

## **RULE 25. SUBSTITUTION OF PARTIES**

### **(a) Death.**

(1) 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 or representatives 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 for the service of a summons. 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.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

### **(d) Public Officers; Death or Separation From Office.**

(1) When a public officer is a party to an action in an official capacity and during its 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. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

### **Explanation of Amendment November 1, 1966**

This amendment to Rule 25(a) was taken from a 1963 amendment to F.R. 25(a). M.R.C.P. 25(a) was taken from a proposed 1955 amendment to F.R. 25(a) which was not then adopted for the federal courts. The 1963 federal amendment was substantially the same as M.R.C.P. 25(a), but it added a provision for filing a suggestion of death upon the record. A 90-day time limit for substitution starts running with such filing. The Maine and Federal Rules 25(a) have now been brought into conformity. A new Form 31, taken from Federal Form 30, for the suggestion of death was also added.

The amendment to Rule 25(d) was taken from a 1961 amendment to F.R. 25(d). The purpose of subdivision (d) (1) was to eliminate the burdensome requirement of the original rule that application with a showing of need for continuing the action be made before a successor officer could be substituted. The phrase "in his official capacity" was added to make clear that the subdivision does not apply to actions in which the relief sought is merely a money judgment against the officer to be satisfied out of his personal assets. Subdivision (d) (2) repeats in slightly different form the last two sentences of original Maine Rule 25(d), taken from the proposed 1955 federal amendment.

### **Reporter's Notes December 1, 1959**

This rule departs from Federal Rule 25(a),\* which has not worked out very satisfactorily. Unlike the federal rule, it imposes no rigid time limit for the substitution of parties, but permits dismissal as to a deceased party if substitution is

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\* [Field, McKusick & Wroth commented: "Amendments to both the Maine and \* federal rules have brought them into substantial uniformity." 1 Field, McKusick & Wroth, *Maine Civil Practice* at 405 (2d ed. 1970).]

not made within a reasonable time. This change is one recommended by the federal Advisory Committee in 1955, but not adopted. There is no stated time limit for substitution in R.S.1954, Chap. 113, Sec, 57 (repealed in 1959).