

To require a notarized signature or not:

A simplified workflow for reviewing court form signature requirements

(January 2024, Updated October 2024)

*This resource is a companion reference to the National Center for State Courts' (NCSC) **Process simplification: A State court toolkit, 17 avoidable pain points when authoring and electronically publishing local court rules (and orders), and Pandemic Procedural Improvements that Courts Should Adopt Permanently** resources.*

Why *not* requiring notarized signatures on court forms (and related

New York state civil litigants no longer need a notary to file affidavits, thanks to Governor Kathy Hochul signing Assembly Bill A5772¹ to amend N.Y. C.P.L.R. § 2106² in late October 2023.

Starting January 1, 2024, civil litigants—without having to use a notary—can now sign some court forms with what's known as an “unsworn declaration” made “under the penalty of perjury”:

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.

Why moving towards **unsworn declarations** improves access to justice:

During the COVID-19 pandemic, many states learned that temporarily suspending traditional notary requirements in favor of an unsworn declaration did not result in complications or increased fraud. So now it seems only prudent for jurisdictions to make these process improvements—like moving towards unsworn declarations—permanent.³

The access to justice community widely celebrated New York state's embrace of unsworn declarations and statements because the notarization requirement is often a barrier for unrepresented parties, especially those of limited financial means (who cannot afford to pay for a notary) or those without easy access to a notary (who cannot travel or live in an area without notaries).⁴

Replacing the notary step also removes one more potential point of confusion and accidental non-compliance for those who are often already navigating what is (to them) an unfamiliar and confusing process.

New York is not alone in adopting some form of law that allows people to sign unsworn declarations through which the person swears they (1) are telling the truth, and (2) acknowledge that lying under the penalty of perjury is a crime.



New York joins six others (Colorado, North Dakota, Pennsylvania, Tennessee, Utah, and Washington) that have adopted a form of the Uniform Unsworn Declarations Act (UUDA)⁵ in allowing unsworn declarations to be used instead of at least some sworn court filings if they are made under penalty of perjury.⁶ (The UUDA does *not* apply to depositions, an oath of office, an oath required to be given before a specified official other than a notary public, a declaration to be recorded under the state's real estate law, or an oath required by the state's law related to self-proved wills.⁷)

Other states have adopted a more limited measure—the Uniform Unsworn *Foreign* Declarations Act (UUFDA)—that allows people who are physically located outside the United States to make unsworn declarations.^{8,1}

Federal law has recognized self-authenticating unsworn declarations made under the penalty of perjury for well over 40 years. 28 U.S.C. § 1746:⁹

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true

¹ NCSC has compiled complementing state law and court rule examples in a *50-state (plus D.C. & VI) scan of unsworn statements/declarations* table with detailed, language-example endnotes, starting at page 16. <https://adobe.ly/47kCrsc>.

under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)"

As state courts continue to review, update, and simplify their rules, **forms**, and processes, the NCSC has prepared a workflow checklist to help courts gauge whether their current rules and forms can be better served through *unsworn* declarations or statements.

Does your current court form, court rule, or administrative order

1.0 If **yes**, does **current state law require** that the document's signature be notarized?

1.1 If **yes**, do not change the notarization block. Consider encouraging state legislative and executive officials to adopt the Uniform Unsworn Declarations Act to remove the notarization barrier.

1.2 If **not**, consider replacing the notarization block with an unsworn declaration made under the penalty of perjury:¹⁰

I declare under penalty of perjury under the law of [state] that the foregoing is true and correct.

Signed on the ___ day of _____, _____, at _____.
(month, year) (city and state (or country))

(printed name)

(signature)

2.0 If **not**, then no change needs to be considered.

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Endnotes:

¹ N.Y. Assembly Bill A5772 (2023). <https://bit.ly/3Moutpx>

² N.Y. C.P.L.R. § 2106. <https://www.nysenate.gov/legislation/laws/CVP/2106>

³ **Pandemic Procedural Improvements that Courts Should Adopt Permanently**, National Center for State Courts (September 2022) p 11.

⁴ Rob Abruzzese, *New York eases notarization requirements in civil cases*, Brooklyn Daily Eagle (October 26, 2023). <https://perma.cc/286K-4VRD>

⁵ Unsworn Declarations Act, Uniform Law Commission. <https://bit.ly/3QzzRZz>

⁶ The Civil Court of the City of New York issued a Directive and Procedure stating that the amendment to N.Y. C.P.L.R. § 2106 “applies only to affidavits.” [<https://perma.cc/SFF2-3MWD>]

⁷ Unsworn Declarations Act: A summary, Uniform Law Commission. <https://perma.cc/RH4W-2BVM>

⁸ See *50-state (plus D.C. and V.I.) scan of unsworn statements/declarations* as of November 2023 compiled by the National Center for State Courts. <https://adobe.ly/47kCrsc>

⁹ 28 U.S.C. § 1746, <https://perma.cc/TT4L-QG5J>. See also Michael L. Closen, *To Swear . . . or Not to Swear Document Signers: The Default of Notaries Public and a Proposal to Abolish Oral Notarial Oaths*, 50 Buff. L. Rev. 613 (2002) [<https://perma.cc/Z2DW-DDYH>] which explains how and why a self-authenticating document is superior to one made under oath before a notary.

¹⁰ Michigan courts, for example, did a limited form review and update in March 2023 when the Michigan Legislature eliminated the affidavit and notarization requirements for the proof of service of process in civil proceedings. [<https://perma.cc/C542-UXW6>]

Arizona’s Legislature has not adopted either the UUDA or the UUFDA, but Arizona courts have adopted the unsworn declarations under penalty of perjury practice through **Ariz. R. Civ. P. 80(c)**. California courts have adopted a similar rule under **Cal. Code Civ. Proc. § 2015.5**. And New Jersey courts allow for certifications in lieu of oath with **Rule 1:4-4**.