

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ZACHARY WHIDBEE,

Plaintiff,

**ORDER**

- against -

05-CV-5260 (RRM)(RML)

THE STATE OF NEW YORK, NEW YORK  
STATE DIVISION OF PAROLE and PAROLE  
OFFICER WILLIAM MAHONEY,

Defendants.

-----X  
MAUSKOPF, United States District Judge.

Plaintiff's motion seeking substitution of parties is DENIED without prejudice, leave to renew is GRANTED. Although Plaintiff's counsel has advised this Court that he has been retained by and formally represents the Administrator of Plaintiff's estate, see [D.E. 41], the Court will not consider the motion for substitution until the fact of such representation is properly set forth in Affidavit form, filed with this Court, and served upon Defendants in this action. See Morales v. CT Holdings, Inc., No. 01-cv-1303, 2001 WL 1204011 (S.D.N.Y. Oct. 10, 2001) (addressing plaintiff counsel's standing to file a motion for substitution and/or formal suggestion of death). Second, Plaintiff counsel's affidavit shall additionally set forth sufficient legal grounds why any restriction imposed upon the Administrator by the Surrogate's Court does not bar or otherwise impair proceedings before this Court. Third, upon the above described affidavit, Plaintiff's counsel shall file a formal Suggestion of Death as required by Fed. R. Civ. P. 25.

The renewed motion, accompanied by affidavit and a formal Suggestion of Death, shall be filed via ECF no later than May 26, 2009.

Upon Plaintiff counsel's compliance with the above ORDER, Defendants shall advise this court via ECF no later than May 28, 2009 to advise whether they will oppose the motion. If Defendants oppose the motion, the Court shall issue a briefing schedule for the motion at that time.

SO ORDERED.

Dated: Brooklyn, New York  
May 19, 2009

s/RRM  
ROSLYNN R. MAUSKOPF  
United States District Judge