



STATE OF FLORIDA

**Rules  
Of  
Executive  
Clemency**

**2007**

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## **RULES OF EXECUTIVE CLEMENCY**

### **1. Statement of Policy**

Executive Clemency is a power vested in the Governor by the Florida Constitution of 1968. Article IV, Section 8(a) of the Constitution provides:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

The Governor and members of the Cabinet collectively are the Clemency Board. Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposes.

### **2. Administration**

A. These rules were created by mutual consent of the Clemency Board to assist persons in applying for clemency. However, nothing contained herein can or is intended to limit the authority or discretion given to the Clemency Board in the exercise of its constitutional prerogative.

B. The Office of Executive Clemency was created to assist in the orderly and expeditious exercise of this executive power.

C. The Governor, with the approval of at least two members of the Clemency Board, appoints a Coordinator who hires all assistants. The Coordinator and assistants comprise the Office of Executive Clemency. The Coordinator must keep a proper record of all proceedings and is the custodian of all records.

### **3. Parole and Probation**

The Clemency Board will neither grant nor revoke parole or probation.

### **4. Clemency**

The Governor has the unfettered discretion to deny clemency at any time, for any reason. The Governor, with the approval of at least two members of the Clemency Board, has the unfettered discretion to grant, at any time, for any reason, the following forms of clemency:

#### **I. A. Full Pardon**

A Full Pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms.

## **B. Pardon Without Firearm Authority**

A Pardon Without Firearm Authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms.

## **C. Pardon for Misdemeanor**

A Pardon for a Misdemeanor Conviction releases a person from punishment and forgives guilt.

## **D. Commutation of Sentence**

A Commutation of Sentence may adjust an applicant's penalty to one less severe but does not restore any civil rights, and it does not restore the authority to own, possess, or use firearms. (See also Rule 15 on commutation of death sentences.)

## **E. Remission of Fines and Forfeitures**

A Remission of Fines or Forfeitures suspends, reduces, or removes fines or forfeitures.

## **F. Specific Authority to Own, Possess, or Use Firearms**

The Specific Authority to Own, Possess, or Use Firearms restores to an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction. Due to federal firearms laws, the Clemency Board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts. In order to comply with the federal laws, a Presidential Pardon or a Relief of Disability from the Bureau of Alcohol, Tobacco and Firearms must be issued in cases involving federal court convictions. A pardon or restoration of civil rights with no restrictions on firearms must be issued by the state where the conviction occurred.

## **G. Restoration of Civil Rights in Florida**

The Restoration of Civil Rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms. Such restoration shall not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

## **H. Restoration of Alien Status under Florida Law**

The Restoration of Alien Status Under Florida Law restores to an applicant who is not a citizen of the United States such rights enjoyed by him or her, under the authority of the State of Florida, which were lost as a result of a conviction of any crime that is a felony or would be a felony under Florida law, except the specific authority to own, possess, or use firearms. However, restoration of these rights shall not affect the immigration status of the applicant (i.e., a certificate evidencing Restoration of Alien Status Under Florida Law shall not be a ground for relief from removal proceedings initiated by the United States Immigration and Naturalization Service).

## **II. Conditional Clemency**

All of the preceding forms of clemency may be granted subject to various conditions. If the conditions of clemency are violated or breached, such clemency may be revoked by the Clemency Board, returning the applicant to his or her status prior to receiving the conditional clemency.

### **5. Eligibility**

#### **I. A. Pardons**

A person may not apply for a pardon unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release and conditional release, for a period of no less than 10 years. The applicant may not have outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have any outstanding victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations pursuant to Chapter 960, Florida Statutes.

Persons who had adjudication of guilt withheld and were not convicted, may apply for a pardon if they otherwise meet the eligibility requirements of this rule.

#### **B. Commutations of Sentence**

A person may not be considered for a commutation of sentence unless he or she has been granted a waiver pursuant to Rule 8 or has had his or her case placed upon a Clemency Board agenda pursuant to Rule 17.

#### **C. Remission of Fines and Forfeitures**

A person may not apply for a remission of fines and forfeitures unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including, but not limited to, parole, probation, community control, control release, and conditional release.

#### **D. Specific Authority to Own, Possess, or Use Firearms**

A person may not apply for the specific authority to own, possess, or use firearms unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release, and conditional release, for a period of no less than eight (8) years. The applicant may not have outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have any outstanding victim restitution, including, but not limited to, restitution pursuant to a court order or civil judgment, or obligations pursuant to Chapter 960, Florida Statutes. Persons convicted in a federal, military, or out-of-state court are not eligible to apply.

## **E. Restoration of Civil Rights or Alien Status under Florida Law**

A person, who meets the requirements of Rule 9, shall have his or her civil rights immediately restored by automatic approval of the Clemency Board. Persons who do not qualify for automatic approval under Rule 9, may qualify for restoration of civil rights without a hearing under Rule 10.<sup>1</sup> All others may request restoration of civil rights pursuant to Rule 6 after completion of all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release, has no pending outstanding detainers or pending criminal charges, and has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes. Restoration of civil rights includes all rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess or use firearms.

If the person was convicted in a court other than a court of the State of Florida, he or she must be a legal resident of the State of Florida at the time the application is filed, considered, and acted upon. If the person is applying for Restoration of Alien Status under Florida Law, he or she must be domiciled in the State of Florida at the time the application is filed, considered, and acted upon.

Notwithstanding any provision of this rule, an individual who has previously had his or her civil rights or Alien Status under Florida Law restored and is subsequently convicted of any offense listed in Rule 9(A)(4) or 9(A)(5) shall be ineligible for restoration of civil rights or Alien Status under Florida law unless the individual has remained crime and arrest free for a period of no less than ten (10) years after completing all sentences and conditions of supervision (including but not limited to, parole, probation, community control, control release and conditional release) arising from the subsequent conviction.

## **6. Applications**

### **I. A. Application Forms**

All correspondence regarding an application for clemency should be addressed to Coordinator, Office of Executive Clemency, 2601 Blair Stone Road, Building C, Room 244 Tallahassee, Florida, 32399-2450. Those persons seeking clemency shall complete an application and submit it to the Office of Executive Clemency. Persons eligible for automatic approval of Restoration of Civil Rights or Alien Status under Florida Law under Rule 9, or approval without a hearing under Rule 10 need not submit an application. (See Rule 9 or 10.) Application forms will be furnished by the Coordinator upon request or they may be downloaded from the clemency website at <https://fpc.state.fl.us/Clemency.htm>. All applications for clemency must be filed with the Coordinator on the form provided by the Office of Executive Clemency.

### **B. Supporting Documents**

Each application for clemency, except for requests seeking only restoration of civil rights, shall have attached to it a certified copy of the charging instrument (indictment, information, or warrant with supporting affidavit) for each felony conviction, or misdemeanor conviction if seeking a pardon for a

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<sup>1</sup> Effective April 5, 2007, persons released from incarceration and/or supervision shall have their names electronically transmitted from the Department of Corrections to the Office of Executive Clemency to begin the process for the automatic approval of restoration of civil rights or for restoration of civil rights without a hearing.

misdemeanor, and a certified copy of the judgment and sentence for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor. *(Note: The Office of Executive Clemency or Parole Commission may assist in preparation of applications in unique situations.)* Each application for clemency may include character references, letters of support, and any other documents that are relevant to the application for clemency.

### **C. Applicant Responsibility**

It is the responsibility of the applicant to answer all inquiries fully and truthfully and to keep the Office of Executive Clemency advised of any change in the information provided in the application, specifically change of address and phone number.

### **D. Failure to Meet Requirements**

If any application fails to meet the requirements of the Rules of Executive Clemency, the Coordinator may return it without further consideration.

## **II. Notification**

Upon receipt of a completed application that meets the requirements of the Rules of Executive Clemency, the Coordinator shall make reasonable attempts to notify the victims of record, the respective State Attorney's Office, the Office of the Statewide Prosecutor, if applicable, and the Office of the Attorney General, Bureau of Advocacy and Grants.

## **7. Applications Referred to the Florida Parole Commission**

Every application which meets the requirements of these Rules may be referred to the Florida Parole Commission for an investigation, report, and recommendation. All persons who submit applications shall comply with the reasonable requests of the Florida Parole Commission in order to facilitate and expedite investigation of their cases. Failure to comply with such requests by the Commission, without adequate explanation, may result in denial of the application without further consideration.

## **8. Waiver of the Rules to Apply for Clemency**

### **I. A. Request for Waiver**

If an applicant cannot meet the requirements of Rule 5, he or she may seek a waiver of the rules so long as at least two years have elapsed since the applicant was first convicted and, except for waivers for commutation of sentence, no restitution is owed by applicant. However, an applicant who receives a mandatory minimum sentence must serve at least one-third of the sentence before applying for a waiver of the rules. If an otherwise ineligible applicant demonstrates extraordinary merit, based upon a concise statement of compelling need, the two-year time period or the serving of one-third of the mandatory minimum sentence may be waived by the Governor. Individuals eligible for waiver consideration may receive a "Request for Waiver" application form by contacting the Office of Executive Clemency or it may be downloaded from the clemency website at <https://fpc.state.fl.us/Clemency.htm>. Upon receipt of the original and four (4) copies of the Request for Waiver form, clemency application, and any other

material to be considered, the Coordinator shall forward copies of the documents to the Clemency Board and the Florida Parole Commission. The Commission shall review the documents and make an advisory recommendation to the Clemency Board. Notification of receipt by the Office of Executive Clemency of such a request for waiver shall be provided as indicated under Rule 6. A waiver of the rules may only be granted by the Governor with the approval of at least one member of the Clemency Board. Rule 17 may also be invoked by any member of the Clemency Board.

### **B. Denial of Waiver**

Waiver cases which have not been acted upon by the Clemency Board within 90 days of receipt of the Parole Commission's waiver report by the Office of Executive Clemency, shall be summarily denied, unless the period is extended by the Governor.

### **C. Referral to Commission**

Upon receipt by the Coordinator of written notification from the Governor and at least one member of the Clemency Board, or such notification invoking Rule 17, the Coordinator may refer the request to the Parole Commission for a full investigation and place the case on the next possible agenda to be heard by the Clemency Board.

### **D. Notification**

The Coordinator shall attempt to provide individuals seeking waivers of the rules, and the respective prosecuting authority, with approximately 20 days notice prior to any such request being heard by representatives of the Clemency Board.

## **II. §944.30 Cases**

All remaining §944.30, Florida Statutes, cases will be processed under this rule.

## **III. Domestic Violence Case Review**

Domestic violence cases that meet the criteria as enumerated within the special waiver procedures adopted by the Clemency Board on December 18, 1991, as amended, will be processed as requests for waivers of the rule.

## **9. Automatic Approval of Restoration of Civil Rights or Alien Status under Florida Law**

### **A. Criteria for Eligibility**

A person shall have his or her civil rights or alien status under Florida Law immediately restored by automatic approval of the Clemency Board, excluding the specific authority to own, possess, or use firearms, if the following requirements are met:

1. The person has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;

2. The person has no outstanding detainers or pending criminal charges;
3. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;
4. The person has never been convicted of one of the following crimes:
  - a. murder, attempted murder, attempted felony murder, manslaughter (F.S. Chapter 782);
  - b. DUI manslaughter (F.S. 316.193(3));
  - c. sexual battery, attempted sexual battery (F.S. 794.011)
  - d. lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (F.S. Chapter 800);
  - e. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (F.S. 825.1025);
  - f. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);
  - g. aggravated child abuse (F.S. 827.03);
  - h. failure to register as a sexual predator (F.S. 775) or sexual offender ( F.S. 943.0435);
  - i. computer pornography, transmission of computer pornography, buying or selling of minors (F.S. Chapter 847);
  - j. kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (F.S. Chapter 787);
  - k. aggravated battery, attempted aggravated battery (F.S. 784.045);
  - l. armed robbery, attempted armed robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (F.S. Chapter 812);
  - m. poisoning of food or water (F.S. 859.01);
  - n. abuse of a dead human body (F.S. 872.06);
  - o. first degree burglary or attempted first degree burglary (F.S. 810.02);
  - p. arson or attempted arson (F.S. 806.01);
  - q. aggravated assault (F.S. 784.021);
  - r. aggravated stalking (F.S. 784.048);
  - s. aggravated battery or aggravated assault on a law enforcement officer or other specified officer (F.S. 784.07);
  - t. first degree trafficking in illegal substances (F.S. 893.135);
  - u. aircraft piracy (F.S. 860.16);
  - v. unlawful throwing, placing, or discharging of a destructive device or bomb (F.S. 790.161);
  - w. facilitating or furthering terrorism (F.S. 775.31);
  - x. treason (F.S. 876.32); or
  - y. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.
5. The person has not been declared to be one of the following:
  - a. Habitual Violent Felony Offender under F.S. 775.084(1)(b);
  - b. Three-time Violent Felony Offender under F.S. 775.084(1)(c);
  - c. Violent Career Criminal under F.S. 775.084;
  - d. Prison Releasee Reoffender under F.S. 775.082(9)(a);
  - e. Sexual Predator under F.S. 775.21;



6. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

7. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

## **B. Action by Clemency Board**

The Florida Parole Commission shall review the records of individuals released by the Department of Corrections by expiration of sentence or from community supervision, who are identified as eligible for automatic approval of restoration of civil rights. If an individual meets all requirements under Rule 9(A), then the Coordinator shall provide that information to the Clemency Board, and pursuant to executive order, issue a certificate that grants restoration of civil rights or alien status under Florida Law in the State of Florida, without the specific authority to own, possess or use firearms. Article IV, Section 8 of the Florida Constitution provides that an executive order granting clemency requires the signature of the Governor and two members of the Clemency Board. A person who is not eligible for automatic restoration of civil rights under Rule 9(A), and is not eligible for restoration of civil rights without a hearing under Rule 10, may request restoration of civil rights pursuant to Rule 6.

## **C. Out-of-State or Federal Convictions**

If the person has been convicted in a court other than a court of the State of Florida, a request for the restoration of civil rights or alien status under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Parole Commission to determine if the requirements under Rule 9(A) are met. If the Commission certifies that all of the requirements in Rule 9(A) are met, the Coordinator shall follow procedures for the automatic restoration of civil rights as enumerated herein.

## **10. Restoration of Civil Rights or Alien Status under Florida Law Without a Hearing**

### **A. Criteria for Eligibility**

As provided in paragraph 10 C, an individual may have his or her civil rights or alien status under Florida law restored, excluding the specific authority to own, possess, or use firearms, without a hearing, if the following requirements are met:

1. The person has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;
2. The person has no outstanding detainers or pending criminal charges;
3. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;
4. The person has never been convicted of one of the following crimes:
  - a. murder, attempted murder, attempted felony murder, manslaughter (F.S. Chapter 782);
  - b. DUI manslaughter (F.S. 316.193(3));
  - c. sexual battery, attempted sexual battery (F.S. 794.011)

- d. lewd or lascivious battery, attempted lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (F.S. Chapter 800);
- e. lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (F.S. 825.1025);
- f. sexual performance by a child, attempted sexual performance by a child (F.S. 827.071);
- g. aggravated child abuse (F.S. 827.03);
- h. failure to register as a sexual predator (F.S. 775) or sexual offender ( F.S. 943.0435);
- i. facilitating or furthering terrorism (F.S. 775.31);
- j. treason (F.S. 876.32); or
- k. any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in this State.

5. The person has not been declared to be a Sexual Predator under F.S. 775.21;

6. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

7. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

#### **B. Criteria for 15 Year Eligibility**

Except as provided in paragraph 10 C, an individual may have his or her civil rights or alien status under Florida law restored, excluding the specific authority to own, possess, or use firearms, without a hearing, if the following requirements are met:

1. The person has remained crime and arrest free for a period of 15 years or more after completion of all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;

2. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;

3. In the case of restoration of civil rights, (a) the person must be a citizen of the United States; and (b) if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

4. In the case of restoring alien status under Florida Law, the person must be domiciled in Florida.

#### **C. Approval by Clemency Board**

The Florida Parole Commission shall review the records of all individuals released by the Department of Corrections by expiration of sentence or community supervision to certify their eligibility for restoration of civil rights or alien status under Florida law without a hearing. The Coordinator shall issue a preliminary review list of individuals eligible for restoration of civil rights or alien status under

Florida law without a hearing to the Clemency Board members. If the Governor plus two members approve an individual's restoration of civil rights or alien status under Florida law without a hearing within 30 days of issuance of the preliminary review list, the Coordinator shall, by executive order, issue a certificate that grants the individual restoration of civil rights or alien status under Florida law in the State of Florida, without the specific authority to own, possess, or use firearms. If approval is not granted, that candidate will be notified, and may pursue restoration of these rights pursuant to Rule 6.

#### **D. Out-of-State or Federal Convictions**

If the person has been convicted in a court other than a court of the State of Florida, a request for the restoration of civil rights or alien status under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Parole Commission to determine if the requirements under Rule 10(A) are met. If the Commission certifies that all of the requirements in Rule 10(A) are met, the Coordinator shall follow procedures for the restoration of civil rights or alien status without a hearing as enumerated herein.

### **11. Hearings by the Clemency Board on Pending Applications**

#### **A. Cases on the Agenda**

After the Parole Commission investigation is complete, the Coordinator may place upon the agenda for consideration by the Clemency Board at its next scheduled meeting:

1. Timely applications that meet the eligibility requirements under Rule 5 for which any investigation, report and recommendation, conducted under Rule 7, has been completed;

2. Cases in which an applicant has obtained a waiver under Rule 8 or when Rule 17 has been invoked so long as any investigation, report and recommendation conducted under Rule 7 has been completed.

#### **B. Distribution of Agenda**

The Coordinator shall prepare an agenda which shall include all cases that qualify for a hearing under Subsection A of this Rule. A preliminary agenda shall be distributed to the Clemency Board at least 10 days before the next scheduled meeting.

#### **C. Failure of Applicant to Comply With Rules**

An applicant's failure to comply with any rule of executive clemency may result in refusal, without notice, to place an application on the agenda for consideration.

### **12. Hearings Before the Clemency Board**

#### **A. Scheduled Meetings**

The Clemency Board will meet in the months of March, June, September, and December of each year, or at such times as set by the Clemency Board. The Governor may call a special meeting at any time for any reason.

## **B. Notice of Appearance**

Applicants are not required to appear at the hearing, but the Clemency Board encourages applicants to attend. The applicant, or any other person intending to speak on behalf of the applicant, must notify the Office of Executive Clemency at least 10 days prior to the scheduled meeting of the Clemency Board.

## **C. Time Limits**

Any person making an oral presentation to the Clemency Board will be allowed no more than five minutes. All persons making oral presentations in favor of an application shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an application, including victims, shall be allowed cumulatively no more than 10 minutes.

## **D. Filing of Executive Orders**

Subsequent to the hearings of the Clemency Board, the Coordinator shall prepare executive orders granting clemency as directed and circulate them to the members of the Clemency Board. After the Executive Orders are fully executed, the Coordinator shall certify and mail a copy to the applicant. The original executive order shall be filed with the custodian of state records. The Coordinator shall send a letter to each applicant officially stating the disposition of his or her application. A seal is not used by the Office of Executive Clemency.

## **13. Continuance and Withdrawal of Cases**

An interested party may apply for a continuance of a case if the continuance is based on good cause. The Governor will decide if the case will be continued. Cases held under advisement for further information desired by the Governor will be marked "continued" and noted on each subsequent agenda until the case is decided.

The applicant may withdraw his or her application by notifying the Office of Executive Clemency at least 20 days prior to the next scheduled meeting of the Clemency Board. A request to withdraw a case made within 20 days of the hearing on the application will be allowed if the Governor or the Coordinator for the Office of Executive Clemency determines that there is good cause. Cases that are withdrawn from the agenda will not be considered again until the application is re-filed.

## **14. Reapplication for Clemency**

Any otherwise eligible person who has been granted or denied any form of executive clemency may not reapply for further executive clemency for at least two years from the date that such action became final. Any person who was granted a waiver of the Rules but was subsequently denied any form of executive clemency, must apply for another waiver prior to seeking any form of executive clemency in the future, if otherwise ineligible. However, he or she may not apply for another waiver for at least three years from the date that such action became final. Any person who has been denied a waiver under Rule 8 may not apply for another waiver for at least three years from the date the waiver was denied. Any person who (i) has been convicted of a capital or life felony, (ii) has been denied a waiver pursuant to Rule 8 and,

(iii) is currently incarcerated, may not apply for another waiver for at least five years from the date the waiver was denied.

## **15. Commutation of Death Sentences**

This Rule applies to all cases where the sentence of death has been imposed. The Rules of Executive Clemency, except Rules 1, 2, 3, 4, 15 and 16 are inapplicable to cases where inmates are sentenced to death.

### **A. Confidentiality**

Notwithstanding incorporation of Rule 16 by reference in cases where inmates are sentenced to death, the full text of Rule 16 is repeated below for clarification: Due to the nature of the information presented to the Clemency Board, all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff. Only the Governor and no other member of the Clemency Board, nor any other state entity that may be in the possession of Clemency Board materials, has the discretion to allow such records and documents to be inspected or copied. Access to such materials shall not constitute a waiver of confidentiality.

### **B. Parole Commission Investigation**

In all cases where the death penalty has been imposed, the Florida Parole Commission may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency and provide a final report to the Clemency Board. The investigation shall include, but not be limited to, (1) an interview with the inmate, who may have clemency counsel present, by the Commission; (2) an interview, if possible, with the trial attorneys who prosecuted the case and defended the inmate; (3) an interview, if possible, with the presiding judge and; (4) an interview, if possible, with the defendant's family. The Parole Commission shall provide notice to the Office of the Attorney General, Bureau of Advocacy and Grants, that an investigation has been initiated. The Office of the Attorney General, Bureau of Advocacy and Grants shall then provide notice to the victims of record that an investigation is pending and at that time shall request written comments from the victims of record. Upon receipt of comments from victims of record or their representatives, the Office of the Attorney General, Bureau of Advocacy and Grants shall forward such comments to the Parole Commission to be included in the final report to the Clemency Board.

### **C. Monitoring Cases for Investigation**

The investigation by the Parole Commission shall begin at such time as designated by the Governor. If the Governor has made no such designation, the investigation shall begin immediately after the defendant's initial petition for writ of habeas corpus, filed in the appropriate federal district court, has been denied by the 11th Circuit Court of Appeals, so long as all post-conviction pleadings, both state and federal, have been filed in a timely manner as determined by the Governor. An investigation shall commence immediately upon any failure to timely file the initial motion for postconviction relief in state court, and any appeal therefrom, or the initial petition for writ of habeas corpus in federal court, and any appeal therefrom. The time frames established by this rule are not tolled during the pendency of any petition for rehearing or reconsideration (or any similar such motion for clarification, etc.), request for rehearing en banc in the 11th Circuit Court of Appeals, or petition for writ of certiorari in the U.S.

Supreme Court. Failure to conduct or complete the investigation pursuant to these rules shall not be a ground for relief for the death penalty defendant. The Parole Commission's Capital Punishment Research Specialist shall routinely monitor and track death penalty cases beyond direct appeal for this purpose. Cases investigated under previous administrations may be reinvestigated at the Governor's discretion.

#### **D. Parole Commission Report**

After the investigation is concluded, the Commissioners who personally interviewed the inmate shall prepare and issue a final report on their findings and conclusions. The final report shall include (1) any statements made by the defendant, and defendant's counsel, during the course of the investigation; (2) a detailed summary from each Commissioner who interviewed the inmate; and (3) information gathered during the course of the investigation. The final report shall be forwarded to all members of the Clemency Board within 120 days of the commencement of the investigation, unless the time period is extended by the Governor.

#### **E. Request for Hearing by any Clemency Board Member**

After the report is received by the Clemency Board, the Coordinator shall place the case on the agenda for the next scheduled meeting or at a specially called meeting of the Clemency Board if, as a result of the investigation, or final report, any member of the Clemency Board requests a hearing within 20 days of transmittal of the final report to the Clemency Board. Once a hearing is set, the Coordinator shall provide notice to the appropriate state attorney, the inmate's clemency counsel, the victim's rights coordinator in the Executive Office of the Governor and the Office of Attorney General, Bureau of Advocacy and Grants. The Office of the Attorney General, Bureau of Advocacy and Grants shall then notify the victims of record of the hearing.

#### **F. Request for Hearing by Governor**

Notwithstanding any provision to the contrary in the Rules of Executive Clemency, in any case in which the death sentence has been imposed, the Governor may at any time place the case on the agenda and set a hearing for the next scheduled meeting or at a specially called meeting of the Clemency Board.

#### **G. Transcript of Interview**

Upon request, a copy of the actual transcript of any statements or testimony of the inmate relating to a clemency investigation shall be provided to the state attorney, the inmate's clemency counsel, or victim's family. The attorney for the state, the inmate's clemency counsel, the victim's family, the inmate, or any other interested person may file a written statement, brief or memorandum on the case within 90 days of initiation of the investigation under Rule 15, copies of which will be distributed to the members of the Clemency Board. The person filing such written information should provide five (5) copies to the Coordinator of the Office of Executive Clemency.

#### **H. Time Limits**

At the clemency hearing for capital punishment cases, the inmate's clemency counsel and the attorneys for the state may make an oral presentation, each not to exceed 15 minutes collectively. Representatives of the victim's family may make oral statements not to exceed an additional five minutes collectively. The Governor may extend these time frames at his or her discretion.

## **I. Distribution and Filing of Orders**

If a commutation of a death sentence is ordered by the Governor with the approval of at least two members of the Clemency Board, the original order shall be filed with the custodian of state records, and a copy of the order shall be sent to the inmate, the attorneys representing the state, the inmate's clemency counsel, a representative of the victim's family, the Secretary of the Department of Corrections, and the chief judge of the circuit where the inmate was sentenced. The Office of the Attorney General, Bureau of Advocacy and Grants shall inform the victim's family within 24 hours of such action by the Clemency Board.

### **16. Confidentiality of Records and Documents**

Due to the nature of the information presented to the Clemency Board, all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff. Only the Governor, and no other member of the Clemency Board nor any other state entity that may be in the possession of Clemency Board materials, has the discretion to allow such records and documents to be inspected or copied. Access to such materials, as approved by the Governor, does not constitute a waiver of confidentiality.

### **17. Cases Proposed by the Governor or Members of the Clemency Board**

**A.** In cases of exceptional merit, any member of the Clemency Board may place a case on an upcoming agenda for consideration.

### **18. Effective Dates**

History. - Adopted September 10, 1975, Rule 6 (formerly Rule 9) effective November 1, 1975; Rule 7 adopted December 8, 1976; Rule 6 amended December 8, 1976, effective July 1, 1977; revised September 14, 1977; Rule 12 amended October 7, 1981; revised December 12, 1984; amended January 8, 1985; amended July 2, 1985; Rule 12 amended September 18, 1986; Rules amended December 18, 1991, effective January 1, 1992; Rule 10 and Rule 15 amended June 22, 1992; Rules amended December 29, 1994, effective January 1, 1995. Rules amended January 7, 1997, effective January 15, 1997; Rule 4 and Rule 9 revised October 28, 1999, effective January 1, 2000; Rules revised June 14, 2001, effective June 14, 2001; Rules revised March 27, 2003; effective March 27, 2003; Rules revised June 20, 2003; effective June 20, 2003; Rules revised December 9, 2004; effective December 9, 2004; Rules revised April 5, 2007, effective April 5, 2007.