

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

BACKGROUND:

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

POLICY:

SECTION 1. COVERAGE AND ELIGIBILITY

- A.** The Legal Defense Benefit (the "Benefit") will be provided to Southern States P.B.A. Members only in those cases where a Civil Claim, Criminal Investigation or Charge of Criminal Conduct results from professional acts or omissions which arise out of and in the scope of employment and their Duties as a Law Enforcement Officer. The Association will make every effort to arrange for Panel Counsel to be available at shooting scenes or other incidents resulting in serious personal injuries caused by a Member arising out of that Member's performance of his/her Official Duties. Where and when Panel Counsel is made available will be determined by factors including, but not limited to, medical condition of the Member, timeliness of the request for service, attorney availability, and immediacy of the investigation. In the event that Panel Counsel is unable to arrive at the scene of the incident, the attorney will be made available to the Member as soon as possible.
- B.** The Benefit shall consist of the payment by Southern States P.B.A. of attorney's fees and related costs. The Member may select legal counsel, provided under the Benefit, subject to any counsel selected agreeing to all terms of the provisions of the Benefit and agreeing to be compensated by the Association strictly in accordance with Section 5.
- C.** A Member is entitled to legal defense and costs within the coverage provided regardless of the number of Occurrences involving a Member during each year.
- D.** To be eligible under the Benefit, a Member must have been an Association member in good standing prior to the incident, and maintain membership in good standing status from time of the Incident, as well as throughout the

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process of the resolution of the Occurrence. If a Member has joined the Association from a similar organization subsequent to an incident which results in litigation, during the time of an organizational campaign where the P.B.A. was competing for collective bargaining certification rights held by another association, Southern States 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. To be eligible under the Benefit, a Member must request P.B.A. representation at the time the Member receives notice of the Occurrence. A Member receives notice of an Occurrence when (i) a member receives written notice that a Civil Claim, Criminal Investigation, or Charge of Criminal Conduct has commenced or been made, or (ii) when the Member first receives information of circumstances involving a particular person or entity which could reasonably be expected to result in a Civil Claim, Criminal Investigation, or Charge of Criminal Conduct. If counsel other than Panel Counsel is retained by the member for purposes of defense of an Occurrence, either at the onset of the case or at any future time, Benefit coverage may, at the sole discretion of the Association, be denied or discontinued.
- F. Coverage under the Benefit is subject to all terms, conditions, and/or exclusions of the Benefit and may be withdrawn at any time pursuant to Sections 3 and 4.

SECTION 2. LIMITATIONS, RESTRICTIONS AND EXEMPTIONS

- A. Coverage under the Benefit is limited to incidents arising in the Association Service Area, as defined by SSPBA Policy 02-23:

With the exception of the salary benefit plan, coverage for all member services under either the legal defense benefit or other provisions, shall be restricted to the service area of the Association. The service area of the Association is defined by the following geographical area: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, West Virginia, Virginia, and the District of Columbia. This service area can be temporarily expanded for membership purposes by the Association President until the next meeting of the Association Board of Directors.

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There is no coverage for incidents that occur on an airplane once the airplane has left the ground unless all actions taken by and against the member occur within our service area. Members are advised that security issues may make it difficult to provide immediate service for incidents involving airplanes or federal installations.

The Association President shall have the discretion to provide coverage in those cases where an incident initiates within the service area but continues outside the service area.

- B.** In order for a Member to be eligible for legal defense under the Benefit, the Member must be in good standing and up to date in dues payments, and must remain in good standing during the process of the resolution of the Occurrence. If the Member fails to remain in good standing, Southern States P.B.A. reserves the right to terminate coverage under the Benefit.
- C.** Emergency Coverage
The assignment of an attorney to cover an emergency will not commit the Association to payment of future legal fees and costs which are not covered by the Benefit. Panel Counsel may not proceed beyond the preliminary stages of an emergency situation without additional written approval from the Association.
- D.** Civil Claim Coverage
In regard to the defense of a Civil Claim against a Member, the Benefit is Excess. The Member is required to request representation from his Employing Agency. The Association does not pay judgments or settlements on a Member's Civil Claim.

 - 1. **Monitoring of Civil Cases**

 - a. The Association may direct that a case assigned to Panel Counsel be monitored by the attorney in the following cases: (a) cases in which the Member is a named defendant and is being actively represented by the employer; (b) cases in which the Member is being actively represented by the employer and the Member is satisfied with representation being provided, and © 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.

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- b. When a case is in monitoring status, the Panel Counsel will not actively participate in litigation of the case but, instead, will consult with the Member and review appropriate court documents to ensure the Member's interests continue to be adequately protected.

2. Active Representation in Civil Cases

- a. Should the Panel Counsel determine active representation is warranted, or should the Member request active participation in the case, the Association will be informed of the proposed change in representation and the reasons for the change. If after review of the information provided, the Association agrees that such active participation is warranted, the Panel Counsel shall actively represent the Member in the case as approved by the Association.
- b. Panel Counsel will also be authorized to actively represent a Member in a civil action when it is determined that the Member's employing agency has declined or failed to provide legal representation for the Member. In cases where the Association provides active representation, the Association will only be responsible for attorney's fees and costs associated with the defense of the civil action.

E. Appeals

The Benefit will not pay for the cost of any appeal, interlocutory or final, civil claim or criminal, unless prior approval is first obtained from the Association upon review of the adequacy of the basis for appeal.

- F. A Member who is being represented by the Association in any action, may not take any steps to amend the allegations and/or defenses to that action without the prior approval of the assigned Panel Counsel and the Association.

SECTION 3. EXCLUSIONS

Coverage under the Benefit does not apply to:

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- A. Situations wherein the Member fails to cooperate in the Member's defense. Cooperation includes, but is not limited to, assisting the Association and Assigned Counsel in the investigation and/or defense, including remaining available for contact, assisting with discovery and appearing for depositions, hearings, and trial, and truthfulness in communications with the Association and Assigned Counsel.
- B. Situations wherein a Member accused of criminal involvement either admits such involvement or where, after careful review and examination by the Association, there exists sufficient evidence of such involvement that providing coverage could bring discredit to the Association and/or the law enforcement profession.
- C. Situations wherein a member has not taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. Coverage does not 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 when 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).
- D. Payment of bail bonds.
- E. Situations arising from any personal conduct, whether on or off duty, including disputes with fellow employees.
- F. The Association 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.

SECTION 4. BENEFIT ADMINISTRATION

- A. The Association will authorize all requests for legal services under the Benefit if the following criteria are met:
 - 1. the requesting officer is a current Member in good standing of Southern States P.B.A.;

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2. he/she was a Member of the Association at the time of the incident;
 3. he/she remains a Member in good standing from date of incident until conclusion of adversarial proceedings;
 4. the incident was the result of the Member's performance of his/her official Duties as a Law Enforcement Officer;
 5. the request for coverage was timely submitted by the Member and received by the Association after the Member received notice of the Occurrence; and
 6. the Member promptly contacts the selected Assigned Counsel upon receiving notification from the Association specifying the name and phone number of such approved attorney.
- B.** If the Association determines at any time that any of the criteria listed above are not met, there is no coverage under the Benefit.
- C.** In instances where a timely request for representation is provided for in Section 4(A)5 has not been made, but the Member is otherwise eligible for coverage, the Member shall be responsible for all legal fees and costs incurred prior to the date the coverage is approved by the Association.
- D.** The Association shall review all cases on a continuing basis to ensure that the monthly fees, costs and expenditures are being incurred within the coverage and limitations set forth by this Benefit.
- E.** The request for representation may be submitted in writing or by telephone and shall include the name of the Member and other necessary identification of the Member; a summary of the allegations; and the date of the Incident. Upon receipt and review, approval or disapproval of coverage will be provided to the Member. At that time, if approval is granted, the Association shall assign Panel Counsel to represent the Member in defense of the Occurrence. The Member shall submit to the Association a written copy of the civil claim or criminal charges when received.
- F.** In cases involving Emergency situations in which a member is involved, such as shootings, vehicular accidents involving serious injury, or other instances requiring emergency response by an attorney, the division or chapter president may authorize the use of Panel Counsel for the Emergency

situation. As soon as possible, the Association is to be advised of the incident telephonically. A written request and/or report is to follow as soon as possible.

SECTION 5. LEGAL DEFENSE BENEFIT PANEL OF ATTORNEYS AND AUTHORIZED FEES

- A.** Attorneys appointed to the Benefit Panel of Attorneys (Panel Counsel) 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 as established by the Association. No attorney shall be selected or appointed to the Benefit Panel of Attorneys when the Association has determined that there is a conflict of interest between the attorney and the Association. The Association decision on a conflict of interest will be final and binding on Members.
- B.** Attorney's fees will be paid on the basis of uniform hourly rates established by the Association. Deviations from this rate may be approved by the Association.
- C.** When an attorney accepts representation for a Member, he or she may seek compensation for fees and costs from the Benefit if:
 - 1.** The attorney receives written authorization for such representation from the Association;
 - 2.** The attorney consents to the procedure, restrictions and limitations as set forth herein;
 - 3.** The attorney shall file with the Association a periodic status report of the case he/she is handling, together with an itemized statement of fees and reasonable costs; and
 - 4.** Upon completion of a case which has been concluded in favor of a Member, if reasonably recoverable, the attorney shall immediately file a motion for costs (and attorney's fees, if applicable). The Association will be entitled to any recovery of attorney fees and expenses, up to the amount that the Association has expended in defense of the Occurrence.

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- D. The Association makes no warranty, express or implied, with respect to the skill or expertise of Panel Counsel.

SECTION 6. DEFINITIONS

- A. **Civil Claim:** filed civil action
- B. **Criminal Investigation:** investigation into potential criminal charges undertaken by a law enforcement agency
- C. **Charge of Criminal Conduct:** criminal charge
- D. **Scope of Employment:** acts or omissions by a peace officer or public safety employee which are typical of the duties which a peace officer or public safety employee is hired, trained, and paid to perform, as determined by the Association
- E. **Duties as a Law Enforcement Officer:** acts or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employing agency. The Benefit is not designated 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 to protect persons or property from harm. In instances of off-duty employment, coverage will be provided only where 1) the off-duty assignment is authorized by the member's primary employer, and 2) the member's employing agency and secondary employer decline coverage of that member. Duties involve taking actions in those geographic areas or situations where the member has law enforcement authority.
- F. **Personal Injury:** serious bodily injury
- G. **Official Duties:** duties for which a Member has received official training. Actions taken by a Member, such as an intentional, deliberate and/or illegal act (either civilly or criminally) that the Member has committed or does commit, may remove that Member from the performance of Official Duties.
- H. **Panel Counsel:** attorneys who have notified the Association of their agreement to serve on the Association panel of attorneys and who have been designated by the Association as such.

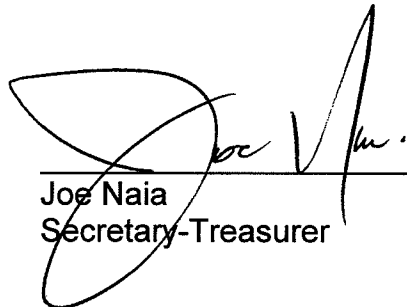
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- I. **Member:** active member of Southern States P.B.A. who is in good standing with the Association and up to date in dues payments.
- J. **Attorney's Fees:** fees charged by Panel Counsel associated with providing legal defense for a Member on a covered legal matter.
- K. **Costs:** expenses incurred by a Member associated with pursuing a covered legal defense. This may include administrative fees imposed by the court or other hearing body, as well as witness fees and expenses, expert fees and expenses, investigator fees and expenses, and transcript costs.
- L. **Association:** Southern States P.B.A.
- M. **Incident:** act or omission of a Member which gives rise to legal action or potential legal action against a Member.
- N. **Occurrence:** legal action or potential legal action, whether civil or criminal, arising from an incident.
- O. **Service Area:** geographical parameters of coverage as defined by Southern States P.B.A. Policy 02-23.
- P. **Emergency:** shooting, death in custody, accident with serious bodily injury. Direct involvement by the Member in such a situation will trigger coverage under the Benefit.
- Q. **Assigned Counsel:** attorney designated or approved by Association to represent a Member.
- R. **Division or Chapter President:** elected leader of the PBA board at the state (division) or local chapter level.

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Joe Naia
Secretary-Treasurer
