



***Pardon Cases with Immigration
Consequences:***

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

January 9th, 2020

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The Seattle Clemency Project (SCP)

I. Mission and Background

Mission

Our mission at the Seattle Clemency Project (SCP) has been 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 heart-wrenching pleas 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.

Pardons

In 2018, SCP identified a new population of individuals: immigrants who have past criminal convictions which put them at high risk for automatic deportation and potentially a permanent ban on ever coming back to the United States. A single criminal offense can have devastating immigration consequences, regardless of how old or how serious the offense is. In many cases, these individuals have lived in the United States virtually all their lives, their families and loved ones are all here, they only read and write in English, and they have no contacts in or relationship with the country where they were born. For these immigrants who are facing deportation because of a single past crime, a pardon may their only protection from exile.

Because a conviction for a broad range of offenses triggers automatic deportation, many immigrants never have the opportunity to show rehabilitation, remorse, progress or change. Under the current administration, thousands of people who have lived in and contributed to our communities for decades - parents, spouses, children, employees and even employers - live under a constant threat of deportation due to past criminal convictions. The governor has the power to correct these disproportionate punishments inflicted upon immigrants.

Effect of Pardons

By effectively erasing criminal convictions from someone’s record, pardons can remove the underlying grounds for the order of removal. A Governor’s full and unconditional pardon can waive certain criminal convictions and allow immigrants to pursue or keep their legal status. In cases where a pardon has full effect because the underlying offense falls into a waivable category, the applicant will no longer be deportable due to that criminal conviction.

This manual provides an overview of the pardon application process and sample materials. Because the law around the immigration consequences of criminal convictions is specialized and complicated, SCP will already have determined, through consultation with an immigration attorney, that the underlying criminal conviction in your client’s case is in fact a waivable offense.

What Does SCP Do?

In clemency cases, 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. Similarly, in pardons cases, SCP matches immigrants with criminal convictions with volunteer lawyers to assist in petitioning the Governor for a pardon, in the hopes of removing the only basis for the client's potential deportation. As with clemency cases, SCP provides support and resources to both attorney and client.

How Does the Clemency Process Work for Pardons?

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 concerning petitions for pardons and commutations. 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. You can find this manual and all exhibits 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. Schedule a meeting with your client. Define the scope of your representation either by letter or attorney-client agreement. (Exhibit: sample letter and attorney-client agreement.)
 - a. Any and all communications between the client and ICE, the Department of Homeland Security, or any other immigration-related agency or organization should be made by the client's immigration lawyer and not by you or any other SCP pro-bono attorney.

C. Go to the Governor's website and print a copy of the Petition for Reprieve, Commutation, or Pardon application. Complete it and set aside for your client's review.

- 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)

III. Meeting with Client

- A. Discuss the scope of your representation, and have client sign the attorney-client agreement.
- B. Tell client you are going to begin process of gathering information related to client's case.
- C. Have client review and sign Petition for Reprieve, Commutation, or Pardon application.
- D. Interview your client to learn their 'life story.' The information gained from these interviews will be the foundation of the petition letter you will file with the Clemency and Pardons Board. Categories to cover include: client's immigration and early life history; client's conviction and criminal history; and client's post-prison history.
 - 1. Client's immigration and early life history. Topics include:
 - a. Life in client's country of origin, if applicable.
 - b. Circumstances surrounding client's immigration to the United States.
 - i. why client's family left country of origin.
 - ii. if client is a refugee, discuss time spent in refugee camp(s) before arriving in the United States.
 - c. Early life in the U.S.:
 - i. family history, including names and ages of all siblings.
 - ii. client's school and social life history.
 - iii. trauma or difficulties client endured, as a result of being an immigrant or for other reasons. This may include trauma to client and immediate family members as a result of being refugees, living in poverty, being bullied, other consequences of being an immigrant, etc.
 - d. Job/work history.
 - e. Introduction of client into criminal activity.
 - 2. Client's criminal history: the conviction for which client is seeking a pardon, as well as client's subsequent and prior criminal history, if any. Topics include:
 - a. Criminal history within Washington and outside Washington, including juvenile offenses.
 - b. A factual summary of the crime for which client is seeking a pardon.

- c. How client feels about the offense(s) he/she committed.
- d. Did client take a plea or go to trial? If client plead guilty, was client advised of the immigration consequences of the plea?
- e. What happened at the sentencing on the case in which you are seeking a pardon? (i.e., why and how did client get this sentence?)
- f. Did your client file an appeal or any post-conviction motions? If so, when and in what courts?
- g. If there were any co-defendants, what were they charged with? Did they plea? Go to trial? What sentences did they receive, if any.
- h. Any gang affiliation? When was that renounced or terminated?
- i. Substance abuse history, evaluations and treatment (especially if involved in the relevant offense(s)).
- j. Client's prison record. Infractions? Education? Programming or other positive behaviors in prison?

Practice Tips:

- Bring WSP criminal history, if applicable, 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 pardon petition may highlight that the co-defendants who pleaded guilty received much lighter sentences than your client who went to trial.

3. Client's Post-Prison life. Topics include:

- a. Client's family relationships:
 - i. Spouse.
 - ii. Children.
 - iii. Parents, nephews and/or nieces, siblings, significant others and their children, etc.
- b. Client's other relationships: friends and work associates. How much community support does your client have?
- c. Client's responsibilities in the community: community groups, religious groups, advocacy, etc.
- d. Client's work history.
- e. Client's health.
- f. Client's family's health.
- g. Client's level of responsibility, financial and otherwise, for others (spouse, children, aging parents, others).
 - i. ie. client drives his elderly mother to doctors' appointments and to pick up medicine; mentors his nephews to stay out of trouble, etc.

E. What you will need from your client.

1. Ask client for a list of people who will write letters of support. Work with client, and family members if applicable, to gather as many letters of support as possible. These include letters from family, friends, neighbors, work associates, religious leaders, prison officials, children's teachers and coaches, community leaders, etc. These letters of support may provide the strongest support for why the client deserves a pardon.
 - a. Letters of support should be addressed to "To Whom it May Concern," so that the letters can be used both for the Clemency and Pardons Board and for Immigration Court/Board of Immigration Appeals ('BIA'). If the letter writers are comfortable providing their immigration status that is also helpful (i.e. "my name is John Smith and I am a U.S. citizen . . .")
2. Discuss with client that he/she should write a personal statement in support of the pardon request, to be included in the petition. This statement is an opportunity for the client to explain, in their own words, the emotional, social, and/or personal impact of the immigration consequences of their conviction. It is also an opportunity to communicate the emotional toll of having to live with the constant threat of deportation on the client, their family and their community.
3. Ask client and family/community members for pictures of your client and his/her family. You will include these photos with the client's personal statement and letters of support to paint a picture of the client's rich life in the community.
4. Ask client if he/she would like any supporters to review a draft of the pardon petition.
5. You may wish to have a psycho-social evaluation of your client and/or his immediate family members showing the serious impact deportation would have on them.

IV. Gathering Necessary Information to Evaluate Client's Case

- A. Court records. Typically, for cases that are relevant to your client's pardon 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.

B. Other records.

1. ICE Order of Supervision.
2. Detention order.
3. Order of Removal.
4. Prison records.
5. Any other records that show post-release rehabilitation or extraordinary circumstances, including medical records or substance abuse treatment records, school records, immigration records, job performance reports, 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 for you or your client to go 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 on an online database.
- 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.

V. 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 pardon 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. 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, 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 pardon petition. If it is favorable, you can make that representation in your petition consistent with what the prosecutor has said to you.

VI. 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) 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.

VII. Preparing the Pardon Petition

- A. Work with your client to get his/her supporters' letters of support to attach to your petition. They should include their full address and contact information. (Exhibit: sample letter requesting letters of support).
- B. Draft the petition. SCP will provide you with samples.
 - 1. The main portion of the petition will consist of a letter to the Clemency and Pardons Board, highlighting the extraordinary circumstances in your client's case which justify the governor's power to grant a pardon. This letter will not only explain how the client has made personal progress and contributed to his/her community since the conviction, but also how the pardon would help the applicant's immigration case. This letter will be the narrative of your client's journey through the immigration and criminal justice systems all the way through to the invaluable, rehabilitated person they are today. Highlight the devastation on family members and the client himself. In order to highlight these things you may want to cover the following:
 - a. The letter should lay out who your client is and may include:
 - i. Where and when they were born.
 - ii. When they arrived in the United States; how long they have lived in the U.S.

- iii. Whether they were admitted to the United States as a refugee; the process of immigrating to the U.S.
 - iv. What family ties, if any, do they have in their country of origin.
 - v. What family ties they have in the United States.
 - vi. How much time elapsed between the initial entry to the United States and the commission of the crime.
 - vii. How much time elapsed between the crime and the commencement of removal proceedings, if removal proceedings have been initiated.
 - viii. What are their stakes in the community.
 - ix. Are members of their family U.S. citizens/lawful permanent residents.
 - x. What is the hardship to their family:
 - a. do they support their family;
 - b. what effect would deportation have on their family members financially or psychologically.
 - xi. What effect would deportation have on the client's education, physical or mental health.
 - xii. Are they, or a family member, a veteran.
 - xiii. What are the current conditions of their country of origin.
 - xiv. What is their employment and educational history.
 - xv. What are their community ties.
 - xvi. Do they own their own home and/or business.
- b. The letter should also address your client's criminal justice experience:
- i. What were the circumstances of the arrest.
 - ii. Where was your client in his life when the arrest occurred.
 - iii. Were there any mitigating circumstances.
 - iv. What was the client's experience in court.
 - v. Were they told to plead guilty or go to trial.
 - vi. Were they advised of the immigration consequences of the plea.
 - vii. If they claim innocence now, why did they plead guilty.
 - viii. Did they complete probation (get a letter).
 - ix. What rehabilitation efforts did they make in prison.
 - x. How long has it been since the commission of the crime.
 - xi. How long ago did your client complete his sentence.
- c. The letter should also address your client's immigration experience
- i. Explain your client's current immigration status.
 - ii. Explain how the pardon would alleviate or remove the immigration consequences of client's conviction.
2. In front of the letter portion of the petition you should attach a very brief cover sheet which succinctly states the main points and extraordinary circumstances identified in your main petition letter. (Exhibit: sample petition cover sheet.)

3. Other parts of the Petition will include your client's personal statement/letter; your client's criminal history documents, letters of support; and other supporting documentation.
- C. Send a copy of your draft to 1. SCP; 2. your client; and 3. your client's immigration attorney, for feedback. Your client's immigration attorney will fact check representations of immigration history and path to relief as well as scan for any information that could be prejudicial in subsequent immigration proceedings.
- D. 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. Statement written by the client in support of his/her request for a pardon.
 4. Letters of support for client written by family and friends.
 5. Videos and 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).
 6. Immigration check-in documentation.
 7. Relevant media articles concerning increased deportations and their effect on local communities.
- E. Finalize petition and submit electronically to CPboard@atg.wa.gov.
- F. 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. Jennifer's phone number is: (360) 586-0047.
- G. Send a copy of the final petition to SCP.
- H. Send a copy of the final petition to the prosecuting attorney.

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.
- 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.
- You may wish to have a psycho-social evaluation of your clients and/or his immediate family members showing the serious impact deportation would have on them.

VIII. Preparing for the Pardon Hearing

- A. Identify a list of speakers

1. The ideal number of speakers is 3-5, 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.

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 how your client's potential deportation would affect them.
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 to get maximum 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. 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.
3. 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 there may be relevant hearings for you to watch. SCP recommends volunteer lawyers watch at least two hearings to prepare for their hearing.
2. 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.

F. Prepare your client

1. Discuss with your client 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 the extraordinary circumstances surrounding their potential deportation, and thank the Board for considering his/her petition. It should be different from the client's written statement in the petition. Ask client to provide 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.

G. Consult with Northwest Immigrant Rights Project (or your client's immigration attorney if outside of NWIRP). The Board may ask counsel immigration-related questions. NWIRP is willing to assist counsel in preparing answers to such questions, or a NWIRP advocate may attend the hearing, as circumstances dictate.

Practice Tips:

- You will need to work with your client to identify the best combination of speakers for his/her case. Rely on the client for support, as well as those who know your client the best. Seek out people who they themselves are impressive. The Board also likes to see family members, particularly young family members in your client's life. Importantly, family members should NOT minimize the client's crime nor the impacts of the crime.
- 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, recommend that he/she watches a couple of relevant hearings. If necessary, assist your client to ensure that they are able to watch these relevant hearings.

IX. Representing Your Client at the Pardon 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.

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. Circumstances of offense for which client was convicted.
 - b. Criminal history (including prior but particularly subsequent criminal history).
 - c. How client feels about the offense and what he/she has learned since committing the offense.
 - d. Personal transformation client has undergone since the offense.
 - e. Hardships to client and those closest to client were client to be deported.
 - f. Substance abuse history and risk of relapse.

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 has the power to grant or deny the petition regardless of the Board's decision.

Practice Tips:

- Address the difficult aspects of the case and acknowledge what will likely be the Board's concerns in considering whether to recommend a pardon.

- 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.

X. After the Pardon 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 meeting with client to discuss the hearing. Ensure that client understood all conditions of the Board's approval. During the meeting, 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 a pardon from the Board. The Governor's deliberation can take several months, however when there are immigration consequences the governor's office is open to an expedited process. Impress upon them the need to act quickly.
 3. At the appropriate time, reach out to the Governor's counsel responsible for advising on pardon matters (currently Tip Wonhoff, Deputy General Counsel). Summarize the extraordinary aspects of the case and offer to answer any outstanding questions.
 4. 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.
- C. 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.
- D. Provide a copy of the petition, signed pardon, and letters of support to the client's immigration attorney as soon as possible after receiving the pardon.

XI. SCP Contact Information and Helpful Links

If you have questions at any time, please contact SCP Executive Director Jennifer Smith (jennifer@seattleclemencyproject.org), SCP founder Jon Zulauf (jonzulauf@zulaufandchambliss.com), or SCP Pardon Coordinator Louise Bush (louise@seattleclemencyproject.org).

Organization Website: www.seattleclemencyproject.org/