

The Advocate



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October 2013

Introducing the New and Updated Kentucky Department of Public Advocacy Courtroom Manual Series

We all have our own favorite legal reference works. Most Kentucky lawyers are familiar with Professor Lawson's *Kentucky Evidence Law Handbook* or Cooper's *Kentucky Instructions to Juries*. I began criminal defense practice with an attorney who loved to quote from Milward's *Reversible Error in Kentucky Criminal Cases*. The theory was that being able to tell a judge that a certain decision would likely result in reversal was more likely to get the judge to reconsider.



Glenn McClister
Staff Attorney



What makes one reference work a favorite may depend on a number of different factors: reputation, recommendations from others, what other attorneys use, what the judge prefers, or just what happens to be available in the office library. Still, what if one could choose a reference work the way a golfer chooses a club or

the way a mechanic chooses a tool? What if some reference works were specially designed to be the legal equivalent of "the right tool for the right job" for attorneys working on their feet in the courtroom day after day? The new DPA Courtroom Manual Series is designed to do just that.

The publications in the *DPA Courtroom Manual Series* all have the following features in common:

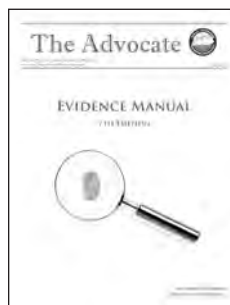
1. **Specialization:** All of the manuals focus on the rules, procedures, statutes and court opinions relevant to the practice of criminal law. There is no need to wade through all the material on civil law and practice which is included in most other types of reference works.
2. **Focus:** Unlike reference works which may include analysis and explanations of how the rules and procedures work or the theory and history behind the crafting of certain rules, statutes or opinions, the Courtroom Manuals focus on collecting published opinions in each important area of the law.
3. **Ease of Use:** The Courtroom Manuals are designed to be long enough to be useful but short and concise enough to be easy to use. Each manual is designed to be a quick reference either in the tranquility of the office or the clamor of a trial. Moreover, the content of each manual can be mastered in a day or two and then be ready at the fingertips of an attorney needing to give a case summary and citation on his or her feet.
4. **Responsiveness:** Since the manuals are all revised regularly with input from our attorneys all over the state, they reflect not only the broad lie of the land in established Kentucky caselaw, but also include the latest changes in law as well as the latest legal issues that are appearing in courts across the Commonwealth. The Manuals not only

include the settled law of Kentucky but are also a guide to the most recent innovations in best practices as well.

5. **Accuracy:** Although most published cases continue to be good law for years, the Courtroom Manuals are updated and revised often enough to include the most important new cases interpreting new legislation, extending previous rulings, or adopting new and different approaches to matters previously settled.
6. **Impartiality:** The Courtroom Manuals are not partisan guides to defense analysis and argumentation. The Manuals are available to judges, legislators, prosecutors, and defense attorneys throughout the state. They are designed to accurately reflect the current state of the law as it is, not how some group or another may wish it to be.
7. **Accessibility:** We say to our new public defenders, with their huge caseloads, "You do not have the time to be ignorant of the law." Our Courtroom Manuals reflect that concern. Each manual is designed to be a concise introduction to the specific area of the law concerned. Aside from reading the black letter law itself, there is simply no better or more efficient way to become quickly proficient in any area of the criminal law than by reading one of these manuals from cover to cover.
8. **Experience:** In sharp contrast to the single authorship of many reference works and treatises, the DPA courtroom manuals draw on the expertise and experience of literally hundreds of criminal law practitioners throughout the state (and beyond) and throughout the history of the training offered by DPA over the years. Each manual is the distillation and compilation of literally hundreds of other training handouts, articles, presentations, motions, and briefs put together by DPA's attorneys and their educators over decades. In a way other manuals cannot, the DPA manuals reflect the accumulated wisdom of, and the continuing challenges facing, attorneys in the courtrooms of this Commonwealth every time the doors are open.

So if you are looking for a series of legal reference materials that are reliable, up-to-date and concise yet also thorough and quick to use, the DPA Courtroom Manual series might just be the right tool, for the right job, for you. Here is a review of our current manuals.

The Evidence Manual, 7th Edition



A lot of law can change in five years. That is how long it has been since the familiar Department of Public Advocacy *Evidence Manual* was last updated. First conceived by the current Public Advocate, Ed Monahan, as an antidote to treatises which were "simply too comprehensive for on-the-spot answers to questions that arise unexpectedly," and first compiled by David Niehaus of the Louisville Metro Public Defender's Office, the *Evidence Manual* has been both the exemplar and flagship of the DPA Courtroom

Manual Series since 1992. The seventh edition is out, updated through June 2013, for use throughout the state.

Although the evidence rules have not changed since the sixth edition, the seventh edition covers over six years of new case law interpreting those rules, sometimes in ways which are quite new. For instance, the 2013

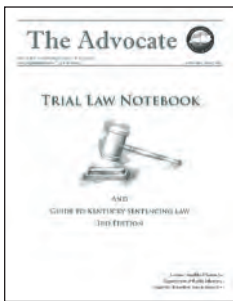
Allen case (395 S.W.3d 451, Ky.2013) now allows cross-examination under KRE 608 regarding the underlying facts of a prior conviction in certain limited circumstances. Readers will also note cases interpreting rules affecting domestic violence and child sex victims, restricting the introduction of KRE 404(b) evidence and prior conviction evidence during penalty and sentencing phases, as well as a number of emerging decisions on habit evidence. The seventh edition also includes expanded discussions on non-English-speaking defendants, the use of interpreters, and “federalizing” objections for appellate review.

Like all DPA manuals, this manual is designed to be helpful in the courtroom at the moment a question must be answered. Many sections have been improved by placing the cases discussed under each rule in alphabetical order for quick reference.

As indispensable as the rules of evidence themselves, the newly revised DPA *Evidence Manual*, 7th Edition will be a welcome aide to judges, prosecutors, defense attorneys, and any criminal defense practitioners needing quick and accurate information on the current state of the law regarding evidence issues.

The *Evidence Manual* is one of DPA’s main new attorney training manuals. The current edition is 122 pages.

The Trial Law Notebook, 3rd Edition



The DPA *Trial Law Notebook*, 3rd Edition, followed the *Evidence Manual* in its emphasis on providing a resource which was both comprehensive and quick-to-consult. The *Trial Law Notebook* is specifically designed for use during a trial: each section of the *Notebook* is in the order of each corresponding part of a criminal trial. After covering the most common types of pre-trial motion practice, the *Notebook* begins with jury selection and proceeds all the way through to initiating an appeal. The

Notebook also includes the *Guide to Kentucky Sentencing Law*, regularly updated as the tide of new sentencing provisions has come from the legislature.

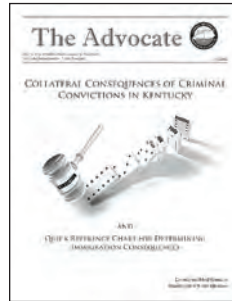
With its unique design, the *Trial Law Notebook* is an excellent example of the special DPA emphasis on reference materials conceived and written for use during court proceedings - and especially during trials. No more concise, accurate and ready-to-use reference work is available for use in a criminal trial in Kentucky. Compiling the insights and experience of hundreds of trial attorneys as well as those of hundreds more appellate attorneys, the *Notebook* not only covers every aspect of a criminal trial, but also offers a number of practice tips which have been learned by criminal defense attorneys over the course of many years. The *Notebook* is also unique among most trial law reference materials in its insistence upon the importance of constant preservation of the record in every step of the trial of pre-trial hearing. The insight of hundreds of appellate attorneys has made this aspect of the *Trial Law Notebook* especially useful.

The purpose of the *Notebook* is not just to address the law which one may need for any particular criminal case –such as the law of self-defense – but to address the law which one will need for every criminal case – such as the law of voir dire. As such, the *Trial Law Notebook* is designed to be equally helpful to judges, prosecutors, and criminal defense attorneys alike.

The 3rd edition includes an additional nine pages of material not included in the 2nd Edition, and is 98 pages long. While the *Trial Law Notebook* may only be re-published as a new edition every two or three years, it is updated and revised annually and those revisions are available on the DPA website in the period between each new edition.

The *Trial Law Notebook* is a main new attorney training manual for DPA. A companion manual designed and updated regularly for new attorney training and for use in District Court, the *District Court Black Letter Law Review*, 7th Edition, updated April, 2013, is also available on the DPA website.

The New Collateral Consequences Manual



Since the United States Supreme Court decision in *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), criminal defense attorneys all over the nation have been wondering to what extent they should revise or enlarge the scope of advice they give to their clients at the occasion of a guilty plea, and have been calling for resources to help them reach the new standard of effective counsel. Many states have already extended the *Padilla* ruling into other collateral consequences of criminal convictions. Kentucky has already expanded *Padilla* to find ineffective assistance of counsel when the client was misadvised or not advised of parole eligibility dates.

It is likely that the new requirements under *Padilla* will continue to impact effective assistance of counsel in more and more areas. The message of *Padilla* is: Competent counsel must warn a client considering a guilty plea about the consequences of conviction that are 1) severe and certain, 2) of predictable importance to the client, 3) whether they arise from statute, regulation, or contract. It is the job of an ethical and competent defense attorney to read these requirements in the broadest manner possible, regardless whether a court has officially expanded *Padilla* into any specific area.

In response to this expansion of effective assistance of counsel, the Kentucky Department of Public Advocacy has published a new manual of *Collateral Consequences of Criminal Convictions in Kentucky*. This 110-page manual includes a survey of state statutes and administrative regulations, as well as a number of federal statutes, to bring together in one place the “severe and certain” consequences of a guilty plea which will most often be “of predictable importance to the client.” While the manual is not exhaustive, all of the most predictable collateral consequences of conviction have been included.

This manual is also unique among state manuals surveying collateral consequences in that it also includes a comprehensive survey of Kentucky criminal statutes and the likely immigration consequences of a plea of guilty under each statute. The *Quick Reference Chart for Determining Immigration Consequences* also suggests alternative pleas in each

At the National Association of Pretrial Service Agencies Conference in Orlando, Florida on September 16, 2013, Charlotte McPherson, Manager, Pretrial Services, Department of Statewide Services, Kentucky Judicial Branch Frankfort, KY presents the National Association of Pretrial Service Agencies’ John C. Hendricks Pioneer Award to Public Advocate Ed Monahan of the Kentucky Department of Public Advocacy for the Kentucky statewide public defender program’s strategic commitment to advance public defender advocacy across Kentucky resulting in an increase of release for indigents prior to trial.



instance, which might avoid an immigration consequence. This chart was compiled by Kate Benward, a Public Defender Corps Fellow with DPA, and Dan Kesselbrenner, Executive Director of the National Immigration Project.

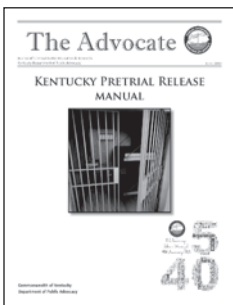
This new publication will see much service in the continuing effort to keep our criminal defense clients the best-informed clients in the courtroom. It will be helpful to judges and prosecutors as well - as case settlement and plea negotiations expand to countenance all the possible consequences of a plea of guilty.

The manual is 110 pages.

There are resources available through DPA that I encourage young people that I talk to, to get - and that's the Trial Notebook and the Evidence Manual. If you're practicing criminal law, and you don't have those, you're way behind. I carry both of those in PDF format on my iPad. Both are invaluable resources.

Representative Jeffrey Hoover
Minority Floor Leader

The new Kentucky Pretrial Release Manual



The new *Kentucky Pretrial Release Manual* is another publication in the DPA Courtroom Manual Series which exemplifies the responsiveness and flexibility of the series design. In addition to being handy compendiums of caselaw in areas such as evidence and trial law, the Courtroom Manuals can be used to compile and provide a great quantity of relevant material in instances in which special circumstances should be addressed throughout the Commonwealth. Compiled in response to

the need to address long-standing systemic inequalities in the uniform application of the bail statutes throughout the state, and in response to the need to expedite the provisions of HB 463 which were conceived as an attempt to address the problem, the *Pretrial Release Manual* is at once both a concise introduction to the law of pretrial release in Kentucky as well as a guide to extended litigation of the issues surrounding pretrial release as well.

