

**60-225. 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 must on motion 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 a reasonable time 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, together with a notice of hearing, must be served on the parties as provided in K.S.A. 60-205, and amendments thereto, and on nonparties in the manner provided for the service of a summons. A statement noting death must be served in the same manner.

(b) *Incapacity.* If a party becomes an incapacitated person, the court may, on motion permit the action to be continued by or against the party's representative as provided in subsection (c) of K.S.A. 60-217, and amendments thereto. The motion must be served as provided in subsection (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 subsection (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.

(e) *Continued representation by attorney.* If a party dies or becomes an incapacitated person, that party's attorney may continue the representation in the name of the original party until a substitution has been made.

**History:** L. 1963, ch. 303, 60-225; L. 1965, ch. 354, § 3; L. 2010, ch. 135, § 94; July 1.