

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Walker D. Miller

Civil Action No. 07-cv-02175-WDM-BNB

ROBERT W. MANN,

Plaintiff,

v.

KIT BRADSHAW, a Colorado resident, et al.,

Defendants.

ORDER ON RECOMMENDATION OF MAGISTRATE JUDGE

Miller, J.

This case is before me on the recommendation of Magistrate Judge Boyd N. Boland (Docket No. 34), filed March 1, 2010, that this case be dismissed pursuant to D.C.COLO.LCivR 41.1 for failure to prosecute. No party has filed an objection to the recommendation therefore no party is entitled to de novo review. 28 U.S.C. § 636(b).

As noted by Magistrate Judge Boland, no filings have been made since April 14, 2008 and Plaintiff did not respond to Magistrate Judge Boland's Order to Show Cause (Docket No. 33) why the case should not be dismissed for lack of prosecution. I agree with Magistrate Judge Boland that Plaintiff has abandoned the action. Since the commencing document is not a complaint, but rather a petition under Fed. R. Civ. P. 27, I need not address whether dismissal without prejudice will nonetheless mean Plaintiff cannot refile the case because of the statute of limitations. See *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992).

Accordingly, it is ordered:

1. The recommendation of Magistrate Judge Boyd N. Boland (Docket No. 34) is accepted.
2. This case is dismissed without prejudice pursuant to D.C. COLO. LCivR 41.1 for failure to prosecute.

DATED at Denver, Colorado, on March 22, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Walker D. Miller".

s/ Walker D. Miller
United States Senior District Judge