IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

JOSHUA G. FRANKLIN, SR.,

Plaintiff,

8:16CV470

MEMORANDUM

vs.

DIANE SABATKA-RINE, Deputy Director, In her Individual and Official Capacity; FRED BRITTEN, Warden, In his Individual and Official Capacity; CURT WEES, Unit Administrator, In his Individual and Official Capacity; MCCLYMONT, Case Manager; DENNIS BAKEWELL, and CHARLES RINE, AND ORDER

Defendants.

This matter is before the court on Nebraska Assistant Attorney General Timothy R. Ertz's, attorney of record for Defendants, Suggestion of Death of Defendant Fred Britten. (Filing No. 44.) Counsel represents to the court that Defendant Britten died on or about July 19, 2017. (*Id.*) Counsel mailed the Suggestion of Death to Plaintiff on July 28, 2017. (*Id.*)

Unless Plaintiff is able to comply with Federal Rule of Civil Procedure $25(a)(1)^1$ by October 30, 2017, Plaintiff's claims against Defendant Britten in his individual capacity will be dismissed. *Cf.* Fed. R. Civ. P. 25(d) ("An action does

¹ "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." Fed. R. Civ. P. 25(a)(1).

not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending").

IT IS THEREFORE ORDERED that:

1. Plaintiff will be permitted until **October 30, 2017**, in which to file an appropriate motion for substitution or Plaintiff's claims against Defendant Britten in his individual capacity will be dismissed.

2. The clerk's office is directed to set a pro se case management deadline with the following text: **October 30, 2017**: check for Plaintiff's motion for substitution.

Dated this 2nd day of August, 2017.

BY THE COURT:

s/ *Richard G. Kopf* Senior United States District Judge