

file those responsive pleadings and motions to the intervenor's pleading which are required by these rules for such pleading.

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~~B~~. SUBSTITUTION OF PARTIES

34A

~~(1)~~ Nonabatement of action or suit by death, disability

or transfer; continuing proceedings. No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues. ^{P 34 B 11} In case of the death of a party, the court shall, on motion, allow the action to be continued:

(1) ^a By his personal representative or successors in interest at any time within one year after his death.

(2) ^b Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after his death.

(3) ^c In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against his guardian or conservator or successors in interest.

(4) ^d In case of the transfer of an interest in the action, the court may, on motion, allow the action to be continued by or against the successors in interest of the transferor.

34C
~~(1)~~ 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.

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Public officers; death or separation from office. (d) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his 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.

(e) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

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Procedure. The motion for substitution may be made by any party or by the successors in interest or representatives of the deceased or disabled party or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 ~~(service of papers after summons)~~ and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

*U. REAL PARTY IN INTEREST

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by

Rule 33

Background Note:

ORS. sections superseded:

13.130

COMMENT:

This rule is based upon the existing Oregon intervention rule in 13.130. ~~XX~~ Section 33B Recognizes the possibility of mandatory statutory intervention; see; ORS ~~XX~~ ~~XX~~ 105.760, 105.755 and 373.060.. The first sentence of Section 33C comes from the existing ORS section; the second is taken from Federal Rule 24~~XX~~ (b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33D relating to procedure.

Rule 34.

Background Note.

ORS sections superseded.

13.080, 13.090

COMMENT:

This rule generally preserves the existing rules of ORS 13.080. ORS 13.~~XXXXX~~ 090 ~~X~~ was unnecessary and was eliminated. Section 34 A and B ~~XXXXX~~ use the language of the existing statute~~X~~. The words "if the claim survives or continues" were added to the first sentence to make clear that this rule relates only to the procedural question of abatement of the action. ~~The language added appeared in the original Oregon Abatement statute but was omitted in a 1975 revision.~~

Sections C and D are based upon Sections (a) and (d) of federal rule 25. The problem covered by Section ~~C~~ is not addressed by existing Oregon rules and the federal approach to substitution ~~for~~ federal officials ~~XXXXXXXXXX~~ is more direct and flexible than existing Oregon practice.

Section E is new and spells out the procedure for substitution of parties which is not clear from the existing Oregon rules.

Rule 35 f/g/j

COMMENT

This rule is based upon the existing Oregon intervention rule in ORS 13.130. Section 33 B, recognizes the possibility of mandatory statutory intervention; see, ORS 105.760, 105.755 and 373.060. The first sentence of section 33 C. comes from the existing ORS section; the second is taken from Federal Rule 24(b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33 D. relating to procedure.

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RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or suit by death, disability or transfer; continuing proceedings.

A.(1) No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues. *A. Death of a party; continued Proceedings*
B. In case of the death of a party, the court shall, on motion, allow the action to be continued:

B. (1) (a) By his personal representative or successors in interest at any time within one year after his death;

B. (2) (b) Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after his death.

C. disability of a party; continued Proceedings
A.(1)(c) In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against his guardian or conservator or successors in interest.

D. Death of ~~an~~ party; surviving parties
A. (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. Public officers; death or separation from office.

B.(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his 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.

B.(2) When a public officer sues or is sued in his official capacity, ^{such officer} ~~he~~ may be described as a party by ~~his~~ official title rather than by name; but the court may require ^{such officer's} ~~his~~ name to be added.

B. Procedure. The motion for substitution may be made by any party or by the successors in interest or representatives of the deceased or disabled party or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

BACKGROUND NOTE

ORS sections superseded: 13.080, 13.090.

COMMENT

This rule generally preserves the existing rules of ORS 13.080.

of section 34 A

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ORS 13.090 was unnecessary and was eliminated. Section ^S 34 A. and ~~B~~. use the language of the existing statute. The words, "if the claim survives or continues", were added to the first sentence to make clear that this rule relates only to the procedural question of abatement of the action.

~~34 B D and E are.~~

Sections ~~C~~ and ~~D~~ are based upon sections (a) and (d) of Federal Rule 25. The problem covered by section ~~34 F~~ is not addressed by existing Oregon rules and the federal approach to substitution of federal officials is more direct and flexible than existing Oregon practice.

Section 34 F ~~is not~~ provides a procedure for substitution, which is not addressed by the existing ORS sections.

RULE 35 (RESERVED)

COMMENT

This rule is based upon the existing Oregon intervention rule in ORS 13.130. Section 33 B. recognizes the possibility of mandatory statutory intervention; see, ORS 105.760, 105.755 and 373.060. The first sentence of section 33 C. comes from the existing ORS section; the second is taken from Federal Rule 24(b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33 D. relating to procedure.

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or proceeding by death, disability or transfer. No action or proceeding shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

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B. Death of a party; continued proceedings. In case of the death of a party, the court shall, on motion, allow the action or proceeding to be continued:

B.(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B.(2) Against such party's personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after such party's death.

C. Disability of a party; continued proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or proceeding

to be continued by or against the party's guardian or conservator or successors in interest.

D. Death of a party; surviving parties. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action or proceeding in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action or proceeding does not abate. The death shall be ^{S. Mann} suggested upon the record and the action or proceeding shall proceed in favor of or against the surviving parties.

E. Public officers; death or separation from office.

E.(1) When a public officer is a party to an action or proceeding in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action or proceeding does not abate and such 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.

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

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F. Procedure. The motion for substitution may be made by any party or by the successors in interest or representatives of the deceased or disabled party or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

BACKGROUND NOTE

ORS sections superseded: 13.080, 13.090.

COMMENT

This rule generally preserves the existing rules of ORS 13.080. ORS 13.090 was unnecessary and was eliminated. Sections 34 A. through D. use the language of the existing statute. The words, "if the claim survives or continues", were added to the first sentence of section 34 A. to make clear that this rule relates only to the procedural question of abatement of the action.

Sections 34 D. and E. are based upon sections (a) and (d) of Federal Rule 25. The federal approach to substitution of federal officials is more direct and flexible than existing Oregon practice. Section 34 F. provides a procedure for substitution, which is not addressed by the existing ORS sections.

RULE 35 (RESERVED)

RULE 36

GENERAL PROVISIONS GOVERNING DISCOVERY

A. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery

COMMENT

This rule is based upon the existing Oregon intervention rule in ORS 13.130. Section 33B. recognizes the possibility of mandatory statutory intervention; see, ORS 105.760, 105.755 and 373.060. The first sentence of section 33 C. comes from the existing ORS section; the second is taken from Federal Rule 24(b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 38 D. relating to procedure.

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or suit by death, disability or transfer.

A. No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

B. Death of a party; continued proceedings. In case of the death of a party, the court shall, on motion, allow the action to be continued:

B.(1) By his personal representative or successors in interest at any time within one year after his death;

B.(2) Against his personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after his death.

C. Disability of a party; continued proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against his

guardian or conservator or successors in interest.

D. Death of party; surviving parties. 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.

E. Public officers; death or separation from office.

E.(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his 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.

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

F. Procedure. The motion for substitution may be made by any party or by the successors in interest or representatives of the deceased or disabled party or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

BACKGROUND NOTE

ORS sections superseded: 13.080, 13.090.

COMMENT

This rule generally preserves the existing rules of ORS 13.080. ORS 13.090 was unnecessary and was eliminated. Sections 34 A. through D. use the language of the existing statute. The words, "if the claim survives or continues", were added to the first sentence of section 34 A. to make clear that this rule relates only to the procedural question of abatement of the action.

Sections 34 D. and E. are based upon sections (a) and (d) of Federal Rule 25. The federal approach to substitution of federal officials is more direct and flexible than existing Oregon practice. Section 34 F. provides a procedure for substitution, which is not addressed by the existing ORS sections.

RULE 35 (RESERVED)

COMMENT

This rule is based upon the existing Oregon intervention rule in ORS 13.130. Section 33 B. recognizes the possibility of mandatory statutory intervention; see, ORS 105.760, 105.755 and 373.060. The first sentence of section 33 C. comes from the existing ORS section; the second is taken from Federal Rule 24(b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33 D. relating to procedure.

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or proceeding by death, disability or transfer. No action or proceeding shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

B. Death of a party; continued proceedings. In case of the death of a party, the court shall, on motion, allow the action or proceeding to be continued:

B.(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B.(2) Against such party's personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after such party's death.

C. Disability of a party; continued proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or proceeding

to be continued by or against the party's guardian or conservator or successors in interest.

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

E. Public officers; death or separation from office.

E.(1) When a public officer is a party to an action or proceeding in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action or proceeding does not abate and such 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.

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

F. Procedure. The motion for substitution may be made by any party or by the successors in interest or representatives of the deceased or disabled party or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

BACKGROUND NOTE

ORS sections superseded: 13.080, 13.090.

COMMENT

This rule generally preserves the existing rules of ORS 13.080. ORS 13.090 was unnecessary and was eliminated. Sections 34 A. through D. use the language of the existing statute. The words, "if the claim survives or continues", were added to the first sentence of section 34 A. to make clear that this rule relates only to the procedural question of abatement of the action.

Sections 34 D. and E. are based upon sections (a) and (d) of Federal Rule 25. The federal approach to substitution of federal officials is more direct and flexible than existing Oregon practice. Section 34 F. provides a procedure for substitution, which is not addressed by the existing ORS sections.

RULE 35 (RESERVED)

RULE 36

GENERAL PROVISIONS GOVERNING DISCOVERY

A. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery

COMMENT

This rule is based upon the existing Oregon intervention rule in ORS 13.130. Section 33 B. recognizes the possibility of mandatory statutory intervention; see, ORS 105.760, 105.755 and 373.060. The first sentence of section 33 C. comes from the existing ORS section; the second is taken from Federal Rule 24(b). The existing rules do not clearly cover the procedure for intervention; this rule includes a new section 33 D. relating to procedure.

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action or proceeding by death, disability or transfer. No action ~~or proceeding~~ shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

B. Death of a party; continued proceedings. In case of the death of a party, the court shall, on motion, allow the action ~~or proceeding~~ to be continued:

B.(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B.(2) Against such party's personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after such party's death.

C. Disability of a party; continued proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action ~~or proceeding~~

to be continued by or against the party's guardian or conservator or successors in interest.

D. Death of a party; surviving parties. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action ~~or proceeding~~ in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action ~~or proceeding~~ ^{shown} does not abate. The death shall be ~~suggested~~ upon the record and the action ~~or proceeding~~ shall proceed in favor of or against the surviving parties.

E. 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.

F. Public officers; death or separation from office.

F.(1) When a public officer is a party to an action ~~or proceeding~~ in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action ~~or proceeding~~ does not abate and such 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.

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

G. Procedure. The motion for substitution may be made by any party, ~~or~~ by the successors in interest or representatives of the deceased or disabled party, or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

COMMENT

Section E. was taken from Federal Rule 25.

This rule generally preserves the existing rules of ORS 13.080. ORS 13.090 was unnecessary and was eliminated. Sections 34 A. through D. use the language of the existing statute. The words, "if the claim survives or continues", were added to the first sentence of section 34 A. to make clear that this rule relates only to the procedural question of abatement of the action.

Sections 34 E. and F. are based upon sections (a) and (d) of Federal Rule 25. The federal approach to substitution of federal officials is more direct and flexible than existing Oregon practice. Section 34 G. provides a procedure for substitution, which is not addressed by the existing ORS sections.

RULE 35 (RESERVED)

RULE 34

SUBSTITUTION OF PARTIES

A. Nonabatement of action by death, disability, or transfer. No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

B. Death of a party; continued proceedings. In case of the death of a party, the court shall, on motion, allow the action to be continued:

B.(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B.(2) Against such party's personal representative or successors in interest at any time within four months after the date of the first publication of notice to interested persons, but not more than one year after such party's death.

C. Disability of a party; continued proceedings. In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against the party's guardian or conservator or successors in interest.

D. Death of a party; surviving parties. 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 shown upon the record and the action shall proceed in favor of or against the surviving parties.

E. 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.

F. Public officers; death or separation from office.

F.(1) When a public officer is a party to an action in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and such 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.

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

G. Procedure. The motion for substitution may be made by any party, or by the successors in interest or representatives of the deceased or disabled party, or the successors in

interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons.

COMMENT

This rule generally preserves the existing rules of ORS 13.080. ORS 13.090 was unnecessary and was eliminated. Sections 34 A. through C. use the language of the existing statute. The words, "if the claim survives or continues", were added to the first sentence of section 34 A. to make clear that this rule relates only to the procedural question of abatement of the action. Section D. is based on Federal Rule 25(a)(2). Section E. was taken from Federal Rule 25(c).

Sections 34 F. and G. are based upon sections (a) and (d) of Federal Rule 25. The federal approach to substitution of federal officials is more direct and flexible than existing Oregon practice. Section 34 G. provides a procedure for substitution, which is not addressed by the existing ORS sections.

RULE 35 (RESERVED)