

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

April 2016

Defense Strategies for Avoiding Jury Trials in Trust and Estate Litigation in Kentucky State Court

By Jared Cox of Bingham, Greenbaum Doll LLP.*

Jury trials in civil litigation are inherently unpredictable – a reason why over 90 percent of civil cases settle before, or during trial. With respect to trust and estate litigation, i.e., litigation typically brought by a disgruntled (often disinherited) “would be” beneficiary challenging the validity of a trust, will or other estate planning instrument, these issues are of particular concern. In trust and estate litigation, juries may have an inclination to render a verdict they believe is “fair” to all parties, no matter what the facts or law may support. This presents a real concern for trustees, executors, family members, beneficiaries and attorneys trying to defend a decedent’s estate plan against such attacks.

Fortunately, it appears that Kentucky law provides an effective method by which defendants in trust and estate litigation may seek to avoid the risks of an “activist” jury. Where there is

an action for declaratory judgment by a disgruntled plaintiff that solely seeks to invalidate a trust, will, or other estate planning instrument, many circuit courts interpreting Kentucky law conclude that such claims must be adjudicated by the court, and not by a jury.

CR 38.01 provides: “The right of trial by jury as declared by the Constitution of Kentucky or as given by a statute of Kentucky shall be preserved to the parties inviolate.” Accordingly, the right to a jury is only guaranteed if required by the Constitution or by statute. But an action solely seeking to invalidate a document transferring real or personal property, like a trust or other estate planning instrument, is an “action at equity” that is to be adjudicated by the court. The case of *Averitt v. Bellamy*, 406 S.W.2d 410 (Ky. 1966), applies to such claims. In *Averitt*, the Kentucky Supreme Court ruled

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Hamilton County Law Library

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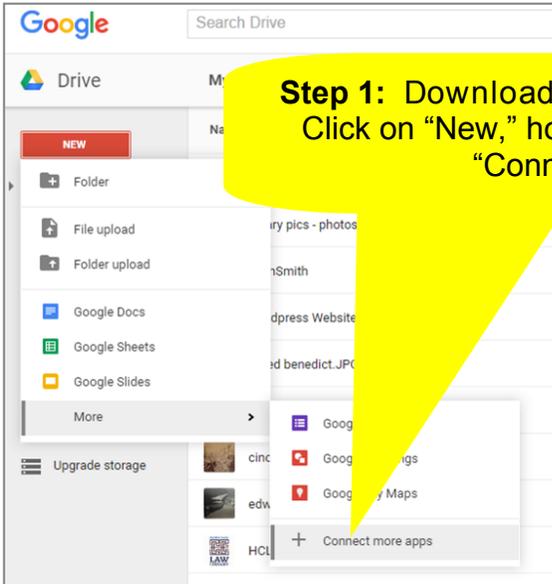
Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

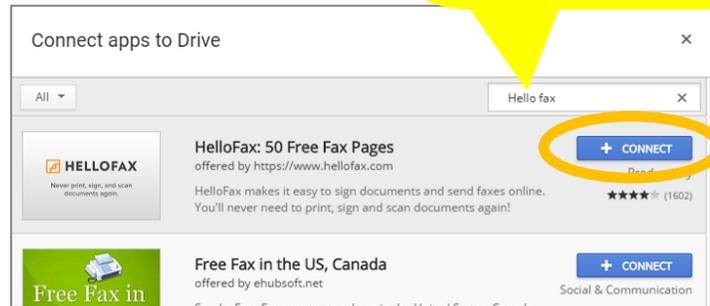
Tech Tip: Fax for Free Using the HelloFax App in Google Drive

By Julie Koehne, Assistant Law Librarian, Systems

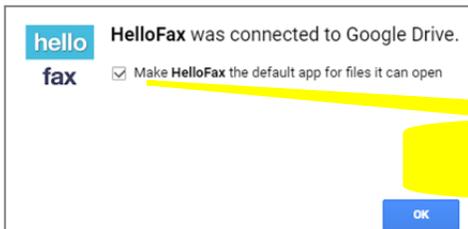
Here's one option for a fax app. Follow the steps below to install the HelloFax app to fax documents from your computer. It provides 50 free fax transactions per email account.



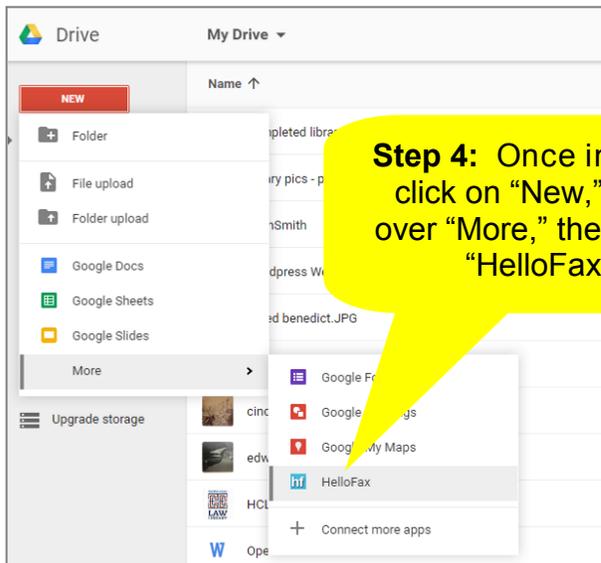
Step 1: Download the app from Google Drive. Click on "New," hover over "More," then select "Connect more apps."



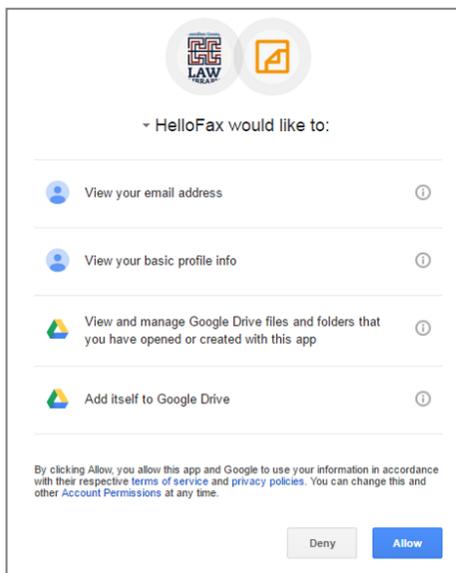
Step 2: Search for "HelloFax," then click on "Connect."



Step 3: Deselect the check box, then click "OK."

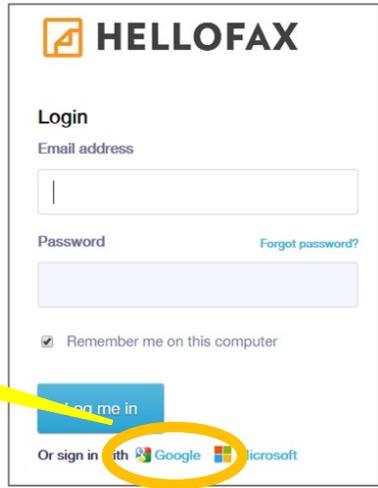


Step 4: Once installed click on "New," hover over "More," then select "HelloFax."



Step 5: Allow the settings HelloFax would like in order to use the app.

Step 6: No need to create another user ID, just click on "Google" and you will automatically be logged in.



HELLOFAX

Login

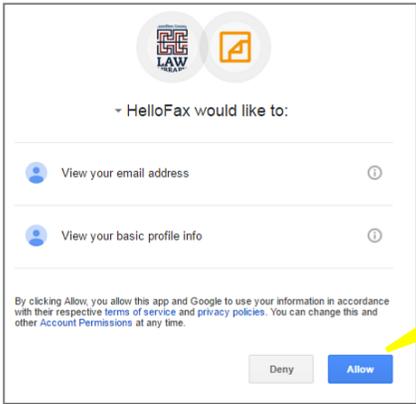
Email address

Password [Forgot password?](#)

Remember me on this computer

Log me in

Or sign in with  Google  Microsoft



HELLOFAX

HELLOFAX would like to:

- View your email address
- View your basic profile info

By clicking Allow, you allow this app and Google to use your information in accordance with their respective terms of service and privacy policies. You can change this and other Account Permissions at any time.

Deny Allow

Step 7: Allow the settings HelloFax would like in order to use the app.

Step 8: Select "Fax Document."



What would you like to do?

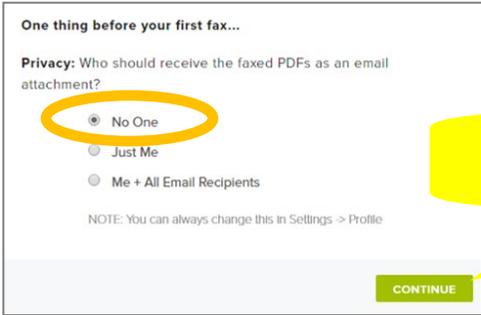
FAX DOCUMENT

EDIT & SIGN BEFORE SENDING.

REQUEST SIGNATURE

HAVE SOMEONE ELSE SIGN VIA HELLOSIGN.

Step 9: Select "No One," then click "Continue."



One thing before your first fax...

Privacy: Who should receive the faxed PDFs as an email attachment?

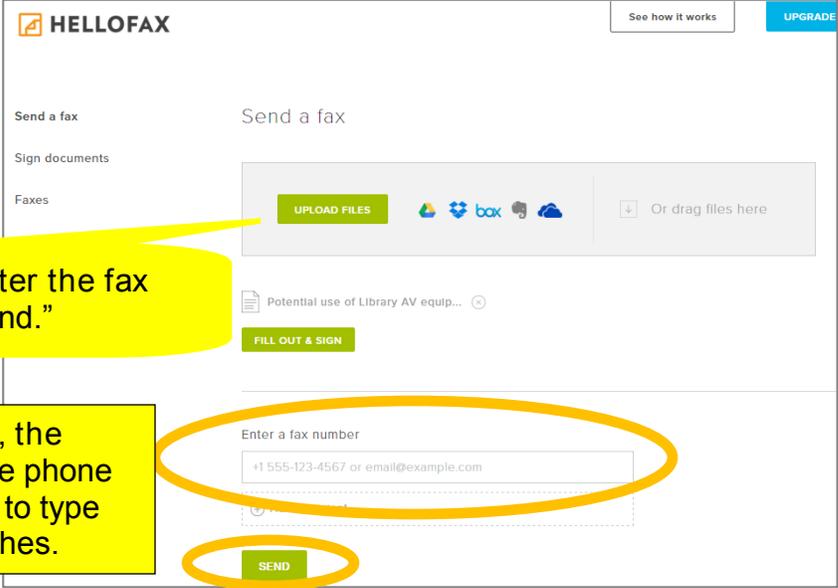
- No One
- Just Me
- Me + All Email Recipients

NOTE: You can always change this in Settings -> Profile

CONTINUE

Step 10: Upload the file, enter the fax number, then click "Send."

Hint: Enter a "1", the area code, then the phone number. No need to type any spaces or dashes.



HELLOFAX

See how it works UPGRADE

Send a fax

Sign documents

Faxes

UPLOAD FILES    Or drag files here

Potential use of Library AV equip... 

FILL OUT & SIGN

Enter a fax number

+1 555-123-4567 or email@example.com

SEND

that CR 38.01 does not entitle the plaintiff in a declaratory judgment action to a jury trial: “A suit to set aside the transfer of real or personal property is peculiarly one of equitable cognizance. Regardless of demand, no party has a right to a jury trial (CR 38.01).” *Id.* at 411.

Indeed, Kentucky law appears to be settled that declaratory judgment actions are generally conceived of as equitable claims. In *Triplett v. Livingston Cnty. Bd. of Educ.*, 967 S.W.2d 25 (Ky. App. 1997), the Court of Appeals affirmed the trial court’s ruling in a declaratory judgment action that: “since the petition was for declaratory judgment seeking a permanent injunction, it was an equitable action in which the court must decide both issues of law and fact.” *Id.* at 29; see also *Marrs v. Kelly*, 95 S.W.3d 856, 864 (Ky. 2003)(Cooper, J., Concurring in Part and Dissenting in Part)(“A declaratory judgment action is a non-jury trial and involves the trial court in findings of fact as well as conclusions of law...”). Further, in *Smith v. Bear, Inc.*, 419 S.W.3d 49 (Ky. App. 2013), review denied (Feb. 12, 2014), the Court of Appeals recognized that “jury trials are only a constitutional right when the issues are at law, rather than in equity. Our Supreme Court has held ‘equitable issues are not triable by juries unless agreed to by the parties.’” *Id.* at 57-58; see also *Schultz v. Gen. Elec. Healthcare Fin. Servs., Inc.*, 360 S.W.3d 171, 175 (Ky. 2012)(holding that equitable issues are not triable by juries unless agreed to by the parties)(citing *Daniels v. CDB Bell, LLC*, 300 S.W.3d 204, 210 (Ky. App. 2009)).

Some “right” to a jury trial in declaratory

judgment actions is not guaranteed by either the Constitution or Kentucky’s Declaratory Judgment statute. As set forth above, Kentucky’s Constitution does not guarantee a party the right to a jury trial in equitable actions. In addition, Kentucky’s Declaratory Judgment statute, KRS 418.040, does not provide a right to a jury trial:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

Further, CR 57 governs declaratory judgment actions and does not guarantee a right to a jury trial. CR 57 simply provides that there may be a right to a jury if provided by CR 38 or 39. However, as set forth above, neither Civil Rule provides such a “right.” A jury trial may only be permitted in such circumstances if consented to by all parties. (See CR 39.03.)

Defense counsel in Kentucky state court declaratory judgment actions which seek to invalidate a trust, estate or other instrument should strongly consider moving for a bench trial on these claims. If counsel determines that the particular circumstances weigh against a bench trial, they may consent to a jury trial. In most circumstances, however, adjudication of the claims by the court instead of a jury is likely to be more favorable to the defense.

For more information, contact [Jared A. Cox](#).

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Law Library Board to Meet on Thursday, April 14

The Hamilton County Law Library Resources Board will hold its next regularly scheduled meeting on Thursday, April 14, 2016 at 12:00 noon in the Robert S. Kraft Board Room. Meetings are open to the public. This meeting will be held in conjunction with the annual meeting of the Cincinnati Law

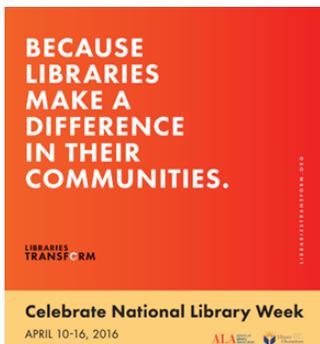
Celebrate National Library Week

National Library Week is April 10-16 2016. This national observance is a time to celebrate the contributions of our nation's libraries and librarians and to promote library use and support. All types of libraries - school, public, academic and special - participate.

Do you love your library? We do! This year's theme is "Libraries Transform" and that's certainly the case at the Law Library where we support access to legal information and access to justice.

At Your Library during National Library Week along with treats all week:

- April 12: CBA Memorial Reception
- April 14: Law Library Board Meeting
- April 15: You and the Legal System



Upcoming CLE

Free to subscribers; \$50 for non-subscribers
Registration is required.

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

<http://lawlibrary.hamiltoncountyohio.gov/classes/cle/>

Lexis CLE: The Modern Campfire: Advanced Research Tips

Thursday, April 28

Noon-1pm

Speaker: Suzanne Morris

Approved for 1.0 hour of general CLE in Ohio

Ohio Senate Bill 181: Statutory Changes in Fiduciary Duties of the Majority Owner

Thursday, May 26

Noon-1pm

Presenter: John Cobey

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

Lexis Anywhere

The Law Library offers a special rate for Lexis to library subscribers who are in solo practice. For all the details and an application form, see the [Lexis for Solo Attorneys](#) information on our website. Content includes Ohio, Kentucky, and Indiana cases and codes, plus Sixth Circuit Court of Appeals, Shepardizing, SCOTUS cases, CFR and USCA. Vanessa or Mary would be glad to answer your questions at 513.946.5300.

