

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ORLANDO MATTHEWS,

Plaintiff,

ORDER

v.

04-C-482-C

MARTEN TRANSPORT, LTD.; RANDY  
MARTEN and WILLIAM (BILL) KENNEDY,  
in their official and individual capacities,

Defendants.  
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This case was transferred to this district from the District Court for the Western District of Tennessee, Western Division after that court allowed plaintiff leave to proceed in forma pauperis on his claims under Title VII of the Civil Rights Act of 1964, and 42 U.S.C. §§ 1981 and 1985(2). Defendants Marten Transport, Ltd. and Randy Marten have been served with plaintiff's complaint. However, the United States Marshal has returned unexecuted the summons for defendant William (Bill) Kennedy. In the "remarks" section of the Process Receipt and Return form, the Marshal has indicated that defendant Kennedy is deceased.

Federal Rule of Civil Procedure 25(a)(1) sets forth the procedure that must be followed when a party to a lawsuit dies:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4. . . . *Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.*

It is up to plaintiff to determine whether he intends to pursue his lawsuit against defendant Kennedy's estate and, if so, to move the court for substitution of the parties. If plaintiff moves for substitution of the parties, he must provide the court with the name and address of the person who should be served with his complaint against the estate. Although Rule 25 allows the parties 90 days to move for substitution, if plaintiff acts diligently, he should be able to make his motion or notify the court of his willingness to dismiss his claims against defendant Kennedy before the 90-day time period has run.

#### ORDER

IT IS ORDERED that no later than September 6, 2004, plaintiff is to advise the court in writing whether he intends to dismiss his claims against defendant Kennedy or move to substitute defendant Kennedy's estate as a defendant. If plaintiff advises the court that he

will move for substitution of the parties, he should be prepared either to provide the name and address of the person to be served with his complaint on behalf of defendant Kennedy's estate or to advise the court of his progress in learning the name of such individual.

Entered this 9th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge