

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 08-cv-01131-PAB-BNB

DEAN CARBAJAL,

Plaintiff,

v.

MYRL SERRA, District Attorney for Montrose County,
in her individual and official capacity,
MONTROSE COUNTY, a state municipal entity,
BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF MONTROSE,
CITY AND COUNTY OF MONTROSE, a state municipal entity,
MONTROSE COUNTY PROBATION DEPARTMENT, a municipal entity,
CITY AND COUNTY OF DELTA, a state municipal entity,
DELTA COUNTY PROBATION DEPARTMENT, a municipal entity,
BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF DELTA COUNTY,
CITY AND COUNTY OF DELTA,
BRIAN DOMMGUES, District Attorney for Jefferson County, in his individual and official
capacity,
BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF JEFFERSON
COUNTY, JEFFERSON COUNTY, a state municipal entity, and
STATE OF COLORADO, a state in the United States of America,

Defendants.

ORDER

This matter comes before the Court on plaintiff Dean Carbajal's "Motion to Dismiss / Withdraw Civil Complaint" [Docket No. 119] ("Pl.'s Mot. to Dismiss"). On March 9, 2009, plaintiff filed this motion to voluntarily "dismiss and withdraw the civil action that he has initiated." See Pl.'s Mot. to Dismiss at 2. On March 10, 2009, the Court ordered the defendants to file responses to plaintiff's motion for voluntary dismissal on or before March 17, 2009 [Docket No. 120]. As of March 18, 2009, no

defendant has indicated any opposition to the motion or the dismissal of the case without prejudice.¹

Plaintiff bases his motion on questionable Constitutional grounds. See Pl.'s Mot. to Dismiss at 2. However, because plaintiff appears *pro se*, I liberally construe the motion as one for voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). To date, no defendant has filed an answer or motion for summary judgment in this case. Therefore, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), it is appropriate to dismiss this case without prejudice. See also Fed. R. Civ. P. 41(a)(1)(B); *Lorillard Tobacco Co. v. Engida*, 556 F. Supp. 2d 1209, 1212-13 (D. Colo. 2008). It is therefore

ORDERED that plaintiff's Motion to Dismiss / Withdraw Civil Complaint [Docket No. 119] is GRANTED. The case shall be dismissed against all defendants without prejudice.² It is further

¹ Responses were filed by defendants City and County of Delta (actually County of Delta) [Docket No. 121]; Myrl Serra, Delta County Probation Department, and the State of Colorado [Docket No. 122]; and Montrose County [Docket No. 123].

² There is some confusion regarding what defendants are properly parties to this case. Apparently in response to plaintiff's second amended complaint [Docket No. 76], various defendants have been terminated or added in the Court's electronic case management system. Although the second amended complaint has not been accepted by the Court, and Magistrate Judge Boyd N. Boland recommended that it be refused [Docket No. 114], this issue is rendered moot by plaintiff's motion to voluntarily dismiss his case. Therefore, this case is dismissed as to all potential defendants listed in this Order's caption.

ORDERED that all pending motions and magistrate judge recommendations
[Docket Nos. 18, 23, 26, 27, 30, 68, 69, 95, 98, 110, 114, 117] are DENIED as moot.

DATED March 18, 2009.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge