THE CIVIL JURY TRIAL IS ON DEATH'S DOORSTEP: SHOULD WE RESUSCITATE, AND IF SO, HOW?

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Lexington Convention Center
Lexington, Kentucky
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Kentucky Bar Association
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Mr. Day has served as president of the Tennessee Trial Lawyers Association, chair of the Council of State Presidents of the American Association for Justice, and president of the National Board of Trial Advocacy. He has served on the Tennessee Supreme Court's Advisory Commission on the Rules of Practice and Procedure, chair of the court's Commission on Continuing Legal Education and Specialization, and as a member on the Alternative Dispute Resolution Commission. Mr. Day is also an elected member of the American Law Institute, where he works on the Restatement (Third) of Torts project. He is an Order of the Coif graduate of the University of North Carolina School of Law.

Mr. Day is the author of four books: Tennessee Law of Civil Trial; Day on Torts: Leading Cases in Tennessee Tort Law; Compendium of Tennessee Tort Reform Statutes and Related Cases, 2008-2017; and co-author of Tennessee Law of Comparative Fault. He has over sixty articles published in legal publications and has lectured at over 300 continuing legal education seminars in eighteen states and three foreign countries.
I. INTRODUCTION

Civil jury trials are declining. Why is this happening? What does the decline in jury trials say about our justice system? Should efforts be made that may increase the number of trials and, if so, how can that be accomplished?

Fifteen years ago, the American Bar Association held a Symposium on the Vanishing Trial. At this Symposium, three general factors were identified as contributing to the decline in jury trials: the increased emphasis on caseflow management, growth in the popularity of alternative dispute resolution, and procedural and institutional constraints on the number of trials.¹ These contributing factors amongst others will be discussed in this program.

II. STATISTICS ON THE DECLINE OF JURY TRIALS

A. Federal

The United States Court system compiles statistics each year on the federal judicial system including data on the courts' caseload and types of trials. These federal statistics are concrete evidence of the decline in civil jury trials over the years. Almost twenty years ago, in 1990, the number of civil jury trials completed was 4,765.² Ten years later, in 2000, this number had decreased to 3,404. By 2016, this number was down to 1,901.

Professor Marc Galanter, who has written extensively on the decline of trials, discussed in his 2006 journal article, "A World Without Trials?," the long-term decline of federal cases tried over the last hundred years. In 1938, approximately 18 percent of civil cases in federal court were resolved by trials.³ This number declined to 12 percent by 1962, to today's average of around 1 percent.⁴ While Galanter identified a long-term decline, in a 2004 article, his research demonstrated a dramatic

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¹ "Trial Trends and Implications for the Civil Justice System," Caseload Highlights, Examining The Work of State Courts (National Center for State Courts, Williamsburg, VA), Vol. 11, No. 3 June 2005, p. 5. Case types included tort (automobile, premises liability, product liability, medical malpractice), contract (fraud, seller plaintiff, buyer plaintiff, employment), and real property cases.

² Table 6.4, Statistical Tables for the Federal Judiciary-December 2016 (citing Table C-7 for 1990-2010 and Table T-1 for 2011 to present, Annual Report of the Director: Judicial Business of the United States Courts).


⁴ Id.; see also Table C-4, U.S. District Courts-Civil Cases Terminated, by Nature of Suit and Action Taken, Statistical Tables for Federal Judiciary December 2016.
decrease of the number of trials in federal courts between 1985 to 2004.\textsuperscript{5} During this time period, the number of federal trials dropped by more than 60 percent and the portion of cases disposed of by trial fell from 4.7 percent to 1.8 percent.

B. State Courts and Kentucky

The decline in jury trials is not limited to the federal courts. In his research, Professor Marc Galanter found that the decline in state court trials generally matches the decline seen in the federal courts.\textsuperscript{6} Notably, he found that in the federal court system, the number of non-jury trials declined more dramatically than jury trials; however, in the state courts, the number of jury trials was more rapidly declining.\textsuperscript{7}

Across the country, for the last two decades, civil jury trials are a small fraction of civil dispositions averaging one percent or less.\textsuperscript{8} Research from a joint research project of the National Center for State Courts and the Bureau of Justice Statistics examined characteristics of bench and jury trials in forty-six large urban courts in twenty-two states, which represented 23 percent of the U.S. population.\textsuperscript{9} This survey found that there was an increase in civil dispositions in the twenty-two states surveyed from 2.1 million in 1984 to 3.1 million in 2002, which demonstrated a 46 percent increase.\textsuperscript{10} However, trial dispositions fell from 31 percent in 1984 to 16 percent in 2002, which represented a 49 percent decline overall.\textsuperscript{11} Of the surveyed areas, in 1984, 24,124 jury trials occurred.\textsuperscript{12} By 1992, this number had declined to 24,159.\textsuperscript{13}

The 2005 Civil Justice Survey of State Courts by the Bureau of Justice Statistics continued to demonstrate this decline. Of civil trials that occurred for select case types that occurred in the seventy-five most populous counties, a decline could be seen from 1992 to 2005.\textsuperscript{14}


\textsuperscript{6} Galanter, supra note 5, p. 510.

\textsuperscript{7} Id.

\textsuperscript{8} “Trial Trends and Implications for the Civil Justice System,” supra note 1, p. 1.

\textsuperscript{9} Id.

\textsuperscript{10} Id.

\textsuperscript{11} Id.

\textsuperscript{12} Id.

\textsuperscript{13} Id.

\textsuperscript{14} Id.
22,451 jury trials occurred. By 1996, this number declined to 15,638 and by 2005 was down to 10,813.

Kentucky is no different. A 2016 news article citing information from the Kentucky Administrative Office of the Courts stated that in the last decade the number of civil jury trials has fallen 60 percent in the last ten years from 292 in 2005 to 118 in 2015. A review of The Kentucky Trial Court Review’s Combined Verdict Summary from 1998 to present demonstrates this decline as well. In 1998, there were 262 reported verdicts in auto negligence cases. By 2017, this number declined to twenty-seven (with one case excluded). For premises liability cases, in 1998, there were sixty-four reported verdicts, which declined to eighteen reported verdicts in 2017.

Statistics obtained from the Kentucky Department of Information and Technology Services, Research and Statistics, shows a decline in civil jury trials in Kentucky over the past decade. In 2008, excluding for certain types of cases, there were 153 civil jury trials. By 2017, that number had decreased to sixty-six.

Research performed in conjunction with New York University Law School’s Civil Jury Project demonstrates that this decline continues. A 2016 survey of attorneys from various legal organizations yielded 836 attorney respondents. Of those surveyed, the survey found that in 2015, the percentage of attorneys who had zero trials was 42 percent compared to 13 percent over the previous five years.
III. WHAT IS CAUSING THE CONTINUING DECLINE IN JURY TRIALS?

A. Rise of Administrative Proceedings and a Displacement of Litigation

With the rise of administrative proceedings to adjudicate disputes, the adjudication of civil disputes has shifted from the trial courts to other settings such as administrative proceedings or disciplinary proceedings.

In examining the federal system, an overwhelming number of disputes are handled through the administrative process. In 2001, the number of administrative law judges was 1,370, compared to 665 Article III District Court judges. The most current data on Administrative Law Judges ("ALJs") indicates that number is approximately 1,584. When one factors in "administrative judges" ("AJs"), agency employees who proceed over less formal hearings, that number increases significantly. As of 2002, there were more than 3,300 administrative judges. Annually, AJs and ALJs preside over 750,000 proceedings.

One example of the continued rise of administrative proceedings is SEC proceedings following the enactment of the Dodd-Frank Act of 2010. As a result of this legislation, the SEC has increased its use of administrative proceedings for enforcement actions as opposed to court proceedings. While in some ways, this shift may ease the burden of pursuing enforcement, it has not come without concerns by the parties involved and criticism from the legal community. An explosion of recent law articles examines the rise of these SEC administrative proceedings including renewed debates regarding constitutional protections that are not afforded (or not to the same degree as a true legal proceeding) by administrative proceedings. Constitutional challenges to these proceedings include arguments by respondents in these proceedings that they are deprived of a constitutional right to trial by jury.

Another example is workers' compensation cases. A 2011 journal article by attorney David Beck noted the impact that the adoption of administrative proceedings for workers' compensation in Texas had on civil trials.

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22 Galanter, supra note 3, at 25.


24 Id.


In 1989, substantive changes to the Texas workers' compensation laws essentially mandated the administrative resolution of workers' compensation claims. Those cases were the most frequent category of civil cases tried before 1989. To be more precise, in 1986, 430 workers' compensation cases were disposed of by jury trial in Texas. By 2004, the number of workers' compensation jury trials had been reduced to twenty-four.28

B. Arbitration and Alternative Dispute Resolution

Another frequently discussed contributing factor for the decline in overall trials is the increase of arbitration proceedings triggered in part by the inclusion of mandatory arbitration clauses in contracts and adoption of legislation mandating arbitration for certain types of proceedings.29 In discussing the impact of ADR proceedings on the decline of jury trials, Galanter pointed to the fact that during the 1990s when contract litigation declined in federal and state courts, the docket of the American Arbitration Association (AAA) remained steady and even increased later in that decade.30

Additionally, more and more courts are mandating mediation or other alternative dispute resolution methods prior to proceeding with litigation. In 1998, Congress passed the Alternative Dispute Resolution Act of 1998 (ADRA) "to address the problem of the high caseloads burdening the federal courts."31 The ADRA was the next step in a trend towards alternative dispute resolution that began at the Pound Conference in 1976.32 The ADRA required district courts to adopt local rules that stated litigants in all cases consider the use of ADR at an appropriate stage in the litigation.33 In 2001, 24,000 cases were referred to some form of ADR in the federal courts.34

28 Id.

29 See Galanter, supra note 5, p. 514.

30 Galanter, supra note 5, p. 515. "In the 1990s, when contracts filings tumbled in both federal and state courts, the AA docket remained steady and even began to increase late in the decade; by 2002 there was something over 17,000 of them."


32 Orna Rabinovich-Einy & Ethan Katsh, "The New New Courts," 67 Am. U.L. Rev. 165, 170-71 (2017) ("The 1976 conference was a gathering of over one hundred participants from the legal milieu – judges, attorneys, academics – all of whom discussed the ills of the court system, the sources of the court system's problems, and the possible solutions to those problems.").

33 Id. at p. 28.

34 Galanter, supra note 5, p. 514 (citing Thomas J. Stipanowich, "ADR and the 'Vanishing Trial': The Growth and Impact of 'Alternative Dispute Resolution,'" 1 J. Empirical Legal Stud. 843 (2004)).
In 2017, the United States Attorney General issued a report on the use of alternative dispute resolution in the federal courts entitled "2016 Report on Significant Developments in Federal Alternative Dispute Resolution." The Report stated that in a twelve-month period ending in June 2011, forty-nine federal district courts referred 28,267 cases to ADR. Thirty-six percent of district courts offered multiple forms of ADR processes with judicial mediation or settlement conferences the most commonly used settlement process in litigated cases. The Report cited as benefits of ADR settling cases prior to adjudication: achieving better and more customized relief than what an adjudication can provide, saving time and money for litigations, reducing time cases spend on court dockets, avoiding the impact of adverse precedent, improving communication between parties and increasing understanding of issues, narrowing issues for trial, making progress towards policy objectives, and narrowing discovery issues. While some of these listed benefits may not be particularly applicable for litigation between private parties as opposed to the federal government, several of these benefits demonstrate why ADR may have risen and jury trials declined. As we will discuss later, rising costs of litigation and the time litigation may take especially in complex cases makes alternative options for resolution an appealing course for litigants.

C. Adoption of Rules of Civil Procedure & Changes in the Law Impacting Pre-Trial Litigation

Another likely cause of the decline of jury trials is a simple one. With the adoption of the Federal Rules of Civil Procedure, the landscape of litigation changed. As Stephen C. Yeazell wrote in his journal article, "The Misunderstood Consequences of Modern Civil Process:"

Most lawyers know that the Federal Rules of Civil Procedure changed the mode of civil litigation. We less commonly appreciate that the Rules also changes the stage at which most civil disputes end.

At the time the Rules took effect in 1938, 18.9 percent of civil cases were resolved by trial. Yeazell's research showed that in the fiscal year ending two months before the Rules of Civil Procedure took effect, approximately one in five federal civil cases ended in a judgment at trial.

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36 Id. p. 14.

37 Id.

38 Id.


40 Beck, supra note 23, p. 33 (citing Galanter, supra note 5, p. 464).
In 1940, a report issued by the Administrative Office of the United States Courts showed the trial rate had dropped to 15.4 percent of the federal civil cases filed.\textsuperscript{42}

When one contemplates this drop and how attorneys use the rules of civil procedure, the correlation makes sense. The Rules of Civil Procedure resulted in a formal discovery process that applied to all cases. Rather than go to trial to discover the facts, parties could learn the evidence prior to showing up in the courtroom, and consequently, lawyers had the ability to evaluate their case prior to embarking on costly litigation. Discovery in its modern form permits lawyers to make intelligent decisions on the true issues in the case. Early on in a case, each side learns more about the strengths and weaknesses of each side's position enabling them to engage in meaningful settlement negotiations. While there may be exceptions to this, such as governmental entities not wanting to create bad precedent or in medical malpractice actions where litigation is influenced by an outside factor that those cases will be litigated to the fullest extent to discourage the filing of such suits, discovery and the early exchange of information has a direct correlation to early resolution of cases.

Discovery is not the only way in which the Rules of Civil Procedure impacted litigation, however. In the wake of the adoption of the Rules, was the rise of motion practice. Dispositive motions in the form of dismissals on the pleadings and summary judgments are an increased form of adjudication in modern civil litigation. Again, we can turn to Yeazell's research to support this contention. Immediately following the adoption of the Rules of Civil Procedure in 1940, pretrial motions accounted for 42 percent of adjudicated dispositions. By 1990, that number had increased to 75 percent.\textsuperscript{43}

Further, changes in the law relating to pleading standards and summary judgment have resulted in increased pre-trial litigation and resolution of cases. The United States Supreme Court's decisions in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), which altered the pleading requirements from notice pleading to "plausibility" pleading have resulted in varied empirical studies on their impact. For plaintiffs, arguably it is more difficult to bring meritorious cases, while defendants contend that the result is a more effective means of disposing with cases that lack merit. However, at least one recent empirical study found a statistically significant difference in the dismissal rates of employment and housing discrimination cases across time periods as the pleading standards evolved.\textsuperscript{44} The study found that pre-

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{41} Yeazell, \textit{supra} note 35, p. 633 (\textit{citing} 1938 Att'y Gen. Rep. 210, 213).
  \item \textsuperscript{42} \textit{Id.}
  \item \textsuperscript{43} \textit{Id.} at 637.
\end{itemize}
\end{footnotesize}
Twombly, the dismissal rate was 61 percent, 56 percent post-Twombly, and 72 percent post-Iqbal.\textsuperscript{45}

D. Increased Concentration of Certain Types of Cases into Fewer Hands

Though I could not find empirical research to support this proposition, I propose one consideration for a decline of jury trials based on my own experience: the increased concentration of certain types of cases into fewer hands. Increased sophistication of lawyers handling certain types of cases, for example, intellectual property or medical malpractice cases, can lead to a more thoughtful analysis of case acceptance criteria. Further, the more experience a lawyer has in a certain practice area, the more equipped that lawyer is to make a sound economic decision on whether to accept that case.

I often lecture on the economics of case acceptance. In doing so, I posit that the acceptance of any case on a contingent fee basis must take into account the likelihood of recovery, the potential amount of recovery, and the collectability of that recovery, and, of course, the amount of time and money it will take to get there. As certain types of cases are concentrated into fewer hands, this kind of economic decision-making can result in cases being declined because the ultimate recovery in those cases may not be economical. While there may be some concern to this from an access to justice perspective, litigation costs more than money. Taking a case to trial takes an emotional toll on the litigants involved, and I would contend that an honest assessment of an individual's case can be a positive thing for a public that negatively perceives the justice system.

All-in-all, however, this ultimately means that fewer cases are filed (because of better case selection methods) and fewer cases are tried (first, because there are less cases filed and second, because the cases actually filed tend to be "better" cases which means that they are more likely to be resolved pre-trial.)

E. Increase in the Ancillary Costs of Litigation

Litigation is expensive and even more so when a case goes to trial. Rising litigation costs factor into the decline of jury trials both in the form of the economic decision-making discussed above for acceptance of cases and in engaging in settlement negotiations and alternative dispute resolution methods prior to trial.


\textsuperscript{45} Id. (citing Brescia, p. 332).
The costs associated with e-discovery may deter some lawyers from even taking on certain cases and will certainly factor into analyses of early settlement. While amendments to the Federal Rules of Civil Procedure have sought to address e-discovery and the associated costs, the reality of this modern discovery hurdle remains as a significant cost to litigation. An article discussing e-discovery costs stated that as of 2014, most Fortune 1000 corporations spent between $5 million and $10 million annually on e-discovery costs.

Other ancillary costs to litigation exist including expert witness fees, demonstrative aids for trials, and costs for court reporters and transcripts, which are all factored into an evaluation of whether it is cost effective for a case to proceed to trial.

F. Subrogation Interests

Another consideration that may incentivize settlement in personal injury cases is the ability to negotiate with health insurance or other entities that have paid out benefits related to injuries or lost wages related to the claim. If an individual is able to resolve the subrogation favorably either in a waiver or a reduction, there is less of an incentive to proceed to a trial on the merits where an entity will be less likely to accept a reduced rate after a favorable judgment.

G. State Courts that Lack Adequate Resources

One problem facing the state court system is a lack of adequate funding. In 2011, the ABA House of Delegates adopted a resolution that urged "state, territorial, and local bar associations to document the impact of funding cutbacks to the justice systems in their jurisdictions, to publicize the efforts of those cutbacks, and to create coalitions to address and respond to the ramifications of funding shortages to their justice systems." The accompanying report noted the result of this lack of funding was staff layoffs including judges, increased filing fees, and closures of courts. The consequence of this is an added burden on litigation.


47 Id. (citing Jennifer Booton, "Don't Send Another Email until You Read This," Marketwatch (Mar. 9, 2015, 10:10 AM), http://www.marketwatch.com/story/your-work-emails-are-now-worth-millions-of-dollarsto-lawyers-2015-03-06.).


49 Id.
Any trial attorney who has filed a motion to set for trial only to have the next available trial date be over a year away can understand the frustration of this lack of funding. Litigants may grow weary of the time it takes for a case to proceed to trial creating an incentive for settlement over continued litigation. These delays impact the cost of litigation substantially, because when attorneys and experts have to place a case on the backburner because of a delayed trial date additional costs will be incurred to re-learn the file when the trial date nears.

