04.01B SURVIVAL ACTION — DEFENDANT DECEASED — IDENTITY OF PARTIES

The defendant in this case is the personal representative of [decedent], who is deceased. The law allows the plaintiff to make these claims against the personal representative of the deceased. You should not be prejudiced for or against, or have any sympathy for or against, either side of this case because [decedent] is deceased and appears by a personal representative.

# **Use Note**

This is an introductory instruction for survival claims under AS 09.55.570, where the defendant is deceased. This instruction does not give substantive law and is offered only for the purpose of clarifying the identity of the parties for the jury. This instruction may be used at the beginning of the trial to explain why the action is being defended by someone other than the person against whom it is asserted.

In the instructions relating to the substantive cause of action and damages, the words “the deceased” can be substituted for “defendant.”

# **Comment**

AS 09.55.570 provides that causes of action except defamation survive the death of the defendant and may be brought against the deceased’s personal representative.

In *Doe v. Colligan*, 753 P.2d 144, 146 (Alaska 1988), the supreme court held that punitive damages may not be recovered from the estate of a deceased tortfeaser under AS 09.55.570.