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TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONSUMER AFFAIRS ON INTRODUCTORY BILL 6A - A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK IN RELATION TO PROCESS SERVERS

March 2, 2010

Legal Services NYC, Manhattan Legal Services, and Queens Legal Services welcome this opportunity to present testimony on the licensing of process servers. Legal Services NYC has been providing critical legal help to low-income residents of New York City for over 40 years. Each year, Legal Services NYC assists over 25,000 individuals in our nineteen neighborhood offices with a full range of legal needs. Manhattan Legal Services ("MLS") and Queens Legal Services ("QLS") are programs of Legal Services NYC. .

In November 2009, Legal Services NYC presented testimony, attached hereto, in support of Int. No. 1037, which proposed greater regulation of process servers. That testimony highlighted the detrimental impact that improper service of process and the resulting default judgments have upon the lives of the low income communities we serve. We commend the City Council for recognizing the problem that abuse of the service of process poses and for proposing further regulation of process servers in the Int. No. 6A. We strongly support the passage of Introductory Bill 6A with the inclusion of the new provisions creating a private right of action and a mandatory licensing exam. These changes would help to further ensure accountability for illegal practices and hopefully prevent many of these

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practices from occurring. In this testimony, we highlight the beneficial effects of the new provisions of the bill and to propose a few modifications.

Licensing Requirement

We thank the Council for amending Int. No 1037 to take into account the needs of many unrepresented low-income litigants, who lack the resources to pay for process service and must rely on friends or family to serve court papers. The amendment to §20-403(a) requires licenses only of those who "do business as a process server," replacing the current language of the statute, which requires licenses of "[all those who] perform the services of a process server." This amendment is consistent with §§20-404 (a) and (c), which restrict the definition of process server to those who do business as a process server, meaning they serve process five or more times in a year.

We do further recommend exempting attorneys, employees of law firms located in this state, and deputized city marshals from some of the requirements of Int. 6A. The current exclusion of these groups from §20-404(b) merely excludes them from the new requirement for process serving agencies to be licensed. However, attorneys, employees of law firms, or city marshals who serve process more than five times in a year would still individually need to be licensed process servers. As such, they would be required to post the $10,000 surety bond required in §20-406.1 and carry an electronic device that uses a global positioning system in §20-410. These requirements would pose an enormous burden on attorneys, employees of law firms, and city marshals, all of whom are already regulated by other government agencies. We suggest excluding "attorneys, employees of law firms, and city marshals" from the requirements of $20-406.1 and §20-410 in order to avoid these unintended consequences.

Examination Requirement

We support the addition of a requirement that process servers undergo an examination of their knowledge of proper service of process in New York City and the applicable laws in the proposed §20-403(c). Examinations are a common tool used in the licensing of professionals whose conduct is governed by law and whose actions have significant legal consequences. One common example is the

requirement by most states, including New York, that a notary public pass an examination. In addition, many states and localities currently require process servers to pass an examination, including Alaska[1], Arizona[2], Montana[3], Nevada[4], and the city of St. Louis.

Under the current law, any person can pay a fee to become a licensed process server regardless of whether they have any knowledge of the applicable laws governing service. A process server who fails to follow the law may only be held accountable much later when their license is revoked or they are subject to criminal penalties. In the meantime, individuals are harmed by their sewer service and resulting default judgments. While an examination cannot prevent sewer service, an examination can ensure that all those doing business as process servers in New York City have a basic knowledge of the applicable law. Moreover, individuals will be discouraged from becoming process servers who are unwilling or unable to learn the requirements for proper service.

Furthermore, the Department of Consumer Affairs (DCA) is the appropriate entity to administer such an exam. In passing regulations that govern the activities of process servers and investigating complaints against them, DCA must regularly evaluate whether a process server has complied with all applicable laws and rules. Consequently, DCA has the requisite ability to develop and administer a test of a process server's knowledge of those laws and rules. DCA has significant experience administering such tests for other licensees, such as Sightseeing Guides[5], Motion Picture Projectionists[6], and Home Improvement Contractors[7].

Private Right of Action

We strongly support the creation of a private cause of action for any person injured by the failure of a process server to act within the law, as proposed in §20-409.2. Under the current law, individuals

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[1] Alaska Admin. Code tit. 13, § 067 et seq. (2010)
[2] Ariz. Rules of Civ. Pro. § 4(e) (2010).
[3] Mont. Code Ann. § 25-1-1104 (2010).
[4] Nev. Rev. Stat. § 648.070 (2010).
[5] N.Y., R.C.N.Y. tit. 6, ch. 2, § 2-211.
[6] N.Y., R.C.N.Y. tit. 6, ch. 2, § 2-81.
[7] N.Y., R.C.N.Y. tit. 6, ch. 2, § 2-226.

lack any direct recourse against a process server who knowingly engages in sewer service. Even though an individual may be able to get the judgment against them vacated, they are often damaged as a result of the default judgment. A civil cause of action will provide a mechanism for holding the process server accountable for the harm they have willingly caused. In addition, it will highlight the bad actors who are abusing the justice system. Legal Services NYC consumer advocates have observed that process servers rarely appear to testify at a traverse hearing when there is an allegation of sewer service. If an injured individual has a private right of action against a process server, then the process server must respond to the allegations of improper service.

We do recommend amending this section to state that any applicable statute of limitations will begin to accrue from the date of discovery of the unlawful service. Many litigants do not discover improper service has occurred until many years after a default judgment was entered, when their bank account is suddenly frozen or their wages are garnished. A judgment creditor has twenty years to enforce a judgment. Consequently, a person could discover a default judgment as many as twenty years from the time of improper service, far beyond any applicable statute of limitations for a private cause of action. If the private right of action were to accrue from the time of discovery, an injured debtor could still obtain recourse for their actions.

Recordkeeping Requirement

We support the proposed requirement of §20.406.3(a) that the process server's log book and other records must be retained for seven years. Enactment of this provision will allow offended parties who do not learn that a default judgment has been entered against them until many years afterwards to contest the bad service.

Violations and Penalties

We strongly support proposed §20-409.1, which allows the possibility for penalizing process servers who are found after "notice and hearing" to have violated any provision of Title 20. This is yet another way this legislation will hold process servers responsible for misconduct and encourage them to

adhere to the letter of the law. The possibility of paying penalties will act as a deterrent to process server misconduct. In addition, the complaint procedure will help those consumers who are unable to navigate the court system and bring a private cause of action with a forum to obtain redress for the harm caused by them. We encourage the Department of Consumer Affairs to develop complaint and investigative procedures whereby reports of violations of this law by process servers can be adjudicated efficiently and expeditiously.

Educational Materials

We also support §20.406.4, which requires the development and distribution of educational materials by DCA. These educational materials will allow process servers (who are not lawyers) to have available the applicable laws and regulations governing their conduct.

Conclusion

We commend the City Council for their efforts to address this very serious issue. While no one provision of Int. 6A will solve the problem of sewer service, we believe that its components in total will have a significant impact. We strongly urge passage of Introductory Bill No. 6A.

Respectfully submitted,

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TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONSUMER AFFAIRS ON INT. NO. 1037—A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK IN RELATION TO PROCESS SERVERS

NOVEMBER 13, 2009

This testimony is submitted on behalf of Legal Services NYC. Legal Services NYC is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The nineteen neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing thousands of low-income consumers and tenants annually in disputes involving their rights to remain in their homes and protect their income.

Manhattan Legal Services ("MLS"), a program of Legal Services NYC, is a legal services provider with deep roots in the culturally diverse and low-income communities that encompass the Borough of Manhattan. MLS provides critical legal services to individuals on a wide range of matters in our two neighborhood offices located in Harlem and lower Manhattan. The Consumer Unit at MLS provides advice and direct representation to low-income Manhattan residents, prioritizing the elderly and disabled. In addition, our staff attorneys engage in community education projects to educate and inform New York City consumers of their legal rights.

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Queens Legal Services is a program of Legal Services NYC that provides free civil legal services, including advice and representation, to low income residents of Queens County. Our practice includes a range of areas, including consumer law, landlord and tenant law, and foreclosure prevention and defense work.

Legal Services NYC advocates have witnessed the prevalence of improper service of process and the devastating effects it has on the communities we represent. We commend the City Council for recognizing the problem that abuse of the service of process poses for low-income tenants and consumers who are left with default judgments. We strongly urge passage of Int. No. 1037, which would improve the regulation of process servers by requiring the posting of a surety bond, enhanced training, and greater record-keeping. These changes would help to ensure accountability for illegal practices and hopefully prevent many of these practices from occurring.

The Problems Posed by Sewer Service

Fraudulent service of process by licensed process servers, commonly known as "sewer service," undermines the judicial system by denying defendants their constitutional right to due process. The Court of Appeals has recognized that questionable service practices have the most impact on the poor and those least capable of obtaining relief from the resulting default judgment.[1]

Legal Services NYC attorneys representing consumers, as well as those representing tenants facing eviction, regularly see licensed process servers that consistently engage in questionable practices. In the less egregious cases, these process servers have not kept the proper records of service or simply failed to serve process in accordance with the requirements of law. However, in a large number of these cases, the process servers have actually submitted false affidavits of proper service. Some examples of false statements include: service upon a family member or friend who does not exist; service at an address that does not exist, or personal service on the defendant at an address where they do not live.

[1] Barr v. Department of Consumer Affairs of City of New York, 70 N.Y.2d 821 (1987).

In our opinion, the process serving companies are often the cause of the sewer service. Many process serving companies only pay the process server a few dollars for each person served and only if they attest to effectuating service. Consequently, it is in the process server's financial interest to produce an affidavit of proper service regardless of whether service was made. In addition, many process serving companies do not provide the process servers with proper training in the laws and regulations affecting process servers. As a result, the process server executes an affidavit of proper service when it has not occurred.

The Effects of Abuse of Service of Process on Consumers

The fact that the overwhelming majority of consumer debt cases filed each year in the Civil Court of the City of New York result in default judgments[2] has raised legitimate concern over the prevalence of sewer service in these cases. In the consumer debt cases handled by our offices, Legal Service NYC attorneys have found improper process service to be the norm, rather than the exception to the rule. Typically, our clients' first notice of a lawsuit against them occurs many years later when their bank account is frozen or their wages are garnished. While low income consumers struggle to get legal assistance, they are unable to access their money to pay for necessities like food, rent, and medical care. They fall behind on their bills and risk eviction. Other clients only discover these judgments when they are denied credit or housing because the default judgment has appeared on their credit report. When these low income consumers come to Legal Services NYC, our advocates typically find that the process server's affidavit is legally deficient and sometimes fraudulent.

In a recent case handled by Manhattan Legal Services, an elderly client first discovered that she had been sued when her bank account was frozen. The client's account contained only $50 in Social Security money. Furthermore, the client had never been notified of any lawsuit against her. The client

[2] In 2008 alone, approximately 319,500 consumer debt cases were filed in the Civil Court of the City of New York. Of these, the majority resulted in default judgments: 74% in Kings County, 76% in the Bronx County, 78% in Queens County, and 68% in Richmond County. Justice Fern A. Fisher, Deputy Chief Administrative Judge, New York City Courts, Presentation to the Civil Court Committee of the New York City Bar Association (March 17, 2009).

came to a Manhattan Legal Services attorney, who found that the affidavit of the process server contained fraudulent statements. Most notably, the licensed process server claimed to have served a male roommate in the client's apartment. However, this client lives alone in a studio apartment and does not have a roommate. She is homebound due to her disability and requires the assistance of a home health aide. As a result of the process server's false statements, the client has been unable to use her bank account for ten months and has been charged fees by the bank.

In another case, also handled by Manhattan Legal Services, an elderly client discovered a default judgment on his credit report. Similarly, he was never served with notice of a lawsuit against him and Manhattan Legal Services found that the process server had made false statements in the affidavit of service. This time the process server attested to personal service on the client at an address which does not exist.

Those consumers who are able to obtain legal assistance or advice are often able to vacate the default judgments against them. However, the process servers are currently not held financially responsible for the damage their actions have caused to the consumer.

The Effects of Abuse of Service of Process on Tenants

The most severe impact on the justice system and on the affected litigant occurs when sewer service results in an eviction, which takes place because the tenant, who has no idea he or she is being sued by the landlord, defaults. As a result of abuses of service of process, a high number of default judgments are entered in landlord-tenant cases.[3] In 2008, there were 46,740 default judgments against residential respondents out of 290,986 notices of petitions filed.[4]

In a recent case reported from Legal Services NYC – Bronx[5], the wife of a soldier in the Army was evicted while her husband was stationed in Iraq. Before a landlord can evict a tenant, the landlord

[3] NY State Attorney General, NYC Department of Consumer Affairs, NYC Department of Investigation, *A Joint Investigative Report Into the Practice of Sewer Service in New York City*, April, 1986.
[4] Civil Court of the City of New York, *Caseload Activity Report*, Generated on 3/13/2009, Terms 1-13, For 2008.
[5] Submitted by Jonathan Levy, Esq.

must prove that the tenant is not in the military.[6] An affidavit stating that the tenant is not in the military must be submitted in order to protect those who cannot come to court because they are serving overseas or elsewhere in the United States.[7] The process server in this case falsely alleged in an affidavit included with the warrant application that the soldier's wife said that she was not dependent on someone in the military. The affidavit by the process server effectively undermined federal protections enacted to prevent evictions of soldiers and their dependents.

In another case, also reported from Legal Services NYC – Bronx[8], the tenant was evicted pursuant to a default judgment while he was away in a drug rehabilitation program in Long Island. Personal service of the petition is alleged to have been made at the subject's Bronx apartment on a date when the tenant was actually at the Long Island treatment facility. Clearly, abuse of service of process in each of these cases led to eviction of the tenants without any semblance of due process.

Int. No 1037

This legislation, while not completely preventing the harm that abuse of process service can do to tenants and consumers, provides important new protections. We would like to highlight the beneficial effects this legislation would have and offer a few suggestions that would make the proposed law even more effective.

Bond Requirement.

We support the conditioning of licensing for process servers and agencies on the posting of a surety bond, as required by proposed §20-406.1. The bond will be available to cover fines and penalties imposed by the Department of Consumer Affairs (DCA) and final judgments recovered by affected New York City residents against the process server or process serving agency. The bond will also increase

[6] Servicemembers Civil Relief Act, 50 App. U.S.C.A. §521.
[7] Servicemembers Civil Relief Act, 50 App. U.S.C.A. §521.
[8] Submitted by James Jantarasami, Esq.

city revenues by ensuring that fines are paid on time. Injured litigants can make a direct claim to the surety company if the process server violated the law when serving process.

Moreover, the requirement of a bond will help to drive process servers who are consistent abusers out of business. For example, the surety companies may require higher premiums and greater collateral from unreliable process servers and process serving agencies. The surety companies may even deny coverage if the individual or agency is unable to meet the surety company's professional standards. The requirement of a surety bond will substantially increase accountability in an industry in which individuals and companies now routinely violate the law with virtually no penalty.

Responsibilities of Process Serving Agencies

We also support the increased responsibilities the proposed legislation would impose on process servers. §20.406.2(b) of the bill will require process serving agencies to provide employees with a written explanation of employee rights and employer obligations with respect to minimum wage, overtime and hours of work, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation laws. This new requirement will help low-wage employees who are the most vulnerable to violations of their employment rights. Many process servers are paid as little as $3-$6 per service. If they have to make three attempts as the law requires, they likely would make less than the hourly minimum wage required by state and federal law. This low wage tempts the process server to engage in sewer service. Process servers knowing their rights (and where to make a complaint) will be better equipped to resist the abusive employment practices that contribute to the problem of sewer service.

We also support the requirement imposed by §20.406.2(c) that the employer keep on record for three years an acknowledgment from the employee, verifying that they have received and read the statement of employment rights. This provision will facilitate monitoring for compliance with the law.

Finally, we support the requirement of annual training for every process server, as required by §20.406.2(d). This provision will help to increase the knowledge and professionalism of the industry and increase the accountability of process serving agencies for the activities of their employees.

Recordkeeping Requirement.

We support the proposed requirement (§20.406.3(a)) that the process server's log book and other records must be retained for seven years. Enactment of this provision will allow offended parties who do not learn that a default judgment has been entered against them until many years afterwards to contest the bad service.

Department of Consumer Affairs Handbook.

We also support §20.406.4, which requires the development and distribution of a handbook by DCA. This handbook will allow process servers (who are not lawyers) to have available the applicable laws and regulations governing their conduct. This requirement complements the training mandated elsewhere in the bill.

Amendments to Int. No 1037.

Lastly, we would like to suggest a few minor changes to the language of this bill which we believe will increase its effectiveness and prevent unintended consequences. First, many unrepresented low-income litigants lack the resources to pay for process service and must rely on friends or family to serve court papers. We recommend amending §20-403 (a) to require licenses only of those who "do business as a process server," instead of the current language, which requires licenses of "[all those who] perform the services of a process server." Our proposed language is consistent with §§20-404 (a) and (c), which restrict the definition of process server to those who do business as a process server, meaning they serve process five or more times in a year. In addition, we support adding an exemption to the surety requirements for a process server who is employed by a "not for profit organization" in §20-406 (c). These amendments would leave intact the goals of the proposed bill, which is to protect against

abuses by irresponsible process servers, while at the same time ensuring greater access to the courts for low-income litigants.

Conclusion

We commend the City Council for dealing with this serious issue and strongly urge passage of Int. No. 1037.

Respectfully submitted,

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February 25, 2009

Chairperson, Karen Koslowitz
Committee Member Leroy G. Comrie, Jr.
Committee Member Charles Barron
Committee Member James F. Gennaro
Committee Member G. Oliver Koppell
Committee Member John C. Liu
Committee on Consumer Affairs
The Council of the City of New York
City Hall
New York, NY 10007

Re: Testimony **in Opposition** to Introduction No. 6 - A Local Law to amend the administrative code of the city of New York, in relation to process servers..

Ms. Chairperson Koslowitz, Committee Members Comrie, Barron, Gennaro, Koppell and Liu, and Members of the City Council, thank you for the opportunity to testify this morning in regard to Introduction No. 6 - A Local Law to amend the administrative code of the city of New York, in relation to process servers.

I am President of the Commercial Lawyers Conference of New York ("CLC") and a Director the National Association of Retail Collection Attorneys (NARCA). The CLC is a New York State Bar Association whose members represent creditors seeking the recovery of consumer and commercial debts in the State of New York. The members of the CLC are law firms whose attorneys are licensed to practice law in the State of New York and whose practice is regulated by and under the supervision of the Appellate Division of the Supreme Court of the State of New York. The CLC has represented creditors' attorneys in standard-setting proceedings involving New York State and City legislation, and in the development of Court Rules and civil practice.

The members of the CLC regularly seek the monies owed their clients, first by pre-litigation means and then through the use of litigation, if necessary. They use process servers to serve their clients' lawsuits. The changes to process service in New York City as contained in Intro 6 will affect the CLC's members and their clients.

The intent of Intro 6 to protect New York City Consumers from improper process service practices is laudable. Unfortunately, the legislation as written will not achieve that intent.

The issue of improper service of legal process has certainly been in the news. The service of process by one process server which was licensed by the New York City Department of Consumer Affairs has been the subject of an investigation by the New York State Attorney General, resulting in the admission by the owner of that company that some of the process served by his company was done improperly. At the same time, there have been no accusations of collusion by or with that process server and other parties. It is clear that this company is the rogue operator who is "the exception that makes the rule."

To the best of my knowledge, no other process server has been found to have committed similar acts. Nevertheless, the Committee on Consumer Affairs has proposed in Intro 6 draconian measures which will change the face of process service in New York City and harm New York City's consumers.

We do not believe that Intro 6 will greatly impact the number of lawsuits filed in New York City, but we have no doubt that the additional costs of service will impact the ability of small businesses and individuals to collect the debts they are owed because the cost of doing so just went up. Debtors will also feel this bill's impact because process service costs are added when computing the amount of judgments. The additional costs Intro 6 will generate will be added to the judgments against all debtors including consumers, increasing their already heavy debt burdens.

Then there are the legal ramifications of Intro 6. Intro 6 violates Federal and State Law and cannot stand if passed. Section 1, which amends Section 20-403 of the administrative code of the city of New York ("Code") at par. b. Process Serving License, and Section 2 which amends section 20-404 of the Code at par. b are invasions of the federal government's right and responsibility to regulate interstate commerce. The Section 4 bond increases have no basis in reality and will be subject to legal challenge.

Section 5 mandates the use of unproven technology which will subject process servers to increased liability. It will also increase the possibility of confrontation between those who serve and those who do want to be served, and in particular, those people who definitely do not want their picture or any picture of their home being taken by anybody. Other issues not addressed in Section 5 are what happens if there is no global positioning signal that can penetrate the exterior

of an apartment building. Is service defective? Is the process server subject to liability for a violation of his or her license or civil liability as proposed in Section 7? Does it provide a basis for a lawsuit against the process server? Does a court throw out the service because the GPS signal simply did not penetrate the building?

Before enacting such legislation, the City Council should commission a study to determine if GPS monitoring can succeed in New York City; whether the taking pictures at places of service is beneficial; and whether there are other means that will better satisfy the intent of the legislation.

Conclusion **For all the reasons cited above, the Commercial Lawyers Conference of New York respectfully requests that Int. No. 6 - A Local Law to amend the administrative code of the city of New York, in relation to process servers, be withdrawn from consideration.**

Respectfully submitted,

Commercial Lawyers Conference of New York

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In Support of Int. 6-A
New York City Council
Consumer Affairs Committee
March 2, 2010

Good morning. I am Bob Martin, Associate Director of District Council 37 Municipal Employees Legal Services, or MELS. I am testifying today on behalf of DC 37 in support of the legislation before you to strengthen the City's laws governing the conduct of process servers.

MELS is a prepaid legal plan providing services to some 125,000 city workers and 40,000 retired city employees and their dependents. Our lawyers give representation in a range of legal matters, including consumer and debt cases. I also note that prior to coming to DC 37, I served as General Counsel at the Department of Consumer Affairs for seven years and thus have experience in the regulation of process servers under DCA's licensing statute.

There is a crisis in the process service industry. It's not the first crisis, but – because of the unprecedented volume of consumer debt cases and the opportunity for sewer service – it's the worst crisis. The past two years have seen an unbroken stream of hearings, studies, law enforcement actions and lawsuits highlighting the fact that something is wrong in the way many process servers do business.

We are clearly at a low point when the New York Attorney General and the Chief Administrative Judge are forced to file suit against debt collectors and law firms seeking to overturn 100,000+ default judgments due to sewer service, and when legal services organizations are compelled to bring a class action law suit seeking similar relief on behalf of New York City residents.

DC 37 MELS recently released a study called "Where's the Proof?" (available at http://www.dc37.net/benefits/health/pdf/MELS_proof.pdf) in which we analyzed cases filed by debt buyers over an 18-month period. Our overall finding was that in almost 95 percent of the cases in which our lawyers appeared in a debt collection case and filed a discovery demand, debt buyers could not or would not substantiate the debt. The debt buyer business model is geared toward obtaining default judgments.

That is where process servers come in. In 65 of the 238 cases in our study (27%), our clients only learned of the lawsuit after their salary was garnished or bank account restrained. Time after time, our clients told us that they had not received a summons that a process server claimed to have served. In many instances, what our clients said was backed up by an affidavit of service that was obviously false – containing an incorrect physical description of the defendant, or claiming service upon a non-existent relative.

What could be more harmful to justice and fairness than a process server who files a false affidavit of service so that a debt collector can obtain a default judgment? What could be more despicable than wrongfully obtaining a default judgment against a wage earner, poor person or senior citizen, and then taking their money?

We support the legislation before you because it is a good bill. It includes several components that will help resolve the crisis in the industry:

- The bonding requirement will bring a level of professionalism to the industry by ensuring that only those individuals and companies with the requisite background and resources will be able to engage in process serving.

- The bill will make clear that companies are responsible for the actions of the individual process servers whom they engage or employ.

- DCA will be authorized to conduct audits of process servers and agencies, and will be directed to disseminate educational materials to its licensees.

- In addition, the bill will require process servers, under rules to developed by DCA, to utilize GPS equipment to record the moment and place in time when a legal document is served. This is a positive innovation with the potential to eliminate "kitchen-table" service.

- Last but not least, the legislation contains a private right of action that will rightfully provide redress to consumers who suffer the type of harm that unfortunately we have seen recently in New York City due to the actions of process servers.

Thank you for the opportunity to testify today, and we urge swift passage of this important legislation.

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Testimony of Harvey Epstein before the New York City Council on behalf of the Community Development Project of the Urban Justice Center

February 10, 2010

Introduction

Thank you Chairperson and Council Member Koslowitz for holding this hearing today, and for the opportunity to testify. Also, thank you Council Member Garodnick for introducing this legislation. My name is Harvey Epstein, and I am the Project Director of the Community Development Project at the Urban Justice Center.

The Urban Justice Center serves New York City's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education and political organizing. The Community Development Project (CDP) of the Urban Justice Center formed in September 2001 to provide legal, technical, research, and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City. Our work is informed by the belief that real and lasting change in low-income, urban neighborhoods is often rooted in the empowerment of grassroots, community institutions.

I am here to urge you to support proposed legislation Int. 0006-2010A. This is an important piece of legislation that will protect consumers from process servers in New York who engage in illegal activity and create a mechanism to punish those process servers who do. Since 2005, the Urban Justice Center's Community Development Project has represented defendants in consumer debt cases in New York City's Civil Court. We have also represented victims of consumer fraud and unfair collection practices in affirmative litigation in State and Federal court. Additionally, the Community Development Project provides general counsel services to community groups advocating for economic justice, including foreclosure, housing and consumer justice.

Our Clients

A clear pattern has arisen where the failure to serve process has left people unaware of the lawsuits against them. It is only until after default judgments have been issued and cases closed, that these individuals learn of the original lawsuit.

For example, one of our clients, Mr. ES, obtained a copy of his credit report only to find that the first item listed was a judgment. Prior to seeing his credit report, Mr. ES had not known that he had even been sued. Mr. ES was applying for jobs and had been unable to obtain employment. Many of the employers to whom Mr. ES applied required access to his credit report and considered his report in determining whether to extend him an offer of employment. When Mr. ES learned of the judgment on his credit report, he was able to find free legal representation. As a result of that representation, the judgment was vacated and the creditor agreed to discontinue the action.

In another example, in January 2006, Mr. OC was told that his wages would be garnished. Mr. OC had never received notice that he had been sued. According to the plaintiff's filings, the process server claimed to have served a non-existent person on a date when Mr. OC's entire family was out of the country. As a result of his blemished credit, Mr. OC, who was in the process of starting his own business, had trouble raising the necessary capital for his venture. Once represented by the Urban Justice Center, Mr. OC entered into a mutually acceptable settlement and payment plan with the creditor.

Recurring Patterns of Victimization

Anyone can be the victim of sewer service, but vulnerable groups such as the elderly, disabled, and working poor families are disproportionately affected. Frequently these individuals are unaware of their legal rights and may lack an understanding of the legal system. We find instances of sewer service most frequently in matters of debt collection, property foreclosures, and evictions.

Sewer service is a problem that has plagued New York City residents for decades. There are statistics, reports, as well as press reflecting this negative pattern and calling for reform. A change in process server oversight is imperative to safeguard the due process rights of every

New York City resident as well as to ensure that they are able to address complaints issued against them. To accomplish this goal we must regulate and control the work of process servers through the use of surety bonds, private rights of action, better licensing requirements, and record keeping.

The Bill

Int. 0006-2010A will provide all New York City residents with additional protections against sewer service. We applaud City Council and Councilmember Garodnick for taking this key step forward. Nevertheless, the public would gain even more protection with minor improvements to the bill.

The Section 406 requirement for an examination is necessary and appropriate considering the importance of the process server's function.

Section 406.1, which requires a surety bond as a condition to obtaining a license, is an incentive for compliance along with a deterrent for violation. The bond will be available to cover fines and penalties for violations by the process server or agency. It will also cover final judgments recovered by New York City residents for damages caused by a process server or an agency's violation. The city itself will also benefit from added revenue because the bond ensures that fines are paid on time. These bonds will substantially increase accountability in an industry, where individuals and companies now routinely violate the law without consequence.

Moreover, the requirement of a surety bond will interject private sector supervision and enforcement alongside the DCA's. The underwriting standards established by surety companies will be an independent supplement to current enforcement. If and when the DCA is faced with budget cuts, private enforcement will remain intact.

Finally, the requirement of the surety bond will help to drive out the current "bad apples" from the industry. Surety companies may demand higher premiums and collateral from unreliable process servers and agencies. The surety companies may even deny coverage altogether if the individual or agency falls below the surety company's professional standards. This will deter unscrupulous people from entering the industry and will be an incentive for current process servers to follow the law.

Section 406.2.c. is another important step forward. It requires process serving agencies to provide employees with a written explanation of extensive employee rights and employer obligations pursuant to state and federal laws. This requirement may help generally susceptible low-wage employees avoid facing violations of employment rights. Furthermore, the requirement in Section 406.2.d., that the employee understand the statement of rights and obligations, may advance knowledge and professionalism while increasing agencies' accountability for the actions of its employees.

Section 406.3 requires process servers and agencies to retain electronic records for at least seven years. This section will profoundly assist people who do not realize that a default judgment has been entered against them until many years later. If the person who was improperly served wishes to contest the bad service, records of the process server describing the service should be readily available.

Section 406.4 which calls for the development and distribution of educational materials is an important addition. The robust collection of laws and rules governing the service of process in New York State and New York City may be overwhelming for a non-lawyer. Therefore, this task is best delegated to the Department of Consumer Affairs ("DCA") to ensure that information is not only accurate and complete, but appropriately relayed to process servers.

Most importantly, Section 409.2 creates a private right of action. This may be the most vital addition to create accountability for process servers. While the bonding requirement is a powerful method of guaranteeing compliance, there are clear limitations for the DCA to bring enforcement actions. Fines alone have consistently proven insufficient to stop sewer service. The inclusion of a private right of action allows individual victims of sewer service to make claims against the process server and obtain deserved relief.

Section 409.3 establishes reporting requirements that allow for review of this bill's effectiveness. This is incredibly important to pinpoint and address any inadequacies of the new administrative code dealing with process servers. Further, it will allow the code to adapt to new problems in the execution of service.

Section 410 requires a licensed process server to carry a GPS-type device during the commission of his or her duties and operate the device only when "process is served or attempted." This is a significant addition to the bill because it will provide a means of tangible proof that the process server properly carried out their commission. Further, this is another avenue where electronic records of service are created and kept for seven years, allowing for future review and evaluation of process servers. Such a requirement should deter sewer service and other violations by process servers.

Though these changes to the oversight of process servers are extraordinarily positive, there are still more steps that should be taken to protect the public.

Recommendations to improve the bill:

Given that process servers are required to maintain and keep records during their commission under this bill, they should also be required to file their logs with the DCA on an annual basis. This ensures that the documents are available to the DCA for review if any questions arise about the credibility of a process server. Also, if process servers are on notice that their logs are reviewed by the government agency who licenses them there will be additional public accountability. Furthermore, it will provide a better foundation for the reporting requirement in Section 409.3. By having records readily and publically available, the report may be more accurate and efficiently created.

Since process servers will be required to carry an electronic GPS-type device during the commission of his or her licensed activities, the process server should be required to operate the device during that time as well. Requiring the device to be carried and not operated is counterproductive. A process server could forget to operate the device at the specified time accidentally, or purposefully, which could result in what this legislation is trying to prevent—sewer service, and similar violations.

Finally, an exemption from the bond requirement should be afforded to process servers employed at legal services and non-profit organizations (and those individuals who serve process less than four times a year), while serving process for such employers. Though these organizations are unlikely to fall under the definition of a process serving agency, the $10,000

bond required for individual process servers, serving five or more process per year, will likely be too burdensome for many of these low-overhead organizations.

Conclusion

These recommendations will ensure the due process rights of all New York City residents by affording us the basic right to respond to claims brought against us, and will protect vulnerable groups from potentially far-reaching, calamitous effects of sewer service.

Thank you for introducing this bill and giving me the opportunity to testify on this important issue.

South
Brooklyn
Legal
Services

Legal
Services NYC

March 2, 2010

The New York City Council
Committee on Consumer Affairs
The Committee Room,
City Hall, New York, NY

Re: Proposed Int. 6-A- a Local Law to Amend the Administrative Code of the City of New York, in Relation to Process Servers

> "There is an air of complacency among the process servers . . . they know that nobody is checking on them." Samson Newman, owner of Aetna Judicial Service.[1]

> "It would be extremely helpful for someone to ... spend ... time on how [to]. . . identify process servers who are . . . flouting the law and engaging in sewer service. . . .[i]t's very difficult for the system to identify [them.]" Queens Civil Court Judge Diane Lebedeff.[2]

Dear Committee Members,

Thank you for inviting me to testify on this issue. I am employed by South Brooklyn Legal Services (SBLS), an affiliate of Legal Services of New York City. Each year, our offices provide free representation on civil matters to over 60,000 low income New Yorkers within the

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[1] New York City Department of Consumer Affairs, *Exploratory Public Hearing on Process Server Practices in New York City*, pp. 155 (June 13, 2008).

[2] Testimony of the Honorable Diane A. Lebedeff before the United States Federal Trade Commission, *A Roundtable Discussion on Debt Collection: Protecting Consumers*, December 4, 2009, pg. 32-33. Available at http://www.ftc.gov/bcp/workshops/debtcollectround/091204-DC/transcript.pdf

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John C. Gray, Project Director

Towards justice and dignity for all — Por justicia y dignidad para todos

five boroughs. Our clients are victims of sewer service on a daily basis. Although sewer service is a problem in housing litigation, I will focus my comments on its gigantic role in consumer debt litigation.

I. This Bill Will End Sewer Service

Last November, I testified that the City Council's 2009 sewer service bill was ineffective. The earlier bill sought to deter sewer service through education and increased liability via bonding. The bill ignored sewer service's main cause - it is "difficult to detect."[3] The amended bill fixes this problem by requiring Global Position System (GPS) proof that the process server went to a defendant's home. This simple yet revolutionary solution is akin to DNA testing in paternity case that previously were proven through testimony. By dovetailing GPS proof with a private right of action against a process server who engages in sewer service, the proposed bill will end sewer service in New York City.

II. Sewer Service And Its Victims

Sewer service is the term used when the process server states in an affidavit that he served the defendant when he did not. When a defendant fails to respond to a law suit, the plaintiff wins by default. Armed with a default judgment, a creditor can garnish the defendant's wages or bank account. For example, identify theft victim David W learned that he had been sued for a cell phone bill in Michigan when his wages at Macy's were garnished. The process server claimed to have visited his Harlem address and served a woman between the ages of 35 and 50 who refused to give her name. The only resident there was his 63 year old mother, and she never received such a visit.[4] Similarly, identity theft victim Barbara B lost her entire savings ($3,000) when a creditor obtained a default judgment by sewer service and emptied her bank account. Ms. B is mentally retarded and cannot use, never mind apply for, a credit card.[5]

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3 The New York State Attorney General, the New York City Department of Consumer affairs, The New York City Department of Investigation, *A Joint Investigative Report into the Practice of Sewer Service in New York City*, p. 2. (April 1986)

4 *Asset Acceptance v. David W*, New York City, Civ. Ct # 074604/06, (New York Cnty 2006).

5 *Erin Capital V. Barbara B*, New York City, Civ. Ct #5832/07 (Queens County 2007).

III. The Epidemic In New York City

A. Sewer Service in 2010

Sewer service is worse today than ever before. In 1986, 48,000 default judgments due to sewer service were entered annually in New York City.[6] Today, 300,000 debt collection suits are filed annually in New York City of which more than 80% result in default.[7] The majority involve debt collectors who pay process servers $5 per service which leads to sewer service.[8] Because sewer service undermines the legitimacy of the judicial system while preventing defendants from raising legitimate defenses, it is of great concern to judges, the Department of Consumer Affairs (DCA), public interest lawyers and the media.[9] Indeed, Administrative Judge Fern A. Fisher of the Civil Court of the City of New York laments that "many defendants" are not receiving notice from process servers.[10]

B. Three Process Servers And a 19th Century Mansion

Jeffrey Taylor's situation bests illustrates the pervasive nature of sewer service among debt collectors in New York City. After his wages were garnished in 2009, Mr. Taylor discovered he had three judgments against him. Each of these judgments involved different

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6 The New York State Attorney General, the New York City Department of Consumer affairs, The New York City Department of Investigation, *A Joint Investigative Report into the Practice of Sewer Service in New York City*, p. 2. (April 1986).

7 MFY Legal Services, *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate By Defendants in Lawsuits Filed in The Civil Court of the City of New York.* (June 2008).

8 The Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (2007). See also *Sykes v. Mel Harris, SamServe et. al,* 09 Civ. 8486 (S.D.N.Y. 2009)(alleging Mel Harris contracts for sewer service by paying below market fees and conditioning payment upon effectuation of service.)

9 Rivera, Ray, *Council Seeks to Crack Down on Process Servers Who Lie*, New York Times (February 28, 2010).

10 Fisher, Fern, *Press Release* from the Office of the Administrative Judge for the Civil Court of the City of New York, November 04, 2008. Available at http://www.probono.net/ny/news/article.218908-Administrative_Judge_Fern_A_Fisher_Announces_New_Measures_to_Assist_Debtors.

process servers working for different process serving agencies.[11] The law firms that hired these process service agencies were also different, as were the plaintiffs who retained the lawyers.

The three process servers allegedly knocked on his apartment door a total of seven times without finding him there. All alleged to have spoken with neighbors ("'Jane' Vargas, "Mr. Young") or co-tenants (wife "Mary Doe") to determine that Mr. Taylor lived there and was not in the military. Unbeknownst to these liars is that the apartment is within a gothic mansion surrounded by an wrought iron fence located within the Greenwood Cemetery. But for a moat, the building is as secure as a castle. You cannot enter it without ringing a bell at the gate and being admitted by the cemetery keeper, Mr. Taylor's father. As for the neighbors, there are none other than the dead.

C. 35 Debt Collection Law Firms + One Process Service Company = 100,000 Sewer Service Default Judgments.

Emblematic of the sewer service problem is American Legal Process (ALP), a long island based process serving company that contracted with over 35 large debt collectors who operate regularly in New York City. In 2009, the Attorney General sued to vacate over 100,000 default judgments involving ALP.[12] By seizing computer records, the Attorney General was able to show that ALP's process servers often claimed service on the same day and same times in counties that were hundreds of miles apart.

At least four New York City Process Servers were implicated in ALP. Gene Gagliardi alleged service in Staten Island at 7:58 a.m. and then one minute later in Orange County, some 84 miles away. Issam Omar did the same alleging service at 8:19am in Brooklyn, and one minute

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[11] In *Household Bank v Taylor*, Index # 041177/03(New York Civil Court, Kings County 2003) Gene Gagliardi served by nail and mail for AAA Attorney Services on behalf of debt collector Rubin & Rothman. In *Erin Capital v Taylor*, Index # 00697/07(New York Civil Court, Kings County 2007) Robert Ramsey served by nail and mail for Triple A Process Server on behalf of Eltman, Eltman & Cooper. Finally, in *LR Credit v Taylor*, Index # 073464/04(New York Civil Court, Kings County 2004) Azzam Abderrahman served by substitute service (on Mr. Taylor's wife "Mary Doe", although he has never been married) for an unknown process service company hired by Mel Harris & Ass.

[12] New York State Attorney General Press Release, *Attorney General Cuomo Sues to Throw out over 100,000 Faulty Judgments Entered Against New York Consumers in next Stage of Debt Collection Investigation* (July 23, 2009) http://www.oag.state.ny.us/media_center/2009/july/july23a_09.html

later at 8:20 am in Chautagua County (400 miles away.)[13]

The Attorney General also found 3,512 instances where twenty of ALP's process servers claimed service at different addresses at *exactly* the same time. These included Gene Gagliardi (450 duplicates), Issam Omar (51 duplicates), and at least two additional licensed New York City process servers, John Hughes (182 duplicates) and Michael Pszczola (20 duplicates).[14]

D. The Ethos of Process Serving Agencies Who Contract with Large Debt Collection Firms: *Don't Ask, Don't Tell.*

In 2008, the Department of Consumer Affairs (DCA) held a public hearing at which a number of process servers and company heads testified voluntarily or via subpoena. One, Jay Brodsky of ABC Process Server, acknowledged that his process servers might make identical or inconsistent service claims for another employer. However, Mr. Brodsky declined to review their log books for such inconsistencies. Instead, his concern was only that services done in his company's name were not internally inconsistent.[15]

At the 2008 hearing, Mr. Brodsky also learned that Mr. Gagliardi was summoned for five traverse hearings over six months in 2007.[16] At that same hearing, another process service executive testified that he would never hire Mr. Gagliardi or anyone he worked with him because of his reputation as a fraud.[17] Nevertheless, ABC continued to employ Mr. Gagliardi until the DCA revoked his license in 2009.[18]

Samson Newman, the head of Aetna Judicial Service, likewise seemed unconcerned that his employees might engage in sewer service. He stated that the log books of the process servers

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13 *Pfau v. Forster & Garbus et. al*, Ind. # 8236-09 (Sup. Ct. Erie County. 2009), New York Attorney General, Memorandum of Law in Support of Verified Petition, pg 13-14 (dated July 20, 2009.)

14 *Id.* at p.11.

15 *Supra.* note 1 at pp.149-150.

16 *Supra.* note 1 at pg.144.

17 *Supra.* note 1 at pg.211.

18 Id. at p. 145. In addition, SBLS uncovered 43 debt collection cases in King County served by Mr. Gagliardi in January 2009 on behalf of ABC Process Servers for debt collection law firm Stephen Einstein. The index numbers of these cases begin at 5214/09 and run to 5256/09.

were not his property and he was not at liberty to inspect them.[19] Not surprisingly, he acknowledged that "there is an air of complacency among the process servers, . . . they know that nobody is checking on them." [20]

The culture of these agencies extends to other process serving companies. Indeed, Gene Gagliardi trained others process servers in New York City and worked for numerous process server firms since 1993.[21] Similarly, Michael Pszczola worked for agencies other than ALP, including Capital Process Servers.[22]

E. Another Indicator of Widespread Sewer Service in New York City: Infrequent Personal Service

A process server may serve legal papers on a natural person in one of three ways. First, the summons and complaint can be delivered personally by hand to the defendant ("personal service.") Second, if the defendant is not at home, the process server can give the papers to someone with whom he lives ("substitute service.") Third, if no one answers the door, the process server must make two more attempts (for a total of three) before he can affix the summons and complaint to the door and mail a copy ("nail and mail.")[23]

When a process server actually attempts service in accordance with the law, he is able to personally serve the defendant about 40% of the time. This finding was made by the undercover detective who worked as a process server in 1986.[24] When one examines affidavits of service involving debt collectors, personal service is rarely made.[25] Indeed, SBLS examined 324 affidavits of service related to eight process serving agencies and found a highly suspect personal service rate of 2.73%. The findings are set forth below in Table 1.

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19 *Supra.* note 1 at pg.152.

20 *Supra.* note 1 at pg.155.

21 *Supra.* note 1 at pg. 211.

22 See e.g. *CCU, LLC v. Racquel King*, New York Civil Court Ind. # 160975/07 (Kings County, 2007)

23 N.Y.C.P.L.R. § 308.

24 *Supra.* note 1 at pg. 16.

25 *Supra.* note 7.

Table 1.

Law Firm	Process Server Agency	Nail & Mail	Substitute	Personal	Sample Size
NYS Attorney General	N/A	7%	54%	**39%**	214
Total for all debt collection firms of SBLS survey	All listed below	36%	61.30%	**2.73%**	324
Rubin & Rothman	AAA Attorney Service	9%	88.5%	1%	72
Pressler & Pressler	Executive Attorney Service	74%	22.5%	4.5%	27
Eltman & Eltman	Triple A Process Services	61%	34	4%	23
Stephen Einstein	ABC Process Servers	56%	44%	0	43
Mel Harris	Samserv	0%	98%	2%	38
Mel Harris	Accu-Serve	59%	37%	3.5%	57
Solomon & Solomon	unknown	23%	77%	0%	18
Goldman, Warshaw & Parrella	AAA Attorney Service	20%	66%	13%	15
Cohen & Slamowitz	Capital Process Servers	52%	40%	8%	50

F. Sewer Service in New York City Dwarfs the Fraud Perpetrated by ALP.

ALP Process servers (about 20 in number) faked service on 102,126 debt collection cases over 17 months from 2007 to 2008.[26] During that same period over four times as many debt collection cases (425,000) were served in New York City by process servers paid equally poorly ($5 - $6 per service.)[27] Since the close of the ALP investigation, another 450,000 debt collection

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[26] *Supra.* note 13 at pg. 3.

[27] *Supra.* note 7.

law suits involving $5 to $6 service have been filed in New York City.

IV. Sewer Service's Three Causes: Low Pay, It Is Difficult to Prove, and It Benefits Debt Collectors

A. Low Wages Promote Sewer Service

Process servers in debt collection cases such as Mr. Taylor's lie without making any service attempt because they are paid only$5.00 to $6.00 per service. Five dollars is the "standard" within the debt collection industry according to a lobbyist for the Process Service industry.[28] Indeed, in the ALP litigation, the Attorney General found that ALP paid its process servers from$4.00 to $8.00 per service for debt collection cases with the average being $5.00.[29] Likewise, four process service company executives testified to the Department of Consumer Affairs that they paid their process servers as little as $3 to $6 per service in debt collection cases.[30]

Such low pay buys sewer service, testified Bob Gulinello, a New York City process server with 34 years of experience [31] Indeed, Harry Torres, a process server employed by three process agencies told the DCA he was paid only $5.00 for each paper he served. He paid a $1000 fine and accepted a five year license revocation after being charged with sewer service.[32]

The idea that low pay promotes sewer service is hardly novel. In 1986, an undercover New York City detective worked as a licensed process server, six days a week, 15 hours a day. During a month he was given 401 summons and complaints to serve for which he was paid the standard 1986 rate of $3.00 per effectuated service. After making 537 attempts he served only 217 summons and complaints, resulting in earnings of about $600 *before* deductions were made for taxes and expenses (such as gas.) This placed his hourly wage at less than half the minimum

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[28] Chad Marlow, testifying on behalf of the New York State Process Service Association and the National Association of Professional Process Servers, *Transcript of the Minutes of the Committee on Consumer Affairs*, November 13, 2009 Pg. 97.

[29] *Supra.* note13 at pg. 4.

[30] *Supra.* note 1 at pp. 106, 137, 198.

[31] *Supra.* note 1 at p. 208.

[32] *Department of Consumer Affairs v. Harry Torres*, Amended Notice of Hearing, dated February 2, 2009, and Assurance of Discontinuance, dated February 26, 2009. On file at SBLS.

wage.[33]

In contrast, reputable process server agencies in New York City pay their process servers livable wages, such as $50.00 for routine service or an hourly wage of $20 to $45 an hour.[34] Moreover, reputable process serving companies will not accept contracts from debt collection firms because their low pay ensures sewer service.[35]

Even Larry Yelon, the president of the New York State Process Servers Association refuses to accept contracts from large debt collection firms that condition payment on effectuation of service.[36] This contractual provision is standard within the industry.[37] It promotes sewer service because an honest process who visits an abandoned building, an address that does not exist, or an apartment the defendant no longer occupies, will not be paid unless he lies.

B. Sewer Service Is Difficult to Detect under Existing Law

A process server is require to record in a bound log, in chronological order, the time, place and method of every service attempt.[38] Accurate process server logs are the chief tool used to detect sewer service. Indeed, one could easily detect sewer service if a dishonest process server wrote in his log that he served someone in Brooklyn at 7:58 a.m. and then someone in Orange County at 7:59 am.

Obviously, this never happens because dishonest process servers cannot maintain true logs and avoid detection. The Department of Consumer Affairs's recent investigations reveal that inaccurate logs are quite common. Since January 2008, the DCA has subpoenaed the logs of 122 process servers and process server agencies.[39] These have led to charges against 54 process

33 *Supra.* note 3 at pg. 11.

34 *Supra.* note 1 at 170, 187, 173.

35 *Supra.* note 1 at 178, and 187.

36 *Supra.* note 1 at 130.

37 *Supra.* note 1 at 138.

38 Rules of the City of New York - Title 6, Department of Consumer Affairs §2-233 Records.

39 The subpoenas, resulting charges, and dispositions of the DCA's extensive investigation were obtained via a Freedom of Information law request by MFY Legal Services and are on file at SBLS.

servers for various log violations, *including failing to maintain any logs*. To date, 32 process servers have agreed to maintain proper logs in exchange for increased monitoring and payment of fines, the median being $300. Typical violations include service attempts not being recorded in chronological order; logs containing spaces, blank pages and altered entries; log books being unbound or computer generated; and logs not listing method of service or a description of the person served.

Yet failure to maintain a proper log is not enough to prove sewer service. For the DCA to revoke a process server's licence, it must uncover a blatant lie. Doing so requires complaints from consumers or judges and a dogged investigation. Indeed, in the last 24 months, only eleven (11) of the 52 process servers charged with improper log maintenance have had their licenses revoked. For example, the DCA was able to revoke the license of Harry Torres because it already had three complaints from separate consumers that he faked their service, as well as an allegation that he created a dummy log book in preparation for a traverse hearing.[40] With that information, the DCA demonstrated that Mr. Torres kept incomplete log books to avoid sewer service detection.

Where a consumer complaint does not create such an obvious contradiction, the DCA has to spend a huge amount of time locating affidavits of service and matching time lines to find the lie. Such was the case with Andrew Linauer. The DCA knew his service was suspect due to: a) a 1986 conviction for making a false statement to a public servant; b) a 1990 sanction for poor log keeping; c) a consumer complaint regarding false service; and d) three traverse hearings in two years. To prove his duplicity, the DCA relied not on his log books, which were in disarray. Nor could it review the affidavits of service he filed on behalf of a single debt collector, since they showed service at reasonable intervals. Rather, it had to locate other civil court files involving different debt collectors that employed him, and then aggregate and compare all the purported dates of service. Only after examining affidavits related to three different debt collection firms was DCA able to show a blatant contradiction -two services at 10:30 am at two different addresses for two different debt collectors.[41]

Given the limited resources of the DCA, the odds of sewer service being proven are low. Equally important, the consequences are being caught are slight. Among the 11 process servers who lost their licenses since 2008, the median fine was only $1,000.[42]

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40 *Supra.* note 30.

41 *Department of Consumer Affairs v. Andrew Linauer* , Notice of Hearing, dated June 2, 2009, and Assurance of Discontinuance, dated August 25, 2009. On file at SBLS.

42 *Supra.* note 36.

C. Collectors of Consumer Debt Benefit From Sewer Service

Whether the creditor is Capital One or a company that purchases defaulted credit cards, it benefits from sewer service. They seek to collect debts that consumers have said for months that they cannot pay. In the about 83% of these cases, the debtor's inability to pay a cent is true.[43] The creditor's goal is thus to uncover which of these financially strapped debtors in fact can legally be required to pay something. This is done through cheap and easy discovery devices (often electronic) that the creditor can use only after a judgment has been rendered. Thus, a judgement that cannot be obtained by default is a liability in a consumer case as the creditor may spend money proving the existence of a debt that the debtor still cannot pay.

In non-consumer debt litigation, the predominate legal question is *must* the defendant pay rather than *can* the defendant pay. For this reason, plaintiffs and their attorneys pay process servers $50 and upward to ensure accurate service. Indeed, failure to hire a reliable process server exposes a lawyer to a negligence suit from his client. *Kleeman v. Rheingold*, 81 N.Y.2d 270 (1993.)

IV. The Proposed Bill's GPS provision and Private Right of Action Makes Sewer Service Easy to Detect and Punish at Little Cost.

A. GPS is Cheap and Effective

At a national hearing before the Federal Trade Commission concerning debt collection, Queens Civil Court Judge Diane A. Lebedeff called for "someone to . . . spend . . . time on how [to] . . . identify process servers who are . . . flouting the law and engaging in sewer service. . . .[i]t's very difficult for the system to identify [them.]" [44]

The GPS portion of this bill answers her call. Under the bill, a process server must maintain GPS proof showing he visited an address where he attempted service. GPS proof of service is cheap, easy to use, and readily available for both the independent process server or one who works with a process serving company as an employee. All of these technologies enable a process server to print out (and save electronically as well as a hard copy) a map that shows the process server's visits during the course of a business day. Most use cells phones for tracking.[45]

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[43] Statement of a debt collector Raymond Bell, vice president of Creditors Interchange Receivables Management, before the Fordham University Law School forum on Debt Collection, June 18 2008.

[44] *Supra.* note 2.

[45] Verizon maps cell phone movements for $9.95 a month. http://products.vzw.com/index.aspx?id=fnd_familylocator Loopt documents the movement of a

For example, Accutrak turns most cell phones into a GPS tracker for $5.99 to $9.99 per phone per month.[46] For those who do not like cell phones, there are small transmitters (starting at $100) that one can carry in the car or one's pocket that will create the same image at the end of the work day.[47] A third option is to photograph the defendant's dwelling with software that "GEO stamps" the photo with the time, date and location of the camera or cell phone camera. Those devises costs from $5 to $150.[48] SBLS installed such a devise on an Apple I-Phone and captured the attached image during a snow storm from the interior of our office.[49] Our office is located in the heart of a six story office building in downtown Brooklyn and is surrounded by numerous high-rises.

B. The Bill's Private Right of Action Prevents Dishonest Process Servers from Using GPS Fraudulently.

Any process server who thinks they can fool the GPS and simply drive-by a defendant's home without making an attempt is in for a rude awakening. GPS Mapping or Geotagging includes time lines. If you have seven summons to serve on Second Avenue between Houston and 23rd Street, you cannot spend ten minutes driving that distance without creating proof of your fraud. Because the bill provides a private right of action, anyone who detects such fraud can bring an action for statutory penalties, as well as compensatory and, where the violation is willful, punitive damages. And because of the bill's $10,000 and $100,000 bonding provision for individual process servers and agencies, respectively, recovery is guaranteed.

If a process server drove slowly enough, or parked for a long time, he probably could obtain GPS data that hid sewer service. However, the GPS provision would significantly

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cell phone in the course of a day. http://en.wikipedia.org/wiki/Loopt Google Latitude is free enables an employer to see an employee's location via his cell phone. http://www.google.com/latitude/intro.html Mobile Spy maps a cell phone's movements for about $200 a year. http://www.mobile-spy.com/howitworks.html

[46] http://www.accutracking.com

[47] http://www.rmtracking.com/.

[48] Eye-Fi works in over 1,000 models of cameras; starting at $59.99. http://www.eye.fi/how-it-works/features/geotagging GeoLogTag for iphone acts as a GPS data logger on photos taken with any digital camera for $4.99. http://www.apptism.com/apps/geologtag GPS Image tracker (GPS-CS3KA) is a chip one installs on a digital camera to record time, date and location to each photo for $149.99. http://www.sonystyle.com/webapp/wcs/stores/servlet/ProductDisplay?storeId=10151&catalogId=10551&langId=-1&productId=8198552921665751075

[49] See attached Exhibit 1.

decrease the harm caused by that dishonest process server. Right now, because logs are so easily faked and sewer service so difficult to detect, the sky is the limit on how many fraudulent services a dishonest process server can make. Indeed, ALP process servers claimed to make up to 100 service attempts in a single day.[50] Such fraud gives graduate-school income ($400 to $500 a day) to anyone. With the GPS, a slow driving process server who decided to space his service attempts by an acceptable 15 minutes would be limited to 32 service attempts in a single, eight hour day. This is the equivalent of $20.00 an hour, the starting wage one could earn for a reputable process server.[51] Given that one can earn up to $50.00 an hour as a process server, the financial incentive for faking service is eliminated especially when one runs the risk of losing one's $10,000 bond to a private litigant.

Moreover, GPS makes it difficult for a process server to make one failed attempt at an empty home and then lie that he served a fictitious occupant by substitute service. Any process server who does so may create a statistical record that establishes sewer service. The1986 study involving the detective who performed by-the-book service showed personal service at almost 40% with substitute service only at 53%. Moreover, the detective was unable to serve almost half of the papers he was given because the defendant had moved.[52] A high rate of substitute service will be suspect and be actionable pursuant to the bill's private right of action and bond

V. GPS Is Not an Invasion of Privacy

Under the proposed bill, any process server wishing to hide her stops or routes between service attempts can simply turn off the GPS unit or cell phone. Then, when she arrives at the address she wishes to record, she can simply turn the unit on. No log is needed regarding the route taken from one address to the next, or where the process server spent time between service attempts.

Requiring GPS for process servers is legal. When addressing privacy in the work place, courts weigh the needs of the employer against the employee's expectation of privacy.[53] Here, the government stands in the shoes of the employer. Its GPS proposal is based upon the public's need to curb sewer service. This need is astronomical. The courts have deemed sewer service an epidemic. In ALP , the Attorney General has spent thousands of hours with agents, computer

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50 *Supra.* note 13 at 15.

51 *Supra.* note 32.

52 *Supra.* note 3 at pg 9-10.

53 Diane Cadrain *GPS on Rise; Workers' Complaints May Follow* HR Magazine, (April 2005) available at http://findarticles.com/p/articles/mi_m3495/is_4_50/ai_n13629523/

scientists, and statisticians to disclose fraud among a single process service company using 20 process servers. The DCA has investigated over 100 process servers in the last two years at great expense. While these efforts no doubt raise fear in process servers, (just as the 1986 investigation and criminal prosecutions did), their lasting effect will remain minimal unless detection of sewer service is simplified.

In contrast, a process server has no expectation that her physical presence at a defendant's address is private as she is regularly attesting in public documents that she was at such an address. On the other hand, it is quite reasonable for a process server to expect her visit to a doctor or friend to remain private. Given the ease in turning off the GPS device during such breaks, the bill is sound and legal.

VI. Conclusion: The Bill's Innovated Solution to an Intractable Problem Must Be Adopted

Some may say that GPS is gimmickry. However, advances in technology are adopted in legal proceedings when they advance justice. In the 1980's DNA testing supplanted oral testimony for establishing paternity. [54] Similarly, electronic bank matching was mandated in the 1990's to facilitate the discovery of assets of child support obligors.[55] In 2001, that discovery tool was extended to collectors of consumer debts. [56]

While New York City will be the first to require GPS technology, its use is not unprecedented. An enterprising process server in Wisconsin guarantees his work with GPS.[57] GPS also is being used by the New York City Department of Buildings in response to fraud among its inspectors. In 2008, a building inspector faked a report stating he had inspected a crane. Eleven days later the crane collapsed, killing seven people. In 2009, the Buildings Commissioner imbedded GPS mapping devices on all of his 379 inspectors' cell phones stating the tracking system was "a simple, innovative way to ensure inspectors reach their assigned

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54 *Jeter v. Clark*, 486 U.S. 456 (1988) (striking down a six year statute of limitations to bring paternity action since "increasingly sophisticated scientific tests facilitate the establishing of paternity regardless of the child's age")

55 New York Social Services Law §111-h (8) and §111-s. (enacted in 1998 to conform with federal mandates enacted in 1996.)

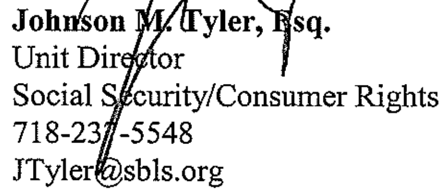
56 N.Y. C.P.L.R. Sect. 5224(a)(4)

57 This process server purchased a $100 "data logger" from Qstartz. It creates reports and screen shots each day similar to Accutrack's without any subscription fee. http://www.randyscott.us/GPS%20screenshot.asp.

locations and are held accountable for their important work."[58]

The work of process servers is equally important. The City Council should support this sound and innovative bill.

Sincerely,



Johnson M. Tyler, Esq.
Unit Director
Social Security/Consumer Rights
718-237-5548
JTyler@sbls.org

[58] Fernandez, *Buildings Dept. to Track Inspectors via Cellphone and GPS Technology*, The New York Times, (August 28, 2009). http://www.nytimes.com/2009/08/29/nyregion/29inspectors.html

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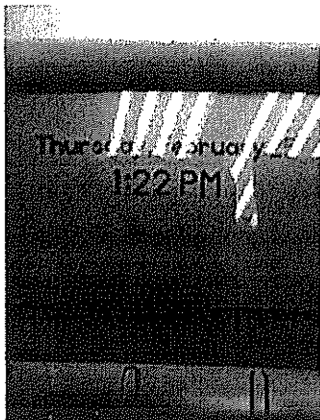
More detail about



Taken on
February 25, 2010 at 1.23pm PST

Posted to Flickr
February 25, 2010 at 10.23AM PST

Edit the photo dates

Camera: Apple iPhone

File Size:	1922 kB
File Type:	JPEG
MIME Type:	image/jpeg
Image Width:	2048
Image Height:	1536
Encoding Process:	Baseline DCT, Huffman coding
Bits Per Sample:	8
Color Components:	3
X-Resolution:	1
Y-Resolution:	1
Orientation:	Horizontal (normal)
Software:	Flickr for iPhone
Date and Time (Modified):	2010:02:25 13:23:34
FNumber:	2.8
Exif Version:	0220
Date Time Original:	2010:02:25 13:23:34
Create Date:	2010:02:25 13:23:34

Return to the page.

What is EXIF data?

Almost all new digital cameras save JPEG (jpg) files with EXIF (Exchangeable Image File) data. Camera settings and scene information are recorded by the camera into the image file. Examples of stored information are shutter speed, date and time, focal length, exposure compensation, metering pattern and if a flash was used.

Source: Digicamhelp.

Your privacy

If you like, you can prevent the link to your EXIF data from displaying on the photo page. Set this in your privacy options.

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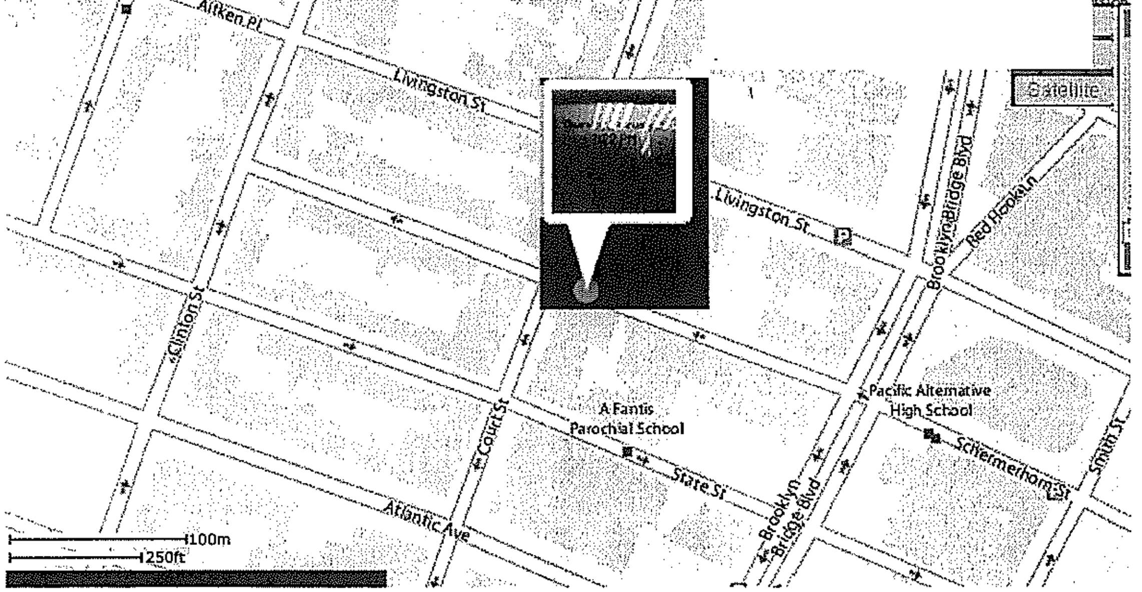
Map: Downtown Brooklyn, New York



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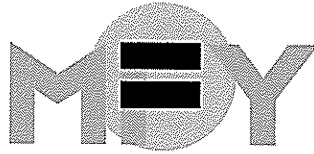
40°41'27"N, 73°59'29
(40.6908, -73.99



LEGAL

SERVICES

INCORPORATED

Testimony of MFY Legal Services, Inc.

on

Intro. 6-A

Presented before:

The New York City Council
Committee on Consumer Affairs

Presented by:

Carolyn E. Coffey
Senior Staff Attorney

March 2, 2010

My name is Carolyn Coffey and I am a senior attorney with MFY Legal Services' Working Poor Project and Consumer Rights Project. Thank you for the opportunity to testify today about Intro 6-A. MFY each year provides direct representation or assistance to over 6,500 clients in New York City and we provide legal training to thousands more. Our clients are primarily the poor and working poor, retirees and the disabled.

Our clients routinely are the victims of "sewer service." Sewer service has long been a problem in the Civil Court of the City of New York, despite a history of attempts to address it. Today, sewer service is so pervasive that in many types of cases—debt collection cases in particular—it occurs more often than lawful service and as a result, tens of thousands of New York City residents are subject to abuse every year. For this reason, there is an urgent need for reform of the process serving industry.

MFY has a long-standing interest in the problem of improper service because of the havoc it wreaks on our clients' lives. As the Council knows, we issued a report in 2008, called "Justice Disserved," which analyzed the high default rate in cases in Civil Court, and concluded that defaults were the result, in large part, of sloppy and illegal service of process.[1] We previously testified in support of Intro 1037, the predecessor to Intro 6-A, and overall we support the current revised version of the bill.

Specifically, MFY Legal Services supports the bonding requirement of Intro 6-A, which would require all licensed process servers and process serving agencies to provide the Department of Consumer Affairs (DCA) with a surety bond in order to obtain licenses. We believe this bonding requirement will guarantee payment of fines levied by the DCA, which licenses process servers, and will guarantee payment of judgments issued against process servers and process serving agencies. By introducing market forces into the process serving industry in the form of surety companies, the bonding requirement of the bill will increase accountability and raise the professional standards of the process serving industry, and will even serve to exclude some of the more unreliable servers.

We also support the provision of the bill requiring process serving agencies to provide employees with information about their rights as workers, including their rights under wage and hour laws, and to provide educational materials regarding the laws pertaining to lawful service of process.

We are pleased that Intro 6-A has been revised to include a private right of action against individual process servers who abuse their power and position to effect service on New Yorkers. This provision is particularly important as it will allow individuals who have been harmed by process servers who do not adequately carry out their jobs to seek appropriate redress in the form of damages, injunctive relief, and attorney's fees.

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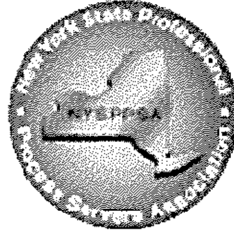
[1] *See* MFY Legal Services, Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York (June 2008) (available at http://www.mfy.org/Justice_Disserved.pdf).

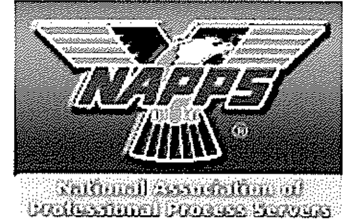
Although the language in the global positioning system (GPS) provision of the bill is broad and leaves the details as to how GPS will be implemented to the Department of Consumer Affairs to establish by rulemaking, MFY supports the provision because it is intended to reinforce what process servers already are required to do under applicable laws and pursuant to DCA regulations. The GPS serves as additional verification that a process server was present at a location where he or she claims to have effected service. Nevertheless, we have two concerns.

First, we are concerned that the time required to promulgate satisfactory regulations and allow the process serving industry to acquire GPS technology may unnecessarily delay the implementation of the entire bill and we believe it is critical that that this bill be passed and implemented promptly. Therefore, we recommend that the law become effective no later than 180 days after its enactment, except that the new GPS requirement may take effect at a later date if the DCA needs more time to implement it and to allow process serving agencies sufficient time to purchase equipment and to train employees on the use of this new technology.

Second, we urge the City Council to amend the current bill by adding a severability clause. A severability clause will ensure that the entire bill cannot be enjoined or invalidated in the event that only a portion of it is challenged in court and will make clear that each new requirement under Intro 6-A is intended to go into effect independently of any other requirement in the bill.

In conclusion, MFY Legal Services urges the adoption of Intro 6-A with a severability provision. By passing this bill, the Council will take an important step to protect New Yorkers from the harms of sewer service and in ensuring that those individuals who are the victims of this practice can seek compensation when they are harmed. Thank you for holding today's hearing and thank you for the opportunity to testify today.





Testimony of

The Public Advocacy Group LLC (Chad A. Marlow, Esq.)

on behalf of

The New York State Professional Process Servers Association

and

The National Association of Professional Process Servers

on

New York City Council Introduction 6A-2010

– MARCH 2, 2010 –

Good morning. My name is Chad Marlow and I am the president of The Public Advocacy Group. I am pleased to be appearing before the Committee on Consumer Affairs on behalf of the New York State Professional Process Servers Association as well as the National Association of Professional Process Servers.

Before getting started, I would like to offer my greetings and well wishes to all the members of the committee [and Councilmember Garodnick], and to extend special good wishes to the new Chair of the Consumer Affairs Committee, Councilwoman Koslowitz. Of course, it is far more accurate to call you the new, old chair of the committee, as you are returning to guide a committee you expertly chaired during your previous service on the Council. In any event, welcome back. We are very lucky to have someone with your insight and experience chairing this committee.

As you know, Madam Chair, Intro. 6 is a revised version of a process server regulatory bill that died at the end of last year's session. My clients, who I will reference as the NYSPPSA and "NAPPS" respectively, spent a great deal of time and effort attempting to make that bill as well-crafted as possible. It is my clients' top priority to ensure that any process servers or agencies that willingly violate the rules governing the service of process are driven out of our industry immediately and permanently. When a process server intentionally engages in "sewer service," it harms the defendants in those lawsuits and tarnishes the reputation of our industry. With that in mind, based on our inside, expert knowledge of our industry, we advised the bill's drafters on how future cases of sewer service could best be deterred; something we believe includes severely punishing those who break the law. In fact, we advocated for considerably tougher penalties than those in the current bill and for permanently expelling any person or business that engages in sewer service from working in our industry, because those punishments, in combination, are the only effective way to deter sewer service.

Before I discuss the specific provisions of this bill, I would like to make a general observation. When the City Council identifies a problem it wishes to address – and strengthening the regulation of process servers certainly belongs in that category – it can pass one of two types of bills. The first is what I call a "window dressing bill" or, if you will, a "constituent newsletter bill." These bills create the appearance of taking action but do little to actually address the underlying problem. Oftentimes, sponsors of these bills seem more focused on the quality of media coverage their bills receive – like Intro. 6 received in the *New York Times* this weekend – then in the quality of the bill itself. The other category of bills is real, problem solving legislation. This type of legislation takes more time and effort to craft than those of the window dressing variety, but that is certainly time well spent if one wants to genuinely address a problem. Madam Chair, in its current form, Intro. 6 is a window dressing bill. It is a constituent newsletter bill. While it brings down the hammer on thousands of innocent process servers who get up every morning, do their jobs to the best of their abilities, and would never consider breaking the law, it does little to protect consumers or to deter the actions those few bad apples in our industry who are intent on engaging in sewer service.

As I will discuss shortly, if this bill passes in its current form, its implementation will be stayed by a court of law and it will ultimately be held unlawful. The lost opportunity that scenario represents would be tragic. In addition to that problem, unless this bill is significantly amended, it will result in New York City having too few process servers to handle the avalanche

of cases that are brought in this City every year, which exceeds the annual amount brought in the state of California. This will compromise the proper functioning of New York City's judicial system and lead to skyrocketing costs for consumers as the demand for process servers outstrips supply. If my testimony accomplishes nothing else today, it will at least create a record that the City Council was on notice of the damage this bill would cause so its supporters can be held accountable.

But I would rather today to be a day for optimism. It is my hope that, finally, the opinions of the NYSPPSA and NAPPS will be given the same due consideration as those of DCA and the various public interest legal services groups who have commented on this regulatory effort. If that happens, will we be able to draft legislation that is as effective as possible in ending sewer service without causing massive, unnecessary collateral damage to all those who provide for their families by working in the process serving industry.

Let me turn to the first specific problem with Intro. 6; namely, its attempt to force process serving agencies that engage in the service of process on a national level – which is virtually all of them – to hold a New York City process serving license. The "sea to shining sea" jurisdictional scope of this bill violates both the laws and constitutions of the United States and the State of New York – a dubious achievement. The current bill, in §2, essentially defines a process serving agency as any business "the purpose of which is to assign or distribute process to individual process servers for actual service in the city of New York."

Intro. 6's attempt to apply the scope of New York City's licensing and regulatory requirements to process serving agencies whose connection to New York City goes no further than picking up a phone and hiring a local business is utterly and unequivocally illegal. This is not a close question of law.

Madam Chair, there are no shortage of attorneys working on this bill. I spoke with many of them at length about this problem last year. As such, it is mindboggling that this overextension of New York City's regulatory power remains part of the legislation. From this, I am left to draw one of two conclusions. Either these attorneys need to brush up on their civil procedure and re-read the Supreme Court's seminal International Shoe v. Washington case, or they have been advising the drafters of this bill that its jurisdictional scope is illegal, but their counsel is being ignored.

In the 65 years since the Supreme Court decided the International Shoe case and courts throughout the nation have expanded upon and interpreted that ruling, it has been beyond dispute that a business cannot be held subject to the laws of a state or locality unless it has certain "minimum contacts" with the jurisdiction. Picking up a telephone or sending an email or fax from outside the jurisdiction to hire a business inside the jurisdiction has *never* been enough to establish minimum contacts.

By way of background, Madam Chair, I want to note that the last time I offered my opinion that a consumer affairs matter was proceeding unlawfully – during the City Council's recent effort to regulate the pedicab industry – I was similarly ignored. It was only after I went to court and had my opinion confirmed by a Supreme Court justice and a unanimous panel of five appellate court justices that it was taken seriously. The fact that the city wasted tens of

thousands of taxpayer dollars defending an indefensible legal position was extremely unfortunate and to do so again here, during these lean economic times, would be even worse. It is my hope we do not have to go down that path again.

In light of the fact that first semester law school students are taught and expected to understand minimum contacts principles and that my legal analysis seems to be repeatedly falling on deaf ears, I thought I would try a different approach in the hopes of producing a different result. Instead, I will attempt to illustrate Intro. 6's jurisdictional overreaching using three illustrative quizzes that should resonate even with those who lack legal training.

Quiz #1: Tomorrow, I go on a shopping spree. First, I go on the Internet and order some cheese from a local cheese shop in Wisconsin. Next, I pick up the telephone and order some real maple syrup from a farm in Vermont. Finally, I return to the Internet and order a DVD from Best Buy. When the items arrive, I notice I paid sales tax on one of the items. Okay. First part of the quiz. Which item did I pay tax on? The answer is the purchase from Best Buy. Now, more importantly, *why* did I have to pay tax on the Best Buy order but not the others? The answer is because only Best Buy has a physical location in New York State. The rule of law is plain: If a business does not have a physical location in New York, New York State cannot require it to collect taxes on the state's behalf. In short, the other local businesses lack the requisite minimum contacts to be subject to New York law.

Quiz # 2: This fact pattern may seem more familiar. New York City passes a law requiring all process serving agencies that hire someone to serve process in New York City to hold a New York City process serving license. After the law passes, an agency located in Salt Lake City, Utah repeatedly hires New York City process servers but does not obtain a license. DCA fines the agency, but the agency never pays. Eventually the City files a lawsuit against the agency in New York Supreme Court. Here's the first question: Does the New York court even have jurisdiction to hear the case? The answer is no. New York City could not even enforce its own law in a New York court, because the Utah agency does not have minimum contacts with the state. Three more quick questions. First, could the City of New York sue the agency at all? The answer is yes, they could. Second, where could New York City sue the Utah agency? The answer is in Utah (pack your bags, corporation counsel). Finally, how would the case turn out in Utah? The answer is the City would lose, because it cannot establish the minimum contacts needed to apply a New York City licensing law to a Utah business that has never so much as had an employee set foot in the City of New York on business.

Finally, Quiz #3: The City of New York passes a law requiring all process serving agencies in the State who hire a New York City process server to hold a New York City process serving license, even if the agency's only contact with New York City is that it occasionally hires a local independent contractor to serve process. Question time. Can New York City apply its licensing law to these agencies? The answer is no. While this answer follows the general "minimum contacts" paradigm, it goes deeper than that on a New York State Constitutional level. While the State of New York grants localities the right to home rule, the state and its courts are quite sensitive about the scope of that power. Every year, the New York Department of State puts out a guide it calls "The Local Government Handbook," which is really a must read for local legislatures looking to pass laws that govern businesses from Buffalo to Lake Placid to Montauk. On page 34 of this year's guide, which is attached to my testimony as Exhibit A, the

Secretary of State writes, "Judicial interpretations of the Home Rule article illustrate the tension between the affirmative grant of authority to local governments and the reservation of matters outside the 'property, affairs or government' of local governments to the State Legislature. In a society where many issues transcend local boundaries, a growing number of matters are considered to be matters of *state concern*." This limitation is good news for New York City businesses as well, who will never have to fear being required to pay licensing fees to local governments in Syracuse, Lackawanna or Yonkers despite having little to no connection with those localities. One footnote to this quiz: As best as my clients have been able to ascertain, under the current DCA licensing law, no process serving agency located outside New York City holds a DCA process serving license.

To bring this bill into compliance with governing federal and state law, the definition of a process serving agency needs to be revised to only cover agencies that (1) have a physical presence in the City of New York or (2) send their own employees into New York City to serve process.

As a practical matter, if this provision of the bill is not changed, NAPPS will advise its members that it believes this bill represents an illegal attempt by the City of New York to extend its powers over, and to collect revenues from, businesses without minimum contacts to the City of New York. As such, NAPPS will strongly recommend its members consult with an attorney before complying with the law. Finally, if necessary, NAPPS will sue to overturn the law in the jurisdiction of its choosing. My money is on Utah or Texas. On a state level, if the jurisdictional language remains unchanged, NYSPPSA is prepared to sue to have the law enjoined and then struck down. I expect the city's lawyers will be shuffling off to Buffalo for that one.

Madam Chair, it simply belies logic for the authors of this bill to risk it being tied up in court for years and eventually ruled invalid just so they can attempt to apply its rules to businesses in Miami and Honolulu and Rochester. A more rational approach must be pursued.

The next section I want to discuss is making its appearance for the first time in this version of the bill. For ease of reference, I will refer to it as the GPS provision. The provision, found at §7 of the bill, reads: "Electronic record of service. A process server licensed pursuant to this subchapter shall carry at all times during the commission of his or her licensed activities and operate at the time process is served or attempted an electronic device that uses a global positioning system, wi-fi device or other such technology as the Commissioner by rule shall prescribe to electronically establish and record the time, date, and location of service or attempted service. . . ."

When I first read this new GPS provision, I told my clients to set their phasers to stun and to immediately beam me over to their office so we could discuss it. The GPS provision deserves a place in the unrealistic legislation hall of fame next to Ronald Reagan's Strategic Defense Initiative, which in 1983 proposed shooting nuclear missiles out of the sky using laser beams bounced off satellites.

Up to this point, only two entities have publicly advocated for tracking process servers using GPS-like technology. The Department of Consumer Affairs (which oddly sent its General Counsel to Washington, D.C. last year to brag about the provision's inclusion in the final law

before it was even added to the bill) and Brooklyn Legal Services, who testified about it last year.

Let me begin by addressing DCA. While DCA's science fiction fantasy about tracking process servers through GPS devices may work great in the depths of their imagination, it does not operate nearly as well in New York City. I spoke with DCA about its GPS idea late last year and asked them a few direct questions. First, I asked them if they were aware of any cases in which such a device has been tested and shown to be both reliable and impervious to data manipulation. Their answer was no, which is the correct answer. Second, I asked them if they were aware that the only person claiming to have developed a reliable GPS tracking system for process servers, called "Truth In Service," was the former owner of American Legal Process, the agency Attorney General Andrew Cuomo accused of engaging in 100,000 cases of sewer service last year. They stated they were unaware of that fact. Third, I asked if DCA would be willing to develop (or hire someone to develop) the software necessary to implement a uniform, reliable GPS tracking system that could not be easily compromised by those who want to engage in sewer service. Their response, in short, was that they had neither the time, money nor inclination to do so. They said they would leave it up to individual process servers and agencies to develop their own programs, which in the case of our industry's bad apples is the regulatory equivalent of giving the fox the keys to the hen-house. Finally, I asked DCA if it had not occurred to them that agencies and servers who intended to comply with the law would attempt to develop reliable GPS tracking software, while those who intended to engage in sewer service would develop software that could be manipulated. To this, I did not receive a response.

I would like to respond to this last question for DCA by letting them and this committee know that a leading developer of software for the process serving industry, whose identity I will withhold at this time for his own protection, was contacted a few years back by ALP about developing a new software program ALP called the "fudge-o-matic." This software would be designed to automatically catch and correct cases when ALP inputted false records of service that placed a process server in two places at the same or nearly the same time or that were too far apart. The developer declined to write the software. Believe me, those who want to engage in sewer service will pay good money to programmers who enable them to manipulate GPS tracking data, so any tracking system that is used had better be as close to hack-proof as possible. I would be willing to try to make this software developer available to this committee at a future date, subject to whatever conditions he may insist upon. I think it would be very unwise to pass a bill with a GPS requirement without hearing from him first.

In short, while DCA is seeking a fancy GPS tracking system requirement to brag about at conferences, it is not willing to make the effort to determine if a reliable tracking system exists or can be developed. That creates a dangerous disadvantage vis-à-vis those who will try to get around whatever flawed GPS tracking systems DCA approves pursuant to this bill.

In the case of Brooklyn Legal Services, I am afraid that their testimony about GPS tracking last year was, at best, based on what could be fairly categorized as 30 minutes of high school-level Internet research. I think BLS' decision to submit testimony suggesting that GPS tracking of process servers is cheap, available and capable of accurately validating legal compliance was irresponsible and may have led to the inclusion of the GPS provision in the current bill when it otherwise would have been rejected. Unfortunately, as this portion of BLS'

testimony was presented in a series of footnotes that were not part of its oral testimony, it escaped rebuttal until now.

In its testimony, BLS first suggested a particular Verizon mapping program could be used to track process servers. However, BLS failed to note the tracking is in real-time only and the program cannot record location data.

Next BLS claimed a program called Google Latitude could be used to track process servers. But Google's own website states that it has problems with capturing "completely wrong locations."

BLS' next proscribed device, called Mobile Spy, cannot be activated by the user and only records location data intermittently, so whether or not the location in which process is served is captured is entirely subject to chance.

Next BLS stated that even without a cell phone, small transmitters can be carried to enable tracking. However the device they point to, available at rmtracking.com, only shows live locations. It does not record data.

BLS also recommends a program called Eye-Fi, but reviews of that program report its wi-fi based tracking is very inaccurate. Other than its wi-fi problems, the software works very similarly to a program called GeoLogTag, so I will go over its other shortcomings in my discussion of the GeoLogTag software.

BLS also endorses the GPS Image Tracker, a chip one places in a digital camera to record the time, date and location of each photograph. This device has the same drawbacks as the other photo-based tracking programs, GeoLogTag and Eye-Fi, which I will discuss shortly. However, users of GPS Image Tracker commonly complain that it shuts off unexpectedly and that it is difficult to ascertain when it is functioning properly.

In discussing the final program advocated by BLS, GeoLogTag, I will shift my focus to the reality of using GPS to track process servers, because of all the software currently available, GeoLogTag comes the closest to meeting the standards of reliability and accuracy that are necessary for the purpose of monitoring legal compliance. That being said, GeoLogTag is still plagued with shortcomings that make its use inappropriate at this time. Because the NYSPPSA has a Brooklyn-based member that has been experimenting with using GeoLogTag to track its process servers, my testimony here is partially based on actual, field tested feedback of this software.

It should be noted at the outset that GeoLogTag is currently available only on two very expensive smartphones: AT&T's iPhone and Verizon's Droid. While GeoLogTag's GPS-based data capture seems to be more accurate than the other programs available, it would be an overstatement to call the program reliable. The Brooklyn-based agency trying out the software has reported numerous incidents where its process servers returned from serving process only to discover the picture they took captured inaccurate data or no data at all. Here, under Intro. 6's requirements, the process server would need to return to the location and re-serve process in order to comply with the law (and that assumes the data capture works the second time, which it might not if the location has an insufficient signal to capture the data). This would add

significant time and expense to serving process and, in some cases, make complying with the City's law impossible.

Because GeoLogTag's data capture relies on taking pictures of the place of service, it shares certain problems with Eye-Fi and GPS Image Tracker. First, as the committee can certainly imagine, people generally do not enjoy being served with process, so it is not uncommon for process servers to need to flee from a person who resorts to violence after being served. Adding a "Kodak moment" to the service of process will only incite more of these incidents – an increase which the Brooklyn-based process serving agency experimenting with GeoLogTag has already reported. Further, there are many places in our city where the appearance of an unfamiliar person taking photographs of people's buildings and front doors will not be well-received. Contrary to the tone of this bill, process servers are not criminals, and their health and safety should not be placed at greater risk because a tiny fraction of people in their profession lack ethics.

In addition, GeoLogTag is not a business friendly piece of software. It was developed for casual picture-taking consumers, such as people on vacation, not to track legal compliance. As such, the data captured is merely attached to each individual photograph. To view the data at all, the photographs need to be downloaded on to a web based photo sharing program like Flicker. Even once the pictures are downloaded, the data cannot be searched, so establishing proof of a particular service will require opening hundreds of pictures one at a time until the right picture is located. This is totally impractical.

Finally, GeoLogTag's data capture is not remotely secure. Again, the program was developed to capture data for casual picture takers, not to monitor legal compliance. For purposes of this hearing, the NYSPPSA conducted an experiment to see how easy or difficult it would be to alter the date, time and location data embedded in a GeoLogTag photo. The result was that it could not have been easier. The data captured by GeoLogTag is contained in a completely unsecure portion of the JPEG file and could be altered as easily as changing the name of the file itself. As such, Intro. 6's GPS requirement, even using GeoLogTag, will do nothing to deter sewer service – it will only burden law abiding process servers so as to create the appearance of providing greater consumer protections.

Given the current state of the existing technology and software, GPS tracking for process servers is a bad idea because it is neither reliable, nor designed to prevent those who want to manipulate its data from doing so. GPS tracking may one day prove to be a reliable and secure way to track process servers and to deter improper service, but that time is not now and it does not appear to be on the immediate horizon. It would be irresponsible to put a requirement in the law that (1) creates a false sense of security for the public, (2) makes sewer service easier to get away with, and (3) produces numerous "false-positives" in which service is properly made but a malfunctioning of the tracking system makes it appear as if it was not.

Intro. 6 mandates that whatever law is adopted shall be subject to review in 24 months. With respect to GPS tracking, the committee should eliminate the current GPS provision and replace it with a requirement that, at the time of the mandated review, DCA should provide the committee with detailed information on any reliable, secure and field-tested electronic methods for tracking process servers that exist at that time. If DCA wants GPS tracking of process

servers so badly, then let them put a little upfront effort into it and prove it can actually be done before asking for it to be legally mandated. If they can do that 24 months from now, then the requirement could be added at that time.

I would now like to turn the committee's attention to the surety bond issue. Intro. 6, §4 requires all individual, independent process servers to secure a surety bond for $10,000, while all process serving agencies must secure a bond for $100,000.

The NYSPPSA and NAPPS have four problems with the proposed surety bond requirement. First, the amount of the bond required is wildly out of line with other surety bond requirements in New York City. Second, because the dollar amount of the bond is so high, only individual process servers with very good credit scores and large process serving agencies could satisfy even the initial qualifications for such a bond. Third, given the scope of the liability process servers and agencies are exposed to under the current bill, it would be nearly impossible to obtain the required bond. Fourth, for the reasons just discussed, unless Intro. 6 is significantly amended, its surety bond requirement will significant increase the cost of serving process and dramatically reduce the number of available process servers in New York City.

To provide this committee with a better understanding of the practical effects of Intro. 6's surety bond requirements, NYSPPSA secured the analysis of two insurance and bonding experts: Michael Eisman of the Unilite Insurance Agency in New York State and H. Eric Vennes of InsuranceTek, Inc. in Washington State. In the letter from Mr. Eisman's to NYSPPSA president Larry Yellon that is attached to my testimony as Exhibit B, Mr. Eisman opines that an individual process server seeking the $10,000 surety bond required by Intro. 6 will need a minimum credit score of 650. Mr. Vennes, whose February 26, 2010 letter to Larry Yellon is attached to my testimony as Exhibit C, believes a minimum credit score of between 650 and 700 would be required. As such, if this bill becomes law in its present form, anyone without very good credit will be barred from becoming a process server in New York City and untold numbers of current process servers will lose their jobs because they cannot obtain the required bond. In the current economy, a lot of New Yorkers have blemishes on their credit reports. It would be quite harsh to strip these individuals of their profession and ability to earn an income simply because they have less than perfect credit.

According to Mr. Eisman, in order the obtain the $100,000 surety bond required of process serving agencies under this bill, agencies will need to have a net worth of at least five times the amount of the bond. This means even a small process serving agency will need to show a half-million dollars in assets to secure the required bond. Mr. Vennes believes agencies that cannot demonstrate they are profitable will not be able to secure a bond – a particularly onerous requirement for a start-up agency. Moreover, Mr. Vennes believes agency owners will face a great deal of scrutiny. Agency owners would likely have to own real estate, have a credit score of 700 or better, have 20% to 30% of bond's value in liquid assets, and have no late payments, collection accounts, bankruptcies, judgments or public records on their credit reports. Moreover, they would have to show they have been in business for at least 3 years or have worked for someone for that amount of time. A substantial number of small and mid-sized process serving agencies will not be able to meet these requirements and will either be forced to go out of business or to refuse to do any business in the City of New York. Of course, the latter option is only available to agencies located outside the city.

In all likelihood, the $10,000 and $100,000 bond amounts were chosen because they present nice, round numbers. It seems highly unlikely that whoever came up with those numbers looked into how easy or difficult it would be to obtain such bonds or even researched what is required of other bonded professions in New York. This should have been done.

In the ultimate analysis, if this is a window-dressing bill, the $100,000 bond requirement will probably go unchanged, because a big six-figure number looks great in a newsletter. So what if it will cause enormous collateral damage to the 99.9% of process servers and agency owners who earn an honest living and obey the law in every respect? So what if it drives up costs for plaintiffs' lawyers throughout the city? So what if low-income plaintiffs are deterred from filing legitimate lawsuits because they are concerned about the cost of serving process? The simple fact is this: if this law wants to protect both victims of sewer service, innocent plaintiffs and their attorneys, and the thousands of law-abiding people who earn their living in the process serving industry every day, then a better balance has to be achieved.

Let me quickly review the other specific New York City bonding requirements by profession and amount. And please bear in mind that unless they state otherwise, these figures are applicable to businesses and therefore comparable to the $100,000 requirement for process serving agencies.

- Persons dealing in laundry services as an independent contractor, jobber or as an agent-driver. $500 bond.
- Drainage and sewer control. $1,000 bond.
- Secondhand dealers, including secondhand automobiles and *firearms*: $1,000 bond.
- Auctioneers. $2,000 bond.
- Child support payment debt collection services. $5,000 bond.
- Vehicle towing. $5,000 bond.
- Booting of motor vehicles. $5,000 bond.
- Laundries: Up to a $5,000 bond for businesses with *over 125 employees.*
- Employment agency: $5,000 bond.
- Vehicle for hire dispatchers. $5,000 bond.
- Storage warehouses. $10,000 bond.
- Collateral loan broker. $10,000 bond.
- Taxicab brokers. $50,000 bond.
- Immigrant assistance services: $50,000 bond.

I was able to find only one bonding requirement at the $100,000 level:

- Storage of explosives: $100,000 to $5,000,000 bond required. The $100,000 bond requirement applies to "the storage of low explosives, small arms ammunition, primers, black powder or smokeless propellants."

I hope the committee appreciates that requiring the same bond for process serving agencies as for businesses that store explosives, ammunition and gun powder is more than a little bit off.

The NYSPPSA and NAPPS believe that in light of the harm to be prevented – namely, protecting falsely accused debtors in low level debt cases who are victims of sewer service – and in light of the average bond requirements in New York City, if surety bonds are to be required, the amount of the bond should be reduced to $2,500 for individuals and $20,000 for agencies.

The difficulty of obtaining these surety bonds due to their high dollar amount is not the greatest problem with the bill's surety bond requirement. Rather, it is the fact that these bonds will be virtually impossible to obtain because of the staggering scope of the liability they are required to cover. Under the bill's current language, the surety bonds will be required to cover fines assessed by the City of New York as well as damages stemming from the cause of action the bill creates for any and all intentional or accidental cases of improper service. For process serving agencies, this liability extends to their own employees as well as any independent contractors they hire. While I will conclude my testimony discussing the inappropriate level of liability Intro. 6 exposes process servers and agencies to, for now I will discuss how that exposure will prohibit them from securing a surety bond.

Rather than use my own words to describe the insurmountable problems process serving agencies will face attempting to meet Intro. 6's surety bond requirement, I would like to read from a February 18, 2010 letter that Michael Eisman wrote to Larry Yellon on the subject. In that letter, which is attached to my testimony as Exhibit D, Mr. Eisman responds to a NYSPPSA question about the breadth of the bond requirement by writing:

> The most complete response requires I break down the question into three parts. First, with respect to the question about how difficult it would it be for a process serving agency to obtain a surety bond to cover its liability for violations of service of process (intentional or accidental) by it own employees and independent contractors, the answer is that one could not obtain a bond to cover such claims. That type of claim is considered one for professional liability and therefore could only receive coverage for payments via malpractice (errors and omissions) insurance, not from a surety bond. Second, with respect to the question of whether a bond could be used to cover fines by the City of New York, the answer is yes. A bond would be issued to cover such fines. Finally, you ask if the breadth of the bond's required coverage would be a problem. The answer is yes, insofar as it seeks to cover improper service, a professional liability matter. In my professional opinion, process serving agencies would have a very difficult if not impossible time finding someone who would issue a surety bond covering liability for improper service of process.

Mr. Vennes, in his letter, agrees wholeheartedly with Mr. Eisman and paints a disturbing picture of how the cascading damage of such a bond requirement would "cripple [the] entire [process serving] industry. .. [because the bonds] would be next to impossible to find." Something here has to give.

As a final thought on this subject, Mr. Eisman and Mr. Vennes both state that the liability sought to be covered by the bonds should actually be covered by malpractice insurance. As such, it would make sense to replace Intro. 6's bonding requirement with an insurance requirement. Even if a surety bond requirement remains, the law should allow individuals and agencies with malpractice insurance equal to the amount of the surety bond requirement to use that insurance in lieu of a bond. This option is presently made available to numerous professions with a New York City surety bond requirement.

The last point I will discuss today is actually raised in two separate sections of Intro. 6. These sections apply strict liability to process servers and agencies and an essentially unheard of combination of strict and vicarious liability to process serving agencies for the actions of the independent contractors they hire. Here, the bill seems to have been written from the perspective that all process servers and agencies are ticking time bombs that will eventually engage in sewer service and cause massive damage to New Yorkers. As such, Intro. 6 overrides the application of basic legal principles and protections and instead assigns them with a degree of economic responsibility for wrongdoings that is exceptionally high and, in some cases, unprecedented. In short, the bill is designed to expedite the transfer of money from process servers and agencies to debtors in debt collection cases without getting too hung up on issues of guilt, fundamental fairness or legal precedent.

The relevant provisions of the law are as follows. First, in §4, the bill makes process serving agencies vicariously liable for the actions of their subcontractors by writing that they are "legally responsible for any failure to act in accordance with the laws and rules governing service of process by each process server to whom it has distributed, assigned or delivered process for service."

Second, in §6, the bill creates strict liability for improper service, by providing that "Any person injured by the failure of a process server to act in accordance with the laws and rules governing service of process in New York state . . . shall have a cause of action against such process server and process serving agency, which distributed or assigned process for service." The relief available includes "compensatory and punitive damages, provided that punitive damages shall only be awarded in the case of willful failure to serve process."

As I previously alluded to, Intro. 6 takes the dramatic and highly irregular position of imposing vicarious liability on a process serving agency who hires an independent contractor to serve process. As the New York State Court of Appeals wrote in 2008: "Typically, liability in negligence is premised on a defendant's own fault, not the wrongdoing of another person. Under the doctrine of vicarious liability, however, liability for another person's wrongdoing is imputed to the defendant. This doctrine rests in part on the theory that – because of an opportunity for control of the wrongdoer, or simply as a matter of public policy loss distribution – certain relationships may give rise to a duty of care, the breach of which can indeed be viewed as the defendant's own fault. Generally, a party who retains an independent contractor, as

distinguished from a mere employee or servant, is not liable for the independent contractor's negligent acts. The primary justification for this rule is that one who employs an independent contractor has no right to control the manner in which the work is to be done and, thus, the risk of loss is more sensibly placed on the contractor." Paul Bros. v. New York State Elec. & Gas Corp., 11 N.Y.3d 251, 257-58, 898 N.E.2d 539, 542; 869 N.Y.S.2d 356, __ (2008).

But Intro. 6 goes even further by also imposing strict liability upon all process serving agencies and process servers. This means the law makes no distinction between whether a process server or an agency's employee or independent contractor fails to properly serve a defendant because of an innocent mistake or as part of an intentional conspiracy to defraud, except in the limited area of awarding punitive damages. It is for that reason that New York State Court of Appeals has referred to strict liability as "[the] imposition of [] onerous liability." Sukljian v. Charles Ross & Son Co., 69 N.Y.2d 89, 94, 503 N.E.2d 1358, 1360, 511 N.Y.S.2d 821, 823 (1986). Strict liability is reserved for a very select area of cases where the control a party exercises over that which caused the harm is so complete and so beyond that of any other potentially culpable party, that it is imposed as a matter of public policy. Such cases include where a product manufacturers puts a defective product on the market *and* it is established that the product was not reasonably safe, *and* there was a substantial likelihood of harm, *and* it was feasible to design the product in a safer manner, and dog bite cases where it is determined that the owner knew or should have known his animal was vicious. Imposing strict liability upon the process serving industry for innocent errors that lead to improper service is entirely out of line with the other circumstances in which courts and legislatures have imposed strict liability.

Is it the specific intent of this legislation to hold process servers and agencies liable for unintentional mistakes? What other industry has ever been held to such a draconian standard? Again, this bill appears to be treating process servers and agencies as if they are already guilty of conspiring to commit sewer service. Those who are guilty of sewer service should be held responsible for their crimes, but the general witch-hunt that these portions of the bill represent must be called off.

In addition to revising the bill to not hold process servers and agencies liable for unintentional mistakes and for the conduct of wholly independent contractors, we would recommend two changes be made specifically to §7 of the bill which deals with penalties for violations (§20-209.1). First, to create a stronger deterrent effect, the minimum fine of $700 and maximum fine of $1,000 per incidence of misconduct should be substantially increased. Second, the section should be amended to clearly state that such penalties are only applied against those who intentionally violate the law. Surely it is not the intent of the drafters of this bill to fine an individual at least $700 for making a single, unintentional mistake. I doubt any of us would want to face that sort of axe over our heads at our job.

I want to conclude by thanking the committee for its time and to once again express my regret that I have been forced to be so blunt during portions of my testimony. Last year, we tried for many months to engage in quiet, positive dialogue and, ultimately, we proved to be the only party at the table whose input was completely ignored. So now we are left to shout from the rooftops and, perhaps, from courtrooms.

In the ultimate analysis, fixing the problem with the process serving industry does not require a long, drawn out bill packed with bells and whistles like bonding requirements and GPS tracking and jurisdictional coverage for agencies in Nome, Alaska. What it needs is three things: first, substantially higher fines for incidences of sewer service (the funds from which could be set aside to assist victims); second, mandatory jail time for anyone who engages in sewer service, and third, permanent license revocation for anyone who engages in sewer service. That's what New Yorkers need, Madam Chair; no more and no less. Such a bill would provide a powerful deterrence against bad behavior and tough-as-nails punishments. It would make a real difference in terms of protecting New Yorkers and the reputation of the process serving industry. And, for what it is worth, I think it would present a bill truly worth bragging about in a newsletter.

I would be happy to answer any questions anyone may have.

EXHIBIT A

Department of State

LOCAL GOVERNMENT HANDBOOK

David A. Paterson
Governor

Lorraine A. Cortés-Vázquez
Secretary of State

The restriction on the State Legislature's legislative powers is predicated upon the phrases "property, affairs or government" and "general law." The Legislature is specifically prohibited from acting with respect to the property, affairs or governance of any local government except by general law, or by special law enacted on a home rule request by the legislative body of the affected local government or, except in the case of the City of New York, by a two-thirds vote of each house upon receiving a certificate of necessity from the Governor. The definitions of the terms "general law" and "special law" as set forth above also apply in the context of this provision.

Local Laws and Ordinances

Local legislative enactments must be considered in order to fully define the power and authority of a local government. City and county charters originally were adopted by a special act of the State Legislature when a city or county was created. These charters created the municipal corporation and, importantly, directed its organization, and responsibilities, and accorded its powers. The Municipal Home Rule Law, pursuant to constitutional direction, authorizes cities to amend their charters and counties to adopt or amend charters by charter local law.[18] Charters of charter local governments must be consulted in order to ascertain the nature and extent of any power held by that government.[19]

Once a local government adopts an ordinance or local law, the government is bound by such legislative enactment until it is amended or repealed. Since local laws may direct that a local government's power be exercised in a certain manner and, in some instances, may supersede state law (to be discussed later), the local government's local laws and ordinances must be consulted in order to fully define its powers.

Administrative Rulings and Regulations

Local government powers also may be expanded, restricted or qualified by the rules and regulations of state agencies. These rules and regulations are usually adopted as part of the implementation of a state program having local impact or application. Thus, it is advisable to review state regulations on a particular subject in order to ascertain the extent of local authorization in undertaking a particular activity or program.

An example is the promulgation of a local sanitary or health code. While a local government may promulgate such a code, it must first ascertain what areas of regulation have been covered by the State Sanitary Code. The State Sanitary Code and other rules and regulations appear in the Official Compilation of Codes, Rules and Regulations of the State of New York, which is published and continually updated at the direction of the Secretary of State.

Home Rule and Its Limitations

What "home rule" means depends upon the context in which it is used. Home rule in a broad sense describes those governmental functions and activities traditionally reserved to or performed by local governments without undue infringement by the state. In its more technical sense, home rule refers to the constitutional and statutory powers given local governments to enact local legislation in order to carry out and discharge their duties and responsibilities. This affirmative grant of power is accompanied by a restriction upon the authority of the State Legislature to enact special laws affecting a local government's property, affairs or government.

Interpreting Home Rule

Originally, the powers of local legislation were derived from specific delegations from the State Legislature. These delegations concerned specific subjects and were narrowly circumscribed. The courts applied strict rules of construction when called upon to interpret state statutes that delegated legislative power to local governments. However, with the evolution of the broad home rule powers, which culminated in constitutional grants to all local governments in 1964, there emerged a gradual recognition that the rules of strict construction were no longer applicable to the interpretation of such delegated powers. Rather, the same rules of liberal construction applicable to enactments of the State Legislature should be applied to the local law power.

Judicial interpretations of the Home Rule article illustrate the tension between the affirmative grant of authority to local governments and the reservation of matters outside the "property, affairs or government" of local governments to the State Legislature. In a society where many issues transcend local boundaries, a growing number of matters are considered to be matters of state concern.[20]

The home rule powers enjoyed by local governments in this state are among the most advanced in the nation. By recognizing the extent of their powers and by continuing to exercise them, local governments can best avoid the erosion of such powers. In this fashion, local governments will not only serve the needs of the people, but will strengthen state-local relationships as well.

EXHIBIT B

UNILITE INSURANCE AGENCY
complete insurance service

Mr. Larry Yellon
President of New York State Professional Process Servers Association
85 Willis Ave Suite F
Mineola, NY 11501

To Whom It May Concern:

Based on the information we received, we were able to contact a bond company to gain some information of what would be required for a bond.

Based on the nature of the profession we are going on the assumption that this is a compliance bond. For individuals requiring a 10K bond: The surety company would need to run a credit check on the individual where they would require name, social security number etc... If the individual has above a score of 650, the bond should be granted, and the estimated annual premium is around $150-$225.

For the Corporations, it will be more difficult. The surety bonds would require financials, usually CPA prepared. These financials would have to show a certain net worth, which could be at least five times the bond amount. If certain corporations would not qualify for this bond financially, the bond rate could jump 20%.

If we are dealing with financial bonds, where the claimant can claim the money right away, then there would be much more that goes into obtaining the bond, for example, a letter of credit may need to be obtained.

Thank You,

Michael Eisman

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EXHIBIT C

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TESTIMONY OF THE LEGAL AID SOCIETY

NEW YORK CITY COUNCIL

CONSUMER AFFAIRS COMMITTEE HEARING

PROPOSED INTRO. 6-A

MARCH 2, 2010

Respectfully submitted,

Tashi T. Lhewa, Esq.
April A. Newbauer, Esq.
Of Counsel to Steven Banks
The Legal Aid Society
120-46 Queens Blvd.
Kew Gardens, N.Y. 11415

Testimony of The Legal Aid Society Before The New York City Council on Consumer Affairs Regarding Int. 6A-2010.

Presented by Tashi T. Lhewa, Staff Attorney

March 2, 2010

We want to thank you Chairperson Koslowitz and members of the Consumer Affairs Committee for the opportunity to comment on the proposed amendments regarding licensing and regulation of process servers and for the Committee's ongoing attention on the issue as it relates to consumer rights. We would also like to thank Councilmember Garodnick for his leadership on this important issue. We believe that the proposed amendments will provide much needed and long overdue consumer protections and oversight that current laws do not fully address.

The Legal Aid Society

The Legal Aid Society is the oldest and largest legal services provider for low income families and individuals in the United States. Annually, the Society handles some 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems, including more than 30,000 individual civil matters as well as law reform cases which benefit some 2 million low income families and individuals.

Through a network of ten neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low income individuals. In addition to individual assistance, The Legal Aid Society represents

clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

The Society's consumer law practice regularly represents and assists low income consumers who are the victim of unscrupulous process servers and process server agencies. These consumers, due to "sewer service," find out about lawsuits and court judgments against them for the first time when their bank accounts are frozen, their wages are garnished, their assets are seized or other consequential damages have occurred. Our support for the proposed amendments to New York City Administrative Code is based upon The Legal Aid Society's extensive work with individual clients, communities, and organizations which provide help to consumers on issues relating to service. It is our belief that the proposed amendments can substantially reduce the epidemic of default judgments that are obtained on the basis of intentionally improper service of process and fraudulent affidavits of service.[1]

The vast majority of clients that we have represented in consumer debt collection cases have been the victims of improper practices by process servers and process serving agencies. In almost all of those cases, we were able to overturn default judgments, remove holds on bank accounts and provide relief from garnishment of wages. Yet, because of limited resources, The Legal Aid Society and other organizations that work with consumers are able to assist only a relatively small number of individuals who become the victims of unethical behavior by process servers and their debt buyer employers. In New York, only approximately four percent of consumers in debt collection cases are represented by counsel in debt collection cases.[2]

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[1] NY CPLR § 308

[2] Debt Weight: The Consumer Credit Crisis in New York City and its Impact on the Working Poor, Oct. 2007, Urban Justice Center, available at http://www.urbanjustice.org/ujc/publications/community.html?year=2007.

Growth in Improper Process Server Practices

The number of consumer debt cases filed in New York City Civil Court has exploded in recent years. In 2006 alone, approximately 320,000 such cases were filed in the five boroughs.[3] Almost $1 billion in claims were made against New York City residents in consumer debt filings.[4] Well over 80 percent of debt collection cases result in default judgment, which are routinely granted when consumers fail to appear in court after process servers claim to have served them.[5] Based on our experience, we firmly believe that the exponential increase in the number of default judgments obtained is as a result of reliance on "sewer service." Process servers regularly fail to properly serve individuals and submit incorrect and blatantly false affidavits of service, and then lawsuits conclude in default judgments. Debt buyers and other entities that retain process servers and process serving agencies regularly rely on consumers not appearing in court to win their cases. As a result, incentives exist for process servers to provide "sewer service," whereby consumers are not given notice of lawsuits and which then conclude with default judgments. These incentives exist because the process servers are involved in volume practice, whereby the average payment for performing service of process in debt collection cases is in the range of $ 25-50 per service.

Current rules pertaining to the licensing and regulation of process servers include the General Business Law[6] on the State level and the Administrative Code of the City of New York on the City level.[7] These regulations in themselves lack the deterrent effect and enforcement mechanism required to halt the exponential growth in consumer right violations by unethical

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[3] Id.
[4] Id.
[5] Id.
[6] New York Gen. Bus. L §§ 11, 13, 89.
[7] NY Admin. Code § 20-403-409; Gen. Bu

process servers. By including the requirement of a surety bond and recording requirements in the proposed amendments, mechanisms to protect consumers rights will be strengthened.

Representative Client Story

Mr. H.'s story illustrates the challenges and difficulties an individual consumer faces with negligent process servers and the need for the proposed amendments. Mr. H., a client of The Legal Aid Society and a low income immigrant from Haiti, first discovered that a debt collection default judgment had been issued against him when he found out that his bank account had been frozen. In this instance, a process server had failed to use "due diligence" in attempting to locate Mr. H. The process server's lack of diligence compounds the problem of debt buyers not having accurate or updated addresses for consumers. After failing to inquire with neighbors or anybody else as to Mr. H.'s location, the process server proceeded to leave a copy of the summons and complaint at Mr. H.'s former residence.[8] As a result of the process server's failure to follow the legal requirements for service of process, there were severe consequences for Mr. H.

Mr. H.'s bank account was suddenly frozen and numerous bills and payments of his were returned back as unpaid, with an average $35 fee per unpaid bill. As a result, Mr. H. had his life insurance policy, car insurance and IRA account terminated when payments were not made. It took him many months and his agreement to make a higher monthly payment charge to obtain auto insurance again. Exactly two weeks after he discovered the news about his frozen bank account, his wages started to be garnished as well. Mr. H., a Patient Care worker at a City hospital, is a hard working, low wage worker, with four children whom he supports. There are numerous low income consumers in Mr. H.'s circumstances who have fallen victim to process servers who regularly partake in sewer service to minimize their own costs. The proposed amendments would effectively reduce the numbers of cases like Mr. H.'s by deterring process

[8] NY CPLR § 308(4)

severs who take part in abusive practices and encouraging others to provide proper service of process.

Systemic Problems Associated with Process Servers

The improper practices by process servers are not restricted to a few individuals or any single entity. The practices are systemic and a troubling pattern has emerged in the last several years. The recent lawsuit filed by Attorney General Andrew Cuomo against American Legal Process, one of the largest process server companies in the United States, illustrates the nature and extent of the problem.[9] The process server defendant had a regular practice of intentionally providing fraudulent affidavits of service and providing incorrect service of process. The Attorney General is currently seeking to overturn more than 100,000 default judgments in that case. In New York, the failure to follow proper procedures in providing service of process has become a common occurrence; therefore the proposed amendments are urgently needed.

Another reason that the proposed amendments are needed is because the court system is unable to address the growing epidemic of sewer service and fraudulent affidavits of service because of resources. In court proceedings, default judgments are regularly obtained on the basis of fraudulent affidavits of service. The consumer protections provided by the amendments to the City Administrative Code would address this growing problem.

We support the requirement of a surety bond for process servers in Section 20-406.1(a-c) as a deterrent against abusive practices by process servers and process serving agencies. This requirement will deter negligent and fraudulent behavior by individual process servers and their employers when the surety bond can be utilized by private consumers and the Department of Consumer Affairs in collecting fines and judgments. Furthermore, such a bond requirement, by

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[9] Pfau v. Forster & Garbus, Index. No. I 2009-8236 (Sup Ct Erie Co.).

placing a financial obligation, would weed out process servers who are in the profession for the short term and thereby less knowledgeable about the field and more prone to abusive practices.

We strongly support the Council's inclusion of a private right of action for individual consumers to pursue when they are the victims of abusive behavior by process servers. At past Consumer Affairs Committee meetings, The Legal Aid Society has raised concerns about the Department of Consumer Affairs' limited resouces to enforce provisions of the City Administrative Code and State Laws against abusive behavior by process severs and debt buyers. Since process serving is a volume practice, we believe that the only way to provide for strict compliance with the proposed amendments and other process server regulations is to give consumers a private right of action , similar to that in Section 20-743.1 regarding tax preparers and in Section 20-401 regarding improvement contractors.

We support the requirements in Section 20-406.2(b) that process serving companies provide their employees with a written statement of their employee rights and in Section 20-406.2(d) that they provide them with annual training, and the requirement in Section 20-406.4 mandating the development and distribution of a handbook of relevant laws and regulations to all licensed process servers and process serving agencies. Information provided to employees of process serving agencies relating to their minimum wage, hours or work, compensation, and other benefits allows process servers to be more aware of their rights, and thus less likely to be pressured into abusive practices by their employing agencies. The requirement for process serving agencies in Section 20-406.2(d) to provide annual training is crucial. Requiring training on an annual basis as to the rights of consumers, permissible methods of service and ethical obligations will greatly assist in preventing abusive practices by process servers. Similarly,

Section 20-406.4 is necessary to ensure the provision of information to process servers regarding their legal and ethical obligations when they are performing service of process.

We also support Section 20-406.3 which requires process servers and process serving agencies to maintain records for no less than seven years on each process served. Such a requirement provides for fairness and accuracy in process serving. Consumers are thereby provided additional protection when they appear in court contesting service of process. This is especially the case when default judgments occur, as consumers commonly discover and raise the issue of improper service in the courts many years subsequent to the alleged service.

We believe the amendment's requirement of surety bonds, record keeping and other protections would decrease the systemic problem of sewer service and fraudulent practices by process servers, and we thank the sponsor for modifying the language in Intro 1037-2009 to clarify that this bill is meant to apply to persons who make process serving their business and not civil litigants who may need to rely on their friends and relatives for one-time service of papers because they cannot incur the process serving fees.

We also generally support the new requirement in Section 20-410 that process servers use GPS devices and keep records to track their actual routes. However, DCA will need to monitor the existing technologies as some systems may be more reliable than others and less subject to manipulation. We also would not want to see any of the other record keeping requirements eliminated because of the difficulty the Civil Court and many litigants — especially pro se litigants — are likely to face in analyzing the technology in a court setting if service of process is challenged.

A Suggested Friendly Amendment to Intro 6-A.

Section 20-406.1(b) should be modified to state, "A process server licensed under this subchapter who engages in the business of serving process exclusively as an employee of a process serving company licensed under this subchapter or exclusively for a not-for-profit legal organization shall not be required to furnish a surety bond pursuant to subdivision (a) of this section."

Section 20-410 should also be modified to state "A process server licensed pursuant to this subchapter shall carry at all times during the commission of his or her licensed activities and operate at the time process is served or attempted an electronic device that uses a global positioning system, wi-fi device or other such technology as the Commissioner by rule shall prescribe to electronically establish and record the time, date, and the location of service or attempted service. This subsection shall not apply to licensed process servers employed by a non-for-profit legal organization."

The abusive process serving practices have existed and grown primarily in the debt collection practice area and exclusively with private process servers and process serving agencies. However, requiring not-for-profit legal organizations to obtain surety bonds and GPS devices unnecessarily burdens not-for-profit institutions such as The Legal Aid Society. This would have an adverse effect on consumer protections by placing additional financial burdens on those who represent the victims of abusive process serving practices and negatively impact the very class of individuals the proposed amendment seeks to protect.

Conclusion

As you have heard from other witnesses today, the proposed amendment includes long needed enforcement mechanisms. However, once the amendment is enacted additional oversight

will be needed to ensure that DCA has sufficient resources to enforce its provisions. We believe implementation and enforcement of the proposed amendments will go a long way to protect the rights of consumers. Thank you again for your leadership on these issues.

Respectfully submitted,

Tashi T. Lhewa, Esq.
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Testimony of Claudia Wilner
on behalf of the Neighborhood Economic Development Advocacy Project

Before the Committee on Consumer Affairs
of the Council of the City of New York

Hearing on Process Servers in New York City

March 2, 2010

Thank you for the opportunity to testify today about the City Council's proposal to amend New York City's Administrative Code in relation to process servers. My name is Claudia Wilner, and I am Senior Staff Attorney with the Neighborhood Economic Development Advocacy Project, or NEDAP. Founded in 1995, NEDAP is a nonprofit resource and advocacy center that promotes economic justice and works to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. Our Consumer Law Project works primarily with low-income New Yorkers who have experienced problems with debt collection, credit reports, and unfair lending practices. Since launching our NYC Financial Justice Hotline in September 2005, we have helped thousands of consumers, most of whom are seeking assistance with debt collection matters, and in particular debt buyer lawsuits. In our experience, defendants in debt buyer lawsuits rarely receive service of process as required by law. In 2008, 70% of hotline callers who were defending themselves in debt buyer lawsuits reported improper service. Only 12.7% reported that they had been properly served.

NEDAP strongly supports the proposed legislation, and we urge that it be enacted as soon as possible.

The high rate of sewer service in debt buyer lawsuits is especially frustrating because New Yorkers often have many legitimate defenses to the alleged debts. But without proper service, New Yorkers are denied their opportunity to be heard. They do not receive notice and therefore do not appear in court, and as a result default judgments are entered against them. These default judgments cause tremendous harm to low-income New Yorkers in the form of wage garnishments, frozen bank accounts, and high bank fees from the resulting bounced check and overdraft fees. New Yorkers also suffer ruined credit when these default judgments appear on their credit reports. A blemished credit record can often prevent someone from securing housing and employment, from obtaining mortgages, car loans, and affordable insurance, and can trigger adverse actions by existing creditors, such as lowering a credit line or raising an interest rate on a credit card.

For instance, our client Ms. V, a 58-year-old nanny from Queens, was sued by four different debt buyers over a three-year period. She was not served with process in any of the four lawsuits. Two of the debt buyers froze her bank account and took $8,000 of her savings. In all four lawsuits, Ms. V was sued for debts that she did not legally owe. Two of the alleged debts were past the statute of limitations. The third was for an account she had never owned, and the fourth was for a Bally's Gym membership that she had promptly cancelled within the cancellation period allowed under the contract. Another client, Ms. P, a 35-year-old woman from Brooklyn,

was sued by a debt buyer on a credit card account that her ex-husband had opened in her name without her knowledge. The debt buyer's process server claimed to have served her at an address that she had not lived at for four years, and which had since been converted to a commercial property. Ms. P's first notice that she had been sued was the restraint on her bank account, the result of which Ms. P was charged hundreds of dollars in legal and insufficient funds fees by her bank.

Unfortunately, most sewer service goes unpunished by both courts and government agencies. When our hotline callers report improper service, we advise them that they have the right to challenge improper service in court through a special type of hearing called a traverse hearing. However, many of them later report that they were actively discouraged by judges and court personnel from pursuing their service defenses, and were instead pressured to waive their service defenses and/or settle with the debt buyers on payment terms that they could barely afford, if at all. And though the New York City Department of Consumer Affairs licenses process servers, its enforcement actions against process servers or process serving agencies are rare. This year, notably, the New York State Attorney General brought civil and criminal charges against the owner of a process serving agency for systematically engaging in sewer service, and also filed a groundbreaking lawsuit against 37 debt collection law firms and debt collectors that had used that process serving agency to allegedly serve process. The Attorney General's lawsuit seeks to vacate 100,000 default judgments obtained through sewer service by this one process serving agency alone. Unfortunately, however, the practices described in the Attorney General's suit are not unique to a single process serving agency but are rampant throughout the industry, especially among those agencies that do a lot of their business with debt collection law firms. As a result of sewer service, hundreds of thousands of New Yorkers have had default judgments entered against them, with disastrous consequences for them and their families.

We are pleased that the New York City Council is taking action to address the problem of sewer service by imposing a bonding requirement on process servers and process server agencies. A bonding requirement will help to raise standards throughout the industry by increasing accountability for sewer service. The proposed enhanced disclosure, training and recordkeeping requirements will likewise improve industry standards by ensuring that process servers understand the laws that govern their employment, with regard to both their rights as workers and their responsibilities under the law.

NEDAP is particularly pleased to see the new provisions incorporating a private right of action. In addition to giving individual New Yorkers the opportunity, now virtually unavailable, to seek redress for the harms they suffer as a result of sewer service, a private right of action would significantly enhance enforcement of current process serving laws and regulations.

NEDAP also supports mandatory GPS tracking of process servers. By providing independent verification of process servers' whereabouts, GPS tracking will keep process servers honest about their movements throughout the city. In our practice, we often find that process servers claim to have made attempts at service that they did not in fact make. GPS tracking should significantly reduce this problem, as well as the related problem of "superman service," when process servers claim to be at two or more places at the same time.

We have one small but important suggestion, which is that the bill should include a savings clause to ensure that if one part of the legislation is invalidated, the other parts will remain in full force and effect.

Again, thank you for the opportunity to testify at today's hearing.

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We have one small but important suggestion, which is that the bill should include a savings clause to ensure that if one part of the legislation is invalidated, the other parts will remain in full force and effect.

Again, thank you for the opportunity to testify at today's hearing.

Department of
Consumer Affairs

Statement of Jonathan Mintz
Commissioner
Department of Consumer Affairs
before the
City Council Committee on
Consumer Affairs
on
Intro No. 6

March 2, 2010

Good afternoon, Chair Koslowitz and Committee members. I am Jonathan Mintz, Commissioner of the Department of Consumer Affairs. I appreciate the opportunity to appear before you this morning to comment on Intro No.6 , a bill that I believe is a game-changer in regulating the process server industry in the City to protect New Yorkers.

We thank Council Member Garodnick, the bill's prime sponsor, for the bold and visionary protections he has proposed for New Yorkers whose lives are turned up-side down when they can least afford it, by ruinous judgments resulting from stealth lawsuits initiated by false or improper service of process. We commend Chair Koslowitz and the Committee for making this issue one of their first orders of business.

We were pleased to have had the opportunity to work with Council Member Garodnick and his staff to strengthen an already tough bill, which is sorely needed to protect consumers from the fraudulent service of process known as "sewer service". Sewer service is the all-too-common practice of failing to properly serve legal papers that provide the intended recipient with notice that he or she has been sued. Process servers compound this abuse by falsely claiming to have actually served the papers. While utilized in many types of cases, sewer service is particularly pervasive in consumer debt collection cases, depriving victimized consumers of the opportunity to respond and defend themselves against creditors' claims that are frequently incorrect or even entirely false.

The consequences of these predatory practices are dire. As Council Member Garodnick himself has noted, they wreak the greatest financial harm among the tens of thousands of people sued for debts that they may or may not owe, but who only learn that they have been victimized when they suddenly find their wages garnished or their bank accounts unexpectedly frozen because they were unaware of a lawsuit that resulted in default.

The recent study, "Justice Disserved," well documents the scope and nature of sewer and other types of improper service and the financial devastation such service creates for consumers who are thereby deprived of the chance to defend themselves against what may be claims for payment that are false, improper, or incorrect.[1] This has become an ever- increasing problem with the rise of the debt buyer industry, whose members purchase old and often stale debts and use assembly- line techniques to run them through the courts to obtain judgments for amounts consumers don't owe.

The Department's heightened concern about this industry was triggered by an 18 percent spike in the number of complaints docketed against debt collection agencies from FY '06 to FY '07. As a result, the Department conducted a series of proactive initiatives to take a closer look at the debt collection and process server industries:

- DCA held a public hearing in June, 2006, on the debt collection industry, which highlighted a number of predatory and illegal practices. The Department learned that technology had compounded the traditional debt collection abuses by providing an easy pathway for the debt collection industry to file cases and obtain judgments against the growing numbers of alleged debtors who became entangled in, and then allegedly defaulted on, their credit contracts.
- DCA's public hearing on process server practices, held in June 2008, provided first-hand testimony from consumers, advocates, judges and process server agencies and individual process servers themselves--all underscoring, loudly and clearly, one primary and critical area of reform in process server practices: the need to improve and update current requirements for documenting that the process server indeed served process as claimed.
- DCA opened investigations and issued subpoenas to 117 individual process servers and process server agencies. Referrals for investigation came from Civil Court judges, attorneys and consumer complaints. DCA developed direct evidence of sewer service by some process servers through its investigative work following process servers during their rounds and then comparing their log book records to the actual locations they visited in the field. Since December 2008, DCA has served charges on 53 individual process servers. Forty-seven of the proceedings have been settled or tried, resulting in the revocation of nine licenses; the assessment of approximately $25,000 in fines; and the imposition of extensive injunctive relief in 37 cases. Six cases remain pending in DCA's tribunal and we anticipate that many more cases will be brought against individual process servers. Additionally, the practices of process server agencies are under close scrutiny by the Department.

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[1] *See* MFY Legal Services, Justice Disserved (June 2008) (available at http://www.mfy.org/Justice_Disserved.pdf).

The rise in the number of docketed complaints against debt collection agencies has continued. By FY '08, docketed complaints catapulted the industry into first place on DCA's list of its top five complaint categories, with complaints increasing from 908 in FY '06 to 1,266 in FY '08. Sad to say, the debt collection industry remains in first place.

Last year, the Council enacted legislation, signed by Mayor Bloomberg in March, 2009, to curb abusive debt collection practices that included proposals DCA had formulated based on its findings at its public hearing on debt collection practices.

The new law, together with DCA's soon to be published rules, will make a huge difference in consumer protections from predatory debt collection practices, but this is only the first step in the battle DCA is waging, in collaboration with the Council, to protect consumers, especially during this economic downturn. Protecting consumers against the abuse of sewer service and other equally misleading and improper service of process goes hand in hand with protecting consumers against abusive debt collection practices. Putting an end to the illegal practices of process servers hired by debt collection agencies when they use judicial rather than non-judicial process to collect debts from consumers is the necessary next step to prevent consumers from being abused by the debt collection industry.

Intro 6-A responds directly to that need and does even more: it significantly impacts the practices of the 2,081 individual process servers and the 143 process server agencies the Department licenses by putting in place a roster of smartly-tailored incentives and penalties that are aimed at encouraging and promoting effective service of process. Key measures include:

- the requirement that process servers carry and operate, at all times while engaged in the licensed activity, a low-cost, electronic device that will independently verify the time, place and location of service or attempted service a process server claims to have made. The requirements for using an electronic device have been carefully circumscribed so that it tracks the process server only when he or she *is serving process or attempting to serve process.* Since the device is not required to be operational at any other time, it would not otherwise either track or record the location of the process server. The device only verifies the location of the process server as of when he or she is already required to document such activity.
- the requirement that all agencies who assign process for service within the City be licensed, ensuring that anyone responsible for serving process to New York residents can be held accountable under the City's licensing law.

- the requirement that process servers maintain electronic records created by electronic devices, ensuring that the records of service or attempted service can be effectively monitored and audited to verify the truthfulness of process servers' claims. Electronic verification of service does not **substitute** for the logs and affidavits of service process servers are required to maintain and file but rather **supplements** those paper records, providing an independent basis for verifying the truthfulness of the claims made. It is extremely difficult, if not impossible, to verify self-serving claims noted in written records, a problem which, by itself, does the most to perpetuate sewer service. An electronic database will be one of the most important and effective tools for identifying and eliminating sewer service.
- the requirement for training and testing process servers, as well as preparing and distributing educational materials to the servers, ensuring that they are fully aware of the legal requirements for, and their obligation to, serve process. These requirements buttress the obligation the bill imposes that process servers and process server agencies follow all city, state and federal laws that apply to the service of process.

Taken together, these critical legislative requirements vastly strengthen the process service licensing law, giving consumers hope, for the first time, that sewer service will be an abuse of the past. The remaining provisions of Intro 6, relating to bonding and the right to sue process servers who fail to make proper service, further bolster consumer protections by enabling consumers to be made whole when they are not properly served and sustain financial harm. The bill's requirement for electronic verification of service of process, along with its other measures as highlighted above, will create a sea change in protections for consumers.

The Administration wholeheartedly supports the enactment of this far-reaching effort to stem the tide of predatory process server practices that have, for far too long, deprived consumers of their days in court to defend themselves against unfounded if not false and fraudulent claims. We look forward not only to the bill's swift enactment, but also to continuing to work with its proponents and with the Council to protect consumers in debt against abuse.

Thank you again for this opportunity to comment on Intro No. 6. I will be pleased to answer your questions.

NEW YORK
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

TESTIMONY OF ANAMARIA SEGURA, MEMBER, CONSUMER AFFAIRS COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION, IN SUPPORT OF INT. 6-A

NEW YORK CITY COUNCIL
CONSUMER AFFAIRS COMMITTEE HEARING
March 2, 2010

My name is Anamaria Segura, and I am a member on the Consumer Affairs Committee of the New York City Bar Association. I am testifying on behalf of the Civil Court and the Consumer Affairs Committees of the New York City Bar Association. The New York City Bar supports City Council Intro 6-A, which amends the laws governing process servers in New York City. The Committees believe that this legislation is necessary to reform the process serving industry, which is replete with problems that have devastating effects on New Yorkers.

It is no secret that there is a crisis in the process service industry in New York City and that New York courts are deluged by a massive wave of consumer credit litigation. More than 75 percent of the 300,000 consumer debt proceedings initiated annually in New York City Civil Court result in default judgments, often after sewer service. These cases are overwhelmingly brought against low- and moderate- income New York debtors, many of whom are elderly or disabled and nearly all of whom are unrepresented by counsel. As a result, each year tens of thousands of New York City residents are deprived of their due process right to be heard before judgments are issued against them. As a result of these judgments, countless New Yorkers are unable to support their families, secure housing, and obtain employment.

Based on our experience as practioners in this forum, we believe the reason for the high rate of defaults is that many consumers never receive notice that a lawsuit has been commenced against them. Many process servers hired to serve papers in consumer credit actions engage in "sewer service" – the practice of failing to serve court papers and filing false affidavits of service with the courts.[1] The New York State Attorney General recently brought civil and criminal charges against a process service agency that allegedly failed to serve New Yorkers in tens of thousands of cases. The Committees believe that the practices uncovered by the Attorney General are far from unique, but instead are all too frequent in consumer credit actions.

We believe that Intro 6-A would help ameliorate many of the problems inherent in the process serving industry in New York City. We support the provisions of the bill that require an applicant for a process server license to post a $10,000 surety bond and process service agencies

[1] *See, e.g.,* MFY Legal Services, Justice Disserved (June 2008) (available at http://www.mfy.org/Justice_Disserved.pdf).

to post a $100,000 bond. Such bonds will be used to secure payment of any fine or penalty levied by the New York City Department of Consumer Affairs as well as the payment of any final judgment recovered by a person who has been injured by improper service of process.

We also support the provision allowing for a private right of action against process servers, enabling individuals to seek injunctive relief and damages from servers who engage in sewer service and abuse the legal system. The Committees believe that this private right of action should be explicitly limited to persons who were improperly served with process.

We also support the new global positioning system (GPS) provision of the bill to the extent that any GPS requirement enhances laws currently in place, including maintenance of logbooks, and with the caveat that we support this provision only if including it will not prevent passage of the entire bill in a timely fashion. The Committees believe that passage of this legislation is urgent and request that the City Council pass it promptly.

The Committees also approve the bill's other important provisions, including the requirements that process servers be required to take an examination to obtain a license; that process serving agencies be required to inform their employees of their rights pursuant to minimum wage, overtime and payroll deduction laws as well as other employment obligations of their employers; and that employment records be retained for three years and process serving records for seven years in electronic form. Finally, we fully support the provision requiring the Department of Consumer Affairs to produce educational materials for distribution to licensed process servers regarding process serving laws and regulations--it is essential that process servers be educated about the laws governing service of process.

This bill will help address many of the problems in the process service industry and will serve as a deterrent to those who believe they can engage in shoddy service without consequences. We urge the City Council to pass this important legislation promptly.

Respectfully submitted,

Anamaria Segura
On behalf of the
Civil Court and Consumer Affairs Committees
New York City Bar Association
March 2, 2010

FORDHAM UNIVERSITY

THE SCHOOL OF LAW

FOR THE RECORD

FEERICK CENTER FOR SOCIAL JUSTICE AND DISPUTE RESOLUTION

JOHN D. FEERICK
FOUNDER AND DIRECTOR

**TESTIMONY OF DORA GALACATOS, SENIOR COUNSEL, FEERICK CENTER FOR SOCIAL JUSTICE AT FORDHAM LAW SCHOOL WITH REGARD TO INT. 6-A
NEW YORK CITY COUNCIL
CONSUMER AFFAIRS COMMITTEE HEARING
March 2, 2010**

The Feerick Center for Social Justice (the "Feerick Center" or the "Center") at Fordham Law School submits this written testimony in order to provide information on the regulation of process servers throughout the United States, which might be of assistance to the Consumer Affairs Committee.

New York City, like many other jurisdictions, has experienced an explosion of consumer debt collection filings. Such cases almost tripled since 2000,[1] climbing to nearly 300,000 in 2008.[2] Consumer law advocates estimate that over 98% of debtor-defendants are pro se. Debtor-defendants default in approximately 70% of cases.[3] The Feerick Center for Social Justice has worked on issues related to consumer debt by:

- Co-sponsoring, along with the New York County Lawyers' Association, the first local New York City Conference focused on consumer debt issues and the experience of litigants in New York City Civil Court;
- Supporting its Domestic Violence and Consumer Law Project, which helps develop resources and expand capacity within the legal and social services community to address the consumer debt issues of domestic violence survivors; and
- Supporting the Bronx and Manhattan CLARO Programs, which provide limited legal advice to unrepresented debtor-defendants in New York City Civil Court.

Since the Spring of 2009, the Feerick Center has worked with the New York City Department of Consumer Affairs ("DCA") on a collaborative project to explore the possibility of education and training for process servers as a strategy for improving industry practice. As part of this effort, the Center conducted a state-by-state survey of process server regulation.

The appended materials, which are part of the state-by-state survey, demonstrate that regulation of process servers varies greatly throughout the country. In some states, only law enforcement personnel may serve civil legal process, whereas in other states (such as in New York State) process can be served by any adult not a party to the action. Some states (and localities or judicial districts) require licensure, registration, and/or appointment; others do not. Additional provisions mandate education (training and/or testing), bond and/or insurance requirements, and

[1] Jim Dwyer, *In Civil Court, One Nation, Under Debt*, N.Y. Times, Oct. 10, 2008, at A19.
[2] Justice Fern A. Fisher, Deputy Chief Administrative Judge, New York City Courts, Presentation to the Civil Court Committee of the New York City Bar (Mar. 16, 2009).
[3] Data provided by the New York City Civil Court; see also New York State Unified Court System, Court Statistics, *available at* http://www.nycourts.gov/courts/nyc/civil/statistics.shtml.

fee guidelines. Some requirements are statutory and regulatory, whereas others are imposed by court rule.

The research was conducted in June 2009 and does not reflect amendments and other developments, which may have taken place since them. The Center can make available a complete compilation of excerpts of the legal provisions governing the service of process in all states, which it identified and which is quite voluminous, to any Committee member who is interested. The Center hopes these materials provide a helpful overview of legal requirements in connection with process servers for the Committee and others involved in efforts to ensure that industry practices meet constitutional and legal standards and that vulnerable defendants, such as pro se debtors, receive the notice they are entitled to about actions and proceedings brought against them.

Respectfully submitted,

Dora Galacatos
On behalf of the Feerick Center
For Social Justice at Fordham Law School
March 2, 2010

State-by-State Survey of Process Server Requirements

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Alabama	**NO**			
Alaska	**YES – Examination & Licensure**	Administered by the State Department of Public Safety.	Passing a 50-question course the first time you obtain license or if license lapses when you reapply.	By statute and regulation. • Alaska R. Civ. P. 4(c) • Alaska Stat. § 22.20.120 • Alaska Admin. Code § 67.005 et seq.
Arizona	**YES – Examination, Certification, Continuing Legal Education**	Administered by the courts.	Application to the court for three-year term of certification. Applicants must pass an examination. Annual continuing education requirements.	By statute. • Arizona R. Civ. P. 4(c) & (d) • Arizona Code of Judicial Admin. § 7-204 By court order. • Arizona Supreme Court Administrative Order No. 2002-110
Arkansas	**YES – Appointment; No formal training or examination; minimum education requirement in statute**	Administered by courts.	Appointment by the court. A Supreme Court Administrative Order sets out minimum requirements, including familiarity with applicable provisions. Judicial districts can impose additional requirements.	By statute. • Ar. R. Civ. P. 4(c) By court order. • Ar. Sup. Ct. Adm. Order No. 20
California	**YES – Registration but no education**	Administered by the county clerks.	Registration by the county clerks. County procedures and practices vary. Some counties impose fees, require bonds, and conduct criminal background screen.	By statute. • Cal. Bus. & Prof. Code § 22350
Colorado	**NO**			

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Connecticut	**YES – Appointment; Examination (only state marshals server process)**	Administered by the State Marshal Commission.	Regulations require the creation of a manual and training program and that applicants take an examination.	By statute and regulation. • Conn. Gen. Stat. § 52-50 • Conn. Gen. Stat. § 6-38b(f) • Conn. State Agencies § 6-38b et seq.
Delaware	**Registration only** required with some individual courts.	Administered by individual courts (Court of Chancery; Family Court; Court of Common Pleas; Justice of the Peace Courts).	Requirements vary, but in the Court of Common Pleas for example applicants submit an affidavit; must pass a criminal background check; must pay a $50 fee; must reapply annually; must by affiliated with a process server organization.	Varies – mostly by court order [see binder].
DC	**NO**			
Florida	**YES** – adopted by the judicial circuit courts (not all)	Administered by individual circuit courts.	**Attend seminar and take exam.** Varies by court. In the fifth judicial circuits, new applicants must attend a 2-3 hour seminar and take a 45-question, multiple choice exam. After one year and upon renewal of their certification, process servers must take a seminar and exam again.	By statute and court order. • Fla. Stat. §§ 48.021, 48.29-31; Fla. R. Civ. P. 1.070; Fla. 2nd Cir. AO 2008-21

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Georgia	**Appointment** only required by court of permanent process servers	Administered by the county court or the courts in which the action is filed.	In one county, submit application, criminal background check; application reviewed by Permanent Process Server Review Panel.	By statute. • Official Code of Georgia Annotated § 9-11-4 Proposed legislation was introduced in State House and State Senate in 2007-2008 to create a statewide registration process for private process servers, including examination.
Hawaii	**NO –except for 5 kinds of service**[1]			
Idaho	**NO**			
Illinois	**YES but only for some personnel** – process limited to sheriffs, sheriff personnel, & private detectives, but in counties with populations of less than 1,000,000 sheriffs can appoint private process servers	For sheriffs, sheriffs' offices and the Illinois Sheriffs' Association. For private detectives, the Division of Professional Regulation. Private process servers appointed by sheriffs do not have any requirements.	For private detectives, examination, training, and continuing education is required by statute.	By statute. • 735 Ill. Comp. Stat. 5/2-202 • 225 Ill. Comp. Stat. 447/1-5 • 225 Ill. Comp. Stat. 447/10-27 • 225 Ill. Comp. Stat. 447/10-35
Indiana	**NO**			
Iowa	**NO**			

[1] The Hawaii State Department of Public Safety has a list of authorized civil process servers for five types of service: orders to show cause, writs of attachment and execution; garnishment documents; writs of replevin; and writs of possession. The authorization process requires application to the Deputy Director of Law Enforcement. Training is informal, by either those already on the list or by an attorney. Interview with James L. Propotnick, Deputy Director of Law Enforcement, Hawaii State Department of Public Safety (Apr. 13, 2009).

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
Kansas	**YES – court appointment only; varies by court**	Sheriffs and other law enforcement personnel receive training through the Kansas Law Enforcement Training Center.	n/a	n/a
Kentucky	**YES – court appointment only; varies by court***			
Louisiana	**YES- must be served by sheriff or if sheriff fails, court appointed process server**			
Maine	**YES – appointment only***			
Maryland	**NO**			
Massachusetts	**YES – appointment only, but only sheriffs, deputy sheriffs, & constables serve process**	Constables must be appointed by the mayor or selectmen.	They must provide references, pass a background check, put up a bond and be sworn in.	By statute • Mass. Ann. Laws ch. 41, § 91- 92
Michigan	**NO**			
Minnesota	**NO**			
Mississipp	**NO***			
Missouri	**YES – education for St. Louis; appointment by county**	For St. Louis, the Sheriff's Office administers education program for private process servers.	Requirements vary by circuit; the City of St. Louis has a very extensive education and certification requirement for private civil process servers.	
Montana	**YES – registration & education requirement**	Board of Private Security.	Applicants for registration as a process servers must pass an examination based on the handbook for process servers.	By statute. • Mont. Code Ann.§ 25-1-1104
Nebraska	**YES –bond requirement**	Sheriffs and constables serve process; some private process servers must		By statute. • Neb. Rev. Stat. Ann. § 25-501.01 • Neb. Rev.

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
		furnish a surety bond of $15,000; others require court appointment		Stat. Ann. § 25-506.01
Nevada	**YES**	Statewide Private Investigators Licensing Board.		
New Hampshire	**NO**			
New Jersey	**NO**			
New Mexico	**NO**			
New York	**YES – licensure in NYC; no education**	NYC DCA licenses process servers in NYC.	Licensure and record keeping.	By local provisions. • NYC Admin. Code §§ 20-403 • 6 RCNY § 2-233
North Carolina	**NO**			
North Dakota	**NO**			
Ohio	**YES – appointment only**	Private process servers are appointed by individual courts.	Must be not a party, over 18 and designated by court.	By statute. • Ohio Rule of Civil Procedure 4
Oklahoma	**YES – appointment only**	Private process servers are appointed by the presiding judge.	Must be not a party, over 18 and appointed by the court.	By statute. • Oklahoma Statute Annotated § 2004
Oregon	**NO**			
Pennsylvania	**NO**			
Rhode Island	**NO**			
South Carolina	**NO**			
South Dakota	**NO**			
Tennessee	**NO**			
Texas	**YES**	Process Server Review Board.	Private process servers must attend a civil process service course approved pursuant to State Supreme Court order and apply to the Board for certification.	By Supreme Court rule. • Texas Rule of Judicial Admin. Rule 14.
Utah	**NO***			
Vermont	**YES – as part of overall law enforcement**	Local sheriff departments.	Training on service of process part of overall training for sheriffs,	

STATE	Educational / Registration / Licensure / Appointment Requirement?	Who administers it?	What is required?	How required?
	training		deputy sheriffs, and constables.	
Virginia	**NO**			
Washington	**NO**			
West Virginia	**NO**			
Wisconsin	**NO**			
Wyoming	**YES – court application required; varies by court**	Various judicial districts.	Application to the court.	

Process Server Requirements – Snapshot

State	What is required?	Source of Authority	How administered?	Statewide?
Alaska	-- licensure -- exam	Statutory	Alaska State Department of Public Safety	Statewide
Arizona	-- registration -- initial exam -- continuing legal education	Order of the State Supreme Court	-- Administrative Office of Courts -- Clerks of the Superior Court of each county	Statewide
Connecticut	**-- state marshals only** -- appointment -- initial exam	Statutory	Connecticut State Marshal Commission	Statewide
Florida	-- 2-3 hour seminar -- exam (initial & with renewal)	Order of judicial district (in place for second and fifth districts)	Judicial districts create Certified Civil Service Process Review Boards	No. Varies by judicial district.
Georgia – **proposed**	-- initial exam	Statutory	Georgia Administrative Office of the Courts	Statewide
Illinois	**-- sheriffs, sheriffs' employees, & private detectives only** -- exam, training, continuing education (private detectives only)	Statutory	Illinois State Division of Professional Regulation (only for private detectives)	Statewide. Varies by profession and designation.
Montana	-- initial exam	Statutory	Handbook – developed by Montana State Department of Labor and Industry Exam – administered by the State Board of Private Security	Statewide
Nevada	-- annual examination	Statutory	Nevada State Private Investigators Licensing Board	Statewide
Texas	-- initial and renewal certification require attending a training and taking an exam	Supreme Court Rule	-- certification by the Clerk of the Supreme Court and the Process Server Review Board	Statewide

Process Server Project
Educational Requirements for Process Servers – By State

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Alaska	Alaska has a statewide licensure requirement. The Commissioner of Public Safety oversees licensure and education requirements for process servers. Alaska Admin. Code Ch. 60.	Alaska R. Civ. P. 4(c) Alaska Stat. § 22.20.120 (general duty and authority of the commission) Alaska Admin. Code § 67.005 et seq.	Process servers must take a test the first time they apply for a license and thereafter if their license lapses (but not for renewal)	Yes – 50 question test (25 T&F; 25 multiple choice). State has developed a study guide.	None required	Topics detailed by regulation. 13 Alaska Admin. Code § 67.100. Topics included general knowledge of service process and standards for professional conduct as established in 13 Alaska Admin. Code 67.180.220.
Arizona	Arizona has statewide certification of process servers. In order to be eligible to act as a private process server, all persons must be certified.	Arizona Revised Statute § 11-445(H) Arizona Code of Judicial Administration § 7-204	Process servers must complete a 10 hour course every 12 months: 6 hours of ACPS training and 4 hours of training in the Rules of Civil Procedure	Yes – the written examination is administered by the Clerk of the Superior Court. Ariz. Code of Judicial Admin. § 7-204(D)(3)	All certified process servers must complete at least 10 hours of continuing education every 12 months. Arizona Supreme Court, Administrative Directive 2003-01.	Outlined in a Study Guide available on the Supreme Court's website. http://www.supreme.state.az.us/cld/pdf/Study%20Guide%20for%20PPS%20Cert.pdf

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Arkansas	Appointment by the administrative judge of a district court or any designated circuit judge.	Supreme Court Order. AR Sup. Ct. Adm. Order No. 20 (2008)	The Order requires, inter alia, "familiarity with the various documents to be served." Order No. 20 § (b)(5).	No, but "[e]ach judicial district, may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications." Order No. 20 § (b)(5).	Must renew appointment every three years.	N/a

Connecticut	State has created a State Marshal Commission, which oversees civil service of process. By statute, the Commission is mandated to "adopt regulations . . . to establish professional standards, including training requirements and minimum fees for execution and service of process." Conn. Gen. Stat. 6-38b.	Conn. Gen. Stat. § 52-50 Conn. Gen. Stat. § 6-38b Conn. State Agencies § 6-38b et seq.	State Marshall Commission has in place educational requirements. Examination and training required by statute. Generally, civil process of service conducted by state marshals only.	Yes, for state marshals. Have to have a raw score of 80% by regulation. Conn. State Agencies § 6-38(b)-3(c).	[Must reapply at the end of each three-year term.]	Regulation requires that "the examination shall include, but not be limited to the following subjects: the functions of a state marshal, including service of process and execution; and (2) familiarity with the applicable portions of the Connecticut General Statutes, the Connecticut Practice book and the commission's regulations." Conn. State Agencies § 6-38(b)-3(b). Regulations also require the development of a training program and manual. Conn. State Agencies § 6-38(b)-4.

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Delaware	Requirements vary by court. There are no educational requirements but some courts require annual registration with a $50 fee, among other requirements.	See binder for copies of relevant applications and forms.	N/a	N/a	N/a	N/a

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Florida	State law provides for an appointment and certification process for certified process servers by the chief judge of each judicial circuit, Fla. Stat. § 48.27 (2009), and an application process for special process servers by sheriffs. Fla. Stat. § 48.021 (2009).	Fla. Stat. § 48.27 (2009). Fla. Stat. § 48.021 (2009).	Yes	The chief judge of the circuit can require that process server applicants submit to an examination. Fla. Stat. § 48.29(3)(f). In the fifth circuit, the court has established the Fifth Judicial Circuit Certified Civil Process Server Review Board. In addition the court develops and administers a written examination to all applicants seeking certified civil process server certification. Fla. 2nd Jud. Cir. AO 2008-21.	The fifth circuit requires biennial testing.	In the fifth circuit, the first seminar covers the process statute. The second seminar (in year two following initial certification), the court plans on adding a focus on professionalism.

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Georgia - proposed	Legislation was proposed to established state-wide registration of private civil process servers.	H.B. 705 (SUB) (Ga. 2009) LC 36 0604S (Ga. 2009)	Process servers would be required to pass a test administered by the Administrative Office of the Courts.	Yes –the Administrative Office of the Courts would be charged with designing and administering the test.	None	The proposed legislation states that "[t]he test will measure the applicant's knowledge of state law regarding serving of process and other papers on various entities and persons."
Montana	Any person who makes more than 10 services of process in any 1 year must obtain a registration certificate	Mon. Code Ann. § 25-1-1101	Applicants must pass a written examination based on a process server handbook. The Montana State Board of Private Security develops and administers the exam; the Montana Department of Labor and Industry publishes the handbook.	Yes	None required	See handbook.

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Nevada	A statewide licensure requirement is in place.	Nev. Rev. Stat. Ann. § 648.060	No training; just an examination required.	Yes -- applicants must pass an initial one-hour written examination of 50 questions and score 75% or better.	None	None stated.

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
Texas	Certification is required. Must file with the clerk of the Supreme Court a sworn application that they have not been convicted of a crime		Process servers must complete a 7 hour training course and complete a written examination.	Yes – it is given at the end of the class	There is a 7 hour training course approved by the Supreme Court. It's not clear whether this is the same course they took to get their certificate. New servers and renewing servers must complete this course and pass a written examination.	Unknown

State	Appointment/ License/Regulation Requirement	Applicable Provision	Educational Requirements	Written examination required?	Continuing legal education requirements	Topics covered on exam
St. Louis	All persons who want to become process servers must take and pass a training course		Process servers must take and pass a training course which consists of 5 nights of classroom instruction with written examination administered by the Sheriff of the City of St. Louis	Yes	Unclear	Unknown

Feerick Center for Social Justice at
Fordham Law School
Appended Materials to Testimony of Dora Galacatos
New York City Council Consumer Affairs Committee Hearing
March 2, 2010

STATE BY STATE SURVEY
LICENSURE / REGISTRATION / APPOINTMENT REQUIREMENTS – SNAPSHOT

State	What is required?	Source of Authority	How administered?	Statewide?
Alaska	-- licensure	Statutory	State Department of Public Safety	Statewide
Arizona	-- registration -- appointment	Order of the State Supreme Court	-- Administrative Office of Courts -- Clerks of the Superior Court of each county	Statewide
Arkansas	-- 3-year appointment -- meet minimum qualifications	Order of the State Supreme Court	-- Administrative judges of judicial and circuit courts	Statewide
California	-- registration	Statutory	-- County clerks	-- Statewide requirement -- administered county by county
Connecticut	-- appointment (only state marshals serve civil process	Statutory	-- Connecticut State Marshal Commission	Statewide
Delaware	-- registration	[Court procedures]	-- various courts	No. Requirements vary by court.
Florida	-- certification	Statutory	-- chief judge of each judicial district	Statewide; administered by judicial districts
Georgia	-- appointment	[Court procedures]	-- various courts	No. Requirements vary by court.
Georgia – **Proposed state legislation**	-- biannual registration	Statutory	-- Judicial Council of Georgia	Statewide
Hawaii	-- informal list of authorized private process servers maintained	None	Hawaii State Department of Public Safety	N/a
Illinois	-- varies by county based on population; if more than 1,000,000 licensed private detectives must supply copy of license to sheriff	Statutory	-- Sheriffs' offices	Statewide; requirements vary by county based on population

State	What is required?	Source of Authority	How administered?	Statewide?
Kansas	--appointment; varies by court	None	-- various courts	No. Requirements vary by court.
Kentucky	-- appointment	Statutory	--by the courts on a case by case basis	Statewide
Louisiana	-- sheriff, otherwise, by court order for private process server	Statutory	--by the courts on a case by case basis	Statewide
Maine	-- sheriff, deputy, person authorized by law, or by court appointment	Statutory	--by the courts on a case by case basis	Statewide
Missouri	-- court appointment; varies by circuit court	Court rule	--varies; court administrator of the circuit court	Varies by circuit court
Missouri – Jackson County / St. Louis	--			
Montana	-- registration	Statutory	-- by the Montana State Department of Labor and Industry	Statewide
Texas	-- certification (3-year term)	Supreme Court Order	-- Process Server Review Board	Statewide

PROCESS SERVER QUALIFICATIONS – BY STATE

STATE	PROVISION	REQUIREMENT
Alaska	13 Alaska Admin. Code 67.020 – Process Server Qualifications	**13 AAC 67.020. PROCESS SERVER QUALIFICATIONS.** (a) To qualify for a process server license a person must (1) be a United States citizen or an alien lawfully admitted for permanent residency; (2) have resided in the state for at least 30 days immediately preceding the date of application; (3) be at least 21 years of age; (4) be free from any mental or emotional disorder that may adversely affect performance as a process server; (5) be of good moral character as defined in this chapter; (6) have a valid Alaska business license, issued under AS 43.70; (7) have a valid municipal business license if required; (8) have passed the process server examination required under 13 AAC 67.100. (b) A person may not be licensed as a process server if the person (1) has been convicted of a felony, a misdemeanor crime involving abuse or assault; or of a misdemeanor crime involving dishonesty or fraud as defined in AS 11.46 and AS 11.56 during the 10 years immediately preceding the date of application, by a court of this state, the United States, another state or territory, or the military unless a full pardon has been granted; or (2) is doing business under a name that is identical to the name under which a different process server is licensed, or is so similar to it as to create confusion or mislead a reasonable person.
Arizona	Ariz. R. Civ. P. 4(d) & Ariz. Code of Judicial Admin. § 7-204	Ariz. R. Civ. P. 4(d): A private process server . . . shall not be less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. Ariz. Code of Judicial Admin. § 7-204(E)(2)(c) - Legal resident of Arizona for at least one year; continually residing in Arizone during this time - Affidavit - Criminal background check
Arkansas	Arkansas Supreme Court Order Number 20	**(b) Minimum Qualifications to Serve Process** Each person appointed to serve process must have these minimum qualifications: (1) be not less than eighteen years old and a citizen of the United States; (2) have a high school diploma or equivalent; (3) not have been convicted of a crime punishable by imprisonment for more than one year or a crime involving dishonesty or false statement, regardless of the punishment; (4) hold a valid Arkansas driver's license; and (5) demonstrate familiarity with the various documents to be served. Each judicial district may, with the concurrence of all the circuit judges in that district, prescribe additional qualifications.
California	--varies by county	The County of Yolo for example requires process server applicants to undergo a criminal background check.