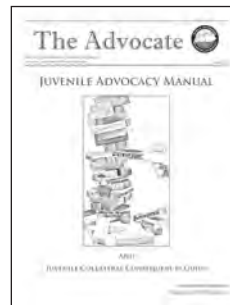
The first four chapters of the *Pretrial Release Manual* cover all the essentials of pretrial release law in federal law and in Kentucky including: the right of counsel at arraignment, the importance of pretrial release advocacy at arraignment, pretrial release and the presumption of innocence, and the duty to litigate pretrial release. The *Manual* then provides selected right to counsel and first arraignment cases, all of the Kentucky statutes and rules pertaining to bail, and a complete digest of bail cases in Kentucky.

The next six chapters are a complete guide to litigation of bail decisions including: conducting a bail hearing, motion practice, evidence-based practices, specific issues in bail litigation, appealing the bond decision by habeas corpus from district to circuit court, appealing a bond decision from circuit court to the court of appeals, federalizing the arguments for bail, issues regarding mootness and discovery, and a whole chapter of blank sample forms and motions. The Appendix contains a collection of articles on issues surrounding pretrial release for added research.

With its unique collection of scholarly articles, black letter law, and litigation resources The *Pretrial Release Manual* comes closer than any

other DPA Courtroom Manual to combining the features of both a treatise and a quick-reference. It is meant to enable and inspire a renewal of emphasis on the importance of pretrial release throughout the criminal justice system in the Commonwealth. The manual is included as part of new attorney training and is 93 pages long.

The new Juvenile Advocacy Manual



Juvenile advocacy has always represented special challenges to the defense attorney. The Juvenile Code does not follow the familiar rhythms of adult criminal law. The purpose of the Code (for instance, the goal of determining the least restrictive alternative for a child) must be fully understood and integrated into defense practice. Although DPA has provided a large Juvenile Law notebook to its field offices for years, there has been no Kentucky resource during the same period which could be studied conveniently and even carried into court for quick reference in order to make juvenile advocacy more effective and consistent.

The experienced juvenile law "specialists" in the Kentucky Department of Public Advocacy's Juvenile Post-Disposition Branch, who handle post-trial issues regarding juvenile dispositions statewide, have remedied this deficiency with the new *Juvenile Advocacy Manual and Juvenile Collateral Consequences Guide*. Now for the first time, a handy, accurate and concise guide to Kentucky juvenile law is available to defense practitioners, judges, and any attorneys wishing to improve their representation of juveniles in juvenile court – especially in status offender and public offense cases.

The manual covers how to handle all the most routine charges a juvenile defendant may face, with the relevant statutes and case law laid out in each instance. The manual covers everything from Beyond Control charges to the transfer of a juvenile to circuit court as an adult. Best practices and the most important issues to confront in the handling of a juvenile case are also included. All of the material has been compiled by defense attorneys with a great deal of experience in litigating juvenile cases. In addition, the manual also contains a helpful section itemizing the most predictable collateral consequences of juvenile convictions of all types.

This new manual will make a trusted and helpful addition to the courtroom manuals DPA has sought to make available throughout the state to judges, defense attorneys, and any attorneys wishing to improve their grasp of juvenile law and improve their practice. It is one of the best ways to improve your representation of juveniles - practically overnight.

The manual is a main part of new attorney training and is 66 pages long.

See the Department of Public Advocacy website: <http://dpa.ky.gov>, for access to the manuals, or contact your local public defender office.

Collateral Consequences Manual, Evidence Manual, Pretrial Release Manual, Juvenile Advocacy Manual and Trial Law Notebook are now available at:

dpa.ky.gov

(eBook versions for your smartphone, pad, or computer are also available.)



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In this issue:

**Introducing the New and Updated
Kentucky Department of Public Advocacy**

Courtroom Manual Series:

Evidence Manual

Trial Law Notebook

Collateral Consequences Manual

Pretrial Release Manual

Juvenile Advocacy Manual