

The Child Victims Act Seminar

May 14, 2024

Overview of CVA Law, Legal Issues, and Recent Developments in the Law

Topic Outline

1. Introduction of the Child Victims Act (CPLR 214-g)
2. Window Period from August 2019 to August 2021
3. Can plaintiffs assert claims after their 55th birthday?
4. Predicate Sex Offenses
5. Does conduct against a 17-Year-Old plaintiff fall within the CVA?
6. Age of alleged abuser
7. Jurisdiction
8. Constitutionality
9. Pleadings
10. "Scandalous" and/or "Prejudicial" Language contained in a pleading (CPLR 3204[b])
11. Specific Causes of Action under the CVA
12. Governmental Immunity
13. Summary Judgment Issues
14. Anonymity

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The Impact of CSA: The Problem, The Path to Recovery, The Complexity of the Social Impact, Differing Interventions, and Skills for Those Working with Victims and Offenders

Topic Outline

This presentation will begin to explain the complexity of the dynamics surrounding child sexual abuse. The symptoms and behavior of victims, offenders and the community are not always logical, rational or easily understood. When working with these individuals it is important to be aware of the reactions, actions and inactions that are common. We will talk about the skills for understanding the stages of healing. This presentation will explain the different processes available for addressing the conflicts surrounding sexual harm, their advantages and disadvantages.

The following topics were discussed:

1. Definitions of Child Sexual Abuse (CSA)
2. CSA Statistics
3. Common Misconceptions
4. The social systems surrounding CSA.
5. The path to healing from harm.
6. Understanding the Victim of CSA
7. Understanding Our Reactions to Sexual Abuse
8. Why Not Disclose? (Reasons)
9. What Motivates Victims to File in Court?
10. Understanding the one who caused sexual harm to a young person.
11. Grooming (a young person and the adults [e.g., the family])
12. The Court Process
13. Mediation, Settlement Conferencing and Attorney Negotiations
14. Restorative Justice Processes
15. Working with Victims and Offenders
16. The different interventions available to families, their advantages and disadvantages.
17. Skills for interacting with litigants.
18. How the victim's trauma impacts court proceedings



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Mediating CVA Cases – NYS Judicial Institute

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Mediating sexual abuse cases is a delicate process that requires special consideration from all parties. Sensitivity, empathy and patience are vital in successfully mediating these types of cases.

Hon. Elizabeth Bonina (ret.), Jeffrey Herman, Esq. (plaintiff's perspective), Barbara Maisto, Esq. (defendant's perspective) shared their thoughts on the unique concerns in mediating these types of matters, including the determination of value, roles of the parties, assessing liability, evaluating damages, and the importance of selecting the mediator. The presenters offered guidance and best practices in mediating sexual abuse cases.

I. What makes these types of mediations different?

- a. Emotional component
- b. Difficulty in discussing the facts
- c. Putting a value on someone's emotional pain

II. Is the case ripe for mediation?

- a. Pre-Suit or Post-Discovery?
- b. While a Summary Judgment motion is pending?

III. Roles of each party

- a. Dealing with the various parties involved in the resolution of the matter.
- b. Mediator facilitating the resolution
- c. Allowing the parties to feel heard and part of the process.
- d. Managing the emotions and expectations of your clients
- e. Appreciating each side's perspective



IV. Assessing Liability based upon the nature of the case.

- a. Understanding that no two cases are the same.
- b. Assessing fault when there are multiple defendants

V. Evaluating damages to place value on the case.

- a. Appreciate the sensitive nature of the injuries.
- b. Appreciate who is paying to resolve the case
- c. Understand how a claim is evaluated to arrive at a fair settlement.

VI. Why choose ADR?

- a. Coming to the table in good faith
- b. Mediation vs. a court decision
- c. Eliminate the need to testify in Court

DISCOVERY ISSUES

- A. NYC Case Management Order (AMT)
- B. Discovery Orders & Expedited Schedules (DC, LDS)
 - 1) Insurance issues (BM)
 - 2) Defunct corp. as defendant
- C. Plaintiff's Records (AMT, LDS)
 - 1) Medical records
 - 2) Employment records
 - 3) Social media
- D. Information/Documents Concerning the Alleged Abuser (LDS)
 - 1) Time period before abuse
 - 2) Time period after abuse
 - 3) Personnel files
 - 4) Medical records
 - 5) Religious exemption (1st Amendment)
- E. Information/Documents Concerning Other Abusers (LDS)
 - 1) Time period before abuse
 - 2) Time period after abuse
- F. Policies and Procedures (DC)
 - 1) Past
 - 2) Subsequent
- G. Identity of Other Victims (DC)
- H. Foster Care Records (DC)
 - 1) Need for *in camera* review
 - 2) Hearing
- I. Municipal/Court Records – CPLR 2307 (DC)
- J. Adequacy of Records Search (AT)
 - 1) Jackson affidavit
 - 2) Deposition of records custodian
- K. Adequacy of Designated Deposition Witness (AT)

TRIAL ISSUES

I Motions In Limine – (LS – lead panelist)

- A. Experts
 - i. Foundation
 - ii. Disclosure
- B. Emotionally charged words – perpetrator, victim, pedophile, child molester, grooming, rape.
- C. Evidence of other employees engaged in sexually inappropriate conduct with students.
- D. Alleged perpetrator’s abuse of other children
- E. Plaintiff’s experiences of sexually inappropriate touching by others.
- F. Criminal investigations

II Jury Selection (DAC lead panelist)

- A. Pro Se
- B. Media in Jury Selection
- C. Questioning on sensitive issues
- D. Privacy of jurors
- E. Bias

III Trial (DAC lead panelist)

- A. Pretrial charge explaining why the case took so long to commence.
- B. Evidentiary Issues
 - i. Ancient Document
 - ii. Admissibility on Notice
 - iii. Standard of Care – then and now
- C. Commonly Used Charges
- D. Verdict Sheet
 - i. Penal Law
 - ii. Article 16
 - iii. Punitive Damages
- E. Punitive Damage – additional step.