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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 115813 PLAINTIFFS' BRIEF PURSUANT TO COURT'S REQUEST OF SEPTEMBER 25, 1998 [Filed concurrently with Appendix A to Plaintiffs' Brief Pursuant to Court's Request of September 25, 1998] Date: November 20, 1998 Time: 10:30 a.m. Dept: 14

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COME NOW, Plaintiffs, who submit this brief pursuant to the Court ordered mandamus proceedings. Plaintiffs respectfully submit that the mandamus proceedings should apply to all plaintiffs/applicants presently before the court.

Plaintiffs incorporate all previously filed briefs, documents, and pleadings in the within matter, by reference as though fully set forth at this place.

1. SUMMARY OF ACTION

On November 4, 1994 plaintiffs filed a Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief and Civil Rights Action. Pursuant to that petition a stipulation for entry of judgment was entered into between plaintiffs and defendants on February 1, 1995 (Exhibit "1" of Exhibits in Support of Order to Show Cause Re Contempt). Pursuant to said Stipulation, a Judgment was signed by the Honorable Dzintra Janavs, Judge of the Superior Court on March 30, 1995 (Exhibit "2" of Exhibits in Support of Order to Show Cause Re Contempt). Said Judgment was amended on February 4, 1998. Said Amended Judgment was signed by the Honorable Dzintra Janavs (Exhibit "3" of Exhibits in Support of Order to Show Cause Re Contempt). All of the above referred to Exhibits have previously been filed with this Honorable Court.

On May 21, 1998 the Honorable Dzintra Janavs, the Judge of this Court who had signed the Judgment in this case, issued an Order to Show Cause why defendants should not be held in contempt for failing to comply with the terms of said Judgment when the plaintiffs were refused renewals of their concealed carry permits. When the matter came on to be heard, Judge Janavs recused herself, having discovered information which she deemed to require her to do so. This matter was then transferred to the Honorable Alan Buckner, Judge of the Superior Court.

This Court after reviewing the evidence contained in the filed papers and issuing certain orders thereon which resolved the contempts concerning dissemination the guidelines for the issuance of concealed carry permits as enunciated in the aforesaid Judgment.

Thereafter, this Court, sua sponte, transmuted the contempt proceedings into mandamus proceedings, limiting it to the original plaintiffs, who also were parties to the contempt. These were William Crawford, Burton C. Jacobson, John Martin, Michael Ontiveros and David Yochelson.

The court has now permitted the parties to submit briefs in support of the court ordered mandamus proceedings. As the Court correctly noted during one of the hearings a form letter of denial of renewal was sent to the plaintiffs. The court may further recall that in response to the question as to what has changed in the four to five years subsequent to the Judgment, the answer stated by plaintiffs was: only the Chief of Police, Bernard Parks. The Court has expressed concern from the bench regarding his authority to compel the Chief to be reason specific concerning the denial of each of the plaintiff's application for renewal of their concealed carry permit. The answer, simply stated, is that without such a requirement there is no contradictory evidence for this Court to review in a mandamus proceeding. In other words, plaintiffs have presented their evidence by way of declarations as provided for in the above referred to Judgment. Defendants have offered no evidence in contravention of those declarations. Therefore, plaintiffs evidence is uncontroverted and proved.

Sommerfield v. Helmick (1997) 57 C.A.4th 315 concerns denial to an honorably retired officer of the special CCW created by Penal Code Section 12027, that statute expressly requires a hearing. But without reference to that requirement, just because the process concerns a permit, the court adopts language that "minimum due process requires some form of notice and an

opportunity to respond." In other words, the applicant is entitled to know why he has been denied, as is the court that will review that denial -- not just the meaningless conclusory formula worded in terms of the statutory language.

Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 C.3d 506 is a zoning variance case. The court expressly distinguishes administrative action involving fundamental rights (fn.1). This case addresses procedures even when no fundamental right is involved. Even in these lesser situations, the case establishes that, as a matter of administrative law applicable to local as well as state government, an administrative decision-maker must make detailed findings of fact and presumably apply them to the law as to why a variance was denied.

2. DEFENDANTS' DUTY IS TO EXAMINE EACH CCW APPLICATION INDIVIDUALLY RATHER THAN DENYING THE EN MASSE PURSUANT TO A POLICY OF NON-ISSUANCE OR RESTRICTIVE ISSUANCE

Salute v. Pitchess (1976) 61 C.A.3d holds that P.C. § 12050 precludes licensing authorities from adopting a "fixed policy of not granting [CCW licenses] except in a limited number of cases or "a uniform rule that only selected public officials can show good cause." (id. at 560) defendants are instead required to "consider good cause on the part of citizens generally" and must "make such an investigation and determination on an individual basis on every application under Section 12050. (id. at 561 emphasis added).

Defendants will doubtless emphasize the broad discretion they enjoy under Section 12050 ff., but even when a state law confers broad discretion on city or county officials "there are clear-cut

limits, one of which is that applications are to be evaluated with regard to the statutory criteria only and that administrators have no authority to "exclude an entire class of people, some of whom would be eligible [under the statute] . . . if evaluated individually. [1]

3. Defendants Must License Applicants Who Meet the Statutory Criteria

It bears emphasis that P.C. §12050 does not grant defendants the discretion to **deny** licenses under the broad and lenient good cause standard. That is to say, defendants are not free to deny licenses whenever, in their broad discretion, they deem there is good cause to do so. On the contrary the statute applies the broad standard of good cause to whether the applicant has reason to carry a gun. This indicates that licensure is to be granted expansively, that defendants' discretion is to **grant** licensure to any person who has good cause (if s/he also has good character and meets the other statutory criteria). The same intention that licensure be widely granted is implicit in the Legislatures careful fixing of the fee to be charged for making an application at $3.00, no matter how much the licensing process actually costs the city. (Penal Code §12054) Even with the pending changes to that section the licensing authority will only be authorized a nominal amount. We readily concede that defendant's authority to define good cause includes discretion to make judgments about what does not constitute good cause. But such judgments must be

[1]Compare Salute, supra 61 C.A.3d at 560 and 561 to Robbins v. Superior Court, (1985) 38 C.3d 199, 211, Mooney v. Pickett (1971) 4 Cal.3d 669, 679, Clay v. Tyrk (1986) 176 Cal.App.3d 119,124 and cases there cited and quoted.

reasonable[2], and must be based on standards that are applied consistently to all applicants,[3] are congruent with the statutory purpose and do not exclude any class of applicant whom the legislature intended to be eligible.[4] For instance, while the defendants may have the discretion to determine the merely having to drive through Southern California late at night is not good cause; they cannot reasonably deny that an applicant has good cause if s/he regularly transports valuables by car, or works in plainclothes security, or is subject to death threats, or whose occupation puts them in threatening situations. The good cause as to each of these categories is: a) self-evident; b) recognized by other CCW licensing agencies not only throughout California but throughout the United States; and c) recognized by cognate statutes which must be taken into account in determining what the legislature meant by "good cause." See discussion below.

Penal Code §12050 leaves the licensing authority no discretion to deny a CCW license to persons who have good cause and good character. As a matter of well-recognized statutory interpretation the pronouncement in a CCW statute that applicants "may" be granted a license or permit to carry means that they "shall" be granted it: Schwanda v. Bonney Me. S. Ct. (1980) 418

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[2]Boehm v. County of Merced (1985) 163 C.A.3d 447, 451; Roussey v. City of Burlingame (1950) 100 C.A.2d 321, 323; see also Hittle v. Santa Barbara County Retirement Employee's Assn. (1985) 39 C.3d 374, 387 and People v. Shipp (1963) 59 C.2d 845, 852-3

[3]See discussion below of People v. Noogle (1935) 7 C.A.2d 15,18; Mass v. Board of Education (1964) 61 C.2d 612,623 and; Harless v. Carter (1954) 42 C.2d 352,356-7.

