



TU Litigation Policy

I. Introduction.

For the last number of years, TU has required that the national office be notified of and approve any litigation filed in the name of TU. The TU Leadership Manual requires that those seeking to file the litigation submit the complaint to the national office for review and approval within a reasonable time before it is filed.

The sheer number of potential litigation actions makes it much harder for TU to track them. It has also become increasingly difficult to ensure that staff and volunteer leaders are coordinating activities and applying consistent criteria in considering and proceeding with legal actions.

Several of TU's core interests are at stake whenever the organization engages in litigation in the organization's name. TU's financial resources and reputation are on the line when it becomes party to an action, and any financial liability incurred by councils or chapters as a result of litigation could potentially become the responsibility of the national organization. Litigation actions are among the most public acts TU can take, and those actions can substantially affect how the public or specific individuals view the organization. This in turn can profoundly affect TU's relationship with state and federal agencies, elected officials, potential members, donors and foundations. It is critical that any litigation filed in TU's name be consistent with TU's mission, values, and strategies. All branches of TU affected by the litigation also need to have the opportunity to review the proposed action and evaluate its possible effects on their activities. It is also important for TU to monitor the status of pending litigation. TU's auditors and government grant programs often require a current status list regarding all litigation in which TU is a party.

TU's updated litigation procedures are designed primarily to achieve the following objectives:

- To ensure that the national office and volunteer leaders are aware of and approve potential litigation before it is filed, and to ensure that filing decisions are made using consistent criteria.
- To ensure that the national office and volunteer leaders are immediately aware of a notice or service received of any litigation against TU, its staff, officers, or members acting on behalf of TU.
- To allow senior management and volunteer leaders to evaluate both individual cases and TU's complete universe of litigation to ensure their consistency with TU's overall programs and available resources.
- To keep the national office and volunteer leaders aware of the status of litigation as it progresses.
- To maintain information about all of TU's litigation in a central location so that it is easily accessible to TU's general counsel, management, auditors, and the Board of Trustees.

II. Definition of Litigation.

Any time a chapter, council, or TU national staff program enters into any of the following legal actions using the TU name in any form it qualifies as litigation on behalf of TU.

- Lawsuits filed directly in court;
- Lawsuits served on a party prior to a court filing;
- Appeals of actions of administrative agencies to either state or federal court;
- Intervention in litigation filed by others;
- An amicus brief filed in litigation involving other parties;
- Appeals an administrative order to a court;
- A notice of intent to sue;
- Certain administrative proceedings (see below for more detail).

Sometimes, TU volunteers and staff participate in a variety of activities involving state and federal agencies, such as commenting on rules or permits, or filing applications for permits. These situations do not qualify as litigation, and will not require approval of the national office.

In some proceedings, however, administrative agencies can have the same powers as courts – they can hold evidentiary hearings, issue subpoenas, and levy fines.

If an administrative proceeding includes one or more of the following attributes, it should be reported as litigation:

- a trial-type evidentiary hearing;
- written discovery or depositions;
- hiring a lawyer;
- the issuance of subpoenas or the assessment of fines, or,
- jurisdiction of the administrative agency to order parties to perform specific acts.

Sometimes this will involve a judgment call, but if you have any doubts about whether you should notify and seek approval from the national office, please contact the VP to whom you ultimately report as a staff member. Volunteers should contact the VP for Volunteer Operations.

Notices of intent (NOI) to sue filed under the citizen suit provisions of the Clean Water Act, the Endangered Species Act, and similar statutes must be reported as litigation. Such notices lay the immediate groundwork for litigation, and reporting them will allow us to be prepared for future litigation and also will help with approving the specific lawsuit should it become necessary to file. An NOI qualifies as “litigation” for the purpose of this policy.

III. Reporting Litigation Against TU.

If any TU staff member receives notice of a lawsuit against or involving any TU entity or is served with legal “papers” in any form, the VP to whom you ultimately report should be notified immediately. If any TU chapter or council receives notice of a lawsuit against or involving any TU entity or is served with legal “papers” in any form, the VP for Volunteer Operations should be notified immediately. This also includes any action against any TU member, including an officer or director of a chapter or council, in his or her capacity as a TU member (such as a chainsaw incident at a field project). Such actions may be

covered by TU's general liability policy and officers and directors liability insurance policy, but those policies require that the carrier receive timely notice of the action.

IV. New Litigation.

A. Filing New Litigation

All new litigation (as defined above in Section II) filed on behalf of TU must be approved by TU's national office, in consultation with relevant program staff and volunteer leaders. Before filing, TU staff must send the memorandum described below to the VP responsible for their program and TU volunteers must send the memorandum described below to the VP for Volunteer Operations early enough to allow for a review of the case by the national office before proceeding. Prior to field staff submitting a memorandum seeking approval of litigation, they must inform the affected council and chapter volunteer leaders of their intent and discuss the potential litigation with them. It is the responsibility of the CEO to keep the Board apprised of significant litigation filing being considered.

A memorandum seeking litigation approval must describe the case and address at least the following issues:

- The legal claims (described briefly);
- The goal of the litigation, described within the broader background of the conservation issues that gave rise to the litigation (describe what will flow immediately from winning, and also what the case will achieve in the long run, whether it be for a particular legal issue, a particular species, or a broader landscape);
- The potential downsides of litigation, including the downsides if we lose;
- TU's role in the litigation (for example, are we driving the lawsuit, or are we just signing on);
- Alternatives to litigation, and the extent to which those alternatives have been explored or attempted;
- A realistic assessment of the chances of succeeding in the case;
- The financial, personnel, and other resources the case will require;
- In the case of notices of intent to sue, an exit strategy in the event we do not actually file a case;
- The attorneys who will represent TU, and in cases where TU is part of a coalition of plaintiffs (this includes a copy of a written agreement regarding fees and costs that also describes how decisions about the litigation will be made by the coalition);
- An anticipated timeline for the litigation and how the litigation is likely to unfold procedurally (e.g., will it be a record review case or require discovery and the presentation of new evidence, is a trial likely, etc.);
- Brief summary of communications with TU staff and the relevant state council about the potential litigation and whether any concerns have been raised.

All of the issues above should be addressed succinctly to provide a clear idea of the rationale for the litigation and how it might be likely to unfold. The actual complaint to be filed, notice of intent to sue letter, or other filing initiating the case should be submitted with the memo, or within sufficient time before the filing deadline to allow for review and discussion of the case. Many cases require extensive

consultation with TU staff and volunteer leaders, and it should be recognized that if less than several weeks notice is provided before filing it may make approval of the case more difficult or impossible.

The primary criterion for approving litigation will be whether the case is well thought out and is consistent with TU's mission, values, and strategies. Once a decision to approve or decline the proposed litigation is reached, that decision will be communicated in writing to the volunteer representative or staff member who has proposed the litigation.

It is also critical that any new litigation filed against TU must be reported to TU's national office, in consultation with relevant program staff and volunteer leaders.

B. Monitoring Litigation

It is important that we continue to keep track of the status of ongoing litigation, and consult with volunteers or field staff about the case as appropriate. It will continue to be part of TU's litigation policy that volunteers or field staff periodically update the national office as to the status of the case, and that the national office do the same if it learns of relevant information of value to respective state councils. The frequency of updates will vary from case to case. A case that moves along quickly might require monthly or quarterly updates, where twice a year might suffice for slower-moving cases. In addition, the responsible VP and general counsel should receive copies of all significant documents in the case (responsive pleadings, dispositive motions, and important court rulings).

Again, there is no reason to send in everything, just filings or orders that affect the status of the case. The responsible VP and the general counsel should also be notified when the case is completed.