

FORMAL INQUIRY AND REQUEST FOR CARIFICATION

Friday, December 05, 2008

San Diego County Sheriff's Department
9621 Ridgehaven Court
San Diego, CA 92123

Attention: Sheriff William Kolender, William Gore, Al Guerin Robert Ahern, James Cooke, Kim Quaco, John Gains, Jan Caldwell, Andy Chmielinski, Lori Bird, John Ingrassia, Michael McNally, Rich Miller, Anthony Nares, Ed Prendergast, Glenn Revell, Alan Skoglund, Agoston Haraszthy, Robert Faigin, John Madigan, Sanford Toyen, Maria Marshall, Brian Sampson, Mary Walsh, Weapons Unit Commander, License and Permits Unit.

To Whom It May Concern:

The undersigned Edward A. Peruta is in need of a clarification on the current policies and practices of the San Diego County Sheriff's Department which mandate questionable requirements regarding the required "RESIDENCE" of applicants for CCW permits in San Diego County.

THE ISSUE

California Penal Code Sections 12050 thru 12054 require CCW applicants to be a "RESIDENT" of the city or county in which application is made.

In order to properly understand the law and instruct individuals in the mandated requirements to obtain a CCW permit in California, I have conducted an extensive review of the California Penal Code regarding firearms and CCW permits

This document is prepared and submitted in an attempt to seek a clarification and understanding of the legislative intent and requirements imposed upon the San Diego Sheriff's Department by the California Legislature through their use of the term "RESIDENT" as it appears in the California penal code.

Recent events lead me to believe that the San Diego Sheriff's Department is currently requiring CCW applicants to establish and maintain what amounts to a "DOMICILE" in San Diego County in order to make application for a California CCW permit.

A serious issue may currently exist where members of the California law enforcement community, by their written and verbal directives, policies, procedures and practices have exceeded the mandates of the California Penal Code by expanding the definition of "RESIDENT" in a manner that compels applicants to establish or maintain a "DOMICILE" in the geographical area where the application is submitted.

If, any incorrect application of the penal code through the restrictive nature of requiring applicants to establish and/or maintain a "DOMICILE" rather than a simple "RESIDENCE" it is incumbent upon law enforcement to immediately correct the situation.

If after any review, it is found that a more restrictive definition of the term "RESIDENT" is currently being incorrectly applied to deny current and future applicants their rights under current California law, it may in fact evidence a clear and unmistakable abuse of power by those who implement the policies and practices of the Department.

The following four questions are posed regarding this issue:

Is there a clear and defined difference between a person who maintains a residence and person who maintains a domicile?

Can an individual in San Diego County maintain a residence in the county without establishing a domicile?

For purposes of applying for a CCW permit in San Diego County, may applicants have more than one residence?

What are the minimum legal time and fact requirements to establish or maintain a RESIDENCE in applying for a CCW permit in the State of California?

Respectfully Requested,



**Edward A. Peruta
American News and Information Services Inc.
3151 Driscoll Drive
San Diego, CA**

edperuta@amcable.tv

**860-978-5455
860-563-NEWS (6397)
858-206-5124**

Information on which this document is based.

CALIFORNIA PENAL CODE SECTION 12050.

(a)(1)(A) The sheriff of a county, upon proof that the person applying is of **good moral character**, that **good cause exists** for the issuance, and that the person applying satisfies any one of the conditions specified in **subparagraph (D)** 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 is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person. (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**

PROVISIONS OF CALIFORNIA PENAL CODE SECTIONS 349, 2027 & 2032, DEFINING AND EXPLAINING “RESIDENCE”, “DOMICILE” AND “RESIDENCE IN A TRAILER OR VEHICLE”

CALIFORNIA PENAL CODE SECTION 349.

(a) **"Residence"** for voting purposes means a person's domicile.

(b) **The DOMICILE of a person is that place in which his or her habitation is fixed**, wherein the person has the intention of remaining, and to which, whenever he or she is absent, **the person has the intention of returning**. At a given time, a person may have only one domicile.

(c) **The RESIDENCE of a person is that place in which the person's habitation is fixed for some period of time**, but **wherein he or she does not have the intention of remaining**. At a given time, **a person may have more than one residence**.

CALIFORNIA PENAL CODE SECTION 2027.

The place where a person's family is domiciled is his or her domicile **unless** it is **a place for temporary establishment for his or her family** or for transient objects. **Residence in a trailer or vehicle** or **at any public camp or camping ground** may constitute a domicile for voting purposes if the registrant complies with the other requirements of this article.

CALIFORNIA PENAL CODE SECTION 2032.

Except as provided in this article, if a person has **MORE THAN ONE RESIDENCE** and that person has not **physically resided at any one of the residences within the immediate preceding year, there shall be a rebuttable presumption that those residences in which he or she has not so resided within the immediate preceding year are MERELY RESIDENCES** as defined in subdivision (c) of Section 349 and **NOT HIS OR HER DOMICILE.**

CODE OF CIVIL PROCEDURE SECTION 1060-1062.5

1060. **Any person interested** under a written instrument, excluding a will or a trust, or under a contract, or **who desires a declaration of his or her rights or duties with respect to another**, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

1060.5. Any individual claiming to be a nonresident of the State of California for the purposes of the Personal Income Tax Law may commence an action in the Superior Court in the County of Sacramento, or in the County of Los Angeles, or in the City and County of San Francisco, against the Franchise Tax Board **to determine the fact of his or her residence in this state** under the conditions and circumstances set forth in Section 19381 of the Revenue and Taxation Code.

1061. The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.

1062. The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party to such action, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

1062.3. (a) Except as provided in subdivision (b), **actions brought under the provisions of this chapter shall be set for trial at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.**

(b) Any action brought under the provisions of this chapter in which the plaintiff seeks any relief, in addition to a declaration of rights and duties, shall take such precedence only upon noticed motion and a showing that the action requires a speedy trial.

1062.5. Any insurer who issues policies of professional liability

insurance to health care providers for professional negligence, as defined in Chapter 1 as amended by Chapter 2, Statutes of 1975, Second Extraordinary Session, any health care provider covered by such a policy, or any potentially aggrieved person, may bring an action in the superior court for a declaration of its, his, or her rights, duties, and obligations under Chapter 1 as amended by Chapter 2, Statutes of 1975, Second Extraordinary Session.

The court shall permit any of the following persons to intervene in the action:

(1) The Attorney General.

(2) Any other person whose appearance is determined by the court to be essential to a complete determination or settlement of any issues in the action.

The action shall be commenced in the superior court in the county in which the Attorney General is required to reside and keep his office pursuant to Section 1060 of the Government Code.

The action shall be set for trial at the earliest possible date and shall take precedence over all cases other than those in which the state is a party.

The court may make a binding declaration of the rights, duties, and obligations of the insurer, whether or not further relief is or could be claimed at the time. The declaration may be affirmative or negative in form and effect and shall have the force and effect of a final judgment.

If the declaration is appealed, the appeal shall be given precedence in the court of appeal and Supreme Court and placed on the calendar in the order of its date of issue immediately following cases in which the state is a party.

The remedy established by this section is cumulative, and shall not be construed as restricting any remedy established for the benefit of any party to the action by any other provision of law. **No declaration under this section shall preclude any party from obtaining additional relief based upon the same facts.**