UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

LOIS V. DRAAYER AND JERRY CIVIL ACTION

DRAAYER

NUMBER 06-731-FJP-DLD

VERSUS

MENTOR CORPORATION

ORDER

The parties informed the court during the September 2, 2010, telephone status conference that plaintiff Lois V. Draayer passed away after filing suit against defendant. The proper party must be substituted for Mrs. Draayer in order to proceed with her claims against defendant. Fed. Rule Civ. P. 25 provides in pertinent part as follows:

Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

The filing of the statement of death triggers the 90-day time limitation for the motion to substitute in Rule 25. See F.R.C.P. Form 9. Once the statement of death is filed and served, any party or the decedent's successor or representative may bring a motion to substitute the proper party for the deceased party. Louisiana law allows for a deceased party to be substituted by his "legal successor," which is defined as the survivors designated in La. Civ. Code art. 2315.1, if the action survives in their favor, the succession representative of the deceased, if the succession is under administration, or the heirs and legatees of the deceased, if the deceased's succession is not under administration. See La. Code. Civ. P. 801.

Thus, plaintiffs must file a statement noting a party's death for Mrs. Draayer within 15 days or by September 17, 2010. Once the statement is filed and served, all parties have 90 days to file a motion to substitute with documentation proving that the party seeking to be substituted is the "legal successor" of Lois V. Draayer. Accordingly,

IT IS ORDERED that plaintiffs shall file a statement noting a party's death within 15 days of this order or by September 17, 2010.

IT IS FURTHER ORDERED that after the statement of death is filed and served, all parties have **90 days** to file a motion to substitute with documentation proving that the party seeking to be substituted is the "legal successor" of Lois V. Draayer.

Signed in Baton Rouge, Louisiana, on September 2, 2010.

MAGISTRATE JUDGE POCIA L. DALBY