

Working *with* Lawyers



A GUIDE FOR
COMMUNITY RESIDENTS
AND ENVIRONMENTAL
JUSTICE ACTIVISTS

SOUTHWEST NETWORK
FOR ENVIRONMENTAL
AND ECONOMIC JUSTICE

ENVIRONMENTAL
LAW INSTITUTE



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Table of Contents

Summary	I
Chapter 1: Introduction	1
Chapter 2: The Role of Lawyers and Legal Strategies	3
The Role of the Lawyer	3
Types of Legal Strategies	4
The Drawbacks to Using Legal Strategies	6
Chapter 3: Interviewing Potential Lawyers	9
Questions About the Lawyer's Background	10
Questions About Legal Options	11
Questions About the Likely Results of A Legal Case	12
Questions About the Lawyer's Fees	12
Questions About Legal Expenses	14
Chapter 4: Hiring a Lawyer and Signing a Representation Agreement	17
Goals of the Legal Strategy	18
Making Decisions and Communicating During the Case	18
Attorney's Fees	19
Expenses	20
Firing Your Lawyer	21
Chapter 5: Working With Your Lawyer	23
Communication With Your Lawyer	23
Participation in Your Case	24
Decision Making	24
Chapter 6: Finding A Lawyer	27
Appendix 1: <u>Model Rules of Professional Conduct</u> (Excerpts)	29
Appendix 2: Bibliography of Resource Materials on Legal Strategies	31
Glossary	33

Summary

For years, community groups and individuals throughout the U.S. have used the law to address serious problems affecting the environment and health in their neighborhoods. The law is not the only answer to environmental problems, but the law may be one tool that you can use as part of a broader strategy to prevent and remedy environmental harm and to achieve environmental justice.

This guide is for people who are considering hiring a lawyer to help them deal with an environmental problem. Its purpose is to help you develop a good working relationship with your lawyer -- a relationship in which you maintain control over the goals of the legal strategy. A lawyer can contribute legal expertise to your case, however the lawyer is working to achieve *your* goals. Because you and your lawyer will be working as a team, it is important that you think carefully about your lawyer's role and about how you will work together. The guide discusses important things to think about before and after you hire a lawyer.

This summary presents key ideas covered in the guide. Each section below refers to a chapter of the guide, and you can read the full text of the guide for more information on these topics.

The Role of Lawyers and Legal Strategies

Community groups and individuals can use the law on their own, without a lawyer. For example, you can get information from the government, negotiate directly with agencies or companies, file administrative cases with agencies, or work to change environmental laws and regulations.

Lawyers can provide assistance in a variety of ways. Lawyers can offer legal advice and education, draft letters, help negotiate with a company or agency, and represent clients in court or at hearings. A lawyer's legal training is often most needed when formal legal proceedings (before administrative agencies or in court) are involved.

As the client, you are the boss. Hiring a lawyer does not mean that you give up control over setting the goals of your legal case. The lawyer's job is to take direction from you, not the other way around.

It is important to consider the drawbacks to pursuing a legal strategy. There may be serious drawbacks to being involved in legal proceedings such as formal hearings or lawsuits. For example, legal proceedings are often expensive, and they may go on for years. Lawsuits may not give community residents a chance to speak for themselves, and may require them to disclose a lot of personal information.

People have successfully used legal strategies as one part of a larger effort to address community problems. The experience of many groups has been that community organizing is critical to the success of a legal strategy and to achieving the group's overall goals. These groups have taken steps to make sure that the legal strategy does not replace or dominate the community organizing strategy.

Interviewing Potential Lawyers

If you are considering hiring a lawyer, it is a good idea to set up meetings to interview different lawyers who can potentially represent you. Interviews will help you make an informed decision about whether to undertake the legal strategy. You can find out about your legal options and whether you will be comfortable working with a particular lawyer.

If you are contacted first by a lawyer who wishes to represent you, take time to think about the decision. Evaluate the information given to you by the lawyer before you agree to hire the lawyer. You may then want to set up interviews with other lawyers to compare.

When you interview lawyers to represent you, explain what you wish to gain from the legal case. Before the interview, it is important to ask the lawyer whether the discussion will be protected as confidential. This is especially true if you are part of a group, so that you can explain fully to the lawyer the group's goals and the strategies the group is using to achieve those goals. If a lawyer is uncomfortable with your group's activities, you may want a different lawyer.

During your interviews, you can find out about:

- *The lawyer's legal background and experience.* You should feel confident about the lawyer's ability to handle the specific type of case you are considering. Find out also the lawyer's track record and her experience working with community groups.
- *The legal strategy options.* Understand your legal options and the alternatives to filing a lawsuit. Discuss the "remedies" that are potentially available and your chances for success. Also find out what you will have to go through in order to pursue the legal strategy.
- *The fee you will be charged for the lawyer's time.* If you cannot obtain free legal representation, you will need to discuss the lawyer's fee -- will the lawyer charge a "contingent fee," an hourly fee, or another type of fee? Is there a possibility that the other side will pay your attorney's fees if you are successful?
- *The expenses involved in your case.* Find out as much as possible in advance about the types of expenses involved, such as experts' fees, the lawyer's travel, "discovery" costs, court filing fees, etc. Find out how you will pay for these expenses and whether there are ways to minimize the costs. If the lawyer is willing to pay the expenses up front, make sure the lawyer has sufficient resources, and will not allow financial pressures to interfere with the case.

Hiring a Lawyer and Signing a Representation Agreement

If you decide to hire a lawyer it is important to put your agreement with the lawyer in writing. You can tailor the agreement to fit your needs and your case. However, you should discuss with your lawyer whether your representation agreement is protected as confidential, and the possibility of including some important issues in a "side letter" to the agreement.

You have the right to negotiate with the lawyer about the conditions for the lawyer to represent you. Some of the things you will need to agree on and can consider including in your representation agreement are:

- ***The goals of the representation.*** Be very clear with your lawyer about what you hope to gain through your case, and about any issues you are not willing to compromise. The lawyer is required to try to achieve your goals throughout the case.
- ***How decisions in your case will be made.*** A lawyer is required to consult with the client on all important decisions. You can develop an agreement with your lawyer at the beginning about how decisions will be made -- this is especially important if you are part of a group.
- ***How to ensure ongoing communication with the lawyer.*** You can establish ways to make sure your lawyer keeps you well informed throughout your case -- for example, by sending you regular updates. If you are part of a group, it is important to decide which group members will be responsible for staying in regular contact with the lawyer.
- ***Attorney's fees.*** You can negotiate with the lawyer about all matters relating to the attorney's fees. Make sure you are satisfied with the fee arrangement in your representation agreement.
- ***Expenses.*** Your lawyer should give you an idea of the expenses that will be involved in your case, and your representation agreement should specify how those expenses are to be paid. The agreement can also state that certain expenses must be pre-approved by you.

Make sure you understand every item in your representation agreement. The agreement should be written in clear language, and you should not be pressured into signing it.

Working with your Lawyer

Make sure that the terms of your representation agreement are carried out. In particular, keep in mind the following items to help ensure an effective working relationship with your lawyer.

Maintain regular contact with your lawyer about your case. Your lawyer should explain what is happening in your case in a clear manner. You should keep your lawyer informed of any events or any changes in your personal circumstances that you think may be relevant to your case.

