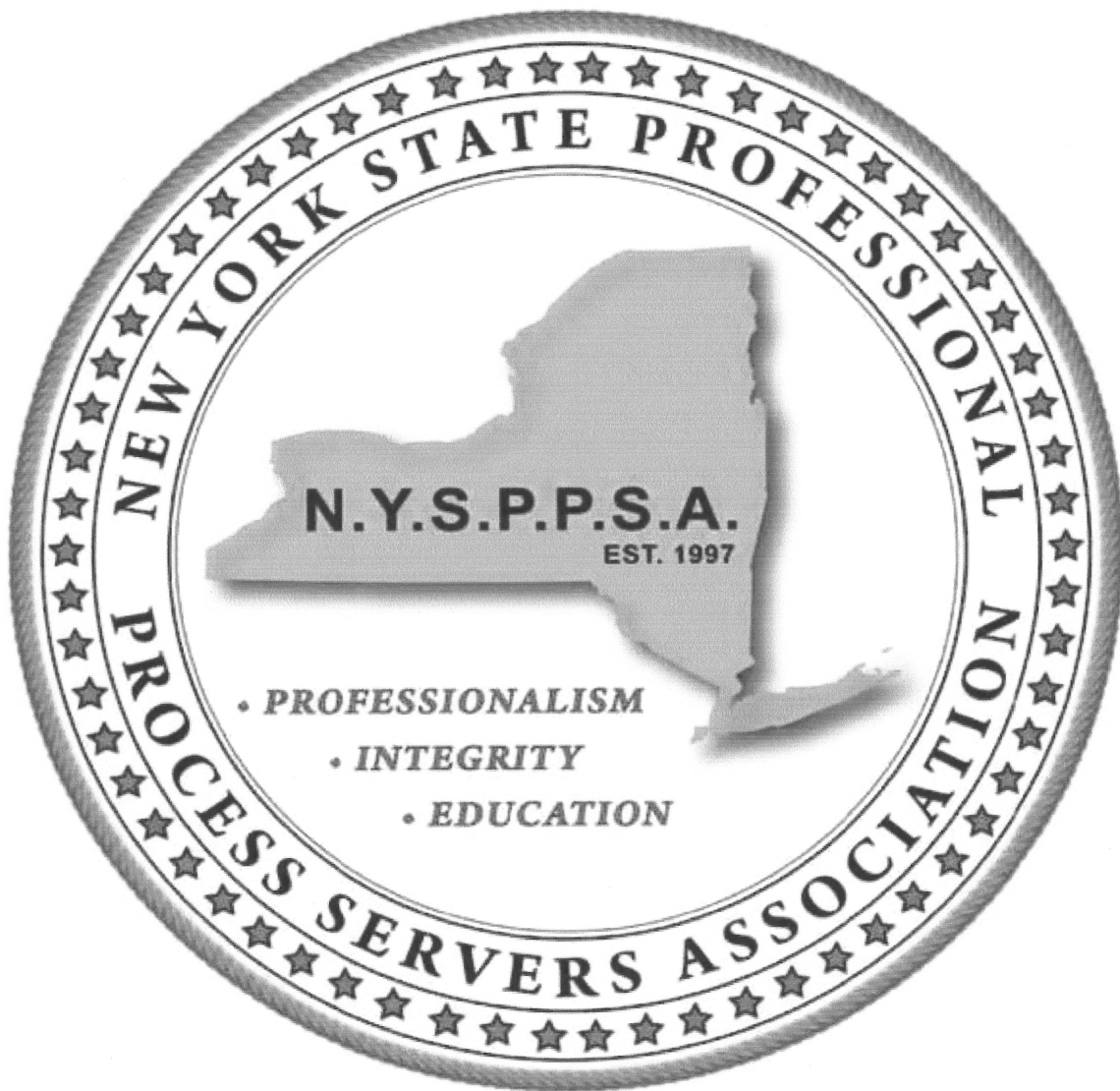


THE LIBERTY

November 2017



The Official Newsletter of the New York State
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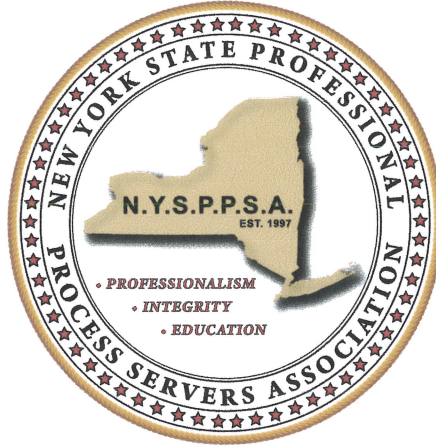
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Robert Marcus Award for Professionalism & Distinguished Service

The NYSPPSA Board unanimously voted to establish an award intended to recognize a member who has demonstrated professionalism and distinguished service to our association and the process serving profession. The award was named after Robert Marcus, a devoted member of NYSPPSA, who has since passed away. He had always embodied the spirit of the award.

Past winners of this prestigious award are:

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Bob Gulinello

Vincent Gillis

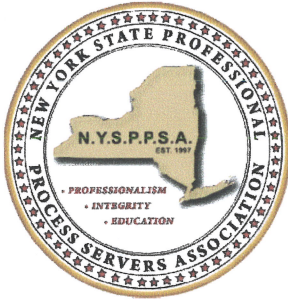
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Jillina A. Kwiatkowski

Larry Yellon

Gail Kagan

Brenda Geedy



2017-2018

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Kim Letus

Rondout Legal Services, Inc.
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TREASURER

Bill Mlotok

Intercounty Judicial Services
Mineola, NY
516-248-8270

DIRECTORS

Gail Kagan**	Action Subpoena	Riverdale, NY	914-963-1941
Larry Yellon**	Intercounty Judicial Services	Mineola, NY	516-248-8270
Jason Tallman	Process Master	New Hartford, NY	315-272-4274

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The Liberty is published by the New York State Professional Process Servers Association, P.O. Box 925, Orchard Park, NY 14127. The opinions expressed in the articles do not necessarily represent the opinions of, or reflect the official position of, the Association, the Board of Directors, or the editor.

Administrator's Report
Brenda Geedy

Have you seen all the new things that are being introduced with NYSPPSA, just for you, the members?? If not, just take a look inside this edition of The Liberty.

LIVE STREAMING OF THE JANUARY 21, 2018 BOARD MEETING – details inside

I.D. BADGES FOR MEMBERS ONLY STARTING JANUARY 2018 – details inside

NEW ADVERTISING OPPORTUNITIES – SPONSOR AN EMAIL BLAST – details inside

CONVENTION SAVE THE DATE - WITH EXCITING NEWS – details inside

EDUCATION/STUDY GUIDE FOR SALE – details inside

HOW TO GET THE LOG BOOK BILL PASSED – details inside

These are just a few of the exciting things that NYSPPSA is working on.

Membership renewal will be starting in February – keep an eye out on how you can renew your membership on-line.

As always, please do not hesitate to contact me or a board member should you have any questions or comments.



MESSAGE FROM NYSPPSA PRESIDENT ELLEN EAKLEY

I want to express my heartfelt thanks to the NYSPPSA membership for electing me President. I am truly honored and humbled by the trust you've instilled in me and I'm very excited to get to work. I know that I have big shoes to fill and promise that I'll give it my all. I'm also thrilled to be working with a great group of Board Members.

This year is all about listening to our members' questions, concerns and ideas. You can count on me and the Board to find innovative ways to communicate with you so that your voices can be heard. I pledge to be guided by your input so we can work together and achieve great results.

I hope my agenda will take NYSPPSA to the next level. Here are some of my ideas:

- Our Board members realize the importance of being connected to each other, so in addition to our regular Board meetings, we'll hold conference calls to handle issues that require immediate attention.
- We'll provide live streaming of our Board meetings on our Facebook page, as well as on our website, so you can participate and be a part of the association without being physically present.
- Each of you will have a Board member assigned to you for the year. This person will be your point of contact if you have questions or issues you want addressed.
- NYSPPSA will build our membership by affiliating ourselves with paralegal associations throughout the state.
- We'll also reach out to non-NYSPPSA process servers throughout the state via email blasts promoting our value and the reasons why being a member is so important.
- With the assistance of our legislative committee, we'll say NO to dual signatures by requesting that the legislature amend the civil practice law.
- NYSPPSA will continue our support of the log book bill by reintroducing legislation that was previously passed by the senate and became stuck in committee by the assembly.
- NYSPPSA will support our membership during the February 2018 DCA renewals by answering our members' questions or addressing any issues that may arise.
- The Empire is our new monthly newsletter. Its objective is to keep members informed of all pertinent information.
- NYSPPSA plans to hold a state-wide fundraiser within the year to support the association and create awareness of the many benefits of membership.

