Environmental Litigation Seminar

This course introduces students to the strategies and skills used by public interest lawyers practicing impact litigation to protect the environment and human health. Rather than focusing on doctrine or substantive law, it is aimed at developing the practical skills and judgment that are essential to litigate these interesting and important issues. To that end, we will rely in significant part on briefs and other practice materials, and address actual situations environmental lawyers face representing clients in litigation.

The focus here will be on federal court litigation and, in particular, the “record review” litigation that is common for many public interest environmental cases. We will touch on other approaches, including hearings practice, but this is not an in-depth trial practice seminar.

There is no textbook but there will be reading assignments for each class that will include cases, statutes and regulations, sample pleadings and briefs, articles and other material. You should have available the federal rules of civil procedure, the local rules for the Western District of Washington, and the state ethical rules. There also will be two short writing assignments.

Class 1: Course Overview, Client Representation, Formulating Legal Strategy

Topics Covered:
- Rules of the road
- The role of the public interest environmental lawyer
- The Attorney-Client Relationship
  - The Initial Investigation
  - Representation Agreements & Fees
  - Representation of Multiple Clients
  - Litigation Holds and E-discovery
- Relationships with opposing counsel
- Developing case strategy
- Preview of standards of review and early remedies

Class 2: Pre-Litigation

Topics Covered:
- Factual and legal investigations
- Freedom of Information Act
  - Deliberative process and other exemptions
  - Fee waivers and appeals
- Administrative processes & appeals, exhaustion
- 60 day notices
- SLAPPs and SLAPP-backs
Class 3: Initiating Litigation; Standing

Topics Covered:
- Complaints and Answers
- Standing
  - basic standing rules
  - recent developments
- Intervention

Class 4: Jurisdiction, Venue & Timeliness (First Writing Assignment – Defending Jurisdiction)

Topics Covered:
- APA & citizen suit jurisdiction
- Venue
- Timeliness – Statutes of limitations & Ripeness
- Writing Assignment No. 1 – Opposition to Motion to Dismiss

Class 5: Standard of Review and the Administrative Record

Topics Covered:
- The “final agency action” requirement
- Different citizen suit standards
- The “Record Review” Rule and the importance of prelitigation planning
- Limits to record review—deliberative process and other loopholes
- Extra-record materials—litigating the exceptions
- Use of Experts in record review cases
- Discussion of First Writing Assignment

Class 6: Addressing the Merits, Summary Judgment (First Writing Assignment Due)

Topics Covered:
- Deference
- Statutory and regulatory history
- Agency policies
- Using the record
- Oral advocacy

Class 7: Remedies

Topics Covered:
- TROs and preliminary injunctions
- Basic injunction standard and “special” standards
- Bond
- Penalties and fees
- Negotiation and settlement
Class 8: Trial and hearings boards (Second Writing Assignment – Briefing the Merits)

Topics Covered:
State hearings board practice
Hearings and de novo review
Evidentiary standards
Working with experts
Discovery
Writing Assignment No. 2 – Motion for Summary Judgment (single issue)

Class 9: Attorneys’ fees and costs

Topics Covered:
Recovering fees from the government
Record keeping
Negotiating strategies
Ethical considerations in fee issues
Discussion of writing assignment No. 2

Class 10: Extra-Litigation Advocacy (Second Writing Assignment Due)

Topics Covered:
Talking to reporters.
Drafting press releases
Legislative and Policy Advocacy
Ethical considerations in out of court advocacy
Class Review and Wrap-up