

Minnesota Chiefs of Police Association Legal Assistance Program (LAP)

Program Document and Summary Program Description

Part I: Contains the complete text of the LAP, setting forth all provisions concerning coverage and Services.

Part II: Contains the Summary Program Description

We recommend that you read this carefully so that you will be fully informed as to the eligibility requirements and available services. If you have questions which are not answered, or if any clarifications are needed, please contact the LAP Program Administrator or MCPA Executive Director Jeff Potts at 952-292-1128.

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ARTICLE I: DEFINITIONS

1. "Administrative Office" - the administrative office of the Legal assistance Program:
803 Old Highway 8 NW, New Brighton, MN
2. "Program" - the program described below in Article III under which Participants are entitled to certain Services.
3. "Program Administrator" - a person or legal entity appointed from time to time by the Board of Directors to supervise the provision of services under the Program.
4. "Services" – Delivery of legal representation in terms of attorney’s fees, cost and expense not to exceed \$2500 per matter.
5. "Matter" – A specific situation described in Article III requiring program services
6. "Member" – any active member of MCPA who is a Minnesota licensed police officer, who is either a chief of police of a Minnesota municipality or part of the Chief’s command staff
7. "MCPA" - Minnesota Chiefs of Police Association.
8. "Panel Attorney" - an attorney selected from time to time by the Program Administrator to provide Services under the Program.
9. "Participant" - a member who qualifies for Services under the LAP pursuant to Article II hereof.
10. "LAP" or "Legal Assistance Program" - the group prepaid legal services program as set forth herein and any amendment thereto.
11. "Scope of Employment" - actions or omissions by a Participant covered by the LAP which are typical of or associated with the duties which a Participant is hired, trained and paid to perform, as determined by the Program Administrator. The actions or omissions may occur while the Participant is on duty or off duty or employed by a law enforcement agency.

ARTICLE II: ELIGIBILITY FOR SERVICES

1. Initial Eligibility For Services

The Participant is eligible for Services for events which occur after all of the following has occurred:

- (a) **Proper Application to LAP** - the individual member’s application to the Legal Assistance Program pursuant to Section 2 of this Article; and
- (b) **Contributions Made to LAP** - (i) the individual makes the required contribution
- (c) **Review by Board of Directors** - The Program Administrator, if the Board so provides, has reviewed and approved the application to insure that the member satisfies the eligibility requirements of Article I, Section 9 of this Document.

2. Method of Application

- (a) **Application** - Application for participation in LAP shall be submitted by a Member to the Legal Assistance Program on forms provided.

3. Required Contributions

- (a) **Amount** - The contributions required in order to be entitled to Services under the Program are as follows: Each individual Member shall make contributions based on a per participant annual rate as set from time to time by the Program Administrator. Contact the Program Administrator for details on the contribution schedule for the Programs.
- (b) **Time of Payment of Contributions** - Member payments of the contributions set forth in Section 3(a) of this Article shall be made in full on an annual basis by each individual member to the Legal Assistance Program on or before the day preceding the first day of **July** of each year and shall be deemed delinquent if unpaid on July 1. An individual Member may join after first becoming eligible for membership at any point within the year as long as application is made and the required contribution is paid within 30 days of first becoming eligible for membership. The rate for the first year will be prorated based on the date of application.

Termination of participation in the Legal Assistance Program in mid-year shall not result in any refund of the contribution for that year.

(c) Method of Payment - Payment shall be deemed to have been made as of the date funds received electronically if paying by credit card or the date of postmark on the envelope containing the payment, provided it has been properly addressed to the Legal Assistance Program at its Administrative Office. The foregoing shall not apply, however, where payment is made by a check which is not honored at the bank upon which it was drawn.

(d) Effect of Delinquency - If payments are not made as required in this Section, Services for the delinquent individual Participant shall cease on the first day of the Calendar Quarter following the payment due date described in Section 3(b) of this Article. An individual Participant shall not be entitled to the Services for any period during which the delinquent individual Participant is in default of payment.

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

New Application -If the delinquency continues for more than (1) month, the individual Participant shall be deemed to have terminated participation and must reapply for membership. Upon reapplication within the current or subsequent year, and, subject to a determination of good cause by the Program Administrator if the Board so provides, entitlement to Services may be reinstated, effective retroactively to the original payment due date. In such cases, all delinquent contributions together with interest shall be paid.

Loss of Membership – Membership in the MPCA is required for participation in the LAP. If a member does not maintain membership in the MCPA She/he is not eligible for participation in the LAP.

4. Termination of Services

The Services for a Participant shall automatically terminate with respect to any event occurring upon the earliest of any of the following:

- (a) When his or her participation (e.g., through nonpayment of contributions) in the Legal Assistance Program terminates; or
- (b) When his or her membership in MCPA terminates; or
- (c) When his or her participation in the MCPA or the LAP terminates, whether voluntarily, by failure to pay MCPA dues or LAP contributions, or otherwise.

5. Extended Coverage

Coverage shall continue with respect to events occurring prior to the Services termination date as described in Article II, Section 4, above for those Matters disclosed to the LAP prior to the termination date

ARTICLE III: SERVICES

Subject to the exclusions and limitations set forth in the LAP, a Participant is entitled to the Services provided under the following Services description for which application has been made and for which the required contributions have been made.

1. A Participant shall be entitled to the following Services:

- (a) Representation by a panel attorney and use of a panel attorney regarding complaints arising from an act or omission by the Participant within the scope of his or her employment
- (b) Representation by a panel attorney to conduct negotiations regarding termination or resignation of his or her employment as Chief of Police or as the Chief's command staff.
- (c) But, NOT extending to representation in any criminal matter, administrative appeal process, or arbitration or litigation in state or federal court

2. Maximum Fee

The LAP will pay a maximum of \$2,500 for each separate matter (“Maximum Fee”), charged at a rate not to exceed \$275 per hour, which shall be paid directly by the LAP to the Attorney.

The Participant may continue, with the panel attorney if the \$2,500 LAP maximum is reached or exceeded, and the attorney will continue to charge of \$275 per hour, or less, for the duration of that particular matter.

3. Additional Representation

The Participant may select such Panel attorney for other matters not covered by the LAP. The attorney fee rate for such matters shall be subject to negotiation and agreement between the Participant and Attorney and NOT paid for by the LAP

ARTICLE IV: EXCLUSIONS AND LIMITATIONS

In addition to the exclusions and limitations set forth elsewhere in the Legal Assistance Program, the following exclusions and limitations shall apply:

1. Exclusions

The provision of Services under the Legal Assistance Program shall be subject to the following exclusions:

(a) Employment Practices - No Services shall be provided under the LAP 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. 299A, PERA determination of disability claims, Section 201 et seq.; the Labor-Management Relations Act, 29 U.S.C. Section 141 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 - 4333; the federal civil rights statutes, i.e., 42 U.S.C. Section 1983 et seq., insofar as the subject matter of the action is similar to that of any of the above-described statutes; the federal or any state constitution, insofar as the subject matter of the action is similar to that of any of the above-described statutes; or any law, statute, ordinance, regulation, or rule of similar type or description enacted by the federal government or any state or political subdivision thereof, including but not limited to counties, districts, and cities, and which is similar either on its face or as applied to any of the above-described statutes.

(b) Retirement - No Services shall be provided under the Plan to obtain, protect, preserve, or set aside pension or retirement funds, including disability retirement payments, under any federal, state, county, or city pension retirement system.

(c) Workers’ Compensation - No Services shall be provided under the LAP for any action within the jurisdiction of the Minnesota Workers’ Compensation System; for any action to obtain, protect, preserve, or set aside workers’ compensation Services, industrial or non-industrial disability Services, social security Services, disability, health or other insurance Services of a like or similar nature, or for any action for Services payable under or because of an industrial injury, illness, disease, or death, whether by contract or otherwise, arising out of any of the provisions of a state Workers’ Compensation Act or any similar federal, state, county, or city ordinance, law, resolution, regulation, or any contract of insurance.

(d) Civil Service Disputes - No Services shall be provided under the LAP for any action to obtain, protect, preserve, or set aside any rights or position with respect to any civil service, merit system, or personnel eligibility list for appointment or promotion to a position.

(e) Punitive or Other Damages - The LAP shall not be liable to cover any monetary award for damages, including but not limited to punitive or compensatory damages, whether by judgment, settlement or otherwise against a Participant in any action.

(f) Criminal Matters - The LAP shall not be liable to cover the attorney’s fees or costs related to criminal charges, complaints or proceedings.

2. Limitations

The provision of Services under the LAP shall be subject to the following limitations:

(a) Civil Action Against Public Employee and Employer

(1) Employer Accepts Defense, Provides Separate Counsel, and Agrees to Indemnify

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

(2) Reservation of Rights by Employer

In the event the Participant's employer agrees to defend the Participant but asserts a reservation of rights, i.e., does not agree to fully indemnify the Participant, the Legal Assistance Program shall monitor the case. Monitoring shall cease, and the Participant shall be entitled to Services under Article III if any of the following occur:

- (A) The Program Administrator determines that there is a considerable likelihood that punitive damages will be awarded against the Participant; or
- (B) The Program Administrator determines that a conflict of interest exists between the employer and the Participant; or
- (C) The Program Administrator determines that the Participant is being accorded inadequate representation.

