

C.R.C.P. 25

This document reflects changes received and effective through July 1, 2022

*CO - Colorado Local, State & Federal Court Rules > Colorado Rules of Civil Procedure > Chapter 3 Parties
> 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 process, and may be served in any county. Suggestion of death upon the record is made by service of a statement of the fact of death as provided herein for the service of the motion and by filing of proof thereof. If the motion for substitution is not made within 91 days (13 weeks) after such service, the action shall 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.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in section (a) of this Rule may allow the action to be continued by or against his 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 subsection (a)(1) of this Rule.

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his 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 right

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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) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

History

(a)(1) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b).

Colorado Court Rules

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C.R.S. 13-21-201

Statutes current through Chapter 290 of the 2022 Regular Session and effective on or before June 3, 2022. The inclusion of the 2022 legislation is not final. It will be final later in 2022 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

Colorado Revised Statutes Annotated > *Title 13. Courts and Court Procedure (§§ 13-1-101 — 13-94-111)* > *Damages and Limitations on Actions (Art. 21)* > *Article 21. Damages (Pts. 1 — 14)* > *Part 2. Damages for Death by Negligence (§§ 13-21-201 — 13-21-204)*

13-21-201. Damages for death.

(1) When any person dies from any injury resulting from or occasioned by the negligence, unskillfulness, or criminal intent of any officer, agent, servant, or employee while running, conducting, or managing any locomotive, car, or train of cars, or of any driver of any coach or other conveyance operated for the purpose of carrying either freight or passengers for hire while in charge of the same as a driver, and when any passenger dies from an injury resulting from or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or other conveyance operated for the purpose of carrying either freight or passengers for hire, the corporation or individuals in whose employ any such officer, agent, servant, employee, master, pilot, engineer, or driver is at the time such injury is committed, or who owns any such railroad, locomotive, car, or other conveyance operated for the purpose of carrying either freight or passengers for hire at the time any such injury is received, and resulting from or occasioned by the defect or insufficiency above described shall forfeit and pay for every person and passenger so injured the sum of not exceeding ten thousand dollars and not less than three thousand dollars, which may be sued for and recovered:

(a) In the first year after such death:

(I) By the spouse of the deceased;

(II) Upon the written election of the spouse, by the spouse and the heir or heirs of the deceased;

(III) Upon the written election of the spouse, by the heir or heirs of the deceased; or

(IV) If there is no spouse, by the heir or heirs of the deceased or the designated beneficiary, if there is one designated pursuant to article 22 of title 15, C.R.S., with the right to bring an action pursuant to this section, and if there is no designated beneficiary, by the heir or heirs of the deceased;

(b)

(I) In the second year after such death:

(A) By the spouse of the deceased;

(B) By the heir or heirs of the deceased;

(C) By the spouse and the heir or heirs of the deceased; or

(D) By the designated beneficiary of the deceased, if there is one designated pursuant to article 22 of title 15, C.R.S., with the right to bring an action pursuant to this section, and the heir or heirs of the deceased.

(II) However, if the heir or heirs of the deceased commence an action under the provisions of subparagraph (B) of subparagraph (I) of this paragraph (b), the spouse or the designated beneficiary of the deceased, if there is one designated pursuant to article 22 of title 15, C.R.S., with the right to bring an action pursuant to this section, upon motion filed within ninety days after service of written notice of the commencement of the action upon the spouse or designated beneficiary, shall be allowed to join the action as a party plaintiff.

(c)

(I) If the deceased is an unmarried minor without descendants or an unmarried adult without descendants and without a designated beneficiary pursuant to article 22 of title 15, C.R.S., by the father or mother who may join in the suit. Except as provided in subparagraphs (II) and (III) of this paragraph (c), the father and mother shall have an equal interest in the judgment, or if either of them is dead, then the surviving parent shall have an exclusive interest in the judgment.

(II) For cases in which the father and mother are divorced, separated, or living apart, a motion may be filed by either the father or the mother prior to trial requesting the court to apportion fairly any judgment awarded in the case. Where such a motion is filed, the court shall conduct a post-judgment hearing at which the father and the mother shall have the opportunity to be heard and to produce evidence regarding each parent's relationship with the deceased child.

(III) On conclusion of the post-judgment hearing conducted pursuant to subparagraph (II) of this paragraph (c), the court shall fairly determine the percentage of the judgment to be awarded to each parent. In making such a determination, the court shall consider each parent's relationship with the deceased, including custody, control, support, parental responsibility, and any other factors the court deems pertinent. The court's

determination of the percentage of the judgment awarded to each parent shall not be disturbed absent an abuse of discretion.

(d) For purposes of this section, “father or mother” means a natural parent of the deceased or a parent of the deceased by adoption. “Father or mother” does not include a person whose parental rights concerning the deceased were terminated pursuant to the provisions of title 19, C.R.S.

(2) In suits instituted under this section, it is competent for the defendant for his defense to show that the defect or insufficiency named in this section was not a negligent defect or insufficiency. The judgment obtained in an action under this section shall be owned by such persons as are heirs at law of the deceased under the statutes of descent and distribution and shall be divided among such heirs at law in the same manner as real estate is divided according to said statute of descent and distribution.

History

Source:G.L.§ 877.G.S.§ 1030. **L. 07:**P. 296, § 1.**R.S. 08:**§ 2056.**C.L.**§ 6302.**CSA:**C. 50, § 1. **L. 51:**P. 338, § 1.**CRS 53:**§ 41-1-1.**C.R.S. 1963:**§ 41-1-1. **L. 88:**(1)(a), (1)(b), and (1)(c) R&RE and (2) amended, pp. 603, 604, §§ 1, 2, effective July 1. **L. 2000:**(1)(c) amended and (1)(d) added, p. 169, § 1, effective July 1. **L. 2009:**(1) amended,(HB 09-1260), ch. 107, p. 441, § 6, effective July 1.

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C.R.S. 13-20-101

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Colorado Revised Statutes Annotated > *Title 13. Courts and Court Procedure (§§ 13-1-101 — 13-94-111)* > *Regulation of Actions and Proceedings (Art. 20)* > *Article 20. Actions (Pts. 1 — 12)* > *Part 1. Survival of Actions (§§ 13-20-101 — 13-20-102)*

13-20-101. What actions survive.

(1) All causes of action, except actions for slander or libel, shall survive and may be brought or continued notwithstanding the death of the person in favor of or against whom such action has accrued, but punitive damages shall not be awarded nor penalties adjudged after the death of the person against whom such punitive damages or penalties are claimed; and, in tort actions based upon personal injury, the damages recoverable after the death of the person in whose favor such action has accrued shall be limited to loss of earnings and expenses sustained or incurred prior to death and shall not include damages for pain, suffering, or disfigurement, nor prospective profits or earnings after date of death. An action under this section shall not preclude an action for wrongful death under part 2 of article 21 of this title.

(2) Any action under this section may be brought or the court on motion may allow the action to be continued by or against the personal representative of the deceased. Such action shall be deemed a continuing one and to have accrued to or against such personal representative at the time it would have accrued to or against the deceased if he had survived. If such action is continued against the personal representative of the deceased, a notice shall be served on him as in cases of original process, but no judgment shall be collectible against a deceased person's estate or personal representative unless a claim, for the amount of such judgment as may be recovered in such continuing action, has been presented within the time and in the manner required for other claims against an estate.

History

Source: L. 73:P. 1646, § 5.C.R.S. 1963:§ 41-5-1. L. 75:(2) amended, p. 587, § 4, effective July 1.