

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVES AND PROCEDURES

Subject: Certificate of Conformity

Class: DRP-189

Category: GP-10 & LT-10

Eff. Date: January 1, 2010

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BACKGROUND

A person filing an affidavit in New York State must have that affidavit notarized. Most of the affidavits received by the court are notarized by a notary in New York State. Lately we have been receiving many affidavits signed outside of New York State and notarized by a foreign notary. CPLR 2309 (c) addresses the requirements for affidavits notarized outside of the state and states as follows:

“Oaths and affirmations taken without the state. An oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation.”

RPL section 299-a, mandates that an affidavit signed outside of the state by a foreign notary must be accompanied by a certificate of conformity which certifies that the manner in which the acknowledgment was taken conforms with the laws of the State of New York or the laws of the state or other place where the acknowledgment was taken. See Ford Motor Company v. Prestige Gown Cleaning Service Inc., et al., 193 Misc. 2d 262 [2002].

If an out of state notarization is unaccompanied by such certificate the defect can be cured nunc pro tunc.

Given the increasing number of out of state affidavits being filed we are instituting the following rules.

DIRECTIVE

Effective December, 1, 2009, any affidavit submitted to the court which has been notarized outside of New York State must have a certificate of conformity attached. The certificate must be made by an attorney admitted to practice in New York State residing in the other jurisdiction, by an attorney admitted to practice in the other jurisdiction, or by any other person provided that a justice, judge, surrogate, or other presiding judicial officer appends a statement signed by him/her that s/he deemed the person qualified to make the certificate.


The certificate must state that the acknowledgment was taken following the laws of New York State or of the other jurisdiction and that the person notarizing the affidavit conformed to the laws of New York State or must specify the other jurisdiction and state that the person

notarizing the affidavit conformed to the laws of that jurisdiction.

Any affidavit not in compliance with this directive is to be flagged by the clerk and filed. The filer should be advised that RPL section 299-a must be followed and a certificate of conformity must accompany any affidavit. However, upon application for default judgment if the required affidavit(s) is/are not in compliance with this directive the clerk must reject the application and notify the filer similarly.

A submission of the certificate of conformity shall be deemed to cure the defect.

Date 11/24/09

  
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Fern A. Fisher  
Deputy Chief Administrative Judge  
New York City Courts