

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

803 CAPITOL STREET VALLEJO, CALIFORNIA
94590 *ET AL.*,

DEFENDANTS.

CASE No.:1:06-CV-01710-JR

**STATEMENT NOTING THE DEATH OF
CLAIMANT AND MOTION FOR
SUBSTITUTION**

Montgomery Blair Sibley, counsel for Claimant, Deborah Jeane Palfrey and Blanche Palfrey, pursuant to Federal Rules of Civil Procedure, Rule 25 “Substitution of Parties”, notes the death of Claimant on or about May 1, 2008.

Designated by Claimant prior to her death as Executor of Claimant’s Estate was Claimant’s mother Blanche Palfrey who is seeking formal appointment as the Executor of Claimant’s estate.

Accordingly, in order to avoid the mandatory dismissal provision of Rule 25¹, Blanche Palfrey moves to be substituted for Claimant in this matter. Additionally, Blanche Palfrey requests that the Court stay further action in this matter pending her formal appointment as Executor of the estate of Claimant, Jeane Palfrey.

¹ “A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.”

II. CERTIFICATE OF CONSULTATION

Prior to making this motion, undersigned counsel consulted with William R. Cowden, Assistant United States Attorney, who requested the following statement be provided to the Court:

“The government has indicated that the requested relief is unwarranted because: (1) the civil case remains stayed at this time; (2) Rule 25 of the Federal Rule of Civil Procedure is irrelevant to this case -- this is not an action “by or against the decedent”; (3) Blanche Palfrey has, according to Mr. Sibley, not been appointed as executor of claimant’s estate at this time; (4) Mr. Sibley cannot represent that he will be representing Blanche Palfrey or claimant’s estate’s interest(s) after Blanche Palfrey is appointed executor (assuming she is); (5) claimant fired Mr. Sibley, which dismissal the Court supported; and (6), thereafter, Mr. Sibley sought to file his own claim to some portion of the defendant property, which claim is appears to be inconsistent with his effort now to represent the interests of claimant’s estate. The government requests that the Court, by minute entry in the docket, relieve the government of the requirement for filing a separate, formal Opposition to this submission and, at the same time, deny this motion.”

In response, undersigned counsel would state to the Court:

(i) Rule 25 is not irrelevant as the Federal Rules of Civil Procedure apply to this case and an abundance of caution directs that the mandatory dismissal section of that rule not be applied through inattention to this matter;

(ii) I have represented Blanche Palfrey since October 2006 – See: D.E. #55 – but have not taken up the matter of continued representation of Blanche Palfrey with her at this time given her daughter’s funeral was only two (2) days ago. I have arranged with Blanche Palfrey to meet with her later this month in person to discuss these matters and how she wishes to proceed; and

(iii) Claimant did not “fire” me from representation, but ask to proceed *pro se* in the criminal matter for reasons only this Court, Court Reporter Rebecca Stonestreet and I presently

know. I was not relieved as Claimant's counsel in this matter or the pending interlocutory appeal of this matter in which I recently filed a motion for rehearing *en banc*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served pursuant to LcvR 5.4(d) upon William R. Cowden, Assistant United States Attorney, Criminal Division, Asset Forfeiture Unit, 555 4th St., N.W., Room 4818, Washington, D.C. 20530 and as a courtesy upon Preston Burton, Columbia Center, 1152 15th Street, N.W., Washington, D.C. 20005-1706 this May 7, 2008.

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By: /s/ Montgomery Blair Sibley
Montgomery Blair Sibley
D.C. Bar #464488

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94590 AND 1441 VAQUERO GLEN ESCONDIDO,
CALIFORNIA 92026,

DEFENDANTS.

CASE No.: 1:06-CV-01710-JR

(Proposed)

**ORDER ON MOTION FOR SUBSTITUTION AND
STAY**

_____ /

On the motion for Substitution and Stay:

IT IS ORDERED that the motion is Granted. Blanche Palfrey is conditionally substituted for Claimant Deborah Jeane Palfrey pending her appointment as Executor of Claimant's estate, and it is further

ORDERED that this matter is stayed pending the appointment of an Executor of Claimant's estate.

DONE AND ORDERED in Chambers, Washington, D.C. this ____ day of _____,
2008.

By: _____
United States District Judge

Copies to:

Montgomery Blair Sibley
William R. Cowden