

# CASE PLANNING

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## CASE PLANNING GUIDE

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### 1. IDENTIFY CLIENT OBJECTIVES

- a) From initial interview, what does the client want?
- b) List facts
- c) Identify legal issues
- d) Generate possible solutions
- e) Identify additional fact investigation
- f) Identify additional legal research
- g) Formulate a timetable for action

List options to present to client

### 2. ANALYZE FACTS, POSSIBLE CAUSE OF ACTION, AVAILABLE REMEDIES

- a) Organize factual chronology
- b) Look at facts from a non-legal perspective
- c) List legal theories, causes of action, defenses

For each:

- 1) List elements
  - 2) Opponent's arguments
  - 3) Possible rebuttal
- e) Test strength of evidence (See Preliminary Fact Analysis)
- 1) List elements
  - 2) Supporting facts for each element
  - 3) Opponents possible rebuttal
  - 4) Method of Discovery

### 3. ANALYZE CAST OF CHARACTERS

**4. FORMULATE THEORY OF CASE (OPPONENT'S)**

**5. SELECT FORUM**

**6. FORMULATE WORKPLAN**

- a) Identify any provisional relief
- b) Identify motion practice
- c) Identify discovery
- d) Plan negotiation
- e) Plan trial

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Some form of case planning is needed for every case that you handle. Many advocates think that case planning means identifying the applicable law, learning some new facts and hoping that the entire case will hold together at the negotiation, hearing or trial. A great deal more is required to meet minimum standards of professional competence.

Case planning involves defining the client's problem, identifying possible solutions and selecting courses of action. It means constructing a complete picture of the client's situation from the facts, the applicable law, and the way in which the facts and law fit in the larger context in which they occur. It must include developing an overall theory of the case — a detailed, coherent and accurate story of what occurred which demonstrates the client's entitlement to relief. This picture requires projecting forward in time, imagining how the opposition will view the case and imagining how it will be viewed if it must be appealed.

Quality representation requires you to make things happen for your clients according to plan. Every step of your plan will influence the ultimate outcome and may even change the entire nature of the case. Advocates develop winning cases — they don't walk through the door.

This overview describes one approach to planning and preparing cases. It breaks out the various steps involved in case planning and presents in linear form that which is

circular. It contains the elements common to all case planning models: defining the problem, generating and examining alternatives, locating facts and law, and devising a case theory to produce the result most favorable to the client's situation.

We have divided case planning into six major steps. In our case plan model, advocates must:

- Identify Client Objectives
- Analyze Facts, Possible Causes of Action, Remedies
- Analyze Cast of Characters
- Formulate a Theory of the Case
- Select Forum
- Formulate Workplan

These steps involve further tasks described below. They are incorporated in the *CASE PLANNING SHEET* contained in this chapter.

### 1. Identify the client's objectives.

From the initial interview, what does the client want? Sometimes identifying the client's objectives requires probing beyond how the client first expresses what she wants. Sometimes the client needs help in articulating and framing exactly what she wants. It's every advocate's duty to find out at the initial interview what the client wants to achieve.

### 2. Summarize the facts of the client's problem.

What happened? Who said and did what? Who are the key players and what is their relationship to the client. This statement summarizes the facts but is specific enough so that someone unfamiliar with the problem could grasp it from reading this summary.

### 3. Identify the legal issues in the case.

What do you initially recognize as the issues in the case? For example: Is the father continually absent from the home? Are the premises habitable? This issue statement will be modified once further legal research and fact gathering are completed.

As you become familiar with particular areas of the law, initial issue identification becomes easier. Checklists of the types of issues presented by various factual situations can be helpful in areas with which you are unfamiliar or which are not in your area of expertise.

### 4. List all possible solutions to the client's problem.

This step involves brainstorming any and all solutions to the client's problem. The point is to generate as many possibilities as you can think of — no matter how crazy or far out. Quantity breeds quality. Include non-litigation strategies such as legislative, administrative, economic development and community education strategies.

This step also forces you to adopt a larger view of the client's problems. The larger implications of a case may relate to the client community as a whole thereby dictating other strategies. While cases often present a conflict between an individual and an agency, a broad range of other relationships and processes may touch on the client's problem in different ways. To generate possible solutions, you must understand some of what's actually occurring within the system where the dispute arises.

## Example

The eligibility worker at the Welfare Department determines that the client and her children are no longer entitled to benefits because the children are not properly enrolled in school. Clearly related to the client's problem are the procedures and relationships between the Welfare Department and the school district and any government policies of the welfare department, the efforts to reduce welfare costs.

The client's problem is very involved in several relationships and processes. The way in which the advocate understands these relationships often determines how she identifies the alternative solutions to solve the client's problem. If action has been taken against the client because of a change in department policy, an administrative hearing for the client may not be an appropriate strategy and litigation to challenge the policy change may be more appropriate.

Understanding the larger context may suggest ideas for further research and fact investigation. Is the action taken against the client isolated or part of a larger change instituted by an institution or agency? How are decisions made within the institution and what are possible pressure points there? Is this behavior part of a pattern and practice that affects the client community? Is this a systemic problem that must be addressed?

Take advantage of the expertise within your program and legal services community in finding out about how institutions and systems function. Failure to examine the larger context within which the problems arise leads to decisions about han-

dling a case which are not the most effective ones to achieve the client's desired goal.

**5. Identify any additional factual investigation that is needed to formulate viable alternatives to present to the client. Include the information needed, the possible sources of that information and the method you would use to get it.**

- WHAT
- SOURCE
- HOW

This step involves locating information needed to offer viable alternatives to the client. This information may be obtained by a quick call to an administrative agency or landlord or may involve more detailed information about an agency's or institution's usual practices. In any event, you should identify what information you need, the source of that information and how you will go about getting it.

**6. Identify any additional legal research that needs to be done to formulate viable alternatives to present to the client.**

What legal research must be completed in order to present viable options to your client? This step is critical to insure that you've identified all the potential legal issues and to determine which of any of the solutions generated in Step 4 are viable enough to present to the client.

In some cases the amount of legal research only may involve checking the language of a code section or regulation. In others it may involve reading narrative overviews of the

subject, analyzing various statutes, regulations and court decisions. Write up the research and include it in the case file. Some offices require a legal memo to the file which includes this information.

**7. Formulate a timetable for action (what must be done, when it must be done and by whom).**

- WHAT
- WHEN
- WHO

This step incorporates what you have decided needs to be done for Steps 5-6 into a workplan. This step is particularly crucial when you are working with other people on a case.

**8. Identify the options that you will present to the client for his/her decision.**

This step assumes that you have completed the tasks in #7, refined the issues in #3 and have narrowed the solutions stated in #4 to realistic and viable solutions. Depending on the case, completing #1-8 could take minutes, days or even months.

**9. Construct a factual chronology of the case.**

Once the client has chosen which option to pursue, it's helpful to put together a detailed factual chronology of what happened when. You should begin as far back as needed to give a full background of the case. Doing the chronology will give you a good grasp on the case and make apparent factual gaps.



**10. Analyzing the case from a “non-legal” perspective:**

Looking at cases from a common sense perspective gives the advocate valuable insight into a case and usually contains the key to possible themes or theories of your case. To help you with this step, we suggest that you get the insight of people who are not in the legal business.

**a) What’s the essential wrong or unfairness to the client?**

What isn’t “right” about what’s happened to your client?

**b) Does this unfairness suggest any causes of action or defenses that were not obvious to you?**

Be creative here. If the law doesn’t recognize a real cause of action here, maybe it should.

**c) Identify any facts that makes the case special or more appealing.**

What stands out about your client, what happened to her or him, or the opponent which distinguishes this case?

**d) Identify any theme or unifying principle that these facts suggest.**

If this scenario was a painting, song, movie or TV show, how would you title it?

**11. Identify the legal theories of the case (causes of action or defenses/counterclaims).**

Formulating the legal theories may require continuing the legal research begun immediately after the initial interview. Expand your research

until a firm decision is reached as to the nature of the substantive law governing the case.

Legal theories are the parties’ legal arguments for why they should prevail. The plaintiff’s legal theory is called a cause of action or claim. A cause of action is a legally acceptable theory for bringing a lawsuit which will be won if the facts support the elements of the theory.

For example, a tenant-plaintiff’s theory in an affirmative action suit against a landlord-defendant might be that defendant had breached a statutory duty to keep a rented apartment in habitable condition, thus entitling the plaintiff to damages. In trying to evict a tenant, a landlord-plaintiff’s theory might be that defendant tenant should be evicted because she had breached the lease by failing to pay the rent pursuant to state law. In a county action to cut off a family from AFDC, the family’s theory for remaining on aid is that the children are deprived of parental support and care as defined in federal and state law.

