

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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| In the Matter of: |) | |
| |) | |
| AMENDING ARIZONA CODE OF |) | Administrative Order |
| JUDICIAL ADMINISTRATION § 6-113: |) | <u>No. 2010 - 8</u> |
| FIREARMS STANDARDS |) | (Affecting Administrative |
| |) | Order No. 2006-63) |
| |) | |

Pursuant to the Arizona Code of Judicial Administration (ACJA) § 1-201(E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

ACJA § 6-113(G)(6) mandates that a chief probation officer or director of juvenile court services “shall only deny, revoke or temporarily suspend authorization to carry a firearm for the following reasons...” The reasons are stated in ACJA § 6-113(G)(6)(a-t). ACJA § 6-113(G)(4) further requires the chief probation officer or director of juvenile court to “provide written reasons for denial to the officer and a copy of the approval or denial shall be kept on file.”

ACJA § 6-113(G)(8) states “The presiding judge shall hear all appeals to the denial, revocation or suspension and the judicial decision is final and not appealable.”

ACJA § 6-113(G)(4) specifically requires a written statement to the officer specifying the reasons for the denial of authorization to carry a firearm, but does not explicitly require written documentation of reasons for temporary suspension or revocation. Due to the fact that reasons for denial also include temporary suspension and revocation, and ACJA § 6-113(G)(8) confers an appellate right that is difficult to exercise without stated written reasons, it is necessary to make the attached conforming amendments that clearly require written reasons for temporary suspension or revocation of firearms authorization.

Due to the fact that these amendments are to clarify requirements and provide consistency regarding the critical and important issue of authorization to carry firearms, and the interests of the judicial branch are best served by the earliest implementation of this change, I find no further review is necessary and that immediate adoption is warranted.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Arizona Code of Judicial Administration § 6-113 is amended as indicated in the attached document, effective immediately. All other provisions of ACJA § 6-113 as previously adopted, remain unchanged and in effect.

Dated this 12th day of January, 2010.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 6: Probation

Chapter 1: General Administration

Section 6-113: Firearms Standards

A. – F. [no changes]

G. Procedures for Authorization, ~~or Denial~~, Temporary Suspension or Revocation.

1. The chief probation officer or director of juvenile court services shall deny authorization to carry a firearm if an officer:
 - a. Has been convicted in any court of a qualifying misdemeanor crime of domestic violence under federal law. See 18 U.S.C. § 922 (g)(9).
 - b. Is subject to a qualifying protection order under federal law. See 18 U.S.C. § 922 (g)(8).
2. The chief probation officer or director of juvenile court services may deny authorization to carry a firearm during any point of the screening and testing process based on the criteria stated in subsection (G)(6).
3. The chief probation officer or director of juvenile court services shall approve or disapprove the request to carry a firearm in writing within 30 days after the officer satisfactorily completes all requirements stated in subsection (E)(2).
4. The chief probation officer or director of juvenile court services shall provide written reasons for denial, temporary suspension, or revocation to the officer and a copy of the approval, ~~or denial, temporary suspension, or revocation~~ shall be kept on file.
5. The chief probation officer or director of juvenile court services or designee shall place the original request and the approval or reasons for denial, temporary suspension, or revocation in the officer's personnel file and provide copies to the officer, and to the officer's supervisor. The CFI shall receive a copy of all approvals.
6. The chief probation officer or director of juvenile court services shall only deny, revoke or temporarily suspend authorization to carry a firearm for the following reasons:
 - a. Results from the psychological evaluation that indicates unfitness to carry a firearm;
 - b. The officer is currently diagnosed with a mental disability or illness by a licensed mental health professional that may impact the officer's ability to safely use a firearm;
 - c. The denial or revocation of a permit to carry a concealed weapon by the State of Arizona;

- d. A result from a criminal history record check or a self report indicating any or all of the following:
 - (1) The conviction of a felony or an offense, which would be a felony if committed in this state;
 - (2) The commission of any offense involving dishonesty, unlawful sexual conduct, physical violence or domestic violence;
 - (3) The violation of A.R.S. § 13-3112, concealed weapons permit or statutes governing firearms or lethal and non-lethal weapons; and
 - (4) The commission of a misdemeanor involving the carrying or use of a firearm.
- e. The violation of departmental policy or this code relating to the carrying or use of firearms;
- f. Carrying, exhibiting, or using a firearm in an unsafe or careless manner;
- g. Disciplinary charges pending or action taken that relate to the fitness to carry a firearm;
- h. Any use of alcoholic beverages on duty or excessive use of alcoholic beverages off duty that affects performance of job;
- i. The administrative reassignment of an officer as a result of a documented stress related disorder or post traumatic stress disorder as diagnosed by a licensed mental health professional that may impact the officer's ability to safely use a firearm;
- j. A medical, psychological, or health condition including a physical or mental disability, which substantially impairs the officer's ability to responsibly carry a firearm or interferes with the safe use of or handling of a firearm;
- k. The addiction to alcohol or prescription drugs that would interfere with the safe use of a firearm and render the officer unfit to carry a firearm;
- l. An officer is found to have illegally used dangerous drugs or narcotics for any purpose within the past seven years;
- m. An officer is found to have illegally used marijuana for any purpose within the past three years;
- n. Transfer or reassignment of an officer to an assignment or unit where carrying a firearm is not authorized pursuant to (D)(2) of this section;
- o. The authorization was based solely upon a specific personal risk to the officer and the risk is determined to no longer exist;

- p. Arrest for an offense punishable as a felony or for a misdemeanor involving the carrying or use of a firearm;
 - q. Discharge of a firearm by an officer in violation of any municipal, county or state law, regulation or policy;
 - r. Drawing a firearm or use of a non-lethal defensive weapon in violation of any municipal, county or state law, regulation or policy;
 - s. Any other circumstance temporary or permanent which leads the chief probation officer or director of juvenile court services to believe that the arming of the officer could place that officer, other staff, probationers or the public in jeopardy; or
 - t. Failure to successfully complete the annual re-qualification program and participate in required practice sessions.
7. All screening and testing records shall be maintained in the officer's personnel file and be confidential as required by law.
8. The presiding judge shall hear all appeals to the denial, temporary suspension, or revocation ~~or suspension~~ and the judicial decision is final and not appealable.
9. An officer wishing to have their authorization reinstated after revocation may submit a written request to the chief probation officer or director of juvenile court services after one year. The officer shall clearly state the reasons for reinstatement of the authorization. The presiding judge, presiding juvenile judge or judicial designee shall hear all appeals to the denial of reinstatement.

H. – S. [no changes]