

On August 28, 2009, the Defendants moved to strike the Fourth Amended Complaint, and moved to dismiss the causes of action in the unfilled Third Amended Complaint for failure to state claims upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6). Kawa filed no brief or other response to the Defendants' pending motion, and his time to respond has expired.

"At any time, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution." NECivR 41.2.

Accordingly,

IT IS ORDERED:

1. The Defendants' Motion to Strike Fourth Amended Complaint and Rule 12(b)(6) Motion to Dismiss (Filing No. 91) is granted in part and denied in part, as follows:
 - a. The Plaintiff Thomas J. Kawa's Fourth Amended Complaint (Filing No. 84) is stricken;
 - b. The Plaintiff Thomas J. Kawa's Third Amended Complaint was never filed, and, therefore, the Defendants' Motion to Dismiss the Causes of Action in the Third Amended Complaint, for failure to state claims upon which relief can be granted, is denied as moot;
 - c. The Plaintiff Thomas J. Kawa's Second Amended Complaint (Filing No. 45) is dismissed, due to Kawa's failure to prosecute with reasonable diligence;
2. The Motion to Withdraw (Filing No. 95) filed by the Plaintiff's attorney, Matthew T. Knoblauch, is denied as moot; and

3. The Plaintiff Thomas J. Kawa's claims are dismissed, without prejudice.

DATED this 1st day of October, 2009.

BY THE COURT

s/Laurie Smith Camp
United States District Judge