

## NOTICE OF ADOPTION

Notice of Adoption of Rules and Amendments to Rules regarding the licensing of Process Servers.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-104(b) of Chapter 1, Title 20 of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Department promulgates and adopts rules and amendments to existing rules regarding the licensing of process servers.

These rules and amendments were proposed and published on November 10, 2010. The required public hearing was held on December 10, 2010.

Material being deleted is shown below in brackets and material being be added is underlined.

### RULE

Section 1. Section 2-231 of subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

#### § 2-231 Definitions.

For the purposes of the application of Subchapter 23 of Chapter 2 of Title 20 of the Administrative Code, (unless the context indicates otherwise), the following definitions apply. **Bound volume.** “Bound volume” means a book or ledger that at the time of purchase contains a specified number of unfolded sheets of paper or other material that are permanently secured to covers by stitching, glue or any other such method that is calculated to make readily discernable the removal or insertion of one or more sheets after the first use of such volume.

**Chronological.** “Chronological” with respect to the notation in a process server record or log means that each notation shall be entered sequentially according to the time and date of the activity recorded and without leaving any blank spaces between each entry that would allow for the insertion of any additional notation between any two entries.

**Contemporaneous.** “Contemporaneous” in relation to entries in records means at or near the time of the event as to which an entry is recorded, or within a reasonable time thereafter.

**Engaged in the business of serving.** "Engaged in the business of serving" means the following: (1) Service of five or more processes within the City of New York in any one calendar year; or (2) One who assigns, distributes or delivers processes to another for actual service.

**Image file.** “Image file” in relation to scans of the records kept by process servers or process serving agencies means a file that contains graphic data such that the file is an exact replica of a specific set of data, and is saved as a portable data file (“pdf”).

**Legible.** “Legible” with respect to the handwriting in the record kept by process servers and in the scanned or copied images of such record means easily read and discernable in all of its details, and in no way obscured.

**Paginated.** “Paginated” means that each page in a volume or log, at the time of purchase, is sequentially numbered starting with the number “1” or contains an indelible label stating the number of pages the volume originally contained.

**Person.** "Person" shall mean any individual, firm, company, partnership, corporation, association or other organization.

**Portable media device.** “Portable media device” as it pertains to electronic record-keeping means an electronic data storage device used to record and store data, such as a flash memory device, CD-ROM or external hard drive.

**Process.** "Process" shall mean a summons, notice of petition, order to show cause, subpoena, notice, citation or other legal paper issued under the laws of the State of New York directing an appearance or response to a legal action, legal proceeding or administrative proceeding; provided, however, that if under the laws of the State of New York the mailing of such legal paper is sufficient to effect service, such legal paper shall not be process for the purpose of this subchapter.

**Process Server.** "Process Server" shall mean a person engaged in the business of serving process upon any person, corporation, governmental or political subdivision or agency.

**Process Serving Agency.** “Process serving agency” shall mean any person, firm, partnership, association or corporation, other than an attorney or a law firm located in this state, or city marshal, who maintains an office, bureau or agency, one purpose of which is to assign or distribute process to individual process servers for actual service in the City of New York.

**Scanning.** “Scanning” in relation to electronic record-keeping means the process of translating a document into a digital form that can be recognized by a computer. A “scan” with respect to electronic record-keeping is the image file that is created by scanning.

Section 2. Subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding new sections 2-232a, 2-232b, 2-232c and 2-232d to read as follows:

**§ 2-232a Surety Bond Requirements for Process Server and Process Serving Agencies**

**(a)** The surety bond required under Section 20-406.1 of the Administrative Code shall be paid in full and must be effective for the entire term of the license.

**(b)** If a process server or process serving agency’s surety bond lapses for any reason, the license issued pursuant to Section 20–403 of the Administrative Code shall become void for such process server or process serving agency.

