

ASSEMBLY BILL

No. 1893

Introduced by Assembly Member Wagner

February 22, 2012

An act to repeal and add Section 1000 of the Probate Code, relating to probate proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1893, as introduced, Wagner. Probate proceedings: rules of practice.

Existing law provides that except to the extent that the Probate Code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings and other proceedings, as specified, apply to, and constitute the rules of practice in, proceedings under that code. Existing law provides that all issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions.

This bill would recast those provisions to provide more specificity for applicable rules for probate proceedings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1000 of the Probate Code is repealed.
- 2 ~~1000. Except to the extent that this code provides applicable~~
- 3 ~~rules, the rules of practice applicable to civil actions, including~~
- 4 ~~discovery proceedings and proceedings under Title 3a~~
- 5 ~~(commencing with Section 391) of Part 2 of the Code of Civil~~

1 ~~Procedure, apply to, and constitute the rules of practice in,~~
 2 ~~proceedings under this code. All issues of fact joined in probate~~
 3 ~~proceedings shall be tried in conformity with the rules of practice~~
 4 ~~in civil actions.~~

5 SEC. 2. Section 1000 is added to the Probate Code, to read:

6 1000. (a) All issues of fact joined in probate proceedings shall
 7 be tried in conformity with the rules of practice of civil actions.

8 (b) Except to the extent that this code provides applicable rules
 9 of practice, the rules of practice applicable to civil actions provided
 10 in the Code of Civil Procedure apply to, and constitute the rules
 11 of practice in, proceedings under this code.

12 (c) Except to the extent that this code provides applicable rules
 13 of practice, proceedings in connection with motions and discovery
 14 provided in the Civil Code or the Code of Civil Procedure,
 15 including motions to strike, motions for judgment on the pleadings,
 16 motions for summary judgment, motions for summary adjudication
 17 on the issues, and discovery motions, apply to, and constitute the
 18 rules of practice in, proceedings under this code.

19 (d) The following exceptions or limitations apply to civil action
 20 motions and pleading practice in proceedings under this code:

21 (1) Demurrers do not apply, except as provided in this code.

22 (2) Provisions of the Code of Civil Procedure regarding
 23 compulsory cross-complaints do not apply.

24 (3) Provisions of the Code of Civil Procedure regarding answers
 25 and amendment of pleadings do not apply to those proceedings in
 26 which there has been no responsive pleading filed. In those
 27 proceedings in which a responsive pleading has been filed, the
 28 parties may amend their pleadings without court approval until
 29 120 days prior to the date set for trial or other evidentiary hearing,
 30 except as otherwise ordered by the court. Any amendment to a
 31 pleading proposed within 120 days of a trial or other evidentiary
 32 hearing shall be governed by the provisions of the Code of Civil
 33 Procedure.