

FILED

AUG 23 2021

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
21-SO-11

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 standing order regarding Appointment of North Carolina Prisoner Legal Services, Inc. in State Prisoner Civil Rights Cases, Standing Order 20-SO-1.

The court hereby ORDERS as follows:

1. NCPLS shall 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 NCPLS to determine whether NCPLS is able to accept an appointment to conduct discovery on the plaintiff's behalf. NCPLS shall review the case and file a response within 30 days. If NCPLS is unable to accept the appointment, NCPLS shall file a Notice of Non-Representation (attached to this order as Form A). If the response indicates that NCPLS is able to accept an appointment, the clerk shall send a notice to the plaintiff and form response (attached to this order as Form B) by which the plaintiff

can consent to or decline the appointment of NCPLS by the court to conduct discovery on the plaintiff's 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. The period of discovery shall not be less than 120 days, unless otherwise ordered by the court, and the discovery period will be extended only upon a strong showing of diligence and good cause.

3. Upon appointment by the court, and within 60 days of entry of the initial scheduling order governing discovery, NCPLS will serve discovery requests on counsel for defendant(s). During the discovery period, all contact seeking discovery from DPS employees shall be made to the Public Safety Section of the Attorney General's Office. 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, inmate medical records, photographs and/or video footage of any alleged incident and/or any injuries incurred, 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. NCPLS will collect discovery responses, review them, and conduct any follow-up as necessary.

4. NCPLS and DPS agree that discovery shall be subject to a Consent Protective Order (attached to this order as Form C) to govern the disclosure of confidential information. The Consent Protective Order is deemed entered in all cases subject to this Standing Order. Nothing

in the Consent Protective Order prevents the court from requiring the parties to publicly file material designated as confidential.

5. If NCPLS provides representation to the plaintiff beyond the initial period of discovery, 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.

6. If NCPLS declines representation or the plaintiff rejects NCPLS's further representation following the period of discovery, before terminating representation NCPLS will provide the plaintiff with a packet of discovery materials, subject to the terms of the Consent Protective Order, and with advice regarding legal issues in the case.


7. In its discretion, the court may appoint NCPLS for limited purposes in other phases of a state prisoner's civil rights case, including: identifying defendant(s), filing an amended complaint, 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. Should NCPLS be unable to accept an appointment for any reason, including a lack of resources or conflict of interest, it shall file a Notice of Non-Representation informing the court that it declines representation within 10 days of entry of the initial order appointing NCPLS. If NCPLS files a Notice of Non-Representation, the clerk shall terminate NCPLS's representation on the docket without the need for NCPLS to file a motion to withdraw.

8. Should the court appoint NCPLS for the purpose of identifying defendant(s) or filing an amended complaint, the period of time NCPLS will have to identify defendant(s) or file an

amended complaint ordinarily shall not be less than 60 days after the entry of the order appointing NCPLS. Should the court appoint NCPLS for the purpose of representing the plaintiff in a court-hosted settlement conference, the settlement conference ordinarily shall not be scheduled for at least 60 days after entry of the order appointing NCPLS. Should the court appoint NCPLS for the purpose of responding to a dispositive motion, the deadline for NCPLS to file the response to the dispositive motion ordinarily shall not be less than 30 days after entry of the order appointing NCPLS. The court retains the discretion to set a shorter deadline in exceptional cases.

9. Upon conclusion of the phase of the litigation for which NCPLS has been appointed, NCPLS will file with the court a Response to Appointment Order (attached to this order as Form D). The Response will indicate that a) NCPLS will provide representation; b) NCPLS will not provide representation; or c) the plaintiff has declined any further assistance by NCPLS. Unless the Response indicates that NCPLS will provide representation, the clerk shall terminate NCPLS's representation on the docket without the need for NCPLS to file a motion to withdraw.

SO ORDERED this 23^d day of August, 2021.



RICHARD E. MYERS II
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.) **NCPLS NOTICE OF**
) **NON-REPRESENTATION**
,)
)
Defendant(s),)

In response to the court’s order and pursuant to Standing Order 21-SO-11, North Carolina Prisoner Legal Services, Inc. (“NCPLS”) hereby informs the court that it is unable to accept appointment in the above-captioned case.

Staff Attorney
North Carolina Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 856-2200

CERTIFICATE OF SERVICE

I certify that on **DATE**, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system and mailed the foregoing documents 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) 856-2200

FORM B

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

,)
)
Plaintiff)
)
v.) **NOTICE TO PLAINTIFF**
)
,)
)
Defendant(s),)

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 be appointed when a scheduling order is entered and will serve discovery requests on defendant(s) on your behalf, collect the discovery responses, and provide you with a set of materials and legal advice pertaining to your case. Additionally, NCPLS will report 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.

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 must 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 might not order NCPLS to conduct discovery on your behalf.

FORM B

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

,)
)
Plaintiff)
)
v.) **PLAINTIFF'S RESPONSE TO NOTICE**
)
,)
)
Defendant(s),)

I have read the "Notice to Plaintiff" informing me of NCPLS's availability to assist me with conducting discovery if ordered to do so by the court at the appropriate time. I understand that if I accept NCPLS's assistance, upon entry of the initial scheduling order governing discovery, NCPLS will serve discovery requests on defendant(s) on my behalf, collect the discovery responses, provide me with a set of materials and legal advice 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 C

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

CONSENT PROTECTIVE ORDER
GOVERNING CASES SUBJECT TO
STANDING ORDER 21-SO-11

Defendant(s), through counsel, and with the consent of counsel for Plaintiff, appearing for the limited purpose of conducting written discovery, agree to entry of a Protective Order which will control the production and dissemination of confidential documents, material, and information (“Confidential Information”).

The Court finds that during the course of this litigation, Defendants obtained and will continue to obtain and disclose to Plaintiff or the Court, information and documents from the North Carolina Department of Public Safety (“the Department”) that are deemed confidential under federal and state law, including, N.C.G.S. §§ 126-22(3) and -24, § 122C-52, § 132-1.7, § 148-74 and -76; *Goble v. Bounds*, 13 N.C. App. 579, 581, 186 S.E.2d 638, 639, *aff’d*, 281 N.C. 307, 188 S.E.2d 347 (1972); *Paine v. Baker*, 595 F.2d 197, 200 (4th Cir. 1979), *cert. denied*, 444 U.S. 925 (1979); 42 U.S.C. § 1320d *et seq.*; and 45 C.F.R. §§ 160-164.

In light of the confidential nature of much of the information which will be produced in this litigation, a Protective Order is necessary to authorize the release of such confidential information and to ensure that such confidential information is not disclosed or used for any purpose except in connection with this litigation.

THEREFORE, the court ORDERS as follows:

1. Scope of the Order. This Order applies to all information produced during written discovery, including any discovery exchanged prior to the entry of this Order.

2. Use of Confidential Information. All Confidential Information, as defined in this Order, shall be used solely in the prosecution or defense of this action, and shall not be used or disclosed by any person for any other purpose.

3. Disclosure. “Disclose” or “disclosure” means to provide, impart, transmit, transfer, convey, publish, or otherwise make available.

4. Confidential Information. “Confidential Information” consists of “General Confidential Information” and “Attorneys’ Eyes Only Confidential Information,” which are defined as follows:

A. “General Confidential Information” refers to and includes:

- i. Information and documents contained in “personnel files”, as that phrase is defined in N.C.G.S. § 126-22;
- ii. Information, documents, and related materials collected, created, and maintained by the Department pursuant to N.C.G.S. § 148-74, -76, -118.5; and § 122C-52
- iii. “Protected health information” as that phrase is defined in 45 C.F.R. § 160.103;
- iv. Other information that is potentially embarrassing or invasive of the privacy of a person not a party to this litigation and therefore an appropriate subject of a protective order under Rule 26(c)(1) of the Rules of Civil Procedure.

B. “Attorneys’ Eyes Only Confidential Information” means:

- i. “Personally Identifiable Information”, as that phrase is defined in 45 C.F.R. § 75.2, of current or former employees and contractors of the Department, such as but not limited to date of birth, social security numbers, home

addresses and telephone numbers, insurance records or designations, medical and/or disability information, and other purely private information;

- ii. The personal financial records, telephone records, and e-mail records of current or former employees and contractors of the Department; and
- iii. Other non-public information as provided in N.C.G.S. § 132-1.7, which includes specific security information or detailed plans, patterns, or practices associated with prison operations, such as certain investigations, security designations, staffing patterns and logs, schematic or other drawings and diagrams, and other sensitive security information.

5. Disclosure of General Confidential Information. General Confidential Information shall not be disclosed to anyone except:

- A. The court and its personnel;
- B. The parties to this action;
- C. Counsel for the parties to this action and employees of said counsel;
- D. Experts or consultants specifically retained by the parties or their attorneys to assist them in the preparation of this case or to serve as expert witnesses at the trial of this action, but only after execution of a Confidentiality Agreement as provided in Paragraph 8; and
- E. Court reporters or videographers engaged to record depositions, hearings, or the trial in this action.

6. Disclosure of Attorneys' Eyes Only Confidential Information. Attorneys' Eyes Only Confidential Information shall not be disclosed to anyone except:

- A. The court and its personnel;

- B. Counsel for the parties to this action and employees of said counsel;
- C. Experts or consultants specifically retained by the parties or their attorneys to assist them in the preparation of this case or to serve as expert witnesses at the trial of this action, but only after execution of a Confidentiality Agreement as provided in Paragraph 8; and
- D. Court reporters or videographers engaged to record depositions, hearings, or the trial in this action.

