

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC HARDING,

Plaintiff,

v.

WESLEY CANFIELD, et al.,

Defendants.

DECISION & ORDER

17-CV-6024W

Pending before the Court is *pro se* plaintiff's motion for substitution of parties pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure. (Docket # 27). The motion was prompted by defendants' service upon plaintiff of a Notice of Suggestion of Death of Wesley Canfield, one of the defendants. (*See* Docket # 26).

Although the Notice was served upon plaintiff, it was not served upon the representative of the estate of Wesley Canfield. (*Id.*). The service provisions of Rule 25 have been interpreted to require that a Suggestion of Death statement be served upon the decedent's representative or successor in order to be effective.¹ *See Young v. Patrice*, 832 F. Supp. 721, 725 (S.D.N.Y. 1993) (“[t]he statement of death must be filed and served according to Rule 25, which most courts (including this one) have interpreted to require at least the naming of the executors of the decedent's estate”) (collecting cases); *see also Crichlow v. Fischer*, 2015 WL 678725, *5 (S.D.N.Y. 2015) (denying motion for substitution because representative of decedent's estate had

¹ Defendants' response to plaintiff's motion indicates that Kaye Canfield is the administrator of Wesley Canfield's estate. (*See* Docket # 32).

not been served). As such service has not been made, the Notice is ineffective, and the ninety-day limit for filing a motion for substitution has not been triggered. *Id.* at 726.

In order to invoke the rights contemplated under Rule 25 – in plaintiff’s case, to seek substitution of the administrator or executor of the estate of Wesley Canfield for the individually-named Canfield, or in defendants’ case, to seek dismissal of the claims against Canfield – a Notice of Suggestion of Death that names the proper parties must first be served on the parties and personally served on the estate representative or administrator. Rule 25 permits the Notice to be served by plaintiff, defendants or the decedent’s successor or representative. Because the notice condition has not yet been satisfied, plaintiff’s motion for substitution **(Docket # 27)** is **DENIED without prejudice.**

IT IS SO ORDERED.

s/Marian W. Payson
MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
December 5, 2019