



Unemployment Hearings Require Careful Preparation

By Kelly Schoening of Dressman Benzinger LaVelle. Reprinted with permission.

Unemployment hearings are the employer's only real opportunity to present its witnesses and exhibits. The best plan for a good result is to be prepared. Although there are two levels of appeal after the referee hearing, no new evidence can be introduced thereafter.

At a recent seminar hosted by the Kentucky Chamber of Commerce, officials from unemployment advised that copies of any policies or documents that are pertinent to the reason for termination should be presented as exhibits. Witnesses with first hand knowledge should be present to testify for the hearing. Having a witness who only has hearsay evidence will not be given as much weight as someone with first hand knowledge. The parties are now asked to submit a witness list and any exhibits five days prior to any telephonic hearings. The witness list and exhibits must be sent to unemployment as well as to the other party. It is best to fax the

information to the unemployment office so that you have confirmation of receipt.

There are numerous reasons for the denial of unemployment benefits which are set out in KRS 341.370. Generally the most often litigated issue in unemployment hearings is whether the employee committed "misconduct". Employers must prove misconduct by a preponderance of evidence which means more likely than not the employee committed the infraction the burden of proof for misconduct remains with the employer. It is a very important distinction for employers to prove that the employee's conduct was deliberate and not merely unsatisfactory work. If an employer can show that an employee had a willful disregard of the employer's interest, by recurring carelessness or negligence or intentional and substantial dis

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

TechTip: Getting started with Fastcase and your all night remote-access information buffet! It all starts with a subscriber number and an internet connection.
By: Julie Koehne

Let's start at our homepage
<http://www.hamilton-co.org/cinlawlib>

Next, click on the case law link in the middle of the page.



You will be asked to login.
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Law library subscribers can login here to access 24 hour remote databases and other helpful information. Log in with your name and your law library borrower number to access these resources. Not a subscriber yet? [Join today](#) and let us extend the reach of your practice!

Note: Only solo and lawyers at firms with a firm subscription have remote access to these resources. If you are the only lawyer at your firm who is a subscriber, and would like access, we have discounted rates for all firms with 2 or more lawyers.

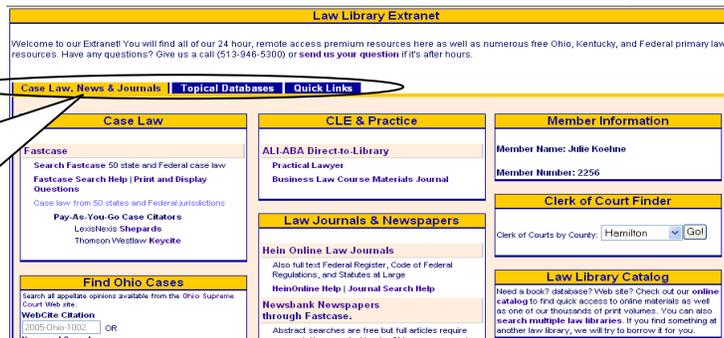
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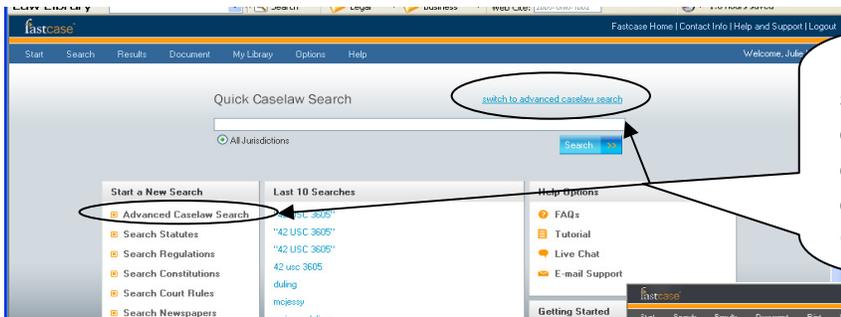
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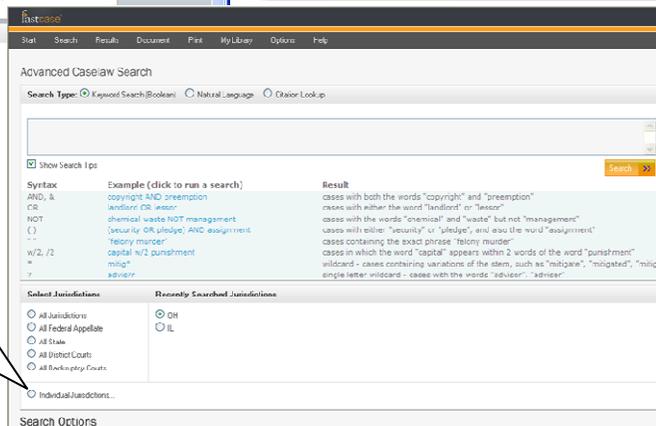


To proceed to Fastcase, click on the Fastcase link in the Case Law box.



Fastcase offers many types databases to search, such as newspapers, court rules, constitutions, regulations, statutes, and case law. To search case law by a specific jurisdiction, click on the "Advanced Caselaw Search".

At the bottom of the next screen you will find "Individual Jurisdictions." Click the radio button and menus will continue to open as you select the specific jurisdiction you want. Enter your search terms above and click on the search button. Your results await you.



Free CLE

Free to subscribers; \$50 for non-subscribers

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Lawyers and Depression: The Silent Epidemic

Presenters: Tabitha Hochscheid and Pat Garry
Wednesday, August 21
Noon-1pm

The seminar will focus on:

- Recognizing the signs and symptoms of Depression
- Prevalence of depression among legal practitioners
- Relationship between depression and addiction.

Approved for 1.0 hour of general credit in Ohio. Kentucky credit is pending.

July Meeting of the Law Library's Board

The Hamilton County Law Library Resources Board is scheduled to meet at 1:00 p.m. on Tuesday, July 9, 2013 in the Robert S. Kraft Board Room in the Law Library. Meetings of the board are open to the public. Minutes of previous meetings are online at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

ALI CLE Courses at Discounted Price to HCLL Subscribers

As we announced in June, the Law Library offers discounted access to ALI CLE live telephone seminars and webcasts*. This is a good option for high quality, low cost, convenient CLEs. For more information, see the June newsletter <http://www.hamilton-co.org/cinlawlineletters/2013/13June.pdf>.

To see available courses, just log in to our website via Subscriber Login and then select ALI CLE Webcasts. You will find more information and registration options for the programs listed below — and others covering the gamut of substantive law, lawyering skills, and ethics — on our website. There are a number of practical CLE webcasts lined up for July, including these:

- Drafting Settlement Agreements in Business Disputes, July 2
- Planning and Administering Estates and Trusts: The Income Tax Consequences You Need to Consider, July 9
- The Ethics of Mobile Computing: Being Safe and Smart While Out of The Office, July 18
- Waving Goodbye to the Attorney-Client Privilege: Express, Implied, and Subject Matter Waivers, July 25
- Writing Skills for Lawyers, July 29
- Bringing Your Case to Life: Persuasive Speaking in a Trial Setting, July 31

**This service is available to our subscribers at firms of 50 or fewer attorneys and to county officials.*



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regard, misconduct can be proven. This is a very high burden for employers to meet and requires careful preparation of witnesses and exhibits to prove it.

Although the unemployment office rarely does in-person hearings due to the sheer number of hearings and lack of referees, in certain situations employers can request an in-person hearing, which in some cases may be very beneficial to the employer's case.

For employers who have participated in numerous unemployment hearings, they are aware that hearings are evidentiary in nature requiring a direct and cross examination of witnesses and introduction of exhibits. The opposing side is not required to notify if legal counsel will be present, so employers can feel ambushed at these hearings when a lawyer for the employee shows up.

According to the 2011 Trust Report issued last year, there were 173,000 unemployment claims filed in Kentucky. Out of the 83,000 of those were protested, 66% of claimants were denied benefits in the first round. Of the 22,000 cases heard on appeal, 84% of those were appealed by the claimant. The Kentucky Unemployment Insurance office hears approximately 135 hearings per day for a total of almost 22,000 per year.

The Kentucky Unemployment Insurance Trust has been insolvent since January 2009 and had to borrow money from the federal government to pay its claims. In 2011 Kentucky employers paid \$443.3 million to Unemployment Insurance contributions but workers received benefits in the

amount of \$554.6 million resulting in \$111.3 million benefits paid above what was received. The maximum weekly benefit for an employee is \$415.00 a week. This has been the maximum benefit for several years and will not be raised until the unemployment insurance trust is solvent again.

Workers are currently able to receive a maximum of 53 weeks of benefits. Employers should be advised that in order to qualify for benefits an employee must have worked 10 weeks for a covered employer. However, a week counts if the person only worked one day that week for chargeability purposes.

A recent change made by the Unemployment office to assist employers was to allow employers 15 days to respond to the initial paperwork instead of 10. Employers are now able to get some of the initial paperwork electronically sent via email to eliminate the paper system and hopefully allow for quicker response times. However, the Unemployment office highly recommends that multiple users have access to this email account due to vacations or illnesses. The 15 day deadline is a hard and fast rule and if missed by the employer will result in the employee receiving benefits.

Employees who fraudulently receive benefits can be charged with a class D felony. Some examples of fraudulently obtaining benefits are employees who fail to report wages earned and still collect unemployment. The state of Kentucky has six fraud investigators whose fulltime job is to prosecute those fraudulently receiving benefits. Employers are encouraged to report violators.

When an employer loses multiple hearings and benefits are paid it will affect the experience rating, which therefore affects the amount of premiums paid by the employer. Therefore, it is of great benefit to adequately prepare for these hearings and challenge the hearings that are worth challenging in order to win them. However, it is advisable not to challenge benefits in a case where the chance of winning is minimal and it may upset an employee causing the employee to file either a EEOC claim or lawsuit. So a careful analysis must be done to determine if an appeal is worth pursuing.

For more information, contact Kelly Schoening. (kschoening@dbllaw.com)

Go Green and Get the News First!

Are you currently receiving the HCLL newsletter in print? Would you prefer an online version? HCLL subscribers who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email reference@cms.hamilton-co.org with a request to switch formats.



Coming Soon: New Technology in Board Room

Our subscribers and visitors who attend CLEs or other programming here will be pleased to know that library staff are reviewing proposals for projection equipment and installation for the Robert E. Kraft Board Room by the end of summer. We will enjoy crisper, bigger images from a new ceiling-mounted projector on a larger screen and clearer sound from new speakers. Our events for legal professionals and the public are very popular so it makes good sense to invest in this meeting space. We are able to fund the technology purchase now thanks to funding from a grant from the statewide consortium of Ohio's county law library boards, supplemented by our regular budget.

New Photocopiers, New Features

New photocopiers were delivered to the Law Library in late June. After a few tweaks to make minor adjustments in functionality, they seem to be serving patrons and staff well. We were able to keep the costs to users the same while adding features, including the ability to send and receive faxes from the copier room. Any task that involves a print out incurs a charge, while scanning and faxing is free. As this newsletter goes to print, we are adding mobile printing, which enables printing from any mobile device by sending a job to a website and then releasing the job when you arrive on-site. We will also be able to save scans to and print documents from flash drives later in the month. If you would like a quick tutorial or guidance on advanced settings, please ask any staff member.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Landlord Tenant Law

Attorney Ivan Tamarkin is our next speaker in the *You and the Legal System* series for the public. Mr. Tamarkin will discuss Landlord Tenant Law on Friday, July 19 at noon at the Law Library.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: James Grey Wolf will discuss Probate Law on August 16.



Deposition and Witness Resources

The Law Library offers a variety of print and online resources on depositions and witness examination. If you have questions about access to any of these resources, just call us at 531.946.5300.

Books

Advanced expert witness deposition tactics
KFO81 .O358 2008

Art of cross-examination
KF8920 .W4 2009

Bender's Forms of Discovery
KF8900 .A3 B4

Cross-examination: science and techniques
KF8920 .W4 2009-

Deposing & examining employment witnesses
KF9650 .S36 2007-

Deposition strategy, law and forms
KF8900 .D47 2013

Discovery Problems and Their Solutions
KF8900 .G758 2013

Effective depositions
KF8900 .E35 2010

Expert witnesses, valuation & damages: the expert's point of view
KF8961 .A967 2013

Eyewitness testimony: civil and criminal
KF9672 .L63 2007-

Litigation section conference: advanced constructive cross-examination
KFO538.4 L573 2012

Model Interrogatories
KF8900 C84 2010-

Model Witness Examinations
KF8950 .S236 2010

Relentless criminal cross-examination
KF9658 .M14 2008-

Taking and defending effective depositions
KFO537 .T34 2012

Warning the Witness: guide to internal investigations and attorney-client privilege
KF1425 .S45 2010

Vouching: a defense attorney's guide to witness credibility, law and strategy
KF8950 .E46 2008

Online Resources-Remote Access

Aspen/Loislaw Treatise Libraries

Deposition Handbook

Malingering and Deception in Litigation

Witness Preparation

Scientific Evidence and Experts Handbook

2012 Expert Witness Update

EBSCO

Nolo's Deposition Handbook

Expert Witness Web Directories

ALM Experts-<http://www.almexperts.com/home>

AMA Doctor Finder-<https://extapps.ama-assn.org/doctorfinder/recaptcha.jsp>

Expert Pages-<http://expertpages.com/>

JurisPro-<http://www.jurispro.com/>



Upcoming Events:

July 9: Hamilton County Law Library Resources Board Meeting

July 19: You and the Legal System: Landlord Tenant Law

August 21: Mental Health CLE

Law Library Holidays

The Law Library will be closed on Thursday, July 4 in honor of Independence Day.



July 2013 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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