

January 1, 2021

To All Participants in the Riverside Sheriffs' Association Legal Defense Trust:

This updated booklet is being distributed to give you complete information about the structure, operation, and benefits concerning the Legal Defense Trust. Please discard and disregard the prior plan document, dated July 1, 2007.

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 Trust and the structure of the Benefit Plans.

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

Part III contains the Legal Defense Trust Complaint procedure.

We recommend that you read this book carefully so that you will be fully informed as to the eligibility requirements and available benefits. If you have questions that the booklet does not answer, or if any clarifications are needed, please contact the General Counsel of the Legal Defense Trust. **Only the General Counsel represents the Board of Trustees in administering the Plan and giving information relating to the amount of benefits, eligibility, and other provisions of the Plan. Statements by other persons are not authorized and will not be binding on the Board of Trustees or the Legal Defense Trust.**

We, the Trustees, as fellow peace officers, are pleased and honored to work on the design and administration of the Legal Defense Trust.

Sincerely,

BOARD OF TRUSTEES OF THE
RIVERSIDE SHERIFFS' ASSOCIATION LEGAL DEFENSE TRUST

WARNING: If you resign from your employment, you may lose your Legal Defense Trust coverage. Read Article II, Sections (D) and (E) of this Plan Document for details.

TABLE OF CONTENTS

	Pages
SUMMARY PLAN DESCRIPTION OF THE RIVERSIDE SHERIFFS' ASSOCIATION LEGAL DEFENSE TRUST.....	1
LEGAL DEFENSE TRUST PLAN DOCUMENT PREAMBLE.....	6
ARTICLE I DEFINITIONS	7
ARTICLE II ENTITLEMENT TO BENEFITS.....	9
A. Initial Entitlement to Benefits	9
B. Method of Application	9
C. Required Contributions.....	9
D. Termination of Benefits	10
E. Extended Coverage	11
ARTICLE III BENEFITS.....	13
A. Benefit Plan I – Civil, Criminal and Administrative Actions.....	13
B. Benefit Plan II – Reserve Officers	16
C. Labor Representative Option.....	16
D. Limits on Benefits for Participants Who Are New Peace Officers or Public Safety Employees	16
E. Benefits for Participants Who Are Department Heads	17
F. Representation for Concerted Labor Activity.....	17
G. Representation Involving Affirmative Relief.....	17
H. Right of a Deceased Participant's Estate	18
I. Cases of General Importance	18
ARTICLE IV EXCLUSIONS AND LIMITATIONS.....	18
A. Exclusions	18
B. Limitations.....	20
C. Coordination of Benefits.....	21
D. Benefits Paid According to Fee Schedule.....	21
ARTICLE V CLAIMS PROCEDURES	22
A. Participant's Duty to Notify Trust of Claim	22
B. Telephone Hot Line (Emergency).....	22
C. Acceptance or Denial of Claim by Trust.....	22
D. Referral by General Counsel to Panel Attorney or Labor Representative.....	22
E. Dissatisfaction or Non-Cooperation with Panel Attorney or Labor Representative.....	22
F. Appeal Procedures	22
G. Contractual Limitation Period.....	23
H. Restriction on Venue.....	23
ARTICLE VI MISCELLANEOUS	24
A. Limitation of Rights	24
B. Applicable Laws and Regulation	24
C. Confidentiality	24
D. Independent Contractor	24
E. Waivers	24
F. Interpretation of the Trust Agreement and the Plan	25

G.	Status of Benefits and Eligibility Requirements.....	25
H.	Non-Affiliation.....	25
I.	Non-Assignment of Benefits	25
J.	Participant Remedies	25
K.	Trust Agreement	25
L.	Modification of Benefits.....	26
M.	Extent of Liability	26
N.	Standard of Review.....	26
ARTICLE VII AMENDMENT AND TERMINATION		26
ARTICLE VIII RETIREE CCW PLAN DESCRIPTION.....		26
A.	Definitions – As applicable to Article VIII:	26
B.	Eligibility.....	27
C.	Prerequisites for Participation.....	27
D.	Application for Coverage	27
E.	Coverage Effective Date	28
F.	Coverage	28
G.	Benefits-Limits of Liability.....	28
H.	Exclusions	28
I.	Prompt Notice of Occurrence	29
J.	Financials.....	29
K.	Changes to the LDT Retiree CCW Plan	29
L.	Coverage and Breaks in Coverage.....	29
M.	Participation Fees Payable Annually-Termination for Non-Payment	29
N.	Termination of Participation and Entitlement to Benefits	30
O.	Claims Made Coverage Dates	30
P.	Other Plan or Insurance-Plan is Excess	30
ARTICLE IX TRUST COMPLAINT PROCEDURE		31
PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT		32
NON-WAIVER STATEMENT		39
TEN RULES OF ENGAGEMENT.....		40

**SUMMARY PLAN DESCRIPTION OF THE RIVERSIDE
SHERIFFS' ASSOCIATION LEGAL DEFENSE TRUST**

(A) Name of Plan: This plan is known as the Riverside Sheriffs' Association (RSA) Legal Defense Trust.

(B) Name, Address, and Telephone Number of Sponsoring Organization: This plan is sponsored by RSA, the name, address, and telephone number of which is:

Riverside Sheriffs' Association
21810 Cactus Avenue
Riverside, CA 92518
(951) 653-5152

(C) Identification Number: The employer identification number assigned to the RSA Legal Defense Trust by the Internal Revenue Service is EIN 33-620-0313. 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.

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

Board of Trustees
RSA Legal Defense Trust
21800 Cactus Avenue
Riverside, CA 92518
(951) 653-0130
(800) 877-7317 - 24-hour emergency number

(G) Name and Address for Service of Process: The Board of Trustees has designated the General Counsel as its agent for purposes of accepting service of legal process on behalf of the RSA Legal Defense Trust. The address for the General Counsel is the same as that of the Plan Administrator as set forth in item (F) above.

Each member of the Board of Trustees is also an agent for purposes of accepting service of legal process on behalf of the RSA Legal Defense Trust. The names of the Trustees in office as of the date of the January 1, 2021 plan restatement are set forth in item (H) below. The address and phone number of the Trustees is the same as that of the Plan Administrator as set forth in item (F) above.

(H) Names and Titles of Trustees in Office as of January 1, 2021:

Darin Gray, Chair
Charles Roberts, Vice Chair
Summer McGill, Treasurer
Brett Pendleton, Secretary
Juan Silva, Trustee

(I) Applicable Collective Bargaining Agreement: None.

(J) Participation, Eligibility, and Benefits Under Benefit Plans I and II:

1. Any active or reserve peace officer or public safety employee (as those terms are defined in Sections S. and U., respectively, 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 active or reserve peace officer or public safety employee is a member of a Member Association or is someone in whose name a Member Association makes contributions to the Legal Defense Trust.
2. Benefits are set forth in Article III of the Plan Document.

(K) Circumstances Which Result in Ineligibility, Cessation of Benefits or Denial of Benefits: As of the date the earliest of the following in subsections (1)-(7) occurs, benefits shall automatically cease (1) for a Participant who as of that date is receiving benefits and (2) for events occurring after such date.

1. Termination of the Participant in the Plan or in the Participant's Member Association.
2. Termination of employment of the Participant, including termination due to voluntary resignation.
3. Termination of membership in the Plan by the Participant's Member Association.
4. Nonpayment of contributions by the Participant through the Member Association.
5. Failure by the Participant to file a claim for benefits or to appeal within time periods set forth in the Plan Document.
6. Amendment or termination of the Plan.
7. Other circumstances as set forth in Article II, Section D of the Plan Document.

(L) Source of Contributions: The Plan is financed by contributions paid by individual Participants through the Member Association as set forth in the Plan Document and the earnings on said contributions.

- (M) **Entities Used for Accumulation of Asset and Payment of Benefits:** The contributions are received and held by the Board of Trustees in the RSA Legal Defense Trust pending the payment of benefits and administrative expenses. The Board of Trustees pays benefits directly from the RSA Legal Defense Trust.
- (N) **End of Plan Year:** The Plan Year runs from January 1 through December 31 of each year.
- (O) **Use of Assets upon Termination:** The Board of Trustees 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 Trust, after payment of expenses, shall be used for the continuance of the benefits provided by the existing Benefit Plan(s), 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 RSA Legal Defense Trust's General Counsel at the RSA office:

Michael P. Stone, Esq.
General Counsel
RSA Legal Defense Trust
21800 Cactus Avenue
Riverside, CA 92518
(800) 877-7317 – 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 Trust will furnish written notification to the Participant within sixty (60) days of receipt of the Participant's claim. (A claim shall not be considered to have been received by the Trust until receipt of any transcripts as required by Article III of the Plan.) In the event the Trust does not respond within sixty (60) days, the claim shall be deemed to have been denied. The Participant may appeal to the Board of Trustees 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 F. of the Plan Document.

