

Environmental Law and Community Engagement Clinic

Course Syllabus and Procedures

Fall 2020

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Introduction and Welcome

Thank you for signing up for Environmental Law and Community Engagement Clinic this semester! As you might know, our Clinic fits within the Law School's Program in Law, Communities and the Environment (PLACE). You will have the opportunity this semester to work on real-world environmental problems in a variety of venues.

Our Clinic focuses on environmental law from the perspective of impacted communities because we recognize that there are many different voices within a community that will need representation. Although we often talk about "our" cases, we need to remember that these cases are *not* ours. Through all of our legal work, we need to make sure that the client's voice comes through. To do that, we first must listen to them.

In past years, our Clinic has represented a diverse array of public-interest clients, from a community group working to preserve an early 20th-century African-American schoolhouse to local governments filing an *amicus* brief in the Supreme Court of the United States.

In addition to working on cases for in-house Clinic clients, you might have the option to work with attorneys at the Southern Environmental Law Center (SELC), a leading environmental law and policy organization headquartered here in Charlottesville. You will be assigned shortly after our first meeting to primarily work on either "in-house" cases *or* SELC cases, so please let me know your preference as soon as possible.

If you are interested in a year-long clinic experience, you can enroll in the Advanced Clinic (a two-credit course) after successful completion of one semester in the Environmental Law and Community Engagement Clinic.

Supervisory meetings

Whether you are working with me or with attorneys at SELC, I will be reviewing your day-to-day work. We will start by scheduling a thirty-minute time slot to meet once a week. These one-on-one meetings provide opportunities for us to go over your Clinic work and for me to give you some individual guidance. These meetings also provide a chance for you to ask questions and share your feedback on how the Clinic is working.

Given the limitations imposed by the pandemic, these meetings might need to be conducted remotely, *via* Zoom or by cell phone. You and I can talk about how best to manage these challenges, and we can adapt as needed throughout the semester.

Time Commitment for the Clinic

The Clinic is a significant commitment of 5 credit hours. *The course requires you to log 16 hours per week, on average, over the course of the semester.* Included within the hours requirement is time spent in our weekly class sessions, time spent preparing for those classes, and time spent meeting with me to review or discuss your Clinic assignments. Your hours can vary significantly from week to week, depending on the needs of your projects. A pressing court deadline might lead to an exceptionally busy week, which might be followed by a light week that allows you to catch up on other classes. That said, I anticipate that your hours for the Clinic might break down in a given week as follows:

- 13 hours (i.e., one-and-a-half business days) working on Clinic cases;
- 80 minutes in class;
- 30 minutes in a weekly supervisory meeting;
- 60 minutes reading class materials and preparing for class.

As members of a working legal clinic, you will need to log your hours on weekly timesheets. This is a course requirement.

I will provide you with blank timesheets. Please complete a new timesheet every week and email it to me *and* Cindy Derrick (Faculty Assistant supporting Clinical Programs) prior to the start of class each Wednesday. Timesheets should run Wednesdays to Tuesdays, so that any hours you complete on the day that you turn in a timesheet should be logged on the following week's timesheet. You should also record on your timesheets all time spent in class, time in our supervisory meetings, and time spent preparing for class.

Maintaining Electronic Files for Clinic Cases

The Clinic's in-house case files are saved in an online file-sharing network. I will grant you access to the individual cases on which you are working. *Please save all case-related work in these electronic folders, including research memoranda, copies of cases you find useful, emails, etc. Literally everything that might go with the case should be saved in these folders.*

SELC maintains its own files, separate from the Clinic. If you are working on SELC cases, you will need to follow their procedures for protecting the confidentiality of materials.

Client Confidentiality

The Environmental Law and Community Engagement Clinic owes the same duties of confidentiality and loyalty that any law firm owes its clients. It is important that you take steps to maintain the confidentiality of client communications and case files at all times. You are responsible for protecting all attorney-client privileged or work-product materials. *Please sign the separate Confidentiality Agreement for the Clinic and email it to Cindy Derrick.*

Conflicts of Interest

All of you will fill out the *Conflict of Interest Form* at the start of the semester. Please update the form during the semester if needed and discuss any potential conflicts issues with me as soon as you are aware of them.

Clinic Resources

Cindy Derrick is the Faculty Assistant supporting all clinical programs at the Law School. Her contact information is as follows:

Office: SL244A
Phone: (434) 924-7893
Email: cderrick@law.virginia.edu

Cindy is an invaluable resource and can answer any questions you might have about printing, conference calls, access to Clinic spaces, etc.

Grading

Your grade for the Clinic will be based on an evaluation of all of your work for Clinic cases and projects, as well as your active participation during the classroom component of the Clinic. For students placed at SELC, I will solicit input on your work from the attorneys that you have assisted during the semester. Factors that go into the evaluation of your work include professionalism, independence, initiative, quality of written work product, and quality of oral advocacy (if applicable). I will also review your time sheets to confirm that you have met the hours requirement for the Clinic and used your time wisely.

Exit Procedures for the Clinic

At the end of the semester, you will need to write a short memo to me documenting your work in the Clinic. The end-of-semester memo should include:

- A brief description of your legal research efforts on particular topics (by this I mean not just a summary of your research results, but also a summary of how thoroughly you researched specific issues and what issues require more follow-up); and
- A summary of where your work stands and where different documents can be found when you transition off a project.

Your overarching goal with this memo should be to make it easy for me and future Clinic students to pick up the work on your cases after you leave. This memo is needed whether you are working on in-house matters or SELC cases.

All Reading Assignments Will Be Posted On Canvas

WEEK 1: Wed., Aug. 26: INTRODUCTION

Assignment: Read excerpt from the book Stand Up That Mountain (Chapter 1).
Read Course Syllabus and Procedures before first class.
Read mock Retainer Agreement between Bedford Falls Conservation Council and UVA Environmental and Regulatory Law Clinic

Blank Time Sheet – To Be Filled Out Weekly
Blank Conflicts Check Sheet – To be Filled Out ASAP
Confidentiality Agreement – To be Signed ASAP

Agenda: We will go through the syllabus and discuss the Clinic's operating procedures. We will also go through initial cases and projects.

We will review the mock retainer agreement and the excerpt from Stand Up That Mountain and talk about the process for initiating representation.

WEEK 2: Wed., Sept. 2: WHAT ARE THE PRACTICE-RELEVANT CHARACTERISTICS OF ENVIRONMENTAL LAW?

Assignment: *Canvas*: Read excerpt from Prof. Cannon's book, Environment in the Balance: (pp. 4-21; 28-37).

Agenda: Discuss readings with a focus on the history of the modern environmental movement, and on the statutes and doctrine that form the framework for modern environmental law. The goal is to provide you with a brief primer on modern environmental law and advocacy.

Conduct case rounds, checking in on initial case assignments.

**WEEK 3: Wed., Sept. 9: UNDERSTANDING AND WORKING WITHIN THE
ADVOCACY COMMUNITY**

Assignment: Laura McFarland, “Landfill possible in Cumberland near Powhatan border,” *Powhatan Today* (June 4, 2018).

Irène Mathieu, “The proposed Cumberland County mega-landfill will threaten children’s health,” *Virginia Mercury* (Nov. 12, 2019)

Muriel Miller Branch, *Pine Grove School and Community*

AMMD Pine Grove Project Brochure

Letter from UVA Clinic to Roger W. Kirchen, Virginia Department of Historic Resources (Apr. 6, 2020).

Agenda: Learn about the AMMD Pine Grove Project’s concerns regarding a proposed mega-landfill in Cumberland County.

Conduct case rounds.

WEEK 4: Wed., Sept. 16: INITIATING A CITIZEN-SUIT ENFORCEMENT

Assignment: *Environmental Law Stories*, Chapter 7, “The Story of *Laidlaw*: Standing and Citizen Enforcement.”

