



Peace Officers Research Association Of California

Legal Defense Fund

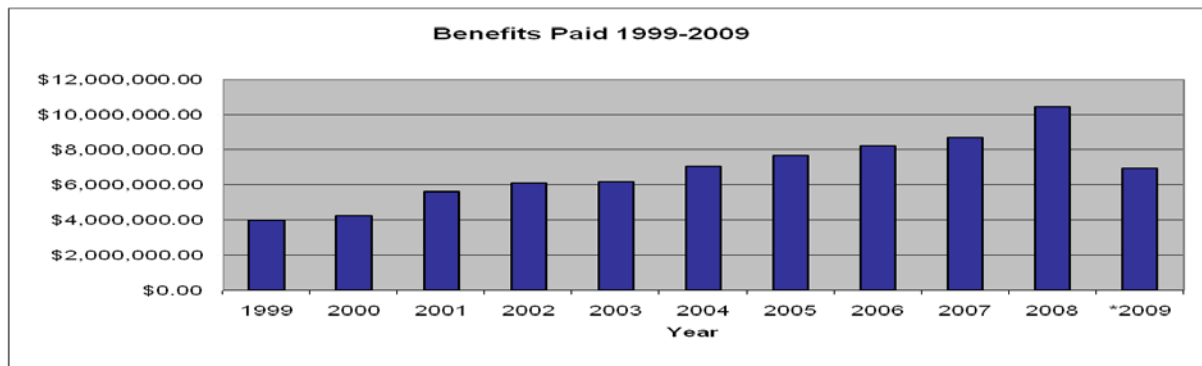
October 8, 2009

Brian L. Livingston
Executive Director, Arizona Police Association
1102 West Adams St.
Phoenix, AZ. 85007

Dear Mr. Livingston:

The Legal Defense Fund has been in operation since 1974. It was formed in response to some of the major cases that arose in the 1970's which clearly demonstrated the exposure of California law enforcement officers to personal liability. I am not aware of any Legal Defense Fund of any magnitude that has over 35 years of experience.

When comparing legal defense plans, in addition to the level of experience, it is critical for you to also examine the financial resources behind any legal plan that you are considering. A plan is only as good as the financial resources behind it. As of September 30, 2009 the Legal Defense Fund had nearly \$7 million in free reserves. This means that if we paid all of our claims and disbanded, there would be nearly \$7 million in funds remaining. As you can see by the following chart, we have achieved that level of financial security while still paying over \$10 million per year in claims.



The reason we have been able to accumulate such a significant war chest is our large and varied membership. The following chart shows the various job classifications covered by the Legal Defense Fund.

<i>Police Officers</i>	<i>Deputy Sheriffs</i>	<i>State Police</i>	<i>Border Patrol Agents</i>
<i>Dispatchers</i>	<i>Correctional Officers</i>	<i>University Police</i>	<i>Federal Agency Invest.</i>
<i>CSOs</i>	<i>Probation Officers</i>	<i>Fish & Game Wardens</i>	<i>Airport Police</i>
<i>Firefighters</i>	<i>D. A. Investigators</i>	<i>State Agency Invest.</i>	<i>School Police</i>
<i>Park Rangers</i>	<i>Marshals</i>	<i>District Attorneys</i>	<i>Transit Police</i>
	<i>Welfare Fraud Invest.</i>		<i>Harbor Police</i>

The Arizona Associations currently participating in the Legal Defense Fund are enrolled in Benefit Plan II, which provides Civil and Criminal coverage.

Criminal coverage is simple. If one of our members is subject to a criminal investigation (it need not rise to the level of criminal charges; criminal investigation is all that is needed to trigger coverage) for an act or omission within the scope of employment, for an event occurring after their date of membership, all they need to do is call our 800 number to open a file and receive representation. If it is an emergency such as a shooting or death in custody, we are available 24 hours a day, 365 days a year and will have an attorney there to assist the involved officer(s) immediately.

Once we receive a call from a member, our office refers the participant to the local attorney(s) their association designates. The criminal coverage continues through trial. In the event of a criminal conviction, the Legal Defense Fund may provide coverage for an appeal if there is a "reasonable likelihood of success" on appeal. That would be determined by the panel attorney, the Legal Administrator, and possibly with the input of an attorney who specialized in criminal appeals. If the member is unhappy with the assessment of the likelihood of success on appeal, the member can appeal the decision to the Legal Defense Fund Board of Trustees, who are all active police officers familiar with issues being faced by our members every day.