Lack of training in effective case management is also an issue. In some jurisdictions, new judges simply adopt the case management practices of their predecessors, which may or may not represent the best technique for managing a docket correctly. Some judges who must stand for election fear retribution from the local Bar if they change docket control methods or more strictly apply rules of procedure. The result? All too often courtrooms sit empty while people who want to get to trial simply cannot get on a trial calendar in a timely fashion.

Kentucky is no stranger to these budgetary issues as the last two years of budget discussions have included proposed cuts to the judiciary's budget. Since 2008, the Kentucky courts have seen their budget shrink by 49 percent and 10 percent of the workforce has been lost to job cuts or attrition. The impact on the local counties is profound. In 2016, Campbell County had a hiring freeze for court clerk’s offices. Though the budget that ultimately passed in 2016 was less drastic than initially proposed, ongoing budgetary concerns exist.

H. Fear & Anxiety

Many lawyers who hold themselves out as trial lawyers have never been to trial and thus fear going to trial. Other lawyers have tried a few cases but not enough to overcome the fear of trial and the uncertainty of turning a case into the hands of twelve strangers.

The lack of trials perpetuates the problem. Less trials means less data on what a jury is likely to do in a given case. Liability insurance companies have superior knowledge on such matters, and thus are in a better position to make more informed decisions about which cases to try and which to resolve. This enhanced knowledge means that, other things being equal, "bad" cases for the plaintiff are more likely to be tried than "bad" cases for the defense. When "bad" cases for the plaintiff are tried, they are more likely to result in a poor result for the plaintiff, which in turn


51 Id.

increases the fear of plaintiff's lawyers (particularly those with no or little experience) of trying a case.

Thus, the lack of trials contributes to a continuing decrease in trials.

IV. WHAT ARE THE CONSEQUENCES OF THE DECLINE IN JURY TRIALS?

A. Chipping Away of a Constitutional Right

Article III of the U.S. Constitution states that all trials shall be by jury. The right to a jury trial is mentioned twice more in the Constitution in the Sixth Amendment, which states that an accused shall have the right to a speedy and public trial in criminal prosecutions, and the Seventh Amendment, which addresses the right to trial by jury in civil cases. The rise of the use of administrative proceedings, arbitration, and procedural court management such as multidistrict litigation (MDLs) have called into question whether the right to a jury trial is in jeopardy. If so, are we at risk of losing what James Madison, the drafter of the Seventh Amendment, stated was "essential to secure the liberty of the people."?

B. Decline in Public Confidence

In 2015, a Gallup poll showed that American citizens' trust in the federal judiciary had sunk to a new low. Fifty three percent of Americans stated that they have a "great deal" or "a fair amount" of trust in the federal judiciary. This number was dramatically lower from the 76 percent of Americans in 2009 who stated that they had public trust in the judiciary. Notably, Gallup's Governance poll also measures trust in all three branches of the federal government and trust in all three had a downward trend.

This lack of public trust in the federal judiciary is perhaps unsurprising given that most Americans are poorly informed about basic constitutional provisions. The annual Annenberg Constitution Day Civics Survey performed by the Annenberg Public Policy Center at the University of Pennsylvania found that one-third (1/3) of survey participants could not name any of the rights guaranteed under the First Amendment and only one quarter of Americans (26 percent) could name all three branches of the federal government.

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56 Id.
V. IS THERE A SOLUTION?

While there may not be one specific solution to the decline in jury trials, there are ways in which we can improve our legal system that may address the underlying causes for a decline in jury trials. By removing some of the outside pressures towards settlement and frustrations that litigants experience, there may be a way to increase the efficiency of the court system and the public's experience with the court system overall.

A. More Efficient Discovery Rules and Case / Docket Management

In addition to the amendments to the Federal Rules of Civil Procedure regarding e-discovery, other modifications to the rules of procedure can assist in ensuring that our legal system is providing justice without undue burden on the participants. In 2015, Colorado adopted changes to its Rules of Civil Procedure. The Comment to the rules changes stated that:

The 2015 amendments are the next step in a wave of reform literally sweeping the nation. This reform movement aims to create significant change in the existing culture of pretrial discovery with the goal of emphasizing and enforcing Rule 1’s mandate that discovery be administered to make litigation just, speedy, and inexpensive. One of the primary movers of this reform effort is a realization that the cost and delays of the existing litigation process is denying meaningful access to the judicial system for many people.58

This language mirrored the 2015 comment to the Amendment to Rule 1 of the Federal Rules of Civil Procedure, which stated:

Rule 1 is amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to employ the rules in the same way. Most lawyers and parties cooperate to achieve these ends. But discussions of ways to improve the administration of civil justice regularly include pleas to discourage over-use, misuse, and abuse of procedural tools that increase cost and result in delay. Effective advocacy is consistent with – and indeed depends upon – cooperative and proportional use of procedure.59


58 C.R.C.P. 1 cmt. 2015.

The changes to the Colorado Rules of Civil Procedure included amendments to Rule 16, which changes the focus of case management to "involve the trial judge in case management personally and actively from an early stage of the case." Under Colorado Rule 16(b), an initial case management conference must occur within forty-nine days of the issue date of the case. These amendments were in part a result of a Civil Action Pilot Project (CAPP) in Colorado, which was a program of case management that applied to certain business actions in Colorado courts. A study of CAPP participants’ experiences found that the "early, active and ongoing judicial management of cases received more positive feedback than any other aspect of the project."

The use of summary jury trials should also be considered. In Michigan, the Michigan Supreme Court has authorized summary jury trial pilot projects for certain districts. What is a summary jury trial? As described by the Order of the Michigan Supreme Court, they are "voluntary, binding jury trial[s], typically conducted in a single day before a panel of six jurors and presided over by the assigned judge, a judge appointed by the court, or a special hearing officer selected jointly by the parties." Differences between a typical jury trial and a summary jury trial include the smaller jury size, relaxed rules of evidence and procedure, and reduced appellate rights. Survey results of jurisdictions utilizing summary jury trials have yielded high satisfaction with the process among those involved. The benefits of summary jury trials include decreased costs to the litigants. The summary jury process limits the number of witnesses including experts and encourages stipulations, which reduces the expense of


61 Id. (citing C.R.C.P. 16(b) and 16(d)(1)).


According to one survey, summary jury trials have an estimated $2,000 cost as opposed to $12,000-18,000 for a regular jury trial.

The challenge here is for lawyers and judges to be open-minded to changes in procedures that will decrease the expense and length of the litigation process. All of us have a tendency to oppose change, and change for change's sake is foolish. But we must look for ways to improve the administration of justice and embrace those which decrease cost and delay while not substantially impacting the rights of any party.

B. Adequate Funding and Support for the Court System

Improved funding for court systems, especially rural counties, can help prevent overload and improve the overall legal system. An initiative began in 2008 by the Justice Management Institute and the Bureau of Justice Assistance, U.S. Department of Justice called the Rural Courts Improvement Network. The Initiative's goal was to "strengthen the ability of state court systems and rural court leaders to improve court operations in rural counties by emphasizing the sharing of information and ideas about promising approaches and practices and fostering peer-to-peer learning among court system leaders at the state and local levels."

Two trends identified by the Initiative as improving rural courts were the thoughtful application of modern information and communication technology including court-system webpages, videoconferencing, automated case management systems, sharing of court calendars and pending case information. The Initiative found that these improvements had improved overall effectiveness of the court system and provided cost savings to the rural courts. Secondly, the Initiative found that an increased role by state administrative offices of courts in addressing rural counties had the result of enabling the installation and use of computer-based technologies in rural courts.

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66 Id. p. 16-17.
67 Id. p. 16 (citing Craig, State Bar of Michigan, Alternative Dispute Resolution Section, Alternative Dispute Resolution Compendium, Demonstrating Cost-Effective and Efficient Resolution of Conflicts 9 (May 2011), pp 8-9).
69 Id. p. 68.
70 Id.
71 Id.
C. Need for Lawyers and Judges to Educate Laypersons on Civics and the Judicial System

Many bar associations including the Federal Bar Association and the American Bar Association have launched civics education programs. In Tennessee, Senior Federal District Judge Curtis Collier helped organize a program that brought together federal judges, members of the Chattanooga Chapter of the Federal Bar Association, and teachers from areas in the Eastern District of Tennessee to provide an overview of the federal courts, including the history and inner workings of the judicial branch.72 The teachers were also provided with the opportunity to view three criminal proceedings, a change of plea hearing, a sentencing hearing, and a revocation of supervised release. Judge Collier, concerned about the declining public perception of the judiciary, sought out a program to provide an opportunity for the public to have more contact with the federal courts. Programs such as these can increase public awareness of the actual workings of the legal system versus the perception that they may derive from popular culture or the media.

A 2013 Survey performed by You.gov surveyed 1,000 adults on jury service. Of the 66 percent of those adults who had been called for jury duty, 40 percent stated that they had been selected for jury duty.73 Of those selected, 35 percent answered that they would describe their experience serving on a jury as "very positive" and 33 percent answered "somewhat positive."74

D. Limiting the Number of Expert Witnesses and Coordination of Expert Discovery

Cumulative testimony from expert witnesses increases pre-trial and trial costs and thus decreases the likelihood of cases going to trial. There simply is no need to have multiple experts be disclosed to testify or testify on a single subject. The issue of the number of experts that may be disclosed or allowed to testify should be the subject of the scheduling and pretrial conference.

Complete expert disclosures should be required and parties who wish to depose expert witnesses should be permitted to do so only after disclosing their own experts. Doing so will reduce the likelihood of multiple depositions of the same experts (because it will reduce the likelihood of one party claiming "surprise" of "new" material arising in a deposition, giving rise to re-take the deposition after additional preparation).

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74 *Id.*
Table 6.4
U.S. District Courts – Civil and Criminal Trials Completed

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Grand Total</th>
<th>Civil</th>
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<th>Criminal</th>
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<td></td>
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<tr>
<td>2014</td>
<td>12,186</td>
<td>4,770</td>
<td>2,848</td>
<td>1,922</td>
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<td>2013</td>
<td>13,033</td>
<td>5,027</td>
<td>3,002</td>
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<tr>
<td>2012</td>
<td>13,446</td>
<td>5,478</td>
<td>3,342</td>
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<tr>
<td>2010</td>
<td>13,828</td>
<td>5,383</td>
<td>3,229</td>
<td>2,154</td>
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<tr>
<td>2005</td>
<td>12,788</td>
<td>5,305</td>
<td>2,993</td>
<td>2,312</td>
</tr>
<tr>
<td>2000</td>
<td>14,691</td>
<td>7,943</td>
<td>4,539</td>
<td>3,404</td>
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<tr>
<td>1995</td>
<td>17,816</td>
<td>10,395</td>
<td>6,146</td>
<td>4,249</td>
</tr>
<tr>
<td>1990¹</td>
<td>20,433</td>
<td>11,502</td>
<td>6,737</td>
<td>4,765</td>
</tr>
</tbody>
</table>

Note: Due to a change in methodology, numbers for years prior to 2015 may not match numbers previously published in this table. Includes trials conducted by district and appellate judges only. All trials conducted by magistrate judges are excluded. Includes hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, and other contested proceedings in which evidence is introduced. Civil trials include trials of miscellaneous cases.

¹ 12-month ending June 30.

Source: Table C-7 for 1990-2010 and Table T-1 for 2011 to present, Annual Report of the Director: Judicial Business of the United States Courts.
CIVIL CASES WITH JURY TRIAL
CY 2008 – 2017

February 28, 2018

by
Tammy Manley (Data Analyst Specialist)
Kathy Schiflett (Research Consultant)
Daniel Sturtevant (Research and Statistics Manager)

Requestor: Liz Sitgraves
On Behalf of: Organization:
Law Offices of John Day Injury Attorney’s
Due Date: February 22, 2018

Statistics Request Overall Description
On February 20, 2018 Liz Sitgraves requested from Research and Statistics the number of civil jury trials occurring in Kentucky for each calendar year during the past ten (10) years.

CourtNet, which provides a summary of Kentucky court cases, was queried to capture cases based on two independent criteria:
1. Any civil case having case disposition type “JJT (Judgement – Jury Trial)” or
2. Any Mental Health “Disability” cases disposed as Full Disability, Partial Disability having one of the scheduled events JT (Jury Trial), JTD (Jury Trial – Disability), JTH (Jury Trial-Involuntary Hospital).

The requested timeframe is derived from the case disposition date ranging from January 1, 2008 through December 31, 2017.

Statistical Table (12_RS3166C)
This report is a count of disposed civil cases meeting the specified criteria by court jurisdiction, case type, and calendar year. Statewide totals are also noted.

Statistical Analysis Considerations:
- The statistics presented in the attached tables are a snap shot in time.
- Case counts do not equal a count of individuals, since an individual may have multiple cases.
CIVIL CASES WITH JURY TRIAL
CY 2008 – 2017

Data Variables Requested

<table>
<thead>
<tr>
<th>Database</th>
<th>Data Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CourtNet</td>
<td>Court Jurisdiction</td>
<td>The jurisdiction (division) of the civil case (Circuit, Family, or District Court).</td>
</tr>
<tr>
<td></td>
<td>Case Disposition Date</td>
<td>The disposition date when the case was adjudicated. The timeframe ranged from January 1, 2008 through December 31, 2017 and is reported as calendar year (January 1 to December 31).</td>
</tr>
<tr>
<td></td>
<td>Case Disposition Type</td>
<td>The code to track the outcome of the adjudication. For this request the codes were:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• ‘JJT’-Judgement - Jury Trial</td>
</tr>
<tr>
<td></td>
<td>Case Type</td>
<td>Description of the type of case. Report is limited to civil cases which meet the specified extraction criteria.</td>
</tr>
<tr>
<td></td>
<td>Scheduled Event</td>
<td>Codes indicating court proceedings or other events occurring during the life of a case. The existence of a scheduled event code for a case indicates only that a given event was at one point scheduled to occur but does not guarantee that the event ever occurred.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>CODE</strong>   <strong>SCHEDULED EVENT DESCRIPTION</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>JT          JURY TRIAL</td>
</tr>
<tr>
<td></td>
<td></td>
<td>JTD         JURY TRIAL - DISABILITY</td>
</tr>
<tr>
<td></td>
<td></td>
<td>JTH         JURY TRIAL-INVOLUNTARY HOSPITAL</td>
</tr>
</tbody>
</table>

Disclaimer Associated with KCOJ/AOC Database(s) and Element(s)

RESEARCH AND STATISTICS DISCLAIMER
Information received from KYCourts/CourtNet is subject to change(s), reprogramming, modification(s) of format and availability at the direction of the Administrative Office of the Courts (AOC), and may not at any particular moment reflect the true status of court cases due to ordinary limitation(s), delay(s) or error(s) in the system’s operation. The KYCourts/CourtNet database is not a real-time system. All datasets are a snapshot of case data at the time a query is run. Case counts are not counts of individuals as some persons may have multiple cases.

