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HOW TO GUIDE ON...



COMMUNITY- DRIVEN LITIGATION

The guide was created in consultation with Just Futures Law, a Justice Power member organization. It was also informed by conversations with other member organizations and experts.

This How to Guide offers guidance for lawyers interested in pursuing community-driven litigation.



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GROUNDING

GROUNDING

Consider why you want to pursue community-driven litigation.

For example, Just Futures Law believes that community-driven litigation is about lawyers co-designing with non-lawyer partners, using power to defend movements, and honoring the work of community organizations. Community-driven litigation is a tactic like advocacy, organizing, and storytelling that supports the change that comes from those organizing on the ground.

Consider how you will meet needs that are not already being met.

- For example, what types of creative and provocative litigation will help reach the organizing goal of reducing or ending the use of surveillance tools (ankle monitors, scans, etc)?
- Or, explore how you might set positive legal precedent by bringing novel claims.



Ana Filipa dos Santos Lopes



Izabela Markova

GROUNDING

GROUNDING



Factors to consider:

- Who is your community (*i.e.*, base-building groups, individual organizers, activists, etc.)?
- Do you have a community power-based theory of change that guides your own strategy?
- Your facility with making agendas and other deliberative processes?
- How you will assist them (*e.g.*):
 - Communications support, such as press talking points.
 - Resources/strategy consultation.
 - Technical assistance.
 - Risk assessment and support in the case of arrest.
 - Lawsuits and freedom of information act requests.
- Are there other needs in the organization that you can support because you have more resources?



GROUNDING

GROUNDING



- Nature of your existing relationships to that community.
 - Do not assume you understand their organizing, communications, or strategy.
 - Durability of your commitment to a project involving them.
 - Clear understanding of the legal issue. Have you de-mystified the legal issue so that the community partner can engage with the law or the litigation so that it is understandable to the public? This will be essential to determine steps you will take to ensure other members of the community can give feedback on the lawsuit.
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- Consider financial liability and how to minimize the risk for your clients.
 - For example, the law is underdeveloped in the surveillance field. Even if you can come up with novel or broader claims, some consumer protection-type claims result in attorneys fees if you lose.
 - Create short-term and long-term visions of success, and set time to reflect on and reassess your vision and needs.

PARTNERSHIP

VALUES

Values and trust:

- Establish your values and how you will build trust with partners.
 - Know that building trust takes time and that you should establish relationships before building something big together to understand potential partners' processes and values.
 - Obtain approval from your established partner before approaching someone new.
- Be transparent and share resources.
- Ascertain if community-driven litigation is aligned with your organization's and partners' organizing and advocacy.
- Determine if community-driven litigation is helpful for a campaign or community problem.
- Analyze the goals of your partners and how community-driven litigation will help further community demands, build power, and achieve their goals.



PARTNERSHIP



Alina Marinescu for Fine Acts

LEADERSHIP



Leadership and feedback:

- Ensure that community partners and organizers are regularly in the room.
 - Build in time for feedback and strategizing. Assess the time constraints under which you are working to determine the frequency of meetings. There may be times when partners feel most comfortable meeting in a 1-on-1 setting; especially when there is disagreement on how to move forward.
 - Be transparent about your goals.
 - Ask questions to understand goals and establish preferred outcomes.

PARTNERSHIP

FEEDBACK

- Build in a lot of time for questions, and focus on oral communication which is less formal and jargony.
 - In group meetings, it can be helpful for plaintiffs and partners to hear the analysis of other partners, especially how other organizational plaintiffs are thinking.
 - If a partner does not talk a lot during a group meeting, do one-on-one check-ins to hear their thoughts.
- Lawyers should alternate attending 1-on-1 meetings. This will allow each person to build a rapport with the community partners.
- Co-develop the communication strategy and storytelling piece with community partners before filing a case.



Asis Percales for Fine Acts



PARTNERSHIP

STRATEGIES



Strategies and support :

- Whether the community-driven litigation is reactive or proactive, think strategically about who the plaintiffs are, e.g., if they are organizational and individuals. Individual plaintiffs often feel more supported when connected to a larger group.
- Consider if your partners will also be organizational and individual plaintiffs.
- Explore whether the community-driven litigation is part of a larger campaign. Ideally, it is combined with organizing.



Osheen Siva for Fine Acts



PARTNERSHIP

SUPPORT



- Support your partners outside of the courtroom (*i.e.*, they might request information, answers, evidence for their theories on why certain policies are enacted, etc.).
 - For example, if a community partner suspects racism as the driving force behind a government policy, you can assist them in obtaining discovery (the compulsory disclosure of relevant documents) that supports their claim of racism.

- Allow and encourage your partners, as strategy leaders, to organize and engage with the press while a case is ongoing. Ensure that your case is de-mystified and understandable.
 - Advise your partners on defamation, which is the action of damaging someone's reputation by making false statements, especially when suing powerful actors and companies. Also be clear that the defendants might request and possibly gain access to some of your partners' documents.
 - For example, powerful actors may target and harass plaintiffs and in discovery, ask for membership lists, organizing documents, funding streams, etc.

PARTNERSHIP



Alexandra Ramirez

PARTNERSHIP

- Consider the assessment of risks to the community group or its members as part of your responsibility to the partner:
 - Advise partners on risks: For example, make a plan in case someone is arrested, sued, or faces retaliation.
 - Represent them as part of the litigation, if you can.
- If requested, prepare partners on talking points if they are engaging with the press.



RUBRIC

Silvana P. Duncan for ArtistsForClimate.org



RUBRIC



- Explore the following guide/balancing test to assess if community-driven litigation is the right course of action:
 - Does this further or complement your legal organization's mission?
 - Does this further or complement your partners' mission?
 - Does this fit within your partner's goals?
 - What is the state of organizing within this issue?
 - Are there folks already working on this?
 - How does this fit into your organization's docket?
- Determine at what point it makes sense to get involved with a case.
- Weigh these factors according to the needs of your partners.

CO-COUNSEL

CO-COUNSEL 🔍

- It can be challenging to find movement-aligned co-counsel, especially in surveillance-related cases because of the business model of law firms.
 - Corporate law firms that do pro bono work will generally have a positional conflict to the surveillance claims and litigation brought against private companies. And plaintiff-side firms are drawn to litigation that provides opportunities for economic recovery through attorney's fees or a percentage of class damages. But these cases may not lend themselves to large recoveries.

NON-LITIGATION PARTNERSHIP 🔍

- Consider working with organizations that are not officially part of a case by soliciting their feedback on communication and organizing strategies--not on litigation strategies.
 - For example, you can hold a meeting to discuss the litigation that you're bringing--without revealing anything confidential--to solicit ideas on how to present the case to the public eye.
- If organizations are not official plaintiffs, their staff may still be able to act as interpreters or paralegals in the legal spaces and maintain confidentiality and privilege.



EVALUATION



Pietro Soldi for Fine Acts

EVALUATION



Debrief internally and externally:

- Practice courageous one-on-one conversations; give feedback to and receive feedback from your colleagues and partners.
- Debrief with your partners at different stages of the case, campaign, or policy advocacy. Discuss what works, what does not work, what builds power, and the lessons learned.
- Consider having organizational retreats where you can decide on annual goals, and look forwards and backwards.



Please refer to the [Resources](#) to access more information (intake form, training presentations, etc.).