

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

MAURICE JACKSON,  
Petitioner,

v.

ALAN J. LAZAROFF,  
Respondent.

CASE NO. 1:15-CV-00253

OPINION & ORDER  
[Resolving Doc. [20](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On October 28, 2015, this Court dismissed without prejudice Petitioner Jackson’s writ of habeas corpus.<sup>1</sup> Petitioner Jackson now files a motion to appeal in forma pauperis and a motion for appointment of counsel. For the below reasons, this Court GRANTS Jackson’s in forma pauperis motion and DENIES Jackson’s motion for appointment of counsel.

**I. In Forma Pauperis**

“It is settled law that filing a notice of appeal with the district court divests the district court of jurisdiction to act in a case, except on remedial matters unrelated to the merits of the appeal.”<sup>2</sup> One of these remedial matters unrelated to the merits of the appeal is a motion to proceed in forma pauperis on the appeal.

The Rules of Appellate Procedure “explicitly contemplate a number of other actions to be taken by the district court during the pendency of an appeal.”<sup>3</sup> “[Federal Rule of Appellate Procedure] Rule 24(a) requires a party seeking to proceed in forma pauperis to so move in the district court.”<sup>4</sup> A party seeking to appeal in forma pauperis does not always need explicit district

<sup>1</sup> Doc. [14](#).

<sup>2</sup> *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Nat. Res.*, 71 F.3d 1197, 1203 (6th Cir. 1995).

<sup>3</sup> § 3949.1 *Filing the Notice of Appeal*, 16A Fed. Prac. & Proc. Juris. § 3949.1 (4th ed.).

<sup>4</sup> *Id.*

court approval. A party seeking to proceed on appeal in forma pauperis does not need district court approval if, (1) the district court permitted a party to proceed in forma pauperis in the district court, and (2) the district court certifies that the party can take an appeal in good faith.<sup>5</sup>

This Court has not previously permitted Petitioner Jackson to proceed in forma pauperis. Petitioner Jackson therefore needs this Court's approval. A district court can withhold approval and deny a motion to appeal in forma pauperis when (1) the district court "certifies in writing that [the appeal] is not taken in good faith,"<sup>6</sup> or when (2) the party seeking to proceed in forma pauperis does not show an inability to pay.<sup>7</sup>

This Court has already certified that Petitioner Jackson could take an appeal in good faith.<sup>8</sup> To succeed on this motion, then, Petitioner Jackson need only show an inability to pay. Jackson filed an application to proceed without prepayment of fees which detailed his inability to pay.<sup>9</sup> Jackson's motion to succeed in forma pauperis is thus granted.

## **II. Appointment of Counsel**

Jackson also moves for the appointment of counsel. The appointment of counsel in a civil proceeding is not a constitutional right and is justified only by exceptional circumstances.<sup>10</sup>

Nonetheless, Plaintiff Jackson says that the Court should appoint counsel for him because he is "a layman unskilled in the profession of Law."<sup>11</sup>

While the Court recognizes the difficulties facing pro se litigants, the Court finds no exceptional circumstances warranting the appointment of counsel in this case. The legal issues presented in this case are not particularly complex. Moreover, Plaintiff Jackson's Complaint,

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<sup>5</sup> [Fed. R.App. P. 24\(a\)\(3\)](#).

<sup>6</sup> [28 U.S.C. § 1915\(a\)\(3\)](#).

<sup>7</sup> [Fed. R.App. P. 24\(a\)](#).

<sup>8</sup> Doc. [14](#).

<sup>9</sup> Doc. [21](#).

<sup>10</sup> [Lavado v. Keohane](#), 992 F.2d 601, 606 (6th Cir. 1993).

<sup>11</sup> Doc. [20](#).

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Motion to Proceed in Forma Pauperis, and Motion for Appointment of Counsel suggest that he has some ability to prosecute this lawsuit and draft legal documents on his own.

**III. Conclusion**

Accordingly, the Court GRANTS Petitioner's motion to proceed in forma pauperis and DENIES the Plaintiff's motion seeking the appointment of counsel.

IT IS SO ORDERED.

Dated: February 9, 2016

*s/ James S. Gwin*  
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JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE