

# ENERGY LAW AND POLICY CLINIC:

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## TRAINING FUTURE CLIMATE AND ENERGY ATTORNEYS THROUGH COLLABORATION AND PARTNERSHIP

The purpose of the Energy Law and Policy Clinic (Clinic) instructional content is to develop in students a fundamental understanding of the complexity of energy and climate issues in California by performing legal work for state regulatory agencies or local government. Students are challenged to gain an understanding of complex areas of laws that form the legal structure of regulatory action in the state and to come to terms with the difficult tradeoffs between reducing greenhouse gas emissions, supplying reliable and affordable energy, and balancing environmental justice with economic, technical, and political limits. Students come away with an understanding of what this work entails and how to successfully practice in

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these areas, both in terms of the challenges and opportunities that exist. This Clinic is unique in that, by partnering with a state agency or local government, students are in a position to inform regulatory and policy decisions that may impact the entire state, a region, or a city.

The outcomes from this Clinic are twofold: first, to produce a high-quality work product on a topical issue for our client in a way that better informs the client and the students; and second, to train law students through a professional experience in an applied experiential setting that improves each student's legal research, reasoning, drafting, and editing skills while further developing their competence in client management, ethics, oral presentation, time management, and working collaboratively. The work product that is completed represents countless hours of effort, discussion, and thought. For students, the work outcome is an opportunity to impact issues that affect millions of Californians.

Often, the completed work serves as the underlying research and drafting for future regulations, court briefs, legislation, or other policy decisions. The Clinic's work has included, but is not limited to, the following areas: cap-and-trade, greenhouse gas reduction and removal, Clean Air Act regulation, environmental enforcement authority, community choice aggregation, energy data privacy, energy efficiency implementation, renewable energy mandates, statutory implementation of agency mandates, power plant siting, transmission interconnection regulations for renewable energy, increases in vehicle-related emissions caused by statutory land-use changes, and fee versus tax issues.

The following will discuss the Clinic's background, teaching objectives, outcomes, and conclude with alumni reflections.

## BACKGROUND AND HISTORY

The Energy Law and Policy Clinic was created in 2008 to further the Energy Policy Initiatives Center's (EPIC) mission to train law students and to provide objective information and analysis to policy makers. Because of EPIC's mission, the Clinic structure does not include engaging in litigation or advocacy. Instead, the Clinic seeks to partner directly with regulatory agencies to perform legal research and produce requested work product.

EPIC sponsors the Energy Law and Policy Clinic (Clinic) every spring semester. The Energy Law and Policy Clinic is one of three course offerings sponsored by EPIC, with the Clinic being the only offering that combines EPIC's mission to both train law students in climate and energy law and provide objective information to policy makers. The Clinic matches a small group of students each year who have taken the Energy Law and Policy course or Climate Law course, have energy or climate experience, or share an interest in these areas, with an energy- or climate-related local government or state agency to conduct legal research on topical issues. It is unique in that the client is a sophisticated government entity working on complex legal issues in the climate or energy field that sets the stage for students to gain experience as outside counsel while working with and learning from agency attorneys and staff. The Clinic is designed to serve client needs while aiding students in successfully entering the job market by building upon and sharpening the skills developed and the knowledge gained during each student's time in law school.

The diversity of California regulatory agencies offers a broad range of opportunities in terms of subject matter, work culture, and purposes that benefit the student experience. It also allows the Clinic students to engage in the ever-changing work of these agencies as statutory mandates, policy, and the world evolve over time. The Clinic has worked with the California Energy Commission (CEC), California Air Resources Board (CARB), California Public Utilities Commission (CPUC), the Governor's Office of Planning and Research (OPR), and local governments such as the City of San Diego. Rarely has the Clinic worked on the same issue twice, unless the legal landscape has changed and the issues are new. This is both challenging and exciting. It is challenging for a supervising attorney to prepare students and for the students to gain an expertise in a short period of time on complicated issues. It is exciting because the issues are topical, timely, and highly motivating.

## CLINIC WORK SUBJECTS LEAD TO JOB OPPORTUNITIES

Part of the benefit of working with a local or state agency on a topical subject is that the expertise and experience gained by students can open job

opportunities upon graduation. Over the years, these opportunities may be either specific to a particular area in which that a student gained expertise during the Clinic or in an area where the general experience of the Clinic lends an advantage over other candidates for that position.

One project where the specific topic led to a job in a directly relevant practice area focused on aiding the Office of the City Attorney, City of San Diego, with the creation of a community choice aggregator (CCA) to implement its climate action plan as part of its greenhouse gas mitigation plan. The subject area of our research focused on the legal requirements of CCA governance structures, implementation plans, and financial separation from the city general fund. Students analyzed the statutory authorization for creating a CCA, as well as all existing and proposed CCA governance structures and implementation plans in existence at that time in California. The students applied their analysis to a wide range of issues, including forming a CCA joint powers authority that would meet regional concerns over how to weight board member voting rights given the significant disparity in size between the City of San Diego and all other potential local government members in the region. The students also vetted issues over startup financing, reserve allocations, withdrawal rights, the power charge indifference adjustment proceeding at the CPUC, and ultimate decertification and shutdown of the CCA. The final products included a draft governance structure, implementation plan, and related legal memoranda on various other topics. From this work, two students were ultimately hired by the law firm that became outside regulatory counsel to the now fully operational local CCA, San Diego Community Power (SDCP).

During another Clinic, we performed work for the CEC on how to parse the legislative requirements of Senate Bill 350 (2015) for implementation across several regulatory agencies. Students learned firsthand the difficulty faced by agency attorneys in implementing major amendments and additions to state code that change policy direction while not necessarily granting new authority, nor clearly expressing how to implement or resolve conflicts with existing mandates. The students learned many practical lessons as they struggled to understand the legislative intent of SB 350 and the possible ways for it to be implemented. The students gained experience analyzing existing statutory mandates and resolving the identified conflicts and shortcomings created by the newly mandated statutory changes.

It was the first time that many of the students realized how unclear statutes can be and the difficulty in providing legal counsel in the regulatory world. Several students were able to take this experience and apply it to positions at the CPUC, the Federal Energy Regulatory Commission, and in the private sector. This experience and the lessons learned allowed these students to stand out from their peers and pursue career paths that reflected their interests from the moment of graduating.

The following will discuss the Clinic's core teaching objectives and outcomes.

## DEVELOPING COLLABORATIVE STUDENT LEADERSHIP

One of the Clinic's primary objectives is ensuring the time and space for student collaborative leadership. This facilitates the ultimate goals of producing high quality work for the client while developing student skills through a real-world experience — ensuring each student leaves the Clinic with the ability and confidence to be successful when they graduate.

The operation of the Clinic continues to move toward greater student leadership. Over time, the Clinic has transitioned from being led by the supervising attorney to being led by the students themselves through collaboration. This is a lesson learned from observing a former student exercise collaborative leadership where she used her natural leadership style to work with her peers to meet deadlines, explain complex issues, and resolve issues constructively. Student leadership grounds the investment in and responsiveness to the work and client. Her leadership style was so effective in terms of management and outcome that it began the transition to this type of organizational structure. Ultimately, students come away with the experience of running a complex legal project where they manage deadlines and workflow to produce the ultimate work product. It also frees the supervising attorney to work collaboratively by guiding students through the research of complex legal issues and drafting of work product while focusing on developing core legal skills.

To encourage this outcome, students are invited to exercise collaborative leadership in deciding what research to perform, setting timelines to complete drafting, managing the client relationship, and deciding how to

present complex legal conclusions to a varied audience. Such freedom and responsibility sometimes overwhelm students. Many can attest to feeling uncomfortable with the weight on their shoulders, given the complexity of the subject matter and frustration with the process at various times. But it is in these moments that students collectively come together to think through how to approach complex issues and assign tasks to meet deadlines, build confidence, and analyze old problems with new eyes. It is also where the supervising attorney provides better training through guiding, suggesting, and encouraging instead of defining, assigning, and concluding. The space granted for struggle and creativity may be one of the best outcomes of the Clinic because students rise to the challenge when no one is telling them how or why the work should occur in a particular way. Ultimately, they learn what it means to timely and competently address their client's needs.

