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Memorandum of Support

Remove Barriers to Access to Justice Certain Civil Proceedings S. 5162 (Hoylman-Sigal)

Empire Justice Center strongly supports this legislation that will remove significant barriers to access to justice for low income New Yorkers especially in housing, civil and family court matters. This bill would amend CPLR 2106 to allow litigants in civil cases to swear to a statement under penalty of perjury without having to notarize the document.

The notary requirement is an outdated burden to access to justice in civil proceedings. There is no evidence that notarization increases the truth of statements made. Under Federal Law and in more than 20 states unsworn and unnotarized declarations are accepted as long as they include a statement that the document is true under penalty of perjury. The notarization process became more onerous during COVID: Litigants who do not have a lawyer have to pay a notarization fee, spend time and money to find a notary, take time off work, and travel to the notary.

Having an attestation process would eliminate multiple barriers, supporting clients who are going through the already challenging process of changing name and gender markers and saving time and money.

For example, a client of Empire Justice Center, K, had an expired driver's license, and was not able to get her name change petition notarized at her local bank, despite having the expired driver's license, social security card, and birth certificate. The attorney working with her had to drive approximately 50 miles notarize her petition.

Another client, A, did not have transportation and was too nervous to meet at Empire Justice

Center's office to get the petition notarized, resulting in a delay of several months. Our name change clients also mainly have ID documents that do not match their match their gender identity or expression, which creates anxiety for them in producing the documents, so they prefer for either their attorney or someone from Empire Justice Center to notarize for them. This can result in delays if they are far from the office.

Requiring a notary disproportionately affects low-income and unrepresented individuals, especially communities of color and deepen the digital divide. The "opportunity" to notarize court documents remotely only works for those who have access to the internet and necessary technology, and are digitally literate.

1. Low-income litigants do not have printers, scanners, fax machines or computers
2. Many cannot pay the expenses needed to electronically submit a notarized statement.
3. Many lack the digital skills to navigate the internet, equipment and tools required for remote notarization.

We urge immediate passage of this bill.

March 10, 2023

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