

**Appendix to Petition to  
Amend Rule 25,  
Rules of Civil Procedure**

## Clean Version of Proposed Amendment

### Rule 25. Substitution of Parties

#### (a) Death.

(1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. Any party or the decedent's successor or representative may file a motion to substitute. If the motion is not made within 90 days after a statement noting the death is served, the court must dismiss the claims by or against the decedent.

(2) *Statement Noting Death.* A party or the decedent's successor or representative may file a statement noting the death of a party. If filed by a party, the statement must identify the decedent's successor or representative if one exists and is known by the filing party. Anyone filing a statement noting death must serve the statement on the parties as provided in Rule 5(c) and on nonparties in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

(3) *Service of Motion to Substitute.* Anyone filing a motion to substitute must serve the motion on the parties as provided in Rule 5(c) and on the decedent's successor or representative--if a nonparty--in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

(4) *Continuation Among the Remaining Parties.* After a party's death, if the claim survives only for or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

**(b) Incapacitated Person or Adult in Need of Protection.** If the court has reasonable grounds to believe that a party has become an incapacitated person or an adult in need of protection, and that party does not have a guardian or conservator, the court may appoint a guardian ad litem as prescribed in Rule 17.1. If a court of competent jurisdiction has appointed a conservator or guardian for a party, the action may be continued by or against the conservator or guardian on behalf of the incapacitated person or adult in need of protection.

**(c) Transfer of Interest.** If a party's interest is transferred, the action may be continued by or against that party, unless the court--on motion or on stipulation of the parties and the transferee--orders the transferee to be substituted in the action or joined with the original party. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5(c) and on the transferee--if a nonparty--in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

**(d) Public Officers; Death or Separation from Office.** An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. The public officer's counsel must file a notice of the substitution, and later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

**(e) Representative Parties; Death.** An action does not abate when a person dies while representing another who is unable to represent themselves. Thus, if a conservator or guardian ad litem dies, or the trustee or adult representative of a minor dies, among other examples of such representatives, the actions brought on behalf of the persons they represent do not abate. Successor representatives may move to substitute themselves, and the court may order their substitution for the deceased representatives.

## Blackline Version of Proposed Amendment

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