

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. The assets of, and monies of, the Program shall be completely separate and distinct from the League monies, funds, and assets.
9. 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.
10. The term of this program began Jan. 1, 1979, and may terminate upon resolution of the Steering Committee of the Program. The provisions of this program may be amended from time to time by resolution of the Steering Committee of the Program.
11. The agreement is made for the benefit of the individual municipalities joining herein and no municipal official or employee 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.
12. 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.
13. Municipalities participating in the Program must adopt a policy on use of deadly force similar to a policy recommended by the Arkansas Municipal League.
14. 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 Arkansas Municipal League or a participant of the Program, be construed as to waive the statutory tort immunity of the municipalities of the state of Arkansas.

MUNICIPAL LEGAL DEFENSE PROGRAM

Effective 1/1/79
As Amended 1/1/2008

The Municipal Legal Defense Program is not insurance. The Program is not an insurance contract. Municipalities joining the program do not waive their statutory Tort Immunity under Arkansas law.

When the Municipal Legal Defense Program defends municipal officials for alleged violations of federal civil rights or other federal rights and the plaintiffs also allege the violation of state tort laws the municipalities joining the Program shall require their municipal attorney to file a motion to dismiss the alleged violation of state tort laws stating the Municipal Statutory Tort Immunity.



P.O. Box 38
North Little Rock, AR 72115
501-374-3484
Fax 501-374-0541
www.arml.org

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, Act 23 of 1949 (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

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 (the 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, 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."
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 participate in defense of 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.
 - (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, court costs and/or attorney fees.
 - (e) The Program shall never be liable to reimburse the municipal government, municipal officials and employees because of judgment in any one lawsuit for more than 25 percent (25%) of the Program's available funds at time the lawsuit was filed or the judgment becomes final, or one million dollars (\$1,000,000.00), whichever is less.
 - (f) The administrators of the Program shall have the right to settle and pay any claim prior or subsequent to entry of a judgment.
 - (g) The Program shall be secondarily liable for any claim covered by a valid insurance policy. The Program shall be primarily liable where a city's insurance policy excludes claims otherwise covered by this Program or there is no insurance in effect.
4. A participating municipality agrees to pay into the Program each year a charge established by the Steering Committee. Each participating municipality also agrees to pay the first three thousand dollars (\$3,000.00) 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. Payment by a participating municipality shall constitute its agreement to, and the acceptance of, the provisions of this Program.
 5. All cities participating in the Municipal Legal Defense

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. Only by joining the Municipal Legal Defense Program are cities and towns entitled to legal advice from the League's staff.

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 Arkansas Municipal League and a participant in this Program.

The words "full-time employees" shall include employees who work at least 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 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 condemnation, inverse condemnation, environmental damage, annexation, planning, zoning, issuance of licenses or variances, or any suits related to real property or land use, 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.
 - (xxii) claims involving city or town police officers working off duty (non-city) jobs unless the off-duty employer contracts with the city to allow the officer to work under the following terms and conditions: the officer will be considered an employee of the city and will receive all pay and benefits from the city for the off-duty work; the off-duty employer will reimburse the city for all such pay and benefits; and, the officer will be subject to, and shall abide by, all city and departmental rules and regulations as well as complying with all local, state and federal laws.
- (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 and judgments which in the aggregate exceed \$2,000.00 in any one suit against a municipal official, municipal employee or municipal government.
6. The Executive Director of the Arkansas Municipal League (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 Executive Director of the League 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 Executive Director of the League 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