7. Withdrawal of Plaintiff's Counsel. In the event that counsel for Plaintiff withdraws from representation and Plaintiff proceeds *pro se*, any Attorneys' Eyes Only Confidential Information disclosed to counsel for Plaintiff may thereafter be disclosed to Plaintiff **only** upon the following conditions:

- A. Plaintiff must sign a Confidentiality Agreement, a copy of which is attached hereto as Exhibit A; **and**
- B. Prior to disclosing any Attorneys' Eyes Only Confidential Information to Plaintiff, Counsel for Plaintiff agrees in writing to copy any documents marked as Attorneys' Eyes Only Confidential Information onto red paper before providing said material to Plaintiff.

If, after the conclusion of this litigation, Department officials, discover red papers marked as Attorneys' Eyes Only Confidential Information, those officials are authorized to seize the documents and return them to the Department.

8. Confidentiality Agreements. Before Confidential Information or Attorneys' Eyes Only Confidential Information is disclosed to any person described in Paragraphs 5(d), 6(c), or 7, of this Order, counsel for the party disclosing the information shall inform the person to whom the

disclosure is to be made that Confidential Information shall be used only for the purpose of the prosecution or defense of this action, and shall obtain from the person to whom the disclosure is to be made a signed copy of the Confidentiality Agreement attached hereto as Exhibit A. Counsel for the party disclosing the Confidential Information to said person shall maintain the original Confidentiality Agreement and need not produce it except by agreement of the parties or upon order of the court.

9. Designation of Confidential Information. Information shall be designated as Confidential Information in the following manner:

- A. In the case of information reduced to paper form, the designation shall be made by placing the appropriate legend, “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” for General Confidential Information or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” for Attorneys’ Eyes Only Confidential Information, on each page containing such information or by such other means as agreed to by the parties. The party disclosing the information shall designate the documents as confidential at or before the time of disclosure. A party may make the designation with respect to information disclosed by another party by a writing directed to the producing party’s counsel. The producing party’s counsel shall then be responsible for labeling the designated information as provided herein, or otherwise agreed to by the parties.
- B. Information on a computer disk, flash-drive, or other medium that has not been reduced to paper form shall be designated as Confidential Information by informing counsel for the parties to this action in writing that the computer disk, flash-drive, or other medium contains such Confidential Information and,

where applicable, specifying by Bates or other page number the particular information being designated or by such other means as agreed to by the parties. To the extent practicable, such physical medium should also be labeled using the appropriate marking. Any party receiving Confidential Information designated under this Paragraph shall then be responsible for appropriately labeling any printed version(s) of such information that it creates.

C. In the case of deposition testimony, any party may designate information disclosed during a deposition as Confidential Information by either identifying on the record at the deposition the information that is to be treated as Confidential Information or; marking the portions of the deposition transcript to be designated as Confidential Information within 21 days after receipt of the transcript. When the deponent and the attending parties do not agree to waive the reading, correcting, and signing of the transcript, all information disclosed during a deposition shall be treated as Attorneys' Eyes Only Confidential Information before the expiration of the 21-day period unless otherwise agreed by the parties and the deponent. If any deposition testimony or any document or information used during the course of a deposition is designated as Confidential Information, each page of the deposition transcript containing such information shall be labeled with the appropriate legend specified in Paragraph 9(A), and the first page of the deposition transcript shall be labeled in a manner that makes it readily apparent that the transcript contains Confidential Information.

D. Any other information that is not reduced to physical form or cannot be

conveniently labeled shall be designated as Confidential Information by serving a written notification of such designation on counsel for the other parties. The notice shall, where applicable, specify by Bates or other page number the particular information being designated.

10. Disputes over Designations. If any party objects to the designation of any information as Confidential Information, counsel for the objecting party and counsel for the designating party shall attempt to resolve the disagreement on an informal basis. If the objection is not so resolved, the objecting party may move the court for appropriate relief. The information in question shall continue to be treated as confidential in accordance with the disputed designation unless and until the court issues a final ruling that the information does not qualify for such a designation. The non-filing by the objecting party of a motion for relief shall not be deemed an admission that the information in question qualifies for the disputed designation.

11. Inadvertent Disclosure of Confidential Information. Inadvertent disclosure of Confidential Information, without identifying the same as confidential, shall not be deemed a waiver of confidentiality with regard to similar or related information nor shall it be deemed a waiver of confidentiality with regard to the information inadvertently disclosed if promptly called to the attention of counsel for each receiving party.

