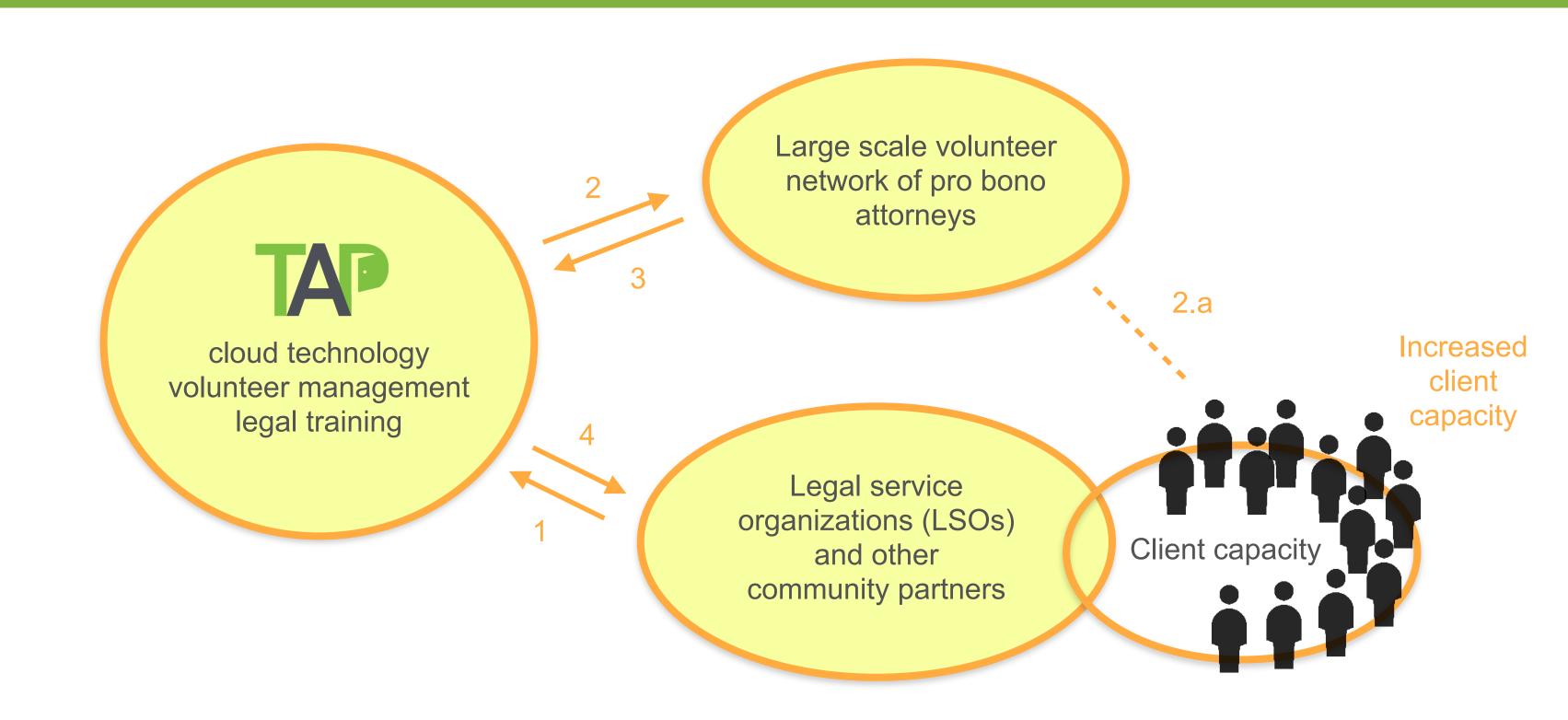


Clean Slate Program:

Second Chance Remedies and Preparing Client Declarations

TAP's Innovative Program Design





Why Clients Need Our Help

- As the use of background checks has grown, so have the number of laws and restrictions
- Laws are complex
- Many people don't even know that remedies are available
- RAP sheets can be difficult to obtain, and hard to understand
- Writing a declaration and gathering supporting letters and documents takes time and knowhow
- Properly preparing, serving and filing petitions is challenging even for attorneys
- Court costs without a successful fee waiver can be prohibitive
- Courts/clerks can be intimidating and unhelpful

Dan Paige for the Boston Globe

Clean Slate Remedies: Two Types

Reduction [Penal Code §§ 17b and 17(d)(2); Prop 47, Prop 64]

- Court grants reduction in the crime from felony to misdemeanor or misdemeanor to infraction
- Conviction remains on the record
- Eligible convictions may be reduced, then expunged

Expungement [Penal Code § 1203.4; § 1203.4a; § 1203.41; § 1203.42]

- Guilty plea is withdrawn, and the record will show that the case was dismissed.
- Private employers cannot see it and it does not have to be disclosed
- Client can honestly answer "no" when asked if they have a conviction in most cases.

DISPO:CONV SET ASIDE & DISM PER 1203.4 PC



Discretionary Remedies Require a Declaration

- Penal Code §§ 17(b) and 17(d)(2): always discretionary
- Penal Code § 1203.4: if client did not successfully complete probation e.g., a probation violation or a conviction in another case
- 1203.4 "always discretionary" list
- Penal Code § 1203.4a: if client did not complete one year from date of conviction free of criminal adjudications
- Penal Code § 1203.41 & 1203.42: always discretionary



What Does Expungement Not Do?

- No effect on sex offender registry
- No federal effect (for immigration and fed jobs).
- Licensing boards can still see everything for jobs working with vulnerable populations
- Gets disclosed if you run for office
- Still visible to law enforcement agencies and for government jobs
- Can be used for sentencing in subsequent convictions



Ineligibility for Clean Slate Remedies

Who is NOT eligible for expungement?

People who are:

- Currently charged with a criminal offense, or
- On probation for a criminal offense, or
- Serving a sentence for a criminal offense.

What crimes are NOT eligible for expungement?

Certain felony convictions can NEVER be expunged. These include:

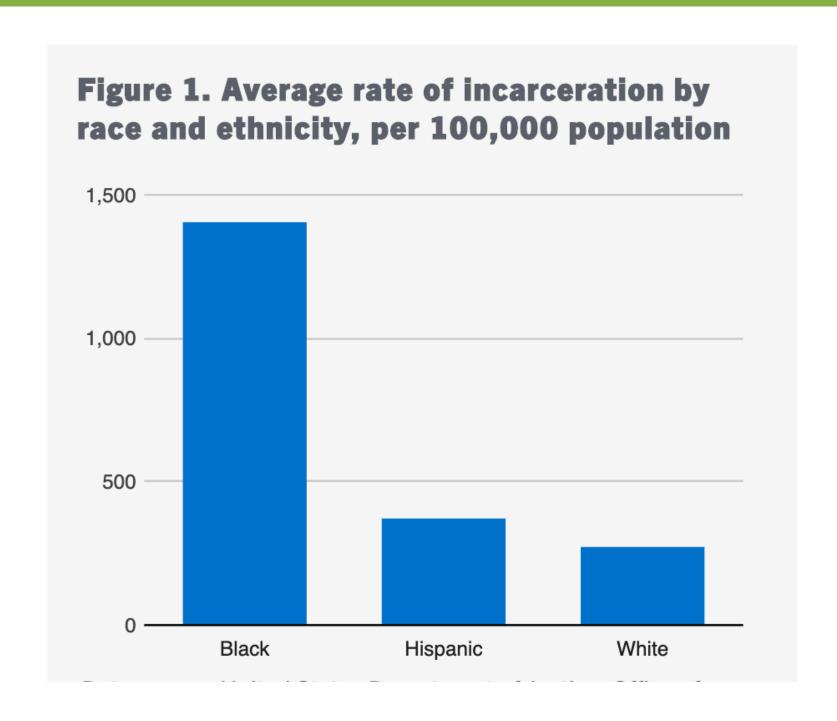
- Child sex crimes (lewd acts with a minor, sodomy, statutory rape)
- Violent felonies (e.g. murder, rape, assault with a deadly weapon that causes a serious injury)
- Sex offenses that require registration as a sex offender
- Convictions sentenced to state prison, UNLESS that conviction would now be subject to county jail or eligible for reduction under P47 or P64



The Need for Clean Slate: Boom in Incarceration Rates



Why Clean Slate is Important: Racial Disparity



Data source: United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. National Prisoner Statistics, 1978-2014. Bibliographic Citation: ICPSR36281-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2015-10-09; U.S. Census Bureau (2013). 2013 Population Estimates. Annual estimates of resident population by sex, race, and Hispanic origin for the United States, states and counties: April 1, 2010 to July 1, 2013. Washington, DC: U.S. Census Bureau.

