

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02042-BNB

JAMAAL WATKINS,

Plaintiff,

v.

COMMUNITY PAROLE OFFICER NATHAN LOVE, #6993,  
DIVISION OF ADULT PAROLE [AND] COMMUNITY CORRECTIONS, and  
COLORADO DEPARTMENT OF CORRECTIONS,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

NOV 05 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DISMISSING CASE

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Plaintiff, Jamaal Watkins, initiated this action by filing a *pro se* pleading titled "Motion for Order of Gag (Gag Order)," on August 21, 2009. By order dated August 27, 2009, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and directed Mr. Watkins to cure certain enumerated deficiencies in the Prisoner Complaint.

On September 10, 2009, Mr. Watkins filed a Prisoner Complaint, and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. On October 19, 2009, Magistrate Judge Boland determined that Mr. Watkins was currently incarcerated in a halfway house, and apparently did not have an inmate trust fund account. Therefore, Magistrate Judge Boland ordered Mr. Watkins to file a properly notarized Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, on the form used by non-prisoners.

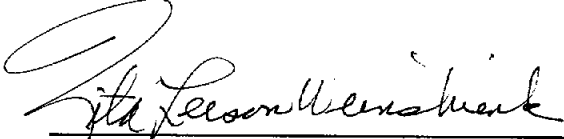
Mr. Watkins filed a "Motion to Dismiss Without Prejudice," on October 26, 2009. In the pleading, Mr. Watkins disagrees with Magistrate Judge Boland's determination that he no longer has an inmate trust fund account. Nonetheless, Mr. Watkins requests that his case be dismissed without prejudice until he has enough funds to pay the \$350.00 filing fee.

Fed. R. Civ. P. 41(a)(1) provides that "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . ." No answer or motion for summary judgment has been filed by Defendants in this action. Further, a voluntary dismissal under Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. **See** J. Moore, Moore's Federal Practice ¶ 41.02(2) (2d ed. 1995); **Hyde Constr. Co. v. Koehring Co.**, 388 F.2d 501, 507 (10th Cir. 1968). The Motion, therefore, closes the file as of October 26, 2009. **See Hyde Constr. Co.**, 388 F.2d at 507. Accordingly, it is

ORDERED that the action is dismissed pursuant to Fed. R. Civ. P. 41(a)(1). It is FURTHER ORDERED that the voluntary dismissal is without prejudice and is effective as of October 26, 2009, the date Plaintiff filed the Motion in this action.

DATED at Denver, Colorado, this 4<sup>th</sup> day of November, 2009.

BY THE COURT:

  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

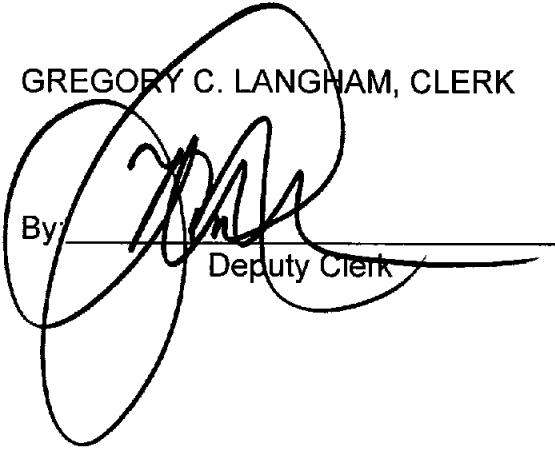
Civil Action No. 09-cv-02042-BNB

Jamaal Watkins  
Prisoner No. 10525  
1651 Kendall Street  
Lakewood, CO 80214

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11/5/09

GREGORY C. LANGHAM, CLERK

By

A large, stylized handwritten signature in black ink, appearing to be 'G. Langham', is written over a horizontal line. The signature is highly cursive and loops around itself.

Deputy Clerk