appeals cases that can impact civil and criminal cases related to intimate partner violence/domestic violence; children who witness IPV; sexual assault; stalking; and related crimes. This document will provide information on the structure of the Kentucky Court of Justice; actions of appellate courts; parties to legal actions; statutes and case law; and types of laws and offenses. The final section provides select legal terminology.

In 1974, Kentucky's justice system was structured with police courts, county courts, quarter-session courts, and justice of the peace courts. These lower courts had little in the way of uniformity, their jurisdictions often overlapped, and law degrees were not required for their judges. Reforming the court of justice would require overcoming the politics of local control and would necessitate a Constitutional Amendment. That effort began in 1964 and after numerous fits and starts, ultimately resulted in passage of legislation in 1974. On May 27, 1975, a Constitutional Amendment was put before the voters of Kentucky. Upon its passage, a uniquely styled unified system of trial and appellate courts was established across the Commonwealth. The language of the Constitutional Amendment was codified by the 1976 General Assembly and through a series of separate House and Senate bills, county courts were changed to district courts; the Supreme Court and Court of Appeals were created; a Chief Justice was established as the executive head of the Court of Justice; and the Administrative Office of the Courts was formed. *Excerpted from Jordan, C.E. (2014). Violence Against Women in Kentucky: A History of U.S. and State Legislative Reforms. Lexington, KY: University Press of Kentucky.*

The Structure of the Kentucky Court of Justice

Supreme Court - There are seven Supreme Court districts in Kentucky, each represented by a justice who serves a term of eight years. At the present time, there are five men and two women who hold seats on the Court. Justices choose a Chief Justice from among their number who serves a term of four years. The Supreme Court has appellate jurisdiction only, meaning it doesn't try cases, rather, it hears cases on appeal from a lower court and issues opinions on those cases. While the Supreme Court generally hears cases from the Court of Appeals, cases involving the death penalty, life imprisonment, or imprisonment for twenty years or more are routed directly from the Circuit Court to the Supreme Court for review as a matter of right as established by the Kentucky Constitution. In addition to hearing cases, the Supreme Court sets rules of practice and procedure for the Court of Justice, which includes the conduct of judges and attorneys.

Court of Appeals - There are 14 judges on the Court of Appeals, presently including six women and eight men. Court of Appeals judges choose a Chief Judge from among their number. The judges are divided into panels of three to consider cases. The Court of Appeals has appellate jurisdiction only (except that it may directly review decisions of administrative agencies), meaning it doesn't try cases, rather it reviews cases from a District or Circuit court. Acquittals from lower courts may not be appealed; nor may divorces, although child custody and property rights may be appealed.

Circuit Court – The number of Circuit Courts in Kentucky and the number of judges in each circuit is determined by the General Assembly after certification of necessity by the Supreme Court. Circuit judges serve eight-year terms. Circuit Court is a court of general jurisdiction that hears civil cases that involve more than \$5,000, capital offenses and other felonies, land dispute title cases, and contested probate cases. It may also hear appeals from a District Court and administrative agencies. Circuit Court has the power to issue injunctions, writs of prohibition, and writs of mandamus.

Family Court – The General Assembly passed legislation in the 1990's and 2001 to establish family courts in Kentucky, leading to a successful Constitutional Amendment being placed on the ballot in 2002. The Supreme Court may designate one or more divisions of Circuit Court within a judicial circuit as a Family Court division. Those courts maintain the general jurisdiction of the Circuit Court, and then have the additional jurisdiction of family matters such as dissolution of marriage, spousal support, child custody, support, and visitation; paternity and adoption; dependency, neglect, and abuse; termination of parental rights; status offenses; domestic violence (protective orders), and related cases.

District Court – The Constitution provides that there shall be a District Court in each county of the Commonwealth. District judges serve four-year terms. District Court is the court of limited jurisdiction and handles juvenile matters, city and county ordinances, misdemeanors, violations, traffic offenses, probate of wills, arraignments, felony probable cause hearings, small claims involving \$2,500 or less, civil cases involving \$5,000 or less, voluntary and involuntary mental commitments, and cases relating to domestic violence and abuse.

Note – The Administrative Office of the Courts also oversees programs for specialty courts including Drug Courts, DUI Courts, Mental Health Courts, and Veterans Treatment Courts.

Actions of an Appellate Court

If a case is appealed from a lower court to an appellate court, there are several actions that may be taken:

Affirmed – If a higher court, such as the Court of Appeals or Circuit Court, agrees with a judge's ruling in the trial court, the ruling will be affirmed (or upheld).

Reversed – If a higher court, such as the Court of Appeals or Circuit Court, disagrees with the judge's ruling in the trial court, the judgment will be reversed (or overturned).

Remanded – If a higher court, such as the Court of Appeals, determines a case needs further action, the higher court will send the case back to the trial court.

Published Case – Cases that have been certified by the court and may be cited as authority in any court of the Commonwealth of Kentucky.

Unpublished Case – The appellate court may issue an opinion as unpublished. In that instance, the case shall not be cited or used as authority in any other case in any court of the state. Generally, an appellate court chooses not to publish the opinion because the court deems the case to have insufficient precedential value.

Parties to a Legal Action

Plaintiff – An individual, company or institution who brings a case against another person in a court of law. A plaintiff is a party in any action other than family law.

Defendant – An individual, company or institution who has been sued or accused in a court of law.

Petitioner – One who files a petition with the court requesting action on a matter. Usually is a party in a civil action involving family law (e.g., victims of domestic violence who petition a court for a protective order).

Respondent – A respondent is the person who is the opposing party in a petition filed by a petitioner.

Petition – The petition is the formal document filed with the court requesting a cause of action.

Party – This term refers to persons or entities who have been named in a lawsuit (e.g., Plaintiff v. Defendant – both the plaintiff and defendant are parties to the case).

Appellant – The person who applies to a higher court for a reversal of the decision of a lower court is called the appellant (e.g., usually the party who fails in their case at the trial court level).

Appellee – The person who is the respondent in a case appealed to a higher court is called the appellee (e.g., usually the party who prevails at the trial court level).

Statutes and Case Law

Statute – A statute is a written law passed by a legislative body (i.e., the Kentucky General Assembly).

Example: KRS § 510.040 – In Kentucky (1) a person is guilty of rape in the first degree when: (a) He engages in sexual intercourse with another person by forcible compulsion; or (b) He engages in sexual intercourse with another person who is incapable of consent because he: 1. Is physically helpless; or 2. Is less than twelve (12) years old. (2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

Case Law – Laws that are established by a judicial decision in a particular case instead of by legislative action.

Example: Roe v. Wade – A landmark decision by the United States Supreme Court on the issue of the constitutionality of laws that criminalized or restricted access to abortions.

Types of Laws and Offenses

Criminal Law – Cases involving criminal activity.

Civil Law – Non-criminal law cases, usually involving disputes between private citizens or entities.

Offenses in Kentucky are defined by Kentucky Revised Statute Chapter 431 as felonies, misdemeanors, or violations:

Felony - Offenses that are punishable by death or confinement in the penitentiary for at least one year, whether or not a fine or other penalty may also be assessed, are felonies. *KRS 431.060(1)*

Misdemeanor - Offenses that are punishable by confinement other than in the penitentiary for a term of not more than twelve months, whether or not a fine or other penalty may also be assessed. *KRS 431.060(2)*

Violation - Offenses that are punishable by a fine only are violations. *KRS 431.060(3)*

Select Legal Terminology

1. **Acquittal** – The legal and formal certification of the innocence of a person charged with a crime.
2. **Adjudication** – A judgment reached in a judicial procedure.
3. **Affidavit** – A written statement originally made under oath before a notary public or other authorized official.
4. **Allegation** – An assertion made by a party in a court proceeding which must be proved or supported with evidence during the trial.
5. **Answer** – The defendant's or respondent's response to allegations in a case.
6. **Brief** – A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of a case.
7. **Case** – Any proceeding, action, cause, suit, lawsuit or controversy initiated through the court system by filing a complaint, petition or indictment.
8. **Claim** – the assertion of a right to money or property.
9. **Complaint** – A statement charging an individual with a criminal violation.
10. **Concurrent Sentences** – Sentences for multiple crimes that are served at the same time, or concurrently.
11. **Consecutive Sentences** – Sentences for multiple crimes that succeed one another.
12. **Conviction** – The finding that a person is guilty beyond a reasonable doubt of committing a crime.
13. **Deposition** – Testimony taken under oath and outside the courtroom.
14. **Due process** – A constitutional provision guaranteeing an accused person a fair and impartial trial.
15. **Evidence** – Any legally presented proof by a witness, records, documents, etc. during the course of a trial.
16. **Grand Jury** - A legal body empowered to investigate potential criminal conduct and determine whether criminal charges should be brought. A grand jury may compel the production of documents and compel sworn testimony of witnesses.
17. **Indictment** – A grand jury's written accusation charging that a person or business allegedly committed a crime.
18. **Jury** - A sworn body of people convened to render an impartial verdict (a finding of fact on a question) officially submitted to them by a court, or to set a penalty or judgment.
19. **Litigant** – Any person or group engaged in a lawsuit.
20. **Litigation** – A legal contest in court.
21. **Probation** – Suspending the sentence of a convicted person and granting supervised freedom on the promise of good behavior.
22. **Parole** – The release of a prisoner before the completion of a sentence, on the promise of good behavior.
23. **Prosecutor** – The public official (Commonwealth's or County Attorney, or Attorney General or assistant Attorney General) who performs the function of a trial lawyer for the state or county.
24. **Statute of Limitations** – A law setting a time limit on enforcement of rights in certain cases.
25. **Writ of Mandamus** – An order issued by a court of superior jurisdiction commanding performance of a particular act by an inferior (lower) court or public official.
26. **Writ of Prohibition** – An order issued by a court of superior jurisdiction commanding a lower court to vacate a ruling in a suit.