

Legislation Report

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 92

September 17, 2001

A. 9400

By: M. of A. Gottfried
Assembly Committee: Codes
Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to changing reference from physician, osteopath or dentist to health care practitioner

LAW AND SECTIONS REFERRED TO: Rule 2106 of the civil practice law and rules, as amended by judicial conference proposal number 3 for the year 1973

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES (#24)

THIS BILL IS APPROVED

The proposed bill would extend to other health care practitioners the privilege now afforded physicians, osteopaths and dentists to substitute an affirmation for an affidavit in civil judicial proceedings. Currently CPLR 2106 permits only New York licensed attorneys, physicians, osteopaths or dentists (who are not parties to an action) to affirm a statement to be true under the penalties of perjury to be "filed in the action in lieu of and with the same force and effect as an affidavit." Such unsworn declarations made by any "person" have been permitted in federal court since 1976. See 28 U.S.C. §§§§1746 The purpose of the bill is to eliminate the inconvenience of having to appear before a notary public in order to submit a sworn statement to the court. Whether this is a major problem is open to some debate; but there are situations where a notary public may not be readily accessible to the deponent and locating one would be inconvenient.

While the committee has no objection to the proposed legislation, it believes the more productive approach would be the adoption of the omnibus bills A. 08535 and S. 03435, which would permit all persons to substitute an affirmation for an affidavit in civil judicial proceedings. In addition, those bills require that the signer acknowledge that the affirmation is signed under penalty of perjury; that if it is false, the signer is subject to prosecution for perjury; and that if convicted, as signer, may be subject to fine or imprisonment. Those bills would also amend the penal code to make the false affirmation a Class E felony. Our report on those bills is attached.

For the above reasons, this bill is **APPROVED**.

Person Who Prepared the Report: David L. Ferstendig, Esq.

Chair of the Committee: Steven M. Critelli, Esq.