

Sean Brady

From: Sean Brady
Sent: Thursday, May 07, 2015 11:29 AM
To: 'mstiverson@ocsd.org'
Cc: Sandra Hutchens (shutchens@ocsd.org); jack.golden@coco.ocgov.com; C.D. Michel (CMichel@michellawyers.com)
Subject: NRA Request for Clarification re CCW Policy
Importance: High

Lt. Stiverson:

I write as counsel on behalf of the National Rifle Association and the California Rifle and Pistol Association, and their respective members in Orange County. On April 24, 2015, I sent an email to Ms. Melissa Soto of the OCSD CCW Licensing Unit, which I have copied in full below for your reference, requesting clarification for our clients on OCSD's CCW application processes and policies, after hearing from several applicants that they were illegally being subjected to OCSD's new good cause standard, despite having already been directed to begin training based on their pre-March 26 good cause.

We have not yet received such clarification, but continue to be contacted by applicants who are being subjected to the new good cause standard even though the law prohibits such. I understand that you are the person who can provide the clarification we seek. The bottom line question is:

Are **any** applicants who attended their interview prior to March 26 where they were directed to commence training orally or provided a form explaining that they needed to do a Livescan **and** submit a copy of their training certificate to complete the application process still being subjected to OCSD's new good cause standard outlined in Policy 218?

Our clients would like to get answers for their members who are concerned about this, and are, frankly, entitled under the law to those answers. I would appreciate a prompt response from either you or your counsel on this matter. Alternatively, we could schedule a conference call at your convenience either this week or early next week to discuss. Please let me know what you would prefer at your earliest convenience and thank you for your prompt attention to this matter.

Sincerely,

Dear Ms. Soto:

I write as counsel on behalf of the National Rifle Association and the California Rifle and Pistol Association, and their respective members in Orange County. The purpose of this correspondence is to seek clarification on whether CCW applicants who have been directed to commence training are still being subjected to Sheriff Hutchens' new, more strict Policy 218 "good cause" standard before we take any formal steps to address this issue, with the hopes that it can be resolved amicably.

As you are likely aware, our office submitted a letter to Sheriff Hutchens explaining that it is illegal to subject any CCW applicant who has been directed to commence CCW training prior to the Ninth Circuit vacating the *Peruta* opinion to the Sheriff's new Policy 218 "good cause" standard. Cal. Penal Code §§ 26165(d), 26202. In response, in a letter dated April 14, 2015 (a copy of which is available here: <http://michellawyers.com/wp-content/uploads/2015/04/Sheriff->

Hutchens-Response-to-NRA-CRPA-Letter.pdf), Sheriff Hutchens assured our office that “Applicants whose good cause had been approved will not be required to provide additional good cause.”


We appreciate the Sheriff’s willingness to engage us in this matter and her apparent desire to adhere to the law with respect to those 1,700 or so applicants. However, already our office has received word from various sources that applicants who have been directed to commence and who have even completed training are being denied for lack of “good cause” or requested to supplement their “good cause” statement by the deputy handling their file. Could this be the result of deputies in the CCW Department not understanding or not being aware of the Sheriff’s updated directive? Or are we misunderstanding the Sheriff’s letter?

To the extent applicants who have been directed to commence training are being denied because they were directed to do so orally at the time of their interview and there exists no writing to that effect, OCS D is violating the law. CCW Issuing authorities must provide a CCW applicant with **written notice** of their determination of whether the applicant qualifies under the department’s “good cause” policy, and if the applicant does, the “notice shall inform the applicant to proceed with the training requirements specified in Section 26165.” Cal. Penal Code § 26202. If OCS D did not provide this written notice and was making “good cause” determinations and directing applicants to commence training orally, it was violating the law and cannot use its failure to adhere to the law as a legitimate basis to violate another law, i.e., Cal. Penal Code § 26165(d) (prohibiting issuing authorities from requiring an applicant to pay for any mandatory CCW training course before the sheriff provides written notice that the applicant has “good cause”).

We respectfully request that someone from OCS D or County Counsel provide clarification on the following question: is OCS D going to subject **any** of those CCW applicants who have been directed to commence training before March 26 to Policy 218’s strict “good cause” standard or not?

If not, then a clarification to that effect and perhaps an explanation on why some deputies have told applicants otherwise would be much appreciated. If so, a clarification on why they are being so subjected and the legal basis for doing so is requested. I appreciate your consideration and await your anticipated response. If you or your counsel have any questions or concerns, you are free to contact me.

Sincerely,

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