

## Perspective

# How Child Sexual Abuse Survivors Can Inadvertently Get Victimized Twice

**C**hild sexual abuse survivors can sometimes get victimized twice. First, they get abused. The second time may be by their own parent(s). By focusing more on a civil lawsuit to collect a sizable settlement or jury award instead of their child's mental health, the parent may inadvertently or callously display indifference to their own child. As a result, the child may be retraumatized, sometimes feeling that their own actions contributed to their abuse. This is not, of course, to say that civil lawsuits are inappropriate in such circumstances. They may not be frivolous, but neither may they merit being brought. Nor is it about meeting the burden of proof. The point to emphasize is that the pursuit of such a lawsuit must be done with maximum regard for the child survivor. The key question: Will the lawsuit have a net beneficial therapeutic effect or a traumatizing effect?

To borrow a maxim from the field of medicine that all students in health care are taught and is a fundamental principle throughout the world, every advocate for sexual abuse survivors should heed the admonition "first do no harm." In other words, when contemplating a civil lawsuit for sexual abuse, it is



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important to ask that, given an existing problem, it may be better not to do something, or even to do nothing, than to risk causing more harm than good.

Therefore, before filing a lawsuit, do an analysis of the viability of the claim and whether the client is prepared for the rigors of litigation. Here are some considerations.

There is no question that survivors of sexual abuse have been traumatized by the experience. Furthermore, even before the abuses that are the subject of the lawsuit, survivors are likely to have been either victimized before, or, because of a variety of life's circumstances, may have been vulnerable individuals to start. Advocates must take into consideration any history of prior sexual or physical abuse and neglect at home, confusion in young individuals about their sexual identity, varieties of social, emotional, and psychological

conditions that subject individuals to be easily compromised, or pre-existing addictions to drugs or alcohol.

These must be considered in advance of litigation before venturing into the civil lawsuit arena with the myriad of obstacles that any litigant will be expected to face. Until these underlying conditions are addressed and dealt with by other professionals, survivors should be wary, or at the very least prepared, for the ardors of all aspects of trial.

Sexual trauma impacts not only the survivor, but often the entire family. Consequently, consideration of the parents' and sibling' role and involvement in the underlying abuse and the support necessary to successfully pursue litigation is one of the first items to be addressed. Explore any evidence that the parents or caregivers facilitated or encouraged the grooming process, the unexplained activities of an adult abuser or a child in unsupervised activities. Did the parents ignore or disbelieve credible complaints of inappropriate behavior? Could the parents or caregivers even be considered potential defendants or unindicted co-conspirators because of their lack of care or outright facilitation of the abuses by third parties?

Even if the parents or caregivers do not risk exposure to liability, consideration should also be given to the entire family's willingness to be open to the scrutiny that comes with civil lawsuits. There is no question that the defendants and their attorneys will use every measure, and conduct any investigation into the family life of not only the parents but also other family members, such as siblings, who may not even be aware of the abuses. There are numerous incidents in litigation where siblings, even twins, have been unaware of the abuses sustained. If so, is the survivor prepared to reveal that to family members who were otherwise unaware?

Bringing this kind of lawsuit is time-consuming, costly, and exhausting for everyone involved. As demanding as it is for the attorney, it is much more so for the family and child who are unfamiliar with the court system. Is the family really ready to have its whole life scrutinized? This may entail delving into medical and psychiatric histories, previous social media posts, and discussions with neighbors and employers.

Once these questions have been thoroughly vetted, the attorney has an obligation to prepare the client in a number of ways.

Mindful of the time limitations of filing a civil lawsuit, lawyers should be prepared to assist the survivors in obtaining important and available assistance from other professionals.

- Is the client dependent on drugs or alcohol or any other substance for which addiction therapy is necessary?
- Is the client in need of psychiatric or psychological counseling both before filing a lawsuit and during the pendency of the claim?
- Is there available insurance or means of funding such therapy?

- Are there other sources of financial assistance available to the survivor through victim assistance programs offered by the state, charitable organizations and even the defendant in certain circumstances?

The process of litigation is a long and arduous process, and the survivors must be prepared to weather the storm. After all of the above consideration are taken into account and a decision has been made to proceed with filing a lawsuit, there are preliminary considerations that must be investigated so that the viability of a successful lawsuit and eventual settlement or verdict in the survivor's favor is more likely than not.

Foremost, the statute of limitations for the jurisdiction where the lawsuit

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may be brought must be determined. Many states have onerous laws that limit the time period for filing a claim. Although they have been amended to be more favorable in a number of states in the recent past, in Pennsylvania for instance, older claims may have already been barred when the survivor turned 18 or perhaps 20.

Here are some additional considerations:

- Has there been passage of what is known as "window legislation" that allows other expired claims to be filed for a short window of time regardless of the statute of limitations?
- Have there been any reparation programs instituted by responsible entities such as the Catholic Church in a number of dioceses throughout the country, and what are the deadlines for filing those claims? Consider-

ation must be made if the defendant is financially solvent so that any verdict will be meaningful and the likelihood of payment of any settlement or verdict is a real possibility.

- Is the prospect of a defendant filing bankruptcy, either before or after litigation has started, a real possibility? Several major defendants have declared bankruptcy in the past including the Boy Scouts of America and Catholic dioceses across the country.

- Is there adequate insurance coverage or does insurance coverage even exist for these kinds of offences, and if the abuses occurred over periods of time, are there multiple sources of insurance coverage?

- Will monetary damages or settlement proceeds assuredly go to the victim?

Pursuing litigation in sexual abuse claims, be it for minors, mentally challenged individuals, or even adults, is fraught with obstacles that must be considered by an attorney experienced in the area of sexual abuse. While not every case may be viable for filing a claim, other pretrial considerations with an experienced professional may provide some remedies to the survivors of sexual abuse.

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