Community Lawyering for Environmental Justice Part 3: Conflict Checks Worksheet

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

This event was created to help clarify conflict checks, which are an integral preliminary step to taking on a case. It is the third part of ELI’s Community Lawyering for Environmental Justice series, which focuses on building skills and strategies for community lawyering.

1. *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 major 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.

1. 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. **Conflict Checks**

*DC Rule 1.7: Conflict of Interest: General Rule*

(a) A lawyer shall not advance two or more adverse positions in the same matter.
   (b) Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if:
       (1) That matter involves a specific party or parties and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer;
       (2) Such representation will be or is likely to be adversely affected by representation of another client;
       (3) Representation of another client will be or is likely to be adversely affected by such representation;
       (4) The lawyer’s professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer’s responsibilities to or interests in a third party or the lawyer’s own financial, business, property, or personal interests.
   (c) A lawyer may represent a client with respect to a matter in the circumstances described in paragraph (b) above if
       (1) Each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation; and
       (2) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.
   (d) If a conflict not reasonably foreseeable at the outset of representation arises under paragraph (b)(1) after the representation commences, and is not waived under paragraph (c), a lawyer need not withdraw from any representation unless the conflict also arises under paragraphs (b)(2), (b)(3), or (b)(4). D.C. R. Prof. Conduct 1.7

Read more about DC’s Rules of Professional Conduct here: https://www.dcbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Client-Lawyer-Relationship/Conflict-of-Interest-General-Rule.

*California: Rule 1.7 Conflict of Interest: Current Clients*

1. (a)  A lawyer shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
2. (b)  A lawyer shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client, a former client or a third person,\* or by the lawyer’s own interests.
3. (c)  Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:
	1. (1)  the lawyer has, or knows\* that another lawyer in the lawyer’s firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
	2. (2)  the lawyer knows\* or reasonably should know\* that another party’s lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer’s firm,\* or has an intimate personal relationship with the lawyer.
4. (d)  Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
	1. (1)  the lawyer reasonably believes\* that the lawyer will be able to provide competent and diligent representation to each affected client;
	2. (2)  the representation is not prohibited by law; and
	3. (3)  the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
5. (e)  For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\* Cal. R. Prof. Conduct 1.7

Read more about California’s Rules of Professional Conduct here: https://www.calbar.ca.gov/Portals/0/documents/rules/Rule\_1.7-Exec\_Summary-Redline.pdf.

For more general information about conflicts, see The American Bar Association’s Rule’s on Conflicts of Interest here : https://www.americanbar.org/groups/professional\_responsibility/publications/model\_rules\_of\_professional\_conduct/rule\_1\_7\_conflict\_of\_interest\_current\_clients/comment\_on\_rule\_1\_7/.

*Notes section: Fill out the following sections based on our speakers’ presentations and remarks.*

* 1. How do conflict checks differ between fields of environmental law?
		1. Academic clinics
		2. Non-profits and NGOs
		3. Law firms
	2. What are some special considerations one should make when conducting a conflict check?
		1. Timing
		2. Has an attorney-client relationship formed?
		3. Is there adversity?
	3. What happens if you identify a conflict?
		1. What steps should you take next?
		2. What information should you give the prospective client?
		3. Can you waive the conflict?
	4. How do conflicts affect working with other groups?
		1. If a party is conflicted out, can you still collaborate with them on certain pieces of the case?

			1. Examples
1. **Pro Bono Work: Best Practices**
2. Tips for practicing meaningful pro bono work:
3. Examples of successful pro bono work: