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The Honorable Kathy Hochul
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Re: NYSBA Support for S5162/A5772

Dear Governor Hochul:

The New York State Bar Association (NYSBA) supports S5162 (Hoylman-Sigal)/A5772 (Lavine), which amends the Civil Practice Law and Rules (CPLR), to allow for an affirmation by any person, wherever made, in a civil action. 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 became even more so during the pandemic and as the State Unified Court System continues to expand e-filing.

This notarization requirement poses a barrier to access to justice for 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. Currently, CPLR § 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: (i) attorneys, physicians, osteopaths, and dentists¹; and 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.²

¹ CPLR § 2106(a).

² CPLR § 2106(b).

In contrast, since 1976 federal law³ has allowed, without exception, unsworn and unnotarized declarations if they include a statement that the document is true under penalty for perjury. CPLR § 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 CPLR 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 CPLR § 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 S5162/A5772. If the Chamber has any questions about our support or would like to discuss this legislation, do not hesitate to contact me or our General Counsel, David Miranda, who can be reached at dmiranda@nysba.org, 518-487-5524.

Respectfully,

A handwritten signature in black ink, appearing to read "Richard C. Lewis". The signature is written in a cursive style with a large initial "R" and "L".

Richard C. Lewis
President, NYSBA

Cc: Liz Fine, Esq.

³ 28 U.S.C § 1746.