

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-03027-BNB

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

RODNEY ZIMMERMAN,

FEB 22 2010

Plaintiff,

GREGORY C. LANGHAM  
CLERK

v.

LEGAL ASSISTANT AT TERRITORIAL PRISON (JANE DOE),

Defendant.

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ORDER DISMISSING CASE

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Plaintiff, Rodney Zimmerman, initiated this action by submitting to the Court *pro se* a letter, a motion to compel, and a request for legal assistance. The Court reviewed the documents and determined they were deficient. Therefore, in an order filed on December 30, 2009, Magistrate Judge Boyd N. Boland directed the clerk of the Court to commence a civil action and directed Mr. Zimmerman to cure certain deficiencies in the case within thirty days if he wished to pursue his claims.

The December 30 order pointed out that Mr. Zimmerman failed either to pay the \$350.00 filing fee or to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The December 30 order also pointed out that Mr. Zimmerman failed to submit a Prisoner Complaint on the proper, Court-approved form. The order warned Mr. Zimmerman that if he failed to cure the designated deficiencies within thirty days, the action would be dismissed without prejudice and without further notice.

On February 4, 2010, without curing the designated deficiencies, Mr. Zimmerman filed *pro se* a copy of page one of the order to commence and cure filed on December 30, 2009, with the words "Clerk, Please Discontinue This Case #" handwritten across the top. He also filed a letter informing the Court that he may initiate a lawsuit "in about a month." **See** docket number 5 at 1.

The Court must construe liberally the February 4 request to discontinue this case because Plaintiff 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). However, the Court should not act as a *pro se* litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, the Court will construe the request to discontinue this case as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Rule 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 response has been filed by Defendant in this action. A voluntary dismissal pursuant to 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 notice closes the file. **See Hyde Constr. Co.**, 388 F.2d at 507.

Therefore, the February 4 request to discontinue this case will be construed liberally as a notice construe the request to discontinue this case as a notice of

voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1). Mr. Zimmerman also failed to cure the designated deficiencies as directed within the time allowed. Accordingly, it is

ORDERED that the request to discontinue this case that Plaintiff, Rodney Zimmerman, submitted to and filed with the Court on February 4, 2010, is construed liberally as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1). It is

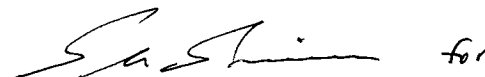
FURTHER ORDERED that the voluntary dismissal is effective as of February 4, the date the liberally construed notice of dismissal was filed in this action. It is

FURTHER ORDERED that the action is dismissed without prejudice. It is

FURTHER ORDERED that the motion to compel is denied as moot.

DATED at Denver, Colorado, this 19<sup>th</sup> day of February, 2010.

BY THE COURT:

  
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PHILIP A. BRIMMER  
United States District Judge for  
ZITA LEESON 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-03027-BNB

Rodney Zimmerman  
Prisoner No. 135354  
Colorado Territorial Corr. Facility  
PO Box 1010  
Cañon City, CO 81215- 1010

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/22/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk