

Pocket Guide to the Clemency Project 2014 Process (with checklist)

By Mark Osler¹

Revised July 13, 2015

This Guide is a free tool to help pro bono attorneys as they represent clients within the structure of the Clemency Project 2014. It was not issued or prepared by the Clemency Project 2014 or the Federal Defenders, and is intended to supplement, not replace, the guidance they have provided.² The Clemency Project is an evolving process, and it is essential to check the Clemency Project 2014's website regularly for the latest information.

Step One: Receive a name

Once you have completed the required training and completed the training survey, the Clemency Project 2014 (CP14) will begin sending you cases. If you already represent someone who is in the CP14 pool, fill out the Prior Representation form and send it to CP14 (general emails like this one can be sent to bgrier@clemencyproject2014.org).

You are ready to start building the file now. The email assigning a case will provide you with a name, a registration number, and a link to the client's page in the CP14 case management system. That page will tell you where the client is housed, and how long he has been there. Click on the link for "Facility Information" to get an address for the client.

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² This guide is intended to serve as a supplement to materials provided by Clemency Project 2014, and is derived largely from the Clemency Project's "Step-by-Step Guide for Clemency Project 2014 Volunteers" and the "Overall Instructions for Pro Bono Lawyers," both of which are available in the "reference" section of the Clemency Project 2014 website (<https://clemencyproject2014.org/reference>). Many of the documents referred to here are also directly accessible on the Federal Defenders' website, at <http://www.fd.org/navigation/select-topics-in-criminal-defense/sentencing-resources/subsections/clemency>. I have provided footnotes to relevant links in the following discussions.

At this step, make sure you have no conflicts involving that defendant. For example, one case was reassigned where the conviction came out of the office where I was a prosecutor during the time I worked there.

Step Two: Perform a “Quick-Look” screen

To completely analyze the case, you will need a number of documents that you will procure using the process described in Step Three. However, there are three factors you should screen for now using the resources available to you as you sit at your computer: length of sentence, violent crimes, and change in sentencing law or policy relating to the case.

To do this screening, you will need the following information, which comes from two sources: The CP14 website, and the PACER website for the sentencing court. To find the PACER website, go to the website for the sentencing court itself; there will be a link there. PACER does charge per-page for most users, but you can get an exemption through a court order if necessary. There is a model exemption order available at the CP14 resource page. As you find these documents, start building your case file.

The CP14 website should provide not only the identifying info described in Step One, but the sentence start date, and a calculation of your client’s time served including good time credit.

From PACER, you should get the Indictment, the Judgment, the Sentencing Memo, appeal & habeas petition information, and (if they are available) other useful documents such as a sentencing transcript. Note that appeal and habeas filings can provide very helpful information on the case.

With this info, the first thing to look for is whether or not they will have completed ten years of imprisonment by January 20, 2017. In calculating this time period, include good time credit, time served in state custody on the same charge, and any reduction in sentence due to participation in a Residential Drug Abuse Prevention Treatment Program.

Second, you can screen for whether the crime of conviction (or prior convictions) would be considered a violent crime. The judgment and sentencing memo/transcript may help the most with this. Be aware that mere gun possession is not on its face a violent crime. Thus a conviction for

carrying and use of a firearm in furtherance of drug trafficking under 18 USC 924(c) may not signal a violent crime.

The third factor, and the most complex, is the calculation of whether a sentence would be different today than when sentenced. If the person would probably get the same sentence under current law and policy, then the case does not fall within the CP14 framework. There are a wide variety of helpful memos available on the CP14 resource page which relate to this analysis.

If the potential petitioner seems likely to qualify under all three of these, proceed to step three below. If they clearly fail one, though, you should (1) use the template below to draft a statement to the Screening Committee, (2) email it to croseberry@clemencyproject2014.org along with supporting documents, and (3) go to the CP14 “Applicant List” page and close the case out.

Here is the template to use in your message to Cynthia Roseberry:

1. “I, _____, a volunteer attorney for Clemency Project 2014 was assigned to review the applicant, _____, BOP # _____. Based upon a review of publicly available information, I and my firm, _____, have chosen not to engage the client because [*list reason as specifically as possible – e.g. the applicant is not currently serving a federal sentence; the applicant is serving a sentence for a 1999 conviction for murder; the applicant is serving a sentence for a 2008 drug conviction in which he received an 8 year sentence*]. Included/attached is the applicant’s docket sheet/indictment or other document upon which I relied, which was obtained from a publicly available source.”

Step Three: Writing to the Client

First, you will need to print out five documents that you will send to the client for his or her signature: A Limited Representation Agreement,³ two forms of consent to release documents,⁴ and a certificate of the client’s

³ CP 14 has provided a form:

https://clemencyproject2014.org/ref/materials/_documents/Appendix%20B%20-%20Limited%20Representation%20Agreement.pdf.

⁴ These are included as Appendix C and F-1 to the memo on “Necessary Documents and How to Obtain Them,” available at

https://clemencyproject2014.org/ref/materials/_documents/Necessary%20Documents%20Memo%20and%20Appendices%20for%20CP2014%20Attorneys.pdf. (You may need

identity,⁵ as well as the PSR release consent form found on the resources page of the CP14 website.⁶

Next, you need to draft a letter to the client, using the address from the “Facility Information” link, along with the registration number of the client. CP14 has provided a sample letter.⁷ The Federal Defenders have prepared an alternative initial letter which offers somewhat different language.⁸

You may want to amend the CP14 boilerplate, as follows:

A) It’s a good idea to ask for the potential client’s help in gathering the documents you will need. Often, the client will know how to find the Presentence Investigation Report (PSR), the Judgment, his Progress Report (from BOP), and the transcript of the sentencing hearing, and you will be able to get these right away rather than waiting for the next step to be completed. This has speeded some cases up.

B) Some attorneys ask the potential client if an attorney represents him in any matter in the text of this letter. You also need to find out if he or she has submitted a clemency petition or request for compassionate release already, or if someone else has done so on their behalf. This has happened in a surprising number of cases.

C) Each inmate is assigned a counselor in the prison. The counselor is an important contact for obtaining the documents described in the next section,

to sign in on the CP14 site before accessing this). The general consent form is available directly at https://clemencyproject2014.org/ref/materials/_documents/Appendix%20C%20-%20Consent%20to%20Release%20of%20Information.pdf, and the CP14 consent form is available directly at https://clemencyproject2014.org/ref/materials/_documents/Consent%20to%20Release%20Information.pdf.

⁵ This is form DOJ-361, available at <http://www.fbi.gov/foia/u.s.-department-of-justice-form-361-certification-of-identity>.

⁶ https://clemencyproject2014.org/ref/materials/_documents/bop%20psr%20consent.pdf

⁷ The sample letter is not directly linkable. You can find a link at <https://clemencyproject2014.org/reference>.

⁸ This is included as Appendix B to the memo on “Necessary Documents and How to Obtain Them,” available at <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-necessary-documents-and-how-to-obtain-them.pdf?sfvrsn=7>.

so it is a good idea to ask for your potential client's counselor's contact information, including email.

D) Finally, you might tell the client explicitly in the text of the letter the ways that you can be contacted, and which it is that you prefer. Inmates have varying abilities to communicate by phone, via corrlinks (the prison email system) or through 3rd parties.⁹ Be aware that some methods (such as corrlinks or third parties) are not confidential and not appropriate for attorney-client communication. Many lawyers direct that communication be by letter only to ensure confidentiality.

Mail to an inmate should be marked "Special Mail—Open Only In the Presence of the Inmate." The return address must identify the attorney by name and legal title (Attorney at Law). The name of a law firm or clinic is not sufficient. This will cause the letter to be treated as confidential by the prison.

Don't forget to enclose the documents to be signed: the two consent forms, the ID Certification, the PSR release consent form, and the Limited Representation Agreement. Do not include a stamped return envelope, as those are not allowed in many federal prisons.

Step Four: Gathering Documents

Once you have received the retention letter and other documents back from the client, you should start gathering documents. There are four essential documents you will need as soon as possible: The Judgment, the Presentence Investigation Report (PSR), the Bureau of Prison's Progress Report, and the BOP's Sentry Report (which has multiple parts). They are listed below along with guidelines on obtaining them. For more guidance, see the memorandum on "Necessary Documents and How to Obtain Them."¹⁰

⁹ For more information on ways to contact inmates, see p. 3-4 of the Federal Defender's "Overall Instructions." <http://www.fd.org/docs/select-topics/sentencing-resources/determining-whether-clemency-applicant-meets-criteria-what-is-required-in-package.pdf?sfvrsn=10>.

¹⁰ https://clemencyproject2014.org/ref/materials/_documents/Necessary%20Documents%20Memo%20and%20Appendices%20for%20CP2014%20Attorneys.pdf.

A. The Judgment

Hopefully, you already have this from doing your “Quick Look” screen described in Step Two. You should be able to get this from PACER (Public Access to Court Records, at www.pacer.gov), and while you are at it get the docket sheet and other documents as well. If that doesn’t work, the client may have it. A third source is the clerk of the court of conviction. Some judgments (though not all) have an attached “statement of reasons” and a few result in written opinions. You will need those, if they exist.

B. The Presentence Investigation Report (PSR)

The fastest way to get this is often through the client’s family or friends (Rules bar inmates from possessing a PSR in prison). Our experience is that the majority of inmates seem to have access to their PSR through friends, family, or the attorney who represented the client in the federal case (make sure you have the consent form before reaching out to third parties including a former attorney).

A second route is to directly approach the attorney who initially represented the client.

If that doesn’t work, CP14 has developed a process with BOP to obtain this key document. Hopefully, you have received the PSR release consent form back from the client. Now complete the Attorney’s part of that form. If this method is used, the sentencing judge must be notified and given two weeks to object to the disclosure (if the sentencing judge has retired, send a copy of the form to the Chief Judge of that district). Also, upload the completed form to the CP14 Applicant Tracking System. Strict non-disclosure and document-handling protocols are in place relating to this document production process. CP14 will forward the memo to the BOP once you have uploaded it to the ATS, and then post it to the Applicant Record online once it is received.

C. BOP Progress Reports and Sentry Reports

There is a welter of BOP forms required by the Pardon Attorney in these cases. The Progress Report is an update on the inmate’s status. Sentry Reports cover several things: The PPPI covers sentencing information, the PD15 describes disciplinary events, the PD44 sets out profile information

such as work assignments and housing unit, and the PIDF provides financial information. To better understand these, read the memo on “Reading, Interpreting, and Using BOP Forms.”¹¹

The inmate may have some of these forms (particularly the Progress Report). However, it is difficult to know that they are complete or up-to-date. Once you get the BOP consent form back from the client, you need to request the six items described below. Do this by going to <http://www.bop.gov/locations/list.jsp>. Find the email for the client’s institution. Write them an email, with “Clemency Project 2014 Records Request” in the subject line. Also, if you have the counselor’s email, address it to the counselor as well. Attach a scanned-in version of the consent forms and the ID certification. In the body of the email, identify the client by name and number, and request the following documents by both the code and description:

- Judgment and commitment order (if you don’t already have it)
- Most recent Progress Report
- SENTRY PPPI—Sentencing info
- SENTRY PD15—Discipline report
- SENTRY PP44—Conduct Report
- SENTRY PIDF—Financial Report

If there is a medical issue in your case, you will also need to obtain medical records from the BOP using the same. The same is true of a previous or pending request for Compassionate Release.

Also be sure to include, in the body of the email, both an email address and a regular mail address.

Some prisons are more responsive than others. If you are having difficulty getting these documents, CP14 can intervene and help you. To get this help, write to record@clemencyproject2014.org.

Once this all is completed, go to the case management system and record the tasks you have completed and the time you have spent on the case thus far.

¹¹ <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-reading-interpreting-and-using-bop-records.pdf?sfvrsn=5>.

Step Five: Evaluate the Case

Your first submission to the Clemency Project 2014 is the Executive Summary, which will be used by them to decide whether or not to include the case in the Project. Before you draft this up, though, analyze each of the factors listed below to make sure that you will be recommending that CP14 take the case. If your analysis reveals that you should make a NEGATIVE recommendation, hold off on drafting the whole thing until you have communicated with the client. It may be that the client does not want you to submit the Executive Summary. Below are the eight factors to analyze, and a few notes on each:

Factor One: Currently serving a sentence that would substantially lower today.

In many (if not most) cases, this will be the most complex factor. Your best resource for this analysis are the many memos in the training materials, starting with “How a Sentence for a Drug Offender May be Lower If Imposed Today” memo¹² if you have a drug case. The Federal Defender website has helpfully structured the listing of memos by category: all cases, drug cases, gun cases, and immigration cases.¹³

It is crucial that you thoroughly analyze this factor and read the memos covering the issues presented.

CP14 requires a summary box as part of the analysis of Factor One, in the following format:

Calculation of How the Imposed Sentence Would Change If Inmate Were Sentenced Today		
Components	Current sentence	Likely Sentence Today
Statutory Range		
Career Offender Range		
Ordinary GL Range		
W/ Booker Variance		
Sentence Imposed/ Likely Would Be		

¹² <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-how-a-sentence-for-a-drug-offender-may-be-lower-if-imposed-today.pdf?sfvrsn=11>.

¹³ <http://www.fd.org/navigation/select-topics-in-criminal-defense/sentencing-resources/subsections/clemency>).

Imposed		
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Importantly, Factor One does not require that the sentence be reduced to the point where the client is released immediately. The President has the power to reduce a sentence through the pardon power short of releasing the inmate; that is, if 10 years has been served on a 20-year sentence, the President could reduce the sentence to 15 years, leaving the inmate with five years left to serve.

Factor 2. Non-violent offender.

This question is limited to the offense of conviction. If there are questions regarding whether the offense was violent (a knotty question that even the Supreme Court has struggled with repeatedly), refer to the memo titled “Was the Client a Non-Violent Offender?”¹⁴ In gun cases, a separate memo titled “How a Person Who Was Convicted of a Firearms Offense, or Was Convicted of a Drug Offense and Received a Guideline Increase Because a Firearm ‘Was Possessed’ May Qualify for Commutation” may help you.¹⁵

Factor 3. Low-level offender.

This factor is in play with conspiracies, which will include most drug cases. Note that an argument can be made that an offender was “low-level” even if he received an enhancement for role in the offense; what matters is that his conduct was essentially “low-level” whether in relation to others involved in the offense, or in the broader picture (e.g., a group of people who get together to sell drugs in a neighborhood is low-level compared to a cartel). One indicator of a low-level offender is relative poverty.

Factor 4. Without significant ties to large-scale criminal organizations, gangs, or cartels.

This is a complicating factor in many cases. The PSR or BOP documents may allege a gang affiliation. You may need to distinguish your client’s present situation from the situation at the time of the offense, and you will need to be honest about it in your submissions. Many drug crimes are (at least indirectly) tied to a cartel. It may be helpful to establish that simply buying drugs from a cartel is very different than being a part of a cartel.

¹⁴ <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-non-violent-offender-history-of-violence.pdf?sfvrsn=5>.

¹⁵ <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-for-persons-convicted-of-firearms-offense-or-drug-offense-with-guideline-increase-for-firearm.pdf?sfvrsn=7>.

Factor 5. Length of sentence served.

The client needs to have served at least ten years of his or her sentence as of January, 2017 (When President Obama leaves office).¹⁶ For many cases, this is easy: If your client has already served over 120 months, you need only to state the length of time served and move on. In closer cases, good time and other credits (ie, for a drug treatment program) may play into the calculation of the duration of the remaining sentence. If this is an element in your case, refer to the federal defenders' "good time chart"¹⁷ and Part III(1) of the "Overall Instructions." The service of state time prior to the case being transferred to federal court may play into your answer, as well. If so, refer to the training memo on the interaction of state and federal time.¹⁸

Factor 6. Does not have a significant criminal history.

Importantly, "significant criminal history" does not mean *no* criminal history. In fact, six of the eight people granted commutations in December of 2013 had more than one prior conviction, and four had been designated as "career offenders." If there is more than one prior conviction, you need to construct a good argument for why that history is not "significant."¹⁹

Factor 7. Has demonstrated good conduct in prison.

Good conduct in prison has two components: A lack of serious problems (ie, disciplinary complaints) and the presence of positive factors such as completing classes, work history, and other achievements. The BOP documents are your best resource in addressing this factor.

Factor 8. No history of violence prior to or during imprisonment

This factor is related to the preceding one, and you can refer back to your answer there. You have to go into greater depth, though, and cover conduct prior to imprisonment, as well. The PSR is your best guide in describing this. Remember that arrests and allegations of violent conduct that do not result in convictions are subject to a presumption of innocence.

¹⁶ If there is any question about this in your case, see part III(1) of the "Overall Instructions" memo, and Part III of the "Reading, Interpreting, and Using BOP Records" memo.

¹⁷ <http://www.fd.org/docs/select-topics/sentencing-resources/good-time-chart.pdf?sfvrsn=3>

¹⁸ <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-the-interaction-of-federal-and-state-sentences.pdf?sfvrsn=3>

¹⁹ The "Overall Instructions" memo does a good job analyzing this factor.

For incidents while the client was imprisoned, identify them through the BOP PD15 form. If there are serious allegations (ie,100-200 level offenses), use the BOP consent form and make a specific request by email (as described in Step 3) for the “DHO Report.” For less serious (300-400) level offenses, ask for the “Incident/UDC Report.” Such a report will better describe what happened. For more guidance, see the Federal Defenders’ memo on “How to Read, Interpret and Use BOP Reports.”²⁰

Now that you have analyzed each factor, you are ready to make a conclusion. If your recommendation is that CP14 take the case, you should draft the Executive Summary as described below in Step Six. If you are NOT going to recommend that CP14 take the case, then you should write the client immediately before doing anything further.

In that letter, describe the basis or bases for your recommendation and make it clear that you will make a negative recommendation. Note that the Screening committee may disagree with you, and decide to take the case if you submit the Executive Summary. Next, present your client with two choices. First, you can complete the Executive Summary and submit it to CP14 with the negative recommendation. Second, you could NOT submit an Executive Summary, and instead send CP14 the following statement:

“I, _____, a volunteer attorney for Clemency Project 2014, and attorney for the applicant, _____, BOP #_____, request that the applicant be removed from Clemency Project 2014 and their case be closed for one or more reasons including, but not limited to: desire of the applicant to discontinue their participation in Clemency Project 2014; desire of the applicant to pursue a clemency petition outside of Clemency Project 2014; and/or the applicant has obtained other counsel.”

Once you hear back from the client, honor their choice either by submitting the Executive Summary and negative recommendation or by sending the above statement to croseberry@clemencyproject2014.org.

Step Six: Prepare the Executive Summary

The form of this submission is set out in the “Sample Executive Summary” at the Clemency Project’s website, and tracks the factors listed above.²¹ The Executive Summary is supposed to be a relatively short, punchy document which is narrowly focused on the eight criteria used by Clemency Project

²⁰ <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-reading-interpreting-and-using-bop-records.pdf?sfvrsn=5>

²¹ https://clemencyproject2014.org/ref/materials/_documents/Sample%20Executive%20Summary.pdf.

2014. It should be submitted as PDF document. Each of the eight factors is described in turn below.²²

Now that you have completed the Executive Summary, you need to do three things: communicate with the client, submit the executive summary (if necessary), and enter the result in the CP14 database.

First, send the draft of the Executive Summary to the client, and ask for their approval to send it to CP14 with a positive recommendation.

Second, email it (as a PDF) to Project Director Cynthia Roseberry at croseberry@clemencyproject2014.org.

Third, log onto the case management system, close the first review, and log in your time. This can be a little tricky—you need to look for a button on the upper left-hand corner of the case management page for your client that says “close level one.” When you do that, a new window will open with three yes/no questions: (1) “I believe this applicant meets all the criteria for a petition,” (2) “I recommend this applicant for a petition,” and (3) “I have completed and submitted the Executive Summary.” In other words, this is where you make a recommendation to the Committees.

Step Seven: Committee Requests and Decision

Once you have sent off the Executive Summary, there is some waiting involved, as the submission must be considered sequentially by two committees. First, a screening committee will review the case. If it approves, the case is sent on to the CP14 Steering Committee, which will also decide whether the process will continue. One or both of these committees may request additional documents from you as they complete their reviews.

If the screening committee or the Steering Committee have rejected the case, you still have the option of completing the petition for the client and submitting it directly to the Pardon Attorney. If you have resolved to take the case to the Pardon Attorney regardless of whether or not CP14 takes it,

²² For a more detailed analysis, see the “Overall Instructions” memo. https://clemencyproject2014.org/ref/materials/_documents/Overall%20Instructions%20for%20Pro%20Bono%20Lawyers%20-%20Final.pdf.

there is no need to wait—start pulling your petition together (using the steps in the next section).

Now that the Clemency Project has made a decision on the case, let your client know. If the case has been declined, decide whether you are willing to pursue the case directly to the Pardon Attorney, or if you are going to terminate representation at this point. Notify the client of the declination and whether or not you are terminating the representation. If you are terminating the representation, be certain to tell the client that he has the ability to submit a petition directly to the Pardon Attorney.

If the case has been approved, also send the client the “re-entry questionnaire”²³ on the CP14 resource page, which will help you frame the release plan you will include in the petition. Some attorneys may want to send an updated representation letter, too. As part of this communication, you should also send the client a copy of the OPA petition form and request that he or she answer (in his own words) Questions 5 & 7. These address the crime of conviction and the reasons for clemency. As described in the next section, you should make changes to the client’s draft in consultation with her, and type the final version. Instructions for obtaining the OPA petition form are on the next page.

Step Eight: Preparing the Petition

If both committees approve the case, it is now time to prepare the actual clemency petition that will be filed with the Pardon Attorney and (hopefully) be considered by the President.

In the previous step, you reached out to the petitioner to seek his help in addressing re-entry and answering questions 5 & 7 of the Pardon Office form. Another thing you might consider at this point is contacting the judge or the prosecutor to see if they will support the petition. This is tricky; see the excellent advice provided on p. 26 of the “Overall Instructions” memo.²⁴

²³ <http://www.fd.org/docs/select-topics/sentencing-resources/clemency-re-entry-questionnaire.pdf?sfvrsn=3>

²⁴ https://clemencyproject2014.org/ref/materials/_documents/Overall%20Instructions%20for%20Pro%20Bono%20Lawyers%20-%20Final.pdf.

CP14 would like petition packets to be submitted as a PDF and electronically bookmarked. Instructions on how to do this can be found in the memo “How to Set Up the Bookmarks Panel in the Combined PDF to Function as an Interactive Table of Contents.”²⁵

The Petition packet will be composed of the Pardon Attorney’s standard petition form and several attachments. Here is what all should be included:

- Executive Summary
- Pardon Attorney Commutation Form
- Office of the Pardon Attorney Checklist
- Memorandum in Support of Clemency
- Other Attachments (letters of support, etc.)²⁶

Executive Summary

Conveniently, you already have this done. You may want to revise it, though, based on your conversations with the screening and steering committee.

Pardon Attorney Commutation Form

The Pardon Attorneys commutation form is the heart of the submission. To get the form, you need to navigate through a few pages of the Pardon Attorney’s website (a direct link is not available). Start at <http://www.justice.gov/pardon/forms.htm>, then click on “commutation petition” at the top of the page. On the next page (“Application Forms”) be careful to click on the link for commutation petitions—the “pardon petition” is different. Go to the bottom of the next page (“clemency instructions”) and click on “continue to next step.” That takes you to an “important notice.” Go to the bottom of that page, click on “commutation application” and you will finally be at the application form itself.

That form contains several sections, and some are trickier than others.

²⁵ <http://www.fd.org/docs/select-topics/sentencing-resources/bookmarking-the-clemency-package-pdf-to-create-an-interactive-table-of-contents.pdf?sfvrsn=4>.

²⁶ The OPA checklist includes a nice listing of optional “elective items.”

The first four sections require background information regarding identity, the conviction, length of sentence, and appeals and collateral actions. Numbers five, six, and seven are the tricky ones.

Question five requires the petitioner to “Provide a complete and detailed account of the offense for which you seek commutation, including the full extent of your involvement.” A straightforward, honest, and brief answer to this request is essential. Prevarication, blaming of others, claims of innocence, and anything short of an acceptance of responsibility has historically resulted in the consistent rejection of petitions by the Pardon Attorney. You may need to work extensively with your client on this answer. Before completing this response, be certain to review the memo on “How to Answer Question 5 on the OPA Form Petition.”²⁷

In turn, section six requires a comprehensive listing of all of the client’s arrests and convictions. Use the PSR to answer this question, as it contains a (usually) well-researched description of this information.

Finally, question seven asks petitioners to “state your reasons for seeking commutation of sentence.” It is crucial in answering this question to avoid any whiff of a refusal to accept responsibility. Worthwhile answers will include expressions remorse, personal growth, an ability to function as a positive member of society, and hope. Solicit your client’s answer to this question—often a client is able to beautifully express an answer to this question. Be certain to edit any response, or feel free to draft a brief statement for the client’s approval. The answer to question seven needs to mesh with the “mitigation” section of the memorandum you will prepare (described below). Rely primarily on your client’s voice here, and your own in the memorandum.

Office of the Pardon Attorney Checklist

The Pardon Attorney has provided a checklist for documents that need to be attached to the clemency petition form described above. The checklist (available on the reference page of the CP14 website) itself should also be attached to the petition. The attachments required by this checklist include:

The PSR

²⁷ <http://www.fd.org/docs/select-topics/sentencing-resources/how-to-answer-question-5-on-the-opa-form-petition-for-clemency.pdf?sfvrsn=5>.

The Judgment, including Statement of Reasons (if made)
Progress Report
BOP Sentry Reports
Calculation of how the imposed sentence would change if the inmate were sentenced today (this is included in the Executive Summary)

In addition, if the client is suffering from a serious medical condition, a medical report and information about any application for Compassionate Release is also required. The checklist also lists “Elective Items.” It generally speaks for itself, but a few “Elective Items” may need some explanation.

“Any court order that is significant with regard to change in the law” appears to mean a ruling *in the applicant’s case* that either reduced the sentence based on a change in law or acknowledged a change in law but declined to apply it to the applicant, for example, because of procedural barriers to habeas relief, or barriers to a retroactive reduction in the guideline range such as a trumping mandatory minimum.

“Appellate opinions” refers to *any* appellate opinion, including a Supreme Court opinion, that is relevant to a “specific legal issue.”

“Parole hearing documents (if applicable)” will exist only if the applicant committed his offense before November 1, 1987, the effective date of the Sentencing Reform Act, which eliminated parole, and was sentenced under pre-SRA law.

Attorney Memorandum Supporting Clemency²⁸

The memorandum should include three sections.

