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JUL 16 1998

**LOS ANGELES
SUPERIOR COURT**

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 ANTHONY MARIO ASSENZA,)	CASE NO. BC 115813
12 et al.,)	
13 Plaintiffs/Petitioners,)	PLAINTIFFS AND/OR APPLICANTS'
14 vs.)	OPENING BRIEF AS PER COURT
15 CITY OF LOS ANGELES, et al.,)	ORDER OF JULY 9, 1998 ON
16 Defendants/Respondents,)	OSC: RE CONTEMPT
17 _____)	Date: July 24, 1998
)	Time: 10:30 a.m.
)	Dept: 14

18 Additional Attorneys for Plaintiffs:

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23 COMES NOW PLAINTIFFS AND/OR APPLICANTS who submit the
24 following Opening Brief pursuant to this Court's Order of July 9,
25 1998.

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1. FIRST QUESTION PRESENTED:

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"Given the demonstrated correlation between the "good cause" and "training" provisions of the Judgment (cite omitted) are CHL applicants required by the terms of the Judgment to enroll in and successfully complete the seven-element training course prescribed by B&PC § 7585. subds. (a)-(g)?" If not, what training criteria, if any, are imposed by ¶ (f)(1) (5:6-20) of that agreed Judgment."

2. SECOND QUESTION PRESENTED:

6

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

3. CONCLUSION

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2,3

1 1. FIRST QUESTION PRESENTED:

2 "Given the demonstrated correlation between the "good cause"
3 and "training" provisions of the Judgment (cite omitted) are CHL
4 applicants required by the terms of the Judgment to enroll in and
5 successfully complete the seven-element training course prescribed
6 by B&PC § 7585. subds. (a)-(g)?" If not, what training criteria,
7 if any, are imposed by ¶ (f)(1) (5:6-20) of that agreed
8 Judgment."

9 Briefly stated, with regard to whether all CHL applicants are
10 required to complete the Business and Professions Code § 7585
11 course, the answer is: some are and some are not. With regard to
12 what type of training criteria is imposed by the Judgment, the
13 brief answer is that professional security personnel must have the
14 B&P Code § 7585 training. Other persons, such as attorneys, are
15 specifically exempted from the requirements of Chapter 11.5 of the
16 B&P Code, including § 7585 (see 7582.2). People who are not
17 exempt and are not security personnel, i.e. those whose permits
18 are for personal protection only, satisfy the Judgment
19 requirements by taking any training covering the specific elements
20 set forth in the Judgment. Typically, this is done by taking a
21 course specified by the Defendants on their permit application.
22 Finally, Penal Code § 12050 has no training requirement for
23 issuance.

24 In the instant matter, as indicated to this Court by Mr.
25 Byron Boeckman, Assistant City Attorney, representing all
26 defendants at the June 26, 1998 hearing, in response to this
27 Court's direct question as to whether or not all
28 plaintiffs/applicants involved in this proceeding had the

1 requisite training required by the Judgment, Mr. Boeckman stated,
2 "yes." The Court then agreed that this was not an issue and all
3 counsel further agreed. That constituted a stipulation and an
4 admission by the defendants through their representative, that the
5 requirements of the Judgment, concerning training, had been met as
6 to all plaintiffs and applicants. There should be no need for
7 plaintiffs and/or applicants to present any further evidence on
8 that issue as it has been proved by stipulation and admission.

9 Training has never been an issue because all plaintiffs
10 and/or applicants have the training required by the Judgment and
11 as specified as acceptable under the Judgment by the Los Angeles
12 Police Department and all defendants. In fact, no rejection
13 letters provided to any of the applicants and/or plaintiffs
14 contained a rejection based upon lack of training. (See the
15 rejection letters contained in Further Declarations Re Contempt,
16 at numbers 1C; 4C; 6D; 7C; 8C; 9C; 10B; 12C; 13C; 14C; 15C; 17C)

17 First, no training is required by Penal Code Section 12050.
18 Training is required only by the Judgment and the type of training
19 specified in the Judgment is in the disjunctive and not the
20 conjunctive. It requires one or the other, not both. Types of
21 training other than the B&P Code § 7585 are alternatively
22 acceptable under the Judgment if they are ". . . some other
23 appropriate course which included [sic] the following subjects of
24 training: knowledge of California laws regarding weapons and
25 deadly force use; safe handling, carriage, use and storage of
26 concealable firearms; competency with the types of firearms to be
27 listed on the license."

28 The defendants permit application states on its face what

1 type of training is acceptable to defendants. That application
2 was changed from a temporary form, "LAPD TEMP FORM 331 (9/93), to
3 the permanent form currently in use, "LAPD FORM 12.49.1 (6/96)."
4 This revision took place subsequent to the entry of Judgment in
5 this action on March 30, 1995. The Amended Judgment, now before
6 this Court, made no substantive changes in the Judgment. The
7 training requirements on both forms have remained exactly the
8 same. This clearly demonstrates that the training requirements on
9 the LAPD forms comport with the training requirements of the
10 Judgment since the new form was created after the Judgment.

11 Each of the current plaintiffs and/or applicants has declared
12 on the application form, under penalty of perjury, that he or she
13 has had the required training. Defendants have never required
14 that any plaintiff and/or applicant do anything more concerning
15 training.

16 There is evidence before this Court in this Order to Show
17 Cause that plaintiffs and/or applicants have taken the requisite
18 training as referred to in the Judgment. Each plaintiff and/or
19 applicant has submitted an application, under penalty of perjury,
20 that he or she has met the various types of alternative firearms
21 training required by the Judgment and the defendants. Further,
22 these same people have, in their declarations set forth their
23 additional training beyond the guidelines established by the
24 defendants. (See Further Declarations re Contempt for all
25 plaintiffs and/or applicants herein)

26 The second part of this Court's question centers upon what
27 type of training criteria is imposed by the Judgment. There, the
28 answer is twofold because the Judgment contemplated two classes of

1 permit holders. This involves professional security personnel on
2 one hand, and those who have "good cause" but are not working in
3 the professional security industry, on the other hand.

4 Of the five categories of "good cause" enunciated in the
5 Judgment, only one category, those employed in the field of
6 security, are required to have passed the B&PC § 7585 course.
7 Individuals falling within the other four categories of "good
8 cause" are not required to take B&P Code § 7585 course because
9 they are not in the business of providing security to others as a
10 business, and as such do not fall under the purview of B&P Code §
11 7582.1, which sets forth the types of persons subject to the
12 chapter.

13 B&P Code § 7585 is first mentioned in the Introductory
14 paragraph in the Judgment and is required by the Judgment and by
15 law for security personnel only (B&P Code § 7582.1). Others may
16 take either the B&P Code §7585 training or the alternative
17 training listed in the Judgment. When applicants fall within the
18 field of security as set forth in the Judgment, the Judgment
19 requires that those persons have "all requisite licenses." One of
20 the requisite licenses for security personnel carrying firearms is
21 the B&P § 7585 training. The Judgment, by specifying "all
22 requisite licenses," thereby requires B&P Code § 7585 training for
23 security personnel.

24 Applicants falling under the remaining four categories of
25 good cause are not required by law to take the B&PC § 7585 course.
26 In fact some of the applicants and/or plaintiffs are specifically
27 exempted from such requirements by B&PC § 7582.2. For example,
28 B&P Code Section 7582.2 exempts a variety of persons, including

1 attorneys at law [B&P § 7582.2(f)] from the entire chapter [11.5]
2 of the Business and Professions Code which includes §§ 7585 and
3 7585.2. The Court will note that a number of the plaintiffs
4 and/or applicants are exempt under the above cited section.

5 All of the plaintiffs and/or applicants have the alternative
6 training provided for in the Judgment and accepted by the Los
7 Angeles Police Department and defendants herein, as evidenced by
8 the applications executed under penalty of perjury. (Please see
9 plaintiffs and applicants Declarations as contained in the Further
10 Declarations Re Contempt, Numbers 1 to 17).

11 The defendants included several specific alternate training
12 courses in their application for a permit. They were satisfied
13 that those types of training they enumerated in that application
14 met the requirements of the Judgment or they would not have
15 included them on the application.

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17 2. SECOND QUESTION PRESENTED:

18 "Assuming, arguendo, the sufficiency of plaintiffs' proof of
19 willful disobedience by any one or more of the Los Angeles
20 defendants of those terms of the Judgment specifically enumerated
21 in the applicants' Declaration of Contempt filed 21 May 1998, what
22 authority has the Court to adjudicate a finding of contempt in
23 view of the lack of any evidence demonstrating either (1)
24 accomplishment by plaintiffs or (2) consideration by defendants of
25 the training criteria which it appears the parties agreed would
26 constitute a condition precedent (or subsequent) to licensure."

27 Briefly stated, plaintiffs have submitted sufficient evidence
28 of the accomplishment of the requisite training by attesting to

1 such on their applications. Defendants have considered the
2 training criteria and have thereupon promulgated a list of the
3 acceptable training on the face of their application form.

4 The plaintiffs and/or applicants have amply demonstrated
5 hereinabove, pursuant to their declarations, (see Further
6 Declarations Re Contempt), that they have the training required by
7 the Judgment and the defendants. The Los Angeles Police
8 Department, in preparing the application for use by the general
9 public, determined what courses and methods of training are
10 appropriate to satisfy the law and the Judgment. Plaintiffs have
11 not complained about the application, its form or its
12 requirements. Every plaintiff and/or applicant has met that
13 criteria, as is more fully set forth hereinabove; and as admitted
14 by the City Attorney acting on behalf of the defendants. In all
15 cases, defendants have accepted plaintiffs and applicants training
16 as legally sufficient and in conformance with the Judgment and
17 previously issued permits to the plaintiffs and/or applicants
18 based thereon.

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3. CONCLUSION

Plaintiffs and/or applicants have fulfilled all their obligations in accordance with the Stipulation for Judgment and Judgment, and at law, for the issuance of a concealed carry permit (CHL). This evidence establishes a prima facie case of contempt for the willful disobedience of this Court's Judgment. The burden now shifts to the defendants to present a defense, which they have not done.

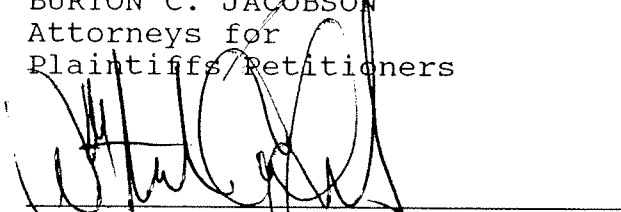
Dated: July 15, 1998

Respectfully submitted,

BURTON C. JACOBSON and
WILLIAM ARTHUR CRAWFORD

By: 

BURTON C. JACOBSON
Attorneys for
Plaintiffs/Petitioners

By: 

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