

# HOUSTON POLICE OFFICERS' UNION

## LEGAL SERVICES PLAN

### **I. Introduction**

The Houston Police Officers' Union (HPOU) is dedicated to providing its members with quality legal protection consistent with the principles and guidelines described herein. This document, the Houston Police Officers' Union Legal Services Plan ("the Plan"), is a description of legal services available to eligible members.

### **II. Definitions**

A. HPOU - Houston Police Officers' Union. Its administrative offices are located at 1600 State Street, Houston, Texas 77007.

B. Department - Houston Police Department.

C. Board of Directors - Elected and/or appointed members of the governing body of the HPOU as defined by the HPOU Constitution.

D. Course and Scope - Conduct, acts or omissions in furtherance of the employer's business and for accomplishment of the objective for which the employee was employed. A member was not acting within the scope of their duties unless the conduct, acts or omissions were being undertaken in furtherance of the employer's business. In determining whether a police officer was acting within the scope of their duties, it is necessary to consider whether the officer was discharging a duty generally assigned to them by their government employer or by law. A police officer may still have engaged in the lawful discharge of their law enforcement duties even when the conduct, acts or omissions commenced while off-duty.

E. Executive Board - Elected and/or appointed members of the HPOU who serve as Secretary, First Vice President, Second Vice President, Third Vice President and President.

F. Legal Committee - A committee appointed by the President of the HPOU to oversee the delivery of legal services.

G. Legal Services - Legal representation by a licensed attorney regarding a covered matter as set forth in this Plan. Representation may include, but may not be limited to, counseling, representation in a contested proceeding as set forth in this Plan, expert witness costs, subpoena costs and expenses, transcript costs, copying costs, court reporter costs, and court costs.

H. Meet and Confer Agreement - The Agreement between the Houston Police Officers' Union as the Majority Bargaining Agent for and on behalf of all Police Officers and the City of Houston adopted pursuant to Texas Local Government Code Section 143.351, *et seq.*

I. Member - a police officer of the Houston Police Department who is a member of the HPOU as that term is defined in the Constitution and By-Laws of the HPOU, is on active-duty, and is current in their dues and other obligations to the HPOU.

J. Staff Attorney(s) - A licensed attorney employed by the HPOU.

K. Contract Attorney - a licensed attorney who is retained by the HPOU to represent members in certain cases.

L. TCOLE - Texas Commission on Law Enforcement.

M. His/He - Term is not gender specific.

N. Event or incident - a situation that gives rise to conduct, acts and/or omissions that may require legal representation.

O. IAD - Internal Affairs Division of the Houston Police Department.

### **III. Eligibility and Exclusion Criteria**

A. A member must be in good standing and be current in their dues and other obligations to the HPOU, and the event or incident giving rise to the request for representation must have taken place while the member was in good standing.

B. A former member who has retired or resigned or was involuntarily terminated will only be entitled to legal services for conduct, acts or omissions occurring prior to their retirement, resignation or termination. Any member who discontinues their membership with the HPOU will receive no legal services for conduct, acts or omissions that occur after the date they discontinued their membership with the HPOU or were removed as a member as provided for in the HPOU Constitution, or for conduct, acts or omissions that occurred after retirement, resignation or involuntary termination.

C. A member or a former member may not receive reimbursement for any costs associated with legal services that the member or former member receives or contracts for unless prior approval has been obtained from the Legal Committee and the services are otherwise covered by this Plan.

D. With respect to Legal Services provided, as detailed below, the initial determination of whether a member is entitled to coverage for legal services under this plan, including whether conduct, acts or omissions were within the course and scope of the member's duty, will be made by the HPOU Legal Department upon a member's request for legal services. If the member disagrees with that determination, they may request to be heard on the issue by the Legal Committee, which will then, in its sole discretion, make the final determination.

#### **IV. Legal Services Provided**

A. Administrative Investigations/Disciplinary Actions taken by the Department. Upon receiving a timely request for legal services, the HPOU will provide legal services to eligible members who are the subject of an IAD investigation, a promotional bypass, a demotion or a matter eligible for the grievance process (as outlined in the current Meet and Confer Agreement). This does not include members who seek assistance to file complaints or who have filed complaints on other officers or members, or members who choose to obtain legal representation from another source (see Section IV(J) below). Legal Services may include representation during the administrative investigative process, the disciplinary or corrective action process, and the administrative review (appeal) of these processes that are established by the Texas Local Government Code and/or the Meet and Confer Agreement. An appeal of an administrative review (appeal) by either the Civil Service Commission (The Commission) or an Independent Hearing Examiner to state District Court is not provided unless, in the sole discretion of the Legal Committee, the appeal to District Court is both legally meritorious and an appropriate utilization of resources. The HPOU will pay for necessary expenses and costs associated with an administrative review (appeal) to an Independent Hearing Examiner or the Commission if the member is represented by an HPOU staff attorney or a contract attorney, subject to approval of the HPOU Legal Department. Should a member elect to retain private counsel of their choosing to represent them during an appeal after an HPOU attorney has already provided the preliminary representation, the HPOU shall not be responsible for any expenses or costs other than the member's portion of arbitration costs and fees billed directly by an Independent Hearing Examiner, subject to a maximum of \$3,000.00 unless specifically approved by the HPOU Legal Department and Legal Committee. In the case of a Step III grievance hearing, the HPOU Legal Department shall determine whether or not the grievance is heard by a Grievance Examiner or an Independent Hearing Examiner.

B. Civil Law Suits. The HPOU will provide legal services to eligible members when all the following conditions are met: 1) the member is sued as a party defendant in a civil case where the member's conduct, acts or omissions form the basis of the allegations; 2) the conduct, acts or omissions were within the course and scope of the member's duty; 3) the City of Houston has denied legal representation after proper formal request has been made by the member; 4) the member is likely to prevail on a cross-claim against the City of Houston for attorney's fees; and 5) approval by majority of the Executive Board, or majority vote of the Legal Committee if the President is sued. The member must agree to assign or subrogate his right of recovery for attorney's fees to the HPOU.

C. Criminal Cases. The HPOU will provide legal services to eligible members who are criminally charged for conduct, acts or omissions arising from an incident that involves the use of force or on-duty operation of a motor vehicle within the course and scope of the member's duty.

In all other instances where an eligible member is criminally charged for conduct, acts or omissions arising from an on-duty incident, the Legal Committee, in its sole discretion, will make the final determination as to whether the conduct, acts or omissions were within the course and scope of the member's duty and what legal services, if any, will be provided. Legal services may be provided by staff attorneys or contract attorneys, or by a reimbursement of a fixed sum at the conclusion of the criminal case if the member is found Not-Guilty. If reimbursement is approved by the Legal Committee, reimbursements are limited to the following schedule unless otherwise

approved by the Legal Committee, in its sole discretion:

Class C misdemeanor - \$1,000.00  
Class B or A misdemeanor-\$5,000.00  
All felonies - \$10,000.00

D. Other Administrative Cases. Any other administrative cases, such as Administrative License Revocations (driver's license), TCOLE license actions or Petition to Correct Separation of Licensee Report (TCOLE), are not covered by this legal services plan.

E. Pro-Active Civil Litigation. Members are not entitled to legal services for pro-active civil litigation, or any administrative process ancillary to pro-active civil litigation, unless the Legal Committee, in its sole discretion, determines that the issue sought to be litigated has merit and would enhance a benefit or right for its members.

F. Critical Incidents. The HPOU will provide legal services to eligible members who, while acting in the course and scope of their duties, utilize deadly force causing serious bodily injury or death, discharge a weapon, or are involved in a motor vehicle fatality or other incidents which may require immediate legal services. The determination as to what immediate legal services are provided in each incident will be at the sole discretion of the attorney on call or the attorney who receives a request for legal services from a member involved in a critical incident.

G. Workers Compensation. The HPOU will provide legal services to eligible member who, while acting in the course and scope of their duties, are injured and have a dispute during the administration of their workers compensation claim. Legal services may include representation of the member through the administrative appeal process. A request for judicial review of the administrative decision to state District Court is not provided unless, in the sole discretion of the Legal Committee, the appeal to District Court is both legally meritorious and an appropriate utilization of resources.

H. Consultation. The HPOU will provide eligible members with consultation services provided by a staff attorney or a contract attorney in the following circumstances:

1. Relieved of duty.
2. After being served with a 48-hour notice.
3. After being arrested, served with a grand jury subpoena, charged with a criminal offense, sued in a civil proceeding.
4. Inquiries concerning the Meet and Confer Agreement or the statutes applicable to the duties, responsibilities and authority of members.
5. Inquiries concerning grievable matters under the Texas Local Government Code and/or the Meet and Confer Agreement.
6. Notification of an Administrative Personnel Concerns meeting.
7. Notification of a Early Warning Program meeting.
8. Any other circumstance which, at the attorney's sole discretion, touches upon an aspect of the member's employment covered by this plan.


I. Conflicts. From time to time, legal conflicts of interest may arise in the representation of members. When a conflict arises, legal services that a member is entitled to under this plan may be provided by a contract attorney at no cost to the conflicted member.

J. Termination of legal services. The Legal Committee, in its sole discretion, may terminate legal services being provided to a member if it determines that the facts and circumstances surrounding the conduct, acts or omissions in question no longer qualify for legal services under this Plan.

If an eligible member for whom legal services are available, offered or provided by this Plan does not make a timely request for legal services or representation by the HPOU attorney assigned to their matter and retains the representation or services of another attorney in the matter, including an attorney affiliated with another employee group, association or union, the HPOU shall be released and free from any further obligation to the member to provide representation or legal services.

K. Finality. The decisions of the Legal Committee and/or Executive Board as described herein, are at its sole discretion and are final.

ADOPTED this *2<sup>nd</sup>* day of *June* 2022, by a majority vote of the Board of Directors of Houston Police Officers' Union.

  
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Doug Griffith, President

Attested:   
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Secretary