

**Indiana University
Conservation Law Clinic
Practice Manual**

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THE CONSERVATION LAW CLINIC AND ITS CLIENTS

The Conservation Law Clinic provides legal counsel to clients pursuing conservation objectives in Indiana, the Midwest, and the nation. The Clinic is staffed by second and third-year law students under the supervision of W. William Weeks, Jeffrey B. Hyman, and Andrea Need. Professor Weeks is the Director of the Clinic, and the President of the Conservation Law Center, which manages the Clinic in accordance with a memorandum of understanding with the Indiana University School of Law. Professors Hyman and Need are the Center's Staff Attorneys.

The Clinic accepts only selected cases, clients, and matters that meet the following objectives: solve or help solve natural resources and conservation problems; represent useful learning opportunities for second and third-year law students; and improve the body of conservation law and policy.

WHAT THE CLINIC DOES – AND DOES NOT – DO

The Clinic can provide a wide range of legal services, including legal research, representation in state and federal agency matters, litigation, counseling, negotiation, and drafting legislation and legal documents from contracts to comments on state and federal regulatory matters. Though we can assist clients and client organizations in a variety of ways in efforts to obtain legislative solutions to their legal problems, we do not lobby.

TRACKING TIME; FEES

The Clinic provides its services without charge to the clients that the Clinic agrees to represent. However, we keep close track of time expended on Clinic matters. There are a number of reasons to track time, including the desire of some of our clients to report the value of services we provide and the need to adequately document our investment of time in a matter in which it is appropriate for the Clinic to seek to recover attorney's fees from other parties.

ENGAGEMENT LETTER; CLIENT INTAKE FORM

The scope of the Clinic's representation will be spelled out in an Engagement Letter prepared for every new matter. The letter is signed by CLC and the client. The letter must reflect clear and specific goals of the representation as determined by the Clinic and the client. For the Clinic's files and reference, we also fill out a Client Intake Form in which essential contact information about our clients is documented and maintained.

CLINIC RESPONSIBILITIES; CLIENT RESPONSIBILITIES

In the course of the Clinic's work for clients, numerous decisions will have to be made. The client is responsible for making decisions affecting the ultimate goals of the representation. The client, for example, decides when to compromise its original objectives in order to resolve a matter or move it forward. The Clinic, on the other

hand, will make all tactical decisions regarding the representation, in close consultation with the client. These decisions include, for instance, the manner, tone, style, and posture of all legal communications and negotiations. Similarly, the Clinic must determine how far and where to direct research, whether and when to request meetings with adverse parties, how to frame communications to agencies, whether filing a lawsuit is a viable choice for the client, and, if the client determines after due counseling that a lawsuit ought to be filed, when and where the suit should be filed. The Clinic always reserves the right to refuse to press a legal claim that is, in its expert opinion, not justified.

Before the representation begins, Clinic interns or attorneys must complete the Client Intake Form, and develop, with the Client, a clear understanding of the method by which the client will make decisions. For example, if the client is an organization, the client's bylaws may require all organizational decisions to be made by majority vote, in an open meeting, with a quorum of members present. The Clinic needs to know, document for its files, and confirm in writing with the client the person/persons who is/are authorized to speak for the client.

If it appears that, in the course of the representation, it may become necessary for a decision to be made without sufficient time to follow the client's usual decision-making process, Clinic attorneys must also determine with the client the manner in which emergency decisions will be made and communicated to the Clinic.

If and as any of this critical information changes, Clinic records must be updated.

WHAT TO EXPECT & WHAT WE EXPECT

CLINIC BY COMPARISON WITH OTHER LEGAL EDUCATION

Clinical courses are unlike other law school courses in a few respects.

Most important, unlike other courses you have taken, you are not merely responsible for your own performance. You are responsible for zealously representing a client. Nothing less than the best representation you are able to provide is ethically acceptable.

Even so, the Clinic is also a law school course, and as such, your performance will be evaluated and graded. A detailed description of the grading criteria is provided below.

You will have at least one mid-semester individual meeting with Professor Weeks, Hyman, and/or Need to discuss your progress, aspirations, concerns, and performance. Prior to that meeting, you will be asked to submit a written self-evaluation, and it will be discussed at the meeting. Your grade should therefore not be a surprise to you at the end of the course, and if your performance is deficient in some way, you should receive ample and relatively early warning.

Please take note that in one other respect, at least, your approach to the Clinic cannot be the approach law students take to some other courses. You will not be able to concentrate your efforts into a few weeks before the end of the semester. You must devote an appropriate amount of time to client matters throughout the semester, and you will need to make each hour spent on client matters count.

There are likely to be frequent client team meetings at which progress in the representation is reviewed, research is discussed, and work assignments are made. Professor Weeks, Hyman, and/or Need will attend many of such meetings, and preparation and punctual attendance is mandatory. A significant part of the learning you will do in the course will occur while presenting to, listening critically to, and interacting with colleagues in client team meetings.

In accordance with common practice in law offices, in Clinic interaction you should address Professors Weeks, Hyman, and Need by their first names: Bill, Jeff, and Andrea, respectively. Do not allow yourself to believe that this collegiality means that excellent performance is not required. Remember that you owe excellent performance not primarily to the Clinic, and not even simply to yourself. You owe it to the Clinic's clients.

Success in every category covered in this memo is dependent upon your willingness to take the initiative in your work, as opposed to digesting (or hoping to later consider) material presented to you in class. Avoid being passive about problems. Actively try to resolve them. Consult your Clinic colleagues and Clinic staff frequently. If you need to set up a scheduled meeting on a matter, do it.

Finally, please give some thought to the idea that among the greatest challenges you will face may be the need to balance the demands of the Clinic with competing pressures in your life. You will need to develop the skills to work under pressure. You will need to earn the respect of and develop good working relationships with your Clinic colleagues. You will need to be able to do a two hour job in two hours, as

opposed to 15 minutes or three days. Skills in each of these areas are critical to your future as an attorney, as well as your present obligations as a Clinic intern.

EVALUATION CRITERIA

These specific criteria, among others, will be used in evaluating your work.

Clinic Hours

Students must average 9 hours weekly on client matters, which includes time in client team meetings (but does not include class time).

Diligence, Timeliness, and Case Management

You will be expected to assume responsibility, with your teammates, for managing the client's case, taking the initiative to develop legal theories and strategies, doing necessary research, identifying the need for and recruiting needed interdisciplinary expertise, discovering applicable deadlines, writing professionally finished work product, managing your time effectively, and taking action in a timely manner.

Elements of performance:

1. Meet all client, filing, and other case or matter-related deadlines, moving the matter along in a timely fashion.
2. Make chronological, contemporaneous notes of all interviews and telephone calls, and keep these notes in your physical and electronic files.
3. Keep copies of written material that reflects the Clinic's legal analysis of the case in the files. Upon delivery of a final document reflecting your analysis, deliver to your supervising attorney a copy of every case you cite, every statute you cite, and any other material that is relevant to the analysis you provide.
4. See that client files are updated with final documents in a timely manner in the Clinic office, so that the documents will be readily available for review by colleagues and supervisors.
5. Keep and turn in accurate time records weekly.
6. Check e-mail and messages daily, or more frequently if you are working with others toward a project deadline.
7. Arrange for case coverage if you are sick.
8. Answer phone calls and e-mails promptly.

Judgment and Problem Solving

You should develop the ability to identify and diagnose client problems and identify objectives and alternative strategies for resolving them; to assess the risks and benefits of likely outcomes of the representation; to decide, in consultation with Clinic staff and other interns, how to begin to address a client's issues, and to identify and carry out steps toward developing needed legal advice and products; and to reflect on and learn from experience.

Elements of performance:

9. Identify the circumstances and needs that make the situation a problem for the client.

10. Identify client priorities and objectives.
11. Identify impediments to reaching client goals.
12. Identify alternatives, choose among them, consult with your colleagues and the client, and implement decisions.
13. Reflect on and learn from your experiences, so you can better represent this and other clients in the future.

Legal Research and Reasoning

We expect you to develop and demonstrate the following abilities: (1) analyze a legal problem and synthesize the law and facts of a given situation; (2) generate, justify, and assess the strengths and weaknesses of alternative legal positions; (3) identify, pursue, and timely complete all necessary research and develop sound and accurate legal conclusions; and (4) use legal materials creatively and imaginatively.

Elements of performance:

14. Identify and develop factual issues by conducting a thorough investigation and fact-gathering.
15. Identify and research legal issues, and find and accurately apply statutes, regulations, case law, and other relevant information.
16. Demonstrate creativity and flexibility in developing strategy.
17. Identify weaknesses in strategy and prepare for opponent's responses.
18. Plan, develop, and follow through on a research strategy for each element of the client matter.
21. Produce well-written, accurate, and error-free materials in which the results of legal research are communicated.

Client Service and Professional Responsibility

We expect you to demonstrate an acute sense of responsibility regarding professional choices and their consequences, and the values implicit in those choices. We expect you to prepare well for and communicate to a professional standard with other interns and Clinic staff attorneys in preparation for the active and effective communication you must establish with our clients. We expect that you will fulfill client related assignments in a competent and timely way.

Elements of performance:

22. Build rapport with the client by listening carefully and empathetically.
23. Never fail to keep the client informed of the progress of the case or matter.
24. Return a client's phone or other messages promptly.
25. Respond to expressions of client needs.
26. Effectively counsel the client about legal choices and decisions.
27. Know and follow the Rules of Professional Conduct.
28. Identify potential ethical issues in cases and develop strategies for dealing with them, with colleagues and your supervisor.
29. Act in an ethical, moral and professional manner with clients, colleagues, supervisors, other attorneys, court and agency personnel, and decision makers.

30. Seek adequate consultation with your supervisor including review of written drafts, discussion of case developments and strategy, and notice of potential delays or problems in the case or matter.

31. Take responsibility for your own learning, critique your own performance, and respond to constructive criticism and feedback.

Written and Verbal Performance

We expect you to express ideas in speech and writing with accuracy, clarity, and economy. While elegant and persuasive writing is always the goal, it is in any event essential that you produce carefully prepared, error-free documents. Your supervisors and colleagues are not proofreaders or copy editors. While it is entirely appropriate to turn in “rough” drafts for conceptual help, it is never appropriate to turn in a written product that is poorly formatted and replete with typographical, grammatical, and spelling errors.

Elements of performance:

32. Produce clear, concise, persuasive, and error-free letters, memos, memoranda of law, and pleadings.

33. Prepare for oral presentations of your written work. Prepare thoroughly for client team meetings, as well as for court, agency, and other public appearances.

34. Learn from critiques of work and strive to improve communication skills based on those critiques.

Team Work

Very few lawyers work alone. The ability to work cooperatively in groups is a skill that you must develop to be successful as a lawyer, and it will be central to our approach in this Clinic.

Elements of performance:

35. Work effectively on cases and projects as part of a team.

36. Prepare carefully for your role in client team meetings, and listen actively to others in such meetings.

37. Develop positive working relationships with your supervisor.

38. Attempt to discover answers to questions before consulting your supervisor.

39. Work effectively with opposing counsel, court and agency personnel, and the judiciary.

40. Develop positive working relationships with administrative and support staff.

CLINICAL LAW OFFICE PROCEDURES

ORGANIZATION OF CLIENT FILES

New Clients

An engagement letter and a client information form must be filed for each new client.

Chronological File

Every client folder should have a Chronological File for each case or matter; some may also require a Litigation File. You are responsible for creating these files if they do not already exist.

Every final document created or received for a client's case must be entered into the chronological file and noted. When large document requests are received that would be too burdensome to include in the chronological file (e.g., large FOIA or discovery requests, etc.), an indication should be made in the chronological file briefly detailing the nature of the material and the separate, secure folder in which it can be found.

Litigation File

If the matter involves litigation, a separate Litigation File must be established and maintained. Every document related to the litigation should be placed under the appropriate subject heading (e.g., Pleadings, Correspondence, Appeals, etc.) into this litigation file. A table of contents also must be maintained for this file.

Sub-files

When more than a few documents in a client file reference a specific sub-part of a client case or matter, we create a sub-file in which copies of those documents can be found, in addition to those placed in the Chronological File.

Working Files

You may create a working file of copies of documents you use extensively. This file should be labeled clearly and may be taken out of the Clinic office. However, **remember that working files often contain documents that are privileged and confidential**, and treat your working files accordingly.

CONFLICTS

During the first week of your tenure as an intern in the Clinic, you must review a list of Clinic clients and consider whether there are potential conflicts with clients you have served in other organizations in which you have been employed as a legal professional. Also, if you know your employer after law school, you should recuse yourself from Clinic matters where you will have access to confidential information that could be used against our Client.

ADMINISTRATION

Rebecca Jordan is the Clinic's Office Manager and an integral part of the work we do. You may ask Rebecca for help on virtually any problem that comes up on a daily basis,

and she has primary responsibility for seeing that the Clinic and Center files are properly maintained. However, Rebecca has extensive administrative responsibilities with the Center, so interns should work hard to be as self-sufficient as possible. If you run into systemic problems (jammed printers, inoperable phones, computers or printers) by all means let her know.

TIMEKEEPING

Please note that every intern must keep up-to-date records of his/her time. We track time by the tenth of an hour, and we enter contemporaneous descriptions of work done. These are concise, but sufficiently detailed that a supervisor, court, or client will understand generally what was done, and will be able to imagine why that task took the indicated amount of time.

CLIENT TEAM MEETINGS

As indicated previously, Team meetings are essential. You will meet nearly every week, at least, with the colleagues working with you on a matter, in order to communicate appropriately. Preparation and active participation in these meetings is required.

COMMUNICATION

Frequent communication – with your teammates, your clients, and Professors Weeks, Hyman, and Need – is expected and is necessary. Among the most often used forms of communication is electronic mail. Check and respond to messages several times each day.

The Clinic follows the same policy towards e-mail that is used by the federal courts: when you use it to “file” a document, any breakdown in the system is your problem. If the server is down, or you encounter other technical problems, you will nevertheless be responsible for meeting the deadline, communicating the information, or otherwise accomplishing the objective you hoped to accomplish with the e-mail.

GOOD LUCK IN THE CLINIC! DO GOOD WORK!

Appendix 1

Some substantive areas of law in which we practice:

1. Endangered Species Act, National Environmental Policy Act
2. Land conservation and preservation and the non-profit organizations that do such work; conservation easements; acquisition of real estate interests; tax law and zoning law as they relate to conservation.
3. Clean Water Act; water as wildlife habitat; invasive species.
4. The intersection of agriculture and conservation.
5. State and federal forest law and regulation.

Appendix 2

Adapted from University of Maryland's Practice Manual, authored by Professor Rena Steinzor.

WRITING A LEGAL DOCUMENT

Legal writing is important in this clinic; this focus reflects the nature of conservation practice. Writing about conservation law is not just legally complex, but also is technically complex. It is crucial to express concepts clearly, not make them more unintelligible. People with any sense do not trust lawyers who say "it's all very complicated" rather than explaining the law in clear English.

All successful legal documents have the following features:

- (1) Define problem upfront.
- (2) Explain gist of factual/legal considerations.
- (3) Summarize conclusion upfront.
- (4) Explain how the document is organized.
- (5) Analyze and rebut the other side's arguments if at all possible.

IMPORTANT:

Any time Clinic interns sign a legal document, they must cite the Rule that authorizes them to practice. On all written documents, an asterisk should be placed after the student's last name. At the bottom of the document the following explanation should be included:

*Practicing pursuant to [the appropriate Rule] of [the appropriate Court].

THE WRITING PROCESS

PURPOSE

This section sketches out a process you can use in organizing and writing a legal document.

Begin by defining purpose of memo (letter, position paper, brief):

Do you want to persuade a private or government party to do something?

Do you want gain the attention of a private or government party by reminding the party of the consequences of inaction?