The Trustees shall conduct a hearing no later than sixty (60) calendar days or as soon as practicable after the receipt of the Participant's written request for review, at which hearing the Participant shall be entitled to present their 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 their choosing.

The Trustees shall issue a written decision within five (5) 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) **Contractual Limitations Period and Restriction on Venue:** Any action by a Participant against a plan fiduciary claiming a violation of ERISA or the terms of the Plan, must be filed in court within six calendar months after the date of the alleged act or omission. Any

action by a Participant from an adverse determination by the Board of Trustees from an appeal from a denial of benefits or from a deemed denial of a claim or appeal must be filed in court within six months after the date notice is mailed to the Participant. The court in which any action must be filed is the United States District Court for the Central District of California.

- (S) **Statement of ERISA Rights:** As a Participant in the RSA Legal Defense Trust, 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 RSA Legal Defense Trust 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 Benefits Administration.

Obtain, upon written request to the Board of Trustees, 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.

Receive a summary of the Plan’s annual financial report. The Board of Trustees 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 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 thirty (30) days, you may file suit in a Federal court. In such a case, the court may require the Board of Trustees 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 that 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 if, for example, it finds your claim is frivolous.

Assistance with Your Questions

If you have any questions about your Plan, you may contact the General Counsel. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the General Counsel, you may contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, 1-866-4-USA-DOL, www.dol.gov or the Division of Technical Assistance and Inquiries, www.sec.gov, Employee Benefits Security 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 Employee Benefits Security Administration.

LEGAL DEFENSE TRUST PLAN DOCUMENT

PREAMBLE

WHEREAS, the Riverside Sheriffs' Association (RSA) is an incorporated association which is organized to represent peace officers and public safety employees for the purposes of collective bargaining; and

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

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

NOW, THEREFORE, the Board of Trustees does hereby restate the Plan Document, effective as of January 1, 2021, as set forth in the following pages.

ARTICLE I
DEFINITIONS

- A. “Administrative” – relating to a specific department or agency which employs the Participant.
- B. “Trust Office” – the administrative office of the RSA Legal Defense Trust:

Riverside Sheriffs’ Association
Legal Defense Trust
21800 Cactus Avenue
Riverside, CA 92518
- C. “Association” – references the Riverside Sheriffs’ Association (RSA).
- D. “Benefit Plan” – one of the plans described below in Article III under which the Participants are entitled to certain benefits.
- E. “Board of Trustees” or “Trustees” – the Board of Trustees of the RSA Legal Defense Trust.
- F. “Calendar Quarter” – the three-month period beginning on the first day of January, April, July, and October of each calendar year.
- G. “Concerted Labor Activity” – concerted failure to work, to respond to orders of 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, or assault.
- H. “Employment” – employment as a Peace Officer or Public Safety Employee, as defined herein.
- I. “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.
- J. “Labor Representative” – an individual ineligible for active membership in a Member Association and experienced in the representation of employees in administrative disciplinary matters who works under the supervision of a Panel Attorney or has established a relationship with a Panel Attorney satisfactory to the Trustees.
- K. “General Counsel” – a person or legal entity appointed from time to time by the Trustees to supervise the provision of services under the Plan.
- L. “Legal Defense Trust” – the entity created by the Trust Agreement, and property and money held by such entity, including all contract rights and records.
- M. “Member Association” – any association of Peace Officers and/or Public Safety Employees whose members are active participants in the RSA Legal Defense Trust.
- N. “Military Service” – full-time, active duty service with the armed forces of the United States, including the Coast Guard, or the State of California, provided that such service occurs (1) during a war involving the United States as a belligerent, (2) during a national security emergency, as declared by the President of the United States or by Congress, or (3) 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.

- O. “Miranda” – *Miranda v. Arizona* (1966) 384 U.S. 436, requires that criminal suspects be advised of the right to remain silent, that any statements made can and will be used against the suspect, of the right to counsel, and of the right to appointed counsel if the suspect cannot afford one.
- P. “Monitor” – action by the Trust or their designee to observe the progress of a civil case against a Participant in which the defense has been tendered to the Participant’s employer under Article IV, Section B.1.(b), to determine whether the appointment of a Panel Attorney as individual counsel for the Participant is necessary. Monitoring may include but shall not be limited to receipt and review of pleadings, discovery documents, and status reports from employer’s legal counsel, and discussion with the employer’s legal counsel when necessary.
- Q. “Panel Attorney” – an attorney ineligible for active membership in a Member Association and selected from time to time by the Trustees to supervise and provide legal services under the Plan.
- R. “Participant” – a Peace Officer or Public Safety Employee who qualifies for benefits under this Plan pursuant to Article II hereof.
- S. “Peace Officer” – (1) any active peace officer or (2) any reserve peace officer who is certified by the Commission on Peace Officer Standards and Training (P.O.S.T.), provided that each such peace officer is a member of a Member Association or is someone in whose name a Member Association makes contributions to the Legal Defense Trust. To determine issues of peace officer status or basic training, reference shall be made to applicable California statutes, e.g., Penal Code Section 830 et seq., or Penal Code Section 832.6. Retired peace officers who return to temporary employment with the County of Riverside in a capacity that requires the possession of peace officer powers shall be deemed to come within this definition.
- T. “Plan” or “Legal Defense Trust Plan” – the group prepaid legal services plan set forth herein and any amendment thereto.
- U. “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 or in whose name a Member Association makes contributions to the Legal Defense Trust. Retired public safety employees who return to temporary employment with the County of Riverside in a public safety capacity shall be deemed to come within this definition.
- V. “RSA” – the Riverside Sheriffs’ Association.
- W. “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 Board of Trustees.
- X. “Skelly” – *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, requires a public agency to provide employees with an opportunity to respond to the disciplinary authority, personally or in writing, within a reasonable time. This applies only to employees with a property right or a liberty interest in their employment.

- Y. “Trust Agreement” – the Trust Agreement establishing the Legal Defense Trust, and any amendments, extensions, or renewals thereof.

ARTICLE II

ENTITLEMENT TO BENEFITS

A. Initial Entitlement to Benefits

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

1. **Proper Application to the Legal Defense Trust** – the date on which actual receipt of an application to the Legal Defense Trust which, in the judgment of the General Counsel, properly meets the requirements of Sections A.3. and B. of this Article; and
2. **Contributions Made to the Legal Defense Trust** – the Member Association makes required contributions on behalf of more than fifty percent (50%) of its members; and
3. **Review By Board of Trustees** – The Board or the General Counsel, if the Board so provides, shall review each application to ensure that the Member Association satisfies eligibility policies adopted by the Board.

B. Method of Application

1. **Application** – Application for participation in the Plan shall be submitted by a Member Association to the Legal Defense Trust on forms provided by the Legal Defense Trust. A Peace Officer or Public Safety Employee can make application to the Plan only through their Member Association.
2. **List of Participants** – There shall be attached to each application a list of each and every Peace Officer or Public Safety Employee on whose behalf application is made.
3. **Choice of Plan** –
 - (a) The application shall indicate in which Benefit Plan as described in Article III hereof the Member Association chooses to participate.
 - (b) Reserve Peace officers may be enrolled only in Benefit Plan II. Those Member Associations with reserve Peace Officers shall inform the Administrative Office of the names of any reserve Peace Officers in the Member Association, and shall pay the contributions applicable to such reserve Peace Officers.

C. Required Contributions

1. **Quarterly Contributions** - Each Member Association shall make quarterly contributions per Participant, based on a monthly rate as set from time to time by the Board of Trustees. Contact the General Counsel for details on the contribution schedule for each Benefit Plan.
2. **Time of Payment of Quarterly Contributions** – Payment of the contributions set forth in Section C.1. of this Article, absent compelling circumstances and subject to such conditions as determined

by the Trustees, shall be made in full on a quarterly basis by each Member Association to the Legal Defense Trust on or before the day preceding the first day of such Calendar Quarter for which each payment applies and shall be deemed delinquent on the first. A Member Association or Participant may join mid-quarter by payment of a prorated contribution.

Termination of a Participant's participation in the Legal Defense Trust shall not result in any refund of the contributions. A Member Association shall receive credit for up to one quarter's worth of contributions in a subsequent quarter for the contributions paid on behalf of the Participants whose coverage terminated in the current or in an earlier quarter. Requests for credit in excess of one quarter's worth of contributions shall be determined by the Trustees and granted only upon a showing of compelling circumstances.