The defendant’s legal theory may be a defense designed to defeat the cause of action or a simple denial of facts that support the plaintiff’s theory.

For example, in the habitability suit above, the defendant’s theory might be that he did not breach the warranty of habitability. The defendant in the eviction suit might argue that she should not be evicted because she was entitled to not pay the rent because the landlord failed to make promised repairs. The welfare department’s theory could be that the children are not deprived within the meaning of the law.

**12. Using the Legal Issues Form, identify the elements you must prove to prevail for each cause of action or defense, any legal arguments the opponent might make as to their validity, and your rebuttal.**

- Elements
- O’s Position
- Rebuttal

For each cause of action, claim and defense, list the elements that you must prove to prevail on that theory and the authority that supports your argument. Next indicate any arguments your opponent might make as to the validity of the element with applicable authority. Finally, state any legal arguments that you can make to rebut opponent’s arguments.

The elements of a claim or defense are the conditions that must exist to sustain the claim or defense. Elements are found in the substantive law which governs the case, whether the law is embodied in statute, regulation or holding of a court opinion.

For example:

Assume that Section 123 provides: “An owner of real property may evict a tenant in possession of said property if the tenant has failed to pay agreed upon rent.”

In order to evict pursuant to Section 123, these elements must be present: “owner of the property,” “tenant, fails to pay,” and “agreed upon rent.” Parties can argue over what elements must exist or how elements should be defined. The arguments over the existence and definition of elements are legal arguments.

In the example above, the parties could disagree over the meaning of “tenant” in Section 123: whether a person who rents a room from the original tenant is a “tenant”. Or suppose the welfare department alleges that Mother Jones is ineligible as an AFDC caretaker for three children because she was not a parent within the meaning of the law. As to the element of “parent”, Mother Jones’ position is that as a foster mother she meets the definition of parent. The Welfare Department’s position is that “parent” only includes biological or adopted parent. Mother Jones’ rebuttal would involve her legal argument in response to the department’s argument.

**13. Using the Preliminary Fact Analysis Form, identify the facts that support the elements, O’s rebuttal to those facts and additional facts that you need.**

- Elements
- Factual Bits
- O’s Rebuttal
- Facts Needed
- Discovery Method

This step is the nitty gritty of analysis. It requires you to state the elements of each cause of action (transferred from the Legal Issues Form), list any facts or factual bits that you have to prove that element, state the opponent’s rebuttal, identify additional facts that you need to prove the element, and indicate the method to collect that information.

For example, in order to prove the element “fails to pay” in the landlord-tenant example above, plaintiff lists these facts: rent was due on July 1st, landlord did not receive any money from tenant on July 1st or any other date since then. Under “opponent’s rebuttal,” plaintiff indi-

cates that tenant alleges she mailed the rent on June 28th.

**14. Identify the “cast of characters” in the case. For each person or institution, list their strengths and weaknesses and any additional information you need about them.**

- Character
- Strengths
- Weaknesses
- Information

Err on the side of including all key players in the case including including institutions and groups.

**15. Identify the theory of the case.**  
**16. Identify the opponent’s theory.**

At this point you have developed your legal theories of the case. From the material and evidence initially available, you must begin to develop a notion of how a particular course of events could have happened — a theory of the facts of the case. The theory of the facts must be grounded in your legal theories and the two enmeshed to formulate the theory of the case.

The theory of the case describes how you want the trier of fact to view the case. This picture involves a combination of your theory of the law and a theory of the facts. It is a dramatic appeal based upon the equities which appeals to the trier of fact’s beliefs about what is right and what constitutes fair play.

A natural impulse is to rehash the facts and law developed in the preliminary analysis and to label the hash the case theory. A good case theory is based on this analysis, but

is couched in a coherent framework which compels the conclusion that your client should prevail.

A good case theory:

- **Is based on strong facts and inferences which can be fairly drawn from these facts.**

- **Is built on facts not subject to much, if any, dispute**, such as documents which speak for themselves, admissions against interest, testimony from independent, reliable witnesses who have no stake in the outcome of the case; undisputed evidence from other areas. For example, assume undisputed evidence exists that a consulting physician who states that a disability claimant was not disabled examined the claimant for only 10 minutes. This evidence could strengthen the client’s credibility and could become part of the hearing officer’s reconstruction of the manner in which the SSA had handled the claimant’s case.

