

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

CIVIL ACTION NO. 11-207-KSF

BOYD PATRICK

PLAINTIFF

v.

OPINION & ORDER

CLARK REGIONAL FOUNDATION FOR
THE PROMOTION OF HEALTH, INC.

DEFENDANT

* * * * *

This matter is before the Court on the Plaintiff’s motion for leave to file an Amended Complaint [DE #8]. The Defendant has filed its response in opposition to the Plaintiff’s motion [DE # 10]; however, the Plaintiff has not replied and the time for doing so has passed.

The Plaintiff states in his motion that “the original complaint . . . was intended to be an action in state court only to enforce Kentucky’s Civil Rights Act, K.R.S. 344.040” [DE #8]. Because Plaintiff’s counsel “used an older complaint on his word processor to save time and that complaint was filed under the Federal Civil Rights Act and had words to that effect,” the original complaint mistakenly contained references to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* The Plaintiff now seeks to amend his Complaint to eliminate any reference to Title VII and to proceed only under the Kentucky Civil Rights Act. Although it is styled as a Motion to File Amended Complaint, the Plaintiff’s motion is tantamount to a motion for voluntary dismissal of the federal claims pursuant to Rule 41 of the Federal Rules of Civil Procedure.

The Defendant responded to the Motion for Leave by stating that while it does not oppose the motion, the Plaintiff should not be permitted to revive the dismissed claims in this or other

litigation [DE #10]. Effectively, the Defendant urges that dismissal of the federal claims should be with prejudice. The Court has not had the benefit of the Plaintiff's reply to the Defendant's suggestion that dismissal of the federal claims should be with prejudice. Accordingly, the Court will order the Plaintiff to show cause why these federal claims should not be dismissed with prejudice.

Accordingly, the Court, being fully and sufficiently advised, hereby **ORDERS** as follows:

- (1) the Plaintiff shall have up and to November 11, 2011, in which to **SHOW CAUSE** why dismissal of the federal claims should not be with prejudice.; and
- (2) the Plaintiff's motion to amend [DE #8] is **PASSED** while the Court awaits the Plaintiff's response to this Order.

This November 1, 2011.



Signed By:

Karl S. Forester *KSF*

United States Senior Judge