

## Resolution 12-08-2009

### Probate: Hearsay Exception for Wills and Trusts

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 1260 to read as follows:

1 § 1260.

2 (a) Evidence of a statement made by a declarant who is unavailable as a witness that  
3 he or she has or has not made a will or established a revocable trust, or has or has not  
4 revoked his or her will or revocable trust, or that identifies his or her will or revocable trust,  
5 is not made inadmissible by the hearsay rule.

6 (b) Evidence of a statement is inadmissible under this section if the statement was  
7 made under circumstances such as to indicate its lack of trustworthiness.

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

**PROPONENT:** Los Angeles County Bar Association

### **STATEMENT OF REASONS:**

Existing Law: Provides a hearsay exception for statements made by decedent when living that are probative as to the existence or nonexistence of a will.

This Resolution: Would expand this hearsay exception to include revocable trusts as well as wills.

The Problem: In an era where many estate plans are contained in revocable trust documents rather than in wills, all the arguments in favor of this hearsay exception for wills would also apply to revocable trusts. Admission of evidence under this proposed exception should expand the scope of admissible reliable evidence in contested proceedings with regard to the estate plan of a decedent or claims against the estate or trust of a decedent.

### **IMPACT STATEMENT:**

This proposed resolution does not affect any other law, statute or rule.

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