

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

DANIEL CAOUCETTE,

Plaintiff,

vs.

No. CIV 22-0149 JB/CG

JENNIFER BARELA and LAW OFFICES OF  
THE PUBLIC DEFENDER

Defendants.

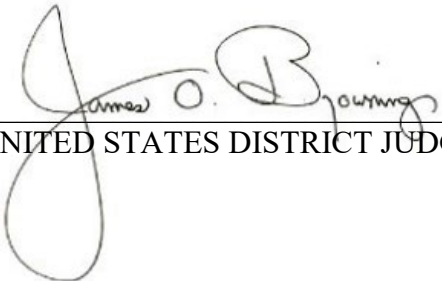
**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Notice of Withdrawal, filed June 23, 2022. See Notice of Withdrawal, filed June 23, 2022 (Doc. 12)(“Notice”). Plaintiff Daniel Caouette initiated this case on January 18, 2022, by filing a Civil Complaint for Malpractice in Second Judicial District Court, Court of Bernalillo, State of New Mexico. See Civil Complaint for Malpractice at 1, filed January 18, 2022 (Doc. 1-1)(“Complaint”). Caouette alleges that his public defender violated his constitutional rights and committed legal malpractice. See Complaint at 1. The Complaint names as Defendants Attorney Jennifer Barela and the Law Offices of the Public Defender. See Complaint ¶¶ 1-2, at 1. The Defendant removed the case to federal Court on February 28, 2022. See Notice of Removal, filed February 28, 2022 (Doc. 1). The Defendants thereafter filed a Motion to Dismiss in Lieu of Filing an Answer, and Caouette filed a Motion to Remand. See State Defendants’ Motion to Dismiss in Lieu of Filing an Answer, filed March 7, 2022 (Doc. 4)(“Motion to Dismiss”); Motion to Remand, filed March 14, 2022 (Doc. 5)(“Motion to Remand”). Those motions are briefed fully.

On June 23, 2022, Caouette filed his Notice. The Notice states: “Plaintiff Daniel Caouette hereby comes before the Court to withdraw this above captioned case without prejudice. No

judgments or any Court action to this point therefore dismissal without prejudice is proper.” Notice at 1. Rule 41(a) of the Federal Rules of Civil Procedure gives plaintiffs an absolute right to dismiss an action without prejudice “before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). See Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003)(noting that the right to dismiss under rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure is “absolute”). The Defendants have not filed an answer or summary judgment motion. The Defendants filed a Motion to Dismiss, which is insufficient to overcome Caouette’s right to unilaterally dismiss this case without prejudice. See De Leon v. Marcos, 659 F.3d 1276, 1283 (10th Cir. 2011)(explaining that the defendant “filed a motion to dismiss, not an answer or a motion for summary judgment. Thus, [the plaintiff] could have dismissed the case unilaterally under Rule 41(a)(1)(A)(i)). The Court therefore will grant Caouette’s request to dismiss voluntarily the Complaint without prejudice. The Court will also deny as moot the Defendant’s Motion to Dismiss and Caouette’s Motion to Remand.

**IT IS ORDERED** that: (i) Plaintiff Daniel Caouette’s Civil Complaint for Malpractice, filed January 18, 2022 (Doc. 1-1), is dismissed without prejudice; (ii) the State Defendants’ Motion to Dismiss in Lieu of Filing an Answer, filed March 7, 2022 (Doc. 4), is denied as moot; (iii) Plaintiff Daniel Caouette’s Motion to Remand, filed March 14, 2022 (Doc. 5), is denied as moot; and (iv) the Court will enter a Final Judgment closing the civil case.

  
UNITED STATES DISTRICT JUDGE

*Parties and Counsel:*

Daniel Caouette  
Lea County Correctional Facility  
Hobbs, New Mexico

*Plaintiff pro se*

Jason R. Alcaraz  
Michael B. Calderon  
Alcaraz Law, P.A.  
Albuquerque, New Mexico

*Attorneys for the Defendants*