Participate actively in your case. In addition to staying informed about your case, you have the right (and may be required) to participate in different aspects of your case, such as "discovery" and hearings.

Make decisions in your case. Talk to your lawyer immediately if you feel your lawyer is not consulting with you on decisions relating to the case. Decisions about settling a case are particularly important, and those decisions are up to you.

Finding a Lawyer

Word-of-mouth. This is often the best way to get the name of lawyers to interview. Talk to others who have been involved in similar cases and who have had positive experiences with their lawyers.

Organizations that provide free legal representation. Some organizations provide free legal representation to people fighting local environmental problems, but generally do not represent people in personal injury (tort) cases. These include: *legal services offices, law school clinics, and non-profit public interest groups.*

Private lawyers. If you are looking for a private lawyer, you might try to get a referral from your *state or local bar association*. You might also try contacting the non-profit group Trial Lawyers for Public Justice, which sometimes helps find private lawyers in personal injury cases that raise public interest issues.

Chapter 1

Introduction

For many years, grassroots activists have used different types of approaches to address environmental justice issues. These approaches include community organizing, education and direct action. Community residents also have used legal strategies as part of their efforts to require the government and industry to do something about important community environmental and health problems. These legal strategies sometimes involve working with lawyers -- for example, lawyers represent people in court, help negotiate agreements, assist in drafting documents, or provide advice. Community residents and groups usually have found that working actively with their lawyer on a legal matter -- but not abandoning their organizing and other efforts -- leads to better results in the legal matter and in the community.

This guide is written for grassroots environmental justice activists and other community residents who are considering hiring a lawyer to help them address a local environmental problem. It discusses some of the things you should think about before and after you hire a lawyer. The guide begins with the principle that hiring a lawyer does not mean simply sitting back and letting the lawyer take over. Therefore, the main purpose of the guide is to help you establish a good working relationship with your

lawyer, so that your lawyer can do a better job representing you and you can use legal strategies more effectively. Although it is written for those who are fighting environmental problems, the guide may also be helpful to people who are concerned about other legal issues, such as civil rights or consumer protection.

Much of this guide discusses what you can and should expect from your lawyer. There is no single set of laws or rules in the United States that require lawyers to represent clients or handle cases in a certain way. The American Bar Association (ABA) has developed guidelines called the Model Rules of Professional Conduct. This guide occasionally refers to the ABA's model rules because they are intended to set a standard of conduct for the legal profession as a whole, even though they are not legal requirements. (Excerpts from the ABA's model rules are included at the end of the guide in Appendix 1.) Keep in mind, though, that individual states have adopted legal requirements for lawyers' conduct, and many of these are based largely on the ABA's model rules. These state rules *are* mandatory for lawyers who are licensed to practice law in the particular state, regardless

of the type of case and regardless of whether the lawyer is handling the case for free.

Following this introduction, the guide is divided into five chapters that cover the following topics:

- understanding the role of lawyers and legal strategies;
- interviewing potential lawyers;
- hiring a lawyer;
- working effectively with a lawyer throughout your case; and
- finding a lawyer.

While you are reading the following chapters, please remember that this guide does *not* intend to provide legal advice. The information in the guide reflects the experiences of community activists who have worked with lawyers to pursue legal strategies in environmental cases. This guide aims to help others learn from those experiences.

Chapter 2

The Role of Lawyers and Legal Strategies

If you are concerned about something that is harming or may harm the environment or health in your community, you might consider hiring a lawyer to help you resolve the problem. One of the ways to find out whether you want to hire a lawyer is to interview several lawyers and then evaluate what they tell you about your case.

Interviewing lawyers is discussed in the next chapter. This chapter provides some basic information to consider before you begin talking to lawyers -- information about the role of the lawyer, about different types of legal proceedings, and about the potential drawbacks to pursuing legal strategies.

This chapter provides general information. It does not discuss specific types of legal strategies and how individuals and community groups can use them. Appendix 2 at the back of this guide contains a list of other written materials that discuss how legal strategies have been used to address local environmental problems.



The Role of the Lawyer

A lawyer has technical expertise in the law that can be used to help community residents in their fight to protect the health of their families and community. The lawyer's role can range from offering legal advice and education to drafting letters, from helping negotiate with a company or agency to representing you in court or at hearings. Lawyers are trained to know such things as how to file a lawsuit, how to get information from your opponent in a case, how to find legal support for the community's goals, and how to present a legal case to a judge or government agency.

Hiring a lawyer to help you pursue a legal strategy does not mean that you must give up control over what happens in your case. You are the boss. In deciding whether to hire a lawyer, one of the most important things to remember is that a lawyer's job is to represent the client, not to decide what is best for the client. The lawyer should help the client understand the legal action so that the client can decide what is best. The Model Rules of Professional Conduct require lawyers to obey the client's decision about the goals of the legal strategy, and to consult with the client about how to achieve those

goals. As the client, you make the major decisions about the case. Therefore, lawyers should be taking their direction from the community groups and community residents they represent -- not the other way around.



Types of Legal Strategies

Environmental laws and other types of laws -- such as worker safety, transportation and civil rights laws -- provide community residents with a tool for preventing pollution and for holding companies, individuals and the government accountable for the environmental and health damage they cause. The laws often give community residents authority to take specific steps on their own behalf to address environmental and public health problems.

There are many ways to use the law, with or without the help of a lawyer. For example, under the "Right-to-Know" or Freedom of Information laws you can request information about a facility and its operations from government agencies. You can file administrative cases with federal, state or local government agencies. You can negotiate directly with government agencies or companies to make sure that local facilities comply with environmental laws and standards. You can also work with the Congress or with local legislatures to change

current laws or get new federal or state environmental laws passed.

Some legal proceedings involve complex legal issues or rules, and are more difficult to pursue without legal assistance or advice. These proceedings may be *administrative* (before a government agency) or *judicial* (before a court).

Government agency decision making is known as the administrative process. As part of this process, federal, state and local government agencies may hold **administrative hearings** (sometimes also called "public" hearings) to gather public input. For example, government agencies may hold administrative hearings when they are deciding whether to renew a company's water discharge permit or when they are evaluating the environmental impact of a new facility that the company wants to build in the community. Administrative hearings also may be held when the government is considering adopting a new environmental rule that sets a standard or establishes some other type of requirement.

Administrative hearings are usually open to the public. The specific procedures that are followed depend on the issues that the agency is considering, and will differ from state to state and from agency to agency. Many administrative hearings are informal. Often at these hearings, any person may make a presentation and submit written information to the agency (though there may not be any opportunity for a question and answer period with the agency).

Some types of administrative hearings are more formal. For example, "adjudicatory" hearings are usually held when a company or member of the public is challenging an action or decision of the agency. Adjudicatory hearings are often run by an administrative law judge (ALJ) who works for the agency. They involve witnesses testifying under oath and cross examination of witnesses. In these more formal hearings, activists have often found it helpful to be represented by a lawyer.

Decision making by courts is known as the judicial process. A **lawsuit** is a case brought in federal or state court against a person, company or agency that allegedly has broken the law. Two of the most common types of environmental lawsuits are "citizen suits" and "tort" suits. Community groups also have filed civil rights lawsuits against environmental agencies claiming that they have violated the civil rights of community members.

Citizen suits. These lawsuits are allowed under most federal environmental laws and some state laws. The laws specifically give community members the right to bring a lawsuit to enforce the law, if the government is not doing the job itself. Examples of federal laws that allow citizen suits are the Clean Water Act and the Clean Air Act.

Citizen suits might be filed directly against a company that is violating the law. For example, community groups have filed lawsuits to require companies to stop dumping chemicals into a river. A citizen suit also might be filed against government agencies to require them to issue a rule or take some other action that is required under

an environmental law. Community groups also have filed similar types of lawsuits against agencies for failing to evaluate adequately the environmental impacts of a proposed project.

The party filing a lawsuit is called the "plaintiff," and the party being sued is called the "defendant." The plaintiff in a citizen suit can be an individual, an organization, or a group of individuals. A plaintiff in a citizen suit may ask the court to order the defendant to:

- stop doing an activity that is causing the harm or take a particular action that addresses the harm (an "injunction");
- pay any fines that are provided in the law; and
- pay the plaintiff's costs and attorney's fees.

Personal injury or "tort" lawsuits. This is a lawsuit brought by a party who already has been harmed by an activity or a hazardous condition and wants the court to provide a remedy for that harm. "Toxic tort" is the name sometimes used for cases that seek compensation for personal injury or property damage from toxic chemical emissions or spills. For example, someone who becomes sick following an accident at a neighboring chemical plant might bring a lawsuit against the owner of the factory. If the person's property also has been damaged in the accident, the lawsuit might combine a claim for property damage with a personal injury claim.

Lawsuits involving injury to a person or to property are brought by individuals, not community groups. Sometimes many individuals who have been affected by a single activity or hazardous condition may be represented by the same lawyer or group of lawyers. These individuals may bring separate lawsuits, or their lawsuits may be combined together as a "class action." A class action is a single lawsuit that is brought by one or more individuals on behalf of a very large group of people. Class actions are sometimes used when the group affected by the problem is so large that is not practical for each person in the group to bring their own lawsuit.

Lawsuits to recover for injuries can produce different types of results. A plaintiff can ask the court to order the defendant to:

- pay "compensatory damages" to the plaintiff -- to pay money for injury to the plaintiff or plaintiff's property;
- pay "punitive" damages to the plaintiff -- to punish the defendant for willful, malicious conduct;
- pay the costs of medical monitoring -
- to determine if the defendant's conduct has any future effects on the plaintiff's health;
- stop doing an activity that is causing the harm or take a particular action that addresses the harm (injunction); and
- pay some of the plaintiff's costs and possibly the plaintiff's attorney's fees for bringing the lawsuit.

Lawsuits are decided by either a judge or a jury, generally after evidence is presented in a formal hearing or trial. However, the parties to a lawsuit often "settle" the case before there is a hearing or trial. In a settlement, the parties reach agreement about how to take care of the problems that led to filing the lawsuit. For example, the plaintiff and the defendant in a personal injury suit might agree that the defendant will pay the plaintiff \$100,000 in compensation to end the lawsuit. The parties ask the judge to approve their agreement, and the "settlement" becomes mandatory. The settlement can then be enforced in court -- for example, if the defendant does not carry out its part of the settlement agreement or does not pay the agreed amount of money. Settlement agreements often allow defendants to avoid admitting or denying any wrongdoing. Formal administrative proceedings involving companies also may end in a settlement agreement.



The Drawbacks to Using Legal Strategies

By participating in administrative hearings or litigation, community groups may be able to change the behavior of a company or a government agency, prevent a polluting facility from being built in the community or obtain compensation from a company for the injuries it has caused. Community members can use public hearings to express to government decision makers the community's concerns about an issue.

Those hearings can also serve as a way to bring people in the community together around an important local issue and as a way to call public attention to a particular problem.

It is important to consider carefully what is involved in pursuing a legal strategy before deciding what to do. Although legal strategies may help improve the environment in a community and show community members that justice has been served, there are many potential drawbacks to using legal strategies. These apply especially to lawsuits, but can also be true for public hearings and other legal strategies.

Legal proceedings can be expensive. The bulk of these expenses are usually the fees for lawyers and expert witnesses. Legal costs are much harder for community groups to bear than for corporations or governmental agencies. Moreover, legal proceedings can take a long time. The community battle to prevent the siting of a toxic waste incinerator in Kettleman City, California took 6 years. It also took people living in Tucson, Arizona years to win compensation for injuries caused by the dumping of chemicals into the groundwater. A case may require the ongoing commitment of a community group to make sure that a court order or settlement agreement is actually carried out. Thus, legal efforts can drain not only the finances, but also the energy of community residents.

Legal proceedings may require community residents to disclose information about themselves. Individuals who are named as plaintiffs in lawsuits may have to provide substantial information through the

"discovery" process as well as during trial in court. Discovery is the opportunity for each party in a lawsuit to obtain information from each other for use in preparing their legal case. Discovery is a two-way street; just as you can find out about your opponent, your opponent can obtain personal information about each named plaintiff that is relevant to the lawsuit. Discovery is a lengthy process that often involves:

- *depositions* -- in-person questioning by the opponent's lawyer under oath, prior to the trial;
- *interrogatories* -- written questions, under oath; and
- *requests for production of documents* -- requiring a party to turn over certain documents.

Lawsuits also may be problematic for community groups because they generally do not allow people to speak for themselves. In order to give the judge a sound legal basis for making the decision sought by the community, a lawyer has to present technical arguments according to the legal rules established by the courts. The language and the process of a lawsuit may be unfamiliar to you. Corporations and government agencies, on the other hand, are experienced with solving problems through the courts. Nevertheless, community members can often have a strong voice outside the courthouse doors -- for example, by talking to the media about the importance of the case.

The pitfalls of legal proceedings described above can strain a community group and may create tension among community residents, especially when financial compensation is at stake. Given the potential problems with legal proceedings, many environmental justice groups have approached legal strategies as only one piece

of a larger effort. These groups have found that community organizing is also critical, because the work of a strong community organization can help the legal case and can continue community efforts to address environmental problems once the case has ended.

Chapter 3

Interviewing Potential Lawyers

Selecting a lawyer can be important to the success of a legal strategy. Because the lawyer will be working for you -- and you will be working closely with the lawyer -- you should choose your lawyer carefully.

Before hiring a lawyer, it is a good idea to set up meetings to interview lawyers who can potentially represent you. This chapter describes some of the information you can get from a lawyer during an interview. The next chapter discusses some of the questions you should consider after you have decided that you want to hire a lawyer and before you sign an agreement with that lawyer.

Interviewing a lawyer does not mean that you must hire that lawyer. An interview is an opportunity for you to learn about a lawyer and to find out about your legal options. Legal actions often can be time-consuming and expensive. Interviewing lawyers can help you to understand fully what will be involved and get an idea of your chance of success. If you interview more than one lawyer, you will be able to compare lawyers to determine who will be most responsive to your needs and interests. You will have a better idea whether you feel comfortable entering into a working relationship with a particular lawyer. You should find out in advance whether there will be a fee for the initial interview.

During an interview, it is important to explain to the lawyer what you want to achieve in the legal case. By giving the lawyer a clear picture of your goals, you can get a better idea whether there are legal strategies that can meet your expectations. For example, if an industrial plant in your neighborhood is trying to get a permit to expand its operations, you may be interested not only in denying the permit for the expansion, but also in trying to make the existing plant safer.

However, *before* you begin talking to a lawyer, it is important to ask the lawyer whether the interview is protected as confidential. The law varies from state to state on this question. The issue is particularly important if the interview is open to all community residents interested in hiring a lawyer. You should discuss with the lawyer how to set up such a meeting. For example, you might want to consider limiting the initial meeting to hearing from the lawyer about the legal options; then, once you know which members of the community want to participate in the lawsuit, you can hold another meeting to explain to the lawyer the group's goals.

Confidentiality is particularly important because community groups need to advise a potential lawyer of the full range of strategies the group is using to achieve its

goals. For example, your group may be conducting a media campaign to raise public awareness of an environmental problem, or you may be trying to organize a letter-writing campaign to protest a company's practices. If you are part of a union, your legal case may impact your union's activities and negotiating strategies. It is important for a lawyer to know about your group's activities, because the lawyer needs to understand how the legal case fits into the community's bigger concerns and strategies. By discussing with a lawyer how legal actions can support your group's overall agenda, you'll get a better idea of whether the lawyer can work effectively with you. If a lawyer is not comfortable with your group's activities, you may want to choose a different lawyer.



Questions About the Lawyer's Background

What is the lawyer's track record? You can start by asking the lawyers you interview to describe their law practice generally and the types of cases they handle. You can also find out whether the lawyers have any conflict of interest -- for example, you can ask if the lawyers have ever worked for or represented the types of companies or government agencies you are opposing. If the lawyers are not from your community, find out whether they have ever worked in the community.

A WORD ABOUT SOLICITATION

"Solicitation" happens when a lawyer contacts a person in order to persuade that person to hire the lawyer. If a lawyer initiates contact with you, it is a good idea to delay making any decision until you have time afterward to evaluate the information that the lawyer gave you. Once you evaluate the information, you may want to set up a meeting to interview that lawyer or other lawyers.

Each state has its own rules about solicitation. The Model Rules of Professional Conduct prohibit a lawyer from soliciting you (unless the lawyer knows you personally), by telephone or in-person, if the lawyer's main reason for wanting to represent you is to receive attorney's fees or other financial gain. This is because many people feel pressured by lawyers in these circumstances, and are more likely to hire the lawyer immediately without considering whether it is in their best interest. Lawyers working for non-profit, public interest organizations may therefore be exempt from this rule.

The way in which a lawyer seeks you out as a client may tell you a lot about whether you will be comfortable working with that lawyer. If you feel that you are being unduly pressured or harassed by a lawyer, you can file a complaint with your state or local bar association or your state Attorney General's office.

When you discuss the types of legal strategies available to you (see below), you can ask the lawyers you interview about their experience handling those particular types of cases. How many similar cases have they handled, and what were the results of those cases? The Model Rules of Professional Conduct direct lawyers to provide "competent" representation and to have the knowledge and skill needed to handle a case. But you still need to satisfy yourself that the lawyers you are interviewing are capable of doing a good job on your case. You should be confident that the lawyer you choose is able to handle the specific type of case that you are considering.

Does the lawyer have experience working with community groups? If you are part of a community group, it may be helpful to know whether the lawyers you interview have experience working with other groups. You can ask the lawyers for references of key clients, and you can contact those clients to find out how responsive and effective their lawyers were. You can find out the lawyers' ideas about how best to work with your group and with other people that are assisting you, such as community organizers.

In addition, you may want to ask the lawyers you interview whether they are willing to work "collectively" with other lawyers -- that is, work on your case as part of a legal team. Community residents and groups sometimes have an opportunity to use the skills and resources of two or more lawyers. If you think this is a possibility in your case, you should ask ahead of time

whether a potential lawyer is comfortable with that type of arrangement.



Questions About Legal Options

What are the different types of legal strategies available? You can ask the lawyers you interview to describe generally the legal options that are available. The lawyers should discuss with you the advantages and disadvantages of each of these legal options. Find out the alternatives to filing a lawsuit.

If you are considering the possibility of filing a lawsuit, you can ask the lawyers you interview about whether a class action is a good idea in your particular case. Whether or not a class action is filed, if you are going to be one of several plaintiffs, the lawyers you are considering should explain to you what is involved in representing more than one person or group in a single case.

What are the possible remedies for each potential legal strategy? It is very important to understand whether a legal strategy can provide the type of remedy that satisfies the interests of you or your group. Some possible remedies are outlined in Chapter Two. For example, you might ask the lawyers you interview how much money you can request as compensation for your injuries, what type of fine you can seek in a citizen suit, or what legal result can be achieved by participating in a public hearing. You can also talk with the lawyers about the possibilities for negotiating less traditional

remedies, such as funding for community projects to improve the environment and public health, or to achieve pollution prevention at an industrial plant.

If you are considering a lawsuit to recover for injuries to you or your family, you may need to discuss with the lawyers you interview the legal rules that govern any money that you would receive in the case. For example, if you are filing a lawsuit for injuries suffered by your children, you will need to understand the legal rules that apply to financial awards to minors. Or, you may need to find out in advance how financial compensation would affect any public assistance your family is receiving. You can also ask about the taxes you may have to pay on your award.

What is involved in pursuing each potential legal strategy? It is important to understand ahead of time what you may have to go through in order to pursue a particular legal strategy. For example, ask the lawyers you interview for an estimate of how long it will take to resolve the case, with or without a settlement, and what types of information about yourself and your case you might be required to provide to your opponents. You can also find out what the lawyers would need you to do to help prepare your case.



Questions About the Likely Results of A Legal Case

What are your chances of success? To decide whether a legal strategy is worth the time, expense and effort involved, it is

important to know the likelihood of achieving your goals. Although the lawyers you interview cannot guarantee a particular result, they can give you a prediction of your chances, based on their past experience with similar cases. You can also ask about the likelihood of negotiating a settlement in a case such as yours.



Questions About the Lawyer's Fees

You should ask about fee arrangements when you first interview potential lawyers. Later, before you hire a lawyer to provide legal services, you will need to negotiate this fee with the lawyer and reach an agreement about the fee. The following paragraphs describe the ways that lawyers charge for their services and present some information about how you may be able to find a lawyer to represent you free of charge.

One common type of fee arrangement for cases involving compensation for injury is the "contingent fee." Under this arrangement, the lawyer only charges a fee if the client actually receives monetary compensation in the case. The lawyer then takes a percentage of the money awarded to the client. The exact percentage is negotiated between the lawyer and the client, and is often around one-third, or 33 percent. The contingent fee does not include expenses associated with the case (see below). Whether the lawyer's fee is deducted from the award before expenses are taken out or after expenses can make a big difference in the amount of money the client receives.

If a case does not involve financial compensation, or if the client is not able to find a lawyer who will handle the case on a contingent fee basis, the lawyer will likely charge for her services on an hourly basis, plus out-of-pocket expenses. Under this arrangement, the client pays for each hour the lawyer works, based on an hourly rate agreed upon by the client and lawyer. The lawyer may bill the client as the case goes along or ask for a "retainer" fee that you will pay before the work starts.

Some environmental and civil rights laws, like the Clean Water Act or the Clean Air Act, allow a judge to award attorney's fees to plaintiffs who bring a "citizen suit" under that law. The Equal Access to Justice Act (EAJA) allows a court to award attorney's fees to a plaintiff in a lawsuit (other than a tort suit) against the United States government. In these types of cases, successful plaintiffs can be reimbursed for the expenses of the lawsuit and the money they have paid for their lawyer's time. These federal laws also allow the court to award attorney's fees to the *defendant* if the plaintiffs lose the case. In practice, this is only likely to happen to you if the case you file is frivolous -- that is, if it had no basis in law and is completely without legal merit. Nevertheless, you should discuss with any lawyers you interview, whether you might face this risk in your case.

You can explore special fee arrangements with the lawyers you interview. For example, community groups may be able to persuade a lawyer to accept a smaller attorney's fee, with the understanding that the community group will donate a

portion of its total award in the case to a project that benefits the community.

You may be able to hire a lawyer who does not charge a fee for representing you in an environmental matter. This is probably not possible if you are considering filing a lawsuit for financial compensation for personal injuries. For other matters, non-profit public interest environmental and civil rights organizations, legal services offices and law school clinics provide free legal services and may be able to handle your case. These organizations are an important resource for community groups. However, their limited funding allows them to represent only a fraction of the communities that need legal assistance in fighting environmental problems. Also, these organizations may be limited to representing people of certain incomes and from certain geographic areas, and they may only handle certain kinds of cases.

In addition, lawyers who are in private law practice sometimes handle cases for free ("*pro bono*"). The Model Rules of Professional Conduct say that every lawyer should provide some free or low cost legal representation each year. Some states have similar voluntary *pro bono* guidelines, and many state and local bar associations have adopted resolutions calling on lawyers to provide public service.

See Chapter 6, "Finding a Lawyer," to learn more about organizations that can assist you in finding legal representation.



Questions About Legal Expenses

What types of expenses will be involved? When you pursue a legal action, you will have to consider expenses other than the lawyer's fee. Even if a lawyer is willing to represent you without charging a fee, there will be other expenses involved in your case. As your case progresses, your lawyer may advise you that particular expenses are vital to winning your case. Therefore, it is a good idea to find out as much as possible about these expenses when you interview potential lawyers, so you can make an informed decision at the beginning about whether to pursue the legal action.

Some states have laws that control the types of expenses that may be charged by a lawyer. For example, a lawyer may be barred from charging a client separately for hiring another lawyer (or paralegal) to work on the case. In general, expenses often include routine, out-of-pocket office costs, such as photocopying, long distance telephone charges, postage, court filing fees and the lawyer's travel costs. Environmental cases usually require outside doctors, scientists, engineers or technical experts to provide information, advice and testimony on technical questions; the fees charged by these experts can be quite large. Other significant expenses may be involved in the discovery phase of a lawsuit. If you lose a lawsuit, you may also be required to pay some of the other costs associated with the case, including the cost of putting together the administrative record.

When you interview potential lawyers, you can ask them to give you a rough estimate of the expenses that would be involved in the legal actions you are considering. For example, they should be able to give you an idea of the minimum number of outside experts needed in your case, and how much those experts generally charge for their services. During the case you can get a monthly statement of expenses from your lawyer. When your case is over, you are entitled to a statement detailing the expenses of the case.

How will you pay the lawyer's out-of-pocket expenses? A lawyer may require that you pay for some or all of the expenses before the case begins. In other cases, a lawyer may agree to pay expenses as they arise during the case. It is very important that you discuss fully with any lawyer you are considering your obligation to pay the lawyer back for these expenses at the end of the case, whether you win or lose.

If a lawyer represents you on a contingent fee basis, then any money the lawyer pays for expenses will generally be taken out of your monetary award and repaid to the lawyer. These expenses can be taken out before or after the lawyer receives his fee. For example, when expenses are taken out after the lawyer receives his fee, it might work as follows: If you are awarded \$10,000 in compensation and the lawyer's fee is 30 percent, then the lawyer receives \$3,000 and the amount remaining for you will be \$7,000; *but* any expenses paid by the lawyer will then be deducted from your \$7,000. If instead, expenses are taken out before the lawyer

gets his fee, the lawyer's fee will be lower and the amount you receive will be higher.

If the lawyers you interview are willing to pay the expenses in advance out of their own pocket, it is important to discuss with those lawyers whether their firms have sufficient resources to pursue the case to the end. You should feel confident that the lawyer you hire will not allow financial pressures to interfere with her judgment in the case -- for example, during settlement negotiations.

Are there ways to reduce your legal expenses? Some groups and their lawyers have developed creative ways of reducing

expenses relating to their legal strategy. For example, clients are often in an ideal position to do some of the investigation that is required to prepare a case, since they know how the community has been affected and understand what questions need to be answered. This type of arrangement can reduce the lawyer's fees and expenses. It also gives clients a chance to be reimbursed for their work on the case if the court awards attorney's fees when the case is won. In addition, you can talk to the lawyers you interview about the possibility of finding experts who will provide free or low cost services in your case.

Chapter 4

Hiring a Lawyer and Signing a Representation Agreement

The last chapter talked about the types of information you can get when you are interviewing potential lawyers. A lawyer can only represent a client if the client agrees to hire that lawyer. Therefore, once you have decided to hire a lawyer, you will need to make an agreement with the lawyer to represent you.

This guide will refer to the written agreement with a lawyer as a "representation agreement." (Often, the written agreement between a client and lawyer is called a "retainer" agreement. This term may be used even when the client is not paying an initial retainer fee, or when the client is receiving free legal services.) The representation agreement is a legal contract between you and your lawyer that spells out the terms of the legal representation. It probably will also include basic information about the lawyer and the client -- such as name, address and telephone number.

The representation agreement may be several pages long and may not be written in clear language. It is very important that you take as much time as you need to read and understand the terms of your representation agreement. As with any legal contract, you should insist on clear, understandable language, and you should not be pressured

or hurried into signing the agreement. You should keep a copy of your signed representation agreement.

The contents of a representation agreement are negotiated between the lawyer and the client. You do not have to sign the first (or any) version of the representation agreement that a lawyer presents to you. You can negotiate the terms and request that the lawyer make changes or additions to the agreement. A representation agreement that adequately addresses your needs and goals will help ensure a better working relationship between you and your lawyer.

This chapter discusses some of the issues you should consider before you sign a representation agreement and hire a lawyer. You may already have raised some of these issues when interviewing potential lawyers. At this point, however, it is important to make sure that you and the lawyer you have selected are in agreement about these issues. Throughout the relationship, you should discuss with the lawyer anything you do not fully understand. This will help avoid false expectations on both sides about what will happen during your case. You can request that specific issues be included in the representation agreement to ensure that there is no misunderstanding later on.

One final point about representation agreements. In some circumstances, the opposing side in your case may legally be able to get access to a copy of your representation agreement. You should discuss this possibility with your lawyer, and determine what steps to take to protect yourself. For example, you may decide to have a representation agreement that is fairly general on certain issues, and then to include other specific items in a "side letter" that is signed by you and your lawyer.



Goals of the Legal Strategy

Before signing a retainer agreement, be very clear with your lawyer about your goals and about what you expect to achieve from the legal strategy. This includes explaining what you hope to win in your case -- for example, community benefits such as funding for local organizations, or the right to community inspections of a plant, or relocation expenses for your family. It also means discussing issues related to the case that are important to you, as well as things you are not willing to give up or concede in the case. The lawyer is required to try to achieve your goals throughout the case.

The representation agreement will probably contain a very general description of the type of case the lawyer will be handling for you and the scope of the legal representation. There may be several stages of the case -- negotiation, administrative hearings, court hearings or a trial. Depending on the type of case you have, you

can decide to limit the agreement to one stage of the case and leave open the possibility of renegotiating a new agreement with the lawyer at the next stage. This may allow you to be more specific about the goals of the legal representation and tailor the agreement to those goals.

A lawyer may want to investigate your case before committing to represent you. The lawyer may suggest including a clause in the representation agreement that the lawyer will investigate the case within a certain period of time (for example, six months) and then tell you whether you have a good enough case for the lawyer to represent you. These clauses may commit you to hiring the lawyer if the lawyer decides that you have a good case. You can make sure that the clause provides that if the lawyer decides not to represent you, then you will not owe the lawyer any money for attorney's fees or expenses, and you will be entitled to get copies of information that the lawyer obtained during the investigation.



Making Decisions and Communicating During the Case

Decision making. Most decisions about your case will be made by you and your lawyer together as the case progresses. The Model Rules of Professional Conduct require lawyers to follow their clients' decisions about the goals of the case, and to consult with the clients about how those goals are pursued. The lawyer's job is to provide you with sound legal advice to help you make

decisions in the case. You cannot anticipate all of these decisions in advance, but you can reach an understanding with your lawyer about how decisions will be made. You can discuss with your lawyer how much discretion she will have to take action and make decisions in order to achieve your goals.

If you are part of a group that is involved in the case, you should determine in advance how decisions will be made by the group and who will communicate those decisions to your lawyer. The same is true if you are one of several plaintiffs in a case. Even if you are the only plaintiff in your case, your lawyer may be handling separate cases for other people in connection with the same problem. If so, the decisions made in one of the other cases may affect you -- especially decisions about settling other cases. You should discuss with your lawyer how to coordinate decisions in those circumstances.

Communication. In addition to making important decisions in a case, the client is entitled to be informed about the progress of the case. The Model Rules of Professional Conduct require lawyers to keep clients "reasonably informed" about their cases. At the time you hire a lawyer, you can establish ways to make sure that the lawyer keeps you *well* informed about the case. This not only will mean less frustration and anxiety for you, but also will help you make decisions in the case.

Community residents and groups have developed different ways of ensuring good communication with their lawyers. One way is to insist on periodic progress reports. For example, you can agree that your lawyer will

send you a letter explaining what is happening in the case every month, or more often if there is a lot of activity in your case. Many people have experienced frustration when long periods have passed without hearing from their lawyers. Even if nothing new is happening in the case, you may want to hear that from your lawyer. Keep in mind, though, that regular reports require your lawyer's time and may increase the attorney's fees.

If you are part of a community group, you will need to designate one or more individuals to be the group's regular contact person with your lawyer. You can also discuss whether you want your lawyer to be available to attend community meetings. Whatever mechanism you establish to ensure accountability can be included in the representation agreement.

Part of being well informed about your case is having access to documents that are prepared in the case, such as experts' reports. When you hire your lawyer, make sure the lawyer understands that you wish to receive copies of materials and discuss what types of materials will be sent to you routinely. You can include this understanding in the representation agreement as well.



Attorney's Fees

The lawyer and client must reach agreement about the fee that will be charged by the lawyer. Before you decide to hire a lawyer, you can negotiate the fee. If you are not satisfied with the fee that the lawyer wants to charge, you can talk with other

lawyers and compare the fees. Then you can make an informed decision about whether you wish to pursue the case, and with which lawyer.

The representation agreement should include a description of how the lawyer will charge you for legal work -- usually either an hourly fee or a percentage of the final money recovered (contingent fee). If the lawyer is taking the case on a contingent fee basis, the Model Rules of Professional Conduct require that the fee arrangement be in writing. It is important to put in writing any type of fee arrangement.

You can negotiate with your lawyer about all matters relating to fees and expenses. In a contingent fee case, the terms of the fee may depend on how much money the lawyer agrees to pay out of her own pocket to cover the expenses of the case -- that is, how much financial risk the lawyer is taking by handling the case. You can negotiate the specific percentage that will be paid to the lawyer in a contingent fee case, as well as whether the percentage will be deducted from the award before expenses are taken out or whether it will be deducted after expenses.

In addition, you can make an agreement with your lawyer that the percentage fee will be reduced if the case ends very quickly. For example, you might agree that if there is a settlement of your case within six months, the lawyer will receive a reduced amount. You might also agree that if the financial award in the case is above a certain amount, the lawyer's percentage fee will be reduced. You can decide in advance what the reduced

fees will be and include these arrangements in the representation agreement.



Expenses

As mentioned earlier, your case will involve expenses other than the lawyer's fee. You cannot predict every expense at the time you hire a lawyer, but you can request that your lawyer discuss with you any major expenses that are anticipated. Your representation agreement can include a list of the general types of expenses that may be charged to you.

You can reach an agreement with your lawyer at the outset about the types of expenses that must be approved by you in advance. You may decide that any expenses above a specified amount will require your pre-approval, or that certain types of expenses (such as outside expert fees) will require your pre-approval. You can also discuss ways to reduce expenses. This can mean such things as agreeing that community residents will do some of the work on the case, or agreeing that your lawyer will not travel first class on trips connected to the case.

The representation agreement should describe how expenses will be paid. In some cases, you may be asked to pay a lump sum in advance to cover expenses. In other cases, your lawyer may be willing to advance the money for expenses.

In many states, the rules of professional conduct *require* lawyers to tell their clients that the client is responsible for expenses

whether or not the case is successful. Therefore, your lawyer might want to include this type of statement in your representation agreement to satisfy the legal requirement. If this comes up in a contingent fee case, you can ask the lawyer before signing an agreement if she has ever tried to recover expenses from a client when a case was not successful.



Firing Your Lawyer

Your lawyer cannot stop representing you until the case is over unless you or the lawyer decide to end the representation. Once you hire a lawyer, you generally cannot hire another lawyer to represent you in the same case unless you fire the first lawyer or unless the first lawyer agrees to work with another lawyer.

If you are unhappy with your lawyer or with the way your case is being handled, you can fire your lawyer at any time -- at the beginning or middle of your case, or near the end. Firing your lawyer can have certain consequences for your case, which you may want to think about before you sign your representation agreement.

For example, if you decide to fire your lawyer, you may still be obligated to pay that lawyer for the time she worked on your case. This issue is especially important where contingent fees are involved. Some states only allow lawyers to receive payment that reflects the amount of time and resources they put into a case before they were fired. In some states, lawyers are allowed to get

the full percentage fee set at the beginning of the case (unless the lawyer and the client have agreed otherwise). You may want to consider adding an item to your representation agreement to address this possibility. For example, you could agree that if you fire your lawyer, she will only be entitled to fees based on the amount of time, effort and resources she has spent on the case.

Another issue to consider is what happens to the documents and other materials prepared for your case, if you fire your lawyer. One way to avoid problems in getting access to your case file is to include this issue in the representation agreement. For example, the agreement could require that your lawyer make your file available to you at the end of the case, or sooner if you fire the lawyer.