Civil coverage is handled somewhat differently. Within the majority of jurisdictions, the employer is required to provide for the defense and indemnity of their employees for acts and omissions within the scope of employment. That is the situation in all but two of our jurisdictions: the Federal Government and the State of Arizona. However, even in these two jurisdictions, the employer routinely defends and indemnifies its employees as a matter of practice. Our civil coverage works like this:

<p>IF ... Your employer agrees to provide you with a lawyer and agrees in writing to pay all damages, including punitive damages,</p>	<p>THEN ... <i>You are protected and there is no need for Legal Defense Fund coverage at this point.</i></p>
<p>IF ... Your employer refuses to give you a lawyer,</p>	<p>THEN ... <i>The Legal Defense Fund will give you your own lawyer.</i></p>
<p>IF ... Your employer provides you with a lawyer, but does not agree to indemnify you,</p>	<p>THEN ... <i>The Legal Defense Fund will monitor your case. This means that an experienced attorney employed by the Legal Defense Fund will review court documents and correspondence to evaluate the case, your position in, it and what is being done. If it is deemed that there is a considerable likelihood of punitive damages being awarded against you, that there is a conflict of interest, or there is any deficiency in your representation, the Legal Defense Fund will endeavor to have your employer provide, or will itself provide you, with your own lawyer.</i></p>

In both civil and criminal cases the Legal Defense Fund pays for customary, necessary and reasonable services related to the case, which can include investigators, court costs, expert witnesses, and whatever it takes to assist the lawyer with being successful in the case.

In addition, because we use multiple law firms, we can provide representation in cases where a conflict of interest exists (or may develop) between your members. As I am sure you are aware, it is virtually impossible for the same lawyer to represent multiple clients in a criminal case.

The Plan also pays for the defense of the Association or its members when they engage in Concerted Labor Activity, which might include activities such as picketing or the use of ads in the media. If the Department retaliates for these activities, the Legal Defense Fund may come to that member Association's assistance, provided they have followed the procedure outlined in the Plan Document. The Plan Document provides:

“Representation for Concerted Labor Activity

A Participant shall be entitled to representation, including representation in a civil or criminal contempt action, in accordance with the Benefit Plan

chosen by the Member Association, for Concerted Labor Activity arising out of a dispute over wages, hours, terms, or conditions of employment between the Participant's Member Association and his or her employer, provided that:

- (a) The Board of Trustees approves benefits under the Plan after establishing that the Participant's 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; and
- (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.

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.”

The provisions cited above for civil, criminal and concerted labor activity coverage are automatically provided to members. The LDF can also provide discretionary coverage. The Affirmative Relief provisions of the Plan Document allow the Trustees to address important issues that affect all peace officers in a given jurisdiction. This has allowed us to file “friend of the court briefs” in 3 United States Supreme Court cases this term. We were successful in two of the cases, with the Court extending qualified immunity to the officers. We also joined with the City of Castle Rock, Colorado, to defeat an attempt to employ procedural due process to challenge the actions taken by peace officers. Another example of the Affirmative Relief coverage that can be provided arises out of Phoenix, Arizona. The following picture is of Phoenix Police Officer Jason Schecterle. Jason was the victim of a horrific car fire, caused when his Ford Crown Victoria Police Interceptor was hit from behind by another vehicle. This has been an on-going problem for law enforcement across Arizona and across the country over the past decade. Our participation in Jason’s case led to safer police cars in Arizona and elsewhere, in the hope that such a tragedy will not befall another law enforcement officer. Under Affirmative Relief coverage, we have also actively enforced the California Peace Officers Bill of Rights (and similar Peace Officer Rights laws in other states), and defended police association leaders for retaliation for their associational activities. I urge you to take a look at our website at www.porac.org/ldf for many additional examples.

Last, but certainly not least, is the commitment to provide the best possible benefit packages for the lowest possible cost. The cost for Benefit Plan II (Civil/Criminal coverage) is \$4.00 per member per month. It is payable one quarter in advance.

Please do not hesitate to call if you need further information.

Sincerely,

Cindi Forbes
Director of Operations

cc: Ed Fishman