

LEGAL DEFENSE FUND

To be a member of the Legal Defense Fund (LDF), a person must be a municipal clerk and an active, current member of MCANJ.

If a member of the Legal Defense Fund needs financial assistance in a legal matter, they file a request form with the Chair of the Legal Defense Fund.

The Legal Defense Fund By-Laws shall detail the process to be followed for financial reimbursement made to a current LDF member.

Not a Member of the Legal Defense Fund: If a member of the MCANJ has a legal problem and he/she is not a member of the Legal Defense Fund, they may contact the MCANJ President who shall make a determination if the case could possibly affect the entire Association. If the MCANJ President determines that the case could affect the entire Association, MCANJ will pay up to \$500 for said member for an initial consultant with the MCANJ Attorney.

If the MCANJ Attorney determines that such a case could affect the entire MCANJ membership, he/she may choose to pursue the case within his retainer fee and with consent of the MCANJ Executive Board. If the case is not of importance, or benefit to the entire MCANJ membership, the Municipal Clerk must decide whether to pursue the case using their own funds and not those of the MCANJ.

LEGAL DEFENSE FUND BY-LAWS CONTENTS

1. Organization
2. Method and Terms of Appointment
3. Responsibilities
4. Eligibility for Financial Assistance
5. Request for Financial Assistance
6. Legal Expenses
7. Deductible Amount
8. Member's Counsel
9. Confidentiality
10. Revenue and Finance
11. Amendments
12. Effective Date

STATEMENT OF POSITION

The determination of the legal defense fund in granting or denying a member's application for legal assistance shall in no way be construed as agreement or disagreement with the underlying issues which are the basis of the controversy between the member and the member's adverse party. Payment by the legal defense fund shall in no way be construed as an endorsement of the member's position, and conversely denial of a member's request for financial assistance shall not be construed as a disagreement with the member's position

1. Organization

There shall be a standing committee of the Municipal Clerks' Association of New Jersey, Inc. (hereinafter referred to as the MCANJ) known as the Legal Defense Committee (hereinafter referred to as the Committee) to oversee the Legal Defense Fund (hereinafter LDF).

2. Method and Terms of Appointment

- A. The Committee shall be appointed by the MCANJ President with the approval of the Executive Board.
- B. The Committee shall consist of three (3) regular voting members from each of the three zones, if practicable, (North, Central and South), each serving for one (1) year terms; and one (1) alternate voting member, serving for a one (1) year term. All members shall be tenured Municipal Clerks and active members of the Legal Defense Fund.

- C. The MCANJ President shall designate one (1) of the regular members to serve as Chairperson who will serve for a one (1) year term in this capacity; and one (1) of the regular members to serve as Vice Chairperson who will serve for a one (1) year term in this capacity.
- D. The MCANJ Executive Director shall serve as non-voting member, serving as Treasurer.
- E. The Attorney for the MCANJ shall serve as legal advisor to the Committee.
- F. Vacancies: In the event a vacancy shall occur for any reason an appointment made to fill the vacant position shall be for the unexpired term of the vacated position.

3. Responsibilities

- A. Recommend improvement to the operation of the LDF.
- B. Annually, by May 1, the LDF Chairperson and MCANJ Treasurer shall provide a budget to the MCANJ Executive Board which has been previously approved by the Committee. Reasonable administrative costs of the LDF shall be paid through LDF funds.
- C. The Chairperson will distribute all applications received for financial assistance to all members of the Committee within fifteen business days for informational purposes.
- D. The Chairperson will submit a memorandum to the MCANJ Executive Board detailing actions related to any application, review and resolution.
- E. All findings and documentation pertaining to a member's application shall become the property of the MCANJ.
- F. Maintain the LDF as a separate fund of the MCANJ and not be co-mingled with MCANJ funds. The MCANJ Executive Director shall sign all checks of the LDF. The Chairperson of the LDF shall be the alternate signer of LDF funds to be expended.
- G. Retain for period of seven years after the final determination of the matter all documents relating to assistance.
- H. Financial records of LDF shall be maintained pursuant to IRS requirements.

4. Eligibility for Financial Assistance

- A. Eligible member shall be a Municipal Clerk, Acting Municipal Clerk, Deputy Municipal Clerk, Freeholder Clerk or Deputy Freeholder Clerk who is a current member in good standing of MCANJ.
- B. A Member eligible for payment from the LDF shall have paid the initial membership fee of \$75 and shall have been a member in good standing for a minimum of 90 days prior to the date of application for assistance.
- C. To maintain membership in good standing a renewal fee of \$25 shall be due and paid by the member of the LDF prior to November 1, each year following the initial application for membership. Any member not renewing by November 10 (grace period) will be required to join as a new member and will have to abide by the 90 day waiting period in order to file an application for financial assistance. The term of membership in the LDF is from July 1 through June 30.

5. Request for Financial Assistance

- A. Financial Assistance is not available for any matter instituted by any member of the LDF against another member of the LDF or member of the MCANJ if other member of MCANJ is acting in his/her capacity as Municipal Clerk, Acting Municipal Clerk, Deputy Municipal Clerk, Freeholder Clerk or Deputy Freeholder Clerk.
- B. A request for financial assistance shall be made, in writing on the LDF application, to the Chairperson of the Committee within twenty (20) days of the date of the matter which is the subject of the application or within twenty (20) days after consulting an attorney as set forth in D.
- C. The Committee may waive the requirements of the twenty (20) day deadline for any application upon a showing of good cause.
- D. The Member shall consult with an attorney to determine whether the member has a legitimate legal issue/complaint prior to making the request.
- E. In the application, the member shall document the entire complaint and matter and nature of the relief which is sought and shall include attorney's acknowledgement that he/she will accept the case.

6. Legal Expenses

- A. The LDF shall pay a member for legal fees paid by the member to the member's attorney in an amount not to exceed \$7,500 subject to the \$500 deductible as set forth in 7 as follows:

- 1) The member shall enter into a signed retainer or separate agreement with the member's attorney specifically setting forth the name of the case, the amount of the retainer fee, if any, the hourly rate and such other terms and conditions as are agreed upon between the member and the attorney.
 - 2) The retainer or separate agreement shall include the following terms and conditions: "The member and member's attorney agree that in the event the member is successful in the subject matter of the retainer so that the member is paid legal fees from the member's adverse party by way of settlement or judgment, the member and his/her attorney shall reimburse the LDF to the extent of the amount paid by the LDF. In the event that the member receives reimbursement less than the amount advanced by the LDF, the member shall only be liable to the extent of the amount of the reimbursement."
 - 3) If a settlement or judgment is entered into, the Member's counsel will immediately notify the Chairperson of the LDF. If the claimant has received reimbursement of legal fees from the settlement or judgment, the amount will be reimbursed to the LDF Treasury within 10 days of receiving compensation.
 - 4) In any case where a court, administrative agency or settlement agreement does not specifically designate an amount as reimbursement or award of counsel fees, but the claimant actually receives compensation or other damages in excess of the claimant's lost wages and other non-legal expenses, claimant and claimant's attorney agree to reimburse the LDF an amount equal to the legal fees advanced by the LDF.
 - 5) In addition to the repayment requirements set forth herein, repayment to the Fund shall also be made in the event the Clerk receives reimbursement for attorneys' fees by way of settlement or judgment in an action that is instituted by the Member as plaintiff in any appropriate tribunal such as the New Jersey Superior Court or State administrative agency, provided that the action brought by the Member is related to the underlying matter on which the Member was required to defend her/himself and for which the funds were provided by the LDF. This required reimbursement shall also occur if the Clerk settles the proposed action prior to suit actually being instituted.
- B. The LDF shall make payments as required up to \$7,500 upon the presentation of a statement of fees and costs relating to the matter in which the member is to receive payment as set forth in E. The statement shall be reasonably detailed to set forth the legal services rendered and to indicate that they relate to the underlying action which is the subject matter of the request for payment from the LDF.

- C. The member and his/her attorney shall submit to the LDF, quarterly statements of fees and costs relating to the matter in which the member is to receive payment.
- D. All checks made hereunder shall be signed by the Treasurer of the LDF or LDF Chairperson.
- E. The amounts LDF shall pay, as set forth herein, shall be paid if the following conditions are met:
 - 1) The member is a member in good standing as set forth in Article 4.
 - 2) The matter relates to the member's status as a Municipal Clerk, Acting Municipal Clerk, Deputy Municipal Clerk, Freeholder Clerk, or Deputy Freeholder Clerk.
 - 3) The retainer agreement between the member and the member's attorney shall include the reimbursement requirements as set forth herein.

7. Deductible Amount

- A. There shall be a deductible amount of \$500 per application.
- B. The member shall be required to pay the deductible amount before any payment for legal expenses are paid by the LDF.

8. Member's Counsel

- A. It is recommended that a member use an attorney of the member's choice who has experience with public entities, local government employees and the position of the Clerk. If any time during the suit, the member changes attorney, the Chairperson of the LDF will be immediately notified.

9. Confidentiality

All information, written or oral, regarding applications for assistance is privileged and confidential information, intended only for the use of the Committee, the MCANJ Executive Board, MCANJ Attorney, the member and member's attorney. Any discussion or dissemination of information is strictly prohibited.

10. Revenue and Finance

- A. All funds held in the LDF shall be derived from fees paid by members' personal checks, gifts or fundraisers and shall be considered non-refundable upon payment and shall not be co-mingled with MCANJ funds.

B. No membership fee may be paid from any Municipal or County funds.

11. Amendments

A. The Committee may make recommendations to the Executive Board of the MCANJ for revisions to the by-laws of the LDF and will state the reasons for such revisions.

B. The Executive Board of the MCANJ may, on its own initiative, adopt revisions to the by-laws by a majority vote and only after providing a draft copy of the proposed revisions to the members of the LDF Committee for their review and comment at least 30 days prior to the date set for adoption.

12. Effective Date

The effective date of these by-laws is: July 1, 2018.