



**PLAN DOCUMENT
OF THE LEGAL DEFENSE FUND**

OF THE

**PEACE OFFICERS
RESEARCH ASSOCIATION OF CALIFORNIA**
(Including Summary Plan Description and Complaint Procedure)

**(As amended through January 5, 2008
and applicable to the Colorado Member Associations)**

PORAC LEGAL DEFENSE FUND

To All Participants in the Legal Defense Fund who are members of a participating association:

This booklet is being distributed to give you complete information about the structure, operation and benefits of the Legal Defense Fund of the Peace Officers Research Association of California (PORAC).

For your convenience in using this booklet, it is divided into three parts:

Part I contains the Summary Plan Description (as required by federal law), with general information about the administration of the Fund and structure of the Benefit Plans.

Part II contains the complete text of the LDF Plan Document, setting forth all provisions concerning coverage and benefits.

Part III contains the LDF complaint procedure.

We recommend that you read this booklet carefully so that you will be fully informed as to the eligibility requirements and available benefits. If you have questions which the booklet does not answer, or if any clarifications are needed, please contact the LDF Legal Administrator. **Only the LDF Legal Administrator can give information relating to the amount of benefits, eligibility, and other provisions of the Plan. Statements by other persons, including representatives of a local association, are not authorized and will not be binding on the Board of Trustees of the PORAC Legal Defense Fund.**

Sincerely,

THE BOARD OF TRUSTEES OF THE
PORAC LEGAL DEFENSE FUND

WARNING: If you resign from your employment, you may lose your LDF coverage. Read Article II, Sections 3 and 4 of this Plan Document for details.

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**SUMMARY PLAN DESCRIPTION OF THE
PORAC LEGAL DEFENSE FUND**

(a) **Name of Plan:** This Plan is known as the Legal Defense Fund of the Peace Officers Research Association of California (PORAC). The benefits are those set forth in the Plan Document of the PORAC Legal Defense Fund, as that document may from time to time be amended by the Board of Trustees of the PORAC Legal Defense Fund.

(b) **Name, Address and Telephone Number of Sponsoring Organization:** The PORAC Legal Defense Fund is sponsored by the:

Peace Officers Research Association of California
4010 Truxel Road
Sacramento, CA 95834-3725
(916) 928-3777 (800) 93-PORAC

(c) **Identification Number:** The employer identification number assigned to the PORAC Legal Defense Fund by the Internal Revenue Service is EIN 94-2381827. The Plan number is 501.

(d) **Type of Plan:** Group prepaid legal services plan.

(e) **Type of Administration:** This Plan is administered by a Board of Trustees, with the assistance of DHS/Police Benefits Administration, a contract administrative organization.

(f) **Name, Address and Telephone Number of Plan Administrator:**

Board of Trustees
PORAC Legal Defense Fund
c/o DHS/Police Benefits Administration
P.O. Box 2487
555 W. Benjamin Holt Drive, Suite 320
Stockton, CA 95201
(800) 255-5610 -- 24-hour emergency number

(g) **Name and Address for Service of Process:** The Legal Defense Fund has designated DHS/Police Benefits Administration as agent for purposes of accepting service of legal process on behalf of the Legal Defense Fund. The address for DHS/Police Benefits Administration is set forth in item (f) above.

Each member of the Board of Trustees of the PORAC Legal Defense Fund is also an agent for purposes of accepting service of legal process on behalf of the PORAC Legal Defense Fund. The names, addresses and phone numbers of Trustees are set forth in item (h) below.

(h) Names, Titles and Addresses of Trustees of the PORAC Legal Defense Fund:

DeeDee Lundquist (Region I)
Sonoma County Law
Enforcement Association
PO Box 187
Sebastopol, CA 95473
Lundquist2028@comcast.net (e-mail)

Andy Schlenker (Region II), Chairman
Modesto Police Management Association
600 Tenth Street
Modesto, CA 95354
adschlenker@comcast.net (e-mail)

Roger Stephenson (Region III)
El Segundo Police Officer's Association
348 Main Street
El Segundo, CA 90245
roger@thevine.net (e-mail)

Russell Reinhart (Region IV)
Huntington Beach Police Managers Assoc.
PO Box 896
Huntington Beach, CA 92648
r-reinhart@cox.net (e-mail)

William Abernathie (PORAC Board Rep.)
San Bernardino County SEBA
735 E Carnegie Drive, Ste 125
San Bernardino, CA 92408
wabernathie@seba.biz (e-mail)

(i) Applicable Collective Bargaining Agreement: None.

(j) Participation, Eligibility and Benefits:

1. Any active peace officer (as that term is defined in Section 15 of Article I of the Plan) and any public safety employee (as that term is defined in Section 18 of Article I of the Plan) shall be entitled to participation and benefits under the Plan upon the payment of the contributions set forth in Articles II and III of the Plan Document, provided that each such peace officer or public safety employee is a member of a Member Association.
2. Any reserve peace officer (as that term is defined in Section 15 of Article I of the Plan) shall be entitled to participate only in Plan II upon the payment of the contributions set forth in Articles II and III of the Plan Document, provided that each such reserve peace officer satisfies section 18(ii) of Article I and is a member of a Member Association.
3. Benefits are set forth in Article III of the Plan Document.

(k) Circumstances Which May Result in Ineligibility or Denial of Benefits: A Participant who is eligible for benefits under the Plan may become ineligible and be denied coverage for events occurring, claims made, or services performed after any of the following happens:

1. Termination of the Participant in the Plan or in the Member Association.
2. Termination of employment of the Participant, including termination due to voluntary resignation.

3. Nonpayment of contributions by the Participant.
 4. Failure by the Participant to file a claim for benefits or to appeal within the time periods set forth in the Plan Document.
 5. Amendment or termination of the Plan or of the Member Association's affiliation with the PORAC Legal Defense Fund.
- (l) **Source of Contributions:** The Plan is financed by contributions paid by Participants through the Member Association as set forth in the Plan Document and the earnings on said contributions.
- (m) **Entities Used for Accumulation of Assets and Payment of Benefits:** The contributions are received and held by the Board of Trustees of the PORAC Legal Defense Fund pending the payment of benefits and administrative expenses. The Board of Trustees pays benefits directly from the Legal Defense Fund.
- (n) **End of Plan Year:** The Plan Year of the PORAC Legal Defense Fund runs from January 1 through December 31 of each year.
- (o) **Use of Assets upon Termination:** The Board of Trustees of the PORAC Legal Defense Fund has the authority to terminate the Plan. In the event of the termination of the Plan, any and all monies and assets remaining in the Fund, after payment of expenses, shall be used for the continuance of the benefits provided by the then existing Benefit Plans, until such monies and assets have been exhausted.
- (p) **Procedures to Be Followed in Presenting Claims for Benefits:** To present a claim for benefits under the Plan, it is necessary to notify the LDF Legal Administrator at the DHS/Police Benefits Administration office:

Mr. Edward Fishman
Legal Administrator
DHS/Police Benefits Administration
P.O. Box 2487
555 W. Benjamin Holt Drive, Suite 320
Stockton, CA 95201
(800) 255-5610 -- 24-hour Telephone Number

For more details, see Article V of the Plan Document.

- (q) **Remedies Available for Redress of Claims Which Are Denied:** In the event a claim for benefits is denied, the Legal Administrator will furnish written notification to the Participant within ninety (90) days of receipt of the Participant's claim. (A claim shall not be considered to have been received by the Legal Administrator until receipt of any transcripts as required by Article IV of the Plan.) In the event the Legal Administrator does not respond within ninety (90) days, the claim shall be deemed to have been denied. The Participant may appeal to the Board of Trustees of the PORAC Legal Defense Fund for a hearing in the matter, provided that he or she makes the request in writing within sixty (60) calendar days after receiving written notice of the denial. The Participant may upon request examine documents pertinent to the denial and may submit to the Trustees written issues and comments. For more details, see Article V, Section 6 of the Plan Document.

The Trustees shall conduct a hearing no later than ninety (90) calendar days after receipt of the Participant's written request for review, at which hearing the Participant shall be entitled to present his or her position and any evidence in support thereof. The Participant may be represented at the hearing, at the Participant's expense, by an attorney or by any other representative of his or her choosing.

The Trustees shall issue a written decision within 120 days after the hearing on the Participant's appeal, affirming, modifying, or setting aside the previous decision. For more details, see Article V of the Plan Document.

- (r) **Statement of ERISA Rights:** As a Participant in the Legal Defense Fund, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

ERISA provides that all plan participants shall be entitled to:

Receive Information About Your Plan and Benefits

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites and union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Pension and Welfare Benefit Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. The administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan participants ERISA imposes duties upon the people who are responsible for the operation of the employee benefit Plan. The people who operate your Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a (pension, welfare) benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan Documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a State or Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

Assistance with Your Questions

If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Pension and Welfare Benefits Administration.

**LDF PLAN DOCUMENT
PREAMBLE**

WHEREAS, the Peace Officers Research Association of California (PORAC) is an incorporated association which is organized on a federated structure composed of individual peace officer and public safety associations from various law enforcement and public safety jurisdictions; and

WHEREAS, peace officers and public safety employees have been subjected in recent years to a variety of litigation arising out of the performance by them of their law enforcement and public safety duties; and

WHEREAS, PORAC established in 1974 a trust fund to provide legal service benefits known as the Legal Defense Fund, governed by a Board of Trustees whose powers and duties include control and management of a prepaid group legal services plan; and

WHEREAS, the affiliated Member Association has determined that it is appropriate to provide legal defense coverage to its members through the PORAC Legal Defense Fund;

NOW, THEREFORE, the Board of Trustees of the PORAC Legal Defense Fund does hereby restate the Plan Document, effective as of January 5, 2008, as set forth in the following pages.

**ARTICLE I
DEFINITIONS**

1. "Administrative" – relating to the department or agency which employs the Participant.
2. "Administrative Office"– the administrative office of the PORAC Legal Defense Fund:

DHS/Police Benefits Administration
P.O. Box 2487
555 W. Benjamin Holt Drive, Suite 320
Stockton, CA 95201
3. "Benefit Plan"– one of the two plans described below in Article III under which Participants are entitled to certain benefits.
4. "Board of Trustees" or "Trustees"– the Board of Trustees of the PORAC Legal Defense Fund.
5. "Calendar Quarter"– the three-month period beginning on the first day of January, April, July or October of each calendar year.

6. “Concerted Labor Activity”– concerted failure to work, to respond to orders to work, or concerted use of sick leave or calling in sick, but not to encompass criminal conduct, including but not limited to vandalism, petty theft, arson and assault.
7. “Employment”– employment as a Peace Officer or Public Safety Employee, as defined herein.
8. “Event”– act or omission of a Participant which gives rise to civil, criminal or administrative action; "event" does not refer to civil, criminal or administrative action.
9. “Legal Administrator” – a person or legal entity appointed from time to time by the Trustees to supervise the provision of services under the Plan.
10. “Legal Defense Fund” – the entity created by the Trust Agreement of the PORAC Legal Defense Fund, and property and money held by such entity, including all contract rights and records.
11. “Member Association” or “Association” – any association of Colorado Peace Officers and/or Public Safety Employees that participates in the Legal Defense Fund.
12. “Military Service” – full-time, active duty service with the armed forces of the United States, including the Coast Guard, or of the State of Colorado, provided that such service occurs (i) during a war involving the United States as a belligerent, (ii) during a national security emergency, as declared by the President of the United States or by Congress, or (iii) during a domestic civil disturbance or natural disaster, as declared by the appropriate state or federal office. “Military Service” shall also mean the time spent by a Participant on active duty training or on weekend training with a reserve component of the armed forces or of the National Guard.
13. “Panel Attorney” – an attorney ineligible for active membership in the Member Association and selected from time to time by the Trustees to supervise and provide legal services under the Plan.
14. “Participant” – a Peace Officer or Public Safety Employee who qualifies for benefits under this Plan pursuant to Article II hereof.
15. “Peace Officer” – (i) any active peace officer, and (ii) any reserve peace officer who has completed basic training, provided that each such officer is a member in good standing of a Member Association.
16. “Plan” or “Legal Defense Fund Plan” – the group prepaid legal services plan as set forth herein and any amendment thereto.
17. “PORAC” – Peace Officers Research Association of California.
18. “Public Safety Employee” – any person not a peace officer who is employed by a law enforcement or public safety agency and who is a member of a Member Association.

19. "Scope of Employment" – generally defined as actions or omissions by a Peace Officer or Public Safety Employee which are typical of or associated with the duties which a Peace Officer or Public Safety Employee is hired, trained, and paid to perform, as determined by the PORAC Legal Defense Fund Board of Trustees.
20. "Trust Agreement" – the trust agreement establishing the PORAC Legal Defense Fund, and any amendments, extensions or renewals thereof.

ARTICLE II ENTITLEMENT TO BENEFITS

1. Initial Entitlement to Benefits

A Peace Officer or Public Safety Employee shall be entitled to benefits for events which occur after all of the following has occurred:

- (a) The Legal Administrator is in actual receipt of a fully completed application with respect to the Participant; and
- (b) A full contribution has been paid on behalf of the Participant.

2. Required Contributions

- (a) **Amount** – The Member Association shall make quarterly payments to the PORAC Legal Defense Fund, based on a monthly rate as set from time to time by the Board of Trustees of the PORAC Legal Defense Fund.
- (b) **Time of Payment of Quarterly Contributions** -- Payment of the contributions set forth in Section 3(a) of this Article shall be made in full on a quarterly basis by the Member Association and shall be transmitted to the PORAC Legal Defense Fund on or before the day preceding the first day of the Calendar Quarter for which each payment applies and shall be deemed delinquent on the first day of such Calendar Quarter. A Participant may join mid-quarter.

Termination of a Participant's participation in the Legal Defense Fund shall not result in any refund of contributions. No refunds of contributions will be made by the Fund to individual Participants.

- (c) **Method of Payment** -- Payment by the Member Association shall be deemed to have been made as of the date of postmark on the envelope containing the payment, provided it has been properly addressed to the Legal Defense Fund at its Administrative Office. The foregoing shall not apply, however, where payment is made by a check which is not honored at the bank upon which it was drawn.

- (d) **Effect of Delinquency** -- If payments for a Participant are not made to the PORAC Legal Defense Fund as required in this Section, benefits under the Plan shall cease on the first day of the Calendar Quarter following the payment due dates described in Section 3(b) of this Article. The Participant shall thereafter not be entitled to any benefits from the Plan for any period during which the Participant is in default of payment.

Late Payment -- Notwithstanding the provisions of the immediately preceding paragraph, if the delinquent payment to the Legal Defense Fund is made within one (1) week of the payment due date, entitlement to benefits shall be reinstated, effective retroactively to the payment due date, on the date of actual payment of all contributions and interest, if any, billed. Any such late payments shall automatically be applied first to the periods of delinquency and then, if sufficient, to the current period.

New Application -- If the delinquency continues for more than one (1) month, the Association shall be deemed to have terminated its participation and must reapply for membership in the Legal Defense Fund. Upon reapplication within the current or subsequent quarter, and subject to a determination of good cause by the Trustees of the PORAC Legal Defense Fund, entitlement to benefits may be reinstated, effective retroactively to the original payment due date. In such cases, the Association shall pay all delinquent contributions and interest.

3. Termination of Benefits

The benefits for a Participant shall automatically terminate:

- (a) When his or her participation (i.e., through non-payment of contributions or charges hereunder) in the Legal Defense Fund terminates; or
- (b) When his or her membership in the Member Association terminates; or
- (c) Subject to Section 4 of this Article, when the employment of the Participant terminates; or
- (d) When the Participant voluntarily resigns as a Peace Officer or Public Safety Employee and Section 4(a)(v) of this Article does not apply; or
- (e) When the affiliation of the Member Association with the PORAC Legal Defense Fund is terminated.

4. Extended Coverage

Notwithstanding subsections (a) through (e) of Section 3 of this Article, a Participant shall be entitled to the applicable benefits of subsections (a), (b), (c), and (d) of this section, provided in all cases that the Participant would otherwise be entitled to benefits.

- (a) **Involuntarily Terminated Participants**

- (i) A Participant who is being involuntarily terminated shall be entitled to benefits for actions arising from events involving the involuntary termination of employment.
- (ii) Provision of benefits for one type of action, i.e., administrative, shall not automatically entitle the Participant to benefits for another type of action, i.e., criminal.
- (iii) If coverage has been granted under subsection (a)(i) above and a second or subsequent action involving the Participant is commenced after termination of employment, the Participant shall be entitled to benefits for the second or subsequent action only if (1) the new action arises from the events giving rise to the involuntary termination and (2) the Participant notifies the Legal Administrator of the second or subsequent action within twelve (12) months of termination of employment.
- (iv) A Participant who is being or has been involuntarily terminated shall be entitled to benefits for (1) actions for which coverage was granted prior to termination of employment and (2) actions involving events which preceded and are unrelated to the events involving the termination of employment, provided that the Participant notifies the Legal Administrator of the action within twelve (12) months of termination.
- (v) A Participant who resigns after the occurrence of any of the following shall be deemed to have been involuntarily terminated for purposes of civil and criminal coverage only:
 - (A) receipt from his or her employer of a formal written notice of intent to terminate; or
 - (B) the existence of surrounding circumstances which clearly and convincingly indicate that issuance of such a notice is imminent; or
 - (C) the Participant's assigned Panel Attorney has advised the Participant to resign, with the advice being reduced to writing, signed by the Participant, and transmitted within five (5) working days of signing to the Legal Administrator; or
 - (D) other good cause as determined by the Board of Trustees.

A Participant's administrative coverage shall not under any circumstances be reinstated, including but not limited to circumstances where a criminal proceeding against the Participant ends favorably for the Participant. Nor shall such a Participant be entitled to coverage to bring a constructive discharge, wrongful termination, or related action.

(b) Retired Participants

A former Participant shall be entitled to benefits in accordance with the Plan for any act or omission occurring while he or she was a Participant, if, subsequent to the act or omission, he or she retires pursuant to the retirement rules of his or her jurisdiction.

(c) Laid-Off Participants

A Participant who has been involuntarily laid off from employment due to a reduction in force or a reorganization of operations, shall be entitled to legal representation in accordance with the Benefit Plan in effect on the effective date of the lay-off in any civil or criminal action brought against him or her arising from any act or omission of the Participant within the scope of his or her employment, provided that the Participant notifies the Legal Administrator of the action no later than the end of twelve (12) calendar months from the effective date of the lay-off. Absent compelling circumstances, a Participant shall not be entitled to receive representation with respect to any administrative disciplinary action brought against the Participant.

(d) Leave of Absence for Military Service

A Participant while on a voluntary or involuntary leave of absence for Military Service shall be entitled to benefits under the Benefit Plan applicable to the Participant immediately prior to the leave of absence for events occurring prior to the leave of absence. For events occurring during the leave of absence, such coverage shall be provided only if each of the following is satisfied:

- i) the Participant pays dues during the leave of absence for Military Service; and
- ii) the event occurs within the jurisdiction in which the Participant is legally authorized to exercise peace officer powers or, in the case of a public safety employee, the jurisdiction in which the employee is employed; and
- iii) the event does not arise out of or relate to, either directly or indirectly, the Participant's scope of Military Service responsibilities.

The Member Association is to notify the PORAC Legal Defense Fund promptly if the Participant does not elect to pay dues during the leave of absence for Military Service.

ARTICLE III BENEFITS

Subject to the exclusions and limitations set forth in the Plan, a Participant is entitled to the benefits provided under the Benefit Plan, as described hereinafter, for which the Member Association has properly applied and for which the required contributions have been made.

1. Benefit Plan I – Civil, Criminal and Administrative Actions

Participant's who are enrolled in Benefit Plan I shall be entitled to the following services:

- (a) Legal representation in any criminal action or administrative disciplinary action brought against him or her arising from any act or omission of the Participant within the scope of his or her employment, including criminal or administrative disciplinary action brought as the result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section 5 of this Article.
- (b) Legal representation in any civil action brought against him or her arising from any act or omission of the Participant within the scope of his or her employment, including civil action brought as the result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section 5 of this Article. Representation shall be provided to a Participant in a civil action to the extent the Participant is exposed to substantial monetary damages as determined by the Panel Attorney in conjunction with the Legal Administrator.
- (c) Representation by a Panel Attorney in any departmental administrative investigation or informal non-adversary pre-disciplinary hearing, if the action arose from an act or omission of the Participant not within the scope of his or her employment.
- (d) All customary, necessary, and reasonable services related to an action described in subsection (a) or (b) hereof, including where it appears reasonably probable that such an action will be commenced.
- (e) Expanded Non-Scope Administrative Coverage Option – If the Member Association enrolls in this option under Benefit Plan I, its members shall be entitled to the following services. Administrative coverage shall continue up to and including the hearing on an appeal from the discipline, including a civil service commission hearing, but coverage shall not extend to any form of post-hearing appeal, including judicial review.

2. Benefit Plan II -- Reserve Peace Officers -- Civil and Criminal Actions

Reserve Peace Officer's who are enrolled in Benefit Plan II shall be entitled to the following services:

- (a) Legal representation in any civil or criminal action brought against him or her arising from any act or omission of the Participant within the scope of his or her employment, including civil or criminal action brought as a result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section 5 of this Article. Refer to Article IV, Section 2 for limitations on civil coverage under Benefit Plan II.
- (b) All customary, necessary, and reasonable services related to an action described in subsection (a) hereof, including where it appears reasonably probable that such an action will be commenced.

3. Limits on Benefits for Participants Who Are New Peace Officers or Public Safety Employees

A Participant who is probationary, according to the rules of his or her local jurisdiction, shall be entitled to representation; provided, however, that, in the event of termination or rejection during the probationary period, benefits shall be limited to representation in informal non-adversary pre-disciplinary administrative hearings.

4. Benefits for Participants Who Are Department Heads

A Participant who is a Chief of Police shall be entitled to representation in accordance with Benefit Plan I only in relation to civil, criminal or administrative disciplinary actions taken against him or her because of his or her personal performance of active law enforcement duties, i.e., when he or she is acting in his or her capacity as a Peace Officer or a Public Safety Employee rather than as an administrator or department head.

He or she will not be entitled to the benefits of the Plan in relation to civil, criminal or administrative disciplinary actions arising from any act, omission or performance of activities in his or her capacity as an administrator or department head.

5. Representation for Concerted Labor Activity

A Participant shall be entitled to representation, including representation in a civil or criminal contempt action, for Concerted Labor Activity arising out of a dispute over wages, hours, terms, or conditions of employment between the Participant's Member Association and the his or her employer, provided that:

- (a) The Board of Trustees of the PORAC Legal Defense Fund approves benefits under the Plan after establishing that the Member Association has exhausted all reasonable procedures or other means to resolve the labor dispute and did so prior to resorting to any such Concerted Labor Activity;

- (b) The Participant's Member Association has been covered under the Plan for at least six (6) months prior to the date of such Concerted Labor Activity; and
- (c) The Board of Trustees' approval under subsection (a) occurs prior to the occurrence of any Concerted Labor Activities, absent compelling circumstances as determined by the Board of Trustees of the PORAC Legal Defense Fund.

A Participant shall not be entitled to benefits with respect to Concerted Labor Activities occurring more than ninety (90) calendar days after approval by the Board of Trustees under subsection (a), unless extended by the Board of Trustees.

6. Representation Involving Affirmative Relief

- (a) Subject to subsection 6(b) hereof, a Participant may be entitled to representation arising from any act or omission within the scope of a Participant's employment and seeking legal or equitable affirmative relief in any court or tribunal of appropriate jurisdiction.
- (b) Benefits shall not be provided under this Section unless the Board of Trustees determines, considering all material factual circumstances and legal issues, that there exists a reasonable likelihood of one of the following:
 - (1) A favorable substantial legal impact on Colorado Participants due to the legal issues presented, or
 - (2) In the absence of a favorable substantial legal impact, a recovery sufficient to reimburse the Legal Defense Fund for all of its expenditures associated with the action, including but not limited to attorneys' fees and expenses and costs.

The Board of Trustees shall in its sole discretion impose the conditions upon which benefits under this Section are granted.

7. Right of a Deceased Participant's Estate

The estate of a deceased person who was a Participant at the time of his or her death shall be entitled to the benefits under this Plan to which the Participant was entitled at the time of his or her death.

8. Cases of General Importance

The Board of Trustees may, in its sole discretion, authorize that legal service benefits be provided for matters of general importance and significance to Participants in any court or tribunal of appropriate jurisdiction. In determining whether to authorize benefits under this Section, the Trustees shall consider the factors set forth in Section 6(b) of this Article.

ARTICLE IV EXCLUSIONS AND LIMITATIONS

In addition to the exclusions and limitations set forth elsewhere in this Plan, the following exclusions and limitations shall apply:

1. Exclusions

The provision of benefits under the Plan shall be subject to the following exclusions:

- (a) **Employment Practices** -- No benefits shall be provided under the Plan for any action brought by a Participant arising out of any violation of, or covered by provisions of, the Equal Employment Opportunity Act, 42 U.S.C. Section 2000(3) et seq.; the Age Discrimination in Employment Act, 29 U.S.C. Section 623 et seq.; the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.; the Labor-Management Relations Act, 29 U.S.C. Section 141 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301-4333; the federal civil rights statutes, i.e., 42 U.S.C. Section 1983 et seq., insofar as the subject matter of the action is similar to that of any of the above-described statutes; the federal or any state constitution, insofar as the subject matter of the action is similar to that of any of the above-described statutes; or any law, statute, ordinance, regulation, or rule of similar type or description enacted by the federal government or any state or political subdivision thereof, including but not limited to counties, districts, and cities, and which is similar either on its fact or as applied to any of the above-described statutes.
- (b) **Retirement** -- No benefits shall be provided under the Plan to obtain, protect, preserve, or set aside pension or retirement benefits, including disability retirement benefits, under any federal, state, county, city, or city and county pension retirement system.
- (c) **Workers' Compensation** -- No benefits shall be provided under the Plan for any action within the jurisdiction of the Workers' Compensation Appeals Board; for any action to obtain, protect, preserve, or set aside workers' compensation benefits, industrial or non-industrial disability benefits, social security benefits, disability, health or other insurance benefits of a like or similar nature; or for any action for benefits payable under or because of an industrial injury, illness, disease, or death, whether by contract or otherwise, arising out of any of the provisions of a state Workers' Compensation Act or any similar federal, state, county, city, or city and county ordinance, law, resolution, regulation, or any contract of insurance.

- (d) **Civil Service Disputes** -- No benefits shall be provided under the Plan for any action to obtain, protect, preserve, or set aside any benefits or position with respect to any civil service, merit system, or personnel eligibility list for appointment or promotion to a position.
- (e) **Punitive or Other Damages** -- No benefits shall be provided under the Plan to cover any monetary award for damages, including but not limited to punitive or compensatory damages, whether by judgment, settlement or otherwise against a Participant in any action.
- (f) **Attorneys' Fees** -- No benefits shall be provided under the Plan to cover the attorneys' fees or costs of an opposing party awarded against a Participant in any action.
- (g) **Minor Discipline** -- In cases where the proposed discipline is a reprimand or suspension less than one (1) workday or its financial equivalent, a participant shall be entitled to benefits under the applicable Benefit Plan until the date a written notice of proposed discipline is issued (and delivered) to the participant.
- (h) **Breach of Employment Contract** -- No benefits shall be provided under the Plan related to proceedings brought against a Participant for breach of an agreement with his or her employer to remain employed.
- (i) **Health Conditions** -- No benefits shall be provided under the Plan related to proceedings involving the health condition of a Participant, including physical and psychological conditions.

2. **Limitations**

The provision of benefits under Benefit Plan II shall be subject to the following limitations:

(a) **Civil Action Against Public Employee**

(1) **Employer Accepts Defense and Agrees to Indemnify**

No benefits shall be provided under the Plan in any civil proceedings in which the Participant's employer or its insurer, whether by agreement, policy or operation of statutory law or applicable case law, agrees to or undertakes to provide a defense, agrees to or undertakes to indemnify the Participant for all general and punitive damages arising out of the proceedings, and is entitled to so agree or undertake under the laws of the State of Colorado.

(2) Reservation of Rights by Employer

In the event the Participant's employer agrees to defend the Participant but refuses to fully indemnify the Participant (including indemnification for punitive damages) or asserts a reservation of rights as to the indemnification of the Participant pending the outcome of the proceedings, then the Participant shall be entitled to benefits as set forth in Article III hereof, provided that the requirement for civil representation in Article III, Section 1(b) is met.

(3) Employer Refuses Defense

In the event the employer or its insurer refuses to defend the civil proceedings, then the Participant shall be entitled to the benefits under Article III, Section 1(b) and the Legal Defense Fund shall be subrogated to the Participant's rights against the employer or its insurer.

- (b) Third-Party Recovery** -- In the event that a Participant recovers from any third party any amounts as damages (other than lost compensation), attorneys' fees, or costs in a case in which the PORAC Legal Defense Fund provided benefits, the PORAC Legal Defense Fund shall be entitled to reimbursement from such Participant to the full extent of the expenditures made by the PORAC Legal Defense Fund on behalf of said Participant hereunder. Participants agree to cooperate with the PORAC Legal Defense Fund in obtaining reimbursement and, upon request, to execute any and all necessary documents. If a Participant has a cause of action against any third party for damages, attorneys' fees, or costs and does not wish to pursue the action, he or she will, upon request, assign those rights to the PORAC Legal Defense Fund to the extent lawfully permissible and assist the PORAC Legal Defense Fund in its prosecution of such action.
- (c) Non-Cooperation or Misrepresentation by Participant** -- No benefits shall be provided to a Participant who is untruthful to his or her Panel Attorney or who does not cooperate with his or her Panel Attorney. In such a case, the right of the Participant to benefits hereunder may be terminated or suspended.

Furthermore, if benefits are provided to a Participant based upon misrepresentations by the Participant to the Legal Administrator or the Board of Trustees, the PORAC Legal Defense Fund shall be entitled to terminate or suspend benefits hereunder and to obtain reimbursement from the Participant for the full amount expended by the Fund for services and costs on behalf of the Participant.

