

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

TERRANCE JAMEEL HORN,	*	
	*	
Plaintiff,	*	
	*	
VS.	*	NO: 5:09CV00019 JMM
	*	
UNION PACIFIC RAILROAD	*	
	*	
Defendant.	*	
	*	

Order

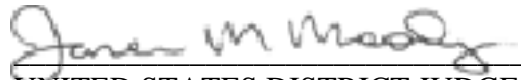
Plaintiff Terrance Horn commenced this Title VII employment discrimination action *pro se*. He claims Defendant discriminated against him by terminating his employment. Along with his complaint, Plaintiff filed an application to proceed *in forma pauperis* and a motion for appointment of counsel.

The Eighth Circuit has instructed that the decision of whether a complaint is frivolous or malicious precedes the decision of whether to grant *in forma pauperis* status and whether to order service of process. *See Carney v. Houston* 33 F.3d 893, 895 (8th Cir. 1994)(quoting *Gentile v. Missouri Dept. Of Corrections*, 986 F.2d 214 (8th Cir. 1993)). “If the complaint is frivolous or malicious, the district court should dismiss it out of hand.” *Id.* A complaint is frivolous where it lacks an arguable basis either in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325-27 (1989).

Plaintiff states in his complaint that the alleged discriminatory firing happened on September 9, 2005. (Complaint, at p. 2). Under Title VII, a discrimination charge must be filed

with the Equal Employment Opportunity Commission no later than 180 days after the alleged unlawful employment practice occurred. *Diaz v. Swift-Eckrich, Inc.* 318 F.3d 796, 798 (8th Cir. 2003)(citing 42 U.S.C.A. § 2000e-5(e)(1)); 42 U.S.C. § 12117(a). Therefore, the Court will dismiss Plaintiff's complaint unless he amends his complaint to further explain the facts upon which his claims are based including all relevant dates. Plaintiff must file an amended complaint within ten (10) days of the date of this Order. Failure to do so will result in dismissal of the complaint.

SO ORDERED this 29th day of January 2009.


UNITED STATES DISTRICT JUDGE