If your lawyer intends to stop representing you, she must give you advance notice. The Model Rules of Professional Conduct states that a lawyer may withdraw from a case if it will not hurt the case. Otherwise, your lawyer may only withdraw if there are serious problems or disputes between the lawyer and client. During lawsuits, a lawyer sometimes needs permission of the court to withdraw from the case. In general, the rules of professional conduct for each state set the guidelines on when your lawyer may withdraw from your case.

Chapter 5

Working With Your Lawyer

As the client, it is your legal case. This means you can actively make decisions about the outcome of the case, as well as how that outcome is achieved and each step that is involved.

Being involved in your case means working closely with your lawyer. By taking time to interview potential lawyers and to negotiate the terms of the legal representation, you set the stage for a better working relationship. Addressing in advance issues such as communication and decision making will provide some guidelines for working with your lawyer. Still, it will be up to you to make sure that the terms of your agreement with your lawyer are carried out. And even the best representation agreement cannot provide for every circumstance that may arise.

This chapter reviews some of the issues that were raised earlier, and describes a few things to keep in mind as your case progresses.



Communication With Your Lawyer

It is important to give your lawyer accurate information during your case. Problems or weaknesses in the case will probably come out at some point, and your

case may suffer if your lawyer is caught by surprise.

Legal proceedings can stretch out over a long period of time, and ongoing communication between a lawyer and client throughout a case is critical. Make sure you have your lawyer's name, address and telephone number. And be sure to inform your lawyer of any changes that may affect your case -- for example, changes in your medical condition, your address or telephone number, etc.

At any time during the case, you should arrange to talk to your lawyer immediately if you feel that she is no longer providing you with regular reports about your case or is not answering your telephone calls.

Lawyers should explain legal issues and legal terms clearly. If you do not understand what your lawyer is telling you, ask for another, clearer explanation. Insist that your lawyer use plain language. The lawyer or outside experts hired in your case also should be expected to explain to you important technical (for example, medical or scientific) issues that are involved.

Remember also that you can request copies of experts' reports, papers filed with the court, or other documents that your lawyer obtains from the defendant or other persons.

Throughout your case, you and your lawyer will need to discuss which information from the case can be made public by you or your lawyer, and which information should remain confidential until the case is over.



Participation in Your Case

In addition to staying informed about your case, you can participate actively in various aspects of the case. This is particularly important if you are part of a community group, and need to integrate the legal action with your group's broader strategy for addressing environmental problems. The work already being done by your group probably will be useful in your legal case. You and your lawyer can identify ways for your group to assist in preparing the case. In some cases, community residents have formed committees to coordinate client participation in different aspects of a lawsuit.

Participating actively in your case usually will require close coordination and consultation with your lawyer. Consultation is critical if you will be attending formal or informal legal proceedings that are scheduled in your case. For example, you may be involved in a hearing before a government agency, a trial in court or a meeting to negotiate with your opponent. At a minimum, you can make sure that your lawyer explains fully to you and your group what to expect. If you will be a witness, you

and your lawyer will need to work together in advance to prepare. You can also discuss how to communicate with your lawyer during the proceeding -- for example, when you need to discuss a question with your lawyer or when decisions need to be made. This arrangement is even more important if you are part of a community group.

Your involvement in the discovery process will also require consultation with your lawyer. For example, if you must give a deposition, your lawyer will need to prepare you fully and answer your questions and concerns. If you are directed to answer written questions or produce documents, your lawyer should review thoroughly with you which types of information are required and which are not. You should also assist your lawyer in preparing requests for information from your opponent. For example, if you are interested in getting specific information related to your case, you will need to help your lawyer draft written questions for your opponent to answer or requests for documents that your opponent must produce.



Decision Making

Your lawyer is ethically required to abide by your decisions in the case. You should talk to your lawyer immediately if you feel that the lawyer is making important decisions for you -- for example, decisions about case strategies or large expenses. You should also discuss thoroughly with your lawyer any disagreements about case strategy or other aspects of the case. Where there is a choice

of strategies to achieve your goals, your lawyer should help you make an informed choice.

The decision to accept or reject an offer of settlement is a very important decision, which only you as the client should make. Settlement agreements may allow you to obtain certain remedies that a court or administrative agency could not order on its own. For example, community groups have brought citizen suits against companies that have failed to file toxics release information under the federal right-to-know law. In some of these cases, settlements have required that the company adopt pollution

prevention techniques to reduce toxic emissions -- actions that go beyond what is required under environmental laws. Community groups have negotiated settlement agreements that require the defendant company to fix the harm that was caused. Groups have negotiated agreements providing other remedies that help the community as a whole, such as payment of money to benefit a community non-profit organization or to initiate a community health or environmental project.

Make sure you understand and accept each and every term in the settlement agreement before giving your approval.

SETTLEMENT AGREEMENTS AND "SEALING" COURT RECORDS

Many lawsuits are resolved by a settlement agreement, whose terms are determined by the parties. Often in environmental lawsuits, the defendant (usually a corporation or individual) will agree to certain terms, but *only if* the plaintiff agrees that some or all of the settlement terms, as well as the case records, will be kept secret. This is known as "sealing" the record and means that no one can have access to information that has been presented to the court. It may also mean that the plaintiff cannot talk to anyone about what the case was about or what happened during the case.

If a case record is sealed, the public loses an opportunity to learn about the problem that led to the lawsuit. This is important, especially if the problem could affect others. Sealing the record in a case also may deprive a community group of the opportunity to use the case and the information collected as an organizing tool.

Without an agreement to seal the record by the parties, court records are open to the public. Before a case can be sealed, the court must give its approval. Some states, such as Texas, have legal rules that make it more difficult to get court approval to seal a case.

Many plaintiffs feel pressured to accept this secrecy in order to be assured of receiving compensation from the defendant or other remedies in the case. If you wish to preserve your right to talk to others about your case -- and the right of others to find out about your case on their own -- you can discuss this with the lawyer you are considering hiring. You can think about whether you want to put into your representation agreement a requirement that your lawyer shall not accept any settlement offer that requires sealing the record or contains a secrecy clause. Such a provision may remove some of the pressure on you and your lawyer later to agree to a settlement that includes a secrecy clause.

Chapter 6

Finding a Lawyer

Ideally, environmental justice groups and community residents should be able to choose among many qualified lawyers to handle their case. In reality, it is often difficult to know how to find a lawyer who is willing and able to represent you effectively. Sometimes the best way to identify potential lawyers is through word-of-mouth, especially from other community groups. It is helpful to talk with other people about their experiences with a particular lawyer whom you may be considering to represent you. Ultimately, the decision to hire a lawyer is yours.

Finding a lawyer may depend on where you live, what type of legal claims you have, and what resources you have available for the case. The following organizations and resources may help you in finding a lawyer.

Legal services offices. To get the name and phone number of the legal services office nearest you, you can call the National Legal Aid and Defender Association (202-452-0620). This group is based in Washington, D.C. and supports lawyers who provide free legal services. You can then call your local legal services office to find out whether they can assist you.

Law school legal clinics. To find out if there is a law school clinic near you that handles environmental cases, you can call the law school(s) in your area and talk to the director of clinical education, or to someone in the Office of the Dean. You can also call your

local or state bar association for the names of law school or legal clinics in your area.

