



CHIEF NATIONAL GUARD BUREAU MANUAL

NGB-JA
DISTRIBUTION: A

CNGBM 0405.01
05 February 2018


LITIGATION PROCEDURES

References: See Enclosure F.

1. Purpose. This manual provides procedural guidance for Army National Guard (ARNG) and Air National Guard (ANG) litigation concerns in accordance with (IAW) references a through e.
2. Cancellation. None.
3. Applicability. This manual applies to all elements of the National Guard (NG).
4. Procedures. IAW reference a, it is National Guard Bureau (NGB) policy to monitor and provide guidance through the Office of the NGB Chief Counsel (NGB-JA) on all litigation arising from or related to activities or interests of the National Guard (NG). This manual establishes procedures for NG litigation concerns IAW enclosures A through E.
5. Summary of Changes. This is the initial publication of CNGBM 0405.01.
6. Releasability. This manual is approved for public release; distribution is unlimited. Copies are available through <<http://www.ngbpdcc.ngb.army.mil>>.

UNCLASSIFIED

7. Effective Date. This manual is effective upon signature and must be reissued, canceled, or certified as current within five years of its publication.



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National Guard Bureau, Chief Counsel

Enclosures:

- A -- Reporting Requirements and Coordination Guidance
- B -- Litigation Report Format
- C -- Supporting Documents for Litigation Reports
- D -- Oral Notification Reports
- E -- Representation by the Department of Justice
- F -- References
- GL -- Glossary

ENCLOSURE A

REPORTING REQUIREMENTS AND COORDINATION GUIDANCE

1. Matters Reported. Report all lawsuits and potential lawsuits involving the NG by telephone to the NGB-JA Litigation Division immediately upon receipt of any information indicating that a suit has been or will be filed by a State. Reporting should not be delayed pending service of process or other receipt of official notification.

2. Reports and Correspondence. Send all reports and correspondence to:

- NGB-JA, 111 South George Mason Drive, Arlington Hall Station-Building II, Suite T319B, Arlington, VA 22204-1373.
- Submit immediate telephone reports of new or potential lawsuits to NGB-JA at 703-607-2723 or Defense Switched Network (DSN) 327-2723.

a. Written Notification. Litigation Coordinators (LC) will retain copies of written reports or email transmissions for a minimum of two years from the date of the incident. Written reports and relevant documents may be submitted one of two ways:

- Via email to: <ng.ncr.arnng.mbx.ngblitigation@mail.mil> or to the NGB-JA Litigation Division attorney receiving the immediate report. All attachments should be in a fixed format (pdf, .jpg, or .tif).
- Via facsimile transmission to: 703-607-3684 or DSN 327-3684.

b. Verbal Notification. Immediately submit all advisory verbal reports to NGB-JA when litigation, legal action, or the imminent possibility of such action is discovered. Transmit all motions or developments requiring prompt action (for example, applications for temporary restraining orders or motions for preliminary injunctions) to NGB-JA immediately. Report all litigation involving the NG to NGB-JA whether or not a Federal interest appears to be involved. Verbal reports will contain the information enumerated in Enclosure D.

3. Litigation Report. Upon receipt of a lawsuit, State LCs will prepare a full litigation report for submission to NGB-JA. Litigation reports will contain the information specified in Enclosures B and C of this manual and in paragraphs 3-9 of reference c or paragraphs 1.8-1.8.6 of reference d. For additional guidance, refer to references c and d, as appropriate.

a. LCs must ensure that the statement of facts, which is typically the most important part of the litigation report, is accurate and sufficiently detailed. The

statement of facts should be in chronological order and numbered in paragraphs with specific references to the relevant parts of supporting documents (for example, "Exhibit A, p.10"). Reference hearing transcripts by page number (for example, "H/Tr. 7"). The statement of facts will serve as the basis for pleadings, discovery, pretrial preparation, and settlement consideration. It is imperative that the statement of facts include both favorable and unfavorable information for the government.

b. LCs must prepare a memorandum of law that discusses the impact of applicable local law practices and addresses all possible relevant issues (for example, measure of damages, scope of employment, effect of contributory negligence, limitations upon death and survival actions, or military status). If State or local statutes or court decisions are applicable, copies should be included in the report. Interview all potential witnesses. Attach all summaries of the interviews to the list of witnesses. The report should include comments that address the credibility of the witnesses, their relationship to the parties, and their interest, if any, in the outcome of the case, as well as any other factors bearing on the usefulness of each witness's testimony.