Agenda: Discuss *Friends of the Earth v. Laidlaw Environmental Services* with an eye towards how citizen suit challenges are initiated, standing is established, and how government enforcement is triggered.

Conduct case rounds.

WEEK 5: Wed., Sept. 23: PREPARING & USING EXPERT TESTIMONY

Assignment: Excerpt from Pre-Filed Testimony of Jim Grevatt, Managing Consultant, Energy Futures Group, *Petition of Va. Elec. & Power Company re: 2019 DSM Update*, PUR-2019-00201 (filed Mar. 20, 2020).

Excerpt from Live Surrebuttal Testimony of Mark James, Institute for Energy and the Environment, *Petition of Va. Elec. & Power Company re: 2019 DSM Update*, PUR-2019-00201 (Apr. 29, 2020).

Excerpt from Post-Hearing Brief of Virginia Energy Efficiency Council, *Petition of Va. Elec. & Power Company re: 2019 DSM Update*, PUR-2019-00201 (filed May 22, 2020).

Expert from Final Order, State Corporation Commission, *Petition of Va. Elec. & Power Company re: 2019 DSM Update*, PUR-2019-00201 (entered July 30, 2020).

Order from Commission to Establish New Efficiency Docket

Agenda: We will explore the use of expert testimony, focusing on an upcoming Virginia State Corporation Commission docket to establish an energy efficiency “dashboard” for tracking energy savings and expenditures.

Conduct case rounds.

WEEK 6: Wed., Sept. 30: WHO IS AN “ENVIRONMENTALIST?” UNDERSTANDING ENVIRONMENTAL RACISM

Assignment: Jedidiah Purdy, *Environmentalism’s Racist History*, The New Yorker (Aug. 13, 2015).

Excerpts from J. Drew Lanham, *The Home Place: Memoirs of a Colored Man’s Love Affair with Nature* (Milkweed Editions 2016).

- *The Home Place*
- *Birding While Black*
- *Digging*

Agenda: Many of us who have worked in the environmental nonprofit advocacy community have had an image of who is an “environmentalist” in our heads: John Muir, Aldo Leopold, Rachel Carson. The pervasiveness of that image has constrained our own understanding of environmentalism and has impaired our ability to advocate for communities impacted by environmental harm. This class looks to examine our unconscious biases.

WEEK 7: Wed., Oct. 7: LEVERAGING THE ROLE OF THE *AMICUS CURIAE*

Assignment: Petitioners’ Statement of Issues, *Environmental Defense Fund, et al. v. James Owens, Administrator, National Highway Traffic Safety Administration*, Case No. No. 20-1169 (consolidated with Nos. 20-1145, 20-1167, 20-1168, 20-1173, 20-1174, 20-1176, at 20-1177) (June 29, 2020).

Executive Summary, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 85 Fed. Reg. 24,174 (April 30, 2020) (“Final Rule”).

EPA and NHTSA Fact Sheets in Support of SAFE Rule Part 2.

Consumers Union’s Comments on NHTSA and EPA’s Notice of Proposed Rulemaking “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks” (filed October 26, 2018).

Agenda: Review pending SAFE Rule litigation in the U.S. Court of Appeals for the D.C. Cir. with an eye toward the role that *amici curiae* might play.

Conduct case rounds.

WEEK 8: Wed., Oct. 14: DELIVERING AN EFFECTIVE ORAL ARGUMENT

Assignment: Read excerpts from *Tongue-Tied America: Reviving the Art of Verbal Persuasion*, (pp. 39-41; 43-44; 57-58; 61-62; 64-66).

Read opening statement of counsel for Potter Power & Elec. Co.
Read opening statement of counsel for Bedford Falls Conservation Council.

Read Virginia statute establishing the Division of Consumer Counsel within the Office of the Attorney General.

Agenda: Review opening statements and discuss what worked, what failed, etc.
Draft a one-paragraph opening statement for the Division of Consumer Counsel and prepare to deliver it in class.

Conduct case rounds.

WEEK 9: Wed., Oct. 21: THE USE OF PUBLIC POLICY RESEARCH IN ENVIRONMENTAL ADVOCACY

Assignment: Climate Restoration Initiative, *Environmental Resilience Institute*, University of Virginia

Lesley Jantarasami, Bipartisan Policy Center, Farm & Forest Carbon Solutions Initiative, *Natural Carbon Solutions in U.S. Farms and Forests* (July 2020).

Once a Fringe Idea, Geoengineering Moves to Center Stage in Policy Arena, Environmental Forum (May/June 2020).

Agenda: We will take a closer look at UVA's Climate Restoration Initiative, considering: (1) how a carbon offset program or negative emissions credit program might fit into the Virginia Clean Economy Act (VCEA); and (2) how a stand-alone, negative emission program might work without disturbing the VCEA.

Conduct case rounds.

WEEK 10: Wed., Oct. 28: NOTICE AND COMMENT RULEMAKING

Assignment: Read excerpt from "Environmental Law Practice, 4th Edition, pp. 261-67; 302-07.

Brookings Report, "More than SPAM? Lobbying the EPA through Public Comment Campaigns," (Nov. 29, 2017).

U.S. Fish and Wildlife Service, Notice of Petition Findings and Initiation of Status Reviews, Endangered and Threatened Wildlife and Plants; 90-Day Findings for Three Species, 84 Fed. Reg. 41691 (Aug. 15, 2019).

Complaint for Declaratory and Injunctive Relief, *Center for Biological Diversity v. David Bernhardt et al.*, Case No. 1:20-cv-1227, U.S. District Court (filed Feb. 20, 2020).

Agenda: We will take a hand-on approach to learning about notice-and-comment rulemaking at the federal level, concluding with drafting our own individual comments for filing on an active docket, <https://beta.regulations.gov/document/FWS-R3-ES-2018-0110-0001>.

WEEK 11: Wed., Nov. 4: PROFESSIONALISM

Assignment: “I’m Rubber, You’re Sued: Should Uncivil Lawyers Receive Ethical Sanctions?”, 26 *Geo. J. Legal Ethics* 1015 (2013).

Agenda: Discussion on collegiality in the bar, with an eye toward an effective and forceful public interest advocate.

Conduct case rounds.

WEEK 12: Wed., Nov. 11: LITIGATION OPTIONS TO COMBAT GLOBAL WARMING

Assignment: Richard Lazarus, Excerpt from *THE RULE OF FIVE: MAKING CLIMATE CHANGE HISTORY AT THE SUPREME COURT* (Belknap Press 2020) (reprinted in *The Environmental Forum*).

Cale Jaffe, Excerpt from *Melting the Polarization Around Climate Change Politics*, 30 *GEORGETOWN ENVTL. L. REV.* 455 (2018).

Cale Jaffe and Michael Livermore, *EPA’s Nondiscretionary Duties to Act Under Section 115* in *COMBATING CLIMATE CHANGE WITH SECTION 115 OF THE CLEAN AIR ACT: LAW AND POLICY RATIONALES* (forthcoming Edward Elgar Publishing 2020).

Agenda: *Massachusetts v. EPA*, 549 U.S. 497 (2007) was once seen as a watershed Clean Air Act case that would quickly usher in an era of comprehensive, greenhouse gas regulation at the federal level. More than a decade later, federal climate efforts have stalled. How should climate advocates move forward on the national level?

WEEK 13: Wed., Nov. 18: CONCLUDING LUNCH AND OPPORTUNITIES FOR INSPIRATION

Assignment: Katie Redford, *Attention, Law Students: Our Country and Our Planet Need You to Lead!*, 69 *Stanford L. Rev.* 1831 (2017).

Agenda: If the pandemic permits, we will meet as a class in-person to have our final discussion over lunch. We will share our reactions to the “call to arms” from Katie Redford (UVA Law ’95).

CLASSES END, NOVEMBER 24, 2020