

SENIOR COUNSEL:  
C. D. MICHEL

SPECIAL COUNSEL:  
JOSHUA R. DALE  
W. LEE SMITH

ASSOCIATE COUNSEL:  
SEAN A. BRADY  
SCOTT M. FRANKLIN  
HILLARY J. GREEN  
THOMAS E. MACIEJEWSKI  
CLINT B. MONFORT  
JOSEPH A. SILVOSO, III  
TAMARA M. RIDER  
LOS ANGELES, CA



OF COUNSEL:  
DON B. KATES  
SAN FRANCISCO, CA

RUTH P. HARING  
LOS ANGELES, CA

GLENN S. MCROBERTS  
SAN DIEGO, CA

AFFILIATE COUNSEL:  
JOHN F. MACHTINGER  
JEFFREY M. COHON  
LOS ANGELES, CA

DAVID T. HARDY  
TUCSON, AZ

---

## *Summary of Some Significant CCW Litigation Against the City of Los Angeles*

---

\*\*\*\*\*NOT A PRIVILEGED DOCUMENT\*\*\*\*\*

---

### **I. INTRODUCTION**

The City of Los Angeles has had multiple lawsuits filed against it due to its politicized decision making in denying licenses to carry concealed weapons (“CCW”).<sup>1</sup> Even after a judge ordered the City of Los Angeles and its agents to follow certain guidelines and procedures when processing applications and issuing such licenses, the City of LA has been reticent to comply with these guidelines and procedures.

This memorandum outlines the history behind the City of LA’s application of the Penal Code sections regarding issuance of CCW licenses, and the litigation which required the City of LA and the City of San Fernando to adopt less arbitrary processes for issuing CCW permits.

### **II. BACKGROUND**

---

<sup>1</sup> See, e.g., *Assenza, et al. v. City of Los Angeles, et al.*, No. BC 115813; *Lake, et al. v. City of Los Angeles, et al.*, No. PC008329; *John Bernard Kihm, et al v. City of Los Angeles, et al.*, No. BC106210; *Lucy Faerman Kihm, et al v. City of Los Angeles, et al.*, No. BS 039321; and *John Bernard Kihm, III, et al. v. City of Los Angeles, et al.*, No. BS150131. It should be noted that these cases, except *Assenza, et al. v. City of Los Angeles, et al.*, were deemed related on May 10, 1999, because they all evolved from the same set of facts and had similar issues. According to Burton Jacobson, however, only the *Assenza* case remains active.

---

Michel & Associates, P.C., Attorneys, 180 E. Ocean Blvd., # 200 • Long Beach, CA 90802 • (562) 216-4444 • [www.michellawyers.com](http://www.michellawyers.com) • [www.calgunlaws.com](http://www.calgunlaws.com)

**Disclaimer:** These materials have been prepared for general informational purposes only. The information presented is not legal advice, should not be acted on as such, may not be current, and is subject to change without notice. For legal advice consult an attorney.

Permission to reprint this document in its entirety and without modification is granted.  
Copyright © 2011 MICHEL & ASSOCIATES, P.C. All Rights Reserved

Penal Code section 12050 governs the ability to obtain a carry concealed weapons license. A portion of subsection (a) of Penal Code Section 12050 states the following:

(a)(1)(B) 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 and has completed a course of training as described in subparagraph (E), *may* 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.

(ii) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

Penal Code, § 12050, subd. (a)(1)(B) (emphasis added).

Thus, the Chief of the police department of a city or city and county has *discretion* to issue licenses to carry concealed firearm applicants. The applicant is required show “good moral character,” the existence of “good cause,” completion of a firearm safety and storage training course, and residence *or* a showing of a substantial period of time in the applicant’s principal place of employment located within the county or a city within the county where the applicant applies.<sup>2</sup>

Prior to 1992, even where an individual had satisfied all of these requirements, the City of Los Angeles, as well as its affiliated agents, denied license requests in contravention of Section 12050.

For example, the City of LA issued a statement, entitled “Board Policy Concerning Licenses to Carry Concealed Weapons” in or around 1974, which states in part:

---

<sup>2</sup> Penal Code, § 12050, subd. (a)(1)(D).

By operation of California law, Penal Code Section 12050, the Board of Police Commissioners has discretionary authority to issue a license to carry a concealed weapon....However, experience has revealed that concealed firearms carried for protection not only provide a false sense of security, but further that the licensee is often a victim of his own weapon or the subject of a civil or criminal case stemming from an improper use of the weapon.[¶]For these reasons, considering the dangers to society resulting from possession and use of concealed weapons, it is the policy of this Board that ‘good cause’ for the issuance of any concealed weapons licenses would exist only in the most extreme and aggravated circumstances.<sup>3</sup>

The Police Department of the City of San Fernando also issued a statement with almost identical language that was in effect up until at least 1992.<sup>4</sup>

The practical effect of these policies, in addition to the circumstances surrounding local politics, was that virtually every individual who applied to obtain a carry concealed weapon license was denied. Additionally, most, if not all applicants failed to receive an explanation as to why they were rejected. This arbitrary practice of denial without a legitimate basis, despite meeting all of the required requisites to obtain a carry concealed license, was finally brought to the attention of the court in 1992.

### III. TIMELINE OF LITIGATION

#### A. 1992: *Lake v. City of San Fernando and City of Los Angeles* Filed

On June 30, 1992, Willie Williams became the Los Angeles Police Department

---

<sup>3</sup> Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer’s Suit and Civil Rights Action) at Exhibit D, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Sept. 24, 1992).

<sup>4</sup> Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer’s Suit and Civil Rights Action) at Exhibit E, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Sept. 24, 1992).

(“LAPD”) Chief of Police.<sup>5</sup>

On September 24, 1992, Peter A. Lake, ten other individual plaintiffs, and two organizational plaintiffs (Congress of Racial Equality and the Second Amendment Foundation) filed a Complaint entitled, “Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer’s Suit and Civil Rights Action),”<sup>6</sup> in the North Valley District of the Los Angeles Superior Court against twelve named defendants, City of San Fernando, City of San Fernando Police Department, Chief Dominick J. Rivetti, City of LA, LAPD, Chief Willie Williams, Stanley K. Sheinbaum, Jesse A. Brewer, Anthony De Los Reyes, Ann Reiss Lane, Michael R. Yamaki, and Commander Frank E. Piersol. The suit was sponsored by the Second Amendment Foundation and challenged the non-issuance of Plaintiffs’ CCW licenses.<sup>7</sup> The Petition sought clarity on and correction of defendants’ procedures, rules, and practices regarding the issuance of CCW licenses pursuant to Penal Code section 12050.

---

<sup>5</sup> Chief of the Los Angeles Police Department *available at* [http://www.lapdonline.org/chiefs\\_of\\_the\\_los\\_angeles\\_police\\_department](http://www.lapdonline.org/chiefs_of_the_los_angeles_police_department) (last visited Nov. 30, 2010).

<sup>6</sup> Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer’s Suit and Civil Rights Action), *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Sept. 24, 1992).

<sup>7</sup> In some instances, the police department had a blanket policy against issuing licenses to any member of the public. See, e.g., letter from Captain E.B. Sansing to James Beck, “In reply to your letter requesting an application for a license to carry a concealed weapon, this Department does not issue such licenses as a matter of policy. This policy was established many years ago and experience has taught us that it is in the best interest of the citizens of this community.” (Aug. 4, 1967) *in* Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer’s Suit and Civil Rights Action) at Exhibit B, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Sept. 24, 1992); *see also* letter from Acting Commanding Officer and Lieutenant Jack L. Briggs to James Beck, stating “In response to your letter of October 25, 1973, please be advised that it is the policy of the Los Angeles Police Department not to issue permits to carry concealable weapons.” (Nov. 9, 1973) *in* Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer’s Suit and Civil Rights Action) at Exhibit C, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Sept. 24, 1992).

The 77 page Petition asserted the following 16 causes of action: (1) improper policy adoption, (2) improper limitation of licensure, (3) unconstitutional discrimination as to retired officer's special privileges for obtaining a carry concealed permit, (4) improper standards for "good cause," (5) violation of the constitutional right of personal security, (6) unconstitutional discrimination as to the failure to provide a CCW permit to individuals who were unable to identify their enemies who threaten them, (7) violation of the First Amendment, (8) improper and ambiguous standard, (9) unconstitutional infringement of the right to work, (10) improper insurance standard, (11) improper residency limitation of licensure, (12) unreasonable delay, (13) unconstitutional discrimination as to the requirement of employing a bodyguard, or the equivalent thereof, (14) violation of the Brown Act (regarding the failure of the City of San Fernando to respond to a public records request), (15) violation of the Brown Act (regarding the failure of the City of LA to respond to a public records request), and (16) Second Amendment challenges.<sup>8</sup>

The lead attorney for plaintiffs in *Lake* was Don B. Kates., Jr.<sup>9</sup>

Highly complex settlement negotiations began to take place following the initiation of the lawsuit, but it took numerous agreements and a few years before a stipulation was reached among the parties.

#### **B. 1994: *Assenza v. City of Los Angeles* Filed**

On November 4, 1994, two years after the complaint in *Lake et al. v. City of San Fernando, et al.* was filed, and while the *Lake* settlement negotiations were still taking place, a second Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief and Civil Rights Action alleging similar causes of action against the City of Los Angeles and its affiliates

---

<sup>8</sup> Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief (Taxpayer's Suit and Civil Rights Action), *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Sept. 24, 1992).

<sup>9</sup> Additional attorneys for the plaintiffs/petitioners were Mark Benenson, Manuel Klausner, Robert Carter, Stephen Herzberg, and Daniel Polsby.

was filed.<sup>10</sup> It was titled *Assenza, et al. v. City of Los Angeles, et al.*, Case No. BC115813.

Anthony Mario Assenza and twenty-nine other plaintiffs sued the City of LA and its affiliates for similar causes of action as the *Lake* case. Burton C. Jacobson and William Arthur Crawford were attorneys for the plaintiffs. They added Kates and David A. Yochelson as additional attorneys for plaintiffs. Assistant LA City Attorney Byron Boeckman, who had been defending the *Lake* matter, also represented the defendants in the *Assenza* matter.

The 57-page *Assenza* Petition asserted 14 causes of action: 1) improper policy adoption, 2) improper limitation of licensure, 3) unconstitutional discrimination as to the special treatment of retired law enforcement officers and the issuance of CCW licenses, 4) improper standards for “good cause”, 5) violation of the constitutional right of personal security, 6) unconstitutional discrimination as to people who are not able to identify who their attackers are when compared to those who can, 7) violation of the First Amendment, 8) improper and ambiguous standard, 9) unconstitutional infringement on the right to work, 10) improper insurance standard, 11) improper residency limitation of licensure, 12) unreasonable delay, 13) unconstitutional discrimination as to the requirement of “utilization of standard commercial security practices”, and 14) Second Amendment challenges.

## **C. 1995: *Lake* and *Assenza* Judgments**

### **1. *Lake* Stipulation for Entry of Judgment**

On March 14, 1995, almost three years after the *Lake* Petition and Complaint was filed, a Stipulation for Entry of Judgment was filed. It was signed by Boeckman on his behalf and on behalf of then-LA City Attorney James K. Hahn, and Senior Assistant City Attorney Frederick N. Merkin. Kates signed as attorney for the plaintiffs.

The Stipulation summarized the nature of the Petition and the duration of settlement negotiations. It also indicated that only the “Los Angeles Defendants”, i.e., City of LA, LAPD, Chief Williams, Captain G.E. Ornelas, and various members of the LAPD’s Board of Police Commissioners, were affected by the stipulation.

---

<sup>10</sup> Petition for Mandamus, Civil Complaint for Equitable and Declaratory Relief and Civil Rights Action, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Nov. 4, 1994).

The Los Angeles Defendants admitted that “certain rules, policies, practices, and procedures, and certain features of the Board Policy Statement cited in the complaint, were not in compliance with Section 12050.”<sup>11</sup> As such, those rules, policies, and were altered and the Policy Statement was repealed, in order to be replaced by later sections of the Stipulated Judgment. In addition, the Los Angeles Defendants were permitted “to add further specifications to their rules, regulations, and guidelines, so long as such amendments [were] not inconsistent with the provisions of this judgment.”<sup>12</sup>

Under the terms of the Stipulation, defendants were required to pay Second Amendment Foundation \$50,000 in attorneys fees in the *Lake* case,<sup>13</sup> and the Plaintiffs who were unable to obtain licenses during the negotiation period, including additional plaintiffs who were added after the Petition was filed, were to be granted licenses within 45 days of their application being presented to the Los Angeles City Defendants, or from the date of the Stipulation for Entry of Judgment, whichever was sooner.<sup>14</sup>

Additionally, and perhaps most significantly, the Stipulation provided that “good cause” would be found to exist to issue a CCW license to any applicant where there was “convincing evidence of clear and present danger to life or of great bodily harm 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 significantly mitigated by the applicant’s carrying of a concealed firearm.”<sup>15</sup>

To ensure that review of “good cause” was properly implemented, the criteria for licensure, the procedures, and the establishment of a advisory review panel were identified.

---

<sup>11</sup> Stipulation for Entry of Judgment at 2, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Mar. 14, 1995).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3.

The court retained jurisdiction and was permitted to make further orders as necessary.<sup>16</sup>

**a. Criteria for Licensure**

The applicant was required to furnish proof that he or she had successfully completed a firearms training course, which course included training for “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.”<sup>17</sup>

According to the language in the stipulation, good cause would exist if:

- (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 to 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 established that the applicant is the on-going victim of a threat of physical violence or otherwise meets the criteria set forth in Penal Code Section 12025.5;
- (d) The applicant established that circumstances exist requiring him or her to carry or transport in public significant amounts of valuable property which it is impractical or impractical to entrust to the protection of the armored car services of equivalent services for safe transportation of valuables;
- (e) The applicant establishes that he or she is subject to a particular and unusual

---

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 4.

danger of physical attack and that no reasonable means are available to abate that threat.<sup>18</sup>

The issuing department could also consider favorable, as well as unfavorable factors, when deciding whether or not to grant an application for a CCW license. Some favorable factors are: (a) a record of responsible safe handling of firearms, (b) a commitment to safe and responsible handling of firearms, (c) a record of good citizenship, (d) a trustworthy applicant, (e) and consideration as to whether the applicant is hindered in some way to properly retreat from an attacker.<sup>19</sup>

Some unfavorable factors to consider are: (a) a long-term history of instability or substance abuse, (b) a history of fault and injuries due to mishandling of firearms or other instrumentalities, (c) a revoked, suspended, or denied concealed weapons permit, (d) a revoked, suspended, or denied drivers license, (e) a long-term record of irresponsible or dangerous behavior with respect to automobile convictions, (f) and a history indicating that the applicant is not of good moral character, trustworthy, or responsible to carry a CCW license.<sup>20</sup>

#### **b. Procedural Matters**

The stipulated judgment also outlined the procedure to apply for a CCW license. For example, if an applicant attempts to apply for a CCW license, the applicant is required to receive a copy of these guidelines along with the application form.

The applicant is also required to submit evidence along with his or her application, relating to his or her medical and psychological fitness, including a certification of the applicant's eyesight (to meet the standards required for the issuance of a California driver's license). The applicant is further required to submit at least two statements from other persons attesting that the applicant is of "good character." Lastly, a showing of "good cause" must be submitted. Good cause will be met if a declaration is submitted and signed under the penalty of

---

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 5-6.

perjury.<sup>21</sup>

Within 50 days after the applicant submits his or her application with its required attachments, subject to some exceptions, the applicant will either be approved or rejected. If rejected, the applicant is required to receive a specific written response as to why he or she was denied a CCW license. Additionally, the applicant is required to receive notification that he or she has the right to seek review from an advisory panel.<sup>22</sup>

If approved, applicants are permitted to specify up to three firearms to be listed on their license. Nevertheless, the issuing department is still permitted to attach conditions on the license, such as the weapon and ammunition conditions, which must be noted on the face of the license.<sup>23</sup>

**c. Advisory Review Panel**

The aforementioned Advisory Panel, headed by Kates, was also established. Kates was given authority to appoint an uneven number of panel of advisors to review contested applications. Kates was also permitted to “add or substitute members of the panel as he deem[ed] necessary to carry out its functions, e.g., in case of the resignation, death or disability of the panel, so long as the total number of panel members remains uneven[]”.<sup>24</sup>

To ensure applicants were aware of the Advisory Panel, LAPD was required to notify its applicants of its grant or denial of the application, as well as provide them with a statement that a review panel exists and how to request review of their application if they were rejected. If requested by the applicant, LAPD was required to provide the material documents to the Advisory Panel, with some limited exceptions, and be available to respond to the Advisory Panel’s inquiries. After the Advisory Panel reviewed the applicant’s file, it was permitted to

---

<sup>21</sup> *Id.* at 6-7.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 8.

recommend, in writing, a different decision for LAPD to consider.<sup>25</sup> However, the Advisory Panel's recommendation was not binding and LAPD was not required to follow the Advisory Panel's recommendation.<sup>26</sup>

## **2. Lake Judgment of Declaratory Relief (Pursuant to the Stipulation)**

On the same day, March 14, 1995, a Judgment for Declaratory Relief (Pursuant to Stipulation) was entered and signed by the Hon. Jerold A. Krieger. In this Judgment for Declaratory Relief, Kates appointed Peter Alan Kasler and David Yochelson as the advisory panel's first two members.<sup>27</sup>

## **3. Assenza Judgment**

Like the *Lake* case, the *Assenza* parties also entered Stipulation for Entry of Judgment. It only took the *Assenza* parties four months to enter into a stipulation.

On March 21, 1995, seven days after the *Lake* Judgment of Declaratory Relief (Pursuant to Stipulation) was entered, the *Assenza* parties filed a Stipulation for Entry of Judgment.

On March 30, 1995, the *Assenza* parties filed their own Judgment of Declaratory Relief (Pursuant to Stipulation). The Judgment was virtually identical to the Stipulated Judgment entered into in the *Lake* case, however, the named plaintiffs were different to reflect the names of the plaintiffs in *Assenza*. Also, the Advisory Review Panel section did not list the first appointed members of the panel, since they were already appointed in the *Lake* Stipulation for Entry of Judgment. Unlike *Lake*, instead of the defendants paying the plaintiff attorney fees in the amount of \$50,000 (as was permitted in *Lake*), each *Assenza* party was required to bear its own costs and

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Judgment of Declaratory Relief (Pursuant to the Stipulation) at 12, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Mar. 14, 1995).

fees, including attorney's fees.<sup>28</sup>

On March 30, 1995 the Honorable Dzintra Janavs signed the Judgment of Declaratory Relief (Pursuant to Stipulation).

#### **4. Post-Judgment Ramifications**

On April 20, 1995, Kates wrote a letter to the Deputy City Attorney Boeckman and discussed the City's compliance with the *Lake* judgment and his additional appointees for the Advisory Panel. With respect to compliance issues, Kates relayed that the Second Amendment Foundation had failed to receive the attorney fee check in the amount of \$50,000 and inquired into the status of the plaintiffs' licenses. Additionally, Kates sought information as to who would be the appointed person who could provide "definitive status information on licenses."<sup>29</sup> With respect to the additional appointees, Kates appointed William Crawford, Burton Jacobson, and O. Ray Watkins to serve on the Advisory Panel with Kasler and Yochelson.

On April 27, 1995, the Advisory Panel signed its Proposed Guidelines and Procedures. Within its statement, it said, "[t]he Citizens Advisory Review Board on Concealed Weapon Permits will convene once a month, more frequently if necessary, to review, interview and make recommendations to the L.A.P.D. and City Attorney regarding applicants for concealed weapon permits (C.C.W.S.) that have been denied by the L.A.P.D."<sup>30</sup> The memorandum also divulged the details of the Advisory Panel's purpose, its procedures when reviewing rejected applications, and its process of making a recommendation to the City Attorney. It also established the Board's regular members, which were:

1. Chairman - David. A. Yochelson
2. William Crawford
3. Burton Jacobson
4. Peter Kasler

---

<sup>28</sup> Judgment for Declaratory Relief (Pursuant to Stipulation) at 12, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Mar. 30, 1995).

<sup>29</sup> Letter from Don Kates to Deputy City Attorney Byron Boeckman at 1 (Apr. 20, 1995).

<sup>30</sup> Citizens Advisory Review Board on Concealed Weapon Permits at 1 (Apr. 27, 1995).

5. O. Ray Watkins<sup>31</sup>

Jacobson reports that despite the Panel being appointed and convening to review LAPD license rejections, the City of LA has only followed the Advisory Panel's recommendation approximately 70 percent of the time.

**D. 1996: Post-Judgment Agreements and Dismissal of City of San Fernando from *Lake* Case**

On January 5, 1996, the Citizens Advisory Panel on Concealed Weapons Permits wrote the Office of the City Attorney a memorialization of the agreement between the Advisory Panel and the City Attorney's Office at a recent meeting. The substance of that agreement stated that all existing permits would automatically be renewed for an additional year, and after the second year the permit holder would be required to establish "good cause" for the further renewal of a carry concealed license.<sup>32</sup> As for deadlines, the Panel and the City Attorney agreed that no more than 90 days would lapse between the time that: (1) an applicant was denied a license, (2) the denied applicant applied for Panel review, (3) a Panel made a recommendation and delivered it to the LAPD, and (4) the City and/or LAPD would take action.<sup>33</sup> Additionally, approved applicants were to obtain their licenses within 30 days.

On January 5, 1996, Chairman Yochelson signed the document on behalf of the Panel, and the Assistant City Attorney signed it on behalf of the City of LA and LAPD on February 8,

---

<sup>31</sup> According to Jacobson as of November 2010, only David Yochelson and Burton Jacobson remain to be the original members on the Advisory Panel as the other original members have either moved or passed away. Other current members include Jennifer Knapp, Keith Whaley, Vic Rappatort, and Franklin Adler. Jacobson is in charge of selecting the panel members. Furthermore, instead of meeting at the Parker Center Office, the Advisory Panel's meetings were moved to City Hall, and now typically convene in the conference room at Jacobson's office.

<sup>32</sup> Citizens Advisory Panel on Concealed Weapons Permits at 1 (Jan. 5, 1996).

<sup>33</sup> *Id.* at 1-2.

1996.<sup>34</sup>

On October 4, 1996, Chief Williams signed Special Order No. 13, which discussed and activated the application procedure for a license to carry a concealed firearm and Form 12.49.1 (the application form). Once the procedure and form was activated, the Commanding Officers were required to ensure that an adequate supply of Form 12.49.1's were maintained at each Community Police Station and provided to the public upon request.<sup>35</sup> Additionally, the Gun Unit at the Detective Headquarters Division was required to investigate all applications and submit them to the Office of the Chief of Police for review.<sup>36</sup>

On November 11, 1996, over a year after the *Lake* Judgment of Declaratory Relief was entered, the Los Angeles Superior Court mailed a Notice of its Intention to Dismiss on the Court's Own Motion to all of the *Lake* parties.

On December 13, 1996, before Judge William A. MacLaughlin, the Court issued an Order to Show Cause in Regards to Dismissal in the *Lake* case. With attorney Chuck Michel present, specially appearing on behalf of certain plaintiffs, the Court ordered, "[p]er request of plaintiff, this matter dismissed without prejudice per Section 581(b)(1) Code of Civil Procedure as to defendants City of San Fernando, City of San Fernando Police Department and Chief Dominick J. Rivetti only."<sup>37</sup>

After the dismissal without prejudice, actions in the *Lake* case were dormant for the next two years.

#### **E. 1997: Ongoing Violations of *Assenza* Stipulated Judgment**

---

<sup>34</sup> *Id.*

<sup>35</sup> Special Order No. 13 at 1 (Oct. 4, 1996).

<sup>36</sup> Special Order No. 13 at 1-2 (Oct. 4, 1996).

<sup>37</sup> Minute Entry, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Dec. 13, 1996).

Issues in the *Assenza* case continued to develop, however. On January 17, 1997, a letter from the Office of the City Attorney to Jacobson revealed that after review of the Panel's recommendations as to 30 individuals whose applications for a CCW license were rejected, "the Chief of Police has determined not to reconsider the denial of the conceal weapons permits."<sup>38</sup> The letter did not provide the basis for the continued rejection of these applicants despite the Panel's recommendation.

On February 11, 1997, Assistant City Attorney Boeckman wrote a letter to the Officer in Charge at the Gun Detail Detective Headquarters Division in Los Angeles, California. The letter provided the procedures necessary to be in compliance with the *Lake v. City of San Fernando* Stipulated Judgment. Specifically, plaintiffs who sought to re-apply for a CCW license had to fill out an application and have it reviewed by the Chief of Police. Non-plaintiffs seeking first time renewal of their permits were required to execute an affidavit showing their good cause to carry a concealed weapon. Additionally, non-plaintiffs seeking a second or subsequent renewal were required to undertake the same procedures as the plaintiffs.<sup>39</sup>

On May 17, 1997, Chief Williams left his position as LAPD Chief of Police. The LAPD Commissioners appointed Assistant Chief Bayan Lewis as the interim Chief of Police on May 18, 1997.<sup>40</sup>

On August 12, 1997, Bernard Parks became the Chief of LAPD.<sup>41</sup> On or around this time, defendant Gabriel Ornelas was no longer Captain of the Gun Detail of the Detective Headquarters Division of the Los Angeles Police Department. With these new facts, the *Assenza*

---

<sup>38</sup> Letter from Office of City Attorney of Los Angeles, California to Burton Jacobson (Jan. 17, 1997).

<sup>39</sup> Letter from Assistant City Attorney Byron Boeckman to Gun Detail Officer in Charge (Feb. 11, 1997).

<sup>40</sup> The LAPD: Chief Williams *available at* [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/1116](http://www.lapdonline.org/search_results/content_basic_view/1116) (last visited Nov. 30, 2010).

<sup>41</sup> Chiefs of the Los Angeles Police Department *available at* [http://www.lapdonline.org/chiefs\\_of\\_the\\_los\\_angeles\\_police\\_department](http://www.lapdonline.org/chiefs_of_the_los_angeles_police_department) (last visited Nov. 30, 2010).

plaintiffs moved to amend the judgment of declaratory relief to reflect these changes.

On September 23, 1997, before moving to amend the judgment, Peter Feldman, a rejected CCW applicant, wrote Assistant City Attorney Boeckman regarding the status of his application after it was reviewed by the Panel on February 26, 1997. Feldman's letter stated:

Since May 28, 1997 I have spoken to you on 5 different occasions, each time requesting that you notify me in writing of the Panel's determination. I've verified that the address you have for me is correct. You've agreed to notify me in writing. To date, I have received nothing from your office.<sup>42</sup>

On the date this letter was written, over 209 days had passed since the Panel had reviewed Mr. Feldman's application. Despite his numerous requests, the Office of the City Attorney failed to provide Feldman a status update as to his reviewed application.

**F. 1998: First Amended Judgment of Declaratory Relief and Subsequent Contempt Proceedings**

On January 20, 1998, a Notice of Motion to Correct and Modify the Judgment and a Memorandum of Points and Authorities was filed by the attorney for plaintiff/petitioner in *Assenza*. The motion was "for the purpose of correcting typographical and/or clerical errors, and to substitute the present Chief of the Los Angeles Police Department, Bernard Parks, into this action in place of his predecessor, Willie L. Williams, who was the Chief of Police at the time the original judgment was entered."<sup>43</sup>

On February 4, 1998, an Amended Judgment of Declaratory Relief was entered and signed by Judge Janavs in the *Assenza* case. The judgment looked similar to the original Judgment of Declaratory Relief (Pursuant to Stipulation) that was formally entered on March 30,

---

<sup>42</sup> Letter from Peter Feldman to Assistant City Attorney Byron Boeckman (Sept. 23, 1997).

<sup>43</sup> Notice of Motion and Motion to Correct and Modify Stipulated Judgment; Memorandum of Points and Authorities; Declaration of Burton C. Jacobson at 2, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Jan. 20, 1998).

1995. However, the defendants affected (due to the substitution) and some typographical errors had been amended.<sup>44</sup>

On February 19, 1998, plaintiffs served and filed a Notice of Ruling and Notice of Entry of Judgment on the defendants, and attached plaintiffs' Amended Judgment of Declaratory Relief as "Exhibit A."<sup>45</sup>

After the Amended Judgment was entered, plaintiffs felt that the continued denial of CCW licenses (such as Feldman's denial), in contravention of the recommendations of the Panel, further established that the defendants were attempting to violate the judgment and order to which they had agreed.

On April 24, 1998, Chief Parks reviewed and approved the memorandum entitled "Reasons for Denials of CCF Application." The memorandum provided fourteen different reasons and to why a CCW license could be denied.<sup>46</sup>

On May 11, 1998, the *Assenza* plaintiffs filed a Memorandum of Points and Authorities in Support of Order to Show Cause Re Contempt. In addition, plaintiffs also included an Order to Show Cause Re Contempt, a Declaration Re Contempt, Further Declarations Re Contempt, and Exhibits in Support of Order to Show Cause Re Contempt.

On May 13, 1998, attorney for the plaintiffs, Jacobson, appeared in an *ex parte* proceeding<sup>47</sup> before the Court on plaintiffs' Ex Parte Application of Plaintiffs for an Order to Show Cause Re Contempt. After reviewing plaintiffs' application, the Court was concerned about issuing an order regarding contempt when it felt that the declarations submitted were

---

<sup>44</sup> Amended Judgment for Declaratory Relief, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Feb. 4, 1998).

<sup>45</sup> Notice of Ruling; Notice of Entry of Judgment, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Feb. 19, 1998).

<sup>46</sup> Reasons for Denials of CCF Application (Apr. 24, 1998).

<sup>47</sup> *Black's Law Dictionary* 1241 (8th ed. 2004 ) (defines an *ex parte* proceeding as "[a] proceeding in which not all parties are present or given the opportunity to be heard").

merely conclusory.<sup>48</sup> The Court stated,

For me to issue an Order to Show Cause Re: Contempt, and particularly to a governmental agency, I do think there have to be facts alleged that would justify that. And I can't tell myself what I'm asking them to show me good cause on, as to how they have violated.<sup>49</sup>

Attorney Jacobson argued that to attach all of the plaintiffs' years' worth of applications, denials, and other documents along with their declarations would have made the filed papers very thick for the Court to read. Nevertheless, the Court wanted to consider all of the factual support, no matter how thick the paperwork, because contempt is a "quasi-criminal kind of thing."<sup>50</sup> The plaintiffs decided to withdraw the entire application altogether in order to amend and re-file another application for contempt. Plaintiffs declared that the new application would provide all of the declarations with sufficient factual support to establish that the defendants were in violation of the court order.<sup>51</sup>

On May 21, 1998, attorney for the *Assenza* plaintiffs filed its new Ex Parte Application Re Order to Show Cause Re Contempt against all defendants. Plaintiffs asserted 24 different counts for holding the defendants in contempt of court. Some of the counts included the defendants' failure to provide copies of the guidelines contained in the Judgment along with the CCW application, their failure to renew licenses of specified individuals before the lapse date, their refusal to amend the CCW license permit of Jacobson, and the defendants' false and misleading guidelines adopted in violation of the Judgment.

Included in the filing were the following documents: Plaintiffs' Memorandum of Points

---

<sup>48</sup> Reporter's Transcript at 4, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (May 13, 1998).

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.* at 11.

