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AUG 19 1998

**LOS ANGELES
SUPERIOR COURT**

**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 RE:
25 SEPTEMBER 1998 HEARING

1. GOOD CAUSE CRITERIA

As revised 22 July 1998, the document entitled "LAPD CONCEALED WEAPON PERMIT POLICY" (Court's Exhibit A to 24 July 1998 Record of Proceedings) provides in relevant part:

"... good cause exists if there is [1] convincing evidence of [2] a clear and present danger to life or of great bodily injury to the applicant, his (or her) spouse, or dependent child, which [3] cannot be adequately dealt with by existing law enforcement resources, and which danger [4] cannot be reasonably avoided by alternative measures, and which danger [5] would be significantly mitigated by the applicant carrying of a concealed firearm.

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

“...

“CRITERIA FOR LICENSURE

“...

“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 [1] there is an *immediate or continuing threat*, express or implied, to the applicant’s, or the applicant’s family’s, safety *and* [2] 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, 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 [3] *subject to a particular and unusual danger of physical attack* and [4] that no reasonable means are available to abate that threat.” (Pages 1-2; italics added.)

1 2. **QUESTION PRESENTED**

2 In denying, for asserted lack of the requisite showing of good cause, the
3 concealed weapon permit applications of the five plaintiffs before the Court, did defendants
4 abuse the discretion vested in the command structure of local law enforcement by Section
5 12050 of the *California Penal Code*?¹

6
7 3. **REQUIRED BRIEFING**

8 A. *Abuse of Discretion Standard; Substantial Evidence Rule*

9 Counsel are referred to the 27 July 1998 Reporter's Transcript of
10 Proceedings (RT), at 21:1-28:2 of which appears a summary of what the Court regards as the
11 controlling principles of law in respect of the dispositive question at bench. If and to the
12 extent any party presently before the Court either disagrees with or wishes to expand upon
13 such rules, they shall do so by way of the formal briefing outlined at ¶ 4, *post*.

14
15 B. *"Good Cause": Elements; Proof*

16 (1) *What is meant in law by the descriptor, "convincing" evidence?*

17 (2) *What is meant in law by the descriptor, "clear and present danger"*
18 *to life or great bodily injury?*

19
20 C. *Court-Appointed Expert*

21 In the course of the 27 July proceeding, the Court posed the question
22 whether an expert is needed to assist the parties and the Court in resolving the good cause
23 dispute which the parties agree is the sole and dispositive question for resolution. (RT
24 32:18-24.) Plaintiffs' counsel suggested the possibility that more than one expert might be
25

26
27

28 ¹As here relevant, subdivision (a)(1)(B) of § 12050 provides that "upon proof ... that good
cause exists for the issuance" of a concealed weapon permit, a Sheriff or Chief of Police "may" issue
such permit to the applicant therefor. The statutory term "may" is permissive (*Hayes v. County of*
Los Angeles, 99 Cal. 74, 80 (1893)) as contrasted with statutory use of the terms "shall" and "shall
be"; the latter "are words of command." *Oakland Paving Co. v. Hilton*, 69 Cal. 479, 492-493 (1896).

1 required (RT 34:4-5); defendants' counsel objected to such appointment on the ground the
2 issue at bench is one of law:

3

4 MR. BOECKMAN: ... The issue is whether or not the plaintiffs in this case have
5 demonstrated an abuse of discretion, and it is not for this Court to substitute its
6 judgment for that of the Chief of Police, but only to weigh whether or not there has,
7 in fact, been an abuse of discretion... [¶] The appointment of an expert would serve
8 only to bring this Court to an opinion with respect to whether or not a permit should
9 have issued... That's a question ultimately [of law] for this Court. (RT 35:8-28.)

10

11 As respects the just-mentioned defense objection, the following colloquy was later had:

12

13 MR. BOECKMAN: I ... would object to the appointment of an expert to substitute for
14 [the Court's] judgment because ... I don't think this is a matter which is the subject
15 of expert testimony.

16 THE COURT: Is it not? ... Does the Los Angeles Police Department have a threat
17 assessment unit; yes or no?

18 MR. BOECKMAN: I believe we do at this current time.

19 THE COURT: There are some experts out there or they wouldn't be in the threat
20 assessment unit; yes or no?

21 MR. BOECKMAN: Yes, your Honor. (45:12-28.)

22

23 The Court, having concluded that expert evidence on the issue of threat assessment
24 is required, has commenced the process of identifying and selecting a suitable consultant.
25 Counsel have been provided a copy of the Court's 14 August 1998 letter to Chief Deputy
26 United States Marshal Tony Perez, Office of the United States Marshal, Central District of
27 California (Exhibit 1 hereto).

28

1 By the Brief required by this Order, counsel shall either state their acquiescence in
2 or objection to the Court's finding as to the necessity for expert testimony pursuant to § 730
3 of the *California Evidence Code*; at such time as a reply is received from the Office of the
4 United States Marshal, counsel shall be more fully apprised in the matter. Pending such
5 reply, *Evidence Code* §§ 730-733 are reproduced below:

6
7 **“§ 730. Appointment of expert by court**

8
9 “When it appears to the court, at any time before or during the trial of an
10 action, that expert evidence is or may be required by the court or by any party
11 to the action, the court on its own motion or on motion of any party may
12 appoint one or more experts to investigate, to render a report as may be
13 ordered by the court, and to testify as an expert at the trial of the action
14 relative to the fact or matter as to which the expert evidence is or may be
15 required. The court may fix the compensation for these services, if any,
16 rendered by any person appointed under this section, in addition to any service
17 as a witness, at the amount as seems reasonable to the court.

18
19 “Nothing in this section shall be construed to permit a person to perform any
20 act for which a license is required unless the person holds the appropriate
21 license to lawfully perform that act.

22
23 **“§ 731. Payment of court-appointed expert**

24 “...

25 “(c) ... in all civil actions, the compensation fixed under Section 730 shall, in
26 the first instance, be apportioned and charged to the several parties in such
27 proportion as the court may determine and may thereafter be taxed and
28 allowed in like manner as other costs.

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“§ 732. Calling and examining court-appointed expert

“Any expert appointed by the court under Section 730 may be called and examined by the court or by any party to the action. When such witness is called and examined by the court, the parties have the same right as is expressed in Section 775 to cross-examine the witness and to object to the questions asked and the evidence adduced.

“§ 733. Right to produce other expert evidence

“Nothing contained in this article shall be deemed or construed to prevent any party to any action from producing other expert evidence on the same fact or matter mentioned in Section 730; but, where other expert witnesses re called by a party to the action, their fees shall be paid by the party calling them and only ordinary witness fees shall be taxed as costs in the action.”

The court shall apportion equitably the costs and fees of the § 730 expert, as by § 731, subd. (c) provided; the Brief hereby ordered shall contain the views of each party as to the method by which such apportionment may be achieved.

Without waiver of prejudice to the right of any party to object to the appointment of a § 730 expert, counsel shall forthwith meet *personally* and confer on the preparation of a joint list of questions which plaintiffs and defendants desire be put to the Court’s appointee. Such Joint List shall be filed and served not later than close of business, 4 September 1998, concurrently with a separate list of questions desired by one side but objected to by the other.

