

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02518-BNB

JOHN RAINEY,

Plaintiff,

v.

DOC,

Defendant.

ORDER DISMISSING CASE

Plaintiff, John Rainey, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who is currently incarcerated at the Centennial Correctional Facility in Canon City, Colorado. Mr. Rainey initiated this action by filing a *pro se* Prisoner Complaint and a motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 on October 17, 2011. He has been granted leave to proceed pursuant to 28 U.S.C. § 1915.

On November 1, 2011, Mr. Rainey filed a letter to the Court asking that this action be dismissed without prejudice. In the letter, Mr. Rainey states that he seeks a voluntary dismissal because he has not yet completed the grievance process. The Court will construe the letter as a Notice of Dismissal filed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

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 Defendant 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 Notice, therefore, closes the file as of November 1, 2011. **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 November 1, 2011, the date Plaintiff filed the Notice in this action. It is FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 7th day of November, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court