

NEW RULES OF EXECUTIVE CLEMENCY

More Felons are Now Eligible for Automatic Restoration of Civil Rights



by
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Governor Ron DeSantis and the three members of the Florida Cabinet, acting as the Board of Executive Clemency, unanimously approved new clemency rules effective March 10, 2021, that are designed to approve civil rights applications faster, expedite pardon and firearm authority cases and reduce the backlog for convicted felons seeking a grant of mercy from Florida's top elected officials.¹ The changes are the first major rules update in 10 years and will make the advisory recommendations from the Florida Commission on Offender Review (FCOR) even more important.

RESTORATION OF CIVIL RIGHTS (RCR) LINKED TO AMENDMENT #4 (VOTING RESTORATION FOR FELONS)

The new rules resulted in two major changes: 1) The prior eligibility waiting periods of five years or seven years for RCR are gone. Previously convicted felons had to wait these years after completion of their sentences before they could even apply and start the process; and 2) The new Rule 9 will provide for automatic RCR without a hearing if the applicant meets the criteria of constitutional Amendment 4 which was approved by 65% of Florida voters in November 2018.² The applicant must have completed all terms of sentence including payment of legal financial obligations and restitution and must



not have any outstanding detainers or pending criminal charges.

In addition to voting restoration, RCR includes the right to serve on jury duty for civil and criminal cases and hold elected office.

The five eligibility criteria in Rule 9 are the same as in the 2019 legislative implementing law codified as Section 98.0751(2)(a), Fla.Stat.³ which was upheld by the U.S. Court of Appeals for the Eleventh Circuit.⁴

If felons do not meet the Amendment #4 criteria, RCR is still an option but a hearing is required.

FULL PARDONS AND FIREARM AUTHORITY = SECOND CHANCES

Most of my clemency clients are business owners or professionals who

committed drug or property crimes as young adults and needed help with obtaining state or federal licenses, security clearances, government contracts, better jobs, and volunteer opportunities at schools or with non-profit groups. Other felons wanted firearm authority for personal, family and business protection; law enforcement, security, or military jobs; recreational hunting; or to inherit a family gun collection.

The existing 10-year (for pardons) and 8-year (for gun rights) eligibility waiting periods still apply. Once filed, these cases will hopefully be considered sooner because most of the RCR cases will be expedited, and the backlog of pending applications will be reduced. Pardons for misdemeanors and for when adjudication of guilt is withheld for

a felony are still options. Any pardon releases a grantee from punishment and forgives guilt.⁵

However, new Rule 11 provides these applications may now be “summarily denied” without a hearing and by letter if the FCOR makes a negative advisory recommendation and no member of the board requests a hearing. This is a major change. Previously, if the FCOR made a negative advisory recommendation the applicant was still given a hearing and speaking opportunity at a quarterly clemency meeting in Tallahassee.

The three members of the FCOR are appointed by the governor and Florida Cabinet and confirmed by the Florida Senate and can serve a maximum of two six-year terms.⁶ Previously known as the Florida Parole Commission, FCOR investigates all clemency cases, prepares a report called a “confidential case analysis” and provides an advisory recommendation on all clemency cases.

Given the FCOR recommendation is now more important than ever and likely dispositive of many applications, optional supporting documents—like character references, letters of support, a personal statement, and resumes—should be added to the original application or provided during the investigation.⁷

COMMUTATIONS OF SENTENCE

Per Rule 8, state inmates with less than a 5-year sentence are no longer eligible to apply. All inmates must still serve at least one-third of their sentence, or one-half if they are serving a minimum mandatory sentence, before applying. Inmates serving a life sentence must complete 20 years to apply. Previously, a life sentence was treated as a 25-year minimum mandatory sentence for clemency eligibility, so the inmate had to serve only 12.5 years before applying.

Inmates must obtain a “Request for Review” (RFR) as a condition precedent to getting a commutation hearing. This can now be achieved with a positive advisory recommendation from the FCOR. Previously the RFR required specific approval from the governor and one board member so this change should also streamline and expedite the process. If the FCOR makes a negative advisory recommendation, the application is subject to be “summarily denied” like the pardon and firearm cases.

NEW AND BETTER APPLICATION / INFORMATION SHEET

To implement the new rules and improve the process, a new two-page application has five option boxes for the type of clemency being sought and additional room to list multiple convictions. The application includes helpful information on how to obtain the required certified court records of the charging instrument and the judgment and sentence orders. Per statute, these documents should be provided to the applicant promptly and free of charge.⁸ The application has been designated Form ADM 1501 and was updated April 14, 2021. A lawyer is not required and there is no application fee.

The new six-page Clemency Information Sheet (also called Form 1) explains the new rules, provides additional directions on how to apply, and includes excellent information on the eligibility criteria for each type of clemency. This form was also updated in April 2021.

Clemency Rules have been compiled into one document.

These documents and additional information can be obtained by calling the Office of Executive Clemency at 850-488-2952 or visiting the FCOR website at www.fcor.state.fl.us/index.shtml. 🏠

¹ All rule citations are to the Florida Rules of Executive Clemency (Fla. R. Ex. C.) effective March 10, 2021.

² Voting Restoration Amendment 14-01 sponsored by Floridians for a Fair Democracy, Inc., amending Fla. Const. art. IV, section 8 (a), obtained 5,148,926 votes or approximately 65% for passage.

³ Committee Substitute for Senate Bill 7066, Section 25, entitled Election Administration, 2019-162, Laws of Florida, effective July 1, 2019.

⁴ Kelvin Leon Jones, Rosemary McCoy et al. vs. Governor of Florida, Florida Secretary of State, No. 20-12003, 975 F.3d 1016 (11 Cir. 2020), opinion dated September 11, 2020.

⁵ Rule 4. I. A. and Rule 4. I. C., Fla. R. Ex. C.

⁶ Sections 947.02 and 947.03, Fla. Stat.

⁷ Clemency Information Sheet, Form 1, updated April 2021.

⁸ Section 940.04, Fla. Stat.

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REGINALD R. GARCIA is Rated AV[®] Preeminent[™] by Martindale-Hubbell, the “highest possible peer review rating in legal ability and ethical standards.” He is also a state government lobbyist based in Tallahassee who has handled executive clemency cases for 27 years before five Florida governors and numerous members of the Florida Cabinet. He is the author of two books: *How To Leave Prison Early: Florida Clemency, Parole and Work Release* and *Second Chances: Florida Pardons, Restoration of Civil Rights, Gun Rights and More*. A University of Florida Frederic C. Levin College of Law graduate, he can be reached at 850-933-7150 and reggiegarcialaw@icloud.com.