



Important Information
All Sexual Abuse Victims
and Their Families
Need to Know

STOP
CHILD SEXUAL ABUSE.
GET HELP HERE.

A VICTIM'S CIVIL RIGHTS

CRIMINAL COURTS PUNISH THE ABUSER
CIVIL COURTS FIGHT FOR THE VICTIM

***“ PRETTY MUCH ALL THE HONEST
TRUTH-TELLING THERE IS IN THE
WORLD IS DONE BY CHILDREN ”***

Oliver Wendell Holmes, Jr.

Introduction	III
1. What is Sexual Abuse?.....	1
2. Why Does Sexual Abuse Go Unreported?.....	2
3. What to Do if You Suspect Sexual Abuse.....	4
4. Barriers to Reporting Abuse	6
5. Criminal vs Civil Prosecution	7
6. What Acts Constitute Abuse?	10
7. Who Can Be Sued in a Civil Case?.....	11
8. What Compensation Can a Victim Receive?	14
9. How Is Compensation Obtained?.....	16
10. Time Limits to Sue for Sexual Abuse	18
11. Is an Attorney Needed?.....	21
12. Finding a Sexual Abuse Attorney	23
13. How Much Does an Attorney Cost?.....	26
14. What Is Expected from The Victim?.....	29
15. Confidentiality	32
Conclusion.....	33
Notes	34-35

Introduction

Sexual abuse is one of the most evil violations that can ever be done to another human being. We hold our bodies to be inviolable. Sexual abuse is violent, even when it does not involve physical force. Certainly, in many instances, sexual abuse happens when a person is subjected, by physical force or harm, to submit to unwanted and unwelcome sexual advances. At other times, sexual abuse can be a result of perceived force or authority.

This booklet is written by the attorneys at Monsees & Mayer, P.C. We dedicate our practice to helping victims of sexual abuse. We have learned that many victims know how to seek punishment for the abuser through the “criminal courts”. However, they are unaware that there is another court system called the “civil courts” with the sole purpose of helping the victim.

The purpose of this booklet is to try and inform victims of their rights and available help within the civil court system and answer many of the questions that can arise in a sexual abuse case. While not exhaustive by any means, this booklet’s aim is to cover a wide array of topics; many of which you may or may not associate with a civil sexual abuse case.

Chapter 1

What is Sexual Abuse?

In a very general sense, sexual abuse is sexual contact that is unwanted and is non-consensual. Adults can consent to sexual contact. In Missouri, the age of consent for sexual contact is 17 years old. This is the age at which a person can legally consent to engage in sexual acts with someone else who is also 17, or older. Anyone younger than 17 is a minor and deemed to lack the maturity and discretion to make a rational decision to consent to sexual contact. Therefore, whenever a young person, under the age of 17, is the recipient of sexual contact, it is by law, non-consensual.

Many have heard the term “statutory rape.” This is the term used to describe sexual contact between an adult and a minor. By law even when a minor agrees to sex, he or she did not truly do so, because he or she lacked the legal capacity to give consent.

Sexual abuse can happen to boys and girls, men and women, and at any age. In short, sexual abuse takes many forms, finds many victims and can be perpetrated by some of the most trusted and outwardly law-abiding people any of us will ever know.

Sexual abuse against all victims, irrespective of age or sex, is a demeaning, anxiety-provoking, life-altering event that is all too common. Whenever someone is manipulated or forced into unwelcome and unwanted sexual contact, it is sexual abuse.

Chapter 2

Why Does Sexual Abuse Go Unreported?

In most instances of sexual abuse there is a common component: trust. The victim is manipulated by someone in a position of trust. Usually victims of sexual abuse know their abuser. Reportedly, upwards of 86% of all victims of child sexual abuse were abused by someone they knewⁱ. Most involve situations when the victim is manipulated into sexual contact, rather than being forced or threatened with physical harm. Occasionally, threats to others is used to manipulate the victim, such as threats to sabotage school records or performance or actions that will be taken against loved ones.

Frequently Known by the Victim

Because the perpetrators are frequently someone known to both the victim and the victim's family, seeking help from parents, siblings or other family members is difficult. Parents may simply refuse to believe that Billy is being sexually assaulted by his baseball coach at out-of-town tournaments.

Organization Cover Ups

Many organizations cover up an abuser's prior history of abuse. The history of abuse within the Catholic Church has only recently come fully into the light, and along with it, the history of concealment. These such efforts are not unique.

Most allegations are made by children with perceived limitations in perception and perhaps honesty. Therefore, organizations are seldom fully confident that a report of sexual abuse is legitimate. Accordingly, abusers can frequently get away with multiple incidents, even if reported.

Churches, rather than acknowledge the incidents, may simply transfer a pastor to a new, unsuspecting congregation with a stern warning to the pastor of, "Don't let this happen again."

Least Likely to Suspect

Sexual abuse is nearly always committed by the last person one would expect. Sexual predators look like everyone else. They coach little league, teach, operate day care centers, act as youth pastors and serve as leaders in youth organizations such as the Boy Scouts of America. In fact, no one looks like a sexual predator. As a result, children fall victim to people who look and seem trustworthy and credible. This is how the wrongdoer gets away with it. None of us willingly leave our children with someone we suspect is a sexual abuser.

Steven is a 13-year old 1st Class Boy Scout, dutifully climbing the ladder all the way from Cub Scouts. Harry, the assistant scout master, has been at Steven's side throughout his progress. While on a camping trip, Steven is alone one night in his tent, as his expected companion was home with the flu. Harry crawls quietly into Steven's tent, snuggles up next to him, and silently starts to fondle him. This progresses to future campouts, and although Steven now shows an increasing distaste for such trips and continually asks his parents if he can quit scouting, his parents keep reinforcing the benefits of scouting. Harry now manipulates the other scouts so that Steven consistently has a tent of his own at campouts.

Chapter 3

What to Do if You Suspect Sexual Abuse

If you suspect someone is being, or has been, sexually abused, **REPORT IT!** Nothing can be done to stop the abuse, punish the perpetrator and accordingly, stop the progression of abuse, unless incidents are reported.

Any report is worthy of belief and investigation. Respect your children's reports and allegations, even with their compromised and under-developed systems of perception and values. Ask! Observe! When necessary, report!

While Mandy, a 5-year old daycare student, lacks many powers of perception and understanding, she deserves belief when she tells her mother that Ms. Davis "touched her peepee." Her powers of perception to understand the ramifications of Ms. Davis' actions are undoubtedly compromised. It may turn out that, upon investigation, Ms. Davis was legitimately and understandably trying to assist Mandy after she wet her pants, but Mandy's allegations deserve investigation.

Report to Police

Every case must start by making a report to your local police or county sheriff's office. This can be accomplished in any one of the following manners:

- In-person visit
- Phone call
- Written letter

The investigative powers of prosecutors and police with the ability to interview, subpoena and search premises during an investigation, are well advanced over the ability of victims or even organizations to do so. If you have concerns for the safety of the victim, make this known at the outset and ask to speak with a "victim's advocate."

Report to Organization or Company

Although it is always best to report any allegations of sexual abuse to the proper authorities, a company or organization can initiate an investigation. Make sure to report your suspicions to someone who has the authority to investigate the abuse and take immediate action.

Keep in mind, the abuser and any organization with which he/she is associated, have a vested interest in hiding or denying a claim. Hence, a report from the abuser that the allegations are false, or from the organization that they found no credibility to the allegations during their own investigation, should not necessarily end the inquiry. Parents and older victims need to be invested in the investigation as well. Find out:

- Who was interviewed?
- Are there witnesses?
- Is this the first time you've gotten a complaint about Ms. Davis?
- What was asked?
- Were there other incidents?

Chapter 4

Barriers to Reporting Abuse

In the United States, we are all innocent until proven guilty. Even allegations of sexual abuse against an individual can have a lifetime of consequences. However, such consequences are at least no greater than the consequences suffered by victims of abuse.

Associated Stigma

It is the stigma that attaches to even allegations of abuse that becomes one of the very barriers to reporting. Once someone is called a “rapist”, can he/she ever escape such an allegation even if innocent? Righteous anger of the alleged abuser plays into this recognized stigma. In short, it is this very stigma and the potential that an allegation is false, that stands in the way of protecting children and punishing the truly guilty.

Victims Themselves

Victims are scared and rarely report abuse themselves. They are afraid of reprisal from a host of sources, most of whom may be difficult for outsiders to understand. Victims fear their abusers but may even have an unhealthy and hard-to-understand affection for their abuser. Hence, it may be difficult for a victim to ever report abuse. Attempts to report to parents, school administrators, and the like, may be dismissed as unbelievable. Why, Coach Smith is such a fine and upstanding fellow, how dare you impugn his character?

Chapter 5

Criminal vs Civil Prosecution

Frequently, the same act can give rise to both a criminal prosecution and a civil action for personal injuries. Criminal courts generally lack the ability to award monetary damages to a victim. Civil courts remain the best avenue when one seeks compensation for the injuries, damages and consequences of a wrongful act.

Criminal Prosecution

Once charges are made in a criminal case the victim has little control over what happens. The ultimate decision to either prosecute or drop criminal charges is up to the prosecutor. Most investigating officers and prosecutors are sympathetic to victims. However, they generally have a huge caseload and no direct, vested interest in the outcome of a given criminal proceeding.

Conviction and punishment are the sole goals for any criminal prosecution. The criminal court system may help in connecting the victim to advocates that can assist with counseling and other needed support. However, the criminal justice system is largely powerless to compensate victims for the torment they have suffered and the lifelong emotional and financial consequences.

Civil Prosecution

The civil justice system is less designed to punish, and more designed to help and support victims. Civil claims are designed to help the victim obtain monetary compensation for the abuse. Attorneys will advocate solely for the victim's rights.

While criminal courts are designed to **punish the abuser**, civil courts are designed to **compensate victims**. Accordingly, the victim can seek monetary damages from the jury or the court for the wide variety of damages that were inflicted by their abuser.

Civil Case and a Criminal Case at the Same Time

Frequently, and especially in instances of sexual abuse of a minor, there is also a criminal case. Regularly the civil case is pursued after the abuser is already convicted and imprisoned. Special challenges exist whenever a civil claim proceeds simultaneously with criminal prosecution.

Certainly, a prosecution, and especially a conviction, lends an air of credibility to any claim of sexual abuse, especially when speaking of sexual abuse of a child. With the child's challenges of perception, a conviction validates that there is basic truth to the child's allegations. Hence, the pressure to prove the abuse even occurred, is substantially lessened. However, one still must prove in the civil case that the abuse took place.

Many state prosecutors or district attorneys are hesitant to provide the fruits of their investigation to the victim. While some states, Missouri as an example, have statutes that make the information of an active investigation available to victims, other states' prosecutors are territorial about their investigation. They fear that details will leak out that will disrupt the privacy of others or compromise the criminal process.

In this sense, a related criminal prosecution can either aid or hinder the flow of information needed to pursue a civil claim.

When Is There a Civil Case Without a Criminal Case?

A civil sexual abuse case can go forward whether or not the abuser was charged criminally for his actions. In fact, a civil case is not barred, even if the defendant has already been acquitted from criminal misconduct.

Due to the difference in the standards of proof (i.e. beyond a reasonable doubt [criminal] versus preponderance of the evidence [civil]), even if the defendant is found not guilty criminally by the higher standard of proof, he or she may still be found guilty due to the lesser civil standard.

Many will recall that O.J. Simpson was found “not guilty” of murdering his wife, Nicole Simpson. Sometime later, the family of Nicole sued O.J. for the wrongful death of Nicole. He was found guilty, or liable, for this civil wrong.

In the simplest sense, the jury had to be “less convinced” of O.J.’s guilt when sued in civil litigation as contrasted with a criminal conviction. Just so, if a perpetrator is found not guilty of criminal misconduct, he or she may still be sued and found liable under civil remedies.

Chapter 6

What Acts Constitute Abuse?

Virtually any unwelcome, unwanted, sexual touching of a child can be legitimately characterized as abuse. Physical injury does not have to be involved. As stated before, the child may seem to consent to the sexual contact, but a minor lacks the legal capacity to consent, rendering any sexual contact actionable. However, only on very rare occasions is consensual sex between two minors, such as two 16-year olds, the subject of any criminal prosecution.

Neither does sexual abuse always involve penetration between a penis and a vagina. Clearly, it is among the most reprehensible of examples. But, oral sex, fondling, and manipulation of the victim into any sexual acts by the abuser are actionable. Oftentimes, sexually tinged touching can become the focus of action. Sexual abuse of minors is not limited to acts perpetrated by males on females.

A good starting point to any analysis of what is abuse is, did the victim consent? “No” can be by “operation of law” (i.e. the minor lacks the capacity to consent), or an expressed rejection of any contact.

It is the exercise of power over an individual under circumstances that have an unwelcome sexual component that is the key to distinguishing sexual abuse or contact from innocent, welcome touching.

Chapter 7

Who Can Be Sued in a Civil Case?

In all instances, the direct perpetrator of abuse can be sued. This is true even if the abuser is also a minor.

Minors

Minors can be sued. However, they can only be sued when an adult is appointed to look after their legal interests. The adult essentially acts as the minor's guardian for purposes of the lawsuit filed.

If Buddy, age 11, is sexually abused by Nate, age 13, Buddy will need a guardian to represent his interests in a lawsuit against a guardian appointed by Nate because minors lack legal capacity to sue one another.

A guardian, or "next friend," can be anyone, but in most cases, it is filled by the victim's natural mother or father. It is a temporary position, and the guardianship only lasts so long as the lawsuit itself.

Authority over the minor, unless the minor's representative has long-term guardian status (e.g., parent), extends only to matters directly related to the conduct of the lawsuit, including decisions about settlement and working with counsel.

Parents & Caregivers

Very young minors may lack the capacity to understand the wrongness of his or her actions. Such as, “show me yours, I will show you mine” episodes in the closet. There is no bright-line rule as to when a minor becomes old enough to be legally responsible for his or her own actions.

When a minor lacks the capacity to understand the essential wrongness of his or her actions, responsibility for the child’s actions may extend to his caretakers.

Parents, babysitters, grandparents and others may be responsible for “negligently” failing to supervise a child, especially if the child has demonstrated any tendencies in the past.

Billy has been caught on several occasions fondling his sister. His mother, Betsy, has repeatedly warned him and punished him accordingly. His sister has friends over for her 7th birthday party, including Erin a friend from school. Betsy does her best keep an eye on Billy during the party. She lets him go downstairs to play video games. Unknown to Betsy, Erin wanders downstairs and begins playing video games with Billy. A bit later, looking for Erin, Betsy too wanders downstairs only to find Erin undressed with Billy fondling her. Betsy could be held responsible for neglecting to supervise Billy.

Organizations

Any type of organization can be sued when one of its employees sexually abuses a child. In rare cases the circumstances are such that the organization can be responsible for the wrongful acts of an employee, even when the acts are intentional, without engaging in any active wrongdoing.

This is what is called “respondeat superior” or vicarious liability. The employer is responsible when the employee commits a wrongful act in the course and scope of his or her employment.

Many children are put into contact with adults that neither they nor their parents know. An employer or an organization may have access to information and resources to investigate backgrounds that are underutilized. They have a responsibility to make sure their charges are not a threat to children.

Jacob is 3-years old and spends 3 days a week in daycare. Daycare R Us, a prominent, nationally recognized facility, hired Beth two years ago. Beth seemed such a fine and personable individual that Daycare R Us did not speak to her former employers, search criminal records or obtain any of her former employment records. If they had done so, they would have found that two of the three facilities had noted in her file that she was fired after allegations of sexual abuse. One employer referred charges on her to the prosecutor’s office, but the plea agreement did not specifically mention a conviction for a sex crime. It was listed simply as “misdemeanor assault.” Beth has been fondling Jacob and other kids at the center when she takes them to the bathroom, under the guise of giving assistance. Jacob tells his parents about these episodes over dinner one night when he casually comments, “I don’t like it when Ms. Beth takes me to the bathroom.”

Chapter 8

What Compensation Can a Victim Receive?

Actual damages in any personal injury case are defined as either “general” or “special.” **Special damages** are those for which a specific dollar value can be assigned and easily calculated. Hence, lost income, lost future earnings capacity, medical expenses (both past and future) and any other out-of-pocket expenses reasonably necessary to place the victim back into circumstances that he or she would have enjoyed in the absence of the abuse.

