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 will be only one writing assignment but several steps in completing it.

This year, Jan Hasselman and Todd True, both with the Northwest Office of Earthjustice, will team-teach the seminar.

**Topics and Assignments**

**Class 1: Course Overview, Client Representation, Formulating Legal Strategy (January 8)**

**Topics Covered:**
- Course overview
- 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
- Initial development of case and strategy

**Class 2: Pre-Litigation (January 17) (Note: There will be no class on January 15th. Instead, class meets Friday, January 17th in Room 240 from 12:45 PM – 2:30 PM)**

**Topics Covered:**
- Factual and legal investigations
- Using the Freedom of Information Act
  - Deliberative process and other exemptions
  - Fee waivers and appeals
- Administrative processes & appeals, exhaustion
- 60 day notices
Class 3: Initiating Litigation; Standing (Introduction to Writing Assignment) (January 22)

Topics Covered:
Complaints and Answers
Standing
- basic standing rules
- recent developments
Intervention
- to intervene or not
- to oppose intervention or not
Writing Assignment – (Scope, preparing a draft, submitting a final)

Class 4: Jurisdiction, Venue & Timeliness (January 29)

Topics Covered:
APA & citizen suit jurisdiction
Venue
Timeliness – Statutes of limitations & Ripeness

Class 5: Standard of Review and the Administrative Record (February 5)

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 Writing Assignment

Class 6: Addressing the Merits, Summary Judgment (February 12)

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

Class 7: Remedies (Draft of Writing Assignment Due) (February 19)

Topics Covered:
TROs and preliminary injunctions
Basic injunction standard and “special” standards
Negotiation and settlement
Class 8: Trial and hearings boards (February 26)

Topics Covered:
State hearings board practice
Hearings and de novo review
Evidentiary standards
Working with experts
Discovery

Individual meetings to discuss draft of writing assignment

Class 9: Attorneys’ fees and costs (March 5)

Topics Covered:
Recovering fees from the government
Record keeping
Negotiating strategies
Ethical considerations in fee issues

Class 10: Extra-Litigation Advocacy (March 12)

Course Evaluation — Bring your laptop or other mobile device to class to participate in the online course evaluation.

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

Final writing assignment due to Academic Services (Room 361) by 4:00 PM, Wednesday, March 19, 2014 (one week after last class).