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# THE CLEMENCY PROCESS IN VIRGINIA

*Walter A. McFarlane\**

## I. INTRODUCTION

When asked to contribute an article on the issue of clemency, I immediately knew the area I wanted to address: the procedural and practical aspects of the clemency process in Virginia. While numerous articles have been written about clemency, few have examined the procedural rules and none have comprehensively studied the executive viewpoint regarding this area of the law.

From the inception of my tenure with the Office of the Governor, I perceived that very few practicing attorneys in Virginia have a grasp of the law or the procedural aspects surrounding clemency. When I was appointed by the Governor, one of my first assignments was evaluating a plea for clemency. I quickly recognized that I lacked the requisite knowledge of this area of the law. Accordingly, I needed to educate myself. Fortunately, a number of my predecessors and staff members who had served prior administrations were extremely helpful.<sup>1</sup> They patiently and thoroughly outlined the philosophy and procedures they had been taught and which had been employed by recent Virginia governors. Armed with this knowledge and the information I was able to glean from law review articles and treatises, I slowly began to appreciate the law and past case precedent. This enabled me to draft procedures I believed to be appropriate for recommendation to Governor Wilder that I hoped would ensure that a request for clemency would be treated with the respect it deserved.

I accepted most of the prior practices and procedures that had been utilized in the past and made a few rejections or modifications. This acceptance of precedence not only provided continuity

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1. The author wishes to thank the Honorable Timothy Sullivan, Leonard Hopkins, Allan Alberts, and Valerie Watkins for their aid and assistance that was so graciously proffered when the author began his review of the prior administration policies on clemency in 1990. The author also wishes to note that any opinion set forth in this article is that of the author and does not necessarily reflect those of the Governor or the Commonwealth of Virginia.

between prior administrations and Governor Wilder's administration, but also assured that the procedures to be employed were proven by past experience. Governor Wilder reviewed my draft, made additions, modifications, and deletions and the procedures for handling clemency petitions during his tenure were implemented.

As I began to review petitions for clemency, I became aware relatively few attorneys submitting petitions on behalf of their clients had a sound grasp of the law or the appropriate manner to properly represent their clients. This has not changed. This is not to say that a number of attorneys did not file excellent petitions which reflected extraordinary legal talent. In fact, I have been privileged to review a number of outstanding petitions which evidenced a significant legal acumen and grasp of clemency law and practice. On the other hand, I also have received work from attorneys who had no idea how to present a case.

In light of the foregoing, this article will attempt to provide practical guidance to those who will represent clients in the clemency process. I hope it will prove to be what my law professors used to call "bread and butter advice." I am satisfied that Virginia Governors will continue to employ the basic tenets that this administration inherited and in turn passes on to them; accordingly, this article should continue to be an effective aid in the future.

## II. ORIGINS OF CLEMENCY AS IT EXISTS IN VIRGINIA

It has been said that clemency:

is something of a living fossil, a relic from the days when an all-powerful monarch possessed the power to punish and remit punishment as an act of mercy. It is the oldest form of release procedures, and it survives in some form in every state in the union, and in every country of the world except China.<sup>2</sup>

Chief Justice Marshall attributed the basic premise of clemency adopted in the United States to English law and tradition,<sup>3</sup> stating:

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2. Daniel T. Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 TEX. L. REV. 569, 575 (1991); see also Leslie Sebba, *The Pardoning Power — A World Survey*, 68 J. CRIM. L. & CRIMINOLOGY 83 (1977).

3. *United States v. Wilson*, 32 U.S. (7 Pet.) 150 (1833).

As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance; we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it.<sup>4</sup>

This concept of English law was based upon Roman law principles.<sup>5</sup> "In his Commentaries, Blackstone said that the Crown's use of the pardon power to ensure that justice was administered with mercy was one of the great advantages of monarchy over any other kind of government, because it softened the rigors of general law."<sup>6</sup> Coke also interpreted the power of clemency as an asset to the powers of the English throne.<sup>7</sup>

Colonial governors exercised clemency under a delegation of power from the Crown.<sup>8</sup> The Virginia Governor first received his power to grant clemency under the Virginia Charter of 1609; this power was passed to the Royal Governor in 1624 when Virginia became a royal colony.<sup>9</sup>

"Immediately following the American Revolution, most state governments rejected the British legacy of complete executive control of the clemency power."<sup>10</sup> Eight out of the thirteen states were uncomfortable with the governor maintaining exclusive authority as had the king; instead, they divided the power between an executive legislative council and the governor.<sup>11</sup>

This approach was not long lived. Many state constitutions, influenced by the newly adopted federal constitution which vested power in the executive, led to an abolition of the legislative councils and an increased power for the governors.<sup>12</sup>

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4. *Id.* at 160.

5. Kobil, *supra* note 2, at 585-86 (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES 388).

6. *Id.* at 586 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES 390-91).

7. *Id.* (citing E. COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 233 (4th ed. London 1669)).

8. *Id.* at 589; see William F. Duber, *The Presidents' Power to Pardon: A Constitutional History*, 18 WM. & MARY L. REV. 475, 497 (1977).

9. See Duber, *supra* note 8, at 497.

10. Kobil, *supra* note 2, at 604.

11. *Id.* at 604-05; see also 2 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 641 (1974).

12. See Kobil, *supra* note 2, at 604-05.

Virginia's constitution grants the Governor exclusive power to grant pardons.<sup>13</sup> Prior to the adoption of the new constitution in 1971, however, the Constitution allowed the General Assembly to establish a coexistent Board of Pardons and Reprieves.<sup>14</sup> This Board was utilized only for the three-year period between 1944 and 1948, and it proved unsatisfactory. Accordingly, although the Constitution continued to provide the General Assembly with the power to create and utilize the Board, it was statutorily terminated.<sup>15</sup> The Board was eliminated from the Constitution when the revised version was adopted in 1971.<sup>16</sup> It should be noted, however, that the deletion of this provision does not prevent the "creation of an advisory board whose counsel the Governor could seek in deciding whether to exercise his powers of executive clemency. No constitutional provision is necessary to authorize the creation of such an advisory board."<sup>17</sup>

### III. PRACTICING AS COUNSEL IN A CLEMENCY PROCEEDING

#### A. *Practical Suggestions*

Before discussing several of Virginia's current clemency provisions, it may be helpful to make a few general suggestions. As I stated earlier, before I began to review and make recommendations on clemency procedures to the Governor, I found it necessary to educate myself through a review of treatises and existing law, and by extensive discussions with my predecessors. It was only after I had completed this educational process that I felt comfortable advising the Governor.

I would counsel any attorney who represents clients in clemency proceedings to undertake the same education.<sup>18</sup> Although many of the same skills that are used in practice before the courts also are necessary when filing a request for clemency, there are notable differences. The two most obvious distinctions follow: (1) throughout

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13. VA. CONST. art. V, § 12.

14. VA. CONST. of 1902, art. V, § 73 (1928). It was not until 1851 that the Governor could act without consultation with the Council of State. 2 Howard, *supra* note 11, at 642. In 1927, the Prentis Commission recommended the creation of a Board of Pardon and Reprieves to relieve the Governor of some of the burden associated with his clemency. *Id.* at 643.

15. See William F. Stone, Jr., Note, *Pardons in Virginia*, 26 WASH. & LEE L. REV. 307, 308 (1969).

16. See 2 Howard, *supra* note 11, at 644.

17. *Id.*

18. For an excellent review on the concept of clemency, see Kobil, *supra* note 2, 571-611.

clemency proceedings, the petitioner is not entitled to due process protection,<sup>19</sup> and (2) the decision to grant clemency is within the exclusive discretion of the Governor; there is no right of appeal.<sup>20</sup>

This is not to say that the general concepts of due process are disregarded in Virginia or that the Governor's decision is based upon arbitrary or capricious whim. To the contrary, the present system offers the petitioner a significant opportunity to present and argue his case with the assurance that he will be given a fair and impartial determination. Thus, even though it is not constitutionally mandated, it is my opinion that the petitioner is given due process protection in Virginia. The reason I highlight the inherent differences between a judicial hearing and a clemency proceeding is to help attorneys anticipate, prepare for, and argue their client's case.

### B. *The Procedures Governing Review of Petitions for Clemency*

I will focus on the two procedures where the advice of counsel is most frequently sought: (1) requests for pardons, and (2) pleas for the restoration of rights that were vitiated when a client was convicted of a felony.

#### 1. Types of Pardons

There are a number of different types of pardons in the United States.<sup>21</sup> In Virginia, we presently utilize only four variations: absolute, simple, conditional, and medical pardons.

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19. See *Binion v. United States Department of Justice*, 695 F.2d 1189, 1190 (9th Cir. 1983) (in discussing the President's clemency power, the court confirmed that, "[t]he applicant has no due process rights in the process."); see also *Shears v. Rockefeller*, 268 F. Supp. 1546, 1547-48, (S.D. W. Va. 1986) (holding that a refused pardon does not trigger any constitutionally protected rights). See generally, Katherine L. Bishop et al., *Fourth Circuit Court Review: Criminal Procedure*, 33 WASH. & LEE L. REV. 517, 569-74 (1976) (discussing petitioner's right of due process in an action to revoke a conditional pardon); Deborah Leavy, Note, *A Matter of Life and Death: Due Process Protection in Capital Clemency Proceedings*, 90 YALE L.J. 889 (1981).

20. *Solesbee v. Balkcom*, 339 U.S. 9, 12 (1950) (noting that "[s]eldom, if ever, has the power of executive clemency been subjected to review by the courts."); see also, Kobil, *supra* note 2, at 594-601.

21. Many terms have been applied to the clemency function, and their usage has not always been consistent. "Thus, in the English language alone, the following terms are encountered: free pardon, full pardon, conditional pardon, commutation, remission, reprieve, respite, amnesty, clemency, mercy." Sabba, *supra* note 2, at 116.

### a. Absolute Pardons

This pardon excuses the fact of a conviction, treating it as if it never occurred.<sup>22</sup> Note that an absolute pardon does not restore rights taken by the conviction unless the document granting the pardon specifically provides for such a restoration.<sup>23</sup> This is illogical because if the pardon erases the existence of the conviction, the individual's rights also should be viewed as never taken. The reason for such an interpretation may be historical. The provisions of the constitution which grant the clemency powers to the Governor speak separately of the issue.<sup>24</sup> As a practical matter, therefore, counsel representing a client who is seeking an absolute pardon should be certain to request that any civil disabilities also be removed.

### b. Simple Pardons

This pardon forgives the legal violation, but does not erase the individual's criminal record; nor does it restore his civil rights unless such relief is specifically given in the pardoning document.<sup>25</sup> Therefore, counsel representing a client seeking a simple pardon always should request the removal of his or her civil disabilities a part of the petition.

The request for a simple pardon is used most frequently where the person no longer is incarcerated.<sup>26</sup> Governor Wilder has granted this type of pardon solely in such instances.

### c. Conditional Pardons

This pardon often is employed in those instances where a person remains incarcerated; however, nothing prevents the Governor from using such a pardon in any situation.<sup>27</sup>

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22. See Attachment A, *Policy for Pardons*, I(A) page 1 (1990); Stone, *supra* note 15, at 310-11.

23. This approach is based upon historical preference and the fact that the Virginia Constitution specifically references the Governor's power to restore civil rights while other state constitutions do not. *Id.* This is a minority view across the United States. *Id.*; See also *Prichard v. Battle*, 178 Va. 455, 175 S.E.2d 393 (1941).

24. Stone, *supra* note 15, at 311.

25. *Id.*; see also 2 HOWARD, *supra* note 11, at 646-47.

26. See Stone, *supra* note 15, at 321.

27. *Id.* at 308. This type of pardon was involved in 67% of the pardons granted between 1958 and 1968. See *Id.* at 321-22. This percentage has changed in recent times as can be

A conditional pardon is a tool that the Governor can use to assure that, if a pardon is granted, the benefactor still will be subject to certain controls and standards of behavior.<sup>28</sup> If the individual fails to meet the conditions of the pardon, he or she may be reincarcerated. A court need not determine whether the conditions have been violated.<sup>29</sup> However, in the event the pardon is revoked, the individual will be given an opportunity to refute any allegations of violations in accordance with due process principles.<sup>30</sup> The types of conditions may vary according to the individual case.<sup>31</sup> For example, governors have required: (1) supervision by the Probation and Parole Board, (2) exclusion from the locality or the state where the crime was committed, (3) restraint from committing the same crime or any crime, and (4) restraint from the use of alcohol or drugs.<sup>32</sup>

Governor Wilder has imposed other conditions in two situations. In the case of Joseph Giarratano, who was convicted of two murders, the Governor commuted his death sentence to life imprisonment. The pardon provided that if Virginia's Attorney General sought a new trial and the court agreed to hear the case, Giarratano must agree to the new trial. The verdict of that trial would take precedence over the provisions of the pardon.<sup>33</sup>

In the second case, Governor Wilder granted a medical furlough with conditions to Alex Valazquez, an inmate suffering from terminal AIDS. In this case the Governor provided that the inmate must be confined to his residence in New York City, submit regular

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seen in the chart contained in Attachment D. The overwhelming number of pardons granted since 1982 have been simple pardons.

28. *Id.* at 311-13. A conditional pardon may be revoked upon breach of a condition. *Id.*

29. *Id.* at 313.

30. See Bishop, *supra* note 19, at 569-74.

31. See Stone, *supra* note 15, at 312.

32. *Id.*

33. Joseph Giarrantano denied committing the crimes of which he was convicted, and requested that the Governor grant him a new trial. Governor Wilder did not believe he had the authority to order a new trial, but provided in the pardon document that if the Attorney General sought a new trial and a court agreed to hear the case, the court's verdict would prevail over the pardon. The Governor was concerned (1) about requiring that another elected officer take certain actions which arguably fell solely within the officer's professional judgment, and (2) about mandating an action that invaded the prerogatives of the judiciary. Thus, the pardon left the option of granting a new trial within the discretion of both the Attorney General and the courts.



medical reports, and adhere to any provisions and requirements established by the Parole Board.<sup>34</sup>

The question has arisen whether the Governor is restricted in the condition he or she may impose. In *Wilborn v. Saunders*,<sup>35</sup> the Supreme Court of Virginia held that a Governor may impose any condition that is not "illegal, immoral, or impossible of performance."<sup>36</sup> Conditions that would offend the United States Constitution also are invalid.<sup>37</sup>

#### d. Medical Pardons

Although Virginia governors have granted pardons for medical reasons in the past, no criteria for granting such pardons had ever been established.<sup>38</sup>

Governor Wilder decided to create a policy to review and consider the petitions of terminally ill inmates. In order to assure that an inmate is eligible for a medical pardon, an Assessment Committee, composed of medical and correctional professionals, first reviews the clemency petition.<sup>39</sup> After the approval from this committee, the Parole Board reviews the case file and the Assessment Committee's recommendations. The Parole Board then submits its recommendations to the Governor's Office.<sup>40</sup>

This process assures that the inmate is terminally ill and that his release will not pose a danger to himself or the public. As previously discussed, one such clemency request has been granted; however, there are a number of similar petitions presently under review.

The application process for medical pardons is set out in Appendix B.

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34. Alex Valazquez's grant of clemency was signed by Governor Wilder in November, 1992.

35. 129 Va. 153, 195 S.E. 723 (1938).

36. *Id.* at 159, 195 S.E. at 725.

37. *Schick v. Reed*, 419 U.S. 256, 264 (1974).

38. Governor Wilder's policy regarding medical pardons was adopted February 12, 1992. The administrative procedures to be followed in requesting such clemency are set out in Appendices A and B.

39. See Appendix B.

40. *Id.*

## 2. Restoration of Rights

Under the Constitution of Virginia, “[N]o person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.”<sup>41</sup> The specific requirements of Governor Wilder’s process for restoring a citizen’s civil rights are set forth in Appendix C.

Governor Wilder has chosen not to review or grant petitions for restoration of the right to possess a firearm. Former Governor Baliles took the same position. Accordingly, if an individual wishes to possess a firearm, he must petition a circuit court judge in the jurisdiction where he resides.<sup>42</sup>

### C. *Reasons for Granting a Pardon or Restoring Civil Rights*

Governor Wilder, as well as past Virginia governors, have cited the following reasons for granting clemency. The weight given to any particular factor depends upon the strength of the petitioner’s position, the type of crimes involved, and the factual circumstances surrounding each case.

In any given situation, the Governor may explore and base his decision upon one or more of the following components:

1. What is the applicant’s attitude toward the crime? Does he evidence a concern for his victim or remorse for his actions?

2. How serious was the crime? Violent crimes involve the infliction of physical harm upon others. Whether the potential for further harm continues to exist must be evaluated. This issue is particularly important when considering whether to release an inmate from incarceration.

In the event the petitioner seeks a pardon while on parole, the above factors must be considered to determine whether continued supervision is required or appropriate.

3. The petitioner’s record while incarcerated also should be considered.<sup>43</sup> Although behavior while incarcerated may not be indicative of how the petitioner will behave outside of incarceration, a good record is one indication of a desire to reconstruct his or her

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41. VA. CONST. art. II, § 1; VA. CODE ANN. § 24.1-43 (Michie Repl. Vol. 1985).

42. VA. CODE ANN. § 18.2-308.2(c) (Michie Repl. Vol. 1992).

43. Stone, *supra* note 15, at 318.

life. If no longer incarcerated, the petitioner's record still may provide valuable insight into both pardon and restoration proceedings.

4. Circumstances surrounding the crime for which the petitioner was convicted may be considered.<sup>44</sup> This is most useful in pardon cases. For example: (a) Was the evidence presented by the prosecution inconsistent with the verdict? (b) Has there been a change in the law since the petitioner was convicted so that he could receive either an acquittal, a lesser punishment, or even a harsher punishment? (c) Does newly discovered evidence indicate that the petitioner was not guilty or that his guilt is questionable? This issue was raised with Governor Wilder in the pardon request cases of Joseph Giarratano, Herbert Basset and Roger Coleman. In the first two instances, the circumstances surrounding the conviction helped persuade the Governor to grant clemency. In the latter case, the evidence was not persuasive and clemency was not granted. (d) Was the petitioner convicted by a jury? Former Governor Albertis S. Harrison, Jr., "generally refused even to consider overturning a jury's determination of sentence."<sup>45</sup>

5. How many years has the petitioner been incarcerated? The greater the length of time served, the more significant the repayment of petitioner's debt to society and his opportunity for rehabilitation.

6. If the inmate remains incarcerated, has the petitioner achieved the maximum benefit that can be expected from confinement?<sup>46</sup>

7. Did the petitioner have a criminal record prior to and following the conviction for which he or she seeks relief?<sup>47</sup>

a. Does petitioner's record evidence prior or subsequent convictions? If the conviction in issue is a sole conviction, this factor merits consideration.

b. If there have been prior or subsequent convictions, do the convictions evidence a pattern of unacceptable behavior? Consideration will be given to the time period between the convictions. For example, if the convictions occurred within a closely related period of time, that may reflect erratic behavior that is unusual for

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44. *Id.*

45. *Id.* at 319.

46. *Id.* at 318.

47. *Id.*

a particular individual. However, convictions separated by considerable time periods may indicate a flaw inherent in the petitioner's character.

c. When did the last conviction occur? If it occurred when the petitioner was very young or in the distant past, the likelihood the petitioner truly has been rehabilitated increases.

8. Is there community support for the petitioner?<sup>48</sup> Local community support evidences public acceptance that the petitioner has paid his or her debt to society and is trusted by fellow citizens. This factor is particularly important in pardon cases.

9. Are there local or statewide public leaders who support the petitioner? Because elected officials depend upon continued public support to maintain leadership roles, their support may indicate that they have studied and thoroughly considered the merits of the petitioner's request.

10. Has the petitioner presented several reasons why a pardon or restoration is necessary? Favorable reasons include: (a) a desire to vote, (b) a wish to run for elected office or (c) a need for the restoration of civil rights or a pardon for employment purposes.

11. What position do the Commonwealth's Attorney and judge who tried the case take regarding the petition? Historically, the Commonwealth's Attorney and judges have "prefer[red] to voice no objection to the pardon rather than making favorable recommendations."<sup>49</sup> In my experience, this continues to be true.

12. If a pardon is requested, the position of the Parole Board will be examined. Governors have frequently relied upon the expertise of this Board in the past.<sup>50</sup> There is no established rule or pattern governing how governors will utilize the Board. Generally, however, when the Board renders an opinion, its recommendation has "had a heavy influence upon the Governor's decisions."<sup>51</sup> Governor Wilder has requested a recommendation from the Board on all pardon requests except those requesting a commutation of the death sentence.

13. If the petitioner is not incarcerated, how the petitioner has conducted himself or herself after being released from prison is

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48. *Id.*

49. *Id.*

50. *Id.* at 316, 318.

51. *Id.* at 318.

pertinent. For example: (a) has the petitioner been gainfully employed since his release and for how long? The ability to retain employment may evidence a dedication to advancement and to family. (b) Has the petitioner engaged in community service activities, such as helping the Red Cross, Boy or Girl Scouts, United Way or his church? (c) Has the individual performed in some particular act of service that merits special attention? In the event a pardon is being requested, a special act, such as preventing an escape while incarcerated, or a heroic act accomplished after release, can be considered.

14. Does petitioner have a family that depends on his or her support? Does the family support the petitioner's request?

D. *Must the Benefactor of a Pardon Agree to Accept It?*

Must a person receiving a pardon accept the pardon? In Virginia, if the Governor grants a conditional pardon, the language of the pardon document requires the beneficiary to agree to the stated conditions, in writing, or the pardon will not be granted.<sup>52</sup>

On the other hand, if the pardon is a simple or absolute pardon, Governor Wilder has taken the position that a beneficiary cannot reject such a pardon.<sup>53</sup> The debate over this issue first arose when Chief Justice Marshall delivered his opinion in *United States v. Wilson*.<sup>54</sup> The Chief Justice viewed the grant of a pardon as:

an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is a private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court.<sup>55</sup>

The Chief Justice further declared,

[a] pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may be rejected

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52. The Joseph Giarratano and Alex Manuel Velazquez pardons are good examples of this requirement.

53. See *Biddle v. Perovich*, 274 U.S. 480 (1927); *Schick v. Reed*, 419 U.S. 256 (1974) (supporting Governor Wilder's position).

54. 32 U.S. (7 Pet.) 150 (1833).

55. *Id.* at 160-61.

by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force it upon him.<sup>56</sup>

In 1927, Justice Holmes changed the theory under which the courts had operated since *Wilson*.<sup>57</sup> Speaking for the court in *Biddle v. Perovich*, the Justice rejected the idea that a pardon was a private act of grace.<sup>58</sup> Instead, Holmes saw pardoning as part of the "Constitutional scheme" in which the ultimate state authority determined "that the public welfare will be better served by inflicting less than what the judgment fixed."<sup>59</sup> It follows that if the pardon is not for the benefit of the person pardoned, but for the benefit of the public, the forgiven individual cannot reject the pardon and prevent the intended public benefit.<sup>60</sup>

#### E. *Practical Aspects for Counsel to Consider in Presenting the Client's Case*

The practical steps counsel should consider when presenting a petition are the next topic to be reviewed.

1. Can the eligibility time period, which applies to both pardons and restorations, be overcome?

The Governor has established a five-year period that must run before an individual may request clemency. This waiting period begins when a petitioner is released from his court sentence and from supervision by the correctional system.<sup>61</sup> This requirement applies to all requests for clemency unless the petitioner (1) seeks a pardon and remains incarcerated, (2) requests a commutation of sentence, or (3) demonstrates extraordinary facts wherein justice calls for immediate relief. Such a waiting period allows the petitioner to prove he can become a productive and respected member of the community without government supervision which regulates the petitioner's behavior.

This is not an unusual requirement. President Kennedy, for example, required a person to wait three years from his date of re-

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56. *Id.* at 161.

57. 274 U.S. 450 (1927).

58. *Id.*

59. *Id.* at 486.

60. For an excellent discussion of the history of this issue, see G. Sidney Buchanan, *The Nature of a Pardon Under the United States Constitution*, 39 OHIO ST. L.J. 36 (1978).

61. See Appendix C.

lease before the President would consider granting clemency for the commission of ordinary crimes.<sup>62</sup> If the conviction was for a more serious crime, the petitioner had to wait five years.<sup>63</sup> In 1983, President Reagan extended the waiting periods to five and seven years respectively.<sup>64</sup> The Bush administration kept the same provisions.<sup>65</sup>

If counsel intends to request an exception based upon extraordinary facts and circumstances, it is crucial to show that the matter truly is extraordinary; this aspect of the petition must be very clearly and logically pleaded.

## 2. Presentation of the Case

### a. Demeanor

It should be evident to most practitioners that counsel should approach the clemency petition with the same respect employed in the judicial process, recognizing that such a request is solely within the discretion of the Governor with no right of appeal. Surprisingly, some have not understood this premise and have been demanding, rude, or even threatening while presenting the case. Counsel does a major disservice to the petitioner by electing to follow such an approach.

### b. Contents of the Petition

Attorneys should recognize the unlikelihood that the Governor or any of his staff will be personally familiar with the petitioner's case. Accordingly, in a restoration of civil rights case, the contents of any written references submitted to the Governor should be clear, relevant, and articulate. It is also very helpful to the Governor if the petitioner explains the facts surrounding the felony which cost him his civil rights. Finally, it is necessary to detail why it can be expected that such an illegal activity will not occur again.

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62. 28 C.F.R. § 1.3 (1963).

63. *Id.*

64. 28 C.F.R. § 1.2 (1992).

65. 28 C.F.R. § 1.3 (1983).

c. Should Counsel Request a Hearing on the Petition?

There are times when a hearing or an informal telephone conversation is helpful to the Governor's Office. Normally, if the petition is for a commutation of sentence, it is recommended that a hearing be requested. The purpose of the hearing is to ensure that the Governor's Office fully understands the position of counsel. Accordingly, counsel should approach the hearing in the same manner and with the same preparation as he or she would approach a judicial appeal.

d. What are the Possibilities that a Petition for a Pardon or Restoration of Rights will be Granted?

The use of "federal clemency power has precipitously declined" over the past twenty years.<sup>66</sup> For example, President Nixon granted thirty-six percent of the requests, President Ford twenty-seven percent, President Carter twenty-one percent, and President Bush (in 1989) only four percent.<sup>67</sup>

Virginia has experienced a similar decline, although until the end of Governor Wilder's term it will be difficult to predict how his record will compare with that of his two immediate predecessors.<sup>68</sup>

#### IV. CONCLUSION

The most appropriate manner in which counsel should represent his or her client includes the following steps:

1. Learn and adhere to the existing policies and requirements for filing a petition. A thorough understanding of the administrative process also is required in order to properly request relief for the petitioner. Copies of current policies and procedures may be obtained from the Secretary of the Commonwealth or from the Governor's counsel.

2. Prepare the petitioner's case with the same legal acumen used in preparing cases for judicial hearings.

3. The client's case must get heard *and understood*. Therefore, be certain that the petition and evidence are clear. If there is any

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66. See Kobil, *supra* note 2, at 602-03.

67. *Id.* President Bush approved no requests for clemency in 1990.

68. See Appendix D.



question, consult the Governor's Counsel or be prepared to explain the case if necessary.

4. Demonstrate the same respect in both the written presentation and any hearing or discussion with the Office of the Governor that counsel would employ in appearing before a court.

## APPENDIX A

I. Procedure for Reviewing Absolute and Conditional Pardon Applications

- A. All written requests for absolute and conditional pardons may be received in either the Governor's Office or the Office of the Secretary of the Commonwealth. Meritorious requests are those that present extraordinary circumstances or those where the applicant has a health condition that is life threatening. If an application is not meritorious, the review process stops and the Secretary of the Commonwealth sends out a denial letter. NOTE: The overwhelming majority of pardon requests are received in the Office of the Secretary of the Commonwealth and deal with inmates who contend their innocence. The Office of the Secretary of the Commonwealth receives an average of ten to fifteen requests a week that fit into this category. Standard form denial letters are used for these requests unless the requests are accompanied by reliable back-up material. In these cases, the file is packaged for review by the Policy Office.
- B. If the Secretary of the Commonwealth determines that a request is meritorious, it is sent to the Policy Office. Meritorious requests involving health related issues are first screened by the Department of corrections to

ascertain the severity of the medical condition. If the medical condition is confirmed, the Parole Board is contacted to determine the availability of parole as an option, rather than executive clemency. If parole is not an option, the file is forwarded to the Policy Office.

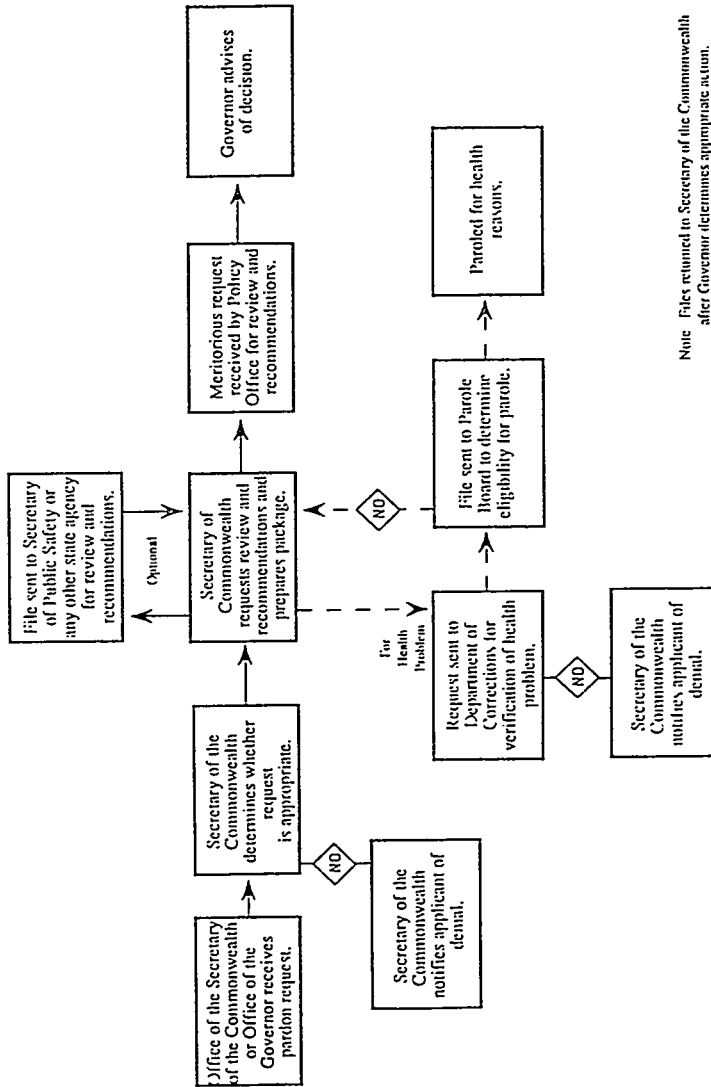
- C. The Policy Office reviews the file and makes a recommendation to the Governor. The recommendations will vary according to the circumstances involved. For example, if the Secretary of the Commonwealth has not already done so, the Policy Office may ask the Parole Board, Secretary of Public Safety, or any other state agency to make a recommendation to the Governor or it may recommend a denial with no further action.
- D. The Governor reviews the Policy Office recommendation and indicates whether or not he concurs and/or suggests further steps to be taken.
- E. File returned to the Secretary of the Commonwealth after Governor determines appropriate action.

## II. Procedure for Reviewing Simple Pardon Applications

- A. Each applicant receives an information packet from the Secretary of the Commonwealth which outlines the procedure for applying for a simple pardon.

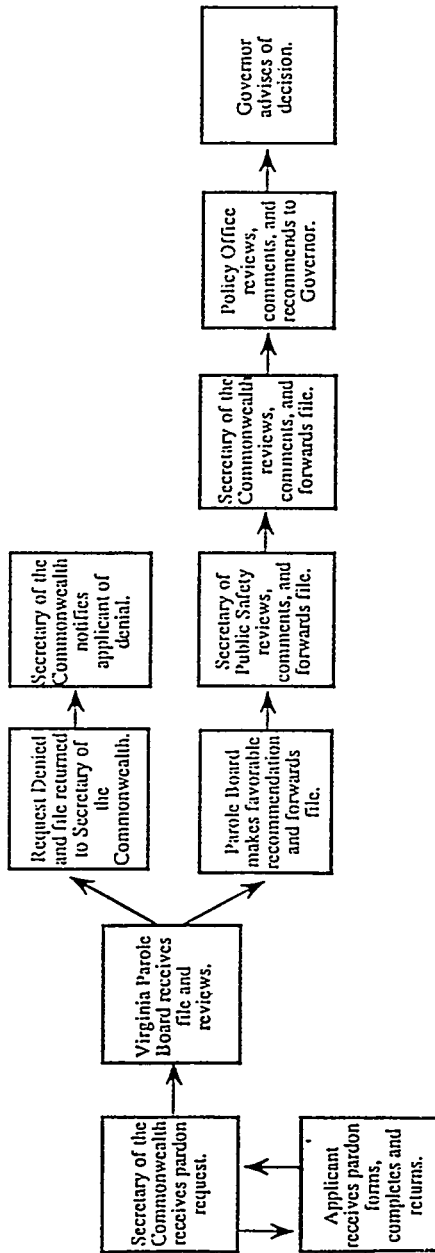
- B. Once the applicant has supplied all the necessary information, the file is sent to the Parole Board for review and recommendation. If the parole board recommends a denial the process stops and the Secretary of the Commonwealth sends out a denial letter.
  
- C. If the Parole Board makes a favorable recommendation, the file is sent to the Secretary of Public Safety for review and recommendation.
  
- D. The Secretary of Public Safety sends the file to the Secretary of the Commonwealth for review and recommendation.
  
- E. The Secretary of the Commonwealth sends the file to the Policy Office for review and recommendation.
  
- F. The Policy Office makes its recommendation to the Governor.
  
- G. The Governor advises the Policy Office of his decision.
  
- H. File sent back to the Office of the Secretary of the Commonwealth for processing. If simple pardon is granted, Governor's original signature is needed on original pardon and two copies.

PARDON REVIEW PROCESS  
for  
ABSOLUTE AND CONDITIONAL PARDONS



Note: Files returned to Secretary of the Commonwealth after Governor determines appropriate action.

PARDON REVIEW PROCESS  
for  
SIMPLE PARDONS



Note: Files returned to Secretary of the Commonwealth after Governor determines appropriate action.

## APPENDIX B

Policy for the Exercise of Executive Clemency  
for Terminally Ill Inmates

## Preamble

The following procedure shall be used when a petition has been submitted to the Governor requesting that he exercise the powers of Executive Clemency granted to him under Article V, Section 12 of the Constitution of Virginia to grant executive clemency to terminally ill inmates of Virginia's Correctional System.

The Governor does not take lightly the powers of Executive Clemency and believes that they should be exercised only in exceptional cases, and even then, in a manner that evidences consistent treatment of those petitioning for such extraordinary relief. Accordingly, he has approved the following process that shall be followed in handling these petitions.

The foregoing procedure is not binding on the Governor nor are the recommendations emanating from the process. Moreover, the findings are to be treated as Governor's working materials, memoranda, and records are not to be publicly disclosed without the express consent of the Governor.

I. Assessment Committee

The Director of the Department of Corrections shall create an Assessment Committee composed of the following persons:

- (1) A doctor on the medical staff of the Department of Corrections,
- (2) A Rehabilitation Counselor on the staff of the Department of Corrections,
- (3) A warden or assistant warden,
- (4) A Deputy Director of the Department of Corrections who shall chair the Committee.

II. Obligations of the Assessment Committee

- (1) Review the petitioning inmate's petition and Corrections record.
- (2) Review any evidence it determines necessary to allow it to reach a conclusion as to the following:

(a) Whether the inmate is terminally ill. For the purpose of this policy, the term terminally ill is defined as an illness which, in the independent opinion of at least two physicians, can be expected, on the average, to result in death within ten to twelve months of the date of the medical examination.

(b) If a conclusion is reached that the inmate is terminally ill, then a determination must be made whether death is imminent. For the purpose of this policy, imminent death is defined as follows:

Death is imminent if, in the independent judgement of the treating physician and an independent non-treating physician, or two independent non-treating physicians, the patient, on the average, has three months or less to live.

(c) If the answers to both (a) and (b) above are positive, then the Committee shall determine the facility's ability to provide proper care. If there is a question concerning continued care, then the Committee shall provide an explanation of that concern and a summary of the inmate's background.

(d) If the answers to (a) and (b) above are positive and the Committee concludes that the inmate will not benefit from further incarceration, then the Committee shall determine whether the inmate's release will pose a threat to public safety.

(e) If the answers to (a) and (b) above are positive and (1) under the circumstances, the inmate will not benefit from further incarceration and (2) the inmate is not considered a threat to public safety, then the Committee will make an assessment of the reaction of law enforcement authorities to a release and shall make that assessment a part of their report.

(3) The Assessment Committee will then make its recommendation and present its findings to the Parole Board.

### III. Parole Board

The Parole Board will then review the findings of the Assessment Committee and take the following actions:

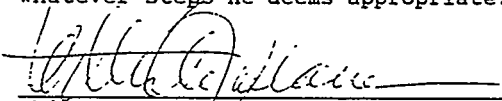
(1) If the Board finds that the report of the Assessment Committee provides it with sufficient information upon which to act, it will form its recommendation and send that recommendation to the Governor along with the findings of the Assessment Committee.



(2) In the event that the Parole Board determines that it must require more information, it will take whatever steps it deems necessary to obtain that information. It will then send its recommendation, along with the findings and recommendations of the Assessment Committee, to the Governor.

#### IV. Actions by the Governor

The Governor will review the findings and recommendations of the Assessment Committee and the Parole Board and will take whatever steps he deems appropriate.



\_\_\_\_\_  
Chief Counsel and Director of Policy  
Office of the Governor

Effective February 12, 1992

## APPENDIX C



## COMMONWEALTH of VIRGINIA

*Secretary of the Commonwealth*

POST OFFICE BOX 1-D

RICHMOND, VIRGINIA 23201

December 18, 1992

Dear

I am writing regarding your request for information concerning executive clemency.

An individual convicted of a felony in Virginia has lost certain civil rights, such as the right to vote, to hold public office and to serve on a jury. Before considering such an individual for a pardon, the Governor requires that these rights be restored. Petition to the Governor must be made using the enclosed application. In order to be eligible for the restoration of one's civil rights certain conditions must first be met. For example, the petitioner must be free of any suspended sentence, probation or parole for a minimum of five years. All fines and restitutions must have been paid and evidence must be given that the petitioner is a law abiding citizen of good character.

Once a restoration of civil rights has been granted, the individual may petition the Governor for a pardon. Petitions for pardons must pass a much more exacting test. There are several kinds of pardons:

(1) An absolute pardon is rarely granted because it is predicated on the belief that the petitioner was unjustly convicted and is innocent. An absolute pardon is the only form of executive clemency that will allow for an expungement of the record.

(2) A simple pardon is more easily obtained. While it does not expunge the record, it does constitute official forgiveness and often serves as a means for the petitioner to advance in employment, education and self-esteem. Evidence of good citizenship is required as are favorable recommendations from officials involved in the case and the Virginia Parole Board.

(3) A conditional pardon is usually granted for early release from incarceration and carries certain conditions, the violation of which can result in reincarceration.

It is the Governor's policy to restrict such acts of clemency to exceptional situations, as he is most reluctant to substitute his judgment for that of the courts. In order to petition the Governor for a pardon, an individual must provide a letter addressed to the Governor stating the reasons for the request; their date of birth; Social Security Number; current address; details surrounding conviction(s); date(s) and court(s) of conviction(s); sentence, or other disposition of conviction(s); date civil rights were restored for felony convictions and location(s) of any incarceration.

Once the petition is received in this office, we will review the request to determine if the case warrants investigation by the Virginia Parole Board. If so, we will request an investigation and proceed based on its recommendation. This process usually takes several months.

Should you have questions concerning executive clemency, please contact Michelle Bradley of my office at (804) 786-2441.

Sincerely,

Pamela M. Womack  
Secretary of the Commonwealth

PMW/mhb  
encl.



## Secretary of the Commonwealth

### APPLICATION AND INSTRUCTIONS FOR RESTORATION OF CIVIL RIGHTS

#### TO ALL PERSONS FORMERLY CONVICTED OF FELONIES:

If you have ever been convicted of a felony, in Virginia or elsewhere, you may not vote, hold public office, or serve on a jury in Virginia. Likewise, you have lost the right to serve as a Notary Public. There is usually only one way to have your voting and other civil rights restored and that is by an act of the Governor of Virginia.

This booklet contains the forms necessary to petition the Governor for the restoration of your rights. Read the information and instructions carefully. If you think you are eligible to have your rights restored, complete all of the forms, assemble the documents, and return them to this office.

**PLEASE NOTE:** If you are eligible, you should be able to petition the Governor without the services of an attorney.

## QUESTIONS AND ANSWERS ABOUT RESTORATION OF CIVIL RIGHTS

### HOW DO I KNOW IF I HAVE LOST MY CIVIL RIGHTS?

You have lost your civil rights if you have ever been convicted of a felony in:

- ...Any Virginia court;
- ...Any court of any other state or the District of Columbia;
- ...Any Federal Court; or
- ...Any court of any associated commonwealth, territory, or possession of the United States.

You have not lost your civil rights if you have been convicted of a misdemeanor or misdemeanors, only. NOTE: There is one exception. If you were convicted of Petit Larceny prior to 1970, you have lost your civil rights.

### HOW DO I KNOW IF A CONVICTION WAS FOR A FELONY?

Ask the clerk of court in which you were convicted, or your probation and parole officer.

### WHO MAY RESTORE MY CIVIL RIGHTS?

The Governor of Virginia.

If your conviction was in a Virginia court, only the Governor may restore your rights.

If your conviction was in another state, you may have your rights restored under the laws of that State or by the Governor of Virginia.

If your conviction was in a Federal court, your rights may be restored only by a Presidential pardon or by the Governor of Virginia.

### CAN A REGISTRAR OF VOTERS RESTORE MY RIGHTS?

No. If you register to vote by concealing your prior record, you may be guilty of a crime. Only a legal restoration of rights, by the Governor or other appropriate authority, gives you the right to vote.

### WHO CAN I CALL IF I NEED HELP FILLING OUT MY APPLICATION?

Your local probation and parole officer will help you, or you may call this office at (804) 786-2441 for assistance. NOTE: Normally, you will not need an attorney to petition to have your rights restored.

**HOW DO I KNOW IF I AM ELIGIBLE TO HAVE MY RIGHTS RESTORED?**

You are eligible if you...

- ...Have completed all prison or jail terms;
- ...Are not under probation or parole supervision, or any suspended sentence;
- ...Are not currently in trouble with any legal authorities;
- ...Have paid all fines, restitutions, and/or court costs for any prior convictions; and
- ...Have been free of any suspended sentence, parole or probation for at least five years.

If you do not know your status with respect to a suspended sentence, fines, restitution or court costs, consult the clerk of the court in which you were convicted.

**WHAT IF I FAIL TO MEET ONE OF THE CONDITIONS?**

If you are still under a suspended sentence, you may not have your rights restored. However, the court in which you were convicted may act to terminate your sentence. Consult your probation and parole officer.

If you are still under parole, probation, or court supervision, you may not have your rights restored. However, you may talk to your parole and probation officer about having your sentence terminated.

**WHAT IS THE DIFFERENCE BETWEEN A RESTORATION OF RIGHTS AND A PARDON?**

A restoration of rights restores the rights which are lost upon a felony conviction. These rights include the right to vote, to run for and hold public office, to serve on juries, and to serve as a Notary Public. Restorations are granted to eligible applicants.

A pardon is an act of forgiveness and is granted only in exceptional cases. You must first have your rights restored before the Governor will consider a petition for a pardon.

**HOW MAY I HAVE MY CIVIL RIGHTS RESTORED?**

By following all instructions which are found in this booklet.

**WILL THE RESTORATION OF MY CIVIL RIGHTS RESTORE MY RIGHTS TO POSSESS OR TRANSPORT ANY FIREARM OR TO CARRY A CONCEALED WEAPON?**

No. It is unlawful for any person who has been convicted of a felony in Virginia, any other state, the District of Columbia, the United States or any territory thereof, to possess or transport any firearm or to carry a concealed weapon. If the Governor restores your civil rights, that action will not restore your rights to possess or transport any firearm or to carry a concealed weapon. You may petition the circuit court of the jurisdiction in which you reside for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant such a petition and issue a permit.

## INSTRUCTIONS

### I. Application For Removal Of Political Disabilities

**Line 1:** Print your full name, as you are now known. If you have ever changed your name, see instructions for Line 2.

**Line 2:** If you have ever had your name legally changed since the time of a prior conviction, print the name under which you were convicted. Also, if you were ever convicted under an alias, print the alias on this line.

**Line 3:** Print your social security number.

**Line 4:** If you were an inmate in the Virginia Department of Corrections, print your prison number on this line. If you were an inmate in any other system, print the name of the state or other authority beside the number.

**Line 5:** Print your present home address, including the state and zip code.

**Line 6:** Print your present home and work telephone numbers, including the area codes.

**Line 7:** Print your date of birth, including the year.

**Line 8:** Print the name of your present employer.

**Line 9:** Print your employer's address.

**Line 10:** Print the length of time you have worked for your present employer. Give years and months.

**Line 11:** Print the name and address of your present probation and parole officer. If you no longer report to an officer, use the name and address of your most recent officer. If you have never been on probation or parole, put "N/A" in the line for "Name."

Obtain a letter from your most recent probation or parole officer outlining your period of supervision. This letter should be addressed to the Governor, c/o Secretary of the Commonwealth and mailed with your application.

Also request that a copy of your presentencing or postsentencing report be forwarded to our office by your probation or parole officer. In the absence of a presentence or postsentence report, a letter from your probation or parole officer detailing the specific circumstances surrounding your offense(s) is required.

**Line 12:** It is very important that you list each felony conviction on your record. Your application will be rejected if this information is not complete.

If you do not have any of this information, you may obtain it from your probation and parole officer, or the clerk of the court in which you were convicted.

If you cannot list all convictions on the application, put the remainder on a separate sheet of paper

and attach this to the application.

**Line 13:** Your application cannot be processed until you have furnished certified copies of every order of conviction in your record. Print the number of conviction orders on the line.

**Line 14:** Attach certified copies of every sentencing order. NOTE: If your order of conviction and sentencing order are the same document, write on this line: "See line 13."

**Line 15:** If you have ever had a sentence terminated by any court, or if you have ever had your parole or probation terminated, you should obtain certified copies of any court order or other official document modifying that term. Print the number of documents of this type on the line.

**Lines 16 and 17:** Answer each question "Yes" or "No."

**Line 18:** Answer this question "Yes" or "No." PLEASE NOTE THAT, IF YOUR ANSWER TO THIS QUESTION IS "NO," YOU ARE NOT YET QUALIFIED TO APPLY. Please read the part of the Instructions called "Questions and Answers About Restoration of Rights."

**Line 19:** Attach certified proof of payment of fines, restitution and/or court costs. These may be obtained from the clerk of the court in which you were convicted. NOTE: Court costs are not always written in the court order. If you are uncertain as to whether you need to pay any costs, please contact the clerk of the court in which you were convicted.

## II. Letter of Petition

Read and sign the letter of petition. Be sure to put the date on the proper line.

## III. Letters of Reference

Take the three (3) letters of reference to three (3) reputable people who live in your present community. Be certain these are people who know you well enough to certify your good character.

Good people to ask for references might be

...your employer or job supervisor;  
...a local businesswoman or businessman;  
...your minister, priest, rabbi, or other spiritual adviser;  
...a leader of a local civic group;  
...a state or local public official; or  
...a law enforcement officer.

Have each person answer the questions in the letter and sign and date it at the bottom.

Ask each person to return the letter to you. You must return the three (3) letters with your application. This office cannot guarantee that letters mailed separately from the application will reach our office.

**NOTE:** Family members or in-laws may NOT sign these letters of reference. It is not necessary to explain the purpose of the letter of reference to the people who sign it, but they may wish to know. The decision to tell them is up to you.



#### IV. Mailing Instructions

Make certain you have included the following:

- ...the application, completely filled out, signed and notarized;
- ...certified copies of all felony court orders and sentencing orders;
- ...certified proof of payment for any fines, restitution and/or court costs;
- ...the letter of petition, signed and dated;
- ...three (3) letters of reference, completed, signed and dated by (3) reputable citizens;
- ...a copy of your presentence or postsentence report. (This needs to be forwarded to this office by your probation or parole officer.)

Mail all of these items to:

Secretary of the Commonwealth  
Attn: Assistant for Clemency  
Post Office Box 2454  
Richmond, Virginia 23201-2454

**APPLICATION  
FOR  
REMOVAL OF POLITICAL DISABILITIES**

Before filling out this application, read the instructions in the booklet. Then fill in each blank. Be certain to print or type. If a question does not apply to you, put "N/A" in the blank. Be certain to attach certified copies of all court orders to this application. The affidavit on the back of this application must be signed in the presence of a notary public or other official empowered to administer oaths.

1. Full Name \_\_\_\_\_
2. Have you ever been convicted under any other name? If so, what was the name?  
\_\_\_\_\_
3. Social Security Number \_\_\_\_\_
4. Prison Number (if any) \_\_\_\_\_
5. Present Home Address \_\_\_\_\_
6. Home Telephone Number \_\_\_\_\_ Work Telephone Number \_\_\_\_\_
7. Date of Birth \_\_\_\_\_
8. Name of Present Employer \_\_\_\_\_
9. Employer's Address \_\_\_\_\_
10. How Long Have You Worked for Present Employer \_\_\_\_\_
11. Name and Address of Your Last Probation and Parole Officer  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Please request: (a) A letter from your last probation or parole officer outlining your period of supervision, and (b) a copy of your presentence or postsentence report be sent to the Governor, c/o the Secretary of the Commonwealth's office.

12. List ALL felony convictions on your record. (Be certain to list each conviction separately)  
Date of Conviction \_\_\_\_\_  
Court \_\_\_\_\_  
Offense \_\_\_\_\_  
Sentence \_\_\_\_\_

NOTE: If you have more than one (1) conviction, put an "X" on this line \_\_\_\_\_

Provide the same information about these convictions on a separate sheet, and attach the sheet to this application.

- 13. Attach a certified copy of the order of conviction in each case listed in Item #12.  
Number of conviction orders attached: \_\_\_\_\_
- 14. Attach a certified copy of the sentencing order for each conviction listed in Item #12. If sentencing order is the same document as your order of conviction, write "See Item #13".  
Number of sentencing orders attached: \_\_\_\_\_
- 15. Attach a certified copy of every court or other order reducing or terminating any sentence, or any term of parole or probation. Number of orders attached: \_\_\_\_\_
- 16. Have you ever received a pardon for any of the convictions listed in Item #12?  
If yes, date granted: \_\_\_\_\_
- 17. Have you previously had your civil rights restored by the Governor of Virginia?  
If yes, date restored: \_\_\_\_\_
- 18. Have you been free of any suspended sentence, parole or probation for at least five years?  
\_\_\_\_\_
- 19. Attach certified proof of payment of fines, restitution, and/or court costs.

Instructions For Affidavit: The following affidavit must be signed in the presence of a notary public or other official empowered to administer an oath.

**AFFIDAVIT**

I, the undersigned, do solemnly swear (or affirm) that the information on this application is complete, accurate, and true, to the best of my knowledge.

\_\_\_\_\_  
Signature of Applicant

Commonwealth of Virginia  
City/County of \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## LETTER OF PETITION

Governor of Virginia  
c/o Secretary of the Commonwealth  
Post Office Box 2454  
Richmond, Virginia 23201-2454

Your Excellency:

I hereby enclose my application for the restoration of my voting rights and other civil rights. I am enclosing copies of all my orders of conviction and sentencing, as well as other required documents, and I have enclosed letters from three (3) reputable citizens concerning my present character.

I understand that it is in your power to restore my rights and that you may choose to do so, or not, as you see fit.

I hope that my application will convince you that I have proved myself worthy of regaining my civil rights.

Thank you for your consideration.

Respectfully submitted,

---

*Signature of Applicant*

---

*Date of Application*

### INSTRUCTIONS FOR LETTER OF REFERENCE

You have been given this letter of reference in a confidential matter between the person giving it to you (Applicant) and the Commonwealth of Virginia. The applicant may choose not to reveal the purpose of this letter to you.

All that is asked of you is to confirm that you are personally familiar with the applicant and that you believe that the applicant is presently a law-abiding person of good character.

You are asked to provide certain information below for the purpose of establishing your identity and your knowledge of the applicant. When you have answered these questions in full and signed and dated the letter on the back, please return the letter to the applicant, who will forward it to this office. Do not send the letter separately.

Thank you.

Secretary of the Commonwealth

Name of Applicant \_\_\_\_\_

Your Name \_\_\_\_\_

Your Address \_\_\_\_\_

Occupation \_\_\_\_\_

How long have you known the applicant? \_\_\_\_\_

Describe briefly how well you know the applicant, or the nature of your relationship with the applicant.

Comments (Optional)

LETTER OF REFERENCE

NOTE: Please read and complete the reverse side of this page before signing.

Governor of Virginia  
c/o Secretary of the Commonwealth  
Post Office Box 2454  
Richmond, Virginia 23201-2454

Your Excellency:

I am writing at the request of \_\_\_\_\_  
whom I know personally. I am not a relative by birth or by marriage.

From my knowledge of this person, I believe that he/she is presently living as a law-abiding citizen of good character.

In order to explain my knowledge of this person, I have read and completed the reverse side of this letter.

I hope this information will be of service to you.

Respectfully,

\_\_\_\_\_

*Signature of reference*

Date \_\_\_\_\_

**INSTRUCTIONS FOR  
LETTER OF REFERENCE**

You have been given this letter of reference in a confidential matter between the person giving it to you (Applicant) and the Commonwealth of Virginia. The applicant may choose not to reveal the purpose of this letter to you.

All that is asked of you is to confirm that you are personally familiar with the applicant and that you believe that the applicant is presently a law-abiding person of good character.

You are asked to provide certain information below for the purpose of establishing your identity and your knowledge of the applicant. When you have answered these questions in full and signed and dated the letter on the back, please return the letter to the applicant, who will forward it to this office. Do **not** send the letter separately.

Thank you.

Secretary of the Commonwealth

Name of Applicant \_\_\_\_\_

Your Name \_\_\_\_\_

Your Address \_\_\_\_\_

Occupation \_\_\_\_\_

How long have you known the applicant? \_\_\_\_\_

Describe briefly how well you know the applicant, or the nature of your relationship with the applicant.

Comments (Optional)

LETTER OF REFERENCE

NOTE: Please read and complete the reverse side of this page before signing.

Governor of Virginia  
c/o Secretary of the Commonwealth  
Post Office Box 2454  
Richmond, Virginia 23201-2454

Your Excellency:

\_\_\_\_\_

I am writing at the request of whom I know personally. I am not a relative by birth or by marriage.

From my knowledge of this person, I believe that he/she is presently living as a law-abiding citizen of good character.

In order to explain my knowledge of this person, I have read and completed the reverse side of this letter.

I hope this information will be of service to you.

Respectfully,

\_\_\_\_\_

*Signature of reference*

Date

\_\_\_\_\_



## APPENDIX D

**Executive Clemency Granted January 15, 1982-January 10, 1986  
Governor Charles S. Robb**

	<u>Absolute Pardons</u>	<u>Conditional Pardons</u>	<u>Simple Pardons</u>	<u>Restorations of Rights</u>	<u>Commutation of Sentence</u>
1982	0	2	4	135	0
1983	0	1	5	349	0
1984	0	0	0	423	0
1985	0	0	16	222	0
TOTAL	0	3	25	1179	0

**Executive Clemency Granted January 11, 1986-January 13, 1990  
Governor Gerald L. Baliles**

	<u>Absolute Pardons</u>	<u>Conditional Pardons</u>	<u>Simple Pardons</u>	<u>Restorations of Rights</u>	<u>Commutation of Sentence</u>
1986	1	1	0	64	0
1987	0	1	4	65	0
1988	1	2	16	315	1
1989	0	1	14	387	0
TOTAL	2	5	34	831	1

**Executive Clemency Granted January 11, 1990-November 17, 1992  
Governor Lawrence Douglas Wilder**

	<u>Absolute Pardons</u>	<u>Conditional Pardons</u>	<u>Simple Pardons</u>	<u>Restorations of Rights</u>	<u>Commutation of Sentence</u>
1990	1	1	2	24	0
1991	1	0	0	123	1
1992	0	0	0	59	1
TOTAL	2	1	2	211	2