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June 13th , 2011

Erik Joerss
Director of City Legislative Affairs
Department of Consumer Affairs
42 Broadway,
8th floor
New York, N.Y. 10004

RE: Proposed Amendments to Rule Regarding the Licensing of Process Servers

Director Erik Joerss;

On behalf of the members of N.Y.S.P.P.S.A., we would like to commend the department for acknowledging the problematic flaws inherent in the current Regulations and proposing amended Regulations directed at correcting these problems. We believe that the proposed amendments, if adopted, will rectify many of the issues with the current rules and will make it easier for process servers and agencies to comply and accurately meet their reporting requirements.

Unfortunately, the proposed new Regulations only address some of the problems with the current structure. As detailed below, the Regulations continue to unfairly punish process servers by forcing them, if they wish to remain economically viable, to stay open seven days a week, and makes no accommodation for religious observance. They also unjustly penalize those process servers of the least economic means, by forcing those who are unable to qualify for bonds to contribute $1340 every two years to the departments fund, without ever having their money returned, even if no violation has occurred. Finally, the Regulations, without foundation, expand the definition of a process serving agency from its statutory definition. This unwarranted change will cause many process serving agencies to forgo New York City, diminishing choice for the consumer. We urge, as you finalize the Regulations, to add additional modifications to address these issues.

In addition, as also explained more fully below, the newly proposed GPS regulations have a number of problems which we believe should be addressed before any final Regulations are promulgated.

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Amendments to the Current Regulations

Conversion of records within 24 hours

Section 2-233a & c (1)(b)-(e) of the current Regulations requires process servers and process serving agencies to convert their service records into an electronic format within 24-hours of service. These regulation fail to make any accommodation for individuals' First Amendment rights to practice their religion, including the Saturday Sabbath for practicing Jews and Sunday Mass for Christians. Indeed, insofar as service records must be converted into an electronic format within 24-hours without exception, the current Regulations will often present an unacceptable dilemma for process servers and their employees, who must choose between their religion and compliance with the law.

Moreover, the 24-hour conversion requirement works an unmanageable burden on process servers and process serving agencies alike. Process servers and process serving agencies do a significant amount of service work on Fridays and Saturdays, but usually close on Sundays. If the 24-hour requirement is imposed, agencies will be required to stay open 7 days a week, at great expense, in order to convert these weekend records. Alternatively, agencies can elect to forego serving process at such times, which are generally the most promising for effective service. In either event, the result will be a significant loss in revenue for process servers and process serving agencies. In an industry where profit margins are often low, this requirement will be the death knell for many smaller agencies.

Additionally, process serving agencies are reliant on the process serving agents to return the information to meet this requirement. Often it is impractical, if not impossible to get this information. Accordingly, for all these reasons, we would ask that you amend the Regulations to, at a minimum, provide for five business days for the conversion of these records.

Individual Process Servers Must Deposit $1,000 into the DCA Fund Every Two Years

Section 2-232c requires individual process servers electing to pay into the fund to deposit $1,000 every two years when they renew their license. In the original Regulations your office indicated the purpose of this requirement is to "ensure that the Trust Fund remains financially solvent to pay prospective obligations." The end result, however, is that in order for a process server, who was unable to obtain a bond, to stay in the business, he has to pay the unaffordable and incredibly arduous $1,340 every two years (the $1,000 deposit and the $340 license fee). Over the life of being a process server, this cost could amount to tens of thousands of dollars, even if he is never found guilty of sewer service. Faced with these requirements, undoubtedly many process servers with upstanding records will simply leave the business.

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Moreover, the biennial deposit requirement will have the effect of penalizing process servers who have been in the industry for longer periods of time. A process server who has been in the industry for one year will have only deposited $1,000 into DCA's fund, while a process server who has been in the industry for twenty years will have deposited $10,000. When this is combined with your interpretation that the money is not returned when a process server retires or chooses not to renew their license, it becomes even more unfair.

Finally, by commingling these funds and not returning them, DCA is forcing a process server with no violations to pay for other process server's misdeeds in the event the Commissioner invades the fund, which is something those holding bonds do not have to do. For all of these reasons, we ask that you amend the Regulations to require a single deposit of $1,000 that can be rolled over when the license is renewed, and that the funds be returned upon retirement

The Definition of A Process Serving Agency

As you are aware, the Administrative Code defines a process serving agency as a "person, firm, partnership, association or corporation, other than an attorney or law firm located in this state, or city marshal, who maintains an office, bureau or agency, *the purpose of which is to assign or distribute process to individual process servers for actual service in the city of New York.*" *See* N.Y.C. Code § 20-404(b) (emphasis added). In promulgating this definition, the City Council recognized that there are certain process serving agencies which have the specific purpose of effectuating service in New York City, and those for whom service within the City is only peripheral to the majority of their business. Only agencies falling under the former category are subject to the Administrative Code provisions governing service of process. However, the Regulations fail to recognize this distinction. Instead, your office has chosen to modify the City Council's definition of a process serving agency from an entity that has "*the* purpose" of effecting service within the City, to an entity "*one* purpose" of which is to effect service in the City. *See* § 2-231 (emphasis added). This unauthorized change will subject agencies that only occasionally effect service within the City to all of the requirements contained in the Regulations.

Clearly, agencies that only perform City service as a tangential part of their business will not be willing or able to justify the time and expense of requirements such as obtaining a $100,000 bond or converting paper records into an electronic format. As such, the end result of the application of the Regulations to these agencies will be that they will discontinue service within the City, often impairing the ability of litigants and attorneys to use a service agency of their choice. We urge that in promulgating your final regulations, you reverse this change and adopt the City Counsel's statutory definition of a process serving agency.

Finally, we request that during this intervening period between the current and amended rules that the department suspend the current rules until the new amendments are finalized.

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Meeting the requirements of the current rules, is in many cases impossible, but in other ways is costly and time consuming. This appears to have been recognized by the proposed changes.

The New GPS Requirements

Failure of the GPS to record service

Unfortunately, our experience from process servers who currently employ GPS technology indicates that there are times when, through no fault of the process server the technology does not

work. The process server has no means of knowing that the GPS coordinates were not captured until they reviewed those records at a later date. According to the current rules this would invalidate the service. We urge to be fair to the process server and agencies, the department must put in procedures for the process server to follow, in case the technology, at no fault of the process server, fails to record the coordinates, so that there work is not lost.

Rules For Maintaining Data Integrity

Under the draft Regulations, the process server must maintain data integrity so that it is "adequate for admissibility in a judicial proceeding under the rules of evidence." This broad definition without more direction is beyond the reasonable scope of a process server and or agency owner or even a software developer. We urge that more specific Regulations be outlined to inform the process serving community what is an acceptable procedure and what specifically will be deemed as admissible for a judicial proceeding.

Identifying information

Under the draft Regulations in keeping records, plaintiff or petitioner, must be specified by the last name of the first plaintiff, or, if not a natural person, the name of the entity while the defendant or respondent, must be specified by the last name of the first defendant, or, if not a natural person, the name of the entity. Automatically extracting a single name from a case caption is a difficult and possibly impossible task to do automatically and may have to be done manually, which depending on the amount of records being requested may be quite time consuming and costly. Such a requirement could cause the cost of the required third party contractors to be high for the licensee. We urge that the records be allowed to be kept as it is stated in the case caption on the affidavit of service, which would make the process more easily achievable.

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The draft Regulations also require that all address information must be CASS (Coding Accuracy Support System) processed to insure its accuracy. Although we do not oppose this requirement, we urge DCA to provide more specific requirements so licensee will have a better understanding in search of a third party contractor.

As we have been throughout the process, we are available to discuss any issue in more depth and would like to be a constructive force in ensuring that the Regulations achieve the city's objectives, while also being workable for those who must comply with them.

Sincerely,

Larry Yellon
President

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