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Process Servers Feeling the Heat of City Crackdown

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For 29 years Maureen Mintzer and her husband have owned a small process serving agency in New York City. This month she must renew her license, a ritual she has performed every two years for almost three decades. But this year there is a little hesitation.

It is not that Mintzer has grown tired of a business where chasing down citizens to serve them court documents is a normal occurrence. The problem is that the paperwork has become a killer.

“We are constantly looking over our shoulder, double- and triple-checking and not being able to focus on the work. We are focusing more on the record keeping,” Mintzer said in a phone interview earlier this month. “The stress level is enormous.”

Like many process servers in the city, Mintzer is feeling the heat from the Department of Consumer Affairs, which began cracking down on process servers for code violations in 2009 by subpoenaing records. They opened up 150 investigations, according to a DCA official. The agency would scour the records for any instance in which servers' paperwork was not filled out according to state and city regulations. Each broken rule would result in a fine. Break the same rule more than once and the fine was multiplied for each infraction, with a cap of 10 set for handwritten log books and 30 for electronic records.

Process servers found to have committed record-keeping transgressions were hit with tens of thousands of dollars in fines. The accused violators had two choices: go to a DCA hearing and contest the penalties, or take a settlement for a fraction of the original judgment—around $500 to $2,000 on average. Unable to afford the tens of thousands in fines, most process servers settled.

The practice of subpoenaing records continues today, with 187 investigations completed since 2012, according to a DCA report issued Feb. 3. DCA is now also checking compliance with a 2010 law passed by the New York City Council that requires process servers to take a written test, purchase a bond and use GPS records to track their whereabouts in addition to their handwritten and electronic log books.

Total fines for the small industry of process servers jumped from $11,250 in fiscal year 2010 to $71,011 in fiscal year 2013. DCA said the number of fines increased because the number of cases resolved more than doubled between 2012 and 2013.

“The administration has made clear that our agency’s objective is achieving compliance with the law, not generating revenue through unnecessary fines,” DCA said in a statement. “That is not in any way inconsistent with rigorous enforcement of this nature that protects consumers and closely monitors industry practices.”

Mintzer, who was one of the 187 servers from whom DCA subpoenaed records in 2013, said the GPS company charged her $480 to access her records. She said she had no choice but to pay the expense because without the records DCA would fine her far more. As of the time of her interview with *City & State*, Mintzer had not heard back from DCA regarding any issues with her records.

DCA's appeals process is a source of significant distress for process servers. The February DCA report lauded the number of settlements, but process servers say they are forced to settle because the hearings are a lost cause. DCA employs their own administrative law judges to rule on the fines levied by the department.

Myra Sencer, an attorney who has represented a dozen process servers at DCA hearings, said having the agency serve as judge and jury is not a fair process.

“In order for the judge to render a fair and impartial decision they have to be free of political restraints,” Sencer said in a phone interview. “If she or he is dependent on the agency for their continued employment, isn’t that going to color everything they do?”

In October 2013, two DCA judges sued the department, in a complaint not related to process servers, claiming they were illegally pressured to rule against small businesses. *City & State* asked DCA if in light of these allegations the agency believed the judges in the process serving department could be impartial. A DCA official denied claims the process was partial, saying there was a “strict wall between our legal and enforcement division.” He added that employees of the two branches within the agency were not even allowed to fraternize.

The stricter enforcement and tougher regulations, while cumbersome to process servers, are not entirely unwarranted. At the height of the recession improper service—known as “sewer service” in the industry—increased, as did default judgments (when a defendant no-shows) in civil court.

There were 51,880 default judgments in Housing Court in 2009 and 158,570 in Consumer Credit Court, according to records obtained from New York State Civil Court. Lawyers and advocates for those affected argued that the high number of judgments was attributable in many instances to process service not abiding by the letter of the law.

So has the DCA's nitpicking of records been effective in improving service? Several metrics point to yes. In 2013, default judgments in Housing Court dipped to 45,803 and in Credit Court they fell to 38,645.

DCA investigated 187 process servers between 2012 and the end of 2013, 80 of whom were found to have lost traverse hearings, according to DCA. A traverse hearing is called when the defendant claims they were not served the paperwork in accordance with the law. Process servers must use their records to prove they abided by proper procedure.

DCA analyzed the GPS records of 42 process servers and in 11 instances found that servers were several miles from where they claimed to be in sworn statements, according to a DCA report.

“When it comes to process servers, we need precision. One mistake can cost someone their livelihood or enormous hassle,” said Councilman Dan Garodnick, who championed the new legislation in 2010. “The report from DCA shows that with the GPS system, they have an easier time determining the compliance of process servers. That is what we sought to achieve.”

The reforms, while welcomed by some advocates, have not come without a cost to the process serving industry. In February 2012 there were 1,850 individual process servers. Two years later, there were only 1,102, according to a DCA report. In large part that decrease is the result of process servers not taking the city's new licensing exam, now required by Local Law 7. The DCA argues the loss weeded out those “who chose not to legitimize their business.” Critics contend that the test is too difficult.

Some in the industry are worried that after two years of fines and fees, the number of process servers could drop by several hundred more with this February’s renewal period. That decline could spell trouble for lawyers in the city. Cary David Kessler, a partner in the firm Farley & Kessler, said that the dwindling number of servers has not impacted the bigger firms yet, but that smaller firms like his are already grappling with the problem. Last week Kessler contacted a process server he prefers to offer him a job, but the server declined telling the the lawyer that the gig wasn't worth the $25 fee because of the extra paperwork he would be required to file if he went to a traverse hearing.

The process server also told Kessler he would not being renewing his license in the city this month, instead opting to take his business outside of the five boroughs where he would not have to live in fear of fines for minuscule paperwork violations.

"It hasn’t hit the average attorney in the face yet," Kessler said. "I'm trying to send the alarm out to the bar associations, but they don't get it yet. They will. The crisis is coming. There is no question."

*City & State* reached out to multiple bar associations for comment. Of the few that responded, none said the issue was on their radar.

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In the waning hours of Mayor Michael Bloomberg’s final term, DCA sent out subpoenas to 316 individual process servers. As a result, fines, which topped $71,000 last fiscal year, could double.

All eyes in the industry now turn to Mayor Bill de Blasio, who as public advocate vigorously fought Bloomberg on small business fines. The process servers applying for licenses, hopeful for a fairer shake from the de Blasio administration, have been waiting for seven weeks for action, but de Blasio still has not chosen a new DCA commissioner. Process servers have spoken with several elected officials for guidance, but they have been put in a holding pattern until de Blasio makes his move.

*City & State* reached out to the de Blasio administration to find out when he would appoint a DCA commissioner and if there would be reforms in the enforcement of fines to process servers. Multiple requests for comment were not returned by press time.

“As long as there is no commissioner and as long as they continue to have these hearings, the subjects of their investigations are being treated in the same manner,’ Senser said. “I believe it to be an unfair and overzealous manner.”