

Rickner PLLC

Rob Rickner | rob@ricknerpllc.com

October 16, 2019

MEMO ENDORSED

Via ECF

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#: 11-21-19
DATE FILED: 11-21-19

Hon. Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Anderson v. The City of New York, et al.*, 16-cv-02583 (RLC) (RWL)

Dear Judge Carter,

Unfortunately, Plaintiff Malcolm Anderson died on June 28, 2019. On July 30, 2019, we moved this Court to have his eldest sister, Tamikah Anderson Kane, substituted as the Plaintiff under Federal Rule of Civil Procedure 25(a) (“Rule 25(a)”), or in the alternative to stay the case. There was no opposition, and the motion is currently *sub judice*.

Due to recent developments, however, we must now withdraw the motion to have Ms. Kane substituted as the Plaintiff. I recently learned from the Surrogate’s Court for Hudson County that a woman who states she is Mr. Anderson’s daughter wants to take over as Administrator of his Estate, and she states she is his sole heir. Ms. Kane is challenging this claim and there will be court-ordered DNA testing within the next 3 months to determine if Mr. Anderson is the father. Given this dispute, the Surrogate’s Court says that Ms. Kane is not permitted to take actions as the Administrator until this issue is resolved. The Surrogate’s Court has not issued an Order; I received this information from a clerk over the phone.

Consequently, we ask that the deadline under Rule 25(a) be stayed (or enlarged by 4 months) while the issues before the Surrogate’s Court are resolved. Typically, under Rule 25(a), a motion to substitute counsel must be made within 90 days – and such a motion was timely made here. But as the Second Circuit has recognized, “the court shall have discretion to enlarge that period” and “discretionary extensions” should be liberally granted. *Staggers v. Otto Gerdau Co.*, 359 F.2d 292, 296 (2d Cir. 1966); *see also Kernisant v. City of New York*, 225 F.R.D. 422, 428 (E.D.N.Y. 2005). In particular, an enlargement is warranted when, as here, there is “difficulty in appointing an administrator.” *Kernisant*, 225 F.R.D. at 428. (quoting *Kasting v. Am. Family Mut. Ins. Co.*, 196 F.R.D. 595, 602 (D. Kan. 2000), which cites *Yonofsky v. Wernick*, 362 F.Supp. 1005, 1013 (S.D.N.Y.1973)).

SO ORDERED:

Respectfully,

/s/

Rob Rickner

Anderson L. Carter, Jr.
HON. ANDREW L. CARTER, JR.
UNITED STATES DISTRICT JUDGE 11-21-19
4 month extension of deadline
is granted