The AOC disclaims any warranties as to the validity of the information obtained from KYCourts/CourtNet. The recipient is solely responsible for verifying information received from KYCourts/CourtNet through the cross-referencing of official court records. The AOC shall not be liable to the recipient, or to any third party using the system or information obtained therefrom, for any damages whatsoever arising out of the use of KYCourts/CourtNet.
Civil Cases Disposed Having JJT and/or Mental Health "Disability" Cases Disposed "FD/PD" having Scheduled Event Type of "JT/JTD/JTH/JTSH"

CY 2015 - CY 2017

STATEWIDE

<table>
<thead>
<tr>
<th></th>
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</tr>
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<tr>
<td>CIRCUIT</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Adoption / Termination</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<td>1</td>
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<tr>
<td>Civil Suits</td>
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<td>128</td>
<td>133</td>
<td>151</td>
<td>115</td>
<td>111</td>
<td>105</td>
<td>85</td>
<td>69</td>
<td>66</td>
<td>1,120</td>
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<tr>
<td>Domestic &amp; Family</td>
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<td>0</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Other Civil</td>
<td>39</td>
<td>34</td>
<td>43</td>
<td>44</td>
<td>32</td>
<td>33</td>
<td>46</td>
<td>36</td>
<td>29</td>
<td>35</td>
<td>371</td>
</tr>
<tr>
<td>Total</td>
<td>192</td>
<td>162</td>
<td>177</td>
<td>196</td>
<td>147</td>
<td>145</td>
<td>155</td>
<td>121</td>
<td>98</td>
<td>101</td>
<td>1,494</td>
</tr>
</tbody>
</table>

| DISTRICT       |         |         |         |         |         |         |         |         |         |         |       |
| Civil          | 16      | 16      | 17      | 15      | 21      | 11      | 16      | 12      | 14      | 10      | 155   |
| Disability & Health | 1,660 | 1,695 | 1,812 | 1,912 | 1,982 | 2,107 | 2,045 | 2,159 | 2,219 | 2,390 | 19,981 |
| Domestic Violence | 1 | 3 | 0 | 2 | 0 | 1 | 1 | 1 | 1 | 1 | 10 |
| Juvenile       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 1       | 2       | 3     |
| Probate        | 0       | 0       | 1       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 1     |
| Small Claims   | 1       | 4       | 1       | 4       | 1       | 2       | 3       | 2       | 7       | 26      |       |
| Total          | 1,681   | 1,718   | 1,830   | 1,936   | 2,008   | 2,119   | 2,064   | 2,175   | 2,247   | 2,410   | 20,178 |

| FAMILY COURT   |         |         |         |         |         |         |         |         |         |         |       |
| Adoption / Termination | 2 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| Disability & Health | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 2 |
| Domestic & Family | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 2 | 0 | 1 | 4 |
| Domestic Violence | 0 | 1 | 1 | 0 | 1 | 1 | 2 | 1 | 4 | 13 |     |
| Juvenile        | 0       | 1       | 0       | 0       | 0       | 0       | 0       | 0       | 2       | 3       |       |
| Other Civil     | 0       | 0       | 1       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 1     |
| Total          | 3       | 2       | 1       | 6       | 0       | 1       | 2       | 2       | 4       | 6       | 27    |
| Total          | 1,876   | 1,882   | 2,008   | 2,138   | 2,155   | 2,265   | 2,221   | 2,298   | 2,339   | 2,517   | 21,699 |

* This data is provided from the CourtNet database.
RESOLUTION

RESOLVED, That the American Bar Association urges state, territorial, and local bar associations to document the impact of funding cutbacks to the justice systems in their jurisdictions, to publicize the effects of those cutbacks, and to create coalitions to address and respond to the ramifications of funding shortages to their justice systems.

FURTHER RESOLVED, That the ABA urges state, territorial, and local governments to recognize their constitutional responsibilities to fund their justice systems adequately, provide that funding as a governmental priority, and develop principles that would provide for stable and predictable levels of funding of those justice systems.

FURTHER RESOLVED, That the ABA urges federal, state, territorial, and local courts to identify and engage in best practices to insure the protection of the citizens within their jurisdictions, efficient use of court resources, and financial accountability.

FURTHER RESOLVED, That the ABA urges state, territorial and local courts and bar associations to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.