Community Lawyering for Environmental Justice Part 4: Working with Non-Legal Experts

Introduction: Community Lawyering for Environmental Justice Series, ELI Pro Bono Clearinghouse, and the Purpose of this Event

This event was created to discuss the use of non-legal experts in environmental matters, primarily in a pro bono setting. It is the fourth part of ELI's Community Lawyering for Environmental Justice series, which focuses on building skills and strategies for community lawyering.

a. *Community lawyering*, sometimes known as empowerment lawyering, is key to meaningful environmental justice-oriented pro bono work. Community lawyering involves collaboration with individuals and community members as facilitative partners. As a result, it differs from the more traditional representational lawyering with which many attorneys are familiar.

The Environmental Law Institute's Pro Bono Clearinghouse is an easy way for communities that need pro bono support for their environmental legal issues to connect with attorneys and experts willing and able to help them. The goal of the ELI Pro Bono Clearinghouse is to address our nation's vast "legal deserts" where communities do not have ready access to the legal support they need.

b. Ways to get involved with the Pro Bono Clearinghouse:

Communities can use the Clearinghouse to connect with general practitioners or specialized experts. Law clinics and other non-profits can submit to the Clearinghouse any viable pro bono environmental matters that they are unable to take on due to resource limitations or because they are outside their scope of work. Clinics and non-profits can also post requests for Clearinghouse member attorneys to expand their capacity or provide expertise that they lack in-house. Clearinghouse member attorneys can offer their skills and take on new matters, whether as a long-term legal ally of a community or for a discrete legal task.

Find out more about the Pro Bono Clearinghouse here: https://www.eli.org/probono.

1. Use of non-legal experts

28 USC App Fed R Civ P Rule 26: General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures.

Except in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) The following categories of proceedings are exempt from initial disclosure under Rule 26(a)(1) :

(i) an action for review on an administrative record;

(ii) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(iii) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

(iv) an action to enforce or quash an administrative summons or subpoena;

(v) an action by the United States to recover benefit payments;

(vi) an action by the United States to collect on a student loan guaranteed by the United States;

(vii) a proceeding ancillary to proceedings in other courts; and

(viii) an action to enforce an arbitration award.

These disclosures must be made at or within 14 days after the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan. In ruling on the objection, the court must determine what disclosures - if any - are to be made, and set the time for disclosure. Any party first served or otherwise joined after the Rule 26(f) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

For the full rule, *see*: https://uscode.house.gov/view.xhtml?req=granuleid:USC-1999-title28a-node79-node117-rule26&num=0&edition=1999

For more general information about the use of experts, *see*: https://www.americanbar.org/groups/litigation/committees/trial-practice/practice/2021/expert-witnesses-the-basics/

Notes section: Fill out the following sections based of our speakers' presentations and remarks.

a. What types of cases require a non-legal expert? How do you identify the expert?

b. How are non-legal experts used in different areas of practice in environmental law?
    i. Academic clinics

    ii. Non-profits and NGOs

    iii. Law firms

c. At what point should you bring in a non-legal expert?

d. How do you prepare a non-legal expert for testimony?

i. Examples

2. **Pro Bono Work: Best Practices**

a. Tips for practicing meaningful pro bono work:

b. Examples of successful pro bono work: