



Comments Received by the Department of
Consumer and Worker Protection on
Proposed Rules related to Process Servers

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From: [Maryanne Hanley](#)
To: [rulecomments \(DCWP\)](#)
Subject: [EXTERNAL] Rules related to Process Servers
Date: Wednesday, August 21, 2024 7:17:22 AM

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I believe that the DCWP has done a good job of calling attention to and initiating rules to rectify some of the issues associated with service of process. Unfortunately, at one time "sewer service" was a not uncommon thing; however, our current process servers have proven to be conscientious, hardworking individuals looking to make a difference. Many of those individuals currently serving legal documents have a background of service to our country or law enforcement. I find the DCWP's continued harassment of these individuals disrespectful. Many of the current rules being entertained by the DCWP are far more stringent than necessary to ensure good service and I believe some of the rules are even potentially harmful to our servers. I am aware that the number of licensed process servers has continued to drop. I accredit this situation to the many cumbersome new rules and regulations that make it difficult for an individual to safely and effectively do their job. I request that you acknowledge the good you have accomplished but that you now allow our professional process servers the respect they deserve for the work they do by allowing them to work unencumbered by overly tedious and potentially hazardous rules.

Thank you, MH

From: [Nationwide Legal Services, LLC](#)
To: [rulecomments \(DCWP\)](#)
Subject: [EXTERNAL] Rules Pertaining to Process Servers
Date: Tuesday, August 13, 2024 5:50:12 PM

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Hello,

Regarding Rules Pertaining to Process Servers:

This rule will put all of servers in danger, and it will also run even more NYC process servers out of the business. There is no difference if the photo is taken before, during or after service and requiring it after but within 5 minutes of service could have the process server attempting to flee an angry server who wishes to do the server harm.

In addition, looking to add another section to their rules stating that a “Process Server is to Testify Truthfully”? This is a given, and a total disgrace to our industry. It portrays that all process servers are liars. We all know that a traverse can be lost even with a photo or a signature. It all depends upon how the case is presented. Why should a server or the agency be faced with fines if they are not successful at a hearing?

Mark McClosky
Nationwide Legal Services, LLC
518-399-3059
service@nationwidelegalsvc.com

August 21, 2024

Sent via email: Rulecomments@dcwp.nyc.gov

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Comments on Proposed Amendments to Rules Relating to Process Servers

To whom it may concern:

The New York Legal Assistance Group (NYLAG), a not-for-profit legal services organization founded in 1990, submits these comments in strong support of the Department of Consumer and Worker Protection's (DCWP) proposed amendments to rules relating to process servers.

NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. We are dedicated to providing free legal services to low-income New Yorkers in poverty or crisis.

Every day, our attorneys in our Consumer Protection Unit and Special Litigation Unit work with individual consumers and families facing abusive, deceptive, and unfair debt collection and lending practices. In many cases where NYLAG defends clients in consumer debt matters, our client is unaware of the lawsuit against them until their wages are garnished, their bank accounts are frozen, or a lien is placed on their home. After being denied notice of the lawsuit and due process, consumers are forced into a position where they must defend the lawsuit while creditor plaintiffs seek to enforce judgments against them based on unlawful service of process. As a result, we scrutinize unlawful service practices and raise jurisdictional defenses on the basis of service of process daily.

DCWP's proposed amendments provide a structure for stronger process server accountability and protection for New Yorkers from the harms of improper service in two ways.

First, DCWP's proposed amendments require process servers to report more accurate and timely information about attempted or effected service. The proposed changes to RCNY § 2-333b(a)(2)(i) state that, if a process server does not submit a timely electronic record following an attempted or effected service, there exists a rebuttable presumption that a process server is not in compliance with this law. This default presumption provides protection for parties in a legal action who may have faced improper service, and many of whom defend their cases *pro se*. Because this presumption is rebuttable, process servers have recourse to demonstrate any extenuating circumstances which may arise when attempting to make a timely electronic record of an attempted or effected service. Further, the proposed changes to RCNY § 2-333b(a)(2)(ii) provide that the electronic record must include prompt documentation of the details of the attempted or effected service.

NYLAG's Consumer Protection Unit often works with clients to oppose default judgments based on inaccurate service information. For example, NYLAG client G.S. faced a default judgment for \$10,000 where the process server swore to conspicuous service at the wrong address. In another example, NYLAG client N.J. defended against a \$20,000 default judgment where the process server swore to substitute service on a co-tenant who does not exist. Under the proposed changes, the process servers in these two cases would have had a contemporaneous record following the alleged effected service indicating the GPS location and manually inputted information about the alleged effected service. Instead, no such records were created after the alleged service attempts and our clients faced default judgments for large sums of money based on alleged service at inaccurate addresses.


NYLAG supports the proposed changes to RCNY § 2-333b(a)(2)(i)-(ii), which would strongly incentivize process servers to create timely and accurate records of their attempted and effected service soon after such service occurs. These changes would provide protection to consumers in the form of a rebuttable presumption if the process server does not create such a timely and accurate record of the attempted or effected service.

Second, DCWP's proposed changes outline a more effective framework for holding process servers accountable when they are found to have made a false statement in a sworn affidavit or affirmation of service. The proposed addition of RCNY § 2-235a clarifies the duty of a licensee to not make false statements in affidavits and affirmations of service. In addition, the proposed section would permit the commission to "deny any license application or refuse to renew any license" based on false statements in affidavits or affirmations of service. The proposed section explicitly provides for "due notice and opportunity to be heard" before suspending or revoking a license for false statements. This framework protects consumers against the widespread practice of "sewer service," where a process server falsely swears to have effectuated lawful service on a consumer.

NYLAG's Consumer Protection Unit and Special Litigation Unit frequently see cases with improper service, resulting in default judgments against our clients, where the process server had a history of violating process server laws. These process servers are often still licensed by DCWP. For example, the process servers mentioned above who swore to conspicuous service on our clients at incorrect addresses, both had disciplinary hearings for multiple instances of improper service and improper recordkeeping before they alleged service on our clients yet nonetheless kept their licenses. When a process server commits perjury in an affirmation or affidavit of service, the consumer often faces the consequences, including: the denial of due process, default judgments, wage garnishments, bank executions, and liens on their homes. Countless consumers would be protected from these consequences under this proposed rule. As amended, once a process server makes a false statement regarding service on a consumer, the commission can deny an application or renewal, or upon notice and opportunity to be heard revoke or suspend a process server's license, preventing future consumers from facing the often detrimental consequences of false statements in affirmations or affidavits of service.

NYLAG supports the addition of RCNY § 2-235a. This section would provide needed accountability for process servers who have made false statements in affirmations and affidavits of service and protect consumers from the impacts of further improper service by these process servers.



New York  Legal Assistance Group

New York State has a long tradition of being a leader on consumer protection. These proposed rules continue that tradition in the context of process server accountability. NYLAG respectfully submits these comments and requests the implementation of the proposed rules. NYLAG thanks the DCWP for the opportunity to participate in the enactment of these rules designed to provide greater protections for vulnerable New York consumers.



NEW YORK
CITY BAR

August 21, 2024

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CONSUMER AFFAIRS**

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**COMMITTEE
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By Electronic Submission to Rulecomments@dcwp.nyc.gov
New York City Department of
Consumer and Worker Protection
42 Broadway #5
New York, NY 10004

Re: DCWP Proposal to Amend and Add Rules Relating to Process Servers

To Whom It May Concern:

The Consumer Affairs Committee and the Civil Court Committee (the “committees”) of the New York City Bar Association (“City Bar”) submit the following comments concerning the Department of Consumer and Worker Protection’s (the “Department”) proposed amendments to rules relating to process servers.

INTRODUCTION

The City Bar’s Consumer Affairs Committee examines consumer protection issues at the national, state and local levels. Its members present on topics affecting consumers, prepare position papers, and develop programming. The committee hosts monthly meetings, which include presentations from thought leaders in consumer financial services, advertising, and data privacy, among other topics affecting consumers. The Civil Court Committee addresses issues pertaining

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

to the New York City Civil Court. Civil Court filings include consumer debt collection cases, small claims cases, and no-fault insurance cases. The committees are often called upon to provide analyses of local, state, and federal law and regulation.

COMMENTS

A. Proposed Amendments to Section 233 of chapter 2 of Title 6 of the Rules of the City of New York

The committees believe the Department's proposed amendments will enhance the accuracy and integrity of process serving.

B. Proposed Amendments to Section 233b(a)(2)(i) of chapter 2 of Title 6 of the Rules of the City of New York

The committees support the Department clarifying that a process server is not in compliance with this provision if its electronic record was made before the time of attempted or effective service. However, the committees are concerned by the Department's proposed addition to section 233b(a)(2)(i) which provides:

There shall be a rebuttable presumption that the process server was not in compliance with this provision if its electronic record is made more than five minutes after the time of attempted or effected service.

Existing section 233b(a)(2) requires that:

the process server must ensure that the mobile device make an electronic record of the GPS location, time and date of the attempted or effected service *immediately after* attempting or effecting service.
(Emphasis added)

The committees believe that the proposed five-minute grace period and a rebuttable presumption of noncompliance contradicts and undermines the rule's mandate that the record be made immediately after attempted or effective service. The Department has not provided any rationale or supporting data suggesting that the five-minute grace period bears any relationship to the accuracy or integrity of the process service. Absent a rationale or supporting data, the proposed five-minute grace period is arbitrary. Therefore, we recommend that the Department delete this provision and maintain the rule's requirement that the electronic record be made immediately after attempting or effecting service.

C. Proposed Amendments to Section 2-233b(a)(2)(iii) of chapter 2 of Title 6 of the Rules of the City of New York

Similarly, proposed amendments to section 2-233b(a)(2)(iii)(e) and (f) are not supported by any rationale or data. Section 2-233b(a)(2)(i), “Operation of Equipment,” states: “On every occasion that a process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately after attempting or effecting service. If no GPS signal is available at the time of attempted or effected service of process, the location, time and date will be determined by triangulated cell tower signals.” The rule does not provide that the date and time “according to the device” may be substituted for the date and time provided by GPS or triangulated cell signal data. No rationale is given for including the device date and time as well as the date and time provided by GPS or cell tower triangulation. Absent a rationale or supporting data, proposed sections 2-233b(a)(2)(iii)(e) and (f) are arbitrary and should be omitted.¹

We believe the remaining proposed amendments will enhance the accuracy and integrity of process service.

D. Proposed Amendments to Section 2-234 of chapter 2 of Title 6 of the Rules of the City of New York

We have no comment.

E. Proposed Amendments to Section 2-235 of chapter 2 of Title 6 of the Rules of the City of New York

The committees believe that the proposed subsection (a) amendments will enhance the accuracy and integrity of service of process upon non-natural persons. Therefore, we support the Department’s proposed amendment.

Likewise, we support the proposed amendments of subsections (b) and (c).

F. Proposed Amendments to Section 2-235a, 236, and 240 of chapter 2 of Title 6 of the Rules of the City of New York

We have no comment.

¹ Also note: proposed amendments 2-233b(a)(2)(iii)(e) and (f) require electronic records of the date/time “according to the device,” which is inconsistent with the rule’s equipment requirement. Under section 2-233b(a)(1)(i), “The process server must obtain a mobile device, such as a telephone or personal digital assistant, that utilizes the software necessary to make an electronic record of the location where, and the time and date when, the record is made as determined by Global Positioning System (“GPS”) technology or Assisted-Global Positioning System (“A-GPS”) technology and labels the record with the network date and time maintained by the mobile device...” (emphasis added). Thus, at a minimum, proposed amendments 2-233b(a)(2)(iii)(e) and (f) should be revised to specify that the electronic record “according to the device” should be of the network date and time maintained by the device.

We appreciate the opportunity to provide comments on the proposed amendments. Please let us know if you have questions or if we can provide further assistance.

Respectfully submitted,

Donald S. Maurice

Donald S. Maurice, Chair
Consumer Affairs Committee

Charles Giudice

Charles Giudice, Co-Chair
Civil Court Committee

Tedmund Wan

Tedmund Wan, Co-Chair
Civil Court Committee

From: INFO DJ CUSTOM CONTRACTING <info@djcustomcontracting.com>

Sent: Monday, July 22, 2024 11:34 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: [EXTERNAL] *PROCESS SERVER POLICY AND LEGISLATIVE UPGRADE* 07/22/2024

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I would like to propose updating two policies for process service in NYC:

P1. (NAIL AND MAIL SERVICE) Making one attempt for certain cases before you nail and mail, the most two; As a process service we are licensed and also submitting signed affidavits of service. Also appearing in court if necessary under oath to verify service. This is 2024, times are changing, people as well. **One attempt should be enough.** Even if it's a temporary policy before it becomes permanent.

P2. (BUSINESS HOUR ATTEMPTS/ NAIL AND MAIL SERVICE) Process servers are in the field 4 - 8 HRS.; 8 - 14 HRS. A day. I would also like to propose a small window from 5 PM - 6 PM after making 1 - 2 attempts on a closed business to nail and mail, in addition to making any attempts. We usually get stuck, no one likes to be a sitting duck haha. **Proposing business hours of service from 9 AM - 6 PM.** This is NYC, the city that never sleeps, we work and we mean business so making any attempts or service by 6 PM doesn't seem like a bad idea.

That's all! Thanks for your time and consideration!



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DJ CUSTOM CONTRACTING LLC.

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From: [Jeremy Miller](#)
To: [rulecomments \(DCWP\)](#)
Subject: [EXTERNAL]
Date: Wednesday, August 14, 2024 5:53:52 AM

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I am a process server in upstate ny, Yates county, Seneca county, and honestly the new idea of having to place even more danger in a job that already can be dangerous at times, why add the fuel to possibly get someone killed for simply serving a eviction, what about my safety?? Does my job and life not matter to the politically charged individuals who are proposing these new rules?? Leave it alone, my job is stressful enough, unless the goal here is to have less people serving because life is more important to me than a job. Please reconsider these proposals. I have to sat thank you in advance for your rime in reading my concern.



August 21, 2024

By email to Rulecomments@dcwp.nyc.gov

Re: Proposed Amendments to New York City Department of Consumer and Worker Protection Rules Relating to Process Servers

To Whom it May Concern:

New Economy Project appreciates the opportunity to comment on the Department of Consumer and Worker Protection's (DCWP) 2024 proposed amendments to its process server rules. The proposed amendments will help curb process server abuses and ensure New Yorkers' due process right to receive proper notice of lawsuits against them.

New Economy Project's mission is to build an economy that works for all, based on cooperation, equity, social and racial justice, and ecological sustainability. For nearly 30 years, we have worked closely with community groups across New York City and State to challenge systemic discrimination in our financial system and economy and to promote affirmative solutions to structural inequality. Since 2005, our organization has operated a free NYC Financial Justice Hotline, through which we provide information and legal assistance to thousands of low-income New Yorkers aggrieved by abusive debt collection lawsuits. For many of our callers, deprived of their right to proper notice, a frozen bank account or wage garnishment is their first notice of the lawsuit.

Rampant sewer service problems continue to plague defendants in debt collection lawsuits, leading to fraudulent default judgments that cause tremendous harm to low-income New Yorkers in the form of wage garnishments, frozen bank accounts, and the subsequent inability to pay for housing, medication, and other vital needs. The vast majority of defendants in these cases are unrepresented in court. Once they learn of a judgment against them, they have the burden of filing emergency motions on their own and meeting the court's sometimes prohibitive evidence requirements to disprove the fraudulent claims of service. On our NYC Financial Justice Hotline, we regularly see flagrant examples of these false affidavits or affirmations of service by process servers, including where the process server claims service on the defendant at an address where they no longer reside or on a "co-tenant" who does not exist.

For example, our client Mr. B is a low-wage worker living alone in Manhattan. In 2021, a credit card company sued him, but he was never served with the summons and complaint. He first

learned of the lawsuit when he received a notice that his wages would be garnished. The process server claimed to have served a fictitious co-resident with a name Mr. B did not recognize, and the physical description of the person allegedly served did not match Mr. B or anyone who had ever been in his home.

Another client, Ms. E, is a disabled Staten Island resident and receives only Social Security Disability Insurance and food stamps. A debt buyer sued her in 2022, but she was never notified. She only found out about the lawsuit when she received notice that the debt buyer was seeking a default judgment because she never appeared in the case. The process server claimed in the affidavit of service to have served Ms. E, falsely describing her as a black-haired male, when she is and appears to be a blond-haired female. DCWP had previously charged that process server with numerous violations, including sewer service and lack of fitness, but nevertheless he continued to make false statements in affidavits of service, and multiple times courts found him to have engaged in improper service.

The proposed amendments include vital protections for New Yorkers. In particular, we strongly support amendments that would:

- Prohibit process servers from making false statements in affidavits or affirmations of service (proposed 6 RCNY section 2-235(b));
- Enable DCWP to refuse, suspend, or revoke a process server license if the licensee is found to have made a false statement in an affidavit or affirmation of service (proposed 6 RCNY section 2-235(c));
- Require process servers to testify truthfully by prohibiting false statements under oath or affirmation and by enabling DCWP to refuse, suspend, or revoke a process server license if the licensee is found to have made a false statement orally or in writing under oath or affirmation (proposed 6 RCNY section 2-235a);
- Encourage compliance with DCWP document production demands by specifying that each failure to comply with such a demand is a separate violation (proposed 6 RCNY sections 2-240(c) and 2-240(f)); and
- Require process servers to record key information in their electronic records of service (proposed 6 RCNY section 2-233b(a)(2)(iii)).

We urge DCWP to adopt these amendments and strongly enforce the process server rules, including by revoking licenses where process servers are found to have repeatedly violated their obligations.

Thank you for the opportunity to comment. Please feel free to contact me at liz@neweconomynyc.org with any questions.

Sincerely,
/s/ Liz Fusco, Staff Attorney



NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS

733 SW Vista Ave, Portland, OR 97205 **Tel:** (503) 222-4180
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Toll-free: (800) 477-8211 (U.S. & Canada) - **Website:** www.napps.org
Gary A. Crowe, Administrator administrator@napps.org

August 21, 2024

New York City Department of
Consumer and Worker Protection
42 Broadway #5, New York, NY 10004
Email: Rulecomments@dcwp.nyc.gov

Dear Sir or Madam,

I am the Administrator for the National Association of Professional Process Servers, and I feel compelled, on behalf of process servers throughout the industry, to comment on the proposed rules.

Of utmost importance to our profession is the safety of process servers. It goes without saying that process service is a dangerous occupation, with countless examples nationwide of marshals, sheriffs, and process servers being beaten or killed while attempting to serve legal documents. Enforcing rules that penalize process servers for failing to obtain a GPS coordinate after a service, especially in tense situations, creates a hazardous scenario. Process server education programs across the country explicitly teach servers to prioritize their safety, often recommending actions that directly conflict with the mandates being proposed. Requiring servers to record everything within five minutes is also problematic. Five minutes is insufficient time, particularly given the complexities that can arise during service.

Another significant concern pertains to the electronic records kept by third-party providers. Many of these providers operate on a national level, and New York City servers represent only a small fraction of their overall business. A business model that manages a large volume of work across the country may face challenges in adapting to these additional requirements. If compliance proves too difficult or costly, these providers may be unwilling to continue servicing New York City, which would affect their clients and likely lead to a substantial increase in the cost of process service, impacting litigants.

Moreover, the number of licensed process servers in the city has plummeted. What was once a profession of over 2,500 individuals has now dwindled to fewer than 500. This aggressive enforcement isn't just choking an industry – it's strangling the very core of due process.

Lastly, I am troubled by what seems to be an overreach by the DCWP, which is investigating services that were not previously in question. It appears that this may exceed the authority of a regulatory agency. My understanding is that New York follows rules outlined in the Civil Practice Laws and Rules, and courts are responsible for determining the proper method of service, with judicial rulings becoming case law. Given this, it would seem more appropriate for the courts, not the DCWP, to oversee issues related to the proper service of process.

In conclusion, I respectfully request that these proposals be revisited, as many of the practices seem impractical and unreasonable. Thank you for your attention and consideration.

Sincerely,

Gary A. Crowe, Administrator
National Association of Professional Process Servers

1982

42 Years of Leadership

2024

August 21, 2024



By Electronic Submission to Rulecomments@dcwp.nyc.gov

1050 Fulton Avenue #120
Sacramento, California 95825
916.482.2462

New York City Department of Consumer and Worker Protection
42 Broadway #5
New York, NY 10004

Re: DCWP Proposal to Amend and Add Rules Relating to Process Servers

To Whom It May Concern:

This letter is submitted on behalf of the Receivables Management Association International (RMAI) submits the following comments concerning the Department of Consumer and Worker Protection's (the "Department") proposed amendments to rules relating to process servers.

I. INTRODUCTION

RMAI is a nonprofit trade association that represents over 600 businesses that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial services fields, including banks, credit unions, non-bank lenders, debt buying companies, collection agencies, law firms, brokers, process servers, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP or Certification Program)¹ and its Code of Ethics² set the "gold standard" within the receivables management industry due to RMAI's rigorous uniform industry standards of best practice which focus on protecting consumers. Several of our standards have been adopted at the state level and were recently used as framework by the Uniform Law Commission in their Uniform Consumer Debt Default Judgment Act.³

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of consumers.⁴ While the program was first designed to certify debt buying companies, it has expanded to include certifications for law firms, collection agencies, and vendors (e.g., brokers and process servers). Currently, over 500 businesses and individuals hold these internationally respected certifications. Presently, all the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

¹ Receivables Management Association International, *Receivables Management Certification Program, Ver. 10* (Mar. 1, 2023), publicly available at <https://perma.cc/7D8Q-KGVC> (last accessed July 16, 2024).

² Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at <https://perma.cc/BM6J-USGY> (last accessed July 16, 2024).

³ Uniform Consumer Debt Default Judgment Act, Prefatory Note ("this act seeks to incorporate provisions from . . . standards set by Receivables Management Association International, a debt collections trade organization.") archived at <https://perma.cc/T5TZ-CRC5>.

⁴ RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

RMCP-certified businesses are subject to vigorous and recurring independent, third-party audits to demonstrate their compliance with the Certification Program. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into their business operations. Following a company's initial pre-certification audit and first full-compliance audit, independent program review audits continue to be conducted every three years. The audits are reviewed by an Audit Committee which has consumer representation. Beginning March 1, 2024, BBB National Programs is administering RMAI's Remediation Committee which is the committee that handles any unresolved audit deficiencies.

RMCP certification also requires RMAI-certified businesses to engage a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or general counsel of the business. The chief compliance officer must maintain individual certification through the RMCP by completing 24 credit hours of continuing education every two years.

As mentioned, our certification standards include process servers and impose certain requirements upon them not unlike the Department's. Therefore, our members are well suited to provide the Department with comment concerning its proposed rule.

II. COMMENTS

Proposed Amendments to Section 233b(a)(2)(i) of chapter 2 of Title 6 of the Rules of the City of New York

Proposed 233b(a)(2)(i) creates unnecessary risks for process servers. The amendment provides:

There shall be a rebuttable presumption that the process server was not in compliance with this provision if its electronic record is made more than five minutes after the time of attempted or effected service.

We know that process servers are sometimes required to serve process under dangerous conditions, such as service in a building that is structurally unsafe, face belligerent people with weapons, or encounter aggressive dogs. In fact, one of RMAI's members had an employee killed by a pack of dogs when serving process. In such situations, the making of the electronic record that is contemplated in this rule must be delayed until the process server is in safe space. Existing section 233b(a)(2) recognizes such conditions may delay the making of the electronic record and only requires that "an electronic record of the GPS location, time and date of the attempted or effected service immediately after attempting or effecting service."

We understand that the device used to record the GPS location (or triangulated cell tower location) can capture the date and time of service at the time service is made. However, the "electronic record" contains more than just the date, time and location of service and would include the additional information under existing 233b(a)(2)(ii) and the information under proposed 233b(a)(2)(iii). A process server under assault cannot be expected to enter all the information being required to create the expanded electronic record, especially when the needed location, time, and date has already been captured. The proposed rebuttable presumption of noncompliance is arbitrary because it is not supported by any data or explanation suggesting that creating the electronic record after five minutes of service, will impugn the accuracy or integrity of the process service.

RMAI respectfully recommends a safer and less burdensome alternative to the proposed rule that is consistent with RMAI Certification Program requirements to ensure service integrity. In addition to having time, date, and location GPS requirements, RMAI also requires: (1) photo or video technology to be deployed to prove service, (2) process servers to perform a monthly audit of each employee/agent to compare the distance and time between each service on a random sample to see if the time and date stamps would support the legitimacy of such service, and (3) process servers to pay the same fee for both successful and unsuccessful service attempts so as to not create an atmosphere that would benefit a “successful” service.

III. CONCLUSION

RMAI appreciates the opportunity to submit its comments concerning the proposed rule. RMAI looks forward to assisting the Department in any capacity we can. Please do not hesitate to contact RMAI General Counsel David Reid at dreid@rmaintl.org or (916) 482-2462 if you need further clarification on RMAI’s comments or if we can be of further assistance.

Sincerely,

Michael E. Becker

Michael Becker
Executive Director
Receivables Management Association International

cc: RMAI Board of Directors

Online comments: 65

- **Eric S. Olesh**

Regarding the upcoming proposal to amend the rules for process servers, my question is, being that affidavits no longer have to be notarized, for audits going forward will the affirmation of service now be acceptable when being audited by the Department?

Sincerely,

–Eric S. Olesh

License #: 2109057-DCA

eolesh@gmail.com

Comment added August 3, 2024 1:53pm

- **Paula` Parrino, Esq.**

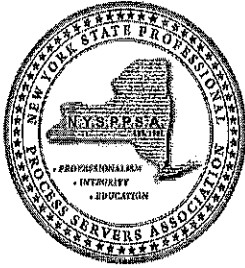
The New York State Association of Professional Process Servers conducted meetings with process servers and third party providers regarding the proposed rules. Please see attached letter for commentary. I look forward to speaking at the hearing on the 21st. Thank you for your consideration.

[Comment attachment](#)

August-2024-Comments-to-DCWP-for-proposed-Rules.pdf

Comment added August 9, 2024 3:08pm

NEW YORK STATE PROFESSIONAL PROCESS SERVERS ASSOCIATION



August 9, 2024

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Administrator

Via Attachment / <http://rules.cityofnewyork.us/>
New York City Department of Consumer and Worker Protection
42 Broadway #5
NY, NY 10004

Re: Proposed changes to Process Server Rules

Dear Sir or Madam:

I am the current President of the New York State Professional Process Servers Association and would like to submit some comments/suggestions regarding the proposed rules.

1. Proposed Rules Page 4:

Section 2-233 Records (a) (2) Content of records of service, (x):

"the address where service was attempted or effected, which must be entered [as] in [three] five different fields: [such that one field will be for the street address and any apartment, suite, or room number, the second field will be for the city or borough and the third field will be for the ZIP code] the first field will be for the building number; the second field will be for the street name; the third field will be for address details, e.g., apartment, suite, floor or room number; the fourth field will be for the city or borough; and the fifth field will be for the ZIP code;

Comments:

If the Rules are passed, when will the rules go into effect? I ask this because it would seem, based upon my conversation with some third party providers, that a change in the data structure to add fields, while it may seem to be something not extraordinarily overwhelming can actually be quite significant, especially to larger third party providers who work with process servers all over the country and not just specifically in the City of New York. While there is no concern about the addition of the fields from a service standpoint, from a practical provider standpoint it appears to be troublesome, as the larger providers have many customers across most, if not all of the states, and in many different cities. By mandating how these providers need to encapsulate the data structure and storage, it will take a great deal of time and will possibly make their other customers use additional fields and take additional steps that is not wanted or needed.

From a process server standpoint, the concern could be increased fees from the third party providers to cover the cost of these changes, thus raising the cost of service, not just for the servers, but the agencies and all of the clients utilizing services. This could have a negative, unintended consequence for all litigants involved in actions. In addition, what happens if a number of the current third party providers no longer want to work with servers in New York City?

Phone: 888-258-8485

P.O. Box 925
Orchard Park, NY 14127

Fax: 877-258-8484

2. Page 5

Section (xviii) adds "or affirmation."

(2) required records. Process serving agencies must maintain, at a minimum, the following records:

(iv) A copy of every affidavit of service and affirmation of service signed by the process server for service assigned the process serving agency;

The use of the word "and" instead of "or" or even "and/or" would seemingly indicate the combining of things, as "and" is conjunctive, whereas "or" is disjunctive and separates things. We believe that the usage of "and" creates ambiguity and inconsistency; respectfully, we request that the text be changed to as follows:

"... copy of every affidavit of service or affirmation of service..."

This same issue is found in several other spots throughout the text:

Page 11 under Section 2-234 Duty to Comply with Law:

"... relating to the conduct of licensees and the service of process in the State of New York and the preparation, notarization and filing of affidavits of service; and the preparation and filing of affirmations of service and other documents, now in force or hereafter adopted during any license period..."

Page 12 at the top of the page under letter (a):

... The licensee must include [his/her] their license number on all affidavits of service and affirmations of service ... each affidavit of service and affirmation of service, the licensee must ..."

Page 13 under Section 2-240 Audits (a) (2):

"Affidavits of service and affirmations of service filed with a court by a process server"

3. Page 6 letter (c) Storage of Records with a third party contractor:

(8) produce to the Department upon request [an MS Excel spreadsheet of] the electronic records containing [the fields and data format] required information set forth in 6 RCNY Section 2-233(a)(2) in the format provided by the Department on its website."

I feel it is best left to the third party providers to speak on this issue, as it involves their area of expertise.

4. Page 7 section 2-233b changes [his or her] to "their" which is not an issue.

5. Page 8 has a significant change to the rule which we believe needs to be reconsidered:

Under Section 2-233b Electronic Record of Service / GPS Requirements (a)(2) Operation of Equipment (i) ... If no GPS signal is available at the time of attempted or effected service of process,

the location, time and date will be determined by triangulated cell tower signals. The process server is not in compliance with this provision if its electronic record was made before the time of attempted or effected service. There shall be a rebuttable presumption that the process server was not in compliance with this provision if its electronic record is made more than five minutes after the time of attempted or effected service.

Comments:

1. Currently, the standard in which some process servers handle the taking of GPS images is upon arrival at the location for service, a server will lock in their GPS coordinates. This is done for several reasons, but the most important and prevalent reason is for safety concerns.

Unfortunately, process service is a dangerous profession and process servers throughout the city, state and country are encountering more belligerent, aggressive and volatile defendants/respondents than ever before. While, as process servers, we are actually securing and protecting the defendants/respondents' right to be heard, many litigants are angered by the notice that our service provides. Additionally, needing to record all of the information for the service within a time of five minutes sets the clock ticking. What happens if a server is in a dangerous building with gang activity or is in a building with a lot of drug activity? Similarly, the server could be looking for a way out of a building that has non-working elevators and must climb down stairwells or the like. We have had instances where aggressive and dangerous dogs have been let out on the servers and I know of many servers who have suffered dog bites. The idea that in the midst of trying to protect themselves and get out of a potentially dangerous situation that they must do everything possible as mandated within five minutes, so the service is considered valid is unreasonable. Certainly, in those instances, a server would not want to go back to once again serve those papers after a threat, aggressive behavior or worse.

By mandating that the process server is not in compliance with the provision if the electronic record is made before the time of service, there is a rebuttable presumption on non-compliance if the electronic record is made more than five minutes after the time of attempted or effected service is faulty reasoning. Respectfully, we aver that to make an inference that is derived from a gap of more than five minutes that service is non-compliant is unreasonable. For a process server to need to rebut the presumption by evidence is in direct conflict with the proposition that a process server's affidavit of service establishes a prima facie case as to the mode of service and gives rise to the presumption of proper service (Second Department, *Wells Fargo Bank, N.A. v. Enitan*, 2021). The presumption of valid service can be rebutted by a defendant's averment otherwise. Yet, here with the language of the proposed new rule, there is a presumption of non-compliant service.

Further, one can argue that the act of service is a process that takes time and is not just when the server locks in a coordinate or rings a bell or knocks on a door.

Lastly, how does this rule impact the rule that the server has 72 hours to upload the service information?

6. Pages 8-9 also includes the addition of the following:

(iii) Each electronic record must include, at a minimum, the following information:

(a) a unique file identifier of the process being served;

(b) plaintiff or petitioner, which must be specified by the last name of the first plaintiff, or, if not a natural person, the name of the entity, except that the field may contain the name of

every plaintiff or petitioner in the case, provided that the entire record is searchable by a wildcard search of the name of any plaintiff or petitioner;

(c) defendant or respondent, which must be specified by the last name of the first defendant, or, if not a natural person, the name of the entity, except that the field may contain the name of every defendant or respondent in the case, provided that the entire record is searchable by a wildcard search of the name of any defendant or respondent;

(d) the full index number, entered with all information necessary to identify the case, such as XXXXXX/XX, unless the case is a Civil Local matter, in which case, it will include the prefix of CV, CC, LT, MI, NC, RE, SC, or TS;

(e) the date that service was effected or attempted according to the device, entered as MM/DD/YYYY;

(f) the time that service was effected or attempted according to the device, entered in military time;

(g) the date that service was effected or attempted according to GPS or cellular signals, entered as MM/DD/YYYY;

(h) the time that service was effected or attempted according to GPS or cellular signals, entered as military time;

(i) the location where service was effected or attempted, which must include building number, street name, address details, e.g., apartment, suite, floor or room number, city or borough, ZIP code, which must be five digits, and latitudinal and longitudinal coordinates returned by the GPS device in decimal degree format. All address information must be CASS (Coding Accuracy Support System) processed to ensure its accuracy with software graded to be CASS Certified by the National Customer Support Center of the United States Postal Service;

(j) the name of the intended recipient of the process, which must be entered in two data fields such that the first data field is the last name of the intended recipient, or, if not a natural person, the name of the entity, and the second data field is the first name of the intended recipient if a natural person;

(k) the name of the person to whom process was delivered, which must be entered in two data fields such that the first data field is the last name of the person, and the second data field is the first name of the person; and

(l) the DCWP license number of the process server, specified as a seven-digit number, where the first number must be zero if the process server's license number is less than seven digits, the DCWP license number of the process serving agency from whom the process was received or, if not received from a process serving agency, the name of the person or firm from whom the process was received.

Comments:

I am unsure of what this section is getting at; my only concern is if, when naming defendants/respondents (particularly in a mortgage foreclosure action), et al. is frequently used. Will that cause an issue with what this rule is trying to put in play?

Similarly, in a mortgage foreclosure, if serving at the property to be foreclosed, a tenant is encountered and a name is refused, the fictional name of "John" or "Jane Doe" is used as a designation. Will somehow

that use run afoul of what is being proposed. Additionally, when a person in any action refuses a part of their full name, will that cause issue with what is contemplated above?

7. Page 12 (continued from page 11)

Section 2-235 Preparation of Affidavits of Service or Affirmations of Service

The new language includes:

A process server purporting to serve a business entity by delivery of papers to an individual that the process server, upon personal knowledge, avers in the affidavit of service or affirmation of service to be the "agent," "managing agent" or "general agent," or other individual authorized to accept service, also must state in the affidavit of service or affirmation of service, at a minimum: (1) that the process server inquired if that individual was authorized to accept service and received an affirmative response; (2) that the process server inquired of the individual their name and job or responsibilities and the individual's responses; and (3) facts confirming or explaining the statement that the process server knew the individual served was the type of agent specified in the affidavit of service or affirmation of service.

Comments:

The only issue here is that the affidavit/affirmation will need to be longer and include with specificity the questions and answers as set forth above.

From a provider standpoint, for those agencies/servers who use a provider database, it would need to be determined how quickly a change like this can be done in order to ensure compliance. Also, will there be a significant cost increase for this implementation that could eventually be borne by a defendant/respondent in an action?

8. On Page 12, the following language is also added:

(b) A licensee must not make any false statement in an affidavit of service or affirmation of service.
(c) The commissioner may deny any license application or refuse to renew any license, and, after due notice and opportunity to be heard, may suspend or revoke such license, if the applicant or person holding such license, or where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owing ten percent or more of the outstanding stock of the corporation, has been found, in connection with the applicant's or licensee's business, to have made a false statement in an affirmation of service or affidavit of service.

Comments:

A licensee should never **knowingly** make a false statement in an affidavit of service or an affirmation of service. The question is what the definition of "false statement" entails. Certainly, a typographical error would not be a "false statement." Thus, a way to define false statement seems necessary so as not to categorize any issue that may require an amendment to be a "false statement." Courts recognize typographical errors and ministerial errors on affidavits [affirmations] and do not discount the service or impugn the process server's credibility for such issues.

9. Further, on page 12, I believe there is a typographical error in letter c and under Section 2-235a Duty to Testify Truthfully: I believe "owing" was meant to be "owning."

10. Regarding Page 12, under Section 2-235a Duty to Testify Truthfully the following is stated:

(a) A licensee must not make any false statement in an affidavit of service or affirmation of service.

(b) The commissioner may deny any license application or refuse to renew any license, and, after due notice and opportunity to be heard, may suspend or revoke such license, if the applicant or person holding such license, or where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owing ten percent or more of the outstanding stock of the corporation, has been found, in connection with the applicant's or licensee's business, to have made a false statement in an affirmation of service or affidavit of service.

Comments:

It should go without saying that anyone signing an affidavit of service or affirmation of service understands that they are testifying under the penalties of perjury that a false statement material to the action would be a cause for alarm. Again, the question of how a "false statement" is defined should be clearly addressed in order to avoid any ambiguity or controversy.

Also, a cause of concern for those in our industry is the perception amongst servers in our industry that the DCWP appears to believe that if a traverse hearing is ordered, the process server must have done something wrong during the service. Acquiring jurisdiction through service of process is essential in our client's cases. One of the easiest forms of challenge to make from a defendant/respondent standpoint is to allege that service was defective or never accomplished. At a certain point, a traverse hearing may eventually be held to determine if the defendant/respondent was served in accordance with the relevant laws.

One of the main challenges currently in the traverse hearing realm is the argument that defendant/respondent attorneys are using the fact that a process server signed a consent order with the DCWP as a way of attacking the server's integrity. While an attorney is present to represent the litigant's rights during the traverse hearing, the process server acts solely as a witness to testify as to their role in acquiring jurisdiction. The process server's records are used as evidence at the hearing and, even when a judge finds that a process server has been credible, may still find in favor of a defendant/respondent for various reasons.

A server may serve hundreds or thousands of papers a year. It is reasonable to believe that a certain percentage/number of those papers may be challenged for service, as process service is one of the building blocks of a successful case for a plaintiff/petitioner. In addition, at times a defendant/respondent is aware that they are about to be served with legal documents and attempt to evade service or deceive the process server.

The presumption that a process server is a "sewer server" because of a lost traverse hearing or is not worthy of license renewal or continuation is a false equivalency. There have been times where defendant/respondents not only actively evade service, but they also tell falsehoods in an effort to avoid service.

11. Pages 13 and 14 add the following language:

"Each failure to comply is a separate violation ..."

There is no "cure period" referenced herein and the Mayor's certification specifically states that the rule "(iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation," however clearly this is not accurate.

Additionally, as mentioned above, one of the most detrimental parts of the traverse hearing for a process server is when opposing counsel makes note that the server has signed a consent order with the DCWP and uses that to impugn a server's credibility. As a part of the traverse hearing, if the attorney for whom the server testifies is unfamiliar with the case or rules of service (many times per diem counsel are hired for these hearings and are often unfamiliar with service of process) then the server is left without sufficient opportunity to be heard and then is also likely to be more heavily scrutinized due to a lost traverse hearing.

Lastly, there is new legislation awaiting the Governor's signature (Bill S7801 / Assembly matching bill 8081A) that wants to amend the wording of the CPLR Section 306 to change the way a person is identified on an affidavit or affirmation of service. The goal of this act, as stated, is to stop civil discrimination. I am unsure of the process by which the new rules are promulgated and how daunting or not it may be. If I may offer a suggestion should the process be time consuming and lengthy; perhaps it is best to await the governor's signing into law the new bill before proceeding with the amendments proposed.

As we have discussed in the past, our Association is aware of the necessity for upholding standards for effective service of process in the City and we appreciate the efforts made by the DCWP in regard to those standards. We believe that the proposed comments above should help demonstrate why some of the proposed rules may need to be adjusted or defined, as it is important to consider all of the circumstances which may affect the ability of a process server to fully comply with the proposed regulations, especially when personal safety is a significant factor.

The Association thanks you for your time and consideration in review of our comments and suggestions and for your continued efforts on behalf of all New Yorkers, including our process servers.

Sincerely,



Paula Parrino, Esq.
President, NYSPPSA

- **Anthony Crowley**

1. You can't submit any electronic record before the time of service. That seems like a good thing (you can't say you served it before you did).....BUT....that means you can't take your photo when you arrive at a location. You would HAVE to take the photo AFTER service, when the person is standing there staring at you, already upset and potentially angered by the fact that you are taking a photo. It is just unsafe.

2. They want to make it so you must submit an electronic record within 5 minutes of service (electronic record is putting it through the app). Think about the times where you want to pull around the corner so you aren't sitting in someone's driveway while they stare at you and get more agitated. or you are working in a complex and it takes time to get multiple people served in one building. If you don't submit that through the app within 5 minutes of the service time, it would be invalid. Again, safety and just logistical problems.

Comment added August 13, 2024 4:29pm

- **Michael Lupia**

Are you trying to get process servers killed or injured ??? what is wrong with you ????

Comment added August 13, 2024 5:12pm

- **Nick Rivera**

I am writing to express my concern about the proposed change to the rules that will require a server to lock in their GPS coordinates after service. Requiring a server to lock in GPS coordinates after they make service heightens the probability that the person served is present and sees them taking the photo. This will absolutely put the process server in harm's way.

The amount of times process servers who serve papers on our behalf have been verbally or physically assaulted has drastically increased

since COVID. One server was attacked with a bat. Another had a gun pulled on him. These are just a couple of examples of the violence that the servers are running into. People are aggravated that the server is there in the first place. This rule will lead to more of these types of situations.

Maybe there is a better solution to whatever the problem is with locking the GPS coordinates in before service.

Comment added August 13, 2024 5:18pm

- **Shannon Hyde**

These requirements would make it very difficult for me to do my job as a process server in New York State.

Comment added August 13, 2024 8:19pm

- **Josh Miller**

These proposed rules are a hazard to process servers. There have been instances of process servers being harmed or killed simply for doing their job, which is an essential part of our legal system. After completing the service, often dealing with hostile and confrontational defendants, the server needs the ability to leave the area immediately for their own safety. Requiring them to add additional steps after the service that could have been performed prior to service (like taking a photo) only puts them in danger. In addition, if someone orders the server to leave their property, they are required to do so. Getting to their vehicle, pulling away and then finding a safe place to pull over to complete their paperwork would more often than not cause them to exceed the arbitrary time limit being proposed and put them in violation. However well meaning these proposed rules are, they are misguided and not founded in the reality that a process server faces on a daily basis.

Comment added August 13, 2024 9:32pm

- **James R**

What you are asking is completely unsafe for servers. The entire argument here is complete and utter safety. To allow this proposal to go thru, it will hinder the legal process and make the overall job change and become that much harder for process servers, law firms and any entity involved.

Comment added August 13, 2024 11:40pm

- **Paula Parrino on behalf of a NYSPPSA member**

A member of our Association asked me to have published the following comments, as they felt there was no way to post anonymously, other than using the Association as a tool. As such, I am copying and pasting their comments:

"If you would allow me: I would like to comment on one of the more troubling technical aspects here in with regards to the database systems which you may wish to comment.

2-233b (a)(2) (iii) (b) and (c) proposal on page 8

- does this mean they want the entire case caption? what about multiple party actions?

normal field size is 255 characters. If you need to make it a larger field – it then becomes a "memo" field.

Memo fields are normally not recommended or advisable since they cannot be indexed to be searchable on your database – especially when data like plaintiff and defendant needs to be queried to search. Forcing an "index" on "memo" type fields in your database will cause all kinds of errors in the database and making it very instable – be it access, sql, etc. You can easily search this dilemma on the net and the experts will tell you that this is highly not recommended and a recipe for disaster with your database.

Also the larger "memo" type fields aren't easily transmitted to an excel spreadsheet "cell" – if its even possible – it gets "truncated" or cut off at 255 characters.

Even memo fields have a limit – what happens when you get one of these crazy captions that are several pages long??

... adding additional fields to a database is a very complicated task.

When you alter foundations of a database – many things need to be changed as well – from the various myriads of queries and forms and reports (i.e. affidavits) that these fields will need to populate from – it is a very undaunting task that can take quite some time and then you have to go through correcting the many bugs that come afterwards from queries...

As for this 5 minute rule – I believe there are some individuals on their own that literally have to manually type all that data case captions, etc, – into the system before they can upload to the third parties – so how can they do all that in 5 minutes??? Or what about the poor fellas that are still on the log book – can take more than 5 minutes to write the log and upload electronically. Weather conditions – what happens when it rains – after running out from an unfriendly place – need to find a friendlier shelter to upload, amongst a myriad of other things that can happen in 5 minutes

the NYS law says 3 days upload – can NYC come in to trump that rule just like that?

Supremacy clause say State law trumps NYC rules?

2-235(a)

for business

needs all 3 of these on affidavit:

1) person must state they are authorized to accept – received a “yes” answer

2) needs job title or responsibilities

3) server knew the person served to be the type of “agent” (i.e. because he asked 1) and 2) , etc.)

• doesn't this require an act of the state legislature to make this a requirement – since it is not required in the CPLR as far as the STATE courts are concerned? “

Comment added August 14, 2024 7:21am

- **DJ**

Hello. I am deeply concerned with some of the new proposed rules for process servers. Requiring a process server to generate a GPS record AFTER service takes place (and within 5 minutes) is EXTREMELY DANGEROUS and detrimental to the safety of us hard working process servers. Once a paper is served, a process server very often faces a threat to their safety by the person served. As a process server for 9 years, I can confidently say that no matter how polite I am when serving process, defendants often get angry and sometimes violent. These interactions require a process server to immediately return to their vehicle and get away as fast as possible to avoid harm. There is sometimes no time for a GPS record to be generated AFTER service has taken place due to these threats. The DCWP needs to respect the safety of us servers. We are doing this to make a living, and we deserve to feel safe when conducting business. This proposed rule change does not allow us that courtesy and completely disregards our safety. We are not blind to what the DCWP is attempting to do, and quite honestly, it is a disgrace. It is very clear to many of us that the DCWP is trying to drive process servers out of business so that civil divisions of Sheriff's Departments are the only option for service of process. This in turn makes a profit for the State of NY. The DCWP, a tax-payer funded organization, is abusing its power by attempting to hurt private businesses (process servers) and create profitability for a public entity, the State of NY. Public entities competing in the private sector is, at best, unethical, if not illegal.

Comment added August 14, 2024 11:16am

- **Paula Parrino on behalf of NYSPPSA members**

Please see attached a letter from a Long Island process server who was formerly a police officer in New York City.

[Comment attachment](#)

Process-server-letter-from-Long-Island-Process-Server.pdf

Comment added August 14, 2024 1:57pm

FROM THE DESK OF

PATRICK BUTTLER

August 13, 2024

To whom it may concern,

My name is Patrick Buttler and I am currently employed as a process server for a large process serving agency on Long Island. I have been serving papers for this company for over 10 years, shortly after retiring from the NYPD as a Police Officer after 20 years of service. I am writing this letter because I have been made aware of new rules that are being discussed that may result in a more dangerous workplace for process servers and I would like to share some experiences that I have encountered.

When I started working as a server, I knew there were risks that would likely occur but I thought those incidents would be few and far between and for the most part that is true. However there are times when things do not go as smoothly as one hopes. We, as process servers, often deal with people who are in a desperate situation. They are being evicted from their apartment and have nowhere to go, their house is being foreclosed because of some tragic event in their life, or they are going through a stressful divorce and their lives have been upended. The emotions people deal with are often expressed when they receive these legal documents and the situation becomes "real" and they lash out at those of us who deliver those documents. The NYPD has always taught us to de-escalate these situations by being professional, respectful, courteous and empathetic. However, when dealing with such fiery emotions, mental health and/or substance abuse issues, this is not always possible. In the police department we worked with a partner and if things escalated further we had the best weapon a police officer could have, his radio. We knew that after we made the call for back up that we would have to defend ourselves for less than sixty seconds until the cavalry arrived. Unfortunately a process server works alone and the only way to feel safe is to retreat to the safety of our vehicle. Here are just a few examples of what has occurred with me.

I was serving foreclosure papers on a residence and the person I was serving became immediately enraged, demanding that I not leave the papers. As I was walking back to my car I noticed him following me and he grabbed a large spade shovel from a garbage can in front of his garage. I immediately jumped in my car and attempted to pull away, but before I could he took a full swing with the shovel striking my rear window with the metal shovel. Somehow the window did not shatter and I was able to leave safely only to swing back around to obtain a picture of the house with the man

still yelling and appearing violent. I informed my office about what happened and they suggested that I file a police report, but I felt that this man had mental issues and calling the police would only escalate the incident.

On another occasion I was again serving foreclosure papers and was met by a man outside of the residence who accepted the papers and was then told to get off his f***ing property and if I came back I would be trespassing and he would "put a bullet your f***ing head". I proceeded back to my vehicle and waited a short time for him to turn his back to take a picture because I knew if he saw me snapping a picture of his residence it would have escalated into a possible physical altercation.

Finally, I served papers just this evening for Surrogates Court that had to be served personally. I attempted to serve these papers on this past Saturday when I spoke to a female resident who said the person I was trying to serve did not live here. My instructions were to post the papers on my final attempt and I informed the woman that I would have to come back and post the papers on the front door if I was unable to serve him. She then proceeded to tell me in a thinly veiled threat that she had a large dog that was capable of breaking through the screen door and that I should be careful. Earlier this evening I was able to post the papers without incident, however I made sure that my car was running and the windows were rolled up to ensure I had a safe way to escape if things went wrong.

These examples are not a total accounting of all the incidents I was involved in, but I think that exemplifies some of the challenges of this profession. When I took this job I knew there would be risks involved. My wife knows the challenges of my career, which is why she always tells me to be careful when I leave for work and why she knows what I mean when I tell her I had to make a "quick getaway" from where I served papers. The company I work for is always supportive of me when I express concerns over serving papers that may result in a dangerous situation by offering me a person to accompany me or request a police escort and I hope that those who make the rules and regulations for process servers will also insure that the service of papers is done properly and safely.

Sincerely yours,

Patrick Buttler

- **Domenic Lanza, Esq.**

The proposed amendment with respect to the 5-minute timeframe to lock-in GPS coordinates borders on shocking the conscience. Process serving is undoubtedly a dangerous profession, owing to the fact that defendants/respondents – more often than not – do not want to be served. The servers themselves are walking into an uncomfortable situation (at best), and there are often threats of violence. I have even heard of actual acts of violence, ranging from a dog being set on servers to actual, physical contact.

Forcing servers to take the GPS lock within such a short period of time will require them to linger, withdraw their phone, and take a photo. Speaking personally, I would be quite unhappy if a stranger took a photo of me; compound that with a person having delivered me “bad” news, and I would almost certainly be angry. It simply does not provide time to retreat and deescalate a situation. In fact, it seems to be a window that may well exacerbate confrontations.

I understand that the goals of these requirements are to prevent “sewer service.” I do not see, however, how this accomplishes that goal, nor do I see how it protects defendants and/or respondents. It feels far more akin to a sword than a shield, given what we have all heard about the fines levied against servers. Process serving is a profession that is an extension of our judiciary, and these rules seemingly seek to eliminate that.

In my mind, the window should be far larger – perhaps one hour? – or the GPS lock should be allowed to be taken upon arrival to the location. I understand that there is a concern about bad actors taking advantage of this, but I do not see how shifting the “when” makes that more or less likely.

Comment added August 14, 2024 2:49pm

- **Christine**

I am not a process server but have been working as a paralegal for a process service company for 20+ years. Serving process is already a dangerous job but the proposed 5 minute rule & photo after rule will put the servers in very dangerous situations. We have had instances where servers have been threaten, had weapons pulled on them, been beaten up and hospitalized. Now add to that fact that they cannot take the photo before walking to the door but now will have to take a photo while being threatened. Server's put themselves at risk every single day. The rules should not add more risk to their job.

I've been working in this industry prior to the gps tracking. I get the need for it but when that was enforced, it diminished the amount of available servers drastically. Everytime there is a new rule that changes how servers need to do their job, the server pool shrinks. Add into the fact that the fines are so drastic and sometimes even more than a server makes, why would someone want to keep doing this very necessary job?? The DCWP needs to start thinking about logistics and realize that part of their job is to protect this industry, not destroy it or use it as a money maker for the city.

Comment added August 14, 2024 3:16pm

- **Harlin Parker**

When serving to a business entity of any kind, it is often the case that the recipient will decline to provide his or her official title or position. The recipient may be reluctant, or even hostile, to answering any questions from the server, with the recipient stating that he or she will take the documents but little more. Especially for small businesses, the recipient may (clearly) be the person in charge, but without the recipient providing clear statements to the effect that they are fully authorized to accept the documents (but without providing corroborating information such as their exact title or duties such that the server can make an independent judgment if that recipient fall under "authorized" recipients as stated in the CPLR or other statutes, then the server is at risk of making a service that is at least

questionable. That could easily add costs and time and effort as it may then be necessary to accomplish service via delivery to the Dept of State if that is an option, to a registered agent if there is one and that is possible, or taking other extraordinary efforts (ie: locating a resident address for an officer and attempting service there). So I think it needs to be established that the business to be served has some actual presence at the location, the recipient is either by their own acknowledgement (without additional "proof") or by reasonable determination, to be a responsible person whom can be entrusted to receive the documents on behalf of the entity.

Comment added August 15, 2024 9:24am

- **Harlin Parker**

Another thing. The proper person to be served on behalf of any business entity may be provided to the server by a party or by counsel. That person's name and position, maybe even a photo, can be provided to the server. So if that server attempts to deliver the documents to that person and that person refuses to answer any questions, does that mean that service cannot, or should not, be made by delivery to that person? That doesn't really make sense, does it? Civil litigation is already time consuming, cumbersome and costly enough. We're not talking about old fashioned sewer service here, such as happened with L&T and consumer credit actions where servers were (quite literally) just signing false affidavits. Let's remember, defendants, and even many non-party witnesses, do not welcome process servers. While the City of New York readily accepts process (and the clerks who take these documents in at the Corporation Counsel's office are always nice and pleasant), many business defendants are small business run by, um, crooks. And crooks do not cooperate. Crooks lie. Let's not give crooks a veto on service of process if we can avoid doing so. If anything, service of process should be made a bit easier to accomplish, especially in light of more business offices not being open five days a week, or having "authorized" personnel at the location during regular business hours.

That alone now adds to the time, effort and costs of serving process on some of these companies. And that includes seemingly large companies as well. Defendants and all litigants have a right to be properly served, but plaintiffs should be able to accomplish these tasks at the least necessary costs and efforts. They have been the one, after all, who have been wronged, have already suffered damages, and now have to engage in the not-cheap effort of civil litigation.

Comment added August 15, 2024 10:01am

- **Dan Crespo**

The rule in regards to upload the GPS coordinates. I find that it will put the servers in harms way. Some people are not that happy about being served with legal documents. And now the server has to be right outside the house or in front of the persons door attempting to upload. If we collect all of the info on the photo, not sure why it would make a difference if the server can get a little bit away from the area to upload.

Comment added August 15, 2024 11:58am

- **Kara**

I think the proposed rules would jeopardize the server's safety. By imposing time constraints on servers, you are putting them in harms way for a prolonged period of time rather than allowing them to leave the location and then submitting their service information.

Comment added August 15, 2024 12:40pm

- **Server**

I think the proposed rules would jeopardize the server's safety. By imposing time constraints on servers, you are putting them in harms way for a prolonged period of time rather than allowing them to leave the location and then submitting their service information.

Comment added August 15, 2024 12:43pm

- **Anonymous**

It seems that those proposing the new rules for GPS photo documentation may not have firsthand experience with serving papers in New York City. If they did, they would recognize that requiring a photo to be taken and uploaded, along with the corresponding service or attempt information, within five minutes of the service or attempt is an impractical and arbitrary requirement.

A GPS photo alone does not constitute proof of service; it merely supports the process server's testimony that they either completed or attempted service at a specified location around the time recorded by the server. Enforcing a five-minute rule for uploading the GPS photo and service details to the electronic logbook overlooks the practical realities of the process.

Process servers typically use a field sheet or work order to record information about the service they are performing. This field sheet serves as the primary record of the events, prior to the server's formal testimony or any signed documentation. Additionally, servers sometimes experience significant delays in meeting the recipient or authorized agent due to various factors. Moreover, GPS and cellular service may be unreliable or unavailable in certain areas, which may necessitate either leaving the location to regain connectivity or waiting until service can be reestablished. Even after obtaining a GPS signal and taking a timestamped photo, the server must also have cellular data to upload the photo and logbook entry to the electronic database. In many cases, a five-minute window is insufficient to accommodate these practical challenges.

Additionally, it's important to consider the inherent risks that process servers face. Recipients of legal papers may react negatively to strangers delivering documents and photographing their properties. Often, individuals who are served are experiencing personal difficulties and may direct their frustration toward the process servers,

who are simply fulfilling their duty to notify the party of the commencement of legal action.

Requiring a process server to remain at a location longer than necessary to complete the service and verify the identity or authority of the recipient introduces significant risk. The potential for hostile or confrontational interactions with the recipient is a serious concern that must be carefully weighed.

A photograph taken upon arrival at the address should adequately establish that the server was present to make contact with the recipient. The determination of whether service was successfully completed should rely on the process server's comprehensive testimony. The server's electronic logbook, recorded field notes, and GPS data should collectively demonstrate that the server performed their duties accurately and with due diligence. These records should not be invalidated simply because the server did not adhere to a stringent five-minute timeframe for completing these tasks.

Comment added August 15, 2024 2:06pm

- **JJ**

As someone who has worked for an attorney, for a very successful process serving agency, has served papers, and I am currently the 2nd vice President for the New York State Professional Process Servers Association, this will be completely detrimental to our industry! Serving process for many different cases can directly and indirectly make or break a case especially with all the rules and guidelines already in place. We are already required to take photos using an app (which is not always guaranteed to work) however if we're unable to catch a GPS we're penalized for it... taken to court for traverse hearings and fined by the DCWP. Our industry is so disrespected by so many because no one realizes what is entailed in actually serving process. We do not just knock on a door and hand over a paper... we're the middle man and 90% of the

time, we end up paying for the reactions of the people we are serving regarding whatever case we're serving them whether it be eviction, divorce, custody, etc which, as you can imagine, no one is happy to be served papers – period!

Process servers AND agencies are professionals who take their jobs very seriously and who depend upon these jobs to support their families and feed their children. Doing what we do is already dangerous, imagine serving someone in a bad neighborhood with papers and the person becomes hostile, you want us now to put a camera in their face and take a picture? To instigate and further irritate them? To provoke possible violence against process servers? Then on top of that just provoking them more, now you're expecting us to stop there and upload the information, giving them opportunity to possibly hurt someone.

It is already very hard work serving process for both the independent servers and the agencies!

This change will potentially put our servers in direct harms way, opening up doors for lawsuits and a significant drop in servers in an already struggling industry due to all of the regulations and laws already implemented by the DCWP!

Do NOT implement this change!

Comment added August 15, 2024 2:20pm

- **J. M.**

Dear Sir or Madam:

I am currently an employee of a process serving agency in New York State. I felt the need to state my concern over over of the proposed changes to for Process Servers suggested by the DCWP. The new proposed 5 minute rule in section 2-233b, has me deeply concerned. Having process servers take pictures after service is putting them at great risk. Not everyone is happy to accept papers. Many times, they are expecting papers and they are for negative things in their lives. These are not happy moments. Divorce, foreclosure, eviction, bankruptcy, etc. It is in the best interest of the servers to deliver the

papers and leave. Sitting around to take pictures and upload the GPS information within a 5 minutes period does not make sense. What if the person being served is not a rational person? What if they chase the server or go to damage their car? what if they have a dog that is not friendly and let out of the house? Getting the important information to prevent dishonesty, is necessary. I do understand. However doing it before knocking on the door is a much safer option. Keeping this , as it, would be best for the safety of the servers. If I were being served papers or even a delivery that I was expecting, and someone was trying to take my picture, I would be very annoyed and even feel violated.

I hope that you can take these points into consideration for the safety of our process servers. If something ever happens to a server due to this proposed change in protocol, that would be devastating. Their jobs can be dangerous as it is, and we need to not add to the stress of their demanding jobs .

Thank you for listening to my concerns.

Regards,

J.M

Comment added August 15, 2024 4:45pm

- **Alex Zambrano**

As a person who has been working for the Process Service Industry for over 20 years I can honestly say that our servers have placed their lives on the line on more than one occasion while serving legal documents, I have heard it all from defendants chasing our servers with bats to shovels to having guns being pointed to their faces to having their car windows broken, we had many servers who had been pushed down the stairs and having received bruises and cuts from the fall. To propose such amendments would be to even further jeopardize not only the life's of our servers but also to our industry which in recent years has suffered tremendously, not only due to the pandemic but also to the excessive fines that are being imposed to many of our servers, this will further hurt the industry in so many

ways, please take time and reconsider this proposal to amend the rules of serving legal documents.

Comment added August 15, 2024 5:01pm

- **Jason Gowin**

The newly proposed rulings give me great concern for how it will effect our safety and well-being. These proposed outside regulations will likely add extra risk in what is already an often times overtly tense and sensitive time frame, and interaction on each premises. This is going to create unnecessary and potentially more frequently increased risks for altercations for us who are serving. I am heavily suggesting these sanctions not be moved forward.

Comment added August 16, 2024 7:26am

- **John W Donnelly**

I do not agree with this it unsafe and puts us in harm's way. People already don't like us coming to their house and serving them bad news. This just makes it harder than what it needs to be. We are already recording the whole serve having them on camera accepting the paperwork.

Comment added August 16, 2024 7:28am

- **Bennett Tanton**

To Whom It May Concern,

I am writing to express my concerns and opposition to the proposed rules regarding the submission of electronic records in the process serving industry in New York. While I understand the intent behind these regulations, there are significant safety and logistical issues that need to be addressed.

1. Restriction on Pre-Service Electronic Records:

The proposed rule prohibiting the submission of any electronic record before the time of service, while well-intentioned, inadvertently creates a serious safety risk for process servers. Currently, many servers take a photo of the location upon arrival as a precautionary measure. This practice not only documents the environment before service but also helps to de-escalate potential confrontations by ensuring that the photo is taken discreetly, without the direct involvement of the individual being served.

Requiring the photo to be taken after service puts process servers in a vulnerable position, as the person being served is often already upset and potentially agitated. The added step of taking a photo at that moment could escalate tensions and lead to dangerous situations. I urge you to consider the safety implications of this rule and to allow pre-service documentation, provided it is not submitted as proof of service until after the service is completed.

2. Mandatory Submission of Electronic Records Within 5 Minutes of Service:

The requirement to submit an electronic record within 5 minutes of service also poses serious concerns. In many cases, process servers need to prioritize their personal safety and the security of others around them. It is not uncommon for servers to leave the immediate area after serving papers, either to avoid escalating a tense situation or to complete multiple services in a single location efficiently. Forcing servers to remain in potentially hostile environments to submit electronic records within a 5-minute window undermines their ability to ensure their own safety.

Moreover, this rule does not account for practical scenarios, such as serving in large apartment complexes or areas with poor cell reception, where immediate electronic submission may not be feasible. The 5-minute requirement is not only logistically impractical but also introduces unnecessary risks.

Conclusion:

While the goals of these proposed rules—to ensure accountability and prevent fraudulent practices—are important, they must be balanced against the real-world challenges and dangers faced by process servers. I respectfully request that these rules be reconsidered or revised to prioritize the safety of process servers while still achieving the desired accountability.

Thank you for your time and consideration.

Sincerely,

Bennett Tanton

Comment added August 16, 2024 7:37am

- **Marcia Allen**

I have been a process server since 1987. It would be untenable to take photos after you have just left life changing/detrimental documents with an individual. The safest recourse is to leave the premises immediately and as quickly as possible. The reactions range from severe anger, screaming, threatening, hysterical crying – to – what do I do? Can you help me ? Then there are dogs involved. They have chased me, jumped on my cars, and chased my car down the road. Again, best to leave as quickly as possible. It is further many times simply not possible or extremely unsafe to submit electronically within 5 minutes. You can't sit on someone else's property while doing "paperwork". It's not always possible to find a safe place within a minute of the residence. There are curves and hills in this area. You have to go a distance to find a safe place to pull over. Other drivers are extremely aggressive for one thing. They get angry if you go too slow or accelerate their cars at high speeds around you. Lastly, in this very rural area, there are many, many areas of county where there is poor cell phone service and the uploads take time. Sometimes having to resubmit in another area. Would one solution to imposing these

new, proposed guidelines be to have only police agencies serve them when everyone is aware of the stress and lack of funding to employ enough officers to cover areas ? No. It would be an undo burden on the police departments that are already strained.

Comment added August 16, 2024 10:05am

- **AF**

As a process server, your proposed changes have me concerned. After completing a service, the last thing I want to have to do is stay at the address any longer than I need too. These proposed changes are putting myself and others in harms way even more than we face daily.

Comment added August 16, 2024 10:17am

- **Andrew Mega**

Hello, I'm greatly concerned about the proposed rules. To begin with, as expressed by many other comments here, the safety risk of delivering papers to a defendant/respondent who is quite often angry and irrational and then being under pressure to immediately photograph their property and enter data is very great. If you speak with ten process servers that are actively serving in the boroughs, all ten of them will have a recent story of a person so agitated that they demanded the process server get off their property. We must not bar a server from photographing or doing data entry immediately PRIOR to serving or also allowing them more than five minutes AFTER a service to find a safe space to enter data that is within the vicinity of the service. I will attest that after service it can take some time to enter the data, sometimes up to five minutes if there are detailed notes to take. This should never be a race to complete in five minutes. If accuracy and detail is required, creating pressure to complete it quickly is not the answer.

I'd also like to express that I'm concerned that there is no specificity regarding what the DCWP considers "falsifying an affidavit" as grounds to deny a license renewal. There are clerical errors, there are

typographical errors, there are accidental submissions of data coming from high volume serving activity. The reasons for false information can be myriad and they do not necessarily indicate malicious behavior or deliberate attempts to falsify. We must have clarity with respect to what can have such a grave impact on a server's livelihood.

I would like to also express that I find that no one I speak with in the business understands the spirit with which the DCWP creates these proposed changes. It would benefit all sides to have more of a dialogue as to why the rules would even be necessary. As it is, these rules appear to be issued by edict. If the intent is to create better service of process, the DCWP should create the impression that it cares about the safety of those who serve process. Process Servers feel that they have nobody on their side and they are detested by all sides, those who they serve, those that regulate them and fine them and deny them renewals, and those that hire them and push them to complete their work quickly. I would wager that there are few IF ANY professions that receive less support and understanding than professional Process Servers. If there is a small percentage of the total licensed Process Servers commenting on here, I can confidently say it is likely because they are afraid of retaliation and being singled out and/or there was not enough effort to notify them that these rules were proposed.

Comment added August 16, 2024 10:22am

- **Sue Cortina**

What exactly is the point of allowing only 5 minutes to upload the GPS coordinates after a serve? This does not prove honesty nor credibility nor prove the serve. This just adds more stress to already a possible stressful situation of serving process. This puts the process server in great danger having to linger around making sure the coordinates are locked in. I was physically assaulted by a defendant who was an orthopedic doctor- a "professional"- in his office with a room full of patients- and maybe you are wondering what I did to

provoke the out lash- my answer would be taking a GPS photo AFTER SERVICE as I was leaving. Our careers puts us in danger daily not knowing what situations we are encountering- being an agency owner on Long Island, I test my servers – where this GPS nightmare is not required. I have fired many not because the picture of the house was not the right house, or the GPS coordinates did not match or the time was wrong or the photo uploaded wasn't within 1 mile-they were all good- and some have failed on multiple occasions and NOT because of this-and this is on Long Island.

The main concern here should be the safety and well being of these individuals who are out there trying to make a living for their families, 5 minutes is not enough time for playing it safe. This is their career and a job and I will say a tough one! Do the construction workers who must wear colorful vests or hard hats when doing their job get penalized or at risk of being penalized when they do not do so? It is much easier to put on a hard hat than trying to obtain a GPS coordinate in 5 minutes.

Will the city take responsibility if a process server gets assaulted or killed because of this requirement?

Comment added August 16, 2024 10:26am

- **Mike Rokicsak**

I have been a server for over 10 years, not being able to take a photo prior to service is a horrible idea. Trying to take a photo after a service puts me in a potentially dangerous situation. Some people are irate after service, I have had my phone slapped out of my hands twice(trying to get a picture for a divorce) Please reconsider this change. Job is tough enough already.

Comment added August 16, 2024 10:46am

- **Tressa Johnson**

I have worked as a paralegal for a process service agency for over 15 years and I have to tell you that this proposed new rule change which would require the process server to take the GPS image after service

has been effected or within 5 minutes of same is an unrealistic expectation. Process Servers already face backlash from serving the papers and now you want them to not only serve the papers which let's not forget, is the goal, you want them to increase the possibility of facing the wrath of an angry defendant / respondent by pulling out their phone and taking a picture of the residence / person so that they are in compliance. The mere fact that time was spent to draft this new rule shows that no thought whatsoever was given regarding the safety of the person serving the paper. We live in world where crime rates have increased dramatically especially within the 5 boroughs of the city of New York. A person can't even walk the streets or ride the subway without fear of being attacked and yet this organization wants to further escalate an already tense interaction by requiring servers to take their required image at the time of service or after service as long as it's within 5 mins are you kidding me! I have watched the pool of licensed process servers drop to industry lows over the past several years and this is mainly due to the fines that are imposed upon them by your agency. Talk about making mountains out of mole hills. The purpose of this agency is supposed to be to prevent sewer service but instead it has turned into a business of let's see how many fines we can impose and get the most money we can for them. Shame on you. Sometimes the people who create the rules are so far removed from the day to day and what it actually takes to serve papers and the risks associated with same, that they propose and attempt to enforce unrealistic and unsafe requirements. That in itself should be a finable offense. Please reconsider and take a stand to help keep Process Servers safe to do the work that needs to be done so the legal process can continue. Respectfully.

Comment added August 16, 2024 11:28am

- **DL**

The 5 minute rule is so unfair. NYC is on the news every day. They have extra cops on patrol and you are asking the Process Servers with no protection to go to dangerous areas at all hours of day, including

night hours to input information in an app within 5 minutes. Please remove this from your rules. They have so many rules that they have to deal with and to add more is so unfair. And in the future, if you are adding or amending rules, please make the rules benefit the Process Servers not hurt them. They are putting their lives on the line.

Comment added August 16, 2024 11:39am

- **Ann Marie Little**

I work with process servers and I hear all the dangerous situations they are face with today with everything the way it is. I have been told about the verbal assaults they have been through down to the physical assaults they endured. Just to mention a few situations in order for you to understand the gravity of the situation I work with a process server that was assaulted with a shovel and another had to defend themselves against a dog attack. I believe that the 5 minute rule takes an already dangerous situation and makes it even more dangerous.

So let's think about this logically for a moment. Process servers deliver tangible bad news. It is not a phone call or an email. It is a face to face situation. The person being served is most likely very upset, at the end of their rope and basically are just plain angry. Now you want a process server to spend more face to face time with a person in this emotional state of mind. I find this disgraceful and honestly you should be ashamed for proposing such rule.

I think time would be better spend making rules that keep our process servers safe and not put them in further harm's way. I find this new rule to be extremely disadvantageous to the process service industry. I think it is time to go back to the drawing board.

Comment added August 16, 2024 11:45am

- **Sandra Mendez**

I am writing to express my concern with the new proposed rules for process servers, this new proposed rule will place hard-working process servers in EXTREME DANGER. Changing procedures to require a process server to generate a GPS Record right after service has just taken place is EXTREMELY UNSAFE and harmful to the safety of all process servers, and specifically to require the GPS Record be created within 5 minutes of service, while the process server is still at the property right in front of the defendants. If you clearly think about it when a paper is served, a process server very often faces a threat to their safety by the person served, as defendants often get angry and sometimes violent. These interactions require a process server to immediately leave the premises in order to get away as fast as possible in order to avoid bodily harm. In certain situations, once the defendant is served the process servers deal with threats, dogs being released to attack them, defendants threatening process servers with bats. Process Servers are serving papers in order to help notify defendants of a pending case against them so they can defend themselves, all this despite the fact they are trying to make a living, everyone is entitled to feel safe when conducting business. This proposed rule change does not help process servers and disregards any concern for their safety, it will place hard working process servers in danger for their livelihoods which can NEVER be ACCEPTABLE.

There has to be a better way of acquiring GPS Records after the service is complete that doesn't put process servers in EXTREME DANGER and allows the GPS Records to be in compliance with the service completed.

Comment added August 16, 2024 2:17pm

- **Olivia Charpentier**

Other than the clear safety issue for process servers, which seems adequately covered herein, I would like to address the issue of the revocation of a process server's license. A process server who clearly did not serve a paper is something everyone involved in the legal

profession wants to avoid. There is no objection to that server's license being revoked. But, other servers who did actually attempt to serve a paper but due to various issues, may have lost a traverse hearing, should not be penalized nor categorized as a "sewer server." Caselaw can be argued and overturned. Service issues that are legitimate where the paper was served is not a cause for someone to lose the ability to earn a living. Please reconsider your processes and punishments.

Comment added August 16, 2024 2:38pm

- **A. S.**

It is my belief that a NYC department dedicated to the protection of both consumers and workers should consider the impact that these proposed rules will have on the safety of Process Servers in our city. The proposed changes will increase the risk of harm as they would be expected to linger in a space during a possible hostile service. A person should not have to choose between their own safety or a violation/fine.

Comment added August 16, 2024 4:13pm

- **CV**

The proposed rule change regarding GPS coordinates benefits no one and will only put the servers in increased danger. The servers are already entering a tense and fraught situation. If they have to hang around for several minutes after they just served someone there is an increased likelihood they will be physically assaulted.

Comment added August 16, 2024 4:34pm

- **Kat Shults**

Your proposed changes don't take into consideration working conditions. Part of our approach to a serve is assessing safety and both paths of entry and exit. It isn't some safe, clean office and the way this is written, it is expected that people will be pleasant. It isn't

like a server makes much money. Would you want to be bitten for \$50? \$100? By a dog, snake, cat, wild animal, or person out of their mind? Do you accidentally walk through excrement or maggots? Perhaps there is rusted metal or glass bits. How would you like to "obtain proof that you did your job" while running through that on an exit? However this was written, the mindset is that already upset people are going to be reasonable. If they were reasonable in the first place, there wouldn't be a need to serve legal papers, now would there? You want to make it that much more difficult to find people WILLING to do this work? Lawsuits are expensive enough. With court systems already clogged and backlogged. Do you want MORE lawsuits when a server then sues someone for being attacked or having a dog set on them, simply for having to turn around in the middle of running for safety? "Shoot the messenger" isn't just a saying. It has history and weight. It is entirely possible that we could get shot by someone who rightfully has a weapon on their own property. You want to bring the second ammendment into this? Pulling out an object from a pocket or waving it in the air while someone is not quite in their right mind? Could get us shot. We are not police. We are not bounty hunters. We shouldn't have to wear kevlar in order to make \$25. How about you actually care about people instead of some unreasonable requirement, as though someone has a laboratory working conditions out in the real world, where it is messy enough, and not some technicality to be argued over ad nauseum. Your proposal puts a technicality over someone's life.

Comment added August 17, 2024 9:48am

- **Anthony Cuomo**

Regarding proposed rule change. Please see attached file.

Thank You

Regards

Anthony Cuomo

[Comment attachment](#)

DWCP-REBUTTAL.pdf

Comment added August 18, 2024 12:18pm

In reference to the rule change stated below.

The process server is not in compliance with this provision if its electronic record was made before the time of attempted or effected service. There shall be a rebuttable presumption that the process server was not in compliance with this provision if its electronic record is made more than five minutes after the time of attempted or effected service.

I am writing to formally express my concerns regarding the recent implementation of [specific rule, which, in my professional judgment, significantly compromises the safety of Process Servers. This rule, as currently enforced, fails to account for the practical and often hazardous realities of our work. It is evident that the rule was introduced without a thorough evaluation of its impact on worker safety. Numerous Process Servers, who are intimately familiar with the on-the-ground risks, have raised serious concerns about the dangers posed by this regulation. It is deeply concerning that these safety risks were not adequately addressed prior to the rule's implementation. Based on extensive discussions with colleagues, it is my belief that a vast majority—likely exceeding 90%—of Process Servers would be willing to attest to the dangers of this rule, should they be asked to provide a formal Affidavit or Affirmation. Each of us can readily cite numerous examples where the enforcement of this rule has directly jeopardized our safety. Such a widespread consensus among those affected should prompt an immediate reevaluation of the rule's viability. I am also concerned by the apparent lack of collaboration in the development of this rule. It is difficult to understand why the DWCP would implement such a significant policy change without engaging in a constructive dialogue with the Process Servers who must adhere to it. A collaborative approach, wherein the experiences and insights of Process Servers are fully considered, would likely result in a more balanced and safer outcome for all parties involved.

There have been numerous cases where individuals were knowingly put in dangerous situations, leading to litigation. These cases typically fall under personal injury, or workplace safety law. Here are a few notable examples:

1. **Ford Pinto Case (Grimshaw v. Ford Motor Company, 1981)**: Ford was sued after it was revealed that the company knew about the design flaw in the Pinto's gas tank, which made the car prone to exploding in rear-end collisions. Ford had decided it was cheaper to pay for lawsuits than to fix the problem. The case resulted in significant damages awarded to the plaintiffs and is a landmark in product liability law.
2. **Asbestos Litigation**: Numerous companies were sued after it was discovered that they had knowingly exposed workers and consumers to asbestos, a dangerous carcinogen. These cases have led to massive settlements and the creation of trust funds to compensate victims.
3. **McDonald's Hot Coffee Case (Liebeck v. McDonald's Restaurants, 1994)**: In this case, McDonald's was sued after a customer, Stella Liebeck, suffered third-degree burns from spilling extremely hot coffee on herself. Evidence showed that McDonald's was aware of the risk of serving coffee at such high temperatures but chose to continue

the practice. The case resulted in a significant jury award and sparked public debate about tort reform.

4. **Silkwood v. Kerr-McGee Corp. (1979)**: This case involved Karen Silkwood, a whistleblower and employee at a Kerr-McGee plutonium plant, who was contaminated with plutonium. It was argued that Kerr-McGee had knowingly put its workers in danger by not following safety protocols. After Silkwood's mysterious death, her family sued the company, resulting in a landmark settlement.

5. **West Fertilizer Company Explosion (2013)**: This incident involved a massive explosion at a fertilizer plant in West, Texas, which killed 15 people and injured hundreds. It was later revealed that the company had stored large amounts of ammonium nitrate, a highly explosive material, without proper safety measures. Victims and their families filed lawsuits against the company for negligence.

These cases illustrate how litigation can arise when individuals knowingly place others in dangerous situations, leading to injury or death and was aware of the risks and chose to ignore them. Here are additional cases where individuals were knowingly put in dangerous situations.

6. **The Johns-Manville Asbestos Case**: Johns-Manville Corporation, a major manufacturer of asbestos-containing products, was sued by thousands of workers who developed asbestosis, lung cancer, and mesothelioma due to asbestos exposure. Internal documents revealed that the company knew about the dangers of asbestos but continued to expose workers and consumers. This case led to significant settlements and the establishment of the Manville Trust to compensate victims.

7. **The Love Canal Incident**: In the late 1970s, residents of the Love Canal neighborhood in Niagara Falls, New York, discovered that their homes were built on a toxic waste dump. The chemical company Hooker Chemical (now Occidental Petroleum) had buried hazardous waste in the area and later sold the land to the local school board. Despite knowing the risks, the company failed to warn residents. The resulting health issues led to extensive litigation and eventually to the creation of the federal Superfund program to clean up toxic sites.

8. **BP Deepwater Horizon Oil Spill (2010)**: The Deepwater Horizon oil spill in the Gulf of Mexico resulted from an explosion on a BP-operated oil rig, leading to the largest marine oil spill in history. Investigations revealed that BP and its contractors had cut corners on safety procedures, knowingly putting workers and the environment at risk. The resulting litigation included thousands of lawsuits from affected businesses, individuals, and governments, resulting in billions of dollars in settlements and fines.

9. **PG&E and the Hinkley Groundwater Contamination (1993)**: This case, famously depicted in the film *Erin Brockovich*, involved Pacific Gas and Electric Company (PG&E) contaminating the groundwater in Hinkley, California, with hexavalent chromium, a toxic chemical. PG&E was aware of the contamination but failed to inform

residents, leading to widespread health issues. The company eventually settled with the affected residents for \$333 million, one of the largest settlements of its kind.

10. ****Enron Scandal (2001)****: While primarily known as a financial scandal, the Enron case also involved dangerous situations for employees and investors. Enron executives knowingly engaged in fraudulent practices that led to the company's collapse, causing significant financial harm to employees who lost their jobs and life savings. Numerous lawsuits followed, including claims for breach of fiduciary duty and securities fraud, leading to criminal convictions and civil settlements.

11. ****The Rana Plaza Factory Collapse (2013)****: In Bangladesh, the Rana Plaza building, which housed several garment factories, collapsed, killing over 1,100 workers. It was later revealed that the building had been constructed with substandard materials and was structurally unsound. Despite visible cracks in the building, factory owners had forced workers to enter the building, leading to the disaster. Lawsuits were filed against the building owner and international brands that sourced products from the factories, leading to compensation for victims' families.

12. ****TWA Flight 800****: This 1996 plane crash was the result of a fuel tank explosion that killed all 230 passengers aboard. Investigations revealed that the airline and the manufacturer, Boeing, were aware of the risk of fuel tank explosions but had not taken adequate steps to prevent them. The families of the victims filed lawsuits against TWA and Boeing, resulting in settlements.

These cases underscore the legal and ethical responsibilities to protect individuals from known dangers.

Regards
Anthony

- **Rondout Legal Services, Inc.**

Full letter on letterhead is also attached**

I have operated a process serving business upstate for 35 years. I have served on the board of NYSPPSA and am a member of NAPPS. My business adheres closely to the statutes regarding service that apply to us. Further, even though not required upstate, we take and maintain GPS photos of all of our attempts and serves except where lack of cell service in the mountains here prevents us from doing so. Without intending any disrespect, I am very thankful that my business does not have the onus of compliance with New York City regulations on process servers and the punitive nature of some of those rules. This newest proposal, in particular, clearly exhibits a basic misunderstanding of the important work process servers do and the daily challenges they face.

In an increasingly dangerous, chaotic and violent atmosphere, process servers are facing more challenges than ever. By requiring them to take photos after they have the attention of the subject by virtue of just serving them, you are deliberately increasing the risk of assault or worse on the server. The servers who do work for my business almost without exception discretely take photos before serving the paper, thus documenting their presence at the location while increasing their chances of a prompt and safe exit post-service. Taking a photo AFTER you have handed someone a paper almost always results in a negative reaction from the party who has been served. At best, the reaction may be further communication and questions as to why the server took a photo. At worst, it could result in an angry or violent reaction. This is a very dangerous proposal. Hands down, a terrible idea.

As to the traverse hearing proposal stating "process server to testify truthfully", this is a given. Under oath, they have already pledged to

testify truthfully. This perpetuates an old stereotype that process servers are dishonest. In my vast experience, this could not be further from the truth. The people who make a living in this business are honest, hard-working and solid, and do not deserve to be perceived as dishonest based on their choice of career. It's insulting.

I hope you will take this input into consideration, as it is coming from someone who has invested 35 years in an actual process serving business, and almost 50 years in legal work overall. I have a thorough understanding of what process servers face every day out on the road.

[Comment attachment](#)

Document-2.pdf

Comment added August 18, 2024 3:31pm



Rondout Legal Services, Inc.

-Process Service and Attorney Assistance-

Mailing Address: P.O. Box 4115, Kingston, New York 12402

Web: RondoutLegal.com

E-Mail: Service@RondoutLegal.com

Telephone: (845) 331-6029

FAX (845) 331-0570 FAX

August 18, 2024

TO WHOM IT MAY CONCERN:

RE: NYC Proposed Rules Change for Process Servers

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I hope you will take this input into consideration, as it is coming from someone who has invested 35 years in an actual process serving business, and almost 50 years in legal work overall. I have a thorough understanding of what process servers face every day out on the road.

A handwritten signature in cursive script, appearing to read "Kim F. Letus". The signature is written in black ink and is positioned above a horizontal line.

Kim F. Letus

- **The Server**

Dear DCWP

As a process server I understand that you want to improve your side in the serving business.

However I do not understand why these new rules are being proposed

Gps on location & time stamp pictures are surely not enough for DCWP

It seems like the safety of process servers are strongly ignored.

Where do these rules help the process servers at ?

Why are there not rules coming out to protect the process servers ?

Comment added August 18, 2024 5:50pm

- **Gail Kagan**

The proposed regulations by the Department of Consumer and Worker Protection (DCWP) 2-233b (2) Operation of Equipment. (i) regarding process servers are impractical and pose significant safety risks. Requiring electronic records of service to be made before the time of service and uploaded within five minutes is unrealistic and dangerous.

There is an issue of Safety Concerns:

Unpredictable Encounters:

Process servers often face unpredictable and potentially dangerous situations. Serving legal documents can provoke strong reactions, and servers never know who or what they might encounter behind a door. This unpredictability increases the risk of harm.

Recent Incidents of Violence:

Ralph Yarl Incident: A tragic incident occurred when Ralph Yarl, a young boy, was shot in Missouri simply for approaching the wrong house. This underscores the dangers of unexpected door visits and

highlights the potential risks process servers face daily.

Dog Attacks:

Process servers are frequently attacked by dogs when approaching homes. This has become so common that it was addressed in the New York State Assault bill to protect process servers.

Assault in the Diamond District:

A process server was severely beaten while serving documents in New York City's Diamond District. The server was attacked by security personnel who did not believe he was legally required to take a photo. This incident exemplifies the hostility and violence process servers can encounter.

Need for Discretion: Many process servers take photos and geotag locations before knocking to ensure they can leave quickly after serving papers. This practice helps them avoid confrontation and stay safe.

Operational Challenges

Detailed Recording Requirements:

The DCWP's requirement to record extensive details, such as steps from a staircase or elevator, and the color and composition of walls, floor, and door, along with the recipient's description and any other details of the service requires more time. Accurately recording this information on a cell phone without errors is difficult, especially under pressure.

This rule has Impractical Time Constraints:

The five-minute window for uploading service details is impractical. Process servers often need to quickly leave the area to avoid confrontation. Forcing them to stand at the door while typing increases the risk of altercations with recipients.

Logistical Issues:

In urban environments, servers must navigate elevators, stairs, and various building layouts. This can significantly delay the process of recording and uploading details, making the five-minute requirement unfeasible.

Comment added August 18, 2024 11:23pm

- **Gail Kagan**

The proposed rules on Page 12 introduce measures to ensure the integrity and accuracy of affidavits of service and affirmations of service by licensees. These updates seem aimed to uphold trust and reliability within the industry, ensuring that all statements made in legal documents are truthful and precise.

Redundancy of the Rule

An affidavit or affirmation, by its very nature, is a sworn statement of truth. When a process server signs such a document, they are already legally affirming the accuracy and truthfulness of its contents.

Therefore, the rule prohibiting false statements reiterates an obligation that is already implicitly understood and legally enforced. The act of swearing to the truth in an affidavit or affirmation is a foundational aspect of these documents. Adding an explicit prohibition against false statements does not introduce a new requirement but rather restates the fundamental nature of these legal instruments.

Definition and Scope of “False Statement”

While the intention behind the rule is clear—to prevent falsehoods—its necessity is questionable given the existing legal implications of submitting a false affidavit or affirmation. The rule would be more beneficial if it clarified what constitutes a “false statement” and differentiated between intentional deceit and inadvertent errors. Typographical or ministerial errors, which are commonly recognized by courts as non-substantive, should not be categorized as false statements. These minor mistakes do not undermine the overall truthfulness or legal validity of the documents.

Courts’ Recognition of Errors

Courts understand that typographical or ministerial errors in affidavits or affirmations do not typically affect the credibility of the process server or the validity of the service. Any rule addressing false statements should align with this judicial understanding to avoid unjustly penalizing process servers for minor, honest mistakes.

Implementation and Fairness

Implementing these rules fairly requires clear guidelines and a balanced approach. Licensees need precise definitions and examples of what constitutes a false statement to ensure they understand and comply with the rule without fear of being penalized for minor, unintentional errors.

Allowing process servers to correct minor errors without facing severe penalties promotes fairness and supports the rule's ultimate goal of maintaining truthful service records.

Conclusion

While the intention behind these new rules is commendable, the prohibition against false statements in affidavits and affirmations appears redundant. By their very nature, these documents require the process server to swear to their truthfulness. The proposed rules would be more effective if they focused on providing clear definitions and distinguishing between intentional falsehoods and inadvertent errors. This approach would protect the integrity of the legal process while preventing undue hardship on licensees for minor, honest mistakes.

Comment added August 18, 2024 11:35pm

- **Gail Kagan**

The proposed addition to the DCWP rules on pages 13 and 14, which states, "Each failure to comply is a separate violation...", is highly problematic for several reasons. The absence of a cure period and the implications for process servers are particularly concerning.

Absence of Cure Period: The lack of a cure period in the proposed provision is deeply troubling. The Mayor's certification claims that the rule "(iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation," which is clearly inaccurate.

Establishing each failure to comply as a separate violation, without allowing businesses a period to rectify the issue, is punitive and fails to acknowledge the complex realities of running a business. A cure period is essential to ensure that businesses have a fair opportunity to

address and correct issues before being penalized.

Disproportionate Penalties: Treating each failure to comply as a separate violation can lead to disproportionately severe penalties.

This approach does not account for minor or inadvertent infractions and can result in excessive fines and sanctions that could cripple small businesses. A more reasonable approach would involve a tiered penalty system that considers the severity and frequency of violations, with a clear and fair process for rectification.

Impact on Process Servers: One of the most detrimental aspects of the proposed rule is its impact on process servers during traverse hearings. Opposing counsel often uses a server's consent order with the DCWP to undermine their credibility. Without a cure period, process servers are more vulnerable to being unfairly scrutinized. If the attorney representing the server is unfamiliar with the case or the rules of service, which is often the case with per diem counsel, the server is left without adequate defense. This not only jeopardizes their credibility but also increases the likelihood of losing traverse hearings, which can have severe professional repercussions.

Fairness and Due Process: The proposed rule lacks fairness and due process. All parties affected by DCWP regulations deserve a fair chance to correct their actions before being subjected to penalties. This provision undermines the principles of justice and fairness by imposing immediate penalties without allowing for rectification. Such an approach is counterproductive and could lead to resistance and non-compliance rather than cooperation.

In conclusion, I believe the provision stating that "Each failure to comply is a separate violation..." is unfair and counterproductive. The absence of a cure period and the potential negative impacts on process servers during traverse hearings highlight the need for a more balanced approach. It is crucial that the DCWP reconsider this provision, incorporate a cure period, and engage with stakeholders before calling for hearings to develop rules that are fair, practical, and conducive to compliance.

Comment added August 18, 2024 11:42pm

- **C.T. Chasse**

I find these proposals to be very detrimental and at times, dangerous to the process server. Over my years of serving, there have been instances of defendants who have yelled at me, threatened me, hit my car, pushed me, threatened to sic their dogs on me, thrown paperwork back at me, stuck paperwork on my car, etc. I know a server who has been physically assaulted and one who has had a gun pointed at them. Rarely do I ever take a picture after service because of these instances. I take the picture, serve or attempt the paper, then immediately move out of the driveway and off the property, away from the line of vision of the person being served. I also serve large apartment complexes, and for the same reasons as outlined above, I load all of my information at the end of my attempts in a part of the parking lot away from the view of the tenants I just served. I back up my services with a body camera. Thank you for your time reading this response to the proposal.

Comment added August 19, 2024 6:38am

- **R. Zicari, Constable**

For those like me who serve in high crime/gang areas, sitting idle in a vehicle is not safe. Even the police advise me to keep moving, so any requirements besides the actual service that can be done ahead of time or down the road protects all who serve process including Process Servers, Police, Sheriff's, Marshall's, Constables.

Read the news and you will find law enforcement officers who were attached sitting in their vehicles.

This is a liability and any requirements that puts us in danger seems negligent.

[Comment attachment](#)

Capture2.pdf

Comment added August 19, 2024 10:34am

 Yahoo News Canada

Baltimore police officer shot while sitting in her patrol car dies after being removed from life support

An officer for Baltimore's police department has died a week after she was shot in an ambush. The officer, Keona Holley, had been sitting in her patrol car...



- **Jason Tallman**

I am writing to express my strong opposition to the proposed rule changes regarding the process server profession in New York City, specifically the rule that would require process servers to submit GPS coordinates within a 5-minute window after completing a service of process. While I understand the intent behind this proposal is to enhance accountability and transparency, I am deeply concerned that this particular requirement introduces significant safety risks and operational challenges that have not been fully considered.

1. Safety Concerns for Process Servers:

Process servers often find themselves in potentially volatile situations where emotions run high. The nature of our work requires us to approach individuals who may be angry, distressed, or hostile due to the legal matters at hand. In these moments, our primary concern is ensuring our own safety and de-escalating any tensions that may arise.

Imposing a strict 5-minute deadline for submitting GPS coordinates places undue pressure on process servers during these critical moments. Instead of focusing on their surroundings and personal safety, process servers would be forced to prioritize immediate compliance with this time-sensitive requirement. This could lead to dangerous situations where a server is distracted, fumbling with a mobile device or GPS tool, rather than maintaining situational awareness and securing a safe exit from the location.

2. Logistical and Technological Challenges:

The process of submitting GPS coordinates, while seemingly straightforward, can be complicated by a variety of factors beyond the server's control. For instance, many areas of New York City suffer from poor or inconsistent cellular reception, particularly in dense urban environments or buildings with thick walls. In these instances, a server may be unable to submit the required GPS data within the

allotted time frame, not due to negligence, but because of technical limitations.

Moreover, technical glitches and software malfunctions are not uncommon in the tools we rely on for GPS tracking. A system outage or application crash could easily prevent a server from meeting the 5-minute deadline, leading to penalties or disciplinary actions that are unwarranted and unfair.

3. Impact on Due Process and Legal Integrity:

The proposed rule change could inadvertently compromise the integrity of the legal process itself. If process servers are penalized for failing to submit GPS coordinates within 5 minutes, even when they have legitimately served the documents, there could be a chilling effect on the profession. Process servers may become overly cautious, prioritizing the GPS submission over the actual service of documents. This shift in focus could result in a lower quality of service, where the emphasis is on meeting an arbitrary deadline rather than ensuring that legal documents are served in accordance with the law.

Furthermore, the threat of penalties or the loss of a professional license could deter experienced and qualified individuals from entering or remaining in the profession. The process server community plays a critical role in upholding the rule of law, and any regulation that discourages skilled practitioners from participating in this work ultimately harms the public interest.

4. Alternatives to the Proposed Rule:

There are alternative approaches that could achieve these objectives without compromising safety or operational effectiveness. For example, extending the time frame for GPS submission to 30 minutes or allowing servers to submit coordinates at their earliest safe opportunity would provide a reasonable balance between the need for timely reporting and the practical realities of the job.

Comment added August 19, 2024 10:54am

- **Jason T Tallman**

I am writing to formally express my opposition to the proposed rule changes concerning the storage of address information within the process server profession in New York City. The new requirement, which would mandate that address data be stored in five distinct fields—one for the building number, a second for the street name, a third for address details such as apartment or suite number, a fourth for the city or borough, and a fifth for the ZIP code—raises serious concerns about its necessity and the underlying rationale for its implementation.

As it stands, the process server industry currently stores address information in three fields: street, city, and ZIP code. This format has proven effective and reliable for many years, serving the needs of both the process server profession and the legal system at large. However, I have been informed by Mr. Nisonoff, a knowledgeable figure in the industry, that the motivation behind this proposed change stems not from any failure on the part of process servers, but rather from the shortcomings of the software used by the DCWP to geocode addresses accurately and consistently.

1. The Issue of Software Limitations:

The fact that the DCWP's current software struggles to geocode addresses with the existing three-field format is concerning, but this should not be a reason to impose sweeping changes on the entire process server profession. The problem lies with the software itself, which appears to be either outdated or inherently flawed in its ability to process standard address formats. It is entirely unreasonable to require an entire industry to adapt to the limitations of a defective system, especially when more capable and reliable alternatives are readily available.

The proposed change would create unnecessary complexity and burden for process servers, who would be forced to modify their data entry practices, potentially leading to inefficiencies, errors, and increased operational costs. Moreover, the additional fields could result in data inconsistencies if not implemented with extreme care, as different process servers may interpret the fields differently, particularly the “address details” field.

2. A More Effective Solution:

Rather than altering the way process servers input and store address data, I strongly recommend that the DCWP explore upgrading its geocoding tools to utilize a more advanced and reliable platform, such as the Google Maps API. Google Maps API is widely recognized for its robust and accurate geocoding capabilities, and it is designed to handle various address formats, including the one currently used by the process server profession.

The Google Maps API can parse and geocode addresses from a single string of text or from a few fields, making it more than capable of processing the data provided by process servers in its existing format. This solution would not only resolve the issue at hand but also avoid imposing unnecessary changes on the industry, allowing process servers to continue their work without disruption.

3. Implications of the Proposed Change:

If the DCWP proceeds with implementing this five-field requirement, it would set a troubling precedent. The process server profession already faces numerous regulatory demands, and adding another layer of complexity—especially one driven by the deficiencies of the software used by the regulating body—would be both unfair and impractical.

The proposed change could lead to a host of unintended consequences. For example, process servers might need to invest in

new software systems or training to comply with the new requirements, which could impose financial and logistical burdens on small businesses and independent contractors. Additionally, the transition period could result in data entry errors, leading to issues with the accuracy of service records, which are critical in legal proceedings.

Furthermore, this change could disrupt the established workflows of process servers, who have developed efficient systems based on the current three-field format. Forcing a shift to a more granular approach without clear, demonstrable benefits would likely reduce overall efficiency in the field, negatively impacting the timely service of legal documents.

4. Call for Reconsideration:

Given the concerns outlined above, I strongly urge the DCWP to reconsider this proposed rule change. Instead of requiring the process server profession to adapt to the limitations of faulty software, the focus should be on improving the tools used by the DCWP to process address data. Adopting a more capable geocoding solution, such as the Google Maps API, would address the current challenges without imposing unnecessary burdens on process servers.

The role of process servers in the legal system is critical, and any changes to the rules governing their work should be made with careful consideration of the practical implications. The current three-field system has served the industry well, and there is no compelling reason to alter it based on the shortcomings of the software used by the DCWP. I believe that by focusing on upgrading the software, the DCWP can achieve its goals without disrupting the process server profession.

Thank you for your attention to this matter. I would be happy to provide further input or discuss alternative solutions that would better serve both the DCWP and the process server community.

Comment added August 19, 2024 11:03am

- **Jason T Tallman**

I am writing to express my opposition to the proposed rule changes that would require process servers to store plaintiff and defendant information with the last name listed first, rather than in the format provided by the process serving agency, which typically matches the exact caption of the legal papers as provided by the attorney. While I understand the desire to standardize data entry, this specific change presents significant operational challenges and risks that could negatively impact the accuracy and efficiency of the legal process.

1. Discrepancies Between Legal Documents and Stored Data:

The current practice of storing plaintiff and defendant information exactly as it is entered by the process serving agency—typically mirroring the caption of the legal papers provided by the attorney—is essential for maintaining consistency and accuracy across legal records. The caption of legal papers is a critical component of legal documentation, as it precisely identifies the parties involved in a case. This information is used throughout the legal process, from filing and service to court appearances and beyond.

By mandating that the last name be listed first in the stored data, the proposed rule creates a discrepancy between the information provided by the attorney (and as it appears on legal documents) and the information stored by the process serving agency. This mismatch can lead to confusion and errors, as the format of the names on the served documents will no longer align with the stored records. Such inconsistencies could result in issues when cross-referencing documents, verifying information, or even in court proceedings where precise identification of parties is paramount.

2. Increased Risk of Data Entry Errors:

The requirement to reverse the order of names adds an additional step in the data entry process, increasing the likelihood of errors. Process servers and their staff are often working under tight deadlines, and the introduction of this extra layer of complexity—particularly one that involves manually reordering names—could lead to mistakes. Even a small error in the order of names can have serious consequences, potentially invalidating service or causing delays in legal proceedings.

Moreover, many legal names are not straightforward. Hyphenated names, compound surnames, and names with prefixes (e.g., “de la Cruz,” “van der Meer”) could easily be mishandled in a system that requires names to be stored in a non-standard format. These errors could be compounded if software systems or data entry personnel misinterpret the required order or inadvertently alter the name’s presentation.

3. Operational Disruptions and Training Costs:

Implementing this change would necessitate retraining personnel across the process serving profession. This retraining would not only involve the mechanics of data entry but also require employees to adjust to a new way of thinking about and organizing information. This shift would come with associated costs, including time spent away from productive work, investment in new training programs, and potentially the need to update or modify existing software systems to accommodate the new requirements.

The disruption caused by this rule change could be particularly burdensome for small process serving agencies that operate with limited resources. Forcing these businesses to adapt to a new and more complex system could reduce their operational efficiency, leading to longer turnaround times for serving papers and increased operational costs that may ultimately be passed on to clients.

4. Legal Implications and Client Relations:

Attorneys and their clients rely on process servers to handle their cases with the utmost accuracy and professionalism. Any change that introduces the potential for discrepancies between the information on legal documents and the data stored by process servers can undermine trust in the process. Attorneys may be concerned that their cases are not being handled with the required precision, leading to strained relationships between process servers and their clients.

Furthermore, the legal implications of mismatches between stored data and legal documents cannot be overstated. If a case is brought to court and the names of the parties as stored by the process server do not match those on the official court documents, this could lead to challenges or disputes, potentially complicating or delaying legal proceedings. In extreme cases, such discrepancies could even result in a court questioning the validity of service, thereby compromising the integrity of the legal process.

5. A Call for Maintaining the Current System:

Given the significant risks and challenges posed by the proposed rule change, I strongly urge the DCWP to reconsider this requirement. The current system, which allows process servers to store plaintiff and defendant information exactly as it is provided by the attorney and as it appears on the legal documents, has worked effectively for many years. This approach ensures consistency, minimizes the risk of errors, and supports the smooth operation of the legal process.

If the goal of the proposed change is to achieve greater standardization across records, I believe this can be accomplished through other means that do not disrupt the existing workflows and do not introduce unnecessary risks. For example, the DCWP could explore alternative methods of standardizing records that still allow for the original format of names as provided by attorneys to be preserved.

6. Conclusion:

In conclusion, while I appreciate the DCWP's efforts to enhance the process serving profession through regulation, I believe that this particular rule change is misguided. The potential for increased errors, operational disruptions, and legal complications far outweighs any perceived benefits of standardizing name storage in this manner. I respectfully request that the DCWP maintain the current system of storing plaintiff and defendant information as it is provided by the process serving agency, in a format that matches the legal documents exactly.

Thank you for your consideration of my concerns. I am available to discuss this matter further and would be glad to offer additional insights or suggestions based on my experience in the process serving profession.

Comment added August 19, 2024 11:14am

- **Tyler J Borden**

When trying to serve someone who does not want to be served, the ability to take GPS photos before we knock on the door is paramount to us being able to do our job safely. This enables us to communicate quickly and effectively, and then leave as soon as service is effected. Additionally, needing to complete the record within 5 minutes of service is also unreasonable for situations where you need to leave the premises quickly because of a hostile servee.

Comment added August 19, 2024 7:59pm

- **Jason Tallman**

I previously submitted a comment similar to this. I am resubmitting and including my opposition to the current rule that forbids a server from recording GPS coordinates right before the service occurs.

I am writing to express my grave concerns regarding the proposed rule changes by the Department of Consumer and Worker Protection (DCWP) concerning the process server profession in New York City.

Specifically, I am deeply opposed to the new requirement that process servers submit GPS coordinates within 5 minutes after a service has taken place, and I am equally troubled by the existing rule that forbids process servers from recording GPS coordinates right before an attempted service, which would be the safest time to do so.

These regulations are not just impractical—they are potentially deadly. They place process servers in situations where they could be physically harmed or even killed. The nature of our work frequently puts us in contact with individuals who may be volatile, angry, or otherwise emotionally unstable due to the legal documents we are required to serve. The stress of these encounters is already significant, and adding a restrictive, time-sensitive requirement only increases the likelihood of a tragic outcome.

1. The 5-Minute GPS Submission Requirement is a Recipe for Disaster:

The proposed rule mandating that GPS coordinates be submitted within 5 minutes of completing a service is, quite frankly, a recipe for disaster. In the heat of the moment, after serving legal papers, a process server's primary concern should be their immediate safety. However, this rule forces them to divert their attention to submitting GPS data at a time when their focus should be on securing their own well-being.

Imagine a scenario where a process server has just handed over legal documents to an irate individual. The person being served may react aggressively, and in such situations, every second counts. The process server needs to exit the area quickly, with their full attention on the surroundings. Requiring them to pause and fumble with a mobile device to submit GPS data within a rigid 5-minute window creates a perfect storm of distraction and vulnerability.

This distraction could be fatal. By pulling the process server's attention away from potential threats, this rule increases the risk that they could be physically attacked, seriously injured, or worse. It is not

an exaggeration to say that this rule could cost someone their life. The safety of process servers should be paramount, and no regulation should force them to choose between following the rules and staying alive.

2. Prohibition on Recording GPS Coordinates Before Service Endangers Lives:

Compounding the danger is the current prohibition on recording GPS coordinates before attempting service. This rule denies process servers the opportunity to document their location in a safe and controlled manner before initiating what could be a dangerous encounter. By forbidding pre-service GPS recording, the DCWP is effectively mandating that process servers wait until the most unsafe moment—immediately after service—to capture this critical data.

This requirement is not just impractical; it is reckless. Forcing process servers to record GPS data only after an interaction, when tensions are likely at their highest, exposes them to unnecessary and heightened risks. A process server who is focused on entering GPS information is not paying full attention to their environment, leaving them vulnerable to retaliation or assault from the person they have just served.

3. The Very Real Threat of Violence:

The process server profession is inherently dangerous. We often deal with individuals who are in distressing or contentious situations, and emotions can run high. In some cases, the mere act of serving legal papers can provoke a violent reaction. By imposing these GPS-related rules, the DCWP is exacerbating the risk of such incidents. The reality is that process servers are already at risk of being attacked, and these rules significantly increase the likelihood of a process server being seriously injured or even killed on the job.

Consider the scenario where a process server is confronted by an angry individual after service. Instead of immediately leaving the scene to ensure their safety, the server is forced to focus on submitting GPS data. This moment of distraction could be all it takes for a situation to escalate into violence. The consequences of such an escalation could be devastating—not just for the process server, but for their family and the wider community.

4. Alternatives That Prioritize Safety:

Rather than enforcing these dangerous and rigid requirements, I strongly urge the DCWP to adopt more flexible and safety-conscious regulations. Extending the time frame for GPS submission to 30 minutes, or allowing process servers to submit coordinates at their earliest safe opportunity, would provide a much-needed margin of safety. This approach would ensure that process servers can prioritize their personal safety during potentially volatile encounters.

Additionally, revising the rule to allow for pre-service GPS recording would be a significant step toward protecting process servers. By enabling servers to document their location before initiating contact, the DCWP would reduce the risks associated with service and help prevent the kinds of tragic outcomes that these proposed rules could otherwise precipitate.

5. A Call for Reconsideration:

In light of the serious safety risks outlined above, I respectfully request that the DCWP reconsider the proposed 5-minute GPS submission requirement and the prohibition on pre-service GPS recording. These rules, as they stand, endanger the lives of process servers and could lead to fatal consequences. The profession is already fraught with dangers, and it is incumbent upon the DCWP to implement regulations that protect, rather than imperil, those who work in this field.

The lives of process servers should not be jeopardized by poorly conceived rules that prioritize bureaucratic efficiency over human safety. I urge the DCWP to prioritize the well-being of process servers and adopt regulations that reflect the real-world risks of the job.

Thank you for your attention to this critically important issue. I am available to discuss this matter further and to provide additional insights based on my experience in the profession.

Comment added August 20, 2024 8:43am

- **Paul Meyers, Esq**

As an Attorney practicing law in New York State for many years, I am writing in response to the new proposed regulations and current regulations on process servers and service of process in the City of New York. Please see my comments attached.

[Comment attachment](#)

202408200441.pdf

Comment added August 20, 2024 12:00pm

PAUL W. MEYER, JR.

Attorney at Law
Admitted in New York and Florida

NYC Department of Consumer
and Worker Protection
Consumer Services Division
42 Broadway - 9th Floor
New York, NY 10004

August 19, 2024

Re: Process Server Law

Gentlemen:

I have been a practicing attorney in New York State since 1983, i.e. over 41 years. The proposed changes to the NYC laws regarding the regulation of process servers and the contents of affidavits of service are, in essence, a joke. Service of process in New York are governed by the Civil Protection Law & Rules and the General Business Law. The regulations, and proposed changes, to the New York City' regulations and interpreted State Law is nothing more than a money-grab. To the extent that the City is seeking to put process servers out of business, or is seeking to unreasonably and improperly fine them in order to cover short falls due to the City wasting money on the sanctuary-acting states is an outrage.

Pursuant to NY law, the determination of the validity of service of process is made by the Court. When service is challenged, a Court may require a traverse hearing to "investigate" the matter. The purported technical aspects of an affidavit/affirmation of service by a process server may or may not be of a degree which the Court deems questionable. In Leifer v. Moskowitz, Slip Op. 22343, 11/9/22 (NYC Civil Ct., NY County) and Kardanis v. Velis, 90 A.D.2d 727 (1st Dept., 1982), it was determined that the testimony that of a disinterested witness such as a process server is usually afforded more weight than an interested witness like a party. As such, it is the obligation of a Court to investigate service only when a party places same into question.

If a party does not question service, what right does your Department have to question on behalf of a process server who has made no issue with same!! The regulations in place and those proposed to be implemented have nothing to do with the propriety of same. As aforesaid same are nothing more than a money grab to fill the coffers of NYC. Same is an outrage and, most likely, is unconstitutional, etc.

Very truly yours,

Paul W. Meyer, Jr.

PWM/cd
35 East Grassy Sprain Road
Suite 500
Yonkers, New York 10710

Tel. (914) 961-3000
Fax. (914) 961-4993
Email paul@meyerjrllaw.com

(Fax and Email Not For Service Purposes)

- **DW**

I am objecting to the proposed rules for several reasons. Having worked with process servers and auditing the servers attempts, I am familiar with the CPLR and the Service of New York State Process.

As many have commented :

I think the proposed rules would jeopardize the server's safety. By imposing time constraints on servers, you are putting them in harm's way for a prolonged period of time rather than allowing them to leave the location and then submitting their service information.

I completely understand that the DCWP wants to Stop Sewer service and we believe in regulation.

I do not understand how the DCWP can say that a service is not valid if it is not made within a certain time period. This goes over and above what the DCWP can regulate. We follow NYS CPLR and Case law and if server meets those standards the DCWP should not be able to say it is not good Service because the GPS upload does not fit into some arbitrary time frame.

I also object to the way the DCWP is trying to discredit serves using the Settlement agreements to dispute a server's creditability. Typos in an affidavit even discrepancies in descriptions have been allowed by the court and does not negate service. Your use of settlement agreement for minor clerical errors defeats the purpose of Personal Delivery under the CPLR and is and should not be used to diminish the service of process . This is a gross miscarriage to the DCWP's power.

And finally the additions to the Corporate service, may conflict with established caselaw., which again interferes or warps the service of process as it is defined in NY law.

Please understand we do not intend to go up against the regulatory power of the DCWP but these rules are not being made to enhance

service or find bad actors, nor do they enhance the efficiency of service of process. They rather to act as a traps to fine servers.

This is not compatible with our job which is to act as the unbiased, go between and give notice to parties in litigation .

Please reconsider, I thank you for your attention

Comment added August 20, 2024 12:36pm

- **Bob Musser**

I am President of one of the firms that provide third party software to customers across the USA, including customers in New York City. I'd like to speak at the meeting on the impact to our customer's efficiency and their cost of implementing special data storage requirements for one city out of 100,000 cities. I am also the Vice President of the Florida Association of Professional Process Servers, and would like to speak on the safety issue of requiring servers to make notes and take pictures after engaging the recipient. We train servers in our Education Programs to do it exactly the opposite of what you are contemplating requiring.

Comment added August 20, 2024 3:38pm

- **Ivy Capelli**

Please see attached

[Comment attachment](#)

Commentary-on-Proposed-Rules-Leopold.pdf

Comment added August 20, 2024 3:57pm

LEOPOLD & ASSOCIATES, PLLC

August 20, 2024

Via email: Rulecomments@dcwp.nyc.gov

New York City Department of Consumer and Worker Protection
42 Broadway #5
NY, NY 10004

Re: Commentary on Proposed Rules for Process Serving

Dear Sir or Madam:

I am an attorney duly licensed in New York and I am the principal of a large multi-state law firm. I have a great deal of litigation experience and work with process servers and agencies for my legal proceedings. Acquiring jurisdiction through service of process is essential in our cases. One of the easiest forms of challenge to make from a defendant/respondent standpoint is to allege that service was defective or never accomplished. At a certain point, a traverse hearing then will be held to determine if the defendant/respondent was served in accordance with the relevant laws.

One of the main challenges currently in the traverse hearing realm is the argument that defendant/respondent attorneys are using the fact that a process server signed a consent order with the DCWP as a way of attacking the server's integrity. While an attorney is present to represent the litigant's rights during the traverse hearing, the process server acts solely as a witness to testify as to their role in acquiring jurisdiction. The process server's records are used as evidence at the hearing and, even when a judge finds that a process server has been credible, may still find in favor of a defendant/respondent for various reasons.

A server may serve hundreds or thousands of papers a year. It is reasonable to believe that a certain number of those papers may be challenged for service, as process service is one of the building blocks of a successful case for a plaintiff/petitioner. In addition, at times a defendant/respondent is aware that they are about to be served with legal documents and attempt to evade service or deceive the process server.

As an attorney whose cases rely on service of process that can withstand the strictest of scrutiny, I am appreciative of the GPS requirements and rules that are put in place to help ensure service of process however I know over the last decade since many of these rules have come into effect, that it has had a dramatic impact on the number of process servers available to serve papers in the city of New York. Many servers chose to leave the profession, not because they were "sewer servers" but because the fines were so astronomical and the alleged administrative infractions so onerous, that the profession

LEOPOLD & ASSOCIATES, PLLC

was no longer desirable to people who sought to earn an honest living. The fact that a process server can be penalized and fined for minor errors on an affidavit of service or be deemed a "sewer server" or have their integrity called into question for signing a consent order with the DCWP or because they have a traverse hearing is truly burdensome, not just for the servers themselves but also for the attorneys and clients who rely on the service for their actions.

Furthermore, many process servers have encountered increasingly hostile and aggressive defendants while serving papers. The new proposed rule of having a server take a GPS image AFTER service (and no more than five minutes after service) does not take into account the dangerous nature of the work of a process server or the situations a process server may find themselves in after serving a litigant. Further, in large buildings, often times elevators may not be working and a process server may have to use the stairs in order to leave a premise (many buildings could have 30 or more flights of stairs – something which could take far longer than five minutes to record a successful service after leaving a potentially dangerous or threatening area).

I respectfully request that these rules, as proposed, be amended further in order to help make service of process less burdensome. As part of the legal community, we all want process service to be done correctly and our service to withstand scrutiny, but we must also be realistic and not put unreasonable limitations in place that further serve to disrupt our legal work and cause problems in our actions. Thank you for your consideration.

Sincerely,



Saul O. Leopold

- **Paula Parrino on behalf of NYSPPSA members**

Several of us have registered to speak at the hearing but have not received a confirmation email, invite or link to the meeting. Please let us know how we can appear. Thank you.

Comment added August 20, 2024 4:04pm

- **TMJ**

Having worked in the legal field for over 20 years and more specifically in the process service field for over 10 years, I am very concerned about a variety of issues brought forth by the proposed rule changes. Other than the safety issues, which seem to be covered but should not be overlooked, I am concerned about the new rules regarding corporate service. Anything that helps make service more difficult to contest is something that I believe most servers would find favor with, as we are an unbiased non-party to the service and our goal is to get the paper to the correct party. What concerns me is the fact that if the questions are not answered in a specific way from a person claiming they are authorized to accept service, is that in some way going to open the door for more challenges to service? And what about the possibility of a paper not being served because a server is fearful that they may receive a penalty for the paper? This could be detrimental to a case, particularly when there is a statute of limitations issue.

Please consider the impact that these rule changes will have on process servers. From a change in the law that allowed affirmations in lieu or affidavits, that seemed to have created a path for the addition of these new proposals. Rather than just focusing on stating that the law change is recognized and language changed to reflect such, instead we have a new set of proposals that will only hinder service more than help it.

Comment added August 20, 2024 4:24pm

- **Chris Harper**

§ 2-233b Electronic Record of Service / GPS Requirements.

The process server is not in compliance with this provision if its electronic record was made before the time of attempted or effected service. There shall be a rebuttable presumption that the process server was not in compliance with this provision if its electronic record is made more than five minutes after the time of attempted or effected service.

This new provision can and will jeopardize the safety of the men and women serving legal documents in New York State. This new requirement would mandate that a server takes a picture of the property and possibly the already angry recipient of the documents. It means that a server would have to stay at a property longer than necessary. Adding electronic records within 5 minutes of service is also unreasonable at times. Circumstances like a lack of gps or cell service, large apartment buildings that require time to return to the vehicle, and aggressive recipients, hinder the server's ability to comply with a 5 minute time frame.

Comment added August 20, 2024 5:18pm

- **Ronny Stattyn**

As a veteran independent process server who has made his living serving process in New York City for over 34 years, I would like to begin my comment by thanking all of my colleagues in the industry for all of their comments on the very real safety concerns posed by these proposed new rules, as well as all of the attorneys who taken the time to comment on the equally concerning legal issues that the proposed rules may have, and also the third party providers for their comments on the equally concerning technical and logistics issues posed by these proposed new rules.

With so many comments on those issues already made, i would like to devote my comment to another issue that I haven't seen commented on yet but is an important issue worth mentioning since

it inevitably will affect how we do our work regardless of whatever DCWP's final new rules end up being.

On June 6, 2024 The New York State Legislature passed The Stop Civil Discrimination Act, which is colloquially known to us in the industry as "The Description Bill". This bill, which will take affect immediately after it is signed by The Governor, will prohibit the use of skin colors when describing defendants/respondents on our affidavits/affirmations and instead require us to specify our perception of the defendent's/respondent's race or ethnicity (think the checkbox choice categories on census forms). Of course, this is a very just bill and one that is long overdue in it's passage. However, there is what I believe an unintentional consequence that will pose difficulties for us, at least temporarily, once passed. To the best of my knowledge, there is not yet any companion legislation in The State Legislature to amend the GBL which would allow us to substitute perceived race/ethnicity for skin color in our E-logs. So we could have a situation where we are required to record descriptions one way in our E-logs(skin color) and another way on our proofs of service(perceived race/ethnicity) since we will no longer be permitted to mention skin colors on proofs of service. Now it could very well be that this discrepancy might be cleared up once the State promulgates the rules for the new law and implements it. But we have no way to know for sure until it happens. So one might ask what does this issue have to do with the new rules that DCWP is proposing? It is that DCWP is also proposing new rules in this revision that would affect how proofs of service are prepared (the commercial cases). So wouldn't it be more practical for DCWP to hold off for a short time to see how the state will implement The Stop Civil Discrimination Act before moving forward with any revisions they wish to make on proof of service requirements? Otherwise, it will just create another situation in the very near future when they will need to revise their rules yet again to add language to conform to this new change in state law. I request that DCWP please take this pending change in state law into consideration before implementing any new rules regarding preparation of proofs of service.

Comment added August 20, 2024 9:07pm

- **Michael Hart**

The redundancy of service only can lead to more dangerous situations and double the workload for a single service. A 5-minute time limit sometimes is not feasible. Case in point you are in the projects pick one anyone the elevators work or they don't work your cell phone service is not working properly, or if the elevator does work you have to wait many times for to have enough room for you to fit inside the elevator to leave. Then you get to a safe location to enter your service attempt.

Example I did a service about a year ago and the South Bronx went to serve custody papers on an individual and family of the respondent was in the house ,they became irate and belligerent I left the papers and I walked to the elevator, as I walked on the hall the family began to follow me I then was cornered in the elevator. This is not the time to be entering my attempt is it. Thankfully I left without incident. But I don't understand is all the extra steps that you are asking process service to take yet the courts do not expect it on the documents being submitted to them. I like the idea of the GPS on the affidavit with the verification that I in fact was there no one can question that when I find out to be a great tool. I would think that the agency would want to work with the license process service personal to improve the system of service of process.

Comment added August 20, 2024 9:56pm

- **Alexander Cohen**

In 2-232 of the proposed changes, you are adding requirements that go beyond those of the CPLR. What is the purpose of this if it is not within the scope of the law or required by any court. This is just one example of your gross overreach. Where is the presumption of innocence? The US Constitution gives any defendant in any criminal or civil case the presumption of innocence and the rite to defend themselves. Individual Process Servers are denied this right because

of the prohibitive cost of hiring an attorney that would have any chance of protecting their rights. You are the Department of Consumer and Worker Protection, Are Individual Process Servers not workers? If it is your task to protect these workers who will protect them from you?

Comment added August 20, 2024 10:07pm

- **KE**

I am writing to express my deep concerns regarding the recent proposed changes by the Department of Consumer and Worker Protection (DCWP) affecting GPS tracking regulations for process servers. Specifically, I wish to address the new requirement to submit GPS coordinates within 5 minutes of completing a service and the existing rule that prohibits recording GPS coordinates before attempting service.

These regulations are not only impractical but also significantly increase the risk to process servers. Our job often involves serving legal documents to individuals who may be distressed or hostile. These rules, as they stand, introduce additional stress and danger into an already hazardous profession.

1. The 5-Minute GPS Submission Requirement:

The mandate to submit GPS coordinates within 5 minutes after completing a service is problematic. When serving documents, we frequently encounter highly agitated individuals. Our primary focus should be getting the documents served correctly and secondary is the recording of the service while making sure we are safe. The added distraction of handling GPS data within a set time limit, in these high-stress situations could divert our attention from crucial safety measures, significantly increasing the risk of harm. In critical moments, this distraction could be dangerous or even life-threatening.

2. Prohibition on Pre-Service GPS Recording:

The current prohibition on recording GPS coordinates before attempting service exacerbates these risks. This rule prevents us from documenting our location in a safer, more controlled environment before interacting with potentially volatile individuals. Instead, we are required to handle GPS data during potentially dangerous encounters, which heightens our risk. Focusing on recording GPS coordinates while dealing with aggressive reactions can compromise our safety and increase the likelihood of harm.

3. Increased Danger and Risk:

Our profession inherently involves significant risks, including interactions with angry or distressed individuals who may react violently. The new rules exacerbate these risks by introducing unnecessary distractions and stress. Being required to focus on GPS data submission under pressure increases the likelihood of injury or worse outcomes.

4. Need for Safer Alternatives:

I urge the DCWP to reconsider these regulations. Extending the time frame for GPS submission permitting pre-service GPS recording would substantially enhance safety. Such changes would enable us to prioritize our safety while still complying with regulatory requirements.

5. Request for Reevaluation:

Given the serious safety concerns, I respectfully request that the DCWP reevaluate the 5-minute GPS submission requirement and the prohibition on pre-service GPS recording. The current regulations place process servers at greater risk and could lead to severe consequences. Regulations must be designed to protect our safety rather than exacerbate existing dangers.

Thank you for your attention to this urgent matter. I am available for further discussion and can provide additional insights based on my own experience.

Comment added August 20, 2024 10:27pm

- **Gail Kagan Legislative Chair**

thank you for the opportunity to speak at the hearing today,.
Attached is a pdf of my full commentary

[Comment attachment](#)

Gail-Kagan-Comments-5o-the-DCWP.pdf

Comment added August 21, 2024 1:59pm

Good Morning

MY name is Gail Kagan and I am The Legislative chair for the NY State Professional Process servers association

Thank you for giving me the opportunity to speak today on the proposed rule changes by the Department of Consumer and Worker Protection (DCWP),

I stand before you to express my strong opposition to these new provisions, as they raise several concerns that I believe are both unfair and detrimental, not only to small businesses but also to the individuals who serve as process servers, who are essential to our legal system.

The rules—requiring electronic records of service to be made and uploaded within five minutes—are not just impractical. They are, frankly, dangerous.

First, let's talk about safety.

Process servers are no strangers to danger. When we knock on someone's door, we never know what to expect. We've seen horrifying incidents like the one in Missouri, where young Ralph Yarl was shot for simply knocking on the wrong door. This underscores the risks process servers face every single day. We've had process servers attacked by dogs or, as in New York's Diamond District, physically assaulted by security personnel who didn't believe a server had the legal right to take a photograph during service.

It's not a matter of if a confrontation will happen—it's a matter of when.

Forcing servers to stand outside the door of an angry recipient, struggling to upload information on a phone within five minutes, is a recipe for disaster. This unrealistic time frame exposes servers to heightened risks of violent encounters, and frankly, it puts lives in danger.

This is how people get hurt.

In cities like New York, the logistical challenges are even greater. Servers have to navigate stairwells, elevators, and crowded environments. Racing against the clock, they can't always make it out of a building and to safety in five minutes.

It's not just unsafe—it's unworkable.

But aside from the safety concerns, the DCWP is also overstepping its bounds.

Let's be clear: Nowhere in state law does it say that failing to upload service details within a certain time frame invalidates the entire service. Yet, the DCWP is attempting to impose this extra burden, suggesting that if information isn't uploaded fast enough, the entire service is null and void.

This is a significant overreach of DCWP's authority. The rules they're trying to enforce are not grounded in state law.

In essence, the DCWP is creating barriers to the service of legal documents that do not exist under state law. This creates confusion, undermines the role of process servers, and, frankly, harms the very due process they claim to protect.

What we need is a sensible balance—a system that ensures legal accountability without endangering process servers or overstepping the bounds of the law.

Additionally, I'd like to address the new provisions concerning affidavits and affirmations of service.

At first glance, these additions seem straightforward—they emphasize the importance of honesty and accuracy in the documents submitted by licensees. But when we look a little closer, it becomes apparent that this rule is, in fact, redundant.

Let me explain why.

By their very nature, affidavits and affirmations are sworn statements of truth. When a process server signs an affidavit or affirmation, they are legally affirming, under penalty of perjury, that the information contained within is accurate and truthful. This is already a binding legal obligation. So, when the DCWP proposes a rule stating that licensees must not make false statements in these documents, what exactly is being added here?

The truthfulness of an affidavit or affirmation is not optional—it's already a requirement by law. Therefore, the proposed rule doesn't introduce anything new or novel. It simply reiterates what is already fundamental to the purpose of these legal instruments.

But there's another issue that concerns me.

The proposed rule gives the DCWP the authority to deny or revoke licenses based on a "false statement." Now, while I support any effort to weed out intentional dishonesty, we have to ask: *What exactly is meant by a "false statement"?*

Is it only a deliberate attempt to deceive? Or are we including innocent errors—like a typographical mistake? Because we all know that mistakes happen. And courts, quite sensibly, have long recognized that minor errors in affidavits—things like typos or clerical oversights—are not enough to invalidate service or cast doubt on the credibility of the process server. The courts understand that these are ministerial errors, not acts of deception.

So, when we talk about "false statements" under this new rule, are we referring only to intentional misrepresentations? Or is there a risk that any mistake, no matter how trivial, could be labeled a falsehood? This lack of clarity is concerning.

The rule, as it stands, risks over-reaching. It risks punishing process servers for honest mistakes while adding no meaningful deterrent to those who are intentionally dishonest. The result? AGAIN, More confusion, more paperwork, and potentially more unintended consequences for people trying to do their jobs diligently.

Add to this the lack of a cure period in this proposal is alarming.

This is not just a matter of compliance—this is a matter of fairness. A cure period is necessary for businesses to understand and correct potential missteps. It ensures that penalties are reserved for those who intentionally or repeatedly violate the law, rather than punishing every minor or unintentional oversight. Without it, we risk creating a punitive environment where small businesses, who often lack the resources for constant legal oversight, are disproportionately burdened by fines and sanctions.

Secondly, the new addition to treat each failure to comply as a separate violation opens the door to excessive penalties.

This one-size-fits-all approach to enforcement doesn't account for the context or severity of the infractions. Is it really fair to penalize a server multiple times for a minor error, or to treat each small mistake as a standalone violation? The consequences of this could be devastating, particularly for small businesses and Process servers that are already facing tight margins in a challenging economic environment. We need a system that allows for the proportionality of penalties—one that distinguishes between honest mistakes and willful neglect.

I also am concerned about the proposed rules regarding corporate service.

While anything that helps make service less contestable would likely be welcomed by most process servers—since we are impartial third parties whose sole goal is to deliver the papers to the right person—the specifics of the new rules raise several red flags. If the answers provided by the person accepting service don't precisely match the criteria, does that mean the entire service could be subject to additional challenges? And if so, wouldn't this increase the likelihood of more disputes over the validity of the service? That, in turn, could further complicate matters, especially in cases with time-sensitive constraints like statutes of limitations.

Moreover, what happens if a server decides not to serve the papers at all out of fear of receiving penalties for some technical misstep during the service? Could that lead to a situation where the case is compromised, perhaps even fatally, because the server was hesitant due to the possibility of fines or sanctions?

This seems like a real risk, particularly when it comes to the following provisions under 2-235(a), which applies to businesses. According to this section, the affidavit of service must now contain three very specific pieces of information:

1. The person must explicitly state that they are authorized to accept service, and the server must receive a clear “yes” answer.
2. The person’s job title or their responsibilities must be included.
3. The server must have known the person was the correct type of “agent,” presumably based on the answers to questions 1 and 2.

Doesn’t this degree of specificity require an act of the state legislature? After all, these requirements are not part of the CPLR (Civil Practice Law and Rules) as it applies to the state courts. How can this new rule, which seems to impose far more stringent demands than the CPLR, be enforced without legislative approval? Wouldn’t this constitute a regulatory overreach, where an administrative body is essentially creating new obligations that have never been mandated by the legislature?

Finally, I can’t help but wonder if all this confusion could backfire in terms of both compliance and enforcement. What happens if servers, facing this new labyrinth of requirements, unintentionally miss one small step, resulting in penalties? Could that lead to more cases of servers simply walking away from difficult serves for fear of being fined, ultimately harming litigants?

These points suggest that the proposed rules, while potentially well-intentioned, could do more harm than good—leading to unintended consequences like more contested services and delays that could jeopardize the cases themselves.

Now, let’s turn to the issue of process servers, who play an integral role in the legal system.

This proposed rule with the consequence of increase of fines could be particularly harmful to process servers during traverse hearings. It is not uncommon for opposing counsel to use the fact that a process server has signed a consent order with the DCWP to discredit them in court. Without a cure period, process servers are more vulnerable than ever. Their credibility, their professional reputation, and their ability to perform their duties effectively are all at risk.

Even worse, process servers have no legal representation during these hearings. Per diem attorneys, who are frequently unfamiliar with the specifics of the case or the rules of service, are often hired to represent the plaintiff. This leaves process servers defenseless. They get no voice in court other than the questions put to them, with no meaningful opportunity to be heard, and potentially facing undue prejudice in the courtroom.

Let me be clear: this is not just about regulatory oversight; it’s about fairness and due process.

The DCWP's fining practices are doing more harm than good. Not only are process servers being unfairly targeted and fined for minor clerical errors, but the very balance of our judicial system is at risk." and these new rules seem to add more opportunity for these excessive fines,

It's as if process servers are being treated like cash machines for the city, with minor errors blown out of proportion in order to justify a fine. This isn't just about accountability; it's about making money."

Settlement Agreements and Their Impact

"Now, you might ask, 'Why don't process servers simply fight these fines if they're unjust?' The answer is simple: many can't afford to.

The time, effort, and cost of contesting a fine often outweigh the fine itself, so process servers are pushed into settlement agreements. These settlements aren't admissions of guilt—they're a practical decision made to avoid the drawn-out legal battle. But here's where it gets worse: these settlement agreements are then used against process servers in courtrooms to question their credibility.

Judges and attorneys see that a server has settled a fine, and suddenly their reliability is in question. This practice, using minor clerical errors to discredit process servers, undermines their professional reputation. It damages their standing in the courtroom, where their impartiality and integrity should be respected, not doubted."

Erosion of Judicial System Integrity

"And this brings us to the heart of the matter: the integrity of our judicial system.

Process servers are not just administrative workers—they are a critical part of ensuring that legal proceedings move forward fairly. They deliver documents that are crucial for due process. When the credibility of process servers is unfairly attacked, it doesn't just hurt them—it weakens the entire system.

When process servers are fined and discredited for small mistakes, the fairness of the judicial process itself is undermined. Courts and judges begin to doubt the reliability of service, introducing a bias that can affect the outcome of cases. This isn't just an administrative issue—it's a fundamental threat to the checks and balances that our justice system depends on."

Case Law Supporting Process Servers

"But it's important to remember that the law has been clear on this point: minor flaws in an affidavit do not invalidate the service.

Let me give you a few examples from case law. In

Simonds v. Grohman, In

Beneficial Homeowner Service Corp. v. Girault

Chemical Bank v. Darnley AND MANY OTHERS

Time and again, the courts have ruled that minor discrepancies should not result in the invalidation of service. Yet here we are, with the DCWP levying fines as if these minor mistakes are evidence of dishonesty."

Injustice to Process Servers

"The result? Injustice to process servers.

Imagine doing your job correctly, only to have a typo or a minor discrepancy in paperwork result in a fine that not only costs you money but also calls your professionalism into question. This is the reality for many process servers today."

Erosion of Professional Integrity and Judicial Balance

"And the broader consequence of this? We see an erosion of the professional standards of process servers, who are essential to the functioning of the legal system.

When process servers are unfairly penalized, it discourages professionalism, and it disrupts the delicate balance within the judicial system. The courts rely on process servers to do their job impartially, and if their credibility is compromised, the entire system suffers."

In conclusion

The DCWP is an agency designed to protect and enhance the daily economic lives of New Yorkers, ensuring our communities thrive. They license over 45,000 businesses across more than 40 industries, and their mission is to enforce key consumer protections and workplace laws, aiming to balance the scales in favor of fairness and equity. It's a responsibility they should take seriously.

However, in recent years, we have seen an alarming trend where this department, instead of promoting equity, has been overreaching with increasingly stricter rules and aggressive fining – specifically targeting process servers.

New York City, like many places, once faced a surge of consumer debt collection filings in the early 2000s, and with it came bad actors. Unscrupulous practices such as "sewer service"—where important legal documents were discarded instead of being properly delivered—once plagued our industry. But those days are behind us. There are fewer bad actors, and the industry has worked hard to regulate itself.

Despite this progress, the DCWP continues to push stricter rules. The outcome? The number of licensed process servers in the city has plummeted. What once was a profession of over 2,500 individuals has now dwindled to less than 500. This aggressive enforcement isn't just choking an industry – it's strangling the very core of due process.

Process servers are not average vendors or businesses. They play a critical role in the legal system. Without us, people would not receive the necessary notices about legal actions being taken against them. Without us, the right to defend oneself in court becomes meaningless. We are integral to ensuring justice is done fairly and transparently.

Yet, the DCWP's procedures for revoking a license are unjust. For a process server, losing a license means losing their livelihood. Many of these individuals, when faced with the potential loss of their business, find that legal assistance is too costly. While criminal defendants receive legal aid, where is the equivalent for those whose ability to provide for their families is at risk?

This year, we saw the mayor sign the **Small Business Forward Executive Order**. Its purpose? To encourage small businesses, reduce fines, and offer warnings or cure periods for first-time violations. Yet, in stark contrast, the DCWP has continued entrapping process servers. Labeling someone a "sewer server" because they lost a traverse hearing, despite completing their duties, is unjust.

We need to remind the DCWP that the process serving industry is not just another small business sector – we are the custodians of due process. Our work ensures that individuals have their day in court and that the legal system functions fairly for all. The department's current trajectory is destroying an industry essential to justice in New York City.

It's time for fairness. It's time for protection. It's time for the DCWP to recognize the difference between ensuring safety and enforcing overzealous fines on an industry that is already highly regulated.

Thank you.

Gail Kagan

- **Jeff Karotkin**

Dear Members of the New York City Department of Consumer and Worker Protection,

I am writing on behalf of Lawgical/ServeManager, a provider of software services to the private process serving industry. Our software is utilized by numerous process serving agencies and individual field servers in New York City and thousands of servers worldwide. We appreciate the opportunity to comment on the proposed regulation changes regarding process servers.

1. Concerns Regarding the New 5-Minute Rule:

We respectfully urge the DCWP to reconsider the proposed rule requiring process servers to create and upload an electronic record within five minutes of service or service attempt. This rule is both unreasonable and unnecessary for the following reasons:

Technological Constraints: The requirement to upload a geotagged photo and GPS logs within a narrow timeframe does not account for real-world technological limitations. In urban environments like Manhattan, process servers often encounter connectivity issues due to large buildings, stairwells, and other locations where establishing or maintaining a GPS or cell connection is challenging or impossible. These connectivity issues can persist for several minutes, and the process of exiting a building to find a connection can also take considerable time.

Practical Considerations: The assumption that a delay in uploading this information inherently indicates a defective service is not supported by the realities of the process serving profession. In fact, the time required to obtain a stable connection should not be used as a determinant of the legality or validity of the service.

2. Importance of Photographic Evidence and Safety:

As a provider of software services, we have extensive data on the practices of process servers. Our observations indicate that process servers typically take photographic evidence using our application upon arrival at a service location. This practice, which includes capturing the street address, apartment, suite number, or other identifying information before attempting contact with the target, is critical for several reasons:

Safety: This approach is the safest for process servers. Taking photographs before attempting service allows servers to document the service location while maintaining a safe distance from potentially dangerous situations.

Efficiency: Documenting the location before making contact ensures that process servers can proceed with their duties efficiently and without unnecessary delays. This practice aligns with the goal of maintaining accurate records while prioritizing the process server's safety.

Conclusion:

In light of the concerns raised, we respectfully request that the DCWP reconsider the proposed 5-minute rule and work closely with the New York Process Servers Association and other stakeholders to develop reasonable rules that reflect the profession's realities. We believe that a collaborative approach will lead to regulations that support the integrity of the process serving industry while also ensuring the safety and efficiency of the individuals who serve legal documents.

Thank you for considering our comments. We look forward to further engagement on this critical issue.

Sincerely,

Jeff Karotkin
VP of Business Development
Lawgical/ServeManager

Comment added August 21, 2024 2:51pm

- **Jenn Simmons, Vice President of NYSPPSA**

On behalf of The New York State

Professional Process Servers Association, we propose the DCWP
adopt the following amendment to 2-2336(2) (1) :

On every occasion that a process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately before or after attempting or effecting service. If no GPS signal is available at the time of attempted or effected service of process, the location, time and date will be determined by triangulated cell tower signals. (The process server is in compliance with this provision if its electronic record was made immediately. before the time of attempted or effected service or within one hour after the time of attempted or effected service.)

*Please see attached.

[Comment attachment](#)

Proposed-Amendment.pdf

Comment added August 21, 2024 3:23pm

On behalf of The New York State Professional Process Servers Association, we propose the DCWP adopt the following amendment to 2-2336(2) (1) :

On every occasion that a process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately before or after attempting or effecting service. If no GPS signal is available at the time of attempted or effected service of process, the location, time and date will be determined by triangulated cell tower signals.

The process server is in compliance with this provision if its electronic record was made immediately before the time of attempted or effected service or within one hour after the time of attempted or effected service.