

LITIGATION REPORT GUIDELINES
for the Litigation Section
of the
Oklahoma Attorney General

When state agencies, officials and employees are sued in state or federal courts, it is necessary that allegations are promptly investigated and a defense initiated. To this end, the Litigation Section of the Oklahoma Attorney General has implemented the following Litigation Report Guidelines to help marshal information and promptly prepare a litigation strategy.

Agency heads are asked to undertake a review of the subject matter of the complaint/petition to ascertain the facts and circumstances of the allegations. Upon review, a written Litigation Report should be prepared to include a detailed statement of the relevant facts and a summary of any procedural history. This report will provide the Litigation Section with necessary information to formulate responses to factual allegations in the complaint/petition and prepare a litigation strategy. Your agency likely has lived with the facts for months or years. The Litigation Report is the best way to quickly get solid litigation information to your attorney. As you know, the Litigation Section initially will be subject to very short deadlines, with a potentially steep learning curve. The party suing you already has a head start. The Litigation Report is the first step in leveling the playing field.

Note: Please prepare, identify, handle and safeguard the litigation report to preserve its character as attorney work product. Mark the report as “Confidential Attorney Work Product.”

The elements of a litigation report are as follows:

1. Title – Case name, file number and name of agency preparing report.

(In some cases more than one agency will be involved. Each agency will need to file a Litigation Report from its perspective.)

2. List Primary and Secondary Agency Contacts

List the primary and secondary contacts within the agency and provide information on how they may be contacted. (If these change, please notify the assigned attorney as soon as possible.)

3. Statement of Facts.

In every case, a complete, accurate and documented set of facts should be the first priority. Use plain language. Avoid or explain any agency jargon. Focus on collecting, documenting, and preserving the facts. Remain objective. This is the most important part of the Litigation Report.

a. Documentation.

All factual statements should be followed by a reference to a specific Exhibit or Tab, and page number (or line number if helpful) in the Litigation Report. All witness statements or supporting documents must be attached as an Exhibit or Tab. Attachments must be readable, properly identified and copied on one side only.

(1) Attach all relevant documents as exhibits, including, but not limited to the following:

- a) Index of Exhibits (Name of exhibit and exhibit number)
- b) Witness interviews, statements and summaries
- c) Relevant Documents (**with page numbers as in "1 of 12", "2 of 12", etc.**)
- d) Photographs
- e) Chronology
- f) Prior Correspondence (including memos and email) with plaintiff and attorneys or others
- g) Pre-litigation reports of investigations, grievances or administrative proceedings (e.g. EEOC administrative records)
- h) Potential Witnesses
- a) Copies of any pertinent agency rules, regulations or Procedures
- j) Transcripts of any recordings
- k) Drafts or sample discovery (Interrogatories, Requests for Admissions)
- l) Drafts or sample motions
- m) Copies of any relevant open records requests

b. Plaintiff's Personal History.

Include a detailed personal history of the Plaintiff. The history may include, but is not limited to: military service, employment, education, family, earning/tax history, medical history and personnel file.

c. Factual History.

A detailed description of the facts that relate to each of Plaintiff's causes of action, all referenced to specific attached supporting exhibits.

d. Pre-litigation Procedural History.

A detailed description of the progression of pre-litigation actions, including pre-litigation claims or administrative actions, pre-litigation negotiations or settlement offers.

e. Chronology.

A succinct time line of the events leading to suit. The Chronology can be included as an Exhibit.

Example:

10 JAN 98 - Plaintiff Smith filed Informal EEO Complaint (Exhibit G)

16 MAY 98 - Plaintiff Smith filed Formal Complaint (Exhibit H)

21 AUG 98 - Internal Affairs investigation (Exhibit I)

14 APR 99 - EEOC ALJ hearing (Exhibit L)

17 MAY 00 - Suit filed in Western District of Oklahoma (Exhibit M)

30 MAY 00 - Complaint Served on administrative agency head (Exhibit N)

4. Set-off or Counterclaim and Affirmative Defenses.

Identify all potential set-offs or counterclaims and the supporting facts and/or law. Also, identify potential affirmative defenses. Remember some defenses may be waived if not raised in the initial response. Fed.R.Civ.P. 12 and 12 O.S. 2001, §2012.

5. Memorandum of Law

For all agencies that have in-house or contract attorneys, please provide a memorandum of law (lawyer to lawyer memo, not being submitted for law review publication.) The format is unimportant, but it should include:

- a. Brief Statement of Legal Issues and Potential Defenses
- b. Jurisdiction Issues (e.g. State Tort Damages Caps, scope of employment)
- c. Key case law, statutes and agency rules or policies
- d. Analysis -- apply the facts to the law and make recommendations as to course of litigation strategy

6. Potential Witness Information.

As the second most important part of the Litigation Report, the witness list should include:

- a. Full name
- b. Work address and telephone number
- c. Date of birth
- d. Home address and telephone number
- e. E-mail address(es)
- f. Forwarding address(es)
- g. Brief summary of the witnesses' testimony (Fed.R.Civ.P. 26(a), 12 O.S. 2001, §2026)
- h. Potential Expert Witnesses -- Include Bio or Curriculum Vitae (CV) as an exhibit to the Litigation Report.
- i. Race, gender, nationality (when relevant)

Witness List Example:

John Joe Doe, M.D.

Address: 4545 N. Lincoln Blvd, Suite 260, Oklahoma City, OK 73105

Work phone (910) 123-1234

Home address: 1234 Army Drive, Fayetteville, NC 28311

Home phone: (910) 123-6789

E-mail Address: john.doe@WAMC.army.mil

Testimony: Dr. Doe is expected to testify concerning the treatment provided to Dead Husband on October 8, 1997.

Exhibits.

7. Distribution.

- a. Keep originals of all agency documents at a central location. Send original summons, complaint/petition and envelopes, if they were not sent with the earlier request for representation. The original agency documents may be needed as the litigation proceeds.
- b. Mail or deliver two copies of the Litigation Report to: Litigation Section, Oklahoma Attorney General, 4545 N. Lincoln Blvd., Suite 260, Oklahoma City, OK 73105.
- c. Alternately (and preferred method), email an electronic copy of the Litigation Report to: FC_Docket@oag.state.ok.us.

