

The Legal Intelligencer

Commentary

How Attorneys Can Help Clients Who Disclose Past Abuse: Day One

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By **Daniel Pollack and Katie M. Shipp** | March 10, 2021 at 11:17 AM



The phone rings. “I was sexually abused.” Or, “My child was sexually abused.”

A hundred questions immediately flood into your attorney brain. Are the caller and story credible? How long ago did it happen? Are there witnesses? What

records exist? Was the alleged perpetrator in a position of authority or trust? While these are important concerns, the more pressing issue is the emotional status of the person disclosing the information. This is a client who needs special handling. And you need special training in expertly talking with the client as well as how to collect and document information evidence from a sexual assault victim.

Sexual abuse has lasting effects. Whether it is a single incident or multiple incidents, an unreported assault can be accompanied by shame and feelings of hopelessness. Accordingly, your first sit-down is not a Joe Friday, "just the facts, ma'am" interview. Sexual abuse disclosures to attorneys can be especially problematic because they raise questions about when and to whom the attorney has an obligation or the option to share those confidences.

Depending on how recently the assault took place, a Sexual Assault Nurse Examination (SANE) may be immediately scheduled. Should it take place, the following will occur:

- To establish diagnosis and treatment, a history of the assault will be taken. This will involve a physical examination, including the genital area.
- Forensic evidence will be gathered and properly preserved.
- If necessary, counseling regarding pregnancy, sexually transmitted diseases, and other medical information will be discussed.
- If warranted, other evidence will be gathered for future use in litigation, and law enforcement may be notified.

If the assault is not one that would benefit from a SANE visit, here are some other things to do on day one:

Some victims/survivors may deny that what happened to them was even an assault. This coping mechanism may provide temporary relief from having to face the emotional reality of what happened. That the survivor is now seeking legal counsel is a signal that she or he no longer feels they are to blame for what happened to them. Part of your immediate job is to validate those feelings. Remember also that full disclosure can take place over an extended period of time. For most survivors, it is an unfolding process, not a one-time revelation.

It is quite possible that you are the first person the survivor is telling their story to. Whether the event(s) happened yesterday or thirty years ago, survivors often do not share their experience with many individuals. It takes tremendous courage to pick up the phone and be willing to share what happened with someone you do not know. Attorneys are often busy moving from one phone call to the next. However, when a call from a survivor comes in, it is essential that you slow down and consider how the person on the other end of the phone is feeling. The strength it took to reach out for help and guidance deserves to be acknowledged and commended. A simple “I believe you,” and “I appreciate the strength it took to call me,” can go a long way.

Prior to gathering all of the details regarding the sexual abuse, you will want to consider the applicable statute of limitations. There are some states that have recently extended their statute of limitations law and included a look-back window for lapsed claims. For example, the New York Child Victims Act’s look-back window allows all survivors, regardless of age and how long ago the sexual abuse occurred, to bring a claim until August 14, 2021. You should be aware of the statute of limitations law in your state and any efforts to pass look-back windows

for survivors. [ChildUSA](#) is an excellent resource for up to date information regarding policy initiatives.

If the claims of the survivor you are speaking with are barred by the applicable statute of limitations, you should let the survivor know this early on during your conversation. You do not want to require a survivor to dive into the traumatic details of her or his abuse only to later explain that there is not much you are able to do from a litigation perspective. Even if the claim is barred, you should let the survivor know about any efforts to change the statute of limitations law and create a look-back window in the state where the abuse occurred. Encourage them to reach back out if there are any changes or offer to keep their contact information on file. Also, you should consider providing contact information for local or national survivor groups or nonprofits that may be able to provide resources or services. Some survivors who are unable to move forward with their claims in court find comfort in joining a survivor community or becoming involved in advocacy themselves.

If the survivor is currently within the applicable statute of limitations, you will want to gather relevant facts while also remaining sympathetic to how difficult this process is for the survivor. You will need to know who the perpetrator was, how the perpetrator gained access to the survivor, and where the abuse occurred. Make sure to consider whether there is any potential institutional liability, and, if so, what kind of notice may have been provided regarding the perpetrator prior to or during the abuse. You should ask if there were other victims or perpetrators, who may have known about the abuse, and the age of the survivor when the abuse occurred. If the claim involves public institutions, you will need to research whether a notice of claim is required.

Lastly, make sure you are timely and considerate in your communications with survivors. If you are unable to represent the survivor, let them know quickly and provide referrals if possible. If you are able to represent the survivor, be clear regarding what to expect moving forward in terms of next steps and communications.

Representing a survivor of sexual abuse is a commitment. That commitment starts on day one.

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