

STANDING ORDER 90-PLR-4
EASTERN DISTRICT PRISON
REPRESENTATION PLAN

I. Department of Correction Employee Defendants

The Clerk of the United States District Court for the Eastern District of North Carolina, North Carolina Prisoner Legal Services (NCPLS), the North Carolina Department of Correction, and the Attorney General of North Carolina hereby establish the following procedures for handling pro se lawsuits filed by North Carolina prison inmates against employees or officials of the North Carolina Department of Correction and arising from the terms and conditions of confinement in the Department of Correction.

1. When the lawsuit has survived the administrative exhaustion test, passed frivolity review, the plaintiff has been granted in forma pauperis status (if justified), and any required filing fee has been paid, the Clerk will transmit to NCPLS an “Order of Investigation” (Form A) and a copy of the Complaint.

2. Within fourteen days of receipt of the Order of Investigation, NCPLS will submit to the Attorney General, Correction Section, a “Request for Documents” (Form B), asking for relevant documents or medical records in the possession of the Department of Correction.

3. The Attorney General and the Department of Correction will deliver to NCPLS, within 30 days of the receipt of the Request for Documents (unless NCPLS is notified of the need for more time), copies of all requested documents. Documents covered by these provisions are Grievance Forms, Use-of-Force Reports, Incident Reports, Disciplinary Reports, and inmate medical records. In the event any of the documents requested include statements which indicate that they were made by inmates who requested that their information be kept confidential (hereafter, “confidential statements”), such statements will be forwarded to the Correction Section of the

Attorney General's Office for review. If the Attorney General's Office believes that the information contained in the confidential statements is relevant and necessary to NCPLS's determination of whether to provide representation, NCPLS will be offered the opportunity to view the confidential statements at the Attorney General's offices. NCPLS will not be given a copy of the confidential statements and the attorney from NCPLS will be bound by the protective order which is made a part of this plan and which states that the existence and contents of the confidential statements will not be divulged to the potential inmate-client or any other person outside of those NCPLS staff who need to be involved in the decision-making process. If the Attorney General's Offices decides that the information contained in the confidential statements is not relevant to NCPLS's decision-making process it will inform the NCPLS requesting attorney of the number of confidential statements that are being withheld. During the investigative period, all contact seeking the above documents or all other information from Department of Correction employees shall be made to the Attorney General's office.

4. Within 90 days of receipt of the Request for Investigation, NCPLS will file with the court a Response to Order of Investigation (Form C). The Response will indicate a) that NCPLS will provide representation; b) that in the opinion of the NCPLS attorney, appointment of counsel is not necessary; c) that the plaintiff does not want NCPLS to provide counsel for him; or d) that the plaintiff has not cooperated in the investigation, and therefore NCPLS cannot complete its investigation. If NCPLS declines representation or the inmate rejects NCPLS' representation, NCPLS will return to the Attorney General's office all material produced by the Department of Correction pursuant to the expedited voluntary discovery procedures of this plan and any copies made thereof.

5. During the investigation period, the Clerk will issue process to the United States Marshal for service upon defendants. The Clerk will also send a copy of the complaint to the

Attorney General's office. NCPLS will provide clerical help to the Clerk for this task.

6. If, during the investigation period, the Attorney General decides not to provide representation to any defendant, it will immediately notify NCPLS.

7. If the court determines, in any particular case, at any state of the proceeding, that appointment of counsel is necessary to reserve the prisoner plaintiff's rights, or is in the interests of justice, or would assist the court or the parties, the NCPLS will accept appointment as ordered by the court.

8. The Clerk will send a copy of the Order of Investigation to the plaintiff. It will include notice to the prisoner plaintiff of the investigation and its role in the court's process, and will include a form by which the plaintiff can indicate if he wishes to cooperate with the investigation, or to reject help from NCPLS.

II. Defendants not employed by the Department of Correction

The Clerk of the United States District Court for the Eastern District of North Carolina and North Carolina Prisoner Legal Services (NCPLS) hereby establish the following procedures for handling pro se lawsuits filed by prison or jail inmates, in which the claim or cause of action does not arise from terms or conditions of confinement in the North Carolina Department of Correction.

1. When the lawsuit has survived the administrative exhaustion test, passed frivolity review, the plaintiff has been granted in forma pauperis status (if justified), and any required filing fee has been paid, the Clerk will transmit to NCPLS an "Order of Investigation (Form A) and a copy of the Complaint.

2. Within 90 days of the receipt of the Request for Investigation, NCPLS will file with the court a Response to Order of Investigation (Form C). The Response will indicate a) that NCPLS will provide representation; b) that in the opinion of the NCPLS attorney, appointment of counsel is not necessary; c) that the plaintiff does not want NCPLS to provide counsel for him; d)

that the plaintiff has not cooperated in the investigation, and therefore NCPLS cannot complete its investigation; or e) NCPLS cannot obtain adequate information to form an opinion regarding the need for counsel, but will accept an appointment to conduct discovery, subject to a later motion to withdraw as counsel, if such motion is justified.

3. During the investigation period, the Clerk will issue process to the United States Marshall for service upon defendants. NCPLS will provide clerical help to the Clerk of this task.

