

New York Civil Practice Will Allow Unnotarized Affirmations Instead Of Affidavits

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Notarized affidavits will not be required for court submissions starting in the new year. As of January 1, 2024, New York CPLR Rule 2106 is amended to permit that an affirmed statement can be used in a New York action instead of an affidavit. This expands the use of CPLR 2106 affirmations to anyone—not like now where only health care professionals, attorneys, and those outside of the State of New York can make affirmations.

Presently, CPLR 2106 allows a New York State attorney or health care practitioner licensed, certified, or authorized under title eight of the education law to practice in the state, to substitute an affirmation for an affidavit in judicial proceedings in which they are not a party. If you are not in one of those categories, you need a notarized affidavit. As such, the amendment aims to relieve persons who may be faced with difficulties in locating a notary or obtaining New York equivalent notarizations in foreign jurisdictions, an issue often arising in major commercial litigation.

When the amendment comes into effect, CPLR 2106, entitled "Affirmation of truth of Statement" will provide as follows:

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)

The use of an affirmation in place of an affidavits for all purposes in a civil action is modelled upon the federal statute (see 28 U.S.C. 1746), which allows the use of unsworn declarations under penalty of perjury—a practice that has been in place since 1976.

This change in civil litigation will alleviate the burden of preparing documents such as witness statements that must be submitted in court. Naturally, something may be lost in not requiring a witness to go through the formality of involving a notary public. Despite removing the need for a notary public, CPLR 2106 will require for the signer to affirm the statement under the penalties of perjury.

If you have any questions about this development, please feel free to contact Rafael Vergara (vergarar@whiteandwilliams.com, 201.368.7216), or Geovanny M. Mora (morag@whiteandwilliams.com, 201.368.7225) for more information, or a member of the Litigation practice.

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