



Pro Bono Representation of Applicants for Executive Clemency: Attorney Training



Training Outline

1. Taking a Case
2. Understanding your Client's Criminal Justice Experience from Conviction through Incarceration
3. Understanding the Law and Standards of Clemency
4. Building a Strong Application Package



Taking a Case



Taking a Case

Signing up with an Affiliated Partner

- Affiliated Partners
 - The New York State Bar Association
 - The New York County Lawyer's Association
 - The New York City Bar Association
 - The New York State Association of Criminal Defense Lawyers
 - The Legal Aid Society of New York
 - The Bronx Defenders
- Vetting Process
 - Sign a nondisclosure agreement so that you will review potential petitions without disclosing their contents
 - Show that you are an attorney in good standing by consenting to your affiliated partner checking your performance record with the Office of Court Administration



Taking a Case

Receive a Referral from the Coordinator at your Affiliated Legal Partner

- Cases will be screened by the Executive Clemency Bureau for prima facie eligibility for clemency.
 - Commutations:
 1. Person is serving a sentence of a year or more;
 2. Person has served at least half of his or her sentence; and
 3. Person is not eligible for parole within one year of his or her application for commutation.
 - Pardons:
 1. Relief not available through a Certificate of Relief from Disabilities or a Certificate of Good Conduct.
 2. Request for pardon based on new claim of overwhelming and convincing proof of innocence.



Taking a Case

Review of the Referral

- Contents of the Referral:
 - Cover letter from the Clemency Bureau confirming the prima facie eligibility and providing an estimated release date
 - Initial application from the individual requesting clemency
 - Release form authorizing attorney review of DOCCS documents
 - Documents about the individual's time in DOCCS custody, including where he or she has been held, disciplinary records, and programming records



Taking a Case

Accepting the Referral and Engaging the Client

- Expectation: Take the case absent a conflict or a determination, shared by your coordinator, that a case for clemency cannot be presented.
- Engagement Letter: Sample limited representation letter in packet. Representation begins when client returns a signed copy.
- Notify coordinator at the partner legal organization that you are or are not accepting representation. The coordinator will notify the Clemency Bureau.



Taking a Case

Communicating with your Client

- Initial 30 minute confidential call with your client
 - Set up through the Clemency Bureau
 - Additional calls
- Visiting your client
 - Not required but encouraged
 - Directive 4404 describes the process

Understanding Your Client's Criminal Justice Experience from Conviction through Incarceration



Understanding Your Client's Criminal Justice Experience

Current Conviction

- Penal Law Definition: citation found on the Commitment Order
- Presentence Report:
 - Written by a probation officer
 - Describes the offense and client's previous activities
 - Obtain through the court
- Speak to your client: get the context and mitigating factors
- Speak with previous defense counsel



Understanding Your Client's Criminal Justice Experience

Previous Offenses

- Rap Sheet
 - Official record of arrests and what happened after each arrest, including dismissals and convictions
 - Obtain from client, who gets a free copy from DCJS
- Speak with your client: What was happening in his or her life that led to the arrests and/or convictions?

Understanding Your Client's Criminal Justice Experience

Incarceration Details

- Review “Explanation of DOCCS Documents”
- Review “Inmate Overview Page”
- Review “Locator System” printout
- Understand what programs are available at DOCCS facilities
 - Speak to client
 - Review DOCCS lists of programming by facility

Understanding Your Client's Criminal Justice Experience

Accomplishments while Incarcerated

- Review “Inmate Program Assignments”
- Review “Inmate Program Summary”
- Review “Training Achievement and Potential Employability Report”
- Speak to your client: What is he/she proud of? How has your client given back?

Understanding Your Client's Criminal Justice Experience

Disciplinary Record during Incarceration

- Review “Inmate Disciplinary History”
- Speak with your client:
 - Ask to see his or her copies of each Inmate Misbehavior Report and Disciplinary Hearing Disposition
 - Ask what was going on at the time of the disciplinary incident(s) – if they fall into a pattern, what is the explanation?

Understanding the Law and Standards of Clemency



Understanding the Law of Clemency

Constitutional Provisions

- NY State Constitution, Article IV, Section 4:
The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he or she may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.



Understanding the Law of Clemency

Statutes

- NY Executive Law Sections 15-19
- Section 19 describes granting pardons by reason of innocence, which is detailed in statute only:

[A pardon based on a] finding of innocence is based on evidence discovered after the judgment of conviction was rendered and after the time within to make a motion for new trial on newly discovered evidence had expired.



Understanding the Law of Clemency

Case Law

- Very little case law.
- “Commutation is a matter of grace not of right”
Roberts vs. State of New York, 160 NY 217 (1899).
- Courts will not review a Governor’s decision to grant or not to grant clemency, absent the Governor setting “an illegal or impossible consideration” for clemency.
Sturnialo v. Carey, 394 N.Y.S. 2d 137 (1977)



Understanding the Law of Clemency

Commutations – Executive Guidance

- The Governor is looking, broadly, at factors that make someone a candidate for this extraordinary relief.
 - Rehabilitation: Person has made exceptional strides in self-development and improvement.
 - Illness, Disability, Age: Person was young at the time of the offense, or is an older person now, or faces severe health issues.
 - Inequity: Continued incarceration would constitute gross unfairness because of the basic inequities involved.

In all instances, the application must address the affect of a proposed release upon public safety.



Understanding the Law of Clemency

Pardons – Executive Guidance

- Need: Individual must show a need for the pardon
 - *Instances where a Certificate of Relief from Disabilities or Certificate of Good Conduct will not suffice, as in deportation cases*
- Good citizenship: Individual must provide examples of rehabilitation and positive accomplishments since the conviction



Building a Strong Application Package



Building a Strong Application Package

Summation from the Attorney (Part One)

Sections should include:

- Executive summary
- Early life and family background
- Prior criminal history, if any, and mitigating factors
- Details about the conviction(s) – factual description together with any mitigating factors
- Behavior during incarceration (accomplishments, disciplinary)



Building a Strong Application Package

Summation from the Attorney (Part Two)

- For pardons: accomplishments and behavior after incarceration
- For commutations: description of plans for re-entry



Building a Strong Application Package

Letters from the Applicant and Supporters

- Applicant's letter should build on the initial letter to the Clemency Bureau requesting clemency.
 - Should address contrition (if applicable), rehabilitation, sense of purpose and goals going forward, any special needs or challenges
- Letters of support should come from anyone that knows the person and can address the person's character, accomplishments, and prospects for life in the community.
- Examples include: family, employers, co-workers, community leaders, faith leaders.



Building a Strong Application Package

Records of Accomplishments

- Diplomas, certificates, articles
- DOCCS records that back up representations about the applicant's disciplinary history and program participation

Building a Strong Application Package

Re-Entry Plans

- Letters from prospective employers (if applicable), community organizations, or re-entry support groups to back up whatever re-entry plans are referenced in the lawyer's narrative.

Questions?

