



## PALM BEACH COUNTY POLICE BENEVOLENT ASSOCIATION

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### **POLICY NO. 12-1** **LEGAL DEFENSE BENEFIT**

#### **BACKGROUND:**

In order to provide legal defense benefits to the members of the Palm Beach County PBA, the Board of Directors hereby adopts the following policy:

#### **POLICY:**

##### **I. Coverage and Eligibility**

The Legal Defense benefit available under this policy 12-1 is limited to legal defense for

- a) civil lawsuits against an officer based on actions arising out of the course of his employment, but only where punitive damages are sought;
- b) internal affairs investigations and other employment related matters that may result in discipline by an officer's employer, as more fully described herein.

A. Coverage is limited to actions stemming from incidents which occurred after membership. Members must have been a Palm Beach County PBA member in good standing prior to the incident, as well as all times during any litigation.

If a member joins Palm Beach County PBA during an organizational campaign in which the PBA is competing for collective bargaining certification rights held by another organization, and the member seeks representation for after an incident which occurred prior to their PBA membership, but while they were members of the other organization, the Palm Beach County PBA will pay the same benefits for legal defense as would have been provided by the organization of which he/she was a member.

B. 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 affect an arrest and to 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. Coverage will also be provided if off-duty activities lead to or could lead to disciplinary action against the employee.

C. 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 any litigation. If the member fails to remain in good standing, the Palm Beach County PBA reserves the right to terminate its support.

D. 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.

E. Notwithstanding the forgoing, coverage under the benefit will not be provided to members requesting the initiation of legal action against their employer, an employee of an employer, or a private citizen for individual advancement or monetary gain unless in the opinion of the Association and within its sole discretion such litigation will advance the interests of the Association.

F. A member must request PBA representation at the time the member receives official notice of any civil suit, criminal indictment, or contemplated disciplinary action by his/her employer and active representation of the member is undertaken.

G. If counsel other than PBA 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 the PBA be denied or discontinued.

## **II. Benefit Administration – Civil and Criminal Litigation Defense**

### *A. Authorization of Legal Services defense Benefit*

The President or his designee (Executive Committee) 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 the Palm Beach County PBA and/or the Florida PBA,
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 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. Legal Defense Benefit Panel of Attorneys and Authorized Fees*

1. Attorneys appointed to the Legal Defense Benefit 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 fee arrangement negotiated by the President with the approval of the Executive Board.
2. 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 (1.) above.
3. When an attorney accepts employment by a member, he or she may seek compensation for fees and costs from the Palm Beach County PBA if:
  - a. The attorney receives written authorization for such representation from the Association President.
  - b. The attorney consents to the procedure, restrictions and limitations as set forth herein.
  - c. No later than the 10<sup>th</sup> of each month, the attorney shall file with the General Counsel of the Florida PBA, 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.
  - d. In civil cases where the employer is a party defendant, the attorney shall concentrate his/her efforts to protect the member against personal liability, unless the Association President authorizes otherwise.
  - e. Interlocutory appeals or writs of certiorari may be filed with written permission from the General Counsel of the Florida PBA. All appeals from final orders, judgments and verdicts must also have prior written approval.
  - f. 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). The Palm Beach County PBA shall receive the benefit of an order granting recovery of attorney fees and assessed costs.

*C. Limitations, Restrictions and Exemptions*

1. 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.

2. 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 had admitted wrongdoing on behalf of the member without the member's consent.
3. The Palm Beach County PBA 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 and convincing evidence the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally.
4. Palm Beach County PBA 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 the Palm Beach County PBA. 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 the Palm Beach County PBA under Legal Defense shall cease.
5. 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 president with approval of the Executive Board.
6. 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 Executive Board, there exists sufficient evidence of such involvement that providing such coverage could bring discredit to the Association and/or the law enforcement profession.

### **III. Benefit Administration – Employment Related Defense**

It is the general policy of the Association to represent each member in good faith, consistent with its organizational policy, the duty of fair representation, applicable laws, regulations and ethical standards. This policy shall govern the provision of representation by Association counsel.

1. It is the general policy of the Association to provide all members with representation in internal affairs investigations or other internal investigative proceedings, in pre-determination hearings, and other internal appeals or grievance process up to the highest level in the agency.
2. It is the general policy of the Association not to represent members in reference to appeals of promotional decisions, unless it is alleged that a contract or department policy was violated. In all cases, however, the Association's Executive Board must review any cases involving promotions where an appeal to a forum outside the agency is sought, to ensure that bringing the appeal will be in the best interests of the members of the Association as a whole.
3. It is the general policy of the Association not to represent members where there is illegal drug involvement that is either admitted or where, in the opinion of the Executive Board, there exists sufficient evidence of such involvement that providing such coverage could bring discredit to the Association or to the law enforcement profession.

A. *Procedure to Obtain Representation*

1. A member who desires representation in an employment matter that may lead to disciplinary action, or in a grievance shall request representation through the Association representative(s) or by calling the main office. If the Association representative is contacted, he/she may then
  - a) refer the member to the Association office for legal representation;
  - b) provide representation to the member at the local level through an appropriate Association representative.

B. *Submission of Case to Arbitration, Civil Service or other Forum outside of Agency*

In its sole discretion and consistent with its duty of fair representation, the Association may decide to represent a member in an external appeal process (arbitration, civil service proceeding or other appeal process outside of the agency).

1) Procedure for Submission to External Appeal Process

- A. A member wishing Association representation in an external appeal process shall submit his/her request for representation through his or her Association representative to the PBA Executive Board. The Executive Board in its discretion may

delegate this decision to the Association President. The factors guiding its discretion shall include the following:

1. the matter must arise out of employment;
  2. the member had to be in good standing at the time of the incident and since;
  3. the merit of the case must warrant use of the PBA's limited legal assistance resources.
- B. The Executive Board (or its designee) may request that the matter be reviewed by Association Counsel, and may in its discretion determine to request arbitration; request civil service hearing; refer the matter to any other type of external appeal.
- C. The Executive Board (or its designee) determines that the Association will not provide representation to the member by a unanimous decision, the member may not appeal further. If the Executive Board decision is not unanimous, the member may appeal the determination to the Board of Directors. The Board of Directors shall employ the criteria above in making its determination.

## 2) Procedure for Assignment of Association Attorney

In the case of employment related matters, the Association shall initially assign representation to the Association's General Counsel. Association attorneys will not assert legal positions that conflict with positions of the Association as a whole or that of other members who have also sought the legal assistance of Association attorneys. If at any point it becomes apparent that a conflict of interest exists, the Association in its sole discretion may attempt to resolve the conflict by requesting the parties in conflict to sign a waiver; by referring a party to outside counsel selected by the Association; or by denying continued legal representation.

If an employee retains private counsel to represent him or her in the same matter as to which they have sought representation through the Association, the Association retains the right to terminate its representation.

Effective Date: 12-90

Policy No. 12-1 Amended, Passed and Adopted: December 11, 1990

Policy No. 12-1 Amended, Passed and Adopted: September 20, 1995

Policy No. 12-1 Amended, Passed and Adopted: June 4, 1996

Policy No. 12-1 Amended, Passed and Adopted: December 10, 1996

Policy No. 12-1 Amended by Florida PBA December 2000 and Adopted by Palm Beach County PBA December 14, 2000.

Policy No. 12-1 Amended, Passed and Adopted: September 24, 2001

Policy No. 12-1 Amended, Passed and Adopted: March 31, 2005