3. **Method of Payment** – Payment shall be deemed to have been made as of the date of the postmark on the envelope containing the payment, provided it has been properly addressed to the Legal Defense Trust at its Administrative Office. The foregoing shall not apply, however, where payment is made by check, which is not honored at the bank upon which it has been drawn.
4. **Effect of Delinquency** – If payments are not made as required in this Section, benefits under the Plan for Participants of the delinquent Member Association shall cease on the first day of the Calendar Quarter following the payment due date described in Section C.2. of this Article. Neither the delinquent Member Association nor any of its Participants shall thereafter be entitled to the benefits of the Plan for any period during which the delinquent Association is in default of payment.
5. **Late Payment** – Notwithstanding the provisions of the immediately preceding paragraph, if the delinquent payment is made within two (2) months of the payment due date, entitlement to benefits shall be reinstated, effective retroactively to the payment due date, on the date of the 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.
6. **New Application** – If the delinquency continues for more than two (2) months, the Association shall be deemed to have terminated its participation and must reapply for membership. Upon reapplication within the current or subsequent quarter, and subject to a determination of good cause by the Trustees, 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.

D. Termination of Benefits

The benefits for a Participant shall automatically terminate:

1. When their participation (i.e., through non-payment of contributions) in the Legal Defense Trust terminates; or
2. When membership in their Member Association terminates; or
3. Subject to Section E. of this Article, when the employment of the Participant terminates; or
4. When the Participant voluntarily resigns as a Peace Officer or Public Safety Employee and Section E.1.(e) of this Article does not apply; or

5. When the participation of the Member Association in the Plan terminates, whether voluntarily, by failure to pay Plan contributions, or otherwise; or
6. When the participation of the Member Association in the Plan falls to fifty percent (50%) or less of the Member Association's membership, not including retirees and reserves; or
7. When the Participant ceases to participate in the Plan through the Member Association, which is the recognized employee organization for the bargaining unit which includes the Participant's position.

E. Extended Coverage

Notwithstanding subsections 1. through 5. but subject to subsections 6. and 7. of Section D. of this article, a Participant shall be entitled to the applicable benefits of subsections 1. through 6. of this section, provided in all cases that the Participant would otherwise be entitled to benefits.

1. Involuntarily Terminated Participants

- (a) A Participant who is being involuntarily terminated shall be entitled to benefits for actions arising from events involving the involuntary termination of employment.
- (b) 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.
- (c) If coverage has been granted under subsection 1. (a) 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 actions only if (1) the new action arises from the events giving rise to the involuntary termination and (2) the Participant notifies the General Counsel of the second or subsequent action within twelve (12) months of termination of employment.
- (d) 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 that preceded and are unrelated to the events involving the termination of employment, provided that the Participant notifies the General Counsel of the action within twelve (12) months of termination.
- (e) 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:
 - (1) receipt from their employer of a written notice of intent to terminate, i.e., a Skelly notice; or
 - (2) the existence of surrounding circumstances which clearly and convincingly indicate that issuance of a Skelly notice is imminent; or
 - (3) the Participant's assigned Panel Attorney or Labor Representative 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 General Counsel; or

- (4) 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.

2. Laterally Transferred Participants

Subject to Article III, Section D., a Participant who laterally transfers from one agency to another agency within a reasonable period not to exceed ninety (90) days and who immediately becomes and remains a Participant at the second agency shall be entitled to benefits in accordance with the Benefit Plan in effect at the initial agency for any event occurring while the Participant was employed as a Peace Officer or Public Safety Officer at the initial agency.

3. Retired Participants

If a Participant retires, the Participant shall be entitled to civil and criminal coverage in accordance with the Plan for any act or omission within the scope of employment occurring prior to retirement. The Board of Trustees, in its sole and unreviewable discretion, may grant continued administrative disciplinary coverage to a Participant that retires before conclusion of their disciplinary appeal. This coverage limitation applies to cases pending at retirement. In cases initiated after retirement, the Board of Trustees has the sole and unreviewable discretion to grant administrative disciplinary coverage to the retired Participant in exceptional and compelling circumstances only.

4. Laid-Off Participants

A Participant who has been involuntarily laid off from employment due to a reduction in force, a reorganization of operations, the disbanding of the department, or the consolidation or merger of the Participant's department with another department or agency shall be entitled to the 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 the Participant arising from any act or omission of the Participant within the scope of employment, provided that the Participant notifies the General Counsel of the actions 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.

5. Promoted, Demoted, or Transferred Participants

Subject to Section D. of Article III, a Participant who, due to a promotion, demotion, or transfer within an agency, becomes a member of another Association shall be entitled to benefits for events occurring prior to the promotion, demotion, or transfer in accordance with the Benefit Plan applicable to the Participant on the date of the event.

6. 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:

- (a) the Participant pays dues during the leave of absence for Military Service; and
- (b) 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
- (c) the event does not arise out of or relate to, either directly or indirectly, the Participant's scope of Military Service responsibilities.

The Participant's Association is to notify the Trust 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. Legal representation in accordance with the Benefit Plan is expressly extended to Participants who are Peace Officers, as defined herein, whose duty assignments do not involve the carrying of a firearm off-duty, but who have obtained a permit to carry a concealable firearm while off-duty. Said participants shall meet the training and qualification requirements of Penal Code Section 832.

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

A Participant whose Member Association has chosen Benefit Plan I shall be entitled to the following services:

1. **Civil and Criminal Coverage:** Legal representation in (i) any civil or criminal action brought against Participant arising from any act or omission of the Participant within the scope of employment, including any civil or criminal action brought as the result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section F. of this Article, or (ii) arising from witnessing any act or omission of another Participant within the scope of employment of that Participant.

- (a) Please refer to Article IV, section B for limitations on civil coverage.

2. **Administrative Coverage:**

- (a) Administrative Coverage through the Completion of the Participant's Skelly Hearing.

A Participant shall be entitled to representation in any administrative disciplinary action brought against Participant arising from any act or omission of the Participation whether within the scope of employment or outside the scope of employment. Coverage under this paragraph shall include representation with respect to any administrative disciplinary action brought as the result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section F of this Article. Entitlement to representation

under this paragraph shall extend through but no further than the completion of the Participant's Skelly Hearing.

(b) Condition to Any Further Post-Skelly Trust Coverage in Administrative Actions

As a condition of further coverage, the Participant shall immediately, but in no event later than five working days following receipt, provide the Trust Office with the written results of the Skelly hearing. Upon obtaining the written results of the Skelly hearing, the Trust will file a notice of appeal with the Department to satisfy any administrative statute of limitations, but the filing of such notice does not guarantee further Trust coverage.

A Participant who desires further coverage from the Trust after the Skelly hearing must file a written request for Trust coverage with the Trust Office within sixty (60) working days of receipt of the results of the Skelly hearing. Failure to comply with this deadline will result in a termination of Trust coverage. Upon receipt of a request for Trust coverage, the General Counsel will review the file and issue a coverage opinion concerning continued Trust coverage and whether the act or omission is within the scope of employment. The Trust Chair shall determine whether to grant or deny further coverage. If further coverage is denied, the Participant has the right to appeal pursuant to Section F. of Article V.

(c) Administrative Coverage After a Pre-Disciplinary Hearing, i.e., Skelly Hearing, Where the Discipline Imposed is a Suspension of Twenty-Four (24) Hours or Less or its Financial Equivalent

A Participant against whom administrative disciplinary action has been brought arising from any act or omission within the scope of employment shall not be automatically entitled to representation beyond the pre-disciplinary hearing, i.e., Skelly hearing, where the discipline imposed after the pre-disciplinary hearing is a twenty-four (24) hour suspension or its financial equivalent or less. The Trust Chair shall determine if further coverage is appropriate.

(i) Granting further representation in addition to the filing of an appeal to a Participant who, after the pre-disciplinary hearing, is subject to a twenty-four (24) hour suspension or its financial equivalent or less is a matter of Trust discretion.

(ii) In determining whether a Participant is to receive additional representation, the Trust Chair (and the Board of Trustees on appeal) shall consider relevant factors, including but not limited to the following:

- (1) Did the alleged acts or omissions occur in the normal scope of the Participant's employment;
- (2) Does the Participant deny the allegations giving rise to the discipline;
- (3) If the Participant admits the allegations giving rise to the discipline, does the Participant contend there are extenuating or mitigating facts or circumstances;
- (4) Are there new or additional facts or circumstances that have not been already submitted to or considered by the Department;
- (5) Is the discipline consistent with how others have been treated under the same or similar circumstances;
- (6) Does it appear that an appeal will result in a reduction of discipline;

- (7) Was the investigation or Skelly hearing handled in a way that was procedurally unfair.
 - (d) Administrative Coverage After a Pre-Disciplinary Hearing, i.e., Skelly Hearing, Where the Discipline is Termination or a Suspension of More Than Twenty-Four (24) Hours or its Financial Equivalent

A Participant shall be entitled to representation in any administrative disciplinary action brought against the Participant arising from any act or omission of the Participant within the scope of employment, provided that the discipline imposed after the pre-disciplinary hearing, i.e., Skelly hearing, is more than twenty-four (24) hours or its financial equivalent. Coverage under this paragraph shall include representation with respect to any administrative disciplinary action brought as the result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section F. of this Article. Entitlement to representation under this paragraph shall extend through and no further than the completion of the administrative hearing.
 - (e) Administrative Coverage for Letters of Reprimand and Performance Evaluations
 - i) A Participant who desires coverage from the Trust under this section shall immediately, but in no event later than five (5) working days following receipt, provide the Trust Office with a copy of the letter of reprimand or performance evaluation, whichever is applicable, and shall at the same time file a written request for Trust coverage with the Trust Office.
 - ii) As determined on a case-by-case basis by the Trust Chair in the exercise of the Chair's discretion:
 - 1) Participant may receive representation to appeal a letter of reprimand where it is reasonable to conclude that the reprimand will form the basis for future discipline, including the amount of future discipline.
 - 2) Participant will only receive representation to appeal or contest performance evaluations or other written documents, including, but not limited to, written warnings, i.e., directive, corrective and corrective counseling memoranda, even if adverse in nature, where they constitute punitive action.
 - (f) With respect to any administrative coverage, it shall be decided on a case-by-case basis whether coverage will be provided for such services as polygraph examinations, expert witnesses, hearing transcripts, etc.
 - (g) Administrative coverage is subject to Section C. (Labor Representative Option) of this Article.
3. Legal representation to defend a Participant against the issuance of injunctive relief, including but not limited to a temporary restraining order, or to move to modify previously issued injunctive relief, provided that the injunctive relief contained provisions limiting the Participant's use or possession of a firearm in such a manner as to have a negative impact upon the Participant's employment.

4. All customary, necessary, and reasonable services related to the action described in Benefit Plan I hereof, including where it appears reasonably probable that such an action will be commenced.

B. Benefit Plan II – Reserve Officers

A Participant whose Member Association has chosen Benefit Plan II shall be entitled to the following services:

1. Legal representation in any civil or criminal action brought against Participant arising from any act or omission of the Participant within the scope of their employment as a Reserve Peace Officer, including any civil or criminal action brought as the result of the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section F. of this Article.
2. Legal representation in any departmental administrative investigation arising from any act or omission of the Participant within the scope of employment as a Reserve Peace Officer, including investigations relating to the Participant's involvement in Concerted Labor Activity, subject to the conditions set forth in Section F. of this Article, with coverage terminating upon the conclusion of any informal disciplinary hearing, i.e. Skelly hearing.
3. Upon payment by a Participant of the premium as set by the Board of Trustees, legal representation in any civil or criminal action brought against Participant arising from any act or omission of the Participant taken when off duty which if done on duty would have been within the scope of their employment, including but not limited to situations where the Participant uses a concealed weapon which the Participant is permitted to carry.
4. All customary, necessary, and reasonable services related to an action described in subsection 1. and 2. hereof, including where it appears reasonably probable that such an action will be commenced.

C. Labor Representative Option

The Trust Chair shall, in the Chair's sole discretion, determine in each administrative disciplinary action whether and to what extent services to a participant will be provided by a Panel Attorney or a Labor Representative. Where the Trust Chair has determined that representation by a Labor Representative is appropriate, a Participant may nonetheless receive legal representation from a Panel Attorney; in such cases, however, the Trust's sole obligation is to compensate the Panel Attorney at the Trust's applicable rate for Labor Representatives, and any remaining fee due to the Panel Attorney shall not be the Trust's responsibility.

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

A Participant who is probationary, according to the rules of their local jurisdiction, shall be entitled to representation in accordance with the Benefit Plan chosen by the Member Association; provided, however, that:

1. 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, e.g., a Skelly hearing or Liberty Interest hearing.

2. Any jurisdiction, which does not set an official probationary period, shall be considered for purposes of this Section to have a probationary period of one (1) year following the commencement of employment.

E. Benefits for Participants Who Are Department Heads

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

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

F. 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 their employer, provided that:

1. 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
2. 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
3. The Board of Trustees' approval under subsection 1. hereof 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 1. hereof, unless extended by the Board of Trustees.

G. Representation Involving Affirmative Relief

1. Subject to subsections G.2. and G.3. hereof, a Participant may request 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.
2. Participants seeking any form of affirmative relief must within sixty (60) days of the occurrence of the act or omission appear in person before the Board of Trustees at a regularly scheduled meeting and present a written petition for affirmative relief.

3. 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:
 - (a) A favorable countywide impact on Public Safety Officers or Peace Officers employed in the same county as the Participant due to the legal issues presented, or
 - (b) In the absence of a favorable countywide impact, a recovery sufficient to reimburse the Legal Defense Trust for all of its expenditures associated with the action, including but not limited to attorney's fees and all expenses and costs.
4. The Board of Trustees shall in its sole discretion determine if affirmative relief is to be granted and the conditions upon which benefits under this Section are to be granted.

H. 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 that the Participant was entitled at the time of the Participant's death.

I. 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 G.3. 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:

A. Exclusions

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

1. Employment Practices:

- (i) 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.; 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 face or as applied to any of the above-described statutes.

- (ii) No benefits shall be provided under the Plan for any action brought by a Participant or against a Participant with respect to any employment practice or benefit, including but not limited to (I) a civil suit by a current or former employer for recovery of alleged overpayment of wages, sick leave, or other benefits, (II) any disciplinary, criminal, or civil action concerning a participant's initial application for employment, or (III) civil or criminal proceedings concerning allegations of workers compensation fraud or abuse.
2. **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 or retirement system.
 3. **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 the State Workers' Compensation Act or any similar federal, state, county, city, or city and county ordinance, law, resolution, regulation, or any contract of insurance.
 4. **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.
 5. **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.
 6. **Attorneys' Fees** – No benefits shall be provided under the Plan to cover attorneys' fees or costs of an opposing party awarded against a Participant in any action.
 7. **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 their employer to remain employed.
 8. **Medical** – No benefits shall be provided under the Plan related to proceedings involving the medical condition of a Participant, including the medical examination portion of a fitness for duty proceeding.
 9. **Claims Against Participants in the Same Bargaining Unit** – No benefits shall be provided for suits brought by a Participant against another Participant within the same bargaining unit, including where the other Participant is a supervisor or superior.
 10. **Bonds** – No benefits shall be provided under the Plan to pay for a bail bond or an appeal bond.

B. Limitations

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

1. Civil Action Against Public Employee and Employer

(a) 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 law, e.g., California Government Code Section 825 regarding "Indemnification of Public Employees" or Section 995 regarding "Defense of Public Employees" 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 proceedings, and is entitled to so agree or undertake under the laws of the applicable jurisdiction.

(b) 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, if the following two requirements are met:

- (1) The Board of Trustees determines, in accordance with the advice of legal counsel with expertise in the field of civil litigation, that there is a considerable likelihood that punitive damages will be awarded against the Participant, based on a conflict of interest or other circumstances; and
- (2) The Legal Defense Trust is subrogated to the Participant's rights against the employer or its insurer.

In the event that these two requirements are not satisfied, the Legal Defense Trust shall monitor the case to ascertain if a considerable likelihood of punitive damages subsequently arises, in which event, provided that the Legal Defense Trust is subrogated to the Participant's rights against the employer or its insurer, the case will then be referred to a Panel Attorney and benefits will be provided as set forth in Article III.

(c) 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 the Benefit Plan selected by the Member Association, and the Legal Defense Trust shall be subrogated to the Participant's rights against the employer or its insurer. The case will then be referred to a Panel Attorney and benefits will be provided as set forth in Article III.

- 2. Third-Party Recovery** – In the event that a Participant recovers from any third party any amounts as damages, attorneys' fees, or costs in a case in which the Legal Defense Trust provided benefits, the Legal Defense Trust shall be entitled to reimbursement from such Participant to the full extent

of the expenditures made by the Legal Defense Trust on behalf of said Participant hereunder. Participants agree to cooperate with the Legal Defense Trust 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, Participant will, upon request, assign those rights to the Legal Defense Trust to the extent lawfully permissible and assist the Legal Defense Trust in its prosecution of such action.

3. **Non-Cooperation or Misrepresentation by Participant** – No benefits shall be provided to a Participant who is untruthful to the assigned Panel Attorney or Labor Representative or who does not cooperate with their Panel Attorney or Labor Representative. 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 General Counsel or the Board of Trustees, the Legal Defense Trust shall be entitled to terminate or suspend benefits hereunder and to obtain reimbursement from the Participant for the full amount expended by the Trust for services and costs on behalf of the Participant.

4. **Non-Interference** – No provision of the Plan shall require the Trust or its employees or agents, or Panel Attorneys or any attorneys associated with them, to perform any act in violation of any 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 a client.
5. **Settlement Opportunity or Jeopardy** – Benefits may be terminated in the event the Trust Chair, in accordance with advice from legal counsel, determines that it is in the best interest of a Participant to cease 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 Participant's case.
6. **Appeal** – No benefits shall be provided to appeal a decision by an administrative tribunal or a court unless the Trust Chair 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 G.3. are satisfied.

