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Apr 21 2020

SC Court of Appeals

1 Mr. Terry H Capone
2 Fire Battalion Chief-Retired
3 130 Summerlea Drive
4 Columbia, SC 29203
5 803-622-6578
6 Email: tcapone@liberty.edu
7 Plaintiff In Propria Persona (Pro Per)

8 **THE STATE OF SOUTH CAROLINA**
9 **IN THE COURT OF APPEALS**
10 SC WCC FILE NOs: 1322451,1319203, 1420487
11 **Appellate Case No.: 2019-000369**

12 Terry H Capone,
13 Appellant, (Pro Per)
14 vs.
15 City of Columbia, Employer and Companion
16 Third Party Administrators, LLC, Carrier
17 Respondents.

)
) **EMERGENCY MOTION REQUESTING**
) **APPOINTMENT OF COUNSEL BY THE**
) **COURT ADA ACCOMODATION REQUEST**
) (Fed. R. Civ. P. 6(b), 15(a)(3)), Title VII of the
) Civil Rights Act of 1964 (“Title VII” and
) Title I, II, III, IV of the American with
) Disabilities Act or any applicable granting
) authority
)
)

18
19 **TO THE COURT, AND TO THE RESPONDENT AND THE ATTORNEY OF RECORD:**

20 **PLEASE TAKE NOTICE** Appellant in Propria Persona (Pro Per), Terry H Capone, In the Interest of Justice
21 and in matters in Equity moves now before the Court Pursuant to Fed R. Civ. P 6(b), 15 (a)(3)), Title VII
22 of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C §§ 2000e-5 (f)(1) and Title I, II, III, IV of the
23 American with Disabilities Act (ADA)¹ or any applicable granting authority.

24
25 **I. RELEVANT FACTUAL BACKGROUND**

26 Appellant *pro se* Terry H Capone, Employee .R/ (“Plaintiff”) makes this ADA accommodation
27 request through Motion Requesting Appointment of Counsel By The Court for assistance in serving
28

1 the record on appeal as also noted in the accompanying Emergency Motion for Extension of Time to
2 serve the record on appeal. The request counsel would be of assistance to both Appellant and Court
3 for collecting, organizing, and presenting the Record on Appeal and all other matters pending before
4 the Court. The Appellant having substantially replied to all requests by the Court, and this request is
5 made as the documents previously provided to the Court show “good cause” and are evidence of
6 my actual disabilities that greatly impact, among other things, my ability to participate in the judicial
7 system. I understand that the Court may appoint counsel in some cases, but in general there is no
8 constitutional right to appointment of counsel in a civil case (Sandle v. Principi, 201 F. App’x 579,
9 582 (10th Cir. 2006) (“There is no constitutional right to counsel in either a Title VII case or other
10 civil case.”)).
11
12

13 14 **II. MOTION FOR APPOINTMENT OF COUNSEL**

15 16 **A. FINANCIAL ABILITY TO SECURE COUNSEL**

17 The ADA affords a broader remedy because its provisions are not “needs based”; that is, ADA
18 accommodations are available to rich and poor alike, and not restricted by a litigants ability to pay for
19 an attorney accommodations (28 C.F.R. § 3.130(f) (2003). This regulation forbids a public entity
20 from charging disabled persons “to cover the cost of measures...required to provide...the
21 nondiscriminatory treatment required by the[ADA or implementing regulations]”. No financial
22 application is required to receive an ADA accommodation.
23

24
25 Plaintiff asserts the it has been an financial unable to meet his daily, non-discretionary expenses
26 where he to hire an attorney
27
28

1 **B. CAPACITY TO PRESENT CASE WITHOUT COUNSEL**

2 As “an aid in exercising discretion” in close cases, the Court should also consider whether the
3 plaintiff has the “capacity to present case without counsel” (*Id.* recognizing *Poindexter v. FBI*, 737
4 F.2d 1173 (D.C. Cir. 1984) as one of several cases that identified the fourth factor).
5
6

7 **C. OTHER CONSIDERATIONS**

8 Denying appointment of counsel to certain disabled litigants violated Title II, the Public Service
9 Sections of the ADA, *See* (42 U.S.C. § 12132 (2000)).
10

11 For actions under Title VII, the statute 42 U.S.C §§ 2000e-5 (f)(1) provides discretionary for
12 appointing counsel “in such circumstances as the court may deem just” (*See*, *Castner*, 979 F.2d at
13 1420-21). The Court has “extremely broad” discretion to appoint counsel under 2000e-5 (f)(1)
14 (*See*, *Castner*, 979 F.2d at 1420).
15
16


17 **III. CONCLUSION**

18 Wherefore, Appellant prays that the Court grant Appellants request to Appoint Counsel /Assistance
19 of Counsel to Assist with serving the record on appeal and other matters pending before the Court. I
20 understand that making this application does not excuse me from litigating my case, and that it is
21 still my responsibility to move forward in this proceeding and in alternative will need an extension of
22 time.
23
24

25
26 I declare under penalty of perjury under the laws of the State of South Carolina and United States of
27 America that my answers to the forgoing is true and correct

28 Respectfully Submitted,

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By: 
Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
Email: tcapone@liberty.edu
(803) 622- 6578

Richland, South Carolina
April 20, 2020

Eosure(s) as stated

1. Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C §§ 2000e- 5 (f)(1)
2. Americans with Disabilities Act of 1990, Pub, L No. 101-136 (codified as amended at 42 U.S.C.§§ 12101-12213 (2000)).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the forgoing court copy referenced "Terry Capone v. City of Columbia SC Court of Appeals Appellant Case. No. 2019-000369

April 20, 2020 Appellant

- Please see attached Emergency Motion for Extension of time to service record and \$50.00 filing fee enclose
- Please see attached Emergency Motion requested appointment/assistance of Counsel by Court to serve record on appeal and other matters pending before the court and \$50.00 filing fee enclosed

by depositing a copy of the same in the United States Mail Certified delivery, postage prepaid or better or personal delivery on April 20, 2020 to the following addressed to the Defendant Legal Representative known to be:

Cythia C Dooley

P.O.Box 1473

Columbia, SC 29202

This 20th day of April 2020.

Columbia, South Carolina

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Apr 21 2020

SC Court of Appeals



Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
803.622.6578
Email: tcapone@liberty.edu

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SC Court of Appeals

April 20, 2020

VIA US MAIL DELIVERY

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Terry Capone, Appellant, v. City of Columbia, Employer, and Companion Third Party Administrator, LLC,
Carrier, Respondent Case No.2019-000369

The Honorable Jenny Abbott Kitching, Clerk and SC Court of Appeals:

- Please see attached Emergency Motion for Extension of time to service record and \$50.00 filing fee
enclose
- Please see attached Emergency Motion requested appointment/assistance of Counsel by Court to serve
record on appeal and other matters pending before the court and \$50.00 filing fee enclosed

I am not a lawyer. Thank you for any consideration you may give my request

With Regards,

Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
(803) 622-6578
Email: tcapone@liberty.edu