

Emergency Resolution on Movement Lawyering and Collective Defense

WHEREAS: the National Lawyers Guild is as an association dedicated to the need for basic change in the structure of our political and economic system. The National Lawyers Guild also strives to be an efficient political and social force in the service of the people, to the end that human rights and the rights of ecosystems shall be regarded as more sacred than property interests. In other words, the National Lawyers Guild is a political organization.

WHEREAS: the National Lawyers Guild recognizes the rights of attorneys and legal workers to condition their legal services based on their own moral, economic, social, and political views.

WHEREAS, the organization Law for Black lives defines Movement Lawyering as taking direction from directly impacted communities and from organizers, as opposed to imposing our leadership or expertise as legal advocates. It means building the power of the people, not the power of the law.

WHEREAS, in 2020 the National Lawyers Guild passed a resolution that included the fact that the National Lawyers Guild is an organization committed to Movement Lawyering.

WHEREAS, the National Lawyers Guild recognizes collective defense strategies as acceptable and effective tactics attorneys use to zealously represent their political clients.

WHEREAS, Defendants, their attorneys, and their movement comrades often take collective approaches to criminal defense, which can aid clients in the courtroom and simultaneously support movements in the streets. By situating a client's individual struggle in a broader political context, an attorney's duty can stretch beyond the courtroom to a movement writ large.

WHEREAS, The American Bar Association has recognized the value of this approach, and it codified that perspective in its Model Rules of Professional Conduct. Rule 2.1 states,

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

WHEREAS, collective defense strategies are not the only way for an attorney to zealously represent their political clients. But the National Lawyers Guild, as a *political* organization, recognizes the strategic and historic importance of collective defense as one strategy among many that criminal clients can use, after individualized advice and consultation with counsel.

WHEREAS, the theory that there is an inherent conflict of interest if an attorney who represents movements also represents individual clients misunderstands the important role of collective-defense strategies in criminal cases for movement participants.

WHEREAS models of representation of individual criminal defendants which include the development of advocacy strategies to support community efforts can be successful.

WHEREAS *Representing Radicals: A Guide for Lawyers and Movements* by the Tilted Scales Collective (AK Press 2021) provides the following guidance and insight relevant to movement lawyering and collective defense.

“Our political clients want and deserve to be represented on a political basis.” P 91 (essay by Dennis Cunningham, Esq.).

“There are numerous benefits to a collective defense. Certainly there is strength in numbers. Often, when cases are split up, defendants are more vulnerable to convictions and harsh punishments. Sticking together may also give the group more bargaining power, as well as help group members who are more vulnerable to convictions avoid more severe consequences. Many movement attorneys also find value in taking collective approaches to defense; fighting charges as a group can allow for strategic wins in the courtroom that aid political movements in the streets. Even so, there may be legitimate reasons that people facing charges need or want their case to be handled separately, as well as many ways to do this that are not at others’ expense.” Pp 89-90.

“When representing radicals, “best possible defense” can mean situating your client’s case in larger political struggle. From this perspective, your duty of loyalty to your client can be considered as broader than their individual case and legal goals; applying your ethical obligations to the entirety of your client’s goals and interests can allow for stronger representation.” P 99.

THEREFORE BE IT RESOLVED that the National Lawyers Guild at its 2021 Law for the People Convention formally adopts movement lawyering principles and recognizes that movement lawyering can be both client-centered and politically transformative.

BE IT FURTHER RESOLVED THAT the National Lawyers Guild disavows the theory that supporting movements creates inherent conflict with the representation of individual criminal defendants.

BE IT FURTHER RESOLVED THAT the National Lawyers Guild the National Lawyers Guild supports and believes in the political, legal, and ethical legitimacy of collective defense strategies as one option for providing representation to criminal defendants.

Implementation: This resolution is to be implemented by the individuals listed in support below, and in coordination with the NLG National Office. The individuals listed below will contact and coordinate with committees, chapters, and other NLG entities to assist them in informing and educating their members (including via ongoing movement lawyering education and skill building) and the public (specifically informing movement participants whom guild attorneys support) about NLG’s position on movement lawyering and collective defense.

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