

## **CLIENT EXPLANATION OF DEFENSE BENEFIT**

### **POLICY NO. 95-1**

### **REQUEST FOR LEGAL ASSISTANCE**

#### **I. DEFINITIONS:**

- A.** The term “Legal Assistance” as used herein refers to the representation of Association members at administrative and/or disciplinary hearings as well as taking judicial action on behalf of Association members, in accordance with the provisions of this policy. In addition, this term refers to grievances of contractual interpretation as it affects a member or a group of members covered by that particular contract.
- B.** The term “Legal Defense Benefit” as used herein refers to Florida Police Benevolent Association Policy No. 3-80, which provides coverage for members in good standing for incidents which arose from within the scope of their employment resulting in criminal or civil prosecution.
- C.** The term “arising out of and in the scope” of a member’s employment as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned duties for his/her employing agency. The benefit is NOT designed to cover a member for any criminal or administrative charges incurred while he/she is “off-duty” or engaged in “off-duty” employment, unless the circumstances are such that it is readily apparent the member was justified in placing himself/herself in an “on-duty” status and acting in his/her official capacity in order to effect an arrest or to protect persons or property from harm. Regarding covered instances of “off-duty” employment as described above, coverage will be provided only where the member’s employing agency or secondary employer declined legal assistance for the member.
- D.** The term “merits of the case” refers to the factual and legal substance of the case as distinguished from the form or procedural aspects.
- E.** The term “eligibility” refers to the member’s standing within the Association and whether the Association is authorized to apply legal resources on behalf of the member. Three (3) elements, ALL of which must be met for a member to be eligible for legal assistance:

- (1) the matter arises out of the scope of the member's employment;  
AND
- (2) the member was, at the time of the incident, a member in good standing as defined within the Association's By-Laws Article I; Section 4 and remains a member in good standing for the duration of all subsequent legal actions, regarding that incident or matter;  
AND
- (3) the "merits of the case" warrants and justifies application of the Association's legal assistance resources.

## **II POLICY:**

One of the major goals of this Association is to provide reasonable and fair representation to all eligible members. However, there exists no absolute right for any member to receive extraordinary aid or legal assistance. In establishing this policy, the Board of Directors recognizes that: (1) legal is a very costly benefit; (2) indiscriminate assistance to all eligible members will quickly bankrupt this Association's treasury; and (3) members are entitled to know when legal assistance can be expected and how extensive that aid will be. The Broward County PBA and its members recognize that this legal assistance policy is primarily a defense policy, to defend eligible members within the scope of these policy guidelines. The Association has an affirmative duty to ensure and safeguard the procedural protections for all its members.

## **III GUIDELINES:**

- A. **ELIGIBILITY:** An Association member is entitled to legal assistance, pursuant to this policy, only when ALL three (3) elements of eligibility, as defined herein, are met.
- B. **REPRESENTATION:** When approved for legal assistance, the member shall accept the Association's staff attorney if the Association is to provide representation. Legal services outside the Association's legal staff is to be provided only after the case is reviewed by the Association's legal staff and approval is obtained by the Association's Director of Legal Services. Case

review is to assess the necessity of outside legal assistance based upon, but not limited to, conflict of interest of counsel or the need for legal specialization. Should a member retain private counsel without prior approval from the Director of Legal Services, and later seeks legal assistance from the Association, for the same incident or issue, the member will be denied legal assistance benefits absent exigent or unforeseen circumstances. Furthermore, the member shall be responsible for any and all attorney fees and costs incurred as the result of a member's retention of outside legal counsel when done without prior approval.

C. **SCOPE OF BENEFIT:** Benefits, pursuant to this policy, shall normally extend only to administrative and trial level actions, and shall normally extend only within the geographical boundaries of Broward County, except for certification hearings conducted by the Criminal Justice Standards and Training. Additionally, benefits, pursuant to his policy, shall not extend to the appellate level unless a determination to appeal an adverse administrative or trial level decision has been made by the Director of Legal Services in consultation with legal staff and the Executive Board. As a matter of policy, such appellate benefits will be afforded only in cases wherein the issue or issues of law re of critical importance to the Association. Determinations of representation under this portion of the policy are within the sole discretion of the Board of Directors.

(1) The Broward County Police Benevolent Association reserves the right to withhold approval of any benefit and to withdraw approval of any benefit if it is determined at any time that the member has committed an intentional, deliberate, and/or illegal act, either civilly or criminally, or has misled the Association or its representatives as to the facts of his or her particular case.

(2) The Broward County Police Benevolent Association reserves the right to settle a member's grievance or case based upon the recommendation of legal counsel and a determination by the Association's Director of Legal Services that such a course of action is in the best interest of the Association and the affected member. Where such a determination is made, the member shall be afforded the option of accepting the

settlement or obtaining private counsel, at his/her own expense, to continue the case. Should the member select to continue litigation, all obligations of the Association under this Policy shall cease.

- (3) **The Broward County Police Benevolent Association shall NOT provide legal assistance to any member accused of illegal drug usage or involvement where the member either admits such usage or involvement or where, in the opinion of the Director of Legal Services, there exists sufficient evidence of such usage or involvement that providing legal assistance could bring discredit to the Association and/or the law enforcement profession. Any representation given in this regard shall be strictly limited to administrative proceedings wherein the integrity of the drug testing procedure is contested.**

**D. FEES AND COSTS:** The general policy of the Broward County Police Benevolent association is to provide approved legal assistance to members as described in the Association's By-Laws.

- (1) **Criminal and Civil Matters:** Legal assistance for defense of approved criminal and civil matters is provided to members through the Legal Defense Benefit, pursuant to Florida Police Benevolent Association Police No. 3-80.
- (2) **Administrative Matters of Civil Prosecution:** As a measure of cost containment, cost monitoring, and policy of maximizing the benefit realized from the Association's limited legal assistance resources, total Association expenditures for legal fees in each approved legal assistance case, pursuant to this policy, shall not exceed a fixed monetary limit of \$3,500 per approved case. Reasonable costs and expenses for legal assistance shall not exceed \$1,500 per approved case. Any legal fees, costs or expenses exceeding the stated limits shall be referred to the Director of Legal Services for evaluation and presentation to the Executive Board for approval of further expenditures.

**E. REIMBURSEMENT TO ASSOCIATION:** When a request for legal assistance is approved, the Association will assume financial responsibility for all necessary and reasonable representations within the limitations provided above. However, if the

member decides, for whatever reason, not to go forward with the requested and approved legal assistance, and/or other type of representation, and/or adopts a difference, conflicting, or contrary legal strategy from that of the provided legal assistance, that member is responsible for reimbursing the Broward County Police Benevolent Association for any and all costs incurred by the Association up to that point in preparation, defense, or prosecution of said case. Furthermore, the Broward County Police Benevolent Association reserves the right to withdraw any and all legal assistance based upon the above described conflict or conflicts. Additionally, should the legal action result in a monetary award (excluding back pay resulting from suspension without pay or termination) to the member or members being represented by the Broward County Police Benevolent Association assigned attorney, all costs for such action shall be reimbursed to the Association by said member(s). Should the award be less than or equal to the amount of actual costs, only the amount of the award would be owed to the Association.

**IV. PROCEDURE:**

- A. REQUESTS FOR LEGAL ASSISTANCE:** Requests for legal assistance must be submitted by the member or members' elected representative or an alternate representative, in writing, to the Director of Legal Services on a form supplied by the Association, a copy of which is attached hereto. All items on the form must be completed and the form must be signed by the member or representative for the request to be considered. The form must be submitted within THREE (3) calendar days of date giving rise to the grievance and/or notification of the matter forming the basis of the legal assistance request.
- B. APPROVAL OF LEGAL ASSISTANCE:** The Director of Legal Services or his/her designee is charged with the responsibility of determining the eligibility of a member to receive legal assistance pursuant to this Policy. Members approved for outside legal assistance shall be notified in writing of such approval and the name of the assigned attorney.
- C. DENIAL OF LEGAL ASSISTANCE:** Should a member be denied legal assistance, the Director of Legal Services will notify the member in writing of the decision including the reason(s) for the denial.

- (1) Denial of legal assistance by the Director of Legal Services or his/her designee based upon matters pertaining to the determinative facts of the incident as to whether the conduct arose out of and in the scope of the member's official duties as defined within this Policy, or based upon the "merits of the case" as defined within this Policy, may be appealed to the Association's Executive Board. Appeal of the denial must be made IN WRITING to the Executive Board with TEN (10) calendar days of the denial.**
- (2) Denial of legal assistance or termination of ongoing legal assistance by the Director of Legal Services or his/her designee based upon the member eligibility as defined by the Association's Constitution and By-Laws is final and not appealable.**

**POLICY NO. 95-1**  
**REQUEST FOR LEGAL ASSISTANCE**  
**SUPPLEMENTAL CLARIFICATION**

The following reflects a clarification ruling issued by the Broward County PBA Legal Staff regarding the impact of the recently adopted Legal Assistance Policy upon the members who use a department issued vehicle in an off-duty capacity within the scope of that department's policy and procedures manual.

It is our opinion that such vehicle usage, as long as it is within the parameters of the department's policy and procedures manual, is sufficiently within the scope of the member's employment. Therefore, when an employee is subject to any internal administrative proceeding, the Broward County PBA will provide legal Assistance.

**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. Coverage 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 litigations involving a member during each year.
- 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 PBA 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's superior).
- 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. 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. and/or Southern States 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,
  - 4. the request for coverage was submitted through the member's Charter/Chapter, and

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 the Florida 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 10<sup>th</sup> 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 so 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 the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally.**
  
- 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.**
  
- 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 of 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 of 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 Director.**

**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: 12/13/86**

**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: 8/30/89**

**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 and Adopted: 7/18/92**

\_(SEAL)

s/James B. Duckworth  
Signature