

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02218-BNB

DANA COOPER,

Plaintiff,

v.

SGT. ROBERTS,
WARDEN SUSAN JONES,
J. DALTON, # 3611,
CARL HOLDITCH, # 2172,
R. MANNING, # 6526,
ANTHONY A. DeCESARO,
C/O GOUDEAU D.C.,
SGT. PADILLA, and
LT. HEIDENTHAL,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 21 2009

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

At issue is the document titled, "Motion to Withdraw Without Prejudice," filed by Plaintiff Dana Cooper on September 21, 2009. The Court must construe the Motion liberally because Mr. Cooper is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure 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 has been filed by Defendants in this action. Further, a voluntary dismissal under Rule 41(a)(1)(A) 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) (2^d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2^d 501, 507 (10th Cir. 1968).

The Court construes the Motion as a Notice of Dismissal filed pursuant to Rule 41(a)(1)(A)(i). The file will be closed as of September 21, 2009, the date the Notice was filed with the Court. **See *Hyde Constr. Co.***, 388 F.2^d at 507. Accordingly, it is

ORDERED that the Motion is construed as a Notice of Dismissal filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and is effective as of September 21, 2009, the date Mr. Cooper filed the Notice in this action.

DATED at Denver, Colorado, this 21 day of Oct., 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-02218-BNB

Dana Cooper
Prisoner No. 135056
Colorado State Penitentiary
P.O. Box 777
Cañon City, CO 81215-0777

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/21/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk