

*Landmines in Litigation:  
How Death, Divorce, & Other Events Affect  
Pending Litigation*

Death: The Unexpected Adverse Party

ADAM R. KITZ



Wolff Hislop Crockett

“If Jeanette had died even one minute after the jury returned a verdict, Mercy would have been liable for the full amount of future damages.”

Jefferson v. Mercy Hospital & Medical Center, 420 Ill. 599, 612 (2018).



# Overview

- I. Who is the client?
- II. Substitution of Parties
- III. Survival Actions
- IV. Creditors' Claims
- V. TEDRA



# I. Who is the client? RPC 1.7, Cmt. 40

- Not the Estate
- Not the Beneficiaries of the Estate
- The Client is: the Personal Representative



# I. Who is the client?

Hypo: The surviving spouses reaches out to you about a wrongful death action for the decedent.

Can you represent the surviving spouse in the action?

Answer: It depends on whether the surviving spouse has been appointed as Personal Representative.



## II. Survival Actions

RCW 4.24.020: injury or death of child

RCW 4.20.010: wrongful death

RCW 4.20.046: general survival

RCW 4.20.060: special survival



## II. Survival Actions

RCW 4.24.020: injury or death of child

“A parent or legal guardian who has regularly contributed to the support of his or her minor child, and a parent or legal guardian who has had significant involvement in the life of an adult child, may maintain or join as a party an action as plaintiff for the injury or death of the child”



## II. Survival Actions

RCW 4.20.010: wrongful death

“When the death of a person is caused by the wrongful act, neglect, or default of another person, his or her personal representative may maintain an action against the person causing the death for the economic and noneconomic damages sustained by the beneficiaries listed in RCW 4.20.020 as a result of the decedent's death”





## II. Survival Actions

RCW 4.20.046: General survival

(1)“All causes of action by a person ...shall survive to the personal representative of the former... whether or not such actions would have survived at the common law”

(2)“In addition to recovering economic losses... the PR is only entitled to recover noneconomic damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by the deceased on behalf of the beneficiaries enumerated in RCW 4.20.020...”



## II. Survival Actions

RCW 4.20.060: special survival

- (1) “No action for a personal injury to any person occasioning death shall abate, nor shall such right of action terminate, by reason of such death, if such person has a surviving spouse, state registered domestic partner, or child living, including stepchildren, or if leaving no surviving spouse, state registered domestic partner, or children, the person has surviving parents or siblings.”
- (2) “An action under this section shall be brought by the personal representative of the deceased, in favor of [the statutory beneficiaries]”



## II. Survival Actions

### Economic vs. Non-Economic Damages

Economic damages may always be recovered by the Personal Representative

Non-economic damages may only be recovered if there is a statutory beneficiary



## II. Survival Actions

### RCW 4.20.020: Statutory Beneficiaries

“Every action under RCW 4.20.010 *shall* be for the benefit of the spouse, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there is no spouse, state registered domestic partner, or such child or children, such action *may* be maintained for the benefit of the parents or siblings of the deceased.”



## II. Survival Actions

### Jurisdictional Issues

Which Court? Superior v. District

Answer: Wash. St. Const. Art. IV, Section 6 constitutional  
mandates Superior Court



### III. Substitution of Parties

Hypo: Your client dies during litigation. As the attorney for the deceased party, do you still represent the decedent's interest in the litigation?

Answer: NO Decedent's cause of action becomes asset of the Estate



### III. Substitution of Parties

RCW 4.20.050: “No action shall abate by the death...if the cause of action survives...the court may at any time within one year thereafter, on motion, allow the action to be continued by...representatives or successors in interest.”

CR25(a)(1): “If a party dies and the claim is not thereby extinguished the court may order substitution of the parties . . . . If substitution is not made within the time authorized by law, the action *may* be dismissed as to the deceased party.”



## IV. Creditors' Claims

RCW 11.40.110 – Actions pending prior to death

RCW 11.40.130 – Judgements entered prior to death

RCW 11.40.120 – Judgements entered after death





## IV. Creditors' Claims

RCW 11.40.010: “A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter.”



# V. TEDRA

## Trust and Estate Dispute Resolution Act

RCW 11.96A.010: “The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter.”



# V. TEDRA

## Plenary power of the court

RCW 11.96A.020: “(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

- (a) All matters concerning the estates and assets of . . . deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and
- (b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.”



# V. TEDRA

Broad Definition of *Matter*: includes any issue, question, or dispute involving:

- (a) The determination of any class of creditors... or other persons interested in an estate, trust, nonprobate assets, or ...any other asset ... passing at death;
- (b) The direction of the personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;
- (c) The determination of any question arising in the administration of an estate or trust...

RCW 11.96A.030(2)(a)-(h)(i)



# V. TEDRA

RCW 11.96A.090: Civil Rules of Procedure

RCW 11.96A.100(8): “Unless requested otherwise by a party in a petition or answer, the initial hearing must be a hearing on the merits to resolve all issues of fact and all issues of law.”

RCW 11.96A.300: Mediation Procedure

RCW 11.96A.310: Arbitration Procedure



# V. TEDRA

## RCW 11.96A.150 – Attorneys' Fees



# V. TEDRA

## Practical Applications:

1. Evicting a Beneficiary from Estate Property (RCWs 11.48.010 and RCW 11.48.020)
2. Determination of Rights regarding Estate Property (RCW 11.96A.080)
3. Directing Personal Representative to bring law suit for benefit of statutory beneficiary (RCW 11.96A.030(2)(b))
4. Expeditious Administration of Estate Matters



# Questions?

