

# Litigation Overview: Kentucky

DAVID J. TREACY AND ADRIANNE C. STRONG, DINSMORE & SHOHL LLP, WITH PRACTICAL LAW LITIGATION

A Q&A guide to general litigation information for Kentucky. Specifically this State Q&A covers the Kentucky state court structure, state statutes and rules governing litigation procedure and the attorney admissions process (including admission without examination, *pro hac vice* admission and in-house counsel registration).

## STATE COURTS

### 1. What are your state's appellate courts? For each appellate court, please identify:

- The courts from which a direct appeal may be taken to this appellate court.
- The appellate court's general subject matter jurisdiction.
- The state court(s), if any, to which a further appeal may be sought.

Kentucky has two appellate-level courts. These are:

- The Kentucky Supreme Court (see *Supreme Court*).
- The Kentucky Court of Appeals (see *Court of Appeals*).

## SUPREME COURT

The Supreme Court of Kentucky is Kentucky's highest appellate court.

### Jurisdiction

The Kentucky Supreme Court may hear as a matter of right:

- A judgment or final order from a case originating in the Court of Appeals (*Ky. R. Civ. P. 76.36(7)(a)*).
- A judgment or final order issued by the Court of Appeals related to a Workers' Compensation decision (*Ky. R. Civ. P. 76.25(12)*).
- Appeals involving the death penalty, life imprisonment or imprisonment of 20 years or more (*Ky. Const. § 110(2)(b)*).

Otherwise, a party must file a petition to the Kentucky Supreme Court for discretionary review (*Ky. R. Civ. P. 76.20*). A party must file the motion within 30 days after the date the Court of Appeals enters the order or opinion, with certain exceptions (*Ky. R. Civ. P. 76.20(2)*). Unless authorized by the court, the motion cannot exceed 15 pages. It must include:

- Each party's name and the names and addresses of counsel.
- The date when the judgment was entered or the Court of Appeals had final disposition of the case.
- A statement as to whether a supersedeas bond or bail on appeal has been executed.
- A clear and concise statement of:
  - the material facts of the case;
  - the questions of law; and
  - the specific reason or reasons why the judgment should be reviewed.
- A statement that the moving party does not have a petition for rehearing or motion for reconsideration pending in the Court of Appeals.
- A statement showing whether any other party to the proceeding has a petition for rehearing or motion for reconsideration pending in the Court of Appeals.
- Copies of:
  - the final order or judgment of the trial court; and
  - the opinion or final order of the Court of Appeals, including any decisions on a petition for rehearing or motion for reconsideration.

The moving party must also pay a filing fee. (*Ky. R. Civ. P. 76.20(3), (4) and (10)*; see *Ky. R. Civ. P. 76.42(2)*.)

The respondent may file a response within 30 days after the motion for appeal is filed. Unless authorized by the court, the response cannot be longer than 15 pages. (*Ky. R. Civ. P. 76.20(5)*.)

### Further Appellate Review

The US Supreme Court may review a decision of the Kentucky Supreme Court in certain situations, such as where:



- The validity of a US treaty or statute is challenged.
- A state statute is claimed to be unconstitutional.

(28 U.S.C. § 1257(a).)

## COURT OF APPEALS

### Jurisdiction

The Kentucky Court of Appeals may hear:

- Original proceedings against a judge or an agency whose decisions may be reviewed as a matter of right (*Ky. R. Civ. P. 76.36(1)*).
- As a matter of right, an appeal from a conviction, final judgment, order or decree from the Kentucky Circuit Court, unless it was rendered on appeal from a Kentucky District Court (*Ky. Rev. Stat. Ann. § 22A.020(1)*).
- In its discretion, a decision from the Kentucky Circuit Court that was appealed from a Kentucky District Court to the Circuit Court (*Ky. Rev. Stat. Ann. § 22A.020(5)*).

In addition, the Kentucky Court of Appeals directly reviews decisions from the state Workers' Compensation Board (*Ky. R. Civ. P. 76.25*).

### Further Appellate Review

Appeals from the Court of Appeals go to the Supreme Court (*Ky. R. Civ. P. 76.36 and 76.20*).

### 2. What are the trial courts in your state? For each trial court, please identify:

- The court's general subject matter jurisdiction.
- The state court(s) to which a direct appeal may be taken.

Kentucky has two trial-level courts. They are:

- The Kentucky Circuit Court, which includes the Family Court (see *Circuit Court*).
- The Kentucky District Court (see *District Court*).

## CIRCUIT COURT

The Kentucky Circuit Court is a trial court of general jurisdiction. It has original jurisdiction over all justiciable causes not vested in some other court. (*Ky. Const. § 112(5)*; *Ky. Rev. Stat. Ann. § 23A.010(1)*.) Types of cases under the Circuit Court's jurisdiction include:

- Civil matters involving more than \$5,000.
- Real property title disputes.
- Contested probate matters.

In addition, the Kentucky Circuit Court may hear appeals from any final action of the Kentucky District Court (*Ky. Rev. Stat. Ann. § 23A.080*).

The Kentucky Circuit Court includes the Kentucky Family Court, which handles domestic matters, including:

- Dissolution of marriage.
- Child custody.
- Visitation.
- Maintenance and support.
- Equitable distribution of property in dissolution cases.

- Adoption.
- Termination of parental rights.
- Paternity.
- Domestic violence.
- Dependency.
- Neglect and abuse.
- Runaways and truancy.

(*Ky. Rev. Stat. Ann. § 23A.100*.)

Appeals from the Circuit Court, including the Kentucky Family Court, are made to the Court of Appeals (*Ky. Rev. Stat. Ann. § 22A.020(1)*).

## DISTRICT COURT

The Kentucky District Court is a trial court of limited jurisdiction, handling:

- Small claims involving \$2,500 or less.
- Civil claims involving \$5,000 or less.
- City and county ordinances.
- Juvenile matters.
- Misdemeanors.
- Violations.
- Traffic offenses.
- Probate of wills.
- Arraignments.
- Felony probable cause hearings.
- Voluntary and involuntary mental commitments.
- Domestic violence and abuse cases.

(*Ky. Rev. Stat. Ann. §§ 24A.110 to 24A.130 and 24A.200 to 24A.360*.)

Appeals from District Court decisions are made to the local Circuit Court (*Ky. Rev. Stat. Ann. § 23A.080*).

## STATE LITIGATION PROCEDURE

### 3. What are the key statutes and rules governing litigation procedure in your jurisdiction?

The following are the primary sources of Kentucky law governing litigation procedure:

- **Kentucky Rules of Civil Procedure (Civil Rules).** These are the procedural rules that apply to civil practice in the Kentucky state courts, except for special statutory proceedings (for example, insurance rehabilitation and liquidation proceedings, residential landlords and tenants, appeals from an adverse decision of the Kentucky Unemployment Insurance Commission and matters in the small claims division) (*Swift & Co v. Campbell*, 360 S.W.2d 213, 214 (*Ky. 1962*)). There are also local rules that apply to each jurisdiction's District Court and Circuit Court.
- **Kentucky State Constitution.** The creation and jurisdiction of the Kentucky courts are governed by Sections 110 to 143 of the Kentucky State Constitution.
- **Kentucky Rules of Professional Conduct.** Kentucky Supreme Court Rule 3.130 outlines the rules of professional conduct for

attorneys in Kentucky.

- **Kentucky Code of Judicial Conduct.** Kentucky Supreme Court Rule 4.300 outlines the rules of professional conduct for judges in Kentucky.

The Kentucky Administrative Office of the Courts introduced eFiling to Kentucky state courts at the end of 2013 in Franklin County, Kentucky. The Kentucky Administrative Office plans to expand the program to all of Kentucky's 120 counties in the next few years.

## ISSUES FOR ATTORNEYS

### 4. Please describe how an attorney becomes a member of the state bar in your jurisdiction. Please include whether the state offers reciprocity to attorneys admitted in other states.

Admission to the Kentucky State Bar Association is governed by the Kentucky Supreme Court Rules (*Ky. Sup. Ct. Rs. 2.000 to 2.550*). The Office of Bar Examiners handle attorney admissions (*Ky. Sup. Ct. R. 2.000*).

To apply for admission, all applicants must:

- Pass a character and fitness review by the Office of Bar Examiners, Character and Fitness Committee (*Ky. Sup. Ct. R. 2.011*).
- Take an oath to support the Constitutions of the United States and Kentucky (*Ky. Sup. Ct. R. 2.012*).
- Intend to engage in the practice of law in Kentucky and agree to abide by the rules, duties and standards for attorneys in Kentucky (*Ky. Sup. Ct. R. 2.013*).
- Hold a Juris Doctor degree from a law school approved by the American Bar Association (ABA) or the Association of American Law Schools, except if the applicant:
  - has been actively engaged in the practice of law in another state or states for at least five of the last seven years prior to filing the application for admission to practice in Kentucky; or
  - fits certain other criteria to apply before obtaining the Juris Doctor degree, specified in the rules (*Ky. Sup. Ct. R. 2.014(1)*).
- Pass the Multistate Professional Responsibility Exam (MPRE) by attaining a scaled score of at least 75 (*Ky. Sup. Ct. R. 2.015(1)*).

## ADMISSION ON EXAMINATION

An applicant to become a member of the Kentucky State Bar generally must:

- Pass the bar examination.
- Pass the MPRE.
- Satisfy a review and investigation by the Office of Bar Examiners, Character and Fitness Committee.

## ADMISSION WITHOUT EXAMINATION

An applicant may be admitted to the Kentucky bar without having to take the Kentucky bar exam if the applicant submits an application and:

- Has been admitted to practice by the highest court in another state.
- Has practiced law in a state or jurisdiction which has reciprocity or

comity with Kentucky for five of the seven years prior to filing the application for admission.

- Meets all requirements for admission under the other Kentucky Rules of the Supreme Court.

Teaching law fulfills practicing law requirement. (*Ky. Sup. Ct. R. 2.110(1)*.)

The applicant must also:

- Pay a \$1,500 fee.
- File any affidavits, certificates, documents and materials required by Office of Bar Examiners, Character and Fitness Committee to show the applicant's good moral character and fitness to be a member of the Kentucky Bar.

(*Ky. Sup. Ct. R. 2.110(2)*.)

## REGISTRATION OF IN-HOUSE COUNSEL

In-house counsel working in Kentucky must file an application for a limited certification of admission for in-house counsel with the Kentucky Office of Bar Admissions. The application must include:

- A sworn statement that the applicant:
  - has graduated from an accredited law school;
  - is admitted to practice in the highest court of another U.S. jurisdiction;
  - is presently in good standing with the bar of the U.S. jurisdiction; and
  - will limit legal services to work performed for the employer or a related entity.
- A statement signed by a representative of the applicant's employer stating that:
  - the applicant is an employee for the employer; and
  - performs legal services in Kentucky for the employer, its parent, subsidiary or affiliated entities.
- A \$1,500 fee to the Kentucky Office of Bar Admissions.

(*Ky. Sup. Ct. R. 2.111(1), (2)*.)

An in-house attorney who has a limited certificate of admission must engage a member of the Kentucky bar as co-counsel when appearing before a Kentucky state court (*Ky. Sup. Ct. R. 2.111(4)(b)*).

The limited certificate terminates if the in-house counsel attorney either:

- Is admitted to the Kentucky Bar, either by examination or by application.
- Leaves the employer, unless the attorney is employed in an in-house position with another organization in Kentucky within 30 days of termination.

(*Ky. Sup. Ct. R. 2.111(6)*.)

If the in-house counsel terminates employment and does not take another in-house position with another employer in Kentucky within 30 days, the attorney must "promptly" file a statement with the Clerk of the Supreme Court stating the date that the employment ended (*Ky. Sup. Ct. R. 2.111(1)*).

### 5. Please describe the process for becoming admitted on a pro hac vice basis in your jurisdiction.

An applicant for *pro hac vice* admission in Kentucky must:

- Be a member of good standing of the bar of another jurisdiction or eligible to practice before the highest court in another jurisdiction.
- Subject herself to the jurisdiction and rules of the Supreme Court of Kentucky.
- Pay a \$270 fee per case to the Kentucky Bar Association.
- Engage an attorney who is barred in Kentucky as co-counsel, who must be present at all trials and any other time required by the court.

(*Ky. Sup. Ct. R. 3.030(2)*.)

Additionally, the attorney seeking *pro hac vice* admission must submit an Out of State Certification form to the Kentucky Bar Association's Bar Membership department. The form must include:

- The Kentucky court in which the case has been brought..
- The full case number.
- The out-of-state attorney's original signature.

(See *Kentucky Bar Association, Pro Hac Vice Certification Request Instructions* ([www.kybar.org/312](http://www.kybar.org/312)).)

After receiving the form, the Kentucky Bar Association sends the out-of-state attorney a letter certifying that the request and payment were made. The Kentucky co-counsel and the out-of-state attorney seeking certification are responsible for providing the letter to the court for the case in which admission is sought.

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