4. Department of Justice (DoJ) Representation. Requests for Representation by the DoJ must be made in writing and submitted promptly upon notification of any litigation in which a Government employee is sued in his or her individual capacity. See Enclosure E. Requests must include copies of all summonses, complaints, and related pleadings, and should be emailed or faxed to the NGB-JA Litigation Division immediately upon receipt by a State, IAW paragraph 2 of this enclosure. Mail hard copies of all requests to the NGB-JA Litigation and Employment Division.

5. Coordination. After concurrence from the appropriate Litigation Divisions, NGB-JA may authorize direct communication between LCs and local NG officials and other Federal agencies on a case-by-case basis when time constraints or other reasons preclude the use of normal channels.

a. Direct communication between LCs or local NG officials and Federal agencies will occur only after approval by the appropriate Litigation Division(s) as an exception to policy.

b. For instances in which direct communication between LCs and local NG officials and Federal agencies is authorized, NGB-JA and the appropriate Litigation Division(s) must be kept fully informed of the communications.

ENCLOSURE B

LITIGATION REPORT FORMAT

1. Litigation reports will comply with either paragraphs 3-9 of reference c or paragraphs 1.8-1.8.6 of reference d, and will include the following practicable and relevant information:

a. A complete statement of facts that contains a summary of known facts giving rise to the litigation and detailed comments with respect to each allegation of the pleadings.

b. All Parties involved in the litigation, the court involved, and the docket number of the case.

c. The amount of damages or other relief sought.

d. Comments on available defenses or counter-claims.

e. Complete information regarding service of process and pleading suspense dates.

f. Any Government indemnity rights (for example, insurance, bonds, or guaranty agreements).

g. Prior action taken with regard to the subject matter of the litigation.

h. The names and addresses of witnesses and summaries of their expected testimony in statement form.

i. A discussion of all relevant state or local law or regulations.

j. An exhibit list.

k. A draft answer to the complaint.

ENCLOSURE C

SUPPORTING DOCUMENTS FOR LITIGATION REPORTS

1. Copies. Submit three copies of all litigation reports and all supporting documents. Second and subsequent copies of reports that are longer than 50 pages, including all allied materials, may be provided in digital media format (for example, compact disc or digital video disc). Upon the request of the receiving agency representative, submit copies of the litigation report and all supporting documentation by attaching the document file(s) (preferably in a fixed format such as .pdf, .jpg, or .tif) to an email or by facsimile transmission.

2. Certification. All official documents, records, and transcripts, including copies of the applicable State and local laws and regulations, must be certified by the custodian of the item(s) concerned. Only one copy needs to be certified. An item that is too bulky may be broken down into two or more parts, provided each part is certified.


3. Certification Forms. For ARNG matters, use Department of the Army Form 4, "Department of the Army Certification for Authentication of Records." For ANG matters, use Air Force Form 44, "Certificate of Records." The certifying custodian must complete the top portion of the appropriate form, while the designated representative of the respective Military Department Secretary concerned will complete the lower portion. Sample forms are shown in figures 1 and 2 of this enclosure. Submit the original appropriate form. Partially preprinted or copied inserts are not acceptable.

4. Assembly of the Litigation Report.

a. Part I. The complete, cross-referenced statement of facts should appear first, followed by: the summons, complaint and related pleadings, supporting documents, records, statements, transcripts, local statutes, and exhibits, arranged chronologically. Tab all supporting material for expedient reference. The resulting report should constitute the complete administrative record in the case.

b. Part II. Pleadings should be examined paragraph by paragraph to determine if the allegations made in them can be answered by the facts and documents prescribed in Part I above. The reviewer should make specific reference to line and page or tabbed portions of Part I when commenting on each paragraph of the pleading. For example, "Paragraph III (Complaint)—See Statement of Facts, page 1, lines 6-7, 21-22, and Tab D (Medical History)".

United States of America



DEPARTMENT OF THE ARMY

Lansing, Michigan 15 Oct 12
PLACE DATE

I HEREBY CERTIFY that the attached documents are true and correct copies of official documents relating to _____, which are located and maintained in the Technician Personnel Office, Michigan Department of Military Affairs, Lansing, Michigan.

Col, MI ARNG
Technician Personnel Officer
Custodian

I HEREBY CERTIFY that _____, who signed the foregoing certificate, is the _____, and _____ that full faith and credit should be given to his certification.

IN TESTIMONY WHEREOF I, _____,
The Administrative Assistant to the Secretary of the Army,
have hereunto caused the seal of the Department of the Army to be affixed this _____ day of _____

By _____
Administrative Assistant.

Figure 1. Department of the Army Certification for Authentication of Records

United State of America
DEPARTMENT OF THE AIR FORCE

(Place) (Date)

I HEREBY CERTIFY that the attached copies, listed below, are true copies of the following official records maintained in Military Personnel Records Section, 301st Mission Support Squadron, 301st Air Base Group.

