



**Harville**  
LAW OFFICES, PLLC

*The Louisville Accident Lawyer Journal*

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**We gladly accept and appreciate your referrals**

- **We are counselors, not just attorneys**
- **We meet with our clients personally - not caseworkers**
- **We want you to understand how the legal system works as it applies to your case**
- **We will keep you informed and guide you every step of the way**

**Why a Newsletter?**

You are receiving this newsletter because you are an existing or past client of our firm, or have contacted us about representation. For this reason, this newsletter is not an "advertisement" under Ky. Supreme Court Rule 3.130-7.02(1)(h). It is our way of staying in touch with people who have had a relationship with our firm. We care about the people we have helped and want you to know your relationship is valuable to us, even after your case is over. We hope you find it entertaining and informative, and would love to hear from you if you enjoy it!

Our best,  
Brad Harville  
Dana Skaggs

# What is a Deposition?

I'm in my 6th year of doing this newsletter, and I can't believe I have never written a column about depositions. October is a good month to finally do it, because most non-lawyers don't have a good idea of what they are, and the idea of giving a deposition can be intimidating.

First of all, what is a deposition? A deposition is where a witness gives sworn testimony about a case. It is typically an out-of-court proceeding that most often takes place at a lawyer's office. Also present is a court reporter who swears the witness under oath, and the lawyers who represent the parties in the case. The time and place is usually scheduled by agreement among the lawyers. In personal injury cases, by far the most common depositions are those of the injured Plaintiff who has filed the lawsuit. These depositions are usually scheduled after the parties have engaged in written discovery. By written discovery, I mean that the lawyer defending the case has sent the Plaintiff's lawyer a set of written questions, called Interrogatories, as well as requests for documents about the case, primarily medical records. Most defense lawyers want to have the Plaintiff's written discovery response in hand before they schedule the Plaintiff's deposition, so they have a better idea of what the case is about.

Why does a Plaintiff who has filed a personal injury lawsuit have to give a deposition? Because our Rules of Court say so. Civil Rule

30 says a defendant's lawyer has the right to take the Plaintiff's deposition in a personal injury case, and in any other kind of case.

Depositions, therefore, are a regular part of our personal injury practice. In every case where we file a lawsuit or a workers' compensation claim, our clients are going to be required to give their depositions. But that's a good thing, because our client's deposition is the most important part of any personal injury or workers' comp case. Once we get that out of the way, we are usually able to get the case resolved. In most personal injury lawsuits, the next step after the Plaintiff's deposition is to schedule the case for mediation, and most cases settle at mediation.

That being said, it is important that we prepare our clients before they give their depositions. A lot of them feel like it's up to them to sell their case in their deposition testimony, and they put way too much pressure on themselves. That's not how it works. We tell them they have only one job, and that is to answer each question they are asked, one at a time. They don't need to be worrying about what the lawyer is going to ask them. We will be sitting beside them, and will let them know if they should not answer a question, but that almost never happens. Most lawyers are professional and don't ask



questions that are out of bounds. Still, they must understand that the lawyer asking the questions has a lot of latitude. They only get one crack at asking all of the questions they feel like they need to ask. The Rules of Court do not require the Plaintiff (or any witness) to give a deposition more than once. For this reason, courts allow lawyers plenty of leeway. They can ask about your background, education, work history, medical history, criminal history, and other things that may not have anything to do with the case, but that's OK because any of that is fair game.

Finally, there are the basic ground rules: 1) Wait until the lawyer finishes asking the question before answering, because the court reporter can't take down what's being said if two people are talking at the same time; 2) Answer just the question you are asked, don't start volunteering a bunch of information that the lawyer hasn't asked about; and 3) if you don't understand the question, ask the lawyer to repeat or rephrase it, because lawyers can ask bad questions. Also, "I don't know" or "I don't remember" are perfectly good answers, because the lawyer wants to know what you know and what you don't know. Of course, we also focus on specific areas we know the other lawyer will ask about. The most important thing for our clients to do is listen to us and follow our advice. When they do that, they do very well and it really helps in settling their cases successfully.

• BDH

## HOW KENTUCKY WON THE SECOND AMERICAN REVOLUTION

Daniel Boone is rightfully regarded as Kentucky's founder. But, just as George Washington is the Father of our Country, the man who is truly the Father of our State is none other than Isaac Shelby, Kentucky's first and sixth governor. He was a Revolutionary War hero, was instrumental in the separation of Kentucky from Virginia to form the nation's 15th state, and was unanimously chosen as Kentucky's first governor.



