



***Pro Bono Manual for Volunteer  
Lawyers and Law Firms***

Revised April 27, 2018

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## The Seattle Clemency Project (SCP)

### **I. Mission and Background**

#### Mission

Our mission at the Seattle Clemency Project (SCP) is to help deserving, transformed, long-serving prisoners chart a path to clemency. SCP was founded in 2016 by criminal defense attorneys Jon Zulauf and Jennifer Smith, who recognized a great unmet need for legal representation in the clemency process. Jon and Jennifer often received letters from incarcerated individuals that contained a similar heart-wrenching plea for assistance: “I committed a crime many years ago, but I’ve taken responsibility for it and paid my debt to society. The person I am today is not the person I was decades ago, and I have a lot to contribute to society. I miss my family, and I don’t want to die in prison. Can you please help me?” Jon and Jennifer founded SCP to help these individuals achieve freedom, and in the process, to bring hope to those who have suffered long-term or even life-time periods of incarceration.

#### What Does SCP Do?

SCP matches men and women who have been in prison for at least 10 years with volunteer lawyers to assist in petitioning the Governor for a commutation. Through the process, SCP provides support and resources to both attorney and client.

#### Why Clemency?

The Sentencing Reform Act of 1981 (“SRA”) transformed the criminal justice landscape in Washington State. Prior to the SRA, the state parole system allowed individuals who exhibited good behavior in prison to be released before the expiration of their sentences. Even for individuals serving life sentences, there was hope of early release. The SRA, like other “tough on crime” policies of its time, took this hope away. The SRA required all criminal sentences in Washington to be “determinate” and led the state to abolish its parole system in 1984.

Washington State enacted an additional “tough on crime” policy in 1993. Through a citizens’ initiative, the State enacted the Persistent Offender Accountability Act (POAA), more commonly known as the “3 Strikes” law. Under the POAA, an individual found to have committed three serious felonies will be sentenced to life without parole, even if the typical punishment for their “third strike” would have been only a 5-10 year sentence.

As a result of such policies, Washington State prisons are filled to capacity with individuals serving long, fixed sentences. Many of these individuals have been rehabilitated and seek to contribute to society, but there is no parole board to grant them release. Instead, a reformed individual must seek clemency from the Governor.

#### How Does the Clemency Process Work for Commutations?

The Governor may grant an extraordinary release from incarceration under RCW 9.94A.728(d). The Clemency and Pardons Board (the “Board”), a five-person board, has been established within the office of the Governor to review petitions, hold quarterly hearings, and make recommendations to the Governor. See RCW 9.94A.880-885. In determining what recommendation to make to the Governor, the Board focuses on the existence or non-existence

of “extraordinary circumstances, pursuant to RCW 9.94A.728(d) and RCW 9.94A.885(1). Washington law does not define “extraordinary circumstances,” and there is no limit on the factors the Board may consider in making its recommendation to the Governor. The Governor has unfettered discretion and is not legally bound by the Board’s recommendation.

## **II. Initial Steps for Pro Bono Lawyers**

### **A. Training and materials**

1. Meet with SCP and learn about the case being assigned to you.
2. Review this manual and other materials provided to you about your role as a Pro Bono Attorney for SCP. Sign the Attorney Agreement and return a copy of the signature page to SCP via email. You can find these materials and all exhibits to this manual on the SCP website under the “For Attorneys” tab: (<http://www.seattleclemencyproject.org/for-attorneys/>). Contact SCP if you need the password to access the materials.
3. Read the Washington State Clemency and Pardons Board Policy Manual (Exhibit).

### **B. Contact client**

1. Write client a letter introducing yourself. Define the scope of your representation either by letter or attorney-client agreement. Designate all mail to client as “legal mail” and include a return address that matches your address on the WSBA website. DOC will not read the contents of your letters if it can confirm that you are a licensed attorney in Washington. (Exhibit: sample letter and attorney-client agreement).
2. Send client the DOC Release Plan template (Exhibit). Instruct client to fill it out as much as possible prior to your first meeting.
3. Establish a JPay account for quick and easy communication with your client (<https://www.jpays.com/>). Note that JPay communications may be monitored. You will have to purchase JPay e-stamps for approximately \$0.25 each to communicate through JPay.
4. To communicate with your client over the phone in confidence, provide your name and phone number to the DOC Chief of Investigative Operations/Designee (currently Clara Church, 360-725-8773). DOC will confirm your phone number with the WSBA, and thereafter, calls placed by your client to you will not be monitored or recorded (DOC Policy 450.200). You will not have the ability to call your client at your convenience, but you may be able to arrange for your client to call you at particular times through JPay. If your client is unable to pay for the phone calls and you would like to put money on your client’s account, you may do so through Global Tel\* Link (GTL): 1-877-650-4249 or <https://web.connectnetwork.com/>.

