

RESOLUTION 05-02-2018

DIGEST

Probate Code: Correct Reference

Amends Probate Code section 1304 to correct a reference to a non-existent "Part" in the Probate Code.

STATEMENT OF REASONS

The Problem: The existing Probate Code section 1304(c) references Part 1 and Part 2 of Division 10; however, a review of Division 10 reveals that there is no Part 1 that commences with section 20100 and no Part 2 that commences with Section 20200. There is clearly an error in section 1304(c): it names the wrong Division, or the reference to the "Part" is incorrect, or the reference to the sections is incorrect (or a combination).

The Solution: This resolution corrects a clear error in the Probate Code by replacing the word "Part" with the word "Chapter" in section 1304(c).

No other construction resolves the error. One could construe 1304(c) as an attempt to reference to Division 11 (not Division 10), Part 1, commencing with Section 21101 (not 20100), and, Part 2 commences with 21200 (not 20200). However, Division 11 deals with the CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS. This construction would introduce redundancy. The appeal of an order regarding construction of a Trust is covered by 1304(a) which provides that "(a) Any final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, ..." is appealable. Section 17200(b)(1) provides for the construction of a trust instrument, and thus is already appealable under 1304(a). Thus, it would be redundant to construe PC 1304(c) as an attempt to refer to Division 11.

This construction is parallel and consistent with the surrounding code. Division 10 deals with the Proration of taxes. Section 1303 includes a clear reference to Division 10, Ch 1, Section 20100 and Ch 2, Section 20200, indicating that section 1303 intended to have a provision for the appealability of an order for proration of taxes. An appeal under a trust is equally relevant as an appeal under a will. Thus, it appears that PC 1304(c) was meant to be parallel to 1303(l).

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 1304 to read as follows:

- 1 § 1304
2 With respect to a trust, the grant or denial of the following orders is appealable:
3 (a) Any final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9,
4 except the following:
5 (1) Compelling the trustee to submit an account or report acts as trustee.
6 (2) Accepting the resignation of the trustee.
7 (b) Any final order under Chapter 2 (commencing with Section 19020) of Part 8 of Division 9.
8 (c) Any final order under ~~Part Chapter~~ 1 (commencing with Section 20100) and ~~Part Chapter~~ 2
9 (commencing with Section 20200) of Division 10.
10 (d) Determining whether an action constitutes a contest under former Chapter 2 (commencing
11 with Section 21320) of Part 3 of Division 11, as that chapter read prior to its repeal by Chapter 174 of

12 the Statutes of 2008.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 1304 to correct a reference to a non-existent “Part” in the Probate Code. This resolution should be approved in principle because the error in the Probate Code needs to be corrected.

Probate Code section 1304 delineates orders in trust actions that are appealable. Subsection (c) refers to orders made under Division 10 of the Probate Code which relates to proration of estate taxes and generation-skipping taxes. Division 10 consists of two Chapters but no “Parts”. The current statute makes reference to Part 1 and Part 2 and should be corrected to match Division 10 of the Probate Code.

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TRUSTS AND ESTATES SECTION - SUPPORT

TEXCOM supports this correction of an apparent error in the Probate Code.