C. **Coordination of Benefits**

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

D. **Benefits Paid According to Fee Schedule**

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

ARTICLE V
CLAIMS PROCEDURES

A. Participant's Duty to Notify Trust of Claim

A Participant shall be obligated to file a request for Trust coverage with the Legal Defense Trust's Legal Assistant at the Legal Defense Trust's Office before the Participant may claim any benefits under the Plan. Notification to any Trustee, Panel Attorney, Labor Representative, General Counsel, or Member Association personnel, or any party other than the Legal Defense Trust's Legal Assistant is ineffective to obtain entitlement to benefits. Failure to file notification with the Legal Defense Trust's Legal Assistant shall relieve the Legal Defense Trust of any obligation to provide benefits.

B. Telephone Hot Line (Emergency)

The Legal Defense Trust shall maintain a 24-hour-a-day telephone service to respond to Participants' needs for services. The number is (800) 877-7317.

C. Acceptance or Denial of Claim by Trust

The Trust Chair shall determine whether to grant or deny coverage under the Plan. If the claim is denied, the Participant has the right to appeal the denied claim pursuant to the procedures described in Section F. of this Article.

D. Referral by Trust to Panel Attorney or Labor Representative

The Trust shall refer representation of a Participant who is entitled to benefits to a Panel Attorney or Labor Representative. In making such a referral, the Trust shall, where feasible, select a Panel Attorney or Labor Representative who meets the approval of such Participant's Member Association. Any dispute concerning the referral of a case to a Panel Attorney or Labor Representative may be appealed by the Participant to the Board of Trustees pursuant to Section F. of this Article.

E. Dissatisfaction or Non-Cooperation with Panel Attorney or Labor Representative

Subject to the appeal rights described in Section F. below, if a Participant (i) unreasonably refuses representation by the Panel Attorney or Labor Representative selected to represent the Participant, (ii) refuses to accept the advice of the General Counsel or a Panel Attorney or Labor Representative, or (iii) fails to cooperate with the Panel Attorney or Labor Representative or the Legal Defense Trust, the Plan shall be free from further obligation to such Participant to provide benefits or otherwise. Such Participant shall be free to employ counsel at their own expense.

F. Appeal Procedures

- 1. Denial** – If a claim for benefits made by a Participant is wholly or partially denied, the Legal Defense Trust shall give written notification of such denial to the Participant within sixty (60) days of receipt of the Participant's claim for benefits. In the event the Legal Defense Trust does not provide written notice of its decision within sixty (60) days of the Participant's claim, the claim shall be deemed denied. (A claim shall not be considered to have been received by the Trusts Office until receipt of any transcripts required by Article III of the Plan.) The notification shall include the following information:

- (a) The specific reason(s) for such denial;
- (b) Specific reference to the Plan provisions upon which the denial is based;
- (c) A description of any material or information that may be needed to clarify or complete the claim and an explanation of why such information is required;
- (d) An explanation of the Plan's review procedure with respect to the denial of benefits;
- (e) A statement of Participant's right to bring an action under ERISA section 502(a); and
- (f) A statement that the Participant is entitled to receive upon request and free of charge reasonable access to and copies of documents, records, and other information relevant to the Participant's claim.

2. Request for Hearing

- (a) Any Participant whose claim has been denied may appeal to the Board of Trustees to conduct a hearing in the matter, provided that Participant 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.
- (b) The Board of Trustees shall conduct a hearing no later than sixty (60) calendar days after the receipt of the Participant's request for a hearing. The Participant shall be entitled to present their 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 their choosing at the Participant's expense. Within five (5) days of the hearing on the Participant's appeal, the Board of Trustees shall issue a written decision, affirming, modifying, or setting aside the initial decision.

G. Contractual Limitation Period

Absent any provision in the Employee Retirement Income Security Act of 1974 (ERISA) to the contrary, the following limitations period shall apply to litigation by a Participant:

- 1. Any action by a Participant from a notice of adverse benefit determination by the Board of Trustees denying an appeal by the Participant from an initial denial of coverage shall be filed in court within six (6) calendar months after the date the notice of the adverse determination is mailed to the Participant, and
- 2. Any action by a Participant against a plan fiduciary for an act or omission alleged to be a violation of ERISA or the terms of the Plan shall be filed in court within six (6) calendar months after the date of the alleged act or omission.

H. Restriction on Venue

Any action filed by a Participant in connection with the Plan shall be brought only in the United States District Court for the Central District of California.

ARTICLE VI

MISCELLANEOUS

A. Limitation of Rights

Neither the establishment of the Plan or the Legal Defense Trust, nor any modifications thereof, nor the creation of any Trust 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 a Member Association or the RSA or its employees, the Legal Defense Trust or its agents and employees, or the Trustees, except as provided in the Plan and the Trust Agreement.

B. Applicable Laws and Regulation

References in the Plan to any particular sections of any local, state, or federal statute may 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 Legal Defense Trust shall be governed by ERISA.

C. Confidentiality

The Participant hereby consents to the release of any information by the provider to the Trust, including to its Trustees or its General Counsel, concerning a Participant's case for the purposes of coverage determinations, expert, and attorney performance assessment and evaluation, and billing questions.

Neither the Participant nor the Trust intend by this sharing of otherwise privileged or confidential material to waive the confidential or privileged nature of such information. A provider of services to a Participant pursuant to a Benefit Plan, whether an attorney or a labor representative, shall not divulge to third parties matters which a Participant revealed to the provider in confidence. The Trust, including its Trustees or its General Counsel, shall not reveal to third parties matters revealed to it in confidence by such Participant in the course of their application for benefits or receipt of benefits from the Trust. The Trust, including its Trustees or its Legal Administrator, shall, however, be permitted to provide (1) to Member Associations general information concerning that Association's usage under the Benefit Plan for the purpose of assisting that Association in its budgetary process or in its selection of Benefit Plans or cost containment options offered in the Plan and (2) to Participants educational materials, including discussion of case examples, to assist them in avoiding discipline or other adverse action or to inform them of legal development of interest to law enforcement.

D. Independent Contractor

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

E. Waivers

The Board of Trustees, for good cause shown as determined by the Board, is authorized to waive any financial assessment or fee imposed upon an Association pursuant to this plan document or to Trust policy, including but not limited to a waiver of interest. This authorization does not extend to requests by individual Participants for waivers.

F. Interpretation of the Trust Agreement and the Plan

The Board of Trustees shall possess full authority and power to interpret the terms of the Trust Agreement and this Plan document. The Board of Trustees also possesses full authority to determine whether any claim for benefits under the Trust's self-insured program is to be granted or denied.

G. Status of Benefits and Eligibility Requirements

So that the Board of Trustees is able to fulfill its obligation to maintain within the limits of Trust resources a program dedicated to providing benefits to all Participants, the Board of Trustees expressly reserves the right in its sole discretion at any time and from time to time:

- (1) to increase, decrease, amend, or terminate any benefit provided under this Plan;
- (2) to increase, decrease, or modify the conditions that have to be met before a benefit is payable and such changes may be made applicable to claims in process or which are made in the future;
- (3) to amend, alter, or modify any eligibility requirement for benefits under this Plan;
- (4) to amend any provision of the Plan Document; or
- (5) to terminate the Plan in full.

H. Non-Affiliation

The Riverside Sheriffs' Association is separate and distinct from the Trust and is not an agent of the Trust. All labor representatives and attorneys are independent contractors and are not agents of the Trust.

I. Non-Assignment of Benefits

A Participant 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.

J. Participant Remedies

A Participant shall not have any right or claim to benefits from the Trust, except as specified in this Plan. Any dispute as to eligibility, type, amount, or duration of benefits under this Plan or any amendment or modification thereof shall be resolved by the Board of Trustees under and pursuant to this Plan and the Trust Agreement, and its decision concerning the dispute shall be final and binding upon all parties to the dispute. The sole remedy of a Participant concerning the Trust's benefits is to pursue the procedures as set forth in Article V of this Plan Document.

K. Trust Agreement

The provisions of the Plan are subject to and controlled by the provisions of the Trust Agreement, and in the event of any conflict between the provisions of the Trust Agreement and the provisions of this Plan, the Trust Agreement shall prevail.

L. Modification of Benefits

The benefits provided by this Plan can be paid only to the extent that the Trust has available adequate resources for such payments. The Association does not have any liability, directly or indirectly, to provide the benefits established hereunder beyond the obligation of the Association to make contributions as stipulated in the applicable participation agreement. In the event that at any time the Trust does not have sufficient assets to permit continued payments hereunder, nothing contained in the Plan shall be construed as obligating the Association to make benefit payments or contributions (other than the contributions for which the Association may be obligated by the participation agreement) in order to provide for the benefits established hereunder.

