The Newsletter of North Carolina Prisoner Legal Services, Inc. Volume 1, Issue 4, December 2000

NCPLS ACCESS

The Imposition of Disciplinary Administrative Fees

During June and July of 2000, inmates in custody of the North Carolina Department of Correction (DOC) received notice of several changes in DOC's Inmate Disciplinary Policy and Proccdurc scheduled to take effect August 1, 2000. These changes revise the classification of offenses, the definitions of certain offenses, establish punishment modifications, and create new offenses. However, inmate correspondence to NCPLS has focused on DOC's intention to begin assessing a $10.00 administrative fee on all inmates whose disciplinary hearings result in a guilty disposition. NCPLS has been informed that the imposition of such administrative fees was implemented on August 28, 2000, and that no inmate should have been charged prior to that date.

In their letters, our clients have pointed out that they are often on extremely limited incomes, given low incentive wages; that they are now required to use their trust funds for co-payments for medical treatment; and that they have experienced ever-increasing restrictions on personal property. In addition, many inmates express concern about the potential misuse of the new disciplinary procedures.

All of these are legitimate concerns. In this article, NCPLS analyzes the proposed regulation under both federal and state law, as well as the likelihood of successfully challenging the more troublesome aspects of the regulation. As will be explained more fully, it appears that the proposed regulation will be consistent with all relevant legal requirements and within the discretion accorded correctional officials by the courts. It does not appear that there will be a sound legal basis for challenging the regulation as it is drafted. (Whether there may be grounds for legal action based upon the way the regulation is applied will depend upon the facts of a particular case.)

The Authority of the DOC to Impose This Regulation

Under the North Carolina Constitution, penal institutions may be operated by the State "under such organization and in such manner as the General Assembly may prescribe." N.C. Const. Art. XI § 3. The operation of the state prison system is governed by Chapter 148 of the North Carolina General Statutes. Section 148-4 of the General Statutes provides that "[t]he Secretary of Correction shall have control of all prisoners serving sentences in the State prison system and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof." Similarly, the Secretary of Correction is given the authority to adopt rules for governing of the state prison system. N.C. Gen. Stat. § 148-11. The Department

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NCPLS serves a population of more than 32,500 prisoners and 10,000 pre-trial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

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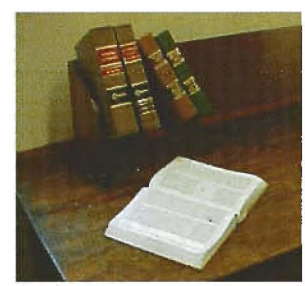
Plaintiffs sought a declaration from the court that this policy and practice is unlawful, an injunction against its continuation, and specific performance of the sentence or status imposed by the court. Judge Manning declared the policy and practice illegal and granted an injunction against its continuation. The court ordered DOC to enter such sentences in accordance with the Judgment and Commitment Order. DOC was further instructed to notify promptly the sentencing judge, the district attorney, and counsel for the defendant of the illegality of the judgment. The parties can then take appropriate action to resolve the matter.

However, the court granted no relief to people whose sentences have already been changed. Even so, DOC notified about three thousand inmates who may have been affected by the illegal practice, and more than 600 have already requested legal assistance from NCPLS. In addition, the DOC will send notice to any inmate who is affected by the policy in the future and who has his or her sentence modified by the DOC.

In the meantime, an appeal has been filed and DOC has asked the appellate court to delay enforcing the lower court's order until the appeal has been decided.



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Articles, ideas and suggestions are welcome: bsanders@ncpls.org

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The Imposition of Administrative Fees

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of Correction is exempt from the rule-making provisions of the State Administrative Procedures Act "with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees." N.C. Gen. Stat. § 150B-1(d)(6).

It is clear that the Secretary of Correction is vested with broad powers to enact prison regulations. Any challenge to such a regulation must therefore be based on a theory that the regulation violates some provision of law, such as the Due Process Clause of the U.S. Constitution.

Due Process

The Due Process Clause of the Fourteenth Amendment provides that a state may not deprive any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. XIV § 1. In order to trigger either aspect of the Clause's protection, a person must show that he has a protected "life, liberty, or property" interest at stake. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). *Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir.1997) *cert. denied*, 523 U.S. 1005, (1998); *Beverati v. Smith*, 120 F.3d 500, 502 (4th Cir. 1997). Typically, the existence of a protected interest is determined by whether a person has a legitimate claim of entitlement to a thing, rather than simply an abstract need or desire for it. *See Greenholtz v. Inmates of the Neb. Penal and Corr. Complex*, 442 U.S. 1, 7 (1979)(*quoting Board of Regents v. Roth*, 408 U.S. at 57). For example, a number of courts have recognized that inmates have a protected property interest in their prison trust fund accounts. *Hampton v. Hobbs*, 106 F.3d 1281, 1287 (6th Cir. 1997); *Campbell v. Miller*, 787 F.2d 217, 222 (7th Cir.), *cert. denied*, 479 U.S. 1019 (1986); *Gillihan v. Schillinger*, 872 F.2d 935, 939 (10th Cir. 1989); *Jensen v. Klecker*, 648 F.2d 1179, 1183 (8th Cir. 1989). Once a person is determined to have such a protected interest, the question then becomes what procedural steps must be taken by the State before the person can be deprived of that interest.

According to the United States Supreme Court, "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Greenholtz,* 442 U.S. at 12 (quoting *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972)). Not all prison disciplinary proceedings are entitled to the full range of due process protections. However, when an inmate faces a disciplinary charge that involves the potential loss of good time or gain time, due process must be provided. The minimal procedural protections include advance notice of the charges; an opportunity for the inmate to be heard on the charges; a written copy of disciplinary findings; and a *limited* right to call witnesses and present documentary evidence where this "would not be unduly hazardous to institutional safety or correctional goals." *Wolff v. McDonnnell*, 418 U.S. 539, 557-59 (1974). But, while a prison disciplinary action may not be wholly arbitrary, only "some evidence" is needed to support a disciplinary decision. *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 454 (1985). Thus, reviewing courts do not reweigh evidence, or make their own assessments concerning the credibility of witnesses.

The DOC has established policies relating to disciplinary charges. These policies allow for 24 hours advance notice of the charges; the right of the inmate to make a verbal and/or written statement to the investigating officer; to request that witness statements be obtained by the investigating officer, or that specific witnesses or evidence be presented at the disciplinary hearing; to request the assistance of a staff representative at the hearing; to be read the substance of the evidence against him and to have the opportunity to explain or refute the evidence at the hearing; and the right to appeal any adverse decision of the disciplinary hearing officer. Department of Correction - Division of Prisons Policy and Proce-

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dure Manual, 5 N.C.A.C. 2B.0204. These rights comply with the minimal requirements set forth by the Supreme Court in *Wolff*. While research has not revealed any case in which a court has considered the loss of property in the disciplinary context, it is unlikely that the courts will require any procedural protections greater than those involving liberty interests.

Eighth Amendment

The Eighth Amendment prohibits the imposition of both "cruel and unusual punishments" and "excessive fines." U.S. Const. Amend. VIII. Unfortunately, neither provision provides a promising basis for challenging this regulation.

The Cruel and Unusual Punishments Clause bars the use of such measures as torture and corporal punishment, as well as excessive sentences and inhumane conditions of confinement. *See Estelle v. Gamble*, 429 U.S. 97, 102 (1976)(the primary concern of the drafters of the Eighth Amendment was to prohibit tortures and other barbarous methods of punishment); *Johnson v. Quinones*, 145 F.3d 164, 167 (4th Cir. 1998)(quoting *Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996)). The imposition of a monetary penalty does not inflict physical pain on an inmate, nor does it easily fit within judicial pronouncements that define "cruel and unusual punishments."

The Excessive Fines Clause limits the government's power to extract payment as a punishment for an offense. *Austin v. United States*, 509 U.S. 602, 609-610 (1993). While other states apparently do impose monetary sanctions on prisoners which are called "fines," the fees listed here are referred to as an "administrative fee." Nevertheless, this type of "fee" does contain several characteristics of a fine. In other contexts, the Supreme Court has noted that a forfeiture of property can be considered a "fine" if it constitutes punishment for an offense. *United States v. Bajakajian*, 524 U.S. 321, 328 (1998). Here there is little doubt that one of the purposes behind the imposition of such a fee is to deter inmates from breaking prison rules. Deterrence "has traditionally been viewed as a goal of punishment." *Bajakajian*, 524 U.S. 321, 328.

Whether a $10.00 fee is "excessive" is governed by principles of proportionality. *Bajakajian*, 524 U.S. at 334. In the context of punitive forfeitures of property, the Supreme Court has noted that "[t]he amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Id.* Enforcing prison order and discipline are among the highest of institutional goals. For this reason, courts may be unwilling to view as excessive a $10 fee assessed after a determination that prison disciplinary rules had been violated.

Other Possible Bases for a Constitutional Challenge

When a prison regulation impinges upon an inmate's constitutional rights, such as the right of free speech or to freely practice one's religion, for example, the Supreme Court has established a test to determine whether the regulation is permissible. *See Turner v. Safley*, 482 U.S. 78 (1987)(establishing the "reasonableness test"); *see also O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987)(applying *Turner* standard to free exercise of religion claim). The *Turner* Court looked at: (1) whether there is a "valid, rational connection" between the regulation and a legitimate governmental interest which has been put forward to justify it; (2) whether there are alternative means that remain open for the inmate to exercise the constitutional right; (3) the extent to which accommodation of the right will have an impact on prison staff, other inmates, and the allocation of prison resources generally; and (4) whether the regulation represents an "exaggerated response" to prison concerns. 482 U.S. at 89-91. The *Turner* Court, while recognizing that prison inmates are not completely deprived of protection under the Constitution, also noted that courts should give deference to the decisions of prison admin-

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istrators in matters governing institutional operations. *Id.* at 84-85. Few prison regulations have been found invalid under the *Turner* test.

False Disciplinary Charges

Many inmates have expressed a concern that the existence of this new fee will give prison officials an additional incentive to fabricate charges as a means of harassing inmates. Of course, the possibility of false disciplinary charges has always been a part of prison life, even when the permissible punishments only included the loss of good-time credits, segregation, extra-duty, loss of privileges, etc. Since any fees assessed as a result of a disciplinary conviction would be applied to offset administrative costs, there would seem to be no personal, financial incentive for an officer to trump up false charges. Of course, the punishment for a disciplinary conviction would for the first time carry a financial burden. But an officer who is inclined to misuse the disciplinary system to harass an inmate would probably do so under any circumstances. It is difficult to see how this new fee would increase abusive practices.

Conclusion

The imposition of this administrative fee, coming on the heels of the medical co-payment and other recent policy changes, is of understandable concern to inmates and their families. Nevertheless, from the information presently available, it appears that the regulation falls within the legal discretion courts allow prison administrators. NCPLS will continue to monitor this situation. In the meantime, inmates should realize that they do have certain procedural rights in disciplinary matters. Where they believe that they are being improperly charged with an infraction, they should respectfully insist on those rights, including the right to appeal any adverse ruling.

Notice

Our office has received numerous complaints and inquiries about an Ohio-based operation known as the National Legal Professional Association (NLPA).

Please be aware that our office is not associated in any manner with NLPA. For your information, The North Carolina State Bar is presently investigating NLPA (State Bar File No. 00AP0053).

Therefore, if you have had problems with NLPA, you should contact the State Bar at the below address:

The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611

Rich Giroux: Twenty Years of Service to Inmates

For more than 20 years at NCPLS, Richard E. Girouxh as been a reliable and a remarkably effective advocate for North Carolina' prisoners.

Rich graduated from law school at the University of North Carolina in 1976. After passing the bar, he began an 18m onth stint as a Vista Volunteer with the North Carolina Commission on Indian Affairs. In addition to serving the Commission as in-house counsel, Rich provided community legal education and assisted his clients in resolving a variety of problems.

In 1979, Rich accepted a position as staff attorney with North Carolina Prisoner Legal Services, Inc. As a staff attorney, Rich advised prisoners of their legal rights, interviewed applicants for legal services, and engaged in the negotiation, trial, and appeal of legal issues that affectcd the rights of indigent prisoners.

The early 1980's brought sweeping changes to the political landscape in this country and serious challenges to the notion of equal justice under law that had provided the philosophical underpinning of federal support for the Legal Services Corporation. As a result, and because prisoners are a politically powerless and an unpopular group, NCPLS was particularly hard hit by a substantial reduction in funding. Despite the loss of nearly two-thirds of the staff, meager compensation, and the prospect of a further diminution of resources, Rich persevered.

In 1985, Rich represented a prisoner who had been subjccted to substandard medical care. The doctor and other Department of Correction officials successfully defended the case in district court. The defendants argued that the doctor was an independent contractor whose actions were his own responsibility, and not that of prison officials. Even if the doctor had been "deliberately indifferent to the serious medical needs" of the prisoner, they claimed, the federal court could not hear the case.

Undeterred, Rich sought review of the decision in the United States Court of Appeals for the Fourth Circuit. A three-judge panel viewed the lower court's decision as unjust, but was constrained to affirmb ased upon binding Fourth Circuit precedent. *West v. Atkins*, 799 F.2d 923 (4th Cir. 1986). Rich asked for further review of the decision, this time by the court sitting *en banc*. After briefing and argument, the fourteen judge court re-affirmed the decision of the district court, holding that prison officials could insulate themselves from liability for inhumane medical treatment by contracting with health care providers. *West v. Atkins*, 815 F.2d 993 (4th Cir. 1987)(*en banc*). Unwilling to accept such a result, Rich petitioned the United States Supreme Court asking that the Court accept the case for final review. Against extremely long odds (the Supreme Court grants only a very small percentage of such petitions), the Court agreed to hear the case.

To argue a case before the United States Supreme Court is the dream of many lawyers, and a pentacle of any legal career. But despitc Rich's considerable experience and skills, his knowledge of the case, his success in securing review by the Court, and his own personal investment, Rich concluded that his client's interests would best be served if the case were argued by an attorney with experience in the Supreme Court. Consequently, Adam Stein, an accomplished and renowned appellate lawyer, was retained for that purpose.

In preparing the case for argument in the Supreme Court, Rich assisted in drafting and revising the brief, and he provided tireless support to Mr. Stein concerning the factual background of the case, information about relevant Supreme Court precedent, and advice regarding strategy. Rich also participated in a moot court argument to help Mr. Stein prepare. In all of these activities, Rich was characteristically cooperative and supportive, never losing sight of his client's interests and objectives.

After briefing and oral argument,

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Rich Giroux: Twenty Years of Service to Inmates

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the United States Supreme Court issued its opinion. A ccording to the Court, prison officials could not shield themselves from liability for deliberate indifference to the serious medical needs of a prisoner through the device of a contract. In reversing the lower courts, the Supreme Court established the principle that prison officials throughout the country are responsible for meeting the basic health needs of prisoners, irrespective of the methodology they employ to meet those needs. *West v. Atkins*, 487U .S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988). As a result, hundreds of thousands of prisoners have benefitted. That case also has had profound implications with respect to the privatization of prisons, an initiative that has gained momentum in recent years.

In the aftermath of that remarkable victory, Rich somehow managed to re-direct accolades and attention to others, preferring instead quietly to continue his work f or his client in the district court on remand.

The year following the *West* d ecision, practically the same issue was resurrected when prison officials argued that the negligence of a contract doctor was not attributable to the State for purposes of a tort claim brought in the North Carolina Industrial Commission. The most significant difference in this case was that State law, and not federal law, controlled. (Thus, *West* w as not binding precedent on North Carolina courts.)

It was again Rich who championed the prisoner's cause, but this time he won in the trial court and had the advantage of defending a favorable decision from the Industrial Commission to the North Carolina Court of Appeals, *Medley v. North Carolina Department of Correction*, 393S .E.2d 288 (N.C.App. 1990), and from the Court of Appeals to the North Carolina Supreme Court.

In the State Supreme Court, Rich argued that prison officials should not be permitted to elude their responsibility to provide for the medical needs of prisoners through a contractual device, but should instead be held responsible for negligent medical practices of which they were (or should have been) aware. That argument prevailed when the Court announced its decision. *Medley v. North Carolina Department of Correction*, 330 N.C. 837, 412 S.E.2d 654 (1992).

After more than seven years of litigation, Rich succeeded in firmly establishing the principle that the provision of medical care for prisoners is a non-delegable duty, for which responsibility lies in the state. It would be hard to exaggerate the favorable impact that principle has had on the lives of North Carolina inmates and prisoners across the nation. *West*a nd *Medley*a re only two of literally hundreds of cases Rich has handled during his tenure at NCPLS.

His commitment to his clients and the broader principles of social justice is an inspiration to all of Rich's colleagues. It is a privilege to work with Rich, and the people incarcerated in this State are fortunate to have so knowledgeable and dedicated an advocate.

NCPLS Staff Member appointed to Sentencing and Policy Advisory Commission.

North Carolina Prisoner Legal Services paralegal Billy Sanders has been named to serve on the North Carolina Sentencing & Policy Advisory Commission. Sanders was appointed to the Sentencing & Policy Advisory Commission on 4 December 2000 by the Honorable W. Erwin Spainhour, who chairs the Commission.

The Commission has the duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in North Carolina and make appropriate recommedations to the General Assembly regarding their findings.

The commisioon is comprised of members representing various intetests in the criminal justtice system.

Access to Courts: NCPLS and its Relationship with the DOC

In a 1977 case, the United States Supreme Court ruled that the states may not interfere with prisoners' attempts to take certain legal matters into court. *Smith v. Bounds*, 430 U.S. 817 (1977). The Court found that incarceration makes it difficult for inmates to raise legitimate legal concerns. For that reason, the Court held that states have an affirmative duty to help inmates by providing them access either to law libraries and persons trained in the law, or to lawyers. *Smith v. Bounds*, *Id.* After the decision, North Carolina planned to meet the constitutional standard by opening a number of prison law libraries and training inmate-volunteers.

In 1978, Professor Barry Nakell, counsel for the plaintiff class in the *Bounds* case, worked with others to establish North Carolina Prisoner Legal Services. With a grant from the Law Enforcement Assistance Administration (LEAA), NCPLS was chartered as a North Carolina non-profit corporation in January of that year. The program was created to provide legal assistance to inmates in North Carolina jails and prisons. NCPLS initially represented inmates in cases challenging conditions of confinement and assisted prisoners in bringing collateral attacks on unfair convictions and illegal sentences.

In 1981, NCPLS became affiliated with Legal Services of North Carolina, a grantee of the Legal Services Corporation. LEAA funding was discontinued, and LSC regulations prohibited the representation of prisoners in post-conviction cases. For that reason, NCPLS had to shift its focus to providing assistance to prisoners in civil matters. The program set specific priorities to reduce the physical abuse of prisoners, to improve the conditions of confinement for North Carolina inmates, to ensure prisoners' access to appropriate health care, and to establish a fair procedure for administrative decision-making and grievance resolution. In accordance with these priorities, NCPLS represented prisoners in actions involving assaults by prison officers, failures to protect inmates from violence, the inadequacy of medical treatment, injuries suffered on prison jobs, inhumane living conditions, and numerous other matters.

In 1986, the *Bounds* plaintiffs challenged DOC's law libraries as constitutionally inadequate. The United States District Court for the Eastern District of North Carolina ruled that the State of North Carolina had not satisfied its *Bounds* obligation to provide inmates meaningful access to the courts. *Smith v. Bounds*, 657 F.Supp. 1322 (E.D.N.C. 1986), *aff'd*, 813 F.2d 1299 (4th Cir. 1987), *aff'd on reh'g*, 841 F.2d 77 (4th Cir. 1988), *aff'd*, 488 U.S. 869 (1988). The Court required the State to enter into a contract with NCPLS to provide the services of attorneys who were independent, knowledgeable and experienced in prisoner rights law. *Id.* The Court's Order was implemented in 1989 through a contractual agreement between the North Carolina Department of Correction and Legal Services of North Carolina, to "provide professional [legal] advice and assistance to North Carolina inmates . . ." in post-conviction proceedings, detainers, claims relating to conditions of confinement, and cases brought under 42 U.S.C. §1983.

Both the *Bounds* plaintiffs and NCPLS asked the Court to adopt measures to ensure that NCPLS could not be controlled by DOC. The parties negotiated, and the Court adopted the following provisions to guarantee the independence of NCPLS:

1. **Independence:** NC Rule of Professional Conduct 5.6 prohibits a lawyer from accepting "compensation for representing a client from one other than the client unless . . . (B) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship. . . ." *Accord*, North Carolina Revised Rules of Professional Conduct, Rule 1.7(b). Under these and other Rules of Professional Conduct, it

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is unethical for an attorney to put anyone's interests over that of his client, even when the attorney is being paid by someone other than his client.

Consequently, NCPLS advocates are independent contractors and not DOC employees. *Bounds* Contract, ¶9. Like all lawyers, NCPLS attorneys must exercise independent professional judgement on behalf of their clients.

2. **Confidentiality:** In general terms, the Rules of Professional Conduct state that: "a lawyer shall not knowingly:"

> (1) reveal confidential information of a client;
>
> (2) use confidential information of a client to the disadvantage of the client; or
>
> (3) use confidential information of a client for the advantage of the lawyer or a third person, unless the client consents after consultation.

North Carolina Revised Rules of Professional Conduct, Rule 1.6(c). This ethical requirement was incorporated into the Contract through the following provision:

> Any inmate request for representation or assistance and any communication between [NCPLS] and an inmate regarding representation or assistance made pursuant to this contract shall be treated as confidential and privileged even if [NCPLS] declines to represent the inmate under the terms of this contract.

Bounds Contract, ¶1.C.

3. **Scope of Services**: The Contract provided funding for legal services related to *habeas corpus* actions and other postconviction proceedings, detainers, and claims relating to conditions of confinement, including cases brought under 42 U.S.C. §1983 and cases filed in the North Carolina Industrial Commission.

4. **Case Selection**: It has always been understood between the parties that decisions about what kind of services NCPLS may offer a client, including whether to accept a case for litigation, will be made by NCPLS, alone. More recent Contracts have memorialized that understanding with the following clause:

> Upon receiving an inmate request for assistance, Contractor will review the inmate's claim and make an initial determination as to whether the claim, in the professional judgment of Contractor, is meritorious. "Meritorious" shall be defined to mean: a claim that is either legally recognized or one for which a good faith argument could be made for recognition and which could generate either monetary or injunctive relief or both, but has more than de minimis value.

Bounds Contract, ¶3.B.

During the eleven-year history of our contractual relationship with DOC, these provisions have proven effective in maintaining the independence of NCPLS.

Of course, NCPLS has responsibilities to DOC that are also defined by Contract. For example, NCPLS

> shall make reasonable efforts to avoid litigation, **consistent with the best interests of the client(s)**, including but not limited to exhaustion of any administrative remedies and consultation with

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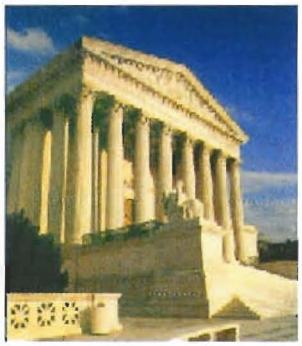
the Attorney General's Office concerning settlement, prior to filing suit.

Bounds Contract, ¶1.D. (emphasis added). NCPLS representatives must "abide by . . . all security rules and regulations of the Department." *Bounds* Contract, ¶5. And NCPLS must maintain records and receipts of all expenditures to provide assurance to DOC that funds are being used to fulfill contractual obligations. *Bounds* Contract, ¶8.



These provisions have provided DOC and the Court assurances that the program is operated in a professional and responsible way.

In 1998, the Court granted the State's motion to dissolve the injunction that required DOC to contract with NCPLS. Thereafter, DOC voluntarily agreed, for the first time, to continue the contract on essentially the same terms.

Over the years, NCPLS has dealt with a number of changes. For example, in January 1996, NCPLS ended its 15-year relationship with Legal Services of North Carolina and relinquished all Legal Services funding in anticipation of federal legislation prohibiting the expenditure of any federal or private funds received by a grantee agency for the representation of prisoners. In April 1996, Congress enacted this legislation in the omnibus spending bill. If NCPLS had remained within Legal Services, we could not have represented prisoners, which is the sole reason for the organization's existence.

Today, NCPLS provides a range of services, including legal assistance in both civil and post-conviction matters. The program has a staff of 32, which includes 15 lawyers and 10 paralegals. NCPLS is governed by a 14-member Board of Directors. The dean of the law schools at UNC, Wake Forest, Duke and Campbell, each designates a director to the Board. Other Board members are designated by the North Carolina Bar Association, the North Carolina Civil Liberties Union, the Southern Prisoners Defense Committee, the North Carolina Association of Black Attorneys, and the North Carolina Association of Women Attorneys. The remaining members are elected by the Board to include a member of the General Assembly, a former judge, two former inmates, and others.

About 98% of the program's funding is now derived from the Contract with the North Carolina Department of Correction. NCPLS receives additional funding from a variety of sources, including grants from the North Carolina Bar's IOLTA (Interest on Lawyers' Trust Accounts) program, grants from private foundations, attorney fee awards in cases won by NCPLS attorneys, and donations from private individuals and organizations.

Most of our clients are impoverished prisoners who often have no other hope of getting legal representation than through our office. There are more than 32,000 prisoners in DOC, and another 8,000 to 10,000 at any given time in the State's jails. Obviously, with the great demand for our services, and given the poverty of our clients and our limited resources, we are happy to have funding from any source that will provide it. But our Contract with DOC and the Rules of Professional Conduct require that NCPLS attorneys exercise independent professional judgement on behalf of our clients. It would be unprofessional and unethical to compromise our clients' interests to maintain State funding, even if that meant the loss of all our revenue. That is the kind of compromise NCPLS will never make.

The existing *Bounds* Contract technically expired on 30 September 2000. However, a provision of the Contract requires a continuation of the existing terms until an agreement to renew the Contract is reached or one of the parties gives written notice of its intention to terminate the relationship in 120 days. Negotiations for a renewal of the *Bounds* Contract are currently underway.