

"UNSWORN AFFIRMATIONS" BILL – ENHANCING NEW YORK'S LEGAL LANDSCAPE

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In a significant development for the legal community in New York, Governor Hochul has recently signed into law a bill that amends CPLR 2106, introducing the concept of "unsworn affirmations" in civil actions. This legislative change, effective from January 1, 2024, is a progressive step towards simplifying legal procedures and enhancing access to justice.

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The New York City Bar Association has been a strong proponent of this change since 2021, advocating for a legal framework that is more accommodating and less cumbersome for litigants and witnesses. The new law allows the use of unsworn affirmations under penalty of perjury as an alternative to sworn affidavits or affirmations that traditionally required notarization by a public notary.

Under the current legal system, unsworn declarations are limited to specific professional groups and circumstances, i.e., for attorneys, physicians, osteopaths, and dentists, or for declarations made outside the United States. This restriction

posed significant challenges, particularly for unrepresented individuals and those residing in areas with limited access to notarial services. The difficulties were further highlighted during the COVID-19 pandemic, underscoring the need for a more flexible legal procedure.

The amendment is seen as a response to these challenges, aiming to alleviate the burden on litigants, non-party witnesses, and the legal system as a whole. It is expected to reduce the undue pressure on county clerks and courts, often burdened with providing notarial services to those unable to afford or access them. A notable aspect of this new law is the specific language of the unsworn affirmation that will be used starting January 1, 2024. The standardized format is as follows:

*"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)"*

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This clear and concise format ensures that individuals making affirmations are aware of their responsibilities and the legal implications of their statements. The City Bar believes that the introduction of unsworn affirmations will not compromise the integrity of witness statements. The rationale is that notaries do not typically investigate the truth of the facts being sworn, and the act of making an affirmation under penalty of perjury could, in fact, enhance the incentive to tell the truth.

Furthermore, this amendment aligns New York's legal practices with the federal standard, which has accepted unsworn declarations under penalty of perjury for over four decades. With this change, New York joins over 22 states that have already adapted their legal systems to this standard, fostering a uniform approach across various jurisdictions.

It is important to note that the new amendment does not completely phase out the use of notarized affidavits and affirmations. Notarization will still be necessary in situations where the law requires the declarant to establish their identity or the authenticity of a document.

The enactment of this bill is a welcome change, particularly for those facing logistical and financial barriers in accessing legal services. It promises a more equitable and efficient legal process, reflecting New York's commitment to evolving its legal system in line with contemporary needs and challenges.

This article was written by Partner John Kissane and Associate Sabih Siddiqi. If you have any questions, please contact one of the authors or your regular Watson Farley & Williams contact.

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