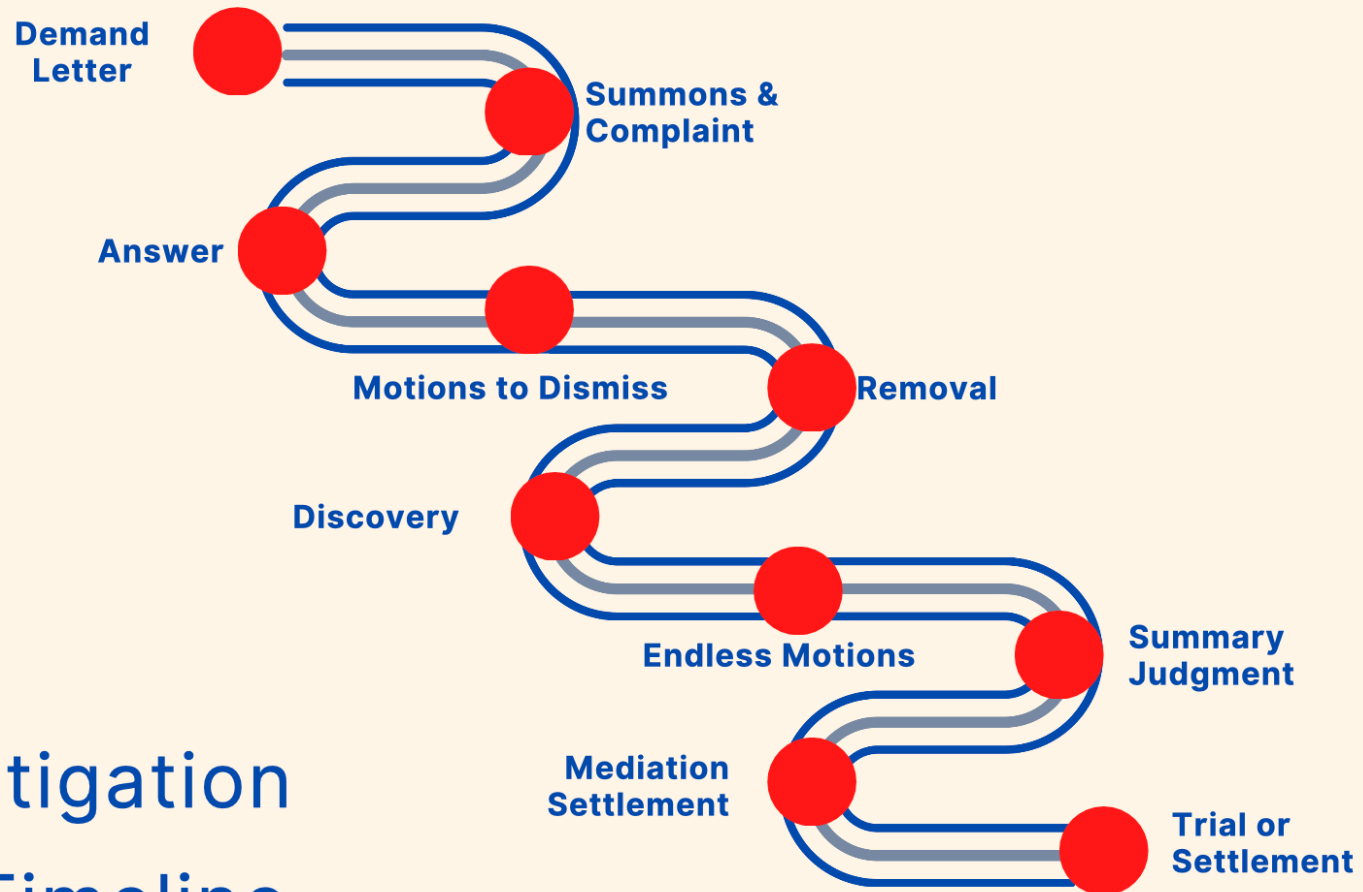


The Language and Process of Litigation

What the Experiences of Survivors can Teach Litigators

Litigation Timeline



**Demand
Letter**

**Summons &
Complaint**

Answer

Motions to Dismiss

Removal

WAIT
Discovery

Endless Motions

**Summary
Judgment**

Litigation

**Mediation
Settlement**

**Trial or
Settlement**

Timeline



UNDERSTANDING
THE
CSA CLIENT



HOW TRAUMA IMPACTS THE ATTORNEY-CSA CLIENT RELATIONSHIP

- Trauma can interfere with an effective and strong attorney-client relationship.
- Trauma may affect how clients hear and process information.
- CSA clients have an array of issues with trust and authority
- CSA Clients may have lots of triggers
- These triggers can activate the stress response system – Fight, Flight & Freeze (Fawn)
 - Fight – they may start yelling or exhibiting signs of agitation
 - Flight – they walk out of the room or hang up the phone
 - Freeze – they become quiet and withdrawn
- The triggers make clients feel as if they are presently in danger – it feels real.
- The stress may be manifested in moments of anger, fear, panic, walking out of a room, withdrawing, disassociation, loss of focus or memory.
- CSA clients have stress responses to seemingly innocuous events in the legal system and process.

WHAT ATTORNEYS CAN DO

1. During intake/consultation don't rush them through the story of their abuse. They need to be heard, often repeatedly.
2. A calm and quiet place is best for intake/consultation.
3. Listen with full attention (eyes/body/facial expressions) – If you are taking notes let them know.
4. Encourage them to seek therapy and continue therapy and to reach out to trusted adults.
5. Clear Communication is key – ask them ahead of time about the type of communication most effective for them.
 - How much do you want to know as we move through the litigation process?
 - How frequently do you need updates?
 - Do you want to be updated on everything or just the major events?
6. CSA clients have issues with trust, power, and loss of control.
7. More TRANSPARENCY = more TRUST
8. Be as clear as possible on the procedural timing of things. Generally, it's a hurry up and wait. Let them know that. Also share procedural timing "Defendant has 30 days to..." "We have to respond in..." "But the parties may stipulate to more time..."
9. Inform them of the purpose, process, and potential outcomes.
10. Check in with CSA clients - quick 30 second emails – the radio silence makes them feel "alone" again, "not heard again" "unimportant" "forgotten"
11. If in Mediation or Settlement advise your client to talk to a financial advisor/tax consultant

**THE RULES OF CIVIL PROCEDURE & LITIGATION
IN THE EYES OF SURVIVORS**

It Is a Foreign Language in a Scary Land with Delays and Denials

YOU COMMUNICATE	CLIENT HEARS	POSSIBLE TRIGGER	NOTES
<p>“The Defendant will be Served” <i>(FRCP 4)</i></p>	<p>S/he will know I’m standing up to them. I’m scared/worried “Was this a mistake?”</p>	<p>Nervousness & anxiety around finally standing up to Perpetrator Concern Fear of retaliation</p>	<p>Let your client know When where and how. Some perpetrators may retaliate, if in family – family members may blame, shame, etc.</p>
<p>“Case has been Removed to Federal Court” <i>(28 §1441)</i></p>	<p>My perpetrator “took it away.” “Eliminated it” It’s gone.</p>	<p>Loss of voice, power, and control, panic</p>	<p>The term “Federal” is likely to alarm survivors as it sounds serious</p>
<p>“The Defendant Answered the Complaint” <i>(FRCP 8)</i></p> <p>All have tons of denials</p>	<p>“Rejection “ “You are a Liar” “You are crazy”</p>	<p>Not Believed Not Valued</p>	<p>Sharing that denials are commonplace in Answers Denials are typical</p>
<p>“The Defendant filed a Motion to Dismiss” <i>(FRCP 12B)</i></p>	<p>“Ordered to Leave” “Unworthy of serious consideration” “Unworthy” “Rejection”</p>	<p>Not Believed Insignificant</p>	<p>Share that this is typical Go through the timing. 30 days, etc. <i>(except for non-waived)</i></p>
<p>“The Defendant has Noticed your Deposition” OR “They are requesting an IME” <i>(FRCP 26)</i></p> <p>(Even in prep)</p>	<p>“The Defendant will hurt me again” “Feel put under a microscope” “All my scars & pain exposed, and analyzed”</p>	<p>Not Believed Consented Not Valued Not Credible</p>	<p>Stress response may be triggered</p> <ul style="list-style-type: none"> • Distracted • Memory • Disassociation • Fear • Anxiety/panic
<p>“We should consider Settlement.” “We should mediate”</p>	<p>“You don’t believe me” “The case is weak” “You think I have exaggerated” “You don’t trust me” “Others won’t know”</p>	<p>Not believed Insignificant Relief Overwhelmed Angry</p>	<p>+Reinforce that you believe your client. +Victim statements -> mediator help survivors feel heard/heal +Sadness as it is never really resolved.</p>
<p>Trial</p>	<p>“Will the perpetrator be there?” “Will the judge believe me?” “Will the jury believe me?”</p>	<p>Most survivors share that just being around the perpetrator or institutional leaders that failed them may trigger sadness, fear & anxiety</p>	<p>Survivors will need support mechanism in place – family, friends, therapist, (calming objects, jewelry, or photos)</p>



Key Takeaways

- **Empathy** (*not pity or sympathy*)
- **Active Listening** (*attentiveness, nodding, holding eye contact, asking for clarification and summarizing*)
- **Nonjudgmental Language** (*“the truth is somewhere in the middle...”*)
- **Know the Trigger responses**
- **Transparency** (*no secrets or withholding*)
- **Empower the Client** (*give them control - review events, strategies, updates with client – this gives them voice and agency*)
- **General Meaning** (*Consider the layperson’s meaning of words*)
- **Timing** – *Be as clear on timing as possible – The Triple D – “Defendant’s Delay and Deny”*