STATE	PROVISION	REQUIREMENT
Connecticut	Regs. Conn. State Agencies § 6-38b-1.– Qualifications	**Generally, civil process of service is limited to state marshals.** Sec. 6-38b-1. Qualifications To qualify as a state marshal pursuant to section 6-38b of the Connecticut General Statutes, a person shall: (1) Be an elector in the county in which a vacancy for the position of state marshal exists; (2) Speak, write and read the English language; (3) Be at least 21 years of age; (4) Have been awarded a high school diploma or general equivalency diploma (GED); (5) Be free from any physical, mental or emotional disorder that would prevent the person from performing the duties of a state marshal; (6) Be of good moral character; (7) Have a valid Connecticut driver's license; and (8) Have passed the examination required under section 6-38b-3 of the Regulations of Connecticut State Agencies and have completed all required training. The State Marshal Commission may waive the examination requirement for persons who previously served as deputy sheriffs in the state of Connecticut.
Florida	- Rules vary by court district - Fla. Fifth Jud. Cir. Administrative Order A-2008-21	**V. Qualifications.** Applicants must satisfy the following requirements to qualify for certification in the Fifth Circuit: A. Re at least 1 8 years of age; B. Have no mental or legal disability; C. Re a permanent resident of this State; D. Attest that they have read and become familiar with the laws and rules governing the service of process; E. Take and pass a written examination administered by the Court and approved by the Chief Judge; F. Submit to a background investigation, at the applicant's expense, which shall include any criminal record of the applicant; G. File with the Board a certificate of good conduct certifying: a. there is no record of any pending criminal case, whether felony or misdemeanor, against the applicant; b, there is no record of any felony conviction for which civil rights have not been restored; c. there is no record of conviction of the applicant of a misdemeanor involving moral turpitude or dishonesty within the preceding five *(5)* years; M. Take an Oath to Office that he / she will honestly, diligently, and faithfully exercise the duties of a Certified Process Server;
Georgia	- Proposed legislation pending	Proposed legislation will require process server applicants: - to undergo a criminal record check by the Administrative office of the Courts; and - to take an oath. [See Binder.]

STATE	PROVISION	REQUIREMENT
Kansas	Rules vary by court district	**Rule 14 of the Eleventh Judicial District** The person being appointed as a Process Server shall state in an application, under oath, that he or she has no felony or misdemeanor convictions, or list such convictions. Accompanying the Application for Appointment of Process Server shall be an affidavit by an attorney duly authorized to practice law in the State of Kansas, which attests to the good reputation of the person applying for appointment.
Montana	Mont. Code Ann. § 37-60-303	**License or registration qualifications.** (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant: (a) is at least 18 years of age; (b) is a citizen of the United States or a legal, permanent resident of the United States; (c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted; (d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored; (e) is not suffering from habitual drunkenness or from narcotics addiction or dependence; (f) is of good moral character; and (g) has complied with other experience qualifications as may be set by the rules of the board. . . . . (4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.
Nebraska	Neb. Rev. Stat. Ann. §§ 25-507(1) & (2)	§ 25-507. Process server; requirements; bond; cost -- 21 years of age and older -- bond of $15,000

<table>
<tr><th>STATE</th><th>PROVISION</th><th>REQUIREMENT</th></tr>
<tr><td>Nevada</td><td>Nev. Reb. Stat. Ann. § 648.110</td><td>648.110. Qualifications of applicants; issuance of license.

1. Before the Board grants any license, the applicant, including each director and officer of a corporate applicant, must:
(a) Be at least 21 years of age.
(b) Be a citizen of the United States or lawfully entitled to remain and work in the United States.
(c) Be of good moral character and temperate habits.
(d) Have no conviction of:
(1) A felony relating to the practice for which the applicant wishes to be licensed; or
(2) Any crime involving moral turpitude or the illegal use or possession of a dangerous weapon.

2. Each applicant, or the qualifying agent of a corporate applicant, must:
(d) If an applicant for a process server's license, have at least 2 years' experience as a process server, or the equivalent thereof, as determined by the Board.
(e) If an applicant for a dog handler's license, demonstrate to the satisfaction of the Board his ability to handle, supply and train watchdogs.
(f) If an applicant for a license as an intern, have:
(1) Received:
(I) A baccalaureate degree from an accredited college or university and have at least 1 year's experience in investigation or polygraphic examination satisfactory to the Board;
(II) An associate degree from an accredited college or university and have at least 3 years' experience; or
(III) A high school diploma or its equivalent and have at least 5 years' experience; and
(2) Satisfactorily completed a basic course of instruction in polygraphic techniques satisfactory to the Board.

3. The Board, when satisfied from recommendations and investigation that the applicant is of good character, competency and integrity, may issue and deliver a license to the applicant entitling him to conduct the business for which he is licensed, for the period which ends on July 1 next following the date of issuance.

4. For the purposes of this section, 1 year of experience consists of 2,000 hours of experience.</td></tr>
<tr><td>Oklahoma</td><td>12 Okla. Stat. tit.12, § 158.1(B)</td><td>12 Okla. Stat. tit.12, § 158.1(B)
Any person eighteen (18) years of age or older, of good moral character, and found ethically and mentally fit may obtain a license by filing an application therefor with the court clerk on a verified form to be prescribed by the Administrative Office of the Courts.</td></tr>
<tr><td>Texas</td><td>Rule of Judicial Administration 14</td><td>§ 14.4(a)(2)
[criminal background check]</td></tr>
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PROCESS SERVER BOND / INSURANCE REQUIREMENTS – BY STATE

STATE	PROVISION	REQUIREMENT
Alaska	13 Alaska Admin. Code 67.920 – Bond Requirements.	**13 AAC 67.920. BOND REQUIREMENTS.** (a) Except as provided in (c) and (d) of this section, an applicant for a process server license shall file with the department a surety bond evidencing liability coverage for fraud, misappropriation or commingling of funds, abuse of process, and malicious prosecution in the minimum amount of $15,000. The bond must provide that it may not be canceled unless 30 days' notice of cancellation is given to the department. (b) The surety shall file with the department a power of attorney designating its attorney in fact for execution of the bond; (c) If a process serving firm employs four to seven process servers, the process serving firm may provide a single surety bond that covers each of those process servers, provided that the bond is in the minimum amount of $60,000. A certificate of the bond must be filed with each employee's application for licensure. (d) If a process serving firm employs eight or more process servers, the process serving firm may provide a single surety bond that covers each of those process servers, provided that the bond is in the minimum amount of $100,000. A certificate of the bond must be filed with each employee's application for license. (e) If a process server is removed from coverage by a firm's bond, the firm shall immediately notify the department in writing. (f) If a process server is not eligible to be covered by a firm's bond or is terminated due to a violation that is a cause for license revocation, this information must be included in the notification submitted under (e) of this section. (g) A process server who is no longer covered by a firm's bond or by the process server's own bond shall return his or her process server license to the department immediately upon termination of coverage. The license will be returned to the process server if the process server submits proof of obtaining the required bond and meets all other eligibility requirements. If a process server fails to submit proof of a new bond within 90 days of the date the process server's previous bond was terminated, the license will be revoked.
California	Cal. Bus. & Prof. Code § 22350	California law requires state-wide registration with county clerks' offices. Requirements vary by county. Many counties require process server applicants to obtain bonds. For example, the County of Yolo requires process servers applicants to take out a bond in the amount of $2,000.
Florida	Fla. Fifth Jud. Cir. Administrative Order A-2008-21	**Section V.I** Execute and file with the Board a bond in the amount of **$5,000.00** with a surety company authorized to do business in this State for the benefit of any person injured by misfeasance, malfeasance, neglect of duty, or incompetence of the applicant in connection with his / her duties as a process server.

STATE	PROVISION	REQUIREMENT
Massachusetts	Mass. Ann. Laws ch. 41, § 92 – Service of Civil Process	**Section 92 – Service of Civil Process** A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, may within his town serve any writ or other process in a personal action in which the damages are not laid at a greater sum than two hundred dollars, and in replevin in which the subject matter does not exceed in value two hundred dollars, and any writ or other process under chapter two hundred and thirty-nine. A constable who has filed such a bond, in a sum of not less than five thousand dollars, may, within his town, also serve any such writ or other process in which the damages are laid at a sum not exceeding two thousand five hundred dollars, and any process in replevin in which the subject matter does not exceed in value two thousand five hundred dollars.
Montana	Mont. Code Ann. § 25-1-1111	**25-1-1111 Bond required -- levy limited.** (1) After completing the requirements in Title 37, chapter 60, for registration, a process server shall provide the board of private security with proof of a surety bond of **$ 10,000** for an individual or $ 100,000 for a firm, conditioned upon compliance with this part, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007. (2) A levying officer may not levy on a judgment that exceeds the value of the bond.
Nebraska	Neb. Rev. Stat. Ann. § 25-507	**§ 25-507. Process server; requirements; bond; cost** (1) In any county which does not have a person contracted as a constable pursuant to section 25-2229, any person twenty-one years of age or older or a corporation, partnership, or limited liability company that satisfies the requirements of subsection (2) of this section shall have the same power as a sheriff to execute any service of process or order. (2) Any person or entity may exercise the powers provided in subsection (1) of this section if such person or entity (a) is not a party to the action, (b) is not related to a party to the action, (c) does not have an interest in the action, (d) is not a public official employed by the county where service is made whose duties include service of process, and (e) **furnishes a good and sufficient corporate surety bond in the sum of fifteen thousand dollars, such bond being conditioned upon such person or entity faithfully and truly performing the duties of process server.**

STATE	PROVISION	REQUIREMENT
Nevada	Nev. Rev. Stat. § 648.135	[Insurance requirement] CHAPTER 648. Private Investigators, Private Patrolmen, Polygraphic Examiners, Process Servers, Repossessors and Dog Handlers. Licenses **648.135. Licensee to maintain insurance or act as self-insurer; minimum limits of liability; proof.** **1.** Before issuing any license or annual renewal thereof, the board shall require satisfactory proof that the applicant or licensee: **(a)** Is covered by a policy of insurance for protection against liability to third persons, with limits of liability in amounts not less than $200,000, written by an insurance company authorized to do business in this state; or **(b)** Possesses and will continue to possess sufficient means to act as a self-insurer against that liability. **2.** Every licensee shall maintain the policy of insurance or self-insurance required by this section. The license of every such licensee is automatically suspended 10 days after receipt by the licensee of notice from the board that the required insurance is not in effect, unless satisfactory proof of insurance is provided to the board within that period. **3.** Proof of insurance or self-insurance must be in such a form as the board may require.
Oklahoma	12 Okla. Stat. tit.12, § 158.1(E)	**12 Okla. Stat. tit.12, § 158.1(E)** If, at the time of consideration of the application or renewal, there are no protests and the applicant appears qualified, the application for the license shall be granted by the presiding judge or such associate district judge or district judge as is designated by the presiding judge and, upon executing bond running to the State of Oklahoma in the amount of Five Thousand Dollars ($ 5,000.00) for faithful performance of his or her duties and filing the bond with the court clerk, the applicant shall be authorized and licensed to serve civil process statewide.

PROCESS SERVER FEE PROVISIONS – BY STATE

STATE	PROVISION	REQUIREMENT
Alabama	Alabama Code § 12-19-73	The following defendant service fees shall be collected in civil cases in circuit court and district court: For each defendant in excess of one, where personal service is required, there shall be collected a service fee of $10.00; provided, however, where service on any defendant is by publication or by registered mail, the actual cost of such service shall be collected as the service fee.
Alaska	13 Alaska Admin. Code 67.220 Fees; fee agreements	**13 AAC 67.220. FEES; FEE AGREEMENTS.** (a) A fee charged by a process server must be reasonable. The department will, in its discretion, review the fees charged by a process server and will determine if those fees are reasonable by considering (1) the maximum amount that can be recovered by a party as costs under Supreme Court Rule of Administration (11)(a) for the designated service; (2) the time and labor required; (3) the time limitations imposed by the person requesting service; and (4) any special circumstances presented by the person who requested service. (b) A process server shall establish a fee schedule for the information of the general public. The fee schedule must clearly state if the fee to be charged will exceed the maximum amount recoverable by a party as costs under Supreme Court Rule of Administration (11)(a) for the designated service. (c) A process server who has not previously served process for the person requesting service shall communicate the fees to be charged in writing to the

STATE	PROVISION	REQUIREMENT
Connecticut	Conn. Gen. Stat. § 52-261	**As a general rule, only state marshals serve civil service of process.** Conn. Gen. Stat. § 52-261. Fees and expenses of officers and persons serving process or performing other duties. (a) Except as provided in subsection (b) of this section and section 52-261a, each officer or person who serves process, summons or attachments shall receive a fee of not more than thirty dollars for each process served and an additional fee of thirty dollars for the second and each subsequent service of such process, except that such officer or person shall receive an additional fee of ten dollars for each subsequent service of such process at the same address or for notification of the office of the Attorney General in dissolution and postjudgment proceedings if a party or child is receiving public assistance. Each such officer or person shall also receive the fee set by the Department of Administrative Services for state employees for each mile of travel, to be computed from the place where such officer or person received the process to the place of service, and thence in the case of civil process to the place of return. . . . Conn. Gen. Stat. § 6-38b(f) – State Marshal Commission The commission, in consultation with the State Marshals Advisory Board, shall adopt regulations in accordance with the provisions of chapter 54 to establish professional standards, including training requirements and minimum fees for execution and service of process. Conn. State Agencies § 6-38b-10. Minimum fees for service of process and execution Except as otherwise provided in the Connecticut General Statutes: (1) Each state marshal who serves process, summons or attachments shall receive a fee of not less than five dollars ($ 5.00) for each process served. (2) Each state marshal who serves an execution on a summary process judgment shall receive a fee of not less than twelve dollars and fifty cents ($ 12.50). (3) Each state marshal who removes a defendant under section 47a-42 of the Connecticut General Statutes, or other occupant bound by a summary process judgment, and the possessions and personal effects of such defendant or other occupant, shall receive a fee of not less than eighteen dollars and seventy-five cents ($ 18.75).
Maryland	Md. Code Ann., Ct. & Jud. Proc. §§ 7-402, 7-404	§ 7-404. Service of process by private process server If the service of process by a private process server is accomplished, a judge of the District Court or a circuit court may impose costs for the service of process in an amount not to exceed the fees authorized for the service of process by a sheriff under § 7-402 of this subtitle [$40].

STATE	PROVISION	REQUIREMENT
Massachusetts	Mass. Ann. Laws ch. 262, § 8	**§ 8. Fees of Sheriffs and Constables.** The fees of sheriffs, deputy sheriffs and constables shall be as follows: (a) for the service of civil process: (1) for service of an original summons, trustee process, subpoena or scire facias, either by reading it or by leaving a copy thereof, $20 for each defendant upon whom service is made, except as otherwise provided herein; (2) for service of an original summons and complaint for divorce or for any other service required to be served in hand, $30 for each defendant upon whom service is made;
Nebraska	Neb. Rev. Stat. Ann. § 25-507(4)	**§ 25-507. Process server; requirements; bond; cost** (4) The cost of service of process is taxable as a court cost, and when service of process is made by such person or entity other than a sheriff the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or orders or the statutory fee set for sheriffs in section 33-117 [typically $10].
New Jersey	N.J. Court Rules, R. 4:42-8 – Costs N.J. Stat. § 22A:4-8 – Fees And Mileage Of Sheriffs And Other Officers	**N.J. Court Rules, R. 4:42-8 – Costs** (b) Proof of Costs. A party entitled to taxed costs shall file with the clerk of the court an affidavit stating that the disbursements taxable by law and therein set forth have been necessarily incurred and are reasonable in amount, and if incurred for the attendance of witnesses, shall state the number of days of actual attendance and the distance traveled, if mileage is charged. Such costs may include fees paid to a private person serving process pursuant to R. 4:4-3, but not in an amount exceeding allowable sheriff's fees for that service. **N.J. Stat. § 22A:4-8 – Fees And Mileage Of Sheriffs And Other Officers** For the services hereinafter enumerated sheriffs and other officers shall receive the following fees: In addition to the mileage allowed by law, for serving every summons and complaint, attachment or any mesne process issuing out of the Superior Court, the sheriff or other officer serving such process shall, for the first defendant or party on whom such process is served, be allowed $ 22.00 and, for service on the second defendant named therein, $ 20.00, and for serving such process on any other defendant or defendants named therein, $ 16.00 each, and no more.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☒ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: HARLIN PARKER
Address: 20 Vesey St. NYNY
I represent: Target Research
Address: 20 Vesey St. NYNY

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☐ in favor ☒ in opposition

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(PLEASE PRINT)

Name: John Perez Esq
Address: 56 Park Place Newark NJ
I represent: Self
Address: ______

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Date: 3/2/10

(PLEASE PRINT)

Name: Johnson Tyler
Address: SBLS 105 Court St
I represent: South Brooklyn Legal Services
Address: ______

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☐ in favor ☒ in opposition

Date: 3/2/2010

(PLEASE PRINT)

Name: Eric Berman

Address: 500 W. Main St., Suite 212, Babylon, NY 11702

I represent: President Commercial Lawyers Conf. of NY

Address: Same

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Name: Claudia Wilner

Address: 176 Grand St. Ste 300 NY NY 10013

I represent: NEDAP

Address:

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☒ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Mark Ceisenberg

Address: 2417 Jericho Tpke #139 G.C. Park, NY

I represent: Myself

Address:

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☒ in favor ☐ in opposition

Date:

(PLEASE PRINT)

Name: JONATHAN MUNIZ
Address: 42 BROADWAY
I represent: NYC DCA
Address: 42 BROADWAY

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Name: DAVID ROBINSON / ELIZABETH DA VICTORIA LOBO
Address: 350 BROADWAY, 6TH FLOOR
I represent: LEGAL SERVICES NYC
Address: 350 BROADWAY

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☐ in favor ☒ in opposition

Date:

(PLEASE PRINT)

Name: Sara Mischner, Urban Justice Center
Address: 123 Williams St, 16th Fl 10038
I represent: Harvey Epstein, Urban Justice Center
Address: 123 Williams St., 16th Fl 10038

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☒ in favor ☒ in opposition

Date:

(PLEASE PRINT)

Name: CHAD MARLOW
Address: NEW YORK, NY
I represent: N.Y. STATE PROF. PROCESS SERVERS ASSN
Address: & NAT'L ASSN OF PROF. PROCESS SERVERS

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Appearance Card

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☐ in favor ☐ in opposition
?
Date: 3/2/10

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Name: LAZARUS, BRUCE
Address: 139 FULTON ST.
I represent: MYSELF
Address:

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☒ in favor ☐ in opposition

Date: 3/2/10

(PLEASE PRINT)

Name: ROBERT MARTIN
Address: PG 37, 125 Barclay Street
I represent:
Address:

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☑ in favor ☐ in opposition

Date: 3/2/2016

(PLEASE PRINT)

Name: Anamaria Segura
Address: 343 15th St. Apt 4B Brooklyn NY 11215
I represent: City Bar Association of City of NY
Address: 42 West 44th St. NY NY 10036

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Appearance Card

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☑ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Carolyn E. Coffey / MFY Legal Services
Address: 299 Broadway, 4th Fl, NY, NY 10007
I represent: ______
Address: ______

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Appearance Card

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☑ in favor ☐ in opposition

Date: 03/02/16

(PLEASE PRINT)

Name: TASHI LHEWA
Address: 12-46 QUEENS BLVD - KEW GARDENS 11415
I represent: LEGAL AID SOCIETY
Address: ______

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