M. Extent of Liability

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

N. Standard of Review

No action of the 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 the Trust and this Plan Document and is able to show by clear and convincing evidence that the Board of Trustees' decision was arbitrary and capricious in light of the information actually available to it, and considered by it, at the time of its decision.

ARTICLE VII

AMENDMENT AND TERMINATION

A. In order that the Board of Trustees 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, the Trustees expressly reserve the right, in their sole discretion, at any time and from time to time, but upon a non-discriminatory basis:

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

ARTICLE VIII

RETIREE CCW PLAN DESCRIPTION

A. Definitions – As applicable to Article VIII:

1. The “LDT Retiree CCW Plan” means the plan set forth in this article;

2. “Legal Defense Costs” means expenses a Participant has incurred for Legal Services, not to exceed the applicable limits of the LDT Retiree CCW Plan’s liability;
3. “Legal Services” include advice, consultation, and representation rendered by a properly licensed attorney to a Participant, including usual fees and office charges for paralegal assistance, telephone, mailing, copying, telefaxing, travel, and similar office expenses, as well as all other necessary and appropriate costs and expenses, except as limited or excluded in this LDT Retiree CCW Plan Description;
4. “Notice” means reporting information as required by this Plan Description. Notice to the Trust Office shall be effective on the date the Trust Office actually receives it;
5. “Retired member” means any former regular, management, or associate member of RSA who immediately before retirement exercised peace officer powers and retired under the provisions of the Public Employees Retirement System, shall, upon approval of a membership application in the manner directed by the RSA Board of Directors, be known as a Retired member;
6. “Qualified retired law enforcement officer” means an RSA retired member who has received and passed annually any firearms training required by the Riverside Sheriff s Department and is not prohibited by state or federal law from carrying a firearm;
7. “Good standing” means a retired member of RSA who has maintained payment of their dues to RSA;
8. “Involuntary termination of membership” means involuntary termination of membership in RSA by decision of the Board of Directors or; after suspension of membership rights for nonpayment of dues.

B. Eligibility

All RSA members who retired from the County of Riverside, in good standing with RSA in payment of dues, are eligible to participate in the LDT Retiree CCW Plan and receive benefits, provided they fully satisfy all LDT requirements for “qualified retired law enforcement officers.” Eligibility must exist on the date of any occurrence giving rise to the claim in order to qualify for benefits, provided however that at the time of the incident the retiree was not under the influence of alcohol or other intoxicating or hallucinatory drug or substance.

C. Prerequisites for Participation

Participation in and the right to benefits under the LDT Retiree CCW Plan are contingent upon approval by the LDT Trust Office of an application to participate and payment to RSA of applicable participation fees.

D. Application for Coverage

Applications for participation shall be submitted to the Legal Defense Trust Office on a standard form provided by LDT. Applications must be approved by the LDT Trust Chair, or designee. Applications not fully and accurately completed may result in non-coverage and nonpayment of benefits.

E. Coverage Effective Date

The effective date of LDT Retiree CCW Plan coverage for any Participant shall be the first day of the month in which the LDT Trust Office approves the application and confirms receipt of the applicable participation fees for that Participant.

F. Coverage

Subject to the exclusions, applicable limits of liability, and coverage limitations stated in this Plan Description and in this article, the Plan shall reimburse or pay on behalf of a Participant reasonable and necessary Legal Defense costs which the Participant is obligated to pay for legally authorized use of a firearm in the protection of persons and/or property, under the following coverages:

- (1) COVERAGE A: Legal representation by a LDT panel attorney in any civil action brought against the Participant arising from the lawful use of a firearm in defense of self or others where an imminent threat of serious bodily harm to self or others is present; and
- (2) COVERAGE B: Legal representation by a LDT panel attorney in any criminal action brought against the Participant arising from the lawful use and possession of a firearm in defense of self or others where an imminent threat of serious bodily harm to self or others is present.

G. Benefits – Limits of Liability

Reasonable and necessary Legal Defense costs are covered up to an annual aggregate limit of \$100,000 for all claims arising out of all occurrences commencing in any one-year period. The one-year period begins from the date of the first occurrence. No more than \$100,000 will be expended per case. No more than \$100,000 total will be paid for all occurrences in any one-year period regardless of when claims are reported.

H. Exclusions

The coverage and benefits provided under the LDT Retiree CCW Plan do not apply to:

- (1) The cost of bail bonds or other bonds;
- (2) The payment or indemnification for any loss incurred by or damages awarded to any person, nor to satisfy any judgment, settlement, fine or penalty of any kind;
- (3) Any claim arising out of occurrences commencing prior to the effective date or after the termination of the Participant's coverage under the Retiree CCW Plan;
- (4) Any claim arising out of occurrences to which the LDT Retiree CCW Plan does not apply for any reason;
- (5) Any claim arising out of occurrences occurring during any period of time during which the claimant is not eligible for coverage under the terms of this Plan Description;
- (6) Any claim for which benefits and/or legal defense are available from or provided by others, including but not limited to insurance, or other sources, as provided in Section 16.;
- (7) Use or carrying of a weapon for sport;
- (8) Use or carrying of a weapon as a private investigator;
- (9) Use or carrying of a weapon as an owner, employee, independent contractor, volunteer, servant, or agent in connection with private security services;
- (10) Any claim arising from domestic violence, incidents between family members or from military service;

- (11) Any claim of which Notice to the Trust office is reported more than ninety (90) days after the incident;
- (12) Any claim arising out of occurrences, actions, or proceedings taking place outside the territorial boundaries of the United States of America, or in connection with military service in the United States or abroad.

I. Prompt Notice of Occurrence

When an occurrence takes place that may result or has resulted in a claim for benefits, the Participant shall give written or verbal Notice to the Trust Office, or designee, within thirty (30) days after the occurrence. Such Notice shall specify particulars sufficient to identify the Participant, and all reasonably obtainable information respecting the time, place, and circumstances of the occurrence. When verbal Notice is given, the Participant shall confirm the Notice in writing within thirty (30) days on the claim form prescribed by the Trust Office. Should the Participant fail to provide written or verbal notice to the Trust Office as indicated above, coverage for that occurrence shall be denied.

J. Financials

The LDT Retiree CCW Plan provides for the payment of Legal Defense costs as provided in this Plan Description. Participation fees shall be held in trust for the exclusive benefit of LDT and its Participants, invested by the Board until used to pay benefits, administrative costs, premiums, and overhead and contingencies. All benefits shall be paid from and are limited to assets of LDT.

K. Changes to the LDT Retiree CCW Plan

The Board may modify, amend or terminate the LDT Retiree CCW Plan at any time. Any such change shall become effective for all participation fees due, services rendered, benefits accruing and claims made to Participants or reported to the Plan on or after the effective date of the change.

L. Coverage and Breaks in Coverage

Coverage extends and is limited to occurrences commencing on or after a Participant's initial effective date of coverage under the LDT Retiree CCW Plan; provided that, if coverage terminates and is subsequently reinitiated after a break in coverage, the Participant's initial coverage date shall be the new effective date of coverage after the break.

M. Participation Fees Payable Annually-Termination for Non-Payment

1. Applicable participation fees as set by the Board must be timely paid in order for a participant to be entitled to benefits under the LDT Retiree CCW Plan.
2. Participation fees shall be payable on an annual basis in advance. The initial participation fee payment shall be submitted with the application. Thereafter annual participation fees shall be paid on or before any scheduled due date in the invoice billed by the Trust Office.
3. The Board possesses the discretion to raise or lower or otherwise modify the participation fee.
4. If any payment is not timely made as required in subsection B of this section, the payment shall be delinquent and participation in the LDT Retiree CCW Plan shall cease effective as of 12:01 a.m. on the day after the applicable due date. If all delinquent amounts are received by the Trust Office within thirty (30) days following the due date, participation shall be reinstated automatically.

without break in coverage. If any payment is delinquent thirty-one (31) days or more, participation shall be deemed to have terminated effective as of 12:01 a.m. on the day after the applicable due date, and reapplication shall be required. Reinstatement upon reapplication shall not be effective prior to one hundred eighty (180) days after the date of the termination for non-payment, subject to the Trust Office's discretion and the Board's review.

N. Termination of Participation and Entitlement to Benefits

1. Except as provided otherwise in subsection 2 of this section, a Participant's participation in and entitlement to benefits under the LDT Retiree CCW Plan shall automatically terminate upon:
 - (a) Non-payment of participation fees when due;
 - (b) Voluntary withdrawal from participation;
 - (c) Termination of the Participant's membership in LDT; or
 - (d) Failure to fully satisfy all requirements under the LDT Retiree CCW Plan.
2. Termination shall not affect any right to benefits which has accrued prior to the date of termination.

O. Claims-Made Coverage Dates

The LDT Retiree CCW Plan applies only to claims that are first made to the Participant and reported to the LDT Retiree CCW Plan on or after the Participant's coverage date and on or after the initial coverage date with respect to that Participant. In addition, the claim must arise out of an occurrence, actions or events that occurred after the initial coverage date. For purposes of determining the respective dates on which a claim is made and reported:

- (1) A claim shall be deemed made to the Participant when the Participant is first notified by any person of information suggesting the possibility of a claim; and
- (2) A claim shall be deemed reported to the LDT Retiree CCW Plan when Notice of such claim is first received by the Trust Office; and
- (3) All claims by a Participant arising out of the same occurrence, actions, or events shall be deemed made and reported on the date the first claim is made to the Participant and reported to the LDT Retiree CCW Plan.

P. Other Plan or Insurance-Plan is Excess

If any other valid plan or insurance is obligated to cover and/or available to the Participant for claims otherwise covered under the LDT Retiree CCW Plan, then the coverage provided under such other plan or insurance shall be primary coverage. Coverage under this LDT Retiree CCW Plan shall apply only in excess of every other plan or insurance, and shall not be considered as "additional insurance" or contribute with any other such valid and collectible plan or insurance benefits.

Prior to seeking benefits under the LDT Retiree CCW Plan, the Participant agrees to:

- (1) Submit any and all claims otherwise covered by the LDT Retiree CCW Plan to all such other plans or insurance and, if requested by LDT, to undertake and pursue such coverage. The Participant's obligation under this subsection shall exist regardless of whether the claim against the Participant is brought in the Participant's official capacity and/or individually, or includes a claim for punitive damages;
- (2) Execute and deliver instruments and other documents and do whatever else is necessary to pursue such coverage; and
- (3) Do nothing to prejudice the rights of LDT to recover money or benefits due the Participant in connection with such coverage. LDT shall pay all expense for the pursuit of such coverage, and reserves the right to assume the legal representation and pursue any claim for coverage through all legal means and remedies available to the Participant.

ARTICLE IX

TRUST COMPLAINT PROCEDURE

It is the policy of the Board of Trustees to encourage and solicit comments regarding the administration of the Legal Defense Trust. Any person who is dissatisfied with any aspect of the administration of the Legal Defense Trust 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 F., 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 this complaint, the Chairperson of the Board of Trustees or Chairperson's 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.

RSA LEGAL DEFENSE TRUST

AMENDMENT ONE TO THE LEGAL DEFENSE TRUST PLAN DOCUMENT (As restated January 1, 2021)

The Board of Trustees of the RSA Legal Defense Trust, pursuant to section IX(A)(1) of the Trust's trust agreement and to section 7.1 of the LDT Plan Document, hereby amends the LDT Plan Document as follows:

1. The following is added as Article III(A)(2)(5):

A Participant shall be entitled to the following services:

- 5.1 Legal representation in administrative proceedings involving the revocation or suspension of a certification to serve as a peace officer in California, including investigative proceedings initiated by a certifying agency and any proceedings before advisory, first-level administrative or before appellate administrative bodies, by a Panel Attorney arising from any act or omission of the Participant within the scope of his or her employment. Coverage does not extend to post- administrative hearing review, including judicial review proceedings.
 - 5.2 Excluded from coverage under this Section 3.4 is legal representation to contest facts, charges, allegations, or grounds for revocation or suspension for events which automatically disqualify an individual from holding the position of a peace officer (e.g. conviction of certain crimes, permanent court orders prohibiting an individual from possessing a firearm, being found not guilty by reason of insanity, etc.) where those facts, charges, allegations or grounds have been finally determined or adjudicated in a separate legal proceeding, including where the Participant pled guilty or nolo contendere.
2. This amendment shall be effective thirty calendar days after written notice is provided to the RSA Board of Directors. Written notice having been provided to the RSA Board of Directors on November 28, 2022, this amendment takes effect on December 28, 2022.

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to or serving as a member of, the governing board of a school district.

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media

without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) (1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.

(2) (A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(B) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(C) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(D) If the investigation involves more than one employee and requires a reasonable extension.

(E) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(F) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(G) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(H) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3305.5. (a) A punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a Brady list, or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83.

(b) This section shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a Brady list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency.

(c) Evidence that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except as provided in subdivision (d).

(d) Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

(e) For purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in *Brady v. Maryland* (1963) 373 U.S. 83.

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3306.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, “lie detector” means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) Nothing in subdivision (h) of Section 11181 shall be construed to affect the rights and protections afforded to state public safety officers under this chapter or under Section 832.5 of the Penal Code.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the party’s attorney, or both, pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not

be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

3312. Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

(a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.

(b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.

(c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

3313. In the 2005–06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

RIVERSIDE SHERIFFS' ASSOCIATION

LEGAL DEFENSE RULES

ALWAYS CONSULT WITH AN ASSOCIATION REPRESENTATIVE / LAWYER BEFORE RESPONDING TO ANY REPORT, LETTER, MEMO, AND/OR QUESTIONS CONCERNING AN INVESTIGATION, WHICH COULD POSSIBLY LEAD TO PUNITIVE ACTION. IF ORDERED TO DO SO ASK TO HAVE IT RECORDED AND READ THE FOLLOWING:

NON- WAIVER STATEMENT

“I HAVE BEEN REFUSED THE RIGHT TO HAVE A REPRESENTATIVE OF MYH CHOICE, I UNDERSTAND THAT I AM BEING ORDERED TO MAKE A REPORT OR ANSWER QUESTIONS AN THAT IF I O NOT COMPLY WITH THE ORDER I MAY BE DISCIPLINE FOR INSUBORDINATION.

THEREFORE, I HAVE NO ALTERNATIVE BUT TO ABIDE BY THE ORDER, HOWEVER, BY DOING SO, I DO NOT WAIVE MY CONSTITUTIONAL RIGHTS TO REMAIN SILENT UNDER THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND UNDER THE PROTECTIONS AFFORDED ME UNDER STATE LAW.”

24-HOUR LEGAL DEFENSE

1-800-877-7317

THE RULES OF ENGAGEMENT IN THE INTERNAL INVESTIGATION PROCESS

LOOKING OUT FOR YOURSELF ("Because No One Else Owns That Job.")

By

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The rights you have as a California peace officer were established after years of effort by many who wanted to see that law enforcement officers in this State would be free from abusive, arbitrary and unfair treatment by untrained, overzealous or politically motivated officials in internal discipline matters. You will not benefit from these protections unless you exercise the rights provided for you. Many of the rights in the Bill of Rights Act pertain to "interrogations" which "could lead to punitive action". Anytime you find yourself in this predicament, immediately demand to consult with a knowledgeable representative, before you answer any questions. Always take the time to contact your association or legal counsel for assistance and information. You owe it to yourself.

I wrote these rules over three decades ago and they have been modified over time as changes in law have occurred. The advice herein comes from my own 49 years with law enforcement, and 36 years devoted exclusively to defending men and women in our profession. Please take them seriously.

TEN RULES OF ENGAGEMENT IN THE INTERNAL INVESTIGATORY AND DISCIPLINARY PROCESS

If you assume that you should approach an internal affairs interview with your guard down and appear at the appointed time without a competent representative, you are embarking upon a perilous journey full of unseen and unappreciated risks and hazards. Let's all be clear on one point: *any* internal affairs interrogation is an *adversary*¹ procedure. Internal affairs interrogators are conducting an investigation which is designed to determine what acts or omissions occurred, and whether that conduct deserves discipline, or in some cases, criminal

¹ Some of our readers are uncomfortable with the characterization of the process as adversary or adversarial. They say this approach unnecessarily injects elements of hostility and distrust into the relationship of supervisor or investigator to subordinate or subject. This is plainly wrong. We rightly expect supervisors and investigators to treat members who are under investigation with respect and courtesy, and otherwise to act civilly and professionally, with all the dignity that the process deserves, just as we expect the members to be respectful of the process and of the investigators, and responsive, truthful and cooperative. However, the dynamics of the interrogation process make it naturally adversarial, even when everyone acts as we expect them to. Among those facets that tend naturally to cast the players in the roles of adversaries are the compelled or compulsory nature of the interrogation procedure, the rule of insubordination, the strict administrative liability for perceived untruthfulness, and the plain fact that any admissions of misconduct will inevitably lead to some form of official censure, perhaps removal. Still, the interrogation process need not be accompanied by the wringing of hands and gnashing of teeth. Civility must prevail at all times.

prosecution consideration. You need to understand that any statement you make will likely be tested against the statements of others or evidence developed by investigators and that additional charges will result if your statement is determined to be false or misleading. Perceived dishonesty is fatal to your career and, standing alone, can result in discharge, due to your "unfitness for further police employment" resulting from "loss of credibility", arising from your perceived "lack of candor" in an official setting or capacity².

Rule No. 1: Speak only the truth. A peace officer with a poor character for truth, honesty, and veracity is unfit. He or she cannot be rehabilitated once records reflect a specific instance of dishonesty or deception in an official matter.