- **Is not inconsistent with some incontestable fact.** A theory premised on the notion that the claimant visited certain doctors when the evidence indicates that she hasn’t is not a good theory. A different theory must be developed which recognizes the existence of incontestable facts and provides a means for the recipient to prevail.

- **Takes into account and explains away as many unfavorable facts as possible.** It is rare that clients present a clean set of facts where no facts are unfavorable. Those clients will not need your help. As a result the theory you develop must take into account the unfavorable facts and have built into it an explanation for them. To be believable



the theory has to explain their existence and has to be one which the trier of fact can reasonably believe.

• **Is accepted by the trier of fact without having to stretch the imagination—it is grounded in common sense and is consistent with what the trier of fact knows about how things happen in the world.** If it is too involved and requires too much imagination or belief in the way things are that is not generally accepted, it has little chance of being accepted.

This grounding in common experience is often the most difficult for advocates representing clients with little or no funds and living in poor communities. It is difficult to convince a trier of fact of a set of circumstances which are particular to the life situation of such individuals but not generally found in the life situation of the trier of fact.

In developing a theory consistent with this concern, you have to take into account this difference in perception and may well have to adopt the theory to deal with it. Advocates who fail to consider this are often surprised when a theory that seems very straightforward is not accepted by the trier of fact, because they find it unbelievable.

• **Is not based on wishful thinking about any aspect of the case.** The theory must be consistent with the facts and law which actually exist, not on what you wish they them to be. At the same time, you must be creative. The history of legal services is full of creative theories, instances where the facts supported the theory being developed and there was reason to believe that the law could be developed in a certain way.

**17. Identify the forum where you will bring the case or whether the forum can or should be changed.**

If a choice of forums exists, some factors to consider are: resolution time, sympathetic judges, availability of jury trial, availability of discovery, available relief, and complexity, sophistication of procedures.

**18. Identify any provisional relief and motions that you will bring or anticipate the opponent bringing.**

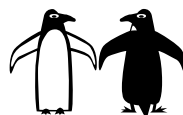
**19. Do a discovery plan**

Building on your Preliminary Fact Analysis:

- Select the way each fact will be proved
- Determine Sequence
- Identify Problems
- Discovery Method
- Begin
- Complete
- O's Response
- Rebuttal

**20. Do case workplan**

- Identify the tasks that need to occur
- Identify who will do what
- List the support needed to accomplish the tasks
- State completion dates (over estimate)





## CASE PLANNING WORKSHEET

1. Identify the client's objectives.
2. Summarize the facts of the client's problem
3. Identify the legal issues in the case.
4. List all possible solutions to the client's problem.

5. Identify any additional factual investigation that is needed to formulate viable alternatives to present to the client. Include the information needed, the possible sources of that information and the method you would use to get it.

WHAT	SOURCE	HOW
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6. Identify any additional legal research that needs to be done to formulate viable alternatives to present to the client.

7. Formulate a timetable for action (what must be done, when it must be done and by whom).

WHAT	WHEN	WHO
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c) Identify any facts that makes the case special or more appealing.

d) Identify any theme or unifying principle that these facts suggest.

11. Identify the legal theories of the case (causes of action or defenses/counterclaims).

12. Identify the elements you must prove to prevail for each cause of action or defense, any legal arguments the opponent might make as to their validity, and your rebuttal.

<u>Elements</u>	<u>O's Position</u>	<u>Rebuttal</u>
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13. Using the Preliminary Fact Analysis identify the facts that support the elements, O’s rebuttal to those facts and additional facts that you need.

Elements	Factual Bits	O’s Rebuttal	Facts Needed
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14. Identify the “cast of characters” in the case. For each person or institution, list their strengths and weaknesses and any additional information you need about them.

Character	Strengths	Weaknesses	Info
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15. Identify the theory of the case.

16. Identify the opponent's theory.
  
17. Identify the forum where you will bring the case or whether the forum can or should be changed.
  
18. Identify any provisional relief and motions that you will bring or anticipate the opponent bringing.
  
19. Do discovery plan
  - .Select the way each fact will be proved
  - .Determine Sequence

Discovery Method	Begin	Complete	Problems O's Response	Rebuttal
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20. Do case workplan
  - Identify the tasks that need to occur
  - Identify who will do what
  - List the support needed to accomplish the tasks
  - State completion dates (over estimate)