

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

TIMOTHY JOHNSTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:04CV1075 DJS
	)	
GARY B. KEMPKER, et al.,	)	
	)	
Defendants.	)	

**MOTION FOR SUBSTITUTION OF PARTY UNDER FED.R.CIV.P. 25(d)**

COMES NOW plaintiff, Timothy Johnston, by and through counsel, Michael J. Gorla and Christopher E. McGraugh, and pursuant to Fed.R.Civ.P. 25(d), moves to substitute Larry Crawford as a named party in place of Gary B. Kempker. In support of this motion, plaintiff states as follows:

1. At the time this suit was filed, defendant Gary B. Kempker was the Director of the Missouri Department of Corrections.
2. Defendant Kempker was a named party to this action in his official capacity as the Director of Missouri Department of Corrections.
3. As of January 13, 2005, defendant Kemper is no longer the Director of the Missouri Department of Corrections.
4. Plaintiff has learned that Larry Crawford is now the Director of the Missouri Department of Corrections.
5. Under Fed.R.Civ.P. 25(d)(1), “When a public officer is a party to an action in an official capacity and during his pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the officer’s successor is automatically substituted as a party.”

6. Given that defendant Kempker was sued in his official capacity as the Director of the Missouri Department of Corrections, that defendant Kempker is no longer the Director, and that Larry Crawford is now the Director of the Missouri Department of Corrections, plaintiff requests that this Court enter an order of substitution pursuant to Fed.R.Civ.P. 25(d)(1) substituting Larry Crawford, in his official capacity as the Director of the Missouri Department of Corrections, as a party defendant for the former Director and previously named party defendant Gary B. Kempker.

WHEREFORE, for each and all of the foregoing reasons, plaintiff requests that an order of substitution be entered substituting Larry Crawford, the current Director of the Missouri Department of Corrections, as a party defendant in lieu of original defendant Gary B. Kempker, the former Director of the Missouri Department of Corrections.

Respectfully submitted,

Christopher E. McGraugh, #25278  
Leritz, Plunkert & Bruning, P.C.  
One City Center, Suite 2001  
St. Louis, Missouri 63101  
(314) 231-9600  
(314) 231-9480 - Facsimile  
E-mail: cmcgraugh@leritzlaw.com

/s/ Michael J. Gorla  
MICHAEL J. GORLA, #3251  
720 Olive Street, Suite 1630  
St. Louis, Missouri 63101  
(314) 621-1617  
(314) 621-7448 - Facsimile  
E-mail: mjgorla@msn.com

Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2005, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Ms. Denise G. McElvin, Assistant Attorney General, Attorney for Defendants Kempker, Roper, and Purkett, Wainwright State Office Building, 111 N. 7<sup>th</sup> Street, Suite 934, St. Louis, Missouri 63101;

I hereby certify that on April 28, 2005, the foregoing was mailed by United States Postal Service to the following non-participants in Electronic Case Filing: Mr. Stephen D. Hawke, Assistant Attorney General, 1530 Rax Court, Jefferson City, Missouri 65109.

/s/Michael J. Gorla

MICHAEL J. GORLA, #3251  
720 Olive Street, Suite 1630  
St. Louis, Missouri 63101  
(314) 621-1617  
(314) 621-7448 - Facsimile  
E-mail: mjgorla@msn.com