Surely if you are the accused, you will recognize that you are in jeopardy and that the preliminary I.A. interrogation is a "critical stage" of the proceedings, warranting appropriate preparation, vigorous representation, and the utmost caution. What if you are "deemed to be only a witness" and you are being interviewed from that perspective? Have you anything to worry about? Absolutely you do, and the same precautions should be applied as though you are the accused. Remember, although you might not be a "principal" in the act of misconduct you will likely be subject to discipline if you might be said to have "acquiesced" in another's misconduct, or if you "failed to take appropriate action" (including reporting) upon learning of or "witnessing" the probable misconduct of another.

Rule No. 2: Do not try to predict the course of the interrogation nor the scope of the investigation. Obtain the aid of a competent representative or lawyer in advance. If you cannot locate one, call your association.

You should remember that an interview (interrogation) is always recorded. Any utterance you might make in the course of the interrogation will be difficult to change or retreat from later. Any statement of fact you might make could form the basis of a charge of "false and misleading" if sufficient contrary evidence is developed by the investigators. Moreover, you may be subjected to orders or other directives to do this or that or refrain from doing this or that. Do not take this on alone, and do not assume that internal affairs procedures and orders are proper or appropriate just because the investigators are from Internal Affairs or are your divisional supervisors. Record all interrogations between you and investigators, with a plainly visible recorder. Discuss your interview in advance with your legal representative and listen carefully to his or her instructions.

Rule No. 3: Record all investigative interrogations. Obtain and consult with a competent representative in advance of the scheduled interview.

Government Code §3303 specifies the minimal protections which must be afforded you when you are subjected to an administrative interrogation. The Public Safety Officers' Procedural Bill of Rights Act (§§3300-3313) is your primary source of statutory legal protection. Remember that the protections apply whenever you are subjected to interrogation which could lead to punitive action. The interrogation must be reasonable as to scheduling and length. If you are off-duty at the time, you are entitled to compensation. You are entitled to an explanation of the nature of the investigation before any questioning. If you don't understand what it is all about, do not proceed with the questioning until you do understand. The Department is not allowed to question you through more than two investigators at a given time. You have the right to reasonable breaks for consultation and

² How many times have we seen or read these quoted words, woven into a rationale for the discharge of an officer or deputy?

physical needs. You may not be threatened, although you may be told, in appropriate cases, that failure to cooperate may result in punitive action.

Rule No. 4: Make sure you understand what the focus and scope of the investigation are and whether you are suspected of any misconduct, and finally, whether whatever you are going to say in response to questioning will disclose misconduct. Discuss all of this thoroughly with your representative beforehand.

If you are interrogated at a second or subsequent time, you have the right to review your prior statements (recordings) made by investigators before further questioning. Review these with your representative. Section 3303(g) states that you may be entitled to disclosure (beforehand) of non-confidential investigative materials (notes, reports, statements, and complaints) prior to interrogation and the opportunity to familiarize yourself with such things, but you have to ask for them. You should demand all of these materials upfront, on the record. Only those materials which are "truly confidential" should be withheld from you. When an item is declared confidential and therefore withheld, it should be because disclosure will endanger someone, lead to the destruction of evidence, frustrate successful completion of the investigation, or identify a truly confidential informant. We do not believe that a mere desire of investigators to be "one-up" on you during the interrogation is an appropriate reason to withhold documents. Put simply, investigators must be able to articulate some reasonable, good-faith premise for withholding materials other than an abstract desire to keep you in the dark or limit your maneuvering room.

Rule No. 5: Demand all notes, reports, statements, and complaints made by any person. If the investigators insist on withholding anything, have them describe what is being withheld with sufficient particularity that it may be identified at a later time. Have them state the specific reason or basis for the claim of confidentiality. Also, demand on the record that all investigators' notes be retained until final disposition of the case. In appropriate cases, inquire if you have been recorded, photographed, or filmed without your knowledge, or whether you have been subjected to surveillance. Put this on the record.

Section 3303(h) entitles you to an advisement of constitutional rights if it is deemed that you may be charged with a criminal offense. If you are so advised, invoke your rights. You may still be required to answer, but your answers deserve protection from introduction into any potential criminal action against you. Never proceed with an interrogation under such circumstances until you have had an adequate opportunity to discuss your case fully with your representative. It is prudent for you to talk to a lawyer if your interview pertains to potential criminal misconduct.

Rule No. 6: If there is a potential for a criminal accusation, invoke your constitutional rights at once and follow the advice of your representative. Remember that you cannot disclose CRIMINAL misconduct to a representative who is also an employee, and expect that it will remain confidential between you. He or she is arguably under a duty to report such things. In this situation, it may be advisable to at least discuss your matter with a lawyer, where you have absolute confidentiality. Do not complete any reports or statements or answer any questions without being ordered or compelled to do so.

In disciplinary investigations, the initial interrogation is positively a critical stage of the proceedings. You should never walk into such a setting without representation. Obviously, there are fact situations too numerous to cover here which may present themselves in a given investigation. Your representative or lawyer will likely have faced them before and you owe it to yourself to get some help. If you need representation, call your counsel or your association at once.

We all recognize that a smooth functioning department depends in large measure on fair discipline and vigorous personnel investigation. On the other hand, state law, constitutional principles, and your MOU contain many protections for you in the disciplinary process. Failure to take advantage of these and the assistance that is available is inviting trouble.

At times, you may be contacted by internal affairs investigators when you are off-duty, at home, without any prior warning. There are very few interviews that must go forward immediately. If you are taken by surprise, do not proceed without representation. If you are contacted by investigators at your home, and they want to take you from your home, you should immediately call a representative or a lawyer. You should make it clear that if you do leave your home and accompany investigators to a police facility or elsewhere, you are cooperating only because you fear discipline for insubordination. In other words, make sure it is clear that you are being compelled to leave your home. You must take the initiative to get legal help. If you do not ask for a representative, they will not give you the opportunity to obtain one.

Rule No. 7: If investigators desire to remove you from your home, demand to talk to a representative before you are required to leave, and demand to know the basis for such an exigency. Do not proceed with an interview until you are adequately represented.

The willful refusal to obey an order from a supervisor is insubordination. It is generally a firing offense. If you are given an order, even one which seems wrong, ill-advised, or even patently illegal, you should still obey if you safely can do so, being careful to make a record as soon as possible of your circumstances. Insubordination is very difficult to cure. On the other hand, there are remedies for a supervisor's illegal order.

Rule No. 8: Obey all orders that are even only arguably legal -- do not invite a charge of insubordination, if it can be avoided in any reasonable way.

Investigators have the right, in investigations that are specifically, narrowly, and directly related to an official interest, to give you an order to answer questions. If the answers may, in any way incriminate you, you have the right to object to answering on Fifth Amendment grounds. When you do, they will normally tell you (1) you are ordered to answer -- failure to do so is insubordination; (2) anything you say in answer cannot be used against you in a criminal proceeding. Once this occurs, you have use immunity for your statements.

Rule No. 9: If your answers to questions may tend to incriminate you, assert your Fifth Amendment rights (silence and counsel) and get a lawyer immediately.

Sometimes when you are involved in an on-duty incident, and you have bonafide self-incrimination concerns, because your account may constitute admissions or statements against your criminal interests, you may be directed to write a report or a memo regarding your actions. These pose the same dangers present when you are questioned about your involvement, because written reports and memos may be used against you in a criminal prosecution unless they are the product of compulsion.

In any case, where you are under threat or apprehension of criminal investigation or prosecution and you are told to write an account of your relevant activities, you need to invoke your right against self-incrimination and secure an order under pain of insubordination to complete the required document. Do not be insubordinate, but, document the circumstances, your invocation of the right to silence, and the direct order, in a side memo to your supervisor, so it is clear that your completion of the required report or memo was preceded by your assertion of the right to silence, but that your invocation of your rights was overridden by a direct order. If these facts are made clear in a record, you will be in a position to claim immunity from the use of your written statement if there

is a criminal prosecution taken against you. If permitted opportunity to do it, seek legal before completing any reports in circumstances. However, do not invoke this procedure lightly, or frivolously.

Rule No. 10: In proper circumstances, invoke your right to silence if you are directed to complete any written accounts of your actions. Secure a direct order to complete the report or memo and then document the facts in a separate memo to your supervisor. Get legal advice if you can, but remember you must ask for the opportunity to speak to a lawyer before you write any statement or report, or answer any questions.

Stay Safe!

***Michael P. Stone, Esq.
Pasadena, CA, 2021***

Michael P. Stone is the firm's founding partner and principal shareholder. He has practiced exclusively in police law and litigation for over 40 years, following 13 years as a police officer, supervisor, and police attorney. He is an "A-V Preeminent" rated trial lawyer by the national Martindale-Hubbell Law Directory, reflecting the highest lawyer rating attainable in the Directory, and the confidential opinions of lawyers and judges collected by the Law Directory.

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