### **C. Schedule a meeting with your client and contact client’s classification counselor**

1. Call the facility where your client is housed and schedule a meeting with your client. Ask for the name of your client’s classification counselor. Attorney visits may be scheduled through the counselor, or there may be a separate scheduling

process, depending on the facility. You will need to fill out a background check form in order to gain entry to DOC facilities (Exhibit).

2. Establish contact with your client's classification counselor. The client's counselor will generally be able to discuss:
  - a. The client's DOC risk level classification (RLC). All clients are assessed upon entering DOC facilities following a conviction. The assessment may not have been updated since entry, or it may have been updated according to the new "Washington One" assessment model (Exhibit). Ask the counselor to explain the status of your client's RLC.
  - b. DOC classes and other programs available to your client.

D. Obtain summary of client's criminal history

1. Run a Washington State Patrol Criminal History Check on client (which you can do online with client's full name and date of birth. See: <https://fortress.wa.gov/Home/Index>) (Exhibit: sample web page and criminal history check)
2. DOC maintains a separate criminal history database which includes out-of-state convictions. You can obtain these records through a public records request (see Section II.E. below).
3. Identify the relevant offenses in client's criminal history and get more information on:
  - a. All strike cases for client with three-strike conviction
  - b. All violent offenses, if client is seeking clemency for a homicide or other violent offense

E. Prepare releases for client to sign at first meeting (Exhibit: sample releases)

1. DOC criminal history records
2. DOC disciplinary records (aka "infraction history")
3. DOC medical records, including any substance abuse or mental health evaluations/treatment records
4. Non-DOC medical records, including any substance abuse or mental health evaluations/treatment records
5. Completion of DOC programs
6. Other relevant records, such as school, immigration or military records

Practice Tips:

- Make sure releases for medical, substance abuse and mental health records are HIPAA compliant.
- To save time and money, it is helpful to use broad language in your releases, but more precise language in public records requests. For example, you may want to have the client consent to release of all medical records, but your records request may encompass a limited subset, such as "mental health evaluations from 2005 to the present." DOC Medical records cost about \$1.00 per page, and a client who has served 20+ years may have hundreds of pages of medical records.

### III. First Meeting with Client

- A. Tell client you are going to begin process of gathering information related to client's case.
- B. Discuss the scope of your representation, and have client sign the attorney-client agreement. Explain that your intention is to file a petition on client's behalf, but also explain the circumstances under which this may not happen. For example, if client fails to communicate with you or respond to your requests, or if you discover information that significantly decreases or eliminates your client's chance of receiving a favorable recommendation.
- C. Have client sign releases.
- D. Discuss with client:
  - 1. Criminal history within Washington and outside Washington, including juvenile offenses.
  - 2. Did your client file an appeal or any post-conviction motions? If so, when and in what courts?
  - 3. What happened at the sentencing on the case in which you are seeking clemency? (i.e., why and how did client get this sentence?)
  - 4. How client feels about the offenses he/she committed (this will be your first look at whether the client takes full responsibility and feels remorse or whether he/she is making excuses, which may suggest that he/she is not ready to pursue clemency).
  - 5. Disciplinary history within DOC (with a focus on any violence or substance abuse).
  - 6. Any gang affiliation? When was that renounced or terminated?
  - 7. Medical issues, including mental health history.
  - 8. Substance abuse history, evaluations and treatment (especially if involved in the relevant offense(s)).
  - 9. Re-entry plan (Discuss DOC Re-entry Plan Template and topics below. See Re-entry section below for sample questions).
    - a. Housing
    - b. Employment or realistic job prospects
    - c. Substance abuse treatment programs and/or AA/NA classes with a sponsor
    - d. Support from family and friends
    - e. Support from mentors or religious groups to help with re-integration
    - f. Health care, especially for elderly clients or clients with an identified health condition

#### Practice Tips:

- Bring WSP criminal history and use it to identify cases you want to discuss with your client. Get as much information as you can from your client so you can find the documents you will want to review from these cases.

- Check with your client whether there is any criminal history from another state. Get as much info as you can from client about offenses in other states (date of conviction/sentence, county, court, etc.).
- Sometimes cases of other defendants will be relevant. For example, a clemency petition may highlight that the codefendants who pled guilty received much lighter sentences than your client who went to trial.
- For additional sample questions/topics, see Exhibit: Zulauf First Client Meeting Checklist.

#### **IV. Preparing a Release/Re-entry Plan**

To achieve a favorable recommendation from the Board, your client must have a comprehensive re-entry plan that addresses his or her particular needs. Be prepared to present your client's plans to the Board in detail, from release on Day 1 to several years in the future. A comprehensive re-entry plan contains the following elements:

##### **A. Housing:**

1. What is your client's proposed county of release? Note that under DOC rules, an individual is typically released to his or her "county of origin." This is often the location of the client's conviction, and it may not be the client's desired county of release. Build your client's release plan in the location where the resources are and where they want to live, even if that is not the "county of origin." If your client receives a commutation, there will time to work with DOC to request release to a different county.
2. Are any family members or friends able to provide housing? If not, the client will need to apply to housing programs.
3. Is the client disabled? A veteran? If so, special housing programs may be available.

##### **B. Employment or realistic job prospects**

1. Discuss education, skills and work experience.
2. Will your client's criminal record prevent him/her from doing the kind of work he/she did prior to incarceration?
3. What type of job is your client physically able to perform?
4. Does your client have connections to anyone in the community who might offer him/her a job?
5. Will client's prospective employment enable him/her to develop a plan to pay off any outstanding legal financial obligations?

##### **C. Substance abuse treatment programs or AA/NA classes with a sponsor**

1. Is your client a better candidate for inpatient or outpatient treatment programs? Consider any failed drug tests while incarcerated.
2. Does your client have an AA/NA sponsor outside the prison facility? If so, how often has your client been in contact with that individual? The Board prefers the client to have developed a relationship with the sponsor prior to the hearing.

D. Support from family and friends

1. Who will be your client's primary supporters, and what will their roles be?
2. Do any of the client's supporters have criminal backgrounds? The Board will sometimes ask, especially if your client plans to live with the supporter.
3. If the client plans to live with a family member or friend, is it a sober living environment?

E. Support from mentors or religious groups to help with re-integration

1. Does the client have a personal relationship with anyone who has received clemency (or release) and is doing well in society?
2. Would this person help your client transition to life on the outside?

F. Health care, especially for elderly clients or clients with an identified health condition

1. Will your client have access to medical care and prescription medications?
2. Will your client be able to enroll in Medicaid/Medicare?
3. Will your client have access to mental health treatment?
4. Is your client seeking to apply for SSI/SSDI?

After your first visit with your client, ask your client's classification counselor to schedule a call between you, your client, the counselor, and Franklyn Smith (Transition Resources Specialist, DOC Re-entry Division, [frsmith@doc1.wa.gov](mailto:frsmith@doc1.wa.gov), office: 206-516-7788, cell: 206-549-6425).

Discuss the client's current plans with Mr. Smith and ask if he is able to connect your client to additional resources that would strengthen the client's plan. Help everyone on the call establish their roles in supporting your client's release plan.

Practice Tips:

- If your client lacks significant family support in the proposed county of release, consider connecting your client to a wraparound service provider like Farestart, House of Mercy, Seadrundar, or Pioneer Human Services. These organizations provide housing and other supportive services. (Exhibit: descriptions of wraparound service providers).
- See the Re-entry Spreadsheet Exhibit for a list of organizations that provide mental health services. Organizations such as Valley Cities and Sound provide outpatient mental health services, often in combination with chemical dependency services. In general, clients released to King County can obtain a mental health assessment from one of these organizations by attending a walk-in clinic. Following the initial assessment, the treatment provider will work with your client to establish a long-term treatment plan. The treatment costs are typically covered 100% by Medicaid (Apple Health). If your client plans to access any mental health services upon release, explain these services to the Board in as much detail as possible. Note that at the present time, SCP is not aware of any organization that will conduct a mental health assessment in prison to support a clemency petition.
- See the Re-entry Spreadsheet Exhibit for a list of organizations that provide chemical dependency services. Your client should consider whether an inpatient or outpatient program is most appropriate. If your client has a significant history of substance abuse



and/or has had dirty UAs in prison, acceptance to an inpatient program may increase your client's chances of receiving clemency.

- As the attorney, your primary role is to ensure that your client's release plan is:
  - **Concrete.** The Board wants to see that all plan details have been worked out in advance, and that your client has been formally accepted into social service programs (to the extent possible).
  - **Coordinated.** All elements of the plan must be cohesive. With your client's permission, reach out to your client's support network to ensure that everyone is aware of your client's decisions and is on board with the plan.
  - **Documented.** Obtain letters of acceptance from social service agencies and letters from community members who pledge to provide support/resources.

## V. Gathering Necessary Information to Evaluate Client's Case

- A. DOC records. DOC criminal history report, medical records, disciplinary records and proof of completion of programs within DOC, etc.
  - 1. For each release, complete form DOC 05-066 (Request for Disclosure of Records) and submit to: [publicdisclosureunit@doc1.wa.gov](mailto:publicdisclosureunit@doc1.wa.gov). Or mail to: Public Disclosure Unit, P.O. Box 41118, Olympia, WA 98504. For questions, call 360-725-8673.
  - 2. Ask for records to be sent in electronic format if possible because when records are sent on a CD, there is NO CHARGE (exception: medical records).
- B. Court records. Typically, for cases that are relevant to your client's clemency case, you will want the following documents:
  - 1. The charging document (Information or Complaint)
  - 2. The Affidavit/Certification for Determination of Probable Cause
  - 3. The Plea Agreement if there was a plea
  - 4. Any materials submitted on client's behalf at sentencing (these may include expert evaluations, letters of support and a letter from the client)
  - 5. The Judgment and Sentence (required)
  - 6. Documents showing any fines, fees, restitution (and interest) owing on the case
  - 7. The materials presented by the State at sentencing
  - 8. Appellate/post-conviction orders
- C. Other records. You may want medical records or substance abuse treatment records from providers outside of DOC, school records, immigration records, military records, etc.

### Practice Tips:

- Get going on records requests ASAP, as the process can take several months.
- Gathering old court records can be a time-consuming process. If the Court is accessible to you, the best way to get everything you need is to go to there and look through the files yourself. Often these are old cases that will only be available on microfiche. With some courts, you can work with the clerk's office to gather the documents you need. You may also be able to access documents in an online database.

- You may want to get a transcript of the sentencing hearing if your client indicates that the judge was reluctant to impose the sentence that was imposed.
- The Board may inquire about post-conviction motions at the hearing. If asked, you should be prepared to explain when your client filed the motions, what your client aimed to accomplish, and why these motions do not contradict your client's acceptance of responsibility for his/her offenses.

## **VI. Evaluating Client's Case and Identifying Areas for Improvement**

Prior to drafting the petition, it is important to pause and identify the strengths and weaknesses of your client's case. You may be able to address the weak points by obtaining additional documents, or by connecting your client to additional resources. Remember in evaluating the case that clemency is an extraordinary remedy. The following questions are important to consider in evaluating the case:

- A. What is the nature/extent of client's criminal history?
- B. Does client have a history of violence?
- C. Has client suffered any sort of trauma in his/her life?
- D. Is client's criminal history tied to a history of substance abuse or a mental health condition, or is some other mitigating issue at play in looking at client's involvement in the crime?
- E. What was the standard sentencing range (if not third strike, or without enhancement) for the crime?
- F. What was the statutory maximum at time of sentencing if this offense had not been third strike or had not involved a firearm (or whatever resulted in very long sentence)?
- G. How many disciplinary infractions does client have since serving his/her time on the sentence for which you are seeking clemency? How many are serious? Has client spent at least a full year with no infractions, and at least five years without any serious infractions?
- H. How did client adjust to prison life (and if client struggled to adjust at first, was there a turning point?)
- I. Has client participated in programs within DOC to better him or herself (to the extent he or she has access)?
- J. Has client done anything within DOC to make the lives of others better (by creating public art, acting as a leader, teacher, peacekeeper, leading by example, etc.)?
- K. Does client appear to take full responsibility for his or her offense(s) and feel remorseful?
- L. Does client have medical issues that cannot be fully addressed within DOC?
- M. Does client have solid family support?
- N. Does client have a thorough and realistic release plan?
- O. Is the victim or victim's family likely to oppose the petition?

### **Practice Tip:**

- In some cases, you will discover information that significantly decreases or eliminates your client's chances of receiving a favorable recommendation from the Board at this time. For example, you may discover that your client recently committed a violent

infraction. If this occurs, please contact SCP to discuss your client's chances of success and how to proceed moving forward.

## **VII. Contacting the Prosecutor**

- A. For each hearing, the Board asks the appropriate prosecutor's office to provide input and indicate support/opposition to the petition. Reach out to the prosecutor's office in the county in which your client received the sentence at issue. Some offices have a person dedicated to responding to clemency petitions, and in other offices you may be dealing with the elected prosecutor.
- B. Write a letter and ask for a meeting with the point person to discuss his/her position (Exhibit: sample letter to prosecutor's office).

### **Practice Tips:**

- If the prosecutor is considering supporting or not opposing your petition, ask what you can do to help him/her reach a decision. Some prosecutors may want to meet with your client or your client's family members or other supporters. If you have such a prosecutor, facilitate these meetings and stay in communication with the family and the prosecutor. Some prosecutors may also want to see your client participate in certain DOC programming. To the extent the prosecutor spends time on the case to formulate his/her position of support or to give your client access to evaluations or programming, express your gratitude!
- If you are dealing with a prosecutor who is considering supporting or not opposing the petition, transparency is paramount. The Board will verify with the prosecutor that you did not withhold any information to get the prosecutor's support. Share your client's full criminal history, a summary of his/her disciplinary history, and other relevant information. If you are giving partial information (for example, a report from the medical records but not all of the records), note that you are providing partial information and offer to provide additional documents upon request. Tell the prosecutor that you and your client are an open book.
- Ideally, you will know the prosecutor's position before you file your clemency petition. If it is favorable, you can make that representation in your petition consistent with what the prosecutor has said to you.

## **VIII. Contacting the Victim**

Pursuant to RCW 9.94A.885(3), the prosecuting attorney in the county of conviction is required to make reasonable efforts to notify victims, survivors of victims, and witnesses of the time and place of the hearing. These individuals have the right to provide input to the Board in any manner, including testimony at the hearing. Additionally, victims of violent or sex offenses have a right to a victim advocate during any interview or judicial proceeding (RCW 7.69.030(10)).

Do NOT contact the victim or the victim's family yourself. If you have contact information for the victim or victim's family, you may provide that information to the Board paralegal (currently Jennifer Rhéaume, [CPboard@atg.wa.gov](mailto:CPboard@atg.wa.gov)) or the prosecutor.

In rare cases, the prosecutor's office will be non-responsive or fail to fulfill its duty to contact the victim and victim's family. Consult SCP if this occurs.

## **IX. Second Meeting with Client**

### **A. Prepare in advance.**

1. Review all the records you have received and determine what additional information you want from your client about disciplinary offenses, criminal history or other issues.
2. In advance of second meeting, ask client to refine the list of people who will write letters and to work with family members to start gathering contact information for those people. Tell client that you will want to receive that information at your upcoming second meeting.
3. Go to Governor's website and print a copy of the Petition for Reprieve, Commutation, or Pardon application. Complete it and bring it to your client for review/signature.

### **B. Set up a meeting (preferably face to face) that is long enough to enable you to get a detailed "life story" from your client. Suggested topics to address include:**

1. Childhood, including family issues, trauma, abuse, school
2. How and why client entered the criminal justice system
3. Client's criminal history (confirm your understanding of each offense)
4. Why client believes he/she is a good candidate for clemency (what is extraordinary about his/her situation?)
5. What client has learned during incarceration
6. What positive things client has done while in custody (including how he/she has helped others)
7. Client's release plan
8. Get list of supporters and their contact information for letters of support
9. Discuss with client that he/she should write a statement in support of the request for clemency, to be included in the petition
10. Have client sign Petition for Reprieve, Commutation, or Pardon application form and go through the form with your client
11. Ask client if he/she would like any supporters to review a draft of the clemency petition
12. Ask client if he/she or a family member can provide you with pictures of your client and his/her family

### **Practice Tips:**

- Get your client to talk about the level of responsibility he/she feels for the crime and whether his/her perspective on this has always been the same or has evolved over time.
- Listen closely to whether your client blames anyone or anything for his/her circumstances (make sure your client is prepared not to minimize or make excuses to the Board).

- Consider with your client whether engaging an expert to write a letter or testify at the hearing could be helpful, but keep in mind that you or the client's family would have to retain the expert.

## **X. Preparing the Clemency Petition**

- A. Write a letter to your client's list of supporters asking for letters to attach to your petition. The supporters should acknowledge in the letter that they are familiar with the nature of the petitioner's offenses. They should also include their full address and contact information. (Exhibit: sample letter requesting letters of support).
- B. Draft the petition. SCP can provide you with samples.
- C. Send a copy of your draft to SCP and to your client for feedback. Send to any supporter your client wished to see a draft.
- D. Topics to consider in drafting the petition include: Client's background, criminal history, release plan, family support, support from inmates who have transitioned to freedom, treatment plan, work, education or job training, etc. Always focus on what is extraordinary about the case. Note that materials submitted may become public records under RCW 42.56.
- E. Potential petition attachments:
  - 1. A Washington State Patrol Criminal History and/or DOC criminal history report
  - 2. Court records for the case at issue (a copy of the Judgment and Sentence is required)
  - 3. Court records of relevant cases. For a client who was "struck out," this includes court documents from the final strike case and prior strike offenses (e.g., affidavit/certification for determination of probable cause, charging document, judgment and sentence and relevant info submitted at sentencing, such as victim impact statements and letters on client's behalf)
  - 4. DOC disciplinary records
  - 5. A letter from DOC outlining programs your client has done or confirming that your client has (or has not) had access to a drug treatment program.
  - 6. Substance abuse evaluation (applicable if client has been evaluated by DOC or an outside provider)
  - 7. Medical records detailing injuries or medical conditions
  - 8. Mental health assessments from DOC or private practitioners. Note that your client may be able to request a mental health assessment from DOC by submitting a kite.
  - 9. Letters from housing providers, job training programs, and treatment providers indicating that your client has been accepted into a program or that your client will be able to obtain an evaluation upon release.
  - 10. Statement written by the client in support of his/her request for clemency. If possible, this statement should be in the client's handwriting.
  - 11. Letters of support for client written by family and friends.

12. Photos of client and various family members (you may also consider including copies of any thank-you notes sent from your client to you or SCP)
  13. Supportive articles or periodicals (e.g., Seattle Times Editorial stating King County Prosecutor Dan Satterberg's position that many people who struck out shortly after the law was passed would not strike out today; excerpts of an ACLU study on recidivism rates of aging prisoners and money savings when aging prisoners are released)
- F. Finalize petition and submit electronically to [CPboard@atg.wa.gov](mailto:CPboard@atg.wa.gov).
  - G. Send client's original signature page via mail to the Board paralegal (currently Jennifer Rhéaume) at: Washington State Clemency and Pardons Board, c/o Jennifer Rhéaume, Office of the Attorney General, P.O. Box 40116, Olympia, WA 98504.
  - H. Send SCP a copy of the final draft of the clemency petition.
  - I. With client's permission, send copies of the final petition to your client's supporters (particularly those who will speak on client's behalf at the hearing).

Practice Tips:

- Transparency is important to the Board. Do not sweep difficult issues under the rug or fail to address them. Be clear if you are giving a summary or partial records, and indicate that more records are available to view upon request.
- To limit the amount of information, you may elect to summarize infractions committed and provide more information about the most serious and recent infractions.
- If the prosecutor is considering supporting the petition, you may consider sending a draft of the petition to the prosecutor.
- Sometimes if the prosecutor is not opposing release, he/she can help arrange a mental health or substance abuse evaluation at the prison.
- If your client developed his/her release plan in coordination with Franklyn Smith in the DOC Re-entry Division, note this in the petition. This will allow the Governor's office to contact Franklyn Smith with questions about the release plan.
- Deadlines for submission and hearing dates can be found on the Governor's website. If you are working with a prosecutor who is not opposing the petition, you might explore whether you can get an earlier hearing date, even if you missed the deadline for getting that hearing date.
- DOC policy prohibits DOC employees and contractors from submitting letters or testifying in support of a clemency petition. This rule sometimes prevents the individuals who know your client best from contributing (such as your client's work supervisor, or a professor teaching courses at the prison). SCP is currently discussing this rule with DOC, and you should consult SCP if this rule poses an issue in your case.
- The Board permits you to submit video of your client with the petition, and some Board members find these videos compelling. If your client's institution will allow you to make a video, consider recording a client statement or client interview.

## **XI. Preparing for the Clemency Hearing**

### **A. Identify a list of speakers**

1. The ideal number of speakers is 4-6, and you should take into account whether the Board will be listening to anyone else in addition to you, your client and the people you plan to call, such as the prosecutor or victim.
2. Identify supporters who have been released from custody and will be part of your client's support group and re-entry. These people who can "show client the way" are particularly important to the Board.
3. Identify with client other inmates who are in custody who may want to supplement previous letters or write a statement to be read by you to the Board.

### **B. Prepare speakers**

1. Contact the supporters who will address the Board on behalf of your client. Give them an outline of points they should be prepared to touch on. Generally, if they submitted a letter, they should say something new and not just re-state what is in the letter. They should be prepared to address what is extraordinary about your client and what they will do specifically to support your client in the adjustment from incarceration to freedom.
2. Suggest that the speakers write out what they plan to say.
3. Send speakers the following link: <https://www.tvw.org/> and recommend a couple of specific hearings to watch. You may choose to send links to particular hearings or portions of hearings (note the applicable minutes). Consult SCP for sample hearings that may be similar to your client's case, and/or sample hearings with supporters who provided effective testimony.
4. Run through sample questions over the phone and ensure that the supporters' responses are consistent with your client's responses.
5. Caution supporters that their testimony can help or hurt your client's chances of receiving a favorable recommendation. Some supporters have caused harm by contradicting the client's version of events (and/or acceptance of responsibility), making excuses for the client's conduct, or failing to present themselves as stable, responsible supporters.

### **C. Rally additional support for the hearing**

1. Send letters to client's supporters (those not in custody) to get max attendance at the hearing. Enclose a copy of the hearing notification letter. The letter should emphasize how important it is for supporters to attend (Exhibit: sample letter to supporters and hearing notification letter).
2. At the hearing, the Board will ask all supporters to stand and will note how many people are present.

### **D. Communicate with the Board**

1. It is helpful to maintain contact with the current Board paralegal in the period leading up to the hearing (currently Jennifer Rhéaume).

2. Several weeks prior to the hearing, the Board paralegal will send you DOC's "Case Analysis," which is a document the client's classification counselor prepares for the Board. The Case Analysis contains information such as the client's prior offenses, classification and custody level, infraction/segregation history, Risk Level Classification (RLC), programming history, medical status, mental health status, legal financial obligations, visitor history, and custody transition considerations. The Board relies on this information during the hearing, especially the descriptions of each infraction. You should ensure that all information is accurate and consistent with your client's recollections.
3. The Board will give you a deadline for submitting additional materials (typically one week before the hearing), and you should consider whether to submit additional materials. Email any additional documents to the Board paralegal at [CPboard@atg.wa.gov](mailto:CPboard@atg.wa.gov).
4. The Board requires all attorneys to submit a list of the supporters who intend to speak at the hearing two weeks prior to the hearing date. Email the list to the Board paralegal.

E. Prepare to present your client's case and answer the Board's questions

1. Consult with SCP staff about prior hearings to watch that will be on point to your case. Depending on your case (3 strikes, prior violent offenses, prosecutor does or does not oppose, etc.) there may be relevant hearings for you to watch. SCP recommends volunteer lawyers watch at least two hearings to prepare for their hearing.
2. Get the state sentencing guidelines applicable to your case from the year your client was sentenced and consider submitting them to the Board. Also, be aware of the statutory maximum at the time of the offense. For example, on a third strike case in which the client had served 24 years, if client had not been a 3rd striker, the max the Court could have imposed was 10 years (for Class B felony). The Board will consider this as relevant to their decision.
3. Find out if your client has outstanding LFOs (legal financial obligations) on the case at issue. Call the clerk's office and find out the amount of restitution and court costs owed, broken down by principal and interest. See if the family can pull together to pay off the principal or make a contribution toward paying off the principal before the hearing (prioritize payment of restitution and restitution interest over court costs). The Board will take this as both a show of support and of good faith. If a payment is made toward the balance owed, provide proof to the Board.
4. If there are any cases that are central to your petition that were the subject of an appeal, consider contacting the Court of Appeals to see if the court's order is available since the Board may have questions about the appeal.
5. Look closely at client's disciplinary history and prepare your client to address any serious or recent violations, or violations involving violence or a dirty UA.

F. Prepare your client

1. Send your client a letter explaining what will happen at the hearing. Include a list of "hard questions" the Board may have for your client. Instruct your client on



- how to prepare a statement to present to the Board. The statement is your client's opportunity to express remorse, explain why he/she is extraordinary, and thank the Board for considering his/her petition. It should be different from the client's written statement in the petition. If possible, advise client to send you a draft of the statement so that you can provide feedback.
2. Meet with your client, ideally within a week of the hearing.
    - a. Run through mock questions and answers with your client about what you perceive to be the weak spots in the client's argument that he/she is ready for release or that his/her case is extraordinary.
    - b. Have your client practice giving his/her statement to the Board.
    - c. Prepare your client to appear at the hearing via Skype. Your client will be on screen and everyone at the hearing will be able to see and hear your client. Make sure your client is aware that facial expressions and conduct at the hearing can be viewed by all. This may change over time, but right now the Skype video feed only works in one direction – your client will be able to listen to the hearing but will not be able to view it.
    - d. Run through each relevant infraction and ask your client to explain what happened. Encourage your client to think about what he/she learned from each infraction and how he/she modified his/her behavior going forward. Note that the Board cares about general infractions as well as serious infractions. The Board wants to see that your client respects authority and that your client is willing and able to follow all rules.
  3. At the hearing, both you and your client should have an outline available to answer questions about disciplinary history within DOC (infraction history). You should have on hand the following info:
    - a. Total number of infractions and what period of time this covers (example: client had 24 infractions dating back to 1973, but only 12 while incarcerated for this offense. One was dismissed).
    - b. Number of serious infractions, drug-related infractions, and violent infractions.
    - c. Number of infractions in the last 10 years.
    - d. The date of the last infraction. Be prepared to explain why the infractions stopped.

**Practice Tips:**

- You will need to work with your client to identify the best combination of speakers for his/her case. The Board wants to hear from the family members who will be living with or monitoring your client's transition. They like to hear from formerly incarcerated individuals who are close to your client and have successfully navigated the transition from long-term incarceration to freedom. They like to hear from people who have gotten to know your client through programs inside the prison and can speak to their participation. The Board also likes to see younger family members who know your client and can help your client adjust to the modern world once released.
- The petition and the hearing will both impact the outcome. Note that the Board and the Governor's office place significant weight on your client's ability to answer questions at the hearing.

- If your client has access to a computer where he or she can watch the hearings, recommend that he/she watches a couple of relevant hearings. At most DOC facilities, this will not be an option.
- Discuss with your client whether the sentencing judge expressed regret about having to impose the sentence that was imposed. (particularly in 3 strikes, firearm cases or other types of cases where the sentence might be disproportionate to what others who committed similar conduct would have received). If so, consider getting a transcript of the judge's comments. Also, consider contacting the sentencing judge (cc the prosecutor's office if the judge is still sitting) and ask if the judge wants to give input to the Board.
- The longer a client has been infraction-free before bringing the request for clemency, the better, and the easier it will be to argue that the client has undergone a change.
- About a week before the hearing, check in with your client's counselor to ensure that he/she has been notified to make your client available for the hearing by Skype.

## **XII. Representing Your Client at the Clemency Hearing**

### **A. Introduction**

1. When introducing yourself, consider telling the Board that you volunteered your time on the case (important if LFOs are not paid off) and that you are working with SCP.

### **B. Opening statement (5-7 minutes).**

1. Highlight the reasons your client's case is extraordinary. Focus on things you have not said in your written materials.
2. Outline for the Board your client's release plan in detail, including where he/she will live, work or job training plans, substance abuse or other treatment, and your client's position on conditions of supervision if released.

### **C. Speakers**

1. Introduce your speakers and tell the Board why you and your client have chosen them.
2. The Board will hear from your speakers, the prosecutor, and anyone opposing the petition.
3. The client typically speaks last, but this is not a requirement.

### **D. Board questions**

1. The Board will likely ask you and your client questions that may touch on:
  - a. Criminal history
  - b. Substance abuse history and risk of relapse
  - c. Disciplinary history and conduct inside prison
  - d. Family and other support
  - e. Plans for work and where client will live
  - f. How client feels about the offense(s) and what he/she has learned since committing the offense(s)

- g. Whether client has undergone any personal transformation since the offense(s)
- h. How client will deal with being on supervision and under a microscope upon release

E. Board deliberation and decision

1. The Board usually votes right after the testimony portion of the hearing as to what their recommendation will be (unless they are waiting for information from the prosecutor's office).
2. The Board's recommendation goes to the Governor's office after the hearing. The Governor works with his/her counsel to decide what action to take on the petition and to formulate a release plan with DOC.

Practice Tips:

- Address the difficult aspects of the case and acknowledge what will likely be the Board's concerns in considering whether to release your client.
- If the hearing is in Olympia and you are coming from far away, consider staying the night before. A hotel close to the legislative campus is the Hilton Garden Inn.
- The hearing times can be adjusted the day of the hearing, depending on the circumstances. Plan to be as flexible as possible.

**XIII. After the Clemency Hearing**

- A. Send your client a letter summarizing what happened at the hearing (Exhibit: sample letter).
- B. If your client received a favorable recommendation:
  1. Schedule a phone call with client to discuss the hearing. Ensure that client understood all conditions of the Board's approval, including any DOC programming or post-release supervision requirements. On the call, ask client whether he/she will permit SCP to post a story about the client's successful hearing.
  2. Consult with SCP about the timing of reaching out to the Governor's counsel after a recommendation for clemency from the Board. The Governor's deliberation can take several months.
  3. At the appropriate time, reach out to the Governor's counsel responsible for advising on clemency matters (currently Tip Wonhoff, Deputy General Counsel). Summarize the extraordinary aspects of the case and offer to answer any outstanding questions.
  4. Ask your client's counselor if additional programming can be made available to your client to prepare for release.
  5. Maintain contact with your client on a regular basis. The Governor's counsel may contact you with questions, and he/she may ask when you last contacted your client. Note that the Governor's counsel is unlikely to meet with your client in person and may rely on you for information.

6. Note that if your client is released and is alleged to have violated the terms of his/her supervision, the client will be given a hearing by DOC. The Governor's office may call you for guidance or ask you to participate.
- C. If your client's petition was denied:
1. Explain what your client may do to increase his or her chances of receiving clemency in the future.
  2. Explain the Board's three-year waiting period for successive petitions and note when client is eligible to apply again.
- D. When you have finished your work on the case (either after the hearing, Governor's decision or release), send your client a letter indicating that you have terminated your representation.

#### **XIV. SCP Contact Information and Helpful Links**

If you have questions at any time, please contact SCP Executive Director Jennifer Smith ([jennifer@seattleclemencyproject.org](mailto:jennifer@seattleclemencyproject.org)) or Board President Jon Zulauf ([jonzulauf@zulaufandchambliss.com](mailto:jonzulauf@zulaufandchambliss.com)).

Organization Website: [www.seattleclemencyproject.org/](http://www.seattleclemencyproject.org/)