

NATIONAL BAIL FUND NETWORK



Best Practices Guide to Setting Up a Legal Defense Fund

Overview

There is no one “right” way to set up a legal defense fund or rapid response bail fund. For decades, organizers and legal support teams have come up with creative and powerful ways to respond to arrests, criminalization, and incarceration resulting from protest and direct action.

Historically, legal activists have employed a variety of approaches when creating and operating legal defense funds, often specific to political circumstances and differences in local legal systems. Some funds are created to respond only to the need to post bail or bond (used interchangeably here), while others are structured to support a wider range of legal defense needs. Rapid response funds have been created to respond to larger movement needs, as well as to support specific individuals or groups.

This document, developed by the [National Bail Fund Network](#) and the [National Lawyers Guild](#), provides an overview of some of the best practices distilled from decades of legal defense fund experiences. This document is focused on funds that are created for rapid response and as part of movement campaigns or direct actions. Notably, our recommendations and practices differ from recommendations and guidance for revolving community bail and bond funds that regularly free community members from pretrial incarceration and immigration detention. The National Bail Fund Network has developed separate resources for revolving bail and bond funds, which are available [here](#).

This document is not intended to be legal advice. It is intended to provide only general guidance on the relevant issues, and we encourage users of this guide to consult with a lawyer licensed in their jurisdiction for more specific legal advice.

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Best Practices

There are many specific decisions to make that are unique to the particular circumstances a legal defense fund is responding to or anticipating. In addition, there are certain legal processes specific to the jurisdiction(s) where help is needed. Understanding that there will be unique aspects necessary for any legal defense fund, some general guidelines and best practices for consideration are described below.

1. Goals & Structure

- a. *Define your purpose and mission.* Defining the fund's goals will help inform a number of key structural decisions. Transparency and clarity on what the fund's mission will be as well as any initial goals around timeline and scope will help with many of your subsequent decisions.
- b. *Intentionally plan for range of scenarios.* Legal defense funds may end up responding to a number of scenarios depending on the actions and the legal system's response. Funds that are formed quickly in response to the immediate needs of activists (with less time for advance planning) may also want to have some flexibility over time and the ability to adjust priorities once needs are clearer. We recommend that funds plan for a range of scenarios and do not restrict themselves to using money only for paying bail – particularly when it is not yet clear whether funds will be needed to cover other necessary aspects of effective legal defense.
- c. *Make sure the organization hosting the fund or receiving money shares the values and mission of the legal support effort.* Finding a host organization (see below for fundraising discussion) is often critical to the support of fundraising and administrative functions. Operating a legal defense fund, even in the short-term, will take coordination. Sharing a vision for why the fund exists and clarifying at the outset to whom it will be provide support is key.
- d. *Be explicit about governance and transparent in decision-making.* Even when creating legal response funds to respond to a fast-moving crisis, legal activists need to think about governance structures and transparency for collectively raised funds. Some questions to consider include: Is there a clear decision-making process or set of processes you can communicate to people or organizations requesting help, possible partner groups, and donors? Does the governance structure anticipate a process for making hard decisions together and potentially over a longer period of time? What methods of communication will be used to share the fund's decision-making? How are you seeking to be accountable to the people you are providing support to? Is there information you will not want to share for any reasons, including security? We recommend you be upfront with organizers about your limitations and capacity, including known unknowns.
- e. *Provide for administrative capacity.* Creating a legal defense fund requires at least some administrative roles, even in cases where the fund's lifecycle is short or limited in scope. Whether through a host organization or a collective of volunteers, there will be a range

of administrative tasks and the fund’s structure should be able to absorb them. Administrative capacity is directly tied to accountability and should be given that same focus.

2. Criteria on eligibility for and/or prioritization of assistance

- a. *Referrals and eligibility.* It is important to establish a process for determining who the fund will support. There may be a specific referral process through organizers or the legal support team, or a plan may be developed as part of the larger response strategy that includes the fund. If you are defining eligibility based on group membership or participation in an action, consider defining when and how support of additional supporters (or bystanders) would be appropriate.
- b. *Prioritization.* In addition to establishing general criteria for eligibility, the fund may want to clarify how it prioritizes assistance among people who are all eligible if there is more need than can be immediately met (See Appendix for examples).
- c. *Scope of assistance provided.* It is important to establish an agreed-upon policy regarding acceptable uses of the money raised for setting both internal and external expectations. This may develop out of an established mission and clear goals, but it is always best to be as explicit as possible. Organizers should consider whether the fund will pay for: monetary bail (and if so, will it pay full cash amount or use bail bondsmen¹); fines, fees, or other court costs; restitution, if ordered; compensation for defense attorneys or other legal defense needs such as investigators or experts (and the scope of this, such as initial legal representation only or for the entire length of the cases), with consideration to the availability of public defenders in the jurisdiction(s); travel and housing costs for defendants coming from out of town to attend ongoing court dates; expungement costs; and other miscellaneous costs associated with criminal prosecution and defense in the relevant jurisdictions.
- d. *Consideration of legal impact.* Sometimes the activities of a legal defense fund can be used against an individual in their legal case. Planning and operating a fund should include an awareness and plan for how its actions may affect eligibility for representation (including eligibility for a public defender), bond assignment, restitution burdens, etc. Be aware that prosecutors and judges may use the presence of a fund to set higher monetary bail, remove court-appointed counsel, argue that someone is a “flight risk” because of their access to funds, and/or impose higher restitution burdens during sentencing based upon “defendant’s ability to pay.” In some jurisdictions, funds have established bond

¹ We recommend not using commercial bail bonds whenever possible, as they are inherently predatory. When paying bail or bond, we encourage funds to pay the full cash amount because doing so creates a way for some or all of the money to be returned to future use by the movement. We recognize that in some cases, bond funds have made the choice to use bail bond companies as a way to secure release when full bail amounts are prohibitively high. If this is the case, it is important to be very clear about this in the fund’s principles and processes.

assignment agreements or other documentation to protect individuals from this sort of action (See Appendix for examples).

