

North Carolina Prisoners' Legal Services
Final Report for Barbara McDowell Foundation 2020 Grant

Solitary Class Action Lawsuit

On 24 April 2020, Plaintiffs filed our motion for class certification and supporting brief and exhibits. We were missing affidavits from two of our named plaintiffs, and we supplemented our exhibits to include the affidavit of Robert Parham in July. During the interim, Defendants requested several extensions of time for them to respond to our class certification motion. They finally did file their response on 12 August 2020. Their arguments included that the North Carolina Constitution does not provide any greater protection than the U.S. Constitution; that there are no legal or factual issues common to the class members because the different classifications of solitary confinement each have different conditions, purposes, and reasons for being put into those various classifications; and that the named plaintiffs are not adequately representative of the class.

They also asserted that Plaintiffs did not show a direct link between the challenged practices and actual harms resulting from those practices. In support of this part of their argument, they cited frequently to a report that the Vera Institute issued five years ago related to reforms to solitary practices in North Carolina prisons, in which the Vera Institute praised North Carolina's efforts at reform. What Defendants neglected to mention was that soon after the Vera report, there were several instances of violence at a few prisons that resulted in the death of some officers. After those deaths, all efforts to reform solitary ceased and the use of solitary confinement became even more widespread in North Carolina.

They also claimed that named plaintiffs were responsible for putting themselves in solitary confinement by acting out, and that therefore, they shouldn't be class representatives. This is an odd argument for Defendants to make, considering that elsewhere they claim that people are only assigned to restrictive housing for very good reasons, such as disciplinary issues. In support of their argument, Defendants use average durations in particular solitary classifications to show that stays are generally not for years, whereas the named plaintiffs spent years in solitary confinement.

We received our initial scheduling order in May, detailing deadlines for certain events and specifying procedures. Pursuant to that order, Plaintiffs had 14 days after service of the response to either serve discovery requests on Defendants limited to issues raised in the response, or to file a reply brief. Because Defendants' response included new factual assertions, Plaintiffs decided to conduct limited discovery and served those requests on Defendants' counsel on 26 August 2020. Per the scheduling order, Defendants now have until 25 September 2020 to provide responses to those requests. Once we receive the responses, we will have 14 days to file our reply. After that, there will be a hearing scheduled on the class certification issue.

One of our Plaintiff's counsel (and the Executive Director of North Carolina Prisoner Legal Services, Inc.) was named Executive Director of Indigent Defense Services and began her new position on 1 August 2020. Therefore, she had to withdraw as counsel in the solitary case.

Although we initially hoped to have at least started conducting discovery in this case by now (and not just discovery limited to class action issues), the COVID-19 situation has greatly slowed down progress on this case. Given that the pandemic situation is not looking like it will improve in the near future, we expect that our timeline will be delayed for the near future.

For further information, please contact Mani Dexter at NCPLS (mdexter@ncpls.org).