

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CHARLIE CALVIN HOLMES,)
)
 Plaintiff,)
)
 v.)
)
 DESOTO HILTON HOTEL,)
)
 Defendant.)

Case No. CV410-140

ORDER

Plaintiff seeks leave to proceed in forma pauperis (“IFP”) in this age and disability discrimination case. (Doc. 1.) The Court will grant leave to proceed IFP if the plaintiff demonstrates that he cannot, because of his poverty, afford to pay the costs of litigation and still provide for himself and any dependents. 28 U.S.C. § 1915. While a plaintiff need not be absolutely destitute in order to proceed IFP, *Adkins v. E.I. Dupont de Nemours*, 335 U.S. 331, 339 (1948), the fact that financing his own litigation may cause some difficulty is not sufficient to relieve a plaintiff of his obligation to pay his own way where it is possible for him to do so without undue hardship.

According to plaintiff's application, he is currently employed by the defendant, earning \$860 every two weeks. (Doc. 1 at 1.) He has no dependants, but has a monthly mortgage. (*Id.* at 2.) His wife, Vivian Pierce, also works at the Desoto Hilton Hotel and earns approximately \$450 per week. (*Id.*) He states that he has only \$50 in the bank, but he admits to having earned approximately \$25,000 in the last twelve months. (*Id.* at 1.) Since plaintiff is employed, has no dependants, and owns his home, the Court is simply not persuaded that he cannot afford to pay some portion of the Court's \$350 filing fee without imposing an undue hardship upon him or his family. Accordingly, plaintiff's motion for leave to proceed IFP is **GRANTED**, but if he wishes to pursue his claim, he must first pay a partial filing fee of \$175.

As an additional matter, an action brought pursuant to Title VII must be filed within 90 days of the receipt of the EEOC's right-to-sue letter. 42 U.S.C. § 2000e-5(f)(1); 29 C.F.R. §1614.407; *Stallworth v. Wells Fargo Armored Serv. Corp.*, 936 F.2d 522, 524 (11th Cir. 1991). Plaintiff furnished an March 12, 2010 right-to-sue letter and "charge of discrimination" (doc. 1 at 10) on June 10, 2010, so he nominally (if barely) satisfies the 90-day deadline. But for this to be a proper legal

“action,” plaintiff must file a complaint or its functional equivalent. *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 148-49 (1984). Plaintiff is advised that he has not yet filed a complaint within the meaning of Rules 3 and 8 of the Federal Rules of Civil Procedure.

In *Judkins v. Beech Aircraft Corp.*, 745 F.2d 1330 (11th Cir. 1984), the plaintiff filed both a right-to-sue letter and a copy of the EEOC charge. The *Judkins* court held that the plaintiff’s filings met Rule 8(a)(2)’s pleading requirements because the charge explained the factual basis for the discrimination claim. *Id.* at 1332. Because the filing functionally met the Rule’s requirements, it also stopped the statute of limitations clock. *Id.* (applying *Baldwin* to hold that filing of *Judkins*’s EEOC charge sufficed to institute a legal action, though filing the right-to-sue letter alone would not have); see also *Robinson v. City of Fairfield*, 750 F.2d 1507, 1511 (11th Cir. 1985). As Plaintiff has proceeded along that path here, his action appears to be timely.

Nevertheless he should file a formal complaint because his EEOC charge’s factual explanation may be shown to be deficient if challenged by the defendant. All litigants are required to state a legal claim before their case can proceed in court. See generally J.J. Coleman, III, Disability

Discrimination in Employment § 7:3 (2009) (while filing the right-to-sue letter and EEOC charge may suffice, “[t]he model complaint, on the other hand, should have much more”). And pro se plaintiffs are subject to the same rules as represented parties, including Rule 12(b)(6)’s requirement that they actually state an actionable claim. Fed. R. Civ. P. 12(b)(6); see *Clime v. Sunwest Peo, CNA Claimplus, Inc.*, 253 F. App’x 805, 806 (11th Cir. 2007) (dismissal of Title VII action was warranted for failure to state claim upon which relief could be granted when plaintiff appeared, at most, to make conclusory and vague allegations and the complaint was largely incoherent).

