

## Pro Bono

# Protecting the Rights of the Incarcerated

Nelson Mullins attorneys protect the rights of the incarcerated in a wide variety of issues, at all trial levels, ranging from parole hearings to addressing state corrections systems for improved conditions for prisoners with severe mental illnesses.

### ***Historic Lawsuit to Improve the Conditions and Treatment of Prisoners With Mental Illness***

The treatment of South Carolina prison inmates with severe mental illnesses came to Nelson Mullins' attention through the nonprofit Protection and Advocacy for People with Disabilities ("P&A"). In 2005 the Firm filed *T.R., P.R., and K.W., on behalf of themselves and others similarly situated v. S.C. Department of Corrections* and represented P&A and some 3,000 South Carolina inmates seeking a court order requiring the Department to design and maintain a program that provides adequate treatment of inmates with mental illness.

In 2012, after nine years of preparation, our attorneys waged a six-week trial, during which national experts and more than ten inmates testified as to the conditions. In 2014, the trial judge ruled that the S.C. Department of Correction's mental health program was "inherently flawed and systemically deficient in all major areas" and that prison officials should address the constitutional deficiencies and provide more humane treatment of prison inmates with serious mental health illnesses.

*This litigation does not occur in a vacuum. What happens at the Department of Corrections impacts all of us, whether it is from discharge of untreated seriously mentally ill individuals from prison into the general population, or tremendously increased costs for treatment and care that might have been prevented, or the needless increase in human suffering when use of force replaces medical care. The decisions of our Courts reflect the values of our society. To that end, our state can no longer tolerate a mental health system at the South Carolina Department of Corrections that has broken down due to lack of finances and focus.*

*- J. Michael Baxley, Presiding Judge*

Although the Department appealed the court's order, the appeal was placed on hold while the parties mediated remedies. After two years, in 2016 the parties signed a settlement agreement. Under the agreement, national experts inspect South Carolina prisons three times a year and evaluate the Department's compliance with 58 remedial factors identified by the trial judge. Following each inspection, the experts make public recommendations to the Mediator, who then issues his own public report. The Department is required by the Agreement to continue this process until the prison system is found to be in substantial compliance with each remedial factor for at least 18 consecutive months. Throughout this process, Nelson Mullins attorneys and staff remain involved.

In a similar lawsuit in Massachusetts, *Disability Law Center, Inc. v. Massachusetts Department of Corrections*, the Firm represented the plaintiff in a lawsuit that resulted in a 2012 landmark settlement reached requiring systematic reforms to the mental health classification system. The settlement included developing a mental health classification system and two maximum security mental health treatment units as alternatives to segregation.

## **Changing the Parole System in South Carolina**

In *Barton v. South Carolina Department of Probation & Parole Services* Nelson Mullins attorneys, who represented an inmate in parole proceedings, obtained a South Carolina Supreme Court ruling that fundamentally changes the way the state Parole Board determines parole questions for other parole-eligible inmates. Lawyers in the Columbia office represented the incarcerated inmate who pleaded guilty to murder in 1982 at 19 years old. Since becoming parole-eligible in 1997, the inmate appeared before the Board 15 times. In January 2012, our lawyers represented the inmate at her parole hearing, where only six of the seven board members were present. Four members voted for parole, two against. The Board maintained that she needed five votes. Nelson Mullins attorneys argued to the Supreme Court that applying the current parole statute creates an *ex post facto* violation and that interpreting the parole statute to require five votes to obtain parole, regardless of how many members are present at the hearing, is erroneous. The court agreed.



*Nelson Mullins has represented inmates in parole proceedings with successful results for eight clients since 2003 through our pro bono programs.*

## **Appellate Project**

In 2012, the South Carolina Commission on Indigent Defense and Nelson Mullins created the Appellate Project. The project is handled under the supervision of Chief Appellate Defender Robert M. Dudek, and our volunteer attorneys have helped the appellate division handle an increasingly heavy hearing caseload. Since inception, attorneys have handled 27 appeals and donated 2,336 hours involving issues of importance to the entire criminal defense community, including successfully reversing a conviction for conspiracy to traffic drugs and winning a unanimous reversal of a murder conviction.



*The Firm accepts the 2013 Beacon of Justice Award from the National Legal Aid and Defenders Association*

## **District Court Pro Bono Project**

Each year, the federal district court of South Carolina receives filings from pro se litigants, including a large number filed by prison inmates. Statistically, many of these cases are dismissed, but occasionally some survive summary judgment and are tried by jury. Through the District Court Pro Bono Project, the Firm provides attorneys with staff volunteer support to conduct discovery, mediation, or participate in these civil rights trials. Since 2013, numerous attorneys have served as court-appointed counsel on behalf of prisoners and donated 1,445 hours.

Some examples of these cases are as follows:

- Representing a prisoner who alleged that the detention center forced him to work against his will for 106 days while he was a pre-trial detainee. Our attorneys obtained a substantial settlement for violating his constitutional rights to be free from involuntary servitude.
- Successfully representing an inmate in a case involving claims under the Eighth Amendment for excessive use of force and deliberate indifference regarding improper confinement.
- Representing an inmate who alleged that prison guards committed assault and battery and failed to protect him. Our lawyers conducted formal discovery and negotiated a settlement for our client.
- Representing an inmate who alleged issues of excessive force and use of a restraint chair. After discovery, locating key witnesses, and a video, our lawyers achieved a settlement for the client.

### ***Clemency Project 2014***

Twenty-three Nelson Mullins attorneys are working to seek relief, under President Barack Obama's Clemency power, for prisoners facing long sentences for non-violent drug crimes. Prisoners must meet the non-violent, low-level offender criteria created by the Department of Justice. Many prisoners with non-violent offenses are serving draconian sentences that would be substantially shorter if imposed today given changes in policy and law. Clemency Project 2014, an unprecedented effort led by five groups of criminal justice stakeholders, has over 1,500 volunteer lawyers nationwide trained to review records to identify eligible prisoners and prepare clemency petitions. Nelson Mullins has numerous cases in various stages of review and to date has submitted four clemency petitions for clients.