[4]Mooney v. Pickett (1971) 4C.3d 669; Clay v. Tryk (1986) 177 C.A.3d 119 and cases there cited.

A.2d 163, 167 (See "Appendix filed concurrently herewith). While there is no California case in the CCW area, Schwanda's rationale has invariably been embraced by our courts in statutory interpretation cases. Compare Schwanda's formulation:

> When the word "may" is used in imposing a public duty upon public officials in the doing of something for the public good and the public or third persons have and interest in the exercise of the power, then the word "may" will be read "shall" . . . [418 A.2d at 167] to Harless v. Carter (1954) 42 C.2d 352, 356-7:
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> Where persons or the public have an interest in having an act done by a public body "may" in a statute means "must." [emphasis by Court; citation deleted] "Words permissive in form, when a public duty is involved, are considered mandatory." Uhl v. Badaracco, 199 C. 270, 282.
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> "[w]here the purpose of the law is to clothe public officials with power to be exercised for the benefit of third persons or the public at large -- that is, where the public interest or private right requires that a thing should be done -- then the language, though permissive in form is peremptory." [citation omitted]

Two particularly instructive cases are People v. Noogle (1935) 7 C.A.2d 15 and Mass v. Board of Education (1964) 61 C.2d 612, 623. In Noogle, the issue was whether a defendant could be convicted of driving without a license where it was revoked without a hearing under a statute providing that the DMV "may"

conduct a hearing. Though the court acknowledged the need for "strict regulations" governing "permission to operate automobiles and in control of the traffic," it emphasized that "this does not dispense with the necessity of exercising a sound discretion based upon uniform and reasonable procedure . . . id. at 18, emphasis added. Noogle, held a hearing mandatory despite the "may" and a further provision that DMV had "discretion" to set a time for hearing. The court construed this to mean only that when a complaint it regards as trivial is made against a licensee DMV has discretion to disregard it and permit the accused to continue to hold his permit without the necessity of a hearing thereon. Any other construction of the term 'discretion' as it is there employed would render the section unconstitutional and void as discriminatory; for it would give [DMV] the arbitrary power to deny one licensee a hearing and grant that privilege to others. It is a well established principle that all laws must be uniform in their application to individuals of the same class. In 37 Corpus Juris, page 240, section 97, it is said ...

> "The power vested in the board or officer to grant licenses upon the applicant complying with the prescribed conditions, unless mandatory in terms, carries with it, either expressly or impliedly, the power of exercising, within the limits prescribed by the act or ordinance, a reasonable discretion in granting or refusing licenses. But this discretion must be exercised [20] reasonably, and not arbitrarily, and furthermore arbitrary power in this respect ordinarily cannot be conferred on such board or officer." [id. at 19-20 --

emphasis added.]

Mass v. Board of Education (1964) 61 C.2d 612, 623 held a school board had not been entitled to fire the plaintiff. In opposing a grant of full back pay to the teacher, the board cited a "statute [which] provide[d] only that the school district 'may' pay the back salary...." [id. at 622]. The California Supreme Court however, held that when a "teacher is entitled to reinstatement" he is also entitled to full salary from the date of suspension . . . ":

> Although the word "may" customarily implies permissiveness [citing a specific section of the Educ. C. apparently so providing], words must be construed in their textual context. The word [623] "may" here occurs in a statute defining a public duty. "'Words permissive in form, when a public duty is involved, are considered mandatory.'" (Harless v. Carter (1954) 42 C.2d 352, 356.) Otherwise the statute would condone arbitrary action of the board in selective compensation of discharged employees covered by the section. [Emphasis added.]

Harless v. Carter (1954) 42 C.2d 352, 356-7 involved a bond statute of limitations and whether a city treasurer could have been forced by the bondholder to sell certain property at a certain time. Treasurer has testified that he would have refused to do so, but the Supreme Court held that he could have been forced to do so by a decree in mandate under the relevant statutes.

> Certainly he might not have refused to act upon the

ground that the statute states that he "may" sell upon the demand of a bondholder. "Where persons or the public have an interest in having an act done by a public body 'may' in a statute means 'must.'[Emphasis by court; citation deleted.] "Words permissive in form, when a public duty is involved, are considered mandatory." Uhl v. Badaracco, 199 C. 270, 282. [357] "[W]here the purpose of the law is to clothe public officials with power to be exercised for the benefit of third persons, or the public at large -- that is, where the public interest or private right requires that a thing should be done -- then the language, though permissive in form, is peremptory." [Citation omitted.]

To say that the Treasurer might act in some cases and refuse to do so upon the demand of a bond holder similarly situated would be to construe the statute as vesting authority with no ascertainable standard for official duty. [Emphasis added.]

To the same effect see Havemeyer v. Superior Court (1890) 84 C. 327, 357 (adopting foreign cases) and Brenner v. Los Angeles (1911) 160 C. 72 and Uhl v. Badaracco, 199 C. 270, 282.

4. Penal Code Section 12050 May Not be Construed as Giving Defendants **Carte Blanch** to Decide That Particular Situations Do or Do Not Constitute Good Cause

While the scope of the doctrine of invalid delegation has greatly narrowed over the years, "nevertheless, delegation of an

uncontrolled discretion is invalid, i.e. where the statute fails to set forth sufficiently definite standards it is void."[5]

So, if "good cause" in Section 12050 were a meaningless phrase under which defendants enjoyed unguided discretion to decide what kinds of situations do and do not justify licensure, Section 12050 would be unconstitutional. But, Section 12050 does not delegate defendants any such thing, nor may it be construed to do so.[6] Rather than assuming the Legislature intended to bestow such carte blanche authority on defendants the phrase "good cause" must be given its common sense and self-evident meaning in context.[7]

While its **outer** limits may be unclear, common sense tells us what "good cause" to carry a concealed firearm in many situations. Those situations include all those specified in paragraph "F" of the Judgment as "occupational good cause."

By the same token, Penal Code Section 12050 does not permit

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[5]7 Witkin Summary of California Law (9th Ed.) 185 citations omitted, see generally Hittle v. Santa Barbara County Retirement Employee's Assn. (1985) 39 C.3d 374 separation of powers doctrine precludes delegating local agency discretionary functions in "the absence of [statutory] standards to guide its decision-making; People v. Wright (1982) 30 C.3d 705, 712 "an administrative agency" may not be granted "unrestricted authority to make fundamental policy decisions."

[6] It is "well established" that, where multiple constructions are possible, courts must "'construe the statute in a manner which avoids any doubt concerning its validity.'" Calfarm Ins. Co. v. Deukmejian (1989) 48 C.3d 805, 827 quoting prior cases; emphasis in original. "We must presume the Legislature did not intend to enact a statute of doubtful validity." People v. Simon (1995) 9 C.4th 493, 522.

[7] "'"Statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers . . ."'" Anaheim Union Water Co. v. Franchise Tax Bd. (1972) 26 C.A.3d 95, 105 (citations omitted)

defendants to deny licenses to applicants who fall within situations that clearly constitute "good cause" on the meaningless ground that defendants define such situations in some undefined different way.

5. The Meaning of "Good Cause" May be Determined by Reference to Other Statutes Indicating What the Legislature Meant by that Phrase

Penal Code Section 12050 provides an exception to, or exemption from, the general prohibitions against carrying loaded, concealed firearms (§12025 and 12031). E.g. Penal Code Sections 12025.5, 12026, 12026.1, 12026.2, 12027 provide numerous exceptions from the general prohibitions against carrying loaded concealed firearms, thereby indicating numerous categories the Legislature sees as presenting good cause for carrying a firearm. Plaintiffs fall within those exceptions or exemptions and so do the categories recognized in paragraph "F" of the Judgment in this case.

Where the terms and standards to be used by administrators under a delegation of legislative power are unclear, reference should be had to related statutory provisions in order to define what the legislature intended, see e.g. People v. Wright (1982) 30 C. 3d 705, 713 and People v. Shipp (1963) 59 C.2d 845, 852-3. As a general proposition statutory "'words must be construed in context and provisions relating to the same subject matter must be harmonized to the extent possible. [citation.]'" In Re Walters (1995) 39 C.A. 4th 1546, 1558 quoting Lungren v. Deukmejian (1988) 45 C.3d 727, 735.

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6. Chief Parks Cannot Simply Ignore the Stipulated Judgment in the Instant Case

It is apparent that Chief Parks does not like the Stipulated Judgment in this action, and simply intends to ignore it. He had an opportunity to oppose and object to the Amended Judgment that included his name. He chose not to do so.

If Chief Parks does not wish to obey the current Judgment, he must take some affirmative action to modify it; i.e., he cannot simply ignore it with impunity as he has done to date.

The United States Supreme Court in Rufo v. Inmates of the Suffolk County Jail, et al. (1992) 502 U.S. 367 (Appendix "A" filed concurrently herewith), a county sheriff filed a motion to modify a consent decree requiring construction of a new jail. The Supreme Court held that the "grievous wrong" standard does not apply to request to modify consent decree stemming from institutional reform litigation; (2) Party seeking modification of consent decree must establish that significant change in facts or law warrants revision of decree and that proposed modification is suitably tailored to change in circumstance; (3) Remand was required to determine whether changed circumstances warranted modification of decree. The Supreme Court stated, at page 385, "if it is clear that a party anticipated changing conditions that would make performance of the decree more onerous but nevertheless agreed to the decree, that party would have to satisfy a heavy burden to convince a court that it agreed to the decree in good faith, made a reasonable effort to comply with the decree, and should be relieved of the undertaking . . ." Chief Parks chose to do nothing but ignore the Stipulated Judgment (Consent Decree) and

made no effort whatsoever to modify it. Plaintiffs argue that he could not possibly meet the burden as enunciated by the United States Supreme Court in Rufo, supra.

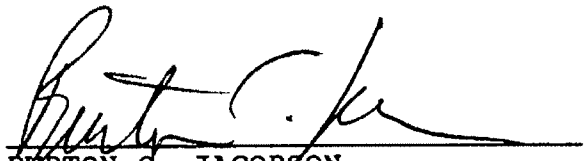
7. Conclusion

Based upon all of the foregoing, plaintiffs/applicants respectfully submit that this Court should enforce the Judgment and order the renewal of their concealed carry permits.

Dated: October 22, 1998

Respectfully submitted,

BURTON C. JACOBSON and
WILLIAM ARTHUR CRAWFORD



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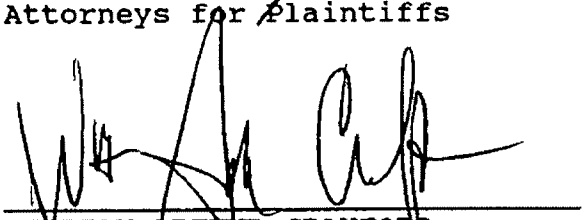

By: _____
WILLIAM ARTHUR CRAWFORD
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(PROOF OF SERVICE BY MAIL--CCP 1013a, 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, JENNIFER HANSEN, declare:

I am over the age of 18 years, employed in the county of Los Angeles, and am not a party to the within action; my business address is 424 South Beverly Drive, Beverly Hills, California 90212.

On October 22, 1998, I served the foregoing document described as PLAINTIFFS' BRIEF PURSUANT TO COURT'S REQUEST OF SEPTEMBER 25, 1998 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States mail at Beverly Hills, California 90212, addressed as follows:

James K. Hahn, City Attorney
Frederick N. Merkin, Senior Assistant City Attorney
Byron Boeckman, Assistant City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 22, 1998, at Beverly Hills, California.

JENNIFER HANSEN