COMMONWEALTH OF MASSACHUSETTS

Office of

District Attorney Joseph D. Early, Jr.

Worcester Trial Court
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Worcester County
(Middle District)
(508)-755-8601

September 4, 2014

Julie C. Pease, Executive Clemency Coordinator
Massachusetts Parole Board/Advisory Board of Pardons
12 Mercer Road
Natick, MA 01760

Re: **Commonwealth's Supplemental Opposition to Benjamin Laguer's Third "Petition for Executive Clemency"**

Dear Ms. Pease:

On August 28, 2014, the District Attorney's Office submitted its opposition to petitioner Benjamin Laguer's third "Petition for Executive Clemency" (hereafter "third Petition"), which was filed *pro se*. Later that same day, the District Attorney's Office received a *pro se* memorandum, mentioned at the bottom of the third Petition and captioned "In the Matter of Ben Laguer's Request for Executive Clemency" (hereafter "*pro se* memorandum").

Instead of providing support for the third Petition, petitioner's *pro se* memorandum provides a number of compelling reasons for the Board to deny the third Petition.

First, as petitioner did in the third Petition, in the second paragraph of his unpaginated *pro se* memorandum, and later in the section captioned "Allegations of Fraud are Unfounded," petitioner once again has presented false information to the Borad about a nonexistent plea offer mentioned in an "unauthentic" and unsigned letter dated "January 17, 1984," which petitioner filed in Superior Court in support of his ninth Motion for New Trial. Petitioner's intentional filing of this "unauthentic" letter in Superior Court caused the motion judge to reject petitioner's ninth Motion for New Trial on the grounds that petitioner had committed "fraud on the court." Despite this ruling, in his *pro se* memorandum, petitioner falsely states that "LaGuer rejected a plea," and then compounds this lie by citing the "unauthentic" letter as support in footnote 193. By deliberately lying to the Board in his *pro se* memorandum,"

petitioner shows that, if released, he would not abide by the law. *See* Guidelines III(B)(1)&(a).

Second, petitioner was convicted of Aggravated Rape in 1984 and was sentenced to serve life in prison with the possibility of parole. In his *pro se* memorandum, petitioner intentionally refers to the rape victim by name, often by her full name and once by her maiden name, at least 181 times, apparently to protest a recent order from the Appeals Court directed at petitioner's appellate counsel in the ongoing appeal from the denial of petitioner's ninth Motion for New Trial. The Appeals Court ordered petitioner's counsel to redact all "references to the victim's name" from petitioner's appellate briefs to comply with G.L. c. 265, § 24C, which makes it "unlawful to publish, disseminate or otherwise disclose the name" of a rape victim. *Id.* (*See* "Notice of Docket Entry" dated August 14, 2014, attached as EXHIBIT A). Petitioner's defiant, excessive, and unlawful repetition of the rape victim's name throughout his *pro se* memorandum proves that he "has [not] made exceptional strides in self-development and self-improvement and would [not] be a law-abiding citizen . . ." if released. *See* Guidelines III(B)(1)&(a). Petitioner's petulant behavior also reflects his continuing refusal to follow the rules.

Third, under G.L. c. 127, § 154, the Advisory Board of Pardons "shall not review the proceedings of the trial court, and shall not consider any questions regarding the correctness, regularity or legality of such proceedings . . . ." *Id.* Nonetheless, petitioner starts his lengthy, *pro se* memorandum by asking the Board "for executive clemency . . . on the basis of actual innocence," and then repeatedly argues facts from his trial and from the record, along with many alleged "facts" unsupported by the record or contradicted by prior judicial findings, on almost every subsequent page. (*See, e.g.*, the sections captioned "The Police Investigation," "The Police Interrogation," "Improper Handling of Forensic Evidence," "Prosecutor Misinterprets Original Forensics," "Racial Bias in the Jury Deliberation," and "LaGuer Alibi Defense Neglected").

By statute, the Board must "confine itself solely to matters which properly bear upon the propriety of the extension of clemency to the petitioner." G.L. c. 127, § 154. In contrast, the intent of petitioner's *pro se* memorandum is explained on the last full page of text: "This paper seeks to correct the official narrative in large and small matters." By intentionally misusing the clemency process to advance his own agenda, petitioner has denied himself any chance of relief. Once again,

he has refused to follow the rules. "The fact that the [petitioner] represents himself does not excuse his noncompliance with [the applicable] rules." *Brossard v. West Roxbury Div. of the Dist. Ct. Dep't*, 417 Mass. 183, 184 (1994).

