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FILED
LOS ANGELES SUPERIOR COURT

JUL 20 1998

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P. Cortez
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

11 ANTHONY MARIO ASSENZA,)
12 et al.,)
13 Plaintiffs/Petitioners,)
14 vs.)
15 CITY OF LOS ANGELES, et al.,)
16 Defendants/Respondents.)

CASE NO: BC 115813

DEFENDANTS' FURTHER
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' CONTEMPT MOTION
DECLARATION OF BYRON R. BOECKMAN
Date: *July 24, 1998*
Time: *10:30 a.m.*
Dept: *14*

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18 As indicated in the accompanying declaration by Byron R.
19 Boeckman, Assistant City Attorney, the City is now providing copies
20 of the "Criteria for Licensure" along with license applications
21 pursuant to Paragraph F(6) of the Amended Judgment of Declaratory
22 Relief, Feb. 4, 1998 (hereinafter "the declaratory judgment").

23
24 Because the City has complied with Paragraph F(6) of the
25 declaratory judgment, and has both issued licenses to the named
26 plaintiffs and renewed those licenses for a period of one year
27 pursuant to Paragraph D, the City believes it has satisfied the
28 requirements of the declaratory judgment.

1 In addition to the relief afforded the named plaintiffs,
2 the declaratory judgment also provides a procedure for advisory
3 review of all license applications that are contested in the
4 future. (Paragraphs G(1)-(3)). In Paragraphs G(1)-(3), detailed
5 administrative procedures are laid out, as well as provisions
6 relating to the filing of subsequent legal actions by rejected
7 applicants. These provisions clearly express the parties' intent
8 that denied applications be brought before the advisory panel for
9 review, and if ultimately unsatisfied with the LAPD's resolution,
10 that applicants have the right to file suit. The parties thus
11 contemplated in their settlement that plaintiffs follow this review
12 process, and that any dispute as to rejected applications be
13 addressed in de novo legal actions in the normal course. They
14 clearly did not intend for the Court to exercise its review
15 functions in such a way to order contempt for LAPD's denial of
16 individual applications in the future.


17
18 Thus, there are three independent reasons why the Court
19 ought not to enter a contempt finding as requested by the
20 plaintiffs: (1) as previously briefed by the city, contempt is not
21 the normal mechanism used to enforce declaratory judgments; (2)
22 contempt is a drastic and disfavored remedy, see Board of
23 Supervisors v. Superior Court, 33 Cal. App. 4th 1724, 1742, 39 Cal.
24 Rptr. 2d 906, 916 (1995); and (3) because the parties never
25 intended for the Court to review individual permit denials, the
26 city believes that the exercise of contempt based on individual
27 license applications is beyond the contemplated scope of the
28 settlement and stipulated judgment.

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The Chief of Police and the Department are carefully reviewing applications, and believe they are fully complying with state law in the issuance of permits. If individual applicants disagree, there is a review process provided in the agreement which ought to be pursued. It was never contemplated by the parties, nor by the Court, that this Court would sit as a permanent review body, reviewing the merits of each individual application and second-guessing the professional judgment of the Police Chief in each individual case.

DATED: July 17, 1998

JAMES K. HAHN, City Attorney
FREDERICK N. MERKIN,
Senior Assistant City Attorney
BYRON R. BOECKMAN
Assistant City Attorney

By: 
Byron R. Boeckman
Attorneys for Defendants

LAPD CONCEALED WEAPON PERMIT POLICY

The policy LAPD has adopted is that good cause exists if there is convincing evidence of a clear and present danger to life or of great bodily injury to the applicant, his (or her) spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a concealed firearm.

The following further rules and guidelines are provided for the interpretation and implementation of this policy:

INTRODUCTORY

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

Good cause is more likely to be found if the applicant has a demonstrated record of responsible handling of firearms as indicated by voluntarily having taken firearms training and/or long-term participation in the shooting sports. While lack of such a demonstrated record is not a disqualification if the applicant is otherwise qualified to use a firearm properly, licenses will not issue if there is substantial, articulable reason to believe that issuance would be contrary to public safety or if the applicant does not have good character. Among other criteria to be considered are: the applicant's record and history in accidents with firearms, automobiles or other dangerous instrumentalities; and association with persons having a criminal record or who are reliably known to lack good character. The expression of dangerous or irresponsible attitudes, or threats, toward or regarding the use of firearms or other dangerous instrumentalities shall be grounds for denial or revocation of a license.

CRITERIA FOR LICENSURE

Training. The license, if approved, shall not become effective until the applicant has furnished proof to the department that he or she has successfully completed the course of training in the carrying and use of firearms established pursuant to Section 7547.1 of the California Business and Professions Code or some other appropriate course which included the following subjects of training: knowledge of California laws regarding weapons and deadly force use; safe handling, carriage, use and storage of concealable firearms; and competency with the types of firearms to be listed on the license.

Good Cause. Good cause shall be deemed to exist, and a license will issue in the absence of strong countervailing factors, upon a showing of any of the following circumstances: a) The applicant is able to establish that there is an immediate or continuing threat, express or implied, to the applicant's, or the applicant's family's, safety and that no other reasonable means exist which would suffice to neutralize that threat.

b) The applicant is employed in the field of security, has all requisite licenses, is employed by a security firm having all requisite licenses, and provides satisfactory proof that his or her work is of such a nature that it requires the carrying of a concealed weapon. c) The applicant has obtained, or is a person included within the protections of, a court order which establishes that the applicant is the on-going victim of a threat or physical violence or otherwise meets the criteria set forth in Pen. C. Section 12025.5. d) The applicant establishes that circumstances exist requiring him or her to transport in public significant amounts of valuable property which it is impractical or impracticable to entrust to the protection of armored car services or equivalent services for safe transportation of valuables. e) The applicant establishes that he or she is subject to a particular and unusual danger of physical attack and that no reasonable means are available to abate that threat.

Favorable Factors. Among facts upon which the department will, in the exercise of its discretion, look favorably in considering applications are whether: a) the applicant has a demonstrated record of responsible handling of firearms; b) the applicant has a commitment to safe and responsible handling of firearms as shown by having voluntarily taken firearms training; c) the applicant has a record of good citizenship in general as evidenced, for instance, by service to the community through such activities as creditable service in the armed forces, including the National Guard and state militia or in the police reserves, or of active participation in charitable or public service organizations or activities or in political affairs; d) the applicant is trustworthy and responsible as evidenced, for instance, by employment history, positions held in civic, political, religious or secular achievements or record of personal accomplishment in other areas of endeavor; e) that the applicant suffers under a disability or physical handicap, including age or obesity, which hinders the applicant's ability to retreat from an attacker.

Unfavorable Factors: Factors which will bear negatively on issuance (unless they appear to be in the remote past) are: a) the applicant has a long-term history of mental or emotional instability, alcoholism, drug use or addiction to controlled substances; b) the applicant has a history of fault in serious accidents with firearms, automobiles or other dangerous instrumentalities; c) the applicant has had a permit to own or carry a concealed weapon denied, suspended or revoked for good cause by any issuing authority; d) the applicant has had a driver's license denied, suspended or revoked for good cause by any issuing authority; e) the applicant has a long-term record of irresponsible and dangerous behavior with automobiles as indicated by numerous convictions of serious driving offenses; f) the applicant has a long-term history of conduct from which it appears that he or she is not now of good moral character, trustworthy or responsible. While none of the foregoing disqualify an applicant *per se*, a license will be denied if it appears, in the discretion of the department, that the applicant does not now have good character or that issuance of a license to him/her is not consistent with public safety.

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**PROOF OF SERVICE
(VIA VARIOUS METHODS)**

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 1800 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On July 20, 1998, I served the foregoing documents described as **DEFENDANTS' FURTHER MEMORANDUM IN OPPOSITION TO PLAINTIFFS' CONTEMPT MOTION; DECLARATION OF BYRON R. BOECKMAN** on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows:

BURTON C. JACOBSON & WILLIAM ARTHUR CRAWFORD
BEVERLY HILLS LAW BUILDING
424 SOUTH BEVERLY DRIVE
BEVERLY HILLS CALIFORNIA 90212-4414

BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/ or

BY PERSONAL SERVICE - () I delivered by hand, or (XX) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5.00 p.m. on the date specified above.

BY FACSIMILE TRANSMISSION - I caused such document to be transmitted to the offices of the addressee via facsimile ((310) 286-2819) machine, prior to 5 00 p m on the date specified above.

BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 1998, at Los Angeles, California.

SOLEDAD FIGUEROA
[PRINT NAME]



[SIGNATURE]