Unfavorable Information File of Thomas Doe

John Smith
Chief, Military Personnel Records Section
301st Mission Support Squadron
Barksdale AFB, LA 71110

I HEREBY CERTIFY that _____, who
signed the foregoing certificate, is the _____
and
that to their certification as such, full faith and credit are and ought to be given.

IN TESTIMONY WHEREOF I, _____,
Secretary of the Air Force, have hereunto caused the seal of the Department of the Air Force to be affixed and
my name subscribed by the Administrative Assistant to the Secretary of the Department, at the
City of Washington, this _____ day of _____, _____.

Secretary of the Air Force

By _____
Administrative Assistant

Figure 2. Certificate of Records

ENCLOSURE D

VERBAL NOTIFICATION REPORTS

1. The verbal notification report will include the following information:
 - a. Name(s) and official positions of the plaintiff(s) and defendant(s).
 - b. Name(s) and address of plaintiff's attorney.
 - c. Name(s) and location of court.
 - d. Case number.
 - e. Date filed.
 - f. Date of service.
 - g. Nature of the complaint.
 - h. Relief requested (for example, Temporary Restraining Order or Amount of Monetary Damages).
 - i. Whether the defendants are sued in their official capacities, as individuals, or in both their official capacities and as individuals.
 - j. Whether the defendants are Federal or State employees and what status they were in at all times relevant to the litigation and underlying events leading to the litigation.
 - k. Who has been served with process, when they were served, and how they were served.
 - j. Whether any orders have been entered by the court and/or any hearings scheduled, and if so, the time and topic(s) to be addressed.
2. Follow-up reports by telephone are necessary when any of the above information is not known at the time of the initial report or becomes known, or when there is a change in previously reported information (for example, a service of process on a previously unserved defendant).

ENCLOSURE E

REPRESENTATION BY THE DEPARTMENT OF JUSTICE

1. Who May Request. ARNG and ANG personnel, including NG members, Federal civilian employees, and agents of the Federal Government, who are sued in their individual capacities may request legal representation by the DoJ in the defense of legal actions arising from their status as Federal employees or out of their performance of official Federal duties. If a defendant is sued solely in his or her official capacities, a Request for Representation is not required.
2. Determination. Requests for Representation are approved by the DoJ. Personnel sued in their individual capacities are always entitled to retain private counsel at their own expense. The Federal Government cannot pay the fees of private counsel except in certain cases where specific authority exists. The U.S. has no obligation to reimburse personnel for an adverse judgment granted against the defendant in his or her individual capacity. The U.S. may consider a request for indemnification from personnel held personally liable when the liability is a result of actions taken in the scope of official duties and indemnification is in the best interests of the U.S.
3. Format. Prepare a Request for Representation by the Attorney General of the U.S. IAW the format in references c and d. Consult with the NGB-JA Litigation Division when preparing Requests for Representation to ensure accuracy and completeness.
4. Supervisor's Statement. The immediate supervisor (or another supervisory official with knowledge of the duties of the individually sued defendant) must prepare a statement that confirms the official duty statement of the defendant. NGB-JA will assist in statement preparation in all cases in which The Adjutant General is the individually sued defendant.
5. Timely Submission. Submit Requests for DoJ representation directly to NGB-JA. NGB-JA will forward the request through the Litigation Divisions of the Army or Air Force, as appropriate, and then to the DoJ for determination. Under no circumstances should the submission of Requests for Representation be delayed pending completion of other reporting requirements or forwarded directly to either the local U.S. Attorney or the DoJ.

ENCLOSURE F

REFERENCES

- a. CNGB Instruction 0405.01, 21 July 2017, "Litigation"
- b. 28 United States Code, Section 516, "Conduct of Litigation Reserved to Department of Justice"
- c. Army Regulation 27-40, 19 September 1994, "Litigation"
- d. Air Force Instruction 51-301, 20 June 2002, "Civil Litigation"
- e. Department of Defense Directive 5105.77, 30 October 2015, Incorporating Change 1, 10 October 2017, "National Guard Bureau"

GLOSSARY

PART I. ACRONYMS

ANG	Air National Guard
ARNG	Army National Guard
CG	Commanding General of the District of Columbia National Guard
DoJ	Department of Justice
DSN	Defense Switched Network
IAW	In accordance with
LC	Litigation Coordinator
NG	National Guard
NGB-JA	Office of the National Guard Bureau Chief Counsel

PART II. DEFINITIONS

Litigation -- Legal action or process involving civil proceedings.

State -- The several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.