

# LITIGATION: AGENCY REPORT GUIDELINES

## For the Litigation Section of the Oklahoma Attorney General

### INSTRUCTIONS

When state agencies, officials and employees are sued in state and 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: Agency Report Guidelines to help marshal information and promptly prepare a litigation strategy.

**Please note: Electronically stored information is important and irreplaceable source of discovery and/or evidence. The lawsuit requires preservation of all information from your agency's computer system and any removable electronic media. This includes, but is not limited to email and other electronic communication, cell phones, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files and network access information. This could possibly include personal computer systems and any personal removable electronic media. Failure to comply with preservation of information may result in severe sanctions, attorney fees, and/or a spoliation jury instruction.**

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 Privileged Agency Report should be prepared to include a detailed statement of the relevant facts and a summary of any procedural history. The Privileged Agency 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."***

## REPORT

### **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 Privileged Agency Report from its perspective.

### **2. Agency Contacts.**

Communication and cooperation are essential to effective representation. 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. Settlement Authority.**

The person in your agency who is authorized to monetarily settle a case on behalf of your agency. This person will need to be available for mediation and settlement discussions.

### **4. IT Agency Contacts.**

Electronically stored information is important and in irreplaceable source of discovery and/or evidence. The lawsuit requires preservation of all information from your agency's computer system and any removable electronic media. This includes, but is not limited to, email and other electronic communication, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files and network access information. *Provide the name, address and telephone number of the person, within your agency, who has the responsibility and/or ability to identify, preserve and collect this information.*

### **5. 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 agency jargon. Focus on collecting, documenting, and preserving the facts. Remain objective. This is the most important part of the Litigation Report.

- a) **Factual History:** A detailed description of the facts that relate to each of Plaintiff's causes of action all referenced to documents you are providing.
- 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) **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.
- d) **Chronology:** A succinct time line of the events leading to suit. The Chronology can be included as an Exhibit.

Example:

Date	Description	Exhibit/Tab #
01/10/10	Plt. Smith Filed Informal EEO Complaint	G
05/16/10	Plt. Smith filed formal Complaint	H
08/21/10	Internal Affairs Investigation	I
04/14/11	EEO ALJ Hearing	L
05/17/12	Suit filed in Eastern District of OK	M
05/30/12	Complaint served on administrative agency head	N

## 6. 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.

Aside from preserving electronically stored information, any and all documents relevant to the case need to be provided to the Oklahoma Attorney General. Please provide copies of all documents 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
- i) Copies of any pertinent agency rules, regulations or procedures
- j) Transcripts of any recordings

- k) Personnel files of Plaintiff and/or any other key employees
- l) Copies of any relevant open records requests

*\*Please designate documents the agency considers confidential.*

## **7. 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 initial response. Fed.R.Civ. P. 12 and 12 O.S. 2001 §2012.

## **8. Memorandum of Law.**

Please provide information regarding the state laws which create your agencies and any other laws which are unique to your agency and might have a bearing on the case. In addition, if you have prepared any legal memorandum or analysis regarding the case, please provide a copy.

## **9. Potential Witness Information.**

Please identify all witnesses within relevant information:

## **10. Agency employees named as Defendants.**

Your agency is responsible for notifying the individually named defendants of the requirement to request representation and to fill out and return to the assigned Assistant Attorney the Individual Litigation Report. Instructions and the Individual Litigation Report can be found on our website at: <http://www.oag.ok.gov/litigation-division>

## **11. 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) E-mail an electronic copy of the Litigation Report and documents to: [Docket@oag.ok.gov](mailto:Docket@oag.ok.gov) and the attorney assigned to your case. Please note the case name and number in the reference portion of the email.

**PRIVILEGED AGENCY REPORT**

**1. Title.**

**Agency:** \_\_\_\_\_  
**Case Name:** \_\_\_\_\_  
**Case Number:** \_\_\_\_\_

**2. Agency Contacts.**

**Primary Contact:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Work Phone:** \_\_\_\_\_  
**Cell Phone:** \_\_\_\_\_

**Secondary Contact:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Work Phone:** \_\_\_\_\_  
**Cell Phone:** \_\_\_\_\_

**3. Settlement Authority.** *(The person in your agency who is authorized to monetarily settle a case on behalf of your agency. This person will need to be available for any/all mediation and settlement discussions.)*

**Settlement Authority:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Work Phone:** \_\_\_\_\_  
**Cell Phone:** \_\_\_\_\_

**4. IT Agency Contacts.** *(The person in your agency who has the responsibility and/or ability to identify, preserve and collect IT information.)*

**Agency IT Contact:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Work Phone:** \_\_\_\_\_  
**Cell Phone:** \_\_\_\_\_

## 5. Agency Employees Named as Defendants.

Your agency is responsible for notifying the individually named defendants of the requirement to request representation and to fill out and return to the assigned Assistant Attorney the Individual Litigation Report. Instructions and the Individual Litigation Report can be found on our website at: <http://www.oag.ok.gov/litigation-division>

## 6. Set-off or Counterclaim and Affirmative Defenses.

## 7. Memorandum of Law.

## 8. Statement of Facts - Attach a separate document with the following information

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

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- j) Transcripts of any recordings
- k) Personnel files of Plaintiff and/or any other key employees
- l) Copies of any relevant open records requests

***\*Please designate documents the agency considers confidential.***

**10. Potential Witness Information.**

**Witness Name & Title:** \_\_\_\_\_

**Email:**

**Work Address:**

**Home Address:**

**Work Phone:**

**Cell Phone:**

**Summary of testimony:**

**Witness Name & Title:** \_\_\_\_\_

**Email:**

**Work Address:**

**Home Address:**

**Work Phone:**

**Cell Phone:**

**Summary of testimony:**

**Witness Name & Title:** \_\_\_\_\_

**Email:**

**Work Address:**

**Home Address:**

**Work Phone:**

**Cell Phone:**

**Summary of testimony:**

**Witness Name & Title:** \_\_\_\_\_

**Email:**

**Work Address:**

**Home Address:**

**Work Phone:**

**Cell Phone:**

**Summary of testimony:**



## **11. Distribution.**

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- b) E-mail an electronic copy of the Litigation Report and documents to: [Docket@oag.ok.gov](mailto:Docket@oag.ok.gov) and the assigned Assistant Attorney General. Please note the case name and number in the reference portion of the email.
- c) If necessary you can mail the Litigation Report to: Litigation Section, Oklahoma Attorney General, 313 N. E. 21<sup>st</sup> Street, Oklahoma City, OK 73105.