
A GUIDE TO CIVIL LAWSUITS

Practical Considerations for Survivors of
Rape and Childhood Sexual Abuse



Illinois Coalition Against Sexual Assault

The Illinois Coalition Against Sexual Assault (ICASA) is a statewide network of community-based sexual assault centers that work together to provide survivor counseling, medical and legal advocacy and public education regarding sexual violence. Through its administrative office, ICASA supports its member centers, works with state and national organizations to end sexual violence and produces publications such as this guide.

We gratefully acknowledge the following individuals and organizations for their assistance in producing this guide:

- Lyn Schollett, General Counsel, and Libby Shawgo, Paralegal, of ICASA, for updating and editing this guide.
- Florence Bain, Michael Brooks, Joe Klest, and Kaethe Morris Hoffer, attorneys, for reviewing and commenting on this guide during its production.
- Sean Black, ICASA Communications Coordinator, for preparing this guide for publication.
- Sarah Hatch, for researching and writing the 1999 edition of this guide as a University of Illinois College of Law student.
- Connecticut Sexual Assault Crisis Services, Inc. for generously allowing the use of its civil lawsuit guide.

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Funding for this publication provided in part by the Illinois Department of Human Services.

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**Published by the
Illinois Coalition Against Sexual Assault
February 2007**



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USING THIS GUIDE

Efforts were made to make this guide as gender-neutral as possible. However, this guide uses "she" to refer to the sexual assault survivor and "he" to refer to the perpetrator because women and girls are more often sexually assaulted and men are more often the attackers. We recognize that there are men who are survivors of sexual assault and that the prevalence of such assaults may not be fully known due to underreporting. We also recognize that there are women who are perpetrators. Sexual assault survivors who file a civil lawsuit have similar experiences whether they are women or men.

This guide uses the word "defendant" throughout, but in many cases multiple persons or entities are sued for liabilities related to a sexual assault.

Some words appear in italics in this guide. The definitions for these words may appear within the guide's text; all definitions appear in the appendix beginning on page 29.

DISCLAIMER

This guide is not intended to and does not provide legal advice, assistance or representation. ICASA encourages each survivor to consult an attorney licensed in the appropriate jurisdiction regarding her particular case.



I. INTRODUCTION



The purpose of this guide is to help you, the *survivor*, understand the advantages and disadvantages of suing your perpetrator in civil court. The guide outlines the factors that may influence a decision to file a lawsuit, guides you through the attorney-selection process, and describes each step of a civil lawsuit. The guide also includes contact information for ICASA member centers and attorney referral services.

One in six women and one in 33 men in the United States report experiencing an attempted or completed rape at some time in their lives.¹ Nearly two-thirds of the women who report being raped as adults were raped by a husband, ex-husband, live-in partner, boyfriend or date.² Only 36 percent of sexual assault victims reported their victimization to police in 2004.³

Statewide, in 2005 there were 5,982 reported incidents of criminal sexual assault in Illinois.⁴ In FY2006, ICASA rape crisis centers served 9,829 adult, adolescent and child survivors of sexual assault, child sexual abuse and sexual harassment as well as 1,515 significant others.⁵

Use the information in this guide to determine whether a civil lawsuit is right for you. Consult your attorney, rape crisis counselor and *therapist* (if you are in counseling) when making this decision. These professionals can help you determine whether a civil suit meets your needs. Keep in mind that a decision not to sue also can be empowering. Ultimately, you must make the best decision for you.

ICASA commends you for coming so far on the difficult journey of healing from sexual violence. Knowledge is power. Properly informed, you will be able to make the decision that is right for you.

¹Tjaden, P. and N. Thoennes. 2000. Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey, p. 13. Washington: National Institute of Justice. Report NCJ 183781. Available online at www.ncjrs.gov/pdffiles1/nij/183781.pdf.

²Ibid at p. 43.

³Catalano, Shannan M. Criminal Victimization, 2004. National Crime Victimization Survey, p. 10. NCJ 210674. Washington, D.C.: U.S. Department of Justice. Bureau of Justice Statistics (Sept. 2005). Available online at www.ojp.usdoj.gov/bjs/pub/pdf/cv04.pdf.

⁴Illinois State Police. Illinois Uniform Crime Reporting Program. 2005. Crime in Illinois 2005, p. 32. Available online at www.isp.state.il.us.

⁵Illinois Coalition Against Sexual Assault. General statistics on sexual assault. Available online at www.icasa.org.

II. SHOULD YOU FILE A CIVIL SUIT?



A decision to file a civil lawsuit based on sexual assault or sexual abuse requires careful consideration. For some survivors, a civil suit can be an empowering experience and an important step in the healing process. A civil suit, however, can be expensive, time consuming and may not be successful. A civil suit also can drain your emotional resources and affect your recovery because it exposes your private life to the defendant and, in some instances, to the media. This section explains how a civil suit differs from a criminal proceeding, introduces you to the costs and benefits of filing a civil suit and outlines the personal and legal factors you should consider.

CIVIL SUIT DEFINED

A civil lawsuit enforces, remedies or protects private rights; loosely defined, it is any suit that is not a criminal proceeding. Civil suits differ from criminal cases in many respects. Civil suits are private lawsuits, meaning that a *plaintiff* (you, the survivor) initiates the action. By contrast, in a criminal proceeding, a representative of the state (the state's attorney) initiates the action.

One of the benefits of a civil lawsuit is that you have more control over the case. One downside is that you may have to pay some or all of the cost of the suit, which could easily be tens of thousands of dollars. However, you should consult with a civil attorney to discuss what, if any costs you may be required to pay. In contrast to civil litigation, Illinois pays for criminal trials.

The standard of proof for criminal trials is "*beyond a reasonable doubt.*" To convict a defendant, the State only needs to prove that the defendant broke the law, but does not need to prove that you were harmed in any way. Civil suits have a lower standard of proof than criminal cases, known as the "*preponderance of the evidence.*" In a civil suit, you must provide proof of all of your injuries, and must prove the value of each injury in order to be successful.

In a criminal proceeding, the court can sentence a defendant to prison or to pay a fine. In a civil suit, the court can only order the defendant to pay you damages. "Damages" are the legal system's method of remedying the harm the perpetrator caused by making him pay you money.

These damages may be *punitive* or *compensatory*. In some circumstances, if the perpetrator tries to leave Illinois or hides or removes his assets from this state, the court may *attach* the perpetrator's property when you file your suit.

Either party who loses a civil suit may file an *appeal*. Only the *defendant* may appeal after losing in a criminal proceeding.

WHY SUE? PROS AND CONS

A civil suit cannot undo the harm a perpetrator caused. However, a survivor may choose to file a civil suit in order to get some money for the harm the perpetrator caused. A survivor may also file a suit to hold the perpetrator accountable for the sexual assault or to make the perpetrator, and others, think twice before committing another assault. It is important to know, however, that a civil lawsuit may take a lot of time and money and may open the emotional wounds you worked hard to heal. You should carefully weigh the possible pros and cons of filing a civil suit that are listed on the next page. Remember that a decision not to sue also can be an empowering experience.



PROS

- expose the perpetrator and prevent future victimization
- damages: obtain money for medical or therapy bills, pain and suffering, lost wages, loss of consortium, loss of enjoyment of life
- emotional empowerment
- opportunity to tell your story
- vindication
- acknowledgement by the perpetrator
- acknowledgement by the community
- assist your recovery and healing
- punish the perpetrator
- publicly confront the perpetrator
- strip the perpetrator of his power or secrecy
- support from family and friends
- put your community on notice about the perpetrator

CONS

- some costs in filing a lawsuit
- time for work on the case, meetings with your attorney, attending court, etc.
- length of proceedings
- loss of confidentiality
- loss of privacy and possible media exposure
- you must face the perpetrator at trial
- reliving the abuse and delaying your healing process
- alienation from family and friends
- perpetrator may not have the money to pay damages, or it may be difficult to collect
- disbelief from community
- perpetrator may file a *countersuit*
- perpetrator may claim *defamation* (rare)

FACTORS TO CONSIDER

Many factors will influence your decision about whether to file a civil suit, including the requirement that you make private information about yourself public, the amount of time and money you will spend pursuing the lawsuit, and whether or not the defendant has assets to pay a damages award to you. This section describes these factors.

LOSS OF PRIVACY

By bringing a civil suit, you may lose a great deal of privacy. A civil suit stems from your claim that the defendant harmed you in some way. Consequently, it is your *burden* to present evidence of this harm to the court. To do this, you may have to share information that otherwise would have been private. Through pretrial *discovery*, the defendant can obtain personal information about you such as your psychiatric and medical records, and your employment and educational history. You may also obtain information about the defendant, but the process of discovery can be very intrusive, and can sometimes make you feel as if you are the person on trial. To illustrate, below is a list of some of the evidentiary items that the defendant might gather during discovery:

- | | | |
|--|--------------------------------------|------------------------------|
| ■ pediatric records | ■ crime victims compensation records | ■ tax returns |
| ■ psychiatric records | ■ letters | ■ address books |
| ■ medical records | ■ photographs | ■ doctors' bills |
| ■ gynecological records | ■ drawings | ■ therapy bills |
| ■ whether you have ever been hypnotized | ■ videos | ■ social life |
| ■ educational history | ■ blood tests | ■ alcohol use |
| ■ employment history | ■ DNA tests | ■ drug use |
| ■ journals or diaries | ■ credit history | ■ witness testimony |
| ■ past sexual history | ■ criminal record | ■ telephone records |
| ■ past allegations of sexual assault | ■ driving history | ■ answering machine messages |
| ■ other claims/lawsuits you may have brought | ■ family member testimony | |
| | ■ calendars or planners | |

During discovery, even people other than the defendant and the judge may review your claims of being injured. For example:

- The perpetrator or the court may request that you undergo physical or mental exams to determine the existence and extent of the injuries you claim. S.Ct. Rule 215. The defendant must pay for the exam. S.Ct. Rule 215(b). You must submit to the exam, but may have your attorney present. 735 ILCS 5/2-1003(d).
- As in a criminal trial, an *expert witness* may testify about your injuries, especially if you claim to suffer from *posttraumatic stress disorder* or *rape trauma syndrome*. To do that, the expert may review your records and/or interview you. S.Ct. Rules 213, 215. The defendant may also hire an *expert witness* to testify at trial to try to disprove your claims.
- If your claim includes *recovered memories* of past sex crimes, the perpetrator or other defendant might accuse you of making up the memory or claim that your therapist implanted the memory. When a survivor refers to recovered memories, the defendant often asserts that the survivor suffers from *false memory syndrome*.

Although the scope of discovery may seem intimidating, remember that you have an equal opportunity to gather information about the defendant. Since, however, you are the one making the claim, there may be a greater burden on you to produce personal information.

Before making a decision about whether to bring a lawsuit, you should consult with a civil attorney. In many cases, claims are resolved before your personal information is subject to disclosure.

WAIVER OF CONFIDENTIALITY

Although discovery exposes much personal information about your life, some information is protected by *privileges*. The communications (discussions, correspondence and records) between you and certain professionals are *confidential* and may not have to be revealed in a civil lawsuit. Three different kinds of privileges that you may rely on when you bring a civil suit are described below. The degree of confidentiality you have with each professional is different.

■ Rape Crisis Center: Absolute Privilege

In Illinois, an *absolute privilege* protects a survivor's communications with her rape crisis counselor (or *advocate*). A rape crisis counselor or advocate is someone who works or volunteers at a rape crisis center in Illinois. Due to the strong public policy that supports rape crisis counselors and advocates helping sexual assault survivors heal themselves, the information you share with these people is absolutely private. The perpetrator cannot obtain the information you tell your advocate to use as evidence in court. You *waive* this privilege only if you consent in writing or give information to a third party. 735 ILCS 5/8-802.1.

■ Non-Rape Crisis Center Therapist: Qualified Privilege

Your communications with a therapist who is not a rape crisis counselor or physician are protected by a *qualified privilege*. Under a qualified privilege, the judge decides whether the perpetrator, or anyone else may have access to your counseling records. 740 ILCS 110/10.

■ Attorney-Client Privilege: Absolute Privilege

The *attorney-client privilege* protects your communications with your attorney, meaning the attorney cannot repeat conversations or share information received from you without your consent. This privilege is also absolute. The privilege begins at the initial consultation and continues until waived by you; it also applies to the attorney's office personnel who work on your case. RPC 1.6.

Although specific laws protect each of the relationships above, in some cases you may decide or the court may rule that information shared with those professionals must be shared with someone else involved in your suit.

■ Voluntary Waiver of Confidentiality

The absolute privilege you share with your rape crisis counselor or advocate states that the discussions you have with her are absolutely private unless you decide to waive that privilege. As discussed earlier, in a civil suit, you have the burden of proving both that the perpetrator committed the wrongful act and that you were harmed by it. Many sexual assault survivors do not suffer physical injuries but may suffer severe emotional and psychological injuries. You have the burden of proving to the court what those injuries were.

Many people may be able to testify about the injuries you suffered, including you, family members, friends and coworkers. They can describe the symptoms you displayed after the assault. However, you and your attorney may decide that the most effective way to prove the injuries you are claiming is to have your rape crisis counselor or advocate testify about the harms you suffered. To allow her to testify, you must waive your privilege, which means that she can testify to anything that you ever told her.

The decision to waive your confidentiality is yours. You never have to waive your confidentiality, but to continue with a civil suit, you may have to make the difficult decision between maintaining the confidential relationship with your rape crisis counselor or advocate and allowing her to testify. Consult your attorney and your rape crisis counselor or advocate about the pros and cons of waiving this privilege before you do so.

■ Court-Ordered Release of Confidential Records

If the defendant subpoenas your records from a therapist who is not at a rape crisis center, you may assert that a qualified privilege protects your records and that you should not have to release them. In that situation, the judge will review your records *in camera*. If the judge then orders you to release your records, you must do so. Keep in mind that in a civil suit it is your burden to provide the court with evidence of any harms the perpetrator caused. In the event that confidential information is disclosed in your case, you may be able to seek a *protective order* from the court preventing the parties from distributing this information to others.

COST

Civil lawsuits can be costly, but you may not necessarily be responsible for all of the costs of the suit. It is not unusual for a civil suit to cost tens of thousands of dollars. However, the cost to the survivor for filing a civil lawsuit is usually very little. You and your attorney will create a fee-payment system as discussed on pages 19 - 20. You are responsible for all out-of-pocket expenses, although your attorney may initially pay these expenses. These expenses may include paying expert witnesses whom you hire (such as doctors or psychologists who testify about your injuries), the cost of transcribing *depositions*, incidental expenses (photocopying, travel costs and phone calls), court fees and sheriffs' fees. Your attorney will help you determine which fees and costs you must pay.

TIME

It may take two to five years from the time you file your case until it goes to trial, although each situation is different. Civil suits may be delayed because of an overloaded court system or because criminal proceedings are pending on your behalf. Your attorney may advise you to wait until after the criminal case is over before filing your civil suit. A criminal conviction may strengthen your civil case and increase the number of people who are liable. Also, criminal defense attorneys sometimes use a survivor's civil suit against her to question her motivation in the criminal proceedings. Discuss these matters with your attorney to avoid allowing the civil *statute of limitations* to expire.

AVAILABILITY OF DAMAGES

If you are successful in your civil suit, the compensation you will receive for your injuries is called damages. If the perpetrator does not have assets to pay damages, you may decide not to bring a civil suit. One method of determining whether the perpetrator has assets is by examining public records (*e.g.*, land records) where he lives. If the perpetrator does not have any assets, you might not collect an award of damages and your attorney may not get paid, especially if your attorney is working on a contingency fee basis. Your attorney will review with you the likelihood of collecting damages from a particular defendant.

AVAILABILITY OF A CIVIL SUIT

Before making a decision, you and your attorney should determine the who, what, where and when that shape a civil suit. This section describes the legal issues that affect your suit. You may raise as few or as many claims as you wish; you might also decide not to sue at all. Remember that a decision not to file a lawsuit may be an empowering experience. You are in control and any decision you make is valid.

WHO MAY SUE

An adult may file a lawsuit for himself or herself. A parent may file a lawsuit for a child. A guardian may file a lawsuit for a ward or disabled adult.

WHOM TO SUE

You are not limited to suing the perpetrator; you can sue any person, institution or organization directly or indirectly involved with the sex offense. Keep in mind that a criminal conviction might expand the number of liable persons. Examples of defendants in sexual assault civil suits include:

parents
stepparents
grandparents
uncles or aunts
siblings
spouses
boyfriends
family friends
accomplices
coworkers
schools

school administrators
teachers
boards of education
clergy members
counselors
therapists
coaches
daycare providers
doctors
youth clubs
churches and dioceses

classmates
landlords
hotels or motels
employers
shopping centers
restaurants
railroad companies
bus companies
perpetrator's estate

WHAT HARM TO CLAIM

A civil lawsuit may address many types of harms or injuries arising from a sex offense. The underlying contact may have involved sexual touching or penetration. The sex offense may involve other kinds of restraint and violence, and may have happened once or many times. Your attorney will advise you about the types of claims that you may raise. Examples of these *causes of action* include:

- **Personal Injury:** harm done to your body or your personal rights.
- **Medical Expenses:** money paid to reimburse the money you paid for health care needed because of the assault. This can include psychotherapy bills.
- **False Imprisonment:** unlawful detainment or confinement.
- **Assault:** an attempt to physically harm someone. This does not require actual touching and is usually combined with *battery*.
- **Battery:** intentional, harmful or offensive physical contact that occurs without your permission.
- **Hate Crimes:** crimes based on gender, race, religion or sexual orientation.
- **Lost Wages:** earnings you lost as a result of the sexual assault.
- **Intentional Infliction of Emotional Distress:** acts done with the intent to cause severe emotional harm.
- **Negligent Infliction of Emotional Distress:** acts that a reasonable person would know would cause emotional harm.
- **Gender Violence Act:** allows victims to sue perpetrators for acts of violence committed because of the victim's gender. 740 ILCS 82/1, *et seq.*
- **Predator Accountability Act:** allows survivors of prostitution to hold customers, brothels and pimps financially responsible for the harm they have caused. 740 ILCS 128/1, *et seq.*
- **Loss of Consortium:** loss of relationship with your partner, including companionship, support and sex.
- **Minor's Loss of Support or Parental Relationship:** loss of financial or emotional support of your parent who was raped.
- **Class X or Class I Felony:** statutory categories that include convictions for various types of sexual assault (*e.g., aggravated criminal sexual assault, predatory criminal sexual assault* and some forms of *criminal sexual assault*). Civil causes of action exist for some of these crimes.