- (d) Non-Interference** -- No provision of the Plan shall require the Legal Administrator or its employees or agents, or Panel Attorneys or any attorneys associated with them, to perform any act in violation of any Colorado State Bar Rule of Professional Conduct, including but not limited to any rule which prohibits any organization or group from interfering with or controlling the performance of an attorney's duty to his or her client.

- (e) **Settlement Opportunity or Jeopardy** -- Benefits may be terminated in the event the Legal Administrator determines that it is in the best interest of a Participant to cease his or her participation in any particular case, including but not limited to cases where continued proceedings may subject the Participant to more severe civil, criminal or administrative sanctions, damages, or attorneys' fees, or where the Participant has rejected a reasonable settlement proposal to resolve his or her case.

- (f) **Appeal** -- No benefits shall be provided to appeal a decision by an administrative tribunal or a court, unless the Legal Administrator determines upon written request from the Participant that there exists a reasonable likelihood of success on the appeal or that the requirements set forth in Article III, Section 6(b) are satisfied. In addition, no benefits shall be provided pursuant to this subsection unless the participant pays in advance seventy-five percent (75%) of any applicable transcript costs, including transcripts for use by the Legal Administrator in considering a request for benefits under this subsection.

- (g) **Geographical Scope of Coverage** -- If a proceeding, whether judicial or administrative or arbitration or otherwise, occurs outside of the geographical area in which the PORAC Legal Defense Fund is operating, which the Board of Trustees in the sole exercise of its discretion shall periodically designate, then a participant shall not automatically be entitled to benefits under any benefit plan but shall instead receive only such benefits as the Board of Trustees in the sole exercise of its discretion deems appropriate and reasonable.

3. Coordination of Benefits

Benefits under the Plan shall not be provided to the extent they are furnished to a Participant by any other plan, program or policy which provides group legal services to Peace Officers or Public Safety Employees.

4. Benefits Paid According to Fee Schedule

Benefits under the Plan will be provided in accordance with the fee schedule for Panel Attorney services adopted by the Board of Trustees from time to time. The PORAC Legal Defense Fund shall not be responsible for any charges made by a Panel Attorney or other person in excess of such fee schedule.

**ARTICLE V
CLAIMS PROCEDURES**

1. Participant's Duty to Notify Legal Administrator of Claim

A Participant shall be obligated to notify the Legal Administrator of his or her claim for benefits before he or she is entitled to any benefits under the Plan. Notification to any Trustee, Panel Attorney, the Member Association, PORAC, or any party other than the Legal Administrator is ineffective to obtain entitlement to benefits. Failure to notify the Legal Administrator shall relieve the PORAC Legal Defense Fund of any obligation to provide benefits.

2. Telephone Hot Line (Emergency)

The Legal Administrator shall maintain a 24-hour-a-day telephone service to respond to Participants' needs for services. The number is **(800) 255-5610**.

3. Acceptance or Denial of Claim by Legal Administrator

The Legal Administrator shall consider each claim for Plan benefits and determine whether to grant or deny coverage under the Plan. If coverage is granted, the Member Association shall be notified. If the claim is denied, the Participant has the right to appeal a denied claim pursuant to the procedures described in Section 6 of this Article V.

4. Referral by Legal Administrator to Panel Attorney

The Legal Administrator shall refer representation of a Participant who is entitled to benefits to a Panel Attorney. Any dispute concerning the referral of a case to a Panel Attorney may be appealed by the Participant to the Board of Trustees pursuant to Section 6 of this Article V.

5. Dissatisfaction or Non-Cooperation with Panel Attorney

Subject to the appeal rights described in Section 4 above, if a Participant unreasonably refuses representation by the Panel Attorney selected to represent him or her or fails or refuses to accept the advice of the Legal Administrator or a Panel Attorney, the PORAC Legal Defense Fund shall be free from further obligation to such Participant to provide benefits or otherwise. Such Participant shall be free to employ counsel at his or her own expense to represent him or her.

6. Appeal Procedures

(a) **Denial** -- If a claim for Plan benefits made by a Participant is wholly or partially denied, the Legal Administrator shall give written notification of such denial to the Participant within ninety (90) days of receipt of the Participant's claim for benefits. In the event the Legal Administrator does not provide written notice of its decision within ninety (90) days of the Participant's claim, the claim shall be deemed denied. (A claim shall not be considered to have been received by the Legal Administrator until receipt of any transcripts required by Article IV of the Plan.) The notification shall include the following information:

- (1) The specific reason(s) for such denial;
- (2) Specific reference to the Plan provisions upon which the denial is based;
- (3) A description of any additional material or information which may be needed to clarify or complete the claim and an explanation of why such information is required; and
- (4) An explanation of the Plan's review procedure with respect to the denial of benefits.

(b) Request for Hearing

- (1) Any Participant whose claim has been denied may appeal to the Board of Trustees of the PORAC Legal Defense Fund to conduct a hearing in the matter, provided that he or she requests the hearing in writing within sixty (60) calendar days after being notified of the denial; and provided further that the request for a hearing explains to the degree possible why the reasons for the denial are inapplicable. The Participant may request and examine documents pertinent to the denial and may submit written issues and comments to the Trustees.
- (2) The Trustees shall conduct a hearing no later than ninety (90) calendar days after receipt of the Participant's written request for a hearing. The Participant shall be entitled to present his or her position and any evidence in support thereof at the hearing. The Participant may be represented at the hearing by an attorney or any other representative of his or her choosing at the Participant's expense. Within one hundred twenty (120) days of the hearing on the Participant's appeal, the Trustees shall issue a written decision, affirming, modifying, or setting aside the Legal Administrator's decision.

**ARTICLE VI
MISCELLANEOUS**

1. Limitation of Rights

Neither the establishment of the Plan or the PORAC Legal Defense Fund, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving any Participant or other person any legal or equitable right of action or recourse against the Member Association, PORAC, or any of their employees or agents, the PORAC Legal Defense Fund or its agents or employees, or the Trustees, except as provided in the Plan and in the Trust Agreement.

2. Applicable Laws and Regulations

References in the Plan to any particular sections of any local, state or federal statute shall include any regulation pertinent to such sections and any subsequent amendments to such sections or regulations. Except where the Plan specifically refers to state law, the Plan and the PORAC Legal Defense Fund shall be governed by the Employee Retirement Income Security Act of 1974, as amended.

3. Confidentiality

A provider of services to a Participant pursuant to a Benefit Plan, shall not divulge to third parties matters which a Participant revealed to the provider in confidence. A provider shall, however, be required to provide information to the Fund, including to its Trustees or its Legal Administrator, concerning a Participant's case. Neither the Member Association nor the PORAC Legal Defense Fund, including its Trustees or its Legal Administrator, shall reveal to third parties matters revealed to it in confidence by such Participant in the course of his or her application for benefits or receipt of benefits from the Fund. The PORAC Legal Defense Fund, including its Trustees or its Legal Administrator, shall, however, be permitted to provide to the Member Association general information concerning that the Member Association's usage under the Plan for the purpose of assisting the Member Association in its budgetary process.

4. Independent Contractors

All Panel Attorneys, and other providers of service are independent contractors and not agents of the Legal Defense Fund.

5. Interpretation of the Trust Agreement and The Plan

The PORAC Board of Trustees possesses full authority and power to interpret the terms of the Trust Agreement and this Plan Document. The PORAC Board of Trustees also possesses full authority to determine whether any claim for benefits is to be granted or denied.

6. Non-Assignment of Benefits

An eligible individual shall not have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any benefit payment hereunder. Benefits hereunder shall not be subject to levy or execution or attachment or garnishment.

7. Extent of Liability

The benefits provided by this Plan are not insured by any contract of insurance, and there is no liability on the PORAC Board of Trustees or other individual or entity to provide payment over and beyond the amount in the trust collected and available for such purpose.

8. Standard of Review

No action of the PORAC Board of Trustees may be revised, changed, or modified by any arbitrator, court, or other entity unless the party seeking such action has exhausted all of its administrative remedies under this Plan Document and is able to show by clear and convincing evidence that the PORAC Board of Trustees' decision was arbitrary and capricious in light of the information actually made available to the Board at the time of its decision.

**ARTICLE VII
AMENDMENT AND TERMINATION**

1. In order that the Board of Trustees of the PORAC Legal Defense Fund may carry out its obligation to maintain, within the limits of its resources, a program dedicated to providing the maximum possible benefits for all Participants, including those who are members of the Member Association, the Trustees expressly reserve the right, in their sole discretion, at any time and from time to time, but upon a non-discriminatory basis:

- (a) To amend or terminate any benefit, even though such amendment or termination affects cases already accepted by the Legal Administrator, provided that the responsibility of the Legal Defense Fund to pay for approved services previously rendered shall not be affected;
- (b) To increase the rate of contributions or alter the method of payment thereof; and
- (c) To amend or rescind any other provision of this Plan.

LDF COMPLAINT PROCEDURE

It is the policy of the Board of Trustees of the PORAC Legal Defense Fund to encourage and solicit comments regarding the administration of the Legal Defense Fund. Any person who is dissatisfied with any aspect of the administration of the Legal Defense Fund is requested to follow the complaint procedure below; provided, however, that denials of Plan benefits are appealable only as set forth in Article V, Section 6, of the Plan.

1. Complaints should be set forth in writing and directed to any or all members of the Board of Trustees, with copies to any persons who may be the subject of the complaint.
2. Within fourteen (14) days of the receipt of the complaint, the Chairman of the Board of Trustees or his designee shall contact the complainant and ascertain if the complainant, any person named in the complaint, or any of the Trustees wish to conduct a hearing on the matter before the Board of Trustees. If so, a hearing will be scheduled at the next regular Board meeting at which the complainant and persons named in the complaint are available to attend. If more immediate action is appropriate, the parties may participate in a conference telephone call.
3. At the hearing, all interested parties will be entitled to appear and discuss the matter.

**LEGAL DEFENSE FUND
OF THE
PEACE OFFICERS RESEARCH ASSOCIATION
OF CALIFORNIA**

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