

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. 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.

(2) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to 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.

(3) *Service.* A motion to substitute must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) **INCOMPETENCY.** If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) **TRANSFER OF INTEREST.** If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(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. 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.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 25*, as amended in 2007, except that, as with the prior version of the Superior Court rule, "notice of hearing" has been deleted from the service provision.

In accordance with the 2007 amendments to the federal rule, former section (d)(2) of this rule has been moved to Rule 17(d).

Rule 25(a)(3) only requires service of the motion to substitute. It does not "incorporate a substantive requirement that a summons and complaint also . . . be served." *Epps v. Vogel*, 454 A.2d 320, 324 (D.C. 1982).

COMMENT

Identical to *Federal Rule of Civil Procedure 25*, except for deletion of inapplicable reference to notice of hearing in subsection (a)(1). In connection with this Rule, see D.C. Code (1967 Edition, Supplement IV) § 12-102.