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New York County Lawyers Association Supports Partial Repeal of Section 135-C

The New York County Lawyers Association (“NYCLA”) commends the great work embodied in the report of the New York State Bar Association (“NYSBA”), which was prepared in a compressed time frame. We support the repeal of the recently issued notarization rules as they apply to attorneys.¹

As NYSBA’s report clearly and correctly demonstrates, the rules impose an unnecessary burden on attorneys whose conduct is already extensively regulated.

NYCLA Supports Partial Repeal of Section 135-c

New York Executive Law Section 135-c, which went into effect on Feb. 1, requires notaries who service clients in-person to keep a journal of each document notarized, including the type of identification provided, for 10 years.

At the outset, we object to these rules because they were imposed with no notice or phase-in period and without any consultation with the legal profession.

More importantly, these rules are unnecessary and unduly burdensome for attorneys since their conduct is already extensively regulated by prevailing professional rules of conduct and the oversight of Grievance Committees within each judicial department. Attorney misconduct in connection with notarization, depending upon its seriousness, could render an attorney subject to censure, suspension, or disbarment.² We also share the concern that these requirements could be especially burdensome to solo practitioners, practitioners in rural areas, providers of legal services to the indigent, and other legal providers who operate with a small staff.

The new notary rules are designed to address the very real and very serious problem of deed fraud, a fraudulent scheme in which criminals steal real property from their victims using false signatures. From July 2014 through February 2022, there were more than 3,350 complaints of deed fraud in New York City.³ The New York City Council has stated that almost all cases of deed fraud involve notarization fraud.⁴ However, we are unaware of any data showing that attorneys are responsible for these acts of fraud or any data indicating that existing regulation of attorneys is insufficient to address this issue.

Conclusion

NYCLA fully supports NYSBA’s excellent Report on the notarization rules.

About the New York County Lawyers Association

The New York County Lawyers Association (www.nycla.org) was founded in 1908 as one of the first major bar associations in the country that admitted members without regard to race, ethnicity, religion or gender, and has a long history of supporting the rights of LGBTQ+ people. Since its inception, NYCLA has pioneered some of the most far-reaching and tangible reforms in American jurisprudence. For more information on NYCLA please visit nycla.org.

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1 -- <https://nysba.org/app/uploads/2022/03/approved-resolution-and-reports-Task-Force-on-Notarization-March-2-2023.pdf>

2 -- E.g., Matter of Toback 2021 NY Slip Op 05066 (1st Dep't 2021)

3 -- <https://www.nytimes.com/2023/01/18/nyregion/solny-deed-theft-charges-ny.html>

4 -- <https://nylssites.wpengine.com/citylandnyc/wp-content/uploads/sites/14/2020/11/Res-1427.pdf>