**§ 2-232b Employee Exemption from Bond**

**(a)** Any process server seeking exemption from the bond requirement pursuant to Section 20-406.1(a) of the Administrative Code because he or she serves process exclusively as an employee of a licensed process serving agency shall furnish to the Department upon application or renewal, a certification from the licensed process serving agency for which he or she works in a form approved by the Commissioner that affirms that

**(1)** the process server serves process exclusively as an employee of the process serving agency;  
**(2)** the bond that the licensed process server agency has furnished to the commissioner is conditioned upon the process server’s compliance with the laws and rules governing the

activities of a process server and upon the further conditions set forth in Section 20-406.1(a) of the Administrative Code; and

(3) the process serving agency acknowledges that it must notify the Department in writing within five (5) days of the date that the process server ceases to serve process exclusively as an employee of the process serving agency.

(b) The process server or the process serving agency shall provide additional documentation that the Department may seek regarding the process server's employee status.

**§2-232c Process Server Trust Fund.** *(a) Establishment.* There is hereby established a Process Server Trust Fund (hereinafter, "the Fund") to provide for the payment of outstanding awards to aggrieved consumers and fines owed to the City. The Fund shall be administered by the Comptroller of the City of New York pursuant to §93 (h) of the New York City Charter.

*(b) Participation in the Fund.* (1) To qualify for participation in the Fund, an applicant for a process server license or renewal therefore shall submit with such server's application a copy of its completed application to two sureties approved by the Commissioner for the bond required by §20-406.1 of the Administrative Code of the City of New York and the original copies of the rejection or denial of such application by such sureties. Pursuant to such section, process serving agencies shall not be eligible to participate in the Fund.

(2) Any process server who qualifies for participation in the fund may participate by submitting with the application for a process server license or renewal thereof a certified check or money order in the amount \$1,000, made payable to the New York City Consumer Affairs Department for depositing the amount in such Fund.

(3) A bonded licensee may participate in the Fund in lieu of continued compliance with the bond requirement of §20-406.1 (a) of such Code by submitting proof that consists of an original copy from the process server's current surety denying renewal and the completed applications and original denials from two additional sureties approved by the Commissioner, and upon submitting to the Department a certified check or money order in the amount of \$1,000 made payable to the New York City Department of Consumer Affairs, prior to the expiration or cancellation of the licensee's bond.

(4) The required deposit to be made by applicants to participate in the Fund shall not be refundable upon the issuance of a process server license. If the Department denies issuance of a license or renewal thereof, the deposit made by the applicant shall be refunded within thirty days after the application for a license or renewal thereof is denied.

(5) Participation in the Fund does not relieve a licensee of any obligation to pay awards or fines imposed by the Department or judgments or arbitration awards rendered against the licensee by a court of competent jurisdiction. In the event that a process server's license is revoked, surrendered or the process server fails to renew its license, and the Fund is invaded to pay an award, fine or judgment that was rendered against such process server pursuant to the provisions of the Code or these rules, no license shall be issued or reinstated to such process server unless

the amount(s) paid out of the Fund on behalf of such process server is reimbursed by such process server in full.

(c) *Invasion of the Fund.* (1) If the Department has revoked a process server's license or the licensee has surrendered or failed to renew the license, the Commissioner may require that disbursements be made from the Fund to pay to the City any fine, penalty or other obligation the City imposes relating to the violation of subchapter 23 of Chapter 2, Title 20 of the Administrative Code of the City of New York and any rules promulgated thereunder or to pay a final outstanding judgment recovered in an action arising out of the violation of the provisions of such subchapter.

(2) No disbursement shall be made from the Fund to pay an award, fine or judgment that is rendered against a licensee who has furnished a bond pursuant to the requirements of §20-406.1 (a) of the Administrative Code of the City of New York or against a process server who was not licensed by the Department or a participant in the Fund at the time of the violation.

(3) Disbursement from the Fund shall be made at the discretion of the Commissioner or his or her designee, provided, however, that invasion of the fund shall be limited to no more than \$10,000 for all awards, fines or judgments arising out of a single service of process.

(4) The Commissioner or his or her designee may order that partial payment of awards, fines or judgments be made from the Fund.

(5) Nothing contained herein shall be construed to limit the rights and remedies of any party, including the Department, to pursue a cause of action against a process server who is a participant in the Fund.

(6) Nothing contained herein shall be construed to provide for the payment of awards or judgments rendered against Fund participants in personal injury actions.

(d) *Accounting.* The Commissioner shall, by January 31 of each year, cause an accounting to be made of all of the Fund's activities during the preceding calendar year.

**§ 2-232d Testing.**

Every person who applies for a process server license or renewal thereof shall be required to pass an examination prior to being issued a license or renewal. Such examination shall test the applicant or licensee's knowledge regarding proper service of process within the city of New York and familiarity with relevant laws and rules. The fee for this examination will be \$75 and is not refundable. An applicant who fails the exam on the first attempt may take the examination a second time without an additional fee. After the second successive failure, the applicant's application or renewal will be denied and he or she must reapply for a process server license.

Section 3. Section 2-233 of subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 2-233 Records.**

(a) *Duty of individual licensee to keep records.* Each process server shall keep records in compliance with the provisions of [§ 89-cc] 89-cc of the General Business Law, as follows:

(1) Each process server shall maintain a legible record of all service made by him as prescribed in this section.

(2) The record to be maintained shall include the following information, where applicable:

(i) the title of the action or a reasonable abbreviation thereof;

(ii) the name of the person served, if known;

(iii) the date and approximate time service was effected;

(iv) the address where service was effected;

(v) the nature of the papers served;

(vi) the court in which the action has been commenced;

(vii) the index number of the action, if known.

(3) If service is effected pursuant to subdivisions one, two, or three of section three hundred eight of the civil practice law and rules, the record shall also include the description of the person served, including, but not limited to, sex, color of skin, hair color, approximate age, height and weight and other identifying features.

(4) If service is effected pursuant to subdivision four of section three hundred eight of the civil practice law and rules, the record shall also include the dates, addresses and time of attempted service pursuant to subdivisions one, two or three of such section. All attempts must be entered in a separate, chronological entry.

(5) If [the process server files] an affidavit of service is filed with the court, [his] the record shall include the date of such filing.

(6) Process servers shall retain each record required to be kept under this § 2-233(a) for a period of [two] seven years from the date of service. Where a process server is employed as a process server by any person, a copy of such records shall also be maintained by such person at his principal office in this state for the same period.

(b) *Licensees who serve process shall also* include in maintain their records in the following manner:

(1) The licensee shall make a separate and contemporaneous entry of the date, time and address of every attempted and effected service of process in chronological order in a bound, paginated volume.

(2) The licensee shall make entries in only one volume at a time, which shall contain every attempted and effected service made by the licensee, until all of the available space in the volume is filled.

(3) The written entry for each service shall include the type of service effected whether personal, substituted or conspicuous.

(4) If service is effected pursuant to CPLR § 308(4) or RPAPL § 735(1), the entry shall include a description of the area adjacent to the door to which process is affixed including the color and composition of hallway walls, color and composition of hallway floor or doorstep, and location of premises in relation to stairs, elevator or entranceway.

(5) If service pursuant to RPAPL § 735(1) is effected by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises then the record shall also include the dates, addresses and time of attempted service. All attempts must be entered in a separate, chronological entry.

[2] (6) The [person or firm] entry shall include the name and license number of the process server organization from whom the process served was received, or, if not received from a process server organization, of such other person or firm from whom the process served was received.

[3] Type of service effected whether personal, substituted or conspicuous.]

[4] (7) If service is made pursuant to RPAPL § 735(1) in a manner other than by delivery of the notice of petition and petition to the respondent personally, the entry in the process server's record of service or attempted service shall include [The] the postal receipt number of registered or certified mail [if service is effected pursuant to RPAPL 735(1).]

[5] Records shall be kept in chronological order in a bound, paginated volume.]

[6] (8) Corrections in records shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to, erasing, opaquing, obliterating, or redacting, are prohibited.

(c) *Duty of [other licensees] licensed process serving agencies to keep records.* Every [licensee] process serving agency shall keep complete and accurate records with respect to each individual licensee to whom it distributes, assigns or delivers process to be served. Such records shall [include:] be kept in a searchable manner that permits ready identification of (i) the daily activity of each such individual licensee and (ii) any or all process assigned or distributed for service by the name of the person or entity from whom the process serving agency received such papers for service.

(1) The records shall at a minimum include:

(i) The name and license number of the individual licensee to whom process is distributed, assigned or delivered to be served;

(2) The names and index numbers of each case;

(3) The date that such papers were assigned for service, and the date that service was effected;]

(4) The person from whom such papers were received for service;]

(5) The date of filing of papers with the court.]

(ii) All of the information required to be maintained pursuant to paragraphs (1) through (5) of subdivisions (a) and paragraphs (3) through (5), and (7), of subdivision (b) of this rule.

(iii) A copy or a scan to an image file that legibly reproduces the original record in all details of the individual licensee's record maintained pursuant to subdivisions (a) and (b) of this rule for each day on which the individual licensee attempted or effected service of the process assigned to the individual licensee;

(iv) A copy of every routing sheet, work order or other written instruction given to the individual licensee;

(v) Copies of any notes, memoranda or other writings submitted by the individual licensee containing information related to the attempted or effected service of process;

(vi) A copy of every affidavit of service signed by the individual licensee.

(2)[(d)] Availability of records. All records shall be retained by the licensee for [two] seven years or until further order of the Department and shall be available for inspection by the Commissioner of Consumer Affairs or his designee.

Section 4. Subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new section 2-233a to read as follows:

**§2-233a Electronic Records.**

Licensed process servers and process serving agencies must maintain records in an electronic format that is resistant to tampering.

(a) Process Servers. Process servers shall maintain electronic records in accordance with the provisions of this subdivision. A licensed process server may meet the requirement to maintain records in an electronic format as required by § 20-406.3 of the Administrative Code by

(1) scanning into an image file that legibly reproduces in all details on a daily basis the original record the process server maintains in a bound volume pursuant to section 2-233,

(i) the image file shall be named with the date of the service recorded in the bound volume and the process server's license number, and shall be date and time stamped with the date and time that the file was created; and

(ii) such scanning shall be done within twenty-four hours from the last event that the record records; and

(iii) the process server must save the scanned image file to a portable media device at least once per week and shall maintain the portable media device in a manner designed to ensure its security and preservation, including by keeping it in a location separate from the original image file; and

(iv) such portable media device shall be labeled with the process server's last name, license number, and the date range of the records stored on the device; or by

(2) maintaining electronic records in accordance with the provisions set forth in subdivision (b) of this section.

(3) Nothing in this section shall be construed to relieve the licensed process server of the duty to maintain a bound, chronological, and contemporaneous record of service as provided under section 2-233 of this rule.

(b) Process Serving Agencies. Process serving agencies shall maintain electronic records in accordance with this subdivision. Such agencies must maintain all information required to be maintained pursuant to section 2-233(c) of this rule.

(1) Licensees shall input information required to be maintained pursuant to § 2-233(c) into the electronic record-keeping system within twenty-four hours after the last event recorded occurred.

(2) The licensee shall use an electronic records management system that:

(i) ensures the authenticity, reliability and integrity of the digital records;

(ii) permits the efficient retrieval of digital records;

(iii) contains a backup support system such that the electronic records shall be capable of being reconstructed in the event of an electronic or computer malfunction or unforeseen accident resulting in the destruction of the system or the information contained therein.

(3) The information required to be maintained pursuant to section 233(c)(1) shall be maintained in electronic form in a format provided by the Department as an Excel spreadsheet and accessible at the following internet address: \_\_\_\_\_ or by a third party document management system in any of the following formats provided that the records shall contain such separate fields with parameters as follow:

(i) name of the individual process server to whom service is assigned, which will be entered as last name, first name;

(ii) the license number of the individual process server to whom service is assigned, which will be specified as a seven digit number, where the first number shall be zero if the process server's license number is less than seven digits;

(iii) the title of the action, if any;

(iv) the name of the person served, if known, which shall be entered as last name, first name;

(v) the date that service was effected, which shall be entered as MM/DD/YYYY;

(vi) the time service was effected, which shall be entered as military time;

(vii) the address where service was effected, which shall be entered as three different fields such that one field will be for the street address and any apartment number, the second field will be for the city or borough, and the third field will be for zip code;

(viii) the nature of the papers served;

(ix) the court in which the action has been commenced, which shall be entered as either Civil Court NYC, Civil Supreme, Criminal, Housing(L/T), or District Court, followed by the county of the court, the judicial department if appellate, or the federal district;

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

(xi) if service was effected pursuant to subdivisions (1) through (3) of CPLR § 308, a description of the person served which shall consist of six fields, including sex, hair color, approximate age, height, weight, and any other identifying features;

(xii) whether service was delivered, as indicated by a Y or N;

(xiii) the type of service effected, which shall be entered as a P for personal service, an S for substitute service, or a C for conspicuous service;

(xiv) if service was effected pursuant to subdivision (4) of CPLR § 308 or subdivision one of RPAPL § 735, a description of the door and the area adjacent.

(4) If the process serving agency elects to record the information required to be maintained pursuant to section 233(c)(1) itself rather than through a third-party provider, it shall convert such information into a portable document ("pdf") format within twenty four hours from the last event the record records.

(i) The process serving agency shall ensure that the security settings for this converted pdf are set so that editing and printing of the document is restricted and no edits or changes may be made to the document.

(5) Licensees shall preserve the electronic records by either (a) submitting the record entries to a third party service on a daily basis or (b) copying the file to a portable media device within one week of a creation of the file. Such device must be maintained in a manner designed to ensure its security and preservation, including by keeping it in a separate off-site location. (c) Process servers shall not tamper with data or properties of any electronic record kept pursuant to this section after an image file is made by modifying, amending, deleting, rearranging or in any other way altering any such data or properties including but not limited to using a meta data scrubber or similar device or program.

Section 5. Subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new section 2-233b to read as follows:

### **§ 2-233b Electronic Record of Service**

Process servers shall comply with all rules regarding the tracking of service with a global positioning system (“GPS”) as shall be promulgated by the Commissioner.

Section 6. Subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding new sections 2-234a and 2-234b to read as follows:

**§ 2-234a Duties of Process Serving Agencies.**

**(a) Assignment of Process to Individual Process Servers.** A process serving agency shall not assign or distribute process for service to an individual process server who:

- (1) is not licensed to serve process;
- (2) has not complied with the requirements of Section 20-406.1 of the Administrative Code;
- (3) does not display integrity and honesty in his or her process serving activities; and
- (4) does not comply with the recordkeeping requirements applicable to the service of process in the City of New York, including maintaining an electronic record of service.

**(b) Compliance Plan.** A process serving agency shall develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers.

- (1) The process serving agency shall take appropriate disciplinary action against an individual process server who fails to comply with the law, including, but not limited to, suspending or terminating its employment, agency or other relationship with the individual process server;
- (2) The policies and procedures to review the individual process server’s compliance with recordkeeping requirements shall require the agency to:
  - (i) at least once each month, review for completeness and accuracy the records of each individual process server to whom it assigns or distributes process;
  - (ii) prepare a monthly written report of its review of the records maintained pursuant to section 2-233 of these Rules of each individual process server to whom it assigns or distributes process during that month;
  - (iii) maintain each monthly report for at least seven years;
  - (iv) maintain records of any disciplinary actions taken against the individual licensed process server;
  - (v) report to the Department in writing the name and license number of each individual licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance;
  - (vi) make available, upon request, to the Department a copy of its record review procedures, any written reports of the reviews it maintains, and copies of any referrals of individual process servers to the Department.

**(c) Implementation Affirmation.** A process serving agency in possession of a license issued by the Department on the effective date of this Rule shall submit an affirmation to the Department that it has adopted a written Compliance Plan within sixty (60) days of such effective date. After the effective day of this Rule, no license shall be issued or renewed until the process serving agency files with the Department an affirmation that it has adopted a Compliance Plan.