Through this process, students learn to lead and to collaborate to produce a wide range of work products that include objective legal memoranda, databases, and policies. It is flexible enough to allow students to respond to an unexpected change in client need at any point during the semester. Students learn to package their work products as requested by the client, but without losing the hard-earned work and creativity that can influence sophisticated clients. They also gain the confidence to disagree with the client when needed, respectfully of course.

## IMPROVING THE CORE LEGAL SKILLS OF LEGAL RESEARCH, ANALYSIS, WRITING, AND EDITING

As important as leadership skills are, developing each student's core legal drafting and research skills remains the primary focus of the Clinic. Each semester, students submit writing samples as part of their application. It is a first look at where their research and writing skills are presently, which reflects a range of abilities. Over the course of the Clinic, students will teach and learn from each other as they research, draft, and edit each other's works.

Every semester, students begin with either no, or a basic, understanding of the issue. By the end of the semester, they have gained an expertise that is rivaled by only a handful of other experts in the state. The instructional

content regarding research takes the form of: (1) providing initial research and teaching enough background material to bring students up to speed within the first weeks of the semester; and (2) leading the development of a research plan to approach the subject area. This may also include assigning drafting of internal legal memoranda to form the basis of the overall project or developing a framework to piece various research areas together. Once enough research is complete, we collectively draft an outline and assign sections with clear deadlines. We also discuss how the editing process will evolve and the time crunches that will inevitably emerge throughout the semester. Once drafting deadlines are met, the editing process begins. Students are assigned to edit the work of their peers in a process that allows each student to review and edit the entire work product. We discuss the minimum types of editing that are necessary, time permitting, to produce the highest quality work product possible. We also dive into how editing processes may evolve over time and ways to streamline both the drafting and editing processes to work more efficiently.

Over the many years of running the Clinic, there has not been a single student who did not improve one or more of these skills over the course of the semester. Learning to evaluate and plan out research on complex issues, as well as how to draft and edit the resulting work, are invaluable skills the students hone through the Clinic. It builds confidence and competence. It often marks a significant achievement in law school because it may be the only opportunity to lead and learn while performing impactful energy and climate work. Students often reflect on how they found the expertise gained and work performed rewarding and beneficial, which is illustrated by the reflections of a couple of students herein.

## BUILDING AND MAINTAINING THE CLIENT RELATIONS

At the beginning of every Clinic, most students are shy about interacting with the client. They often need to be prodded to ask questions and lead discussions, particularly over the phone or in a digital conference. This remains one of the more difficult skills to develop in students over a short semester. In some semesters, there may be one or two students who are comfortable with leading client communications and interactions, and often the rest are happy

to leave this area to those who volunteer (though allowing such would be a disservice to the students and the opportunity this Clinic offers).

Developing the skill of effectively managing client relationships remains a core teaching objective. It is another example where the use of student collaborative leadership serves as one of the best means of students' becoming comfortable and competent at interacting and managing a client. It also may be one of the first experiences a student has providing legal advice to a client and being confronted with a client who challenges or disregards their advice, which is not surprising given that the Clinic works directly with agency attorneys and staff, some of whom have decades of experience.

Being disregarded after a semester of work is a frustrating but necessary lesson for the students. Students need to learn to respectfully disagree with a client where their legal analysis supports a different action or multiple options. This situation occurs often enough in the Clinic to make this lesson a major focus of internal discussion during the semester. Students are prepared and guided in how to manage a hard or contentious conversation with a client as they approach an issue from the outside and as they are made aware of the highly ingrained institutional culture that is a characteristic of many regulatory agencies. It is also a central skill when working on issues that are on uncertain legal ground or deal with new technologies or challenging tradeoffs that may not fit neatly into existing statutes and regulations, which is often the case in the energy and climate practice areas.

Learning to navigate client relationships through the Clinic, the students emerge as better prepared lawyers with the ability to manage both their own expectations and their client's, to advise, objectively analyze, and to accept and learn from the client's own appetite for risk or political limits.

## LEGAL ETHICS, CONFIDENTIALITY, AND ATTORNEY-CLIENT PRIVILEGE

Most students join the Clinic either currently enrolled in or yet to take a professional responsibility course. They are familiar with the ideas of confidentiality, privilege, and other basic ethical requirements, but they have never read the duties required of licensed attorneys. The Clinic introduces the requirements imposed on licensed attorneys and focuses on how to practice under our duty to protect both client confidences and



the deliberative process that is entailed in working for regulatory agencies. Students are trained in confidentiality to competently communicate via emails or orally when performing factfinding for their work. They are trained in preserving privileges and learn to practice in a way that always protects client privileges. Finally, the students learn to perform conflict checks and understand that their future work may require a conflict check and, if required, may limit who they represent or what they work on unless they receive client consent in accordance with the governing rules of their respective jurisdiction.

In learning to practice ethically, students benefit from their role in the Clinic because it allows them to make mistakes and learn from agency attorneys about how to approach certain types of communications and ethically carry out their duties. One simple example of this in practice is remembering to include the word “Confidential” in an email subject line and body. By the end of the Clinic, students know when this is required and that they need to be thoughtful about who the recipient of the email is, the content of the email, and whether confidentiality, privilege, or another ethical duty is involved. The fact that students are now thinking about every communication they make and their duties to their clients means that they are prepared to begin their practice of law.

## ORAL PRESENTATION: KNOWING THE AUDIENCE AND SUCCINCTLY VOICING COMPLEX CONCLUSIONS

As we reach the end of each semester, the students are tasked with deciding how they wish to present their work to the client. Students must complete a draft of their presentation and perform at least one dry run before presenting to a client. In years past, we would fly our students to Sacramento or San Francisco to present in person. This offered the added benefit of setting up networking opportunities the day of the trip. In the COVID-19 era, presentations have become exclusively digital, which offers many pros and cons. The pros include that our students are now so familiar with platforms like Zoom that they already have the necessary skills to practice in any number of the work situations of today. Technology offers other key advantages about how to present content, how to present professionally, and

how to use time efficiently. It can also allow students the ability to connect to more people in their chosen practice area, because that person is only a phone or Zoom call away.

When thinking through how to present, students are guided by several questions about the content of what they present: What is the most efficient way to present the content given our time constraints? Who is the audience and what is their understanding of the subject matter? How much content should be in a PowerPoint presentation versus spoken orally? What is a good speaking pace? How do we continue if there are technical difficulties? How should you respond to difficult questions that challenge what you said?

Without exception, I am always impressed by the professionalism that the students exhibit when presenting their work. The content is always presented efficiently and with creativity. There are also always new thoughts that come forth, leading to valuable discussions, largely because complex legal analysis must be distilled for the presentation and audience. Students also benefit from responding to hard questions that challenge their positions, an experience that is much like appearing before a judge or negotiating a contract. Even after a tough oral presentation, students come away with the reward of knowing they presented their work in front of people who make or help inform decisions that affect every person in California. There are few other opportunities in law school akin to this experience.

At the end of the Clinic, students are better trained and better prepared to enter the job market. They are confident in their skills and competent in the subject matter given their experience. It is always the goal of this Clinic to offer the best experience and training each semester so that students can progress and succeed in this profession, whether they go on to practice energy law or pursue another area of law.

## ALUMNI REFLECTIONS ON THE ENERGY LAW AND POLICY CLINIC

*Lauren Perkins, 2018*

*Associate, Duncan Weinberg Genzer Pembroke (Sacramento)*

Through the learning and experiential objectives discussed at length above, the Energy Law and Policy Clinic (Clinic) prepared me for a career as an

energy attorney. In the classroom, I grappled with learning how to work in a team to accomplish a large project in a short timeframe; this is the reality of working as an attorney, especially when working in a small firm in an evolving field like the energy regulatory realm. A valuable lesson I learned from the Clinic was that every team member is different in terms of their bandwidth and priorities, but every person working on the project plays a crucial role. This is not something you can learn in the typical law school classroom where you have two tests to focus on in a semester and only your own schedule to manage to tackle those tests. Communication, ability to understand and work with differing perspectives to approaching a problem, and confidence to acknowledge and speak up when you need assistance are all skills students hone through the Clinic that are crucial to a successful law practice.

Speaking separately to the learning objective above of practicing with client confidences in front of mind, one smaller though invaluable lesson I learned from the outset of the Clinic is to cautiously consider platforms on the Internet when you are uploading your work product and communicating with clients. What might seem a basic lesson of scrutinizing a user agreement before utilizing a platform turned out to be a fundamental step that cannot be overlooked; in the Internet age, it is easy to succumb to the temptation of using an apparently efficient platform, but lacking security features, which can pose devastating consequences to the client. It is these practical details the Clinic involved that speak to its success in preparing students for a career path as a mindful attorney.

And of course, the moment from the Clinic that is most rewarding to reflect on is the moment immediately following your presentation to the regulatory agency. For my Clinic class, we had the privilege of presenting at the CEC in Sacramento — I remember we were all tired from the hours and nerves we expended on preparation. Having the regulatory agency's staff engage following our presentation with questions facilitated a dialogue that is a unique reward at the end of law school — it is not rewarded through an A on a paper, but rather through the ability to communicate confidently to a client on a topic you poured your semester into.

*Ian Kearney, 2018*

*Associate, Western Energy and Water (Sacramento)*

The Energy Law and Policy Clinic was instrumental in my decision to pursue energy law upon graduating law school, and it provided me with valuable experience that allowed me to smoothly transition into the practice of energy law as I began my career.

In general, students seek out clinics because they offer the ability to have a hands-on experience, moving beyond classrooms and textbooks to real-world legal issues and client interactions. This is especially true of the Energy Law and Policy Clinic — the Clinic’s mixed focus on administrative law, regulatory practice, and energy and climate matters allows students to have practical insights into a legal practice space that is usually difficult for interested students to enter.

I was immediately attracted to the subject matter of energy law when taking related law school courses. However, beginning down this career path always seemed like a challenge and I had some concern pursuing it. After participating in the Clinic as a 2L, I gained confidence in my understanding of some of the fundamental legal concerns relevant to California energy matters, as well as important experience that led me to a summer position with CPUC’s Administrative Law Judge Division. I enjoyed my Clinic experience enough that I participated again as a 3L. These experiences then resulted in my being hired out of law school by a firm that specializes in California energy matters, and my interest and experience in the energy space played a significant role in setting me apart from other applicants.

Beyond the knowledge I gained about this highly technical subject matter, the Clinic taught me some foundational lessons of client management that are necessary to learn as a young lawyer but not easy to come by in the pursuit of energy and climate policy experience. During one Clinic, we had a disagreement with the client over the extent of their authority provided in statute. The Clinic was reassured by our supervising attorney to stand by what we believed to be a reasonable interpretation of statute. And we learned how, in working with an organizational client, it can be useful to first bring a potentially disagreeable opinion to a smaller group via a phone conversation before ultimately building to a larger final written product where the disagreement may be embedded. Despite any eventual

disagreement, the final product was still valuable and delivered what the client desired.

Clients in this space are often making policy judgments in addition to balancing other considerations. Energy lawyers are often sought after for advice that ends up being much different than, say, a criminal matter with clearer rights and boundaries. Client disagreements can occur and with different and varying stakes. Often a conversation is needed to strategize a workable solution for a client to meet their end business or regulatory objective. The Clinic provided an excellent introduction to all of these lessons.

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