



## FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.

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### **POLICY NO. 3-80**

### **LEGAL DEFENSE BENEFIT**

#### **BACKGROUND:**

In order to provide legal defense benefits to the members of Florida P.B.A., the Board of Directors hereby adopts the following policy:

#### **POLICY:**

##### Section 1. Coverages and Eligibility

- A. The Legal Defense Benefit will be provided to Florida P.B.A. members only in those cases where a lawsuit or criminal indictment results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer. Representation will also be provided at shooting scenes and at the scene of serious personal injuries caused by a member, arising out of that member's performance of or pursuit of his/her official duties.
- B. The Benefit shall consist of the payment by Florida P.B.A. of attorney's fees and directly related Court costs.
- C. Members are entitled to legal defense and costs within the coverage provided regardless of the number of separate incidents involving a member during each year. Where a single incident generates multiple criminal actions, the P.B.A. shall have the option to represent the member in each action if it determines such representation is in the best interest of the Association and its membership.
- D. Coverage is limited to actions stemming from incidents which occurred after October 1, 1980. Members must have been a Florida P.B.A. member in good standing prior to the incident, as well as all times during the litigation. If a member has joined Florida P.B.A. from a similar organization subsequent to an incident which results in litigation, during the time of an organizational campaign wherein P.B.A. was competing for collective bargaining certification rights held by another association, Florida P.B.A. will pay the same benefits for legal defense as would have been provided by the Association to which he/she was a member.
- E. The term *arising out of and in the scope of their duties* as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employing agency. The benefit is not designed to cover a member while he/she is off-duty or engaged in off-duty employment, unless the circumstances are such that it is apparent the member was justified in placing himself/herself on duty acting in his/her police capacity in order to effect an arrest and protect persons or property from harm. In instances of off-duty employment,

coverage will be provided only where the member's employing agency or secondary employer decline coverage of the member.

- F. In order for a member to be eligible for legal defense, the member must be in good standing and up to date in dues payments, and must remain in good standing during the litigation. If the member fails to remain in good standing, Florida P.B.A. reserves the right to terminate its support.
- G. Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions including, but not limited to, personnel employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facility's capacity) or instances where no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on theory of respondent superior). Furthermore, coverage under the benefit is not intended to cover actions of a member who is assigned to a professional standards or internal affairs unit and the case involves allegations that the member acted contrary to the rights, privileges or procedures set forth in sections 112.532, .533 and .534, Florida Statutes.
- H. A member must request P.B.A. representation at the time the member receives official notice of the civil suit or criminal indictment and active representation of the member is undertaken. If counsel other than P.B.A.'s is retained by the member either at the onset of the case or at any future time, legal defense benefit coverage may, at the sole discretion of P.B.A., be denied or discontinued.

## Section 2. Benefit Administration

- A. The General Counsel will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:
  - 1. The requesting officer is a current member in good standing of Florida P.B.A.,
  - 2. He/she was a member of the Association at the time of the incident,
  - 3. The incident was the result of the member's performance of or pursuit of his/her official duties as a law enforcement officer, and
  - 4. The request for coverage was submitted through the member's Charter/Chapter
  - 5. The request for coverage was submitted to and received by the Association within sixty (60) calendar days after the member received official notification of the civil suit or criminal indictment and active representation of the member is undertaken by a legal defense benefit attorney.
- B. In instances where a timely request for representation as provided for in Section 2(A)5 has not been made, but the member is otherwise eligible for coverage, the Charter/Chapter shall be

responsible for all legal fees and costs incurred prior to the date the coverage is approved by the Association General Counsel.

- C. The Association General Counsel shall review all cases on a continuing basis to ensure proper representation is being provided to the member and that the monthly fees, costs and expenditures are being incurred within the coverage and limitations set forth by this policy.
- D. If the Association General Counsel determines that the criteria listed above are not met, the General Counsel may reject the request. The member, through his/her Charter or Chapter, may appeal such a denial to a retired Judge, appointed by Florida P.B.A., who sat on the Circuit Court or a higher court, whose action shall be final and binding on all parties.
- E. It is the responsibility of the Charter or Chapter president to file a written request for legal assistance. The request shall include the name of the member and the member's Social Security number; the type of legal action; a summary of the allegations; the date of the incident, and the president's recommendation for or against coverage. Upon receipt and review, approval or disapproval of coverage will be telephonically relayed to the Charter/Chapter president. At that time, if approval is granted, the General Counsel shall assign a Panel Attorney to handle the case.
- F. In cases involving emergency situations such as shootings, vehicular accidents involving serious injury inflicted by a member, or other instances requiring emergency response by an attorney, the Charter/Chapter president may authorize the use of a Panel Attorney for the emergency situation. As soon as possible, the General Counsel for Florida P.B.A. is to be advised of the incident telephonically. A written request and/or report is to follow. The assignment of an attorney to cover an emergency problem will not commit Florida P.B.A. Legal Defense Benefit to coverage of future legal fees and costs. An attorney may not proceed beyond the preliminary stages of an emergency situation without additional written approval from the Association General Counsel.

### Section 3. Legal Defense Benefit Panel of Attorneys and Authorized Fees.

- A. Attorneys appointed by the affected Charter/Chapter president, after consultation with the Association General Counsel, to the Legal Defense panel of attorneys shall be in good standing with the State Bar Association in which they intend to represent members and be willing to represent members pursuant to the established fee arrangement.
- B. Attorney's fees will be paid on the basis of uniform hourly rates established annually by the Association General Counsel, the Comptroller and the Florida P.B.A. Executive Committee. Deviations from this rate may be approved by the General Counsel after consultation with Florida the P.B.A. President and Comptroller.
- C. The Benefit shall also consist of the payment of Appellate fees when authorized by the Association General Counsel. Appellate fees shall be established in the same method as attorney fees in (B) above.

- D. When an attorney accepts employment by a member, he or she may seek compensation for fees and costs from the Florida P.B.A. Legal Defense Benefit if:
1. The attorney receives written authorization for such representation from the General Counsel of Florida P.B.A. or the Association President acting on behalf of the General Counsel.
  2. The attorney consents to the procedure, restrictions and limitations as set forth herein.
  3. No later than the 10th of each month, the attorney shall file with the General Counsel of Florida P.B.A. a detailed monthly status report of the case he/she is handling, together with an itemized statement of fees and costs. Costs will be paid pursuant to a schedule established by the General Counsel.
  4. In civil cases wherein the employer is a party defendant, the attorney shall concentrate his/her efforts to protect the member against personal liability, unless the Association General Counsel authorizes otherwise.
  5. Interlocutory appeals or writs of certiorari may be filed with written permission from the General Counsel of Florida P.B.A. All appeals from final orders, judgments and verdicts must also have prior written approval.
  6. Upon completion of a case which has been concluded in favor of the member, the attorney shall immediately file a motion for costs (and attorney's fees, if applicable). Florida P.B.A. shall receive the benefit of an order granting recovery of attorney fees and assessed costs.

#### Section 4. Limitations, Restrictions and Exemptions

- A. A member will be entitled to an attorney under the Legal Defense Benefit in civil actions when the member is a co-defendant with his/her employer and when punitive damages are sought against the member. The litigation preparation shall be confined to the issue of punitive damages. The Association General Counsel reserves the right to review the costs and expenditures each month to determine if they have been incurred within the coverage set forth.
- B. The Benefit will not provide legal services in civil matters wherein punitive damages are not sought unless the member is sued individually and the employer refuses representation; or unless the employer is going to settle the claim and the employer has admitted wrongdoing on behalf of the member without the member's consent.
- C. The Association General Counsel may direct that a case assigned to a legal defense attorney be monitored by the attorney in the following cases: (a) pro se cases in which the member is being actively represented by the employer; (b) civil cases in which the member is being actively represented by the employer and the member is satisfied with representation being provided, and (c) civil cases in which the member is only a nominal party and the case is designed to test the legality of an employer's practice, policy or rule enforced by the member.

When a case is in monitoring status, the legal defense attorney will not actively participate in litigation of the case but, instead, will consult with the member and review appropriate court

documents to ensure that the member's interests continue to be adequately protected. Should the legal defense attorney determine active representation is warranted, or should the member request active representation in the case, the Association General Counsel will be informed of the change in representation status and reasons for the change. Thereafter, a legal defense attorney shall actively represent the member in the case.

- D. Florida P.B.A. reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that there is clear or convincing evidence the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally, or the member's own actions in the matter have substantially harmed the ability of counsel to render effective legal assistance.
- E. Florida P.B.A. reserves the sole right to settle a claim against a member based upon the recommendation of legal counsel and a determination by the Association General Counsel that such a course of action is in the best interest of Florida P.B.A. Where such a determination is made, the member shall be afforded the option of accepting the settlement or obtaining private legal counsel, at his own expense, to continue the case. Should the member elect to continue litigation, all obligations of Florida P.B.A. under the Legal Defense Benefit shall cease.
- F. The Benefit will not pay for the cost of any appeal, interlocutory or final, civil or criminal, unless prior approval is first obtained from the Association General Counsel based upon the member's assigned attorney's conclusion that there are substantial meritorious grounds for such appeal and the interests litigated on appeal are determined to be in the best interest of the Association and its membership.
- G. The attorney for a member may seek permission from the Association General Counsel to allow the attorney to actively litigate a civil case involving a member when the employer has indicated a position that is adverse to the member and/or the representation afforded by the employer is detrimental to the member. If the Association General Counsel grants approval in that instance, the Legal Defense Benefit will cover those legal fees and costs. Permission must first be obtained.
- H. The Association will not provide legal defense benefit coverage as described in this policy to any member accused of illegal drug involvement where the member either admits such involvement or where, in the opinion of the Association General Counsel, there exists sufficient evidence of such involvement that providing such coverage could bring discredit to the Association and/or the law enforcement profession.

Section 5. Cessation of Legal Defense Benefit Plan

- A. In the event the State Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reasons, Florida P.B.A. shall promptly notice each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's membership list.
- B. Thirty (30) days after the notice is mailed, P.B.A.'s obligation under this plan shall cease, except in those incidents where representation of a member had already been undertaken. Where representation had been undertaken prior to the end of the thirty (30) day period, the provisions of this Plan shall continue to apply.
- C. Any Charter or Chapter that is current in its Legal Defense Benefit payments and desires to opt-out of the Legal Defense Benefit may do so under the following conditions:
  - 1. The Charter or Chapter Board of Directors, by a two-thirds vote of that Board, approves the withdrawal;
  - 2. After proper notice of the meeting and the issue, the Charter's or Chapter's general membership ratifies, by a majority vote, the action of its Board of Directors;
  - 3. Florida P.B.A. be noticed of both above meetings and allowed to have a representative present to explain the procedures of withdrawal;
  - 4. Following the affirmative votes described above, the Legal Defense Benefit for that Charter or Chapter shall cease as of midnight on that date and Florida P.B.A. will have no further liability for cases from that time forward. Payments for the Benefit shall cease at the same time and date;
  - 5. On-going cases shall continue to be the responsibility of Florida P.B.A. for only that amount of monthly legal bills approved by the Association's General Counsel which exceeds the amount of Legal Defense Payments had they been submitted, and
  - 6. A Charter or Chapter that has opted out of this Benefit may, after one year, be reinstated by a two-thirds vote of the Association Board of Directors.

EFFECTIVE DATE: October 1, 1980

Passed and Adopted February 28, 1981

Amended (On-scene attorney), Passed and Adopted: 8/4/84

Amended (LDQ Committee/guidelines), Passed and Adopted: 2/13/86

Amended (Guidelines Adopted), Passed and Adopted: 6/14/86

Amended (Benefit Adm.Com. to Gen.Counsel) Passed and Adopted: 6/27/87

Amended (Add 1(G) and 2(A)(5), (B)), Passed and Adopted: 10/30/89

Amended (Add 4(G)), Passed and Adopted: 1/13/90

Amended (Amend 3(A) and Add 5 (C, 1-6)), Passed and Adopted: 7/28/90

Amended (Add Sec. 1(H) and Sec. 4(C) re-lettering), Passed, Adopted: 7/18/92

Amended (Amend Sec. 2(A)(1) and Sec. 4(D)), Passed and Adopted: 12/2/00

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Amended (Amend Sec. 1(C), Sec. 4(D), and Sec. 4(F)), Passed and Adopted: 6/9/01

Amended (Amend Sec 1(G)), Passed and Adopted: 6/17/2006

(SEAL)

A handwritten signature in black ink, appearing to read "M. Clifton", is written over a light gray rectangular background.

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Signature