

# NY CLS CPLR R 2106

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***New York***

***Consolidated Laws Service*** >  
***Civil Practice Law And Rules (Arts. 1 — 100)*** >  
***Article 21 Papers (§§ 2101 — 2106)***

## **R 2106. Affirmation of truth of statement.**

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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)

## **History**

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Add, L 1962, ch 308, § 1; amd by Judicial Conference (1973); L 2014, ch 380, § 1, effective January 1, 2015; L 2023, ch 559, § 1, effective January 1, 2024; L 2023, ch 585, § 1, effective October 25, 2023; L 2024, ch 665, § 3, effective December 21, 2024.

Annotations

## **Notes**

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**Editor's Notes**

**Laws 2023, ch 559, § 2**, eff January 1, 2024, provides:

§ 2. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law and shall apply to all actions commenced on or after such effective date and all actions pending on such effective date.

### **Amendment Notes**

**The 2014 amendment by ch 380, § 1** deleted “by attorney, physician, osteopath or dentist” at the end of the section heading; added the (a) designation; and added (b).

**The 2023 amendment by ch 559, § 1**, deleted former (a); deleted the (b) designation; in the first sentence, substituted “wherever made” for “when that person is 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 jurisdiction of the United States”, added “in New York”, and deleted “I am 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 jurisdiction of the United States, that” following “imprisonment, that” in the second sentence.

**The 2023 amendment by ch 585, § 1**, substituted “a health care practitioner licensed, certified, or authorized under title eight of the education law to practice in the state, who is not a party to an action, when subscribed and affirmed by him or her to” for “a physician, osteopath or dentist, authorized by law to practice in the state, who is not a party to an action, when subscribed and affirmed by him to.”

### **Commentary**

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### **PRACTICE INSIGHTS:**

#### **THE USE OF AFFIRMATIONS**

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## INSIGHT

Effective January 1, 2024, New York amended CPLR 2106 to permit, like in federal court, the use of affirmations by anyone, not just attorneys and healthcare professionals admitted or licensed under New York law.

## ANALYSIS

**Amendment provides that affirmation can be used in lieu of affidavit and sets forth the precise language to use.**

The witness must affirm that their statements are true under the penalties of perjury, and may be used in an action in New York in lieu of and with the same force and effect as an affidavit. Practitioners are advised to use the specific language on the statute: 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.<sup>1</sup>

**Affirmation should strictly comply with the statutory language.**

Failure to utilize the language of CPLR 2106 could render the statements inadmissible. See *Great Lakes Ins. v American Steamship Owners Mut. Protection & Indem. Assoc. Inc.*, 228 A.D.3d 429, 213 N.Y.S.3d 286, 2024 N.Y. App. Div. LEXIS 3170 (1st Dep't 2024) (holding that defendant's affirmation was inadmissible because it did not contain CPLR 2106 language); *Fifth Partners LLC v. Foley*, 227 A.D.3d 543, 212 N.Y.S.3d 566, 2024 N.Y. App. Div. LEXIS 2835 (1st Dep't 2024) (noting that affirmation failed to comply with statutory language requirement).

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<sup>1.1.</sup> In addition to the permissible use of affirmations in an action or proceeding in a court of law, section 302 of the State Administrative Procedure Act extends that use to include any administrative proceeding in New York. The precise language reflects this change: 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 administrative hearing.

## **Advisory Committee Notes**

This rule is new. The Advisory Committee has been urged to adopt such a provision on a number of occasions. A number of bills to allow attorneys to certify their statements in certain proceedings instead of taking an oath to verify them have been introduced in the Legislature in recent years. See, e.g., 1958 NY County Lawyers Ass'n, Reports on New York State Legislative Bills, Report No. 134 and 1959 id. Report No. 43 (recommending approval). In California anyone may certify an unsworn statement to be true under penalty of perjury. Such an unsworn statement has the same effect as a sworn statement, except in three specified instances. See Cal Civ Proc Code § 2015.5 (Supp 1960). Similarly, any statement required to be made under the Federal Internal Revenue Laws is not verified by an oath but by a declaration that the statement is made under the penalty of perjury. See Int Rev Code of 1954, § 6065(a). New Jersey, it should be noted, permits oaths to be taken before attorneys. See NJ Rev Stat § 41:2-1 (Supp 1960).

The purpose of the rule is to save an attorney appearing in a civil action the trouble of taking an oath where he must formerly make an affidavit or verification of a paper to be served or filed in the action. An oath requires an appearance before someone authorized to administer it. The appearance takes some time and if there is no one in the attorney's office to administer the oath at the time he is executing a paper, what is otherwise an annoyance can become a substantial nuisance. The matter is particularly burdensome to the attorney practicing in a small law office.

While attorneys always have a professional duty to state the truth in papers, the affirmation under the proposed rule gives attorneys adequate warning of the possibility of prosecution for perjury for a false statement. The official forms will contain a form such as the following:

Affirmation.

The undersigned, attorney of record [of counsel with the attorney of record] for A.B. affirms that the foregoing statement is true, under penalty of perjury. C.D. [address].

A corollary amendment is proposed to section 1620 of the Penal Law to include false affirmation by an attorney under this rule within the definition of perjury. In California false certification is perjury, and under the Internal Revenue Code it is a felony. See Cal Penal Code § 118 (Supp 1960); Int Rev Code of 1954, § 7206(1). An attorney who certifies falsely will also be subject to the sanctions for professional misconduct established by section 90 of the Judiciary Law.

The term “affirmation” rather than “certification” is used to distinguish this statement from certification of the accuracy of a copy under new CPLR rule 2105.

### **2014 Recommendations of the Advisory Committee on Civil Practice:**

The Committee recommends the amendment of CPLR 2106 to permit the use of an affirmation in place of an affidavit for all purposes in a civil action, a procedure modeled upon the Federal declaration procedure ( see 28 USC 1746; unsworn declarations under penalty of perjury). This proposal has been amended to add the words “under the laws of New York” in the affirmation.

Currently, under New York law, an affidavit must be sworn to before a person authorized to take acknowledgments of deeds by the Real Property Law ( CPLR 2309(a)). However, specified professional persons (attorney, physician, osteopath or dentist) may substitute an affirmation for an affidavit in judicial proceedings in which they are not a party. This measure would broaden the statute to permit the use of an affirmation in place of an affidavit for all purposes in a civil action with no restriction to non-parties.

The current law has created two significant problems in New York practice. First, the requirement for notarization places a major burden on unrepresented litigants who have difficulty locating a notary. Second, the requirement has made it extremely burdensome to obtain equivalent notarization in foreign countries, which is a common occurrence in major commercial litigation.

Within the state, it is increasingly difficult to find a notary outside of central business districts, and when found, usually in banks, they often refuse to notarize for anyone not known to a

branch officer. The significant needs of pro se litigants for notary services has resulted in heavy demand upon the county and court clerks' offices, particularly in the City of New York, resulting in an untenable burden upon an unrepresented party. For the poor, especially, this often results in unnecessary cost and delay. Frequently, notary services may be necessary outside business hours. In the era of electronic filing, there should be no impediment caused by lack of a notary. In addition, the Committee is advised that some persons have religious objections to swearing, but no such objections to affirming. This change would offer an alternative to swearing to the truth of a paper submission that is presently available to live witnesses giving testimony. [See, CPLR 2309 (a), (b)].

It is even more burdensome to execute an affidavit abroad. Questions often arise as to who would be the appropriate official that would be equivalent to a New York notary and whether the affidavit obtained in a foreign country may be unusable in New York litigation. See *Green v. Fairway Operating Corp.*, 72 A.D. 3d 613, 898 N.Y.S. 2d 848 (1st Dept. 2010); *Matter of Eggers*, 122 Misc.2d 793, 471 N.Y.S.2d 570 (Surr. Ct., Nassau Co. 1984). Commercial litigants with international cases in the Commercial Division of State Supreme Court increasingly must go to extraordinary lengths to obtain affidavits notarized overseas. This in turn detracts from the desirability of New York as a forum for international commercial disputes, which desirability is important for maintaining New York as an international commercial center. These concerns have led to the proposed adoption of the Uniform Unsworn Foreign Declarations Act as promulgated by the Uniform Law Commission which would allow declarations to be executed abroad without the need for a notary's attestation. The Committee believes, however, that a statute allowing affirmations in all litigation circumstances by all persons is more appropriate for inclusion in the CPLR.

Current case law suggests that, to be considered the equivalent of an oath, an affirmation should "be administered in a form calculated to awaken the conscience and impress the mind." CPLR 2309(b); see *People v. Coles*, 141 Misc.2d 965, 535 N.Y.S.2d 897 (N.Y. Sup. Ct., Kings Co. 1988) (waiver of immunity held to be under "oath" if defendant testified to grand jury that

signature on it was his); *People v. Lennox*, 94 Misc.2d 730, 405 N.Y.S.2d 581 (N.Y. Sup. Ct., Westchester Co. 1978) (signature above words to the effect that document signed under penalties for perjury would satisfy requirement for sworn traffic information). Because the affirmation authorized by the amendment would be used by a much larger group than the limited classes of professionals now permitted, and such may not be familiar with the particulars of the law of perjury, the amendment requires that the signer affirm the facts stated in this 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 forgoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

The proposed amendment will result in greatly expanded use of the CPLR 2106 affirmation, and it is likely to supplant the use of making affidavits in almost all circumstances. Accordingly, the Committee considered whether there is any difference in the charges or punishment between perjury by affidavit or affirmation. The Committee concluded that, whether made in an affidavit or in the form of an affirmation as proposed in amended CPLR 2106, a false statement made with the intention of misleading the court will constitute perjury in the second degree, a Class E felony punishable by up to four years imprisonment. Penal Law §§ 70.00(2)(b), 210.00 (1) and (5), 210.10.

The Committee considered the widespread concern about misleading or inaccurate affidavits and affirmations by attorneys submitted in foreclosure proceedings, as reflected in Rule 202.12-A(f) of the Uniform Rules of the New York State Trial Courts permitting the Chief Administrative Judge to require counsel to file “affidavits or affirmations confirming the scope of inquiry and the accuracy of papers filed in residential mortgage foreclosure actions.” However, the Committee concluded that, because this proposed amendment makes no change to the use of affirmations by attorneys, it will have no impact on the filing of affidavits and affirmations by attorneys in foreclosure actions.

## Notes To Decisions

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Doctor's report which does not give basis of his opinion is admissible, and such report in affirmation form may constitute substantial evidence even though doctor is not called as witness. *National Basketball Ass'n v New York State Div. of Human Rights*, 68 N.Y.2d 644, 505 N.Y.S.2d 63, 496 N.E.2d 222, 1986 N.Y. LEXIS 19039 (N.Y. 1986).

Attorney who was active litigant on his own behalf could not subscribe to affirmation for entry of judgment, and thus procedure followed for entry of default judgment was improper. *Schutzer v Suss-Kolyer*, 57 A.D.2d 613, 393 N.Y.S.2d 776, 1977 N.Y. App. Div. LEXIS 11623 (N.Y. App. Div. 2d Dep't 1977).

"Affirmation" of attorney was of no force or effect where it was not signed. *American Sec. Ins. Co. v Austin*, 110 A.D.2d 697, 488 N.Y.S.2d 16, 1985 N.Y. App. Div. LEXIS 48591 (N.Y. App. Div. 2d Dep't 1985).

Defendant was entitled to summary judgment in personal injury action due to failure of plaintiffs to establish that they had suffered "serious injury" in motor vehicle accident as defined by CLS Ins § 5102 where (1) treating physician failed to affirm diagnosis to be true under penalty of perjury (as required by CLS CPLR § 2106 so as to qualify as competent evidence to defeat motion for summary judgment), (2) plaintiffs failed to provide medical records to support diagnosis, and (3) contradictory evidence existed indicating that plaintiffs suffered only mild injury in accident and that their alleged inability to work was related to pre-existing condition. *Lowe v Bennett*, 122 A.D.2d 728, 511 N.Y.S.2d 603, 1986 N.Y. App. Div. LEXIS 59260 (N.Y. App. Div. 1st Dep't), *aff'd*, 69 N.Y.2d 700, 512 N.Y.S.2d 364, 504 N.E.2d 691, 1986 N.Y. LEXIS 21309 (N.Y. 1986).

Defendants were not entitled to summary judgment in personal injury action where (1) record contained affirmation by plaintiff's treating physician, stating with reasonable degree of medical certainty that plaintiff's injury to her lower back and restriction of motion of her lower back was permanent in nature, and (2) physician's opinion was supported by his examination of plaintiff,



as well as by reference to objective diagnostic test conducted by another physician. *Addison v New York City Transit Auth.*, 208 A.D.2d 368, 618 N.Y.S.2d 1007, 1994 N.Y. App. Div. LEXIS 9452 (N.Y. App. Div. 1st Dep't 1994).

Under CLS CPLR § 2106, statements prepared by physicians and submitted by defendants to show that plaintiff had not sustained serious injury did not constitute competent evidence where statements were neither sworn to nor affirmed to be true under penalty of perjury. *Moore v Tappen*, 242 A.D.2d 526, 661 N.Y.S.2d 665, 1997 N.Y. App. Div. LEXIS 8582 (N.Y. App. Div. 2d Dep't 1997).

Defendant was entitled to summary judgment dismissing cause of action based on alleged “serious injury” under CLS Ins § 5102(d) where defendant made out prima facie case that plaintiff had not sustained serious injury, and sole medical evidence submitted by plaintiff in opposition—affirmed report prepared by plaintiff’s treating chiropractor—was not competent evidence under CLS CPLR § 2106. *Rameau v King*, 245 A.D.2d 557, 666 N.Y.S.2d 513, 1997 N.Y. App. Div. LEXIS 13376 (N.Y. App. Div. 2d Dep't 1997).

Affidavit of plaintiff’s treating physician was not competent evidence under CLS CPLR § 2106 where it was neither sworn nor affirmed to be true under penalties of perjury, and thus it was insufficient to raise triable issue of fact as to whether plaintiff sustained “serious injury” under CLS Ins § 5102(d). *Parisi v Levine*, 246 A.D.2d 583, 667 N.Y.S.2d 283, 1998 N.Y. App. Div. LEXIS 435 (N.Y. App. Div. 2d Dep't 1998).

Reports prepared by 2 doctors, submitted by defendants to prove prima facie case that plaintiff had not sustained “serious injury” under CLS Ins § 5102(d), were competent evidence where they were affirmed to be true under penalty of perjury. *Marin v Kakivelis*, 251 A.D.2d 462, 674 N.Y.S.2d 709, 1998 N.Y. App. Div. LEXIS 6883 (N.Y. App. Div. 2d Dep't 1998).

Chiropractors are not afforded privilege, under CLS CPLR § 2106, of making affirmation without necessity of appearing before notary or other official authorized to administer oaths or

affirmations. *Doumanis v Conzo*, 265 A.D.2d 296, 696 N.Y.S.2d 201, 1999 N.Y. App. Div. LEXIS 9631 (N.Y. App. Div. 2d Dep't 1999).

Defendants were entitled to summary judgment in personal injury action, on ground that plaintiffs failed to sustain serious injury under CLS Ins § 5102(d), where plaintiffs submitted only unsworn papers subscribed by chiropractor, purportedly made under authority of CLS CPLR § 2106; in order to make competent affirmations, chiropractors, like most other persons, must appear before notary or other official and formally declare truth of document. *Doumanis v Conzo*, 265 A.D.2d 296, 696 N.Y.S.2d 201, 1999 N.Y. App. Div. LEXIS 9631 (N.Y. App. Div. 2d Dep't 1999).

Affirmations by chiropractors that are not subscribed before notary or other authorized official do not constitute evidence in admissible form. *Young v Ryan*, 265 A.D.2d 547, 697 N.Y.S.2d 150, 1999 N.Y. App. Div. LEXIS 10827 (N.Y. App. Div. 2d Dep't 1999).

Landowner was entitled to summary judgment dismissing action for slip and fall on stairway where sole evidence that stairway was defective was inadmissible expert opinion of architect contained in nonnotarized affirmation; architects are not among persons entitled to submit affirmations without appearing before notary or other official authorized by law to administer oaths or affirmations. *Laventure v McKay*, 266 A.D.2d 516, 699 N.Y.S.2d 92, 1999 N.Y. App. Div. LEXIS 12252 (N.Y. App. Div. 2d Dep't 1999).

In granting summary judgment to defendants on ground that plaintiffs' submission of unsigned chiropractor's report in form of affirmation was insufficient to establish serious injury, court properly refused to accept late submission of chiropractor's affidavit based on plaintiffs' prior agreement not to seek further adjournment and failure to proffer adequate excuse for submitting unsworn medical evidence. *Fleck v Calabro*, 268 A.D.2d 738, 702 N.Y.S.2d 666, 2000 N.Y. App. Div. LEXIS 262 (N.Y. App. Div. 3d Dep't 2000).

Report of plaintiff's chiropractor did not constitute competent evidence in opposition to defendant's summary judgment motion, even though report stated "I hereby affirm the truth of

the foregoing,” since chiropractor failed to appear before notary or other such official to formally declare truth of contents of document. *Cubero v DiMarco*, 272 A.D.2d 430, 708 N.Y.S.2d 324, 2000 N.Y. App. Div. LEXIS 5594 (N.Y. App. Div. 2d Dep't 2000).

Plaintiff did not sustain “serious injury” under CLS Ins § 5102(d) where written statements of her treating physician were not competent evidence under CLS CPLR § 2106. *Douglas v Zhi Wei He*, 275 A.D.2d 690, 713 N.Y.S.2d 287, 2000 N.Y. App. Div. LEXIS 9177 (N.Y. App. Div. 2d Dep't 2000).

It was error to deny defendant’s summary judgment motion where it was supported by affirmed report of board-certified neurologist, who examined plaintiff and concluded that “there is no disability,” and plaintiff’s submission of report prepared by board-certified psychiatrist was neither sworn to nor affirmed to be true under penalty of perjury. *Mezentseff v Ming Yat Lau*, 284 A.D.2d 379, 725 N.Y.S.2d 898, 2001 N.Y. App. Div. LEXIS 6040 (N.Y. App. Div. 2d Dep't 2001).

A chiropractor may not affirm the truth of his statement with the same force as an affidavit; consequently, a plaintiff’s failure to submit a chiropractor’s report in admissible form requires its exclusion from consideration. *Sanchez v Romano*, 292 A.D.2d 202, 739 N.Y.S.2d 368, 2002 N.Y. App. Div. LEXIS 5112 (N.Y. App. Div. 1st Dep't 2002).

Defendants were entitled to summary judgment on the basis that plaintiff did not suffer a serious injury within the meaning of N.Y. Ins. Law § 5102(d) because the affirmation of plaintiff’s treating physician was without probative value as it did not meet the requirements of N.Y. C.P.L.R. 2106 and the unaffirmed reports of other medical personnel who treated plaintiff also lacked probative value. *Parente v Kang*, 37 A.D.3d 687, 831 N.Y.S.2d 430, 2007 N.Y. App. Div. LEXIS 2044 (N.Y. App. Div. 2d Dep't 2007).

Reports submitted by plaintiffs in opposition to defendant’s summary judgment motion, which reports were authored by a treating chiropractor, were not probative because the chiropractor tried to affirm the contents of his reports pursuant to N.Y. C.P.L.R. 2106, but as he was a

chiropractor, that statute was inapplicable. *Casas v Montero*, 48 A.D.3d 728, 853 N.Y.S.2d 358, 2008 N.Y. App. Div. LEXIS 1708 (N.Y. App. Div. 2d Dep't 2008).

Because a patient submitted a redacted affirmation from a physician who was not authorized to practice in New York under N.Y. C.P.L.R. 2106, and because the expert's conclusory and unsupported allegations of medical malpractice did not raise a triable issue of fact, the hospital was entitled to summary judgment in the patient's medical malpractice action. *Worthy v Good Samaritan Hosp. Med. Ctr.*, 50 A.D.3d 1023, 857 N.Y.S.2d 178, 2008 N.Y. App. Div. LEXIS 3576 (N.Y. App. Div. 2d Dep't 2008).

Denial of defendants' summary judgment motion was error in plaintiffs' traffic accident personal injury case because, in opposition to defendants' prima facie showing, plaintiffs failed to demonstrate that they suffered serious injury pursuant to N.Y. Ins. Law § 5102(d); chiropractor's reports submitted by plaintiffs, among other things, were not competent evidence because they were not in affidavit form. *Perdomo v Scott*, 50 A.D.3d 1115, 857 N.Y.S.2d 212, 2008 N.Y. App. Div. LEXIS 3889 (N.Y. App. Div. 2d Dep't 2008).

In an action to recover no-fault benefits, the trial court, upon reargument, should have adhered to its prior decision denying plaintiffs' summary judgment motion because defendant presented evidence showing it issued a denial of claim letter within the requisite 30-day period as tolled by its requests for additional verification. Defendant was not required to set forth a medical rationale in its denial of claim form or, in the absence of a written request, to furnish a copy of the peer review report, in admissible form satisfying the affirmation requirements of this section. *New York Univ. Hospital-Tisch Inst. v Government Employees Ins. Co.*, 117 A.D.3d 1012, 986 N.Y.S.2d 617, 2014 N.Y. App. Div. LEXIS 3754 (N.Y. App. Div. 2d Dep't 2014).

In a motorist's action, arising from a vehicle accident, the court did not err in considering the affirmed expert report of a certified orthopedic spinal surgeon in opposition to the driver's summary judgment motion because that report constituted the affirmed statement of a physician, such that it had "the same force and effect" as an affidavit. *Stamps v Pudetti*, 137 A.D.3d 1755, 28 N.Y.S.3d 539, 2016 N.Y. App. Div. LEXIS 2248 (N.Y. App. Div. 4th Dep't 2016).

Trial court erred in granting the borrowers' motion to impose sanctions on the lender for its failure to comply with discovery demands because there was insufficient evidence to demonstrate that the lender's failure to comply with prior discovery orders of the court was willful and contumacious and the submission by one of the borrower, an attorney, of an affirmation rather than an affidavit in support of the motion was improper and should have been disregarded because it was not in admissible form. *Household Fin. Realty Corp. of N.Y. v Cioppa*, 153 A.D.3d 908, 61 N.Y.S.3d 259, 2017 N.Y. App. Div. LEXIS 6340 (N.Y. App. Div. 2d Dep't 2017).

Granting a borrower's cross motion to dismiss a bank's foreclosure action was error because a process server's affidavit of service established a prima facie case as to the method of service, giving rise to a presumption of proper service, and the borrower's affirmation in support of his cross motion, created by him in Israel, failed to rebut the process server's affidavit because it failed to indicate that it was made under penalty of perjury as required by the Rule. *U.S. Bank N.A. v Langner*, 168 A.D.3d 1021, 92 N.Y.S.3d 419, 2019 N.Y. App. Div. LEXIS 458 (N.Y. App. Div. 2d Dep't 2019).

Dentist was entitled to summary judgment in patient's dental malpractice claim because in opposition, the patient submitted the unsworn affirmation of a dentist licensed to practice in the State of New Jersey, which did not constitute admissible evidence, and the affirmation failed to address specific assertions made by the dentist's expert, and was otherwise conclusory. *Nelson v Lighter*, 179 A.D.3d 933, 116 N.Y.S.3d 360, 2020 N.Y. App. Div. LEXIS 410 (N.Y. App. Div. 2d Dep't 2020).

In a medical malpractice action, plaintiff cured the technical defect in his expert's affirmation by submitting in support of his motion for leave to renew an affidavit from his expert, which included the statement that the expert was licensed to practice medicine in New York and plaintiff also provided a reasonable justification for the failure to include that necessary information in the original affirmation. *Stradtman v Cavaretta*, 179 A.D.3d 1468, 118 N.Y.S.3d 828, 2020 N.Y. App. Div. LEXIS 848 (N.Y. App. Div. 4th Dep't 2020).

Validating petition was properly verified per CPLR 2106 where petitioner attached a verification page to the validating petition, wherein he attested to the veracity of the contents. *Matter of Sweet v Fonvil*, 227 A.D.3d 849, 211 N.Y.S.3d 451, 2024 N.Y. App. Div. LEXIS 2637 (N.Y. App. Div. 2d Dep't), app. denied, 41 N.Y.3d 906, 234 N.E.3d 375, 210 N.Y.S.3d 759, 2024 N.Y. LEXIS 595 (N.Y. 2024).

The purpose of CPLR 2106 is to simplify the attorney's practice. *Macri v St. Agnes Cemetery, Inc.*, 44 Misc. 2d 702, 255 N.Y.S.2d 278, 1965 N.Y. Misc. LEXIS 2392 (N.Y. Sup. Ct. 1965).

Where the plaintiff's attorney added a perjury clause to the customary form of verification, the affirmation did not comply with CPLR 2106, since the mere typing of the attorney's name was not sufficient because the rule required that it be subscribed. *Macri v St. Agnes Cemetery, Inc.*, 44 Misc. 2d 702, 255 N.Y.S.2d 278, 1965 N.Y. Misc. LEXIS 2392 (N.Y. Sup. Ct. 1965).

The application in a special proceeding under CPLR § 1207 for an order approving settlement of an infant's cause of action against Motor Vehicle Accident Indemnification Corporation, although unopposed, must be denied when the petition was not accompanied by the affidavit of the physician as required by subd (c) of CPLR Rule 1208, or the affidavit or affirmed statement of the attorney as required by subd (b) of CPLR Rule 1208 and by CPLR Rule 2106, and when the infant did not personally appear before the court as required by subd (d) of CPLR Rule 1208. *Bittner v Motor Vehicle Acci. Indemnification Corp.*, 45 Misc. 2d 584, 257 N.Y.S.2d 521, 1965 N.Y. Misc. LEXIS 2238 (N.Y. Sup. Ct. 1965).

Where the attorney elects to be the petitioner, he may affix his signature to the petition by a rubber stamp, but his verification, if sought to be made pursuant to CPLR 2106, must be made by holographic subscription. *Sandymark Realty Corp. v Creswell*, 67 Misc. 2d 630, 324 N.Y.S.2d 504, 1971 N.Y. Misc. LEXIS 1314 (N.Y. Civ. Ct. 1971).

Word "attorney," within statute prohibiting affirmation of truth of statement by an attorney when he is a party to an action, refers to an attorney who has a personal beneficial interest in lawsuit or who is an active litigant on his own behalf, and not to an attorney who expressly acts for a

client in bringing proceeding. *Fitzgerald v Willes*, 83 Misc. 2d 853, 373 N.Y.S.2d 773, 1975 N.Y. Misc. LEXIS 2998 (N.Y. App. Term 1975).

Petition in summary proceeding brought pursuant to Real Property Actions and Proceedings Law was not subject to dismissal for reason that it was made by counsel as “attorney” for landlord and was verified by him by affirmation in lieu of an oath before a notary. *Fitzgerald v Willes*, 83 Misc. 2d 853, 373 N.Y.S.2d 773, 1975 N.Y. Misc. LEXIS 2998 (N.Y. App. Term 1975).

An attorney who is a party to proceeding does not enjoy the privilege of utilizing an affirmation. *Flaton v Caso*, 86 Misc. 2d 695, 383 N.Y.S.2d 166, 1976 N.Y. Misc. LEXIS 2507 (N.Y. Sup. Ct.), modified, 54 A.D.2d 752, 387 N.Y.S.2d 710, 1976 N.Y. App. Div. LEXIS 14404 (N.Y. App. Div. 2d Dep't 1976).

Where a mother had obtained only an affirmation from her infant child's treating physician in support of a petition to for court approval of a settlement of a negligence suit, she was granted an adjournment of the hearing on the petition in order to obtain an affidavit from the physician. The affidavit was necessary instead of the affirmation because N.Y. C.P.L.R. r. 2106 allowed affirmations in support of such petitions only where the physician was in-state; since the infant's treating physician was licensed in the state of Alabama, the mother needed to secure an affidavit instead of an affirmation. *Brown ex rel. Brown v Sea Park W. Houses*, 783 N.Y.S.2d 254, 5 Misc. 3d 224, 2004 N.Y. Misc. LEXIS 1279 (N.Y. Civ. Ct. 2004).

Defendants failed to establish, prima facie, that plaintiff did not sustain a serious injury within the meaning of N.Y. Ins. Law § 5102(d) because, inter alia, the report submitted by defendants' examining orthopedist was lacking in probative value as it was not affirmed to be true under the penalties of perjury as required by N.Y. C.P.L.R. 2106. *O'Connor v Singh*, 842 N.Y.S.2d 119, 16 Misc. 3d 30, 2007 N.Y. Misc. LEXIS 3238 (N.Y. App. Term 2007).

In an action to recover assigned first-party no-fault benefits, a medical provider was entitled to partial summary judgment on its first cause of action as an insurer submitted a peer review report in support of its defense of lack of medical necessity that contained a doctor's signature

affixed by an electronic stamped facsimile, which did not comply with N.Y. C.P.L.R. § 2106; thus, the insurer did not present evidence in admissible form. *Radiology Today, P.C. v GEICO Ins. Co.*, 864 N.Y.S.2d 664, 20 Misc. 3d 70, 2008 N.Y. Misc. LEXIS 4198 (N.Y. App. Term 2008).

Because a doctor's affirmation indicated that the peer review report that had an electronic stamped facsimile of the doctor's signature, was in fact the doctor's and applied by the doctor, and not by anyone else, the report was admissible under N.Y. C.P.L.R. 2106. *Jesa Med. Supply, Inc. v GEICO Ins. Co.*, 887 N.Y.S.2d 482, 25 Misc. 3d 1098, 2009 N.Y. Misc. LEXIS 2505 (N.Y. Civ. Ct. 2009).

Because the peer reviews in question were either unsigned, undated, or not notarized, they were inadmissible under N.Y. C.P.L.R. 2106, even though the doctors might have been present to testify; accordingly, the reviews and the documents underlying them could not serve as a basis for an insurer's denials based on a medical necessity defense. *A-Quality Med. Supply v GEICO Gen. Ins. Co.*, 915 N.Y.S.2d 906, 30 Misc. 3d 485, 2010 N.Y. Misc. LEXIS 5998 (N.Y. Civ. Ct. 2010), rev'd, 971 N.Y.S.2d 69, 39 Misc. 3d 128(A), 2013 N.Y. Misc. LEXIS 1163 (N.Y. App. Term 2013), rev'd, 964 N.Y.S.2d 399, 39 Misc. 3d 24, 2013 N.Y. Misc. LEXIS 2343 (N.Y. App. Term 2013).

Pursuant to N.Y. C.P.L.R. 2106, only the affirmation of an attorney, admitted to practice in New York, or of an osteopath, physician or dentist, authorized by law to practice in the state, may be served and filed in lieu of an affidavit. *People v Christian P.*, 956 N.Y.S.2d 410, 38 Misc. 3d 241, 2012 N.Y. Misc. LEXIS 5141 (N.Y. Sup. Ct. 2012).

Earlier submitted affirmation of a chiropractor's opinion as to the extent of the injured parties' injuries, submitted in opposition to a motion for summary judgment and held to not be competent medical evidence, pursuant to N.Y. C.P.L.R. 2106, was properly received via a motion for renewal when the same statement was submitted in affidavit form, as it contained sufficient objective medical evidence to raise a triable issue on whether each plaintiff sustained a serious injury and prejudice to the tortfeasors was not proven. *Ramos v Dekhtyar*, 301 A.D.2d 428, 753 N.Y.S.2d 489, 2003 N.Y. App. Div. LEXIS 306 (N.Y. App. Div. 1st Dep't 2003).



Trial court properly granted summary judgment to the owners of a restaurant in a personal injury action filed by an injured child and his mother which alleged that the child was injured when he fell off a coin-operated ride at the restaurant, because the injured child and his mother failed to submit evidence in admissible form sufficient to raise a triable issue of fact, as an unsworn letter of a playground safety expert was not competent evidence to defeat the motion for summary judgment, N.Y. C.P.L.R. 2106, and the hearsay statements by the child's sister were not competent evidence to defeat the summary judgment motion. *Orelli v Showbiz Pizza Time, Inc.*, 302 A.D.2d 440, 753 N.Y.S.2d 737, 2003 N.Y. App. Div. LEXIS 1317 (N.Y. App. Div. 2d Dep't 2003).

Where a corporation that sued a town for nuisance and trespass moved for a preliminary injunction and submitted in support of its motion an affirmation of an attorney who was the corporation's principal shareholder, the trial court properly disregarded the affirmation, as the attorney should have submitted an affidavit. *Seven Acre Wood St. Assocs. v Town of Bedford*, 302 A.D.2d 511, 755 N.Y.S.2d 257, 2003 N.Y. App. Div. LEXIS 1645 (N.Y. App. Div. 2d Dep't 2003).

Trial court correctly observed that the affirmation of a party attorney did not have the same force as an affidavit under N.Y. C.P.L.R. art. 2106, and initially properly denied a motion for summary judgment filed by the lawyers in a legal malpractice case; however, in support of their motion for leave to renew, the lawyers submitted additional affidavits, thus correcting their inadvertent procedural error, and the trial court improperly denied their motion for leave to renew. *Wester v Sussman*, 304 A.D.2d 656, 757 N.Y.S.2d 500, 2003 N.Y. App. Div. LEXIS 3930 (N.Y. App. Div. 2d Dep't), app. denied, 100 N.Y.2d 510, 766 N.Y.S.2d 164, 798 N.E.2d 348, 2003 N.Y. LEXIS 2268 (N.Y. 2003).

Where an injured party's moved to renew a prior summary judgment order so that the injured party could attached a sworn affidavit of a doctor's findings, the motion was based on newly submitted evidence and did not prejudice the individuals; therefore, the motion was properly

admitted. *Cespedes v McNamee*, 308 A.D.2d 409, 764 N.Y.S.2d 818, 2003 N.Y. App. Div. LEXIS 9924 (N.Y. App. Div. 1st Dep't 2003).

Where the chiropractor submitted an unsworn affirmation that did not comply with N.Y. C.P.L.R. 2106, the issue was waived by the driver, as the driver raised the issue for the first time on appeal. *Shinn v Catanzaro*, 1 A.D.3d 195, 767 N.Y.S.2d 88, 2003 N.Y. App. Div. LEXIS 11931 (N.Y. App. Div. 1st Dep't 2003).

Where the attorney submitted an attorney's affirmation to show a meritorious cause of action and a reasonable excuse for the law firm's delay in prosecuting the case, because the attorney was an associate of the firm, submission of an affirmation instead of an affidavit was improper under N.Y. C.P.L.R. 2106. *Samuel & Weininger v Belovin & Franzblau*, 5 A.D.3d 466, 772 N.Y.S.2d 600, 2004 N.Y. App. Div. LEXIS 2477 (N.Y. App. Div. 2d Dep't 2004).

Attorneys' signature on documents that were served upon the court and opposing counsel had the force and effect of an affidavit sworn before a notary public and pleadings that were not actually signed by the attorneys were null. *MZ Dental, P.C. v Progressive Northeastern Ins. Co.*, 786 N.Y.S.2d 908, 6 Misc. 3d 649, 2004 N.Y. Misc. LEXIS 2769 (N.Y. Dist. Ct. 2004).

Trial court properly granted defendant's motion for summary judgment dismissing plaintiffs' personal injury suit on the ground that neither plaintiff sustained a serious injury within meaning of N.Y. Ins. Law § 5102(d) because defendant made prima facie showing that neither plaintiff sustained a serious injury, and plaintiffs failed to submit competent medical evidence demonstrating that they were unable to perform substantially all of their daily activities for not less than 90 of the 180 days immediately after the accident because of a medically determined injury. The records of plaintiffs' expert did not constitute competent proof on the issue because they were not affirmed and did not meet the requirements of N.Y. C.P.L.R. 2106. *Liao v Festa*, 18 A.D.3d 448, 794 N.Y.S.2d 905, 2005 N.Y. App. Div. LEXIS 4830 (N.Y. App. Div. 2d Dep't 2005).

Though “affirmations” from architects, which were submitted as expert opinion evidence in a building maintenance supervisor’s negligence action against the architect who designed a roof renovation, could not substitute for an affidavit, there were no objections that the affirmations were insufficient as the requisite evidentiary proof in admissible form for purposes of supporting the architect’s summary judgment motion. Consequently, even though N.Y. C.P.L.R. 2106 allowed only affirmations from an attorney, physician, osteopath, or dentist to act as an affidavit, the failure to object waived that deficiency and the affirmations were properly considered in deciding the architect’s summary judgment motion. *Bax v Allstate Health Care, Inc.*, 26 A.D.3d 861, 809 N.Y.S.2d 378, 2006 N.Y. App. Div. LEXIS 1514 (N.Y. App. Div. 4th Dep’t 2006).

Because an examining neurologist’s reports failed to indicate what, if any, objective tests were employed to examine the passengers and because the reports were not affirmed in accordance with N.Y. C.P.L.R. § 2106, the trial court erred in granting summary judgment to the owner and the driver on the basis that the passengers did not sustain a serious injury within the meaning of N.Y. Ins. Law § 5102(d). *Offman v Singh*, 27 A.D.3d 284, 813 N.Y.S.2d 56, 2006 N.Y. App. Div. LEXIS 2749 (N.Y. App. Div. 1st Dep’t 2006).

Although an attorney was authorized to submit an affirmation in lieu of an affidavit in most situations, pursuant to N.Y. C.P.L.R. 2106, it was improper for an attorney in a legal malpractice action to do so because he was a named defendant in the action; even those persons who were statutorily allowed to use such affirmations had no right to do so when they were parties to an action. Submitting the affirmation, therefore, was improper, its contents should have been disregarded, and as a result, the documents that the lawyers submitted were insufficient to sustain their motion for summary judgment. *LaRusso v Katz*, 30 A.D.3d 240, 818 N.Y.S.2d 17, 2006 N.Y. App. Div. LEXIS 8039 (N.Y. App. Div. 1st Dep’t 2006).

Trial court erred in vacating its prior summary judgment in favor of defendants on the ground that defendants’ affirmations were inadmissible as they bore the electronic signatures of the doctors because the electronic signatures were proper under N.Y. State Tech. Law § 304(2) and complied with N.Y. C.P.L.R. 2106; the affirmations should have been considered. Plaintiff’s

opposition raised triable issues as to the injuries and causation, but plaintiff's claim under the 90/ 180 day category was properly dismissed. *Martin v Portexit Corp.*, 98 A.D.3d 63, 948 N.Y.S.2d 21, 2012 N.Y. App. Div. LEXIS 4974 (N.Y. App. Div. 1st Dep't 2012).

In an action brought by an infant against pet supply companies arising out of an incident at a store owned by the companies where a patron's dog bit the infant, the infant's application under N.Y. C.P.L.R. art. 63 for an order that the companies prohibit any animals in their stores other than those for sale or, alternatively, that the companies post a warning sign advising its patrons that accompanied pets might have vicious propensities was denied because (1) the only evidence that the infant submitted was an unsworn affirmation by a veterinarian, which was not admissible as a matter of law under N.Y. C.P.L.R. 2106; (2) the veterinarian offered his personal beliefs and opinions and employed words and phrases that were too vague to be of specific use to the application at bar; (3) as to the infant's request for equitable relief, she already had a remedy available at law in which her personal injury action would proceed; and (4) any attempts to cloak the application as a private individual seeking equitable relief on behalf of the public to enjoin a public nuisance was rejected because the complaint failed to state any cause of action for public, or common, nuisance, and the infant failed to establish that the nuisance or endangerment affected a considerable amount of people. *Christian v PETCO Animal Supplies Stores Inc.*, 235 N.Y.L.J. 39, 2006 N.Y. Misc. LEXIS 4030 (N.Y. Sup. Ct. Feb. 28, 2006).

Affirmative defenses and other contentions raised in a political candidate's answer—in a special proceeding which was brought by a verified invalidating petition—were unverified because, although the candidate was an admitted attorney and the candidate's answer included a verification affirmed under penalties of perjury, an attorney was permitted to use an affirmation only when the attorney was not a party to the proceeding. Thus, the candidate's use of an affirmation was improper, thereby leaving the candidate's answer unverified. *Matter of Ellman v Grace*, 75 Misc. 3d 776, 171 N.Y.S.3d 306, 2022 N.Y. Misc. LEXIS 2028 (N.Y. Sup. Ct. 2022).

Plaintiff's submission of the CPLR 2106(b) statement was permissible and in acceptable form, and thus, the court granted plaintiff's application to hold defendant in default for failure to appear

and to schedule an inquest, because a plain reading of the CPLR 2106(b) statement confirmed that it in substance and form complied with the requirements of CPLR 2106(b), and a plain reading of the language of CPLR 2106(b) was devoid of any requirement that a litigant who had complied with that section had to further submit a second document in compliance with CPLR 2309(c). *S.B. v A.K.*, 81 Misc. 3d 1079, 204 N.Y.S.3d 406, 2023 N.Y. Misc. LEXIS 22744 (N.Y. Sup. Ct. 2023).

In reviewing the expert affirmations submitted, it was clear that they lacked compliance with CPLR 2106 in both form and substance where neither physician was licensed to practice medicine in New York and neither affirmed by the specific language of the statute. Moreover, as the brief language affirmed to by the physicians did not demonstrate their acknowledgement of the import and seriousness of their statements made in the document as required by statute, they could not be considered by the court. *Zhou v Central Radiology, P.C.*, 2024 N.Y. Misc. LEXIS 2302 (N.Y. Sup. Ct. 2024).

While a business owner contended that the sheriff's certificate of service of a sealing order did not meet statutory requirements of N.Y. C.P.L.R. 2106, the hearing officer did not irrationally credit the certificate of service because N.Y. C.P.L.R. 306(d) provided that proof of service was to be in the form of a certificate if the service was made by a sheriff. N.Y. C.P.L.R. 2106 did not apply to administrative proceedings. *22 Convenience Shop Inc. v City of New York*, 231 N.Y.S.3d 352, 2025 N.Y. Misc. LEXIS 1264 (N.Y. Sup. Ct. 2025).

## **Research References & Practice Aids**

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### **Codes, Rules and Regulations:**

Parties and Pleadings. 8 NYCRR Part 275.

### **Treatises**

**Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 2106, Affirmation of Truth of Statement by Attorney, Physician, Osteopath or Dentist.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 302.06, 303.01, 303.04, 303.05; 2 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1004.05, 1005.03; 4 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1410.05, 1750-a.04, 1750.04.

**Matthew Bender's New York CPLR Manual:**

CPLR Manual § 14.01. Introduction.

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CPLR Manual § 16.11. Security against terrorists.

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2 New York Practice Guide: Domestic Relations § 35.13; 3 New York Practice Guide: Domestic Relations §§ 37.25, 37.26.

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**Warren's Weed New York Real Property:**

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**Forms:**

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LexisNexis Forms FORM 461-27:6.— Affirmation in Support of Order Directing Payment by County Treasurer.

LexisNexis Forms FORM 461-27:63.— Alternate Form: Affirmation in Support of **Ex Parte Order Substituting Referee** to Sell; Referee Died.

LexisNexis Forms FORM 75-CPLR 2106:1.— General Form of Affirmation.

LexisNexis Forms FORM 75-CPLR 2106:2.— Affirmation by Attorney in Support of, or in Opposition to, Motion Skeleton Form.

LexisNexis Forms FORM 75-CPLR 2106:3.— Statement by Attorney With Affirmation in Lieu of Affidavit or Verification.

LexisNexis Forms FORM 461-2:10.— Affirmation in Support of Motion for Service by Publication (and Other Relief); Defendant Believed Deceased.

LexisNexis Forms FORM 461-2:8.— Affirmation in Support of Motion for Service by Publication (and Other Relief); Defendant Cannot Be Located.

LexisNexis Forms FORM 461-5:14.— Attorney's Affirmation in Support of Motion for Summary Judgment, R.P.A.P.L. Article 15 Action to Declare Mortgage Void; Statute of Limitations Expired.

LexisNexis Forms FORM 461-7:10.— Attorney's Affirmation in Support of Money Judgment, Note and Loan Agreement.

LexisNexis Forms FORM 461-7:12.— Affirmation in Support of Motion for Summary Judgment, Suit on Note.

LexisNexis Forms FORM 461-9:11.— Alternate Form: Affirmation in Support of Order Directing Entry Upon Premises.

LexisNexis Forms FORM 461-9:3.— Attorney's Affirmation in Support of Order Enjoining Damage or Waste During Pendency of Mortgage Foreclosure Action.

LexisNexis Forms FORM 461-9:5.— Affirmation in Support of Order Directing Entry Upon Premises.

LexisNexis Forms FORM 461-9:7.— Alternate Form: Affirmation in Support of Order Directing Entry Upon Mortgaged Premises.

LexisNexis Forms FORM 380-79:108.— General Form of Affirmation by Physician, Osteopath or Dentist of Truth of Statement.

LexisNexis Forms FORM 461-10:108.— Affirmation in Support of Motion to Direct Receiver to Disburse Interest.

LexisNexis Forms FORM 461-10:113.— Alternate Form: Affirmation of Attorney in Support of Order Discharging Receiver.

LexisNexis Forms FORM 461-10:12.— Attorney's Affirmation in Support of Order for Successor Temporary Receiver.

LexisNexis Forms FORM 461-10:13.— Emergency Affirmation.

LexisNexis Forms FORM 461-10:14.— Alternate Form: Attorney's Affirmation in Support of Order for Successor Temporary Receiver.

LexisNexis Forms FORM 461-10:16.— Affirmation in Support of Order to Show Cause to Discharge Receiver and Appoint Successor.

LexisNexis Forms FORM 461-10:18.— Affirmation in Support of Order Appointing Receiver in Tax Lien Foreclosure Action Limited Purpose, Environmental Assessment.



LexisNexis Forms FORM 461-10:20.— Affirmation in Support of Motion to Appoint Temporary Receiver in Mortgage Foreclosure Action.

LexisNexis Forms FORM 461-10:23.— Attorney's Affirmation in Support of Motion for Appointment of Temporary Receiver (on Behalf of Defendant).

LexisNexis Forms FORM 461-10:26.— Affirmation in Support of Motion to Appoint Receiver in Tax Lien Foreclosure Action Limited Purpose, Environmental Assessment.

LexisNexis Forms FORM 461-10:29.— Affirmation in Support of Order Terminating Receivership.

LexisNexis Forms FORM 461-10:31.— Affirmation in Support of Order to Amend Order Appointing Successor Temporary Receiver.

LexisNexis Forms FORM 461-10:39.— Attorney's Affirmation in Support of Lease.

LexisNexis Forms FORM 461-10:40.— Affirmation in Support of Order Reappointing Temporary Receiver.

LexisNexis Forms FORM 461-10:42.— Affirmation in Support of Order Extending Receivership.

LexisNexis Forms FORM 461-10:44.— Affirmation in Support of Order to Extend Receivership.

LexisNexis Forms FORM 461-10:5.— Affirmation in Support of Order Appointing Temporary Receiver.

LexisNexis Forms FORM 461-10:60.— Receiver's Affirmation in Support of Order to Show Cause to Enjoin Interference with Receiver's Rent Collection.

LexisNexis Forms FORM 461-10:67.— Affirmation in Support of Order to Show Cause.

LexisNexis Forms FORM 461-10:69.— Affirmation in Support of Order.

LexisNexis Forms FORM 461-10:77.— Form: Attorney's Affirmation in Support of Motion to Compel Owner to Convey Documents and Monies to Receiver.

LexisNexis Forms FORM 461-10:8.— Emergency Affirmation in Support of Receiver's Appointment.

LexisNexis Forms FORM 461-10:83.— Affirmation in Support of Order to Show Cause to Vacate Receivership, Compel Accounting and Other Relief.

LexisNexis Forms FORM 461-10:89.— Attorney's Affirmation in Support of Receiver's Motion to Intervene in Owner's Action.

LexisNexis Forms FORM 461-10:9.— Alternate Form: Emergency Affirmation in Support of Receiver's Appointment.

LexisNexis Forms FORM 461-10:91.— Affirmation in Support of Order to Show Cause to Direct Receiver to Execute Leases.

LexisNexis Forms FORM 461-12:11.— Attorney's Affirmation in Support of Order to Show Cause to Intervene.

LexisNexis Forms FORM 461-12:9.— Affirmation in Support of Cross-Motion to Dismiss Action as Against Unnecessary Party.

LexisNexis Forms FORM 461-15:21.— Affirmation in Support of Extending Lis Pendens.

LexisNexis Forms FORM 461-15:23.— Affirmation in Support of Order to Show Cause to Extend Lis Pendens.

LexisNexis Forms FORM 461-16:10.— Affirmation in Support of Order Granting Leave to Amend Complaint to Add Governmental Defendant.

LexisNexis Forms FORM 461-16:12.— Affirmation in Support of Order Granting Leave to Amend Complaint to Add Governmental Defendant and to Extend Time to Serve Summons and Complaint.

LexisNexis Forms FORM 461-16:14.— Affirmation in Support of Motion for Leave to Amend Complaint to Add Mortgaged Parcel and Lienor Thereon As a Defendant.

LexisNexis Forms FORM 461-16:16.— Affirmation in Support of Order Granting Leave to Amend Complaint to Release a Parcel and to Add Guarantor.

LexisNexis Forms FORM 461-16:3.— Affirmation in Support of Motion for Leave to Amend Complaint.

LexisNexis Forms FORM 461-16:6.— Affirmation in Support of Motion to Amend Caption.

LexisNexis Forms FORM 461-16:8.— Affirmation in Support of Order Granting Leave to Amend Complaint.

LexisNexis Forms FORM 461-17:10.— Affirmation in Support of Judgment of Foreclosure and Sale; Partial Foreclosure.

LexisNexis Forms FORM 461-17:7.— Affirmation in Support of Order Appointing Referee to Compute; Partial Foreclosure.

LexisNexis Forms FORM 461-19:12.— Affirmation in Support of Motion to Dismiss Complaint; Failure to Plead Conditions Precedent.

LexisNexis Forms FORM 461-19:18.— Attorney's Affirmation in Support of Order to Show Cause to Vacate Judgment (and Other Steps) for Failure to Honor Notice of Appearance.

LexisNexis Forms FORM 461-19:2.— Affirmation in Support of Motion to Dismiss Complaint; Lack of Jurisdiction.

LexisNexis Forms FORM 461-19:4.— Affirmation in Support of Motion to Dismiss Complaint; Failure to State Cause of Action.

LexisNexis Forms FORM 461-19:6.— Affirmation in Support of Motion to Dismiss Complaint; Defense Founded Upon Documentary Evidence, Failure to State Cause of Action.

LexisNexis Forms FORM 461-19:7.— Alternate Form: Affirmation in Support of Motion to Dismiss Complaint; Subordinate Mortgagee Names Senior Mortgage as Defendant.

