

AMENDED IN SENATE JUNE 25, 2012

AMENDED IN ASSEMBLY MAY 7, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1893

Introduced by Assembly Member Wagner

February 22, 2012

An act to *amend Section 1022 of, and to repeal and add Section 1000 of, the Probate Code, relating to probate proceedings.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1893, as amended, 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. *Existing law also requires that an affidavit or verified petition be received as evidence when offered in an uncontested proceeding under the Probate Code.*

This bill would recast those provisions to provide more specificity for applicable rules for probate proceedings. *This bill would also require that an affidavit or verified petition be received as evidence when offered in accordance with specified provisions.*

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 Section 1000 of the Probate Code is repealed.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

3 1000. (a) All issues of fact joined in probate proceedings shall
4 be tried in conformity with the rules of practice of civil actions.

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

9 (c) Except to the extent that this code provides applicable rules
10 of practice, proceedings in connection with motions and discovery
11 provided in the Civil Code or the Code of Civil Procedure,
12 including, but not limited to, motions to strike, motions for
13 judgment on the pleadings, motions for summary judgment,
14 motions for summary adjudication on the issues, and discovery
15 motions, apply to, and constitute the rules of practice in,
16 proceedings under this code.

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

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

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

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

30 *SEC. 3. Section 1022 of the Probate Code is amended to read:*

31 1022. An affidavit or verified petition shall be received as
32 evidence *as provided in Section 2009 of the Code of Civil*
33 *Procedure* or when offered in an uncontested proceeding under
34 this code.

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