

Exploring How to Help Clients Navigate the Policy Environment



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I am pleased to debut this new column, which is about the private practice of environmental law — but with a twist. My thesis is that there is a symbiotic relationship between public policy and environmental law, and that the better feel we have for that dimension, the more effective we can be for our clients. This is a dynamic I have experienced first-hand, not only as a private practitioner, but in my recent government experience as deputy general counsel at EPA and deputy assistant attorney general in the Environment and Natural Resources Division.

So, what does public policy have to do with the private practice of environmental law?

First, and most obviously, environmental laws are themselves the products of public policy. As the Supreme Court recently reminded us in *American Electric Power Co. v. Connecticut* (finding displacement under the Clean Air Act of climate change nuisance claims), environmental law fundamentally rests on an “informed assessment” and “complex balancing” of “competing [policy] interests.” Understanding the public policy underpinnings of environmental laws helps us interpret them, advise clients on how to comply with them, and, when necessary, advocate for how they should change.

Second, public policy is the stuff of government. Private practitioners who have served on both sides of the public-private divide, therefore, routinely use their government experience to help clients navigate the complex web of agencies and officials responsible for decisions that affect their businesses.

These insights are no less relevant to corporate counsel. Roger Martella, for example, draws heavily on

his previous experience in both government (as EPA general counsel in the George W. Bush administration) and the private bar in his new role as in-house environmental, health, and safety counsel at General Electric. It is critical, says Martella, that practitioners “understand how government works, how people think, and what the culture is in the agencies.”

Jeff Wood, who is acting assistant attorney general of ENRD, points out that it is a two-way street: having private-sector experience is immensely valuable in public service, too. Wood’s transitions between the public sector (which included a stint on the Hill) and the private realm (as both law firm partner and in-house counsel), have helped him get quickly up to speed in his new job at the Justice Department, allowing him to “see first-hand the connections between what we do as environmental lawyers and the broader legal and policy arena.”

Looking for alignment between the public policy objectives of client and agency

Third, our clients are themselves deeply concerned with public policy. Numerous corporations have adopted policies promoting sustainability and addressing societal concerns, announcing guiding principles such as “carbon neutrality” and “no damage to the environment.” As one Fortune 100 company declares, “We tackle these projects because they reduce our company’s environmental impact, and . . . improve our bottom line. But mostly we do this stuff because . . . it’s the right thing to do.” It follows that, as private practitioners, we must be equipped to advise our clients with both their business and public policy objectives in mind.

Finally, there are frequently situations where, as lawyers duty bound to advance our clients’ interests, we also advance public policy. For example,

a lawyer defending an enforcement case may advocate to both the client and the government that performing a supplemental environmental project to prevent pollution is a good idea. Or, in challenging a rule, a lawyer may help work toward a better rule that both enhances compliance and produces environmental benefits.

Stacey Sublett, for example, who recently rejoined her law firm after two years’ service as special counsel at EPA, has used the insights she gained to help municipal clients address challenging environmental disputes under Title VI of the Civil Rights Act. Her experience at the agency helps her “understand not just the regulations, but the motivations” of the recently restructured Title VI office, and to look for “alignment between the public policy objectives” of her clients and the agency.

Roger Martella sums it up nicely: “It’s a truism in life that appreciating diversity in perspectives is critical to success, and that’s especially true for environmental lawyers.” It’s critical to how we “learn to adapt to a constantly changing world.”

I look forward to exploring these connections from multifaceted perspectives, as our profession adapts to a world that is constantly changing. Future columns will examine the connections between private practice and public policy in a variety of contexts, focused on how these insights help us become more effective practitioners.