LexisNexis Forms FORM 461-19:9.— Alternate Form: Affirmation in Support of Motion to Dismiss Complaint, Junior Mechanic's Lienor Foreclosing Upon Senior Mortgagee.

LexisNexis Forms FORM 461-20:11.— Basic Affirmation of Regularity.

LexisNexis Forms FORM 461-20:13.— Alternate Form: Basic Affirmation of Regularity.

LexisNexis Forms FORM 461-20:15.— Affirmation in Support, Substituting Estate Representative.

LexisNexis Forms FORM 461-20:17.— Affirmation in Support, Obligor Wife Deceased, Substitution of Multiple Defendants.

LexisNexis Forms FORM 461-20:19.— Affirmation in Support, Original Mortgagors Excised as Defendants, Amended Complaint.

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LexisNexis Forms FORM 461-20:21.— Affirmation in Support, Default on Stipulation.

LexisNexis Forms FORM 461-20:23.— Affirmation in Support, Answer Withdrawn.

LexisNexis Forms FORM 461-20:25.— Affirmation in Support, After Publication of Summons.

LexisNexis Forms FORM 461-20:27.— Affirmation in Support, Vacate Publication and Guardianship.

LexisNexis Forms FORM 461-20:28.— Affirmation in Support, Acceptance of Service by Counsel, Voluntary Appearance.

LexisNexis Forms FORM 461-20:31.— Affirmation in Support of Order Appointing Referee to Compute and to Amend Complaint.

LexisNexis Forms FORM 461-20:33.— Affirmation in Support of Order Appointing Referee To Compute Kings County Required Form.

LexisNexis Forms FORM 461-20:37.— Affirmation in Support of Order Appointing Referee to Compute and Directing Reindexing of Mortgage.

LexisNexis Forms FORM 461-20:39.— Affirmation in Support of Motion, Extensive Recitation of Mortgage Transaction.

LexisNexis Forms FORM 461-20:42.— Affirmation in Support of Renewal Motion for Order Appointing Referee to Compute.

LexisNexis Forms FORM 461-20:45.— Affirmation in Support of Motion for Order Appointing Referee to Compute; Amend Complaint to Excise Personal Liability Claim.

LexisNexis Forms FORM 461-20:52.— Attorney's Affirmation in Support of Cross-Motion to Excise Party Defendant.

LexisNexis Forms FORM 461-20:63.— Attorney's Affirmation in Support of Order for Successor Referee.

LexisNexis Forms FORM 461-20:65.— Alternate Form: Affirmation in Support of ***Ex Parte*** Order to Appoint Successor Referee; Referee Declining to Serve.

LexisNexis Forms FORM 461-20:66.— Alternate Form: Affirmation in Support of *Ex Parte* Order to Appoint Successor Referee; Referee Apparently Declining to Serve.

LexisNexis Forms FORM 461-20:68.— Affirmation in Support of Motion to Appoint Successor Referee; Referee Apparently Declining to Serve.

LexisNexis Forms FORM 461-20:71.— Alternate Form: Affirmation in Support of Motion to Appoint Successor Referee.

LexisNexis Forms FORM 461-20:74.— Affirmation in Support of Order Relieving Referee to Compute.

LexisNexis Forms FORM 461-20:76.— Alternate Form: Attorneys Affirmation in Support of Order Appointing Successor Referee to Compute (Referee Deceased).

LexisNexis Forms FORM 461-21:10.— Attorney's Affirmation In Support of Defendant's Motion for Summary Judgment, First Mortgage Senior to Foreclosing Condominium Common Charge Lien.

LexisNexis Forms FORM 461-21:12.— Attorney's Affirmation in Support of Defendants' Motion for Summary Judgment, Leasehold Mortgage Foreclosure, Mortgage Previously Extinguished, Plaintiff Not Holder of Mortgage.

LexisNexis Forms FORM 461-21:2.— Attorney's Affirmation of Regularity.

LexisNexis Forms FORM 461-21:23.— Affirmation in Support of Issuance of Summary Judgment Order Demonstrating Conditions Imposed Upon Defendant Not Fulfilled.

LexisNexis Forms FORM 461-21:3.— Notice of Motion, Plaintiff's Affidavit, Attorneys Affirmation; Basic, Answer of Subordinate Mortgagee, Denials of Knowledge Or Information Only, Strike "John Does".

LexisNexis Forms FORM 461-21:4.— Notice of Motion, Plaintiff's Affidavit, Attorney's Affirmation, Directed to Two Undated Answers, Consolidated Mortgage, Affidavit by Plaintiff's Servicing Agent, Affirmative Defense of Plaintiff's Oral Representation.

LexisNexis Forms FORM 461-21:5.— Notice of Motion, Plaintiff's Affidavit, Attorney's Affirmation, Answer of Mortgagors and Junior Mortgagee, Equity Access Agreement and Mortgage, Severing Cross-Claims, Amending Caption to Add Defendant.

LexisNexis Forms FORM 461-21:6.— Notice of Motion, Plaintiff's Affidavit, Attorney's Affirmation, Answer of Multiple Defendants, After Publication of Summons, Vacate Publication As Against Certain Defendants and Relieve Guardian As Against Them, Strike Deceased Defendants, Substitute Parties Found For John Does, Claimed Failure to State Cause of Action, Claimed Lack of Acceleration.

LexisNexis Forms FORM 461-21:9.— Attorney's Affirmation in Support of Defendant's Motion for Summary Judgment.

LexisNexis Forms FORM 461-23:5.— Affirmation in Support of Judgment (Action to Cancel Erroneous Satisfaction of Mortgage).

LexisNexis Forms FORM 461-26:9.— Affirmation of Regularity and Services Rendered; **Ex Parte Motion** for an Inquest.

LexisNexis Forms FORM 461-27:15.— Alternate Form: Supplemental Affirmation of Regularity (Judgment Sought After Assignment of Mortgage During Case).

LexisNexis Forms FORM 461-27:16.— Alternate Form: Supplemental Affirmation of Regularity (Deed as Mortgage; After Appeal; Bypass Referee's Computation).

LexisNexis Forms FORM 461-27:17.— Alternate Form: Supplemental Affirmation of Regularity (Renewal Motion; Excise Unnecessary Defendants; Notice of Pendency Renewed).

LexisNexis Forms FORM 461-27:2.— Affirmation in Support of Motion to Direct Payment of Surplus (R.P.A.P.L. 1351).

LexisNexis Forms FORM 461-27:31.— Non-Military Attorney's Affirmation.

LexisNexis Forms FORM 461-27:4.— Affirmation in Support of Order to Show Cause to Direct Payment of Surplus (R.P.A.P.L. 1351).

LexisNexis Forms FORM 461-27:60.— Affirmation in Support of Motion to Appoint Successor Referee to Sell; Referee Refusing to Execute Deed.

LexisNexis Forms FORM 461-27:62.— Alternate Form: Affirmation in Support of **Ex Parte Order Substituting Referee** to Sell.

LexisNexis Forms FORM 461-27:64.— Alternate Form: Affirmation in Support of Ex Parte Order Substituting Referee to Sell; Referee Appointed Assistant District Attorney.

LexisNexis Forms FORM 461-27:66.— Affirmation in Support of Motion to Amend Judgment to Appoint Successor Referee to Sell, Referee Unreachable.

LexisNexis Forms FORM 461-27:69.— Affirmation in Support of Order Amending Judgment to Excise Unnecessary Defendant.

LexisNexis Forms FORM 461-27:73.— Affirmation in Support of ***Ex Parte*** Order to Amend Caption to Correct Name of Plaintiff .

LexisNexis Forms FORM 461-27:79.— Affirmation in Support of Order Amending Judgment of Foreclosure and Sale.

LexisNexis Forms FORM 461-27:8.— Referee's Affirmation in Support of Motion for Award of Additional Fees for Sale.

LexisNexis Forms FORM 461-27:81.— Affirmation in Support of Motion to Amend Caption of Judgment Nunc Pro Tunc to Correct Name of Defendant.

LexisNexis Forms FORM 461-30:10.— Attorney's Affirmation in Support of *Ex Parte* Order to Vacate Foreclosure.

LexisNexis Forms FORM 461-30:12.— Attorney's Affirmation in Support of Motion to Vacate Sale and Relieve From Bid.

LexisNexis Forms FORM 461-30:16.— Attorney's Affirmation in Support of Motion to Vacate Foreclosure Sale and Discontinue Action.

LexisNexis Forms FORM 461-30:20.— Affirmation in Support of Bidder's Motion to Vacate Sale, Return Portion of Bid Deposit, Authority to Schedule New Sale.

LexisNexis Forms FORM 461-30:26.— Attorney's Affirmation in Support of Plaintiff's Motion to Vacate Sale, Vacate Judgment and Discontinue Action.

LexisNexis Forms FORM 461-31:6.— Affirmation in Support of Order to Amend Deed and Pleadings Nunc Pro Tunc.

LexisNexis Forms FORM 461-31:8.— Affirmation in Support of Order Appointing Official Examiner of Title.



LexisNexis Forms FORM 461-32:12.— Affirmation of Regularity in Support of Motion for Summary Judgment, Strict Foreclosure.

LexisNexis Forms FORM 461-32:13.— Alternate Form: Affirmation of Regularity in Support of Motion for Summary Judgment, Strict Foreclosure, Affirmative Defenses and Counterclaims.

LexisNexis Forms FORM 461-32:14.— Affirmation of Regularity in Support of Motion for Summary Judgment, Strict Foreclosure, Multiple Affirmative Defenses.

LexisNexis Forms FORM 461-32:16.— Affirmation of Regularity (in support of judgment foreclosing right of redemption).

LexisNexis Forms FORM 461-32:2.— Affirmation in Support of Motion for Order Directing Payment of Use and Occupation, Strict Foreclosure.

LexisNexis Forms FORM 461-32:5.— Attorney's Affirmation in Support of Judgment for Use and Occupation.

LexisNexis Forms FORM 461-33:11.— Affirmation in Support of Motion; R.P.A.P.L. Section 221; Without Contempt.

LexisNexis Forms FORM 461-33:14.— Affirmation In Support of ***Ex Parte*** Order of Possession.

LexisNexis Forms FORM 461-33:20.— Affirmation in Support of Order to Show Cause.

LexisNexis Forms FORM 461-33:5.— Petition [R.P.A.P.L. 713(5)].

LexisNexis Forms FORM 461-34:10.— Alternate Form: Affirmation in Support of Motion to Confirm Report of Sale and For Leave to Enter Deficiency Judgment; Creditor as Assignee of Plaintiff.

LexisNexis Forms FORM 461-34:12.— Affirmation in Support of Order to Show Cause to Confirm Report of Sale and for Leave to Enter Deficiency Judgment.

LexisNexis Forms FORM 461-34:14.— Affirmation in Support of Motion for Renewal and Reargument for Leave to Enter Deficiency Judgment.

LexisNexis Forms FORM 461-34:19.— Affirmation In Support of Leave to Amend Complaint, Convert Junior Foreclosure to Money Judgment Action.

LexisNexis Forms FORM 461-34:21.— Affirmation in Support of Cross-Motion to Vacate Foreclosure Sale and Deed.

LexisNexis Forms FORM 461-34:22.— Second Affirmation in Support of Cross-Motion to Vacate Foreclosure Sale and Deed.

LexisNexis Forms FORM 461-34:24.— Attorney's Affirmation in Opposition to Order to Show Cause to Enter Deficiency Judgment (Items in Calculations Improper; Conflicting Facts).

LexisNexis Forms FORM 461-34:34.— Attorney's Affirmation in Support of Order to Show Cause, Punish Judgment Debtor for Failure to Respond to Subpoena.

LexisNexis Forms FORM 461-34:5.— Alternate Form: Affirmation in Support of Motion to Amend Judgment of Foreclosure and Sale (to Impose Deficiency Liability).

LexisNexis Forms FORM 461-34:8.— Affirmation in Support of Motion to Confirm Report of Sale and for Leave to Enter Deficiency Judgment.

LexisNexis Forms FORM 461-34:9.— Alternate Form: Affirmation in Support of Motion to Confirm Report of Sale and for Leave to Enter Deficiency Judgment; Prior Mortgages, Challenge to Service Interposed.

LexisNexis Forms FORM 461-35:19.— Attorney's Affirmation in Support of Order Confirming Report of Sale, Dispensing With Reference and Directing Payment of Surplus.

LexisNexis Forms FORM 461-35:5.— Affirmation in Support of Motion to Confirm Report of Sale and for Reference in Surplus Money Proceeding.

LexisNexis Forms FORM 461-35:7.— Affirmation of Other Liens.

LexisNexis Forms FORM 461-36:12.— Affirmation in Support of Order Appointing Referee to Compute.

LexisNexis Forms FORM 461-36:4.— Affirmation in Support of Cross-Motion to Dismiss Common Charge Lien Foreclosure Against Senior Mortgagee.

LexisNexis Forms FORM 461-37:37.— Affirmation of Regularity in Support of Inquest.

LexisNexis Forms FORM 461-37:39.— Attorney's Affirmation in Support of Default Judgment; Co op Deficiency Action.

LexisNexis Forms FORM 461-37:42.— Affirmation in Support of Motion for Summary Judgment; Co op Deficiency Action.

LexisNexis Forms FORM 461-41:10.— Affirmation in Support of Order Appointing a Successor Guardian Ad Litem and Military Attorney.

LexisNexis Forms FORM 461-41:11.— Affirmation in Support of Order Appointing a Successor Guardian Ad Litem and Military Attorney.

LexisNexis Forms FORM 461-41:13.— Affirmation in Support of Order to Show Cause to Stay Foreclosure Pending Discovery and Granting Leave to Reargue Summary Judgment.

LexisNexis Forms FORM 461-4:15.— Affirmation in Support of Order to Show Cause to Compel Issuance of Payoff Letter.

LexisNexis Forms FORM 461-41:17.— Affirmation in Support of Cross Motion for Summary Judgment to Dismiss Complaint.

LexisNexis Forms FORM 461-41:20.— Affirmation of Incoming Counsel in Support of Order to Show Cause.

LexisNexis Forms FORM 461-41:22.— Attorney's Affirmation in Support of Cross Motion to Dismiss Complaint and Discharge Tax Lien.

LexisNexis Forms FORM 461-41:25.— Attorney's Affirmation in Support of Motion to Vacate All Stages of Foreclosure and Stay Sale for Lack of Notice.

LexisNexis Forms FORM 461-41:34.— Affirmation in Support of Order Directing Service by Alternate Means, Limited Partnership Avoiding Service.

LexisNexis Forms FORM 461-41:38.— Affirmation in Support of Order Directing Service By Alternate Means (Upon Defendant's Attorneys).

LexisNexis Forms FORM 461-41:4.— Affirmation in Support of Order to Show Cause to Vacate Stay of Eviction After Foreclosure.

LexisNexis Forms FORM 461-41:40.— Affirmation in Support of Order to Change Index Number.

LexisNexis Forms FORM 461-41:42.— Affirmation in Support of Order Consolidating Foreclosure Actions.

LexisNexis Forms FORM 461-41:44.— Affirmation in Support of Motion to Dismiss Complaint of Junior Mechanic's Lienor.

LexisNexis Forms FORM 461-41:49.— Affirmation in Support of Order to Show Cause to Substitute Estate and Appoint Temporary Administrator.

LexisNexis Forms FORM 461-41:6.— Affirmation in Support of Order to Show Cause to Vacate Stay of Foreclosure Sale.

LexisNexis Forms FORM 140-514.— Affirmation in Support of Motion for Writ of Assistance (R.P.A.P.L. 221).

LexisNexis Forms FORM 140-657.1.— Affirmation: Motion for Reconsideration on Remittitur from Appellate Term, Staying Issuance of Warrant.

LexisNexis Forms FORM 140-719.2.— Complaint to Enjoin Public Nuisance (City of New York).

LexisNexis Forms FORM 140-719.4.— Affirmation in Support of Motion to Enjoin Public Nuisance (City of New York).

LexisNexis Forms FORM 1434-19320.— CPLR 2106, 2214: Affirmation by Attorney in Support of, or in Opposition to, Motion - Skeleton Form.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 10:101 et seq .(papers; stipulations).

**Texts:**

1 Bergman on New York Mortgage Foreclosures (Matthew Bender) §§ 4.07, 7.16, 9.03, 9.05, 10.09, 10.10, 10.13, 10.14, 10.16, 10.23, 12.14, 15.09; 2 Bergman on New York Mortgage Foreclosures (Matthew Bender) §§ 16.04, 17.06, 17.08, 19.04, 20.02, 20.08, 21.05, 21.08, 24.11, 26.09, 27.06, 27.08, 27.09; 3 Bergman on New York Mortgage Foreclosures (Matthew Bender) §§ 31.01, 31.07, 32.12, 33.07, 33.08, 34.04, 34.07, 35.05, 37.08, 41.03, 41.04, 41.06, 41.07, 41.09, 41.10, 41.11, 41.12, 41.14, 41.15, 41.16.

**Hierarchy Notes:**

NY CLS CPLR, Art. 21

New York Consolidated Laws Service

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