

FILED
LOS ANGELES SUPERIOR COURT

JUL X 9 1998

JOHN A. CLARKE, CLERK

~~J. Lorenz~~
BY P. SWEET, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ANTHONY MARIO ASSENZA, et al.,
Plaintiffs/Petitioners,
vs.
CITY OF LOS ANGELES, et al.,
Defendants/Respondents.

Case No. BC 115 813

BRIEFING ORDER ON 24 JULY 1998
HEARING ON OSC RE: CONTEMPT

On the basis of the observations and authorities set out below, the Court solicits the parties' views on the issues posed at subparagraph 3 hereof.

1. **STATUTORY FRAMEWORK: DECLARATORY RELIEF ACTION
AND STIPULATED JUDGMENT**

1.1 The within action, and its resultant "Amended Judgment of Declaratory Relief (Pursuant to Stipulation)," filed 30 March 1994, are grounded in § 12050 of the *California Penal Code*. As here relevant, the cited statute provides within certain discretionary limits for the issuance of concealed handgun licenses (CHL's) to those private citizen applicants found qualified to carry such weapons.

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1.1.1 Subdivision (a)(1)(B) reads:

"The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city, *may*¹ issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person...."

1.2 The just-quoted provision must, in the court's view, be read together with § 12050, subd. (b):

"(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person."

¹"[T]he [statutory] words ['shall' and] 'shall be' are words of command. Such is their natural and ordinary meaning. They are not permissive or only directory, to be heeded or not by the Senate and Assembly, but mandatory and peremptory, exacting compliance with and obedience to them, and prohibitory of any action conflicting with them. They are not so only by the common meaning, but are declared to be so by the language of the twenty-second section of Article One of the Constitution. The obedience commanded to the mandate of those words is not partial or simulated, but absolute and entire. This mandate should not be frittered away and rendered illusory by ingenuous or subtle refinement, but regarded in its full and honest requirement." (Oakland Paving Co. V. Hilton, 69 Cal. 479, 492-493, 11 Pac. 3 (1896).)

1 2. **STIPULATED JUDGMENT: CORRELATION OF "GOOD CAUSE"**
2 **AND "TRAINING" CONDITIONS TO CHL ISSUANCE**

3 2.1 In relevant part, ¶ "FN " (3:27-11:16) of the Judgment reads:

4
5 "F. The following further rules and guidelines are provided for the
6 interpretation and implementation of [the good cause condition of]
7 Item E:

8
9 **"INTRODUCTORY**

10 "The Department recognizes that *Pen. C.* Section 12050 requires the
11 issuance of licenses to persons of good character who have good
12 cause to carry a concealed firearm for the defense of themselves or
13 others or in pursuing their livelihood. These guidelines are designed to
14 implement that requirement.

15 "Good cause is more likely to be found if the applicant has a
16 demonstrated record of responsible handling of firearms as indicated
17 by voluntarily having taken firearms training and/or long-term
18 participation in the shooting sports. While a lack of such a
19 demonstrated record is not a disqualification if the applicant is
20 otherwise qualified to use a firearm properly, licenses will not issue if
21 there is substantial, articulable reason to believe that issuance would
22 be contrary to public safety...." (3:27-4:21.)

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24 " ...

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26 **"CRITERIA FOR LICENSURE**

27 "1. Training. The license, if approved, shall not become effective
28 until the applicant has furnished proof to the Department that he or she

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“(g) Examination which has been provided by the bureau of the subject matter taught.”

2.2.1 In that P.C. § 12050, subd. (a)(2) provides that no CHL shall remain valid beyond the first anniversary date of its issuance and is thereafter reissuable subject to the good cause/moral character/residency conditions of subd. (a)(1)(B), *ante*, it is noted that enrollment in the “firearms requalification course” prescribed by B&PC § 7582.2 appears likewise to be a condition of such reissuance.

3. QUESTIONS PRESENTED

3.1 Sections 7585-7585.20 of the *Business and Professions Code* were simultaneously incorporated into Division 3, Chapter 11.5, Article 5 (“Firearms and Baton Training Facilities”) of that Code at the 1994 Legislative Session. The Historical Note accompanying § 7585 expresses the relevant legislative intent:

“Section 1. The Legislature finds and declares that the primary purpose of regulating and licensing armed security guards in this state is to protect the public from the unnecessary and improper use of force. The Legislature further finds and declares all of the following:

“(a) The increasing crime and violence confronting California’s citizens, private businesses, and law enforcement officials have strained the ability of the security guard industry and the individual armed security guard to confront criminal activity while avoiding the need to use force.

1 “(b) The Department of Consumer Affairs reports that, during fiscal
2 years 1989 to 1994, inclusive, there have been over 400 shootings by
3 licensed armed security guards in this state.
4

5 “(c) Licensed armed security guards are using and will continue to
6 use deadly force in the face of criminal situations.
7

8 “(d) Existing laws and regulations relating to the licensing and
9 regulation of armed security guards are inadequate and do not
10 adequately protect the public health, safety, and welfare.
11

12 “(e) It is the intent of the Legislature that armed security guards
13 should not be required to meet the same rigor of standards required of
14 peace officers.
15

16 “Sec. 2. The Bureau of Security and Investigative Services, with the
17 technical assistance of the Commission on Peace Officer Standards
18 and Training, shall develop minimum selection, competence, and
19 training standards for armed security guards and implement those
20 standards through regulations no later than January 1, 1996. In
21 developing these minimum standards, the bureau also shall seek the
22 advice of the security guard industry and other interested and affected
23 parties. The minimum standards shall be developed by the bureau no
24 later than July 1, 1995. The minimum standards to be considered for
25 adoption shall include, but not be limited to, all of the following:
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1 “(a) Training and statewide policy standards in the use of force and
2 weaponry, with particular emphasis on methods for preventing the need
3 to use force.

4
5 “(b) Selection standards, including the use of appropriate
6 psychological testing methods to screen out any applicants with
7 psychological disorders.

8
9 “(c) Minimum educational standards.

10
11 “(d) Criminal, arrest, and previous employment history and
12 preemployment investigation standards.

13
14 “(e) Recertification standards to ensure continued competency
15 including an appropriate phase-in period.

16
17 “Derivation: Former § 7552, added by Stats. 1983, c. 1196, § 2.5.

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19 “Former § 75478, added by Stats. 1982, c. 1262, p. 4643, § 18.”
20 (4 West’s Ann. B&PC § 7585, pp. 131-132.)

21
22 3.1.1 Given the demonstrated correlation between the “good cause” and
23 “training” provisions of the Judgment (see ¶ 2, *ante*), subd. 3.1.1, are CHL applicants
24 required by the terms of the Judgment to enroll in and successfully complete the
25 seven-element training course prescribed by B&PC § 7585, subds. (a)-(g)? If not,
26 what training criteria, if any, are imposed by ¶ (f)(1) (5:6-20) of that agreed
27 Judgment?
28

1 3.2 Assuming, *arguendo*, the sufficiency of plaintiffs' proof of willful
2 disobedience by any one or more of the Los Angeles defendants of those terms of
3 the Judgment specifically enumerated in the applicants' Declaration of Contempt
4 filed 21 May 1998, what authority has the Court to adjudicate a finding of contempt
5 in view of the lack of any evidence demonstrating either (1) accomplishment by
6 plaintiffs or (2) consideration by defendants of the training criteria which it appears
7 the parties agreed would constitute a condition precedent (or subsequent) to
8 licensure?³

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10 3.2.1 It is observed, as succinctly stated in Pry Corp. of America v.
11 Leach, 177 Cal.App.2d 632, 639, 2 C.R. 425 (1960), that

12
13 "[A] party complaining of the breach of a contract is not entitled to
14 recover therefor unless he has fulfilled his obligations. [Citations.] He
15 who seeks to enforce a contract must show that he has complied with
16 the conditions and agreements of the contract on his part to be
17 performed."

18
19 4. **BRIEFING SCHEDULE**

20 4.1 The parties shall address the questions set out at ¶ 3.1.1 and
21 ¶ 3.2, *ante*, by Briefs (1) not to exceed 10 pages in length, and (2) each
22 accompanied by a detailed Table of Contents and Table of Authorities. At the
23 parties' discretion, either such brief may be accompanied by one or more
24

25
26 ³The court refers once again to the "Training" criteria of the Judgment: "The license, if approved,
27 shall not become effective until the applicant has furnished proof to the department that he or she has
28 successfully completed the course of training in the caring and use of firearms established [by] *B&PC*
§ 7547.1 [now § 7585] or some other appropriate course which included [sic] the following subjects of
training: knowledge of California laws regarding weapons and deadly force use; safe handling, carriage,
use and storage of concealable firearms; competency with the types of firearms to be listed on the
license." (5:6-20.)

1 Declarations not to exceed a combined total of 15 pages, exclusive of exhibits. Any
2 such exhibit shall comport with all evidentiary rules pertaining to its admissibility.

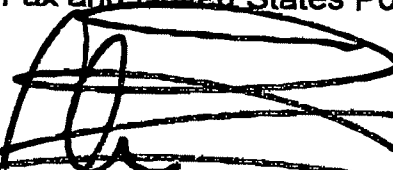
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4 4.2 Plaintiffs' Opening Brief (and accompanying papers, if any) shall
5 be filed directly in this Department and hand-served by 3:00 p.m., 16 July 1998.

6
7 4.3 Defendants' Reply Brief (and accompanying papers, if any) shall
8 be filed directly in this Department and hand-served by 3:00 p.m., 20 July 1998.

9
10 4.4 At their discretion, plaintiffs may submit a Closing Brief not
11 exceeding five pages in length, accompanied by one or more Declarations not
12 exceeding a combined total of 10 pages, exclusive of admissible exhibits. Such
13 paper or papers, if any, shall be filed directly in this Department and hand-served by
14 10:00 a.m., 23 July 1998.

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16 Clerk of court to give notice by Fax and United States Post.

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18 DATED: 9 July 1998

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21 ALAN G. BUCKNER
22 Judge of the Superior Court

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