12. Filing of Confidential Information Under Seal. Before filing a document containing any Confidential Information, the filing party must confer with the other parties about how the document should be filed. If the filing party decides that the document should be sealed, the filing party shall file the document along with a motion to seal and supporting memorandum showing that the document may properly be sealed. A motion to seal may be filed without a supporting memorandum only if the filing party can cite a statute or rule (federal, local or standing

order) that requires the filing to be sealed. Absent such authority, the filing party must submit a supporting memorandum that specifies: (i) the exact document or item, or portions thereof, for which filing under seal is requested; (ii) how such request to seal overcomes the common law or the First Amendment presumption to access; (iii) the specific qualities of the material at issue which justify sealing such material, taking into account the balance of competing interest in access; (iv) the reasons why alternatives to sealing are inadequate; and (v) whether there is consent to the motion. If a party other than the filing party seeks to have the document sealed, the filing party shall file the document as a proposed sealed document. Instead of a motion to seal and supporting memorandum, the filing party shall file contemporaneously with the document a notice stating that, pursuant to this Paragraph, any party seeking the sealing of the document must within 7 days file a motion to seal and supporting memorandum as provided in Local Civil Rule 79.2 or the document will be unsealed by the Clerk without further order of the court.

13. Authors/Recipients. Except as specifically provided herein, this Order shall not limit use by a party of its own Confidential Information, nor shall this Order limit the ability of a party to disclose any document to its author or to anyone identified on the face of the document as a recipient.

14. Return of Confidential Information. Following the conclusion of this action, including any appeals, the Department may request in writing its return by any other party. Within 60 days after service of such a request, any party that received the Confidential Information shall either return it to counsel for the Department or destroy it, at the election of the receiving party; provided that the information shall not be destroyed if otherwise ordered by the court or a motion for relief from this Paragraph is pending. If a receiving party elects to destroy the Confidential Information rather than returning it to the Department, counsel for the receiving party shall provide

to the Department by the 60-day deadline a signed certification that the Confidential Information has been destroyed. This Paragraph shall not be construed to require the return or destruction of any regularly maintained litigation files held by the attorneys of record for each party as archival records or other attorney work-product created for any party. Any Confidential Information, or portions or excerpts thereof, which are not returned or destroyed pursuant to this Paragraph shall remain subject to the terms of this Order. The return of trial exhibits by the court shall be governed by Local Civil Rules 6.1 or 79.1.

15. Admissibility of Information. Neither the terms of this Order nor the disclosure or designation as confidential of any information pursuant to it shall be deemed to establish or vitiate the admissibility under the Federal Rules of Evidence of any information subject to this Order.

16. Confidential Employee Information. Pursuant to N.C.G.S. § 126-24(4), this Order specifically authorizes the disclosure of confidential portions of the personnel files maintained by the Department of current or former employees in accordance with the terms of this Order.

17. Modification. This Order is without prejudice to the right of any party or witness to seek modification or amendment of the Order by motion to the court, or to seek and obtain additional protection with respect to Confidential Information as such party may consider appropriate.

EXHIBIT A

CONFIDENTIALITY AGREEMENT

I, _____ have read and am familiar with the terms of the Consent Order governing the Confidential Information in the case of _____, Civil Action No. 5:___-CT-_____-__, in the Eastern District of North Carolina, Western Division. I agree to the following:

1. To abide by all the terms of said Order and not to reveal or otherwise communicate any of the information disclosed to me pursuant thereto to anyone except in accordance with the terms of said Order.

2. To make use of any information obtained, whether in documentary or other form, pursuant to that Order other than for purposes of this litigation.

3. Upon written request, to return to counsel of record or to destroy not later than 60 days after notification of the termination of this litigation any and all documents in my possession containing information which is the subject of said Order (whether such information is in the form of notes, memoranda, reports, or other written communications or documents prepared by any person at any time containing information covered by the terms of said Order).

4. To submit myself to the jurisdiction of the foregoing Court, including its contempt power, for enforcement of said Order.

This the _____ day of _____, 20__.

PRINTED NAME

FORM D

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

,)
)
Plaintiff)
)
v.) **NCPLS RESPONSE TO**
) **APPOINTMENT ORDER**
,)
)
Defendant(s),)

In response to the court's order and pursuant to Standing Order 21-SO-11, I have assisted the plaintiff with _____ and provided legal advice in this case.

- ___ a) North Carolina Prisoner Legal Services, Inc. ("NCPLS") will provide representation to plaintiff in this action.
- ___ b) NCPLS will not provide further representation to plaintiff in this action.
- ___ c) The plaintiff has declined any further assistance by NCPLS.

Staff Attorney
North Carolina Prisoner Legal Services, Inc.
Post Office Box 25397
Raleigh, North Carolina 27611
(919) 856-2200

CERTIFICATE OF SERVICE

I certify that on **DATE**, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system and mailed the foregoing documents 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) 856-2200