Finally, petitioner's *pro se* memorandum also includes a litany of baseless attacks upon the integrity of: (1) the police officers who investigated the crime; (2) the judges who have ruled against petitioner; (3) the prosecutor who convicted petitioner in 1984, and is now a Superior Court judge; (4) the current prosecutors; (5) the lawyers who represented petitioner at trial and in post-conviction matters; and (6) most disturbingly, the deceased victim, her deceased daughter, and her son-in-law and granddaughter. In short, petitioner has filled his *pro se* memorandum with "exaggerated, inflammatory, and generally confusing accusations of [misconduct and ethical] violations . . . [and] conspiracy, fraud, and bad faith investigation" against an ever-increasing list of people who have either opposed petitioner or failed to do what he wanted. *Callahan v. Board of Bar Overseers*, 417 Mass. 516, 517 (1994). A clemency petition is not a tool to be used for attack or revenge.

In sum, petitioner's *pro se* memorandum only confirms that petitioner Benjamin Laguer's third "Petition for Executive Clemency" submitted in June of 2014 has no merit and should be denied, because he refuses to follow the rules.

Very truly yours,

Sandra L. Hautanen
Assistant District Attorney

cc: District Attorney Joseph D. Early, Jr.
Assistant District Attorney Jane Sullivan, Appeals Chief
John A. LaChance, Esq.

Hautanen, Sandra (MID) EXHIBIT "A"

From: Appeals Court Clerk's Office <AppealsCtClerk@appct.state.ma.us>
Sent: Thursday, August 14, 2014 1:00 PM
To: Hautanen, Sandra (MID); Sullivan, Jane (MID)
Subject: 2012-P-1785 - Notice of Order

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

August 14, 2014

RE: No. 2012-P-1785
Lower Ct. No.: WOCR1983-03391

COMMONWEALTH vs. BENJAMIN LAGUER
NOTICE OF DOCKET ENTRY

Please take note that, with respect to the MOTION to strike appellant's brief and appendix, filed by Commonwealth. (Paper #28),on August 13, 2014, the following order was entered on the docket:

RE#28: Allowed in part and denied without prejudice in part. The defendant's brief contains references to the victim's name, which is confidential. See G.L. c. 265, s. 24C. Consequently, Defendant's counsel shall make appropriate redactions to the brief in all copies on file with the Clerk's Office on or before 8/22/14. Alternatively, replacement briefs may be filed on or before said date. To the extent Commonwealth contends the defendant's appendix is incomplete, the Commonwealth may file an appendix containing additional materials from the trial court record with its responsive brief. The remaining arguments raised in the motion may be included in Commonwealth's responsive brief, now due on or before 9/15/14. *Notice.

ELECTRONIC NOTIFICATION. The Clerk's Office requests that all counsel of record and self-represented litigants register to receive electronic (i.e., e-mail) notification of actions, orders, judgments, rescripts, and decisions entered by the Appeals Court, including notices scheduling oral argument, in an appeal in which they are participating.

HOW TO REGISTER. Registration is simple. Visit the e-notification page of the court's website at mass.gov/courts/appealscourt/e-notification.html and click on Consent to Electronic Notification Form. Complete and print a copy of the form, then email it to enoticesignup@appct.state.ma.us.

FILINGS AFTER ASSIGNMENT OF APPEAL TO PANEL. Once an appeal is assigned to a panel for consideration on the merits, with or without oral argument, all further filings in the appeal are required to be filed electronically by e-mailing the document in PDF to emotions@appct.state.ma.us.

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. When filing any document containing confidential, impounded, or sealed material, compliance with Mass.R.App.P. 16(d), 16(m), 18(a), 18(g), and the S.J.C.'s Interim Guidelines for the Protection of Personal Identifying Information is required.
Very truly yours,
The Clerk's Office
To: Jane A. Sullivan, A.D.A., Sandra L. Hautanen, A.D.A., John H. LaChance, Esquire, Worcester Superior Court Dept.