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**NRCP 25 – Proposed
(Revise Federal and Nevada Rules)**

Rule 25. Substitution of Parties

(a) Death.

(1) **Notice of Death.** Upon a party's death, any party or a decedent's attorneys, successors, or representatives may file a notice of the death. If claims by or against the decedent are not extinguished or continued among the parties, any notice of death served on the decedent's successors or representatives must indicate that the court may dismiss the decedent's claims or strike the decedent's answer if the successors or representatives do not make a motion to substitute or take other action to continue to prosecute the action within 180 days after service of the notice of death.

(2) **Dismissal if the Claim Is Extinguished.** If a party dies and the claims are extinguished, the court shall, on motion, dismiss the claims by or against the decedent.

(3) **Continuation Among the Remaining Parties.** If a party dies and the party's claims survive only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. Upon a finding that the claims so survive, the court may dismiss the decedent from the action.

(4) Substitution if the Claim Is Not Extinguished.

(A) If a party dies and the claims are not extinguished or continued among the parties the action does not abate and, unless otherwise ordered by the court, the remaining parties must continue to prosecute the action in accordance with these rules and any court orders entered prior to the decedent's death. The parties

1 or the decedent's attorneys, successors, or representatives may make any
2 appropriate motion, and the court may issue any appropriate order or direct any
3 appropriate proceeding, to ensure the continuation of the action and the proper
4 administration of justice in the case. Such a motion, order, or proceeding may
5 include:

- 6 (i) substituting the proper party;
- 7 (ii) appointing a special administrator or guardian ad litem;
- 8 (iii) permitting the remaining parties to continue the action
9 with the decedent's name in the caption as if the death had not occurred; or
- 10 (iv) if the decedent was protected by insurance, permitting
11 the action to proceed solely by or against the decedent's insurance carrier.

12 (B) If the decedent's successors or representatives take no action
13 to continue to prosecute the action within 180 days after service of a notice of death
14 that complied with Rule 25(a)(1), the court may, on motion or on its own, dismiss the
15 claims by or against the decedent or strike the decedent's answer.

16 (5) **Service.** A notice of death, a motion to substitute, or any other
17 motion made under Rule 25(a) must be served on the parties and the decedent's
18 attorneys, successors, and representatives. Service on the parties must be made as
19 provided in Rule 5 and on nonparties as provided in Rule 4.

20 (b) **Incompetency.** If a party becomes incompetent, the court may, on motion,
21 permit the action to be continued by or against the party's representative. If no such
22 motion is made within a reasonable time, the incompetent person's representative,
23 the other parties, or the court may proceed under Rule 25(a)(4). Any motions or
24 orders must be served as provided in Rule 25(a)(5).

1 (c) **Transfer of Interest.** If an interest is transferred, the action may be
2 continued by or against the original party unless the court, on motion, orders the
3 transferee to be substituted in the action or joined with the original party. The
4 motion must be served as provided in Rule 25(a)(5).

5 (d) **Public Officers; Death or Separation from Office.** An action does not
6 abate when a public officer who is a party in an official capacity dies, resigns, or
7 otherwise ceases to hold office while the action is pending. The officer's successor is
8 automatically substituted as a party. Later proceedings must be in the substituted
9 party's name, but any misnomer not affecting the parties' substantial rights must be
10 disregarded. The court may order substitution at any time, but the absence of such
11 an order does not affect the substitution.

12 13 **Advisory Committee Note—2017 Amendment**

14 Rule 25(a) is amended to avoid the mandatory dismissal of a decedent's claim,
15 to encompass the death of a defendant, and to provide the court, the remaining
16 parties, and the decedent's successors or representatives as much flexibility as
17 possible to deal with a party's death. The prior mandatory dismissal provision is now
18 discretionary with the district court after 180 days instead of 90 days. The new rule
19 clarifies that the action should continue among the other parties to the action after
20 one party's death, and not cease to be prosecuted. The alternatives to substitution
21 that the new rule provides are incorporated from the existing rule, NRAP 43, and
22 other states' rules and statutes. Such alternatives are examples of appropriate
23 actions, and the court may, in its discretion, take other appropriate action to continue
24 the prosecution of the action or to achieve the proper administration of justice. These

1 provisions, including the court's ability to permit the remaining parties to continue
2 the action with the decedent's name in the caption as if the death had not occurred,
3 do not authorize orders or proceedings in violation of due process or contrary to
4 probate law.

5 Rule 25(a) is intended to work in harmony with NRS 7.075. An attorney should
6 not be sanctioned under NRS 7.075(2) for failing to file a motion for substitution if
7 (a) no substitution is warranted, or (b) the remaining parties, the decedent's
8 successors or representatives, or the court are proceeding under Rule 25(a) in a
9 manner not involving substitution.

10 Rule 25(b) was amended to provide the same flexibility to the court and the
11 parties when a party becomes incompetent and that party's representative is not
12 substituted. Rule 25(c) and (d) are conformed to the corresponding federal rules. The
13 former NRCP 25(d)(2) was moved to Rule 17(d).