If Services under Article III are provided to a Participant, the Legal Assistance Program shall be subrogated to the Participant's rights against the employer or its insurer.

(3) Employer Refuses Defense

In the event the employer or its insurer refuses to defend the civil proceedings, then the Participant shall be entitled to the Services under Article III, and the Legal Assistance Program shall be subrogated to the Participant's rights against the employer or its insurer.

(b) Third-Party Recovery - In the event that a Participant recovers from any third party any amounts as damages (other than lost compensation), attorney's fees, or costs in a case in which the Legal Assistance Program provided Services, the Legal Assistance Program shall be entitled to reimbursement from such Participant to the full extent of the expenditures made by the Legal Assistance Program on behalf of said Participant hereunder. Participants agree to cooperate with the Legal Assistance Program 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, attorney's fees, or costs and does not wish to pursue the action, he or she will, upon request, assign those rights to the Legal Assistance Program to the extent lawfully permissible and assist the Legal Assistance Program in its prosecution of such action.

(c) Non-Cooperation or Misrepresentation by Participant with Program Administrator or Panel Attorney - No Services shall be provided to a Participant who is untruthful to the Program Administrator concerning coverage determinations or who is untruthful to his or her Panel Attorney. No Services shall be provided to a Participant who does not cooperate with the Program Administrator concerning coverage determinations or who does not cooperate with his or her Panel Attorney with respect to his or her case. In such a case, the right of the Participant to Services hereunder may be terminated or suspended. Furthermore, if Services are provided to a Participant based upon misrepresentations by the Participant to the Program Administrator, the Panel Attorney or the Board of Directors, the Legal Assistance Program shall be entitled to terminate or suspend Services hereunder and to obtain reimbursement from the Participant for the full amount expended by the LAP for services and costs on behalf of the Participant.

(d) Non-Interference - No provision of the Program shall require the Legal Administrator or its employees or agents, or Panel Attorneys or any attorneys associated with them, to perform any act in violation of the applicable rules of professional

conduct, including but not limited to any rule which prohibits any organization or group from interfering with or controlling the performance of an attorney's duty to his or her client.

(e) Settlement Opportunity or Jeopardy - Services may be terminated in the event the Program Administrator determines in his reasonable judgement that it is in the best interest of a Participant to cease his or her participation in any particular case where continued proceedings may subject the Participant to more severe civil or criminal sanctions, damages, or attorney's fees, or where the Participant has rejected a reasonable settlement proposal to resolve his or her case.

(f) Appeal - No Services shall be provided to appeal a decision by a court, unless the Program Administrator determines upon written request from the Participant that there exists a reasonable likelihood of success on the appeal and the Maximum Fee has not been reached. The LAP shall not pay more than the Maximum Fee for any Matter, including on appeal.

3. Coordination of Services

Services under the LAP shall not be provided to the extent they are furnished to a Participant by any other program or policy which provides group legal services to Peace Officers.

4. Exclusion of Dual Counsel

Services shall not be provided under the LAP whenever a Participant privately retains his or her counsel to represent the Participant in a matter for which the Participant would otherwise be entitled to Services.

5. Non-Assignment of Services

A Participant shall not have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any payment for Services hereunder. Services hereunder shall not be subject to levy or execution or attachment or garnishment.

6. Extent of Liability

The Services provided by the LAP are not insured by any contract of insurance, and there is no obligation on LAP Board of Directors or other individual or entity to provide payment over and beyond the amount collected and available for such purpose.

ARTICLE V CLAIMS PROCEDURES

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

A Participant shall be obligated to notify the Program Administrator of his or her claim for Services before he or she is entitled to any Services under the LAP. Notification to any Board Member, Panel Attorney, MCPA personnel or any party other than the Program Administrator is ineffective to obtain entitlement to Services. Failure to notify the Program Administrator shall relieve the Legal Assistance Program of any obligation to provide Services.

2. Telephone Hot Line (Emergency)

The Program Administrator shall maintain a 24-hour-a-day telephone service to respond to Participants' needs for services. The number is **952-292-1128**.

3. Acceptance or Denial of Claim by Program Administrator

The Program Administrator shall consider each claim for Services and determine whether to grant or deny coverage under the LAP. If the claim is denied, the Participant has the right to appeal a denied claim pursuant to the procedures described in Section 6 of this Article V.

4. Referral by Program Administrator to Panel Attorney

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

5. Dissatisfaction or Non-Cooperation with Panel Attorney

Subject to the appeal rights described in Section 4 above, if a Participant unreasonably refuses representation by the Panel Attorney selected to represent him or her or fails or refuses to accept the advice of the Panel Attorney, or fails to cooperate with the Program Administrator concerning coverage determinations, the LAP shall be free from further obligation to such Participant to provide Services or otherwise. Such Participant shall be free to employ counsel at his or her own expense to represent him or her.

6. Appeal Procedures

a. Denial - If a claim for Services made by a Participant is wholly or partially denied, the Program Administrator shall give written notification of such denial to the Participant within ninety (90) days of receipt of the Participant's claim for Services. In the event the Program Administrator does not provide written notice of the decision within ninety (90) days of the Participant's claim, the claim shall be deemed denied. The notification shall include the following information:

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

b. Request for Hearing

(1) Any Participant whose claim has been denied may appeal to the LAP Board of Directors to conduct a hearing in the matter, provided that he or she requests the hearing in writing within thirty (30) 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 Board of Directors.

(2) The Board of Directors shall conduct a hearing as soon as practicable, no later than thirty (30) calendar days after receipt of the Participant's written request for a hearing. Except in unusual circumstances as determined by the Directors in their sole discretion, a Participant shall not be permitted to appear personally or present oral arguments at the hearing. Within five (5) business days of the hearing, the Board of Directors shall issue and deposit in the United States mail to the Participant's last known address a written decision affirming, modifying, or setting aside the Legal Administrator's decision.¹

7. Standard of Review

No action of the LAP Board of Directors may be revised, changed, or modified by any arbitrator, court, or other entity unless the party seeking such action has exhausted all of its administrative remedies under this Program Document and is able to show

by clear and convincing evidence that the Board of Directors decision was arbitrary and capricious in light of the information actually made available to the Board at the time of its decision.

8. Contractual Limitations Period

Any action by a Participant from a notice of adverse Services determination by the Board of Directors denying an appeal by the Participant from the Program Administrator's denial of coverage or from a deemed denial of a claim or appeal shall be filed in court within six calendar months after the date the notice of the adverse determination is mailed to the Participant.

Any action by a Participant against the Program Administrator or any employee or representative of the program for an act or omission shall be filed in court within six calendar months after the date of the alleged act or omission.

ARTICLE VI MISCELLANEOUS

1. Limitation of Rights

Neither the establishment of the Legal Assistance Program, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any Services, shall be construed as giving any Participant or other person any legal or equitable right of action or recourse against MCPA or its officers or employees, the MCPA Legal Assistance Program or its Board of Directors, agents or employees, except as provided in the LAP.

2. Applicable Laws and Regulations

References in the LAP to any particular sections of any local, state or federal statute shall include any regulation pertinent to such sections and any subsequent amendments to such sections or regulations.

3. Confidentiality

A provider of services to a Participant pursuant to the LAP shall not divulge to third parties matters which a Participant revealed to the provider in confidence. A provider shall, however, be entitled to provide information to the LAP, including to its Board of Directors or its Program Administrator, concerning a Participant's case. The Board of Directors or the Program Administrator, shall not reveal to third parties matters revealed to it in confidence by such Participant, or the Participant's provider, in the course of his or her application for Services or receipt of Services from the LAP.

4. Independent Contractors

All Panel Attorneys and other providers of service are independent contractors and not agents of the Legal Assistance Program.

5. Interpretation of this Document

The Board of Directors possesses full authority and power to interpret the terms of this Document. The Board of Directors also possesses full authority to determine whether any claim for Services is to be granted or denied.

ARTICLE VII AMENDMENT AND TERMINATION

In order that the Board of Directors may carry out its obligation to maintain, within the limits of its resources, a program dedicated to providing the maximum possible Services for all Participants, the Directors 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 Services, even though such amendment or termination affects cases already accepted by the Legal Administrator, provided that the responsibility of the Legal Assistance Program 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.
- (3) To amend or rescind any other provision of this Plan.

II. SUMMARY PROGRAM DESCRIPTION OF THE MCPA LEGAL ASSISTANCE PROGRAM

1. Name, Address and Telephone Number of Program Administrator:

Jeff Potts
Executive Director Minnesota Chiefs of Police Association Legal Assistance Program
803 Old Highway, NW, Suite 1
New Brighton, MN 55112
952-292-1128

2. Name and Address for Service of Process: The Board of Directors has designated the executive director of the MCPA as agent for purposes of accepting service of legal process on behalf of the Legal Assistance Program. The address for the Executive Director is set forth in item (1) above.

3. Program Year: The Program Year runs from July 1 through June 30 of each year.

4. Procedures for submission of Claims for Services: To present a claim for Services under the Program, it is necessary to notify the Program Administrator at the office:

Jeff Potts
803 Old Highway 8, NW
New Brighton, MN 55112
952-292-1128