



Memorandum in Support

April 5, 2023

S.5162
A.5772

By: Senator Hoylman-Sigal

By: M of A Lavine

Senate Committee: Third reading

Assembly Committee: Judiciary

Effective Date: First January next succeeding the date upon which it shall have become a law.

AN ACT to amend the civil practice law and rules, in relation to an affirmation by any person, wherever made, in a civil action.

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

An undue burden falls on unrepresented parties when they need to file a sworn document, such as an affidavit or a verified pleading that requires notarization, in New York State court civil actions and proceedings. The notarization requirement has long been a significant impediment particularly in landlord-tenant proceedings and is even more so during a pandemic and as the State Unified Court System expands e-filing.

This requirement poses a barrier to access to justice for any unrepresented parties who do not have easy access to a notary. In many parts of the state, especially outside cities, finding a notary is difficult and presents a huge challenge for persons unable to travel or with limited public transportation options, causing litigation delays and added costs. The pandemic has worsened this plight.

Currently, C.P.L.R. § 2106 exempts only two groups from the requirement for a notarized affidavit, authorizing them to file an affirmation declared to be true under penalty for perjury. The first group, under C.P.L.R. § 2106(a), comprises attorneys, physicians, osteopaths, and dentists. The second group, under C.P.L.R. § 2106(b), comprises persons physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the United States' jurisdiction.

Since 1976, federal law has allowed, without exception, unsworn and unnotarized declarations as long as they include a statement that the document is true under penalty for perjury. 28 U.S.C. § 1746. C.P.L.R. § 2106(b) moved New York closer to the federal court civil practice in effect for over 40 years, but not far enough. If an affirmation declared to be true under penalty for perjury is acceptable from persons outside the United States, the same affirmation ought to be acceptable from persons within the United States.

Amending the C.P.L.R. provision will not affect the efficacy of an unsworn affirmation as compared to an affidavit, since an affirmation is already an accepted alternative to an affidavit under C.P.L.R. § 2106(b). The amendment would not relieve a party from establishing the declarant's identity or the document's authenticity. The proposed change relates only to a declaration of the document's truth.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.