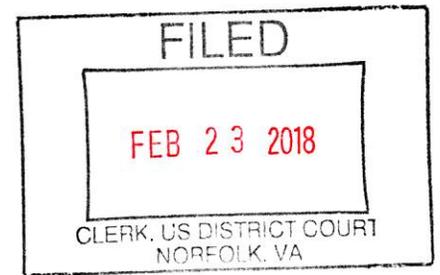


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



LATASHA HOLLOWAY,

Plaintiff,

v.

ACTION NO. 2:18cv69

CITY OF VIRGINIA BEACH, VIRGINIA,

Defendant.

ORDER

This matter is before the Court on *pro se* Plaintiff Latasha Holloway's ("Plaintiff") (i) Motion for Leave to File Interlocutory Appeal, and (ii) Motion to Stay Proceedings Pending Appeal ("Motion to Stay"). Mot. for Leave to File Interlocutory Appeal, ECF No. 6; Mot. to Stay, ECF No. 10. For the reasons set forth below, Plaintiff's Motion for Leave to File Interlocutory Appeal, ECF No. 6, is **DENIED**. The Court will **DEFER** its ruling on Plaintiff's Motion to Stay, ECF No. 10, until Defendant files its responsive pleading with the Court.

I. Background

On November 20, 2017, Plaintiff submitted an application to proceed *in forma pauperis* ("IFP Application") and a proposed Complaint to the Richmond Division of this Court. IFP Appl., ECF No. 1. On December 13, 2017, Plaintiff filed a Motion for Appointment of Counsel. Mot. for Appointment of Counsel, ECF No. 2. On February 2, 2018, Plaintiff's case was transferred from the Richmond Division to the Norfolk Division of this Court based on improper venue, and assigned to the undersigned. Mem. Order, ECF No. 3.

On February 12, 2018, this Court granted Plaintiff's IFP Application, and directed the Clerk to (i) file Plaintiff's Complaint and (ii) send waiver of service documents to Defendant.

Order, ECF No. 4. In addition, the Court denied Plaintiff's Motion for Appointment of Counsel *without prejudice*. *Id.* at 2. In analyzing the merits of Plaintiff's request for counsel, the Court explained:

In civil actions, "the appointment of counsel should be allowed only in exceptional cases." *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975). "Exceptional cases" may be found in "meritorious cases involving particularly complex factual or legal issues." *Ferrer v. Garasimowicz*, No. 1:13cv797, 2013 U.S. Dist. LEXIS 139939, at *3 (E.D. Va. Sept. 27, 2013).

Id. The Court briefly summarized the claims set forth in Plaintiff's Complaint, as well as Plaintiff's arguments as to why she believed appointed counsel was necessary. The Court stated:

Plaintiff claims that "the City's election structure dilutes the strength of 'all people of color,'" and violates the "Voting Rights Act of 42 U.S.C. § 1973, 42 U.S.C. § 1983, the First, Fourteenth and Fifteenth Amendments to the U.S. Constitution." [Mot. for Appointment of Counsel at 1, ECF No. 2]. Plaintiff further claims that she "lack[s] the financial ability to retain counsel and properly prepare for trial," and "lack[s] legal expertise to prepare responsive pleadings, affidavits, briefs, discovery, designate expert witnesses and investigate the critical issues that are so complex that [] she can not reasonably be required to effectively present this case." *Id.*

Id. The Court concluded that "[a]t this time, it is unclear to the Court whether appointment of counsel is justified in this action." *Id.* As a result, the Court denied Plaintiff's Motion for Appointment of Counsel "*at this time without prejudice*."¹ *Id.* (emphasis added).

II. Plaintiff's Motion for Leave to File Interlocutory Appeal

On February 15, 2018, Plaintiff filed a Motion for Leave to File Interlocutory Appeal pursuant to 28 U.S.C. § 1292(b). Mot. for Leave to File Interlocutory Appeal, ECF No. 6. Section 1292(b) provides:

¹ Because the Court specifically stated in its Order that Plaintiff's Motion for Appointment of Counsel was denied "at this time without prejudice," Plaintiff is free to request appointed counsel at a later date as the factual and legal issues raised in her case are more fully developed, allowing the complexity of such issues to be better analyzed.

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* [t]hat application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. § 1292(b). Here, the Court finds that its Order denying Plaintiff's request for appointed counsel "at this time without prejudice" does not involve "a controlling question of law as to which there is substantial ground for difference of opinion." *Id.* Further, the Court is not "of the opinion . . . that an immediate appeal from the [O]rder may materially advance the ultimate termination of the litigation." *Id.* Accordingly, Plaintiff's Motion for Leave to File Interlocutory Appeal, ECF No. 6, is **DENIED**.

III. Plaintiff's Motion to Stay

In addition to her Motion for Leave to File Interlocutory Appeal, Plaintiff also filed a separate Notice of Appeal on February 15, 2018. Notice of Appeal, ECF No. 7. In her Notice of Appeal, Plaintiff characterizes the Court's denial of her Motion for Appointment of Counsel as a "final judgment order," and claims that she has a "right to appeal to the Fourth Circuit Court of Appeals." *Id.* at 1. The Clerk of this Court transmitted Plaintiff's Notice of Appeal to the Fourth Circuit on February 16, 2018. Transmission of Notice of Appeal, ECF No. 8.

On February 16, 2018, Plaintiff filed a Motion to Stay. Mot. to Stay, ECF No. 10. In her motion, Plaintiff states that (i) she "believes she will likely succeed on the merits of the case

if granted a stay for good cause shown and as a matter of [l]aw,” and (ii) the parties “will not be prejudiced by granting [a] stay.” *Id.* at 2.

The Court notes that Plaintiff’s lawsuit is in the earliest of stages. On February 12, 2018, the Court entered an Order that directed the Clerk to file Plaintiff’s Complaint and to send service waiver forms to Defendant. Order, ECF No. 4. Defendant has thirty days to return a signed service waiver. If Defendant agrees to waive service, it will have sixty days to file a responsive pleading with the Court. If Defendant chooses not waive service, the Clerk will issue a summons, prepare a service packet, and deliver the service packet to the United States Marshal who will then serve the packet on Defendant. *See* Order at 2, ECF No. 4. Defendant will then have twenty-one days from the date of service to file a responsive pleading with the Court.

Because there is no need for Plaintiff to take any action in this matter until Defendant files its responsive pleading, Plaintiff’s request to stay these proceedings pending the Fourth Circuit’s review of this Court’s denial of Plaintiff’s Motion for Appointment of Counsel is premature. Accordingly, the Court will **DEFER** its ruling on Plaintiff’s Motion to Stay until Defendant files its responsive pleading with the Court.

IV. Conclusion

For the reasons set forth above, Plaintiff’s Motion for Leave to File Interlocutory Appeal, ECF No. 6, is **DENIED**. The Court will **DEFER** its ruling on Plaintiff’s Motion to Stay, ECF No. 10, until Defendant files its responsive pleading with the Court.

The Clerk is **DIRECTED** to send a copy of this Order to Plaintiff and the United States Court of Appeals for the Fourth Circuit.

IT IS SO ORDERED.



Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia

February 23, 2018