

# **RULES OF EXECUTIVE CLEMENCY**

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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 Florida 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 within these rules 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. No applicant has a right to a clemency hearing. The Governor has the unfettered discretion to require at any

time that an individual matter be treated under other provisions of these rules, whether or not the person satisfies the eligibility requirements of a particular rule. 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. Types of Clemency**

**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 in the State of Florida 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 restores to an applicant all of the rights of citizenship in the State of Florida possessed by the person before his or her conviction, except the specific authority to own, possess, or use firearms. It 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., an Executive Order evidencing a Pardon Without Firearm Authority under Florida Law shall not be a ground for relief from removal proceedings initiated by the United States Immigration and Naturalization Service).

**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. The Clemency Board will not consider requests to suspend, reduce, or remove victim restitution.

#### **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, automatically upon processing and without a hearing pursuant to Rule 9, or with a hearing pursuant to Rule 10, restores to an applicant all of the rights of citizenship in the State of Florida possessed by the person before his or her felony conviction—including the right to vote if not already restored by Amendment 4,<sup>1</sup> the right to serve on a jury, and the right to hold public office—except the specific authority to own, possess, or use firearms. However, the Restoration of Civil Rights does not relieve an applicant from the obligation to pay his or her outstanding legal financial

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<sup>1</sup> The Voting Restoration Amendment known as Amendment 4 restores voting rights to felony offenders, except those convicted of murder or a felony sexual offense, “upon completion of all terms of sentence including parole or probation.” Art. VI, § 4(a), Fla. Const. (2020); § 98.0751, Fla. Stat. (2020). A person convicted of murder as defined in § 98.0751(2)(c), Fla. Stat. (2020), or a felony sexual offense as defined in § 98.0751(2)(b), Fla. Stat. (2020), is not qualified to vote pursuant to Amendment 4. A person convicted of a crime other than murder or a felony sexual offense is not qualified to vote pursuant to Amendment 4 unless he or she has completed all terms of sentence as defined in § 98.0751(2)(a), Fla. Stat. (2020), arising from the person’s felony conviction or convictions. A clemency application is not required for the Restoration of Voting Rights pursuant to Amendment 4. Qualifying to vote under Amendment 4 does not restore any other civil rights—including the right to serve on a jury or to hold public office—or the specific authority to own, possess, or use firearms to a person convicted of a felony.

obligations or relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders. A clemency application is required for the Restoration of Civil Rights.

## **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**

### **A. Pardons**

A person may not apply for a pardon unless he or she has completed all terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020), arising from the applicant's felony conviction or convictions.

The Clemency Board acknowledges that a term of sentence—including any legal financial obligation owed by an applicant—shall be deemed completed if a court of competent jurisdiction modifies or converts the original sentencing order to no longer require completion of such term pursuant to § 98.0751(2)(a), Fla. Stat. (2020), or any similar law applicable to an out of state court or federal court sentence. The Clemency Board also acknowledges that a person may submit a plea for relief to a court of competent jurisdiction pursuant to § 98.0751(2)(a), Fla. Stat. (2020), or any similar law applicable to an out of state court or federal court sentence.

All durational periods arising from the applicant's felony conviction or convictions must have been completed for a period of no less than ten (10) years. The applicant may not have pending outstanding detainers or pending criminal charges. The applicant may not have any pecuniary penalties or liabilities which total more than one thousand dollars (\$1,000.00) and result from any misdemeanor criminal conviction or criminal 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.

If the person applying for a pardon is not a citizen of the United States, he or she must be domiciled in the State of Florida at the time the application is filed, considered, and acted upon. All currently filed Restoration of Alien Status cases will be processed under Rule 5(A).

Persons who had adjudication of guilt withheld and were not convicted may apply for a pardon if they otherwise meet the eligibility requirements of Rule 5(A).

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

A person may not be considered for a commutation of sentence unless he or she has been granted a Request for Review 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 terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020)—other than any legal financial obligations—arising from the applicant’s felony conviction or convictions.

#### **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 terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020), arising from the applicant’s felony conviction or convictions. All durational periods arising from the applicant’s felony conviction or convictions must have been completed for a period of no less than eight (8) years. The applicant may not have pending outstanding detainers or pending criminal charges. The applicant may not have any pecuniary penalties or liabilities which total more than one thousand dollars (\$1,000.00) and result from any misdemeanor criminal conviction or criminal 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 under Florida Law**

### **1. Restoration of Civil Rights under Florida Law Without a Hearing for Felons Who Have Completed All Terms of Sentence Pursuant to Amendment 4 as Defined in § 98.0751(2)(a), Fla. Stat. (2020)**

A person who meets the requirements of Rule 9 shall have his or her civil rights immediately restored upon processing without a hearing by automatic approval of the Clemency Board. Restoration of civil rights under Rule 9 includes all rights of citizenship possessed 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.

Notwithstanding any provision of Rule 5(E), an individual who has previously had his or her civil rights under Florida law restored under Rule 9 and is subsequently convicted of another felony offense shall be ineligible for restoration of civil rights under Florida law for a period of no less than seven (7) years after completing all non-financial terms of sentence as defined in § 98.0751(2)(a), Fla. Stat. (2020), arising from the subsequent felony conviction.

### **2. Restoration of Civil Rights under Florida Law With a Hearing for Felons Who Have Not Completed All Terms of Sentence Pursuant to Amendment 4 as Defined in § 98.0751(2)(a), Fla. Stat. (2020)**

Persons who do not qualify for restoration of civil rights without a hearing under Rule 9, including indigent felons, may continue to be processed with a hearing pursuant to Rule 10 if the person has completed all terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020)—other than any legal financial obligations—arising from the applicant’s felony conviction or convictions; has no pending outstanding detainers or pending criminal charges; and has met the requirements of Rule 10. Restoration of civil rights under Rule 10 includes all rights of citizenship possessed by the person before his or her conviction, except the specific authority to own, possess, or use firearms.

Notwithstanding any provision of Rule 5(E), an individual who has previously had his or her civil

rights under Florida law restored under Rule 10 and is subsequently convicted of another felony offense shall be ineligible for restoration of civil rights under Florida law for a period of no less than seven (7) years after completing all non-financial terms of sentence as defined in § 98.0751(2)(a), Fla. Stat. (2020), arising from the subsequent felony conviction.

## **6. Applications**

### **A. Application Forms**

All correspondence regarding an application for clemency should be addressed to Coordinator, Office of Executive Clemency, 4070 Esplanade Way, Tallahassee, Florida, 32399-2450. Those persons seeking clemency shall complete an application and submit it to the Office of Executive Clemency.

Persons seeking Restoration of Civil Rights must submit an application. Application forms will be furnished by the Coordinator upon request or they may be downloaded from the clemency website at [www.fc.or.state.fl.us](http://www.fc.or.state.fl.us). All applications for clemency must be filed with the Coordinator on the form provided by the Office of Executive Clemency.

### **B. Required Supporting Documents**

Each application for clemency shall have attached to it: (1) 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 misdemeanor, and (2) a certified copy of the judgment and sentence for each felony conviction, or misdemeanor conviction if seeking a pardon for a misdemeanor, which may include an order of community control or order of probation for each felony conviction, felony charge for adjudication of guilt withheld, or misdemeanor conviction or charge. The applicant may obtain various documents from the applicable clerk of court free of charge pursuant to § 940.04, Fla. Stat. (2020). (Note: The Office of Executive Clemency or Florida Commission on Offender Review may assist in preparation of applications in unique situations.)

### **C. Optional Supporting Documents**

Each application for clemency may include character references, letters of support, a statement,

and any other documents that are relevant to the application for clemency. Documents not relevant to the application for clemency will not be retained.

#### **D. 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, including change of address and phone number.

#### **E. 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.

#### **F. Notification**

Upon receipt of a completed application that meets the requirements of the Rules of Executive Clemency, the Florida Commission on Offender Review 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 Commission on Offender Review**

Every application which meets the requirements of these Rules may be referred to the Florida Commission on Offender Review for an investigation, report, and recommendation.

All persons who submit applications shall comply with the reasonable requests of the Commission in order to facilitate the investigation of their cases. Failure to comply with such requests by the Commission, without adequate explanation, may result in closure of the application without further consideration.

### **8. Commutation of Sentence**

#### **A. Request for Review**

An applicant who applies for commutation of sentence under Rule 5(B) may do so only if he or she has a sentence of imprisonment of five (5) years or longer and has completed a minimum of at least

one third of the durational period of imprisonment imposed by the sentencing court in conjunction with an adjudication of guilt arising from the applicant's felony conviction or convictions, or, if serving a minimum mandatory sentence, has completed at least one half of the durational period of imprisonment imposed by the sentencing court in conjunction with an adjudication of guilt arising from the applicant's felony conviction or convictions, or, if serving a life sentence, has completed at least twenty (20) years of the durational period of imprisonment imposed by the sentencing court in conjunction with an adjudication of guilt arising from the applicant's felony conviction or convictions.

Individuals eligible for commutation of sentence consideration may receive a "Request for Review" form by contacting the Office of Executive Clemency or it may be downloaded from the clemency website at [www.fcor.state.fl.us](http://www.fcor.state.fl.us). Upon receipt of the Request for Review form, clemency application, and any other required and optional supporting documents relevant to the application for clemency, the Coordinator shall forward copies of the documents to the Florida Commission on Offender Review. Documents not relevant to the application for clemency will not be retained. The Commission shall review the documents and make a report and recommendation to the Clemency Board.

If the Commission recommends that a Request for Review be granted, the Request for Review shall be deemed granted and the Coordinator may place the applicant's case on an agenda to be heard by the Clemency Board after a full investigation is completed by the Commission.

If the Commission recommends that a Request for Review be denied, the Coordinator shall issue to the Clemency Board members a preliminary review list of applicants to be denied a Request for Review without a hearing. If no member of the Clemency Board objects to the denial of an applicant's Request for Review without a hearing within 60 days of issuance of the preliminary review list, the case will be summarily denied and the Coordinator shall inform the applicant that the Clemency Board has denied his or her Request for Review.

An objection to the denial of a Request for Review by preliminary review list merely indicates

that a member of the Clemency Board believes that a case should be considered by the Clemency Board at a meeting. It does not indicate whether the Clemency Board member is inclined to vote to grant or deny the underlying application for commutation of sentence.

Notification of receipt by the Office of Executive Clemency of a Request for Review shall be provided as indicated under Rule 6. Rule 17 may also be invoked by any member of the Clemency Board.

**B. Referral to the Florida Commission on Offender Review**

Upon receipt by the Coordinator of notification invoking Rule 17, the Coordinator may refer a Request for Review to the Florida Commission on Offender Review for a full investigation and place the case on an agenda to be heard by the Clemency Board.

The Coordinator may also refer a Request for Review to the Commission for a full investigation and place the case on an agenda to be heard by the Clemency Board if the Commission recommends that the Request for Review be granted, or if a Request for Review is not denied by preliminary review list under Rule 8(A).

**C. Notification**

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

**D. § 944.30 Cases**

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

**E. Domestic Violence Case Review**

Domestic violence cases that meet the criteria adopted by the Clemency Board on December 18, 1991, as amended, will be processed as requests for review.

**9. Automatic Restoration of Civil Rights under Florida Law Without a Hearing for Felons Who Have Completed All Terms of Sentence Pursuant to Amendment 4 as Defined in § 98.0751(2)(a), Fla. Stat. (2020)**

**A. Criteria for Eligibility**

A person shall have his or her civil rights under Florida law immediately restored upon processing by automatic approval of the Clemency Board, including the right to vote, the right to serve on a jury, and the right to hold public office but 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 terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020)—including any legal financial obligations—arising from his or her felony conviction or convictions;
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 as defined in § 98.0751(2)(c), Fla. Stat. (2020);
  - b. A felony sexual offense as defined in § 98.0751(2)(b), Fla. Stat. (2020);
  - c. Any offense committed in another jurisdiction or under Federal law which would constitute one of the foregoing offenses if committed within the criminal jurisdiction of Florida; and
5. The person must be a citizen of the United States; and if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

**B. Action by Clemency Board**

The Florida Commission on Offender Review shall accept and retain the records of individuals released by the Department of Corrections by expiration of sentence, including terms of imprisonment or from community supervision. In a manner approved by the Board of Clemency, the Commission may provide individuals released by the Department of Corrections with a written explanation of the Rules

determining eligibility to apply for restoration of civil rights.

The Commission shall review the applications of individuals who have applied for restoration of civil rights pursuant to Rule 6. If an individual meets all requirements under Rule 9(A), then the Coordinator shall provide that information to the Clemency Board and, if the individual is not removed from the preliminary review list by the Governor within 60 days of issuance of the list, pursuant to executive order, issue a certificate that grants the individual restoration of civil rights 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 Florida Cabinet. A person who is not eligible for automatic restoration of civil rights without a hearing under Rule 9 may continue to be processed with a hearing pursuant to Rule 10.

### **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 under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Commission on Offender Review 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 restoration of civil rights as enumerated herein.