- **Sexual Abuse/Childhood Sexual Abuse:** sexual acts involving a minor.
- **Sexual Exploitation by a Therapist:** acts that occur when a therapist is sexually involved with a patient.
- **Abduction:** kidnapping or otherwise taking a person away through fraud, persuasion or violence.

WHERE TO SUE

The location of your suit depends on the claims you assert. Typically, the state court of the state where the perpetrator lives or where the sexual assault happened hears your civil suit. Consult with an attorney regarding where to sue as early as possible so that you can locate an attorney in the appropriate *jurisdiction*.

WHEN TO SUE

The statute of limitations provides the deadline for filing your suit. This deadline prevents (*bars*) the court from hearing any case you file after the deadline. This is the tool most often used to defeat claims of childhood sexual abuse. The time period extends (*tolls*) in specific situations.

If you are considering filing suit, consult with an attorney as soon as possible. It is important to determine the correct jurisdiction and the applicable statute of limitations as soon as possible so that your claims are not barred because you filed them too late or in the wrong place. Most attorneys who handle these cases will give a free initial consultation. In that consultation, you can review these issues and the question of whether any extensions of the statute of limitations may be available in your case. The following is a list of relevant statutes of limitations.

ILLINOIS STATUTES OF LIMITATIONS FOR SEXUAL ASSAULT AND SEXUAL ABUSE

Class X or Class I Felony: No statute of limitations applies for a civil suit against a perpetrator convicted of a Class X felony (*e.g.*, aggravated criminal sexual assault, predatory criminal sexual assault) or Class 1 felony (*e.g.*, criminal sexual assault). 735 ILCS 5/13-202.1.

Adult Survivors of Childhood Sexual Abuse: The statute of limitations is the later of

- when the survivor reaches age 28; or
- five years after the survivor discovers or should have discovered the abuse and injury. 735 ILCS 5/13-202.2.

For an adult survivor who turned age 30 before January 1, 1994, a *statute of repose* may bar her personal injury claim based on childhood sexual abuse. *M.E.H. v. L.H.*, 177 Ill.2d 207 (1997).

ILLINOIS STATUTES OF LIMITATIONS FOR RELATED OFFENSES

Sexual Exploitation by a Therapist: A survivor may sue her psychotherapist, if he sexually exploits her while she is in therapy, until two years after the exploitation. 740 ILCS 140/6.

Loss of Consortium: The statute of limitations is the same as that of the underlying claim. The loss of consortium's statute of limitations is extended if the statute of limitations for the underlying claim is extended. 735 ILCS 5/13-203.

Personal Injury, False Imprisonment, Abduction and Others: Suits to recover damages for *personal injury, false imprisonment, abduction, or seduction* must be filed within two years after the act occurred, or within two years under the *Criminal Victims' Asset Discovery Act*. 735 ILCS 5/13-202.

All Other Civil Actions Not Provided for Within Illinois Law: If a statute does not specifically address the cause of action, it may be pursued in civil court until five years after it arose. 735 ILCS 5/13-205.

Minor Victims: The two-year statute of limitations for a minor survivor filing a civil suit for a cause of action other than sexual abuse is until the survivor turns 20. 735 ILCS 5/13-211.

A Minor's Loss of Support or Parental Relationship: A minor who lost parental support or relations through a Class X felony or first-degree murder has 10 years to sue after the perpetrator completes his sentence. 735 ILCS 5/13-203.1.

Death of a Party: If the survivor dies, her representative may file suit for her cause of action within the statute of limitations for her claim or one year after her death, whichever is later. If the perpetrator dies, the survivor may file a claim against his *estate* after the statute of limitations expires as long as it is within six months of his death. 735 ILCS 5/13-209.

Some of the statutes of limitations described above may be extended to 10 years, or 10 years after the convicted perpetrator completes his sentence, if the perpetrator committed a Class X felony (*e.g.*, aggravated criminal sexual assault) or first-degree murder. This extension may apply to claims for loss of consortium, personal injury, false imprisonment, abduction, and others. 735 ILCS 5/13-214.1.

Also, many of the statutes of limitations described above may be extended if the common law *discovery rule* applies to them. The discovery rule states that the time limit for filing a civil lawsuit does not begin to run until the survivor knows or should have known 1) that the wrongful act occurred, and 2) that she was injured by the wrongful act. Application of the discovery rule happens on a case-by-case basis. Your attorney can help you assess whether the discovery rule may apply in your case.

The statute of limitations and its application to your claim are highly technical. If you think you might want to pursue a civil lawsuit, contact an attorney familiar with these kinds of cases as soon as possible.



III. YOU AND YOUR ATTORNEY

You need an attorney for your civil suit. This section explains the services the attorney provides, lists some questions to ask the attorney and yourself to guide you through the selection process and describes common fee-payment methods.

THE ATTORNEY'S ROLE

A civil suit is a private lawsuit; therefore, you must hire your own attorney. This is different from a criminal proceeding in which a state's attorney files charges against the perpetrator on behalf of the people of Illinois.

At your first meeting, the attorney advises you about the strength of your case, and determines the likelihood of success if you decide to sue. If you feel this attorney is the right one for you, and the attorney accepts your case, he or she acts on your behalf when communicating with the defendant and the court. The attorney handles the legal aspects of your case, although you have input regarding how the attorney approaches your case.

SELECTING AN ATTORNEY

Select an attorney with whom you are comfortable and whom you trust. He or she should be familiar with sexual assault cases. You may find a desirable attorney in a number of ways, but it is best to get information about an attorney from more than one source and preferably with referrals. Some sources of information follow:

- family and friends
- local attorneys
- state, county and city bar associations
- other survivors
- legal directories
- your support group
- local rape crisis center

For additional attorney referral resources and phone numbers, refer to pages 47 - 49.

After identifying a few attorneys, call them to arrange initial consultations. The attorney may ask you a few pre-screening questions over the phone to determine whether your claims are timely and whether he or she is licensed in the jurisdiction where you are likely to file suit. Frequently the initial consultation is free, but you should confirm this when making your appointment. Do not worry about telling these attorneys the facts of your case. The attorney-client privilege protects the initial consultation, which means that neither the attorney nor the attorney's staff may share your information with anyone unless you give them specific permission.

WHAT YOUR ATTORNEY NEEDS TO KNOW

The attorney needs to ask you questions in order to evaluate your case. It is critical that you share information with your attorney so that he or she can assess both the strengths and weaknesses of your claims. Be open and honest with the attorney, even at the initial consultation. The attorney-client privilege protects your conversations with your attorney. The attorney will need to know at least the following:

- the type of injury you suffered
- when the injury occurred
- the medical or psychological treatment you had or are having
- where the injury occurred
- the identity of the perpetrator
- whether there is a pending criminal prosecution, or what the result was if it has finished

QUESTIONS TO ASK THE ATTORNEY

This is your opportunity to "comparison shop" and interview attorneys. Do not be afraid to ask the questions that follow, and you are encouraged to bring the checklist on page 40 with you to the meeting.

How long could this case take?

- How long do I have to file?
- How soon could you start working on my case?
- What is your action plan?

What is my chance of winning?

- What is the law on these issues?
- Does the law work for or against my case?
- Would you go to trial with this case, or would you settle it out of court?

Have you handled other cases like this? If so, how many?

- Were those cases successful?
- Have you handled cases involving recovered memories?
- How would you handle a defense strategy alleging false memory syndrome?
- Will you be the attorney working on this case or would other attorneys work on this as well?
- Can highly sensitive matters be placed *under court seal* or fictitious names used?
- Have you represented the perpetrator before or do you have any other connection to him?

How much will I participate in this suit?

- How will you keep me informed about my case?
- What information from my personal life will you need (e.g., counseling records, medical records, family history)?

How much will this cost?

- How do you arrange fee payments?
- Will there be a retainer fee? If so, how much?
- Approximately what will the out-of-pocket costs be?
- Are there any other costs I will have to pay?
- Do you accept credit cards?

After the initial consultation, the attorney evaluates the strength of your case, decides whether a statute of limitations bars the case and assesses whether the perpetrator has money to pay damages. Based on this information, the attorney decides whether or not to take your case.

QUESTIONS TO ASK YOURSELF

At the same time, you should evaluate whether you feel comfortable working with this attorney. Your relationship with this attorney will be long-term, since civil suits often take several years. During the course of the representation, the attorney you select will learn all about your private life and the sexual assault. Trust your research and your instincts while asking yourself the following questions:

Was the attorney comfortable with and knowledgeable about sexual victimization?

- Did the attorney seem to know about this type of law?
- Am I comfortable telling this attorney personal information?

Am I comfortable with the way my case will be handled?

- What are my goals in filing suit?
- Did this attorney accept and understand my goals?
- Will this attorney, and not an assistant, handle my case?
- Did this attorney focus only on taking my case to trial, or only on settling the case?
- Did the attorney talk to me in ways I could understand?
- Did the attorney explain the strengths and weaknesses of my case, and the laws that apply?