**(d) Persons to Whom the Agency Assigns Service.**

- (1) A process serving agency must notify the Department in writing at the time of its application or renewal, or at such times as requested by the Department of:
- (i) the names, addresses, and Department license numbers of each process server who serves process exclusively as an employee of the process serving agency; and
- (ii) the names, addresses, and Department license numbers of each process server who serves process on behalf of the process serving agency.
- (2) If additional process servers are assigned process by the process serving agency or a new process server is hired to serve process exclusively as an employee of the process serving agency after the date of such application or renewal, the licensee must notify the Department in writing within five (5) days of the new assignment or employee with the names, addresses and Department license numbers of such additional process servers.
- (3) If a process server ceases to serve process exclusively as an employee of a process serving agency after the date of such application or renewal, the process serving agency must notify the Department in writing within five (5) days that the process server ceases to serve process exclusively as an employee with the name, address and Department license number of such process server.
- (4) The process serving agency must advise the Department of any process server who is misrepresenting his or her license status or his or her compliance with the requirements of Section 20-406.1 of the Administrative Code.

**§ 2-234b Duty of Process Servers to Report Agencies That Assign Service.**

- (a) A process server must report the name and license number of the process serving agency for whom he or she serves process exclusively as an employee when applying for a license or renewal thereof.
- (b) A process server must report to the Department in writing when he or she ceases to exclusively serve process as an employee of a process serving agency within five (5) days that he or she ceases such employment. The process server must include the name and license number of any other process serving agency that he serves process exclusively as an employee.
- (c) When applying for a license or renewal thereof, a process server shall report the name and license number of every process serving agency which he or she has reason to believe assigns process for service to the applicant.
- (d) A process server applying for a renewal of a licensee shall report the name and license number of every process serving agency from which it has accepted assignment of service of process within the previous two years.
- (e) A process server shall keep a list of the name and address of each process serving agency that assigns service to the process server. The process server shall maintain the list for seven years and produce it upon request by the Department.

Section 7. Section 2-235 of subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 2-235 Preparation of Affidavits of Service.**

No licensee shall sign or notarize or cause to be signed or notarized an affidavit of service until all factual averments have been set forth. The licensee shall include his/her license number on all

affidavits of service signed by him/her. The licensee shall maintain a copy of every affidavit of service for at least seven years in electronic form or as a paper copy.

Section 8. Section 2-236 of subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 2-236 Duty to Report Hearings Contesting Service.**

(a) Whenever a process server or process serving agency receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process made or assigned by such licensee was effective, [The] the licensee shall [notify] submit a report to the Department (attention of Counsel's Office), in writing, by certified mail, or by e-mail to an address designated by the Department, within ten days of [the conclusion of any court hearing, including, but not limited to, hearings commonly known as "traverse hearings," where service of process is contested.] receiving such notice. Such written [notice] report shall include:

[(a)] (1) the title and index number of the action;

[(b)] (2) the court and the judge before whom the hearing [took place] is scheduled;

[(c)] (3) the date(s) of the hearing;

[(d) any finding of the court regarding the service of process, if known.] (4) the name and license number of every licensee who effected service or assigned or distributed the process for service; and

(5) copies of all records, including but not limited to, routing sheets, the pages of the licensee's log book for each day on which service of the process in issue was attempted or effected, and all affidavits of service, pertaining to the contested service.

(b) The licensee shall have an affirmative obligation to learn and report to the Department the result of the hearing, including any judicial order or voluntary settlement resolving the challenge to service of process, within ten days of the issuance of a decision on or settlement of the challenge.

**Statement of Basis and Purpose.** Section 20-104 (a) of the New York City Administrative Code confers on the Commissioner cognizance and control over all licenses issued under Chapter 2 of such Code, which includes process servers who are required to be licensed pursuant to Subchapter 23 of Chapter 2 of Title 20 of the Code. Section 20-104 (b) confers on the Commissioner the power to promulgate rules necessary to carry out his or her powers and duties, to require licensees to keep such records as he or she may determine are necessary or useful to carrying out the purpose of Chapter 2 governing licensing laws and all other laws conferring such powers upon him and her, and to protecting the health, safety, convenience and welfare of the general public with respect to licensed activities. Those powers include the authority to promulgate rules prescribing how licensees maintain records that they are by law required to keep; to require that licensees, their employees and agents, conduct their activities consistent with the requirements of the laws applicable to the service of process in the City of New York and with standards of honesty and integrity; and to require the licensees notify the Department and the public when they fail to carry out their duties in a competent and lawful manner.

The Department has concluded that the Rules applicable to persons and entities engaged in the business of process service in the City of New York require strengthening. These proposed rules will tighten the recordkeeping requirements that currently exist; impose specific duties on process server organizations to ensure that the individual process servers to whom they assign process for service act with honesty and integrity, and maintain records of their activities in compliance with legal requirements; require a process server organization to notify the Department and disclose to the public when it has reason to know that the requirements of the law applicable to process service have not been followed; require that records be maintained for seven years in an electronic format; and direct that all process servers utilize a global positioning system device to ensure that all service is made in accordance with rules to be promulgated by the Department.

Section 1 of the Rule amends definitions already in the Rules and adds new definitions to clarify the meaning of terms used in the Rules that have previously been undefined. The terms “bound volume”, “paginated” “legible” and “chronological” have previously appeared in the Rules without definition. The definitions will clarify for process servers their duty to maintain records of their process serving activities in a manner that is resistant to tampering and manipulation. The term “contemporaneous” has been added to ensure that process servers maintain records in a timely manner when memory of their activity is fresh and accurate. Terms that relate to electronic records have also been added to clarify the requirements for that rule.

Section 2 of the Rule adds Section 2-232a, 2-232b, 2-232c, and 2-232d. Section 2-232a implements the surety bond for process servers and process serving agencies and requiring that a surety bond must be effective for the entire term of the license period. This Section also provides that if a process server or a process serving agency’s bond lapses for any reason, the license is void.

Section 2-232b elaborates on the exemption from the bond requirement set forth in Section 20-406.1 of the Code for process servers who serve process exclusively as employees of an agency under the Rule, if an applicant for a license or renewal claims that he or she is an

employee of an agency, and therefore exempt, that process server must submit a certification from the agency affirming that the process server serves process exclusively as an employee of the agency and that the bond that the agency submitted is conditioned upon the process server's compliance with the laws and rules governing the activities of a process server. This section also requires that if a process server ceases to be an employee of a process serving agency, the agency must notify the Department within five (5) days of the process server is ceasing to be an employee.

Section 2-232c establishes a Trust Fund into which process server applicants can deposit a minimum of \$1,000 in lieu of providing the required bond upon providing proof satisfactory that they were unable to obtain such bond. Proposed Rule 2-232c (a) creates the necessary Trust Fund; subdivision (b) prescribes the proof applicants must submit that they are unable to obtain the bond and the conditions under which process server licensees participate in the Trust Fund; subdivision (c) specifies how the Trust Fund may be invaded to pay awards to consumers and fines and penalties on behalf of licensees participating in the Trust Fund; and subdivision (d) provides for the Commissioner accounting annually for all of the activities of the Fund.

The Department has also concluded that to ensure that the Trust Fund remains financially solvent to pay prospective obligations, process server applicants be required to make a contribution of at least the minimum \$1,000 whenever they apply for license renewals.

Section 2 of the Rule also adds § 2-232d which establishes the test required under § 20-406(c) of the Code. This Rule establishes that all applicants and renewals for a process server license must pass an examination that will test the laws and rules for service of process in the city. The test fee is \$75. If the process server applicant or renewal fails the test on the first attempt, he or she may take the test a second time for no additional fee. If the applicant or renewal fails the test on the second attempt, the application or renewal will be denied and he or she must reapply for a license.

Section 3 of the Rule amends Section 2-233 of the Rules, which sets forth recordkeeping requirements applicable to individual process servers and process server organizations. It clarifies that individual process servers must keep a contemporaneous record of every attempted and effected service of process in a bound and paginated volume. The Rule has not previously required that every attempted service be recorded in chronological order, only that attempted services be recorded after "nail and mail" service is completed. The requirement that attempted and effected service be recorded chronologically will prevent process servers from post hoc recording of attempted service to avoid detection of dishonesty. Together with the requirements that records be kept in bound, paginated volumes and that corrections do not obscure original entries, these new rules will ensure that process servers' records will be more complete and transparent than in the past. Section 6 also adds new responsibilities to process serving agencies to collect and maintain records of service performed by the individuals they hire to complete service to provide a second set of data available to the Department and the public and thereby achieve greater compliance with process serving laws.

