

STATE OF IDAHO JUDICIAL BRANCH  
Supreme Court

Idaho Rules of Civil Procedure Rule 25. 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 may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative party. If the motion is not made within a reasonable time, the action by or against the decedent may 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

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## HOW TO DEAL WITH A DEAD CLIENT IN A LIVE CASE

Stephen Adams

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## What happens to your case when a party dies?

- It is not the same thing in every case, and it depends on numerous factors:
  - ▣ Do you represent the Plaintiff or the Defendant?
  - ▣ How did the party die?
  - ▣ When did the party die?
  - ▣ Is your client the one who passed away?
  - ▣ Is the party who passed away on the opposite side?
  - ▣ Is it a witness who passed away?

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## Very (Very) Basic legal issues when a person dies

- Do you have to know a lot about probate law to do this?
  - ▣ No, but you should know a little.
- An estate springs into existence
  - ▣ May be formal or informal probate (see Title 15)
  - ▣ A person is appointed to deal with the estate
    - Personal Representative (Executor): usually has broad powers
    - Special Administrator: usually has very limited powers
- The P.R./S.A. is, for all intents and purposes, the estate. They are the ones sued and the ones suing. An estate is just a legal fiction. It is the person appointed to represent it that gives it any power.

## Issues to resolve when a Plaintiff dies

- Who is the proper party when a Plaintiff dies?
  - ▣ If the Plaintiff died before the suit was filed, then it depends what the cause of death was.
    - If the Plaintiff died from causes unrelated to the lawsuit, then the proper party is most likely the personal representative or special administrator of the Plaintiff's estate.
    - If the Plaintiff died from the event that is the basis of the suit, then it is very probable that a wrongful death suit arises. This means the estate (through the representative) is probably a party, as are all the heirs of the decedent.

## Issues to resolve when a Plaintiff dies (cont.)

- Who is the proper party when a Plaintiff dies? (cont.)
  - ▣ If the Plaintiff died after the suit was filed, then most likely the proper party at the time the suit was filed was the Plaintiff.
    - If the Plaintiff died from causes unrelated to the basis of the lawsuit, then likely only the estate (through the representative) needs to be substituted in.
    - If the Plaintiff died as a result of the basis of the lawsuit, then the estate likely needs to be substituted in and the heirs need to be added as parties, and a new claim for wrongful death arises.
      - Alternately, the original case can be dropped, and a totally new lawsuit for wrongful death can be instituted.

## Issues to resolve when a Defendant dies

- The proper party when a Defendant dies is the Defendant's estate (through the representative).
- If the Defendant dies before the suit is filed, it should be filed directly against the personal representative.
- If the Defendant dies after the suit is filed, a substitution of parties can occur. I.R.C.P. 25.

## How to substitute parties

- What happens if there is no personal representative?
  - ▣ For Plaintiffs, they generally have significant motivation to find someone to act as the representative of the decedent Plaintiff, so that the claim can continue to move forward.
  - ▣ There must be a real party in interest to pursue the claims, so they find a family member or friend to represent the estate.

## How to substitute parties (cont.)

- What happens if there is no personal representative? (cont.)
  - ▣ For deceased defendants, this can often times be significantly trickier.
  - ▣ If the assets of the estate are very small, there is often no motivation to open probate on the estate, and therefore, there is no personal representative appointed by the Court.
  - ▣ Thus, defense counsel are often required to find someone to act on behalf of the estate.
  - ▣ This can be a family member, friend, or in dire circumstances, a paralegal or assistant in the defense counsel's office.

## How to substitute parties (cont.)

- Personal Representatives v. Special Administrators
  - ▣ When is there usually a personal representative?
    - When the family opens probate for purposes of dividing up estate assets. This is a more likely appointment than a special administrator.
  - ▣ What does a personal representative do?
    - They have to comply with all the requirements of the will (if one exists), and probate law (including doing inventories, paying taxes, distributing assets, etc.).

## How to substitute parties (cont.)

- Personal Representatives v. Special Administrators (Cont.)
  - ▣ Is a personal representative necessary to represent an estate-defendant in a lawsuit?
    - No. A special administrator can also be utilized.
  - ▣ What is a special administrator?
    - It is a person who is appointed by the Court to fulfill a particular role or duty with regard to the estate.
    - This means that the special administrator can be appointed purely to act on behalf of the estate for purposes of the lawsuit.

## How to substitute parties (cont.)

- Personal Representatives v. Special Administrators (Cont.)
  - What is the benefit of utilizing a special administrator?
    - Any person can do the job.
    - The responsibilities are as expansive or as limited as requested by the person seeking appointment.
      - The special administrator's role can be so limited that they can be appointed to only deal with the lawsuit. No paying taxes, no inventories, etc.
    - It is much easier to convince someone to become a special administrator than to become a personal representative.

## How to substitute parties (cont.)

- Process for substitution:
  - If the personal representative/special administrator has already been appointed, simply file a motion to substitute with the Court under I.R.C.P. 25. The P.R./S.A. is the party, but they are only named on behalf of the estate.
  - If no P.R./S.A. has been appointed, the party seeking substitution can usually request appointment at the same time.
    - Note: A P.R. is typically appointed in a separate probate action, usually filed in a separate case before the Magistrate Court. A petition to appoint a S.A. can be filed in the district court without opening any probate case, and can be filed the same time as the Motion to Substitute.

## Wrongful Death claims

- What is a wrongful death claim?
  - ▣ At common law, if a person died as a result of a tortious act, their spouse had no claim for recovery against the tortfeasor.
  - ▣ Wrongful death claims are statutorily created causes of action that allow the heirs to pursue damages against the tortfeasor.
  - ▣ Idaho's wrongful death statute is Idaho Code 5-311.

## Wrongful Death claims (cont.)

- Who may bring a wrongful death claim?
  - ▣ A wrongful death claim is a new claim that springs into existence upon death.
  - ▣ The claims belong to the heirs of the decedent.
  - ▣ The heirs include:
    - Anyone entitled to succeed the decedent under Idaho Code 15-1-201
    - The decedent's spouse, children, stepchildren, and parents
    - Any other family member who was dependent upon the decedent for support.

## Wrongful Death claims (cont.)

- Who may bring a wrongful death claim? (cont.)
  - ▣ Idaho Code 5-311 also allows the personal representative of the decedent to bring a wrongful death claim on behalf of the heirs without joining the heirs.
    - The claim does not belong to the personal representative or the estate. If the personal representative brings such a claim, it is only as a fiduciary on behalf of the actual heirs.
    - Defendant's beware: there is nothing in the statute indicating that if the personal representative of the estate brings a claim, the heirs are barred from independently bringing such claims.
    - Heirs may argue that the personal representative does not represent them, and bring their own claims.

## Wrongful Death claims (cont.)

- Who may bring a wrongful death claim? (cont.)
  - ▣ If a personal representative brings a claim on behalf of heirs, the defense should check to make sure whether the heirs have agreed to let the personal representative act on their behalf.
  - ▣ If not, the personal representative may want to implead the heirs to force them to bring their claims all in one place.



## Wrongful Death claims (cont.)

- Wrongful death damages:
  - ▣ The heirs may recover, “such damages may be given as under all the circumstances of the case as may be just.” Idaho Code 5-311(1).
  - ▣ This is interpreted broadly, and may include, “the loss of protection, comfort, society and companionship,” of the decedent.
  - ▣ This does not include “grief and anguish.”

## Wrongful Death claims (cont.)

- Wrongful death damages (cont.):
  - ▣ Generally, wrongful death damages are non-economic damages. These damages are capped, absent reckless conduct. Idaho Code 6-1603.
    - ▣ Note: this is also capped by the Tort Claims Act. Idaho Code 6-926.
  - ▣ Economic damages (such as lost wages of the decedent, etc.) typically belong to the estate. However, damages may include, “loss of support.”
    - ▣ “Loss of Support” does not include net accumulations, earnings, and inheritance the heirs would have obtained had the decedent lived. *Pfau v. Comair Holdings, Inc.*, 135 Idaho 152, 155–56, 15 P.3d 1160, 1163–64 (2000).
  - ▣ Punitive damages are allowed. *Gavica v. Hanson*, 101 Idaho 58, 63, 608 P.2d 861, 866 (1980).

## How to Preserve Witness Testimony

- I.R.E. 803 and 804 – hearsay exceptions
- Depositions before a claim is filed – I.R.C.P. 27(a).
  - ▣ Useful if a tort claim notice has been filed, but you think the plaintiff might pass away before the statute of limitations runs.
- Beware the Deadman's statute: Idaho Code 9-202(3).

## Claims that abate upon death

- Libel and slander abate on the death of the plaintiff. Idaho Code 3-527(1).
- Personal injury and property damage claims survive death of the plaintiff, but damages available are limited.
  - ▣ Punitive damages are barred when pursued against a decedent. Idaho Code 3-527(1).
  - ▣ Certain economic damages continue to exist, but pain and suffering damages abate upon death of the plaintiff. Idaho Code 3-527(2); *Evans v. Twin Falls Cty.*, 118 Idaho 210, 216, 796 P.2d 87, 93 (1990).

## Considerations regarding Statutes of Limitations (cont.)

- Normal statutes of limitations still apply:
  - ▣ 2 years: personal injury and wrongful death (I.C. 5-219)
  - ▣ 3 years: property damages, statutory causes of action (I.C. 5-218)
  - ▣ 4 years: oral contract (I.C. 5-217)
  - ▣ 5 years: breach of contract (I.C. 5-216)

## Considerations regarding Statutes of Limitations (cont.)

- Extensions to Statutes of Limitations:
  - ▣ Up to six years – if a minor is involved (I.C. 5-230)
  - ▣ The statute of limitations for any claim belonging to a decedent is extended by four months as a result of their death. (I.C. 15-3-109).
  - ▣ The statute of limitations for any claim against a decedent is extended by four months as a result of the defendant's death. (I.C. 15-3-802(b)).

## Considerations regarding Statutes of Limitations (cont.)

- Does any of this matter for governmental entities?
  - ▣ For any claims against decedents, these time limits matter.
  - ▣ For any claims by a decedent against a governmental entity under the ITCA, the tort claims act is probably going to be binding as the statute of limitations.
    - But does the extension of time for claims by a decedent apply to I.C. 6-911?
    - Does it apply to extend the time to file a notice of tort claim?
    - What about contract claims or federal claims that aren't under the ITCA? Does a 42 U.S.C. 1983 claim get extended by 4 months if the claimant dies?

## Resolving cases with deceased parties

- Settlements with dead parties can be tricky and may require addressing numerous different issues.
- If the decedent is the defendant, the P.R./S.A. is probably the person who needs to sign any settlements or releases.

## Resolving cases with deceased parties (cont.)

- If the decedent is the Plaintiff:
  - ▣ Does the case include wrongful death claims?
  - ▣ If not, then more likely than not, only the P.R./S.A. will need to sign on behalf of the estate.
  - ▣ If so, then the P.R./S.A. will need to sign the release, as will every heir of the decedent.

## Resolving cases with deceased parties (cont.)

- If the decedent is the Plaintiff (cont.):
  - ▣ Why does every heir need to sign?
    - The personal representative of the estate can only release claims on behalf of the heirs if the heirs have agreed to allow the personal representative to bring such claims.
    - If the personal representative does not have permission to represent all of the heirs, and individual heirs may have retained their claims, then a signature by the personal representative on a settlement agreement does not release all claims. It only releases the estate's claims and those claims of the heirs who have agreed to allow the P.R. to represent them. The other heirs would not be barred from bringing their own claims.

## Resolving cases with deceased parties (cont.)

- Minor's Compromises:
  - ▣ If the heirs are minors, then all settlement agreements will need to be approved by the Court. Idaho Code 15-5-409A.
  - ▣ If the heirs are unrepresented, this means someone will likely need to help them file the petitions for approval with the Court. This often is the defense attorney. Care should be taken to avoid the creation of any attorney-client relationship with the unrepresented heirs.

## How to Deal with a Dead Party in a Live Case

By Stephen Adams<sup>1</sup>

Every so often, we as attorneys must deal with the unfortunate fact that our client, whether a plaintiff or a defendant, has passed away. This is often a very sad fact for the families of the decedent, and as an attorney, we are tasked with playing both counsel and counselor. However, the emotional minefield is not the only place where we need to step lightly; we also have to make sure we apply the law correctly, as the law changes significantly when your client is no longer living. This article will provide some considerations that should be addressed when dealing with a deceased client in a lawsuit.

### Differences and similarities between a deceased plaintiff and a deceased defendant

A deceased plaintiff and a deceased defendant are vastly different things. In some respects, there are similarities, as the attorney needs to determine what claims and damages or defenses transfer from the decedent to a substitute party. However, as discussed below there are many differences. Who should be bringing or defending the lawsuit depends on when the decedent passes away, and whether the claim that inspires the lawsuit was the cause of death. If the plaintiff or defendant is alive at the time the lawsuit is filed, they personally are likely the proper party to bring/defend the suit.<sup>2</sup>

### Who is the proper defendant for a civil lawsuit?

If a defendant passes away before the lawsuit is filed, then the person probably most proper to be served is the representative of the defendant's estate.<sup>3</sup> If there has been no personal representative appointed at the request of the decedent's family or friends, other steps can be taken to make sure a person with standing can fill the role of defendant. For example, if there is no one who wants to act as personal administrator for the estate, a special administrator can be appointed purely for the purpose of dealing with the lawsuit.<sup>4</sup> Typically a motion is filed with the Court to appoint the special administrator. This motion will explain why a special administrator is desired over a personal representative and will ask that the special administrator's duties be limited to dealing with the lawsuit. While a family member or friend is likely ideal to fill the role of special administrator, if the defendant has no family or friends, there is no legal requirement indicating that the person acting as special administrator have any special relationship with the decedent.<sup>5</sup> Any attorney representing the decedent in a civil action should take care to look for conflicts that may arise should the attorney also represent the estate/probate generally.

The timing for appointing a personal representative for a defendant also matters. It is often the case that an estate is not timely opened by a family member or friend, and that an attorney hired to defend the estate in a civil action does not have access to someone who is willing to fill the role as personal representative or special administrator. Under such circumstances, the plaintiff, as a creditor of the estate, may seek to have themselves appointed as personal representative.<sup>6</sup> This can cause significant confusion and complexity.

If this happens in insurance defense cases, the attorney hired to represent the deceased defendant may end up representing the plaintiff, who has been appointed the personal representative. This creates significant conflicts. The best way to avoid this situation is to

find a personal representative or special administrator to be appointed to address the lawsuit before the plaintiff files a petition to be appointed. This may mean seeking to appoint someone who has no limited connection to the decedent, including possibly a legal secretary, paralegal, insurance representative, or learning whether the county has a public administrator available to fill the role.

### Who is the proper plaintiff for a civil lawsuit?

For a deceased plaintiff, the question involves not only when the plaintiff dies, but what caused the death, and what type of claims exist. For example, if the plaintiff dies because of the tortious activity, not only is a new party needed to be substituted in place of the plaintiff (such as a personal representative on behalf of an estate), but the plaintiff's heirs are also all now plaintiffs under the wrongful death statute.<sup>7</sup> As a general rule, the decedent's claims (at least those that do not abate on death) belong to the estate, and thus a personal representative or special administrator should be appointed to pursue the claims. However, personal injury or property damage claims survive death<sup>8</sup>, and can be brought by the decedent's heirs directly if there is no personal representative.<sup>9</sup> Thus an attorney must know who the proper party is to substitute as a representative for the deceased person, and when new classes of plaintiffs are created. These factors also affect who the real party in interest is, who needs to sign settlement agreements, who can execute on judgments, and who can be served.

As stated above, under Idaho's wrongful death statute, the heirs are permitted to bring their own claims for the wrongful death of the decedent.<sup>10</sup> These heirs include anyone entitled to succeed the decedent under Idaho's probate code<sup>11</sup> as well as any spouse, children, stepchildren, and parents.<sup>12</sup> Other family members who rely on the decedent for support may also be heirs.<sup>13</sup>

The statute is unclear as to who should bring the claim, as it says the decedent's "heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death."<sup>14</sup> This language seems to give standing to the heirs or the decedent's personal representatives to bring a claim. However, Idaho law does not appear to indicate that the estate itself has a wrongful death claim, instead the estate may act on behalf of the heirs.<sup>15</sup>

This can cause confusion if the heirs have not agreed to act together and allow the estate to bring such claim, as nothing in the statute or case law discussing the statute bars an heir from bringing a claim independently even if the personal representative has already brought a claim. Thus, it is very possible for a personal representative to bring a wrongful death claim on behalf of heirs who did not agree for the personal representative to act on their behalf, and which claim does not specifically bar the heirs from bringing their own claims. This may mean that unless all the heirs are involved in the lawsuit (whether as original parties or impleaded as parties), there is potential that other plaintiffs could bring identical claims in separate lawsuits.<sup>16</sup>

### How to substitute parties

If a party passes away during the pendency of a lawsuit, or if the complaint names a deceased person, then substitution of parties is likely to be necessary. I.R.C.P. 25 deals with



this, stating, “If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative party. If the motion is not made within a reasonable time, the action by or against the decedent may be dismissed.”<sup>17</sup> This substitution usually requires providing to the court an explanation as to who has been appointed as the personal representative or special administrator.

If no steps have been taken to appoint a personal representative, then this is likely an appropriate time to appoint a special administrator. A personal representative is usually appointed in connection with a probate action, which usually requires opening a separate action. However, nothing in the special administrator statute requires opening a probate action for appointment, and therefore, it can be done in the civil action without additional court costs. At the point where substitution is appropriate, a special administrator may be requested. This typically requires a separate motion and declarations (explaining why a special administrator is preferable to a personal representative)<sup>18</sup>, along with proposed letters of special administration<sup>19</sup> limiting the powers of the special administrator to dealing solely with the lawsuit.

#### What is a wrongful death claim?

It has long been established that a spouse can bring a loss of consortium claim for injury to a spouse.<sup>20</sup> Loss of consortium claims are dependent on the underlying claim.<sup>21</sup> Therefore, if the injured party died, at common law, the spouse (or possibly the child) had no claim for recovery.<sup>22</sup> As a result, states have enacted wrongful death statutes to allow heirs to recover for claims that were not allowed under the common law. “These wrongful death statutes are either (1) survival statutes, which preserve the deceased's cause of action for the heirs while amplifying the amount of damages because of the death; or (2) ‘death acts’ based on Lord Campbell's Act which creates a new cause of action for the death in the deceased's heirs. Idaho Code § 5–311 is of the latter type.”<sup>23</sup>

Idaho’s wrongful death statute allows heirs to recover, “such damages may be given as under all the circumstances of the case as may be just.”<sup>24</sup> These damages are typically very broad (allowing both special and general damages),<sup>25</sup> but are not unlimited. While a wrongful death heir may obtain damages for, “the loss of protection, comfort, society and companionship,” of the decedent, they may not recover, “grief and anguish.”<sup>26</sup>

#### Damages and claims that abate on death of the client

As outlined above, personal injury and property damage claims survive death, but only in a limited fashion. Under Idaho Code § 5-327(1), punitive and exemplary damages are barred when sought against a decedent (i.e. the dead defendant). Under Idaho Code § 5-327(2), a deceased plaintiff’s personal injury and property damage claims survive death, but the estate/heirs may only seek damages for, “(i) medical expenses actually incurred, (ii) other out-of-pocket expenses actually incurred, and (iii) loss of earnings actually suffered, prior to the death of such injured person and as a result of the wrongful act or negligence.” The Idaho Supreme Court has similarly stated, “[A]n action for pain and suffering does not survive the death of the injured.”<sup>27</sup>