Was the attorney respectful and polite?

- Did the attorney focus on me at the meeting or were there lots of interruptions (phone calls, office staff, etc.)?
- Did the attorney, an associate, a clerk or a paralegal interview me?
- Did I feel I would participate in the decision making?
- Did I feel like a real person and not just another case?
- Did the attorney put me at ease?

What is my gut reaction?

HOW TO PAY YOUR ATTORNEY

There are several ways to structure a fee-payment system. Directly ask your attorney which method he or she uses, and whether you can create a flexible schedule that works for both of you. Regardless of the method used, your attorney should provide you with an engagement letter and a written fee agreement. You are responsible for all out-of-pocket expenses regardless of the fee agreement used. The following are typical payment methods:

Contingency Fee. This method is the most common for sexual assault civil lawsuits and is usually the most beneficial for the survivor/plaintiff. Under this agreement, the attorney is paid a percentage of any money damages you win. The Rules of Professional Conduct require that your attorney describe the fee arrangement to you in writing and provide you with a written statement showing how he or she calculated the bill after your suit. RPC 1.5(c). Because the attorney bases a contingency fee on the money the defendant must pay you, it is critical to determine beforehand whether the defendant has sufficient assets to pay damages. Regardless of the outcome, you are responsible for all out-of-pocket expenses, but not for additional fees. If your suit is unsuccessful, you do not have to pay a contingency fee.

If, after consulting several attorneys, you are unable to find one who will take your case on a contingency fee basis, you may need to consider other payment options. The fact that attorneys are not willing to take your case on a contingency basis also may reflect the validity of your legal claim or the recoverability of damages in your case. If multiple attorneys are not willing to risk time and money to pursue your case, they probably do not believe that you will be able to recover a worthwhile amount of damages. This does not mean that the assault did not happen or that you were not harmed by it. It may mean, however, that your claim is not well suited for the civil legal system.

Hourly Fee. Under this arrangement, the attorney charges you a fixed hourly rate for all of the time he or she spends working on your case, including research, phone calls, depositions, travel, typing, copying, court appearances, certified mailings, and other tasks. The attorney bases this method on his or her standard hourly rate. The minimum hourly rate for attorneys is approximately \$150 and can be much higher. Legal fees based on an

hourly rate can mount quickly especially in complex sexual assault cases. As a result, this method is not recommended for plaintiffs in sexual assault cases. This method is not based on the defendant's ability to pay. Cases paid for on an hourly basis usually require a retainer (advance payment). You must pay fees and out-of-pocket expenses as the case goes along regardless of the outcome.

Sliding Scale Fee. In this payment system, the attorney lowers his or her hourly fee according to your ability to pay. Attorneys infrequently use this method because sexual assault civil suits are often expensive and time-consuming.

Pro Bono. In this arrangement the attorney works for free, but you must pay the out-of-pocket expenses. A law firm able to donate its time and money might provide pro bono services, as may an attorney seeking to branch into a new field of law. Public interest organizations or legal clinics very rarely handle these cases.

Project-Based Fee. In this arrangement, the client pays the attorney a flat fee for the entire case. This format is not used very frequently in personal injury cases.

Retainer Fee. Loosely defined, a "retainer" is a sum of money the survivor pays the attorney early in the representation. A retainer frequently serves as a reserve of money that the attorney can use to pay fees, such as *filing fees*.

Retainers serve other purposes as well. For example, a retainer ensures an attorney's availability over a period of time, with the attorney keeping the money even if he or she does not do any work for the survivor during that time. A retainer also may pay for future services by allowing the attorney to use the sum as payment for work the attorney completes later. Finally, a retainer pays the fees and costs an attorney incurs as the representation progresses.

Advancement of Out-of-Pocket Expenses. In some circumstances, an attorney may agree in advance to pay for out-of-pocket expenses, usually with the expectation that the survivor will reimburse the attorney from the damage award she receives.

Regardless of the payment method used, all billing issues should be put in writing at the beginning of the case. Otherwise, conflicts over payment issues can strain the attorney-client relationship.

IV. HOW DOES A CIVIL LAWSUIT WORK?



CIVIL PROCEDURE EXPLAINED

Civil procedure -- the steps through which the court hears a civil suit -- is complex. This contributes to the cost of your suit and the length of time it may take the court to resolve your case. This section walks you through the possible stages of a typical suit: pretrial events, the trial itself and posttrial motions, and concludes with an outline of civil procedure. Be aware that every case differs in length and the specific steps involved. The process summarized below is intended to provide a general overview of steps common to many civil sexual assault cases.

If you are seeing a rape crisis counselor or a therapist, discuss issues regarding the civil suit process with her or him as well as with an attorney. Most of all, listen to yourself. This is your decision to make.

PRETRIAL EVENTS

Hire an Attorney: Find an attorney to represent you. The questionnaires and phone numbers included in the appendices may help you with this process.

Demand Letter: After you hire an attorney, he or she may send the perpetrator (or other people potentially liable for the assault) a *demand letter* to notify him that you intend to sue, and to offer him the opportunity to meet your demands before your attorney files the *complaint*. For strategic reasons, your attorney might choose to forego sending a demand letter and simply file the complaint.

Complaint: Filing the complaint with the court formally begins your civil suit. The complaint is a document that states your claims and supporting facts, and lists the damages you seek. Your attorney must pay a filing fee to file the complaint with the court. To file a complaint in Illinois, it costs approximately \$500. This is an out-of-pocket expense that you ultimately are responsible for paying.

The complaint and other papers filed with the court are called "*pleadings*." Pleadings are usually part of a record available to the public and the media. Reporters often scan new complaints and may report on your case, particularly if a high-profile defendant is involved. However, complaints can be filed anonymously to avoid disclosing your identity.

Service of Process: When the attorney files the complaint with the court, he or she must serve the perpetrator a *summons* by having a sheriff or process server deliver a copy of the complaint to him. This *service of process* assures the court that the perpetrator knows about the suit. Service of process requires a fee. Again, this is an out-of-pocket expense that you must pay.

Motion to Dismiss: The defendant may file a *motion to dismiss* with the court, requesting that the court drop the case. The defendant may claim that you have no legal case, that a statute of limitations bars your case, that the court lacks jurisdiction (meaning it does not have the power to hear the case based on its subject matter or where the defendant lives) or that you have not claimed a harm the court can remedy.

Answer: In the *answer*, the defendant must respond to your complaint by admitting or denying each of the claims you raise and/or raising *counterclaims* against you.

- **Counterclaim:** The defendant files suit against you claiming that you harmed him in some way. For example, he might claim *defamation*, but this rarely occurs because a statement is not defamation if it is true.
- **Defenses:** The defendant might state that he has a *defense* to your claim (e.g., you consented to the act). Consent is not a defense if you were a minor at the time the act(s) occurred.

Discovery: Discovery is the process through which each side gathers information and evidence, such as from documents and by interviewing witnesses under oath in a deposition. Discovery opens much of your private life including your medical and psychotherapy records to the defendant and the court. Other unprotected areas include your education, employment or pediatric medical records, and other personal information such as your past sexual history or things you wrote in your diary. The process of obtaining discovery often requires attorneys to file various motions (e.g., motions to compel people to testify and motions for extension of time) that take time and money.

- **Deposition:** The deposition is a proceeding in which your attorney or the defendant's attorney interviews you, the defendant, or a witness under oath. A deposition usually takes place at one of the attorneys' offices. Usually the only people present at a deposition are the attorneys, the person being interviewed and the court reporter. The parties to the lawsuit do, however, have the right to attend the deposition but cannot ask any questions. Both the questions and answers are recorded by a court reporter, and the person being questioned must swear to tell the truth, similar to the oath required before testifying at trial. After the deposition, the court reporter transcribes the testimony into a written document. In addition to having the deposition transcribed into a written document, some depositions are videotaped. Videotaped depositions are often used for witnesses who may not be available for trial or who reside out of state. The party taking the deposition must pay the fees related to the deposition. These fees include the costs involved with the court reporter, transcripts, witnesses and travel costs, if any.
- **Interrogatories:** *Interrogatories* are written questions that the witness or party must answer under oath in writing. Attorneys usually use interrogatories in addition to a deposition. This method of fact finding is less expensive than a deposition, but it may take longer to obtain the information.
- **Subpoena for Documents and/or Requests for Production:** Each side may use subpoenas to request documents for inspection. For you, the survivor, this might include your medical or psychiatric records, or other records such as your employment history, educational records and personal writings such as diaries or journals.
- **Independent Psychiatric Evaluation:** The defendant's attorney or the court might request that you undergo an examination by an independent psychiatrist or physician, to evaluate the harm you claim. If requested, you must submit to this exam, but you may have your attorney present. If you refuse to cooperate, you could jeopardize the likelihood of success for your case.

Motion for Summary Judgment: If a case has no facts in dispute and could be decided only by looking to the law that applies, you or the defendant may ask the court to decide the case before it goes to trial. For example, if discovery shows that you filed your claims after the statute of limitations expired, the court could grant a defense *motion for summary judgment*.

Settlement: In a *settlement*, you and the defendant reach an agreement about the lawsuit through your attorneys. A settlement is an agreement that looks like a contract; a court may enforce it and it may provide money damages (the settlement amount). A settlement may occur at any point before or during the trial, up to the point when the court makes a final judgment. The defendant may require a private settlement, which prevents you from revealing the facts of the case, the identity of the perpetrator or the settlement amount to others. Cases sometimes settle because the defendant wants to avoid the cost and publicity of a trial.

TRIAL

A trial has many different steps. The trial of your case may include some or all of the following stages.

- The judge alone may hear a civil suit in a *bench trial*, or the case may be heard by a judge and a jury. Either party may request a trial by jury. Both the plaintiff and the defendant are present in the courtroom during all phases of a trial, whether it is by a judge or a jury.
- For a jury trial, your attorney and the defendant's attorney will select the jury by questioning prospective jury members. This process is called *voir dire*.
- When the trial begins, your attorney speaks first and presents an *opening statement*, which provides the judge or jury with an outline of the case. The defendant's attorney also presents an opening statement that outlines his defense.
- Your attorney then begins putting on the *evidence*. Your attorney proves your case by presenting evidence, including physical items (such as medical and therapeutic records) and testimony. Your attorney questions you and your witnesses, including your expert witness, if you have one.
- Then the defendant's attorney questions you and your witnesses during *cross-examination*. The styles of defense attorneys during cross-examination vary; some are much more aggressive than others. The defendant's attorney will ask you about all aspects of your claims, including extensive questions about the sexual assault, your background, what motivated you to file suit and whether you were harmed. The

defense attorney's job is to cast doubt on you, your claims, your credibility, and the credibility of your witnesses. Cross-examination might make you feel as if you are the person on trial.

- The defendant's attorney then presents physical items and testimony from the defendant and witnesses supporting the defendant's case, and attempts to disprove your version of the case. Your attorney may cross-examine the defendant and any of the defendant's witnesses.
- After both attorneys present all of the evidence, but before the judge or jury decides the case, the defendant's attorney might submit a *motion for directed verdict*, stating that you failed to meet the burden of proof. If granted, the judge makes a decision without allowing the jury to reach a decision because there can be only one decision under the law with the facts as presented. The court may initiate this motion on its own.
- If the motion for a directed verdict is denied by the judge, both attorneys present separate *closing arguments* in which they summarize the case as presented. In jury trials, the judge then provides instructions for the jurors to use when coming to a verdict. This is the final stage of the trial before the judgment.

Judgment: The judge or the jury then comes to a verdict, which they reach by weighing all of the evidence. The judge or jury must make this decision using the preponderance of the evidence standard, which means that they find it more likely than not that certain events happened. This standard is less than the beyond a reasonable doubt standard used in criminal proceedings. If the judge or jury determines that you proved your case under the preponderance standard, you win the trial. The length of time required to reach a decision varies. After making a decision regarding the liability of the defendant, the court enters a judgment and typically decides damages at the same time.

Damage Award and Recovery: The judge or the jury might determine that money damages are an appropriate award for you. The defendant pays you the amount of damages ordered by the judge or jury. You might encounter difficulties collecting the award from the defendant, however. To avoid this situation, the court may *attach* the defendant's property if your claim is greater than \$20.00. A post-judgment attachment is a court order that prevents the defendant from removing his property from Illinois or hiding his assets, and can be used when the defendant is not from Illinois or has moved away from this state. 735 ILCS 5/4-101. If the defendant is convicted of certain crimes, you might be able to attach his assets through the Criminal Victims' Asset Discovery Act. 725 ILCS 145/3. The unfortunate reality is that many survivors do not recover their award if the defendant has no assets, or do not recover fully if he avoids attachment or enforcement of the judgment.

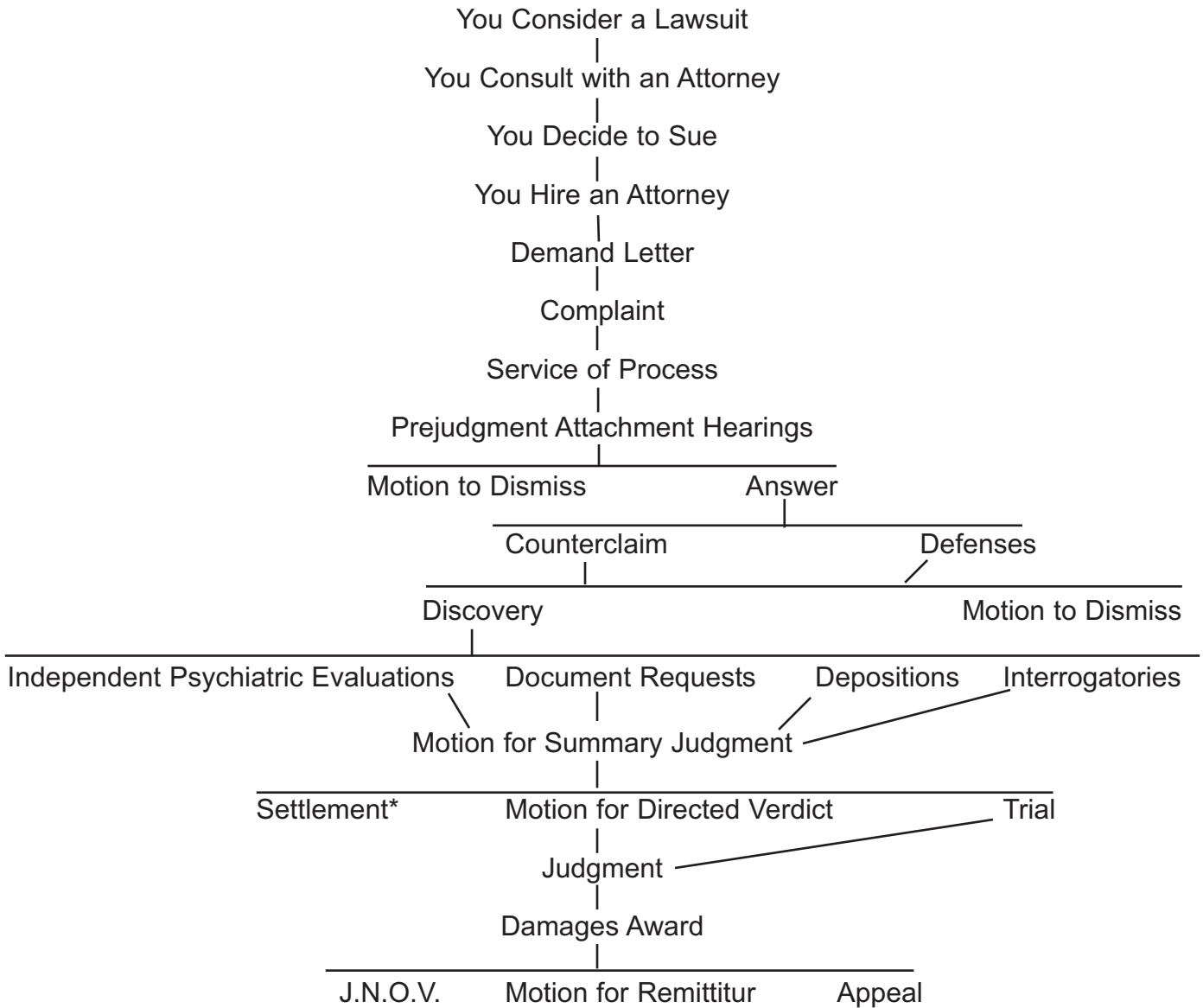
POSTTRIAL EVENTS

Motion for Judgment Notwithstanding the Verdict (J.N.O.V.): The perpetrator may file a motion for *J.N.O.V.*, asking the judge to set aside the jury's verdict. If the judge agrees, he or she does not accept the decision reached by the jury. Instead, the judge enters his or her own decision based on the trial record.

Motion for Remittitur: The defendant may file a posttrial motion for *remittitur* asking the judge to reduce the amount of the damages awarded. If the judge grants the motion, the amount of damages will be reduced.

Appeal: If you or the defendant believe that the trial court erred in its decision, you or the defendant may *appeal* the judgment or the damages. During the appeal a different court reviews the trial record and makes a decision about the alleged error. Keep in mind that appeals require an attorney and an additional expenditure of money and time. You will not receive money awarded to you as damages while your case is on appeal. Appeals can take one to two years to process.

CIVIL PROCEDURE OUTLINE



***Settlement:** You and the defendant might agree to settle your case out of court at any time before the court enters a judgment.

V. CONCLUSION



Make the decision that is best for you. Balance your goals and reasons for filing a lawsuit with the investment of money, time and emotional risk that a civil suit requires. You might decide that a civil suit is right for you, or you might decide that a suit's costs outweigh its benefits. There are good reasons to make either decision and whatever you decide is perfectly valid. A decision not to sue can be as empowering as a lawsuit, as long as you keep your needs in mind and are true to yourself.

Be sure to discuss the issues presented in this guide with your rape crisis counselor, advocate or therapist. If you decide you want to sue, find a competent attorney with whom you are comfortable to assist you with the legal aspects of your case. These professionals can help you weigh the pros and cons of filing a civil lawsuit.

ICASA congratulates you for reaching this point in your healing, and wishes you the best of luck in whatever you decide.



APPENDIX I: DEFINITIONS



- A -

Abduction - Taking away a person (such as kidnapping) through fraud, persuasion or violence.

Absolute privilege - A method of protecting the confidential relationship between a survivor and her rape crisis counselor or her attorney from the defendant and the court. This unconditional privilege cannot be broken unless the survivor agrees in writing. The defendant also has an absolute privilege with his attorney.

Advocate - The rape crisis center employee or volunteer who assisted the survivor at the hospital, who counsels her or accompanies her to court.

Aggravated criminal sexual assault - The crime of sexual assault made more severe by the presence of an additional factor, such as the use of a deadly weapon. 720 ILCS 5/12-14.

Answer - The defendant's written response to the claims made in the survivor's complaint. The defendant must admit, deny, or move to dismiss each claim the survivor raises.

Appeal - The party who lost a trial court case asks a higher court to review the trial court's decision.

Assault - An attempt or threat to intentionally harm another person. People often refer to assault and battery together, but unlike battery, assault does not require actual touching.

Assault and battery - A term combining assault, the threat of injury by force, with battery, the actual use of force to hurt someone.

Assets - The money and property (e.g., real estate and personal property) owned by a person, organization or corporation.

Attachment, attached - The process through which the court "freezes" the defendant's assets until the court decides the survivor's case.

Attorney-client privilege - A legal principle protecting oral and written communications between the attorney and the client. This privilege keeps the survivor's confidential information from the defendant and the court.

- B -

Bar, barred - To prevent something, *e.g.*, to prevent someone from filing a lawsuit because the time limit for filing the suit has expired.

Battery - Offensive or intentional physical contact, such as punching, kicking or any physical trauma sustained during sexual assault. Battery always includes an assault.

Bench trial - A trial heard and decided by the judge alone (without a jury).

Beyond a reasonable doubt - The standard used in criminal proceedings to determine whether the facts completely establish the defendant's guilt. This is a higher standard of proof than the preponderance of the evidence standard used in civil cases.

Burden, burden of proof - A party's duty to prove its claims to the court. In a civil suit arising from sexual assault, the survivor (plaintiff) has the burden.

- C -

Cause of action - The facts that create a valid legal claim. A statute of limitations or statute of repose may limit the cause of action.

Childhood sexual abuse - Sexual abuse that happens to a person who is a minor.

Closing arguments - An attorney's presentation to the court at the end of the trial. The attorneys representing the plaintiff and the defendant each present a final argument to the court in which they summarize their versions of the case presented.

Compensatory damages - A monetary award designed to "make up" for any harm the survivor sustained. The theory behind this award is to restore the survivor to the position she was in before the sexual assault.

Complaint - The first document a plaintiff files in a civil lawsuit. The document includes all claims the plaintiff wishes to raise and officially begins the lawsuit.

Confidentiality, confidential communication - Legal protection for oral and written communications between a survivor and her attorney, rape crisis counselor or therapist. See also "absolute privilege," "qualified privilege," "attorney-client privilege" and "rape crisis privilege."

Counterclaim - A claim raised by the defendant in direct response to a claim the survivor raises. For example, the survivor claims the perpetrator raped her, but he claims the survivor consented.

Countersuit - A suit initiated by the defendant in response to the survivor's suit. For example, a defendant sometimes files a suit against the survivor claiming defamation.

Contingency fee - The client pays the attorney a percentage of the damages awarded. If the client does not receive damages, she does not have to pay the attorney a fee. Regardless of whether she recovers damages, the client must pay out-of-pocket expenses.

Criminal sexual assault - See "sexual assault."

Criminal Victims' Asset Discovery Act - This Act allows a survivor to freeze the assets of a person convicted (or found not guilty due to insanity) of a Class X felony, first-degree murder or aggravated kidnapping. 725 ILCS 145/3.

Cross-examination - The process through which the opposing party's attorney asks the survivor and her witnesses questions during the trial or the deposition. The survivor's attorney repeats this process by questioning the defendant and his witnesses when they testify.

- D -

Damages (damage award, money damages, monetary damages) - An award made by the court requiring the defendant to pay the survivor for the harm she suffered. See also "compensatory damages" and "punitive damages."

Defamation - A claim that a person (here, the survivor) attempted to damage the reputation of someone else (the perpetrator). This claim includes libel and slander.

Defendant - The person or entity against whom the plaintiff files a lawsuit.

Defense - A claim made by the defendant intended to provide a reason why the survivor should not recover based on her claims.

Demand, demand letter - A letter sent by the survivor's attorney notifying the defendant that the survivor will file suit unless the defendant satisfactorily addresses her claims.

Deposition - A proceeding in which your attorney or the defendant's attorney interviews you, the defendant, or a witness under oath.

Discovery - The pretrial process through which an attorney obtains factual evidence from the opposing party. This evidence includes information such as documents, the identities of persons (*e.g.*, witnesses), depositions or psychiatric exams.

Discovery rule - A rule that delays the commencement of a statute of limitations period until the plaintiff discovers the wrongful act occurred and that she was injured by the wrongful act.

- E -

Estate - The property (money, real estate and other property) a person owns at the time he or she dies.

Evidence - Proof (physical items or testimony) that supports or disproves a claim at trial.

Examination, examine, exam - The questioning of a witness under oath.

Expert witness - A professional who testifies regarding a specialized, complex topic that arises at trial, to explain it to the court. For example, a psychotherapist could provide expert testimony regarding posttraumatic stress disorder at a civil sexual assault trial.

- F -

False imprisonment - Intentionally and unlawfully detaining someone against his or her will, either by confinement or by force.

False memory syndrome - The theory that sexual abuse memories are not valid. Defendants use this theory as a defense to claims involving recovered memories.

Filing fee - A sum charged by the court when an attorney submits documents or pleadings to the court.

- G -

- H -

Hate crimes - A perpetrator's acts against someone that are motivated by gender, race, religion or sexual orientation.

- I -

ILCS - Illinois Compiled Statutes. These are the written laws that apply in Illinois.

In camera - A private proceeding before the judge in which other parties and persons are excluded from the courtroom or the judge's chambers.

Initial consultation - The first meeting between a survivor and an attorney. This meeting provides the survivor with an opportunity to assess the attorney's qualifications and her reaction to the attorney, and allows the attorney to learn the specific facts of the survivor's case in order to decide whether to accept the case.

Intentional infliction of emotional distress - Acts done by the perpetrator with the purpose or hope of causing the survivor emotional harm.

Interrogatories - Written questions that a party or witness must answer in writing and usually under oath. Interrogatories may replace or supplement a deposition.

- J -

Judgment notwithstanding the verdict (J.N.O.V.) - A posttrial activity in which the judge sets aside the jury's verdict and enters his or her own decision. A party's motion for a directed verdict must precede a J.N.O.V. motion.

Jurisdiction - The power and authority of a court to hear a particular case. A court has jurisdiction over cases it is allowed to hear. This word also refers to a specific geographic area (*e.g.*, a county or a state) in which a court can hear cases.

- K -

- L -

Loss of consortium - A loss of marital relations, including companionship, affection and sexual relations. The survivor's spouse frequently raises this claim.

Lost wages - Wages the survivor lost as a result of the harm she suffered, such as money she would have earned if she had not been unable to work due to her sexual assault.

- M -

Medical expenses - A survivor's medical or psychotherapy bills resulting from the sexual assault.

Minor's loss of support or parental relationship - Loss of financial or emotional support of a parent who was raped.

Money damages, monetary damages - An award by the court that requires the defendant to pay the survivor money.

Motion for directed verdict - The party without the burden of proof (here, the defendant) or the court moves to decide the case without presenting it to the jury. Attorneys file this motion based on the rationale that the plaintiff failed to meet her burden, and therefore there can be only one decision under the law based on the facts as presented at trial.

Motion to dismiss - After the complaint is filed, but before the defendant's answer, the defendant requests that the court dismiss the case on the grounds that the case is deficient in some way, such as it lacks a valid claim.

- N -

Negligent infliction of emotional harm - Acts that a reasonable person should have known would cause harm.

- O -

Opening statement - An attorney's presentation to the court at the beginning of the trial. In this statement, the attorney outlines the case and the supporting proof he or she will present during the trial.

Out-of-pocket expenses - Costs that are related to a lawsuit, such as filing fees, charges for copying or mailings, expert witness fees and other expenses.

- P -

Perpetrator - The person who sexually assaulted the survivor.

Personal injury - Harm done to a survivor's body, as opposed to her property or reputation. This term includes physical harm, false imprisonment and mental suffering.

Plaintiff - The person filing a lawsuit with the court. Here, the plaintiff is usually the survivor.

Pleadings - The parties' documents filed with the court, including the complaint and answer.

Posttraumatic stress disorder (PTSD) - A syndrome that typically results from experiencing a traumatic event, such as sexual assault/abuse, when the person fears death or serious injury. Symptoms of PTSD include: signs of depression; heightened sense of fear or anxiety; disturbances in sleeping/eating; intrusive thoughts/memories; and emotional numbing and detachment.

Predatory criminal sexual assault of a child - Sexual penetration by an adult age 17 or older of a person under the age of 13. 720 ILCS 5/12-14.1.

Preponderance of the evidence - The standard of proof used in civil lawsuits to determine whether the facts completely establish the defendant's liability. If a claim is proved by a preponderance of the evidence, then it is more likely than not that it occurred. This is a lower standard of proof than the beyond a reasonable doubt standard used in criminal cases.

Privilege - A legal principle protecting communications (verbal conversations and written documents) between two people. Examples of privileges include doctor-patient privilege, rape crisis worker-victim privilege, therapist-client privilege, attorney-client privilege and clergy-penitent privilege. See also "rape crisis privilege."

Protective order - A court order forbidding parties in litigation from disclosing a survivor's name and/or personal information.

Punitive damages - Damages awarded by the court specifically to serve as a punishment. The court may award punitive damages in addition to other damages.

- Q -

Qualified privilege - A confidentiality privilege that allows the defendant or the court to view a survivor's personal information in certain circumstances. This privilege applies to communications a survivor has with a therapist who does not work at a rape crisis center. This is a lesser amount of protection than an absolute privilege.

- R -

Rape crisis counselor - The rape crisis center employee or volunteer who helps the survivor recover through counseling.

Rape crisis privilege - The legal principle protecting oral and written communications between a survivor and her rape crisis counselor. This privilege keeps the survivor's confidential information from the defendant and the court.

Rape trauma syndrome - Behavioral, physical and emotional reactions that a victim may experience before, during or after a sexual assault. These include such things as nightmares, intrusive thoughts, feelings of detachment, sleep disturbances, fears and feelings of self-blame.

Recovered memories - Memories of past abuse, which typically occurred during childhood, that the survivor suppressed as a defense or coping mechanism and remembers at a later time, such as during adulthood.

Remittitur - A process through which the judge reduces the amount of damages awarded to a plaintiff by a jury.

Retainer - An amount of money given to an attorney to guarantee that his or her services will be available.

RPC - Rules of Professional Conduct (see definition immediately below.)

Rules of Professional Conduct (RPC) - An ethical code to which all attorneys must adhere. Violations of this code may result in disciplinary actions by the Illinois Attorney Registration and Disciplinary Commission.

- S -

S.Ct. Rule - Supreme Court Rule (see definition below).

Seduction - A man entices a woman into having intercourse through bribes, solicitation or promises. Seduction is an outdated claim that has rarely, if ever been used since the late 1800s.

Service of process - The method by which the court ensures that the defendant is notified of a pending suit. The plaintiff must provide the defendant with a copy of her complaint to meet this requirement.

Settlement - An agreement between the survivor and the defendant that resolves the survivor's claims. This is a decision reached outside of the court, and may occur at any time before the court renders a judgment. Usually a settlement includes a payment of damages to the survivor.

Sexual abuse - Illegal sex acts, often against a minor that usually involve sexual touching but not penetration of the victim. 720 ILCS 5/12-15.

Sexual assault/rape - Sexual penetration of a person without her or his consent. 720 ILCS 5/12-13.

Sexual exploitation by a therapist - Sexual acts between a therapist and that therapist's patient or former patient.

Statute of limitations - The time limit for filing a lawsuit. When this period ends, a survivor's cause of action is barred from the court. In some cases, the statute of limitations can be tolled (extended).

Statute of repose - The time limit for when a cause of action may arise. This differs from a statute of limitations, which limits the time a survivor has to file her claim with the court. A statute of repose ends a survivor's right to sue by limiting when such a right exists.

Subpoena - An order issued by the court, on behalf of one of the parties, that requires the other party to produce testimony or documents such as records.

Summary judgment - A judgment rendered by the judge when there are no facts in dispute and only a legal issue exists. A jury does not need to hear a case before the judge grants a summary judgment.

Summons - The court's formal request that a person appear at the trial. Ignoring a summons is a direct violation of the court's order.

Supreme Court Rules - Rules of the Illinois Supreme Court that govern all civil and criminal court proceedings in Illinois.

Survivor - The person victimized by sexual assault or abuse.

- T -

Testimony - A party's or witness's sworn statement in deposition or at trial that explains his or her version of the events and facts surrounding the sexual assault or other claims raised by the survivor.

Therapist - The psychotherapist aiding the survivor in her emotional recovery.

Toll, tolling - When used in conjunction with a statute of limitations, "tolled" means that a survivor's right to file suit is extended.

- U -

Under court seal - Documents placed under court seal in a lawsuit are not accessible to the general public without an order from the court.

- V -

Voir dire - The process of selecting jurors based on their responses to questions presented by both parties' attorneys. The phrase "voir dire" literally means "to speak the truth."

- W -

Waive - To knowingly and voluntarily give up something (e.g., a claim, privilege, right, etc.).

- X Y Z -

This section paraphrases definitions from *Black's Law Dictionary* (Bryan A. Garner ed., 8th ed. 2004). Persons seeking more detailed information should consult that resource.

Appendix II: Questions to Ask the Attorney



Attorney: _____ Date: _____

Address: _____

City/State/Zip: _____ Phone: _____

Fee for initial consultation? _____

1. How long could this case take? _____

■ How long do I have to file? _____

■ How soon could you start working on my case? _____

■ What is your action plan? _____

2. What is my chance of winning? _____

■ What is the law on these issues? _____

■ Does the law work for or against my case? _____

■ Would you go to trial with this case, or would you settle it out of court? _____

3. Have you handled other cases like this? If so, how many? _____

■ Were those cases successful? _____

■ Have you handled cases involving recovered memories? _____

■ How would you handle a defense strategy alleging false memory syndrome? _____

■ Will you be the attorney working on this case or would other attorneys work on this as well?

■ Can highly sensitive matters be placed under court seal or fictitious names used? _____

■ Have you ever represented the perpetrator before or do you have any other connection to him? _____

4. How much will I participate in this suit? _____

■ How will you keep me informed about my case? _____

■ What information from my personal life will you need (e.g., counseling records, medical records, family history)? _____

5. How much will this cost? _____

■ How do you arrange fee payments?

_____ a) hourly fees _____ c) sliding scale fee _____ e) project-based fee

_____ b) contingency fee _____ d) pro bono

■ Will there be a retainer fee? If so, how much? _____

■ Approximately what will the out-of-pocket costs be? _____

■ Are there any other costs I will have to pay? _____

■ Do you accept credit cards? _____

NOTES:

APPENDIX III: QUESTIONS TO ASK YOURSELF



Attorney: _____ Date: _____

Address: _____

City/State/Zip: _____ Phone: _____

My general reaction: _____

1. Was the attorney comfortable with and knowledgeable about sexual victimization? _____

■ Did the attorney seem to know about this type of law? _____

■ Am I comfortable telling this attorney personal information? _____

2. Am I comfortable with the way my case will be handled? _____

■ What are my goals in filing suit? _____

■ Did this attorney accept and understand my goals? _____

■ Will this attorney, and not an assistant, handle my case? _____

■ Did this attorney focus only on taking my case to trial, or only on settling the case?

■ Did the attorney talk to me in ways I could understand? _____

■ Did the attorney explain the strengths and weaknesses of my case, and the laws that apply? _____

3. Was the attorney respectful and polite?

■ Did the attorney focus on me at the meeting or were there lots of interruptions

(phone calls, office staff, etc.)? _____

■ Did the attorney, an associate, a clerk or a paralegal interview me? _____

■ Did I feel I would participate in the decision making? _____

■ Did I feel like a real person and not just another case? _____

■ Did the attorney put me at ease? _____

4. What is my gut reaction? _____

NOTES:

APPENDIX IV: ATTORNEY REFERRAL SERVICES



If you would like to consult with an attorney about filing a civil lawsuit, but don't know where to find a lawyer, you may want to call a lawyer referral service. Rates, policies and procedures for each referral service vary and are listed in the chart below along with contact information for each association.

If you live in the Chicago area or a suburb of Chicago:

| Organization | Cost* | # of Referrals Given | Miscellaneous |
|---|---|----------------------|--|
| Chicago Bar Association Chicago, IL 60604 312/554-2001 www.chicagobar.org | \$20 — initial consultation | One per call | Telephone and online referrals only. |
| CARPLS — Coordinated Advice & Referral Program for Legal Services 312/738-9200 info@carpls.org www.carpls.org | No charge for referrals for low-income residents of Cook County | No limit | Lawyers are available to answer questions and give referrals Monday through Friday 9:30 a.m. to 4:30 p.m. and Wednesdays until 7:30 p.m. |
| North Suburban Bar Association 847/564-4800 | \$25 — 1st ½ hour | No limit | Available 24 hours per day, 7 days per week |
| Northwest Suburban Bar Association 847/221-2601 www.nwsba.org | \$25 — 1st ½ hour | One per call | Telephone referrals available weekdays 10:00 a.m. to 3:00 p.m. |
| West Suburban Bar Association 708/366-1122 | \$25 — 1st ½ hour | One per call | |

If you live in one of the following areas:

| Organization | Cost* | # of Referrals Given | Miscellaneous |
|---|-------------------------|--|---|
| DuPage County Bar Association 630/653-9109 www.dcba.org | No charge for referrals | Three | Telephone and online referrals only. Hotline available weekdays 9:00 a.m. to 4:30 p.m. |
| Kane County Bar Association www.kanecountybar.org | | | Online referrals only. |
| Lake County Bar Association 847/244-3140 www.lakebar.org info@lakebar.org | No charge for referrals | One referral per hotline call; no limit for online referrals | Telephone and online referrals only. |
| Peoria County Bar Association 411 Hamilton Blvd., Suite 1618 Peoria, IL 61602 309/674-1224 www.peoriabar.org pcba@mtco.com | No charge for referrals | Three per call or e-mail | Telephone, e-mail, and walk-in referrals available weekdays 9:00 a.m. to noon; 1:00 p.m. to 5:00 p.m. |
| Will County Bar Association 815/726-0383 or 815/726-1015 sharyl@willcountybar.com | \$15 — 1st ½ hour | | Hotline available weekdays 9:00 a.m. to 4:30 p.m. |
| Winnebago County Bar Association 815/964-5152 www.wcbarockford.org | \$35 — 1st ½ hour | One per call | |

If you live in any other part of Illinois:

| Organization | Cost* | # of Referrals Given | Miscellaneous |
|---|---------------------------------|----------------------|---|
| Illinois State Bar Association Illinois Lawyer Finder 217-525-5297 (LAWS) or 800-922-8757 www.illinoislawyerfinder.com | \$15 or less — first half hour. | | Hotline available weekdays 9:00 a.m. to 4:00 p.m. |

* Lawyer later assesses additional fees

The Attorney Registration and Disciplinary Web site provides a comprehensive list of attorneys who are licensed to practice in Illinois and allows you to check whether an attorney is in good standing in Illinois. www.iardc.org.

Martindale Hubbell Law Directory is a national directory of over one million attorneys and law firms. It is available in print at law and public libraries and online at www.martindale.com.

Sullivan's Law Directory is a directory of Illinois attorneys and law firms. It is available in print at law and public libraries.







APPENDIX V: ICASA MEMBER CENTERS

■ NORTH

ARLINGTON HEIGHTS

Northwest CASA
24 hrs. 888-802-8890

AURORA

Mutual Ground, Inc.
24 hrs. 630-897-8383

CHICAGO HEIGHTS

YWCA Metropolitan Chicago, South Suburban
Center Sexual Violence and Support Services
24 hrs. 708-748-5672

DEKALB

Safe Passage, Inc.
24 hrs. 815-756-5228

ELGIN

Community Crisis Center
24 hrs. 847-697-2380
TTY 847-742-4057

GALENA

Riverview Center Inc. /
Sexual Assault Prevention
& Intervention Services
24 hrs. 888-707-8155

Satellite Office:

Savanna

Riverview Center Inc. / SAP&IS Carroll
County
24 hrs. 877-273-7772

Satellite Office:

Dubuque, Iowa

Riverview Center Inc. / SAP&IS Dubuque
County
24 hrs. 888-557-0310

Satellite Office:

Manchester, Iowa

Riverview Center Inc. / SAP&IS
24 hrs. 888-707-8155

GLEN ELLYN

YWCA Metropolitan Chicago, West Suburban
Center, Sexual Violence and Support Services
24 hrs. 630-971-3927
TTY 630-790-6600

GURNEE

Lake County Council Against Sexual Assault
(LaCASA)
24 hrs. 847-872-7799
TTY 847-244-1367

HICKORY HILLS

The Pillars Community Services
24 hrs. 708-482-9600
TTY 708-793-5000

Satellite Office: Berwyn

The C.A.R.E. Center
24 hrs. 708-482-9600

Satellite Office: Chicago

The Midway Center
24 hrs. 888-293-2080

JOLIET

Sexual Assault Service Center Guardian Angel
Community Services
24 hrs. 815-730-8984
TTY 815-744-6369

KANKAKEE

Kankakee County Center
Against Sexual Assault
24 hrs. 815-932-3322
TTY 815-932-7273

MCHEMRY

Pioneer Center of McHenry County Voices
Program
24 hrs. 800-892-8900

PRINCETON

Freedom House, Inc.
24 hrs. 800-474-6031

QUAD CITIES

Quad Cities Rape/Sexual
Assault Counseling Program Family
Resources, Inc.
24 hrs. 309-797-1777
TTY 309-793-1443

ROCKFORD

Rockford Sexual Assault
Counseling, Inc.
24 hrs. 815-636-9811

Satellite Office: Belvidere

Rockford Sexual Assault
Counseling, Inc.
24 hrs. 815-636-9811

Satellite Office: Rochelle

Rockford Sexual Assault
Counseling, Inc.
24 hrs. 815-636-9811

Outreach Office: Rockford

Children's Center
24 hrs. 815-636-9811

STERLING

YWCA of the Sauk Valley
24 hrs. 815-626-7277
TTY 815-625-6870

Satellite Office: Dixon

YWCA of the Sauk Valley
24 hrs. 815-288-1011

STREATOR

ADV & SAS
24 hrs. 800-892-3375

Satellite Office: Pontiac

ADV & SAS
24 hrs. 800-892-3375

Outreach Office: Ottawa

ADV & SAS
24 hrs. 800-892-3375

Outreach Office: Oglesby

ADV & SAS
IL Valley Community College
24 hrs. 800-892-3375

■ CHICAGO

Chicago Citywide
Tollfree 24-Hour Hotline
1-888-293-2080

COMMUNITY COUNSELING

CENTERS OF CHICAGO /

QUETZAL CENTER

TTY 773-769-1724

MUJERES LATINAS EN ACCION

YWCA METROPOLITAN CHICAGO, HARRIS CENTER, SEXUAL VIOLENCE AND SUPPORT SERVICES

TTY 773-955-0133
Satellite Office: Englewood

APPENDIX V: ICASA MEMBER CENTERS

YWCA METROPOLITAN CHICAGO, LOOP **SEXUAL VIOLENCE AND SUPPORT** **SERVICES**

Satellite Office: Chicago

YWCA Metropolitan Chicago, Logan Square

Satellite Office: Chicago

YWCA Metropolitan Chicago, Lawndale

Outreach Office: Chicago

YWCA Metropolitan Chicago, RISE Children's Center

Outreach Office: Chicago

Uptown Outreach Services

RAPE VICTIM ADVOCATES

TTY 312-935-3401

Satellite Office: Chicago

RVA — Cook County Hospital

Satellite Office: Oak Park

Austin Community Satellite

■ CENTRAL

BLOOMINGTON

Stepping Stones Sexual Assault Services

YWCA of McLean County

24 hrs. 309-827-4005

CHARLESTON/MATTOON

Sexual Assault Counseling

& Information Service

24 hrs. 888-345-2846

TTY 217-348-5033

Satellite Office: Robinson

Counseling & Information for

Sexual Assault/Abuse

24 hrs. 866-288-4888

TTY 618-544-9379

DANVILLE

Your Family Resource Connection - REACH

24 hrs. 888-549-1800

TTY 217-443-5566

Satellite Office: Paris

Paris Regional Office

24 hrs. 866-617-3224

DECATUR

Growing Strong Sexual Assault Center

24 hrs. 217-428-0770

TTY 217-362-9226

Outreach Office: Clinton

Clinton Outreach Office

24 hrs. 217-428-0770

MACOMB

Western Illinois Regional Council/Community

Action Agency Victim Services

24 hrs. 309-837-5555

TTY 309-837-5555

PEORIA

The Center for the Prevention of Abuse –

InnerStrength

24 hrs. 309-691-4111 or

800-559-SAFE

TTY 309-691-0551

QUINCY

Quanada Sexual Assault Program

24 hrs. 800-369-2287

TTY 217-223-2383

Satellite Office: Pittsfield

Pike County Satellite Office

24 hrs 800-369-2287

SPRINGFIELD

Prairie Center Against

Sexual Assault

24 hrs. 217-753-8081

Satellite Office: Jacksonville

Prairie Center Against Sexual Assault

24 hrs. 217-753-8081

URBANA/CHAMPAIGN

A Woman's Fund, Inc.

Rape Crisis Services

24 hrs. 217-355-5203

or 877-236-3727

Outreach Office: Monticello

A Woman's Fund, Inc.

Rape Crisis Services

24 hrs. 217-355-5203

Outreach Office: Rantoul

A Woman's Fund, Inc.

Rape Crisis Services

24 hrs 217-355-5203

■ SOUTH

BELLEVILLE

Call For Help

Sexual Assault Victims

Care Unit

24 hrs. 618-397-0975

TTY 618-397-0961

Satellite Office:

East St. Louis

Call For Help Sexual Assault Victims Care

Unit

24 hrs. 618-397-0975

Satellite Office: Granite City

Madison County

Call For Help, Inc., Sexual Assault Victims

Care Unit

24 hrs. 618-452-2763

CARBONDALE

Rape Crisis Services of

The Women's Center, Inc.

24 hrs. 618-529-2324 or

800-334-2094

TTY 618-529-2324

Satellite Office: Marion

Rape Crisis Services of

The Women's Center

24 hrs. 800-334-2094

TTY 618-993-0803

VANDALIA

Sexual Assault & Family Emergencies

24 hrs. 800-625-1414

Satellite Office: Centralia

Sexual Assault & Family Emergencies

24 hrs. 800-625-1414

Outreach Office: Effingham

Sexual Assault & Family Emergencies

24 hrs. 800-625-1414



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