

Alabama Rules of Civil Procedure

IV. PARTIES

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, and may be served in any county. Unless the motion for substitution is made not later than six months 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 in the absence of a showing of excusable neglect 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.

(3) In any such pending action the failure of any party to comply with § 43-2-350, Code of Alabama 1975 (statute of nonclaims), shall not be a bar to a claim against the estate to the extent that the estate is entitled to assert any right under any contract providing for the payment of the judgment in said action.

(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.

(dc) *District court rule.* Rule 25 applies in the district courts.

[Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

Rule 25 provides mechanics for substitution in the event of death, incompetency, transfer of interest and death or separation from office of public officers.

Note that Rule 25(a)(1) provides that an action shall be dismissed as to a deceased party unless a motion for substitution is made not later than six months after the death is suggested upon the record.

In order to minimize the possible harsh result that might obtain in the event, § 43-2-350 Code of Ala., (Statute of non-claims) has not been complied with, these rules provide at Rule 25(a)(3) that the claim against the estate shall not then be barred in the event that the estate is entitled to assert any right under any contract providing for the payment of the judgment in said action.

Committee Comments to October 1, 1995, Amendment to Rule 25

Except for a revision to Rule 25(a)(1) dealing with the timeliness of a motion for substitution, the amendments are technical. The revision to Rule 25(a)(1) is required by *Hayes v. Brookwood Hospital*, 572 So.2d 1251 (Ala.1990), which allowed a motion for substitution to be made more than six months after death had been suggested on the record in a setting where excusable neglect could be shown.