



March 8, 2010

Attached, please find a proposed substitute bill for the current Intro. 6-A-2010, which is being offered by the New York State Professional Process Servers Association and the National Association of Professional Process Servers. We believe this bill will more effectively deter sewer service and aggressively punish those who intentionally break the law, will steer clear of potential jurisdictional problems without compromising its efficacy, and will better account for certain economic and technological limitations the current version overlooks. As such, we feel this is a better bill from the perspective of all of the stakeholders in this process.

The comments below provide a brief explanation of the revisions the proposed bill makes to the current one.

- **CHANGE:** In §2 of the bill (§20-403 of the Administrative Code of the City of New York), the definition of a process serving agency is amended to limit the scope of its applicability from a national level to one that applies only to process serving agencies with an office in New York City or who send their employees to serve process in New York City.
 - **PURPOSE:** To remedy an unlawfully broad application of the regulations to businesses that lack minimum contacts with New York City.
- **CHANGE:** In §4 (§20-406.1), the amount of the bond required for individual process servers is reduced from \$10,000 to \$2,500 and for process serving agencies from \$100,000 to \$20,000 (this is more in line with other city bonding requirements). It also adds a clause that errors and omissions (malpractice) insurance may be used in lieu of the bond, which is permitted for several other bonded industries.
 - **PURPOSE:** Reduces the bond amount so it is more in line with the city's other existing bond requirements. Allows E&O insurance to be used in lieu of a bond (a common allowance when bonds are required), which is important because the required bonds are unlikely to be available (because improper service is a professional malpractice issue).
- **CHANGE:** In §4 (§20-406.2), process serving agencies are held responsible for their employees' failure to abide by the laws governing service of process, but are no longer liable for the actions of independent contractors they hire (ends vicarious liability).

- PURPOSE: Eliminates a significant, highly irregular extension of liability that would hold agencies responsible for the actions of independent contractors, over whom exercise very limited control.
- CHANGE: In §6 (§20-409.1), (A) the penalties provided now only apply to intentional or knowing misconduct (ends strict liability), (B) the minimum fine per violation is increased from \$700 to \$1,000 and the maximum fine is increased from \$1,000 to \$5,000, (C) all monetary penalties collected under the subchapter will now be placed in a fund used to aid victims/potential-victims of sewer service, (D) any person who engages in, or orders others to engage in sewer service shall be subject to between six and twelve months imprisonment for each offense (for multiple offenses, the terms may be served concurrently or consecutively, at the court's discretion), and (E) persons or agencies that engage in sewer service will immediately and permanently lose their licenses.
 - PURPOSE: Significantly increases penalties for intentionally violating service laws, which will make the law far more effective as a deterrent to bad behavior. Eliminates penalties for unintentional mistakes. Creates victims' fund.
- CHANGE: In §6 (§20-409.2), the bill's private right of action is changed to cover only intentional/knowing violations of process service laws (ends strict liability).
 - PURPOSE: Eliminates liability for innocent mistakes.
- CHANGE: In §6 (§20-409.3), the report from DCA to the council required 24 months after the bill is enacted will now included a detailed report on the feasibility of using GPS to track the service of process. This eliminates §7, which would have required the use of GPS tracking now (which cannot be reliably done).
 - PURPOSE: Eliminates GPS requirement until DCA can demonstrate that reliable, field-tested technology exists that cannot be easily manipulated. The *only* technology DCA cited in its testimony as proof that GPS tracking can work now (the TeleNav program used by the Department of Buildings) does not record data (it only tracks live locations) and has not be created to prevent manipulation, so it cannot be used to meet the requirements of Intro. 6-A-2010.

Proposed Substitute Bill For Intro. 6-A-2010

A Local Law

To amend the administrative code of the city of New York, in relation to process servers.

Be it enacted by the Council as follows:

Section 1. Section 20-403 of the administrative code of the city of New York is amended to read as follows:

a. Process server license. It shall be unlawful for any person to do business as, be employed as or perform the services of a process server without a license therefor.

b. Process serving agency license. It shall be unlawful for any process serving agency to assign or distribute process to individual process servers for actual service in the city of New York without a license therefore.

§2. Section 20-404 of the administrative code of the city of New York is amended to read as follows:

a. A process server is a person engaged in the business of serving or one who purports to serve or one who serves personally or by substituted service upon any person, corporation, governmental or political subdivision or agency, a summons, subpoena, notice, citation or other process, directing an appearance or response to a legal action, legal proceeding or administrative proceedings.

b. A process serving agency is any person, firm, partnership, association or corporation, other than an attorney or law firm located in this state or deputized city marshal, that either (i) maintains an office, bureau or agency in the City of New York for the purpose of serving process, or (ii) maintains an office, bureau or agency outside the City of New York but sends one or more of its employees into the City of New York for

the purpose of serving process more than five (5) times in a single calendar year.

[b.] c. For the purposes of this subchapter the service of five or more process in any one year shall be deemed to constitute doing business as a process server.

§3. Section 20-406 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

c. Each such applicant for a process server license or renewal thereof shall be required to pass an examination satisfactorily. Such examination shall be under the supervision of the commissioner and shall test the knowledge of the applicant concerning proper service of process within the city of New York and familiarity with relevant laws and rules.

§4. Subchapter 23 of chapter 2 of title 20 of the administrative code of the city of New York is amended by adding new sections, 20-406.1, 20-406.2, 20-406.3 and 20-406.4 to read as follows:

20-406.1 Bond required. a. As a condition of the issuance of a process server license, each applicant for such license or a renewal thereof shall furnish to the commissioner a surety bond executed by the applicant in the sum of two thousand five hundred dollars, payable to the city of New York, and a surety approved by the commissioner. Such bond shall be conditioned upon the applicant's compliance with the provisions of this subchapter and any rules promulgated thereunder, and upon the further condition that the applicant will pay (i) to the city any fine, penalty or other obligation the city imposes relating to a violation of this subchapter and any rules promulgated thereunder, and (ii) to a plaintiff any final judgment recovered in an action arising out of the violation of any of the provisions of this subchapter within thirty days of its

imposition. The commissioner may by rule authorize an individual applicant, in lieu of furnishing a bond, to satisfy the requirements of this section by depositing cash in an amount equal to the amount of the surety bond required by this section.

b. A process server licensed under this subchapter who engages in the business of serving process exclusively as an employee of a process serving agency licensed under this subchapter shall not be required to furnish a surety bond pursuant to subdivision (a) of this section.

c. As a condition of the issuance of a process serving agency license, each applicant for such license or a renewal thereof shall furnish to the commissioner a surety bond in the sum of twenty thousand dollars executed by the applicant payable to the city of New York, and a surety approved by the commissioner. Such bond shall be conditioned upon the applicant's compliance with the provisions of this subchapter and any rules promulgated thereunder, and upon the further condition that the applicant will pay (i) to the city any fine, penalty or other obligation the city imposes relating to a violation of this subchapter and any rules promulgated thereunder, and (ii) to a plaintiff any final judgment recovered in an action arising out of the violation of any of the provisions of this subchapter within thirty days of its imposition. The commissioner may by rule authorize an applicant, in lieu of furnishing a bond, to satisfy the requirements of this section by depositing cash in an amount equal to the amount of the surety bond required by this section.

d. In lieu of providing the required surety bond, a process server or process serving agency may furnish to the commissioner proof it maintains a policy of errors and omissions (malpractice) insurance, the coverage from which is equal to or greater than

the amount of the applicable surety bond requirement.

§20-406.2 Responsibilities of process serving agencies. Every process serving agency licensed under this subchapter shall:

a. Comply with all applicable state and federal laws;

b. be legally responsible for any failure to act in accordance with the laws and rules governing service of process by each process server it employs;

c. Provide to each process server employed by such agency a written statement indicating the rights of such employee and the obligations of the process serving agency under city, state and federal law. Such statement of rights and obligations shall include, but not be limited to, a general description of employee rights and employer obligations pursuant to laws regarding minimum wage, overtime and hours of work, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation;

d. Keep on file in its principal place of business for a period of three (3) years a statement for each employee, signed by such employee, indicating that the employee read and understood the statement of rights and obligations such employee received pursuant to subdivision (c) of this section.

§20-406.3 Records, Audits. a. Every process server and process serving agency licensed under this subchapter shall retain records in compliance with section 89-cc of the New York state general business law for no less than seven (7) years of each process served. Such records shall be retained in electronic form. Tampering with any such electronic records shall be prohibited.

b. A process server licensed under this subchapter who engages in the business of

servicing process exclusively as an employee of a process serving agency licensed under this subchapter shall not be subject to the provisions of subdivision (a) of this section, but shall be required to comply with all other applicable laws.

c. The commissioner may conduct audits of the information required to be kept pursuant to subdivision (a) of this section in order to monitor compliance with this subchapter.

§20-406.4 Educational materials. The commissioner shall develop educational materials to be provided to all process servers and process serving agencies licensed under this subchapter. Such materials shall at a minimum identify the laws and regulations pertaining to service of process in the city of New York.

§5. Section 20-409 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

c. Upon application for renewal of a license issued pursuant to this subchapter, applicants subject to subdivision (a) of section 20-406.3 of this subchapter shall certify in writing compliance with the record keeping provisions of such section.

§6. Subchapter 23 of chapter 2 of title 20 of the administrative code of the city of New York is amended by adding new sections 20-409.1 and 20-409.2 to read as follows:

§20-409.1 Violations and penalties. (i) Any person who, after notice and hearing shall be found guilty of intentionally or knowingly violating any provision of this subchapter, shall be punished in accordance with the provisions of chapter one of this title and shall be subject to a penalty of not less than one thousand dollars nor more than five thousand dollars for each violation. Any monetary penalties collected under this subchapter shall be transferred to a fund, to be controlled by and used in accordance with

the discretion of the Commissioner, to aid victims and potential victims of intentional improper service. (ii) Any person who, after notice and hearing shall be found guilty of intentionally or knowingly submitting false information regarding the service of process, or intentionally or knowingly requested or required another person to submit false information regarding the service of process to the commissioner or any court of competent jurisdiction in the City of New York shall be subject to a term of imprisonment of not less than six (6) months and not more than twelve (12) months for each offense. Sentences for multiple offenses may be served consecutively or concurrently, at the discretion of the court. (iii) Any person who, after notice and hearing shall be found guilty of intentionally or knowingly submitting false information regarding the service of process, or intentionally or knowingly requested or required another person to submit false information regarding the service of process to the commissioner or any court of competent jurisdiction in the City of New York shall have his or her process server license immediately and permanently revoked. If that person is an owner or manager of a process serving agency, that process serving agency's license shall be immediately and permanently revoked.

§20-409.2 Civil Cause of Action. Any person injured by a process server who intentionally or knowingly fails to act in accordance with the laws and rules governing service of process in New York state, including this subchapter and regulations promulgated thereunder, shall have a cause of action against such process server and any process serving agency by which the process server was employed, in any court of competent jurisdiction for any or all of the following relief:

- a. compensatory and punitive damages;

- b. injunctive and declaratory relief;
- c. attorneys' fees and costs; and
- d. such other relief as a court may deem appropriate.

§20-409.3 Reporting. (i) Twenty-four months after the local law that added this section becomes effective, the commissioner shall submit a report to the speaker of the council regarding the effectiveness of these provisions on effectuating proper service and improving oversight over the process service industry. Such report shall include, among other things, the results of audits the commissioner has completed of process servers and process serving agencies, including information regarding their compliance with the provisions of this subchapter. (ii) At the time of such report, the Commissioner shall submit a comprehensive report to the speaker of the council regarding the feasibility of using an electronic device that uses a global positioning system, wi-fi device or other such technology to electronically establish and record the time, date, and location of service or attempted service. Such report shall include, with respect to the specific hardware and software recommended for such purpose by the Commissioner, if any, field-tested information regarding the functionality of the hardware/software as well as the accuracy, reliability and security from manipulation of the data captured by the hardware/software.

§7. This local law shall take effect one hundred eighty days after enactment provided, however that the commissioner of consumer affairs shall take all actions necessary for its implementation, including the promulgation of rules, prior to such effective date.