General damages include all such damages for which a specific dollar figure is hard to calculate. The ability to assign a specific dollar value to these damages is left to the sound discretion of the jury.

The most recognizable element of general damages is “pain and suffering. Pain and suffering damages can include disfigurement, mental anguish, loss of esteem, and in the most general of terms, loss of the basic enjoyment of life.

The third type of damages that are possible but less likely to be awarded are **Punitive Damages**. Punitive damages are not designed to compensate the victim for the abuser’s wrongdoing. They are designed to punish the wrongdoing and to be in such an amount that other similarly situated defendants will be deterred from similar wrongful acts.

Not every case warrants punitive damages, and they are greatly disfavored by the courts except in the most extreme cases of misconduct. In Missouri, jury instructions define the conduct for which a jury may award punitive damages as follows: Punitive damages are appropriate only when the conduct of defendant is outrageous because of evil motive or reckless indifference to the rights of othersⁱⁱ.

SPECIAL DAMAGES

The victim is awarded \$50,000 in medical expenses due to the incident.

GENERAL DAMAGES

Jury awards the victim \$100,000 in pain and suffering for not being able to live as she did before her incident.

PUNITIVE DAMAGES

The Jury awards \$1,000,000 against a nursing home for knowingly employing a convicted sexual predator.

ⁱⁱ See Missouri Approved Jury Instruction, 10.01.

Chapter 9

How Is Compensation Obtained?

Episodes of sexual abuse invariably involve intentional acts. Unfortunately, many insurance policies do not provide coverage for intentional or purposeful acts. Therefore, abuse victims can rarely look to any insurance policy held by the abuser for compensation. So, how do victims find the money to be satisfactorily compensated for their damages?

In many instances it is important for the victim to show that others share in the responsibility for the abuse. For example, Sarah has been repeatedly abused by her step-father Greg in her mother's house. If Sarah's mother knew or should have known that the abuse was occurring, Sarah may be able to collect from her mother's homeowner's insurance in a claim for negligent supervision.

Collecting from an Employer or Organization

As a practical matter, successful cases typically involve a claim against an individual or organization that was responsible for placing the perpetrator and the victim in contact with one another.

When intentional acts are involved, such as with sexual abuse, it is much more difficult to say that abuse occurred in the course and scope of employment, because an employer would seldom, if ever, condone such acts.

It is not enough for the act to simply be committed while someone is in the employ of another. The key to vicarious liability is that the wrongful act was basically part of the wrongdoer's job.

A case may proceed against a church, a youth organization, a care facility, school, sports club, or any other organization that fails to undertake proper means to hire and supervise people who will have close, trusting relationships with children. Were former employers contacted? Was a criminal screen performed? Was the sex offender database checked?

An employer or organization which hires or retains a person with a history of abuse, is going to stand responsible for that person's future acts, especially when a reasonable investigation or inquiry would have revealed the perpetrator's tendencies.

Chapter 10

Time Limits to Sue for Sexual Abuse

Frequently, victims of child abuse take years to realize the mere fact that they have been victimized. In many instances, victims repress the memories of abuse as a psychological safeguard. The capacity to consciously recollect the event may be blocked, and the individual may have no conscious recollection that such horrific events ever occurred. Nonetheless, the emotional consequences of the events frequently play a real and ongoing role in the victim's life and may surface in the form of anxiety, anger and/or depression. Ultimately recovering such repressed memories is a beginning step in assisting the victim with real recovery.

Time Limits

These repressed memories may be the first hurdle to pursuing a case for sexual abuse. All types of claims or lawsuits have time limits that are generally referred to as "statutes of limitation." In most instances, the running of any such time limit begins when the event happened (e.g., a car wreck). For events that happen over time, calculation of the time limit can be challenging, such as when a child is abused for years.

In Missouri, for claims related to **negligence**, the standard period of time for filing a lawsuit is five (5) years. Other types of claims not based on negligence may also be involved, particularly time limits that may directly apply against the perpetrator for his or her intentional acts. Assault and battery are **intentional acts** that have shorter, two (2) year, statutes of limitation.

When Time Limits Start

Some states have a variation on when the time limit begins for sexual abuse cases. Exceptions have been made in certain areas of the law to accommodate for the unique circumstances of abuse of children. In keeping with recognition of repressed memories, and in further keeping with the vulnerable nature of children, there is forgiveness on when any such claim must be filed if it involves a minor. (i.e., an individual, in Missouri, under the age of 18 or 21 years, depending on the situation.)

In every instance of abuse affecting a minor, time limits are “tolled”, or paused, until the child reaches the age of majority. In Missouri, the age of majority with respect to legal cases varies. (e.g., age 18 for cases against healthcare providers, and age 21 for all other types of cases.)

Minors lack the legal capacity to sue. A parent can sue on the minor’s behalf before the child reaches majority, but the parent acts in the capacity of “next friend.” If nothing is done until the child reaches majority, the applicable time limit or period of limitation begins to run upon the commencement of the child’s 18th or 21st birthday.

Now add the effect of repressed memories. Missouri has recognized that, when a victim has repressed memories of the terrible event, the victim has up to five years upon realization of the eventsⁱⁱⁱ.

Repressed memories are a barrier, but statutes of limitations are recognized to avoid “stale” claims. Over time, memories diminish, evidence disappears, and witnesses vanish. Statutes of limitation are designed to aid in the timely progress of claims. Hence, one should never wait until the end of the applicable time limit.

Chapter 11

Is an Attorney Needed?

Attorneys play a crucial role in obtaining financial compensation for victims, especially those of sexual abuse. The earlier you hire an attorney, the better. The best time to hire an attorney is immediately after learning that you or a loved one has been victimized by abuse.

Beneficial Connections

Attorneys will usually have some history with local law enforcement officials. It is likely criminal authorities will become engaged early. The ability to talk to witnesses and investigate the allegations may be shut down once prosecutors and law enforcement take over. Attorneys who specialize in child sex abuse cases will know the prosecutors who are specifically assigned to the sex crime unit. These relationships prove to be valuable and increase the chances of being able to work in tandem with one another.

Abuser Hires A Lawyer

Once an individual or organization retains an attorney, the ability to communicate directly with these individuals decreases dramatically. However, there is usually a short window to talk to witnesses, or perhaps even to the perpetrator him/herself. An experienced sexual abuse attorney will have the connections and know the questions to ask before other attorneys become involved.

Early Resolution

Litigation has its own separate set of anxieties. The term “litigation” generally describes the process following the filing of a lawsuit. Early involvement with an experienced attorney may facilitate an early resolution so that a victim and his/her family can get some level of closure and begin to move forward with the resources and an undivided focus on counseling and recovery.

Chapter 12

Finding a Sexual Abuse Attorney

In most states, including Missouri and Kansas, a lawyer, is a lawyer. Unlike the medical profession, which routinely certifies doctors for specialties (e.g. surgeon), the legal profession treats all attorneys the same. There is no procedure or organization that extends certification or special recognition to an attorney for a legal specialty. Instead, you must properly inquire and vet the prospective attorney. Among the inquiries that should be made, are the following:

› **What percentage of your professional time is devoted to civil litigation?**

It is best if the attorney focuses solely on civil litigation.

› **How long have you been practicing?**

Practicing long enough to have 1st chair trial experience, have taken 40 to 50 depositions, and been lead counsel on 50 or more cases.

› **Have you handled sexual abuse cases? If so, against what types of defendants?**

An experienced attorney will have handled 10 or more cases. Their experience should relate to your specific case. I.e., experience representing minors, litigating against clergy, churches, schools, civic organizations or employers.

› **How many jury trials have you had, and what is your record of success?**

Attorneys should have tried 10 or more jury trials to verdict as the “first chair” attorney. Meaning they were the lead counsel and primarily responsible for trying the case.

› **What is your attorney to staff ratio? Do you have enough help to handle big cases?**

The attorney to staff ratio should be at least 1:1. Such cases can involve numerous witnesses and hundreds of documents.

› **Who pays the expenses of the case?**

A skilled, experienced personal injury attorney is inclined to not only advance all litigation expenses, but to bear the risk if the case is lost.

› **How much do you forecast this case will cost in case expenses?**

Each case must be evaluated for the potential costs. It is not uncommon for a complex sexual abuse case to involve expenditures of in excess of \$25,000.

› **Have you ever had a complaint to the bar? How many? What were they for?**

An isolated bar complaint is not a deal breaker. Most complaints are dismissed without any consequence to the attorney. Sometimes it can be a matter of a client being dissatisfied with a result, for what is otherwise a good representation. Be wary of complaints that resulted in attorney discipline, such as a reprimand, suspension or disbarment.

› **Do you have any representative clients that we can speak with?**

A self-assured attorney, with the former client’s permission, should always be willing to provide references.

› **Have you been recognized by any legal organizations for special skill or expertise?**

While neither the Missouri or Kansas bar associations recognize certification of legal specialties, there are some organizations which recognize attorney achievement. Some of the most reliable are those that consult with an attorney's peers and judges before bestowing recognition. A few such organizations include: Super Lawyers, Best Lawyers in America and Martindale-Hubblle. As trial attorneys, The American Board of Trial Advocates recognizes attorneys with a demonstrated track record of trial experience.

› **Do you have a Martindale-Hubbell rating? If so, what is it?**

Attorneys are rated "A", "B" or "C" by this long-standing legal group. An attorney can only be rated by his or her peers once he has first been recognized as having outstanding professional integrity. For that, he/she will receive a "v" rating. There is no other. An attorney rated "A/v" is among the most stellar in the profession as rated by other attorneys.

All attorney/client relationships are based on trust. Litigation can be a long, emotional process. In addition to finding a good attorney, you need to find an honorable and trustworthy attorney. There will come a time in every case when you will receive direct legal advice from your attorney. Do you trust his advice? Do you trust his support staff to give your case the same competent, caring service you demand of your attorney? Finally, does you attorney work pursuant to a contingent or percentage fee?

Chapter 13

How Much Does an Attorney Cost?

Most successful personal injury attorneys work by contingent fee. A contingent fee is paid only when the case is won or settled. Because the attorney works for a percentage of the result, his interests are nearly always aligned with yours to get the maximum value for your case. If you make more, he makes more.

Be wary of any attorney who insists on an hourly fee. It suggests an attorney unfamiliar with personal injury litigation and/or may suggest an attorney with little confidence in the outcome.

Contingent fees vary as to percentage and how that percentage will be calculated. Some attorneys calculate the percentage fee on the **gross recovery**. Others calculate the contingent fee only after expenses of litigation have been deducted from the recovery, what is called the **net recovery**. The latter calculation works somewhat in the client's favor.

Contingency on Gross Recovery

Let's assume there is a contingent fee of 40% on the **gross recovery**. A gross settlement is negotiated for \$200,000. There were \$20,000 in expenses of litigation. The \$20,000 in expenses is deducted from the gross recovery, but the 40% fee is also calculated on the gross recovery.

\$200,000	Gross Recovery
<u>-\$20,000</u>	Expenses
\$180,000	Recovery Before Fees
<u>-\$80,000</u>	Contingency Fee ($\$200,000 \times 40\%$)
\$100,000	Net Recovery

Contingency on Recovery After Expenses

Now, let's assume there is a contingent fee of 40% on the **net recovery** after expenses. This time the ultimate net recovery to the client is **calculated after deduction of expenses**.

\$200,000	Gross Recovery
<u>-\$20,000</u>	Expenses
\$180,000	Recovery before Fees
<u>-\$72,000</u>	Contingency Fee ($\$180,000 \times 40\%$)
\$108,000	Net Recovery

Contingency Percentage

What is a proper percentage? In a general sense, a percentage fee is based on the attorney's risk. How much time is the case likely to take? How much will it cost? How long will it take? What are the chances of success? All these factors are considered by a contingent fee attorney.

Some clients are willing to advance some or all the expenses. Since the attorney's risk is correspondingly lower, he may be willing to work for a reduced percentage fee. Percentage fees vary based on jurisdiction, experience of the attorney, type of case and risk. **Fees should never exceed 50%**, whether calculated on the gross or the net. 40% fees are common, and some attorneys are willing to work for less if the case is settled before trial.

Do not select an attorney based on the quoted percentage. Many times, you get what you pay for. A good attorney with experience in sexual abuse cases, working on a 40% contract, may get you more money resulting in a better net recovery for you than the attorney who offered to handle your case for 25%.

GOOD ATTORNEY		OTHER ATTORNEY	
\$50,000	Gross Recovery	\$10,000	Gross Recovery
-\$5,000	Expenses	-\$2,500	Expenses
<u>-\$18,000</u>	40% Contingency Fee	<u>-\$1,625</u>	25% Contingency Fee
\$27,000	Net Recovery	\$5,875	Net Recovery

Chapter 14

What Is Expected from The Victim?

There are approximately five occasions a victim will be called upon to actively participate in and assist your attorney in the pursuit of your case. Every civil case has a period called “discovery” when the parties exchange useful information about the case. Their assistance will be required during discovery on the following occasions:

Accuracy of the Lawsuit Allegations

The victim will assist in reviewing and verifying the accuracy of the initial lawsuit papers. The “petition” or “complaint” is the instrument that begins the lawsuit, and its factual accuracy is vital.

Provide Information for Discovery

Interrogatories are written questions posed from one side to the other that seek general information about the case and the litigants. Those directed to the plaintiff or injured party will ask for basic information about witnesses, medical care, employment and education. Many courts impose strict limitations on how many “interrogatories” (written questions directed to an opposing party), may be asked. Your attorney will rely on you to supply basic information and will then use that information to draft formal responses, and any objections to unacceptable questions.

Similarly, written discovery may seek documents (e.g. medical records and bills) or tangible items. Your attorney will rely on you to provide the basics about the existence and location of any such documents and things.

Appear for Depositions

The victim will need to appear and give testimony to a court reporter, under oath in response to questions asked by opposing counsel. This process can take several hours. Your attorney will meet with you to prepare you and will be present during the duration of any questioning. Although a party to litigation is always entitled to attend the deposition of any witness, the case will only require the victim's attendance at their own deposition.

Attend Mediation

Mediation is a formal settlement discussion that is now pursued in nearly all civil lawsuits. An impartial mediator is retained and paid by both sides who will act as a go-between for settlement discussions. Generally, the mediator renders no final opinion as to settlement value, although some states recognize a non-binding "mediator's opinion" in cases that do not settle during the mediation. The process is confidential, and you are required to attend. It may be the best opportunity to settle your case out of court, but frequently less formal settlement discussions are held between sides that also require your input.

Appear at Trial

Most civil lawsuits settle out of court, although many proceed “to the courthouse steps” before resolving. If there is a trial, which statistically happens in only about 5% of all civil lawsuits, your attendance for the duration of what can be a 1 to 2-week trial is necessary. You will likely be called as a witness and will be present to observe the entire presentation of evidence and testimony.

Communication with your attorney and his/her staff throughout the process is a must. While you may not speak to your attorney on a weekly basis, regular communication to and from your attorney about all important developments is necessary.

Chapter 15

Confidentiality

Finally, many victims are reluctant to enter the civil litigation process due to concerns about their privacy and the confidentiality of such sensitive and embarrassing events.

The identity of victims can be kept confidential. The names of children are commonly left out of court documents and referred to only by either their initials or as a “Jane Doe” alias. Courts commonly accept such measures to protect the innocent.

Cases frequently settle with confidentiality agreements, whereby the sides agree to keep the terms of any settlement confidential. This too can benefit victims by protecting them from the revelation of the terms of settlement that may provide a map to the events themselves.

Conclusion

Few personal injury lawsuits are more sensitive or generate more emotion, indignation, embarrassment and stress than sexual abuse cases. The events leave the victims, their families, loved ones, the attorneys, and even the courts uncomfortable and squeamish.

The victims deserve to be taken care of as much as the abusers deserve to be punished. The Civil Court System's purpose is to help the victims obtain the aid and compensation they need to overcome this life altering abuse.

This booklet was written to give you insight into how the Civil Court System works and is able to help victims. All situations are different so it is impossible to be able to answer all questions within this booklet.

This booklet was authored by the attorneys at Monsees & Mayer, P.C. Advocating for the rights of victims of sexual abuse is a major focus of our firm. If you need our assistance, our contact information is on the back cover.



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