

1           **Rule 38. Substitution of parties.**

2           (a) Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is  
3 otherwise pending in the court, the personal representative of the deceased party may be substituted  
4 as a party on motion filed by the representative or by any party. The motion of a party shall be served  
5 upon the representative in accordance with the provisions of Rule 21. If the deceased party has no  
6 representative, any party may suggest the death on the record and proceedings shall then be had as  
7 the court may direct. If a party against whom an appeal may be taken dies after entry of a judgment  
8 or order in the trial court or agency but before a notice of appeal is filed, an appellant may proceed  
9 as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in  
10 accordance with this paragraph. If a party entitled to appeal dies before filing a notice of appeal, the  
11 notice of appeal may be filed by the deceased party's personal representative or, if there is no  
12 personal representative, by the deceased party's attorney of record. After the notice of appeal is filed,  
13 substitution shall be effected in accordance with this paragraph.

14           ~~(b) Substitution for other causes. If substitution of a party is necessary for any reason other than~~  
15 ~~death, substitution shall be effected in accordance with the procedure prescribed in paragraph (a) of~~  
16 ~~this rule.~~

17           (b) Incompetency. If a party becomes incompetent, the court may allow the action to be  
18 maintained by or against the party's representative upon good cause shown.

19           (c) Substitution for other causes. If substitution of a party is appropriate for any other reason,  
20 the court may substitute the party upon good cause shown.

21           (d) Public officers; death or separation from office.

22           (d)(1) When a public officer is a party to an appeal or other proceeding in an official capacity and  
23 during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the  
24 public officer's successor is automatically substituted as a party. Proceedings following the  
25 substitution shall be in the name of the substituted party, but any misnomer not affecting the  
26 substantial rights of the parties shall be disregarded. An order of substitution may be entered at any  
27 time, but the omission to enter such an order shall not affect the substitution.

28           (d)(2) When a public officer is a party to an appeal or other proceeding in an official capacity,

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29 the public officer may be described as a party by official title rather than by name; but the court may  
30 require the name to be added.

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