4. If the court determines, in any particular case, at any stage of the proceedings, that appointment of counsel is necessary to preserve the prisoner plaintiff's rights, or is in the interests of justice, or would assist the court or the parties, then NCPLS will accept appointment as ordered by the court.

5. A copy of the Order of Investigation will be sent to the plaintiff and to the defendant, if possible. The Order will inform the prisoner plaintiff of the investigation and its role in the court's process, and will include a form by which the plaintiff can indicate whether he wishes to cooperate with the investigation, or to reject help from NCPLS.

JOHN PRISONER,)
Plaintiff)
v.)
JOE OFFICER)
Defendant)
_____)

No. _____

ORDER OF INVESTIGATION

This action having been filed pro se by an inmate of the North Carolina Department of Correction, and it appearing to the Court that an investigation of the claims of the plaintiff is warranted prior to the appointment of Counsel,

IT IS ORDERED,

1. That pursuant to this Court's Eastern District Prisoner Representation Plan, North Carolina Prisoner Legal Services is requested to investigate the claims of the plaintiff and respond to the court within 90 days of the date of entry of this Order.

2. That the North Carolina Department of Correction furnish, upon request, copies of the appropriate documents as called for by the Plan.

3. The time for defendants to answer the complaint is hereby extended until 30 days after the Response is filed by NCPLS.

Clerk, U.S. District Court

NOTICE TO PLAINTIFF

You are hereby notified that North Carolina Prisoner Legal Services (NCPLS) has been ordered to conduct an investigation of the claims raised in your complaint and to report to the court whether NCPLS is willing to provide representation for you.

During the investigation period, NCPLS is not representing you. However, information you give to NCPLS regarding your claim will be held in confidence, consistent with the Rules of Professional Conduct.

You are not required to cooperate with the investigation, and you can decide now that you do not want NCPLS to investigate your claims or to represent you. However, failure to cooperate with the investigation, or a decision not to accept representation from NCPLS, may be interpreted by the court as a waiver of any right to court-appointed counsel. If you do not cooperate with the investigation, or if you reject representation by NCPLS, it is highly unlikely that the court will appoint other counsel for you.

Please fill out the enclosed waiver forms indicating whether you want NCPLS to investigate your claim, and return it immediately to:

Clerk, United States District Court
Post Office Box 25670
Raleigh, North Carolina 27611

REJECTION OF INVESTIGATION BY NCPLS

I have read the “Notice to Plaintiff” in the Order of Investigation. Even though I understand that my decision may be interpreted as a waiver of any right to court-appointed counsel, I do not want North Carolina Prisoner Legal Services (NCPLS) to investigate my claims, and I hereby reject any assistance, including legal representation, from NCPLS.

Plaintiff

Date _____

Case No. _____

ACCEPTANCE OF INVESTIGATION BY NCPLS

I have read the "Notice to Plaintiff" in the Order of Investigation. I agree to cooperate with the North Carolina Prisoner Legal Services' investigation.

Plaintiff

Date _____

Case No. _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

JOHN PRISONER,
Plaintiff

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v.

JOE OFFICER,
Defendant

No. _____

RESPONSE TO ORDER OF
INVESTIGATION

_____)

In response to the Court's request, I have conducted the factual investigation and legal research that I find to be warranted and adequate for the claims raised. As a result of my investigation:

- _____ a) North Carolina Prisoner Legal Services (NCPLS) will provide representation to plaintiff.
- _____ b) In the opinion of the undersigned attorney, appointment of counsel is not required in this action. NCPLS has provided advice and assistance to the plaintiff.
- _____ c) The plaintiff has declined the services of NCPLS.
- _____ d) The plaintiff has not cooperated with the investigation and NCPLS cannot complete its investigation or render any opinion.

[For non-Department of Correction cases]

- _____ e) NCPLS has not been able to obtain adequate information to evaluate the claim. NCPLS will accept appointment as counsel, and will conduct discovery, but may later request permission to withdraw as counsel.

Staff Attorney
N.C. Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 828-3508

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served upon the defendants by mailing a copy to their attorney at the following address:

Department of Correction is requested to supply to the undersigned within 30 days of its receipt hereof, the following documents, to the extent the documents directly concern the incidents raised in the complaint.

_____ The specific grievances (Form DC-410) listed below and the responses filed at each step;

_____ Any Use of Force Reports (Form DC-422), Incident Reports (Form DC-432), or Offense and Disciplinary Reports (Form DC-138), along with the Statements of Witnesses (except for confidential statements which will be handled in accordance with Part I, paragraph 3).

_____ The portions of the medical records and charts of the Plaintiff indicated below (an executed release will be forwarded within fourteen days, or this request is withdrawn), provided that mental health records, and any copies made thereof, shall not be redisclosed to the client or anyone other than the court, except as actually adduced at trial or otherwise expressly ordered by the court, and shall be returned to the custody of the North Carolina Department of Correction if representation is refused.

Dates of medical records:

Staff Attorney
N.C. Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 828-3508

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served by mailing a copy to the following address:

Corrections Division
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

This the _____ day of _____, 20__.

NCPLS Staff Attorney