

Evaluation of North Carolina Prisoner Legal Services

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We appreciate the cooperation and assistance provided by the management and staff of North Carolina Prisoner Legal Services.

Executive Summary

North Carolina Prisoner Legal Services (NCPLS) is a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in the state. Pursuant to its contract with the State of North Carolina, NCPLS serves a population of more than 35,000 prisoners in the custody of the Department of Correction (DOC) by providing information and advice concerning their legal rights and responsibilities, working toward administrative resolutions of inmate problems, and providing representation in state and federal court.

In 1989, DOC contracted with Legal Services of North Carolina (LSNC) to provide legal assistance and advice to the North Carolina prison population, pursuant to Bounds v. Smith, 430 U.S. 817 (1977), which established the constitutional right of all prisoners to have meaningful access to the courts. At the time, NCPLS was a subsidiary of LSNC. NCPLS broke off from LSNC in 1996, continuing to contract with DOC.

In 2005, the North Carolina General Assembly transferred contract responsibility for NCPLS from DOC to the Office of Indigent Defense Services (IDS). The General Assembly also asked IDS to evaluate NCPLS and to report its findings (S.L. 2005-276, § 14.9(b)). IDS in turn contracted with the University of North Carolina at Chapel Hill's School of Government to conduct the evaluation. This is the final report of the evaluation.

The evaluation had three main objectives:

- 1) To understand and document NCPLS's case-management process;
- 2) To determine the extent to which NCPLS is providing appropriate, quality responses to inmates in light of the requirements of the contract, the standards prescribed by the Rules of Professional Conduct, NCPLS's case acceptance priorities, and peer reviewers' views of the needs and interests of the prison population; and
- 3) To review select cases where IDS had received written complaints from NCPLS clients with respect to the appropriateness and quality of NCPLS's response in light of the requirements of the contract, standards prescribed by the Rules of Professional Conduct, and peer reviewers' views of the needs and interests of the prison population.

The evaluation had three major parts. First, we detailed each major step in NCPLS's case management process, which allowed us to identify the major areas of their work. Second, we selected a sample of NCPLS cases from each of those major areas for review by 16 different peer reviewers—expert volunteers with legal background in the particular area of law in question. The sample included 110 randomly selected case files (50 intake files, 30 post-conviction files, 20 jail credit files, and 10 civil files), 20 semi-random litigation files (10 post-conviction litigation files and 10 civil litigation files), and 19 selected files in which IDS had received a complaint about NCPLS's services from an

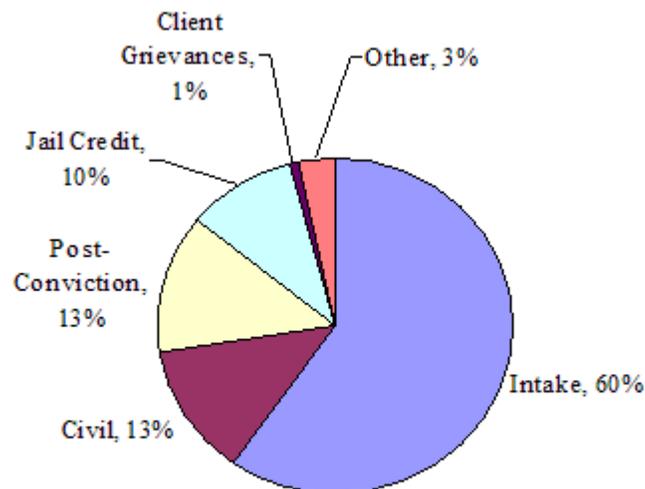
inmate. With the exception of the jail credit files, the file for each selected case was examined by three separate peer reviewers. After the peer review, at the request of some reviewers, we also invited all of the reviewers to share any additional comments they had. Third, to provide context for the evaluation, we interviewed members of NCPLS's leadership, including the executive director, administrative officer, team leaders, and executive assistant.

Findings

The Case Management Process is complex but appears to be well organized.

NCPLS uses a complex process to handle their overall caseload. Work is split between three main legal teams: the Intake Team, the Civil Team, and the Post-Conviction Team. Each group has a Team Leader. NCPLS utilizes specialized computer software, LegalFiles, to record and track all case documents electronically. In calendar year 2005, NCPLS opened 12,878 case files, or approximately fifty files per work day, of which 11,044 files were handled by the Intake, Post-Conviction, or Civil Team. Generally, all files are first opened in Intake. As seen in Figure ES1, most of these are also resolved in Intake, primarily through prepared form letters, pre-assembled informational packets, or customized "quick response" letters.

Figure ES1: Distribution of 2005 NCPLS Casework by Files Opened (N= 12,878)



The Intake Team functions primarily as NCPLS's triage unit. It addresses requests that can be resolved relatively easily and quickly. (Resolution includes identifying those cases for which NCPLS denies service). If a case cannot be resolved in Intake, the basic legal issues are identified, appropriate paperwork is gathered, and the case is referred to the Civil or Post-Conviction Team.

Of the cases that go beyond the Intake Team (about 3,000 in 2005) about an equal number of the files are handled by the Post-Conviction and Civil Teams. Civil work primarily involves issues of medical treatment, conditions of confinement, use of force or failure to protect from harm. Post-conviction work is characterized by clients contesting the legality of their trial or plea, their sentence, or both.

In NCPLS's overall, multi-step process, the majority of requests received are resolved early on and in short order by the Intake Team. While this helps to streamline the workload for the Post-Conviction and Civil Teams to conduct investigations, the vast majority of cases handled by those teams are rejected by advocates assigned to cases, generally in consultation with Team Leaders. According to NCPLS, cases are rejected when litigation or other corrective actions are found to be unwarranted.

Throughout the evaluation, it was difficult to reach a consensus on what was considered "litigation." For the purposes of this evaluation report, we use a definition used by NCPLS in its case acceptance process, described below. Litigation is defined here and throughout the report as case work that would require more than 50 billable hours, more than minimal cost, and a potential court appearance. Cases the attorneys recommend for litigation are considered by the Case Acceptance Committee and the Executive Director. All told, NCPLS reports that about 58 cases were approved for litigation in 2005. For an illustration of these findings, please see Figure ES3.

While reviewers gave NCPLS positive ratings overall, they also provided numerous negative comments on the questionnaires

For the legal review panels, each of the 16 reviewers answered a questionnaire for each case reviewed. The questionnaires were tailored to the different team functions and varied slightly for that reason.

The reviewers were asked a series of questions on the appropriateness and quality of NCPLS's service in light of the criteria explained in the evaluation's objectives. The results, in Table ES2, show the average of all the responses for each question and each type of file. The responses were made on a scale of 1 to 5, with 1 indicating the reviewer strongly disagreed with the statement and 5 indicating the reviewer strongly agreed with the statement. That is, in the eyes of the reviewer, a lower score (1 or 2) generally reflected lower quality work and a higher score (4 or 5) generally reflected higher quality work. After each numerical rating, the reviewers were also given space to make comments.

Reviewer Questions <i>(paraphrased, please see forms in Appendix D for exact wording)</i>	Reviewer Response Averages <i>On scale of 1 (strongly disagree) to 5 (strongly agree)</i>				
	Intake	Civil	Post-Conviction	Jail Credit	Grievance (all types)
Issue was complex?	n/a	2.96	2.58	n/a	3.38
Action was appropriate?	4.11	n/a	n/a	n/a	n/a
Response was prompt?	4.38	3.72	4.38	4.75	3.57
Inmate was informed of deadline?	4.18	3.37	4.65	n/a	2.88
Issues were interpreted correctly?	4.27	4.63	4.42	4.70	3.57
Legal issues were identified?	4.15	4.59	4.42	4.75	3.29
Response understandable to average inmate?	4.07	4.59	4.37	4.32	3.76
Response included appropriate citations?	4.25	4.57	4.73	4.38	3.87
NCPLS appropriately applied its standards?	4.04	4.60	n/a	n/a	3.68
The factual investigation was appropriate?	n/a	4.46	4.13	4.55	3.29
Issue was analyzed correctly?	n/a	4.58	4.14	4.50	3.08
Case was referred appropriately?	4.49	n/a	n/a	n/a	n/a
Complaint handled appropriately?	n/a	4.40	n/a	n/a	3.33
MAR/habeas done well?	n/a	n/a	4.89	n/a	4
Overall work was appropriate?	4.00	4.46	4.19	4.50	3.67

n/a = question not asked for that case type

Table ES2: Summary of Legal Review Questionnaire Ratings

As seen in the table, overall, the panels rated NCPLS’s work favorably. For intake cases, the reviewers generally agreed with all of the statements. For the civil and jail credit cases, reviewers agreed or strongly agreed with most of the statements. In the case of civil work, however, reviewers felt the cases were not particularly complex. They were also less satisfied with response promptness and NCPLS’s efforts to inform inmates of appropriate deadlines than they were with other, more substantive issues such as appropriately applying standards or correctly analyzing legal issues. Jail credit cases were well regarded overall. Post-conviction work was also not seen to be complex. However, reviewers generally gave favorable ratings in response to questions about the quality of the work.

Readers should note that the table above reflects averages across all reviewers. Histograms showing the distribution of ratings for each question, included in the body of this report, show that it was not unusual for a single reviewer to rate NCPLS’s work poorly or well on particular questions. That is, for each question, the ratings were generally very positive or very negative. Overall, across all groups and questions, the positive ratings outweighed the negative ones. It was not unusual for reviewers to

provide positive comments on the files, especially if the reviewer was struck by particularly fine work by individual NCPLS attorneys. For a number of questions, no additional comments were provided by any reviewer, which could be interpreted as satisfaction with or approval of the work.

In many cases, individual comments accompanying the files were inconsistent with the overall positive ratings. In such cases, a file may have received high ratings, but the comments were predominately negative. Across all files, reviewers expressed sympathy for the large workload NCPLS carries, and recognized that many of the inmates were not able to express themselves well. However, that did not seem to counter the frustration expressed by some reviewers with what they considered to be significant delays. In addition, many comments reflected disappointment with the perceived lack of factual investigation, and how that played into problems in communication, issue identification, analysis, or overall exploration of the possibility of merit. Finally, in a limited number of cases, some reviewers discovered what they believed were errors in how the case was handled.

Reviewers were generally less satisfied with the work done on the selected grievance files for which IDS had received complaints. Responses were not as bi-polar (strongly positive or negative) as seen in the other types of files. Instead, reviewers responded across all categories of agreement/disagreement with statements about the quality of NCPLS's work. It was clear that the work on these files was not seen to be at the same level of quality as other NCPLS work.

A Focus on Highly Rated Cases – Where Do the Strengths Lie?

We explored highly rated cases to see if we could identify particular strengths. Generally, reviewers felt these cases were strong across all areas. For civil files, out of 90 possible individual reviewer ratings, 79 were rated as 4 or 5 overall. (Remember the ratings of 1 to 5 corresponded generally with poor to excellent quality.) For these, scores were generally high across several areas, with the highest rated area being on whether or not appropriate citations were included. The only areas that were slightly downgraded for civil files were in the areas of promptness and informing clients of statute of limitation deadlines. For post-conviction files, out of 210 possible individual reviewer ratings, 158 received ratings of 4 or 5, the favorable and best ratings respectively. These files were highly rated in all categories. Reviewers were especially pleased with how NCPLS was prompt, informed clients of statute of limitation deadlines, and made appropriate legal citations.

A Focus on Poorly Rated Cases – Where Do the Problems Lie?

Generally, reviewers downgraded a file overall because of what they perceived to be a lack of or ineffective factual investigation or poor issue analysis, or for reasons not reflected in the questions included in the questionnaire. There were very few poorly rated civil files. Out of 60 possible ratings, there were only two overall ratings of 2 from at least one reviewer; there were no overall ratings of 1. (Remember the ratings of 1 to 5 corresponded generally with poor to excellent quality.) Of these, one reviewer felt there

was not a high quality of issue analysis; on the other, the reviewer felt the case was significantly delayed and appropriate legal citations were not included. For post-conviction files, out of 210 possible ratings, there were 27 ratings of 1 or 2, the worst and a poor rating respectively. For these poorly rated cases, reviewers most commonly downgraded the file because of a lack of factual investigation and/or problems with issue analysis. These files rated relatively highly on other aspects, such as promptness, informing clients of statute of limitation deadlines, and appropriate legal citations.

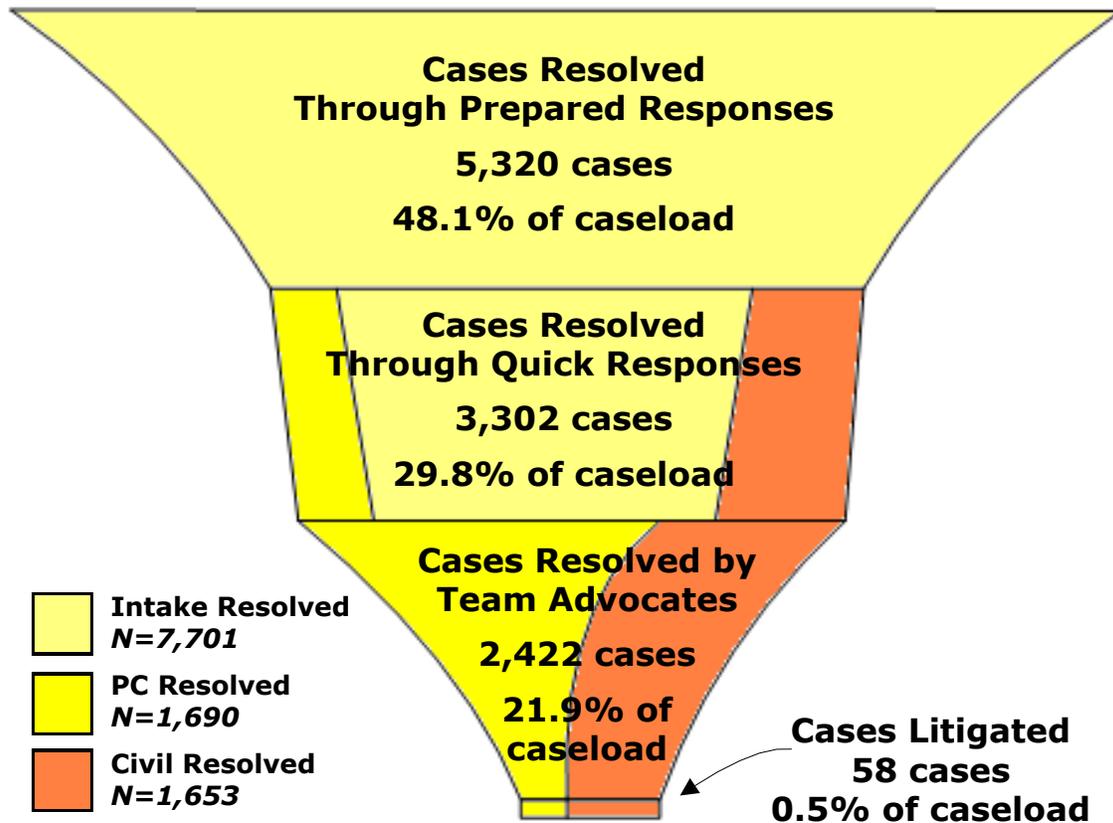
Additional Reviewer Comments

From the peer review panel process, five of the 16 peer reviewers submitted additional comments for the evaluation, beyond those included on the standard questionnaire. The reviewers who had additional comments about post-conviction work had strong reservations about the extent to which NCPLS was providing inmates with meaningful access to the courts. Although they recognized the difficulties of post-conviction work, they had concerns about NCPLS's effectiveness in identifying and investigating violations that had occurred during the trial phase of the proceedings and in utilizing post-conviction proceedings to address the range of potential violations. On the civil side, the comments were mixed, with both positive and negative comments.

Interviews with NCPLS's Leadership

Through in-person interviews, NCPLS's leadership provided additional information to supplement the data obtained during the main part of the evaluation. (For purposes of this report, NCPLS's leadership includes the executive director, administrative officer, team leaders, and executive assistant. For ease of reference, they are sometimes referred to as managers regardless of differences in their specific job titles or duties.) The interviewees discussed four main areas: the mission of NCPLS and its ability to meet that mission; the work environment at NCPLS; training and mentoring at NCPLS; and their observations about the evaluation process. The largest portion of the interviews involved discussion of NCPLS's mission. The interviewees believe the organization is meeting its primary mission of providing legal services to inmates, although that often means explaining to inmates why they do not have a case. They identified various barriers to meeting the mission, such as low pay for staff. For the most part they felt that the workload is manageable (as the duties are currently defined). They praised the work environment, recognized that most of the training is currently on-the-job, and were generally positive about the evaluation process itself.

Figure ES3: Overall Caseload Resolutions



Conclusions

As requested, we are providing several brief conclusions related to NCPLS's work. We are not providing recommendations for any specific actions to be taken.

- NCPLS handles an enormous volume of inmate requests, almost 13,000 annually. They appear to have an efficient system for processing the large volume of paperwork they receive and they respond to every inmate letter that presents new information or requests.
- Post-conviction claims rarely reach the stage of formal litigation. The cases that are litigated tend to involve issues that are clear on the record and do not require investigation. NCPLS reports that during the calendar year we evaluated, 2005, 58 cases were presented to the Case Acceptance Committee for approval of litigation, and almost all of those were civil cases.
- NCPLS does not have investigators on staff and performs limited or no factual investigation for the vast majority of its cases. \$10,940 of their budget was allocated to litigation expenses in the year we evaluated. NCPLS's total operating budget that year was \$2,695,386, with \$2,511,821 of that budget funded by the *Bounds* contract with the State.

- NCPLS has a very structured process that requires a staff attorney with a potentially litigable case to pass two levels of review before s/he can proceed with litigation. The case must be discussed with the attorney's team and it must pass case acceptance review. While the review process may be helpful in getting input and additional case evaluation from senior staff and management, it also may act as a disincentive to litigation.
- The structure and institutional culture at NCPLS appear to emphasize rejecting inmate claims for assistance, along with an explanation for the rejection, or informally resolving inmate requests, over costly investigation and formal legal representation. Overall, the organization appears to do this in an efficient manner.

NCPLS Response to Evaluation

NCPLS was invited to submit a response to this report. Their response immediately follows the main text of the report and we invite readers to consult it.

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Introduction

North Carolina Prisoner Legal Services (NCPLS) is a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in the state. In 1989, the North Carolina Department of Correction (DOC) contracted with Legal Services of North Carolina (LSNC) to provide legal assistance and advice to the North Carolina prison population, pursuant to Bounds v. Smith, 430 U.S. 817 (1977), which established the constitutional right of all prisoners to have meaningful access to the courts. At the time, NCPLS was a subsidiary of LSNC. NCPLS broke off from LSNC in 1996, continuing to contract with DOC.

In 2005, the North Carolina General Assembly transferred the contract from DOC to the Office of Indigent Defense Services (IDS), effective October 1 of that year. With this change in oversight, the General Assembly also directed IDS to evaluate NCPLS and to report its findings by May 1, 2007 (S.L. 2005-276, § 14.9(b)). IDS in turn contracted with the University of North Carolina at Chapel Hill's School of Government to conduct the evaluation.¹

The evaluation had three main objectives:

- 1) To understand and document NCPLS's case-management process;
- 2) To determine the extent to which NCPLS is providing appropriate, quality responses to inmates in light of the requirements of the contract, the standards prescribed by the Rules of Professional Conduct, NCPLS's case acceptance priorities, and peer reviewers' views of the needs and interests of the prison population; and
- 3) To review select cases where IDS had received written complaints from NCPLS clients with respect to the appropriateness and quality of NCPLS's response in light of the requirements of the contract, standards prescribed by the Rules of Professional Conduct, and peer reviewers' views of the needs and interests of the prison population.

History and Mission of NCPLS

Established in 1978, NCPLS is a non-profit, public service organization. Pursuant to its contract with the State of North Carolina, NCPLS serves a population of more than 35,000 prisoners in the custody of DOC by providing information and advice concerning their legal rights and responsibilities, working toward administrative resolutions of inmate problems, and providing representation in state and federal court. While NCPLS also does some work on behalf of pre-trial detainees, that work is funded by an IOLTA grant and is not the subject of this evaluation.

¹ - For the NCPLS/DOC contract, please see Appendix A; for the NCPLS/IDS contract, see Appendix B.

NCPLS is organized into three main legal teams—an Intake Team, a Civil Team, and a Post-Conviction Team.

- *NCPLS's Intake Team:* The role of the Intake Team is to triage inmate requests for assistance, determine which requests can be responded to quickly, gather additional information where the nature of the request is uncertain or will likely be referred to the Civil or Post-Conviction Team, and direct all other matters to the appropriate team. It is not the role of the Intake Team to address all legal issues presented by inmate letters.
- *NCPLS's Civil Team:* The role of the Civil Team is to provide legal advice, assistance and, where appropriate, representation in civil proceedings challenging conditions of confinement or the actions of government officials.
- *NCPLS's Post-Conviction Team:* The role of the Post-Conviction Team is to provide legal advice, assistance and, where appropriate, representation in criminal post-conviction proceedings challenging illegal convictions and sentences. The Post-Conviction Team also has a Jail Credit unit that assists inmates with obtaining appropriate credit for time spent in jail prior to a conviction.

NCPLS also has a Support Team that provides administrative support to the organization as a whole. The Executive Assistant leads the team, which includes a Finance Officer, bookkeeper, secretaries, and receptionists.

The NCPLS Contractual Definition of Merit

Both the DOC and IDS contracts reflect an agreement that NCPLS will review inmate claims for merit. A “meritorious” claim is defined by contract as one “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.”

Pursuant to the contractual definition of merit, in civil cases, NCPLS attorneys review inmate claims to determine: “(1) whether the injury involved is such that it cannot satisfy the applicable legal standards (*de minimis* injury) and (2) whether the case lacks the chance for sufficient damages to justify pursuing litigation (*de minimis* value).”

Overall Methodology

To achieve Objective 1, we documented the case-management process in workflow format, using as much detail as possible given the data available, with information on workload, timelines, and associated costs provided throughout. The resulting work-flow charts are contained and explained in the first part of this report.

For Objective 2, we attempted to conduct a blind peer review process to the extent possible. A series of peer review panels examined a sample of files drawn from NCPLS's case file system. The sample of files (most of which were selected at random) was reviewed by experts in one or more of the areas covered by IDS' contract with

NCPLS—*i.e.*, criminal post-conviction proceedings, jail credit cases, or civil proceedings challenging conditions of confinement or the actions of government officials. The reviewers responded to a questionnaire customized for the specific type of case under review. Each review was anonymous and independent of the other reviews. Each file was reviewed by the entire panel, that is, by three individual reviewers. The only exception was with jail credit cases, which by their nature are much briefer and less complex. These files were reviewed by one reviewer.

Reviewers were identified by an assigned reviewer number on the questionnaires. Data from the questionnaires were entered into a database and summarized by evaluation staff. That information is presented in the second part of this report. In addition, while not initially solicited or planned, several of the reviewers requested the opportunity to provide additional comments following their review of files. In response, we offered all of the reviewers the opportunity to provide additional comments anonymously if they wished. Five of the 16 availed themselves of this opportunity. A summary of those comments is included in part three of this report.

For Objective 3, a separate review panel examined select cases identified by IDS. These were cases for which IDS had received written complaints from NCPLS clients, and were not a random sample. These clients may have exhausted the NCPLS grievance process through appeal to the Board Grievance Committee. They may have been in the midst of, or have entirely by-passed the internal NCPLS grievance process. The results are contained in part two of this report.

To add context to the evaluation and allow for participation by the NCPLS leadership, a series of open-ended interviews were held with the executive director, administrative officer, three team leaders, and executive assistant. We also solicited feedback from any staff member who wished to contribute any anonymous comments to the evaluation. Summaries from these interviews and any comments are contained in part three of this report.

Throughout the entire evaluation process, the evaluation team maintained strict client confidentiality.

I. NCPLS Case Management Process Evaluation

NCPLS responds to correspondence from incarcerated individuals throughout the state. While many of these people are simply seeking general or specific information about their legal rights as inmates, a significant number of clients write to NCPLS seeking post-conviction relief for perceived wrongs in the justice system, or civil relief for perceived wrongs in the prison system. It is NCPLS's duty to provide legal advice and assistance, and to determine whether these individuals' requests have merit. Where merit is found, NCPLS offers to undertake corrective administrative actions on their behalf, or to litigate the matter.

NCPLS uses a Legal Files software database to track cases, deadlines, assignments, time records, and other details associated with client services. NCPLS reports that each prisoner letter is scanned into an electronic file so that for each client, there is an electronic file and a hard copy file. Through use of this technology, NCPLS hopes to transition to a "paperless" office.

In calendar year 2005, NCPLS opened 12,878 case files, or approximately fifty files per workday. This total includes all cases handled by the legal teams as well as client grievance files. In NCPLS's overall, multi-step process, the majority of requests received are resolved by the Intake Team. This helps to streamline the workload for the Post-Conviction and Civil Teams to conduct investigations and litigation, even though the vast majority of cases handled by those teams are determined not to warrant litigation or other corrective actions. Such cases may be discussed at team meetings or with the Team Leader before final decisions are reached. All told, NCPLS reports that about 58 cases were approved for litigation by the Case Acceptance Committee in 2005.

Process Overview

NCPLS uses a complex process to handle their overall caseload. Of the 12,878 case files opened in 2005, 11,044 were cases which were resolved by one of the three legal teams—Intake, Civil, or Post-Conviction. Each was resolved in one of the following ways:

- Cases for which an informational packet or form response was sent to the client.
- Cases where a customized "quick response" letter was sent to the client, explaining how legal precedents and/or the client's circumstances precluded their having a litigable case.
- Cases that received more extensive review or investigation or both from an advocate, but which resulted in a determination of insufficient merit to proceed.
- Cases that had sufficient merit to proceed, and which were resolved through administrative means or brought to litigation by NCPLS attorneys.

NCPLS’s three legal teams include an Intake Team, a Civil Team, and a Post-Conviction Team. Each of the legal teams and the leadership of NCPLS receive administrative and technical support from NCPLS’s Support Team. All cases begin with the Intake Team. Cases which cannot be handled there are assigned to an advocate on either the Civil or Post-Conviction Team. Where a civil or post-conviction advocate believes there is sufficient merit to proceed with litigation, the case is then brought to the assigned advocate’s team for discussion. If the case would involve minimal cost, no court appearance, and less than fifty hours of work, the advocate may take corrective action on the case through less formal procedures. If not, the case is brought to the Case Acceptance Committee.

Resolution of NCPLS Cases in 2005	# of Cases	
Intake	7701	11,044
Civil	1653	
Post-Conviction	1690	
Jail Credit	1306	
Client Grievances	95	
<i>Jails (IOLTA funded)</i>	393	
<i>Court Appointment</i>	40	
Total	12,878	

Two other types of inmate requests are handled by NCPLS through state funding: jail credit cases and client grievances. Unlike the cases that proceed through the intake, civil or post-conviction, and case acceptance processes, jail credit and client grievance cases are identified early on in Intake, and sent to the lead attorney for Jail Credit or to the Grievance Coordinator. The jail credit and client grievance processes occur apart from the overall merit determination process for litigation. “Merit” for jail credit or a client grievance is different. In jail credit cases, advocates determine whether a client is entitled to credit for time served in jail and whether he or she has received proper credit; and in client grievance cases, advocates determine whether NCPLS erred in handling a case, in representing a client, or in evaluating merit for litigation.

The body of this section of the report includes an examination of the Intake Team, which conducts an initial review process, followed by a work-up process for preparing case files for the Civil Team or the Post-Conviction Team. The section continues with separate examinations for both of those teams’ processes. The section then includes an examination of the process for the Case Acceptance Committee and approval for litigation. Finally, the section also includes separate examinations of the processes for the Jail Credit Team and for Client Grievances. The section concludes with an overall discussion of cost, given the prior overview of the case management process and the team workloads.

This section is accompanied by illustrations of these interrelated processes in a flowchart format. Figure 1 illustrates how these flowcharts connect to form NCPLS’s overall case management process. All cases start with Intake, and advance through the process from there. How far they go depends on merit determinations made along the way by NCPLS team attorneys, generally in consultation with team leaders. There are separate, independent processes for jail credit cases and for client grievances.

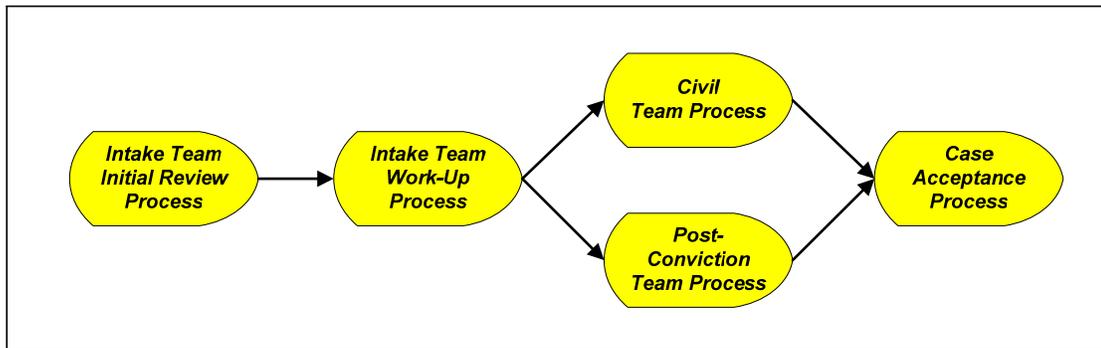


Figure 1: NCPLS’s Overall Case Management Process

In addition to cases handled through these processes, NCPLS also handles some civil jail issues and court-ordered investigations from the Eastern District of North Carolina (EDNC). Of the 12,878 case files opened in 2005, 393 were civil jail issues and 40 were court appointments. The specific processes involved and the handling of these cases were not evaluated and will not be examined in this report.

Methodology and Limitations

Through document analysis, staff interviews, and observational visits, we attempted to arrive at a correct understanding of the steps involved in NCPLS’s processes. Complete lists of all documents used, interview dates and those interviewed, and meeting dates and groups observed are included in Appendices E and F.

- *Document Analysis.* We examined several documents created by NCPLS to explain their team processes, both internally to staff and externally to the public. The most useful documents for our purposes were the NCPLS Work Plan, the Intake Management Plan, and the Client Grievance Procedure.
- *Staff Interviews.* We had a set of one-on-one or group conversations with key staff members throughout NCPLS. The most significant dates included an initial visit in January 2006, a mid-way discussion of findings in August 2006, and leadership interviews conducted in December 2006 (these interviews are also the subject of part three of this report). As well, several emails in which NCPLS staff explained processes were sent at our request.
- *Observational Visits.* We sat in on several team meetings in August 2006 to observe how the meetings were conducted and what issues were discussed.

All the measurement data included in this section come from an analysis of a 2005 case file data set provided at our request by NCPLS. On August 29, 2006, a complete list of all cases opened by NCPLS in calendar year 2005 was compiled using NCPLS’s Legal Files case management software. Data provided about the cases included “funding category” (civil or post-conviction), “case type” (indicating the team to which the case was referred), “date opened/closed,” and “hours billed” to the case. The data were put

into an excel file so that calculations could be made to determine measures of workload, time, and cost for cases handled within each team. Estimates of NCPLS's overall workload were made using these data as well.

Limitations. With each method used, certain research concerns arose which may limit the overall accuracy of the process part of the evaluation. As evaluators, we represent an outside perspective looking in. A document may explain the process in theory where a different, informal process is actually used. Interviews, while helpful, provide a single perspective on these informal processes. And meeting observations are a one-time occurrence of a process that may vary from week to week. Throughout the duration of the evaluation, we attempted to compensate for these shortcomings. For example, when the process charts were first mapped out, we checked our assumptions by meeting with NCPLS's leadership over a half-day in August 2006 to go through the charts step-by-step.

The data set provided by NCPLS had bearing on our interpretations:

- *Separating Intake Cases.* Without its own category label, there was no sure way to determine exactly which cases were handled in Intake as opposed to which went on to the civil or post-conviction processes. We made our best effort to separate out the intake cases by separating out cases of types that were known to be handled through intake (standard form letter, information about prisoner rights, family law, etc.), and which were closed in a week or less.
- *Completion of Timeline.* At the time NCPLS provided these data, some of the case files opened in calendar year 2005 were still open. A closing date of August 29, 2006 (the date the data were provided) was inserted in the excel file for these cases, and timeline calculations reflect this. In all, this condition applied to 350 of the cases.
- *Accuracy of Cost.* NCPLS reports that "hours billed" to a case are a measurement used for accounting purposes. Under the prior contract with DOC, the department required that a certain number of recorded hours be billed to cases in order to receive state funding. Because "hours billed" to cases is a mechanism for determining how the whole organization receives funding and not how individual attorneys and paralegals are paid, the data are not necessarily indicative of exactly how much time staff members spent on a particular case, and a given case did not necessarily "cost" the number of hours billed multiplied by an hourly rate. This section reports on total hours billed for each team, and concludes with a thorough discussion of *overall* cost estimates. To aid in the cost discussion, an overview of NCPLS's 2005 operating budget is included in Appendix C.

Despite the limitations which prevent precise accuracy of measurements, we are confident that the estimates provided in this section of the report are *relatively* accurate. We feel that the groupings of cases by total team workload, by days opened in each team, and by financial resources used by each team effectively mirror the way that work is done in a typical year at NCPLS.

The Intake Team

The Intake Team is currently comprised of three attorneys and five paralegals. These eight individuals share the duties of reviewing new requests for assistance, making an initial merit determination for each new request, and obtaining necessary support materials for cases forwarded on to the Civil and Post-Conviction Teams.

Intake Team: Initial Review Process. NCPLS receives all of its correspondence from clients through US mail. Over 100 pieces of mail may arrive at NCPLS on any given work day. About half of these are new requests for assistance, and the rest includes support materials for opened cases, such as court documents, DOC grievances, and returned client questionnaires. At the start of each work day, the Intake Team's attorneys and paralegals are responsible for opening, date-stamping, and sorting all new correspondence. Support staff members are often available to assist.

Once mail sorting is complete, new requests for assistance are divided equally among the three intake attorneys, who make an initial set of determinations about the request:

- 1) *Can NCPLS address the request?* Does the prisoner request assistance or services of the kind provided by NCPLS? If the request falls outside the scope of NCPLS's work, a denial of service letter is sent.
- 2) *Can the request be addressed by the Intake Team?* The Intake Team resolves over two thirds of client requests for services. Requests that cannot be addressed by the Intake Team are forwarded to the appropriate legal team, with some amount of additional work-up done by intake paralegals.

In general, the attorneys on the Intake Team are equipped to identify and respond to requests through form responses, packet responses, and quick responses (among which NCPLS reports more than 50 subject types are addressed). The attorneys on the Intake Team are NCPLS's first responders: it is their responsibility initially to determine what each client is asking and how the matter should be handled.

- *Standard form letters* may be sent if the client is seeking general legal advice, and NCPLS has a prepared response.
- *Pre-assembled packets* may be sent if the client is seeking information on prisoner rights and regulations, information about NCPLS services, or information about filing *pro se* (without the aid of counsel).
- *Quick response letters* may be sent if the client is seeking specific legal advice that intake attorneys are equipped to provide. Unlike standard form letters, quick responses are customized for the client. If the attorney senses any "grey area," she or he may seek assistance from or forward the matter to the appropriate team leader.
- *Sentence issue letters* are a type of quick response which may be sent if the client seeks information about a release date or indicates confusion over sentencing laws. Simple sentencing issues such as these can be identified and addressed by intake attorneys. Most often, these inquiries are categorized as involving a "sentence calculation." These letters are customized for the client, and if the attorney senses

any “grey area,” she or he may seek assistance from or forward the matter to the Post-Conviction Team Leader.

- *Family law letters* are processed by intake attorneys. At the present time, all of the family law requests are reviewed by a designated attorney in Intake. NCPLS reports that since they do not provide direct representation for these cases, quick responses are sent for each of them instead. As with all quick responses, a letter is sent applying the facts presented in the request to the laws governing that particular issue. Family law claims usually concern parental rights, child custody and visitation, paternity and DNA testing, or divorce and equitable distribution.

Intake Team: Work-Up Process. Requests that cannot be addressed by the Intake Team are forwarded on to the appropriate legal team, with some amount of additional work-up or file preparation done by intake paralegals. Intake paralegals begin the work-up process by sending a questionnaire to the client. The questionnaire primarily seeks information about the case that was not revealed in or included with the client’s initial letter. In civil cases involving physical injury, the questionnaire may be accompanied by medical records release forms. In post-conviction cases, prior offenses, prior record level, and other such information is requested.

The client has 45 days to return the questionnaire before NCPLS closes the case file. If received after 45 days, the intake paralegals will re-open the file and continue the process. Once the questionnaire is received, the information is reviewed by the paralegals to be sure the information is complete. Further steps in the work-up depend on the type of case being considered.

For civil work-ups, it is imperative that the client’s case file includes proof of grievances filed with the North Carolina DOC. This stems from a federal law that requires prisoners with a civil issue to “exhaust administrative remedies” with their state correctional agency before pursuing litigation. Once completed questionnaires and necessary filed grievances are received, the complete file is turned over to an intake attorney. With the additional information received, the intake attorney conducts a more substantive merit review of the case, focusing on whether the injury involved satisfies legal standards, and whether the request justifies pursuing litigation. The attorney may opt to close a file at this point if the case does not pass his or her merit review, but if it passes or if the intake attorney is at all uncertain, the file is discussed with the Civil Team Leader. For all intents and purposes, the intake attorneys are acting as civil advocates when making the merit determination which follows the work-up.

NCPLS only assists inmates with post-conviction claims if their direct appeal is final. If the case is still being appealed, an intake paralegal sends the client a “still on direct appeal” (SODA) letter and closes the file. In most cases, the direct appeal process will be completed and the client will again write to request assistance. The next step in the paralegal’s post-conviction work-up is to obtain specific court documents pertaining to the client’s case. For cases that were appealed, intake paralegals obtain these documents online from the North Carolina Court of Appeals website. For cases that were *not* appealed, intake paralegals have to order the necessary documents from the clerk of the

county in which the client was convicted. NCPLS reported that this can be a lengthy and cumbersome process due to the reliance on outside offices to retrieve and provide the needed information. Once court documents are obtained (and sometimes before), the complete file is turned over to an attorney on the Post-Conviction Team.

Intake Team Workload. Of the 11,044 cases that were resolved by one of NCPLS’s three legal teams in 2005, an estimated 7,701 (or 69.7%) were resolved in Intake. The remaining cases were handled by the Civil and Post-Conviction Teams. Estimates of the cases handled by category are shown below.

INTAKE	Category	Total Cases	% of Intake	% of All NCPLS
	Form Response	3228	41.9	29.2
	Packet Response	1956	25.4	17.7
	Quick Response	1451	18.8	13.1
	Family Law Issue	549	7.1	5.0
	Sentencing Issue	381	4.9	3.4
	SODA Letter	136	1.8	1.2
	Intake Total	7,701		69.7%

By far, the majority of the cases handled in Intake – and nearly a third of all NCPLS files opened in 2005 – involved form responses to clients. Prepared form letters are brief responses to legal issues by specific subject that NCPLS can address, but which NCPLS has determined clearly cannot be litigated successfully or otherwise resolved. For example, an inmate who has served many years in prison and feels that he or she has paid his or her debt to society may write to NCPLS about a time cut, and NCPLS will respond with a prepared form letter explaining that they can not obtain such relief for the client through the legal system. We estimate that in 2005, NCPLS intake paralegals sent prepared form responses (including SODA letters) to an estimated 3,364 clients.

When issues of sentencing and family law are included, quick response letters comprise the next largest set of responses in Intake. They are customized for the client, and are used for issues that are not as clearly “cut and dry” as those that can be addressed by a form response. Quick response letters are intended to be used when legal precedents and/or the client’s circumstances seem to preclude relief. They cover myriad issues, but two distinct types of quick responses address sentencing issues and family law issues. Sentencing issue letters are used when a request asks to provide a release date, indicates confusion over sentencing laws, and/or refers to simple sentencing issues. Family law letters are used for claims concerning parental rights, child custody and visitation, paternity and DNA testing, or divorce and equitable distribution. We estimate that in 2005, NCPLS intake attorneys sent general quick response letters, sentencing issue letters, and family law letters to an estimated 2,381 clients.

The next most prevalent set of cases handled in Intake involved informational packet responses to clients. Examples include information on prisoner rights and responsibilities, *pro se* litigation packets and post-conviction procedures manuals, or

information about NCPLS services. Like forms, these types of responses are also printed and prepared in advance. In 2005, NCPLS Intake paralegals sent prepared packet responses to an estimated 1,956 clients.

It appears that at least two thirds of the case files opened by NCPLS in 2005 involved issues that were addressed by the Intake Team. While this may seem like a daunting workload for a team of eight, the cases were handled in short order, and virtually all of these case files consist only of two things: the client's request and NCPLS's response. Of the estimated 7,701 cases resolved by the Intake Team in 2005, we estimate there were 5,320 which involved responses prepared in advance (a form response, packet response, or SODA letter). Files involving prepared responses represent about 69.1% of the Intake Team's total caseload, and about 48.1% of NCPLS's overall caseload.

Intake Team Timeline. Requests handled in intake are generally handled in less than a week. In fact, where all that is required is a quick response, a simple sentencing explanation, a packet, or a form, most cases are closed in one or two days. Family law cases are generally closed in under a month (26.5 days on average). Cases that are still on direct appeal (SODA) are closed in Intake, and this generally occurs in a week or less (on average, 6.3 days).

It is worth noting that Intake handles nearly 70% of NCPLS's caseload and all of its incoming mail, so in order to keep things streamlined, they will pass on some quick responses to the appropriate team. This generally occurs with more complex cases that require more than a week to complete the legal research needed to respond.

Intake Team Cost. According to the data, hours billed to Intake cases handled in 2005 amounted to 2,328.9 hours, and the average case handled in Intake had 0.4 hours billed to it.

The Civil Team

The Civil Team is currently comprised of four attorneys and one paralegal who is a registered nurse. This team is responsible for identifying meritorious cases and resolving them through administrative means, negotiation, or litigation. The team also addresses prisoner complaints of perceived wrongs having to do with medical treatment, conditions of confinement, and use of force.

Civil Team Process. All cases forwarded from the Intake Team to the Civil Team are received by the Civil Team Leader. Cases that have been through the Intake Team's work-up process have already been screened for merit by an attorney before being sent to the Civil Team. When a case passes that review, the case is assigned to a Civil Team advocate.

Where it is determined that a case does not merit litigation, the Civil Team advocates respond to such requests for assistance through customized responses which are based upon substantive legal research. Upon first review, the advocates determine whether the

case can be handled by a quick response. A quick response is sent if the issue can be handled within 30 days of being assigned to the Team Leader.

Civil Team attorneys may decide to factually investigate some cases if a quick response is not the appropriate resolution. When advocates choose to do such investigation, they send a status letter to the client indicating that they have been assigned to the case and that they will be in touch with a decision. The factual investigation that follows involves mostly reviewing medical or other records and may involve interviews with people related to the case. Generally, NCPLS reports these cases take longer than 30 days to resolve.

The Civil Team Leader also directly receives all civil medical issues. These are forwarded directly to the Civil Team Leader early in the intake process, before any work-up is done there. Once received, these cases are reviewed for merit by the Team Leader before being assigned to a team advocate. This type of case makes up most of the Civil Team’s workload, and the team paralegal (who is a registered nurse) assists in the work-up for these cases.

Following investigation, the individual advocate for a case decides whether further investigation and pursuit of litigation is justified, generally in consultation with the Team Leader. If he or she decides further investigation or litigation is not justified, he or she sends the client a response explaining the denial of further service. But if the advocate decides litigation is justified or might be justified, he or she brings the case to the weekly meeting of the full Civil Team to seek input and opinions from the group. The team recommendation may be to conduct further investigation, to attempt to resolve the case informally, or to take it to the Case Acceptance Committee for approval of litigation.

Civil Team Workload. Of the 11,044 cases that were resolved by one of NCPLS’s three legal teams in 2005, the Civil Team resolved an estimated 15%, or about 1,653 cases. The general types of these cases are shown below, along with workload estimates.

CIVIL	Category	Total Cases	% of Civil	% of All NCPLS
	Medical Treatment	624	37.7	5.7
	Quick Response	599	36.2	5.4
	Conditions	220	13.3	2.0
	Use of Force	210	12.7	1.9
	Civil Total	1,653		15.0%

Medical treatment cases, conditions of confinement cases, and use of force cases are the case types that received investigation by the Civil Team advocates in 2005. The quick response cases were handled by advocates where the case was able to be resolved without extensive investigation. Of the estimated 1,653 cases handled by the Civil Team in 2005, we estimate that 36.2% were handled by a quick response, and the remaining 63.8% were medical treatment, conditions of confinement, and use of force cases that received investigation by a team advocate. On average, any given attorney of the four on the Civil

Team had to investigate about 260 cases in 2005, or about five cases a week per attorney. Those who investigated medical issues did so with the assistance of the team paralegal who had medical training.

Quick response letters sent from the Civil Team cover a myriad of issues; for example, inmates fearing guards or other inmates where use of force has *not* taken place, or inmates alleging theft of property. In 2005, NCPLS civil advocates sent quick response letters to an estimated 599 clients. It should be noted that these responses may have been sent by any of three parties:

- By an Intake Team attorney just after a civil work-up where he or she has determined that the case does not merit further service;
- By the Civil Team Leader receiving the case from Intake and making the determination that the case does not merit further service or investigation; or
- By a Civil Team attorney assigned to the case who makes the determination that the case can be resolved in less than 30 days without further investigation.

Investigation was done by Civil Team advocates for about 624 medical treatment cases, 220 conditions of confinement cases, and 210 use of force cases in 2005 (we approximate 1,054 in all). Most of the medical treatment cases cite a lack of “access to adequate treatment” as the primary case type (481 of the 624). Other medical treatment case types include “negligent” treatment or “use of force” in treatment. Conditions of confinement cases cite issues such as overcrowding, safety, and sanitation, but most case types (199 of the 220) are simply categorized as “other.” Finally, use of force cases fall into two broad categories: “assault by guard” (157 of the 210) and “assault by inmate” (46 of the 210).

It is unclear at exactly what point in the process each of the investigated cases were closed, but following investigation, there are four possibilities:

- 1) *Just after investigation and before the case would have been discussed by the full Civil Team.* At this point, generally in consultation with the Team Leader, the individual advocate decides that the case warrants no further investigation or litigation. A denial letter with an explanation is sent and the case is closed after 30 days.
- 2) *Following a full team meeting in which the team decided the issue could be resolved through less formal means, so the case did not need to be referred to the Case Acceptance Committee.* At this point, the advocate or the full team decides that the request can be resolved through less formal administrative means (with minimal cost, no court appearance, and fewer than 50 hours of total work), and the advocate follows through.
- 3) *Following a full team meeting in which the team decides not to recommend litigation to the Case Acceptance Committee.* At this point, the full team decides that the case does not merit litigation and the case is closed. However, the process allows for an advocate to submit the case for case acceptance consideration without the approval of the team.

- 4) *Following referral to the Case Acceptance Committee.* At this point, the full team has decided to recommend proceeding with litigation, and the matter is brought to the Case Acceptance Committee.

Although it is unclear at exactly what point in the process each of the approximately 1,054 investigated civil cases were closed in 2005, there is reason to believe that many were winnowed out with the first step listed above. The full Civil Team meets once a week, and if the advocates are on average each investigating five new cases per week, it is unlikely that the team can routinely discuss *all* newly assigned cases in addition to other ongoing investigations. In addition, virtually all cases are winnowed out within the first three steps named above, because according to NCPLS, litigation was approved by the Case Acceptance Committee and authorized by the Executive Director in 58 cases during 2005.

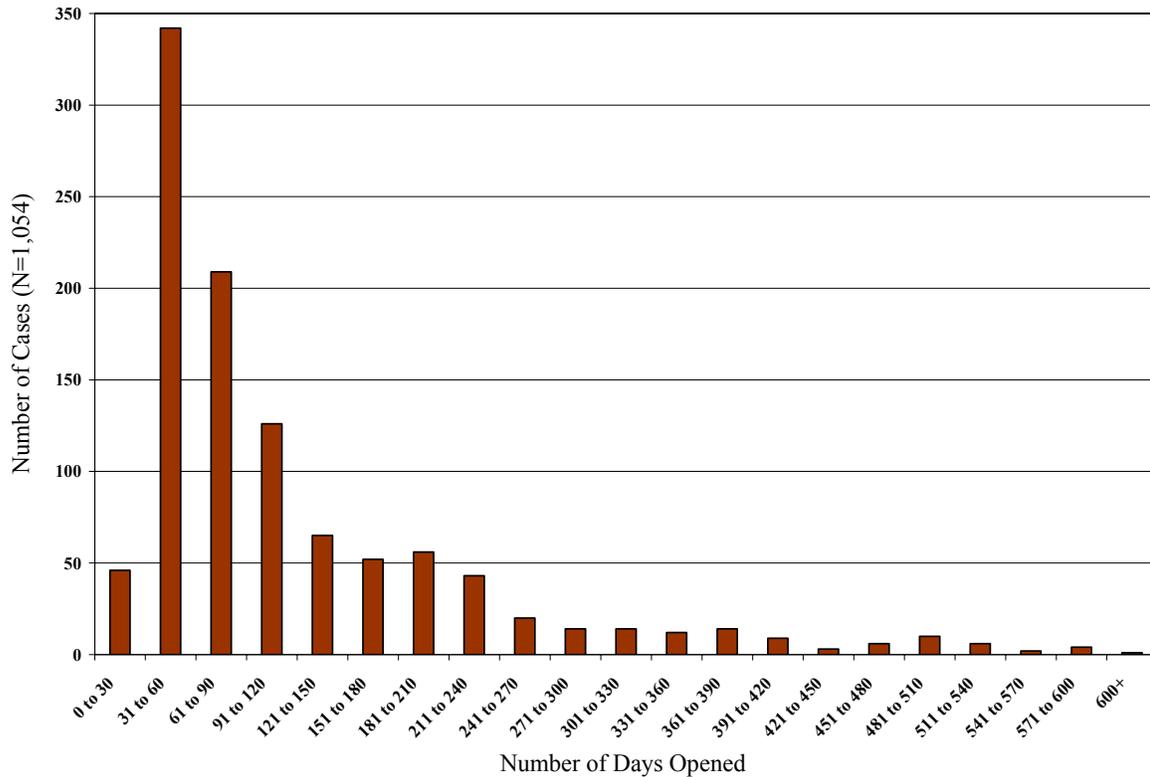
An observation of the Civil Team in August 2006 showed that each of the advocates brought about one or two cases to the full team meeting. Most of the cases that go to the full team are either resolved by informal procedures or closed for lack of merit without being sent to the Case Acceptance Committee. NCPLS reports an estimated 58 civil *and* post-conviction cases went through the full case acceptance process in 2005 (on average, just over one case per week)². According to NCPLS, most of these were civil cases, but that amount is still far fewer than the estimated 1,054 civil cases that received investigation. For *most* substantive, potentially meritorious civil cases that go through NCPLS, the ultimate decision for closing the case is made by the advocates individually, and sometimes with the consultation of the Team Leader or full team or both.

Civil Team Timeline. Cases handled by the Civil Team take significantly longer than those handled in Intake, but this timeline includes the time it takes for paralegals on both teams to acquire documents for work-up. The time it takes to close a case depends on the length of its work-up and on its complexity: more complex cases require more time and resources to investigate.

Civil cases overall are handled in about four months. Use of force cases were handled on average in 133.6 days; medical treatment cases in 123.5 days; and conditions of confinement cases in 99.7 days. Figure 2 shows the distribution of all civil cases opened in 2005 in terms of the number of days the cases were opened.

² - This is an estimation of the workload for the Case Acceptance Committee, which includes some cases that were opened by NCPLS in previous calendar years.

Figure 2: Duration of Cases Resolved by Civil Advocates in 2005



“Quick responses” took 117.9 days on average, but the name is actually a catch-all for myriad issues which generally require greater legal research on behalf of the client. As well, that number means that such cases were open for that long on average from the date the original request was received in the mail, and case files may have been held for many weeks during the Intake Team’s civil work-up while waiting on administrative grievances.

Civil Team Cost. According to the data, hours billed to civil cases in 2005 amounted to 6,638.3 hours, and the average case handled by civil advocates had 4.1 hours billed to it.

The Post-Conviction Team

The Post-Conviction Team is currently comprised of seven attorneys and one law clerk. The team also includes seven paralegals who specialize in jail credit cases, which generally do not require litigation. The work of the Jail Credit Team is described under a later heading in this part of the report. The Post-Conviction Team is responsible for making merit determinations for requests from clients contesting the legality of their trial, their sentence, or both.

Post-Conviction Team Process. Cases forwarded from Intake are categorized by the type of plea associated with the case; that is, “guilty” or “not guilty.” A significant number of cases are categorized by Intake as “status unknown,” but these are actually guilty plea or

not guilty plea cases that for one reason or another did not get labeled as such. Cases that fall into one of these categories are those which have gone through the Intake Team's work-up process.

Within the Post-Conviction Team, a parallel set of processes is followed for all cases forwarded from the Intake Team. There is one process for not guilty/status unknown pleas, which are sent to the Post-Conviction Team Leader; and another process for guilty pleas, which are sent to the team attorney in charge of supervising and coordinating work performed on guilty plea cases. The Team Leader and the guilty plea attorney follow different processes for assigning cases to team advocates. In addition, the Intake Team directly forwards re-opened cases to the Post-Conviction Team Leader. Re-opened cases are those which have been rejected previously but for which new information has been presented. Once received, these cases are reviewed for merit by the Team Leader before being assigned to a team advocate or rejected.

The process for not guilty/status unknown cases begins with the Team Leader. She reports that the "status unknown" classification is "an administrative mistake... Intake is supposed to classify the case as guilty or not guilty ... When [she] notices those classifications, [she] changes them to guilty or not guilty," and directs them through the appropriate process. NCPLS also reports that some cases lack sufficient information to be classified in Intake. For not guilty pleas, the process continues with the Team Leader's review of the case before assigning it to a team attorney. Prior to the meeting of the full Post-Conviction Team, the individual attorneys will conduct a legal and sometimes factual investigation of the case. The case is then discussed by the full Post-Conviction Team in a weekly meeting. This process is followed for *all* not guilty plea cases received from Intake. In these meetings, the Post-Conviction Team makes a collective decision about the merits of a case, as well as whether further investigation or litigation is warranted.

The process for guilty plea cases is quite different, and begins with a designated team advocate (not the Team Leader) receiving the cases from Intake. The advocate assigns each case to a team member. Prior to the meeting of the full Post-Conviction Team, the individual attorneys will conduct a legal and sometimes factual investigation of the case. The individual attorney for a case decides whether further investigation and pursuit of litigation is justified. They make this merit decision based on their own professional judgment, giving special consideration to the likelihood of achieving meaningful relief, as well as the time and resources needed for proper factual investigation. If they decide against offering further assistance, they send a response to the client explaining the denial of further service. But if they decide litigation is justified, or might be justified, they take the case to the weekly meeting of the full team. This process is followed for *all* guilty plea cases received from Intake.

Cases are then discussed by the full Post-Conviction Team in a weekly meeting. The cases are reviewed for merit by the full team with the understanding that from there, they may go on to informal resolution or to the Case Acceptance Committee.

Post-Conviction Team Workload. Of the 11,044 cases that went through part or all of the NCPLS case management process in 2005, the post-conviction team handled an estimated 15.3% (1,690 cases). The general types of these cases along with workload estimates are shown below.

POST-CONVICTION	Category	Total Cases	% of PC	% of All NCPLS
	Guilty Plea	943	55.8	8.5
	Quick Response	322	19.1	2.9
	“Unknown” Plea Status	239	14.1	2.2
	Not Guilty Plea	186	11.0	1.7
	Post-Conviction Total	1,690		15.3%

The quick response cases were handled by the Team Leader where the case was previously open and was able to be resolved without extensive investigation. This means that of the estimated 1,690 cases handled by the Post-Conviction Team in 2005, about 19.1% were handled by an initial quick response and the remaining 80.9% were guilty plea or not guilty plea cases that received investigation by a team advocate. The Post-Conviction Team Leader’s responsibilities are primarily quick responses for newly reopened cases (of which an estimated 322 were received in 2005) and an initial review and assignment of all not guilty plea cases. On average, any given attorney of the other six on the Post-Conviction Team had to investigate about 228 cases in 2005 or about four cases a week each.

By far, most of the cases that the Post-Conviction Team receives are cases for which the client initially pled guilty. Investigation was done by Post-Conviction Team advocates for at least 943 guilty plea cases and at least 186 not guilty plea cases. In addition, there were 239 “status unknown” cases that included cases of both plea types. For practical purposes, we may assume that these break down in proportion to the cases in which the status was known, which would mean about 1,143 guilty plea cases and about 225 not guilty plea cases, for a total of 1,368 investigated cases.

It is unclear at exactly what point in the process each of the investigated post-conviction cases was closed. But as is with the civil cases that make it this far, there are four possibilities following investigation:

- 1) *Just after investigation, and before the case would have been discussed by the full Post-Conviction Team.* At this point for guilty plea cases, generally in consultation with the Team Leader, the individual advocate has the discretion to proceed with the case if she or he believes it merits (or may merit) further investigation and litigation. If not, a denial letter is sent and the case is closed after 30 days.
- 2) *Following a full team meeting in which the team decided the issue could be resolved through less formal means, so the case did not need to be referred to the Case Acceptance Committee.* At this point, the advocate or the full team decides that the request can be resolved through less formal means (with minimal cost, no court appearance, and fewer than 50 hours of total work). The team recommends a

resolution for the case, such as a belated appeal or resolving a clerical error without filing a Motion for Appropriate Relief, and the advocate follows through.

- 3) *Following a full team meeting in which the team decides not to recommend litigation to the Case Acceptance Committee.* At this point, the full team decides that the case does not merit litigation and the case is closed. However, the process allows for an advocate to submit the case for case acceptance consideration without the approval of the team.
- 4) *Following referral to the Case Acceptance Committee.* At this point, the full team has decided to recommend proceeding with litigation, and the matter is brought to the Case Acceptance Committee.

While it is unclear at exactly what point in the process each of the approximately 1,368 investigated post-conviction cases were closed in 2005, just as with the Civil Team, there is reason to believe that many were winnowed out with the first step named above. The full Post-Conviction Team meets once weekly and *all* not guilty plea cases (of which we estimate that there were about 225) are discussed in these one- or two-hour meetings. This means that at least about four not guilty cases have to be discussed at each meeting.

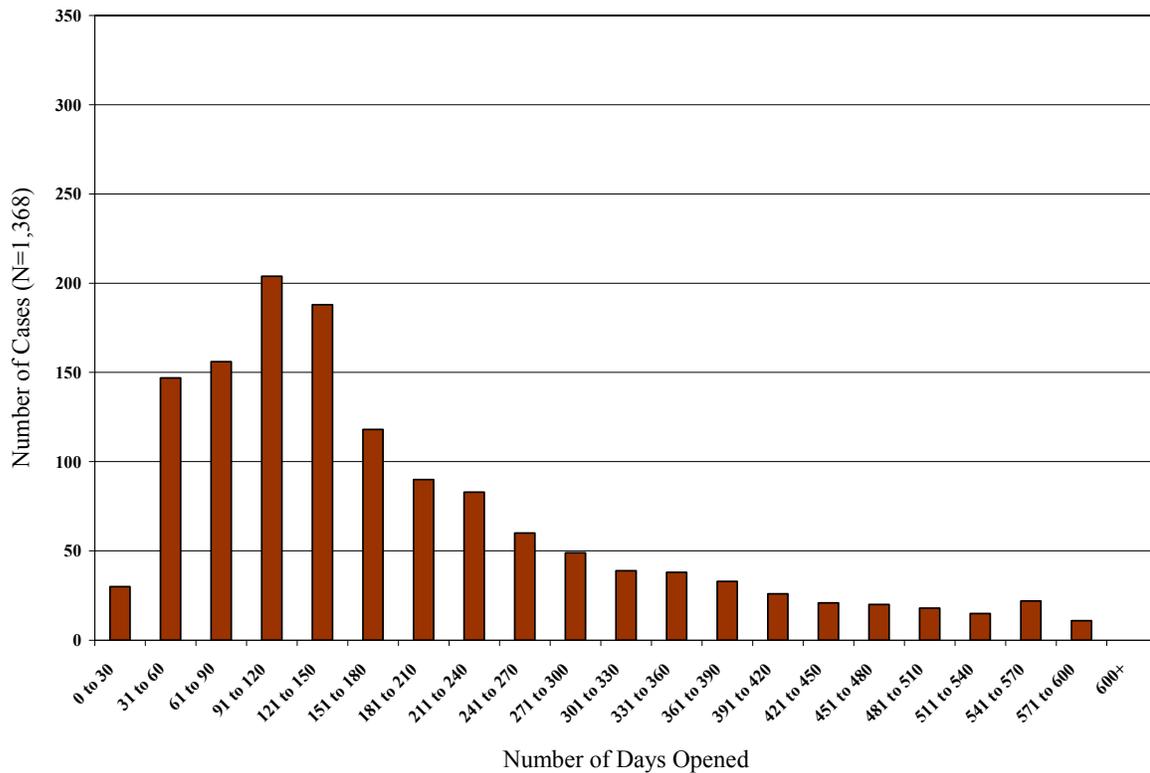
The remaining time is available for discussion of guilty plea cases, of which we estimate there to have been about 1,143 in 2005, or about 22 per week on average. Clearly, most of these had to have been closed before they would have been discussed by the full team. In addition, virtually all cases are winnowed out within the first three steps named above, because according to NCPLS, litigation was recommended to the Case Acceptance Committee in 58 cases during 2005.

Most of the cases that go to the full team are probably either resolved by informal procedures or closed without being sent to the Case Acceptance Committee. As stated earlier, NCPLS reports that an estimated 58 civil *and* post-conviction cases went through the full case acceptance process in 2005 (on average, just over one case per week)³. As with civil cases, the ultimate decision for resolving *most* substantive, potentially meritorious post-conviction cases that go through NCPLS is made by the advocates individually, sometimes with the consultation of the Team Leader or the full team or both.

Post-Conviction Team Timeline. The time it takes to close a post-conviction case depends on its complexity and on the time it takes to procure necessary information during work-up. Overall, post-conviction cases take about six months, including the time it takes for intake paralegals to acquire documents for the work-up. Not guilty cases opened in 2005 were handled on average in 237.4 days; guilty plea cases in 198.3 days; and cases for which the plea status was “unknown” in 95 days. There appears to be a significant difference between the time it takes to handle “unknown” cases compared to those properly categorized. Figure 3 shows the distribution of all post-conviction cases opened in 2005 in terms of the number of days the cases were opened.

³ - This is an estimation of the workload for the Case Acceptance Committee, which includes some cases that weren't opened by NCPLS in previous calendar years.

Figure 3: Duration of Cases Resolved by Post-Conviction Advocates in 2005



“Quick responses” took 101.6 days on average, but again, the name is actually a catch-all for issues which generally require greater legal research on behalf of the client.

Post-Conviction Team Cost. According to the data, hours billed to post-conviction cases handled in 2005 amounted to 10,839.1 hours. Cases handled by post-conviction advocates had an average of 6.5 hours billed to them.

The Case Acceptance Committee

NCPLS’s Case Acceptance Committee has five members. The committee consists of the leaders from the three legal teams and the NCPLS administrative officer, and is currently chaired by an attorney on the Post-Conviction Team.

Case Acceptance Process. If a civil or post-conviction advocate brings a litigable case to their team, and the team recommends referral to the Case Acceptance Committee, then the advocate meets with the committee for case acceptance. The committee meets once a week, depending on the need. As litigable cases arise, the committee places the advocate’s case on their meeting agenda, the advocate is present for the meeting, and the case acceptance process is followed.

The case acceptance process involves the committee and NCPLS’s Executive Director. The committee makes the decision of whether to recommend a case to the Executive

Director for litigation. If so, a written recommendation is sent and the Executive Director then makes the final approval decision. Cases that come before the Case Acceptance Committee have already been vetted by the intake process, by a civil or post-conviction team leader or senior attorney, by the team advocate assigned to the case, and finally, by the full team. NCPLS reports that by this point, a case is likely to be approved for litigation, with or without conditions. (NCPLS reports that conditional approval by the Executive Director is rare, and usually involves a resource, legal, or factual concern. In such instances, the case is returned to the committee, and the committee will return it to the advocate for appropriate follow-up.)

Case Acceptance Workload. NCPLS reports an estimated 58 cases went through the case acceptance process in 2005. On average, this is just over one case per week. NCPLS reports that most of the cases that go through the process are civil cases, as most post-conviction cases are resolved through less formal procedures. These 58 cases are not necessarily among the cases that were opened in 2005; many were opened in previous years and were considered for litigation by the committee and Executive Director in 2005.

Case Acceptance Timeline. The cases that went through the Case Acceptance Committee in 2005 are all cases handled by advocates on the Civil or Post-Conviction Teams. On average, the Teams' cases are open for four to six months, but those cases accepted and approved for litigation may be open for a year or more. This includes the vetting and investigation which preceded the team meeting as well as any additional investigation as required by the committee or the Executive Director during the case acceptance process.

Case Acceptance Cost. The hours billed for civil and post-conviction cases that go through the case acceptance process are included in the totals reported for those teams. Additionally, NCPLS allocated \$10,940 to "client litigation expenses" in their budget for calendar year 2005.

The Jail Credit Process

As the name suggests, jail credit is time deducted from a prisoner's sentence that is equal to the time the client spent in jail awaiting trial or plea. If a prison inmate in North Carolina feels that he or she is not being credited with some or all of the jail credit required by law, then he or she may write to NCPLS to have the problem addressed.

The process for handling jail credit cases exists apart from NCPLS's other case handling procedures. The Jail Credit Team is a subgroup of the Post-Conviction Team, consisting of one lead attorney supervising seven paralegals who handle the cases.

Jail Credit Process. Jail credit cases do not involve litigation. When a jail credit case is identified during the initial sorting of mail in Intake, the request is immediately forwarded to the Post-Conviction Team's lead attorney for jail credit. The attorney opens each file, putting them in order of the client's projected release date. Priority is thus given to the most urgent cases; cases for which the release date is closest are served first.

Each case is handled by a post-conviction paralegal working under the attorney's supervision.

The paralegals examine their assigned cases, and make an initial determination as to whether the credit status can be determined from the client's initial request:

- If there is only a request present but no substantive information, the paralegal designates the case a "red ink letter," and a request is sent to the client for additional information. These files are closed after 30 days if the client does not respond.
- If the information is present, but the credit status is unclear, the paralegal seeks additional information from the county jail(s) that had housed the client. The paralegal is responsible for ensuring that this information is received in a timely manner.
- If the information is present, and the client is clearly entitled to jail credit, then a case work-up follows.

If the paralegal determines that a client is not entitled to jail credit, then he or she writes to the client with an explanation and the file is closed. For cases where it is determined that a client is entitled to credit, a work-up follows. The paralegal will draft a letter to the clerk of the county where the client had been convicted. The work-up includes acquiring a client's jail records and including that documentation with the letter. The Jail Credit Team's lead attorney signs and sends all letters to county clerks, who then secure the jail credit time for the clients.

Jail Credit Workload. According to the data, the Jail Credit Team handled 1,306 cases in 2005. The Jail Credit Team's lead attorney's responsibilities are primarily at the beginning and end of each case; that is, opening and assigning the case, and closing the case with letters to the clerks. On average, any given paralegal had to review about 187 cases in 2005, or about three or four cases a week each.

Jail Credit Timeline. The time it takes to close a jail credit case depends on its complexity and on the time it takes to procure necessary information during work-up. As with other post-conviction cases, NCPLS reports that information work-up can be a time-consuming process. On average, jail credit cases take just over four months (129.5 days), which mostly includes the time it takes for the paralegals to acquire documents from clerks offices for the case work-up.

Jail Credit Cost. According to the data, hours billed to jail credit cases handled in 2005 amounted to 6,096.2 hours. The average case handled by a jail credit advocate had 4.7 hours billed to it.

The Client Grievance Process

The process for handling client grievance cases also exists apart from the process for litigable cases. If a client or former client of NCPLS feels that he or she was not given fair or adequate service, or disagrees with the decision regarding the case, then he or she

writes to NCPLS with a formal grievance. The grievance process is overseen by the Executive Assistant under the supervision of the Executive Director.

Client Grievance Process. Grievances are received through the daily mail. Clients are originally notified of the grievance procedure through a services brochure that is sent with each closure letter. When a client grievance is found in the initial sorting of mail in intake, the request is immediately forwarded to the Executive Assistant, who is also NCPLS's Grievance Coordinator. The Grievance Coordinator opens each grievance file and assigns it to the Executive Director or to one of NCPLS' designated senior attorneys. The Executive Director or other senior attorney reviews the case.

The attorneys examine their assigned cases, and make an initial determination as to whether the grievance has merit. For grievances filed over how a case was handled, the attorney reviews to determine whether the advocate deviated from established program policies and practices (such as deadlines, conducting investigation, or providing information). For grievances filed over the denial of representation, the attorney reviews to determine whether the original case had merit. This determination is made in accordance with NCPLS's contractual definition of merit, cases for which a "good faith argument can be made for recognition and which can generate either monetary, injunctive or post-conviction relief, and where the relief sought and the prospect of success are more than *de minimis*."

If the attorney determines either that a client's original case did not have merit or that the advocate did not err in the handling of the case, then the grievance is dismissed. The client is notified with an explanation and an invitation to appeal. The grievance file is closed after thirty days. The file remains closed if the client does not choose to appeal, but the file is re-opened and sent to the Executive Assistant if an appeal is received.

The grievance appeal process starts with the Executive Assistant referring the matter to the two-person grievance committee of the NCPLS Board of Directors. The grievance committee members review the case to make sure NCPLS's staff work was in accordance with program policies and practice. The two members may reach consensus or may decide individually whether the original case had merit, and their decision is final. If they determine that a client's original case did not have merit, then the grievance is dismissed, the client is notified, and the file is closed.

When a client grievance is found to have merit, either through a senior attorney's review or through the appeal process, the client is notified and the case file is re-opened for the original advocate to re-work. There are four courses of action in upholding meritorious client grievances:

- *No further action.* The matter is found irremediable under the circumstances. This may occur for grievances where the original case lacked merit, but the issue was over how it was handled (for example, if NCPLS took too long responding to a request).
- *Reassignment.* The matter is remanded to the Executive Director, who will convey specific or general instructions to the assigned or newly assigned advocate.

- *Reconsideration.* The matter is remanded to the Executive Director or the assigned advocate with specific instructions to reconsider the matter in light of a fact or case that had been overlooked.
- *Referral.* The matter may be remanded to the Executive Director to refer to outside counsel. NCPLS reports that this is “extremely rare.”

Client Grievance Workload. NCPLS reports that 95 cases went through the client grievance process in 2005. On average, this is about two cases per week. These 95 grievance files are not necessarily related to cases that were opened in 2005; that is, many were cases opened in previous years, and the client grievance was brought to NCPLS in 2005.

Client Grievance Timeline. The Executive Assistant’s primary duty as Grievance Coordinator is to assign grievances to senior attorneys and to the NCPLS Board of Directors’ grievance committee members. Grievances are to be turned around in 30 days from receipt of the initial correspondence from the inmate. The Grievance Coordinator reports that where the grievance case cannot be handled within 30 days, it is NCPLS policy to notify the client of the status of his or her file within that time frame.

Client Grievance Cost. There is no specific budget for client grievances, and attorney hours spent reviewing and responding to grievances are not billed to the *Bounds* contract. The process is funded through NCPLS’s overall operating expenses, including salaries to the Executive Assistant and others involved. However, this evaluation included an examination of NCPLS’s grievance procedure because it is the quality control that NCPLS has established to ensure that it is meeting its obligations under the *Bounds* contract.

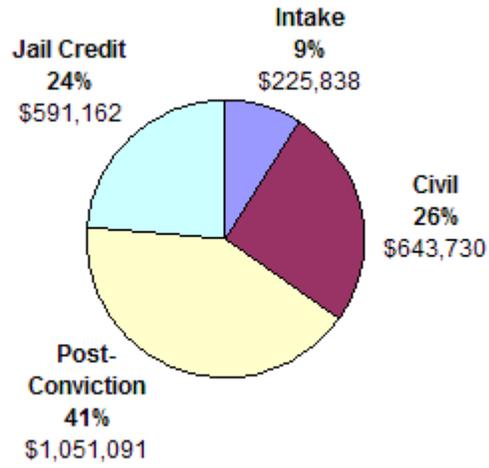
Case Management and Cost Estimates

NCPLS’s overall support revenues received under the state contract in 2005 amounted to \$2,511,821. (For a more detailed breakdown of activities, please see Appendix C.) Hours billed to all cases opened in 2005 amount to 25,902.5 hours. It is worth noting that many of these hours were actually billed for work done in 2006, but this limitation is offset by the fact that in 2005, advocates were also working on cases opened in 2004 and other previous years. In other words, the total is a good (if not exact) indication of how many hours of work are put in by NCPLS’s legal staff in any given year.

Dividing NCPLS’s 2005 support revenues received by the total hours billed to cases opened provides an approximation of how much of the budget was absorbed by work done by each team. Please see Figure 4 on the following page.

Figure 4:

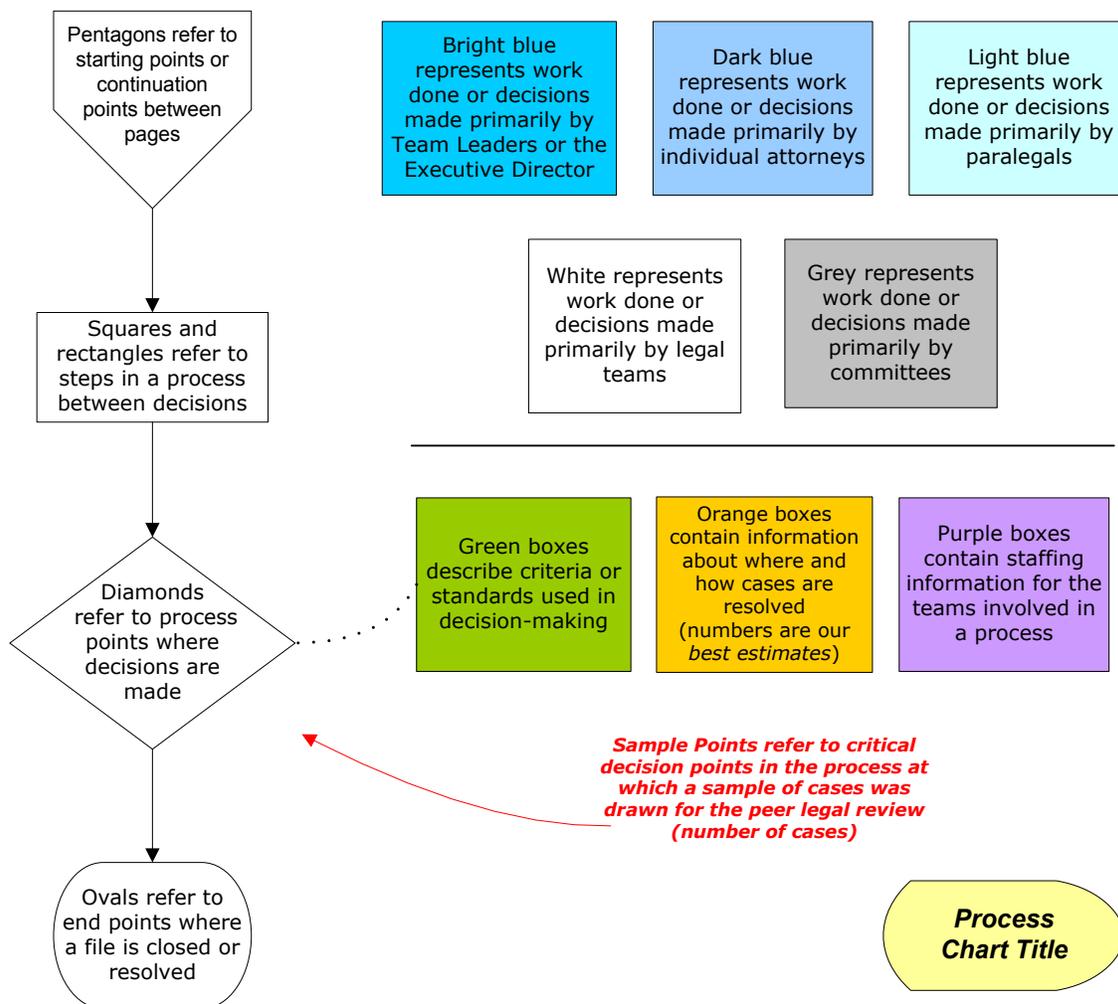
Estimates of how much of the total 2005 state funding for NCPLS went to cases handled by each legal team (N=\$2,511,821; estimates based on hours billed to cases)

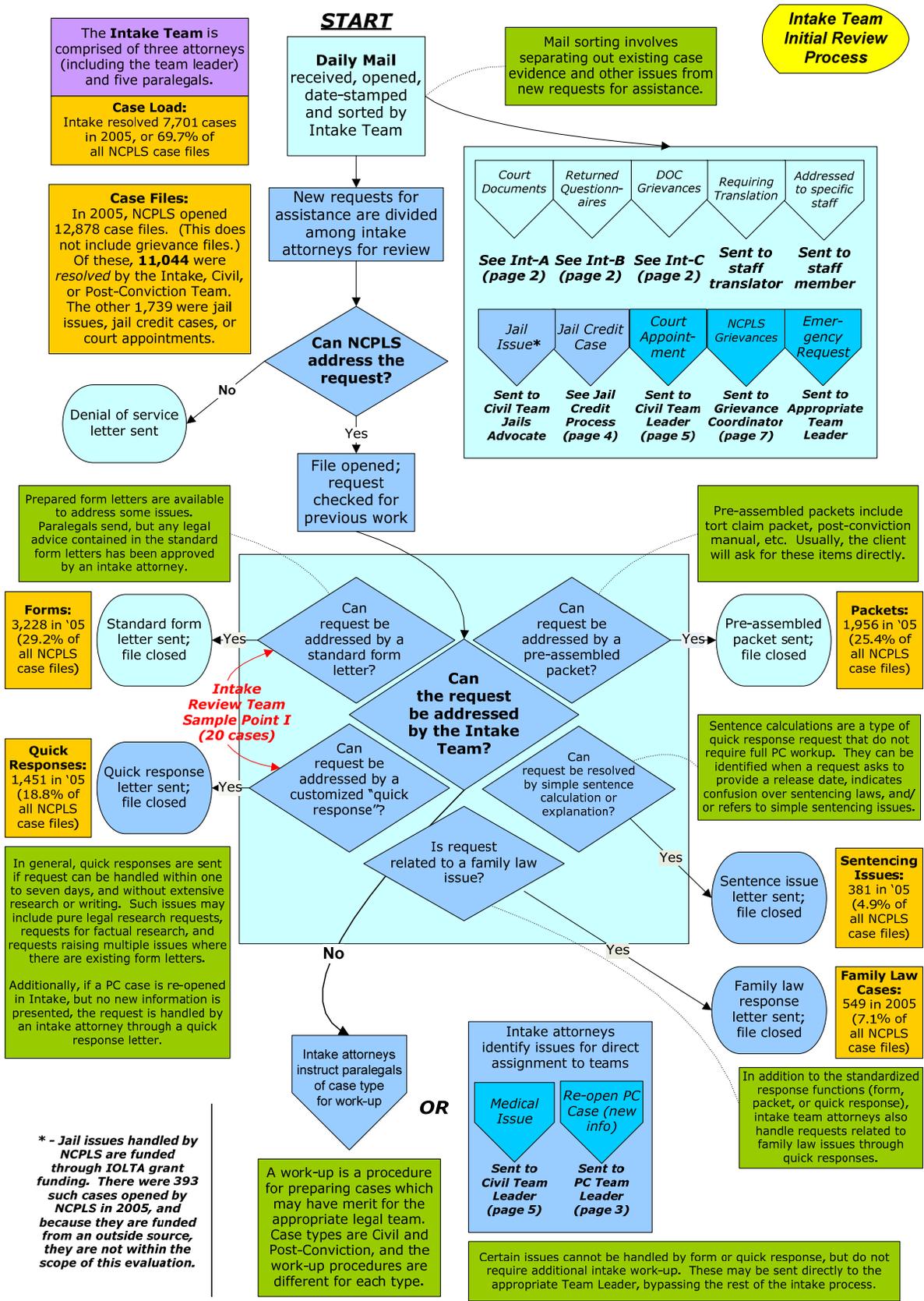


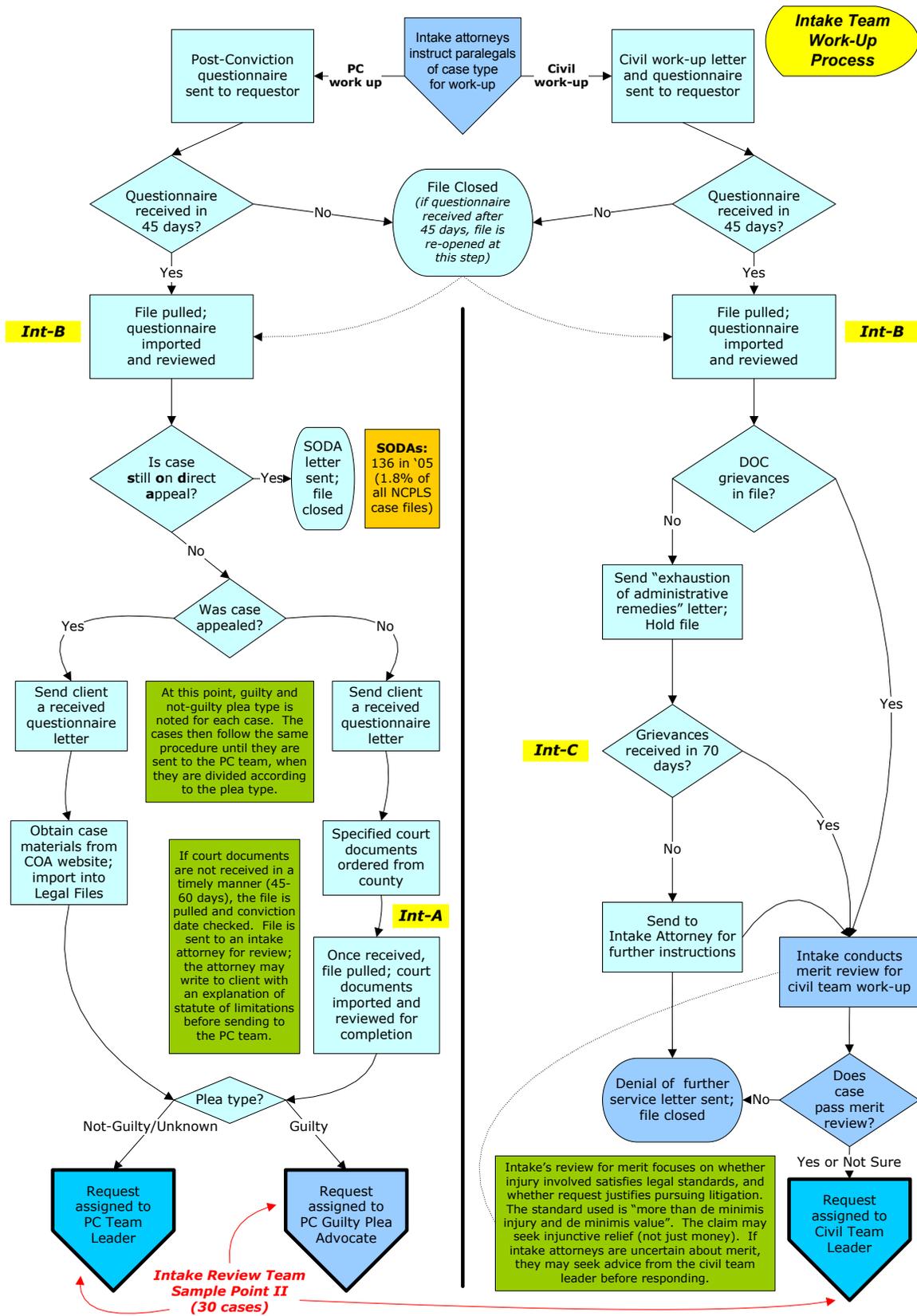
Evaluation of North Carolina Prisoner Legal Services

Case Management Process Flowcharts

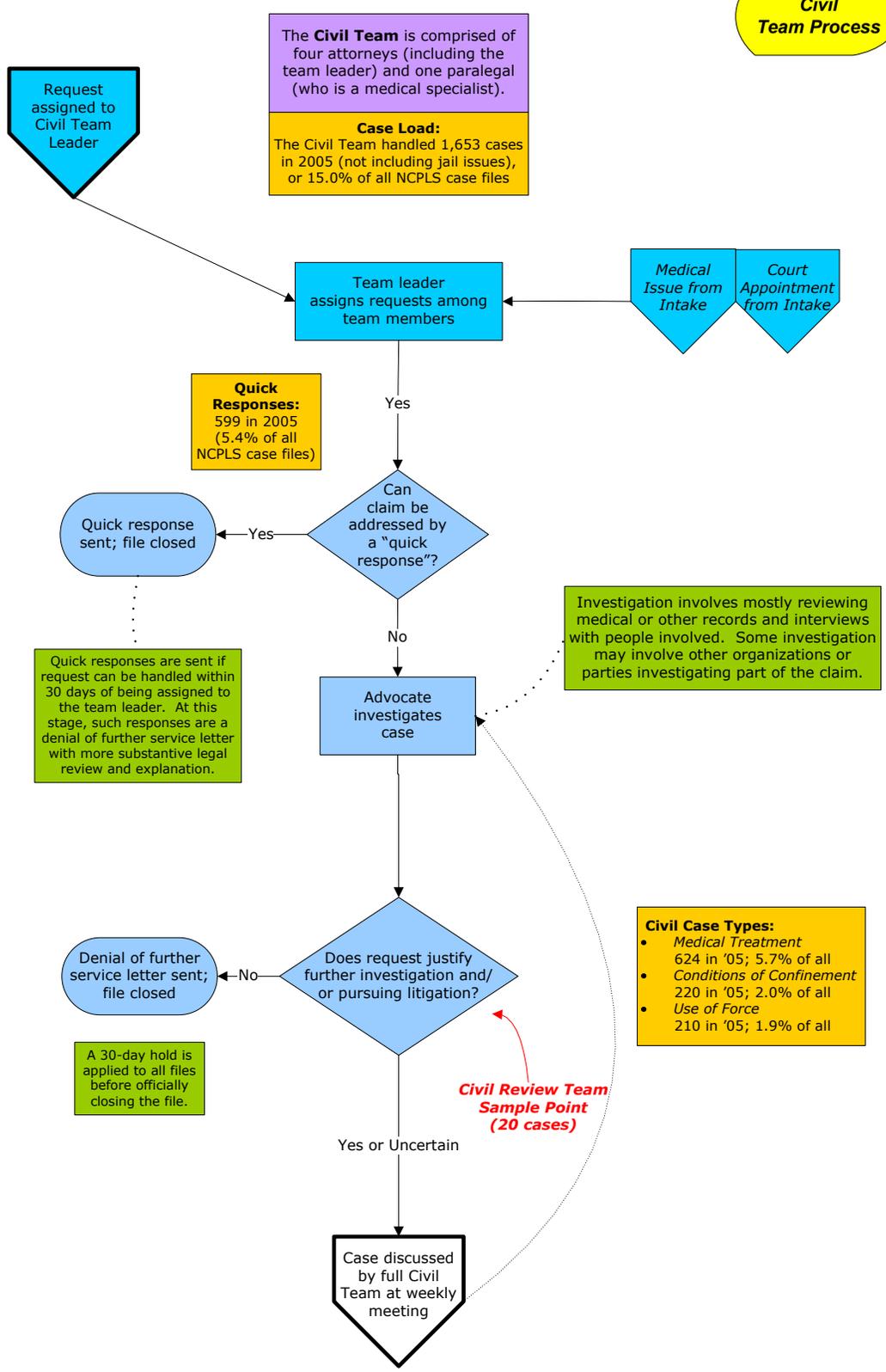
The following charts illustrate NCPLS' case management process as explained in Part I of the evaluation report. The charts begin with two pages showing the processes used by NCPLS's Intake Team, followed by a page for the Civil Team's process, a page for the Post-Conviction Team's process, and a page for the Case Acceptance Committee's process. There is then a page for the Jail Credit process and a page for the Client Grievance process.