Are you simply trying to hold your own against a difficult adversary?

Do you want to let your client know the facts of life?

Are you advising your client about her options?

Are you trying to persuade your client not to do something?

Are you recommending a strategy to your client or co-counsel?

Do you want to persuade an adversary or a judge you are right

on the facts?

on the law?

as a matter of justice?

Is this a memo to file to help you remember key facts or cover you far in the future?

Last but not least: are you trying to publicize your client's plight?

You need to have a firm fix on the above before you can begin to conceive of your memo and you should guard against losing this big picture goal as you get into the details. You need perspective not because it will necessarily change the content of what you are going to say – although it may. The goal of the document defines its tone and, often, its organization. You need to figure this out because it will help you find a voice for the document, and documents with a voice are always more successful.

AUDIENCE

Next, define your audience.

Who is the audience?

What is the level of the audience's understanding?

Write differently to:

your supervisor or colleague;

a client who is formally educated versus one who is not;

an adversary versus co-counsel;

an adversary who doesn't get it versus one who does;

a defensive government bureaucrat who holds all the cards versus

one who can and should understand that you are in a superior bargaining position;

judges in different courts at different levels.

You need to figure this out because it changes crucial aspects of your writing style (using citations, legalese, complex versus more simple words and sentence structures). It may also affect the scope – that is, the degree of detail – in the memo. For clients, it is essential that you express your legal understanding in a way that is accurate, understandable, and concise.

SCOPE

Define the scope of the memo (letter, brief, etc.).

Decide what problems (factual, legal, strategic, practical, political) the memo will – and will not – address.

Clearly explain what your memo will and will not cover.

Accurately gauge your time/space situation. Key skill: if you have three hours, do three hours of work. This is arguably the most important skill you learn from taking exams.

In general, you can't solve all problems with a case all at once; the audience can only absorb so much.

CONTENT

Determine the organization and the content of the memo.

It is very common to develop writer's block at this point—mull over research, studying every nuance, and becoming paralyzed. You do not have this luxury in practice. Try to develop your organizational approach, do an outline, then go back and fill in detail.

Outline for Internal Clinic Legal Memos

- I. Question Presented
- II. Short Answer
 - A. Summary of conclusions.
 - B. Roadmap.

III. Analysis

- A. Subheading
- B. Subheading

IV. Conclusion

WRITING THE MEMO

Then, write the memo. How many drafts? As many as are necessary. Once you get the memo down on paper for the first time, read it a few times to make sure it is accomplishing goals, is appropriate for audience, is well-organized, makes the argument effectively, etc. Do not neglect details like levels of headings. Sometimes preparing a Table of Contents for an especially long and complicated piece of legal writing is key.

Do not neglect the “polishing process.” Before turning it in, read at least twice for little errors: spelling, citation form, incomplete sentence, grammar (e.g., singular subject, plural verb). Professional reputations are made very quickly, and the first impression of your writing—especially whether you are meticulous—can stay with you for a very long time. These small details can determine whether adversaries or courts take you seriously.

Do not use the words “might”, “possibly”, “could” to describe the state of the law unless the state of the law is truly unsettled. If there is an answer, but you aren’t confident of it, complete your research.

COMMON MISTAKES

1. Fail to define problem adequately, especially factually. (What are the facts of case, what did the agency do?)
2. Fail to provide context. The first place to start is often a treatise so you make sure you have a grip on the context.
3. Fail to read and carefully analyze facts, law, and holding of potentially relevant cases.
4. Use passive voice.
5. Use artificially complex sentence structure.
6. Overwrite. Verbosity is often a symptom of the absence of clarity. Jefferson once apologized at the end of a letter: “...I did not have time to make it shorter.”
7. Use words that your audience will not understand. Misuse words.
8. Try to sound like someone else.
9. Write redundantly.
10. Write colloquially.

12. Write emotionally.
13. Make statements with no discernible back-up.
14. Leave punch line to end.
15. Forget to ask for a remedy.

Appendix 3

Contact Information for **Professor Weeks**:

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