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Re: Restoring the Right to Possess Firearms

Dear Potential Client:

This letter responds to your inquiry regarding whether a criminal conviction (or convictions) or other governmental restriction you suffered in the past prohibits you from owning firearms, and, if so, whether the restrictions can be cleared from your records so that you could once again legally own or possess firearms.

Due to increased regulation of the possession of firearms and the expansion of the types of convictions (increasingly relatively minor) and other proceedings that result in a firearms possession prohibition, an increasing number of individuals are finding themselves subject to firearm restrictions -- often well after a conviction is suffered. Because of our experience in this area and our positive relationship with several self defense civil rights organizations, we have been referred a large number of inquiries on this subject matter in recent years. We are now one of only a very few firms that have developed this practice area.

In attempting to assist our clients, we discovered that the rehabilitation of criminal records is a very arcane and narrow legal specialty. While much of the work involves law and motion practice and court appearances, some of the "fact gathering" work does not require a legal background. In attempting to provide good value to our clients, and to assist our clients in the most cost effective manner possible, we have developed a system that streamlines the evaluation of each case and provides our clients with options in deciding how much work they would like us to perform on their behalf. This letter, and the enclosed forms, will facilitate the process and provide you with background on the system and the court review process.

I. BACKGROUND ON PROHIBITED CATEGORIES

Historically, the vast majority of people that were legally prohibited from possessing firearms were prohibited because of a felony convictions or commitment as a mental patient.

Before 1991 in California, only felony convictions, along with a very few misdemeanor convictions, resulted in a firearm prohibition. (This pre-1991 California law only applied to handguns, but convicted felons were still prohibited from possession of any firearm under federal law). The California prohibition was permanent unless a full pardon was granted by the Governor, or a felony conviction was reduced to misdemeanor by the court. Then, On January 1, 1991, thousands of California gun owners with certain misdemeanor convictions found themselves prohibited from owning a gun for 10 years. Many of these old misdemeanor convictions, such as simple assault or battery, did not even involve firearms. Since 1991, the list of misdemeanor convictions which result in this ten year ban on firearms possession has been continuously expanded. Some misdemeanors involve violence, others do not (for example, unlawful sale or negligent discharge of firearms).

Today in California, even persons who have never been convicted of any crime, nor committed as mental patients, may nonetheless find themselves legally prohibited from owning a gun. This results primarily from recent new laws affecting individuals subject to a restraining order, or with only limited contact with the mental health system.

II. DETERMINING FIREARM ELIGIBILITY

Often, clients are uncertain of whether a previous conviction prohibits them from owning a firearm. To answer this question, first review the list of categories that prohibit a person from possessing a gun. The list is on the DOJ website, www.caag.state.ca.us/firearms/index.html or caag.state.ca.us/firearms/forms/pdf/prohibs.pdf

If that doesn't help then, as discussed below, as part of the evaluation process we can review your records and offer our legal opinion and advice on whether you are prohibited from possessing a gun. Alternatively, you can seek a "Certificate of Eligibility" (COE) to own a firearm from the California Department of Justice. The DOJ will review its files and send you a Certificate of Eligibility if, according to their records, you qualify. To obtain these COE forms, contact the DOJ at (916) 227-3703.

We strongly caution against filling out the paperwork to buy a gun if you are uncertain of your status. These forms are signed under penalty of perjury, and require you to state that you are not prohibited from owning a firearm. Answering falsely is itself a crime.

If you possess firearms and then learn that you are a "prohibited person," you are committing a felony by continuing to possess them. To avoid prosecution you should immediately legally transfer possession of the firearms to an individual who is not prohibited from possessing them. We can assist with this as well if necessary.

III. GENERAL PRINCIPLES OF RECORD CLEARANCE

Whether your right to possess a gun can be restored depends on the reason you are prohibited from possessing one. Often, criminal convictions result in a firearms prohibition. But firearm restrictions may also be imposed through administrative tribunals, restraining order and injunction proceedings (usually associated with divorce or domestic disturbances), or through mental health care providers.

1. Criminal Convictions

Criminal convictions commonly result in a firearm prohibition being imposed. A criminal conviction may be suffered in state or federal court.

Typically, federal convictions are difficult to clear, primarily due to the lack of federally authorized funding for the Bureau of Alcohol, Tobacco, and Firearms to process restoration of firearm rights applications. The case law on this subject is rapidly evolving as appeals progress through the court system.

By contrast, California state court convictions can often be cleared. The court review process involves a combination of legal and equitable considerations, and often involves law and motion practice, extraordinary writ filings, and multiple court appearances.

Please note, what is typically called “expungement” (i.e. a conviction set-aside under Penal Code §§1203.4 or §§1203.4a) does *not* restore your right to own a gun. Depending upon the nature of your conviction and whether you are eligible, you may need to obtain relief by means of a pardon, a 17b motion or a Penal Code §§12021(c)(3) petition.

Generally, if you have a straight felony conviction (that is, the statute can only be charged as a felony, not as either a misdemeanor or a felony) the record clearance process is more difficult. It may even be necessary to pursue a full pardon from the Governor’s office to restore your gun rights. Even the Governor cannot restore gun rights if the felony involved the use of a dangerous weapon. Pursuing a pardon is a lengthy process, but it can usually be accomplished in cases where the person seeking the pardon has led an exemplary life since the conviction.

If you were convicted of an offense which could of been charged as either a misdemeanor or a felony (called a “wobbler”) and if you have successfully completed probation, than we can most likely reduce the offense from a felony to a misdemeanor and restore your right to own a gun via a Penal Code section 17(b) motion. If you were convicted of a misdemeanor offense that carries a 10 year prohibition on owning firearms, we may be able to bring a motion to have your rights restored early.

Criminal convictions suffered in other state courts present unique problems. Often, an attorney from the state where the conviction was entered will need to clear the record there before the California firearm disability can be eliminated.

2. Mental Health Evaluations or Commitments

If you were taken in for a mental health evaluation and can’t own firearms pursuant to that procedure, we may be able to restore your rights through a separate mental health hearing. Firearm restrictions go into effect when a person has been detained on a Welfare & Institutions Code section 5150 evaluation. Section 5150 provides for detention and a 72-hour mental health evaluation of a person considered a danger to himself/herself or others. Those detained under “5150” often are legally prohibited from owning firearms for five years.

To terminate the five-year period early you will need to be examined by a psychiatrist or psychologist. Assuming favorable findings, at the hearing of your petition the psychiatrist or psychologist can provide expert testimony that you are a person likely to use firearms in a safe and lawful manner. Without such favorable psychiatric evidence, the court is likely to deny your petition.

3. Restraining Orders and Injunctions

In California, being the subject of certain restraining orders results in a firearm disability, and frequently a court Order to dispose of one’s firearms within 24 hours. Also, under Federal law, being the subject of a restraining order obtained by an intimate partner prohibits possession of firearms. To restore your rights before the Order expires, the restraining order must be terminated or modified by the court.

4. Probation Conditions

Often courts impose “weapons conditions” as a condition of probation in a criminal case. This typically prohibits the possession or ownership of any dangerous or deadly weapons, usually

for three years. This is a form of injunction, and the probation Order must be modified (or expire) before a gun can be possessed. Often, modifications can be inserted to allow the possession of firearms for specific purposes, such as hunting, sport shooting, and self-defense.

5. DOJ Record Keeping Errors

The California Department of Justice database of criminal records and other firearm prohibitions is often in error. Unfortunately, DOJ's errors are not corrected by local law enforcement or even the courts. Failure to forward the proper records from a court to the DOJ, or simple clerical errors, sometimes result in a person being improperly classified as subject to a firearm restriction. We have had great success in getting the documentation through the DOJ bureaucracy and correcting these records.

6. Other Prohibitions

Other specific prohibitions on firearms ownership require various other procedures.

IV. OBTAINING THE RECORD FOR REVIEW

Before we can ascertain whether or not a criminal record can be cleared so that firearms can once again be possessed, we must determine the exact nature of the criminal conviction(s) suffered, or other procedure that resulted in a firearm disability. To do this, the official records must be obtained from the state or federal governmental agencies keeping the records.

With a federal court conviction, the records with the Federal Bureau of Investigation and the U.S. Courts must be obtained. You can get your record from the FBI by sending a letter asking for it, along with your full name, address, date and place of birth, a set of fingerprints, and a check for \$17.00 payable to the Treasury of the United States. Address this to: FBI, Identification Division, Attn: FOIA, Washington, D.C. 20537-9700. For Court records ask the clerk at the courthouse where your conviction took place.

With a state court conviction, records must be obtained from the California Department of Justice, as well as the local courthouse where the case was heard. Call (916) 227-3822 for information and forms. The state courthouse where your case was heard will have the records on your criminal case available through the court clerk's office, or will know where the records are being stored. Contact the clerk's office and ask for a copy of the "docket sheet" in your case. That docket sheet should reflect each time you were in court, and what happened at each court appearance. That docket sheet will also show exactly which criminal statute you were convicted of violating.

For health care records, the treating facility's records must be obtained. Contact the facility for guidance on their procedures.

We need these documents before we can proceed to evaluate your case. Once these records are obtained we can then evaluate the likelihood of succeeding in having the criminal conviction cleared. Some clients prefer to hire us to perform this record search and assemble these records. For this service we charge a \$500.00 flat fee.

V. EVALUATION OF RECORDS

Once we have the necessary information from the relevant agencies and courts, we can evaluate the possibility of, and the degree of complexity involved in overturning the underlining

conviction(s) and restoring your rights, and can better predict the costs involved. For this evaluation we charge a flat fee of \$250.00 per conviction reviewed. We apply this fee toward any subsequent work that we do.

VI. COURT AND ADMINISTRATIVE PROCEEDINGS

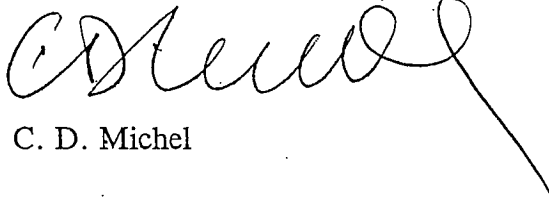
If we determine that the chances of successfully restoring your rights are reasonable, and provided you agree, we can begin the process of seeking judicial review. Our fees for these procedures vary based on the complexity of the issues, whether a special motion or writ needs to be filed, the number of appearances required in court, the nature of the underlying conviction(s), and the specific facts of each case. Most often, we are able to resolve these record clearance matters for a total \$3,000.00 fee, which includes the \$250.00 advanced for the initial review (but does not include the fee for obtaining the records, assuming we provided that service). Absent unusual circumstances or difficulties in obtaining records, the process usually takes about 90 days.

VII. CONCLUSION

If you would like to discuss this process and the costs involved further, please give us call and we will be happy to answer any questions you may have.

Thank you for your inquiry.

Sincerely,
TRUTANICH • MICHEL, LLP



C. D. Michel

CDM/hv



P.O. Box 903417
SACRAMENTO, CA 94203-4170

**RECORD REVIEW
(Live-Scan)**

California Penal Code Sections 11120 through 11127 afford persons an opportunity to obtain a copy of their record, if any, contained in the files of the California Bureau of Criminal Identification and Information and refute any erroneous or inaccurate information contained therein.

You may use the information you receive to answer questions regarding past criminal history, or to complete an application or questionnaire. However, this process is not to be used to obtain a copy of your record to furnish to another person or agency for immigration, visa, employment, licensing, or certification purposes (refer to California Penal Code Section 11125).

GUIDELINES FOR COMPLETING
"REQUEST FOR LIVE SCAN SERVICE" FORM (BCII RR8016)

CATEGORY	INSTRUCTION	COMMENT
1) Reason for Application:	Write a brief explanation of why you need a copy of your criminal history record.	Example: Personal Use, Verify Accuracy of Record, Update FBI record, Prison visit, to Fill Out an Application
2) Name of Applicant & Personal Descriptors:	Enter your full name, any known alias, date of birth, sex, height, weight, eye & hair color, place of birth, social security number, California driver's license number.	Name, date of birth, and sex are mandatory fields and must be provided. All others are optional
3) Applicant Address:	Enter your home address.	This is mandatory field and must be completed.
4) Daytime Telephone Number	Enter telephone number you can be reached at from 8:00am to 5:00pm. Please include the area code.	A telephone number is useful in helping to resolve problems which could result in a delay in the processing of your request
5) Optional Mailing Address	If you want the response mailed to your attorney, or an address different than your home address, provide the address here. If you want it mailed to your home address, provide your home address again.	This is mandatory field and must be completed. The DOJ provides only one copy of your record. We do not mail a copy to both you and your attorney.

Contact your local Police Department or Sheriff's Office regarding the availability of "Live-Scan" fingerprinting service, the fee charged by the agency for the taking of your fingerprints, and the types of payment they accept. **Go to the agency you have selected and have your fingerprints taken.** Your total costs will be \$25 plus the fingerprint rolling fee charged by the Live-Scan agency.

After you have completed the fingerprinting process, mail the DOJ copy of form BCII RR8016 to the Record Review Unit at the address on the form. Your response will be sent by "First Class" mail.

If you have any further questions, contact the Record Review Unit at (916) 227-3832.

REQUEST FOR LIVE SCAN SERVICE

ORI. CA0349435

Type of Application: (check one) Record Review

DOJ Visa/Immigration Clearance Letter
(Visa/Immigration, Letter of Good Conduct, Police Clearance Letter, Foreign Adoption)

(Job Title)
Reason for Application: Personal Use

Agency Address Set Contributing Agency:

California Department of Justice
Record Review Unit
P.O. Box 903417
Sacramento, CA 94203-4170

Mail Code: 07041

Contact Name: Record Review Unit
Contact Telephone No. (916) 227-3832

Name of Applicant: _____
(Please print) Last First MI

AKA's: _____
Last First

Date of Birth: _____ SEX: Male Female

Billing No. Applicant to pay fees _____

HT: _____ WT: _____

Applicant's Address:

EYE Color: _____ HAIR Color: _____

Street or P.O. Box

Place of Birth: _____
(State or Foreign Country)

City, State and Zip Code

Social Security Number: _____

California Driver's License No. _____

Daytime Telephone Number

Level of Service DOJ Only If Resubmission, list Original ATI No. _____

(Employer Address)
If you wish this record forwarded to someone other than yourself, or if you wish this record mailed to an address different from the one listed above, complete the following:

Name: _____ Title

Address: _____
Number Street Apt or Suite No.

City State Zip Code

Live Scan Transaction Completed by: _____ Date: _____
Name of Operator

Transmitting Agency: _____ Terminal ID: _____ Amount Collected: _____

ATI Number: _____