## **10. Restoration of Civil Rights under Florida Law With a Hearing for Felons Who Have Not Completed All Terms of Sentence Pursuant to Amendment 4 as Defined in § 98.0751(2)(a), Fla. Stat. (2020)**

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

An individual who does not qualify for restoration of civil rights without a hearing under Rule 9 must comply with Rule 6 by filing an application to have his or her civil rights under Florida law restored, excluding the specific authority to own, possess, or use firearms, with a hearing. An individual is eligible to apply only if the following requirements are met:

1. The person has completed all terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020)—other than any legal financial obligations—arising from the applicant’s felony conviction or convictions;

2. The person must be a citizen of the United States; and if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

### **B. 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 under Florida law must be submitted in accordance with Rule 6. Such request shall be reviewed by the Florida Commission on Offender Review 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 with a hearing as enumerated herein.

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

### **A. Action by Clemency Board**

The Florida Commission on Offender Review shall review the applications of individuals who have applied for clemency pursuant to Rule 6 and make a report and recommendation to the Clemency Board, except that applications under Rules 8 and 9 shall be handled in accordance with those Rules.

If the Commission recommends that an application be granted, then the Coordinator may place the applicant’s case on an agenda to be heard by the Clemency Board after a full investigation is completed by the Commission.

If the Commission recommends that an application be denied, then the Coordinator shall issue to the Clemency Board members a preliminary review list of applicants to be denied clemency under Florida law without a hearing. If no member of the Clemency Board objects to the denial of an applicant’s clemency application without a hearing within 60 days of issuance of the preliminary review list, the case will be summarily denied and the Coordinator shall inform the applicant that the Clemency Board has denied his or her application.

An objection to the denial of clemency by preliminary review list merely indicates that a member of the Clemency Board believes that a case should be considered by the Clemency Board at a meeting. It does not indicate whether the Clemency Board member is inclined to grant or deny the underlying application for clemency.

### **B. Cases on the Agenda**

After the Florida Commission on Offender Review completes any investigation, report, and recommendation conducted under Rule 7, 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 that the Commission recommends be granted under Rule 8(A) or Rule 11(A);
2. Timely applications that meet the eligibility requirements under Rule 5 that are not denied by preliminary review list under Rule 8(A) or Rule 11(A); and
3. Cases in which Rule 17 has been invoked.

### **C. Distribution of Agenda**

The Coordinator shall prepare an agenda which shall include all cases that qualify for a hearing under Rule 11(B). A preliminary agenda shall be distributed to the Clemency Board at least 10 days before the next scheduled meeting.

### **D. 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**

While applicants are not required to appear at the hearing, 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 (5) minutes. All persons making oral presentations in favor of an application shall be allowed cumulatively no more than ten (10) minutes. All persons making oral presentations against an application, including victims, shall be allowed cumulatively no more than ten (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 applicant or their attorney 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.

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 other than a Restoration of Civil Rights may not reapply for further executive clemency for at least two (2) years from the date that such action became final. Any person who has been denied a Rule 8 commutation of sentence may not apply for another request for at least five (5) years from the date the prior request was denied.

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

Rule 15 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, as approved by the Governor, does not constitute a waiver of confidentiality.

##### **B. Florida Commission on Offender Review Investigation**

In all cases where the death penalty has been imposed, the Florida Commission on Offender Review 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 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 Commission to be included in the final report to the Clemency Board.

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

The investigation by the Florida Commission on Offender Review 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 Eleventh 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 Eleventh Circuit Court of Appeals, or petition for writ of certiorari in the United States 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 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. Florida Commission on Offender Review 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 fifteen (15) minutes collectively. Representatives of the victim's family may make oral statements not to exceed an additional five (5) 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**

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

### **18. Collection of Statistics and Evaluation of Clemency Action**

The Office of Executive Clemency, in conjunction with the Florida Commission on Offender Review and Department of Corrections, shall collect and submit to the Clemency Board an annual written report.

### **19. Effective Dates**

History. - Adopted September 10, 1975, Rule 6 (formerly Rule 9), effective November 1, 1975; Rule 7 adopted December 8, 1976; Rule 6 revised December 8, 1976, effective July 1, 1977; revised September 14, 1977; Rule 12 revised October 7, 1981; revised December 12, 1984; revised January 8, 1985; revised July 2, 1985; Rule 12 revised September 18, 1986; Rules revised December 18, 1991, effective January 1, 1992; Rule 10 and Rule 15 revised June 22, 1992; Rules revised December 29, 1994, effective January 1, 1995; Rules revised 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; Rules revised March 9, 2011, effective March 9, 2011; Rules revised January 21, 2020, effective January 21, 2020; Rules revised March 10, 2021, effective March 10, 2021.