

# Probate In Common Form

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## FORM OF PLEADINGS

### Rule 6 Form of Pleadings

Every now and then it is good to remind ourselves about the rules pertaining to document preparation.

**General Rules of Practice for the District Courts, Rule 6.01** speaks to the format of documents and states the following regarding all pleadings

- Double-spaced
- Legibly handwritten or typewritten
- Printed on one-side of plain, unglazed paper of good texture
- Top margin of every page shall be not less than one (1) inch

(this margin needs to be free of all typewritten, printed or other written markings)

With respect to the one-sided paper, if you are using the “official forms” approved by the Minnesota Association of District Court Judges and the form

### White Paper

is two sided we will accept it. But if the document is your own created form we want it on single sided paper in compliance with the rule set forth above.

Hennepin County would like to add that all documents should be on white paper. Recently, we have had attorneys filing documents on everything from green to red paper. Our imaging technology has been tested with a variety of colored papers and the most clear image is to be found on white paper.



### Rule 6.02. Paper Size

“All papers served or filed by any party shall be on standard 8 1/2 x 11

## FORM OF PLEADINGS

inch paper.”

This has been the rule in District Courts in the State of Minnesota since 1982.

**The only exception to this rule in the probate area is the decedent’s will.**

### Rule 6.03. Backings Not Allowed

“No pleading, motion, order or other paper offered to the court administrator for filing shall be backed or otherwise enclosed in a covering.”

Some law firms like to make a booklet out of the will with plastic covers front and back. We ask that in accordance with this rule these plastic coverings be removed when presenting the will for probate.

The rule goes on to state that if the document you are submitting cannot be held together with a single staple in the upper left-hand corner it shall be clipped or tied in another manner in the upper left-hand corner.

**Rules of Civil Procedure, Rule 10.01** lists a number of require-

ments. The following are the caption elements we require in Probate Court:

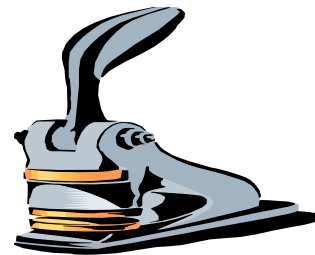
- Name of the Court
- County in which action is brought
- Title of the action
- Court file number if one has been assigned

Please pay particular attention to the file number as a decedent may have more than one file number. The document you are filing has to have the most current case number to become a part of the correct file.

Proofreading hints:

- Compare the file number on the top page of your document with any file number on subsequent pages.

Due to the common usage of templates we see names and or court file numbers of cases that have nothing to do with the notice attached. The information is carried over from the previous use of that document.



Notary stamp must be on all documents that require an acknowledgment.

- Adapt your interested party list, attached to an affidavit of mailing, to the case scenario.

For example, just because deceased persons are shown on the interested party list attached to the application or petition doesn’t mean they should be included in the interested party list attached to the affidavit of mailing. The interested party list attached to the affidavit of mailing is comprised of people who are living and have addresses.

The affidavit of mailing should include only persons you actually addressed an envelope to.

## FORM OF PLEADINGS

### Rule 403(a)

The Trust and Probate Court Rules, Rule 403 (a) addresses the preparation of documents.

The Rule states that it is the responsibility of the lawyers and others including ProSe parties “. . . to prepare for review and execution . . .”, the following:

- Orders
- Decrees
- Statements
- Applications
- Petitions
- Notices
- Related documents

**“. . . completely and properly drafted, to address the subject matter and relief requested.”**

Many counties including Hennepin have different

preferences on which of the documents listed in the Rule the Court requires you to prepare. Contact the court staff or probate registrar to find out the individual county’s preferences.

### Closing Statements

Which of the closing statement forms should I use to close an Informal Probate?

A common question with a quick answer and a longer more exhaustive answer.

Quick response: Miller Davis Form 682

Longer narrative:

Not knowing the differences between the two informal closing statements available, some personal representatives incorrectly choose Miller Davis form 688 Small Estate: Closing by Sworn Statement of Personal Representative.

The primary distinction between the two forms after a

cursory review is that one form requires a **notary (682)** the other does not.

A simple way to remember the correct document is that your personal representative needs to have a notary to acknowledge his acceptance of appointment and a notary to obtain his discharge as personal representative.

Form 688 closing by sworn statement pertains to an estate being administered under [Minnesota Statutes 524.3-1203](#) which is a Summary Proceeding.

It is not our practice in Hennepin County to appoint a personal representative in a Summary Proceeding under [Minnesota Statutes 524.3-1203](#).

[Minnesota Statutes 524.3-1003](#) governs the closing of an informal probate.

When can the closing statement be filed?

Not earlier than four months after the date of the appointment of a general personal representative.

## INFORMAL CLOSING STATEMENTS

Keep in mind that there is no statutory authority for the court to require the personal representative to file an informal closing statement. Some counties do require this document to be filed but that is a policy **not** a statutory requirement.

The closing statement of the personal representative (s) needs to include the following statements:

### Informal Closing Checklist

The personal representative has:

- Published notice to creditors more than four months prior to filing the closing statement
- Completely administered the estate

What does completely administering the estate mean?

- Paid, settled or otherwise disposed of all claims presented
- Expenses of administra-

tion, estate and other taxes have been paid, settled or otherwise disposed of and any exceptions noted in the closing statement

- Assets have been inventoried
- Assets have been distributed to the appropriate persons
- Detailed explanation of any unpaid claims

**Before** filing the statement with the Court a copy of the closing statement needs to be mailed to:

- All distributees of the estate
- All creditors
- All known claimants whose claims are neither paid nor barred
- **All demandants need 14 days mailed notice**
- Provide a written copy of a full accounting detailing the personal representative’s administration of the estate

to all the distributees whose interests are affected.

Practically this means that if the specific devisees have been completely paid only residuary distributees need to receive the final account.

The authority of the personal representative to transact business on behalf of the estate continues for one year from the date of the filing of the closing statement. Once the year has elapsed the authority of the personal representative is terminated. [Minn. Stat §524.3-1003.](#)

### Interested Parties

#### PREPARATION OF THE INTERESTED PARTY LIST

In the informal probate process the complete and thorough preparation of the application is critical to the success of commencing the estate. One of the primary things that the Registrar looks for is that all interested parties will be given notice. The interested party list must be complete.

## INTERESTED PARTY LIST

**Minn. Stat. § 524.3-301 (1) (ii)** states that the names and addresses of the following need to be included:

- spouse
- children
- heirs
- devisees

To this list the Court adds,

- **personal representative**
- demandants
- specifically omitted persons
- foreign consul
- devisees named in a separate writing
- guardians/conservators for protected persons
- trustees as devisees
- predeceased devisees
- natural guardian for minor children
- contingent beneficiaries (see note below)

- primary trust beneficiaries (see note below)

Unless the applicant/personal representative appears at the appointment and or provides a written waiver of notice of the informal probate proceedings, mail notice to the personal representative along with the other interested parties.



Economic Assistance needs to be listed as an interested party, if they filed a demand for notice, even if a waiver of the 14 day “notice of intent to file” accompanies the application. The affidavit of mailing notice must show that economic assistance received a copy of the Registrar’s notice.

If the decedent was born in a foreign country or left heirs or devisees residing in a foreign country whose consul is registered with the Minnesota Sec-

retary of State, the foreign consul is an interested party and needs to receive the Registrar’s notice. **Minn. Stat. § 524.3-306**

### Names

Compare the name of the devisee in the will, codicil and/or separate writing with their current name. If there are differences, the differences need to be mentioned on the Interested Party List.

Example, current name first, named in said will as \_\_\_\_\_.

This allows us to make the connection between the person named in the will and the party you intend to give notice to.

If your case has a predeceased spouse named as a devisee or personal representative, note that fact on the interested party list.

The Registrar is not permitted to presume facts. We are limited by the information provided in the application.

## INTERESTED PARTY LIST

An intestate application may require additional information on the interested party list concerning predeceased descendants or ancestors.

The Registrar makes a determination of who the decedent's heirs are and the share of the estate they are entitled to receive. If the progression to the heir goes through several levels of kinship, we need to know the name of those predeceased persons.

Our determination could read as follows:

Mary Smith, grandniece, being the sole surviving issue of decedent's predeceased nephew, John Smith, being the predeceased son of decedent's predeceased sister, Maureen Smith, a one-fourth (1/4<sup>th</sup>) share of decedent's intestate estate.

### Contingent beneficiaries

Some wills have extended survivorship clauses ranging from 30 days to six months. In the event that the applicant wishes to proceed with the application for informal probate prior to the expiration of this time period,

contingent beneficiaries have to be listed on the interested party list. The contingent beneficiaries need to receive the Registrar's notice the same as all the other interested parties.

### Primary trust beneficiaries

[Minn. Stat. § 524.3-306](#) Informal Probate; Notice Requirements is our reference with respect to how notice is to be given in an informal probate proceeding and to whom notice is to be given.

Notice “. . . shall be given . . . by mailing a copy of the notice by ordinary first class mail to all **interested persons**, other than creditors.” . . . (emphasis added)

[Minn. Stat. § 524.1-201\(24\)](#) includes beneficiaries in its definition of interested persons. [Minn. Stat. § 524.1-201 \(3\)](#) in defining beneficiaries as it relates to trusts includes persons who have “. . . any present or future interest, vested or contingent, . . .”

The interested party list generally has three (3) columns of information. The name of the interested party, their legal

interest/relationship to the decedent, their mailing address and if a minor the date of birth becomes a fourth column.

### Legal Interest vs. Relationship

Many times this second column is incomplete on the applications and petitions filed with the Court.

What are we looking for when it states “**interest**” on the forms?

- Heir
- Devisee
- Trustee
- Trust beneficiary
- Creditor
- Demandant
- Nominated personal representative

The interested party may have multiple interests in the estate.

Do not list someone as an heir if they did not survive the decedent. In order to be an heir, you must have survived the decedent by 120 hours.

## INTERESTED PARTY LIST

What do we mean by relationship?

- Mother
- Father
- Spouse
- Son
- Daughter

### Addresses:

The last known complete address, including zip code, needs to be included for every living interested party and entity.



Do not combine persons living at the same address as one listing.

### General Comments:

The interested party list needs to be clear, concise and easy to read. Keep in mind that although you may have been laboring on this file for hours before your appearance in

Court this is all new information to the Registrar. The information needs to flow logically. The names on the list should appear as whatever the individual or entity calls themselves now followed by “named in said will as. . .” if the name is now different than in the will. The Registrar cannot assume that:

James R. Johnson is the same as James Johnson named in the will.

The issue of predeceased interested parties need to be listed if there is a possibility they would take if the will were to be challenged and overturned. Likewise, a predeceased interested party with **no surviving issue** should be noted.

**Post deceased interested parties:** If a devisee or heir survives the required five days (120) hours to take a bequest or an intestate share but then dies before the client ever comes to you to commence the estate, list the interested party with their status as of the 120 hour period and indicate

“**now deceased**”. In addition, the personal representative or in the absence of an appointed personal representative the known heirs of the now deceased person need to be listed and given notice of this proceeding. The bequest from this estate may necessitate the opening of an estate for their family member.

**ALERT**

Problems continue with affidavits of mailing not arriving at the Court in a format that can be accepted for filing. Most common errors:

1. Court headings are missing.
2. Notary seals missing.
3. Attachments missing.
4. List of interested parties missing.
5. Incomplete dates of mailing.

Please proof your filings before submitting to the Court to expedite processing and acceptance.

HENNEPIN COUNTY DISTRICT COURT  
FOURTH JUDICIAL DISTRICT



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Minneapolis, Minnesota 55487-0421

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<http://www.courts.state.mn.us/districts/fourth/>

TO:



### Cash Bond in Lieu of Surety Bond

If the Registrar orders a bond in an informal probate, a cash bond in lieu of a surety bond will not be accepted. The reason is that Hennepin County's accounting department will need a court order for the release of the cash at a later date. The accounting department will not accept the Registrar's Determination to Release Bond. Consequently, the applicant must be pre-approved for a bond if the demand for bond is on file with the Court at the time the application is presented to the Registrar for approval.