Proskauer

Affirmations over Affidavits: Highly Anticipated NY Bill Promises to Simplify Civil Action

Minding Your Business on **June 23, 2023**

A welcome change may be afoot for New York lawmakers, as New York Senate Bill S5162 recently passed the Senate and Assembly judiciary committees. The bill, which may soon be delivered to the Governor for signature, would amend CPLR 2106 to streamline the civil action process, ending the current notarization requirement to allow anyone to sign an affirmation sworn under penalty of perjury in place of an affidavit in a civil action within the state. Specifically, S5162 would amend CPLR 2106 to read as follows:

Rule 2106. Affirmation of truth of statement.

The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an action in New York in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:

I affirm this ___ day of _____, ____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

Many, including the Officers of the New York County Lawyers Association (NYCLA) hail the bill's arrival as a timesaving, equitable improvement which would spare litigants, non-party witnesses, and litigators the unnecessary time and cost constraints of notarization. In many communities, notaries are relatively scarce; moreover, many low-income litigants and individuals cannot easily secure childcare, transportation, or time off work to get a document notarized, which produces a compounding access issue. The height of the coronavirus pandemic shed additional light on the limitations of CPLR 2106 in its current form, as the notarization requirement forced many to venture into banks and other crowded public spaces—or else face the difficulties of securing a virtual notarization. Beyond improving access to justice in the state, SB5162 would bring about uniformity, aligning New York State court practice with current federal rules which allow unsworn declarations under penalty of perjury in place of affidavits, as authorized by 28 U.S.C. 1746—a practice which has been in force for over forty years. If the Governor signs the bill, New York will join over 22 states that have already conformed their rules to the federal standard. S5162 is expected to take effect on the first of January and will apply to all actions commenced after or then pending on such date.

View original.

Related Professionals

- **Dakshina H. Chetti**
  Associate