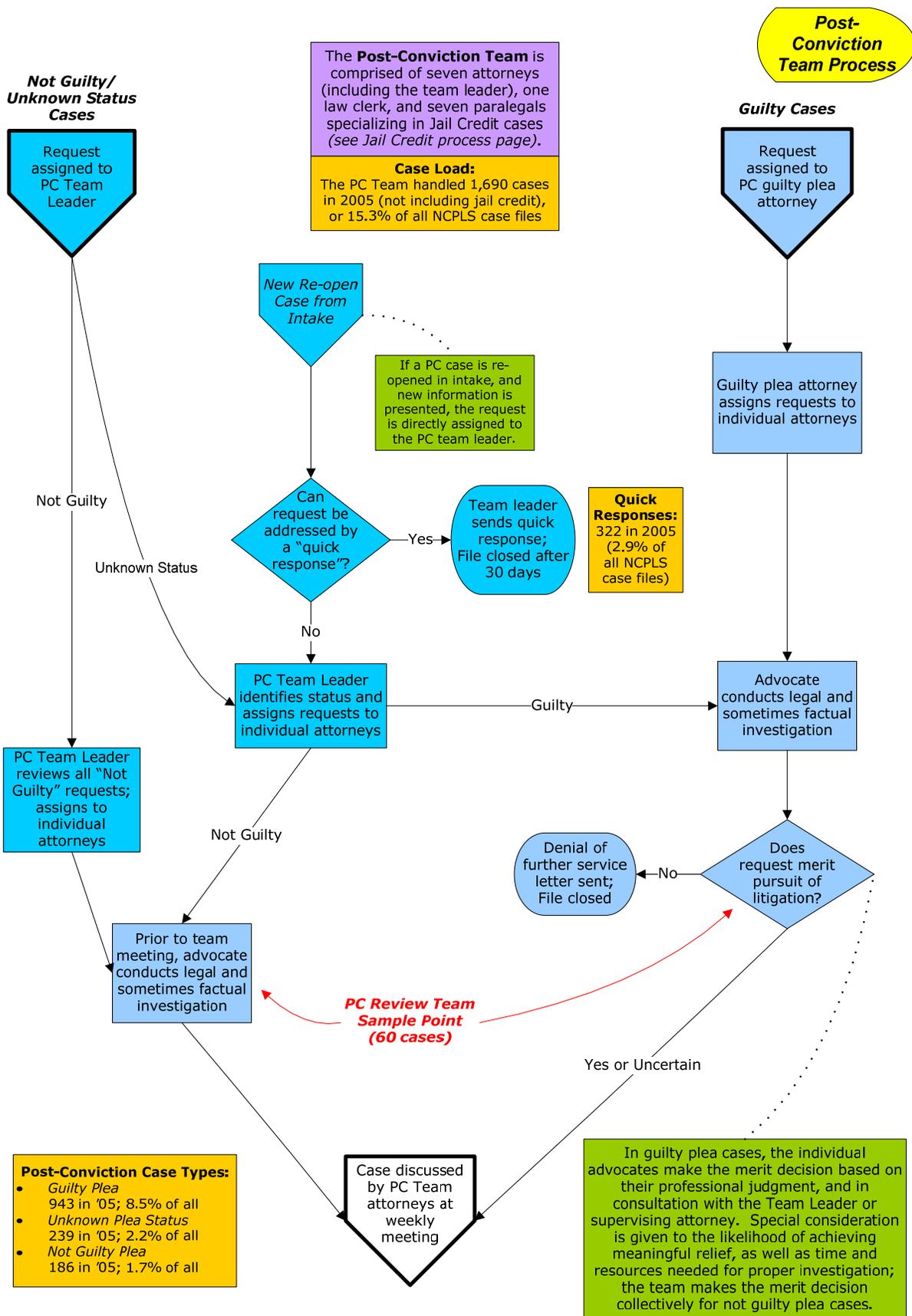




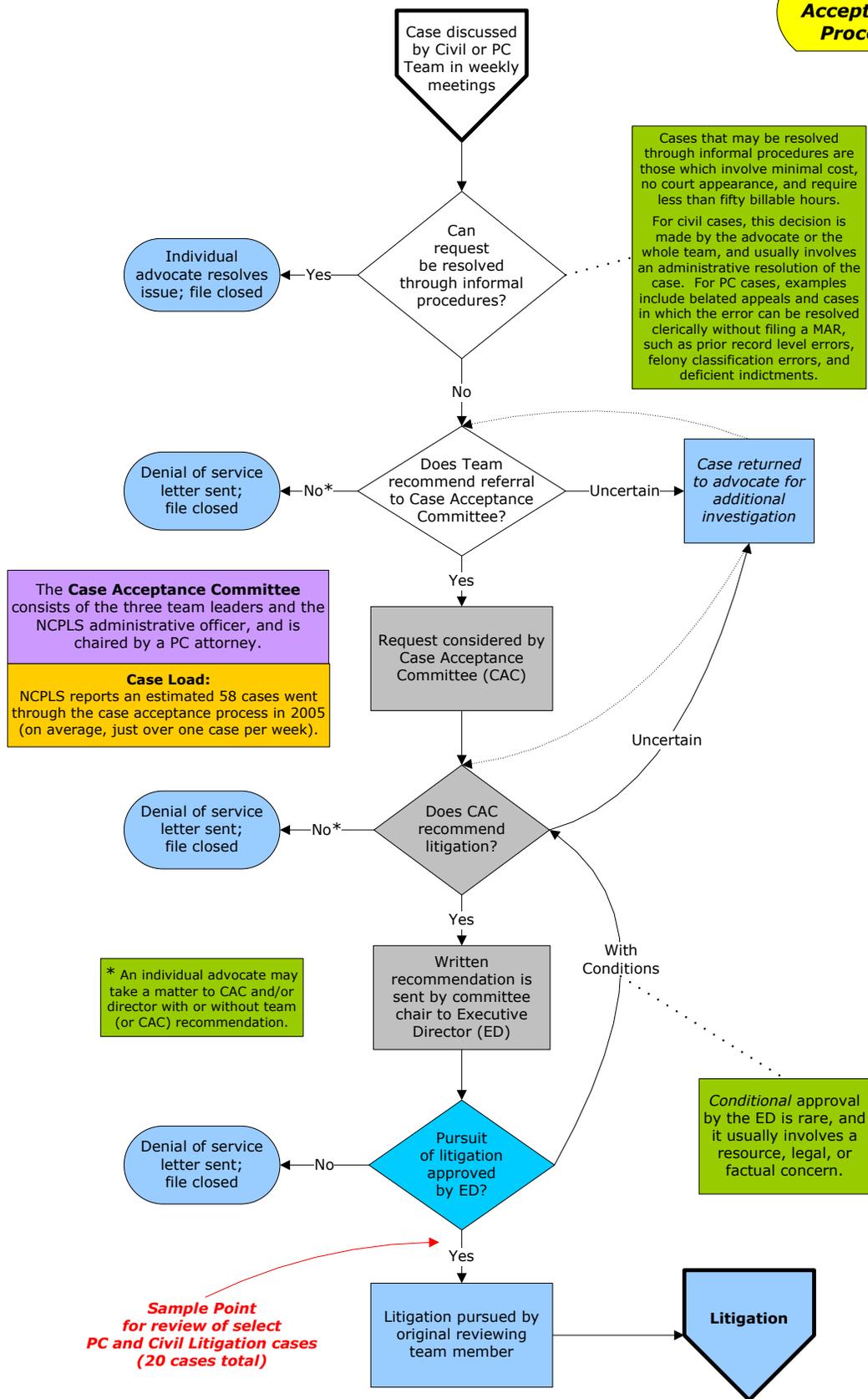


Civil Team Process





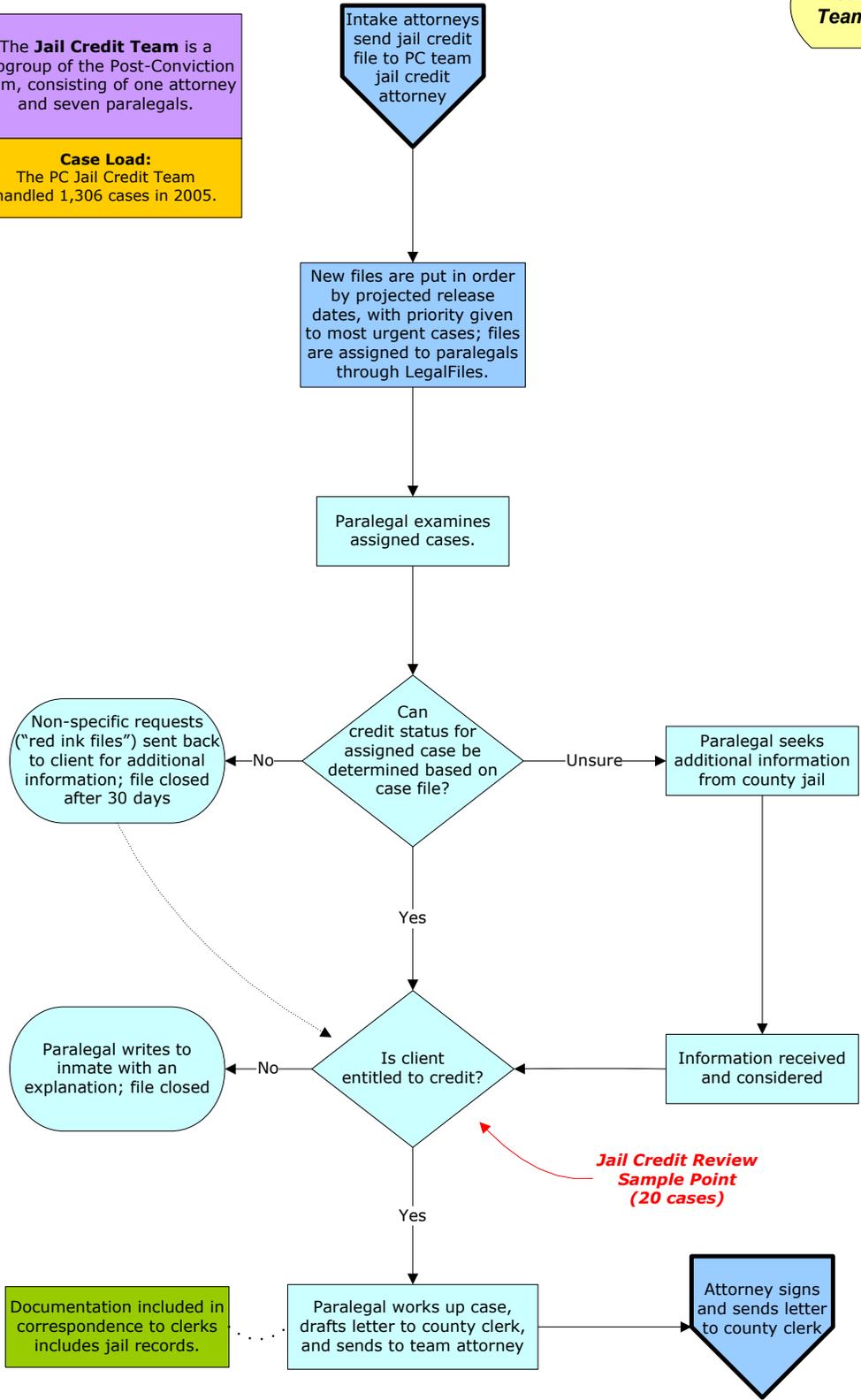
Case Acceptance Process



Jail Credit Team Process

The **Jail Credit Team** is a subgroup of the Post-Conviction team, consisting of one attorney and seven paralegals.

Case Load:
The PC Jail Credit Team handled 1,306 cases in 2005.



*Jail Credit Review
Sample Point
(20 cases)*

Client Grievance Process

The **Client Grievance Process** is overseen by the Executive Assistant under the supervision of the Executive Director.

Case Load:
NCPLS reports that 95 cases went through the client grievance process in 2005 (on average, about two cases per week).

Grievances are received through daily mail following an invitation to grieve, which is sent to a client in the event that he or she disagrees with NCPLS over denial of representation or the handling of their case. Grievances may also be filed at any stage in the handling of a case, not necessarily before closure.

Client grievance is sent to executive assistant

Executive Assistant sets up client grievance file; assigns to ED or designee (senior attorney)

The process also directly involves the advocate(s) responsible for the case, and a separate advocate (the ED or a senior attorney designee) who conducts the evaluation. Currently, there are eight senior attorneys on staff at NCPLS.

In cases where the client appeals the grievance, the three-person grievance committee of the NCPLS Board of Directors is involved in the process.

File reviews are conducted to determine if the advocate(s) deviated from established program policies and practices in handling the case, or if they missed a case with merit in denying representation.

ED or other senior attorney reviews file; makes decision based on grounds for grievance

Merit exists in a claim where a "good faith argument can be made for recognition and which can generate either monetary, injunctive or post-conviction relief, and where the relief sought and the prospect of success are more than *de minimis*."

Does original case have merit? (For denial of representation)

Factors affecting how a case was handled may include issues such as timeliness, investigation, and information provided to the client.

Does the grievance have merit? (For handling of a case)

Grievance dismissed; client is notified with explanation and right to appeal. File closed after 30 days

Appeal Dismissal? (Client)

Case sent to Executive Assistant who refers case to Board Grievance Committee

Grievance Committee reviews case to make sure NCPLS staff work was in accordance with program policies and practice

Client grievance upheld; client is notified, and case is returned to original advocate for reworking

Does the original case have merit?

Case is sent back to client with explanation; file closed

There are four courses of action in upholding client grievances:

- *No further action.* Matter is found irremediable under circumstances.
- *Reassignment.* Matter remanded to ED with specific or general instructions.
- *Reconsideration.* Matter remanded to ED with specific instructions to advocate.
- *Referral.* Matter remanded to ED to refer to outside counsel.

The Executive Director may also take any of these actions as a result of first-level grievance review.

Appropriate Action Taken

II. Peer Review of NCPLS’s Work

The second phase of the evaluation involved a set of peer review panels evaluating the overall effectiveness of NCPLS. We asked the reviewers to focus on the appropriateness and quality of NCPLS’s responses in light of the requirements of the contracts with DOC and IDS, the standards prescribed by the Rules of Professional Conduct, NCPLS’s case acceptance priorities, and the peer reviewers’ views of the needs and interests of the prison population.

Methodology

As indicated in Table 1, we formed six panels to review a selection of case files. Each panel was responsible for a different type of case file. In the instance of Post-Conviction case files, which tended to be longer and more complex, two panels were formed.

Review Panel	Number of Panelists	Number of Files Reviewed
Intake	3	50 files, selected at random
Post-Conviction I	3	15 post-conviction files, selected at random 5 post-conviction litigation files <i>(mix of guilty and not-guilty cases)</i>
Post-Conviction II	3	15 post-conviction files, selected at random 5 post-conviction litigation files <i>(mix of guilty and not-guilty cases)</i>
Jail Credit	1	20 jail credit files, selected at random
Civil	3	10 civil files, selected at random 10 civil litigation files
Grievance	3	Selection of 19 files for which IDS had received a written complaint re: NCPLS
Totals	16 panelists	110 case files selected at random 20 semi-random litigation files 19 select grievance files

Table 1: File types and quantities reviewed by peer review panels

Several factors were considered when drawing a sample of files:

- The randomly-selected files for intake, post-conviction, jail credit, and civil reviews are files which were opened in calendar year 2005 and are currently closed.
- The semi-random selection of litigation files for post-conviction and civil reviews are files which were approved for litigation by NCPLS’s Executive Director in calendar year 2005. These files may have been closed or open. Selected post-conviction litigation files were those for which a motion for appropriate relief or

habeas petition was filed; selected civil litigation files involved the filing of a complaint.

- The grievance files were selected by IDS staff from cases in which IDS had received a written inmate complaint about NCPLS's services. The grievance files were not a random sample.

For all but the grievance files, we limited our review to files opened in the most recent calendar year possible (2005) to best reflect the current organizational structure of NCPLS. We generally limited our pool to cases that had been closed to minimize interruption of service provision and to be able to see the full NCPLS response. Files involving litigation could involve action over a period of years. For these, we chose to limit our pool to those cases which the Executive Director had approved for litigation in 2005. Therefore, these cases may have been opened or closed outside of 2005. For grievances and litigation files, some may still have been open due to the lengthy nature of the case. In these cases, the files were reviewed and returned to NCPLS staff immediately following review.

To improve our questionnaires and determine an appropriate sample size, we asked Alyson Grine, J.D., a legal defender educator at the School of Government with public defender experience, to pilot-test one of our questionnaires. In July 2006, she spent a morning at NCPLS reviewing five different post-conviction files using a draft questionnaire. We timed how long it took her to review each file. This information was matched with what IDS felt would be an appropriate time to ask reviewers to spend in the panel review process. From this, we were able to determine the sample size that would be feasible given the resource limitations of the project (see Table 1). Our sample is not large enough to be considered statistically significant, but should provide thoughtful insights.

We obtained a list of all files meeting our criteria from NCPLS's LegalFiles case management database. Using a random number generator, we selected the sample. With an evaluator present, the cases were pulled from the file record room and stored separately. An evaluator then placed all papers in the file in chronological order.

All information for each NCPLS case file is also kept in electronic format through the software system LegalFiles. We received conflicting advice from NCPLS staff as to whether the paper or electronic files would be most complete, and therefore the best for the reviewers to use. Both paper and electronic files may be incomplete, although a great deal of emphasis is placed on scanning all paperwork related to any particular file into the LegalFiles database. However, using only the electronic files would have required extensive training for the reviewers or NCPLS staff working directly with reviewers during the review process. To determine the best course of action, several paper case files were selected at random and compared to the electronic system, and found to be consistent and complete. We therefore chose to rely on paper files for the review. NCPLS staff offered to provide access to the Legalfiles system if necessary.

In the course of the reviews, there were several instances of reviewers or evaluators noticing documents missing from the paper files. In these cases, the evaluator assisting the reviewers worked with NCPLS staff to print off the missing documents to complete the file if possible. In almost every case, NCPLS staff were able to print off or locate the missing documents immediately. However, there may have been cases where a document was missing but this fact was not brought to the attention of the evaluator staff monitoring the process.

Grievance files were not selected at random, but were selected in response to letters received by IDS. Some of the files had gone through the formal grievance process within NCPLS and some had not. These files are not necessarily representative of the typical grievance situation.

The panel reviews took place over six days in a two-week period of October 2006. Each panel devoted three full consecutive days in either the first week (October 9-11, 2006) or second week (October 16-18, 2006), with the exception of the jail credit reviewer, who conducted his review on October 17. The reviews were held at NCPLS's office in Raleigh. An evaluator was present to assist the review panelists at all times.

The 16 review panelists were selected based on their areas of expertise. IDS selected the panelists with input from NCPLS. All of the selected reviewers had some prior contact with NCPLS or IDS staff (please see Table 2).

Review Panel	Panel Members
Intake	Fred T. Friedman, Chief Public Defender, Sixth District, Minnesota Ann E. Groninger, Attorney at Law, Raleigh, NC Marvin R. Sparrow, Attorney at Law, Rutherfordton, NC
Post-Conviction I	Ben Dowling-Sendor, Assistant Appellate Defender, Durham, NC Ann B. Petersen, Attorney at Law, Chapel Hill, NC Kenneth Rose, Center for Death Penalty Litigation, Durham, NC
Post-Conviction II	Faith S. Bushnaq, Attorney at Law, Charlotte, NC Reita P. Pendry, Attorney at Law, Charlotte, NC Rich Rosen, Professor of Law, UNC School of Law
Jail Credit	Anthony Purcell, Assistant Public Defender, Charlotte, NC
Civil	Reid Cal Adams, Attorney at Law, Winston-Salem, NC Jack Holtzman, NC Justice Center, Raleigh, NC Carlos Mahoney, Attorney at Law, Durham, NC
Grievance	Frank G. Queen, Attorney at Law, Waynesville, NC Mary Pollard, Center for Death Penalty Litigation, Durham, NC Winifred H. Dillon, Attorney at Law, Garner, NC

Table 2: Composition of Peer Review Panels

Reviewers were given the following information before the review:

- General information about NCPLS and the planned evaluation
- The DOC and IDS contracts with NCPLS during calendar year 2005
- A blank sample questionnaire for the applicable team
- NCPLS's case acceptance priorities
- NCPLS's guidelines for de minimis review in civil cases (intake, civil, and grievance panels only)
- NCPLS's client grievance policy (grievance panel only)

Review panelists read each file, and filled out a questionnaire customized for the case type (jail credit, post-conviction, etc.). Please see Appendix D for sample copies of the questionnaires. Results are summarized throughout the remainder of this section.

Question by Question Intake Review Panel Analysis (50 cases reviewed)

In the analysis presented in the following pages, we first present the question included on the questionnaire, the average overall score on that question for all of the reviewed files, and then a histogram of the scores so that readers may understand the detailed responses underlying the average scores. We also present a summary of the reviewer comments associated with the question. When selecting quotes to illustrate and support our summary, we attempted to select quotes from cases that received a range of scores. We tried not to include comments that could identify particular cases. We did not attempt to independently confirm reviewers' assertions or interpretation of the material in the case file.

For the questions below, the following scale was used:

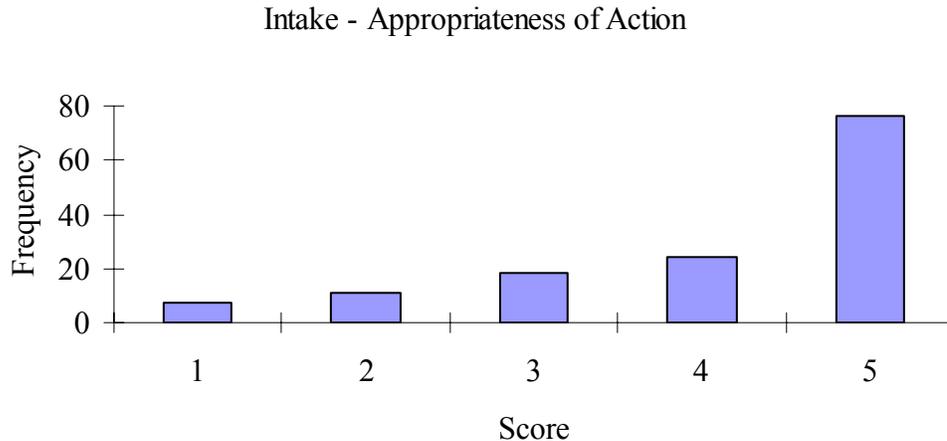
(strongly agree) 5 4 3 2 1 (strongly disagree)

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Question: The actions taken by the Intake Team were appropriate.

Reviewer average: 4.11

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer comments (N=42): While a few comments complimented the Intake Team’s work or reflected the difficulty of dealing with an unclear request, many reviewer comments expressed the view that the minimum was done, or in some cases, the Intake Team was not aggressive enough in requesting information. The comments include:

- “Intake addressed each concern, one by one”
- “Inmate asked for PC packet and they sent it”
- “Should have requested prison file/medical records”
- “Should have requested more info (i.e. discharge(?)) before evaluating case”
- “Give the forms to the prisons so the clients can fill them out sooner and everyone saves postage.”

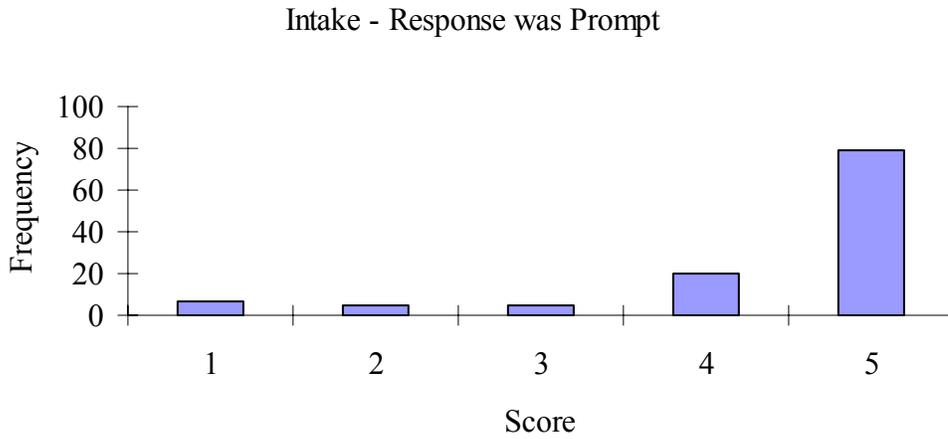
One case invoked strong negative comments from all the reviewers.

- “This guy is over 60 years old and has been in prison over 30 years for a burglary. This is outrageous. No one asked for his prison file or tried to learn the circumstances of the crime. Just a discouraging letter re: MARs and commutations. They didn’t even give him advice (as I saw in a different letter in another case) on how to improve his chances at a parole hearing.”

Question: The Intake Team's responses to all of the inmate's correspondences were prompt.

Reviewer average: 4.38

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

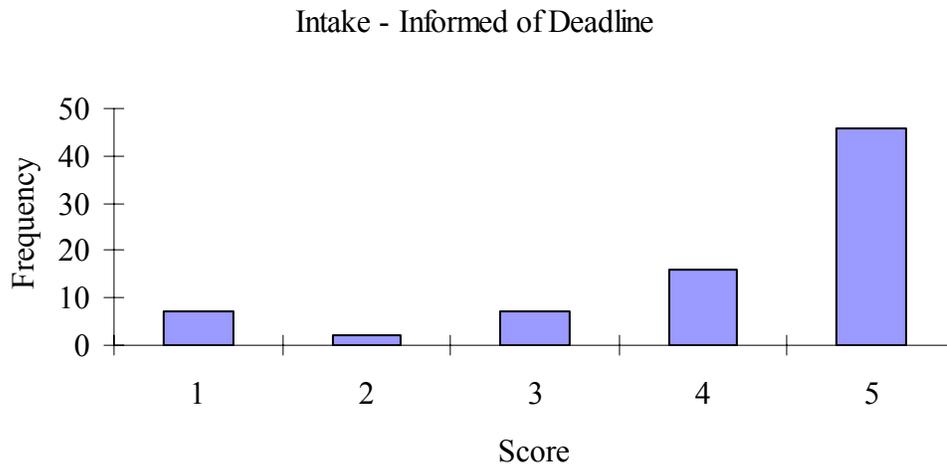


Reviewer Comments (see next question)

Question: Where appropriate, the Intake Team informed the inmate of all applicable deadlines.

Reviewer average: 4.18

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer Comments (N=41)

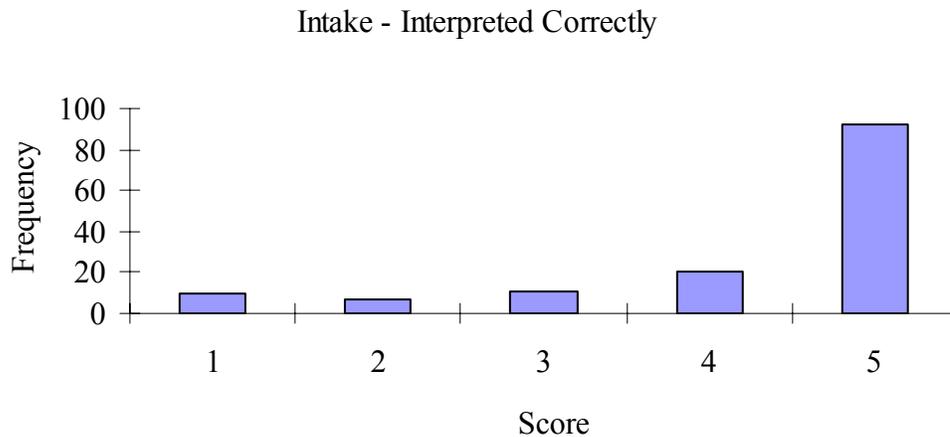
Because they deal with a similar issue, the responses for these two questions are reported together. Some reviewers were pleased with the quick turn-around on an inmate's request. A number of comments simply mentioned that response letters were undated, so the reviewer was unable to determine if it was prompt. There were also several comments about the response being late, or not including specific information on the inmate's statute of limitations. Sample comments include:

- "2nd request received on 6/27/05 was answered (with packet) on the same day. 1st request answered within 1 week, including (?) to court to try to respond to inmate's questions."
- "Some questions answered, some not"
- "Don't know → undated"
- "Did not talk about deadlines"
- "Why 6 months to get court docs? Another 6 months to refer to legal team?"
- "I have noticed on a lot of files that the original packet has generalized info about SOLs. However, the inmate is never informed of his specific SOL until the PC team gets the case – often long after the initial contact and when the SOL is days from expiring (here, notified 4/5 of 4/12 deadline)"

Question: The Intake Team appropriately interpreted the inmate’s questions and requests.

Reviewer average: 4.27

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer Comments (N=34)

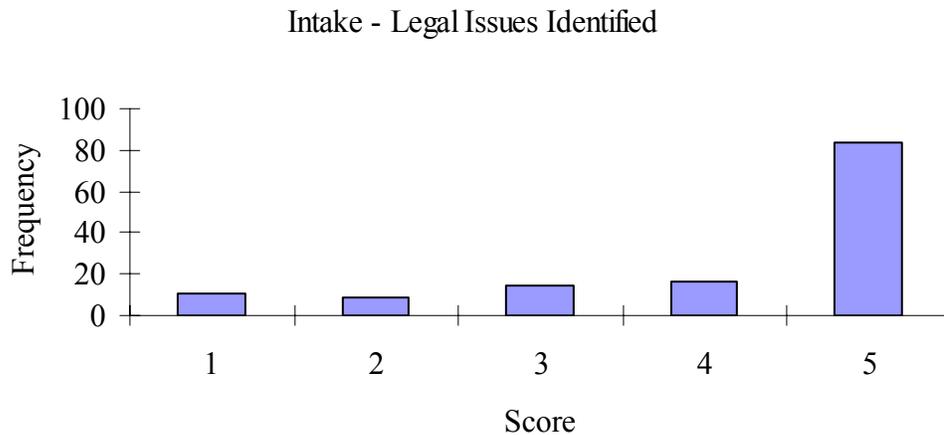
On this question, many of the reviewers’ comments were complimentary. Another significant portion indicated the reviewer was uncertain. There were a few negative comments. Sample responses include:

- “Well done file”
- “The form helped”
- “Inmate requested info and it was sent”
- “They understand the question but the answer is incomplete – how about the conflict of interest?”
- “Do not know. Cannot tell”
- “Cannot tell from file if intake team spotted issue. Client’s letters were well written.”
- “No. Completely incomplete and inappropriate response. THIS MAN NEEDS A LAWYER NOT A FORM.”

Question: The Intake Team appropriately identified the predominant legal issues presented by the inmate’s correspondence.

Reviewer average: 4.15

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer comments (N=53)

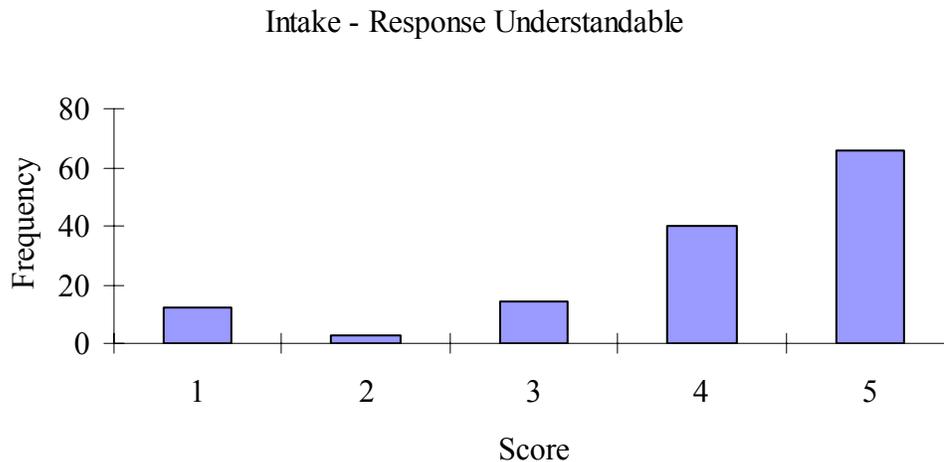
Almost all of the comments stated that issues were identified, but only to the extent that the file was referred appropriately to the Civil or Post-Conviction Team. This caveat was found in reviewers who rated a file as a “5” and who rated it as a “1” meaning that some reviewers found this very disturbing while others did not. Sample comments include:

- “Right on point”
- “Very well!”
- “Just sent a packet”
- “To the extent referred to PC team, yes.”
- “Good work on this file”
- “To the extent referred to PC; but I think if IAC claim is made, lawyer’s file could be requested”
- “It is not clear – it appeared that the intake team was able to remove detainers, as requested. However, inmate requested help in resolving pending misdemeanor charge so his time could run concurrent – not sure whether that charge was resolved or addressed.”
- “No legal issues identified, other than it was post conviction as opposed to civil”
- “To the extent referred to PC team, yes. Otherwise, no particular issues ID’d”
- “Identified, yes. But nothing done about them.”

Question: The Intake Team’s response(s) would be understandable and useful to the average inmate.

Reviewer average: 4.07

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer Comments (N=56)

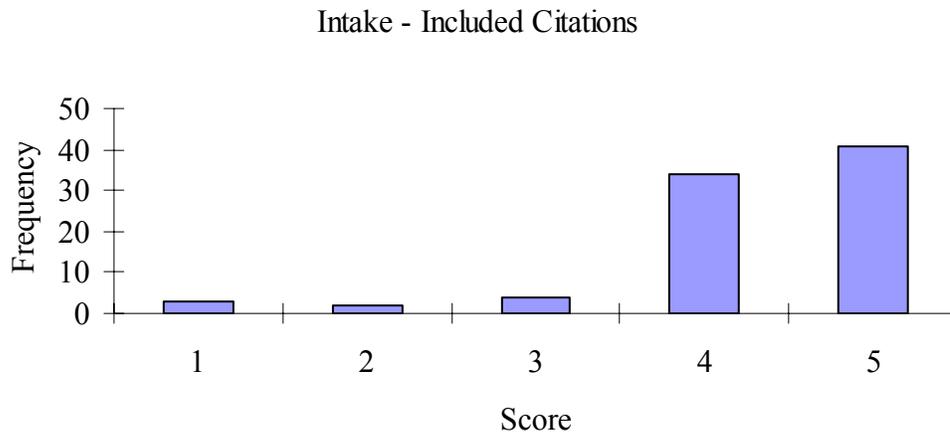
Of the 56 comments for this question, only eight were complimentary, with short comments such as “well done.” The vast majority of the comments expressed frustration with the use of form letters. Several mentioned that while the letter was understandable, it was not particularly useful. Examples of comments include:

- “Good letter, very easy to understand”
- “This is the only guilty plea case I’ve reviewed in which the PC Team contacted the client’s attorney to investigate client’s IAC claims.”
- “Understandable – the office writes a lot of bad news”
- “May be helpful to include in that packet some instructions on how to get the court docs that are required”
- “Inmate wanted DOC printout and they sent it”
- “Understandable but not useful”
- “Intake is pro forma. Legal team response is formulaic and applies law to facts they didn’t have (ie – p. 3 – assumes attorney gave strong advice vs. coercing)”
- “Not all, much more work should have been done on this file”
- “No – Not useful – spend more time on questions rather than rely on computer generated answers”
- “Not even close – they just sent a form letter”
- “I don’t understand letter”

Question: Where appropriate, the Intake Team’s correspondence included citations to relevant legal authority.

Reviewer average: 4.25

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer Comments (N=18)

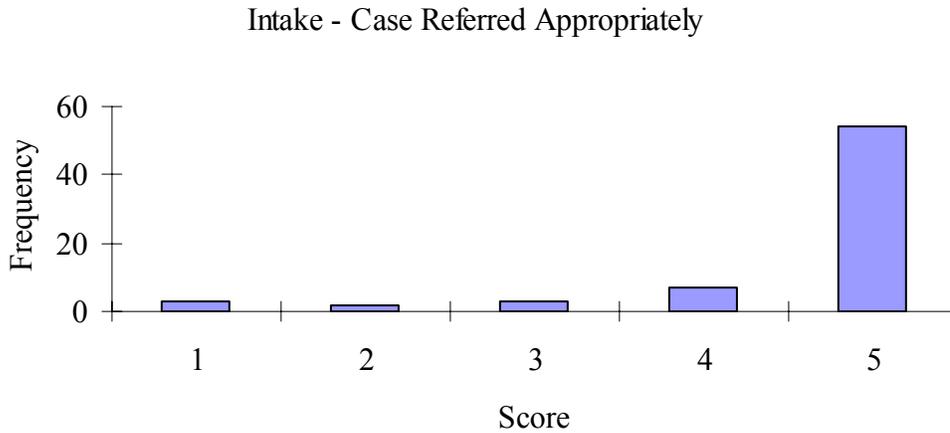
There were few comments on this question, but for the reviewers who did comment, there appeared to be a sense that if there were citations, it was due to the fact that there was a form letter response. Comments include:

- “Normal form letter”
- “Not cited by intake, just legal team”
- “Sure – it is a form response”
- “No legal authority cited by intake team”

Question: If the Intake Team referred the case to the Post-Conviction and/or Civil Team, that decision was appropriate.

Reviewer average: 4.49

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer comments (N=15)

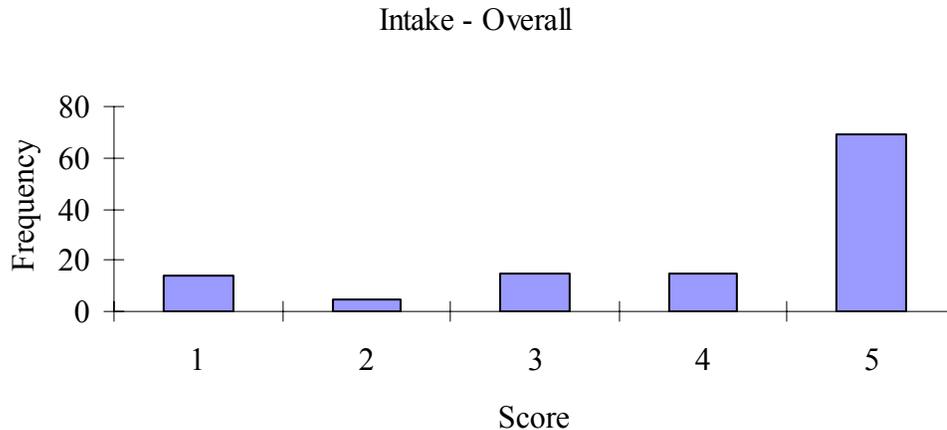
Overall, reviewers had few comments. In general, they felt the files had been referred appropriately. If there were any negative comments, they involved the view that not enough had been done, rather than a case being referred inappropriately. Examples include:

- “Yes and good letter”
- “Ya – but more needed it to be done by PC team”
- “Yes but should have obtained more info first”
- “Yes – but took way too long and no follow-up at all by legal team.”

Question: Overall, the decisions made by the Intake Team with respect to this inmate letter were appropriate.

Reviewer average: 4.00

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



Reviewer Comments (N=37)

The majority of reviewers' comments to this question highlighted that even when appropriate, NCPLS responses were limited.

- “Yes, well written”
- “Service provided effectively”
- “Appropriate but should have also checked with lawyer re: plea and looked at transcript of plea hearing to see what judge said.”
- “On criminal law yes, on civil law no.”
- “More time and care should have gone into the response”
- “No, did not adequately explain problem or decision.”
- “Decisions yes, addressing specific questions, no.”
- “Decisions were appropriate but form letter should not have been relied on”

General Reviewer Comments on Intake Files (N=61): Reviewer comments ranged from compliments to a few strong negative comments, most of which have already been reflected above. Other insights include:

- “all in all, correct”
- “Mills letter to client on 5/02/05 is real strong! Good job”
- “In this case form letter was appropriate.”
- “It’s a close call, and hard to argue with attorney discretion.”
- “Problem was successfully resolved. Unclear how or why.”
- “Write a personal response”
- “More than a form letter is needed.”
- “No inmate response to form letter. Form letter missed the point, but correctly informed of need to exhaust grievance.”
- “Someone should have written to this guy to let him know what his restitution was”
- “The client asks a fair question. It was not answered. Over-reliance on form response”
- “The other concern is that PC team told inmate he could pursue MAR on his own and they would provide forms on request. Inmate wrote letter saying he wanted to pursue and would they help him. Apparently without sending forms, attorney responded that they could not help.”

**Question by Question Civil Review Panel Analysis
(20 cases reviewed)**

In the analysis presented below, we first present the question included on the questionnaire, the average overall score on that question for all of the reviewed files, and then a histogram of the scores so that readers may understand the detailed responses underlying the average scores. We also present a summary of the reviewer comments associated with the question. When selecting quotes to illustrate and support our summary, we attempted to select quotes from cases that received a range of scores. We tried not to include comments that could identify particular cases. We did not attempt to independently confirm reviewers' assertions or interpretation of the material in the case file.

For the first question, on complexity, we used the following scale.

(very complex) 5 4 3 2 1 (not complex)

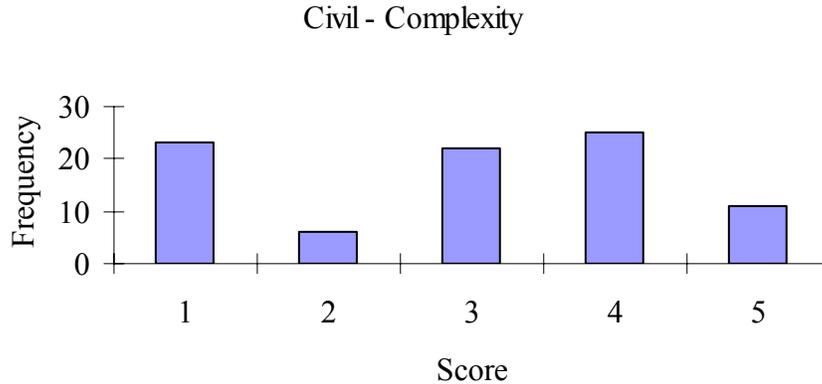
For the rest of the questions below, the following scale was used:

(strongly agree) 5 4 3 2 1 (strongly disagree)

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Question: Please circle the number that, in your professional opinion, reflects the overall complexity of the factual and legal issue(s) raised in this case file:

Reviewer average: 2.96

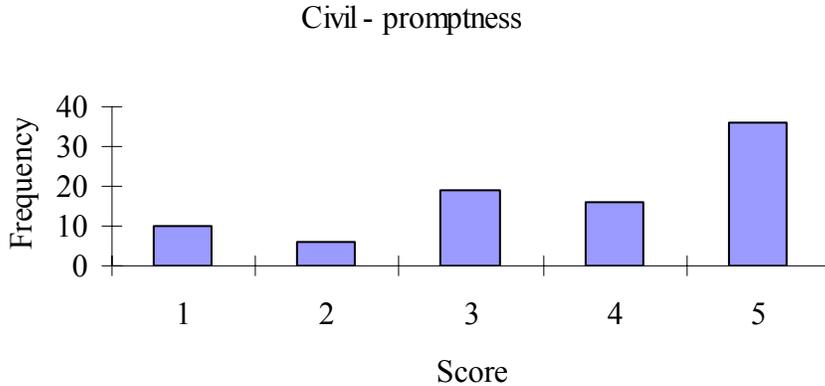


A lower score (1 or 2) reflects less complex work, a higher score (4 or 5) reflects more complex work.

Reviewer comments (N=13 non-litigated, N=7 litigated): There were very few reviewer comments for this question. The only general comment on the non-litigated cases was, “Multiple issues and very difficult prisoner.” All of the comments for litigated cases referred to the type of case with no other information.

Question: The Civil Team’s response(s) to all of the inmate’s correspondence were prompt? (NCPLS’ policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Civil Team’s responses were “prompt,” please consider both NCPLS’ policy and your own professional view of whether the response times in this case were appropriate.)

Reviewer average: 3.72

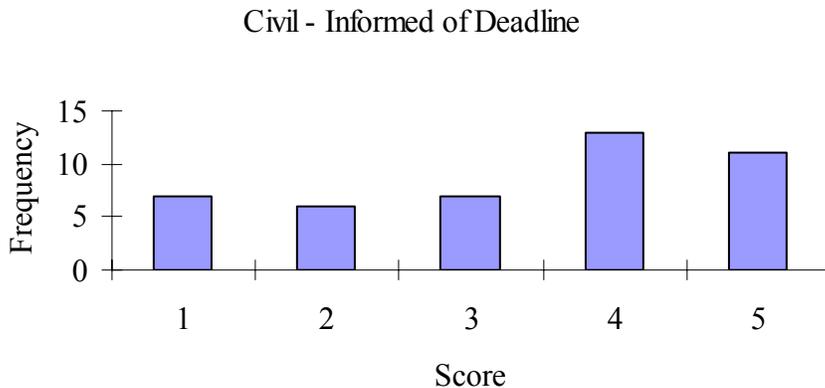


A lower score (1 or 2) reflects less prompt work, a higher score (4 or 5) reflects more prompt work.

Reviewer comments: see next question

The Civil Team informed the inmate of all applicable deadlines?

Reviewer average: 3.37



A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

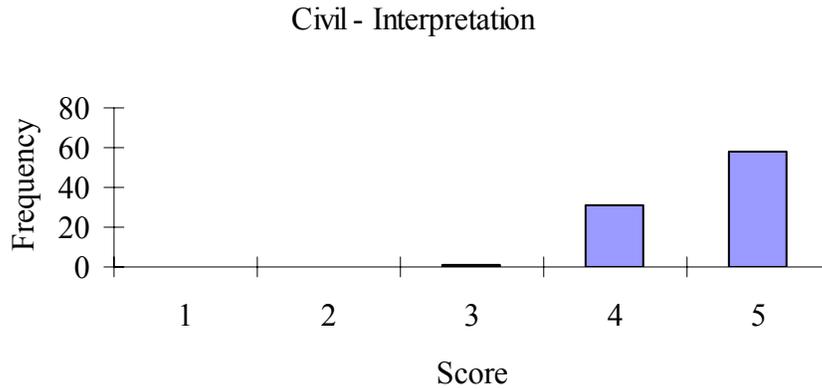
Reviewer comments (N=9 non-litigated, N=9 litigated): Because they deal with a similar issue, the responses for these two questions are reported together. Again, there

were few reviewer comments. Where a reviewer did make a comment, it related to delays in NCPLS's response. Some examples:

- “There was a year delay between the initial client contact and the filing of a motion for visitation.”
- “There are some significant gaps in the correspondence. Also, the inmate was not advised of the delays inherent in litigation.”
- “Too long a delay until filed motion, even considering informal attempt to resolve beforehand.”

Question: The Civil Team appropriately interpreted the inmate’s questions and requests?

Reviewer average: 4.63

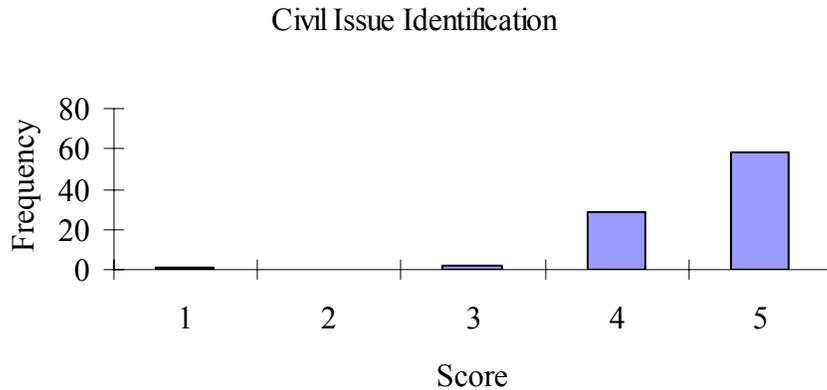


A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=1): There was only one reviewer comment for this question, “Inmate told NCPLS that she would not settle her claim for less than \$50,000; however, NCPLS made an initial demand of \$50,000 thus receiving a settlement offer of less than \$50,000.”

Question: The Civil Team appropriately identified all of the potentially meritorious legal issues presented by the inmate’s correspondence, including any important issue(s) that the inmate did not recognize him or herself?

Reviewer average: 4.59

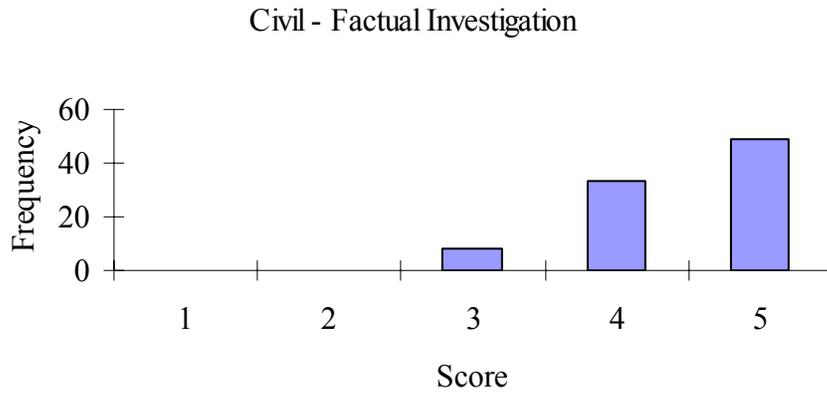


A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=2): Again, there were only a few comments. In both cases, the reviewers noted that an action had not been taken. For example, “No review of her medical and mental health records. No psychological evaluation to determine extent of inmate’s injuries.”

Question: The Civil Team conducted adequate factual investigation?

Reviewer average: 4.46

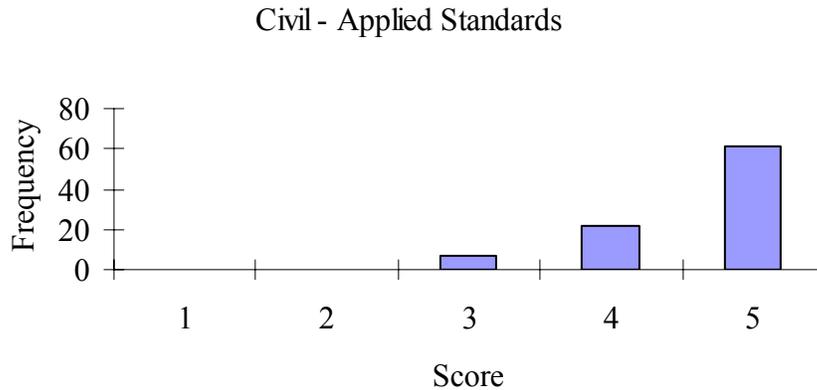


A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=6): There were very few comments. A few reviewers noted that discovery was on-going. There were three negative comments, such as “Damages evidence was not fully developed – lack of psych exam, no review of medical/mental health records.”

Questions: In reviewing potential civil claims for merit according to NCPLS’s standards (*i.e.*, more than *de minimis* value and *de minimis* injury), the Civil Team appropriately applied those standards?

Reviewer average: 4.6



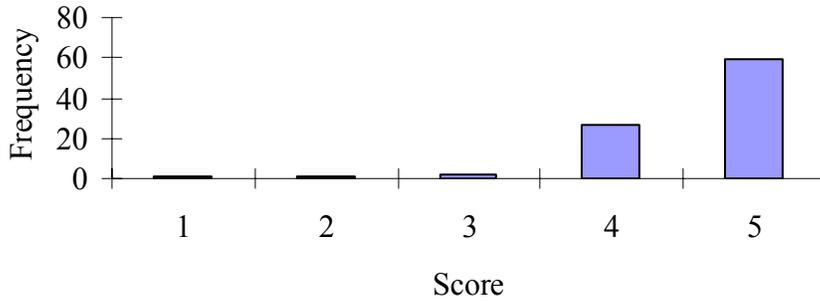
A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=3): There were very few comments, and these only related to low priority cases, such as “This case appears to be a low priority one.”

Question: The Civil Team appropriately analyzed and responded to all of the potentially meritorious factual and legal issues presented?

Reviewer average: 4.58

Civil - Issue Analysis

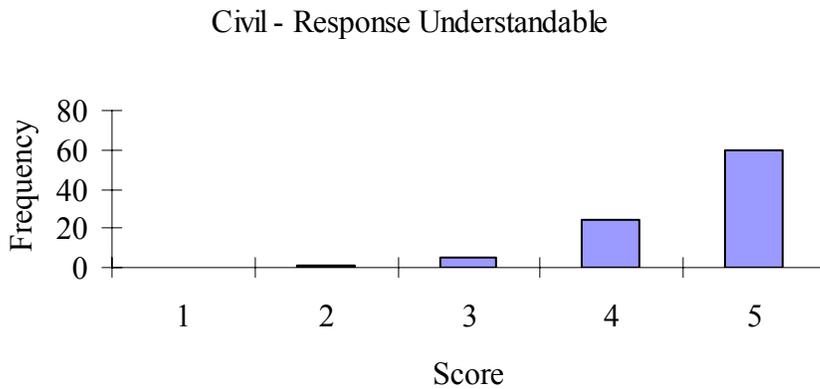


A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=1): There was only one comment, “Inadequate evidence of damages due to sexual assault.”

Question: The Civil Team’s correspondence would be understandable and useful to the average inmate?

Reviewer average: 4.59

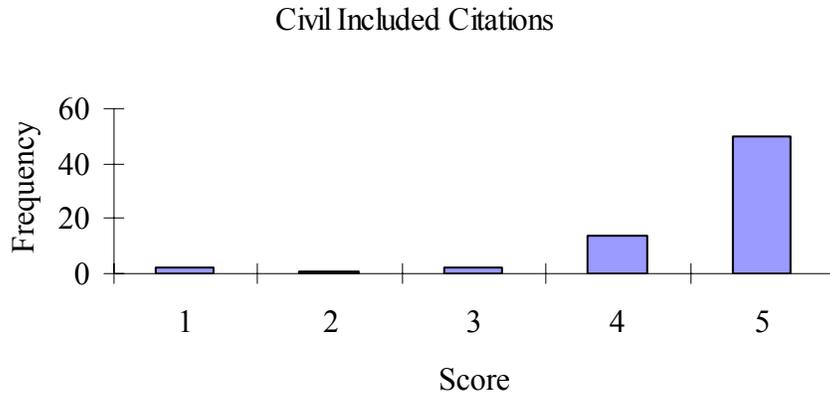


A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=1): There was only one comment, “Inmate not informed of the delays in litigation.”

Where appropriate, the Civil Team’s correspondence included citations to relevant legal authority?

Reviewer average: 4.57

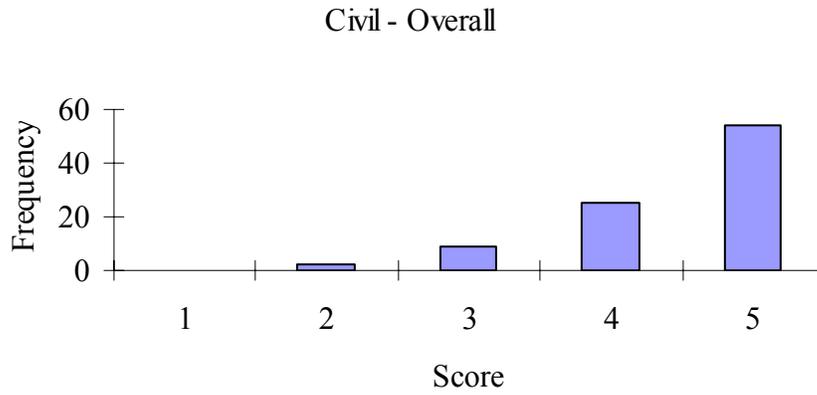


A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments: There were no comments on this question.

Overall, the decisions made by the Civil Team with this case file were appropriate?

Reviewer average: 4.46



A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

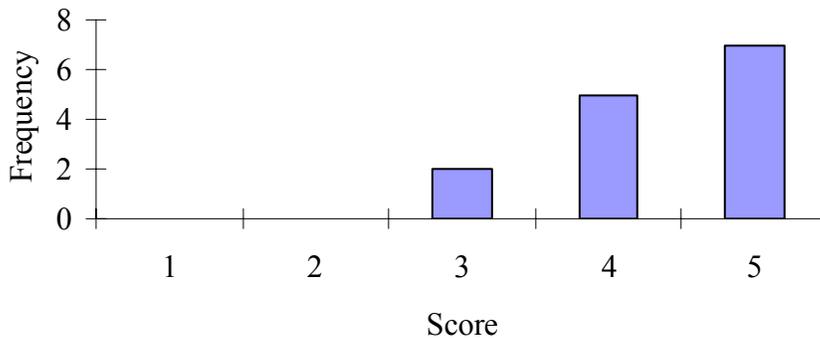
Reviewer comments (N=9): There were few comments, and they were not strongly positive or strongly negative. The majority of comments related to delays in handling the cases. Examples include:

- “There was a significant delay in the filing of the tort claim → approximately 1 year following denial of the claim by the A.G.”
- “Took way too long to file simple motion
- “PLS should have accepted or rejected case much sooner. Took 2 years before finally filed IC tort claim.”

If a complaint was filed, it was well written and properly stated a claim for relief?

Reviewer average: 4.40

Civil - Complaint Appropriate



A lower score (1 or 2) reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments: Again, there were few comments. They tended to be general comments and, if anything, they re-emphasized delays in the cases. For example,

- “Simple tort claim in IC. Took too long to investigate and file. What has happened since 5/06?”
- “Could NCPLS have gotten more from filing case? Hard to tell.”

General Reviewer Comments on Civil Files (N=8): While there were a few comments that re-iterated frustration with delays, as mentioned above, there were a number of very positive comments, such as:

- “Excellent outcome!!”
- “Handled well and achieved good result.”
- “Case has gone on for a while but mostly not fault of PLS”
- “Case handled very well. Timely and good result achieved for client.”

Question by Question Post-Conviction Review Panel Analysis (40 cases reviewed)

In the analysis presented below, we first present the question included on the questionnaire, then the average score for all files for that particular question, and then a breakdown of all scores by question so that one can see the distribution. The sample included 64 percent guilty, 26 percent not guilty, and 10 percent “other” plea cases. We also present a summary of the reviewer comments associated with the question. When selecting quotes to illustrate and support our summary, we attempted to select quotes from cases that received a range of scores. We tried not to include comments that could identify particular cases. We did not attempt to independently confirm reviewers’ assertions or interpretation of the material in the case file.

For the first question, on complexity, we used the following scale.

(very complex) 5 4 3 2 1 (not complex)

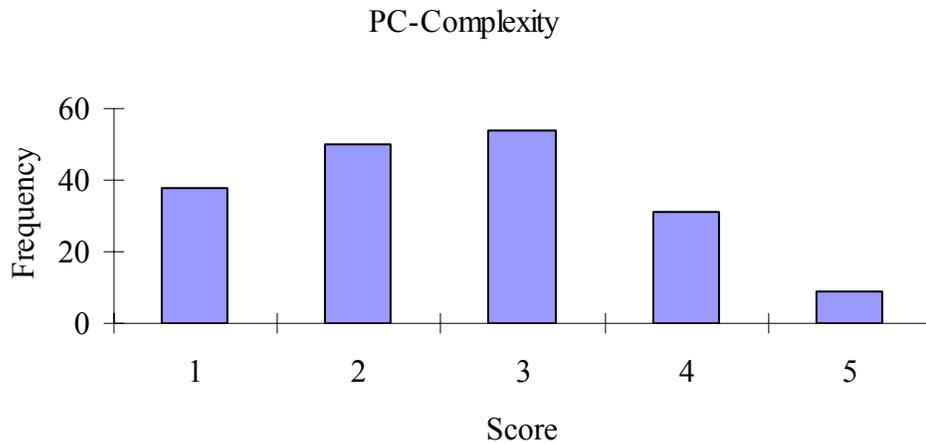
For the rest of the questions below, the following scale was used:

(strongly agree) 5 4 3 2 1 (strongly disagree)

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Question: Please circle the number that, in your professional opinion, reflects the overall complexity of the factual and legal issue(s) raised in this case file:

Reviewer average: 2.58

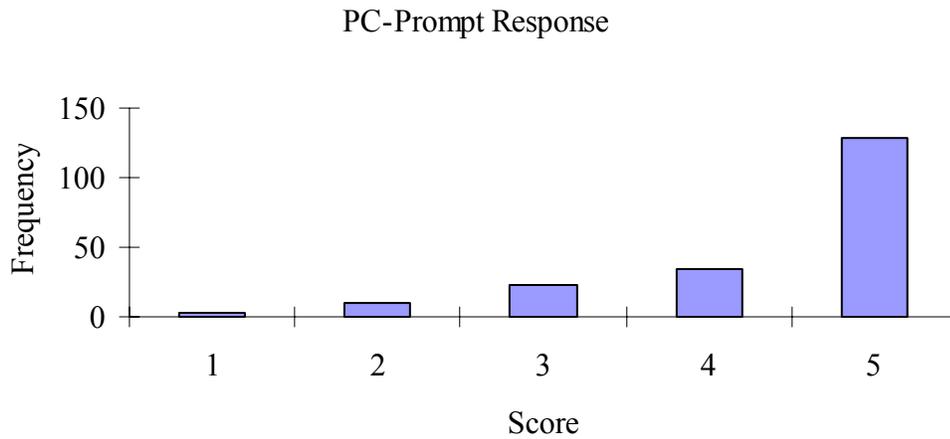


Reviewer comments (N=19 not-litigated, N=7 litigated): Most of the comments were not about the complexity, but raised specific issues with the case. This is the same for both post-conviction cases that were not litigated, and those that were. Here are a few of the comments relating to complexity issues:

- “Great job on this matter, as to all the details.”
- “The legal issues are not tremendously complex, but wading through the facts as stated in the client’s letters is quite something.”
- “IAC is, by necessity, very fact intensive.”
- “This case was factually complex. NCPLS had to sift through multiple charges, with difficult combinations of concurrent and consecutive sentences”
- “Issues raised by client’s letter are not complex. However, because client claims innocence and the evidence presented was weak, factual issues regarding guilt are complex.”

Question: The Post-Conviction Team’s responses to all of the inmate’s correspondence were prompt? (NCPLS’ policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Post-Conviction Team’s responses were “prompt,” please consider both NCPLS’ policy and your own professional view of whether the response times in this case were appropriate.)

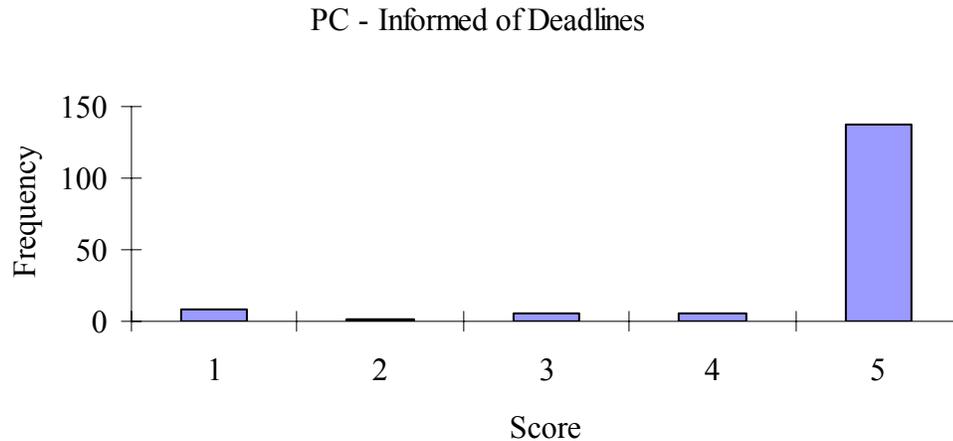
Reviewer average: 4.38



Reviewer comments: See next question

Question: In cases with potential federal claims, the Post-Conviction Team informed the inmate of the statute of limitations in federal court for his or her case?

Reviewer average: 4.65



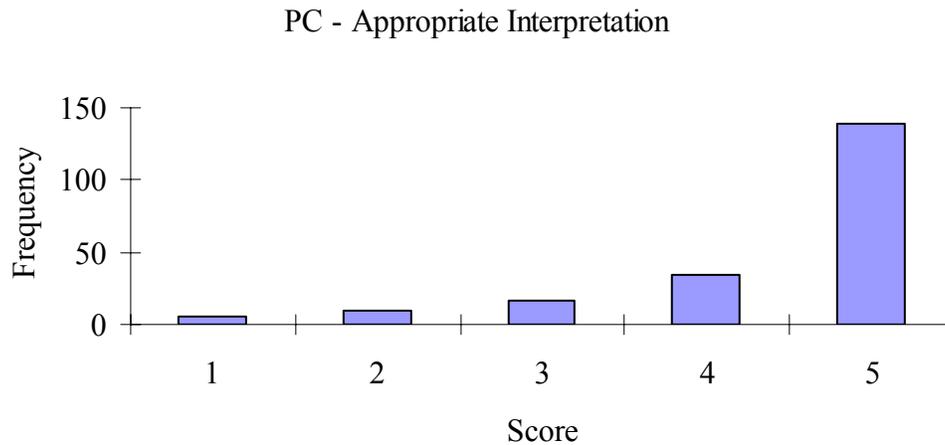
Reviewer comments (N=51 non-litigated, N=14 litigated): Because they deal with a similar issue, the responses for these two questions are reported together. Reviewers were overall complimentary to NCPLS, with many strong comments on how the Post Conviction Team was able to respond quickly. However, there were a number of comments regarding delays, due to both internal and external factors:

- “PC Team was great to notify client of imminent deadline for federal *habeas* filing.”
- “The PC Team did a great job of corresponding with client: prompt informative, polite, and respectful.”
- “Good correspondence re: timing expectations.”
- “NCPLS had to write repeatedly to clerk’s office to get complete court record . – 2/05, 3/05, 6/27. The delay in this case resulted from the clerk’s delay.”
- “Response times seemed slow at first but them seemed very attentive once matter was underway.”
- “No explanation for 5 month delay in response (documents may not have been timely received).”
- “A little over 2 months from receipt of records to letter denying service”
- “Superior Court delayed sending requested documents, but it took NCPLS 6 months to send client’s documents back.”
- “No explanation for 3-month delay in response.”
- “Letter went out promptly after final record request, but unclear why record requests occurred over two months.”

- “On 2-1-05, client requested “self help” MAR package.” Not sent until 7-12-05, eight (8) days before AEDPA time limitation would run out.”
- “What is happening with MAR – well over a year, no action, or response from state in file.”
- “The initial response was prompt, but litigation MAR was not pursued until over two years after initial request.”
- “This case stretched out over nearly 3 years. It’s not the fault of any one attorney. It took so long because client’s PC attorneys kept leaving NCPLS. I think there were 4 NCPLS attorneys over the course of nearly 3 years”
- “On xxx (8 months after initial letter), NCPLS writes that there are no claims to attack guilty plea. Never advises about Federal *habeas* deadline – although no claim that I can see. But unlike other cases, never tell defendant he/she can file and what deadline is. While responses to client were prompt, it should not have taken over 2 years to file an MAR on this claim.”

Question: The Post-Conviction Team appropriately interpreted all of the inmate’s questions and requests?

Reviewer average: 4.42



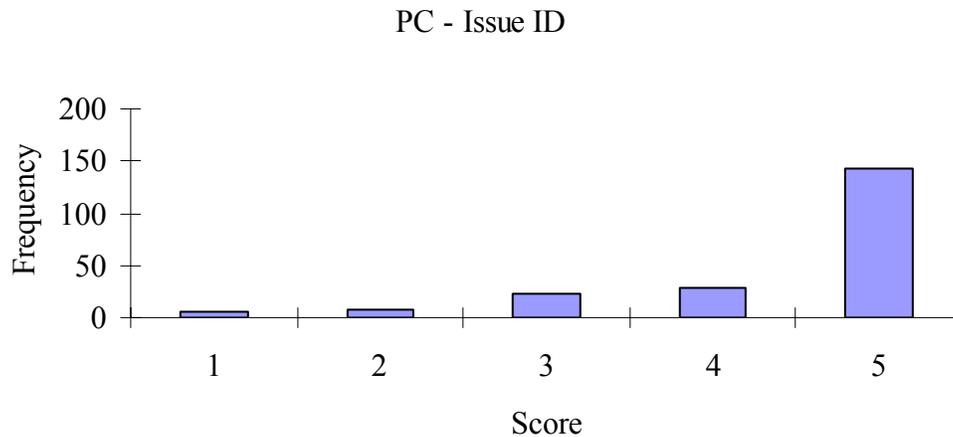
Reviewer comments (N=47 not-litigated, N=7 litigated): In this case, there seemed to be some inconsistency between the scoring and the comments. Of the 47 comments, four were complimentary for the non-litigation cases. The vast majority stated the issues were missed, claims were not investigated, or requests went unfulfilled. In contrast, the majority of comments for the post-conviction litigation cases were very complimentary. Some examples from both non-litigated and litigated cases include:

- “When client asked for NCPLS review of entire case for any ground for relief, attorney did so – excellent follow-up.”
- “The correspondence was hard to decipher, but NCPLS staff managed to evaluate and find meritorious claims.”
- “This was a difficult client to deal with and I think NCPLS did a good job communicating with him – very demanding.”
- “Simple case, handled well.”
- “The client did not really know what his claims were but the NCPLS lawyer looked at all possible.”
- “Cursory response to client’s request for reconsideration. No investigation of client’s claim of innocence, no effort to contact defense attorney, client’s mom.” (This person marked the score “5” on the question.

- “Should have followed up on IAC and competency issues; if jail records showed 1 hour visit by counsel, further investigation would be called for. Client had mental health concern and claimed to have been medicated; again, further investigation should have been done.”
- “I’m not sure, because the rejection letter never responded to the bulk of the IAC (Ineffective Assistance of Counsel) claims in the first letter.”
- “This correspondence was hard to interpret, but the response letter did not address any of the inmate’s concerns regarding showed warrants or payment arrangements with his lawyer.”
- “It is true that the defendant did not articulate any grounds to challenge the guilty plea, but it is also clear he did not understand. I would have at least contacted his trial counsel to see if he did communicate. Also defendant does not think there is a deportation detainer; there appears to be.”
- “Inmate raised bias and response was regarding conflict of interest. Also, inmate raised issue regarding voluntariness of plea; this was addressed later in the letter, but not stated in the first page summary as a ground, then form language regarding guilty plea followed immediately. The final conclusion (i.e. to decline representation) was correct.”
- “There were a raft of IAC allegations that were not addressed, including that the inmate never reviewed evidence with lawyer, assertion that inmate believed event was accident, etc.
- “The very first question the inmate asked was about jail credit; he repeated this several times. The question was never addressed by NCPLS.”

Question: The Post-Conviction Team appropriately identified all of the potentially meritorious legal issues presented by the inmate’s correspondence, including any important issue(s) that the inmate did not recognize him or herself?

Reviewer average: 4.42

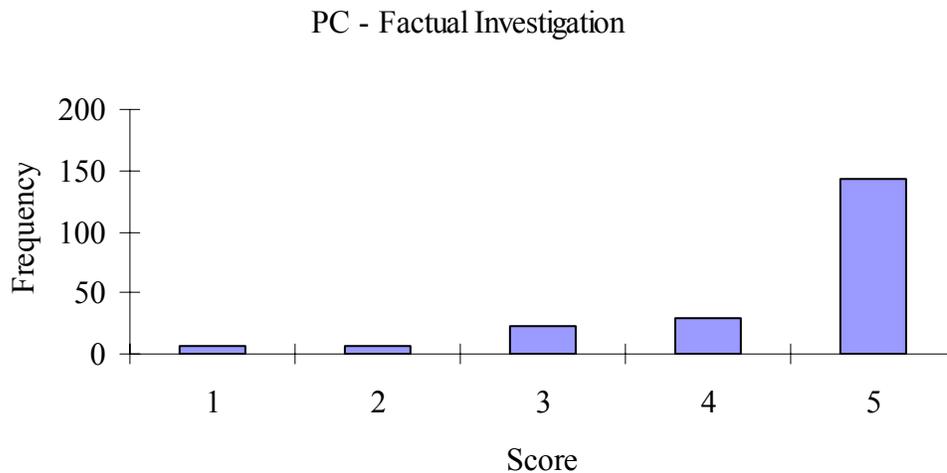


Reviewer comments (N=27 non-litigated, N=0 litigated): For this question, many of the comments simply made reference to comments listed under the previous question on correct interpretation of issue. Several raised concerns over mental capacity of client and adequate identification of IAC problems. There were no substantive comments on the litigated cases. Comments on the non-litigated files included:

- “Hard to tell whether other issues might be discovered after further investigation – this particularly disturbing because client is apparently mentally ill and has low intelligence.”
- “Missed the bulk of the IAC claim.”
- “Fine on the indictment issue – never addressed the IAC claim.”
- “IAC for failure to inform the inmate that the consequences of a guilty plea included registration as a sex offender.”
- “See #5 above. It may be that he actually didn’t have a good claim regarding jail time, but it should have been addressed.”
- “The PC Team does not appear to have reviewed the transcript (A PDR was, in fact, filed) or gone beyond the face of a request for assistance from an inmate with low intelligence.”

Question: The Post-Conviction Team conducted adequate factual investigation

Reviewer average: 4.13



Reviewer comments (N=52 non-litigated; N=5 litigated): As on other questions, there seemed to be some inconsistency between the reviewer comments and overall scoring. For cases that were not litigated, of the six comments associated with a score of “5,” three bore caveats. In many instances, the reviewers noted what they felt to be a lack of adequate investigation. However, there were several compliments on the litigated cases. Comments for both included:

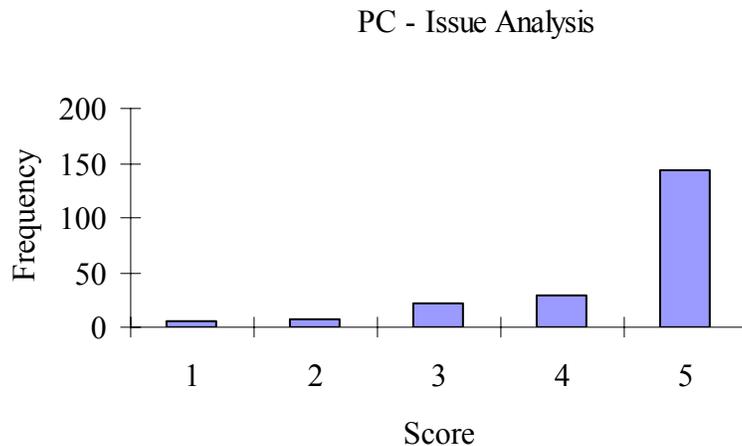
- “Called trial counsel for clarification – excellent decision.”
- “Excellent investigation by the PC Team, especially McNeill. Ms. McNeill spotted a terrific issue and tracked down a transcript that supported her hunch. She also remained firm and determined when appellate attorney angrily (and wrongly) defended himself against her correct claim of appellate IAC.”
- “Attempted to interview inmate – very appropriate in this case.”
- “This is the only guilty plea case I’ve reviewed in which the PC Team contacted the client’s attorney to investigate client’s IAC claims.”
- “Not clear if trial attorney interviewed”
- “It appears so.”
- “The PC Team contacted the trial attorney and obtained a transcript from the inmate but did no further investigation.”
- “Client made many factual allegations about innocence and IAC. Even though client signed the transcript of plea, I think the PC Team should have called or written to client’s attorney to ask client’s attorney to respond to client’s claims.”
- “These IAC allegations could have been completely without merit, but if the facts as independently ascertained supported the inmate’s claims, this could have been a strong claim. For example, the record indicating that the judge and the defense

lawyer believed the client was not competent cannot be the end of the inquiry in evaluating an IAC claim. Furthermore, if a client is incompetent to plead, the fact that the client will be placed in a custodial mental institution is no counterbalance to failure to investigate. Lack of competence means a client cannot understand the plea and defense lawyers are supposed to ensure that clients do not waive rights without comprehension. Similarly, to evaluate the waiver claim regarding the victim's estate, one would have to know a number of factual details, such as the length of relationship between the victim and the firm, who in the firm handled it, etc."

- "The PC Team did an excellent job in getting client's 1st degree kidnapping conviction reduced to 2nd degree kidnapping. But the PC Team did not investigate client's claim that he did not rape or kidnap the victim, that they had consensual sex, and the victim's boyfriend assaulted her later."
- "The PC Team should have investigated the nature of client's alleged involvement in the crime (see #5, above)."
- "None to be done."

Question: The Post-Conviction Team appropriately analyzed and responded to all of the potentially meritorious factual and legal issues presented?

Reviewer average: 4.14



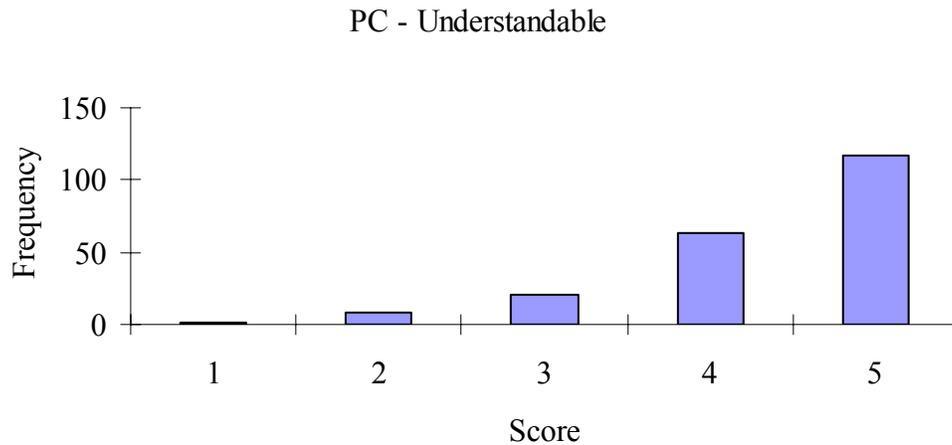
Reviewer comments (N=35 non-litigated; N=4 litigated): For the non-litigated files, there were a number of positive comments in response to this question. As was the case with negative comments above, in many cases, the reviewers tended to refer to responses to earlier questions. There were only two substantive comments on the litigated files. Examples of both sets of comments include:

- “PC Team did a great job of answering client’s numerous letters. PC Team answered every letter promptly, clearly, and courteously.”
- “This was a very good analysis”
- “The client sent repeated letters in which he made identical or very similar claims, sometimes with incorrect factual assertions. The PC Team consistently responded promptly and appropriately.”
- “I would prefer that the client be told that there is some way to challenge the effective assistance of counsel, even at a guilty plea – although it is difficult to win.”
- “The legal issues raised by the inmate were fully reviewed”
- “The PC Team adequately addressed client’s complaint about his sentence being greater than one of his attorneys predicted. But the PC team did not adequately analyze or respond to client’s claims about his prior record level. If client was correct, his prior record level might have been II rather than III.”
- “There was an issue raised on appeal and in the PDR that was preserved. This NCPLS lawyer never got the PDR. Bad advice based on insufficient research. A federal *habeas* could have been taken and maybe MAR.”
- “Delay!”

- “No documents reflecting activity after October 2005, although case is still open.”
- “In the letter denying service, NCPLS says client ‘did not explain in detail’ how his constitutional rights were violated. That’s not an appropriate analysis or response in light of client’s low IQ. The failure of the PC Team to confirm that a PDR was filed led the PC Team to mistakenly tell client that the failure to file a PDR would doom an MAR.”

Question: The Post-Conviction Team’s correspondence would be understandable and useful to the average inmate?

Reviewer average: 4.37

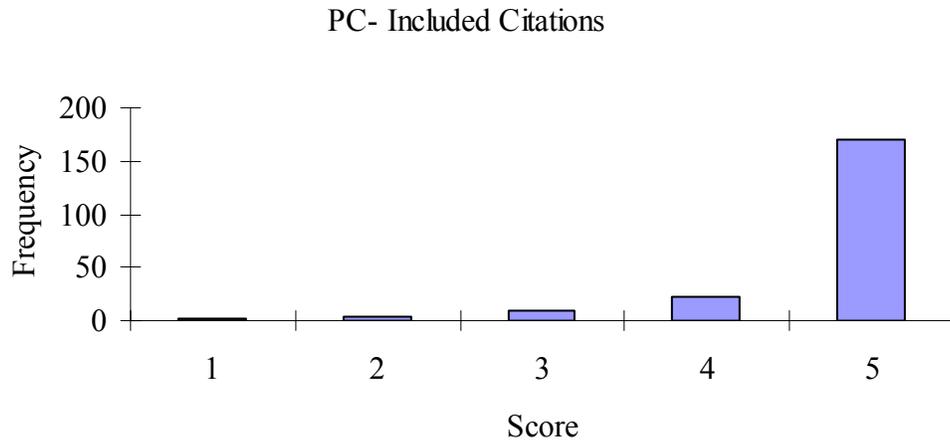


Reviewer comments (N=15 non-litigated, N=4 litigated): There were not many comments for this question, for either litigated or non-litigated cases. Comments were about equally split between positive and negative, with little detail.

- “Very clear letter.”
- “Very clear correspondence generally.”
- “I’m not sure anything else could or should be said.” Good letter denying service, but some of the wording was legalistic.”
- “Okay for an average inmate, but not for an inmate with low IQ’
- “PC Team incorrectly informed client by letter that the MAR was denied before viewing the order granting the main claim in the MAR. The client was later properly informed of the result.”

Question: Where appropriate, the Post-Conviction Team’s correspondence included citations to relevant legal authority?

