

FILED
JAN 22 2009
ORANGE SUPERIOR COURT

STATE OF VERMONT
ORANGE COUNTY

IN RE: EDWARD LANE

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Orange Superior Court
Docket No. 192-8-08 Oecv

ENTRY ORDER

Edward Lane petitioned the Department of Public Safety to remove his name from the Vermont Sex Offender Registry. His request was denied by DPS Staff Attorney Howard Kalfus in a letter dated June 27, 2008. Mr. Lane now seeks review of the denial of his petition under Vermont Civil Procedure Rule 75.

The issue in this entry order is the sufficiency of Mr. Lane's service of the complaint. He commenced this proceeding by filing a motion for review of governmental action with the clerk on July 18, 2008. He subsequently mailed a copy of the complaint to Attorney Kalfus by certified mail at the Department of Public Safety in Waterbury, Vermont. The return receipt shows that the certified mail was received by a person named Timothy Plastridge.

Service by certified mail upon the Department of Public Safety is not sufficient under these circumstances. Rule 75(b) provides that review of governmental action is commenced by filing a complaint with the court, and that the complaint and summons "shall be served upon the agency and all parties in accordance with the provisions of Rule 4."

Rule 4(d)(2) provides that when a complaint and summons are to be served upon "the State of Vermont or any agency or officer thereof," service is accomplished by "delivering a copy of the summons and of the complaint to the Attorney General or the Deputy Attorney General." This delivery must be made in person, rather than by mail. V.R.C.P. 4(d).

Mr. Lane cited Rule 4(f) in support of his service by mail. Rule 4(f)(2) does allow service by mail when service is to be made upon "an officer of the state as a statutory agent for the service of process pursuant to paragraph (1), (7) or (8) of subdivision (d)." However, this provision refers to special circumstances where a statute allows a plaintiff to serve a complaint upon a private individual, corporation, or partnership by serving a statutorily-identified governmental agent instead. An example of this occurs when a plaintiff sues an out-of-state driver for damages suffered in a car accident in Vermont—the plaintiff may serve the complaint upon the Vermont Commissioner of Motor Vehicles instead of personally serving the out-of-state defendant. 12 V.S.A. § 891. By its terms, Rule 4(f)(2) does not apply when the plaintiff is suing "the State of Vermont or any agency or officer thereof" under paragraph (2) of subdivision (d) of Rule 4.

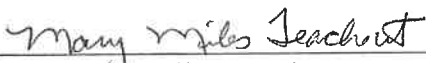
In short, Mr. Lane's service of the complaint was insufficient for the following reasons:

- (1) Mr. Lane served only a complaint, rather than a complaint and summons;
- (2) Mr. Lane served the complaint by mail, rather than personal service; and
- (3) Mr. Lane served Attorney Kalfus and the Department of Public Safety, rather than the Attorney General or Deputy Attorney General.

The court will extend Mr. Lane additional time within which to complete proper service. The complaint and summons must be personally served upon the Attorney General or Deputy Attorney General within 30 days from the date of entry of this order. If proper service is not made within 30 days, the complaint shall be dismissed. V.R.C.P. 41(b)(iii).

SO ORDERED.

Dated at Chelsea, Vermont this 22nd day of January, 2009.



Hon. Mary Miles Teachout
Superior Court Judge