#### What are the applicable time limits?

The first place to start with time limits are the applicable statutes of limitations: two years for wrongful death or personal injury,<sup>28</sup> three years for injury to personal property,<sup>29</sup> four years for oral contract,<sup>30</sup> five years for written contract.<sup>31</sup> These deadlines are often extended in wrongful death claims as there are often minor heirs. Under Idaho Code § 5-230, every statute of limitations (other than for recovery of real property) is extended up to six years.<sup>32</sup> This may mean that a statute of limitations for an adult has run, but continues to run substantially longer for any person who was a minor at the time the claim accrued.

In addition to Idaho Code § 5-230, which extends the time to bring a claim for a minor, all claims against a decedent are extended. Idaho's probate code states, "The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended during the four (4) months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow."<sup>33</sup> As the Idaho Supreme Court has noted, this statute provides, "a four-month tolling of the applicable statute of limitations following a decedent's death."<sup>34</sup> Thus, based on the plain language, the applicable statute of limitations is tolled if the ostensible defendant dies during the running of the statute of limitations. Similarly, statutes of limitations of claims belonging to decedents are potentially extended by 4 months as well.<sup>35</sup>

#### Who needs to sign the settlement agreement?

When settling claims, it is important to have all the necessary participants agree. If the defendant has passed away, then likely the proper party to the settlement (if a signature from the defendant is required) is the personal representative or special administrator. Outside of wrongful death claims, the same is likely true for a decedent plaintiff.

In a wrongful death claim, it is important to have all parties in interest sign the releases. This means that the personal representative of the estate and all heirs must sign the agreement in order for all claims to be resolved. Where there are minors involved, this will likely require court approval of the agreements as required by statute.<sup>36</sup> This may take significant negotiation to reach a result that all heirs are willing to accept, particularly if the heirs do not agree on how to distribute the settlement proceeds. If the settlement proceeds are insurance funds, then this problem can potentially be resolved by interpleading the insurance funds.<sup>37</sup> If however, there is excess exposure, or the heirs/representatives cannot agree on a settlement amount, then it may be impossible to settle with some or any of the heirs until the statute of limitations has run. Stated another way, settling with some heirs does not mean that the remaining heirs are barred from bringing independent claims under the wrongful death statute.

#### Things to remember

Dealing with deceased clients requires an attorney to remember numerous moving parts. Some examples include:

1. If you have an elderly client with a personal injury claim, it is best to bring the claim sooner, rather than later, so as to avoid having pain and suffering claims abate upon the client's death.

2. If an estate brings a wrongful death claim on behalf of a decedent, the defending attorney should make sure the estate has permission of the heirs to avoid arguments that the heirs retained their independent claims.

3. In defending a deceased client, it is best to get a personal representative or special administrator appointed as soon as possible to avoid a situation where you have to try to unwind a plaintiff being appointed to represent the defendant's estate.

These examples show what can go wrong if you are unfamiliar with representing a deceased client in a civil lawsuit. Though this article cannot address every issue, litigation attorneys should make sure to know what potential consequences occur when a client is deceased before or dies during a civil action.

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<sup>2</sup> This of course depends on the circumstances, as there may be a need for guardians, conservators, etc.

<sup>3</sup> Idaho Code § 15-3-703(c) ("Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.")

<sup>4</sup> Idaho Code § 15-3-617.

<sup>5</sup> Idaho Code § 15-3-615.

<sup>6</sup> Idaho Code § 15-3-203(a)(3).

<sup>7</sup> Idaho Code § 5-311

<sup>8</sup> Idaho Code § 5-327(2). These claims are limited in what can be brought.

<sup>9</sup> Idaho Code § 5-327(2).

<sup>10</sup> Idaho Code § 5-311.

<sup>11</sup> Idaho Code § 15-1-201(22). This definition would include those entitled to recover as identified in Chapter 2, Title 15 of the Idaho Code dealing with intestate succession.

<sup>12</sup> Idaho Code § 5-311(2).

<sup>13</sup> Idaho Code § 5-311(2).

<sup>14</sup> Idaho Code § 5-311(1).

<sup>15</sup> *Farm Bureau Mut. Ins. Co. of Idaho v. Eisenman*, 153 Idaho 549, 553, 286 P.3d 185, 189 (2012) ("Any damages an estate recovers in an action for the wrongful death of the decedent inure solely to the benefit of the heirs."); *Hagy v. State*, 137 Idaho 618, 623, 51 P.3d 432, 437 (Ct. App. 2002) ("However, we construe I.C. § 5-311(1) to use 'personal representative' to mean the personal representative of the decedent, not of the heirs."); *Hayward v. Valley Vista Care Corp.*, 136 Idaho 342, 353, 33 P.3d 816, 827 (2001) ("The personal representative can bring an action for wrongful death, and need not join the heirs as parties. '[A] personal representative ... may sue in this capacity without joining the party for whose benefit the action is brought.' IDAHO R. CIV. P. 17(a).")

<sup>16</sup> *Dreyer v. Idaho Dep't of Health & Welfare*, 455 F. Supp. 3d 938, 955 (D. Idaho 2020) ("[I]t is clear that two person/s can bring a claim for wrongful death under Idaho Code Section 5-311: (1) the decedent's heir/s, or (2) the decedent's personal representative on behalf of the heirs.")

<sup>17</sup> I.R.C.P. 25(a)(1).

<sup>18</sup> See Idaho Code § 15-3-614(b).

<sup>19</sup> See Idaho Code §§ 15-3-602 and 15-3-702.

<sup>20</sup> *Conner v. Hodges*, 157 Idaho 19, 27, 333 P.3d 130, 138 (2014). This case also suggests that a loss of consortium type claim may exist arising out of injury to the parent-child relationship as well.

<sup>21</sup> *Zaleha v. Rosholt, Robertson & Tucker, Chtd.*, 131 Idaho 254, 256, 953 P.2d 1363, 1365 (1998).

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- <sup>22</sup> *Castorena v. Gen. Elec.*, 149 Idaho 609, 614, 238 P.3d 209, 214 (2010).
- <sup>23</sup> *Castorena v. Gen. Elec.*, 149 Idaho 609, 614–15, 238 P.3d 209, 214–15 (2010).
- <sup>24</sup> Idaho Code § 5-311(1).
- <sup>25</sup> *Horner v. Sani-Top, Inc.*, 143 Idaho 230, 237, 141 P.3d 1099, 1106 (2006).
- <sup>26</sup> *Hayward v. Yost*, 72 Idaho 415, 427, 242 P.2d 971, 978 (1952). *See also Hepp v. Ader*, 64 Idaho 240, 130 P.2d 859, 862 (1942) (“Although the decisions are agreed that recovery may not be had for grief and anguish suffered by the surviving relatives of the deceased, it may be had, in Idaho, for loss of society, companionship, comfort, protection, guidance, advice, intellectual training, etc.”).
- <sup>27</sup> *Evans v. Twin Falls Cty.*, 118 Idaho 210, 216, 796 P.2d 87, 93 (1990) (quoting *Vulk v. Haley*, 112 Idaho 855, 859, 736 P.2d 1309, 1313 (1987)).
- <sup>28</sup> Idaho Code § 5-219(4).
- <sup>29</sup> Idaho Code § 5-218.
- <sup>30</sup> Idaho Code § 5-217.
- <sup>31</sup> Idaho Code § 5-216.
- <sup>32</sup> *Gomersall v. St. Luke's Reg'l Med. Ctr., Ltd.*, 168 Idaho 308, 483 P.3d 365, 371 (2021).
- <sup>33</sup> Idaho Code 15-3-802(b).
- <sup>34</sup> *Trimble v. Engelking*, 134 Idaho 195, 197, 998 P.2d 502, 504 (2000).
- <sup>35</sup> Idaho Code § 15-3-109.
- <sup>36</sup> Idaho Code § 15-5-409a.
- <sup>37</sup> I.R.C.P. 22; Idaho Code § 5-321.