The first section should be titled “Mitigation.” It should be consistent with, but deeper than, the client’s statement in response to Question 7 on the Pardon Attorney Petition Form. Facts favoring mitigation might include a statement by the sentencing judge (or others involved in the case, such as an appellate judge) suggesting that the sentence is too harsh, rehabilitation as shown through conduct in prison, sentencing disparity with co-defendants, unfortunate facts leading to the offense conduct, medical issues, and family responsibilities and relationships.

²⁸ Part IV(D) of the “Overall Instructions” covers this part of the submission.

The second section should address the client's fulfillment of the President's criteria. In simpler cases, you can base your discussion on the points made in the Executive Summary, which is already a part of the package. If important additional facts have emerged or become known since the creation of the Executive Summary, be sure to include these and re-draft the relevant sections.

The third section should address re-entry. In short, you need to set out a plan through which the client can return to society as a safe, productive citizen. Emphasize stability. At the least, this section should address each of the following, as specifically as possible. Whenever you can, tie the plan's employment and housing components to letters submitted with the petition:

- Housing (preferably with employed, stable adults with no criminal history)
- An employment plan with regular hours and an established employer
- A plan for substance abuse and/or mental health treatment (if called for)
- Avoidance of negative influences
- Volunteer and community work (if called for)

Other Attachments

You already are attaching the Executive Summary, the OPA Checklist, the materials required by the OPA checklist (ie the PSR and BOP materials), and the memorandum to the Petition form. In addition, you should attach the following:

1) Letters of support

Two kinds of letters are most helpful. First, letters from outside the prison are great if they offer a specific kind of support upon re-entry: A place to live, a potential job, a steady friendship, or connection with community institutions and family. Encourage letter-writers to be as specific as possible when describing what they are willing to do. Second, letters from inside the prison (from fellow inmates or employees of the prison) are most useful where they describe with particularity the way in which the client has been rehabilitated: By working with others, starting or leading programs, and succeeding in jobs.

2) Certificates and Awards

This is optional—recognize that the classes taken by your client are already listed in the BOP materials. The attachment of certificates and awards can emphasize the point, though.

3) Judicial Opinions

If the sentencing court or others have suggested that the sentence is too high, attach that opinion.

Now that you have completed the petition, send it to the client for his signature. Once that is obtained, scan it in to a PDF, create bookmarks in the PDF, carefully retain the originals, update the case in the case management system, and email the whole thing to CP14 at petition@clemencyproject2014.org.

Clemency Project 2014 Action Checklist

Step One: Receive a name

- Gather address and publicly available info on potential client
- Determine Conflicts

Step Two: Quick-Look Screening

- Determine Sentence served with good time from CP14 site
- Get key docs from PACER
- Determine sentence served
- Determine violent nature of crime of conviction or priors
- Determine whether sentence would be different
- IF a criteria fails, return case to CP14

Step Three: Write to the Client

- Print out Limited Rep. Agreement, two forms of consent, cert. of ID
- Prepare Limited Representation Agreement
- Draft letter to client
- Send letter to client with docs. to sign

Step Four: Gathering Documents

- Get Judgment (if you don't have it already)
- Get PSR
- Get BOP (Bureau of Prisons) Progress Reports & Sentry Reports

Step Five: Evaluating the Case

- Evaluate case per eight criteria
- Communicate any negative recommendation to client

Step Six: Preparing the Executive Summary

- Draft Executive Summary
- Get client approval
- Email PDF of Executive Summary to CP14
- Update case management system

Step Seven: Responding to Committee Requests & Notifying Client

- Respond to questions from Screening or Steering Committees
- If the decision is negative, decide whether or not to continue representation
- Notify the client
- Send client the re-entry questionnaire
- Seek client's input on answering Q. 5 & 7 of the OPA Petition Form

Step Eight: Drafting and Submitting the Clemency Petition

- Consider seeking support of Judge and Prosecutor
- Solicit letters of support from family, friends, and others
- Complete OPA (Office of the Pardon Attorney) Petition Form
- Complete OPA Checklist
- Draft Attorney Memorandum
- Gather other attachments (ie, support letters)
- Create package as a PDF, with bookmarks
- Submit package to CP14
- Update case management system