

# MUNICIPAL LEGAL DEFENSE PROGRAM

Effective 1/1/79  
As Amended 1/1/18

The Municipal Legal Defense Program (Program) is a self-funded risk management trust designed to benefit its local governmental members. The Program is not insurance and is not a contract. Municipalities joining the Program do not waive their statutory Tort Immunity under Arkansas law nor any other immunity under Arkansas or Federal law.

When the Program defends municipal officials for alleged violations of federal civil rights, or other federal laws or rights, and the plaintiffs also allege the violation of state tort laws, the municipalities joining the Program, where practical and at the Program's discretion, may require their municipal attorney to file a motion to dismiss the alleged violation of state tort laws stating the Municipal Statutory Tort Immunity.



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WHEREAS, suits and claims against municipal officials and employees frequently interfere with each official's and employee's ability to conduct the affairs of their office or employment and discourage qualified citizens from seeking public office or employment; and

WHEREAS, the United States Supreme Court in the case of *Monell vs. New York City Department of Social Services*, 436 U.S. 658 (1978) held that city and town governments are liable for money damages for violation of civil rights and the U.S. Supreme Court case of *Owens vs. City of Independence, Missouri*, 445 U.S. 622 (1980) held that municipal governments do not have the defense of "good faith immunity" and recent federal court cases have rendered judgments against governmental agencies because of the actions of officials and employees even when the governmental agency was not a defendant in the case; and

WHEREAS, A.C.A. § 14-54-101 permits municipalities "... to associate with other municipalities for the promotion of their general welfare; to join with other municipalities in the purchase of equipment, supplies or services..." and A.C.A. § 16-22-211 specifically allows legal and risk management services in those associated efforts; and

WHEREAS, there is a need for a method whereby Arkansas cities and towns may mutually provide legal defense and pay expenses in various suits against municipal governments and their officials and employees seeking judgment against municipalities and the personal assets of officials and employees, and in certain cases, pay judgments against municipal governments and their officials and employees.

NOW THEREFORE, the municipalities joining herein hereby establish the Municipal Legal Defense Program (Program) for member cities and towns under the following terms and conditions:

1. During the term of this Program and to the extent of funds available, the Program shall, in the sole discretion of the Program Administrators and Steering Committee, provide extraordinary legal defense and extraordinary expenses in "suits against municipal officials and employees" and "civil rights suits against the municipal government" of a participating municipality and pay extraordinary judgments (for actual damages—not punitive damages) imposed on "municipal officials and employees" and the "municipal government;" however, in no event shall the Program ever be liable for more than ninety percent (90%) of any judgment for compensatory/actual damages, settlement monies, court costs and/or attorney fees.
2. The legal defense provided to the municipal government and the municipal officials and employees shall include all necessary legal research, preparation of all briefs and pleadings, all appearances, taking of all statements and depositions necessary for proper preparation for trial, all necessary trial preparation, conduct of the trial and all other necessary functions essential for the proper representation of the municipal government and the municipal officials and

employees, including all necessary legal work in connection with any appeal or appeals from rulings, judgments or orders of the trial court.

3. Payment of sums from the Program for extraordinary judgments for actual damages imposed against municipal government and the municipal officials and employees or against the estate of municipal officials and employees may only be made under the following conditions:
  - (a) All requirements of the Program have been complied with, and attorneys for the Program participated in defense of the claim.
  - (b) If the municipality of which the municipal official or employee is an official or employee is also a party defendant and judgment is rendered jointly against the municipal official or employee and the municipality, then the municipality shall be primarily liable under the terms of this agreement and the Program shall be obligated for payment of the judgment against the municipal official or employee only to the extent that judgment is not paid by the municipality and only to the extent allowed by the terms of the Program.
  - (c) The Program shall not, under any circumstances, pay judgments for punitive damages.
  - (d) In cases involving wrongful termination or harassment of an official or employee, including “constructive discharge” of an official or employee, the Program, after the case is accepted, shall never be liable for more than fifty percent (50%) of any judgment for compensatory/actual damages, settlement monies, plaintiff’s/claimant’s court costs and/or attorney fees.
  - (e) The Program shall never be liable to reimburse a municipal government, municipal officials, or municipal employees because of a judgment or a settlement in any one lawsuit for either (1) more than 25 percent (25%) of the Program’s available funds at the time the lawsuit was filed or the judgment or settlement becomes final, or (2) one million dollars (\$1,000,000.00), whichever is less; except, however, the Program’s limitation is five hundred thousand dollars (\$500,000.00) for cases covered pursuant to paragraph 3(d). The terms “judgment” and “settlement” are defined as being inclusive of all fees and costs paid by the Program.
  - (f) The Administrators of the Program shall have the right to settle and pay any claim prior or after entry of a judgment.
  - (g) The Program shall be secondarily liable for any claim covered by a valid insurance policy, risk management program or other like coverage. The Program shall be primarily liable where a city’s insurance policy, risk management program or other like coverage excludes claims otherwise covered by this Program or there is no insurance or other coverage in effect.

4. A participating municipality agrees to and accepts all the provisions of the Program, as well as:
  - (a) Payment into the Program each year a charge established by the Steering Committee; and,
  - (b) Payment of the first three thousand dollars (\$3,000) of the aggregate cost for all expenses, including legal fees, on each lawsuit against the municipality, municipal officials or employees of the participating municipality. This cost deposit is not refundable.
5. All cities and towns participating in the Program may at their option provide additional coverage, as provided under this Program, for extraterritorial activities engaged in for and on behalf of any other governmental entity, for all volunteers and all employees who are not classified as “full-time” employees, as that term is defined herein. Each municipality exercising this optional coverage for volunteers and “part-time” employees shall annually provide the Program a current list of persons affected thereby.

As used in this agreement:

- (a) The words “municipal official and employee” shall include all officials, full-time employees, and members of a municipal board or commission of an Arkansas municipality which is a member of the League and a participant in this Program. The words “full-time employees” shall include employees who work at least thirty (30) hours per week for a participating employer.
- (b) The words “municipal officials” shall include municipal elected officials, department heads and members of boards and commissions. All others with full-time employment shall be considered employees.
- (c) The words “suits against municipal officials and employees” and “civil rights suits against the municipal government” shall mean any litigation originally commenced during the term of this Program arising out of acts or omissions occurring during the term of this Program in the United States District Court sitting in the State of Arkansas or a Circuit Court of the State of Arkansas against a “municipal official or employee” or “municipal government” which requests a money judgment, excluding court costs and fees, or other judgment affecting the personal assets of the “municipal official or employee” or the monetary assets of the “municipal government” for acts alleged to have been done or not done by an official or employee in his official or employee capacity or by municipal officials or employees which violate the civil rights of some person. The words “suits against municipal officials and employees or the municipal government” shall not include the following:
  - i. claims filed by or on behalf of any other municipal official or, in the case of suits against the municipality, claims filed by or on behalf of any municipal official or employee of the municipal government,

- claims against the estate of any deceased official or employee of a municipality;
- ii. any claim based upon a municipal official's or employee's gaining any personal profit or advantage to which they were not entitled, including remuneration paid in violation of law;
  - iii. any claim for intentional misconduct or any act of bad faith;
  - iv. a claim by any government, or department or agency thereof, seeking to impose a fine, penalty or forfeiture against a municipal official, municipal employee or the municipal government;
  - v. a claim arising from the ownership or use of any motor vehicle or machinery of any kind;
  - vi. any claim by the state or federal government alleging a violation of a criminal statute;
  - vii. claims by any municipality, suits for writ of mandamus, suits for removal of elected officials, suits for injunctive relief;
  - viii. any claim which is not presented pursuant to Paragraph 6 hereof within seven (7) days (Saturdays, Sundays and holidays excluded) from the deadline for responding to said claim;
  - ix. claims by a municipal official against any municipal employee;
  - x. hearings before the Civil Service Commission, any appeals from such hearings to the Circuit Court and any appeals from the rulings of the Circuit Court;
  - xi. claims where cities have created permanent employment status sufficient to be considered a property interest under the constitution and laws of the state of Arkansas and the United States of America;
  - xii. claims involving land use, condemnation, inverse condemnation, environmental damage, annexation, planning, zoning, issuance of licenses or variances, or any suits related to the taking of personal or real property, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;
  - xiii. claims involving franchise fees levied by a municipality or violation alleged of the Commerce Clause of the United States Constitution or of the Federal Telecommunications Act of 1996;
  - xiv. claims involving drug or alcohol testing of non-CDL employees which is not required by the Omnibus Transportation Employee Testing Act of 1991, except that any such case(s) may, upon proof by the municipality that the Program's formal non-CDL drug testing policy has been adopted by the municipality's governing body and that the per capita charge has been paid, subject to the remaining

- terms and conditions of the program, be defended and covered by the Program;
- xv. claims for illegal exaction or other tax claims, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;
  - xvi. claims made pursuant to the Fair Labor Standards Act (FLSA), except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;
  - xvii. claims made pursuant to the Americans with Disabilities Act (ADA), the Rehabilitation Act, and any other state or federal law concerning disabilities and/or public property, as they may relate to the alteration, improvement, change or other like action to the municipalities' property, real or personal, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;
  - xviii. claims made pursuant to federal, state, or local law for the failure to provide employee benefits including, but not limited to, vacations, sick leave, military leave, health benefits, or retirement benefits, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;
  - xix. claims involving racial profiling, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided unless the member municipality has in effect at the time the litigation is filed, the Program's latest policy on racial profiling and then, subject to the remaining terms and conditions of the Program, the Program may extend coverage and defense;
  - xx. claims involving collective bargaining including but not limited to the collection of union dues, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;
  - xxi. suits by municipalities or municipal officials naming other municipalities or other municipal officials as opposing parties in the litigation; or
  - xxii. claims involving city or town police officers working off-duty (not on the city or town payroll) jobs unless, there is written permission to engage in the off-duty job executed by the chief executive officer of the city or town or their designee noting that the officer

is mandated to follow all city and departmental policies, state and federal law and remains exclusively under the managerial control of the city or town, as well written evidence that the incident in question was investigated by the city or town, the officer was acting under color of law and the officer was cleared of any misconduct, policy violation and criminal wrongdoing.

- (d) The words “participating municipality” shall mean a municipality which has paid the charges provided in Paragraph 4 hereof.
  - (e) The word “extraordinary” as it applies to legal defense, expenses and judgment shall mean the total amount of expenses for legal defense and other expenses, judgments and settlements which in the aggregate exceed three thousand dollars (\$3,000) in any one suit against a municipal official, municipal employee or municipal government.
6. The Executive Director of the League is hereby designated the Program Administrator. As a condition precedent to becoming eligible to participate in or receive defense and/or financial coverage from the Program, the municipal official or employee shall notify the Program Administrator of a pending claim by delivering a copy of said claim, along with the written consent executed by the municipal official or employee involved, together with a cost deposit, to the Program Administrator not less than seven (7) days, excluding Saturdays, Sundays and holidays, prior to the deadline for responding to said claim. Further, it is mandatory that the participating city or town make this submission on behalf of all named municipal officials and employees. The Program will not accept submissions made by individual officials and employees that have not been authorized by the city or town’s governing body or chief executive officer with authority granted by the governing body. The submission to the Program must enumerate the individuals that the city wants defended and the dates of service of each of those persons.
  7. The Program will be administered by the Program Administrator. A Steering Committee of the Program shall be composed of the President, First Vice President and chairmen of the Advisory Councils who are from participating municipalities. The Steering Committee shall settle any disputes regarding coverage(s). Appeals by Program members or their employees or officials of defense or financial coverage decisions of the Program Administrator are mandatory before any litigation can ensue regarding those defense or financial coverage decisions. The Program shall not be liable, nor required to pursue, any form of litigation regarding any defense or financial coverage decision unless the Program participant has first exhausted all administrative remedies available through the Program, including but not limited to an appeal to the Steering Committee.
  8. Only by joining the Program are cities and towns entitled to legal advice from the League’s staff.

9. The assets of and monies of the Program shall be completely separate and distinct from the League monies, funds, and assets.
10. Notwithstanding anything herein to the contrary, the League shall not be obligated, directly or indirectly, to pay any sum except from the Program's monies and assets, and then only to the extent that funds are available in the Program.
11. The Program began Jan. 1, 1979, and may terminate upon resolution of the Steering Committee. The provisions of the Program may be amended from time to time by the Steering Committee.
12. The Program is a service of the League provided to municipalities that associate with the League and which opt to participate in the Program. The Program is not a contract and nothing contained herein shall be construed as an offer to enter into, or as the formation of, a contract with any person, entity, municipality or other party. The League is an instrumentality and agency of the municipalities that are members of the Program. The agreement provides that the membership receives various legal services from League/Program attorneys who are in conjunction with the Program directly responsible for, and accountable to the membership. As such, the agreement is made for the benefit of the individual municipalities joining herein and no person or entity shall have any legally enforceable rights under this agreement against any municipality joining herein, the Program, the League, or attorneys for any of the foregoing, whether as third-party beneficiaries or otherwise, this agreement being one solely between the municipalities joining herein.
13. Municipalities participating in the Program must instruct their city attorney to actively participate and cooperate in the defense of the municipality provided that the city attorney or members of the same firm of the city attorney are not litigating against a covered participant, in which case an attorney mutually acceptable to the city and the Program Administrator shall be substituted.
14. Municipalities participating in the Program must adopt a policy on use of deadly force similar to a policy recommended by the Steering Committee.
15. Housing Authorities created by a municipality pursuant to state law are eligible for Program services and benefits provided the municipality that created the Authority is a member in good standing of the League and the Program, and the Authority is a limited services member of the League. A cost deposit of \$5,000.00 is to be charged to and paid by the Housing Authority when a case is tendered and meets requirements of the Program brochure.
16. It is expressly stated that no terms, conditions or provisions of this Program, nor shall any actions of the Program Administrator or any employee of the League or a participant of the Program, be construed as to waive the statutory tort immunity of the municipalities of the state of Arkansas.