Why Clean Slate is Important: Collateral Effects

Criminal records haunt 1 in 5 Californians.



5 in 10 (46%)

have difficulty finding a job

5 in 10 (45%)

struggle to pay fines and fees

4 in 10 (40%)

have trouble sleeping or other health issues

4 in 10 (35%)

have difficulty obtaining occupational licenses

2 in 10 (24%)

have difficulty finding housing



Why Clean Slate is Important: Intergenerational Impact

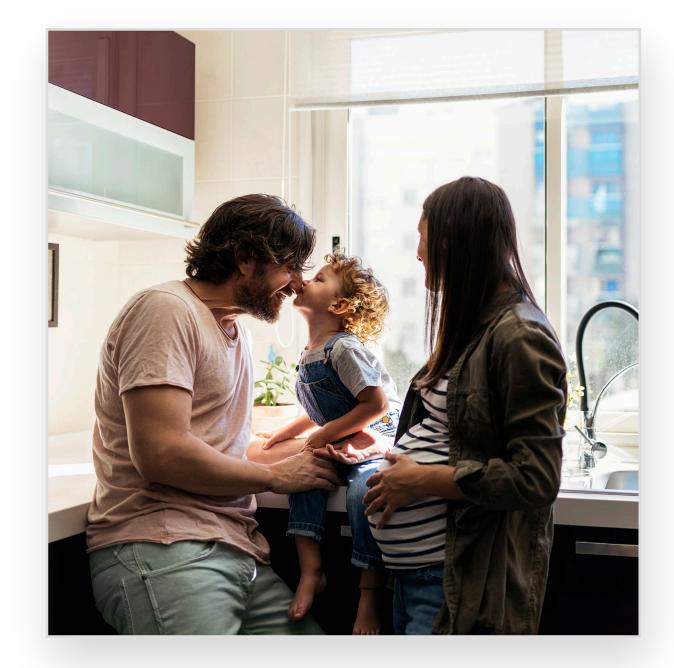
Nationally, half of all children have a parent with a conviction.

"MY WIFE AND CHILDREN EXPERIENCE THE SAME CONSEQUENCES I DO. When I am denied housing, they are denied housing too."

TERRANCE STEWART

Organizer, Inland Empire Congregations for Change





SOURCE: REPAIRING THE ROAD TO REDEMPTION IN CALIFORNIA, CALIFORNIANS FOR SAFETY AND JUSTICE

Clean Slate is in the Public Interest

- Low recidivism rates
- Successful applicants experience on average "experience a sharp upturn in their wage and employment trajectories."
- Access to economic, housing, educational and social opportunities allows our clients to thrive and contribute to their communities and families, which benefits everybody.



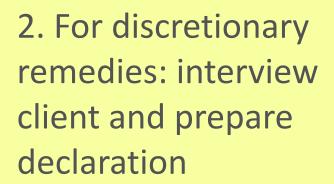


Clean Slate Process Overview: Three Steps

Step 1

1. Review client RAP sheet and determine available remedies





3. For clients needing fee waivers: interview client and prepare fee waiver application



- Prepare Judicial
 Council motion forms
- 2. Submit motion packet (petition, supporting declaration, fee waiver, proposed order) to court
- 3. Court grants or denies motion.



Declaration Training Overview

When Clients Need a Declaration:

- Key judicial considerations to keep in mind
- Process for interviewing the client, completing fee waiver and gathering supporting documents
- Tips on writing the declaration
- Wrap-up/next steps



Key Considerations: The Legal Standard

"in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section."