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 six weeks at a time

Access to extensive legal information databases from the Law Library, including Lexis Advance, Shepard's, Westlaw, Intelli-Connect, Lexis Digital Library e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Five 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

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

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Intelli-Connect Law, Business, Tax, and Accounting.

An add-on plan for Lexis access is available for subscribers in solo practice.

You and the Legal System: Protecting Yourself Before and After an Auto Collision

Attorney Alison de Villiers is our next speaker in the *You and the Legal System* series for the public. Ms. De Villiers will discuss Auto Accidents on Friday, April 15 at noon in the Law Library.

The program is free to the public. To register, call 513.946.5300 or register via our website at <http://lawlibrary.hamiltoncountyohio.gov/classes/you-and-the-legal-system/>

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](#).

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 on our *You and the Legal System* series. Melinda Knisley will discuss workplace sexual harassment on May 20.



Personal Injury

Law Library subscribers have access to a variety of resources on Personal Injury. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Anatomy and physiology 101 for attorneys [in Ohio]
KFO539.P4 A63 2015

Blashfield automobile law and practice
KF1290.A8 B57 2015

Bluffton bus crash : start to finish.
KFO196.3.A8 B58 2012

Damages in personal injury [in Ohio]
KFO195.A25 D36 2014

Damages in tort actions.
KF1250 .D35 2015

Hornbook on torts
KF1250 .D59 2016

Kentucky Law of Damages
KFK1395 .E18 2015

Ohio personal injury practice : successful trial strategies.
KFO539 .P4 I41 2015

Personal injury : actions, defenses, damages
KF1256 .A8 F7 2015

Punitive damages
KF1249 .S34 2013

Scientific automobile accident reconstruction,
KF1290.A8 S5 2015

A short & happy guide to torts / by Roger E. Schechter.
KF1250.Z9 S34 2012

Tort law [Kentucky]
KFK1280 .K4 2015

Tort law [Ohio]
KFO195 .E78 2015

Understanding torts
KF1250 .D5 2013

Uninsured and underinsured motorist insurance
KF1218.8 .W53 2015

Online Resources-Remote Access*

Fastcase

Personal Injury Law Library:
Personal Injury: Forms and Procedures
Tort Law Desk Reference: A Fifty State Companion
Understanding the AMA Guides in Workers' Compensation, 5th edition

EBSCO

Everybody's Guide to Small Claims Court
How to Win Your Personal Injury Claim
Lawsuit Survival Guide
Represent Yourself in Court
Win Your Lawsuit

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

April 14: Hamilton County Law Library Resources Board Meeting

April 15: You and the Legal System: Protecting Yourself Before and After and Auto Collision

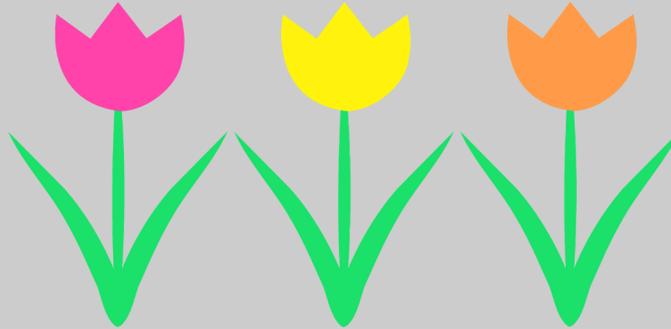
April 28: Lexis CLE: The Modern Campfire: Advanced Research Tips

May 20: You and the Legal System: Sexual Harassment in the Workplace

May 26: CLE: Statutory Changes in Fiduciary Duties of the Majority Owner

Law Library Holiday:

The Law Library will be closed on Monday, May 30 in recognition of Memorial Day.



April 2016 Law Library Newsletter

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