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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CLIFTON SLAUGHTER,	*	
	*	4-99-CV-90471
Plaintiff,	*	
v.	*	
CATHOLIC HEALTH INITIATIVES IOWA, CORP. d/b/a MERCY MEDICAL CENTER and DEBORAH BOYER,	*	
	*	ORDER
Defendants.	*	

This is an employment discrimination case brought under Title VII, 42 U.S.C. § 2000e *et seq.*, and the Iowa Civil Rights Act, Iowa Code § 216 *et seq*. It is currently scheduled to start trial on March 12, 2001. However, on February 27, 2001, Defendant filed a motion to dismiss on the basis that Plaintiff requested and received a right-to-sue letter from the Equal Employment Opportunity Commission (EEOC) only 126 days after he filed his complaint. Plaintiff, fearful that on appeal the Eighth Circuit, which has not yet addressed this issue, might agree with Defendant and force him to retry this case, does not resist. Plaintiff asks only that the Court stay and remand the case instead of dismissing it without prejudice as Defendants suggest.

Plaintiff's trepidation comes from the circuit split on whether the EEOC can lawfully issue a right-to-sue letter before 180 days have passed since the claimant filed his or her complaint with the EEOC. *See* 42 U.S.C. 2000e-5(f)(1); 29 C.F.R. 1601.28(a)(3). The Ninth and Eleventh Circuits have held that the EEOC may issue an early right-to-sue letter. *Sims v. Trus Joist MacMillan*, 22

F.3d 1059 (11th Cir. 1994); *Brown v. Puget Sound Electrical Apprenticeship & Training Trust*, 732 F.2d 726 (9th Cir. 1984). More recently, the D.C. Circuit has held that the EEOC may not issue an early right-to-sue letter. *Martini v. Federal National Mortgage Assoc.*, 178 F.3d 1336 (D.C. Cir. 1999). Since *Martini*, district courts have gone both ways. *Compare Rodriguez v. Connection Technology Inc.*, 65 F.Supp.2d 107 (E.D.N.Y. 1999) (may not issue a right-to-sue letter prior to expiration of 180-day period), *and Stetz v. Reeher Enterprises, Inc.*, 70 F.Supp.2d 119 (N.D.N.Y. 1999) (may not issue a right-to-sue letter prior to expiration of 180-day period), *with King v. Dunn Memorial Hospital*, 120 F.Supp.2d 752 (2000) (EEOC may issue a right to sue letter prior to expiration of 180-day period), *and Valardi v. Yellow Page Publishers Inc.*, No. 00-1370(DSD/JMM), 2000 WL 1897355 (D. Minn. Nov. 3, 2000) (EEOC may issue a right to sue letter prior to expiration of 180-day period). The Court thus understands Plaintiff's concern.

Dismissing the case without prejudice does not seem to be the most appropriate course of action though. The Court disagrees with the reasoning in *Martini* that the EEOC must be forced into either improving its investigatory capacities or asking Congress for more money. *See Martini*, 178 F.3d at 1346-47. Rather, the Court agrees with the reasoning of the Ninth and Eleventh Circuits and their progeny, that there is no point in making claimants wait around if the EEOC knows it is not going to be able to do anything with their claim. *See Sims*, 22 F.3d at 1062-63; *King* 120 F.Supp.2d at 758-59. The Court therefore sees no reason to dismiss this case and make Plaintiff start over when it is so unlikely that the EEOC will do anything different the next time around.

Nor does the Court think that staying the case is appropriate. As a practical matter it would serve no purpose. Whether it is stayed or not, Plaintiff will still be able to pick up where he left off if the

EEOC does not resolve the matter. Simply remanding the case is the best and most practical course of action. *See Rodriguez v. Connection Technology Inc.*, 65 F.Supp.2d 107, 113 (E.D.N.Y. 1999); *Simler v. Harrison County Hospital*, 110 F.Supp.2d 886, 891 (S.D. Ind. 2000).

Defendants' motion to dismiss is **DENIED**. This case is **REMANDED** to the EEOC. The Clerk of Court is thereby directed to close the case. After the completion of the 180 day period before the EEOC, the case may then be re-opened upon application of the Plaintiff. **IT IS SO ORDERED**.

Dated this ___1st____ day of March, 2001.

ROBERT W. PRATT
U.S. DISTRICT JUDGE