



# APABA-PA

Asian Pacific American Bar Association of Pennsylvania

## **RESOLUTION URGING THE BOARD OF PARDONS TO RESCIND IMMEDIATELY ITS NEWLY-ANNOUNCED POLICY PROHIBITING HEARINGS ON APPLICATIONS FOR CLEMENCY WHERE THERE ARE UNPAID FINES, FEES, OR COSTS FROM UNDERLYING CONVICTIONS**

**WHEREAS**, the Asian Pacific American Bar Association of Pennsylvania (APABA-PA) has demonstrated through its words and deeds that access to justice is a core principle not just of the Constitution and laws of our state and nation, but of a just society; and

**WHEREAS**, APABA-PA has identified access to the Governor for clemency as an essential element of our justice system, especially for those Pennsylvanians who are indigent and lack financial resources; and

**WHEREAS**, the Board of Pardons has always “strongly encouraged” applicants to pay any “outstanding legal financial obligations, which may include but not be limited to fines, court costs, supervision fees, and restitution . . . prior to applying for executive clemency,” and has always warned that “[f]ailure to do so may result in application processing delays or an adverse decision on your application from the Board” [emphasis in the original]; and

**WHEREAS**, the Board of Pardons has recently changed this policy from a warning to a requirement, announcing that “**the full balance must be paid prior to the scheduling of your Merit Review Hearing**”; and

**WHEREAS**, as a result of this new policy, deserving applicants for clemency will not be able to obtain a Merit Review Hearing, which is a condition precedent to obtaining the public hearing on the merits of their applications that is required by the Constitution, simply because of their poverty; and

**WHEREAS**, unlike restitution, fees and costs are not part of the sentence imposed by a judge, and unlike civil proceedings where indigent parties are excused from having to pay costs, all defendants in criminal proceedings are assessed fees and costs without regard to their ability to pay, resulting in court dockets indicating that hundreds and occasionally thousands of dollars are “owed” by individuals long even decades after they have completely served their sentences; and

**WHEREAS**, simply allowing a petitioner’s case to be heard does not impair in any way the Board of Pardons’ ability to deny a recommendation of clemency or condition it upon the prior payment of such obligations by those with the financial resources to pay, and therefore is without budgetary consequence to the Commonwealth; and

**WHEREAS**, the Pennsylvania Constitution grants to the Governor alone the “power to remit fines,” and therefore does not give the Board of Pardons authority to prevent the Governor from cancelling a fine or administratively-imposed monetary obligation or penalty.

**NOW, THEREFORE, BE IT RESOLVED**, that the Asian Pacific American Bar Association of Pennsylvania objects to the adoption of this exclusionary policy by the Board of Pardons as being contrary to principles of fairness and justice for all Pennsylvanians and the best interests of the Commonwealth of Pennsylvania; and therefore calls upon the Lieutenant Governor, the Attorney General, and the other members of the Board of Pardons to rescind immediately this obstacle to obtaining clemency for deserving low-income applicants.

**AND BE IT FURTHER RESOLVED** that the Asian Pacific American Bar Association of Pennsylvania authorizes the President or the President's designee to communicate the content of this Resolution to the Governor, the Lieutenant Governor, the Attorney General, the Board of Pardons, the General Assembly, the legal profession, the media, and the public, and shall take all such other actions as may be deemed necessary or appropriate to effectuate this Resolution and obtain the rescission of the said policy.

**ADOPTED: November 10, 2021**