

# WHEN AND HOW TO LAWYER UP: LEGAL RESOURCES FOR ARTISTS

## Naima Lowe and Sarah Lippek

### WORKSHOP OUTLINE

#### INTRO:

Why do artists need legal stuff?

- Art is a business
- Often dealing with institutions with MORE POWER than you, when you are in a position of supplicant
- Stop working for 'exposure'
- Art work is WORK!
- Undervalued, not organized as a field of labor, underrepresented

Our background

- Naima – artist, writer, educator, getting lawyered up
- Sarah – harm reduction background, becoming a lawyer
- How we met
- What we did together
- Naima's process approaching the institution
  - o Their lawyer is not your lawyer!!
  - o Your lawyer works for you and interacts on your behalf

When to get a lawyer:

- In any negotiation where you will be signing something, legal issues come into play
- IF YOU SIGN SOMETHING IT'S (almost definitely) a CONTRACT
- If you feel suspicious or like you are being used by an institution and internal processes have not solved the problem
- SEXUAL HARASSMENT
- Setting up a business! If you are selling work you're in business! You may also want an LLC if you are doing teaching, workshops, etc.
- All the non-art-related legal stuff: Getting arrested, getting a DUI, domestic violence situations, getting sued, getting married or divorced, buying property, etc.

General areas:

#### INTELLECTUAL PROPERTY

- Copyright – may or MAY NOT be useful to register; if you are putting stuff out – on a blog, etc. – you may want to register
- Protecting your work (stopping misuse of images ie Etsy seller printing your drawing on a mug; website using your photo for commercial purposes, etc.)
- Use of YOUR image (photos of you, your name, etc.)
- Protecting yourself when you will be pitching, applying for grants, partnering with orgs or collaborators, etc.
- LICENSING your work

- When you sell an artwork, are you ALSO selling rights to reproduce? Can that collector print posters of 'his' painting that he has bought from you?

## CONTRACTS

- Residencies, fellowships, etc – what are the expectations? For you AND for them? What are the consequences of a breach?
- Negotiating terms for ANY project – gallery show, sale to collector, loan of work to a museum, providing images to a magazine or book, commissions, illustration/graphic design work projects, etc.
- Renting or buying studio space. What are the limitations on a commercial space? What materials/equipment can you use? Can you have studio tours? A gallery/showing space? Parties? Can you sleep over?
- Collaborations and organizations – getting a grant together; doing a tour together; etc.
- HIRING people – studio assistants; performers; engineers; manufacturers; etc.
- AGENTS and GALLERISTS – have a contract with them!!

## EMPLOYMENT LAW

- Artists are often treated as 'independent contractors' but TREATED LIKE EMPLOYEES
  - o If they control the manner (place, time, method) of your work YOU ARE NOT A CONTRACTOR
- Workplace safety
- Wage theft/wage fairness
- Unemployment contributions
- TAX contributions (you might need an accountant!)

## BUSINESS LAW

- Do you need a business license? Insurance? Etc.?
- Setting up an LLC, s-corp, partnership
  - o It may be advantageous to do this, if you are doing commissions, work as contractor, etc
  - o Careful with your accounting
  - o Tax advantages
- 501(c)(3)s and other nonprofits
  - o Can be useful esp if you are doing 'social purpose' work – with kids, prisoners, etc., TEACHING; etc.
  - o You can get grants
  - o It's a giant hassle and can be disadvantageous
- Liability – who is liable for mishaps? What if you sell something and it disappears during shipping? What if someone gets hurt at your studio?
- TAXES – making sure you are collecting/paying the correct taxes AND taking all the possible deductions
- Buying supplies wholesale with a business license
- Protection in partnerships and collaborations

## FINDING A LAWYER

- Make a list! Try to get several options to choose from
- Use your network! Even if you don't know any lawyers, you probably know someone who has HAD a lawyer, and had a good or bad experience with a lawyer in your town
  - o Crossing people OFF your list of prospects is just as useful as adding people on!
  - o Ask friends, colleagues, family, people you might not think of
- LAW SCHOOLS –
  - o Look for professors interested in your issue by reading their bios & publications of the law school website
  - o Look for professors who teach law school CLINICS or run law school volunteer programs
    - Even if they practice a different kind of law they are often well-connected and will know someone
  - o Don't hesitate to cold-call or cold-email someone! They tend to be quite helpful and are happy to feel relevant!
- BAR ASSOCIATIONS
  - o Your state and county bar associations know ALL the lawyers
  - o They may have formal programs for legal aid, talk to them
  - o They probably have a PRO BONO COORDINATOR who manages a bunch of volunteer attorneys – that person knows a lot of lawyers with different specialties, ask them!
  - o Again, don't be afraid to cold-call!
  - o You can ALSO use the state bar association website to CHECK FOR MISCONDUCT – if an attorney has had bar complaints against them, you can find them here.
    - STAY AWAY from lawyers who have had complaints for lack of communication. Seriously.
- LEGAL AID ORGS
  - o Again, they often depend on volunteers so they know lots of lawyers
  - o There are lots of arts-specific orgs, Volunteer Lawyers for the Arts national directory is a great place to start
  - o Google (actually I recommend Duck Duck Go but either way) IS YOUR FRIEND – find out who is working on your issue and talk to them
  - o If you can't find a free legal aid group to provide you services, you can still ask them for referrals for attorneys
  - o General social-service hotlines and directories often have lists of legal service orgs
- OTHER NONPROFIT ORGS
  - o Arts orgs need lawyers too! Ask people you know at local arts organizations what lawyer THEY use
  - o Even a non-art organization might know lawyers – if you have immigration issues, talk to immigrant advocacy or social service orgs., for example

## CHOOSING A LAWYER

- Most (good) lawyers will offer a 30 to 60 minute free first-time consultation.

- When pandemic rules allow it, go for a face-to-face meeting
- Making an appointment should be easy and polite. If they can't find time to meet you in a reasonable timeframe, they probably won't have time to talk with you as your case progresses.
- BE READY for your first meeting so you use the time well
- PREPARE TO TELL YOUR STORY
  - Try telling the story to a close friend, partner, or family member. Be discreet about who you speak with, but try telling the narrative once and make sure it's clear
  - This also helps get out some of the emotion connected to the situation so it's easier to discuss!
  - MAKE A TIMELINE –
    - This is often the first thing a lawyer will ask you to do, and it's great to have it done for your first meeting.
    - Basic outline of facts – what happened and when.
      - When did you notice something was wrong?
      - What documentation exists of the problem?
      - What have you already tried doing about it?
      - Who have you spoken to about it?
      - Where do things stand now?
  - Gather DOCUMENTATION
    - Get together emails, texts, documents, photos, video, WHATEVER YOU HAVE.
    - Be organized! Make a (virtual or actual) folder or notebook and keep everything in one place.
  - WHAT DO YOU WANT?
    - This is a very important question. Ask yourself before you meet your potential lawyer!
    - Money is the obvious answer. But do you want your old job back? Healthcare coverage? An apology? Think about it.
    - This question includes the question WHAT DON'T YOU WANT?
      - If you don't want to testify in court, or you don't want to target your boss, or you don't want to spend more than a certain amount of money, be clear about that with your potential lawyer
- TRUST YOUR GUT!
  - THEY WORK FOR YOU
  - You are interviewing the lawyer. Not the other way around.
  - This is someone you may be working with EXTENSIVELY – the basics need to be there as a foundation.
    - Do you feel comfortable talking OPENLY AND HONESTLY with this person?
    - Do you feel like they listen to you & hear you?
    - Do you feel you can trust this person?

- Do your communication styles work well together?
  - Do you feel like they will respect your decisions?
  - Do you understand them when they explain things?
  - Do they present options, or just tell you what to do?
- ASK QUESTIONS
  - Do they prefer email or phone?
  - How often can you expect to hear from them?
  - How will they share information and help you understand the options and make decisions?
  - Who will do the work on your case? What kind of experience do they have?
  - What do they see as possible ways to address your issues?
  - What are the payment options?
    - Do they expect an hourly fee?
    - Do they work on contingency?
    - What is their percentage?
    - What about costs (for experts, mediators, etc.?)
    - How do they bill?
    - Do they require a deposit?
    - How much do they expect a case like yours to cost?
- CHECK THE AGREEMENT
  - They should have a Legal Service Agreement, Contract for Legal Services, or Letter of Engagement
    - This is a contract by which you set terms and conditions for hiring them
    - You should have enough time to read it thoroughly, and to consult with an advisor (even another lawyer!) if you want
    - If you don't understand something, or feel uncomfortable, ask the lawyer about it. If their explanation doesn't help, cross that part out before you sign – or find a different lawyer!
    - The contract should be clear about what is expected of you and what is expected of the lawyer – money, communication, etc. and all terms should be clear
    - It should be signed by you AND the lawyer, and you should be given a copy to keep

#### ONCE YOU'VE ENGAGED A LAWYER

- Stay in touch! Keep communication open and inform them of anything that happens that might affect your case
- Hands off! Your lawyer will handle communications with the opposing party – don't back-channel them.
- Be discreet! Don't discuss the details of your case with others outside your very closest inner circle.
- Keep your eye on the prize – if your goals or needs change, or you don't want to go any farther, don't be afraid to tell your lawyer

- Sign papers and return them promptly
- To save on legal fees, do a little preparation before picking up the phone to call your lawyer.
  - o Know what you want to talk about and what answers you need
  - o Stick to the point
  - o The lawyer is not a therapist, if you're calling for emotional support, consider if that's the right person to ask

#### IF YOU CAN'T STAND THE PERSON AND YOU FEEL YOU MADE A MISTAKE

- o ....you probably did! Get out!
- o Ask for a copy of your file including all attorney notes
- o Ask them to tell you all upcoming deadlines and to hand over any progress they have made.
- o Ask them to inform the court, if applicable, that they are withdrawing
- o Go back to Step One!