Section 4 of the Rule adds a new Section 2-233a to require process servers and process serving agencies maintain their records in an electronic format. The rules specify the manner in which licensees must comply with this requirement to ensure the integrity, security and legibility of the electronic records. The new section will give process server individuals who are not exclusive employees of an agency two options. The first option allows the process server individual to scan information that he or she is required to maintain under New York State and City Law into an electronic format. The process server must make these scans within twenty-four (24) hours of the last recorded service for a day. The scans must be saved to a labeled portable media device, such as a flash drive or a CD-ROM. In the alternative, a process server may follow the same requirement as a process serving agency. The process server will still be required to maintain a bound, paginated volume that records service. Process serving agency licensees must maintain records in a tamper-proof electronic format that is maintained by a third-party or they may enter it into a spreadsheet such as the one that will be made available on the Department's website and converted to a pdf and copied to a portable media device. The measures outlined will help to ensure that the records maintained are easily accessible and searchable by the Department and others.

Section 5 pertains to the new electronic record of service provision that will be promulgated at a later date. It requires that all process servers and process serving agencies will comply with any rule regarding electronic record of service promulgated by the Commissioner.

Section 6 of the Rule adds new Sections 2-234a and 2-234b to the Rules to clarify the responsibilities of process serving agencies to ensure that the individual process servers to whom they assign or distribute process are properly licensed, have the requisite bond or trust fund membership, act with honesty and integrity, and comply with recordkeeping requirements.

Section 2-234a sets forth the duties of process serving agencies. Subsection (a) specifies that a process serving agency shall not assign or distribute process for service to an individual process server who is not licensed, does not display integrity and honesty in process serving activities, and does not comply with recordkeeping requirements.

Subsection (b) requires each process serving agency to develop and implement a Compliance Plan for complying with Subsection (a)(2) of the new rule. It requires a process serving agency to develop and implement policies and procedures to regularly review for completeness and accuracy the records kept by individual process servers. Implementation of plans written by the agencies will provide explicit direction to the agencies about how to ensure that individuals they hire act in accordance with the law, and will provide information from which the Department can assess whether the agencies are meeting their supervisory responsibilities. Those plans will obligate the agencies to take corrective actions when they discover that individual process servers have not acted in compliance with the law or have failed to display integrity in their practices, and to make those findings available to the Department, the agencies' clients and to the public.

Subsection(c) provides that no process serving agency can maintain a license unless it has submitted an affirmation that it has developed and implemented a Compliance Plan consistent with the requirements of subsection (b).

Subsection (d) compels process serving agencies to provide a list of all licensed process servers to whom service is assigned at time of application or renewal, as well as a list of all process servers who are employees of the agency. It also requires that the agency update this list within five days when a new process server is assigned service or when a process server ceases to be an employee of the agency. Process serving agencies will also have an affirmative duty to ensure that it only assigns service to process servers who either carry an individual bond or are exclusive employees of the agency, or process servers who participate in the trust fund. This section also requires a process serving agency to notify the Department when a process server misrepresents his or her licensing status.

Section 2-234b requires that a process server report to the Department the name and license number of the process serving agency that assigns service. The process server will have to report this information when applying for the license or renewing. Additionally, process servers who serve process exclusively as an employee have an affirmative obligation to notify the Department in writing when he or she ceases to serve exclusively as an employee for an agency. Process servers must also maintain a list of all agencies that assign service to the process server. These lists must be maintained for seven (7) years, and must be provided to the Department on request.

Section 7 of the Rule amends Section 2-235 to require that process servers maintain for seven years copies of affidavits of service that they execute.

Section 8 of the Rule amends Section 2-236 to clarify the responsibilities of process servers, including process serving agencies, who receive notice that a court has scheduled a hearing in a challenge alleging that process was not properly served. The amended rule clarifies that both the process serving agency and the individual process server to whom process was assigned or distributed for service have an obligation to notify the Department of the scheduling of a hearing and provide documents related to the challenged service within ten days. In addition, the amended rule imposes an affirmative obligation upon licensees to track developments in the challenge to service. The licensee must learn and report to the Department the results of the challenge, including any judicial order or voluntary settlement resolving the challenge, within ten days of the issuance of a decision on or settlement of the challenge