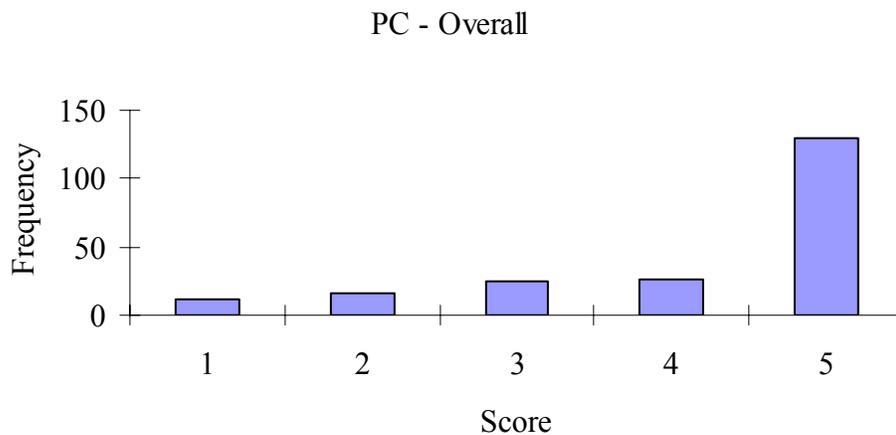
Reviewer average: 4.73



Reviewer comments: (N= 1 non-litigated, N=0 litigated). There were no substantive comments on either litigated or non-litigated cases for this question.

Question: Overall, the decisions made by the Post-Conviction Team with this case file were appropriate?

Reviewer average: 4.19

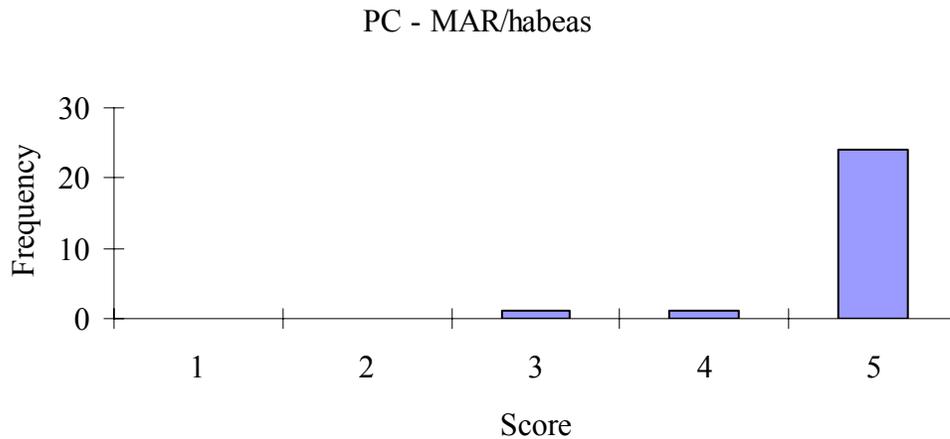


Reviewer comments (N=34 non-litigated, N=17 litigated): For the non-litigated cases, most of the comments to this question were references to previous answers. For the litigated cases, some of the exceptions included:

- “The response letter was really nice in how it worked in follow-up questions from the prisoner.”
- “No correspondence to inmate following release, which meant, from prisoner’s perspective, that case just evaporated.”
- “Excellent job on the MAR and cert. petition, but is not clear why NCPLS declined to continue representing client at the evidentiary hearing. The client has not yet established a trust relationship with new appointed attorney.”
- “I might tend to agree with ultimate conclusion if proper investigation had been done.”
- “Unclear, although I think I would have come out the same way.” “I don’t see how you can deal with this case without talking about IAC.”
- “Should have pursued MAR more rigorously.”
- “Again, an appropriate decision would have required answers to questions in #7 above.”
- “I think they should have acted much sooner here. It was obvious within weeks that client was being held unconstitutionally – a quick *habeas* was warranted.”
- “There seems to be a large amount of time expended by staff on a type of case not listed as either a top or medium priority of NCPLS.”

Question: If a Motion for Appropriate Relief and/or *habeas* petition was filed, it was well written and argued?

Reviewer average: 4.89



Reviewer Comments (N=13, litigated only): Most of the comments were complimentary, although there were still some concerns. Examples include:

- “Ms. Coleman-Gray wrote an excellent response to the state’s motion for summary judgment.”
- “The MAR was simply written, clear and concise, and well-reasoned.”
- “Excellent MAR and cert. petition.”
- “Excellent job on the MAR.”
- “My problem is the 5 month delay. I am also not sure that I would style this a Harbison case, but that really is unimportant since the requirement of relief is so obvious.”
- “But not heard!”

Other Reviewer Comment on Post-Conviction Files (N=9 non-litigated, N=5 litigated): The additional comments reviewers offered highlighted the conflict between needing to catch possible meritorious claims and simply dealing with the high volume of requests. Some examples include:

- “This case highlights the difficulty of trying to process a volume of IAC cases. Picking out the meritorious claims requires a huge amount of factual review. However, that amount of review would paralyze NCPLS at current resource levels.”
- “After win in Court of Appeals, the PC Team continued to follow the case to ensure resentencing.”
- “I wonder if the time obviously spent on this case was warranted.”
- “Also – on the consecutive/concurrent inconsistencies in the judgment which might have provided for relief – I am not certain that this claim is merit less.”
- “Should NCPLS consider denying all claims resulting from guilty pleas? The questions of voluntariness of pleas cannot be adequately determined in this context.”
- “Should NCPLS automatically reject challenges to guilty pleas because of the slim chance of success?”
- “It has been over a year since the defendant was given a new sentencing. The new sentencing has not happened yet. Should push for it. Only 1 letter to DA over 1 year requesting a hearing and that was 8 months ago.”
- “Should policy of not reviewing cases until direct appeal is final be reevaluated?”
- “I wonder if all the time spent on this case was wise given potential relief and need for lawyers time in other cases. Most they got was 2 months off a sentence, made concurrent. And it took 2 ½ years to file an MAR!”

**Jail Credit Review Analysis
(20 case files reviewed)**

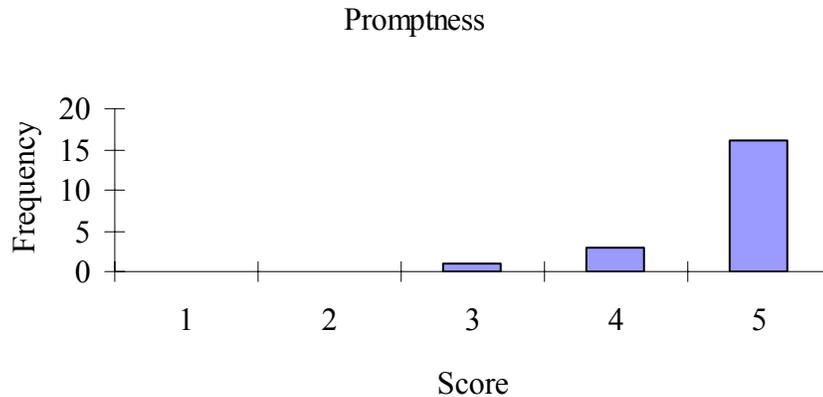
In the analysis presented below, we first present the question included on the questionnaire, then the average overall score for all files, and then a breakdown of the score by question. We also present a summary of the reviewer comments associated with the question. When selecting quotes to illustrate and support our summary, we attempted to select quotes from cases that received a range of scores. We tried not to include comments that could identify particular cases. We did not attempt to independently confirm reviewers' assertions or interpretation of the material in the case file.

All responses are on the following scale:

(strongly agree) 5 4 3 2 1 (strongly disagree)

Question: The Jail Credit Team’s responses to all of the inmate’s correspondence were prompt? (NCPLS’ policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Jail Credit Team’s responses were “prompt,” please consider both NCPLS’ policy and your own professional view of whether the response times in this case were appropriate.)

Reviewer average: 4.75



Score

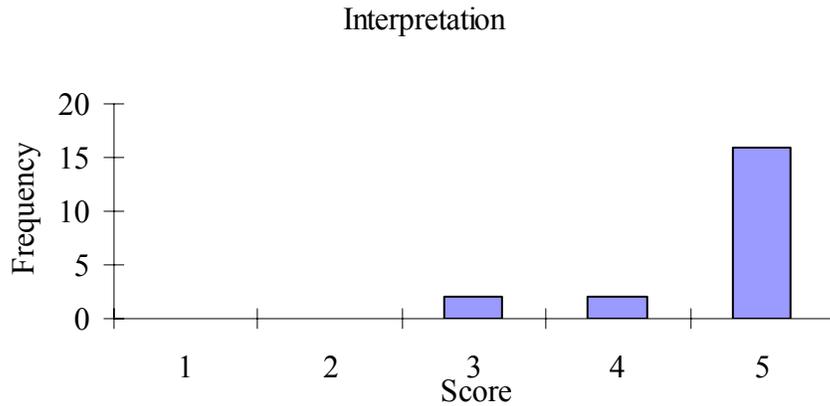
A lower score (1 or 2) generally reflects more prompt work, a higher score (4 or 5) reflects less prompt work.

Reviewer comments (N=7): The reviewer comments either complimented the quick response or noted a delay. Examples include:

- “Quick and easy response”
- “All actions proper, but required 3 follow-up requests to local jail. Probably needed to be more forceful.”
- “First response was good, but no follow-up for about 3 months.”

Question: The Jail Credit Team appropriately interpreted all of the inmate's questions and requests concerning jail credit?

Reviewer average: 4.70



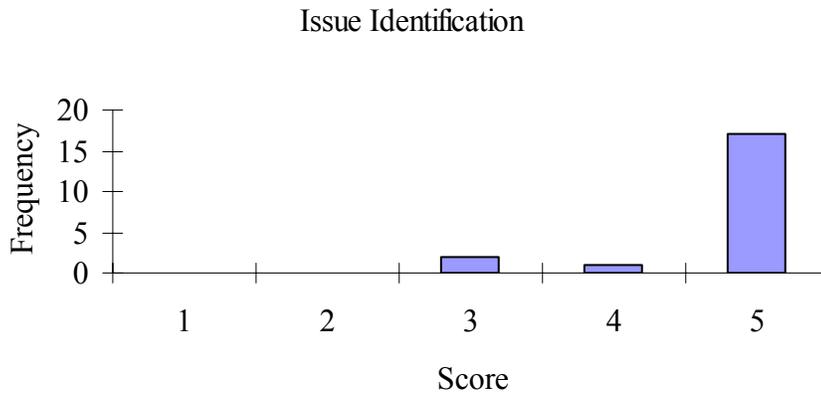
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=4): The few comments that were made focused on specific perceived shortcomings, such as:

- “Yes, but the order providing credit given to the clerk’s office was incorrect, resulting in the delay in getting a second order signed and entered.”
- “Request was for 90 days credit from DART program. No verification of what sentence it related to or what, if any, action was taken. I have no clue what was done. No order/letter in file.”
- “Client wanted 6 months credit. NCPLS said from when. No follow-up with client or Person County Jail. Probably would not have taken much to request that.”

Question: The Jail Credit Team appropriately identified all of the potentially meritorious jail credit issues presented by the inmate’s correspondence, including any important issue(s) that the inmate did not recognize him or herself?

Reviewer average: 4.75



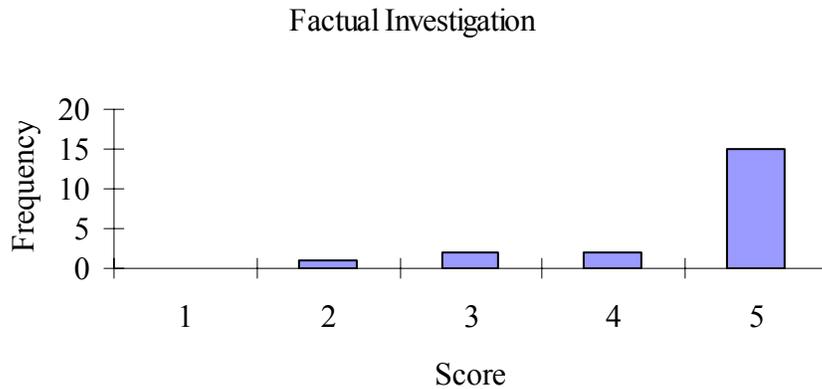
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=7): Two comments simply referred to comments under other questions. Most of the rest were complimentary.

- “Detainer packet sent without request. Very helpful.”
- “NCPLS recognized outstanding detainer and sent relevant info concerning it.”
- “I assume this file also went to another area to address his other ‘counsel’ concerns in 1-26-05 letter. If not, it should have. No mention of it in client letter.”

Question: The Jail Credit Team conducted adequate factual investigation?

Reviewer average: 4.55



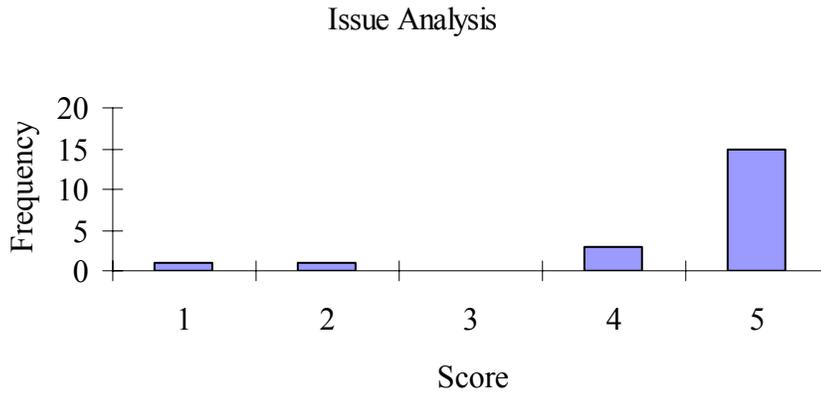
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Reviewer Comments (N=7): The reviewer had only a few comments, some positive and some unsure, such as:

- “Letter to and response from clerk saved the day.”
- “Thorough & exhaustive research & investigation.”
- “Probably should have requested jail records from both counties.”
- “I still don’t know the results of the 4 requests to Lenoir County Jail.”

Question: The Jail Credit Team appropriately analyzed and responded to all of the potentially meritorious jail credit issues presented?

Reviewer average: 4.50



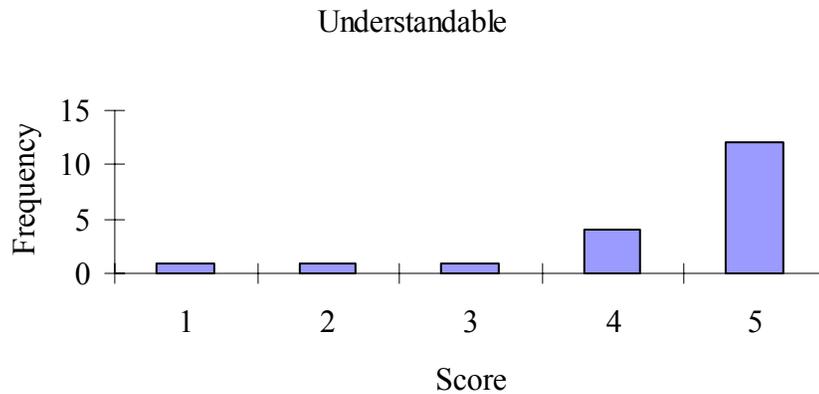
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=7): The reviewer had compliments on two cases, but others just referred to errors noted under previous questions. The compliments were:

- “Very detailed, specific, and polite in asking for “expedited” review and action by clerk.”
- “Even encouraged more issues from client.”

Question: The Jail Credit Team’s correspondence would be understandable and useful to the average inmate?

Reviewer average: 4.32



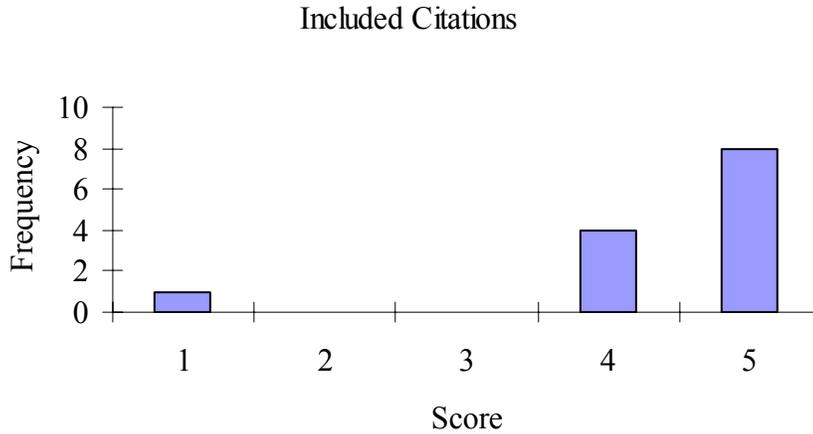
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Reviewer comments (N=7): The reviewer noted several typos or poorly worded letters, but also noted some well written letters. One comment was on how the case was handled. Comments included:

- “Great letter to client & to clerk’s office.”
- “Fairly complex issue to explain, but done well.”
- “Looks like they just passed the buck.”

Question: Where appropriate, the Jail Credit Team’s correspondence included citations to relevant legal authority?

Reviewer average: 4.38

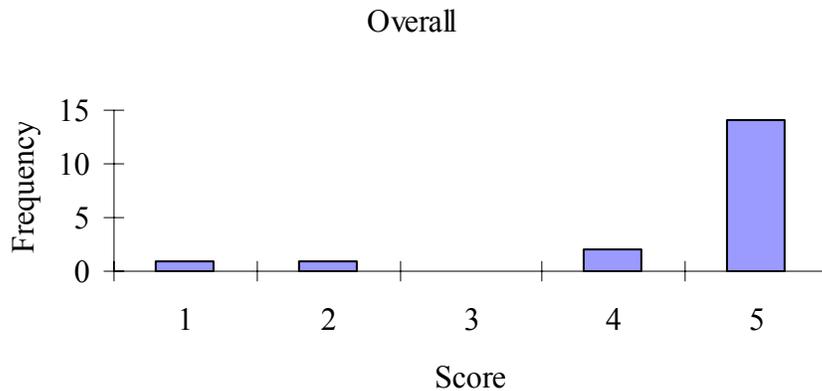


A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Reviewer comments (N=5): Except for one compliment, the comments were suggestions for citations. The compliment was: “Great cites and ‘heads up’ on potential correction by the courts.”

Question: Overall, the decisions made by the Jail Credit Team with this case file were appropriate?

Reviewer average: 4.50



A lower score (1 or 2) generally reflects lower quality
work, a higher score (4 or 5) reflects higher quality

Reviewer comments (N=7): The comments show that the reviewer was satisfied with the work done on some of the cases, and disappointed with others. Comments include:

- “Very impressive.”
- “I don’t think this client would be confident in the services provided, given the length of time involved and the mistakes made that resulted in the need for additional orders.”
- “I would have serious problems with the lack of follow-up in this case.”

Other Reviewer Comments on these Files (N=12): The additional comments primarily dealt with specific details from the case in question. A few examples of general comments include:

- “Fast, accurate response.”
- “Don’t we wish they were all this easy.”
- “It’s a shame trial counsel did not catch this issue sooner.”
- “The final letter sent to client on... does not contain ‘enclosure’ at bottom, nor does there appear to be a copy in the file of what would have been the enclosure with ‘handwritten numerals in red.’ This would be very important to have in your file.”
- “Question: What efforts are made to make sure that no other sentence was imposed during pre-trial confinement that would disallow that portion of credit? I saw nothing in the file that addressed that issue.”

Question by Question Grievance Review Panel Analysis

In the grievance review panel analysis, we first asked the reviewers to document basic information about the nature of the grievance. We then asked the reviewers to respond to the following questions. As in the analyses above, for the first question, on complexity, we used the following scale:

(very complex) 5 4 3 2 1 (not complex)

For the rest of the questions below, the following scale was used:

(strongly agree) 5 4 3 2 1 (strongly disagree)

A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

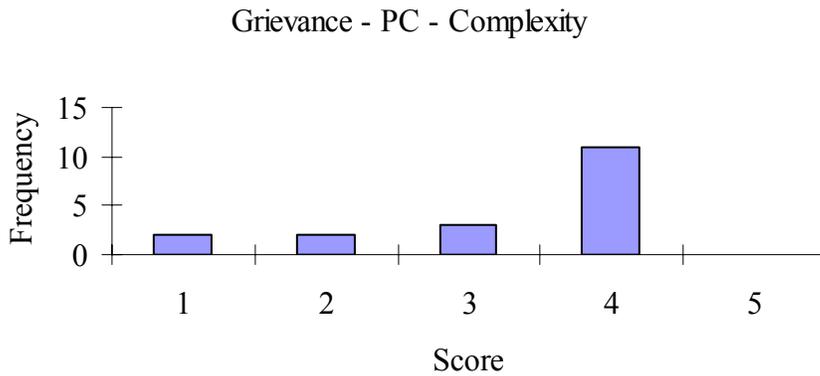
Under each question are charts according to the type of case in question. In some instances, a chart is not included for a type of case if the question was not applicable. We also present a summary of the reviewer comments associated with the question for all types of files. When selecting quotes to illustrate and support our summary, we attempted to select quotes from cases that received a range of scores. We tried not to include comments that could identify particular cases. We did not attempt to independently confirm reviewers' assertions or interpretation of the material in the case file.

The nineteen files reviewed by the grievance panelists were not selected at random, but were selected in response to letters received by IDS. Ten of the files had gone through the formal grievance process within NCPLS, while the other nine had not. It should be noted that because they were not randomly selected, these files are not necessarily representative of the typical grievance situation.

Question: Please circle the number that, in your professional opinion, reflects the overall complexity of the factual and legal issue(s) raised in this case file:

Post-conviction cases

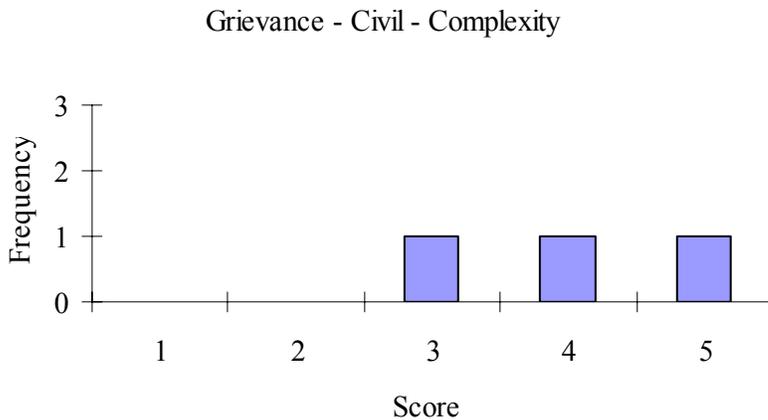
Reviewer average: 3.28



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Civil cases

Reviewer average: 4.0



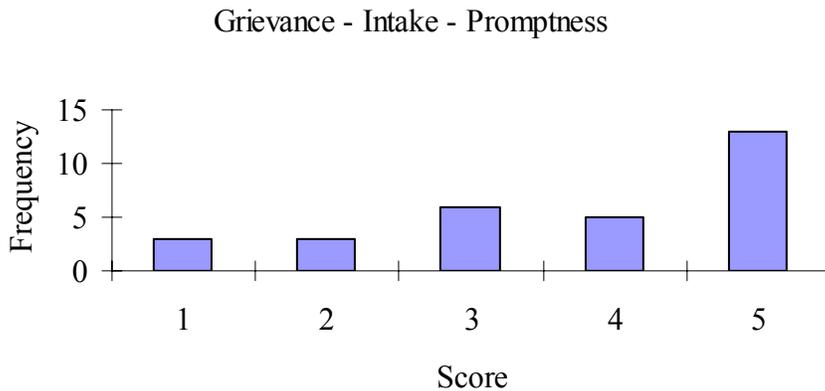
A lower score (1 or 2) generally reflects a more complex case, a higher score (4 or 5) reflects a more

Reviewer comments (N=5 PC, 2 Civil): Two reviewers said they did not have enough information for this question and two simply identified the issue, but several others made comments consistent with the following: “Very interesting & potentially significant case where inmate rejected plea without being informed of potential violent habitual felon status.”

Question: Throughout the grievance process, NCPLS’ response(s) to the inmate’s grievance was prompt. (NCPLS’ policy is to make an effort to answer client correspondence within 30 days. When deciding whether NCPLS’ responses to this grievance were “prompt,” please consider both NCPLS’ policy and your own professional view of whether the response times in this case were appropriate.)

Intake cases

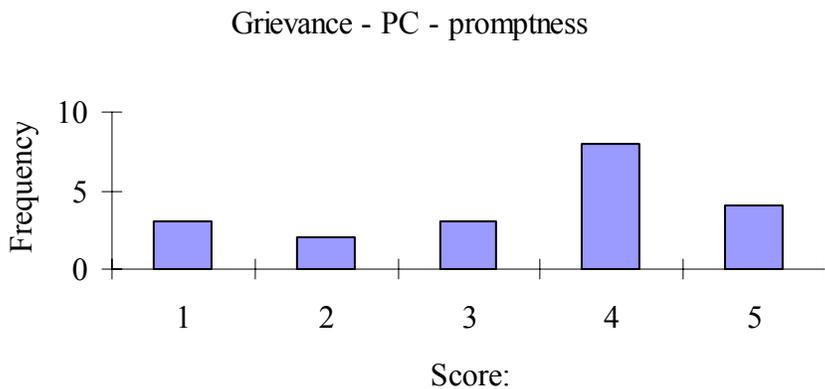
Reviewer average: 3.73



A lower score (1 or 2) generally reflects less prompt work, a higher score (4 or 5) reflects more prompt work.

Post-conviction cases

Reviewer average: 3.4



A lower score (1 or 2) generally reflects less prompt work, a higher score (4 or 5) reflects more prompt work.

Civil cases

Reviewer average: 3.67

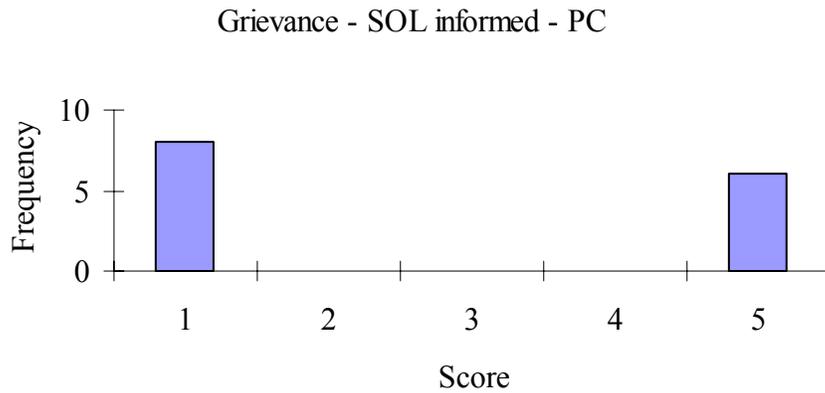


A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

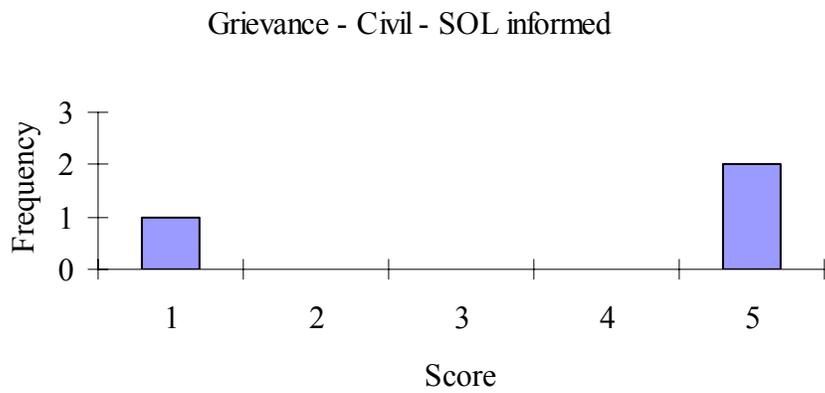
Reviewer comments: see next question

Question: The inmate was informed of all applicable deadlines?

Reviewer average: 2.71



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.



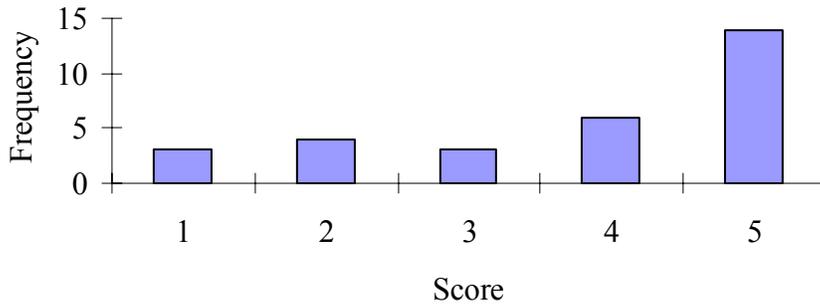
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Reviewer comments (N=8 through NCPLS grievance procedure; N=10 through IDS (9 PC, 1 Civil)): It appears that reviewers were split on this question. In some cases they were complimentary on promptness; others mentioned inordinate delays or problems with identifying appropriate deadlines. Examples include:

- “As noted above, client filed several grievances. First 3 grievances were properly and promptly addressed. Grievance filed 7/1/05 never seems to have received response. Latter two grievances were promptly addressed.”
- “Attorney investigated appropriately & declined representation on MAR. Probably should have treated inmate April 05 letter as response to grievance”
- “There were six grievances in this file. All but the last were dealt with promptly. The last grievance was not resolved for a year. *Habeas* deadline has passed.”
- “Paralegal Hawkins did an outstanding job on this case. It only became a problem after attorney involvement
- “Attorney dropped the ball. No questionnaire sent, no investigation undertaken, no letter declining to represent sent. Inmate apparently wrote for file in 2005, but letter is not in file.”
- “Never done. Fortunately this guy filed himself before the statute ran, but info about *habeas* deadline should be in every rejection letter (my opinion).”

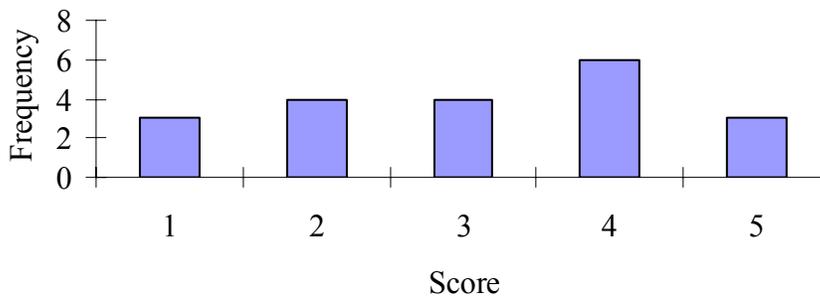
Question: Throughout the grievance process, NCPLS appropriately interpreted the inmate's complaint(s).

Grievance - Intake - Interpretation



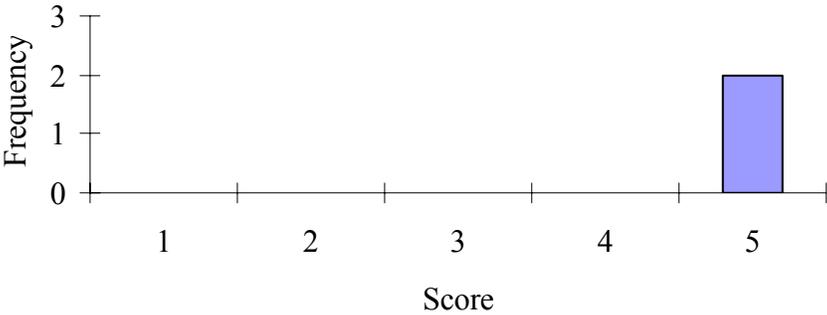
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Grievance - PC - Interpreted Correctly



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - Civil - Interpreted Correctly



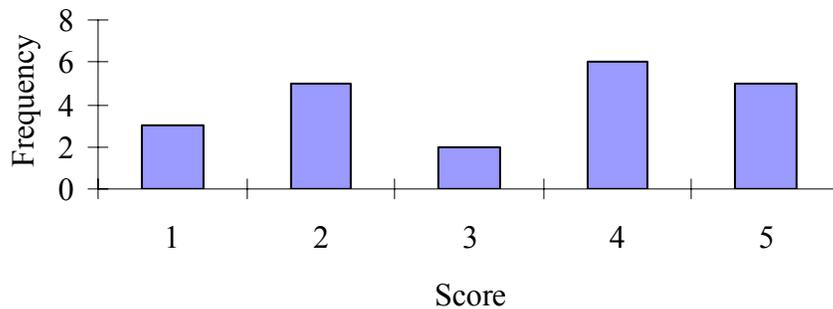
A lower score (1 or 2) generally reflects lower quality

Reviewer comments (N=7 through NCPLS grievance process, N=8 through IDS (all PC)) : For the straightforward grievances, reviewers were sympathetic with the volume of and difficulty in understanding the nature of grievances, but also pointed out places where the interpretations may not have been correct. For post-conviction grievances, however, reviewers gave some strong negative comments. Examples from both include:

- “NCPLS probably correct on decision to decline representation & understandably explained the law. However, attorney responding to grievance should have been aware of & addressed staff attorney’s statement that a more sympathetic plaintiff might succeed.”
- “Looks like the right call on PC representation. However, guy is clearly mentally ill and complaining about treatment about mental health. This file references 20 closed files on this inmate. I am curious about whether anyone followed-up if he made other complaints about conditions of confinement.”
- “X did; staff attorney either entirely missed the issue or re-reviewed the issue but failed to document & explain to the inmate.”
- “Inmate should have, at a minimum, been provided with info on proceeding *pro se* & notified of *habeas* deadline – he was not.”
- “Guy could have great PC claims, but cannot know & his *habeas* deadline is blown.”
- “NCPLS thinks inmate fired them – I don’t see that – the way this file has been handled disgusts me.”

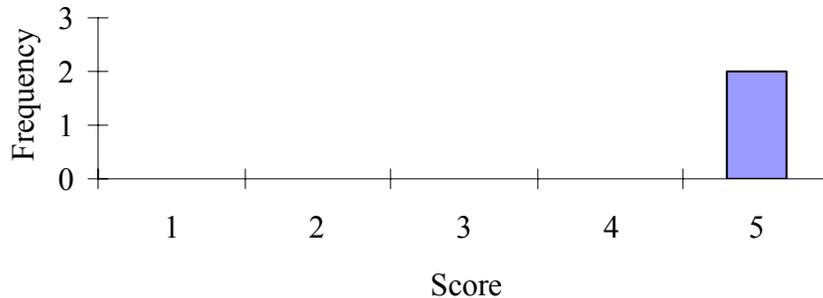
Question: The pertinent team appropriately identified all of the potentially meritorious legal issues presented by the inmate’s correspondence, including any important issue(s) that the inmate did not recognize him or herself?

Grievance - PC - Issue Correctly ID'ed



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - Civil - Issue Id'ed



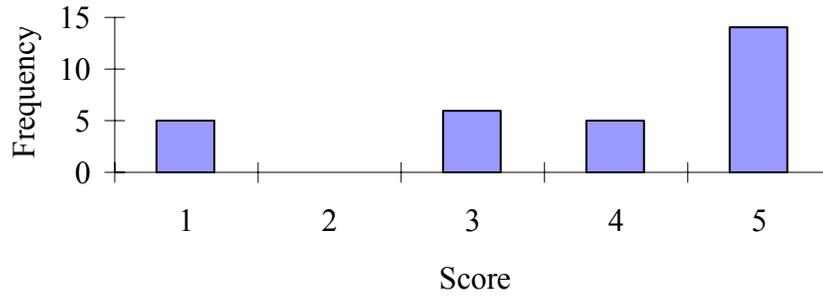
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=6 through IDS, all PC): For two of the post-conviction cases on which there were comments, reviewers felt that issues were appropriately identified. In one case, the reviewer felt an issue was not investigated thoroughly before coming to a conclusion. Examples of responses include:

- “In PC case, yes.”
- “Initially – missed issues – handled appropriately though after case reconsidered & accepted.”
- “Attorney knew the paper record well & understand posture of case/difficulty of challenge, but concludes no IAC claim without investigation.”

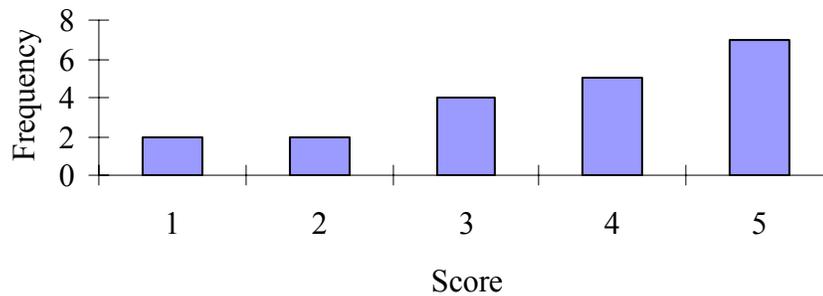
Question: Throughout the grievance process, NCPLS' response(s) to the grievance would be understandable and useful to the average inmate.

Grievance - Intake - Understandable



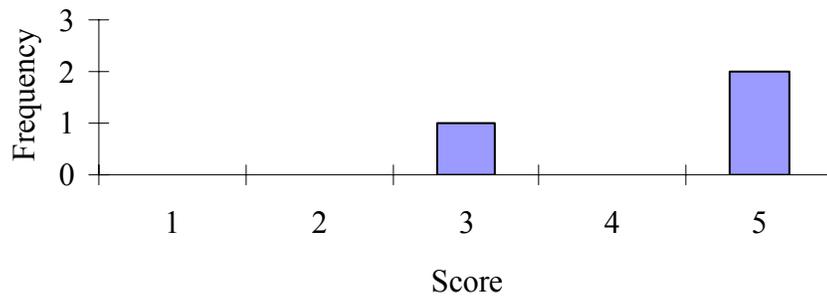
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - PC - Response Understandable



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - Civil - Response Understandable



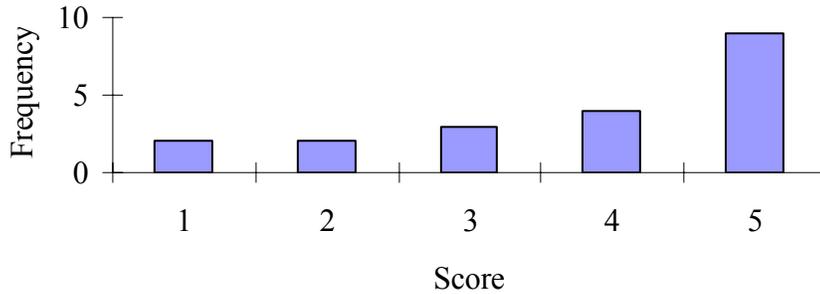
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=5 through NCPLS grievance procedure, N=6 through IDS (all PC)): There were only a few responses. Examples include:

- “Except the last letter perhaps was a little abrupt.”
- “I think this inmate’s anger is justified to a certain extent because the responses are confusing & don’t address the problems.
- “Original letter declining representation in MAR not too bad. 2005 letter declining representation in federal *habeas* proceedings less so”
- “Well, if there were any correspondence about anything of substance, it might have been useful.”

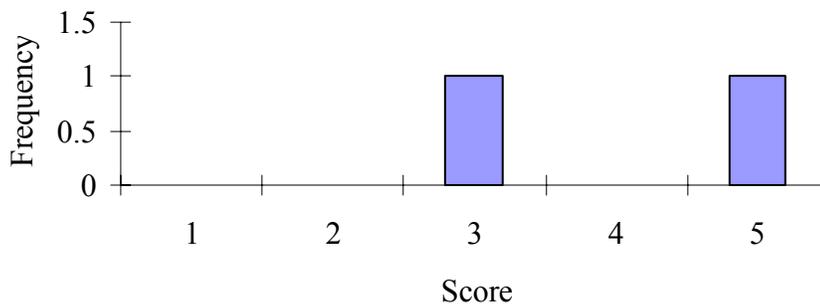
Question: Where appropriate, the pertinent team’s correspondence included citations to relevant legal authority?

Grievance - PC - correct citations used



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Grievance - Civil - used citations

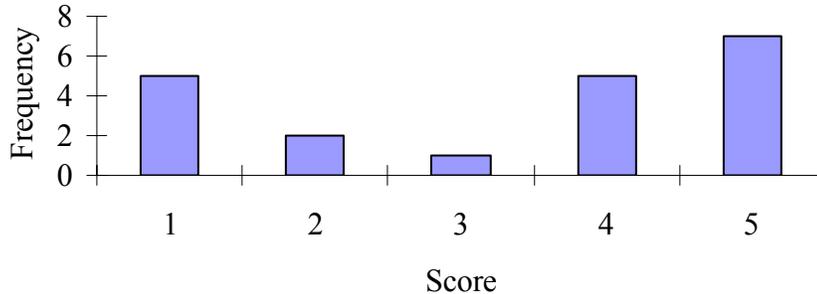


A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=4 from IDS, all PC): There were 4 comments, and of those, two were substantive. These were: “Seem to be telling him IAC claims must be visible from the record” and “I don’t think this was adequate.”

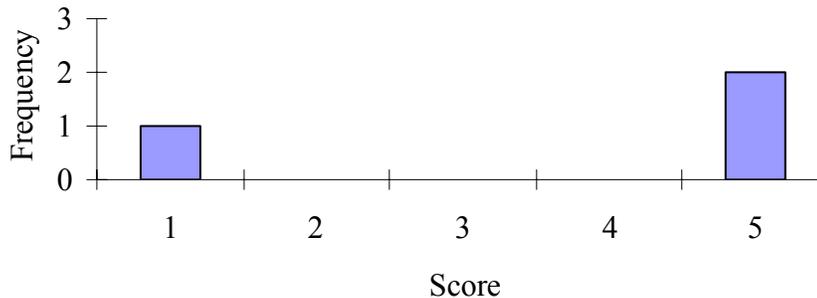
Question: The pertinent team conducted adequate factual investigation?

Grievance - PC - Factual Investigation



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Grievance - Civil - Factual Investigation



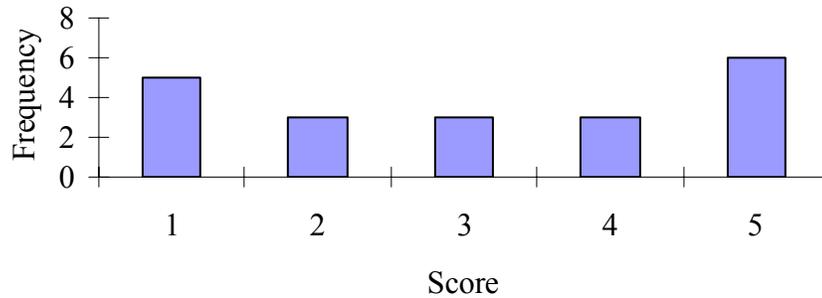
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=9 from IDS, all PC): Most of the comments referred to answers given in other parts of the questionnaire. In the few cases where there were substantive comments on factual investigation, the comments were primarily negative. Examples include:

- “No, should have 1) interviewed counsel; 2) gotten psych records – if inmate really was found legally insane by John Warren, court should have known that
- “Should have called attorney, asked about discovery – at a minimum.”
- “None.”

