

## How to deal with a Child Victims Act client with a weak case

Helene M. Weiss and Daniel Pollack | September 8, 2023



Credit: Sharomka/Shutterstock.com

The decision to bring a lawsuit by survivors of child sexual abuse is an especially agonizing one. The last thing they want to hear from their prospective or retained attorney is that the legal case is just not a good one—or that it might take years to resolve. How do attorneys properly relay sensitive and important case information to their clients? And, how

should attorneys manage expectations from the outset with an especially vulnerable client?

## **Strong v. Weak Cases**

New York's Child Victims Act (CVA) extended the statute of limitations for survivors of child sexual abuse in criminal and civil cases. Previously, the statute of limitations for misdemeanor offenses ended when survivors turned 20 years-old.

Since August of 2019, nearly 11,000 CVA cases have been filed across New York State. Out of those cases, over 50% of filed claims name a religious institution as a defendant. Although the CVA window closed on August 14, 2021, the new legislation allows victims of sexual assault to bring a civil lawsuit until their 55th birthday, as opposed to previous legislation limiting the time until a plaintiff's 23rd birthday.

The Child Victims' Act has empowered survivors of abuse from decades ago to seek justice for the crimes committed against them as children. But, the passage of time in these important cases also brings many hurdles for the attorneys on the front lines, as well as their clients. Crucial witnesses may have since passed away, photographs and employee directories may be difficult to recover, and defendant institutions may have since deleted essential documents that would have helped prove a client's claim. As such, proving a CVA case can be burdensome for attorneys who are left with only the testimony of their client.

While testimony is considered evidence, and a plaintiff's testimony regarding their own sexual abuse may be considered enough evidence to

secure a positive outcome, a stronger CVA case exists when a plaintiff is able to produce some sort of documentary evidence, such as medical records, therapy documents, photographs, diary entries, yearbook information, and other helpful pieces of recorded, relevant history.

Helpful documentary evidence may consist of anything that further substantiates a client's claim, as well as evidence that sheds light into a defendant's knowledge and notice of the abuse.

In any event, it is imperative for clients to understand how notice imputed to an institutional defendant will affect their case. This may, in turn, help clients be more forthcoming with helpful information or evidence to prove such notice.

Defendant institutions may have retained essential documents—even if they are from 40 or more years ago. Plaintiff attorneys must be persistent in seeking this information from defendant institutions, as discovery sought through litigation can reveal substantial evidence of notice to the defendant regarding not only an abuser's propensity to commit sexual abuse against minors, but also the failures of that defendant in preventing abuse that they knew or should have known about.

However, even after diligent research, thorough investigations, and endless discovery requests, some CVA clients may be left with sparse evidence that supports their claims, but for their own testimony.

## **Managing Clients' Expectations**

The key to helping clients who have suffered from unimaginable trauma is to be upfront and honest about expectations from the very start of

their case. From the outset, attorneys handling cases of this nature should be mindful to manage client expectations through clear communication.

Clients should be aware that they will be asked sensitive, personal, and detailed questions about their abuse. Attorneys should be mindful that each client will have a different set of expectations. Some may want a quick resolution, while others may already be anticipating a drawn out process. Either way, clients must be advised that cases of this nature typically take several years to resolve.

Even with testimonial evidence, documentary evidence, photographs and recordings, a defendant may not be eager to swiftly resolve these cases.

Attorneys can further combat unreasonable expectations by thoroughly explaining each step of litigation and how long it may take to complete: filing a complaint, requesting paper discovery, depositions, medical examinations and expert evaluations, and for some clients, trial preparation.

Moreover, attorneys should counsel their clients to be prepared for invasive and uncomfortable questions from defense attorneys during discovery and at their deposition. When a litigant has a full understanding of the scope and nature of how their lawsuit will proceed, they are less likely to end up with unmanageable expectations.

Nevertheless, lawsuits of this nature are especially taxing on clients—physically, psychologically, and sometimes spiritually. Clients who are exhausted by the process may decide they no longer wish to pursue a case, even after litigation has begun. Other clients may find themselves

out of options after an unfavorable decision on a motion to dismiss or motion for summary judgment is rendered. Learning how to counsel clients through these difficult stages of litigation is an essential skill.

Most importantly, the attorney must validate the clients' feelings and their recollection of the shattering events they experienced. Yet, attorneys must still be frank with their clients about possible case outcomes to manage expectations. Breaking bad news is hard. Words matter, so know exactly what you are going to say before meeting with the client.

No matter how tactful and sensitive you are, some clients may still be dissatisfied with your explanation of how (and for how long) their case could potentially pan out. Toward this end, have a relationship mindset, not merely a transactional one.

**Helene M. Weiss** is a partner at Marsh Law Firm, and Special Professor of Law at Maurice A. Deane School of Law, Hofstra University.

**Daniel Pollack**, MSW, JD, is a Professor at Yeshiva University's School of Social Work in New York. He was also a Commissioner of Game Over: Commission to Protect Youth Athletes, an independent blue-ribbon commission created to examine the institutional responses to sexual grooming and abuse by former USA Gymnastics physician Larry Nassar.

Original link: <https://www.law.com/newyorklawjournal/2023/09/08/how-to-deal-with-a-child-victims-act-client-with-a-weak-case/>