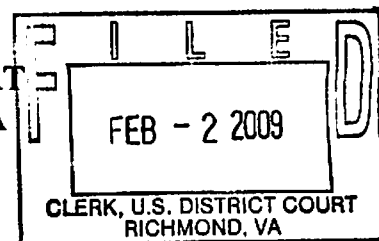


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



DANIEL VESLEY,)
)
Plaintiff,)
)
v.)
)
DARNLEY R. HODGE, Sr., *et al.*,)
)
Defendants.)

Civil Action No. 3:07CV176-HEH

**MEMORANDUM OPINION
(Dismissing Without Prejudice All Claims Against Defendant Rostafinski)**

Plaintiff, a Virginia inmate proceeding *pro se*, filed this 42 U.S.C. § 1983 action. Under Federal Rule of Civil Procedure 4(m), Plaintiff was required to serve all of the Defendants within 120 days. Here, that period commenced on December 19, 2007. On March 14, 2008, service was returned unexecuted as to Defendant Rostafinski. A Memorandum Order entered on May 8, 2008, granted Plaintiff an additional fifteen (15) days to provide the Court with Defendant Rostafinski’s address. On May 29, 2008, service was reissued, and the United States Marshals Service was directed to serve Defendant Rostafinski and file his return. On August 26, 2008, the summons was returned unexecuted. The return of service indicates that, on August 15, 2008, the Marshals Service was “advised by jail staff that subject is deceased.”

On October 2, 2008, Plaintiff was ordered to show cause within eleven (11) days for not attempting to add the correct party to this lawsuit in light of Defendant Rostafinski’s death. More than eleven (11) days have passed, and Plaintiff has not

provided the Court with the appropriate legal confirmation of Defendant Rostafinski's status, informed the Court of the identity or location of his successor in interest, or moved to name the proper party. Moreover, he has not moved to obtain this information in accordance with the discovery provisions of the Federal Rules of Civil Procedure. Accordingly, Plaintiff's claims against Defendant Rostafinski will be **DISMISSED WITHOUT PREJUDICE**.

Any party wishing to file a dispositive motion must do so within thirty (30) days of the date of entry hereof.

An appropriate Order will accompany this memorandum opinion.

<p><i>H</i> <i>/s/</i></p> <hr/> <p>Henry E. Hudson United States District Judge</p>
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Date: *Feb. 2, 2009*
Richmond, Virginia