3. Fundraising

- a. *Personal vs. organizational fundraising.* In rapid response conditions, an individual may end up taking on fundraising and banking responsibilities. We recommend being thoughtful about personal tax liability and exposure (such as whether funds raised will impact the organizer's personal finances or tax liabilities), and when possible, having an organizational host for the financial component of the fund. Organizations that agree to house the money raised should be clear about any limitations on funds in their possession and any internal decision-making processes (separate from the legal defense fund) that must be involved in disbursing money to individuals or organizations.
- b. *Fundraising platforms.* Choose a funding platform that permits fundraising for monetary bail and legal defense of a criminal case. Many popular crowdfunding websites, such as GoFundMe, do not allow for fundraising that supports the work of a legal defense or bail fund and will shut down fundraisers that have already collected donations if they are discovered or reported. We recommend checking the terms of service or using a platform that you have control of, such as a special page or function on an organizational website. (See Appendix for examples.)
- c. *Solicitation language & disclaimers.* On any fundraising platform, it is important to use solicitation language that allows for flexibility later on or for changing the scope of the fund (as legal needs become clearer) so that donors do not feel misled and to improve transparency and accountability. (See Appendix for examples.) Depending on the legal status of the fund, disclaimers about tax deductions (or not) should be made.
- d. *Longevity.* Some legal defense funds will use all of their funds for their stated purpose, but others may end up with remaining assets. In any case, we recommend intentional planning for how any unused or returning funds (such as for bail) will be used. An important part of planning is the creation of an agreement that ensures that returned and surplus funds go back into movement work and do not end up restricted or kept by the host organization in a way that is or seems non-transparent or unaccountable.

Contacts for More Information

We recognize that this document provides only a framework for starting to think through the issues that arise when creating a legal defense fund. If you are establishing a legal defense fund and have more questions, you may reach out to us for additional resources and advice at:

National Lawyers Guild: director@nlg.org

National Bail Fund Network: network@brooklynbailfund.org



Appendix - Legal Defense Fund Best Practices

The following resources are meant as examples and are not exhaustive.

1. Examples of criteria for eligibility and prioritization:

- [Freshet Collective](#) (supporting Standing Rock resistance)
- Durham Solidarity Center's [Freedom Fighter Bond Fund](#)
- [Chicago Community Bond Fund](#) (note this fund supports both a legal defense fund and a revolving community bail fund)

2. Fundraising platforms:

If an organizational host already has an established fundraising platform, a specific fundraising page may suffice. For specific fundraising platforms that may be useful within the legal defense fund context, here are just a few options with relevant notes²:

- [PayItSquare \(http://www.payit2.com/\)](http://www.payit2.com/):
 - Allows fundraising for legal fees.
 - Fees: 3.85% of donation + 2.9% of donation + \$0.30 per transaction
 - Available to individuals.
- [fundrazr.com](#)
 - [Explicitly allows fundraising for legal fees.](#)
 - Choose “Keep it all” to access funds immediately
 - Fees: "Contributors pay no fee. Recipients pay 5% FundRazr fee plus Payment Provider fee of 2.9% + 30¢ per transaction."
 - Available to individuals.
- [Fundedjustice.com](#)
 - Explicitly for legal costs crowdsourcing.
 - Fees: "The fee for all campaigns is a flat 7% plus any credit card processing charges, currently our credit card payment processor are WePay and PayPal and they charge 2.9% + .30 per transaction."
 - Available to individuals.
- [CrowdRise](#)
 - Allows fundraising for legal defense and bail.
 - Is available to non-profit organizations but **not** to individuals.
 - Was used by both the Standing Rock and Baton Rouge legal defense funds.

4. Solicitation language samples:

² These are current as of May 2018. Please always check for updated terms and changes to service as well as new platforms.

Here are two samples of donation solicitation language that anticipate and are clear about the future of unused or returned funds.

- [Stand with Laquan McDonald](#)
- [Free the Trump Protesters](#)

5. Documentation of Source of Funds for Bond

It is often necessary to provide evidence of the source of any bail or bond money paid to the judge or other court system actors. Options for doing so include: 1) having the person bailed out sign an acknowledgement (contract) stating that the funds are not their own and they promise to return them to the entity who paid bond at the end of the case³; and 2) creation of an affidavit by the organization that paid the bond. You can view an example of one such affidavit, which is used by Chicago Community Bond Fund, [here](#).

³ Note that even if the legal defense fund is unlikely to pursue legal action against the person bailed out should they not abide by the terms of this agreement, some funds have found that showing these agreements to third parties (such as judges, prosecutors, and defense lawyers) effectively clarifies the relationship of the person being prosecuted to the bail money paid.