

AMENDMENTS

TO ORCP 34

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

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)

SUBSTITUTION OF PARTIES  
RULE 34

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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 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] unless the personal representative or successors in interest mail or deliver notice including the information required by ORS 115.003(3) to the claimant or to the claimant's attorney if the claimant is known to be represented, and the claimant or his attorney fails to move the court to substitute the personal representative or successors in interest within 30 days of mailing or delivery.

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