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Forms Committee Presents Standardized Pleading Samples to Be Used under the 1951 Determination of Interests Statute

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FORMS COMMITTEE PRESENTS STANDARD- IZED PLEADING SAMPLES TO BE USED UNDER THE 1951 DETERMINATION OF INTERESTS STATUTE

All of us have been conscious of the variation in pleadings used by lawyers in Determination of Interests proceedings. The 1951 session of the legislature passed Senate Bill No. 286 which provides an entirely revised procedure for Determination of Interests. The effective date of this Act is August 1, 1951.

In an attempt to avoid the multiplicity of pleading types used by the practitioner, the new statute has received the careful consideration of the Subcommittee on District Court Forms of The Colorado Bar Association. This committee, composed of Edwin P. Van Cise, Vance Dittman, Edward C. King and Arthur M. Schwartz, under the chairmanship of Donald M. Leshner, has evolved, and submits herewith, proposed sample pleadings which are designed to comply with the new 1951 statute with a minimum of effort.

The committee solicits suggestions and criticism from members of the bar throughout the state. It may be that the practice in different counties requires motions or orders other than those submitted; as suggestions from the bar are received by the committee, the sample pleadings can be amended, corrected, and supplemented.

The committee is planning the proposal of additional pleading samples to be used in the district court pertaining to divorce actions, foreclosures through the Public Trustee, negligence actions, quiet title suits, and whatever else appears to be in greatest demand.

If the committee's work is to bear fruit, suggestions, recommendations, and corrections from the individual members of the bar will be essential. It is recognized that the program of activity for the committee may extend over a period of time—perhaps several years—but it is hoped that, within a reasonable period of time, this program will have materialized to such an extent that its efforts will be of help to attorneys.

In addition to the District Court Subcommittee, herewith reporting, the Forms Standardization Committee is composed of Subcommittees on County Courts, Real Estate, Justice Courts, Criminal Instructions, and Civil Instructions, each of which has under consideration those pleadings and forms within the scope of its field.

The District Court Subcommittee respectfully reports by sub-

mitting the following unexpurgated sample pleadings¹ to be used in connection with Determination of Interests proceedings.

Royal C. Rubright, General Chairman,
Forms Standardization Committee,
Colorado Bar Association.

IN THE DISTRICT COURT IN AND FOR
THE CITY AND COUNTY OF DENVER
AND STATE OF COLORADO

CIVIL ACTION NO. X-711, DIV. 7.

IN THE MATTER OF THE DETER-
MINATION OF INTERESTS IN THE
LANDS OF

ALPHONSO ABIATHAR GRTHVLM,²
Deceased.³

PETITION TO
DETERMINE THE
DESCENT OF
PROPERTY

COMES NOW *Zebina Hereditament*, petitioner, and, as particularly as known or can by due diligence be ascertained, alleges:

That petitioner is *the grantee of an heir of decedent*;⁴ that *Alphonso Abiathar Grthvml* died intestate about the *first* day of *October, 1947*, at or near *Sunlit Beach*, County of *Sandy*, State of *California*, his last place of residence having been *Sunlit Beach*, County of *Sandy*, State of *California*; that *administration of decedent's estate has not been granted in this state within the*

¹ It should be recognized that the committee's recommendations are samples, not forms. Although it is hoped that an attorney, in bringing a Determination of Interests proceeding, may find some phraseology herein which may be adaptable to his particular factual situation, the committee feels that a form, as such, may be a dangerous thing. It is not the intention of the committee to leave the impression that only the terminology herein employed is acceptable. Certainly, there can be nothing wrong with pleadings which comply with the requirements of the statute and use other words. The committee feels, however, that the proposed samples do comply with statute.

² Any similarity between the persons appearing in these samples and other persons living or dead is *not* purely co-incidental. The subchairman of the subcommittee once (1921) knew a lad named Eunander. Translated literally, the name of the patriarch of the Grthvml family, Alphonso Abiathar, means "Willing Father of Plenty"; the committee is especially proud of the fact that the other names used herein likewise have meanings.

³ It will be noted that the title has been shortened by Section 34 of the new act as shown above.

⁴ This phrase should read either: "An heir of decedent", "the grantee of an heir of decedent", "a relative of decedent", or "a person claiming an interest in the hereinafter described property", as the case may be. The new statute (Section 28) changed the former statute only by changing the phrase "lands, tenements or hereditaments" to read "real property".

period of one year from the date of death,⁶ that the names, addresses,⁷ and relationships to the decedent of all the heirs⁸ entitled to any interest in the hereinafter described real property are:

Name	Address	Relationship	Interest
Beatrice Bridget Grthvlm	00 Nought St., Sunlit Beach, California	Wife	1/2
Celestine Corinna Hpuiwmn	11 Waan Ave., South Saguache, Colorado	Daughter	1/8
Darius Dexter Grthvlm	22 Tughe St., Choo Choo, Colorado	Son	1/8
Ephraim Enos Grthvlm	00 Nought St., Sunlit Beach, California	Son	1/8
Fidelia Faustina Grthvlm minor, born March 10, 1933 ⁹	00 Nought St., Sunlit Beach, California	Daughter	1/8

That decedent died leaving intestate the following described real property, located in the State of Colorado, in the City and County of Denver:

*Plot One, Block One, New Monia;*¹⁰

and that petitioner is the record owner thereof.¹¹

WHEREFORE, petitioner prays that this Court determine the heirs of the decedent, the present owners of the real property above-described, and any other pertinent facts, and enter judgment and decree accordingly.¹²

⁶ This phrase should read either as above shown or: "administration of decedent's estate has been granted in this state within one year from the date of death but the descent of the real estate has not been therein determined". The only change in the new statute is to eliminate the phrase, "then after the final settlement of such estate", from the latter provision. (Section 28).

⁷ The former Section 28 required that the "residences" be stated; the new statute substituted "addresses".

⁸ The former Section 28 provided that the grantees of the heirs must also be stated; the new statute eliminates this requirement.

⁹ The former Section 28 required that the petition state "who, if any, are minors or under legal disabilities, and the names and residences of their guardians, if any, in this state." The new statute reads: "If an alleged heir is known to be under legal disability such fact shall be stated".

¹⁰ The former Section 28 required that the value of the property be alleged; this requirement has been eliminated. If the action is brought in the County Court, however, the \$2000 jurisdictional requirement should be alleged as follows: "that the value of such property does not exceed two thousand dollars". Of great importance is the fact that the former statute required that a description of all property be given; the new statute requires that a description be given only of the real property the descent of which is sought to be determined.

¹¹ The new statute requires that the name of the record owner be alleged; the former statute had no such provision.

¹² This prayer is practically a verbatim copy of the new Section 31, which is completely rewritten from the former statute.

Address of Petitioner:
Zebina Hereditament
33 Thurt St.
Denver, Colorado

Silvester Hasede
Attorney(s) for Petitioner
First Majestic Equitable Building
Denver, Colorado
Address
Dylryt 004U
Telephone

THE STATE OF COLORADO }
CITY AND COUNTY OF DENVER } ss.

The undersigned, being duly sworn, says: that the facts set forth in this petition are true.

Silvester Hasede
Attorney for Petitioner.¹³

Subscribed and sworn to before me this 16th day of July, 1951.
My commission expires November 22, 1951.

(SEAL)

Uriah Urban
Notary Public.

(USE CAPTION)
IN THE MATTER OF THE DE-
TERMINATION OF INTER-
ESTS IN THE LANDS OF

ALPHONSO ABIATHAR
GRTHVLM, Deceased.

ORDER FOR ISSUANCE
OF NOTICE, FOR
PUBLICATION THEREOF,
AND FOR SERVICE
BY MAIL ¹⁴

The Clerk is ordered to issue the attached notice and to mail a copy of said notice ¹⁵ to all persons named in the petition as heirs whose addresses are shown in the petition.¹⁶

¹³ The petition shall be verified by the petitioner or by his attorney. This proceeding may be brought in the District Court in the county in which the decedent was last a resident, or the county in which the property or some portion thereof is situated, or in the County Court of any such county if the value of the property does not exceed \$2000. (Section 28).

¹⁴ It is believed that a motion for issuance of notice, publication, and service by mail could be dispensed with, so long as the order itself appears in the file; if, however, a motion is also required, that requirement could be satisfied by attaching to the order the following: "Petitioner moves that the attached order be issued".

¹⁵ The former statute required that a copy of the notice and a copy of the petition be mailed. The new Section 29 eliminates the necessity of mailing a copy of the petition.

¹⁶ The former statute required mailing to all persons named in the petition as heirs, who reside out of the state and whose addresses are shown or brought to the court's attention. *Mailing must now be made to each heir whose address is shown in the petition, whether he resides in the state, or out. This should be particularly noted.*

It is also ordered that said notice be published once each week for four successive weeks in the *Denver Clarion* a newspaper published in this county.¹⁷

Done in Open Court this 17th day of July, 1951.

BY THE COURT,

Zadok Zedekiah

Judge.

(USE CAPTION)

IN THE MATTER OF THE DETERMINATION OF INTERESTS IN THE LANDS OF

ALPHONSO ABIATHAR GRTHVLM,
Deceased.

} NOTICE ¹⁸

THE PEOPLE OF THE STATE OF COLORADO

TO BEATRICE BRIGET GRTHVLM, CELESTINE CORINNA HPUIWMN, DARIUS DEXTER GRTHVLM, EPHRAIM ENOS GRTHVLM, and FIDELIA FAUSTINA GRTHVLM, heirs at law of *Alphonso Abiathar Grthvlm*, Deceased, to all persons who are or claim to be heirs of said decedent, and to all persons interested, GREETING:

TAKE NOTICE that a Petition has been filed in this cause alleging that the above named decedent died leaving the following described real property situate in the *City and County of Denver*, State of *Colorado*, to-wit:

Plot One, Block One, New Monia

That the Petition names the above named persons as the heirs at law of decedent.

You are notified to answer said petition within twenty days after personal service of this notice on you, or within twenty days after the last publication of this notice, if served by publication; and in default of an answer the Court will proceed to hear the matter after expiration of the last period for answer.

Dated at *Denver, Colorado*, this 17th day of July, A. D. 1951.

(SEAL)

Hezekiah Hosea

Clerk of Said Court.

¹⁷ Insert: "A newspaper of general circulation in an adjoining Colorado county", if there is no newspaper of general circulation published in the county where the proceeding is filed.

¹⁸ The form of notice is now statutory. (Section 29).

(USE CAPTION)
IN THE MATTER OF THE DETERMI-
NATION OF INTERESTS IN THE
LANDS OF

ALPHONSO ABIATHAR GRTHVLM,
Deceased.

CERTIFICATE
OF MAILING
OF NOTICE ¹⁹

I hereby certify that I have this day mailed a copy of the Notice in the above entitled action to each of the following persons at the addresses set opposite their respective names, each envelope being addressed with sufficient postage prepaid to carry it to its destination:

<u>Name</u>	<u>Address</u>
<i>Beatrice Bridget Grthvln</i>	<i>00 Nought St., Sunlit Beach, Cali- fornia</i>
<i>Celestine Corinna Hpuiwmn</i>	<i>11 Waan Ave., South Saguache, Colorado</i>
<i>Darius Dexter Grthvln</i>	<i>22 Tughe St., Choo Choo, Colorado</i>
<i>Ephraim Enos Grthvln</i>	<i>00 Nought St., Sunlit Beach, Cali- fornia</i>
<i>Fidelia Faustina Grthvln</i>	<i>00 Nought St., Sunlit Beach, Cali- fornia</i>

Dated this 18th day of July, 1951.²⁰
(SEAL)

Hezekiah Hosea
Clerk of Said Court.

(USE CAPTION)
IN THE MATTER OF THE DETERMINA-
TION OF INTERESTS IN THE LANDS OF

ALPHONSO ABIATHAR GRTHVLM,
Deceased.

CONSENT ²¹

¹⁹ The former Section 29 provided that no service by mailing or personal service shall be required to be given to any person, of full age, who shall properly execute a consent. The new statute provides only that no notice by personal service need be given if a consent is executed. Because Section 29 provides: "The Clerk of the Court shall mail a copy of the Notice to each heir whose address is shown in the Petition. . . .", it would appear that mailing is necessary whether or not a consent has been executed and whether or not the heir has been personally served. As a practical matter, if a consent is executed and filed in the cause, the heir, even without mailing, is probably within the jurisdiction of the court, and if a conveyance is executed by the heir, he could not complain about any lack of mailing to him.

²⁰ The former Section 29 required that the mailing occur within ten days after the issuance of the notice; the new statute requires that mailing occur "at least 30 days prior to entry of decree". If mailing does not occur, therefore, within the 10 days formerly required, the only effect will be to delay the entry of the decree until 30 days have passed after the mailing.

²¹ Section 29 now provides: "No personal service shall be required on any person of full age who shall by writing, duly acknowledged before an officer authorized to take acknowledgments of deeds, consent to the hearing of the Petition or that the prayer of the Petition be granted". The former statute also provided that the consent may be signed in open court; this provision has been eliminated.

The undersigned, of full age, heirs at law of *Alphonso Abiathar Grthvlm*, deceased, do hereby consent to the hearing of the petition filed in the above entitled cause and that the prayer thereof be granted.

Beatrice Bridget Grthvlm
Ephraim Enos Grthvlm
 (Heirs of Decedent)

STATE OF CALIFORNIA }
 COUNTY OF SANDY } ss.

The foregoing instrument was acknowledged before me this 19th day of July, 1951, by *Beatrice Bridget Grthvlm and Ephraim Enos Grthvlm*.

Witness my hand and official seal.

My commission expires June 2, 1953.

(NOTARIAL SEAL)

Griselda Godwin
 Notary Public

(May be included on reverse side of Notice.)

RETURN OF SHERIFF

STATE OF COLORADO }
 COUNTY OF SAGUACHE } ss.

I hereby certify that I have duly served the within notice²² this 20th day of July, 1951, by personally delivering to and leaving with each of the following named persons a true copy thereof on the dates and at the places set opposite their respective names:

<u>Name</u>	<u>Date</u>	<u>Place</u>
<i>Celestine Corinna Hpuwmn</i>	<i>July 20, 1951</i>	<i>South Saguache, Colorado</i>

(SEAL)

Heman Herbert Herman
 Sheriff

²² The only material change in the requirement for personal service is that only a copy of the notice need be served. The former law required service of a copy of the notice and a copy of the petition. Personal service must still be had on "all persons residing in this state who are named in said Petition as heirs of the decedent and whose addresses are shown in the Petition". This is not a material change from the former statute.

AFFIDAVIT OF SERVICE BY DISINTERESTED PARTY

STATE OF *COLORADO* }
 COUNTY OF *SAGUACHE* } ss.

The undersigned affiant, being sworn, says: that affiant is over the age of eighteen years and is not a party to this action or proceeding; that affiant duly served the within notice by personally delivering to and leaving with each of the following named persons a true copy thereof on the dates and at the places set opposite their respective names:

Name	Date	Place
<i>Darius Dexter Grthvlm</i>	<i>July 21, 1951</i>	<i>Choo Choo, Colorado</i>
		<i>Israel Ignatius</i>

Subscribed and sworn to before me this *21st* day of *July, 1951*.
 My commission expires *May 3, 1954*.

