

## **A Euphemistic Look at the Death of a Party Opponent, by David S. Canter**

You discover that your business partner of 20 years has swindled you out of hundreds of thousands of dollars. Your initial reaction may be, “He should drop dead.” You then pause for a moment to reflect, adding the caveat, “but not until after I sue the bastard.”

What if your wish comes true? What if you file a lawsuit against your former partner, and before you have a chance to present your case to a jury, your former partner dies? While your fantasies of watching your former partner squirm under grilling cross-examination may have passed on with him, your lawsuit may still have life – *if you act timely*.

Pursuant to Colorado Rule of Civil Procedure 25(a)(1), if a party dies, and the claim against that party is not thereby extinguished, the court may order substitution of the proper parties. If you happen to be scanning the obituaries and learn that your former partner, and now defendant, has met his demise, then you may file an appropriate motion for substitution of parties, requesting that the court substitute a representative of the deceased defendant in the defendant’s place.

Does this mean that once you become a party to a lawsuit you are suddenly charged with the duty and obligation ensuring that your party opponent is still walking among the living? Of course not. You are free to omit the obit from your morning routine. However, the attorney representing the not so dearly departed, must place the court and other parties to the action on notice of the defendant’s death by filing with the court and serving on all parties a document entitled, “Suggestion of Death.” C.R.C.P. 25(a)(1) and (2). Yes, you read that right, a “Suggestion of Death.”

Though it has been argued that some legislators and jurists lack a sense of humor, I beg to differ. If the attorney for your former business partner knows that his client is pushing up the daisies, does the attorney really need to “*suggest*” that his or her client is dead? Shouldn’t the document be entitled, “Notice of Death of Defendant”? I suppose in Colorado we must sugar coat things a bit and merely “*suggest*” that the defendant is six feet under, lest we offend. But I digress.

Once you receive notice that your former partner is living in a pine condo, the proverbial clock begins to tick. You have 91 days (13 weeks for the superstitious) after service of the “Suggestion of Death” to file a motion with the court requesting that a representative of the terminated defendant be substituted in place of the defendant who has joined the choir invisible.

What if you are not able to identify a representative of the defendant who has crossed over? Then the burden shifts to you to file a petition with the court requesting that a representative be appointed. Once the court appoints the representative of the defendant who is now sleeping with the fishes, you must file the appropriate motion of substitution.

But beware: If you fail to substitute a representative in place of the party who has gone into that good night, then your lawsuit **shall** be dismissed as to that party who is now bereft of life. In other words, should the 91 days pass before a representative is substituted in place of the party who has bought the farm, ask not for whom the bell tolls, for it tolls for thee.