Key Considerations: The Client's Historical Record



Time elapsed since last conviction



Severity of the client's record

Felonies/Violent Felonies: injury or risk of danger Misdemeanors/Infractions



Number of Convictions

Single conviction

Multiple convictions



Key Considerations: Conviction and Sentence in This Case



Seriousness of crime in this case

Felony

Wobbler

Misdemeanor

Infraction



Severity of sentence in this case

Prison / Felony Jail

Jail

Probation

Fine



Key Considerations: The Client's Past Hardships

- Substance abuse
- Family struggles & trauma
- Economic hardship & poverty
- Lack of education
- Racial discrimination/racism
- Domestic violence



Key Considerations: The Client's Current Hardships

- Turned down for employment
- Turned down for housing
- Turned down for education/loans
- Dignity issues
- Firearms rights
- Civic participation affected



Key Considerations: The Client's Life Today: Responsibility, Community, Family Support

- Drug/alcohol rehabilitation (when applicable)
- Employment and education
- Family support and community ties
- Acceptance of responsibility
- Restitution, fines, fees





Step 2: Interviewing the Client

Remember: a RAP sheet does NOT represent the person



Tips for Successful Interviewing

- Set the tone for a respectful relationship
- Use layman's terms
- Establish trust
- Be mindful when addressing trauma or difficult stories



Tips for Successful Interviewing

- Expungement isn't about guilt
- Inconsistencies are natural, but don't accept untruthfulness
- Tease out answers
- Don't worry about giving advice refer to us



Setting up the Interview

- We will assign you a client and provide a summary of their convictions.
- We will provide an interview outline
- We will alert client to look out for contact from you
- Be patient it can be difficult to reach the client

Hi, this is [name]. You should have heard from Legal Services that I would be getting in touch to help you write your declaration for your expungement petitions. Can you let me know what would be a good time to talk? I could do it [times]



Before the Interview: Get Organized

1. Review the Convictions

- Overall Record: Felonies v. Misdemeanors/Infractions
- Type of sentences and length (ie, prison v. 1 year probation).
- Does client have a record of successfully completing probation?
- Note convictions involving drug/alcohol/domestic abuse
- Note any sentence that included restitution

2. Create a timeline

- include dates and convictions;
- note any narrow "bunching" of crimes
- note the time elapsed since last conviction

3. Have your questions ready



The Interview: Introduction and Setting Expectations

- Explain again who you are and how you hope to help them, including any additional explanation of the need for a declaration and what it is.
- Let them know how long you expect the interview to take (45 minutes or so)
- Stress the confidential nature of your communications
- Ask if they have reviewed their RAP sheet, and whether they have any questions about it, or if they noticed any errors on it.
- Provide an overview of the types of questions you will be asking





Interview Questions and Sample Answers

Question 1: Establish Current Hardships

1. Why do you want to clean up your record?

(for a fresh start, to expand your job opportunities, help with housing, for personal reasons?)



Question 1 — Past Responses

"I am currently employed as a bus driver. I was able to secure this job only because the company has a policy of only considering the last 10 years of an applicant's criminal record. I have lost other offers because of my record. I believe that when one door closes another opens, and I am glad I ended up with the job I have, but I don't want my record to hold me back from opportunities in the future. I am not the same person I was when I entered prison 24 years ago, and I want to be judged by the person I am today."



Question 1 — Past Responses

"Even though my conviction was 30 years ago, I experience dealing with my record on a daily basis, and feel I am constantly on the radar, no matter where I go or what I do. There is an image of myself that does not match who I am, but that I carry around every day. It feels humiliating to be viewed as a dishonest person, when that does not reflect who I have been for the past 30 years. For this reason, I am seeking relief. "



Question 2: Establish Past Hardships

2. What was happening in your life when you were arrested/convicted? Were there circumstances that made your life especially difficult at that time?



Question 2 — Past Responses

- a. "At the time of my convictions, I was battling an addiction to heroin. My convictions were a direct result of my need to support and maintain my addiction."
- b. "During the period of life when I had my convictions, I was using and selling drugs. I grew up in South Central, and started down the wrong path coming out of elementary school and into junior high. I was hanging out with the wrong people who were into criminal behavior, because I liked the clothes they wore, and the cars they drove. I developed an addiction to drinking, then marijuana, then to other drugs. It was a learned behavior in a world where that was what everyone did. But it was still a choice I made at a young age to hang around people who were into crime, and it ruined my life."



