

NCPLS ACCESS

NCPLS 2007 STRATEGIC PLAN WILL LEAD TO IMPORTANT CHANGES

Adopted by the Board of Directors on October 22, 2007, NCPLS is implementing a strategic plan that will affect virtually every aspect of program operations. Through this plan, NCPLS intends to reinvigorate and continue to improve prisoner legal services. The focus of this plan is to ensure robust investigation, to enhance efforts to identify possibly meritorious claims for relief, and to engage in the proactive and vigorous pursuit of relief for NCPLS clients. The 2007 Strategic Plan emphasizes zealous litigation in appropriate cases. Some key components of the plan appear in the following paragraphs.

Guiding Principles

The identification of meritorious issues, cutting-edge advocacy on behalf of our clients, and meaningful litigation are the most important functions of NCPLS. Accordingly, attorneys are strongly encouraged to exhaust all reasonable bases for obtaining relief for clients, specifically encompassing proactive, zealous litigation.

New Policies and Procedures

One particularly important procedural change involves proactive investigation and identification of



meritorious claims for relief. This means that NCPLS will not necessarily await a client request for assistance, but will review appellate decisions as they are handed down, will act promptly on referrals from defense counsel or the concerns of family members, and will take other measures to identify meritorious cases. These changes will have the greatest impact on our work to challenge illegal convictions and sentences.

For example, the “Tarnished Badge” investigation conducted by the SBI uncovered corruption in the Robeson County Sheriff’s Office and led to the conviction

of the Robeson County Sheriff, as well as a number of Sheriff’s Deputies. It appears that part of the wrong-doing uncovered by the investigation was false testimony given in criminal prosecutions by some of these officers. Obviously, such testimony could taint the constitutionality of many convictions. NCPLS is working to identify those cases to determine which of them may be successfully challenged in post-conviction proceedings.

Shifting Resources

To ensure the success of this new, more aggressive approach, NCPLS has shifted significant program funds to strengthen its Post-Con-

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ACCESS is a publication of North Carolina Prisoner Legal Services, Inc. Established in 1978, NCPLS is a non-profit, public service organization. The program is governed by a Board of Directors who are designated by various organizations and institutions, including the North Carolina Bar Association, the North Carolina Association of Black Lawyers, the North Carolina Association of Women Attorneys, and law school deans at UNC, Duke, NCCU, Wake Forest and Campbell.

NCPLS serves a population of more than 38,600 prisoners and 14,000 pretrial detainees (with about 250,000 annual admissions), providing information, advice, and representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

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Please Note: *ACCESS* is published four (4) times a year.

Articles, ideas
and suggestions are welcome.
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NCPLS BOARD MEMBERS ELECTED TO OFFICE

At its December 7, 2007 meeting, the NCPLS Board of Directors elected its officers for 2008. Following out-going President Fred J. Williams, Vice-President Susan F. Olive, and Treasurer Ronald Steven Douglas are the following officers:

PRESIDENT OF THE BOARD:

Dean Ronald Steven Douglas



Dean Douglas

Dean Ronald S. "Steve" Douglas was born March 30, 1950 in New Rochelle, New York. He received his undergraduate degree in Economics in 1978 at Howard University. After graduation, Mr. Douglas served as a Public Health Advisor for the District of Columbia.

Mr. Douglas took up the study of law at North Carolina Central University, working as a Law Clerk for the District of Columbia's Office of Employee Appeals during the summer after his first year. Dean Douglas received his Juris Doctorate in 1982.

As a lawyer, Dean Douglas held the position of Legal Advisor to the Occupational Safety and Health Administration Review Board for the State of North Carolina and was in private practice for many years

in the DC area, focusing his practice on criminal defense. Dean Douglas currently serves as the Assistant Dean to the Day Program at NCCU Law School and is responsible for admissions, scholarships, grants, financial aid, and disciplinary matters. He is a member of the American Bar Association Standing Committee on Substance Abuse, and he joined the Board of NCPLS in July, 2004.

VICE-PRESIDENT:

Professor Johnny C. Chriscoe, Jr.



Professor Chriscoe

Professor Chriscoe is a *summa cum laude* graduate of the Norman Adrian Wiggins School of Law, where he graduated first in his class, was an articles editor for the Campbell Law Review, and was a regional champion trial team member. Following graduation from law school, he served as a law clerk on the North Carolina Court of Appeals. Professor Chriscoe then entered the private practice of law and concentrated primarily on the areas of civil litigation, appellate advocacy, and worker's compensation. Professor Chriscoe returned to Campbell and the Norman Adrian Wiggins School of

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NCPLS BOARD MEMBERS ELECTED TO OFFICE (CONTINUED)

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Law in 1995 to manage the Career Services and the Alumni Relations Offices. He also taught law part-time. In 1999, Professor Chriscoe became a member of the faculty and teaches Insurance Law, and Trial and Appellate Advocacy I and II. He also works with student trial teams and has taught in various continuing legal education programs. Professor Chriscoe joined the NCPLS Board in April of this year.

TREASURER:

Paul A. Meggett, Esq.



Paul Meggett

Paul Meggett earned his J.D. degree from the University of North Carolina School of Law. Before law school he earned a Bachelor of Science degree from North Carolina State University. Mr. Meggett is also an alumnus of the North Carolina School of

Science and Mathematics. After law school, Mr. Meggett clerked for retired Chief Justice Burley B. Mitchell, Jr., of the North Carolina Supreme Court. He currently serves as Associate General Counsel for UNC Hospitals and Assistant University Counsel for UNC at Chapel Hill. Mr. Meggett also serves as an Adjunct Professor of Law at UNC Law School, teaching in the Research and Writing Program. He is a member of the North Carolina Bar Association, serving as Co-Chair of the Minorities in the Profession Committee; Chair of the Momentum 2010 Joint Diversity Task Force; and is a member of the Education and Health Law Sections. Mr. Meggett joined the NCPLS Board in the spring of 2007.

NCPLS is grateful to these leaders, both those who are completing terms of service and those who are taking up new responsibilities. As volunteers, these and other members of the Board devote a significant amount of time to setting policy and serving as ambassadors for NCPLS to the broader community. It simply would not be possible for NPCLS to operate without their selfless service.



**HAPPY
Holidays**

NCPLS 2007 STRATEGIC PLAN (CONTINUED)

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viction Team from eight to twelve attorneys. In addition, for the first time in its history, NCPLS will permanently employ investigators to augment our capacity to dig beneath the perceptions of our clients, the legal pleadings in the case, and the opinions of the courts in order to determine whether some important fact was initially overlooked or has subsequently come to light. An experienced lead investigator will train, direct, and coordinate four other paralegal/investigators at the direction of NCPLS attorneys.

In addition, NCPLS attorneys will continue vigilant efforts to identify questionable policies or procedures, as well as suspicious recurring events that adversely impact the general prison population. Meritorious cases will be aggressively pursued to achieve relief on behalf of entire classes of prisoners, or the prison population as a whole.

To leverage its resources, NCPLS will continue to actively recruit law student volunteers from North Carolina law schools to assist in client interviews and conduct other investigations year round. Through coordination with North Carolina law schools' criminal advocacy clinics and legal organizations, we will seek law student assistance with research, interviewing, investigation, and similar activities under the supervision of NCPLS attorneys. NCPLS will also foster close relationships with the Appel-

late Defender's Office and the Public Defender Offices in each district to actively solicit cases from, and seek ways in which we can better collaborate with defense counsel.

Finally, NCPLS will foster communication with prisoner advocacy groups such as the National Prison Project, Prisoner Legal Services of New York, Florida Institutional Legal Services, the Prison Law Office, and others. Further, NCPLS will strengthen alliances with grassroots citizen advocacy groups like CURE (Citizens United for the Rehabilitation of Errants), FAMM (Families Against Mandatory Minimums), and the ACLU (American Civil Liberties Union).

Changes in Existing NCPLS Policies, Procedures, & Services

NCPLS will continue to respond to prisoner requests for legal advice and assistance. However, in view of the reallocation of resources to focus on investigation and litigation, NCPLS services will be more limited in other ways. We will continue to fulfill requests for routine information through form letters, forms, or informational packets.

Requests for services that the program does not offer and those which (in our opinion) present no legal issues will be summarily rejected with form letters that explain in general terms the legal protections afforded prisoners by law. We will no longer be able to

provide lengthy explanations about the law, the way the law applies to individual circumstances, or other services that are not directly related to the identification and resolution of substantive meritorious claims. Meritorious claims are those which are legally recognized or for which a good faith argument could be made for recognition, and which could generate either monetary or injunctive relief or both, but have more than *de minimis* value. By the phrase "*de minimis* value," we mean cases in which the cost of litigation will significantly exceed the relief we could obtain for our client and that no other prisoners would be helped by a favorable outcome.

Requests that meet NCPLS criteria will be investigated through client and witness interviews, fact investigation, examination of court documents, examination of forensic evidence, and/or such further measures as are necessary to determine the legitimacy of a client's claim. When (in our opinion) such a case is not sufficiently supported by evidence, law, or otherwise lacks merit, NCPLS correspondence with the client will be significantly abbreviated, containing a short recitation of the client's allegation, NCPLS investigative actions, and a statement concluding that NCPLS cannot offer representation. In appropriate circumstances, the client will be provided explanatory materials, self-help manuals, instructional booklets and the

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NCPLS 2007 STRATEGIC PLAN (CONTINUED)

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forms necessary to prosecute an action, *pro se*.

Implementation of the New Approach

NCPLS began to implement this approach to our work in September. Personnel changes and additions, as well as the restructuring of the Intake, Civil, and Post-Conviction Teams were aspects of the new approach that were completed within the first week of September. On September 19, NCPLS began to initiate contact with prisoners whose convictions have recently become final. In those instances, NCPLS has requested authorization to investigate and review the conviction, and to provide representation in meritorious collateral proceedings. We plan to continue this procedure to be sure that no valid claims for relief are overlooked, even by prisoners who may not know that their conviction or sentence is illegal. This practice will also maximize the time available to investigate and prosecute

meritorious cases before the expiration of the one-year statute of limitation imposed by the *Antiterrorism and Effective Death Penalty Act*, Pub. L. 104-132, 110 Stat. 1214 (1996) (AEDPA), codified at 28 U.S.C. §1244(d)(1).

Effective October 1, 2007, our clients began receiving abbreviated responses to requests for assistance, including reports of completed investigations and decisions to decline representation. NCPLS will no longer devote significant resources to lengthy explanations of litigation or other decisions.

Other parts of the plan are being implemented in a thoughtful, deliberate way as we gain experience under the new approach.

New Leadership Sought

Discussion regarding the development and implementation of the new Strategic Plan led to a realization that new program leadership will be required. Consequently,

Michael Hamden tendered his resignation as Executive Director on December 8, 2007. That resignation was accepted by the Board of Directors on Tuesday, December 11, 2007, with a request that Mr. Hamden continue as Interim Director until such time as a national search can be completed and a successor chosen. Hamden expressed his willingness to serve the program and its clients in that capacity.

CONCLUSION

Implementation of these changes will significantly reduce the amount of time NCPLS advocates spend on inmate correspondence and education. The plan will substantially reallocate resources to investigation of post-conviction and conditions of confinement cases, and is expected to dramatically increase the number of such cases litigated by NCPLS attorneys. Adoption of this plan is intended to improve the overall delivery of meaningful legal services to North Carolina prisoners.

REMINDER REGARDING REQUESTS FOR ASSISTANCE

To reach a decision about whether we can offer assistance to a client, we must first receive and review all grievances and grievance responses. We can begin an assessment when we have received those materials through Level II

of the process, as long as a Level III appeal has been filed. Why? Exhaustion of all available administrative remedies is a prerequisite to the institution of a federal lawsuit. 42 U.S.C. §1997(e)(a); *Porter v. Nussle*, 534 U.S. 516 (2002)(The

Prison Litigation Reform Act of 1995 (PLRA) requires prisoners to exhaust all available administrative remedies in accordance with grievance procedural rules before they can file a federal lawsuit.) Thank you for your cooperation.

IOLTA AWARDS

SAFE & HUMANE JAILS PROJECT

\$55,000

NCPLS provides a wide range of services, from advice about prisoners' legal rights, to representation in all State and Federal courts. The promotion of safe and humane conditions of confinement for our clients continues to be one of the highest priorities of NCPLS.

People who are held in jail pending trial on criminal charges have little or no access to the courts in cases pertaining to conditions of confinement or other important matters. The population of pretrial detainees constantly changes, but there are 17,000 beds in North Carolina detention facilities, an average jail population that totals approximately 14,000 at any given time, and jail admissions that exceed 250,000 on an annual basis.

To address the legal needs of North Carolina's pretrial detainees, NCPLS operates the *Safe & Humane Jails Project* under the leadership of Michele Luecking-Sunman, and with the invaluable experience and assistance of Paralegal Sharon G. Robertson. During 2007, NCPLS provided a variety of services to these detainees. For instance, NCPLS representatives toured jails in Lee, Johnston, Bladen, Harnett, Carteret, Surry, and both the Mecklenburg Central



and Mecklenburg North detention facilities. Ms. Robertson appeared together with NCPLS Attorney Luecking-Sunman as guests at the Jail Administrator's Conference in High Point last October to make a brief presentation of our current activities and to participate in a roundtable discussion of jail issues. And our team contributed an article for the quarterly magazine of the National Association of Legal Assistants, "*Establishing Excessive Force in Civil Rights Litigation.*"

Among a number of cases accepted by the *Project* was an appointment to represent a detainee who repeatedly complained of severe pain but received no treatment. When he was finally admitted to the hospital, he was diagnosed with communicable MRSA, pneumonia, and empyema (the presence of pus in a bodily cavity) which required

extensive surgery to correct. *Copeland v. Causey, et al.*, No. 5:07-CT-3-41-BO (EDNC 2007). The case is pending.

These and a number of other services were provided our clients with limited funding provided by "IOLTA." The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA) was established in 1984 by the North Carolina State Bar and the North Carolina Supreme Court to generate income from lawyers' trust accounts in order to fund programs for the public's benefit. The provision of legal aid to poor people is one of the public purposes for which IOLTA funds can be used, but there are a great many organizations which seek IOLTA support to serve indigent clients.

This year, IOLTA awarded a grant in the amount of \$55,000 to fund the *Safe & Humane Jails Project* through 2008. That grant is the most generous IOLTA has ever bestowed on the Project.

Without the support of IOLTA, NCPLS could not operate the *Safe & Humane Jails Project* or offer legal assistance to pretrial detainees. We are deeply grateful to IOLTA for its continuing support.



CHANGES IN FEDERAL CRACK SENTENCING LAW

Although not directly bearing on people convicted on state charges of crack offenses, there have been significant developments recently at the federal level.

Recently, the United States Sentencing Commission (USSC) recommended relaxing the harsh 100 to 1 sentencing disparity between convictions for crack and powder cocaine. Previously, equivalent amounts of those substances resulted in much harsher sentences resulting from convictions involving crack. The USSC recommended very modest, technical changes in applying the federal sentencing guidelines, addressing what many have identified as a gross injustice in the criminal justice system that has disproportionately affected blacks. This draconian approach resulted from widespread hysteria in the '90's about the perceived "crack epidemic" (which turned out to be no epidemic at all).

On November 14, 2007, the American Bar Association (ABA) testified in hearings held by the USSC, asking that those modest changes be made retroactive (and thus applicable to about 20,000 people who are still incarcerated under earlier convictions for crack offenses). In addition, the USSC received more than 33,000 letters, almost all of which favored retroactivity.



On December 10, 2007, the U.S. Supreme Court reaffirmed that the federal sentencing guidelines are "advisory" [citing *U.S. v. Booker*, 25 S.Ct. 738 (2005)], and held that a federal judge may exercise discretion in allowing for individual differences in sentences. *Gall v. United States*, (No. 06-7949), ___ U.S. ___ (10 Dec. 2007)(defendant pled guilty to a conspiracy to distribute "ecstasy" in college from which he withdrew and engaged in no illegal conduct in subsequent 42 months was properly sentenced to 36 months probation where Sentencing Guidelines would have required imprisonment for a similar period).

On the next day, December 11, 2007, the USSC voted unanimously to give retroactive effect to the amendment to the Federal Sentencing Guidelines that reduces penalties for crack cocaine offenses. Retroactivity of the crack cocaine amendment will become effective on March 3, 2008. As a result, prison sentences may be reduced for as many as 19,500 of the estimated 36,000 to 37,000 crack

offenders currently in federal prisons. Not all crack offenders will be eligible for sentence reductions, and among those who are, each defendant will have to file a federal habeas action and ask the sentencing judge to exercise discretion to reduce the sentence based upon the particular facts of the defendant's case.

However, congressional legislation still sets mandatory minimum sentences which are triggered for a five-year prison term at five grams of crack. But it takes 500 grams of powdered cocaine to result in a sentence of equal length. The disparity has disproportionately affected blacks, who account for 85 percent of crack offenders. The disparate impact results from the fact that most crack offenders are inner city black men, while suburban white folks are most frequently busted for powder cocaine.

And these events have brought renewed attention to legislation that has been introduced in both the House and in the Senate. Legislators may now feel that the Court and the USSC have provided political "cover" against potential charges of being "soft on crime" should a bill be enacted to rectify this sentencing injustice.

**THE NEWSLETTER OF NORTH CAROLINA
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