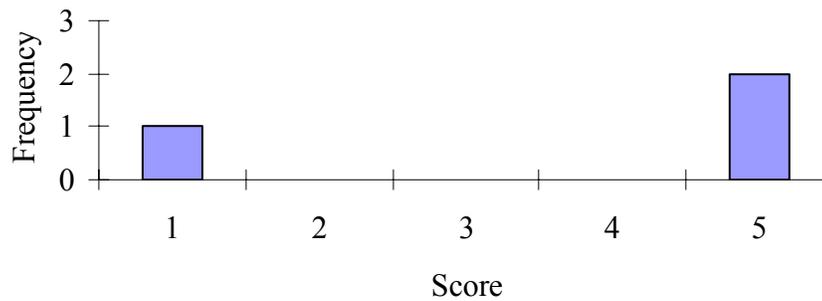
Question: The pertinent team appropriately analyzed and responded to all of the potentially meritorious factual and legal issues presented?

Grievance - PC - Issue Analysis



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Grievance - Civil - Issue Analysis



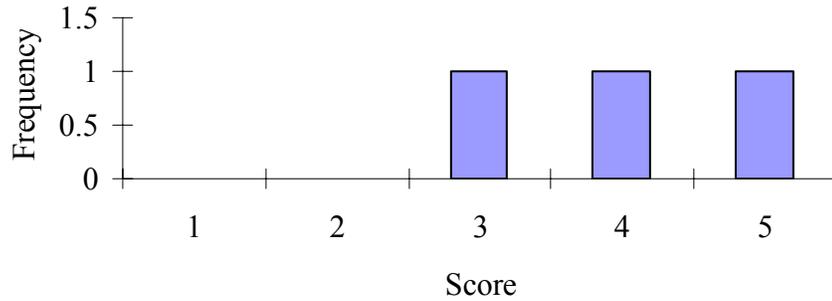
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=10 through IDS, all PC): Again, these comments often referred to answers included in other questions. In most of the cases where there were substantive answers, the comments reiterated the frustration with a lack of investigation.

- “Initial response of no representation contained an erroneous analysis of *Strickland* case’s applicability to the case. When error pointed out, state and federal representation followed and is pending.”
- “Again, how? At least call the guy’s lawyer.”
- “How? He did no investigation.”
- “Has done nothing.”

Question: If a Motion for Appropriate Relief and/or *habeas* petition was filed, it was well written and argued?

Grievance - PC - Habeus Corpus Brief

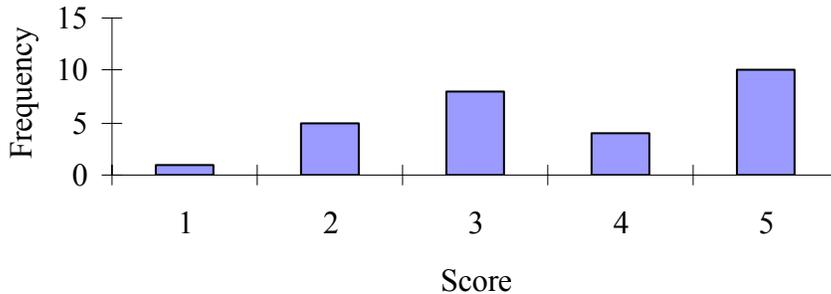


A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=2): One of the two comments referred to an earlier response. The other was specific to the case, disagreeing with how a particular case was used in the MAR brief.

Question: Overall, the grievance process that was used in this case followed NCPLS' established grievance policy.

Grievance - Intake - Followed Policy



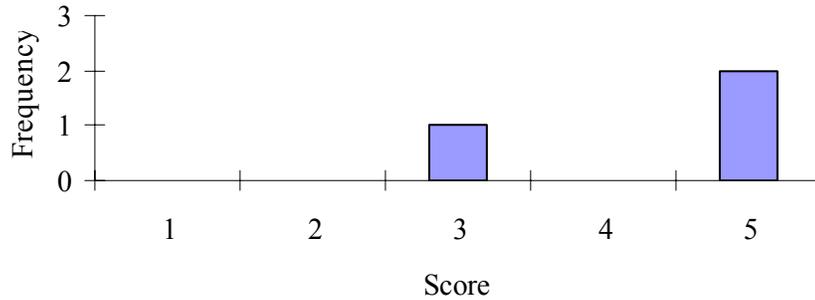
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=10 through NCPLS grievance process): In the cases where reviewers made comments, it was to note significant delays in the process. In a few cases, the reviewer was unclear if policy had been followed because certain documents were not in the case file. (Note: NCPLS keeps much of its correspondence on electronic files. When asked, evaluators staffing the review, assisted by NCPLS staff, attempted to obtain any missing document. However, there may have been cases where reviewers did not bring missing documents to our attention). Examples include:

- “Slow to respond to some initial correspondence.”
- “Delay violated policy.”
- “Unclear. No evaluation by a staff attorney in just instance was done. I understand that grievance policy is that this should be done.”

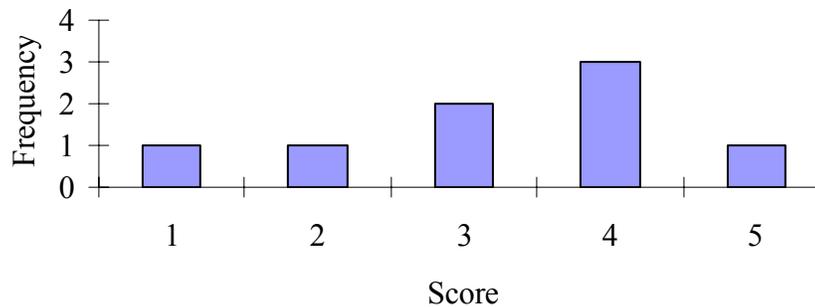
Question: If the process that was used in this case deviated from NCPLS' established grievance policy, that deviation was appropriate.

Grievance - Civil - applied PLS standards



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - Intake - deviation appropriate



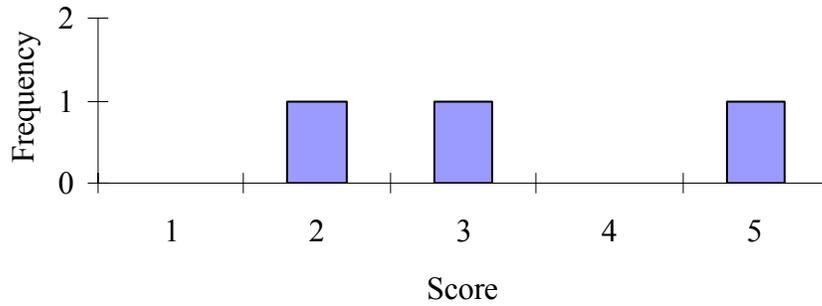
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Reviewer comments (N=8): Most of the comments reflected confusion as to why a file deviated from the established process, although the reviewers did not necessarily disagree with the outcome. Examples include:

- “Letter to Malcolm Hunter treated as a grievance & appropriately responded to.”
- “Pointless case – delay in response not substantively harmful.”
- “Unclear why board chair bypassed director – could be reason staff never re-evaluated case.”
- “Looks like ‘deviated’ because it sat somewhere for 5 months.”

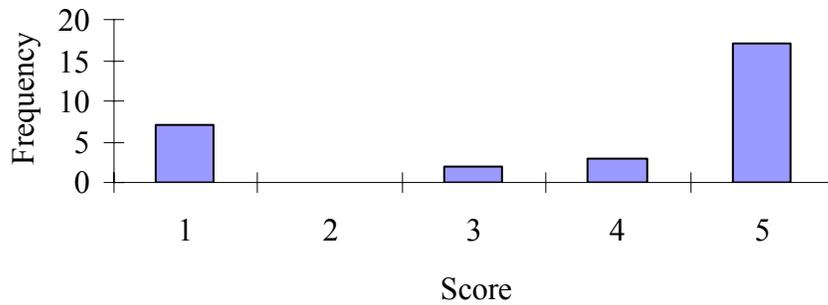
Question: Overall, the resolution of the grievance in this case was appropriate.

Grievance - Civil - Complaint addressed



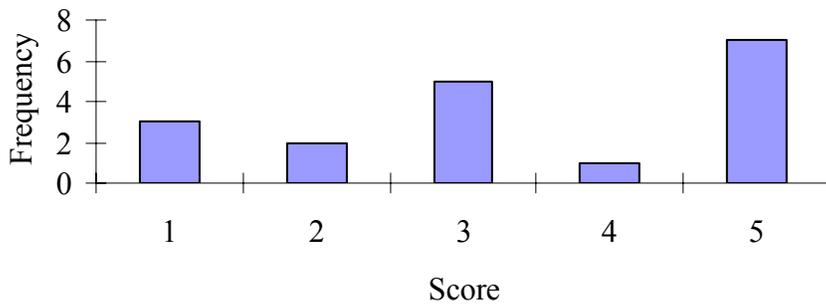
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality

Grievance - Intake - Overall



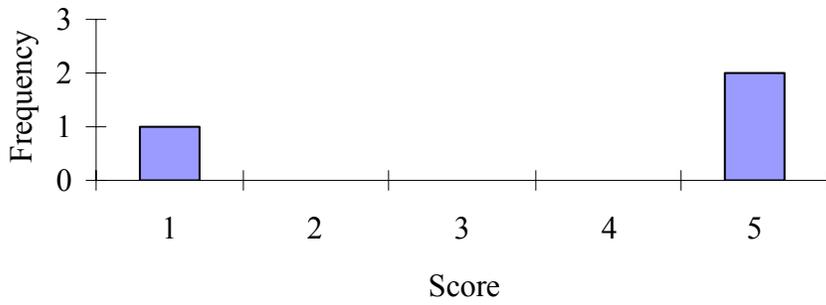
A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - PC - Overall



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Grievance - Civil - Overall



A lower score (1 or 2) generally reflects lower quality work, a higher score (4 or 5) reflects higher quality work.

Reviewer comments (N=12 through NCPLS grievance process, N=11 through IDS, all PC): Most reviewers agreed that there was no substance to the particular grievance. However, there were several comments about how the grievance was handled.

- “Well done.”
- “Initial analysis erred; subsequent work is excellent.”
- “Not initially. Subsequently, pleadings are good.”
- “Only mistake was the file confusion. The case had no merit and there was no harm in the delay caused by the file confusion.”
- “As far as it goes. However, the delay in realizing the possible conflict was troublesome.”
- “Decision on representation likely would have been the same, but impossible to know without any investigation.”
- “My guess is that there was no viable PC challenge but again, some minimal investigation would confirm that.”
- “He did not receive a response to his 7/05 request for assistance. Apparently the letter/file was lost. However, this is the 2nd file that I have reviewed where lack of communication to inmate re: NCPLS conflict is complicating resolution – perhaps lack of recognition of conflict? Inmate is complaining that NCPLS dropped the ball by not handling appeal of dismissal of civil case – that is frivolous – however – inmate also seems to be complaining that NCPLS won’t help him sue NCPLS – just tell him why!”
- “No decision has been made more than four years late. Attorney has misinterpreted client’s letters as to desire of client to have his case investigated, contributing to the delay.”
- “Several later letters received inadequate response. Proper response initially, even starting from reject letter, could have resulted in fewer write-backs & complaints to IDS.”

In the case of jail credit, only one grievance file was reviewed by one legal expert. The comments on the file outlined the specific issues with this case, but expressed frustration with not being able to tell what was done, delay in responses to client, and possible mishandling of the case. The following table shows the reviewer's scores:

Prompt	Request interpreted	Issue ID'd	Understandable	Included Citations	Factual Investigation	Issue Analysis	Overall
2	3	1	4	5	1	1	1

Other Reviewer Comments on Grievance Files (N=14 through NCPLS, N=9 through IDS; 7 PC, 2 Civil): Most of the reviewers' comments for straightforward files were lengthy and had to do with the specific case. However, they illustrate again the sympathy the reviewers had with the difficult nature of addressing the grievance. They also comment on how internal NCPLS actions, or lack of action, may have exacerbated the problem. Comments on post-conviction files were markedly different. Four of the seven indicated serious concerns with the cases. Examples from the straightforward files include:

- “Inmate did not grieve original decision of NCPLS to decline representation in post-conviction – which is unfortunate because attorney made decision w/out adequate information (both NCPLS attorney & inmate’s original attorney seem to think that the standard for diminished capacity defense & an insanity defense are the same) (missed IAC claim – valid one – possibly should have gotten psych records). NCPLS response to later grievance by staff attorney was late (Jan 06 to Summer 05 complaint) but probably appropriate given unclear nature of complaint.”
- “This is the type of client who is convinced she has a claim and won’t take no for an answer. There is only so much you can do in situations like these.”
- “Only issue w/ this file – one follow-up letter in response to his 6 letters requesting help on his *pro se* MAR – (after NCPLS appropriately declined representation) explaining that NCPLS could not help – might have prevented grievance.”
- “File is a mess. Clearly a mentally ill problem client. On the other hand, NCPLS attorneys either misstate or misunderstand his concerns & never provide him with promised answer on whether they would assist with post-conviction. In the meantime, guy’s *habeas* deadline has expired.”

Examples of the post-conviction grievance file comments include:

- “Again, failure to timely respond to post-rejection letter might have been useful, although that is not clear in this case.”
- “No documentation. Serious issues.”
- “Inmate refers to a letter from him dated in 11/03. Not in file. Also references letter from attorney to inmate dated 4/23/02. No copy in file. Ditto 5/4/02. The delay in this case is inexcusable.”
- “This case needs some attention.”
- “Overall, I think the handling of this file was marginally negligent.”

Examples of comments on civil grievance files included the following:

- “File was still incomplete for our review despite repeated attempts to find the missing documents. *E.G.* – Judge X’s order dismissing negligence claim against client. X notes that client filed a motion to dismiss, and filed a response, client filed a reply. None of these pleadings are in the file. Nor are the discovery responses of the client. The file in general is well-organized and the attorney

- seems to know what he's doing. There doesn't appear to be any good reason why these documents are not in the file, or why they could not be located after repeated requests to find them.”
- “NCPLS undertook to represent this man in a GS 1983/negligence case in the EDNC. The file was well-prepared – pre-filing by a paralegal. However, after filing:
 - R NCPLS failed to conduct any discovery to support deliberate indifference or negligence claims.
 - R NCPLS failed to keep client informed of progress of case.
 - R NCPLS failed to inform client of import of fact that negligence claim against defendant X was dismissed by Court.
 - R NCPLS recommended settlement to client in part with inducement that case against X would continue – knowing that best claim against X had been dismissed and that likelihood of success in amending complaint low – especially without discovery.”

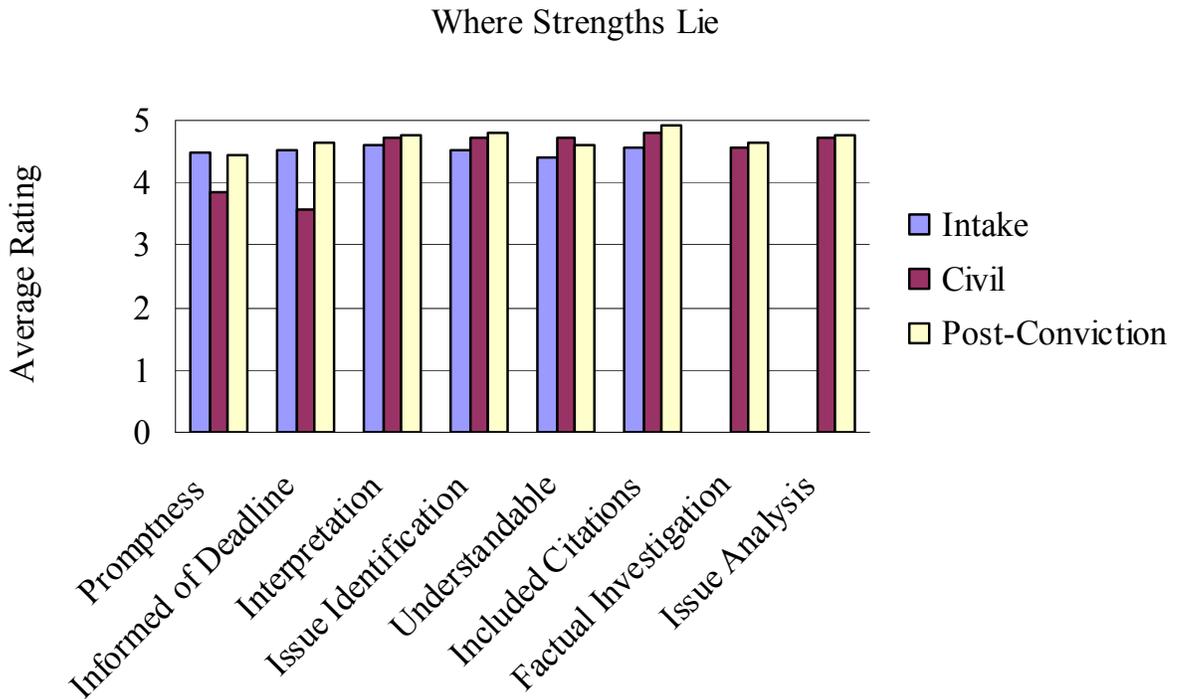
A Focus on Highly Rated Cases – Where Do the Strengths Lie?

We explored highly rated cases to see if we could identify particular strengths. Generally, reviewers felt these cases were strong across all areas.

For civil files, out of 90 possible individual reviewer ratings, 79 were rated as 4 or 5 overall. (Remember the ratings of 1 to 5 corresponded generally with poor to excellent quality.) For these, scores were generally high across several areas, with the highest rated area being on whether or not appropriate citations were included. The only areas that were slightly downgraded for civil files were in the areas of promptness and informing clients of statute of limitation deadlines.

For post-conviction files, out of 210 possible individual reviewer ratings, 158 received ratings of 4 or 5, the favorable and best ratings respectively. These files were highly rated in all categories. Reviewers were especially pleased with how NCPLS was prompt, informed clients of statute of limitation deadlines, and made appropriate legal citations.

The figure below shows the average scores in various areas for intake, civil and post-conviction files which had an overall rating of 4 or 5.

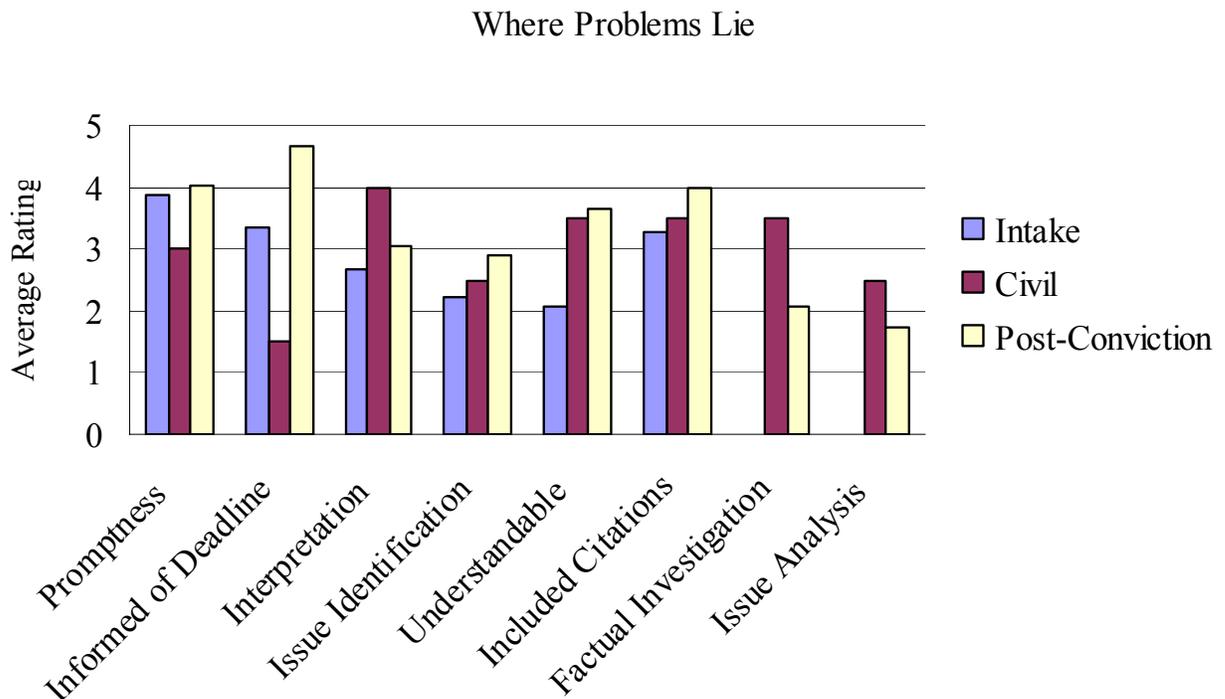


A Focus on Poorly Rated Cases – Where Do the Problems Lie?

Where reviewers had strong negative reactions, we explored those cases in more depth to see if there were particular reasons. Generally, reviewers downgraded a file overall because of a lack of or ineffective factual investigation or poor issue analysis, or for reasons that were not reflected in the questions included in the questionnaire.

For civil files, out of 90 possible individual reviewer ratings, there were only two overall ratings of 2; there were no overall ratings of 1. (Remember the ratings of 1 to 5 corresponded generally with poor to excellent quality.) Of these, one reviewer felt there was not a high quality of issue analysis; on the other, the reviewer felt the case was significantly delayed and appropriate legal citations were not included.

For post-conviction files, out of 210 possible ratings, there were 27 ratings of 1 or 2, the worst or poor ratings respectively. For these poorly rated cases, reviewers most commonly downgraded the file because of a lack of factual investigation and/or problems with issue analysis. These files rated relatively highly on other aspects, such as promptness, informing clients of statute of limitation deadlines, and appropriate legal citations. The figure below shows the average scores in various areas for intake, civil and post-conviction files which had an overall rating of 1 or 2. This chart also illustrates how a case may have received relatively higher ratings in individual areas and still have received an overall low rating, most likely for reasons not captured in the specific questions on the questionnaire but mentioned in the comment sections.



III. Summary of Additional Feedback from Peer Reviewers

This portion of the report summarizes observations provided by five of the 16 review panel members directly to John Rubin, Professor of Government and Public Law, The School of Government, UNC-Chapel Hill. The evaluation team asked Professor Rubin to receive these comments because of his legal background and expertise.

The reviewers who had additional comments about post-conviction work had strong reservations about the extent to which NCPLS was providing inmates with meaningful access to the courts. Although they recognized the difficulties of post-conviction work, all of these reviewers had concerns about NCPLS's effectiveness in identifying and investigating violations that had occurred during the trial phase of the proceedings and in utilizing post-conviction proceedings to address the range of potential violations. On the civil side, the comments were mixed. One reviewer was particularly critical, and the other had positive and negative comments.

Methodology

The summary is included because several of the reviewers who participated in the evaluation asked for the opportunity to provide additional feedback. They felt that the format of the questionnaires used during the main part of the evaluation did not adequately bring out these additional impressions and conclusions. The evaluation team advised all of the reviewers that, if they wished to provide additional feedback, they should contact Professor Rubin directly in order to preserve their anonymity with the main evaluator team members.

Five of the 16 reviewers contacted Professor Rubin by telephone or email during the latter part of October 2006. The following section presents Professor Rubin's summary of these conversations. All of these reviewers are referred to as "he" regardless of their gender.

Comments by Reviewers

Post-Conviction Cases

Three of the reviewers focused their comments on post-conviction work. They all expressed concerns about the organization's effectiveness in identifying and investigating violations that had occurred during the trial phase of the proceedings, and in utilizing post-conviction proceedings to address the range of potential violations. One reviewer stated, "That may be hard to see from the written evaluation comments because most of the cases that were turned down I would've turned down. But, that's not consistent with the overall feeling we came out with." Another reviewer stated, "[B]ased on what I learned, I don't believe that NCPLS is providing inmates any type of meaningful access to the courts for post-conviction claims." Although the reviewers recognized that post-conviction work is difficult and that NCPLS has funding limitations, the reviewers expressed several concerns about NCPLS's processes and priorities.

The principal deficiencies these three reviewers identified can be broken down as follows:

- NCPLS limits post-conviction work to “addressing specific issues raised by inmates.” This approach is problematic because for various reasons inmates are usually not in a good position to identify the issues that need to be raised in their cases.
- Relatedly, NCPLS limits its review of inmate claims to the face of the record. One reviewer observed that NCPLS does “a relatively good job in a limited way. The office is able to identify things that are a matter of record, such as incorrect sentences.” But, the office is “reluctant to do any preliminary investigation before turning down a case.” Another reviewer echoed this concern, stating that people who may or may not have meritorious claims are discouraged from pursuing their case without adequate investigation into the circumstances of the case.
- NCPLS litigated few post-conviction cases during the period reviewed, and of the cases that were litigated, all dealt with matters that appeared on the face of the record, such as questions about whether inmates had received proper jail credit. Cases rarely involved evidentiary hearings—that is, those that involve the presentation of witnesses.
- NCPLS’s internal review process has too many layers of review, which eliminate potentially meritorious cases and delay the filing of cases that need to be pursued.
- NCPLS spends too much time on rejecting cases and is too concerned with creating a record of the inquiries it received and why it decided not to proceed.
- The reviewers thought that NCPLS spends too much time responding to complaints about guilty pleas, which are usually difficult to challenge. The reviewers also were concerned that NCPLS limits its review to the record and may not be identifying cases in which a guilty plea could be successfully challenged.
- NCPLS has not established a way of identifying systematic problems. Relatedly, the few cases that were chosen for litigation had a relatively small impact. Although the reviewers believed it important for sentences to reflect proper jail credit, they were concerned that NCPLS was not pursuing post-conviction cases with greater implications for the particular inmates and for inmates in general. “I disagreed with some individual decisions; that can happen and could happen to me. But, all the cases that were litigated were small. That disturbed me more than what NCPLS turned down.”
- The reviewers recognized the importance of correcting illegal sentences but questioned whether there are alternative approaches that would free up time for other claims.
- The reviewers recognized that most inmate claims are not meritorious and do not warrant litigation. They were concerned, however, that the wheat was being tossed out with the chaff. The reviewers were concerned that attorneys may have difficulty in identifying meritorious claims and in developing the skills necessary to engage in litigation when a meritorious claim is identified and settlement is not possible.

Civil Cases

Two of the five reviewers addressed the civil side of NCPLS's work. The comments were not as extensive as the comments about NCPLS's post-conviction work. One reviewer was particularly critical about the effectiveness of NCPLS's advocacy on the civil side. The other stated that he found lots of good practices, such as sympathetic, informed letters to inmates. He also recognized that the attorneys have a difficult job. Still, he had concerns.

Both of these reviewers recognized that there were impediments to pursuing civil rights cases (such as PLRA, the Prison Litigation Reform Act), but they believed that more could be done. One reviewer questioned whether NCPLS was doing any class action work and expressed concern that the culture at NCPLS did not encourage lawyers to take on tough issues. The other reviewer noted that cases on behalf of individual inmates can have a big impact.

There also was concern over how long the process took. One reviewer found that the intake process worked well, particularly in light of the number of inmate letters received each day, and that NCPLS initially responded quickly, well within the thirty days set by the office. Thereafter, however, there were long delays for both litigation and non-litigation matters. "There would be three letters, for example, saying that I'm reviewing and I'll get back to you." Simple litigation matters, such as custody and visitation, took too long. "What should take a year took two years." This reviewer thought that the detailed internal review process before the filing of a case may contribute to delay. "Review is needed for class action cases, but if the case is a custody and visitation or tort action, review contributes to delay."

Lastly, it was suggested that more efforts should be undertaken to address conditions of confinement in county jails. However, such efforts are not currently funded by the *Bounds* contract with the state.

Summary of Interviews with NCPLS Management Staff

Through in-person interviews, NCPLS's leadership was given the opportunity to submit additional information about NCPLS to supplement the data obtained during the main part of the evaluation. (For purposes of this report, NCPLS's leadership includes the executive director, administrative officer, team leaders, and executive assistant. For ease of reference, the interviewees are referred to as managers regardless of differences in their specific job titles or duties.) The following summaries identify the principal matters discussed by the managers; the summaries are not verbatim recitations.

The interviewees discussed four main areas: the mission of NCPLS and its ability to meet that mission; the work environment at NCPLS; training and mentoring at NCPLS; and the managers' observations about the evaluation process. The largest portion of the interviews involved discussion of NCPLS's mission. The managers believed that the organization was meeting its primary mission of providing legal services to inmates, although that often means explaining to inmates why they do not have a case. They identified various barriers to meeting the mission, such as low pay for staff. For the most part they felt that the workload was manageable (as the duties are currently defined). They praised the work environment, recognized that most of the training is currently on-the-job, and were generally positive about the evaluation process itself.

Methodology

The interviews were conducted by John Rubin, Professor of Public Law and Government at the School of Government at UNC-Chapel Hill, and Joe Gavrilovich, Masters of Public Administration candidate at the School of Government, UNC-Chapel Hill. The interviews were in-person, and took place on December 18, 2006, at the NCPLS office. Each interview was individual, and lasted approximately 45 minutes. Interviews were conducted with persons at the NCPLS office in the following order:

- Brenda Richardson, Executive Assistant (Support Team Leader)
- Billy Sanders, Administrative Officer
- Lynne Rupp, Post-Conviction Team Leader
- Liz Raghunanan, Intake Team Leader
- Phil Griffin, Civil Team Leader
- Michael Hamden, Executive Director

The interviews followed a predetermined set of questions, which were provided in writing to NCPLS in advance of the interviews, but the interviews were not strictly limited to these questions. The questions and summary of responses appear below. Each person is referred to as "he" regardless of gender. Some responses are tied to the particular job the person is performing so, although the person is not identified, complete anonymity may not be possible.

NCPLS asked the evaluation team to conduct additional interviews of all NCPLS staff, but for several reasons the evaluation team declined to participate directly in

comprehensive interviews. Instead, in addition to those listed above, Dr. Berner, the evaluation team leader, notified all NCPLS staff that they could contact Professor Rubin if they wanted to provide additional information for the evaluation. No NCPLS staff members contacted Professor Rubin in response to Dr. Berner's invitation.

Interviews

Providing qualitative information on ability of NCPLS to meet its mission

A portion of the interviews dealt with NCPLS's conception of its mission and its ability to meet that mission. The prepared questions were as follows:

- What is the mission of NCPLS?
- What do you consider to be your role in the organization?
- Do you feel NCPLS is meeting its mission? Why or why not?
 - What is the biggest barrier to meeting its mission?
 - What most facilitates meeting its mission?

NCPLS's managers agreed on the general mission of NCPLS. The top priority is to provide legal services to North Carolina inmates. The mission also includes educating the public and public officials about what NCPLS does and prisoners rights, and raising money to carry out these objectives. The managers talked about how they meet this mission. On the civil side, they address such matters as claims of excessive use of force and problems with medical care; on the post-conviction side, they correct sentence errors and deal with claims of innocence and ineffective assistance of counsel. One manager stated that NCPLS's goal is to provide service in every case, although he observed that in 98% of the cases this means sending a rejection letter. Another manager echoed this idea, stating that a part of the organization's mission is the provision of good legal advice. This is done through well-reasoned rejection letters. A third manager observed, "Eventually, you learn that you make a difference anyway. . . . You explain something to [inmates] that nobody has ever taken the time to explain to them before." The managers also talked about the challenge of figuring out which cases are meritorious. One manager observed that the meritorious cases are few and "the chaff is large." Another observed that a part of the mission is to prevent frivolous prisoner litigation while making sure to take care of the clients' needs.

The observations by the managers about the roles they played in the organization are briefly as follows. The Executive Director's role is to oversee and maintain the structure of the organization. He is responsible for approving all cases proposed for litigation. He also serves and staffs the NCPLS Board of Directors and represents the program externally. The Administrative Officer is in effect the associate director of NCPLS and is responsible for day-to-day operations. He is a team leader for the team leaders, sits on the Case Acceptance Committee, oversees securing grants and other special projects, and assists the Executive Director in various functions, including personnel matters. The Executive Assistant is the office manager. She supervises three support staff members and provides assistance as needed to the Executive Director. Her top priority is handling client grievances. She oversees the grievance process for each client by pulling the case,

talking to the advocate involved, and working to resolve the grievance. The three team leaders oversee the work in their respective areas: post-conviction, civil, and intake.

All of the managers believe that NCPLS is meeting its mission, although there are barriers. The biggest barrier identified by the managers is inadequate funding, and the main need is for better salaries. Better pay, in the managers' view, would help in the retention of attorneys. Additional funds also would allow the office to hire investigators and other staff and undertake additional initiatives, although there was not a clear consensus on the additional things that should be done. One manager observed that having investigators (NCPLS currently does not hire investigators) would allow more aggressive pursuit of post-conviction claims that require investigation and proof, such as ineffective assistance of counsel claims. Currently, attorneys have to conduct these investigations with what resources are available. Another manager thought that additional funds would be a greater aid in civil than in post-conviction cases. He said that there's "more of a grey area" on the civil side, while post-conviction cases are more cut and dried. Additional uses for funding included: more money for medical experts for civil cases (the office has difficulty getting experts with the funds it has available); an in-house person who could do Spanish translation (the office currently contracts with a former employee for translation services); more assistance to inmates with mental health problems; and more assistance to inmates in North Carolina's jails (the \$40,000 annual budget is covered by an IOLTA grant and NCPLS reports that it is enough to cover correspondence only, not investigation or litigation).

The managers expressed some concern about the workload, but overall thought that the workload was manageable (as the duties are currently defined). One manager stated that the volume of cases was a hindrance to fulfilling the office's mission and that more paralegals and attorneys are needed, but he also stated that the office is able to put out so many carefully written three-to-four page response letters because "the time to write them is available here." Another manager stated that the staff's caseloads are "manageable," in contrast to three to six years ago when there were a lot of complaints about caseloads.

Also cited as a barrier was that the law has gotten worse for prisoner litigation, particularly because of the passage of PLRA (the Prison Litigation Reform Act) on the civil side and AEDPA (the Antiterrorism and Effective Death Penalty Act) on the federal *habeas* side. Another manager stated that the staff's caseload on the civil side is not overwhelming. "If the law were better, that might be more of a problem."

The principal things identified as facilitating the mission are the enthusiasm and dedication of staff; the quality of the staff; the work environment at NCPLS, discussed more below; the relative longevity of NCPLS; improvements to NCPLS's processes, including form letters and self-help packets; the organization of the office into civil, post-conviction, and intake teams; and technological improvements, such as online legal research and case management software. The brevity of this discussion is not intended to suggest that the managers believed that the office is not meeting its mission. The question about barriers, above, lent itself to greater discussion during the interviews.

Providing context for overall evaluation report

A portion of the interviews dealt with the work environment at NCPLS. The prepared questions were as follows:

- How would you describe the work environment at NCPLS?
- How would you describe the culture at NCPLS?
- What motivates your work?

Two themes emerged about the work environment at NCPLS. First, the managers praised the atmosphere at NCPLS. One manager likened the organization to “a family.” Another described the work environment as “calm and familial, with everyone doing what they are expected to do.” The managers also emphasized the office’s greater efficiency. One stated that with the team structure, things are “flowing in a much more efficient manner.” Another observed that there is more “accountability, control, and tracking.”

The work culture was described as informal and flexible. Everyone pitches in and helps with each other’s jobs. People are “fired up” about the work. The staff are motivated by a genuine concern for inmates and the difficult conditions with which they have to deal. Two of the managers noted that it takes “a special kind of person” to do prisoner work.

Gaining information on training and mentoring

A portion of the interviews dealt with training. The prepared questions were as follows:

- What training is provided to new attorneys and paralegals?
- What continuing training is provided to established attorneys and paralegals?
- Are junior staff members mentored in any way and, if so, how?

The managers acknowledged that formal training is limited. An orientation is done for new employees, and they receive a handbook and individualized training on the office’s case management system. As in many organizations, training is on-the-job, with more experienced staff providing supervision as needed. The office does not have a formal mentoring process, although team leaders review new attorneys’ letters for up to six months after hire and more experienced paralegals work with newer paralegals on preparation and follow-up, particularly with respect to the application of deadlines.

One manager stated that established attorneys have a training allowance of \$600 per year. Another manager stated that each attorney has a training allowance of \$500 per year. (NCPLS reports that each employee has a training budget of \$625, which was lowered to \$500 in 2006 and was recently restored.) The office sometimes holds in-house trainings, such as a recent presentation for continuing legal education credit on sentencing issues in light of the U.S. Supreme Court’s decision in *Blakely v. Washington*. Previous training materials are available to staff on the office’s intranet.

Providing opportunity for NCPLS staff to comment on any aspect of evaluation

The last portion of the interviews dealt with the evaluation itself. The prepared question was as follows:

- Do you have any comments you would like to provide about any aspect of this evaluation?

The managers were generally positive about the evaluation process. Comments included that the evaluation was time-consuming and took away from other work but also that it was thorough and in-depth.

Appendix A: NCPLS's Contract with DOC

NORTH CAROLINA

WAKE COUNTY

PERSONAL SERVICES CONTRACT

This contract entered into this 1st day of October, 2002, between the State of North Carolina, Department of Correction, hereinafter referred to as the "Department," and North Carolina Prisoner Legal Services, Inc., hereinafter referred to as "Contractor," is for the purpose of providing certain legal services, specified below, to inmates assigned to the Department.

The Department has a legal obligation to provide legal assistance to inmates in its custody, as declared in *Bounds v. Smith*, 430 U.S. 817 (1977), and in accordance with constitutional requirements as enunciated by the United States Supreme Court in *Lewis v. Casey*, 116 S. Ct. 2174 (1996).

Contractor specializes in providing legal assistance to prisoners. Department desires to use the services of Contractor in order to meet the constitutional obligation of providing legal services to prisoners. Under the terms and conditions set forth in this contract, Contractor agrees to provide legal assistance to inmates in the custody of the Department.

Now, therefore, it is mutually agreed that:

1. Statement of Work

A. This is a personal services contract under which the Contractor agrees to provide legal assistance to people in custody of the Department of Correction in the amount and at the hourly rate specified in ¶ 14, which follows.

B. Contractor shall provide professional advice and assistance to North Carolina inmates in the following legal proceedings:

1. *Habeas corpus* petitions and other post conviction relief, but specifically excluding all work in any capital case;
2. Detainers; and
3. Civil proceedings under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of North Carolina inmates, and in the North Carolina Industrial Commission.

Appendix A: NCPLS's Contract with DOC

4. First-level interlocutory appeals to determine the applicability of qualified immunity defenses.
- C.
 1. Upon receipt of an inmate request for assistance, Contractor will review the inmate's request and provide a written response to the inmate. The response shall advise the inmate whether the inmate has an arguable claim for relief and shall include a statement of the applicable law, including appropriate case citations, on which the conclusion was based.
 2. Upon receiving an inmate request for assistance or representation, Contractor will review the inmate's claim and make an initial determination as to whether the claim, in the professional judgement 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. However, in every case in which it decides to represent a prisoner, before proceeding further, Contractor shall make a reasonable attempt to resolve the inmate's claim in accordance with ¶ 1. E, below.
 3. With respect to inmate requests for assistance based on subjects not listed in ¶ 1.B, above, Contractor shall advise the inmate that the request is not one covered by this contract. Contractor may bill the Department for reasonable actual time, up to one hour at the applicable hourly rate set forth in ¶ 14.A, below, to respond to requests for assistance not covered by this contract.

D. Should Contractor determine that a claim is not meritorious as defined above, or Contractor cannot otherwise represent the inmate consistently with the North Carolina Rules of Professional Conduct and Rule 11 of the State or Federal Rules of Civil Procedure, Contractor shall provide to the inmate an explanation of the legal and/or factual basis for the refusal to represent the inmate, including citation to relevant case law, if appropriate.

Any inmate request for representation or assistance and any communication between Contractor and an inmate regarding representation or assistance made pursuant to this contract shall be treated as confidential and privileged even if Contractor declines to represent the inmate under the terms of this contract; provided however, that in the event that an inmate waives this privilege, by word or deed, nothing in this agreement shall be deemed to prohibit the Department from making appropriate use of the resulting information.

E. If Contractor determines that the claim is meritorious, it shall make reasonable efforts to avoid litigation, consistently with the best interests of the client(s), including but not limited to exhaustion of any administrative remedies and consultation with the Attorney General's Office concerning settlement, prior to filing suit (if suit has not been filed). Contractor shall confer with the Attorney General's Office about the possibility of settling the claim and shall provide as much information as is then available, including the nature of the relief sought

Appendix A: NCPLS's Contract with DOC

by the client, the amount of damages to be sought and specifically what procedural or administrative modifications to the policies, procedures, or regulations of the Department of Correction, or the Division of Prisons, or of the statutes of the State of North Carolina that Contractor believes necessary to correct a perceived constitutional infirmity. When the best interests of the client(s) allow, Contractor will defer the institution of legal proceedings for at least thirty calendar days (and at least sixty calendar days in cases that present extraordinary legal or factual matters) pending a response from the Department. If a complaint has been filed *pro se* and the Contractor decides to offer representation, Contractor shall require its attorney(s) to determine whether the filing of an amended complaint would serve the interest of the client, would serve the interests of justice and could be done consistently with all applicable rules of civil procedure. In every case where these conditions are met, Contractor shall require its attorneys to file an amended complaint.

F. In addition to the prerequisites for class certification set out in Rule 23 of the Federal Rules of Civil Procedure, Contractor shall file no suit as a class action until Contractor has determined that class certification is required to assure that plaintiff and other inmates similarly situated would only thereby obtain the relief sought by the suit and that maintenance of a class action is superior to other means of affording full relief.

G. If Contractor accepts representation, Contractor shall continue to represent the inmate until the action is resolved through settlement or litigation at the federal district court or state superior court, or Industrial Commission level. The Department is not responsible for and will not pay for legal services, costs, and expenses associated with any matter beyond the scope of services described in paragraph 1.B., above. Those services do not include appeals beyond the trial court level except for first-level interlocutory appeals to determine the applicability of qualified immunity defenses, and those appeals necessary to exhaust state appeals in post conviction matters for the express purpose of filing *habeas corpus* claims. Therefore, it is understood that Contractor may file such petitions as necessary to exhaust an issue as prerequisite to filing a petition for *habeas corpus* relief in federal court.

H. Contractor agrees that it shall not seek nor be eligible to request or receive attorney's fees or costs under 42 U.S.C. § 1988 or any other remedial statute against any party for whom the State of North Carolina provides representation for any service provided pursuant to this contract. Contractor does not waive attorney fees for services which are not undertaken pursuant to this contract.

Appendix A: NCPLS's Contract with DOC

I. Contractor will not bill the Department under this contract for any assistance it may provide an inmate concerning criminal appeals for which assistance is available through the Office of the State Appellate Defender Services, except the time spent to determine the status of the inmate's rights and to inform the inmate that such services are available through that office.

J. In connection with work performed under this contract, Contractor shall not solicit plaintiffs nor promote litigation which was not initiated by the inmate seeking legal assistance pursuant to this contract.

2. Access to Inmates

Arrangements for legal visits or contacts with inmates shall be accomplished in accordance with applicable Division of Prisons policies.

3. Access to Records

Inmate institutional records that are a matter of public record will be available to Contractor for inspection or copying in accordance with 5 NCAC 2D.0601 *et seq.*, or other applicable Departmental regulation. Requests to review additional information must be made in accordance with applicable state and federal laws and regulations. Contractor agrees to abide by federal and state laws and regulations in maintaining the confidentiality of Department files and records. All requests for any public inmate records made during investigatory procedures prior to the filing of a lawsuit should be sent to the appropriate records custodian. All requests for other inmate records shall be made through the office of the General Counsel for the Department or the person designated by such counsel upon receipt of a request. The Department's response to all requests for information and inmate records shall be reasonably prompt and complete.

4. Termination of Inmate Representation

At either the initial interview with an inmate client or during initial correspondence, Contractor shall advise the inmate that consistently with Rule 2.8 of the Rules of Professional Conduct of the North Carolina State Bar, no representation will be provided subsequent to an inmate client's release from incarceration except as follows: If an inmate is released during the pendency of a lawsuit, which suit arose during confinement and is not mooted by release, then representation may continue under the terms of this contract.

Appendix A: NCPLS's Contract with DOC

5. Security and Lockdown

Contractor agrees to abide by, and to instruct its staff to abide by, all security rules and regulations of the Department. In the event of a lockdown or any other serious security concern, Contractor's access to the inmates, their records, and any other material contained within the facility may be restricted by the superintendent or warden of said facility, or his superiors in the chain of command.

6. Transportation of Inmates

The Department assumes responsibility for transporting inmates to and from the appropriate court facilities for appearances related to actions brought under this contract when a court of competent jurisdiction so orders. The contract shall not be construed to create any additional responsibility in the Department for providing security for these appearances.

7. Quarterly Reporting

Contractor shall submit to the Department quarterly reports, due fifteen (15) calendar days after the end of each quarter, containing the following information:

- A. Number of inmate requests for assistance and/or representation, categorized by type of action;
- B. Number of requests for representation denied;
- C. Number of requests accepted for representation;
- D. Action taken to process requests for assistance or representation;
- E. Number of requests resolved, categorized by type of action;
- F. Number of requests still pending by type of action;
- G. Number of lawsuits, including tort claims, initiated by Contractor on behalf of inmates, categorized by type of action;
- H. Number of lawsuits to which Contractor has been appointed after *pro se* complaint was filed;
- I. Number of Orders of Investigation in the Eastern District and number of cases accepted based on Orders of Investigation;
- J. Number of lawsuits pending, categorized by type of action;
- K. Number of lawsuits resolved; and
- L. Number of grievances filed by inmates complaining about services provided by Contractor, categorized by general topic area.

Appendix A: NCPLS's Contract with DOC

The work of the contract includes the time reasonably necessary to provide all required reports.

8. Records, Documents, and Reports

Contractor shall maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. To the extent that disclosure of the information contained in these records will not compromise client confidences or litigation strategies in pending litigation, these records shall be subject at all reasonable times, and upon reasonable notice, to inspection, review, or audit by personnel duly authorized by the Department and/or the State of North Carolina as required by state law. Contractor will retain all books, records, documents, and other material relevant to this contract for three years after resolution, and upon reasonable notice will make them available for inspection by persons authorized under this provision.

9. Independent Contractor

A. It is understood and agreed that Contractor is an independent contractor providing professional legal services as provided herein, and the Department shall neither direct the manner nor the method by which Contractor provides such services. Under no circumstances shall this contract be construed, deemed or considered to be an employment agreement between Department and Contractor or Contractor's employees. Contractor's employees shall have no claim under this contract or otherwise against the Department for compensation, vacation pay, sick leave, retirement benefits, Social Security, worker's compensation, disability, employment insurance benefits, professional malpractice insurance benefits or employee benefits of any kind. Contractor and its employees or agents rendering services under this contract are not agents or employees of the Department and shall not represent themselves as agents or employees of the Department.

B. Contractor shall adhere to professional standards and to the North Carolina Rules of Professional Conduct promulgated by the North Carolina State Bar which are incorporated by reference, and will perform all services required under this contract in a manner consistent with those professional standards.

C. Contractor shall pay for and maintain in force professional liability insurance coverage for errors, omissions, commissions, negligence, incompetence, and malfeasance.

Appendix A: NCPLS's Contract with DOC

10. Governing Law

This contract shall be governed by the laws of the State of North Carolina.

11. Severability

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provisions, and to this end the provisions of this contract are declared to be severable.

12. Limitation of Authority

Only the Secretary of the North Carolina Department of Correction, the Acting Secretary, or his delegate (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract for the Department. Only the Executive Director of North Carolina Prisoner Legal Services, Inc., shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract for Contractor. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Secretary and the Executive Director.

13. Term

The term of this contract is from 1 October 2002, through 30 September 2005, and the contract is renewable on terms agreed by the parties, as set out below.

14. Payment and Expenses

A. It is agreed for the contract period beginning 1 October 2002, that Contractor will perform the obligations set forth in the contract and that in consideration of Contractor's services the Department agrees to pay Contractor \$81.92 per lawyer hour up to a maximum of 74,001 hours for the thirty-six (36) month contract period and \$39.82 per paralegal hour up to a maximum of 36,999 hours for the thirty-six (36) month contract period. It is specifically understood that services provided in connection with family law issues, immigration proceedings, and clemency matters will not exceed 7.5% of the hours billed to the contract.

B. It is agreed that the Department will pay Contractor, in advance, twelve equal quarterly installments of \$627,955.18 on the first day of October, January, April, and July for a total of

Appendix A: NCPLS's Contract with DOC

\$7,535,462.16. It is further agreed that Contractor will submit invoices and detailed time records, as well as a summary of total attorney and paralegal hours substantiating the payment for the previous quarter within 30 days after the end of the quarter; and that at the end of the contract period, Contractor will refund any portion of the funds advanced not supported by time records within 45 days of the end of the contract period.

C. It is specifically understood that Contractor may expend these funds on any items reasonably related to the purposes of this contract. Contractor may alter its budget for these funds without the approval of the Department. There is *no* line item budget which is a part of this contract.

D. Contractor shall maintain a comprehensive timekeeping system to track attorney and paralegal hours expended on this contract. Contractor will keep detailed time records showing the type of work done (*e.g.*, reviewed inmate letters, prepared complaints, travel to prison to interview client) and that the records will clearly indicate time expended on provision of legal services pursuant to the contract.

E. A fiscal audit shall be performed by Contractor's independent auditor to determine that hours charged against the contract are hours spent on inmate legal matters covered by this contract and that Contractor has properly performed its obligations under this contract. Such an audit shall be performed annually. A copy of the audit report, in a form that accords with generally accepted accounting principles, shall be provided to the Department within 30 days of receipt by Contractor.

F. During this contract period, Contractor will assemble a team of three lawyers who have relevant expertise to conduct an audit of the work performed under this contract. The audit team will review at random 50 requests for assistance, the response to each request, and the overall adequacy of the legal work performed in response to the request in light of the requirements of this contract and the standards prescribed by the Rules of Professional Conduct. The audit team may, in its discretion, review additional requests for assistance, case files, or such other materials as are needed to fulfill the purposes of the performance audit.

The audit team will provide a report of its findings to the Department which shall consist either of:

1. A certification of reasonable assurance that, based upon the files randomly reviewed and the observations of the team, NCPLS is fully performing all material contractual obligations. Or,

Appendix A: NCPLS's Contract with DOC

2. A statement that a certificate of reasonable assurance cannot be given, together with a detailed statement of the specific problems or deficiencies noted by the team with recommendations for further auditing and/or measures to correct the deficiencies.

Each member of the audit team will sign the report and a copy will be delivered to:

Executive Director NC Prisoner Legal Services, Inc. P.O. Box 25397 Raleigh, NC 27611	And	Secretary NC Department of Correction 4201 Mail Service Center Raleigh, NC 27699-4201
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Contractor shall take prompt action and work in good faith to correct every material deficiency noted by the audit team.

This performance audit shall be conducted under strict requirements of confidentiality.

Except for the disclosures specifically required, the audit team and individual members of the team will hold in strictest confidence all information concerning NCPLS clients, client interests and/or objectives, and all confidential client information. Additionally, the audit team and individual members of the team will preserve the confidences and confidential employment information of NCPLS employees.

G. The Contractor shall provide the necessary office space, supplies and equipment to carry out the duties of this contract, as more fully specified below. Contractor is responsible for lights, power, water, sewer, heat, telephone, janitorial services, and such other similar services as are necessary and appropriate for Contractor's employees to render legal services. Contractor shall provide maintenance and repair all such equipment at its sole cost and expense.

H. Hours spent in the processing of grievances filed by inmates against the Contractor shall not be included in the attorney hours charged against the contract.

I. It is understood that capital items, such as furniture and equipment, purchased with funds provided by this contract or previous contracts with the Department shall remain the property of the State of North Carolina. During the period of this contract, it is understood that Contractor shall use all such property in carrying out the purpose of the contract, but that should this contract terminate, the State may take possession of the same. Further, any capital items purchased with funds provided by this contract shall be returned to the Department when such property is replaced.

15. Construction

Appendix A: NCPLS's Contract with DOC

Nothing in this agreement shall be construed to create a right enforceable by or in favor of any third party.

16. Integration

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.

17. Waiver or Default

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the agreement unless stated to be such in writing, signed by the Secretary of Correction and the Executive Director of North Carolina Prisoner Legal Services, Inc., and attached to the original contract.

18. Liability

The services to be provided under this contract will be performed entirely at Contractor's and his agents' or employees' risk.

19. Modifying Program

A. If it appears to either party that the legal requirements for or the need for legal services for incarcerated persons has changed, and that the services by Contractor may need to be changed, that party may propose a change in the contract. If the parties desire to change any term in the contract and can agree upon the change, such change may be made in accordance with paragraph 12. In the case where no agreement can be reached concerning renewal terms before the end of the prior contract period, the budget and the terms of the contract will continue until the parties enter into a new contract or cancel the continuation terms of this agreement in the manner provided in ¶19.C., below.

B. This contract shall become effective October 1, 2002, to continue in effect through the 30th day of September, 2005.

C. Except as provided below, this contract may be canceled by Contractor only in the event that it is unable to perform its contractual obligations, in which case the Department shall be entitled to a refund of any portion of the funds advanced that have not been expended (as shown by Contractor's time

Appendix A: NCPLS's Contract with DOC

records). Otherwise, the parties may sever their relationship by giving 180 days advance written notice of an intention to sever the relationship at the conclusion of the contract term or during the continuation period provided in ¶19.A. When such notice is given, the contractual relationship will end the 181st day after notice was given. Notice of cancellation, as required herein, shall be transmitted *via* U.S. Mail, certified, return receipt requested. The notice period shall begin on the day the return receipt is signed and dated. Either party may seek specific performance of a material contract term in the courts of this State.

IN WITNESS WHEREOF, the parties have executed this agreement at Raleigh, the day and year first written above.

Michael S. Hamden
Executive Director
North Carolina Prisoner Legal Services, Inc.

Theodis Beck, Secretary
Department of Correction
State of North Carolina

Appendix B: NCPLS's Contract with IDS

Personal Services Contract

This contract is entered into this 24th day of February 2006 between the North Carolina Office of Indigent Defense Services (hereinafter referred to as "IDS") and North Carolina Prisoner Legal Services, Inc. (hereinafter referred to as "NCPLS"), for the purpose of providing legal services to inmates in the custody of the North Carolina Department of Correction (hereinafter referred to as "DOC") in accordance with the constitutional principles set forth in *Bounds v. Smith*, 430 U.S. 817 (1977), and *Lewis v. Casey*, 518 U.S. 343 (1996).

Under the terms and conditions set forth in this contract, NCPLS agrees to provide legal assistance to inmates in the custody of DOC. Now, therefore, it is mutually agreed that:

I. Term

The term of this contract shall be from March 1, 2006 through September 30, 2007, and the contract is renewable on terms to be agreed by the parties, as set out below.

II. Statement of Work

A. This is a personal services contract under which NCPLS agrees to provide legal assistance to people in custody of the DOC at the rate of compensation specified in ¶ VIII., below.

B. NCPLS shall provide professional advice and assistance to North Carolina inmates in the following legal proceedings:

1. *Habeas corpus* petitions, other post-conviction relief, and sentence reduction credits, but specifically excluding all work in any capital case;
2. Detainers;
3. Civil proceedings under Federal and State law with respect to the conditions of confinement or the effects of actions by government officials on the lives of North Carolina inmates, and actions in the North Carolina Industrial Commission;
4. First-level interlocutory appeals to determine the applicability of qualified immunity defenses; and
5. Family law and immigration proceedings that affect the lives of North Carolina inmates.

C. IDS is not responsible under this contract and will not pay for legal services, costs, and expenses associated with any matter beyond the scope of services described in ¶ II.B., above, other than the expenses associated with providing *pro se* packets to inmates. Those services do not include appeals beyond the trial court level except for first-level interlocutory appeals to determine the applicability of qualified immunity defenses, and those appeals necessary to exhaust state appeals in post-conviction matters for the express purpose of filing *habeas corpus* claims. Therefore, it is understood that NCPLS

Appendix B: NCPLS's Contract with IDS

may file such petitions as necessary to exhaust an issue as prerequisite to filing a petition for *habeas corpus* relief in federal court.

D. NCPLS shall timely respond to inmate requests for assistance as follows:

1. Upon receipt of an inmate request for assistance, NCPLS will review the inmate's request and provide a written response to the inmate. The response shall advise the inmate whether the inmate has an arguable claim for relief and shall include a statement of the applicable law, including appropriate case citations, on which the conclusion was based.

2. Upon receiving an inmate request for assistance or representation, NCPLS will review the inmate's claim and make an initial determination as to whether the claim, in the professional judgment of NCPLS, 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.

3. With respect to inmate requests for assistance based on subjects not listed in ¶ II.B., above, NCPLS shall advise the inmate that the request is not one covered by this contract and may provide one or more *pro se* packets to the inmate. NCPLS may charge reasonable actual time against this contract to respond to requests for assistance not covered by this contract.

E. Should NCPLS determine that a claim is not meritorious as defined above, or NCPLS cannot otherwise represent the inmate consistently with the North Carolina Rules of Professional Conduct and Rule 11 of the State or Federal Rules of Civil Procedure, NCPLS shall provide to the inmate an explanation of the legal and/or factual basis for the refusal to represent the inmate, including citation to relevant case law, if appropriate. 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.

F. If a civil complaint has been filed *pro se* and NCPLS decides to offer representation, NCPLS shall require its attorney(s) to determine whether the filing of an amended complaint would serve the interest of the client, would serve the interests of justice, and could be done consistently with all applicable rules of civil procedure. In every case where these conditions are met, NCPLS shall require its attorneys to file an amended complaint.

G. If NCPLS accepts representation, NCPLS shall continue to represent the inmate until the action is resolved through settlement or litigation at the federal district court, state superior court, or Industrial Commission level.

H. NCPLS agrees that it shall not seek or be eligible to request or receive attorney's fees or costs under 42 U.S.C. § 1988, or any other remedial statute, against any party for whom the State of North Carolina provides representation for any service provided pursuant to this contract. NCPLS does not waive

Appendix B: NCPLS's Contract with IDS

attorney fees for services that are not undertaken pursuant to this contract.

I. NCPLS will not bill IDS under this contract for any assistance it may provide an inmate concerning criminal appeals for which assistance is available through the North Carolina Office of the Appellate Defender, except the time spent to determine the status of the inmate's rights and to inform the inmate that such services are available through that office.

III. Termination of Inmate Representation

At either the initial interview with an inmate client or during initial correspondence, NCPLS shall advise the inmate that consistently with Rule 2.8 of the Rules of Professional Conduct of the North Carolina State Bar, no representation will be provided subsequent to an inmate client's release from incarceration except as follows: If an inmate is released during the pendency of a lawsuit, which suit arose during confinement and is not mooted by release, then representation may continue under the terms of this contract.

IV. Quarterly Reporting

NCPLS shall submit to IDS quarterly reports, due fifteen (15) calendar days after the end of each quarter, containing the following information:

1. Number of inmate requests for assistance and/or representation, categorized by type of action;
2. Number of requests for legal representation that were denied;
3. Number of requests for legal representation that were accepted;
4. Action taken to process requests for assistance or representation;
5. Number of requests resolved, categorized by type of action;
6. Number of requests still pending, categorized by type of action;
7. Number of lawsuits initiated by NCPLS on behalf of inmates, categorized by type of action;
8. Number of lawsuits to which NCPLS has been appointed after a *pro se* complaint was filed, categorized by type of action;
9. Number of Orders of Investigation in the Eastern District and number of cases accepted based on Orders of Investigation;
10. Number of lawsuits pending, categorized by type of action;
11. Number of lawsuits resolved and the closing code; and

Appendix B: NCPLS's Contract with IDS

12. Number of grievances filed by inmates complaining about services provided by NCPLS, categorized by general topic area.

No later than fifteen (15) calendar days after the end of each quarter, NCPLS shall also submit to IDS copies of all lawsuits and motions for appropriate relief that were filed by NCPLS during the previous quarter of the contract period. The work of the contract includes the time reasonably necessary to provide all required reports.

V. Records, Documents, and Reports

A. NCPLS shall maintain books, records, documents, and other evidence of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. To the extent that disclosure of the information contained in these records will not compromise client confidences or litigation strategies in pending litigation, these records shall be subject at all reasonable times, and upon reasonable notice, for inspection, review, or audit by personnel duly authorized by IDS and/or the State of North Carolina as required by state law. NCPLS will retain all books, records, documents, and other material relevant to this contract for three years after resolution and, upon reasonable notice, will make them available for inspection by persons authorized under this provision.

B. During the term of this contract, NCPLS shall comply with IDS' requests for copies of documents that have been filed by NCPLS in any court, and shall respond in a timely manner to all requests for non-confidential and non-privileged information that the IDS Director determines is necessary to facilitate the reports to the General Assembly that are required by Section 14.9(b) of North Carolina Session Law 2005-276. If the IDS Director requests confidential or privileged client information, including client confidences and attorney work-product, NCPLS shall provide the information to the extent and in the form permitted by law and the Revised Rules of Professional Conduct, including but not limited to aggregated information that is responsive to the request. If the IDS Director requests confidential employment information, NCPLS shall provide the information to the extent and in the form permitted by law and NCPLS' confidentiality obligations, including but not limited to aggregated information that is responsive to the request.

VI. Program Evaluation

A. During the term of this contract, IDS shall perform the program evaluation and submit the reports to the General Assembly that are required by Section 14.9(b) of North Carolina Session Law 2005-276. The evaluation will be conducted pursuant to the attached "Scope of Work Agreement," which is incorporated into this contract by reference. IDS shall consult with NCPLS concerning the development of a system for performing the evaluation in a manner that is consistent with the attached "Scope of Work Agreement," all applicable laws governing attorney-client and employment confidentiality, and the Revised Rules of Professional Conduct.

Appendix B: NCPLS's Contract with IDS

B. NCPLS shall take prompt action and work in good faith to correct every material deficiency noted by the evaluation team. The evaluation shall be conducted under strict requirements of confidentiality. Except for the disclosures specifically required, the evaluation team and individual members of the team will hold in strictest confidence all information concerning NCPLS clients, client interests and/or objectives, and all confidential client information. Additionally, the evaluation team and individual members of the team will preserve the confidences and confidential employment information of NCPLS employees.

VII. Independent Contractor

A. It is understood and agreed that NCPLS is an independent contractor providing professional legal services as provided herein, and that IDS shall neither direct the manner nor the method by which NCPLS provides such services. Under no circumstances shall this contract be construed, deemed, or considered to be an employment agreement between IDS and NCPLS or NCPLS' employees. NCPLS' employees shall have no claim under this contract or otherwise against IDS for compensation, vacation pay, sick leave, retirement benefits, Social Security, worker's compensation, disability, employment insurance benefits, professional malpractice insurance benefits, or employee benefits of any kind. NCPLS and its employees or agents rendering services under this contract are not agents or employees of IDS and shall not represent themselves as agents or employees of IDS.

B. NCPLS shall adhere to professional standards and to the North Carolina Rules of Professional Conduct promulgated by the North Carolina State Bar, which are incorporated by reference, and will perform all services required under this contract in a manner consistent with those professional standards.

C. NCPLS shall pay for and maintain in force professional liability insurance coverage for errors, omissions, commissions, negligence, incompetence, and malfeasance.

VIII. Payment and Expenses

A. In lieu of hourly compensation for NCPLS staff attorney and paralegal time for the remainder of fiscal year 2005-06, IDS agrees to pay NCPLS a lump sum of \$209,318.33 for the month of March 2006, which represents one-ninth of the funding that DOC transferred to IDS for fiscal year 2005-06 in accordance with Section 14.9(c) of North Carolina Session Law 2005-276; IDS shall issue that lump sum payment to NCPLS on March 2, 2006, or as soon as practicable thereafter. IDS further agrees to pay NCPLS a lump sum of \$627,955.00 for the fourth quarter of fiscal year 2005-06, which represents one-third of the funding that DOC transferred to IDS for fiscal year 2005-06 in accordance with Section 14.9(c) of North Carolina Session Law 2005-276; IDS shall issue that lump sum payment to NCPLS on April 6, 2006, or as soon as practicable thereafter.

B. In lieu of hourly compensation for NCPLS staff attorney and paralegal time for fiscal year 2006-07, IDS agrees to pay NCPLS a lump sum of \$627,955.00 at the beginning of each quarter of the

Appendix B: NCPLS's Contract with IDS

fiscal year, or as soon as practicable thereafter, which represents one-fourth of the funding that DOC will transfer to IDS for fiscal year 2006-07 in accordance with Section 14.9(c) of North Carolina Session Law 2005-276.

C. In lieu of hourly compensation for NCPLS staff attorney and paralegal time for the first quarter of fiscal year 2007-08, IDS agrees to pay NCPLS a lump sum in an amount to be determined pursuant to the 2007 Appropriations Act at the beginning of that quarter, or as soon as practicable thereafter.

D. In the event that the General Assembly directs DOC to transfer additional funds to IDS for NCPLS' services, or the General Assembly otherwise appropriates additional funding to NCPLS, at any point during the course of this contract, IDS agrees to execute an amendment to this contract authorizing payment of the additional funds to NCPLS.

E. NCPLS may expend these funds on any items reasonably related to the purposes of this contract, and may alter its budget for these funds without IDS' approval.

F. Throughout the contract period, NCPLS shall maintain a level of staff and productivity that is comparable to the level it maintained during the course of the prior contract with IDS, which was effective from October 1, 2005 through February 28, 2006. NCPLS shall submit to IDS detailed time records, as well as a summary of total attorney and paralegal hours substantiating the payment for the month of March 2006, no later than April 30, 2006. NCPLS shall submit to IDS detailed time records, as well as a summary of total attorney and paralegal hours substantiating the payment for the months of April through June 2006, no later than July 31, 2006. NCPLS shall submit to IDS detailed time records, as well as a summary of total attorney and paralegal hours substantiating the payment for each quarter of fiscal year 2006-07, no later than 30 days after the end of the applicable quarter.

G. NCPLS shall maintain a comprehensive timekeeping system to track attorney and paralegal hours expended on this contract. NCPLS will keep detailed time records showing the type of work done (*e.g.*, reviewed inmate letters, prepared complaints, traveled to prison to interview client), and the records will clearly indicate time expended on provision of legal services pursuant to the contract.

H. A fiscal audit shall be performed by NCPLS' independent auditor to determine that the hours charged against the contract are hours spent on inmate legal matters covered by this contract and that NCPLS has properly performed its obligations under this contract. Such an audit shall be performed annually. A copy of the audit report, in a form that accords with generally accepted accounting principles, shall be provided to IDS within 30 days of receipt by NCPLS.

I. NCPLS shall provide the necessary office space, supplies, and equipment to carry out the duties of this contract. NCPLS is responsible for lights, power, water, sewer, heat, telephone, janitorial services, and such other similar services as are necessary and appropriate for NCPLS' employees to render

Appendix B: NCPLS's Contract with IDS

legal services. NCPLS shall provide maintenance and repair all such equipment at its sole cost and expense.

J. Hours spent in the processing of grievances filed by inmates against NCPLS shall not be included in the attorney hours charged against this contract.

K. It is understood that capital items, such as furniture and equipment, purchased with funds provided by this contract or previous contracts with DOC shall remain the property of the State of North Carolina. During the period of this contract, it is understood that NCPLS shall use all such property in carrying out the purpose of the contract, but that should this contract terminate, the State may take possession of the same. Further, any capital items purchased with funds provided by this contract shall be returned to the State when such property is replaced.

IX. Governing Law

This contract shall be governed by the laws of the State of North Carolina.

X. Severability

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract, which can be given effect without the invalid provisions, and to this end the provisions of this contract are declared to be severable.

XI. Construction

Nothing in this agreement shall be construed to create a right enforceable by or in favor of any third party.

XII. Integration

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.

XIII. Waiver or Default

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of the agreement unless stated to be such in writing, signed by the Executive Director of IDS and the Executive Director of NCPLS, and attached to the original contract.

XIV. Liability

The services to be provided under this contract will be performed entirely at NCPLS' and its agents' or employees' risk.

Appendix B: NCPLS's Contract with IDS

XV. Modifying Program or Contract

A. If it appears to either party that the legal requirements for or the need for legal services for incarcerated persons has changed, and that NCPLS' services may need to be changed, that party may propose a change in the contract. If the parties desire to change any term in the contract and can agree upon the change, such change may be made in accordance with ¶ XV.B., below. In the case where no agreement can be reached concerning renewal terms before the end of the prior contract period, the budget and the terms of the contract will continue until the parties enter into a new contract or cancel the continuation terms of this agreement in the manner provided in ¶ XV.C., below.

B. Only the Executive Director of IDS or his designee shall have the express, implied, or apparent authority to alter, modify, or waive any clause or condition of this contract for IDS. Only the Executive Director of NCPLS or his designee shall have the express, implied, or apparent authority to alter, modify, or waive any clause or condition of this contract for NCPLS. Any alteration, modification, or waiver of any clause or condition of this contract shall not be effective or binding unless made in writing and signed by the Executive Director of IDS and the Executive Director of NCPLS.

C. Except as provided below, this contract may be canceled by NCPLS only in the event that it is unable to perform its contractual obligations, in which case IDS shall be entitled to a refund of any portion of the funds advanced that have not been expended, on a *pro rata* basis. Otherwise, the parties may sever their relationship by giving 180 days advance written notice of an intention to sever the relationship at the conclusion of the contract term or during the continuation period provided in ¶ XV.A., above. When such notice is given, the contractual relationship will end the 181st day after notice was given. Notice of cancellation, as required herein, shall be transmitted via U.S. Mail, certified, return receipt requested. The notice period shall begin on the day the return receipt is signed and dated. Either party may seek specific performance of a material contract term in the courts of this State.

In witness whereof, the parties have executed this agreement effective March 1, 2006.

Malcolm Ray Hunter, Jr.
Executive Director
NC Office of Indigent Defense Services

Michael S. Hamden
Executive Director
NC Prisoner Legal Services, Inc.

Appendix B: NCPLS's Contract with IDS

NORTH CAROLINA PRISONER LEGAL SERVICES, INC.
Statement of Activity DOC/OIDS
Year Ended December 31, 2005

SUPPORT:

DOC contract	\$ 1,883,866
OIDS contract	627,955
	<u>2,511,821</u>

EXPENSES:

Salaries	1,680,144
Fringe benefits	442,576
Contract labor	37,008
Computer consultant	1,125
Staff training	34,286
Travel	16,829
Occupancy	146,606
Other	7,298
Office supplies and equipment	35,368
Equipment maintenance	39,807
Library maintenance	19,521
Client litigation expenses	10,940
Postage and printing	49,469
Telephone	14,951
General insurance	17,870
Dues and fees	15,124
Professional fees: defense expense	80,590
Other professional consultant	24,400
Finance & performance audit	12,830
Property depreciation	8,645
	<u>2,695,386</u>

Appendix D: Sample peer legal review questionnaires

Evaluation of North Carolina Prisoner Legal Services Case File Review: [Review Panel⁴]

In 2005, the North Carolina General Assembly directed the Office of Indigent Defense Services (IDS) to contract with North Carolina Prisoner Legal Services (NCPLS) to provide legal assistance and advice to the North Carolina prison population. The General Assembly also directed IDS to evaluate the program and to report our findings.

With the assistance of School of Government faculty, the first part of IDS' evaluation has been to document NCPLS' case-management process in work-flow format, with information on workload, timelines, and associated costs at each step.

The second part of the evaluation relies on your expertise in one or more of the areas covered by IDS' contract with NCPLS—*i.e.*, criminal post-conviction proceedings, jail credit cases, or civil proceedings challenging conditions of confinement or the actions of government officials. The objective of this portion of the evaluation is to determine the extent to which NCPLS is providing appropriate, quality responses to inmate requests in light of the requirements of the contract, the standards prescribed by the Rules of Professional Conduct, NCPLS' case acceptance priorities, and your view of the needs and interests of the prison population.

The attached file contains all of the documents in the inmate's paper and electronic file at NCPLS. Please note that, if an inmate letter raised both post-conviction and civil issues, NCPLS would have opened two separate files. Thus, if you are reviewing a post-conviction file, you should not expect to see information relevant to any civil claims in the file. Similarly, if you are reviewing a civil file, you should not expect to see information relevant to any post-conviction claims in the file.

Please review all of the materials up to the point indicated in this file and complete the attached questionnaire. All of your responses will be kept confidential. Individual responses will only be seen by evaluation staff, and the final evaluation report will aggregate all of the reviewers' responses. Select quotes, reported anonymously, may be used to illustrate points in the final report.

Thank you for agreeing to review NCPLS' work. As an expert in this field, your opinions will be invaluable to our evaluation.

NOTE: *The evaluators serving on the Grievance Team will be reviewing selected files for which IDS has received an inmate complaint about NCPLS. If that complaint has been addressed through NCPLS' internal grievance procedure, the Grievance Team members should review both NCPLS' case file and grievance file and complete the attached Grievance Questionnaire. However, if that complaint has not been addressed through NCPLS' internal grievance procedure, the Grievance Team members should review NCPLS' case file and complete either the Civil or Post-Conviction Questionnaire as appropriate.*⁵

*(Continue to attached pages) →
Please feel free to use the back of this page for additional comments*

⁴ - This cover page used on the front of each questionnaire; the name of the review panel was included in the header of the cover pages, and questionnaires were color-coded according to the review panel.

⁵ - The note about grievance files only appeared on the cover page for the grievance review panel.

Appendix D: Sample peer legal review questionnaires

**Evaluation of North Carolina Prisoner Legal Services
Case File Review: Intake**

NCPLS Case File #: _____ Reviewer #: _____ Today's Date: _____

Please check the appropriate box(es) below:

1. What actions were taken by the Intake Team with this case file? *(check all that apply)*
- | | |
|--|---|
| <input type="checkbox"/> Application/questionnaire sent | <input type="checkbox"/> Court documents requested |
| <input type="checkbox"/> Standard form letter sent | <input type="checkbox"/> Referred to Post-Conviction Team |
| <input type="checkbox"/> Pre-assembled packet sent | <input type="checkbox"/> Referred to Civil Team |
| <input type="checkbox"/> Quick response letter sent | <input type="checkbox"/> Representation denied |
| <input type="checkbox"/> Sentence recalculation letter/motion sent | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Exhaust administrative remedies letter sent | _____ |

Please circle the number that, in your professional opinion, reflects how much you agree or disagree with each statement below:

2. The actions taken by the Intake Team that are identified in Question #1 above were appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

3. a. The Intake Team's responses to all of the inmate's correspondence were prompt. *(NCPLS' policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Intake Team's responses were "prompt," please consider both NCPLS' policy and your own professional view of whether the response times in this case were appropriate.)*

(strongly agree) 5 4 3 2 1 (strongly disagree)

- b. Where appropriate, the Intake Team informed the inmate of all applicable deadlines.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Record Relevant Dates Here (month and year):

Conviction (PC)/Incident (Civil): _____ Referred to Legal Team: _____
Initial Inmate Request: _____ Other Important Dates: _____
Initial Correspondence from NCPLS: _____

Comments: _____

4. The Intake Team appropriately interpreted the inmate's questions and requests.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

Appendix D: Sample peer legal review questionnaires

5. The Intake Team appropriately identified the predominant legal issues presented by the inmate's correspondence.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

6. The Intake Team's response(s) would be understandable and useful to the average inmate.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

7. Where appropriate, the Intake Team's correspondence included citations to relevant legal authority.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

8. If the Intake Team reviewed a potential civil claim for merit according to NCPLS' standards (*i.e.*, more than *de minimis* value and *de minimis* injury), they appropriately applied NCPLS' standards.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

9. If the Intake Team referred the case to the Post-Conviction and/or Civil Team, that decision was appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

10. Overall, the decisions made by the Intake Team with respect to this inmate letter were appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

11. *Other Comments on this File:* _____

Appendix D: Sample peer legal review questionnaires

**Evaluation of North Carolina Prisoner Legal Services
Case File Review: Civil**

NCPLS Case File #: _____ Reviewer #: _____ Today's Date: _____

Please answer the following questions:

1. What actions were taken by the Civil Team with this case file? *(check all that apply)*
- | | |
|---|---|
| <input type="checkbox"/> Application/questionnaire sent | <input type="checkbox"/> Negotiated settlement |
| <input type="checkbox"/> Pre-assembled packet sent | <input type="checkbox"/> Negotiated administrative resolution |
| <input type="checkbox"/> Quick response letter sent | <input type="checkbox"/> Lawsuit filed in the Industrial Commission |
| <input type="checkbox"/> Assigned attorney recommended for litigation | <input type="checkbox"/> Representation denied |
| <input type="checkbox"/> Case accepted for litigation by CAC | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Lawsuit filed in State or Federal Court | _____ |

2. Please circle the number that, in your professional opinion, reflects the overall complexity of the factual and legal issue(s) raised in this case file:

(very complex) 5 4 3 2 1 (not complex)

Comments: _____

Please circle the number that, in your professional opinion, reflects how much you agree or disagree with each statement below:

3. a. The Civil Team's response(s) to all of the inmate's correspondence were prompt. *(NCPLS' policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Civil Team's responses were "prompt," please consider both NCPLS' policy and your own professional view of whether the response times in this case were appropriate.)*

(strongly agree) 5 4 3 2 1 (strongly disagree)

- b. The Civil Team informed the inmate of all applicable deadlines.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Record Relevant Dates Here (month and year):

Incident(s): _____ NCPLS Attorney Assigned to Case: _____
 Initial Inmate Request: _____ Case Resolution: _____
 Initial Correspondence from NCPLS: _____ Other Important Dates: _____

Comments: _____

4. The Civil Team appropriately interpreted the inmate's questions and requests.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

5. The Civil Team appropriately identified all of the potentially meritorious legal issues presented by the inmate's correspondence, including any important issue(s) that the inmate did not recognize him or herself.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Appendix D: Sample peer legal review questionnaires

Comments: _____

6. The Civil Team conducted adequate factual investigation.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

7. In reviewing potential civil claims for merit according to NCPLS' standards (*i.e.*, more than *de minimis* value and *de minimis* injury), the Civil Team appropriately applied those standards.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

8. The Civil Team appropriately analyzed and responded to all of the potentially meritorious factual and legal issues presented.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

9. The Civil Team's correspondence would be understandable and useful to the average inmate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

10. Where appropriate, the Civil Team's correspondence included citations to relevant legal authority.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

11. Overall, the decisions made by the Civil Team with this case file were appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

12. If a complaint was filed, it was well written and properly stated a claim for relief.

Appendix D: Sample peer legal review questionnaires

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

13. *Other Comments on this File (attach additional pages):* _____

Appendix D: Sample peer legal review questionnaires

**Evaluation of North Carolina Prisoner Legal Services
Case File Review: Post-Conviction**

NCPLS Case File #: _____ Reviewer #: _____ Today's Date: _____

Please answer the following questions:

1. The defendant in this case pled (*check all that apply*):
 Not guilty Guilty Other: _____

2. What actions were taken by the Post-Conviction Team with this case file? (*check all that apply*)

<input type="checkbox"/> Application/questionnaire sent	<input type="checkbox"/> Case accepted for litigation by CAC
<input type="checkbox"/> Pre-assembled packet sent	<input type="checkbox"/> MAR filed in State court
<input type="checkbox"/> Quick response letter sent	<input type="checkbox"/> Habeas petition filed in State court
<input type="checkbox"/> Sentence calculation letter/motion/order sent	<input type="checkbox"/> Habeas petition filed in Federal court
<input type="checkbox"/> Letter/motion/order sent to correct technical error	<input type="checkbox"/> Representation denied
<input type="checkbox"/> Assigned attorney recommended for litigation	<input type="checkbox"/> Other: _____

3. Please circle the number that, in your professional opinion, reflects the overall complexity of the factual and legal issue(s) raised in this case file:
(very complex) 5 4 3 2 1 (not complex)

Comments: _____

Please circle the number that, in your professional opinion, reflects how much you agree or disagree with each statement below:

4. a. The Post-Conviction Team's responses to all of the inmate's correspondence were prompt. (*NCPLS' policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Post-Conviction Team's responses were "prompt," please consider both NCPLS' policy and your own professional view of whether the response times in this case were appropriate.*)
(strongly agree) 5 4 3 2 1 (strongly disagree)

- b. In cases with potential federal claims, the Post-Conviction Team informed the inmate of the statute of limitations in federal court for his or her case.
(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Record Relevant Dates Here (month and year):

Conviction: _____	NCPLS Attorney Assigned to Case: _____
Initial Inmate Request: _____	Case Resolution: _____
Initial Correspondence from NCPLS: _____	Other Important Dates: _____

Comments: _____

5. The Post-Conviction Team appropriately interpreted all of the inmate's questions and requests.
(strongly agree) 5 4 3 2 1 (strongly disagree)

Appendix D: Sample peer legal review questionnaires

Comments: _____

6. The Post-Conviction Team appropriately identified all of the potentially meritorious legal issues presented by the inmate’s correspondence, including any important issue(s) that the inmate did not recognize him or herself.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

7. The Post-Conviction Team conducted adequate factual investigation.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

8. The Post-Conviction Team appropriately analyzed and responded to all of the potentially meritorious factual and legal issues presented.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

9. The Post-Conviction Team’s correspondence would be understandable and useful to the average inmate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

10. Where appropriate, the Post-Conviction Team’s correspondence included citations to relevant legal authority.

(strongly agree) 5 4 3 2 1 (strongly disagree) **n/a**

Comments: _____

11. Overall, the decisions made by the Post-Conviction Team with this case file were appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

12. If a Motion for Appropriate Relief and/or *habeas* petition was filed, it was well written and argued.

(strongly agree) 5 4 3 2 1 (strongly disagree) **n/a**

Appendix D: Sample peer legal review questionnaires

Comments: _____

13. *Other Comments on this File (attach additional pages):* _____

Appendix D: Sample peer legal review questionnaires

**Evaluation of North Carolina Prisoner Legal Services
Case File Review: Grievance**

NCPLS Case File #: _____

NCPLS Client Grievance File #: _____

Reviewer #: _____

Today's Date: _____

Please answer the following questions:

1. Please briefly describe the nature of the inmate's grievance (*check all that apply*):

- Inmate believed NCPLS was too slow in answering the inmate's letter.

Date Inmate Letter Received: _____ Date of NCPLS Response: _____

- Inmate disagreed with NCPLS' decision to decline representation.

Reason(s) for Disagreement (*describe*): _____

- Inmate believed his or her case was not being handled properly.

Reason(s) (*describe*): _____

- Other (*describe*): _____

2. The following person(s) responded to the inmate's grievance: (*check all that apply*)

- NCPLS attorney NCPLS Director NCPLS Board Grievance Committee

3. The grievance was: dismissed; or upheld

If unclear, describe resolution: _____

4. If the grievance was upheld, what remedial action(s) were taken? (*check all that apply*) **n/a**

- Grievance found to be irremediable and/or no further action necessary
 Case sent back for reconsideration by the NCPLS attorney who was originally assigned
 Case sent back for assignment to a different NCPLS attorney
 Case sent back for referral to outside counsel
 Other (*describe*): _____

5. If the grievance was sent back to the original NCPLS attorney or a different NCPLS attorney, were any general or specific instructions provided to that attorney? (*check one box below*) **n/a**

- yes; or no

If yes, please describe those instructions: _____

Appendix D: Sample peer legal review questionnaires

Please circle the number that, in your professional opinion, reflects how much you agree or disagree with each statement below:

6. Throughout the grievance process, NCPLS' response(s) to the inmate's grievance was prompt. *(NCPLS' policy is to make an effort to answer client correspondence within 30 days. When deciding whether NCPLS' responses to this grievance were "prompt," please consider both NCPLS' policy and your own professional view of whether the response times in this case were appropriate.)*

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

7. Throughout the grievance process, NCPLS appropriately interpreted the inmate's complaint(s).

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

8. Throughout the grievance process, NCPLS' response(s) to the grievance would be understandable and useful to the average inmate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

9. Overall, the grievance process that was used in this case followed NCPLS' established grievance policy.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

10. If the process used in this case deviated from NCPLS' established grievance policy, that deviation was appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree) n/a

Comments: _____

11. Overall, the resolution of the grievance in this case was appropriate.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

Appendix D: Sample peer legal review questionnaires

12. *Other Comments on this File (attach additional pages):* _____

Appendix D: Sample peer legal review questionnaires

**Evaluation of North Carolina Prisoner Legal Services
Case File Review: Jail Credit**

NCPLS Case File #: _____ Reviewer #: _____ Today's Date: _____

Please answer the following question:

1. What actions were taken by the Jail Credit Team with this case file? *(check all that apply)*

- Jail credit letter/motion/order sent
- Representation denied
- Sentence calculation letter/motion/order sent
- Other: _____

Please circle the number that, in your professional opinion, reflects how much you agree or disagree with each statement below:

2. The Jail Credit Team's responses to all of the inmate's correspondence were prompt. *(NCPLS' policy is to make an effort to answer client correspondence within 30 days. When deciding whether the Jail Credit Team's responses were "prompt," please consider both NCPLS' policy and your own professional view of whether the response times in this case were appropriate.)*

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

3. The Jail Credit Team appropriately interpreted all of the inmate's questions and requests concerning jail credit.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

4. The Jail Credit Team appropriately identified all of the potentially meritorious jail credit issues presented by the inmate's correspondence, including any important issue(s) that the inmate did not recognize him or herself.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

5. The Jail Credit Team conducted adequate factual investigation.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

6. The Jail Credit Team appropriately analyzed and responded to all of the potentially meritorious jail credit issues presented.

(strongly agree) 5 4 3 2 1 (strongly disagree)

Comments: _____

Appendix D: Sample peer legal review questionnaires

7. The Jail Credit Team's correspondence would be understandable and useful to the average inmate.

(strongly agree) 5 4 3 2 1 **(strongly disagree)**

Comments: _____

8. Where appropriate, the Jail Credit Team's correspondence included citations to relevant legal authority.

(strongly agree) 5 4 3 2 1 **(strongly disagree)**

n/a

Comments: _____

9. Overall, the decisions made by the Jail Credit Team with this case file were appropriate.

(strongly agree) 5 4 3 2 1 **(strongly disagree)**

Comments: _____

10. *Other Comments on this File:* _____

Appendix D: Sample peer legal review questionnaires

NCPLS Legal Team	Documents on File	# examples
Intake	Standard No Service Letter	1
	Standard Form Response	2
	Sentence Calculation Letter	1
	Quick Response Letter	3
	Pre-Assembled Packet	6
	Work-Up Questionnaire	1
	SODA Letter	1
	Exhaustion of Remedies Letter	1
Civil	Quick Response Letter	4
	Denial of Service Letter	2
Post-Conviction	Quick Response Letter	3
	Denial of Service Letter	5
Jail Credit	Client Response Letter	1
Case Acceptance	Litigation Initiation Report	4

Appendix F: List of interview dates and site visits for evaluation

Purpose of Site Visit	NCPLS Staff Visited	Date of Site Visit
Meeting to outline case processes	Michael Hamden Billy Sanders	January 11, 2006
Scope of work signing	Michael Hamden	February 21, 2006
Meeting to discuss case processes	Billy Sanders Liz Raghunanan	June 29, 2006
Pilot test for peer legal review	Billy Sanders	July 27, 2006
Team meeting observations	Brenda Richardson	August 8, 2006
Logistics for peer review	Phil Griffin Billy Sanders Michael Pearson Lynne Rupp	
Team meeting observation	Liz Raghunanan	August 16, 2006
Evaluation team mid-term report	Michael Hamden Billy Sanders Liz Raghunanan Phil Griffin Lynne Rupp	August 25, 2006
File pull for peer legal review	Brenda Richardson Trish Sanders Michael Pearson	September 26 to October 5, 2006 (various dates)
Peer legal reviews	Michael Hamden Billy Sanders Brenda Richardson	October 9-10 and 16-17, 2006

Appendix F: List of interview dates and site visits for evaluation

Interviews with leadership/management	Brenda Richardson Billy Sanders Lynne Rupp Liz Raghunanan Phil Griffin Michael Hamden Beth McNeill	December 18, 2006
Discussion of Grievance Process	Brenda Richardson	January 17, 2007

Appendix G: NCPLS Response to Evaluation Report

NCPLS was invited to submit a response to this report. Their response, including several appendixes they requested be included, immediately follows.

COMMENTS OF NORTH CAROLINA PRISONER LEGAL SERVICES

On behalf of NCPLS, we thank the Office of Indigent Defense Services and the UNC School of Government for conducting a comprehensive evaluation of the operations and services provided by our organization. In a planning process that extended over at least three months, we were grateful for the opportunity we were afforded to participate in the planning of the audit, and in the selection of auditors. We have already implemented some of the auditors' recommendations, and we will continue our efforts to improve the legal services we provide North Carolina's prison population.

We also thank the fine, public-spirited attorneys who served as evaluators devoting three full business days to participate in the audit of NCPLS. That service was a realization of the highest aspirations of the legal profession, providing *pro bono* public service. Of course, it would be difficult for these (or any) attorneys to fully grasp the complexities of NCPLS's structure and operations in so short a time. Neither could it reasonably be expected for lawyers who are not routinely engaged in prisoner representation to have the extent of knowledge about the law or the workings of the correctional system that our advocates have developed over decades of daily involvement. But many of the auditors did possess that knowledge, and it would have been difficult or impossible to have assembled a more qualified, competent team from members of the North Carolina Bar. We are deeply grateful for their service.

Context

Many factors that were inherently encompassed by this evaluation are not controlled by NCPLS. For instance, NCPLS has no control over the growth of the prison population or the number of prisoner requests for legal assistance that are received on any given day, or over the course of time.

Program resources are almost entirely derived from the "*Bounds*" contract, which has historically provided compensation for attorney and paralegal hours, but no funding for support staff such as a financial officer, a bookkeeper, or investigators.

Regarding post-conviction work, NCPLS depends upon the offices of clerks of court around the state to provide the documents necessary to assess possible grounds to collaterally challenge the convictions and/or sentences of our clients. Delays in the provision of those documents often forestall legal reviews and assessments for months. (It is not possible for NCPLS to routinely travel the 100 counties of the state to copy these materials, and clerks of court are often short-staffed and overburdened. Thus, responses to our document requests are often delayed, sometimes for months.)

The Law of Prisoner Rights and Responsibilities

The law governing the rights of prisoners provides little protection and imposes a morass of administrative and procedural complexities, as well as heightened legal standards. For example, prisoners must exhaust all available administrative remedies before they may institute federal litigation. *Porter v. Nussle*, 534 U.S. 516 (26 Feb. 2002). Failure to comply any prison procedural rule bars federal action. *Woodford v. Ngo*, 126 S.Ct. 2378, 165 L.Ed.2d 368, 74 USLW 4404 (2006). Prison officials may freely impinge upon the constitutional rights of prisoners when there is a "legitimate penological" reason for doing so. *Turner v. Safley*, 482 U.S. 78 (1987). And other laws impose broad constraints on a prisoner's hope for relief through the courts. See, for example, *Antiterrorism and Effective Death Penalty Act*, Pub. L. 104-132, 110 Stat. 1214 (1996) (AEDPA); 28 U.S.C. § 1244(d)(1)(one-year statute of limitation for filing a petition for writ of *habeas corpus* in federal court); *The Prison Litigation Reform Act of 1995* (PLRA), 110 Stat. 1321-73, as amended, 42 U.S.C. § 1997e(a)(1994 ed., Supp. V)(precluding suit where there has been no physical injury, requiring exhaustion of all available administrative remedies, and

Appendix G: NCPLS Response to Evaluation Report

requiring an indigent prisoner proceeding *in forma pauperis* to pay the full costs of the litigation, unlike any other class of indigent litigants.)

Audit Team Findings

The peer review of NCPLS case files constitutes an objective assessment of the quality of our work. The review of hundreds of files across a number of substantive areas of law over a three-day period resulted in an overall average rating by the Audit Team that exceeded 4 points on a scale 5-point scale. The Audit Team thus concluded that NCPLS functions at a high level. This rating demonstrates the commitment of our staff to fulfill the program's mission, to provide high quality legal services to prisoners, and thereby satisfying the state's constitutional mandate that prisoners be provided meaningful access to the courts.

There were some extraneous, misinformed comments in the report narrative that seem to have been included without critical analysis. Some of these comments are wholly inconsistent with the overall ratings of the Audit Team, a few are internally inconsistent, and some appear to have arisen from a misunderstanding of the context in which NCPLS provides services or the law governing prisoner rights. Moreover, it is not clear that all of the auditors appreciated the rarity of meritorious claims among nearly 13,000 cases in which NCPLS provided information, advice, and administrative advocacy in 2005. Further, NCPLS is able to obtain relief for many of our clients administratively or through means other than litigation. For example, in the seven months prior to the date of this report, our advocates obtained jail credit totaling 20,477 days for North Carolina inmates. The \$1,401,650.65 savings to North Carolina taxpayers (calculated by multiplying the total number of days credited by the average daily cost of incarceration - \$68.45) is another tangible benefit of this work.

A few other auditor criticisms seemed to lack an understanding of, or an appreciation for the importance of discouraging frivolous litigation, responding to all prisoner correspondence, or conserving limited resources. In addition, NCPLS has some concerns about the extent to which personal comments of five of the sixteen auditors skew the general tenor of the report. All of the auditors were invited by email to offer additional comments, but none of the other eleven auditors offered any further observations. This unanticipated and unstructured variation from the audit protocol is the focus of the latter third of the report, which reflects significant misunderstandings of the governing law, Department of Correction practices and procedures, or NCPLS operations.

Conclusion

Overall, NCPLS feels that the process employed in developing and conducting the audit was fair and open. We were generously provided an opportunity to offer our suggestions to improve the process, and we were permitted to participate in the selection of the Audit Team. Because the audit presented a realistic chance to gain insight and advice for improving program operations and the services we deliver to our clients, we were happy to work with IDS and SOG, fully cooperating in the process to provide assistance and support at every juncture. The objective findings of the Audit Team, rating NCPLS operations and services at greater than 4 points on a 5-point scale, we believe to be reasonably accurate.

We respect and appreciate the manner in which IDS conceived and fulfilled the mandate of the General Assembly throughout the course of the program review. We especially appreciate the leadership of IDS Executive Director Malcolm Ray "Tye" Hunter, Jr., and Assistant Director Danielle M. Carmen. We are grateful to Dr. Maureen Berner, Associate Professor at the School of Government, who was largely responsible for the conception, design, and execution of the audit plan. Finally, we thank Joe Gavrilovich, MPA, John Rubin, Professor, UNC School of Government and Virginia L. Hebert, Legal Associate, Office of Indigent Defense Services, for their assistance in planning and conducting the audit.

**NORTH CAROLINA PRISONER LEGAL SERVICES
ACTIVITIES & LITIGATION**



INTRODUCTION

Established in 1978, North Carolina Prisoner Legal Services, Inc. (NCPLS), is a non-profit, public service organization. The program serves a population of more than 37,000 prisoners and 14,000 pre-trial detainees (with annual jail admissions exceeding 250,000). With a staff of 38, including 15 lawyers and 16 paralegals, NCPLS provides information and advice concerning legal rights and responsibilities, discourages frivolous litigation, and works toward administrative resolutions of legitimate problems. When serious problems cannot be resolved administratively, NCPLS provides representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences. No other entity in North Carolina routinely provides these services.

LITIGATION

State v. Ellis, 639 S.E.2d 425, ___ N.C. ___ (2007)(illegal sentence voidable *ab initio*)(*But c.f., Hamilton v. Freeman*, 554 S.E.2d 856 (NC App. 2001)(DOC required to honor judgment & commitment order as entered by court and could not unilaterally modify sentences based on its own determination that sentence violated state statute).

State v. Lutz, 628 S.E.2d 34, ___ N.C.App. ___ (2006)(pursuant to decision of N.C.S.Ct. in *Hearst* [see *infra* at p. 2], defendant entitled to credit against sentence for time spent in court-ordered substance abuse program at DART-Cherry substance abuse treatment program).

State v. Lawson (COA04-564)(NC Ct. App. 2005). NCPLS accepts a limited number of court appointments to represent defendants in criminal appeals. In this case, the defendant was convicted of assault with a deadly weapon inflicting serious injury. The North Carolina Court of Appeals ruled that the State failed to present adequate evidence on the element of the deadly weapon. The appellate court arrested judgment on the felony assault and remanded the case for entry of judgment on the lesser included offense of assault inflicting serious injury, a misdemeanor. A subsequent addendum to the opinion granted the defendant's Motion for Appropriate Relief (filed after the appeal, but prior to the Court's decision in the case). The court further held that defendant's aggravated sentence on the felony assault violated the requirements of *Blakely v. Washington*. The case was also remanded for resentencing.

Dawed Al-Amin Shabazz v. Michael York, et al., Case No. 1:02CV00350 (MDNC 2005). The plaintiff found it difficult to access prison services using his religious name. DOC policy stated that a prisoner had to use the name under which he was originally committed to DOC, even if his name was legally changed prior to a readmission to DOC. Therefore, when getting mail, seeking medical services, requesting trust fund disbursements, accessing other programs or services, and

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participating in various activities, the prisoner would have to provide his former name – one that he found offensive following his religious conversion. In an effort to resolve the litigation DOC changed its policy, permitting prisoners who legally change their names to have their new, legal name added directly below the committed name on their identification cards.

State v. Thomas, No. 99-CRS-036198, Forsyth County Superior Court (2005). Motion for Appropriate Relief filed on behalf of a man sentenced for second degree rape. An error in calculating our client's Prior Record Level provided grounds for reducing his sentence from 105-135 months to 91-119 months to reflect the correct Prior Record Level.

Thebaud v. Jarvis, 5:97-CT-463-BO(3)(EDNC 1997 - 2003). A class of women confined at Women's Correctional Institution in Raleigh, NC, alleged that a systemic failure to provide timely medical evaluations, diagnoses, and treatment for serious medical conditions resulted in deaths, miscarriages, and other serious injuries. After a series of ameliorative measures implemented by the defendants, the parties agreed to a novel resolution of the case – an expert was jointly hired to assess the delivery of health care services at the prison. The expert's recommendations were not binding on the parties, but the defendants agreed to act in good faith to implement those proposals they considered to be feasible and well-founded. Virtually all of those recommendations were addressed by the defendants, and after five years of litigation and substantial improvements in most aspects of the health care delivery system, the parties entered into a "Joint Resolution," under which Plaintiffs monitored compliance for a one-year period. The Federal District Court approved the Joint Resolution on 8 July 2002, and Plaintiffs took a dismissal on 8 July 2003.

State v. Hearst, 356 N.C. 132, 567 S.E. 2d 124 (N.C. 2002). North Carolina Supreme Court held that inmates who participated in a mandatory boot camp program (the Intensive Motivational Program of Alternative Correctional Treatment - IMPACT) were entitled to credit against their sentences pursuant to State law. From 1 October 2002 through 10 May 2005, with help in identifying affected prisoners from the DOC, NCPLS advocates obtained more than 69,928 days (some 383 years) credited to more than 300 of our clients (70 of whom were entitled to immediate release). At a rate of \$65.59 per day, we estimate savings to the State in the amount of \$4,586,577.52. Over the past 5 years, those savings totaled more than \$15 million.

Hamilton, et al. v. Beck, et al., COA00-1470 (NC Ct.App. 2002)(class action which reversed DOC's practice and required sentences to be recorded in DOC combined record as specifically stated in the judgment and commitment).

Hamilton v. Freeman, 554 S.E.2d 856 (NC App. 2001)(DOC required to honor judgment & commitment order as entered by court and could not unilaterally modify sentences based on its own determination that sentence violated state statute).

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In other litigation, literally hundreds of inmates have been represented by NCPLS attorneys. Significant victories include; **Bates v. Jackson**, 5:98-HC-915-BR(2) (October 19, 2000), **Fields v. Chavis**, 5:00-HC-9-BR(3) (January 29, 2001) and **Milligan v. McDade**, 5:00-HC-8-H (February 15, 2001) (individual habeas corpus actions brought in federal court for the Eastern District of North Carolina finding violations of the Double Jeopardy Clause, and resulting in the immediate release of all three clients); **In re: Bullis**, 00 J 139 (3 October 2001)(gaining and enforcing client's right of visitation with minor child); and **State v. Cox**, (MAR challenging conviction for speedy trial violation resulted in settlement dismissing several charges and reducing sentence by more than 6 years.) **Love v. Freeman**, 188 F.3d 502 (4th Cir. 1991-1999)(8-year legal battle culminating in new trial when appellate court ruled that evidence improperly withheld by the State had prevented defendant from receiving a fair trial.)

Over the years, NCPLS has been involved in other significant litigation, including **Small v. Martin**, 85-987-CRT (EDNC 1985)(class action challenging conditions at 48 of the State's "road camp" prison units; settlement resulted in legislation that "capped" the prison population, leading to Structured Sentencing); **Law, et al., v. Britt**, No. 93-300-CT-BR (EDNC 1993)(class action lawsuit challenging the conditions in the State-run juvenile detention centers); **Anthony D., et al., v. Freeman, et al.**, 5:95-CV-1053-BR(1)(EDNC 1995)(special education); and **West v. Atkins**, 487 U.S. 42 (1988)(U.S. Supreme Court held obligation to provide medical care to prisoners is non-delegable duty of the state). **Medley v. N.C. Dept. of Correction**, 412 S.E. 2d 654 (N.C.S.Ct. 1992)(State-law duty to provide adequate medical care for prisoners cannot be delegated).

Legal Services for Incarcerated Immigrants: For the past decade, NCPLS has provided limited assistance to inmates in connection with immigration matters. For instance, we have successfully represented prisoners who were U.S. citizens, but who were erroneously being considered for deportation, non-English speaking prisoners who were convicted without the benefit of an interpreter, and non-citizens who were not advised of the immigration consequences of entering a guilty plea. NCPLS has also successfully represented non-citizen prisoners who faced persecution, torture, or murder upon removal.

In re: Hassan, File No. A 76 413 781 The Bureau of Immigration and Customs Enforcement (BICE) attempted to deport our client, who was legally residing in the United States. However, upon a conviction for embezzlement, BICE filed an immigration detainer alleging that our client was deportable due to his conviction of an "aggravated" felony. In response, NCPLS filed a claim asserting that there was a clear probability that our client would face persecution and torture if he were forced to return to Somalia. (In the early 1990's, Somalia was gripped by a civil war after which our client suffered severe persecution and torture until he was able to escape to the United States where he was granted political asylum. Conditions in Somalia have not improved for the minority clan since the civil war and our client faced grave and perhaps mortal danger if he were forcibly returned to Somalia. This critical point was established with expert testimony which convinced the immigration judge to rule in our client's favor, allowing him to remain and work in the United States.

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NCPLS advocates are also involved in other activities to improve the criminal justice system and to serve the public.

The North Carolina Sentencing & Policy Advisory Commission is the body created by the North Carolina General Assembly to study the impact of criminal laws with regard to the State's correctional resources, to assess the impact of possible changes in the law, and to recommend measures that will best meet the correctional objectives of the Legislature. Billy Sanders, a Certified Legal Assistant Specialist employed by NCPLS as Office Administrator, serves as a Commissioner in that organization.

American Bar Association (ABA) – Executive Director Michael S. Hamden served as co-chair of the ABA Criminal Justice Section's Sentencing & Corrections Committee. In addition, Hamden, who has served as the ABA's liaison to the American Correctional Association, presently serves on the Criminal Justice Section Council.

American Correctional Association (ACA) – The ACA is a national, multi-disciplinary organization of professionals representing all levels and facets of corrections and criminal justice. ACA establishes standards governing corrections practices and operations, and accredits institutions that comply with those standards. The NCPLS Executive Director has served three terms of two years each on the ACA's Standards Committee (the body that promulgates standards which reflect "best practices" for all types of correctional facilities.) Hamden also served two terms of four years each on the ACA Commission on Accreditation (the body that rules on applications for ACA accreditation and enforces operational standards nationwide.) Hamden was elected to the Commission's Executive Committee in 2002 and will complete his term of service in August 2006.

Reasonable Access to Correctional Telephone Services – Families who have loved ones in prison know just how expensive it can be to communicate with prisoners by telephone. Collect calls are generally the only means by which a prisoner can place a call, and rates tend to be four or five times as expensive as ordinary phone calls. In his capacity as co-chair of the Corrections & Sentencing Committee of the American Bar Association (ABA), NCPLS' Executive Director successfully advocated for an ABA Resolution encouraging correctional authorities to provide prisoners reasonable opportunities to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates. On August 11, 2005, the ABA's House of Delegates passed the Resolution by over-whelming voice vote.

The ABA Resolution accords with the position of the American Correctional Association (ACA). During his term of service as the ABA's liaison to the ACA, NCPLS' Executive Director drafted and successfully lobbied for the adoption of ACA's Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (adopted Jan.24, 2001); as well as related

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standards [Standards for Adult Correctional Institutions (3rd ed.); Standards for Adult Local Detention Facilities (3rd ed.); Standards for Adult Community Residential Facilities (4th ed.); Standards for Adult Correctional Boot Camp Programs (1st ed.); Standards for Juvenile Community Residential Facilities (3rd ed.); Standards for Juvenile Detention Facilities (3rd ed.); Standards for Juvenile Correctional Boot Camp Programs (1st ed.); Standards for Juvenile Training Schools (3rd ed.); Standards for Small Juvenile Detention Facilities (1st ed.); and Small Jail Facilities (1st ed.).]

Committee on Ethical Considerations for Revisions to the Department of Health and Human Services (DHHS) Regulations for Protection of Prisoners Involved in Research (the National Academies of Science, Institute of Medicine). To re-examine ethical considerations for the protection of prisoners involved in research, the Institute of Medicine recently commissioned a committee to study the issue. Regulations that presently govern such research were adopted by the Department of Health and Human Services (DHHS) at 45 C.F.R 46 Subpart C (1978). There are several concerns about these regulations. First, they apply only to research funded by DHHS or other agencies of government that have expressly agreed to be bound by the rules. 45 C.F.R. 46.101. Second, the regulations have been criticized as overly protective, preventing the participation of people who would benefit greatly from research into the treatment of HIV/AIDS, or Hepatitis C, for example. Third, researchers have complained that the regulations are too restrictive and that they frustrate efforts to expand knowledge. Finally, much has changed during the two-and-a-half decades since the rules were promulgated and some observers question whether they continue to be in keeping with the realities of prison life, societal perceptions about research, and the need for the protection of well-informed and consenting participants in research. Among those named to the Committee was NCPLS' Executive Director.

Lynn S. Branham and Michael S. Hamden, Cases and Materials on the Law and Policy of Sentencing and Corrections (7th ed. 2005). A team of NCPLS attorneys contributed to a new publication from Westlaw/Thomson for use in the law school classroom. Published as part of its American Casebook Series, the book includes coverage of important court decisions, as well as materials that reflect the practical challenges of effectively representing criminal defendants and prisoners. The casebook serves both as an outstanding instructional tool for legal educators and students, and as a reliable and authoritative reference work for practitioners. A summa cum laude graduate of the University of Illinois, Lynn Branham is an expert in sentencing and corrections law and policy and a well respected author who presently serves as Associate Dean for the Thomas M. Cooley School of Law in Grand Rapids, Michigan.

North Carolina Prisoner Litigation Conference (December 1996 - February 1997). NCPLS convened a conference involving representatives of the United States District Court, the U.S. Marshal, the Department of Correction, the Inmate Grievance Resolution Board, and the Office of the Attorney General, to discuss prisoner litigation in the Eastern District of North Carolina, and to explore ways to increase efficiency, consistently with the interests of justice and the rights of the litigants.

NCPLS Form Letters and Information Packets January 6, 2006

1. 42 U.S.C. § 1983 Packet – forms and instructions for pro se federal civil rights claims.
2. 2005 Legislative Rumors Letter – discusses rumors about legislation that might affect sentences.
3. \$10.00 Administrative fee letter – analyzes the DOC policy of assessing an administrative fee for convictions of disciplinary infractions.
4. Bankruptcy letter and brochure
5. Commutation Packet – information on seeking executive clemency.
6. Concurrent sentence letter – explains that there is no established procedure for changing consecutive sentences to concurrent.
7. Conditions of Confinement letter – form letter outlining the law for legal claims regarding conditions of confinement. Sent as part of civil work-up along with a conditions of confinement questionnaire.
8. Criminal Discovery letter – sent in response to requests for “motion of discovery.” Briefly explains criminal discovery and advises inmate to contact trial attorney.
9. Criminal Charges Letter – sent in response to inmates who want to press criminal charges against correctional staff or other inmates.
10. Custody Classification Letter – reviews DOC custody classification practices and explains that this is largely a discretionary function of prison administrators.
11. CYO Status – explains committed youthful offender status.
12. Detainer Packet – explains inmate rights with regard to detainers and pending charges.
13. Disciplinary Hearing Letter – reviews disciplinary hearing issues.
14. Discretionary Review letter – explains that this is part of direct appeal process and outside the scope of our services.
15. Discrimination Letter – briefly explains equal protection concepts.
16. Divorce Packet – forms and instructions for seeking uncontested divorce.
17. DNA Post-conviction packet – contains information and draft motion for seeking DNA testing under N.C.G.S. § 15A-269
18. DNA Registry Letter – explains N.C.G.S. § 15A-266.
19. DOC pending charge letter – explains to inmates already in DOC custody that NCPLS does not provide representation in pending criminal cases.
20. Driving privileges – explains that NCPLS cannot assist with restoration of driving privileges.
21. Educational / Vocational letter – explains that there is no legally enforceable right to such programs.
22. Election to Revoke Probation Letter – sent where an inmate wants to revoke a probationary sentence.
23. Estate Administration Letter
24. ETS Letter and packet – issues relating to exposure to environmental tobacco smoke.
25. Exhaustion of Administrative Remedies Letter – general letter advising inmate to file a grievance and pursue administrative appeals.
26. Failure to Protect letter – Explains the law relating to claims that correctional staff failed to protect against violence from other inmates. Sent as part of a civil work-up along with FTP questionnaire.
27. Fair Sentencing Reform letter – explains Senate Bill 1070.
28. Federal Inmate Reject Letter

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29. Firearm law letter – explains federal and state laws governing possession of firearms by convicted felons.
30. FOIA packet
31. Friend and Family letter – sent where NCPLS receives request for assistance from someone other than the inmate
32. Gain Time for Disabled Inmates letter
33. Habitual felon Letter – explains habitual felon law and sentencing.
34. House arrest letter – inmate wants to serve remainder of sentence on house arrest.
35. Hypothetical question letter – inmate asks for information on a hypothetical legal question, or one that is not clearly related to his circumstances
36. Inmate to inmate correspondence letter
37. International Transfer (both English and Spanish)
38. Jail Pending Charge letter – sent to inmates in county jails who have pending charges.
39. Mandamus letter
40. Medical care civil work-up letter – outlines the law concerning inmate medical care claims. Sent as part of a civil work-up along with medical care questionnaire.
41. Medical co-payment letter – explains that medical co-payments have been upheld by the courts.
42. Merit time letter – explains that such awards are discretionary and do not give rise to an enforceable legal right.
43. Motor Vehicle Accident letter- initial letter sent where inmate alleges injuries in a MVA involving a DOC vehicle.
44. Mountain View Correctional Institution double-bunking
45. Name change packet – forms and instructions for legally changing name.
46. No Copy letter – explains that NCPLS does not make copies of cases or perform clerical work for inmates who are seeking such services.
47. No expert witness letter – sent where inmate wants NCPLS to obtain a expert witness for a pro se civil claim (typically medical expert in tort claims).
48. No further response letter – sent to inmates that continue to present arguments that have been repeatedly addressed by NCPLS staff. This letter is sent only after the advocate reviews case with team leader and receives approval.
49. No medical copy letter – explains that NCPLS does not assist inmates in obtaining copies of their medical records.
50. No reopen letter – explaining that we cannot re-open inmate’s file.
51. North Carolina Constitution
52. Need more information letter – sent where the nature of the inmate’s request for assistance is not clear.
53. Out of state reject letter – explains that NCPLS is not funded to provide assistance to individuals in other states.
54. Parole Changes 2005 Budget Act letter – explains changes to Post-Release Supervision and Parole Commission structure and procedures.
55. Paternity packet
56. Post-Conviction (PC) packet – contains a PC Manual, PC forms packet, and a cover letter.
57. Post-conviction questionnaire – sent in response to an inmate’s request to review his case for possible post-conviction assistance.
58. Post-conviction 90 day letter – explaining that inmate’s federal statute will run shortly and that NCPLS will not be able to evaluate the case prior to the statute’s expiration.
59. Post-release supervision letter
60. Prison job injury letter – explains that workers comp is sole remedy for injuries on prison jobs.

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61. Prison visitation letter – explains new visitation policy.
62. Problems with inmate grievance process – list of measures that an inmate can take to get grievance addressed.
63. Property loss letter – inmate claims that staff has lost or destroyed personal property.
64. Power of attorney packet
65. Pro se letter – explains that NCPLS typically does not provide litigation support, where an inmate is proceeding pro se.
66. Security Threat Group (STG) letter
67. Sentence calculation letter – explains how sentences are determined and run.
68. Small claims action packet
69. *Small v. Martin* form letter – explains the history of the *Small* litigation and its effect on N.C. prisons.
70. Social Security letter – NCPLS does not assist with SS claims.
71. SODA letter – sent in post-conviction cases where case is still on direct appeal.
72. State Bar grievance packet
73. State civil litigation packet – contains forms for filing a civil claim in the General Court of Justice.
74. *State v. Jones* letter – explains the *Jones* case, which dealt with the status of the offense of possession of cocaine.
75. Time cut letter – explains that there is no basis for obtaining a reduction in an otherwise valid sentence.
76. Tort Claim packet – cover letter, and forms and instructions for filing claim in the N.C. Industrial Commission.
77. Transfer letter – no right to be housed in a particular prison.
78. Transfer (threat) letter – same as above, but advised IM to notify prison authorities of particular threat.
79. Trial Transcript letter – sent where inmate wants assistance in obtaining a copy of his transcript.
80. Unaudited sentence letter – sent to new inmates in DOC, explaining that we cannot give him information about his sentence since it has not yet been audited by Combined Records.
81. United States Constitution
82. U.S. Supreme Court *certiorari* information.
83. Use of Force letter – Explains the law relating to claims of excessive force by correctional staff. Sent as part of civil work-up along with UOF questionnaire.
84. Will packet
85. Work Assignment letter – no right to a particular job.
86. Worker's compensation packet
87. Work Release letter – no right to work release placement.

INTAKE REVIEW OF SELECT AUDITOR COMMENTS

Question 2 *The actions taken by the Intake Team that are identified in Question ____ above [see case file review questionnaire] were appropriate.*

Auditor Comment: "BUT – failed to obtain Dix report referenced in judgment"

Response: In this case the sentencing judge directed that a report from Dorothea Dix be attached to the Judgment & Commitment Order. The Clerk did not send such an attachment when we ordered court documents. It is often the case that deputy clerks fail to send us attachments to court documents, including separate memoranda of plea agreements. However, even if an attachment is not provided in the initial ordering of documents, the attorney or paralegal who ultimately reviews the file can make a separate document request if necessary.

Auditor Comment: "This may seem elementary, but the letter said inmate needed to send grievance forms without telling him he needed to file grievance."

Response: This client was sent our standard exhaustion of administrative remedies letter. This included a memo discussing how to deal with problems in the inmate grievance process.

Auditor Comment: "Why wait until referred to legal to order violation checkpoints? (?) (Not ordered until 12/06); why not request with court docs?"

Response: Probation violation reports should ordinarily be ordered in probation revocation cases. The Intake Paralegal in this case **did** ask for Violation Reports in her request for documents, but they were not sent by the Clerk's Office. Please also note that this client specifically listed his charged violations in his PC Questionnaire, along with his justifications for the violations.

Auditor Comment: "Cannot tell"

Auditor Comment: "Any info provided re: civil? (see #4)"

Response: This client raised multiple issues, including PC. Intake opened 3 separate files on this particular client in 2005, and 4 in 2006. The file number here was assigned to client's PC issues. The civil questions were addressed in other files.

Auditor Comment: "All he wants is a copy of his motion."

Response: This comment raises the question of whether NCPLS should act as a copying and document retrieval service for inmates. Due to issues of cost and the lack of expertise, we have concluded that we cannot provide this service. Unfortunately, inmates

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who write to the clerks of court are often unable to obtain copies of documents, including motions that they have filed. Even when the clerks respond to them, the inmate may not

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have sufficient funds to pay for the copying costs mandated by the Administrative Office of the Courts. We are assessed the same charges by many clerks of court.

Auditor Comment: "Should have requested prison file/medical records"

Response: The central issue in this letter was whether excessive force was used. The information provided by the client shows that he refused a direct order from correctional staff. (He was concealing contraband money in his rectum and was refusing an x-ray examination.) There is little question that correctional staff could justify a use of force to compel compliance. The decision as to whether to allow this case to proceed to the Civil Team was a judgment call and was within the parameters that the Intake Team follows for *de minimis* injury rejection.

Auditor Comment: "Apparently client was previously sent a detainer(?) packet but it was not clear what was going on with his pending charge. A phone call by intake to the clerk of court would have been appropriate."

Response: In this case the client wrote that he had an attorney who had been appointed on these cases. He was writing and asking for information about his rights with regard to these issues and a detainer packet was sent. During the time he corresponded with NCPLS, some of these charges were resolved through his appointed counsel.

This type of case raises the question of what level of service NCPLS should provide with regard to pending criminal charges, particularly where the client already has representation. Given our funding, staffing limitations, and the availability of appointed counsel, we have not seen our role as providing representation or assistance in this area. We have, however, provided inmates with information about their rights and how they can request speedier resolution of charges.

Auditor Comment: "See #4 – should have also sent packet with original response / also it appears inmate wanted help resolving a pending misdemeanor charge – not clear that he wanted PC review"

Response: This client had previously written NCPLS about detainers / pending charges. We addressed this issue in a separate file. The client's initial letter contains a letter from an NCPLS paralegal showing that the clerk of court was contacted and some of the detainer issues were resolved. The misdemeanor charge was pending because he had appealed it to superior court. The client's letter indicates that he had an attorney representing him on those charges.

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Auditor Comment: "Should have sent PC packet in response to 11/15 letter (see #4) – request for medical records would have been appropriate"

Response: This was a case assigned to the Civil Team. In cases where a file is assigned to a litigation team, but the inmate requests information on an unrelated issue, that should be brought to the attention of the Intake Team so that a separate file or response can be prepared. I would note here that this inmate subsequently wrote to us and a PC packet was sent under another file number.

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Auditor Comment: "Yes, but a little slow"

Response: File was opened 10/21/2005. Medical issue. It often takes between 4 and 6 weeks to obtain DOC medical records. Final evaluation letter sent by Civil Team on March 23, 2006.

Auditor Comment: "Should have included projected release date in letter"

Response: File was interpreted as requesting information on parole but agree that projected release date information should have been sent. It should be noted, however, that PRD information is already available to inmates through their case managers.

Auditor Comment: "He wants the yellow pages"

Response: Intake will often provide addresses for inmates in matters that directly relate to access to court issues. This includes addresses for clerks of court, judges, and private attorneys. However, we do not have the personnel to act as a general directory service for the prison population. In this case, the inmate wanted addresses for all of the AM and FM radio stations in several NC metropolitan areas. He was sent a standard "no service" letter for this request.

Auditor Comment: "I think they should have checked into it further – doesn't sound like the guy had anything to do with a STG(?) – and his tattoos could legitimately be religious. Probably should have sent grievance info"

Response: NCPLS receives many letters from inmates who claim that they have been wrongfully classified as belonging to a Security Threat Group (STG). Many are classified on the basis of tattoos, pictures, reading material, or similar items which may also have perfectly innocuous meanings. The DOC tends to be proactive with respect to gang activity and it is likely the case that innocent inmates are swept up in such classifications. However, given the fact that there is no enforceable right to be housed in a particular prison, or to a particular classification designation, such cases do not present a basis for a legal claim. (It is possible that an RLUIPA claim could have been made, but

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given the authority of prison officials to classify prisoners, it would have little chance of success. Not a good investment of time or resources.)

Auditor Comment: "No specific response to specific question"

Response: This is a sentence calculation case where the inmate does not understand how his sentences are running. He was sent a standard sentence calculation form letter which explains all of the issues that he raises. These include DWI sentencing, concurrent sentences, the significance of minimum / maximum sentences, etc. It is true that this response was not individually tailored to his case.

Auditor Comment: "No action was taken"

Response: We requested court documents from Guilford County on the same date that we received the initial letter from the inmate. However, it took nearly 6 months for the

documents to be sent to us by the clerk of court. By that time, the inmate had been released from DOC custody. The responsibility to maintain contact with NCPLS is (and must be) the prisoner's. We have no way to know when a prisoner has been transferred or released. In the latter case, it is almost impossible to locate clients after they are released from custody.

Auditor Comment: "Missed the question"

Response: Inmate wrote about alleged religious discrimination against Muslim inmates. Intake attorney sent him a letter acknowledging this issue and advising him of the need to exhaust his administrative remedies. (Because of the requirements of the Prison Litigation Reform Act (PLRA), prisoners are required to exhaust all available administrative remedies before seeking relief in federal court.)

Inmate also asked about transfers and custody classification issues. Both of these were discussed in the initial letter responding to his questions.

Auditor Comment: "Awful"

Response: This inmate has numerous previous files with NCPLS. We have reviewed his case on several occasions. His conviction was affirmed by the N.C. Supreme Court and he has filed multiple post-conviction motions, which procedurally bars any further motions. These issues have all been discussed with him in earlier files by several different attorneys.

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Auditor Comment: "This guy is over 60 years old and has been in prison over 30 years for a burglary. This is outrageous. No one asked for his prison file or tried to learn the circumstances of the crime. Just a discouraging letter re: MARs and commutations. They didn't even give him advice (as I saw in a different letter in another case) on how to improve his chances at a parole hearing."

Response: This inmate has numerous previous files with NCPLS. We have reviewed his case on several occasions. His conviction was affirmed by the N.C. Supreme Court and he has filed multiple post-conviction motions, which would result in procedural bar for any future motion. These issues have all been discussed with him in earlier files by several different attorneys. We are well aware of the circumstances of his case.

Despite the fact that he is over 60 years old and has been in prison for over 30 years, he has also compiled 121 disciplinary infractions. (Including one just last month.) These include escape, assaulting staff (both with weapons and by throwing liquids), weapon possession, refusal to submit to drug tests, setting fires, etc. Moreover, neither age nor time served provides a basis for successfully challenging a legal conviction and sentence.

Auditor Comment: "Give the forms to the prisons so the clients can fill them out sooner and everyone saves postage."

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Response: This assumes that the DOC would be willing to undertake the task of providing forms. Since the U.S. District Court ordered the DOC to contract with NCPLS it has been the practice of prison officials to refer *all* inmate requests for legal assistance to us. This includes asking for various legal forms. (There may also be issues with whether prison employees who have no formal legal training would feel comfortable providing inmates with *pro se* legal forms, and whether an official might face a lawsuit from an inmate if the wrong form were provided.) In any case, DOC has denied multiple requests that these materials be maintained at any prison library.

Auditor Comment: "4/29 letter indicates questionnaire sent, but it is not in file"

Response: Blank questionnaires, which are generated in Legal Files and sent to inmates, are not often included as a hard copy in the file. This saves paper and file space.

Auditor Comment: "No, should do more. No inmate should be compelled to be exposed to tobacco smoke – NCPLS should go to DOC commissioner"

Response: NCPLS has litigated prison second-hand smoke cases in the past, without success. The Supreme Court has recognized a right for an inmate not to be deliberately exposed to "unreasonably high levels" of second-hand smoke. *Helling v. McKinney*, 509 U.S. 25, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993). This is far different from a right to be free from all exposure to ETS.

The standard position of the DOC on this issue, as has been repeatedly demonstrated, is that prisons will point to the existence of a "no smoking" policy in the prison. Inmates who see violations are encouraged to report these to correctional staff. The DOC's position has been that they cannot be said to have been "deliberately indifferent" to a risk from smoke, as required by Eighth Amendment jurisprudence, if they are not made aware of such violations, or where they have taken reasonable action to eliminate the risk.

Auditor Comment: "towel not addressed"

Response: In this case the inmate wrote that correctional staff had denied him a meal because he had a towel wrapped around him. The issue here is not the towel but the denial of a meal. The staff attorney who responded to this inquiry correctly analyzed this deprivation under the Eighth Amendment's standards of "cruel and unusual punishment."

Auditor Comment: "Client had sentencing questions which were properly interpreted and money and estate questions which were not"

Response: Civil issues were addressed in a separate file. NCPLS generally does not provide representation with respect to matters that arise outside the prison context. Specifically, we have no expertise with the law governing estates. Therefore, we do not offer legal services with respect to such matters.

Auditor Comment: "Not at all – wrong form letter was sent."

Response: This file is a post-conviction review. No form letter was sent to the client.

Question 5 *The Intake Team appropriately identified the predominant legal issues presented by the inmate's correspondence.*

Auditor Comment: "Not even close – they just sent a form letter"

Appendix G: NCPLS Response to Evaluation Report

Response: This inmate expressed confusion over how his sentences are running in the DOC. Intake has prepared a standard sentence calculation letter which explains most of the questions concerning sentences, including the issues raised in this letter.

Auditor Comment: "Too legalize [*legalese*?]- I do not agree that the fact that NC juries are not sympathetic is a reason not to pursue a claim.

Response: This is a complaint of excessive force which was rejected in Intake for lack of serious injury on *de minimis* review. The language complained of here is part of our standard use-of-force letter. This letter reviews both the legal standards and the practical issues involved in litigating such claims. One of those practical issues is juror prejudice

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against prisoner claims. As such matters are part of case assessment, we feel that it is appropriate to give our clients complete information about how our decisions are made.

Question 6 *The Intake Team's response(s) would be understandable and useful to the average inmate.*

Auditor Comment: "I do not like the credibility paragraph in the excessive force to inmates standard paragraph"

Response: This refers to a paragraph in our introductory use of force letter, which reviews some of the inherent difficulties in such cases, including a paragraph that reads:

On a more practical note, a major problem in such cases is always going to be one of credibility. It has been our experience that use of force claims are sometimes raised by inmates who have a history of institutional misconduct. In such cases, judges or juries are most likely to accept an officer's statement that the use of force was necessary to preserve order. A similar situation arises where more than one officer is involved in the incident. Unless an inmate has witnesses who corroborate his statement that the officers used excessive force, a jury usually credits the officers' story. Regrettably, judges and juries are far more likely to believe officers than inmates, at least in the absence of strong evidence to support the inmate's version of the facts.

The foregoing is an entirely accurate report of our experience in courts around the state. It is also information that we use to assess the chances of successful litigation which we share with our clients to help them to weigh their own chances of success. With \$350 filing fees in federal district courts, and because even indigent prisoners are not permitted to proceed on their own without paying that fee, such matters deserve serious consideration.