(NOTARIAL SEAL)

Juliana Justina
 Notary Public

(USE CAPTION)

IN THE MATTER OF THE DETERMI-
 NATION OF INTERESTS IN THE
 LANDS OF

ALPHONSO ABIATHAR GRTHVLM,
 Deceased.

ORDER FOR
 APPOINTMENT OF
 A GUARDIAN
 AD LITEM²³

Launcelot Leonidas is hereby appointed guardian ad litem, and he is directed to appear²⁴ for *Fidelía Faustina Grthvlm, a minor*²⁵ for whom no *general guardian*²⁶ has appeared.

Done in open court this *5th* day of *September, 1951*.

BY THE COURT,

Zadok Zedekiah
 Judge

(USE CAPTION)

IN THE MATTER OF THE DETERMINATION
 OF INTERESTS IN THE LANDS OF

ALPHONSO ABIATHAR GRTHVLM,
 Deceased.

} DECREE

²³ Presented for use only in those counties requiring such formal order. Re motion: see Note 14.

²⁴ The new Section 30 changes slightly the wording of the former statute which ambiguously used the phrase, "before any testimony is taken . . .".

²⁵ Substitute "under legal disability" where applicable.

²⁶ Substitute "conservator" where applicable.

THIS MATTER having come on to be heard this 14th day of September, 1951.

THE COURT DOTH FIND:

That the matters as stated in the petition are true; that notice has been properly served in accordance with statute;²⁷ that no persons in interest have appeared;²⁸ that more than twenty days have elapsed since the date of the last publication of notice or the last personal service; and that more than thirty days have elapsed since the date of the mailing of notice.

That Alphonso Abiathar Grthvlm died intestate on October 1, 1947, at Sunlit Beach, California; that no administration of his estate has been granted in this State.²⁹

That he died seized and possessed of the following real property:

Plot One, Block One, New Monia, City and County of Denver, State of Colorado.

That his sole and only heirs at law and the interests each was entitled to in the above described property are:

<u>Name</u>	<u>Interest</u>
<i>Beatrice Bridget Grthvlm</i>	1/2
<i>Celestine Corinna Hpuiwmn</i>	1/8
<i>Darius Dexter Grthvlm</i>	1/8
<i>Ephraim Enos Grthvlm</i>	1/8
<i>Fidelia Faustina Grthvlm</i>	1/8

That petitioner herein is the present owner of said real property by conveyance from said heirs.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the above-named heirs are the sole and only heirs at law of said decedent, and that *Zebina Hereditament*, the petitioner herein, is now the present owner³⁰ of the above described real property.³¹

Done in open Court this 14th day of September, 1951.

BY THE COURT:

Zadok Zedekiah

Judge

²⁷ In the event that an answer has been filed by a person in interest, such person shall be notified of the time that a request for hearing on the petition will be made. This notice shall be given pursuant to the Rules of Civil Procedure. (Section 30).

²⁸ The former Section 32 gave any heir or his grantee, not personally served with notice, and not appearing at the hearing, *two years* in which to move to reopen the decree. The new statute provides that any heir or interested person not personally served with notice and not appearing at the hearing, "may file an answer at any time within six months after the entry of judgment and decree, but not thereafter, and shall be entitled to a hearing on such answer".

²⁹ If such be the case. See Note 6.

³⁰ The new Section 31 provides that the court shall determine the present owners of the real property, whereas the former statute provided that the decree shall name the persons entitled to interest therein.

³¹ § 33 provides: "Proceedings under this act may be joined with any action affecting real property brought under the Rules of Civil Procedure. In the event of such joinder the proceedings shall be conducted in compliance with said Rules". The former statute permitted joinder with an action for partition.