

FILED

AUG 02 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
17-SO-03

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY SKH DEP CLK

IN RE:)
APPOINTMENT OF NORTH)
CAROLINA PRISONER LEGAL)
SERVICES, INC. IN STATE PRISONER)
CIVIL RIGHTS CASES)

ORDER

This Standing Order is hereby entered to reflect an agreement this court has reached with North Carolina Prisoner Legal Services, Inc. (hereinafter "NCPLS") in state prisoner civil rights cases. This order applies only to civil rights actions filed by North Carolina state prisoners against current and former employees of the North Carolina Department of Public Safety, Division of Adult Correction (hereinafter "DPS"). This Standing Order supersedes the court's prior Eastern District Prisoner Representation Plan, Standing Order 90-PLR-4.

The court hereby ORDERS as follows:

1. NCPLS shall establish and maintain an email inbox for the court's use in serving NCPLS with appointment orders and other related filings.
2. When the court has reviewed a state prisoner's civil rights complaint pursuant to 28 U.S.C. § 1915A, identified any cognizable claim(s), and directed the clerk to maintain management of the action, the clerk shall send a copy of the order to the plaintiff, together with a notice to the plaintiff and form response (attached to this order as Form A) by which the plaintiff can indicate if he/she consents to the appointment of NCPLS by the court to conduct discovery on his or her behalf. If the plaintiff accepts appointment of NCPLS for the purpose of conducting discovery, the court will appoint NCPLS for this purpose in a scheduling order setting a period for discovery after defendant(s) have been served and answered the complaint.

3. Upon appointment by the court, and within 60 days of entry of the discovery order, NCPLS will serve discovery requests on counsel for defendant(s). Documents and materials covered by these provisions may appropriately include but are not limited to Grievance Forms, Use-of-Force Reports, Incident Reports, Disciplinary Reports, and inmate medical records, video footage of any alleged incident of excessive use of force and photographs of any injuries incurred in the use of force, complete PREA reports if the complaint alleges sexual assault, and personnel records including records of pre-disciplinary conferences, letters of reprimand, and unsatisfactory TAP entries, where those records describe disciplinary action taken against the named defendants related to the allegations in the prisoner's complaint.

4. If defense counsel believes that any documents or material are responsive to NCPLS's discovery requests but contain confidential information which would not be appropriate to divulge to the inmate-plaintiff, counsel may move the court for a protective order. During the discovery period, all contact seeking the above documents or all other information from DPS employees shall be made to the Correction Section of the Attorney General's Office.

5. Upon conclusion of the discovery period, NCPLS will file with the court a Response to Discovery Order (attached to this order as Form B). 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) the plaintiff has declined any further assistance by NCPLS; or d) that in the opinion of the NCPLS attorney reviewing the case, the plaintiff's case is meritorious, but NCPLS lacks adequate resources to provide representation.

6. If NCPLS provides representation to the plaintiff, NCPLS may request that the court order an additional discovery period that will include time for depositions of parties and witnesses and designations of expert witnesses prior to the deadline for dispositive motions.

7. If NCPLS declines representation or the plaintiff rejects NCPLS's further representation following the period of discovery, NCPLS will provide the plaintiff with a packet of discovery materials to assist the plaintiff in either filing or responding to any dispositive motion. The packet will not include any documents or material subject to a protective order, and NCPLS will return any such documents or material to defense counsel at the conclusion of discovery.

8. In its discretion, the court may appoint NCPLS for limited purposes in other phases of a state prisoner's civil rights case, including: filing a response to a dispositive motion, representing the plaintiff in a court-hosted settlement conference, representing the plaintiff in a trial or other hearing, and executing on a judgment.

SO ORDERED. This 2 day of August 2017.



JAMES C. DEVER III
Chief United States District Judge

FORM A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:◆-CT-◆

◆,)
)
Plaintiff,)
)
v.)
)
◆,)
)
Defendant◆.)

NOTICE TO PLAINTIFF

The court has directed the clerk to maintain management of this action, and the defendant(s) is/are in the process of being served with the complaint. You are hereby notified that North Carolina Prisoner Legal Services, Inc. ("NCPLS")¹ is available to assist you in conducting discovery if ordered to do so by the court at the appropriate time. If you accept NCPLS's assistance, NCPLS will serve discovery requests on defendant(s) on your behalf, collect the discovery responses, and provide you with a set of materials pertaining to your case. Additionally, NCPLS will report to the court whether it is willing to represent you in this action beyond the discovery period.

You are not required to accept any assistance by NCPLS, and you can decide now that you do not want NCPLS to conduct discovery on your behalf or to represent you. However, there is no general right to court-appointed counsel in civil cases, and counsel is only appointed in exceptional cases.

¹ NCPLS is a non-profit legal services firm, contracted with the Office of Indigent Defense Services (IDS) to assist it in providing inmates who are in the custody of the North Carolina Department of Public Safety, Division of Adult Correction with their constitutional right of meaningful access to the courts.

FORM A

Please fill out the enclosed form indicating whether you want NCPLS to assist you in conducting discovery, and return it to:

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

You should sign, date, and return this form within twenty-one (21) days. Your failure to return this form by that deadline may be construed as a rejection of NCPLS's assistance, and the court may not order NCPLS to conduct discovery on your behalf.

FORM A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:♦-CT-♦

♦,

Plaintiff,

v.

♦,

Defendant♦.

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PLAINTIFF'S RESPONSE TO NOTICE

I have read the "Notice to Plaintiff" informing me of NCPLS's availability to assist me in conducting discovery if ordered to do so by the court at the appropriate time. I understand that if I accept NCPLS's assistance, NCPLS will serve discovery requests on defendant(s) on my behalf, collect the discovery responses, provide me with a set of materials pertaining to my case, and report to the court whether it is willing to represent me in this action beyond the discovery period. I further understand that there is no general right to court-appointed counsel in civil cases, and it is highly unlikely that the court will appoint other counsel for me.

Accordingly, I hereby

___ ACCEPT the assistance of NCPLS during the discovery period and agree to allow NCPLS to conduct discovery on my behalf if ordered to do so by the court.

___ REJECT the assistance of NCPLS, including any legal representation in my case.

Date

Plaintiff's Signature

Plaintiff's Printed Name

FORM B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:♦-CT-♦

♦,

Plaintiff,

v.

♦,

Defendant♦.

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**NCPLS RESPONSE TO
DISCOVERY ORDER**

In response to the court's order and pursuant to Standing Order 17-SO-XX, I have assisted the plaintiff with conducting discovery in this case. As a result of my review of the discovery:

- ___ a) North Carolina Prisoner Legal Services, Inc. ("NCPLS") will provide representation to plaintiff in this action.
- ___ b) In the opinion of NCPLS, appointment of counsel is not required in this action. NCPLS has provided advice and assistance to the plaintiff.
- ___ c) The plaintiff has declined any further assistance by NCPLS following the discovery period.
- ___ d) In the opinion of the NCPLS attorney, the plaintiff's case is meritorious, but NCPLS lacks adequate resources to provide representation.

Staff Attorney
North Carolina Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 856-2211

FORM B

CERTIFICATE OF SERVICE

I certify that on **DATE**, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification to the following:

I further certify that on **DATE**, I mailed the foregoing document via USPS, postage prepaid, to the following:

Respectfully submitted,

Staff Attorney
North Carolina Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 856-2211