Gov. Isaac Shelby

Shelby also played a vital leadership role during the War of 1812, often called the Second American Revolution. Most people don't know much about this war, and fewer know about Kentucky's role in it. It lasted for 3 years and effectively ended in a draw. Both sides simply agreed to cease hostilities and return to their prewar territorial boundaries. But it was a victory in the sense that England finally had enough of tangling with the Americans. And no state fought harder than Kentucky.

A few facts are helpful to better understand this war. There were only 17 states when it broke out. Only 3 states were west of the Appalachians: Kentucky, Tennessee, and Ohio. Among those 3, Kentucky was by far the most populated and economically advanced, and Lexington was unrivaled as the leading city.<sup>18</sup>

There was also no national military as we think of it today. States raised their own militias, which gravitated toward those theatres of war where they perceived their own interests were at stake. Kentuckians were focused on the British presence in Canada across the border from Detroit, Michigan. They had a long memory of how British agents from Canada had instigated Indian attacks in the Ohio River Valley. They also felt they could end the war in that part of Canada in a single blow, as they thought it was weakly defended.

There was also a governor's election in 1812. Enter Shelby, Kentucky's Revolutionary War hero. Amid the wartime fervor, he was urged out of retirement to become Kentucky's 6th governor, in addition to being its first, as well as the wartime commander-in-chief of the state militia. Kentucky's militia force swelled to 40,472 men, by far the largest west of the Appalachians, although this number masked deficiencies in training and armament.

They soon found out that victory over the British wasn't going to be easy. On January 20, 1813, in their first major engagement, about 1,000 Kentuckians occupied Frenchtown in southeastern Michigan, on the banks of the Raisin River. There they captured a considerable supply of British provisions. Just before dawn on January 22, however, a force of about 600 British and Canadian militia, combined with 600 to 800 Indians, launched a surprise counterattack. They were supported by 3 artillery fieldpieces, for which the Kentuckians had no answer. The result was a complete rout of the Kentuckians. Many were taken prisoner, guarded by the Indians, who then scalped and murdered many of them during a drunken victory celebration.

The best estimates are that about 400 Kentuckians were killed during the battle, or afterward by the Indians. Needless to say, Kentuckians' view of the war was darkened by the "River Raisin Massacre," as it came to be known.

If that weren't bad enough, Kentuckians endured a second major defeat a few months later. In late April/Early May, about 1000 Kentuckians occupied Fort Meigs in northwestern Ohio, when they were besieged by a combined force of nearly 2,400 Indians and British soldiers. The fort was bombarded by British artillery for 4 days while the Kentuckians awaited reinforcements. When reinforcements arrived, another group of Kentuckians made an ill-advised charge against the British camp, resulting in another disaster in which 650 of their men were killed or captured. Once again, Indians killed about 40 of the prisoners after the battle. Kentucky's war spirit had never been lower.

With such discouraging news, the number of enlistments were far below the previous year. Shelby, however, believed he could still rally Kentuckians to victory. Nearly 62 years old, he promised to personally lead another campaign of mounted riflemen into Canada and raised a force of around 3,500 volunteers. In October, 1813, he joined forces with William Henry Harrison in the invasion of Canada. The invasion culminated in the victorious Battle of the Thames against British forces and their Indian allies, who were led by the great warrior chief Tecumseh. Tecumseh himself was killed in this battle by Kentucky Congressman and future U.S. vice-president Richard M. Johnson. The battle ended any further British encroachment into US territory, and also severed the alliance between the British and the Indian nation.

Kentuckians also played a large role in the final battle of the war, the Battle of New Orleans, in January, 1815, in which the British were soundly defeated by the Americans, led by General Andrew Jackson. Ironically, word had not reached the combatants that the US and Britain had agreed to cease hostilities before the battle took place, by signing the Treaty of Ghent in Belgium on December 24, 1814. The Kentuckians' contributions in this battle inspired a popular song, "[The Hunters of Kentucky](#)," which became a campaign song for Jackson in his successful run for president in 1828.

I am grateful for the book, [Kentucky and the Second American Revolution](#), by James Wallace Hammack, Jr., © 1976 by the University Press of Kentucky, which supplied nearly all of the information in this article. The book concludes that no state fought harder for our nation during the War of 1812 than Kentucky, even though Kentucky itself was never seriously threatened by enemy invasion. Of the 1,876 Americans killed during the war, approximately 1,200 were Kentuckians. Thus, although the total number of soldiers from Kentucky represented only 4.6% of all American soldiers who fought in the War, 64% of all Americans killed in battle in the War of 1812 were Kentuckians. That is an amazing statistic.

## Current Trends in Personal Injury Law

On September 30, the Kentucky Supreme Court rendered a decision in a slip-and-fall case, *Phelps v. BGH*. This case discusses what evidence must be shown for a slip-and-fall case to be presented to a jury.

The upshot of this case is that “slippery isn’t good enough.” Phelps and her co-worker went to lunch at Harry’s Bar & Grill, a popular Lexington restaurant. They were seated at a high-standing table on an outdoor patio with a tile floor. Phelps slipped while walking to the table, but did not fall. She mentioned this to the waitress, who agreed the floor was “a little slippery.”

They then asked to move to a standard-height table. When Phelps stood up, she slipped again, only this time she fell and injured her left hand, arm and elbow.

Phelps then sued Harry’s for her injuries. She claimed the floor was “waxy,” and it felt like she had lotion on her hand after touching the floor, although she admitted to using hand lotion before she fell. However, there was no proof that any “cleaning products, waxes or other treatments” were used on the floor before she fell. Harry’s then filed a motion to dismiss the case, citing no evidence of any negligence. The trial court granted the motion, and the Court of Appeals agreed.

The KSC then agreed to hear the case. The COA said the condition was open and obvious, but the KSC pointed out that just because a condition is open and obvious doesn’t rule out any negligence. Still, the KSC agreed with the dismissal. Phelps had no evidence that any unsafe substance or condition caused her fall. Therefore, she could not prove that anybody at the restaurant had done anything negligent to create a dangerous condition. In short, the mere fact that a floor is slippery isn’t good enough to recover in a slip-and-fall case. You have to have some kind of evidence to show that someone had done something to the floor to make it slippery.

## Stupid-Easy Recipe of the Month

*Your dessert is staring at you!*

### Cake Eyeballs

#### Ingredients:

- 1 box yellow or red velvet cake mix
- 1 can frosting (any kind)
- 1 bag white chocolate melting wafers
- Assorted gel icing

#### Directions:

1) Bake cake mix according to directions. Allow to cool completely.

2) Break off sections of cake and crumble into large bowl. Work frosting into cake until no longer visible.

3) Roll mixture into 1 1/2 balls using ice cream scoop and place on parchment paper. Freeze for at least an hour.

4) Melt white chocolate in double boiler. Remove from heat and add cake balls to coat and then place them back onto parchment paper.

Set at room temperature until dry. Decorate with gel icing to look like eyeballs!



## Favorite Pet of the Month

Meet Blossom, a 1-year-old domestic short hair. She is a little shy at first, but LOVES personal attention.

Blossom gets along well with other cats, but we are not sure about dogs.

If you would like to add a sweet feline to your family, consider Blossom! Visit [www.barktownrescue.org](http://www.barktownrescue.org) and fill out an application.

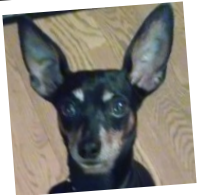
Dana serves on the Board of Directors at Barktown Rescue. Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) with a photo and we’ll try to put this in a future issue!

BRADLEY D. HARVILLE LAW OFFICES PLLC

# 20 Questions about Kentucky No-Fault

The key to understanding how the legal and medical system works in personal injury cases resulting from motor vehicle accidents in Kentucky.



Casey's Ky. Trivia Question:

Which haunted Ky. location has been nicknamed “The Portal to Hell?”

- A. Waverly Hills Sanatorium
- B. Bobby Mackey’s Music World
- C. Perryville Battlefield
- D. Maysville Slave House

Be the first person to answer correctly by sending an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) and we’ll mail you a \$5 Starbucks gift card!



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**We want to help you secure the best possible outcome out of a difficult situation that you wish had never happened. If you have been injured, our goal is to obtain maximum recovery in the shortest amount of time it takes to get your case resolved.**



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