

## **RULE 4:34. Substitution Of Parties**

### **4:34-1. Death**

- **(a) Party Survivors.** 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 noted upon the record and the action shall proceed in favor of or against the surviving parties.
- **(b) Non-party Survivors.** If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and notice thereof shall be served on parties as provided by R. 1:5-2 and on persons not parties in the manner provided by either R. 4:4 (service of original process) or, if the court directs, R. 4:67-3 (service of orders to show cause).

**Note:** Source-R.R. 4:38-1(a) (b).

### **4:34-2. Mental Incapacity**

If a party becomes mentally incapacitated, the court upon motion served as provided in R. 4:34-1(b) may allow the action to be continued by or against the party's guardian or guardian ad litem.

**Note:** Source-R.R. 4:38-2; amended July 13, 1994 to be effective September 1, 1994; amended July 12, 2002 to be effective September 3, 2002.

### **4:34-3. Transfer of Interest**

In case of any transfer of interest, the action may be continued by or against the original party, unless the court on 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 R. 4:34-1(b).

**Note:** Source-R.R. 4:38-3.

### **4:34-4. Public Officers; Death or Separation From Office**

When any public officer sues or is sued in an official capacity whether or not the officer's name is mentioned, and then dies, resigns or for any reason ceases to hold office, the successor in office shall be deemed to have been substituted in unless the court on motion otherwise orders; but the court may on motion specially order the substitution of such successor in office.