

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TONY GOODMAN

Plaintiff,

v.

CIVIL ACTION NO. 17-40004-GAO

COUNSELOR TIDWELL, et al.,

Defendants.

ORDER

January 8, 2018

O'TOOLE, D.J.

Tony Goodman initiated this civil rights action on January 11, 2017, by filing a *pro se* complaint. *See* Docket No. 1. Goodman's complaint was accompanied by motions for leave to proceed *in forma pauperis*, appointment of counsel, and temporary restraining order. *See* Docket Nos. 2, 3.

Goodman was permitted to proceed *in forma pauperis*, but his motions for appointment of counsel and temporary restraining order were denied. *See* Docket Nos. 6, 12. The Clerk issued summons for the identified defendants and, upon receipt of Goodman's prison account statement, he was assessed an obligation to make payments towards the \$350.00 filing fee pursuant to 28 U.S.C. § 1915(b)(2). *See* Docket No. 12, 16.

The government moved to revoke Goodman's *in forma pauperis* status pursuant to 28 U.S.C. § 1915(g) (the so-called "three strikes rule") arguing that he had brought three or more actions in a court of the United States that were dismissed as frivolous, malicious, or failing to state a claim upon which relief may be granted. *See* Docket No. 35. Goodman filed an opposition, *see* Docket No. 37, as well as other motions. *See* Docket Nos. 18-19, 20-21, 36.

On September 20, 2017, the United States, through an Assistant United States Attorney, notified the court that plaintiff Tony Goodman had died on September 16, 2017. *See* Docket No. 42. Although the United States does not know whether an executor will be appointed for Mr. Goodman's estate, copies were sent to Mr. Goodman's known next of kin by first-class mail. *Id.*

Federal Rule of Civil Procedure 25(a) provides that if a party dies, unless substitution is made within 90 days of the service of a suggestion of death, the action shall be dismissed as to the deceased party. Fed. R. Civ. P. 25(a)(1).

With the death of Goodman, no party has appeared to litigate this action. No motion has been filed for substitution of a representative for Goodman and the time for doing so has expired. In accordance with Rule 25, it is hereby ordered that this action be dismissed without prejudice.

It is So Ordered.

/s/ George A. O'Toole, Jr.
UNITED STATES DISTRICT JUDGE