<sup>51</sup> *Id.* at 13; *see also* Minute Entry, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (May 13, 1998).

and Authorities in Support of Order to Show Cause Re Contempt, Declaration Re Contempt, an Order to Show Cause Re Contempt, Further Declarations Re Contempt, and Exhibits in Support of Order to Show Cause Re Contempt. The additional declarations and attached denied applications consisted of 404 pages and was at least three inches thick.

On May 21, 1998, the Judge Janavs ordered the defendants to appear on June 26, 1998 and show cause why they should not be “adjudged in contempt of court and punished accordingly for willfully disobeying the Judgment and Orders [] this Court made on February 4, 1998...”<sup>52</sup>

On May 27, 1998, the proof of service of the notice of the hearing on Order to Show Cause Re Contempt was filed .

On June 23, 1998, defendants filed their Memorandum of Points and Authorities in Response to Order to Show Cause Re Contempt. Defendants argued that the judgment was not enforceable by way of a citation for contempt and the denial of certain plaintiffs’ permits were not proper subjects of contempt. Defendants admitted that they had not been providing copies of the guidelines with the application form and would begin to do so.<sup>53</sup> In Assistant City Attorney Boeckman’s declaration, he declared that the “preparation of the guidelines for distribution have been delayed because of economic as well as logistic and other reasons. It was my belief based upon those meetings that the plaintiffs were more concerned with processing applications and that they understood the delay in preparing the distribution. At no time did Plaintiff’s attorney object to this delay, either orally or in writing.”<sup>54</sup>

In plaintiffs’ “Reply to Defendants’ Response to Order to Show Cause Re: Contempt; Memorandum of Points and Authorities in Support Thereof,” plaintiffs stated that “Defendants

---

<sup>52</sup> Order to Show Cause Re: Contempt, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (May 21, 1998).

<sup>53</sup> Defendants Memorandum of Points and Authorities in Response to Order to Show Cause Re: Contempt, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 23, 1998).

<sup>54</sup> Declaration of Bryon R. Boeckman at 3-5, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 23, 1998).

ignore the words “IT IS SO ORDERED” at the end of the judgment[]”<sup>55</sup> and “[t]he defendants, and especially the Chief, must obey the law. No one is above the law and its particularly egregious when the Chief of Police, who is sworn to enforce the law, acts like he is above the law.”<sup>56</sup>

On Friday, June 26, 1998, the Judge Janavs recused herself “pursuant to Code of Civil Procedure section 170.1(a)(6)(A) and (c) in the interests of justice and on the grounds that a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”<sup>57</sup> A declaration of William Crawford filed in another case revealed that Judge Janavs “recuse[d] herself from hearing any matter pertaining to the issuance(s) of CCWs due to the fact that her husband had applied for issuance of a CCW Permit, and had been denied; and such could give rise to the appearance of impropriety.”<sup>58</sup> The case was transferred to the Honorable Alan Buckner.<sup>59</sup>

The same day Judge Janavs recused herself, the matter was reassigned and a hearing took place before Judge Buckner regarding the Order to Show Cause. Attorneys Jacobson, Crawford, and Kates appeared on behalf of the plaintiffs. Boeckman appeared on behalf the defendants. The Court admitted that it “had this case for all of about seven or eight minutes, and [it] simply

---

<sup>55</sup> Reply to Defendants’ Response to Order to Show Cause Re: Contempt; Memorandum of Points and Authorities in Support Thereof at 3, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 24, 1998).

<sup>56</sup> *Id.* at 6.

<sup>57</sup> Minutes Entered, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 26, 1998).

<sup>58</sup> Declaration of William Arthur Crawford at 2, *Aronson v. City of Los Angeles et al.*, No. BC212899 (Jan. 19, 2000).

<sup>59</sup> Minutes Entered, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 26, 1998).

want[ed] to familiarize [itself] with the nature of the matter.”<sup>60</sup>

The Court determined that the main question to be decided is whether “there may be a world of difference between a judgment which takes the form of injunctive or prohibitory relief on the one hand, and a judgment which is merely declaratory of the law on the other.”<sup>61</sup> The Court took a recess from the morning proceedings to consider the main issue and determine whether Kates should be permitted to testify as to the intent of the Stipulated Judgment, in other words, give parol evidence of the intent of the parties in crafting the Judgment. Additionally the Court considered whether a contempt proceeding is the appropriate procedural method for enforcement of a declaratory judgment.<sup>62</sup>

Following a recess, that afternoon the Court indicated that it had a chance to review all of the filed pleadings and determined, “[i]t seems to me, therefore, that the questioned is not so much whether the Court has power in the abstract to apply the sanction of contempt, which is one thing, but the real question is whether the court should. I believe the Court has power to do that.”<sup>63</sup> The defendants argued that the Chief of Police specifically, and the defendants generally, should not be controlled by a contempt proceedings. “The way to control it is by way of either a separate writ of mandate[.]”<sup>64</sup> Defendants further admitted, “[w]e concede that we did not, in fact, comply with our own standards with respect to issuance of the copies of the various provisions of this agreement to all applicants with respect to the issuance of concealed weapons permits. We agree we did not do that.”<sup>65</sup> Defendants asserted that they planned on providing a clearer set of guidelines which incorporates both provisions “E” and “F” from the Stipulated Judgment to each and every applicant, no later than July 15, 1998. The Court continued the

---

<sup>60</sup> Reporter’s Transcript of Proceedings at 3, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 26, 1998).

<sup>61</sup> *Id.* at 6..

<sup>62</sup> *Id.* at 15.

<sup>63</sup> *Id.* at 18.

<sup>64</sup> *Id.* at 29.

<sup>65</sup> *Id.* at 44-45.

matter until July 24, 1998 to determine if the defendants issued a new set of guidelines which were more complete than the set it was currently issuing.<sup>66</sup>

On July 9, 1998, the Court issued a “Briefing Order on 24 July 1998 Hearing on OSC [Order to Show Cause] Re: Contempt,” which discussed the statutory framework of the Amended Judgment of Declaratory Relief and California Penal Code Section 12050. The Court Ordered that the parties address the following questions in a brief, not to exceed ten pages:

1. Given the demonstrated correlation between the “good cause” and “training” provisions of the Judgment [], are CHL [concealed handgun licenses] applicants required by the terms of the Judgment to enroll in and successfully complete the seven-element training course described in [Business and Professions Code Section] 7585, subds. (a)-(g)? If not, what training criteria, if any, are imposed by ¶ (f)(1) (5:6-20) of that agreed Judgment?<sup>67</sup>
2. 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 would constitute a condition precedent (or subsequent) to the licensure?<sup>68</sup>

Following the filing of an opening brief by plaintiffs, defendants filed an opposition. In “Defendants’ Further Memorandum in Opposition to Plaintiffs’ Contempt Motion [and] Declaration of Byron R. Boeckman[,]” defendants claimed there were “three independent reasons why the Court ought not to enter a contempt finding as requested by plaintiffs:

---

<sup>66</sup> *Id.* at 44-47.

<sup>67</sup> Briefing Order on 24 July 1998 Hearing on OSC Re: Contempt at 7, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 9, 1998).

<sup>68</sup> Briefing Order on 24 July 1998 Hearing on OSC Re: Contempt at 8, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 9, 1998).

(1) as previously brief by the city, contempt is not the normal mechanism used to enforce declaratory judgments;

(2) contempt is a drastic and disfavored remedy, see Board of Supervisors v. Superior Court, 33 Cal.App.4th 1724, 1742, 39 Cal.Rptr.2d 906, 916 (1995); and

(3) because the parties never intended for the Court to review individual permit denials, the city believes that the exercise of contempt based on individual license applications is beyond the contemplated scope of the settlement and stipulated judgment.”<sup>69</sup>

In a reply brief, plaintiffs stated, “[Defendants’ Reply Brief] does not address the questions that this Court ordered brief in its Order of July 9, 1998. In fact, the word ‘training’ is not mentioned.”<sup>70</sup> Plaintiffs’ argued that defendants statement that the City has complied with the Stipulated Judgment is strongly contested and defendants circular reasoning would create a “multiplicity of actions of an infinite number.”<sup>71</sup>

Additionally, plaintiffs filed concurrently with their reply brief a request for judicial notice of the Reporter’s Transcript of proceedings from the June 26, 1998 hearing. At the June proceedings, when asked by the Court as to whether every applicant had the requisite training to meet the requirements stated in the Amended Judgment for Declaratory Relief, defendants conceded that all applicants had the requisite training.<sup>72</sup> Thus, plaintiffs argued that the

---

<sup>69</sup> Defendants’ Further Memorandum in Opposition to Plaintiffs’ Contempt Motion [and] Declaration of Byron R. Boeckman at 2, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 20, 1998).

<sup>70</sup> Plaintiffs and/or Applicants’ Closing Brief as Per Court Order of July 9, 1998 at 2, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 23, 1998).

<sup>71</sup> *Id.* at 3-4.

<sup>72</sup> See Plaintiffs and/or Applicants Request for Judicial Notice Pursuant to Evidence Code Section 452(d) and 453 at Exhibit A, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (stating:

defendants admitted that the issue of “training” was not contested.

At the July 24, 1998 further hearing, Bruce Hagerty, Commander of the LAPD and Acting Commanding Officer of Operations Headquarters Bureau took the stand and testified.<sup>73</sup>

On direct examination by City Attorney Boeckman, Hagerty testified that the “Los Angeles or L.A.P.D. Concealed Weapon Permit Policy” was delivered to 18 geographic police stations 2 days before the hearing to ensure that they were included in any application process for a gun permit.<sup>74</sup> The “Policy” was received into evidence as “Court’s Exhibit A.”<sup>75</sup>

On cross examination, attorney Jacobson questioned Hagerty as to the Parker Center Division at 150 Los Angeles Street Headquarters. Hagerty stated that “Parker Center is not a geographic division, although the gun detail works at Parker Center, and it (the “Policy”) was distributed there as well.”<sup>76</sup> Plaintiffs entered into evidence, “Plaintiffs’ Exhibit 1,” which was a document Jacobson picked up that morning from Parker Center. It was a different document than the Policy Hagerty claimed to have been delivered to 18 different geographic police stations 2 days prior. Plaintiff’s Exhibit 1 was a document written on L.A.P.D. Form 12-49.1 Edition 6/96, entitled “Los Angeles Police Department Application to Carry a Concealed Firearm.”<sup>77</sup>

---

THE COURT: THE FIRST NUMBERED PARAGRAPH UNDER THAT  
HEADER IS “TRAINING” AND I’M GOING TO ASSUME THAT EVERY  
APPLICANT HAS THE REQUISITE TRAINING?

MR. JACOBSON: CORRECT, YOUR HONOR.

THE COURT: IS THAT CONTESTED?

MR. BOECKMAN: THAT IS NOT CONTESTED).

<sup>73</sup> Reporter’s Transcript at 23, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 24, 1998).

<sup>74</sup> *Id.* at 24-26.

<sup>75</sup> *Id.* at 26.

<sup>76</sup> *Id.* at 27.

<sup>77</sup> *Id.* at 29.

Jacobson further questioned Hagerty as to whether there was ever a written memorandum in which Hagerty's orders could be documented and confirmed. Hagerty conceded that there was not a written memorandum supporting his orders regarding the distribution of the guidelines.<sup>78</sup>

Thereafter, Robert James Bryant testified on behalf of the plaintiffs.<sup>79</sup> Bryant testified that he went to Parker Center that morning with Jacobson before the hearing. Upon their arrival, Bryant asked the officers at the front desk what was necessary to apply for a carry concealed firearm permit. Personnel at the front desk directed him to follow a blue line on the floor towards the police commission.<sup>80</sup> When the blue line "petered out," Bryant asked the officers at the closest desk for assistance. They said the police commission was down the hall and around the corner. Upon reaching that destination, different officers informed Bryant that he had to go to the third floor to Detective Headquarters to get the form.<sup>81</sup> Jacobson handed Bryant the Policy claimed to be delivered by Hagerty, marked into evidence as "Court's Exhibit A." Bryant testified that he was not given that document.<sup>82</sup> Rather, he was only given an application form. Bryant testified,

And I asked twice and Mr. Jacobson asked as well, if these were the guidelines, and the complete guidelines, everything available to assist us in applying. And we were told emphatically that that was the case. Yes, that was the form, and the only form, and the only instructions available.<sup>83</sup>

Thereafter the judge discussed a proposed order of declarations he would like to see filed

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 31.

<sup>80</sup> *Id.* at 34-35.

<sup>81</sup> *Id.* at 35.

<sup>82</sup> *Id.* at 35-36.

<sup>83</sup> *Id.* at 38.

by defendants.<sup>84</sup> The parties were unable to agree to a deadline date on the proposed order regarding compliance with the LAPD's Policy Statement on CCW permits application, so the matter was continued to the following week.

On Monday, July 27, 1998, the matter continued, and the Court addressed whether the Chief had abused his discretion in denying the application of each of the renewal applicants, even though defendants conceded that they all had the requisite training and were of good moral character.<sup>85</sup> The Court also considered whether an expert or a court-appointed expert should be utilized to provide an opinion on whether the applicants met all of the requirements and whether defendants fulfilled their obligations and did not abuse their discretion in denying CCW permits.

A briefing schedule on these issues was ordered, a further hearing was set, and on July 29, 1998, Judge Buckner ordered the defendants to undertake additional briefing which required them to:

1. File and serve a uniform declaration, executed by each sworn Los Angeles Police Department personnel identified by job title [listed] below, no later than August 28, 1998, attesting to receipt of a two page document entitled "Los Angeles Police Department Concealed Weapon Permit Policy," issued around July 22, 1998;
2. Declare his or her ready familiarity and understanding of the terms of the Policy;
3. Acknowledge that his or her oath of office requires obedience to such Policy;
4. Verify the present and future availability of each applicant for a carry concealed firearms license a copy of both the Policy and Los Angeles Police Department Form 12.49.1, Edition 6/96 application for concealed weapons license;

---

<sup>84</sup> *Id.* at 53-55.

<sup>85</sup> Reporter's Transcript at 4-5, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 27, 1998).

5. Verify that sworn or civilian personnel at each Departments 18 regional stations or divisions has been specifically instructed as to the specific desk or office in accordance with the July 22, 1998 verbal order of Commander Hagerty. Execute Each declaration must be executed by each and every sworn Commanding Officer of each 18 Regional Los Angeles Police Department Stations or Divisions.<sup>86</sup>

On August 14, 1998, Judge Buckner sent a letter to Chief Deputy United States Marshal Tony Perez. Judge Buckner enclosed materials for the Chief Deputy's consideration with respect to being a potential court-appointed expert. The following documents were enclosed:

1. Amended Judgment of Declaratory Relief, filed February 4, 1998;
2. Declarations and supporting exhibits of (1) Burton C. Jacobson, (2) William Arthur Crawford, (3) David A. Yochelson, (4) Daryl F. Asplund, and (5) John R. Martin;
3. A copy of a Los Angeles Police Department letter which rejects the declarants renewal applications for a carry concealed weapons license;
4. Stipulation for Entry of Judgment filed on or around February 1, 1995 which sets forth the Concealed Weapon Permit Policy of the Los Angeles Police Department;
5. Reporter's Transcript of June 26, 1998 Proceedings;
6. Reporter's Transcript of July 24, 1998 Proceedings;
7. LAPD Concealed Weapon Permit Policy;

---

<sup>86</sup> Order at 1-3, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (July 29, 1998).

8. Reporter's Transcript of July 27, 1998 Proceedings.<sup>87</sup>

Despite the Court's letter, Jacobson recalls, however, that Chief Deputy Marshal Perez was never utilized as a court-appointed expert due to the later developments in the case, as discussed below.

Plaintiffs' opening brief for the further hearing addressed plaintiffs' concerns on the precedential effect that any ruling may have for the community at large. Plaintiffs argued that the appropriate standard of review "is that of independent judgment on the basis of a limited trial 'de novo' because a fundamental right [from the California Constitution] is involved."<sup>88</sup> Plaintiffs additionally argued that "[i]n the case at bar, the only evidence before the court is the uncontradicted and uncontroverted and admittedly credible evidence presented by plaintiffs in their renewal applications and declarations in support thereof[,] and the failure of the defendants to provide any evidence to controvert the facts."<sup>89</sup>

Two days after the filing of plaintiffs' brief, the Court issued a "Briefing Order Re: 25 September 1998 Hearing." The Court set forth the following issues to be briefed:

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

Additionally, the parties were required to discuss the abuse of discretion standard, substantial evidence rule, the elements (and the required proof) to establish "good cause," and whether the parties consent or object to the Court's finding as to the necessity for expert

---

<sup>87</sup> See Letter from the Honorable Alan G. Buckner to Chief Deputy United States Marshal Tony Perez (Aug. 14, 1998).

<sup>88</sup> Plaintiffs and/or Applicants' Opening Brief as Per Court Order of July 27, 1998 at 4, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Aug. 17, 1998) (emphasis in original).

<sup>89</sup> *Id.* at 6.

testimony.<sup>90</sup> Plaintiffs' Opening Brief was due September 1, 1998. Defendants Opposition Brief was due September 14, 1998. Plaintiffs' Reply Brief, if any, was due on September 21, 1998.<sup>91</sup>

On August 28, 1998, defendants filed their "Notice of Lodging of Declarations" as required by the Court.<sup>92</sup> Fifteen declarations were submitted which followed the same standard language:

I, \_\_\_\_\_, declare as follows:

1. I am employed as a police officer for the City of Los Angeles and hold the rank of Captain.
2. I am currently assigned as the Commanding Officer of \_\_\_\_\_ area of the Los Angeles Police Department.
3. I have received, read, understand and am familiar with the document entitled "LAPD Concealed Weapon Permit Policy", a copy of which is attached hereto as "Exhibit A."
4. I understand that as a Captain of the Police I am responsible to and have a duty to ensure that the policy is obeyed so long as it is in effect.
5. I have instructed that both the Los Angeles Police Department forms 12.49.1, dated June, 1996, and the "LAPD Concealed Weapon Permit Policy" be made available for distribution at the front desk area station and that both forms be distributed to any person who asks for an application to carry a concealed weapon.

---

<sup>90</sup> Briefing Order Re: 25 September 1998 Hearing at 3-4, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Aug. 19, 1998).

<sup>91</sup> *Id.* at 7.

<sup>92</sup> Notice of Lodging of Declarations, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Aug. 28, 1998).

6. I have further directed that every person assigned the front desk be instructed that any person requesting an application for a concealed weapon permit be provided with both the application Form 12.49.1 and the attached LAPD Concealed Weapon Policy.

7. I have caused each department employee of the Area to be informed of the location of the said applications and forms.

8. I have personal knowledge of the facts stated above and if called as a witness could and would competently testify thereto.  
Executed this \_\_\_\_\_ day of August, 1998, at Los Angeles California.

\_\_\_\_\_  
Declarant<sup>93</sup>

On September 1, 1998, plaintiffs filed another opening brief. Plaintiffs asserted, for the second time, that “[t]he standard for review in this action, as well as for similar cases, is that of independent judgment on the basis of a limited trial de novo because a fundamental right is involved.”<sup>94</sup> Plaintiffs also clarified what is meant in the law by the descriptor, “convincing evidence” and “clear and present danger” for “good cause” purposes.<sup>95</sup> Plaintiffs also argued that the expense of appointing an expert should be borne by the party that altered the “status quo,” namely the current Chief, who had failed to determine, unlike his predecessor, that plaintiffs met the “good cause” standard.<sup>96</sup>

On September 4, 1998, plaintiffs filed Joint Proposed Questions to be Propounded to Court Appointed Expert. Within the nine page filing, the plaintiffs provided a list of prefatory questions to be propounded to an expert, as well as questions to be presented to the court appointed expert.

---

<sup>93</sup> *Id.*

<sup>94</sup> Plaintiffs’ Opening Brief as Per Court Order of August 19, 1998 at 2, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Sept. 1, 1998).

<sup>95</sup> *Id.* at 7-10.

<sup>96</sup> *Id.* at 11.

Plaintiffs also filed a request for judicial notice of the Minute Entry and Court's Ruling, filed on August 28, 1998, in a similar case entitled *John Bernard Kihm III, et al v. City of Los Angeles, et al.*, Case No. BC106210.

In *Kihm*, plaintiffs had entered into a Stipulated Judgment with defendant City of Los Angeles due to the defendant's failure to issue CCW licenses. Thereafter, despite defendant's admission that LAPD had already issued the plaintiffs' their one-year CCW licenses and that plaintiffs continued to have good cause to be issued a renewal license, defendant failed to process the renewal applications in accordance with the agreed terms of the Stipulated Judgment.

Therefore, the Court in *Kihm* granted plaintiffs' Motion to Enforce the Judgment and plaintiffs' Motion for Monetary Sanctions, in addition to ordering an Order to Show Cause as to why the defendants had failed to comply with the terms of the Judgment. A hearing as to why the defendants should not be held in contempt was scheduled to occur on October 23, 1998, unless defendants complied with the judgment prior to that date.<sup>97</sup>

The *Kihm* Minute Entry was filed by the *Assenza* plaintiffs to show the Court that a contempt order was permissible and that defendants were engaging in the same complained-of actions in a similar case.

Following a series of continued hearing dates and an order by the Court that plaintiffs cure defects in their prior filed documents, on November 4, 1998, the *Assenza* parties entered into a Stipulation for Settlement. Plaintiffs agreed to dismiss the pending proceeding in the Order to Show Cause regarding Contempt/Mandamus conditioned on:

1. Crawford, Jacobson, Yochelson, Michael S. Ontiveros, and John R. Martin – the five original plaintiffs in *Assenza* – receiving CCW licenses within 14 days;
2. Judicial review of any decision of the Chief of Police relating to the future issuance or denial of a carry concealed permit as to any plaintiff in *Assenza* will be brought by a Writ of Mandate.
3. Defendants paying plaintiffs' counsel \$14,000, in addition to fees and costs in

---

<sup>97</sup> Plaintiffs Request for Judicial Notice Pursuant to Evidence Code Sections 452(d) and 453 at Exhibit A, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Sept. 11, 1998).

the instant proceedings, within 30 days.<sup>98</sup>

**G. 1999: General Housekeeping Measures**

On February 8, 1999, the *Assenza* plaintiffs filed a “Request for Dismissal” without prejudice as to the Order to Show Cause regarding Contempt/Mandamus.<sup>99</sup>

On March, 26, 1999, in the *Lake* case, a substitution of attorney was filed by the attorney for plaintiffs. The substituted attorney for plaintiffs was Lawrence P. House.<sup>100</sup>

On May 10, 1999, in the *Lake* case, a Notice of Related Cases was filed by the attorney for plaintiffs. The *Kihm* case (No. BC106210) and two other matters, *Lucy Faerman Kihm, et al. v. City of Los Angeles, et al.* (No. BS039321), and *John Bernard Kihm, III, et al. v. City of Los Angeles, et al.* (No. BS150131) were deemed related to *Lake, et al. v. City of San Fernando, et al.* because “they all involve the same issues arising from the same set of facts. Those facts are the failure and refusal of the defendants to enact rules, policies and procedures regarding the issuance of licenses for carrying concealed firearms in conformity with the provisions of Penal Code section 12050.”<sup>101</sup>

On November 29, 1999, Deputy City Attorney Donna M. Edmiston wrote a letter to Jacobson regarding the changes in the law which required different “training” language for CCW

---

<sup>98</sup> Stipulation for Settlement at 1-2, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Nov. 4, 1998).

<sup>99</sup> Request for Dismissal, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Feb. 8, 1999).

<sup>100</sup> Substitution of Attorney, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (Mar. 26, 1999).

<sup>101</sup> Notice of Related Cases at 2, *Lake et al. v. City of San Fernando et al.*, No. PC008329 (May 10, 1999).

licenses from the language provided in the *Assenza* Judgment.<sup>102</sup> Edmiston stated that from their former conversations, the changes in the language were appropriate.

#### **H. 2002-2003: Second Amended Judgment of Declaratory Relief**

On May 4, 2002, Bernard Parks stepped down as LAPD Chief.<sup>103</sup> Martin Pomeroy became LAPD Chief on May 7, 2002, but left the position on October 26, 2002.<sup>104</sup> William Bratton became LAPD Chief on October 27, 2002.<sup>105</sup>

On June 12, 2003, the *Assenza* plaintiffs filed a “Stipulation to Modify Amended Judgment of Declaratory Relief filed on February 4, 1998; Order Thereon (Proposed)” to

---

<sup>102</sup> Letter from Deputy City Attorney Donna Edmiston to Burton Jacobson (Nov. 29, 1999) (stating the following language:

Training: A new license applicant must furnish proof to the department that he or she successfully completed a course of training in the carrying and use of firearms established pursuant to Section 7585 of the California Business and Professions Code or some other course acceptable to the department which includes 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. Such course does not need to exceed 16 hours. For license renewal applicants, the course of training may be any course acceptable to the department, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm).

<sup>103</sup> Chiefs of the Los Angeles Police Department *available at* [http://www.lapdonline.org/chiefs\\_of\\_the\\_los\\_angeles\\_police\\_department](http://www.lapdonline.org/chiefs_of_the_los_angeles_police_department) (last visited Nov. 30, 2010).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

substitute Chief Bratton as a party for former Chief Parks.<sup>106</sup> Jacobson signed the stipulation for the plaintiffs. Deputy City Attorney James Axtell signed for defendants.<sup>107</sup>

**I. 2004: Repeated Attempts to Obtain the Board of Police Commissioners' Policy Regarding the Issuance of CCW Licenses**

On March 21, 2004, Franklin S. Adler, an attorney who worked with Jacobson, sent Deputy City Attorney Axtell a letter, requesting a copy of a policy established by the Board of Police Commissioners for the issuance of CCW licenses, which policy had been referenced, but not provided, in applicant denial letters sent by the Commission to Adler's clients.<sup>108</sup>

On May 3, 2004, Adler sent Deputy City Attorney Axtell another letter regarding the recent developments in obtaining a copy of the Policy established by the Board of Police Commissioners for the issuance of a CCW license. Adler indicated that he had failed to receive any response to his March 21, 2004 letter requesting a copy of the Police Commissioner Policy. He was interested in viewing the Policy because it concerned the issuance of carry concealed licenses and his clients were denied such permits because they did not "meet Police Commission guidelines for the issuance of such permits."<sup>109</sup> Adler also stated that when he reviewed the Commission website, he could not find the Policy, and when he called the Commission Office, an employee told him that no such Policy exists and the Police Commission does not deal with firearm permits.<sup>110</sup> Adler noted that Penal Code Section 12050 grants the Sheriff of a County or Chief of a municipal police department, not the Police Commission, the sole authority to issue carry concealed firearms permits and that "someone has lied to our clients, lied to us as counsel

---

<sup>106</sup> Stipulation to Modify Amended Judgment of Declaratory Relief filed on February 4, 1998; Order Thereon (Proposed) at 2, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (June 12, 2003).

<sup>107</sup> *Id.*

<sup>108</sup> Letter from Franklin Adler to James Axtell (Mar. 21, 2004).

<sup>109</sup> Letter from Franklin Adler to James Axtell at 1 (May 3, 2004).

<sup>110</sup> *Id.*

and is intentionally violating the Lake and Assenza judgments.”<sup>111</sup>

On June 25, 2004, Adler again wrote Axtell, in response to a letter from Axtell on May 12, 2004. In Adler’s latest letter, he claimed that Axtell had failed to address the concerns Adler raised in his prior letter. “It appears not only that the policy has changed from the controlling judgments, but also that the Citizen’s Committee has been all but eviscerated by the unyielding refusal of the Department to follow any of the recommendations of the Committee to issue permits to applicants.”<sup>112</sup>

On July 2, 2004, Axtell responded to Adler’s letter dated June 25, 2004. Axtell was under the impression that Jacobson would not provide him the requested information from a telephone conversation that took place on June 8, 2004 with respect to the history of a particular applicant. Furthermore, Axtell took the position that he had already provided Jacobson with the Department’s current policy, but if any amendments to the *Assenza* judgments were considered, he would be happy to hear any suggestions.<sup>113</sup> Jacobson recalls that he never received a satisfactory answer from Axtell regarding the Policy.

On December 12, 2004, Judge Alan Buckner committed suicide by a self-inflicted gunshot wound.<sup>114</sup>

#### **J. 2009-2010: Third Amended Judgment of Declaratory Relief**

On October 31, 2009, Chief Bratton stepped down.<sup>115</sup> On November 16, 2009 Charlie

---

<sup>111</sup> *Id.* at 1-2.

<sup>112</sup> Letter from Franklin Adler to James Axtell at 1 (June 25, 2004).

<sup>113</sup> Letter from James Axtell to Franklin Adler at 1 (July 2, 2004).

<sup>114</sup> County Coroner’s Office Confirms Judge Buckner’s Death Was Suicide *available at* <http://www.metnews.com/articles/2004/buck121504.htm> (last visited Nov. 22, 2010).

<sup>115</sup> Chiefs of the Los Angeles Police Department *available at* [http://www.lapdonline.org/chiefs\\_of\\_the\\_los\\_angeles\\_police\\_department](http://www.lapdonline.org/chiefs_of_the_los_angeles_police_department) (last visited Nov. 30, 2010).

Beck became the LAPD Chief.<sup>116</sup>

On January 29, 2010, the *Assenza* plaintiffs associated counsel C.D. Michel, Clint B. Monfort, and Sean A. Brady of Michel & Associates, P.C.

On April 1, 2010, the *Assenza* plaintiffs filed a Notice of Motion and Motion to Modify Amended Judgment of Declaratory Relief filed on February 4, 1998 and the Stipulation filed on June 12, 2003, and supporting documents. These were filed to substitute Chief Beck as a party to the Judgment.<sup>117</sup> A Stipulation was signed on behalf of defendants in response, and on June 3, 2010, the Court signed and filed the Stipulation. The Third Amended Judgment of Declaratory Relief, substituting Charlie Beck as Chief of Police of the City of Los Angeles Police Department, was signed and entered into the record on June 11, 2010.

#### IV. CONCLUDING REMARKS

The *Lake* case did not reach an agreed upon Stipulation or a Judgment of Declaratory Relief until March 14, 1995, almost three years after the Petition was filed. According to Kates, the Judgment of Declaratory Relief was never absolved in any way, however. Rather, defendants complied with the judgment as little as possible. This lack of compliance was reflected in other cases that were filed against the Los Angeles Defendants, such as *Assenza* and *Kihm*

Despite the quick settlement in the *Assenza* matter, according to Jacobson all current CCW applicants are still being hindered in applying for and receiving CCW licenses because under Chief Beck, LAPD has never followed any recommendations of the Advisory Panel.

In late 2010, because of Beck's refusal to comply with the *Assenza* judgment, applicants for CCWs were still having problems with LAPD not supplying CCW applications or copies of the LAPD Concealed Weapon Policy. As of the date of this memorandum, a new set of plaintiffs has emerged to attempt to enforce Chief Beck and LAPD's obligations to adhere to the negotiated policy. Additionally, the *Assenza* plaintiffs are planning new legal action to enforce

---

<sup>116</sup> *Id.*

<sup>117</sup> Notice of Motion and Motion to Modify Amended Judgment of Declaratory Relief filed on February 4, 1998; Memorandum of Points and Authorities, *Assenza et al. v. City of Los Angeles et al.*, No. BC115813 (Apr. 1, 2010).

the prior judgment.

@PFDesktop\::ODMA/MHODMA/IMANAGE1;Interwoven;175146;2