Thus, plaintiff must, within 30 days of the date this Order is served upon him, submit the partial filing fee along with a formal complaint containing: (1) a short and plain statement of the claim showing that he is entitled to relief, and (2) a demand for judgment for the relief that he seeks in this action. Rule 8(a). The complaint must also include a caption setting forth (1) the name of the Court, (2) the names of all parties to the action, (3) the file number, and (4) a designation of the pleading as a “Complaint.” Fed. R. Civ. P. 10(a).

In addition, the complaint must set forth a brief statement of the

facts of plaintiff's case, including the names of the individuals involved, the actions or conduct engaged in by them, and specific designations of when and where these events occurred. The statements of fact must be made in numbered paragraphs, the contents of which must be limited as far as practicable to a statement of a single set of circumstances. Fed. R. Civ. P. 10(b). Attached to this Order is a sample complaint form that plaintiff may use.

After plaintiff files his complaint and pays the partial filing fee of \$175, the Court will issue certain basic instructions to him. For now, however, the Clerk is **DIRECTED** to notify the Court of the receipt of the complaint. Plaintiff's failure to submit the formal complaint and filing fee within the time allotted may result in the loss of his right to pursue this case any further in this Court.

SO ORDERED this 14th day of June, 2010.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT of GEORGIA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
_____ DIVISION**

_____,)
Plaintiff,)
v.) **Case No. CV _____**
_____,)
Defendant.)

EMPLOYMENT DISCRIMINATION COMPLAINT

1. Plaintiff resides at: _____
(Street)

_____ *(City)* _____ *(State)* _____ *(Zip Code)*

2. Defendant's name: _____

Location of defendant's principal office:

Nature of defendant's business:

Approximate number of individuals employed by defendant: _____

3. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is specifically conferred on the court by 42 U.S.C. § 2000e-5. Equitable and other relief are also brought under 42 U.S.C. § 2000e-5(g).
- This action is brought pursuant to Age Discrimination in Employment Act of 1967 for employment discrimination based upon age. Jurisdiction is conferred by 29 U.S.C. §§ 626(c)(1) and 626(e), and appropriate relief is also sought.
- This action is brought pursuant to the Americans with Disabilities Act of 1990, for employment discrimination on the basis of disability. Jurisdiction is conferred by 42 U.S.C. § 12117(a), and appropriate relief is also sought.
4. I **have** filed a charge with the Equal Employment Opportunity Commission (EEOC) regarding defendant.
- Attach a copy of the charge(s) filed with the EEOC to this complaint.**
- I **have not** filed a charge with the EEOC.
5. I **have** received a Notice of Right to Sue letter from the EEOC on _____.
- (date)*
- Attach a copy of the Notice of Right to Sue letter to this complaint.**
- I **have not** received a Notice of Right to Sue letter from the EEOC.
6. The acts complained of in this suit concern:
- Failure to hire me
 - Termination of my employment
 - Failure to promote me
 - Demotion

- Denial of equal pay or work
- Sexual harassment
- Other (specify) _____

7. Plaintiff

- is presently employed by defendant
- is **not** presently employed by defendant

The dates of plaintiff's employment were _____.

The reason(s) for the end of plaintiff's employment by defendant is/are:

- Plaintiff was discharged.
- Plaintiff was laid off.
- Plaintiff left the job voluntarily.

8. The conduct of defendant is discriminatory with respect to:

- my race
- my national origin
- my religion
- my age
- my sex
- my disability

9. The name, race, sex, and position or title of the individual(s) who allegedly discriminated against me during my period of employment with the defendant company is/are:

<u>Name</u>	<u>Title</u>	<u>Race</u>	<u>Sex</u>
(1) _____	_____	_____	_____
(2) _____	_____	_____	_____
(3) _____	_____	_____	_____
(4) _____	_____	_____	_____
(5) _____	_____	_____	_____
(6) _____	_____	_____	_____

10. Describe the discriminatory actions or events that you are complaining of in this lawsuit. Give factual detail, including names and dates concerning what happened. **You do not need to refer to any statutes or cite law.**

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint, and that the information contained therein is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Date

Signature of Plaintiff

Plaintiff's Address: _____

(Street)

(City)

(State)

(Zip Code)