Question 3: Establish Past Hardships

3. Were there any circumstances in your life growing up that might have had an impact on your actions as an adult?

Examples (only use if the client asks you to explain the question): household abuse, lack of family support, exposure to substance use at an early age, a challenging community environment



Question 3 — Past Responses

"I grew up in East Los Angeles, in a gang neighborhood, and everyone I knew was doing drugs. When I was 11, I was shot just walking down the street, and some of my friends died in gang-related violence. I was the youngest child in my family, and my three older siblings were all addicts. My father was an alcoholic and abusive toward my mom. I had a difficult upbringing and was surrounded by bad influences, but it is not an excuse for the choices I made."



Question 3 — Past Responses

"I was a troubled teenager from the time I was 15. I had no guidance. When my mom re-married, had more children and went through a depression, I felt she had abandoned me. I was looking for the family I didn't have at the time, and was following older people who weren't the greatest examples. Nobody ever taught me about staying out of trouble, and I didn't understand the impact of my actions."



Question 4: Demonstrated Remorse

4. Did your actions hurt you, or those around you? How do you feel about them now?

(If the client does not use language indicating regret, ask directly: Do you take full responsibility for your criminal convictions? Or, do you regret your actions?)



Question 4 — Past Responses

"I deeply regret my actions 30 years ago. I was young when I committed this crime, and for a short period of time I was trying to fit in by using drugs and alcohol. I was listening to the wrong people and was caught up with the wrong crowd. I knew immediately this was a "one and done" situation and not something I wanted to do, or a life I wanted to live. I decided I needed a new set of friends and to get away from that crowd, and to never go back to that type of life. It has been 30 years, and I never have."



Question 4 — Past Responses

"When I was younger I was partying and acting just like my dad did. I know a lot of what I was doing was a result of who I became, and how I reacted in marriage and in life. There is a correlation. I didn't understand it at the time how wrong it all was. I was going through a separation and it was a very stressful time in my life. I had a lot of growing up to do. But my actions were wrong, and I regret them deeply."



Question 5: Establishing a Record of Rehabilitation

5. What have you done to turn your life around since your convictions?

(Examples: attended a rehabilitation program, started supporting a family, got your children back, got a job, vocational training or furthered your education)



Question 5 — Past Responses

"I am not the same person I was in my youth. I did time, went back to school, found jobs, and have dedicated my life to helping others. I have spent many years counseling people with substance abuse issues. I have also become an advocate for domestic violence victims. I have been involved in my community and my church, I am a Deacon and a community advocate. I have received awards and recognition for what I have accomplished. I am have seven grandchildren, and love spending time with them. I believe in helping people instead of harming them. This is who I am and what defines me, not the ignorant things I did growing up as a young man."



Question 5 — Past Responses

"Today I feel like I am a much better person in a much better space. I got married and started a family, and have a son who is in college. I have actively been attending my church since 1991, where my husband is on the Deacon Board and I am a Deaconess. I am also the church clerk, responsible for keeping church records of everything. For 30 years, I have been a productive individual, with the longevity of my career, always working hard, caring for my family, and attending church. I have a normal life, and I am a productive member of society."



Question 6: Establish that a Clean Slate Would Allow Client To Be a Productive Member of Society.

6. What would be different in your life if you had a clean slate? Or, what opportunities could you take advantage of if your criminal record was expunged?

(Examples: expanded job opportunities, housing, ability to obtain a professional license, the chance to put the past behind you?)



Question 6 — Past Responses

"If I had a clean slate, it would help me the belief in myself: that I have the ability to get any job I may apply for because I'm dedicated and a hard worker, and I am a great representative for any company. I would also love the chance to be licensed again and flourish in my field of expertise. But most importantly, to prove to my son that at one time I did matter, was in demand and made a good living on my own. He would know with his own eyes that I can still do it."



Question 6 — Past Responses

"If I could have a clean start, and not be held back by my record, I would consider going back to school. I would like to study business or marketing and expand my opportunities beyond cosmetology. I also wish to be able to present to the world as the honest, productive, caring and good person I know I am today."



Question 7: Establishing a Record of Rehabilitation

7. What does the court need to know about who you are today? Why is granting this relief the right thing to do for you, your family and your community?

(Examples: any social or religious affiliations, volunteer or advocacy work, support groups, hobbies or any activities that enrich your life, or just a personal statement of who you are today, and how those around you view you.)



Question 7 — Past Responses

"For 17 years, I have been clean and have not committed another crime. I am who I was supposed to be all along. I went back to work to help people get out of their drug addictions and integrate into society. I have committed myself to my faith, and I am active in my church. I have been there for my family. I helped to raise my grandchild so that my 15- year-old daughter and the 15 year-old father could finish high school. I got back in my children's lives and we were able to heal."



Question 8: Catch-All

8. Is there anything else you would like to tell the judge about why you deserve a second chance? Is there anything we haven't covered?



Question 8 — Past Responses

a. "It hurts deeply to still be judged by my record, to get a letter that a job has been taken away because of actions that no longer represent who I am as person. I no longer want to be haunted or held back by my past.

b. I am legitimate. I am for real. I matter. We are all cut from the same cloth. If I weren't a felon, I wouldn't have to identify myself as one. Some people still look down on felons. Everything is going well in my life, but it matters to me to have a legitimate and clean background. "



Question 9: Letters of Support

9. Is there anyone in your life who would support your application by writing a letter of support?

(Examples: clergy, family members, a supervisor, sponsor, volunteer organization, or other community member.)



Letter of Support — Example

Letter Writer Address Phone Number

Dear Your Honor:

I have known John Doe for 14 years through his friendship and working relationship to my husband.

During this time I have found John to be a trustworthy, kind and a contributing member of society. I do not make this statement lightly, given my profession.

John has been instrumental in helping us raise our two children, he keeps his word and shows through his actions that he is a committed member of the community and someone who can be relied upon. John has babysat our children in the past, which is a reflection on his character, as I would not let just anyone have that privilege.

John has been transparent about his past and has learned from the time when he was incarcerated, over two decades ago. There are very few, if any, that I would write on behalf of to aid in their ability to continue to contribute to the community, but John is one for which I will do so willingly and unreservedly.

Thank you for your consideration of John.

Letter Writer

Executive Director

Behavioral Health Systems

Letter of Support — Example

November 28, 2012

Dear Your Honor,

My name is Pastor John and I am the Senior Pastor here at ABC Church in Sacramento. I am writing in regards to Jane Doe. Jane is a member of our church and has been attending since 2007. Throughout this time I have known her to be a kind, honest, and giving person, she is a faithful and valuable member of our church.

Jane is very involved in our ministry and can always be counted on to lend a helping hand to those in need. Throughout the years she has been a volunteer at several of our community outreaches and has served in our Ministry of Helps for many years. I've known Jane to be faithful and dedicated in her service.

I know that Jane has had legal problems in the past and that does not change how I view her. I fully trust her and I know that given the chance, she will continue to make the best of her second chance.

Please contact me at the number below if you have any questions.

Sincerely,

Pastor John
ABC Church

Question 10: Supporting Documents

10. Do you have any documents you want to provide to support your petition?

(Examples: certificates of completion of job training, employee appreciation or other awards, school transcripts, completion of a recovery program, or others.)



Supporting Documents — Example

Certificate of Attendance



This certificate is presented to:

John Doe

Grah.

Program Coordinator

10/18/2011

ate



Domestic Violence Advisory Council
Portuguing to stay family violence in Kern County

Supporting Documents — Example





Step 2: Filling out the Fee Waiver

Assist Client with Fee Waiver Form

FW-001

Request to Waive Court Fees

CONFIDENTIAL

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- · You cannot give the court proof of your eligibility,
- · Your financial situation improves during this case, or
- You settle your civil case for \$10,000 or more. The trial court that waives

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		2	\$1,795.84	4	\$2,729.17	6	\$3,662.50	for each extra person.	
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Judicial Council of California, www.courts.ca.gov Revised March 24, 2020, Mandatory Form Government Code, § 68633 Cal. Rules of Court, rules 3.51, 8.26, and 8.818

Print your name here

Request to Waive Court Fees

Sign here

FW-001, Page 1 of 2



Wrapping Up the Interview

- Explain that they will need to gather letters of support and any documents that will aid their petitions and bring to their appointment with LSNC. If they are able to e-mail them to you beforehand so that you can specifically reference them in the declaration, that is ideal.
- Confirm the best way to contact them, and that their contact information (e-mail, phone, address) is all current.
- Explain you will e-mail (or mail if preferable) a draft of their declaration for their review and edits as needed, and will text them when you send the e-mail so they know to look for it.
- Explain that many courts are not processing petitions, but that when business is back to normal someone from LSNC will be in touch to schedule an appointment to complete and file their petitions.





Step 2: Writing the Declaration

The Declaration: Framework

- 1. Past hardships (i.e. give context to criminal record)
- 2. Statement of remorse
- 3. Current undue hardships caused by criminal record
- 4. A demonstrated record of rehabilitation
- 5. The benefits to the client and society should the client be given a "second chance"



Writing the Declaration: Tips for Success

The Narrative:

- Amplify the client's voice
- Write as client speaks
- Focus on story-telling



Writing the Declaration: Tips for Success

The Judge

- Has limited time
- Won't search hard for the evidence
- May be jaded or actively hostile to the process

Write Accordingly:

- Be concise
- Keep the standard in mind.
- Highlight best facts up front
- Don't be boring



Writing the Declaration: Tips for Success

The declaration is evidence. Use it to persuade the judge:

- Use specific, concrete examples.
- Avoid unnecessary information.
- Edit your client.
- Estimated dates are fine.
- Refer to supporting documents.



Clean Slate Process Overview: Three Steps

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- 2. For discretionary remedies: interview client and prepare declaration
- 3. For clients needing fee waivers: interview client and prepare fee waiver application

Step 3

- Prepare Judicial
 Council motion forms
- 2. Submit motion packet (petition, supporting declaration, fee waiver, proposed order) to court
- 3. Court grants or denies motion.



Complete Forms for Filing

CR-180

ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NO.:		FOR COURT USE ONLY	Π
NAME: EMILIA PÉREZ				
FIRM NAME:				
STREET ADDRESS: 21 W 4TH AVE				
CITY: Chico	STATE: CA	ZIP CODE: 95002		
relephone no.: 5305551111	FAX NO.:			
E-MAIL ADDRESS: EMILIA@GMAIL.CON				
ATTORNEY FOR (name): EMILIA PÉREZ				
PEOPLE OF THE STATE OF CALIFORNIA				
v.				
DEFENDANT: EMILIA PÉREZ	DATE	OF BIRTH: 12/1/75		
			CASE NUMBER: CR1234567	
PETITION FO	FOR COURT USE ONLY			
(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 12	DATE:			
			TIME:	
			DEPARTMENT:	_

1. On (date): 12/1/13 , the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (felony, misdemeanor, or infraction):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (yes or no)
PEN	459	FELONY (SUBJ. TO P47 REDUCTION)	YES	YES

If additional space is needed for listing offenses, use Attachment to Judicial Council Form (form MC-025).

2	Felony	y or misdemeanor	with	probation of	granted	Pen.	Code.	\$ 1203.4)

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, or under charge of commission of any crime, and the petitioner (check all that apply)

a. has fulfilled the conditions of probation for the entire period there
--

b. has been discharged from probation prior to the termination of the period thereof.

C.	~	should be granted relief in the interests of justice. (Please note: You may explain why granting a dismissal would
	120	be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter
		or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form
		MC-031) and attach it to this petition.)

Page 1 of 3



Wrapping Up Training

Wrapping Up Training

To accept a client, email Michele@AccessProjectCA.org. We will send you:

- Client contact info
- Sample outreach options (text, mail, email)
- Copy of these slides
- Interview Outline
- Interview Tips and Reminders Summary
- Sample Declarations
- Sample Letters of Support
- Sample Follow-up Letter
- Know-Your-Rights Flyers about employment issues

If the client has questions that you can't answer, refer them to us.



Wrapping Up Training

Once you've finished, return the declaration to Michele@AccessProjectCA.org.

If you have questions or need advice, sign up for office hours:

15-minute phone appointments with Michele

