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August 13, 2024

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

Re: NYSBA Support for A3225(Vanel)/S2271(Liu)

Dear Governor Hochul:

The New York State Bar Association supports this legislation which would clarify requirements for acknowledgements, proofs, oaths and affirmations without the state.

This legislation eliminates the need for a certificate of conformity for an out-of-state affidavit. That requirement adds little to the process and is the source of much unneeded litigation. *See Midfirst Bank v Agho*, 121 AD3d 343 (2d Dept 2014). As the Practice Commentaries to CPLR 2309 point out, the cases are all over the map and have created problems and confusion in a variety of contexts. Some courts have disregarded noncompliance with the statute, some permitted correction and did not deem noncompliance fatal to consideration of out-of-state affidavits, and some applied the requirement strictly. The requirement adds nothing of substance to an out-of-state affidavit yet adds unnecessary burdens on an out-of-state witness who at times cannot or cannot easily locate an additional person with knowledge and authority to certify that the notarization process of the affidavit was performed according to and in conformity of the laws of the state where it was administered. Incidentally, no such requirement exists for a written statement of any person who is located outside of the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. *See* CPLR 2106 (b). A witness who is located in a foreign country may affirm pursuant to CPLR 2106 (b). With the COVID19 pandemic and the various restrictions for movement, limited access to court clerks, multiple precautions concerning inter-personal contact, there is no justification to continue to maintain such a requirement for out-of-state affidavits. Like with an out of country affirmation (*see* CPLR 2106 [b]), a false statement made in an out-of-state affidavit submitted in an action or proceeding pending in New York, the witness may be subject to penalties of perjury in New York.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation and urges that it be signed into law. We welcome the opportunity to meet with the Chamber to discuss A3225/S2271 and address any questions your office may have regarding this legislation. Please do not hesitate to contact me, or NYSBA's General Counsel, David Miranda, who can be reached at dmiranda@nysba.org, 518-487-5524.

Respectfully,

A handwritten signature in cursive script, reading "Domenick Napoletano". The signature is written in black ink and is positioned above the typed name.

Domenick Napoletano
President, NYSBA

Cc: Liz Fine, Esq.