Non-profit public interest groups. There are many non-profit environmental and civil rights organizations in the U.S. that represent people for free. These legal organizations choose which cases they will pursue and generally handle a limited number of cases. One way to find out about more about these organizations is to get a copy of the *People of Color Environmental Groups Directory*, which lists many environmental, civil rights and legal organizations working on environmental and economic justice issues. The Directory is edited by Dr. Robert Bullard and is available from the Charles Stewart Mott Foundation (810-766-1766). You can also talk with local community activists, who may know of these legal organizations and may have experience working with them.

Private lawyer referrals. State and local bar associations sometimes operate referral services. By calling your state or local bar association you may be able to get the name of a nearby lawyer who specializes in environmental, land use or other legal issues that you are interested in. Keep in mind that these services generally are not selective about the lawyers they list.

In addition, there is a national non-profit organization that helps match individuals with private lawyers in tort or personal injury cases.

Trial Lawyers for Public Justice (202-797-8600) focuses on cases that raise public interest issues. They generally file lawsuits against corporations or government agencies for causing injuries to people or the environment. If they accept your case, they will locate a lawyer to represent you.

Directory of lawyers, law firms and organizations: The American Bar Association (ABA), a national organization of lawyers, has published a *Directory of Pro Bono Legal Services Providers for Environmental Justice*.

The ABA prepared the Directory in cooperation with the California Rural Legal Assistance Foundation and the National Conference of Black Lawyers. The Directory contains a list of lawyers, law firms, legal services offices, law school clinics and non-profit organizations that have indicated they are willing and able to provide free legal representation in environmental justice cases. The Directory costs \$15 plus shipping. Call the ABA (800-285-2221) for more details.

Appendix 1

Excerpts from the American Bar Association's Model Rules of Professional Conduct (1995)

The American Bar Association (ABA) publishes the Model Rules of Professional Conduct. The model rules do not establish legal requirements, but they are intended to set a standard of conduct for the legal profession. Each state has its own rules of professional conduct for lawyers, and those rules *are* mandatory for lawyers practicing in that state.

The following are excerpts from the ABA's Model Rules of Professional Conduct. To find out whether these or other rules apply to lawyers practicing in your state, you can obtain a copy of your state's professional conduct rules from your state or local bar association or from a law library near you.

Attorney Competence

Rule 1.1 states: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Client Decision Making

Rule 1.2 states: "A lawyer shall abide by a client's decisions concerning the objectives of representation ... and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter."

Communication With a Client

Rule 1.4 states: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." The rule also states: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Attorney's Fees

Rule 1.5 states: "A lawyer's fee shall be reasonable." This rule provides the following with respect to contingent fees:

A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and if there is a recovery, showing the remittance to the client and the method of its determination.

Voluntary *Pro Bono* Service

Rule 6.1 states: "A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year." This rule also states: "In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means."

Client Solicitation

Rule 7.3 states: "A lawyer shall not by in-person or live telephone contact solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain."

This rule also states that: "Every written or recorded communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words 'Advertising Material' on the outside envelope and at the beginning and ending of any recorded communications."

Appendix 2

Bibliography of Resource Materials on Using Legal Strategies

There are many books, articles and other publications that address environmental justice. The following are a few publications that discuss different ways community groups have used legal strategies to achieve environmental justice.

- Carl Anthony and Luke Cole (editors), "Environmental Justice and the Law," Volume 5, No. 2/3 *Race, Poverty and the Environment* (Fall 1994/Winter 1995).
- Luke Cole, "Legal Services, Public Participation and Environmental Justice," *Clearinghouse Review* (Special Issue 1995).
- Luke Cole, "Environmental Justice Litigation: Another Stone in David's Sling," Volume 21, *Fordham Urban Law Journal*, page 523 (1994).

For a broader listing of written materials on environmental justice and the law, see:

- Robert D. Bullard (editor), *Unequal Protection: Environmental Justice and Communities of Color* (1994).
- Adam D. Schwartz, "The Law of Environmental Justice: A Research Pathfinder," Volume 25, *Environmental Law Reporter*, page 10543 (October 1995).

Glossary

Administrative proceeding	A formal hearing or other public meeting held by a governmental agency, as part of the agency's decision making process.
Attorney's fee	The amount of money charged by a lawyer for his or her legal services.
Citizen suit	A lawsuit brought by a member of the public to enforce a particular environmental or civil rights law. Citizen suits (and recovery of attorney's fees) are specifically authorized by several federal (and some state) environmental laws.
Client	The party (company, agency, individual) being represented by a lawyer.
Contingent fee	A type of fee charged by a lawyer, usually a percentage of any money recovered. If the client receives monetary compensation in the case, the lawyer receives a percentage of that compensation; if the client receives no compensation, the lawyer does not receive a fee.
Defendant	The party (company, agency, individual) that is being sued.
Deposition	A lawyer's questioning of someone, in person and under oath, about matters relating to a lawsuit. A party to a lawsuit may take the deposition of another person (even if that person is not a party to the lawsuit) during the "discovery" phase of the case.
Discovery	The phase of a lawsuit in which the parties gather information from each other to prepare their case for trial. Legal rules govern how discovery is conducted. Examples of discovery tools are "depositions" (asking questions in person) and "interrogatories" (asking written questions).

Expert witness	A person with special knowledge (scientist, doctor, engineer, etc.) who testifies at an administrative or judicial proceeding.
Interrogatories	Written questions that one party to a lawsuit may require another party to answer in writing and under oath, as part of the "discovery" phase of the case.
Judicial proceeding	A trial, hearing or other appearance before a court of law, and with a judge or magistrate presiding.
Lawsuit	A legal claim filed in a court of law by one party, seeking some type of relief or remedy for a wrong that was committed by another party.
Litigation	The process of resolving a legal dispute in a court of law.
Party	An individual, company, agency or other legal entity that has a direct stake in a lawsuit or other type of legal proceeding. The principal parties to a lawsuit are the plaintiffs and defendants.
Plaintiff	The party (individual, company, agency) that files a lawsuit.
Remedy	The result a party is seeking through a legal proceeding, such as money to pay for an accident or physical injury, an injunction to stop a hazardous activity, or a fine to punish a violation of the law.
Representation agreement	The term used in this guide to mean the written agreement between a lawyer and client outlining the terms of the representation. Also called a lawyer's "retainer agreement."
Retainer fee	A lump sum of money paid to a lawyer for her services at the time she is hired.
Settlement agreement	An agreement between parties about how to end a dispute. If the parties to a lawsuit negotiate and agree to a settlement, then that settlement ends the lawsuit before a judge or jury makes a final decision. Sometimes administrative cases can result in settlement agreements too.
Tort	An injury to an individual or property. In a tort lawsuit, the plaintiff generally seeks some type of monetary compensation for the injury.



The **SOUTHWEST NETWORK FOR ENVIRONMENTAL AND ECONOMIC JUSTICE** brings together activists and youth, student, labor, and community based grassroots organizations of people of color from across the southwestern U.S. and Mexico. The Southwest Network promotes regional strategies and perspectives on environmental degradation and other social, racial and economic injustices.



The **ENVIRONMENTAL LAW INSTITUTE** is a not-for-profit research, training and education organization. ELI works to develop and apply strategies that make environmental laws and policies more effective.

