

Frizzell Carrell Woodson
2432 Cumberland Road
Farmville, VA 23901

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1894, Frizzell Woodson v. Megan Brennan
3:17-cv-00748-HEH

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC:

A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: November 19, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1894
(3:17-cv-00748-HEH)

FRIZZELL CARRELL WOODSON

Plaintiff - Appellant

v.

MEGAN J. BRENNAN, Postmaster General United States Postal Service, Agency

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1894

FRIZZELL CARRELL WOODSON,

Plaintiff - Appellant,

v.

MEGAN J. BRENNAN, Postmaster General United States Postal Service, Agency.

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:17-cv-00748-HEH)

Submitted: November 15, 2018

Decided: November 19, 2018

Before MOTZ and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Frizzell Carrell Woodson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Frizzell Carrell Woodson seeks to appeal the district court's order closing his case and consolidating the proceedings for Woodson to show cause why the court should not impose a prefilng injunction against him for filing numerous frivolous complaints. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Woodson seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal for lack of jurisdiction. We deny Woodson's motion for default judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Frizzell Carrell Woodson
2432 Cumberland Road
Farmville, VA 23901

FILED: January 29, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1894
(3:17-cv-00748-HEH)

FRIZZELL CARRELL WOODSON

Plaintiff - Appellant

v.

MEGAN J. BRENNAN, Postmaster General United States Postal Service, Agency

Defendant - Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Motz, Judge Harris, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FRIZZELL CARRELL WOODSON,)
Plaintiff,)
v.) Civil Action No. 3:17cv00748-HEH
MEGAN J. BRENNAN,)
POSTMASTMASTER GENERAL)
UNITED STATES POSTAL SERVICE,)
Defendant.)

MEMORANDUM ORDER
**(Granting Motion to Proceed *In Forma Pauperis*,
Dismissing Complaint, and Ordering Plaintiff to Show Cause)**

THIS MATTER is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis* ("Application") (ECF No. 1), filed on November 6, 2017. Upon due consideration, Plaintiff's Application to Proceed *In Forma Pauperis* is hereby GRANTED. Plaintiff may proceed in this case without paying the Court's filing fee. The Clerk is DIRECTED to file the Complaint (ECF No. 1-1). For the reasons set forth below, however, the Court finds that the Complaint fails to state a claim on which relief may be granted. Accordingly, the Complaint is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The Court acknowledges that *pro se* complaints are afforded a liberal construction. *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006). That said, the Court need not attempt "to discern the unexpressed intent of the plaintiff." *Id.* Nor does the requirement of liberal construction excuse a clear failure in the pleading to allege a federally

cognizable claim. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990). As the Fourth Circuit explained in *Beaudett v. City of Hampton*, “[t]hough [pro se] litigants cannot, of course, be expected to frame legal issues with the clarity and precision ideally evident in the work of those trained in law, neither can district courts be required to conjure up and decide issues never fairly presented to them.” 775 F.2d 1274, 1276 (4th Cir. 1985).

Under Federal Rule of Civil Procedure 12(b)(6), a complaint need not assert “detailed factual allegations,” but must contain “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). Thus, the “[f]actual allegations must be enough to raise a right to relief above the speculative level” to one that is “plausible on its face.” *Id.* at 555, 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The Court assumes Plaintiff’s well-pleaded allegations to be true and views all facts in the light most favorable to him. *T.G. Slater & Son v. Donald P. & Patricia A. Brennan, LLC*, 385 F.3d 836, 841 (4th Cir. 2004) (citing *Mylan Labs, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993)).

Plaintiff has brought five claims against United States Postal Service Postmaster Megan J. Brennan (“Defendant”) under the Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, accusing Defendant of racial discrimination, gender discrimination, religious

discrimination, age discrimination, and retaliation. (See, e.g., Compl. at 48–57.)

Although he scatters facts throughout the sixty-seven paged Complaint, Plaintiff fails to present a short and plain statement of the factual and legal bases for any specific claim, leaving the Court with a generally indecipherable list of grievances challenging aspects of his former employment. To the extent the Court can identify and understand Plaintiff's Title VII and ADEA claims, they are at best conclusory statements lacking the specific factual allegations necessary to elevate them to the requisite level of facial plausibility. Therefore, the Complaint should be dismissed.

Even if the Court could identify a claim upon which relief may be granted among Plaintiff's Title VII and ADEA claims, the Court observes that such claims appear to be time-barred. Before filing an employment discrimination suit in federal court under Title VII or the ADEA, a plaintiff must first exhaust available administrative remedies by filing a charge with the Equal Employment Opportunity Commission ("EEOC"). *Jones v. Calvert Group, Ltd.*, 551 F.3d 297, 300 (4th Cir. 2009) (regarding exhaustion of administrative remedies under Title VII and the ADEA). A plaintiff may initiate a civil action based on the claims raised in his EEOC charge only after receiving a right-to-sue letter from the EEOC. *Puryear v. County of Roanoke*, 214 F.3d 514, 518 (4th Cir. 2000). Moreover, a plaintiff must commence a civil action within ninety days of receipt of notice or, if an appeal with the agency is filed, within ninety days of the final decision on appeal. See 42 U.S.C. § 2000e-5(f)(1) (Title VII); 29 U.S.C. § 626(e) (ADEA); 29 C.F.R. § 1614.407.

Plaintiff filed a charge of discrimination with the EEOC on August 30, 2013. On November 20, 2014, after completing its investigation, the EEOC mailed Plaintiff a right-to-sue letter, notifying Plaintiff that the EEOC was closing its file and dismissing his charge. The Complaint alleges that Plaintiff subsequently appealed the EEOC's dismissal, but it does not provide the date upon which Plaintiff filed this appeal. The initial appellate decision was rendered on March 10, 2017. Plaintiff then filed a Request for Reconsideration, which the EEOC denied on August 9, 2017. Plaintiff did not file the present action until November 6, 2017.

Although a timely appeal tolls the running of the ninety-day statute of limitations for Title VII and ADEA actions, *Cochran v. Holder*, 564 F.3d 318, 322–323 (4th Cir. 2009), the Court finds that the Complaint fails to allege that Plaintiff's appeal was in fact timely. An appeal is timely if it is filed within thirty days of the EEOC's dismissal of a charge, 29 C.F.R. § 1614.402(a). As stated above, Plaintiff does not provide the date upon which he filed his appeal. However, Plaintiff does assert that the EEOC issued its decision on the appeal on March 10, 2017. If Plaintiff had timely filed an appeal, he would have filed it by December 20, 2014. Assuming the facts as pled in the Complaint to be true, the Court cannot draw a plausible inference that Plaintiff in fact filed his appeal on or before that date, in light of the fact that the EEOC rendered its decision on the appeal over two years later. Accordingly, the Court concludes that the Plaintiff's ninety-day limitations period for filing an action began to run on November 20, 2014, with the issuance of his right-to-sue letter. Because the instant action was not filed until November 6, 2017, Plaintiff well exceeded the filing period allowed by law.

“The ninety day notice period is clear evidence that Congress intended to require claimants to act expeditiously, without unnecessary delay.” *Harvey v. City of New Bern Police Dep’t*, 813 F.2d 652, 654 (4th Cir. 1987). However, courts in the Fourth Circuit may apply equitable tolling to the statutory period where “reasonable grounds exist” warranting such an action. *Id.* Equitable tolling may be appropriate in cases where a claimant has actively pursued judicial remedies by filing a defective pleading during the statutory period or where an adversary has induced or tricked the claimant into missing the statutory deadline. *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990).

Including the present case, Plaintiff has filed ten lawsuits¹ against the United States Postal Service since receiving his right-to-sue letter, the earliest of which was docketed in this Court on December 30, 2014. *Woodson v. United States of America*, Case No. 3:14cv862-HEH. Despite the fact, as stated above, that equitable tolling may be appropriate in cases where a claimant has actively pursued judicial remedies by filing a defective pleading during the statutory period, *see Irwin*, 498 U.S. at 96, and despite Plaintiff’s active pattern of litigation, the Court finds that equitable tolling cannot render Plaintiff’s present Complaint timely filed.

Plaintiff’s ninety-day filing window began to run on November 11, 2014. Plaintiff’s first subsequent lawsuit was initially filed in state court on December 1, 2014, and it was docketed in this Court on December 30, 2014. Notice of Removal & Ex. 1, *Woodson v. United States of America*, Case No. 3:14cv862-HEH, ECF Nos. 1, 1-1. Determining from which date to toll the running of Plaintiff’s ninety-day filing clock is

¹ The other nine are docketed as Case Nos. 3:14CV862; 3:15CV001; 3:15CV002; 3:15CV003; 3:15CV004; 3:16CV233; 3:16CV234; 3:16CV235; 3:16CV236.

happily unnecessary, because Plaintiff's case was dismissed, along with four others, on February 2, 2015, and Plaintiff did not file another complaint until April 25, 2016, when he filed four new civil actions directly with this Court. *Woodson v. United States of America*, Case Nos. 3:14cv862; 3:15cv1; 3:15cv2; 3:15cv3; 3:15cv4 (all dismissed Feb. 2, 2015); Case Nos. 3:16cv233; 3:16cv234; 3:16cv235; 3:16cv236 (all filed Apr. 25, 2016). Over twelve months passed between the dismissal of Plaintiff's first five actions and the filing of any subsequent action. As a result, even if the statutory limitations period was tolled during the pendency of Case No. 3:14cv862 and its accompanying cases, those ninety days had long since expired when Plaintiff re-filed in 2016 and similarly when he filed the instant Complaint. Plaintiff's Title VII and ADEA claims therefore remain time-barred.

Accordingly, the Court finds that, even if Plaintiff's Complaint contained sufficient factual allegations to support his Title VII and ADEA claims, such claims would be time-barred pursuant to 42 U.S.C. § 2000e-5(f)(1) and 29 U.S.C. § 626(e). The Complaint must therefore be dismissed.

For the foregoing reasons, the Court GRANTS Plaintiff's Application to Proceed *In Forma Pauperis* but DISMISSES Plaintiff's Complaint.

Plaintiff has demonstrated a continuing pattern of filing frivolous actions against the United States Postal Service and its employees. Each of these actions was dismissed by this Court for lack of jurisdiction or failure to state a cause of action. Based on this most recent unmeritorious filing, it is hereby ORDERED that Frizzell Carrell Woodson file by January 11, 2018, a written statement of position addressing why the Court should

not issue an injunction forbidding him from filing, without prior authorization, any cases in this Court relating to the subject matter of his employment with the United States Postal Service and the previously dismissed complaints described below:

<u>Case</u>	<u>Civil Action No.</u>
<i>Woodson v. United States of America</i>	3:14CV862
<i>Woodson v. United States of America</i>	3:15CV001
<i>Woodson v. United States of America</i>	3:15CV002
<i>Woodson v. United States of America</i>	3:15CV003
<i>Woodson v. United States of America</i>	3:15CV004
<i>Woodson v. United States of America</i>	3:16CV233
<i>Woodson v. United States of America</i>	3:16CV234
<i>Woodson v. United States of America</i>	3:16CV235
<i>Woodson v. United States of America</i>	3:16CV236
<i>Woodson v. Megan J. Brennan</i>	3:17CV748

Any written statement of position filed by Plaintiff should specifically address why he should not be forbidden from filing any case in this Court pertaining to the above described matters without submitting such contemplated lawsuit to a judge of this Court for pre-filing review and authorization. Plaintiff may also wish to address the following additional issues, which will be considered by the Court before determining whether a pre-filing injunction is appropriate:

1. Plaintiff's prior history of litigation;
2. Whether Plaintiff had a good faith basis for pursuing such litigation, or simply intended to harass the defendants;
3. The burden on the Court and the parties resulting from Plaintiff's filings; and
4. The adequacy of alternative sanctions.

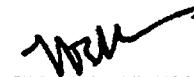
See *Cromer v. Kraft Foods, N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004).

Accordingly, for the reasons set forth above, the Court GRANTS Plaintiff's Application to Proceed *In Forma Pauperis*, DISMISSES his Complaint for failure to state a claim, and ORDERS Plaintiff to show cause as to why a pre-filing injunction should not be issued.

Should Plaintiff wish to appeal this Order, written notice of appeal must be filed with the Clerk of Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the right to appeal.

The Clerk is directed to send a copy of this Order to Plaintiff, who is *pro se*.

It is so ORDERED.



/s/
Henry E. Hudson
United States District Judge

Date: Dec. 12, 2017
Richmond, VA

Frizzell Carrell Woodson
2432 Cumberland Road
Farmville, VA 23901-4305

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FRIZZELL CARRELL WOODSON,)
)
Plaintiff,)
)
v.) Civil Action No. 3:17cv00748-HEH
)
MEGAN J. BRENNAN,)
POSTMASTMASTER GENERAL)
UNITED STATES POSTAL SERVICE,)
)
Defendant.)

ORDER
(Directing the Clerk to Close Case)

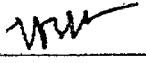
THIS MATTER is before the Court on its own initiative. On November 6, 2017, Plaintiff filed a Motion for Leave to Proceed *In Forma Pauperis*. On December 12, 2017, the Court granted Plaintiff's Motion but dismissed the accompanying Complaint because it failed to state a claim. (Order, ECF No. 3.) In that same Order, the Court additionally ordered Plaintiff to show cause why the Court should not impose a pre-filing injunction against him, to stem the tide of his frivolous filings. Before the Court had the opportunity to reach a decision regarding the proposed pre-filing injunction, Plaintiff filed five other Motions for Leave to Proceed *In Forma Pauperis*. (See Civil Action Nos. 3:18cv278, 3:18cv279, 3:18cv280, 3:18cv281, 3:18cv282.) The Court has since dismissed the Complaints contained therein and reissued its Order to Show Cause.

To avoid duplicitous proceedings, the Court hereby consolidates the show cause proceedings pending against Plaintiff with those in Civil Action No. 3:18cv278. Because

the show cause order was the only reason this action was held open after the dismissal of Plaintiff's Complaint, the Clerk is accordingly DIRECTED to close this case.¹

The Clerk is directed to send a copy of this Order to Plaintiff, who is *pro se*.

It is so ORDERED.


/s/
Henry E. Hudson
Senior United States District Judge

Date: July 5, 2018
Richmond, VA

¹ Since the dismissal of his Complaint, Plaintiff has persisted in filing various Motions for Subpoenas and attempts to demand discovery. The Court has disregarded these Motions because there was no live controversy in this action other than the show cause proceeding. That said, in an effort to clear the record, the Court DENIES all of Plaintiff's outstanding Motions (ECF Nos. 5, 7, 8) as MOOT.

**Additional material
from this filing is
available in the
Clerk's Office.**