As the year goes on, we'll keep you informed of our progress. If you have questions, need answers or have suggestions, please feel free to reach out to me directly or any of our Board members. Participate in our association and LET YOUR VOICE BE HEARD!

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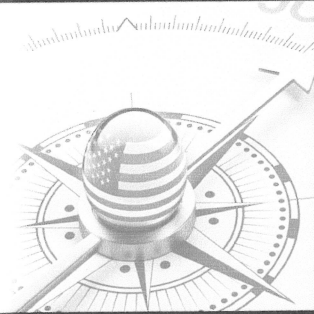
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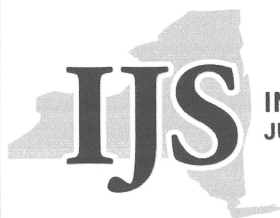
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PROCESS SERVING: THE NEXT GENERATION

We've all been seeing articles focused on one subject – "Judge orders service via social media." Personally, I've been keeping my eye on these, while wondering what the future of our profession might be. My company has had our first introduction to social media service, and it's not as intimidating as I thought it was going to be.

Let me first say that this DID NOT take the place of a regular service of process. This was ordered only after extreme diligence was performed to find the individual. This procedure is not really replacing the process server; it is more just the present-day version of service by publication (which was done in the newspapers.) Also, my client advised me that, although not required, it was preferred this be done by a professional process serving company.

My particular Order was for service via Facebook. I was supplied with the individual's Facebook account. Service had to be performed through Facebook Messenger, as this is only option available to attach files. The wording was basically what you would say with a regular serve. I identified myself, I outlined the documents that were being served, and I advised that this was a service of process ordered by the court. I did this from my company Facebook page, not from my personal one. I took screen shots of every detail as I went along. These were then attached to my affidavit of service as exhibits.

If you receive a request like this from your client, accept it with the same confidence you would with any other job. As I said earlier, this is nowhere near as daunting as I thought. But be prepared...this is the next phase of process serving.

If anyone wants to discuss the details of this or has any questions, please give me a call at my office at (716) 668-2711. As always, I'd be glad to speak with you.

Have a joyous holiday season ~ stay safe.

Respectfully submitted,

Jillina Kwiatkowski
First Vice-President

2017-2018 COMMITTEE CHAIRS

Please feel free to contact any chairperson if you would like to become involved and help out

Advertising

Brenda Geedy
admin@nyspps.org

Arbitrations & Grievance

Bernard E. Hughes
bhughes@finestservices.com

Benefits

Jillina Kwiatkowski
jillina@smartserveprocess.com

Budget & Finance

Bill Mlotok
bill@intercountyjudicial.com

Convention

Jillina Kwiatkowski
jillina@smartserveprocess.com

Education & Certification

Larry Yellon
larry@intercountyjudicial.com

Elections/ByLaws/Awards

Vinnie Gillis
ucg@post.com

Fundraising

Jillina Kwiatkowski
jillina@smartserveprocessserving.com

Legislative

Larry Yellon
larry@intercountyjudicial.com

Gail Kagan

gk.actionsubpoena@gmail.com

Membership

Kim Letus
kletus@rondoutlegal.com

Newsletter and Directory

Brenda Geedy
admin@nyspps.org

Public Relations

Gail Kagan
gk.actionsubpoena@gmail.com

Robert Marcus Award

Larry Yellon
larry@intercountyjudicial.com

Secure Document Trading

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Ellen Eakley
ellen@intercountyjudicial.com

Sunshine

Kim Letus
kletus@rondoutlegal.com

Technology

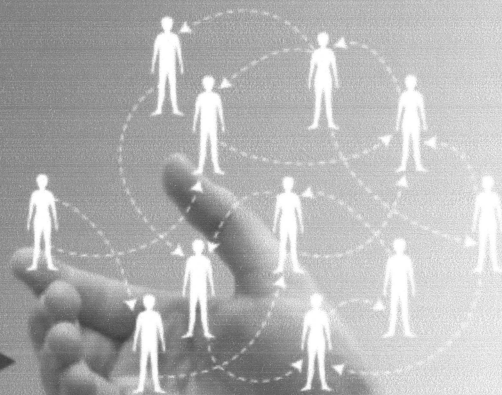
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Most of the articles I've written for The Liberty specifically apply to the process serving world, as they should when writing for a process serving association's newsletter. I've been on the board in one capacity or another for quite a few years now and have written articles for every newsletter since I started; so, frankly, I'm a little short on material at this point. Hopefully you will forgive me for my deviation from the norm this one time. I decided to submit an article I recently wrote for a small local newspaper in my town. Although the subject matter doesn't pertain specifically to process serving, it does affect most people, whatever their profession.

THE SLOW AND PAINFUL DEATH OF CIVIL DISCOURSE

By Kim Letus

I don't think it needs to be said that we are living in a rapidly changing world. Pretty much anyone with a pulse realizes it. Our civilization is, in many respects, regressing. Violence is running rampant. Ideologies have replaced common sense and empathy. Many people struggle with constant fear and anxiety over the state of the country and the world.. Hate and division are reaching new heights. Political extremism has infiltrated our lives and polarized our country. Mob mentality has taken over. This hasn't happened overnight. It's been years in the making.

There is a pervasive reluctance, even inability, on the part of many people to respect or even listen to opinions different from their own. Extremists are incredibly dogmatic and uncompromising in their positions. They become so immersed in their own beliefs that they become deaf and blind to anything else. They're robbing themselves of the opportunity to consider new ideas and engage in meaningful exchange of opinions. The discord I'm witnessing between family, friends, colleagues and strangers who do not share the same political or ideological beliefs is truly disturbing. Social media, while a wonderful tool, has made it easier to voice opinions to a broader audience, and this ability is often not exercised with prudence. The excessive rants and attacks on social media between "friends" fractures relationships and damages family ties. Social media has made it oh so easy to annihilate those who don't share your views with vicious self-righteousness. I guess it's easier to trash someone using an online post than to look them in the eye while doing it. Shoving your opinions down the throats of others to the point they're choking on them, while at the same time invalidating and dismissing their beliefs, is highly unlikely to bring them around to your way of thinking.

News media continues to feed and nurture this hysteria by peppering facts with speculation, sensationalism and spin. It seems that the media likes to keep us minions revved up and tuned in. Remember the days when the likes of Walter Cronkite stared stone-faced into the camera and delivered facts to the audience with a controlled voice and an appropriately serious countenance? At the risk of dating myself, I remember those days. The newscasters of today are more inclined to assert opinions and omit facts that don't support whatever their perspective happens to be than to simply report the news. Tune in to two different stations, and you'll get two different takes on the exact same story, and sometimes there is little similarity between the two. It's to the point I don't know what to believe most of the time.

There are many other contributing factors, too numerous to mention, that have landed us in the stew we're in today. The general disrespect for our country, our flag, our history, our diversity and each other is ruining us. We as a people need to buck this trend and reverse this decline. Each individual has to look inside him or herself and decide what type of person they want to be, and choose what battles they want to fight. If we are to stabilize and maintain this wonderful country of ours and the lives we've built for ourselves here, we need to learn how to listen and converse again without labeling and belittling each other. We need to stand up for what we believe without disrespecting the beliefs of others. We need to work together to find solutions to all the problems facing our country and the world today. We can't focus on fixing problems when we're attacking each other and spewing hate and intolerance. We need to learn civil discourse again, before it's gone forever. That is my hope for the future.

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Dear Fellow NYSPPSA Members,

I hope everyone enjoyed this years' convention in Saratoga. Thank you to Jillina and Brenda for all your hard work on the Convention; and to our new President, Ellen Eakley, and the newly elected board. I am looking forward to working with the new board in my new position as your Second Vice President. I had the honor of speaking at the convention in reference to the assault bill, which was turned into law last year. For those of you who were unable to attend, I thought I would take this opportunity to go over what we spoke about. Over the past several months, the board has received numerous calls and emails for clarification on the new assault law. For that reason, I will briefly go over how to apply this law to our industry.

In order for the law to be properly applied, you must meet the prerequisite of the assault law section 120.00

One must realize that you are required to meet the FULL criteria of the law. Meaning, you MUST sustain a "Serious Physical Injury". However, just because you haven't sustained "Serious Physical Injury" does not leave you without recourse. The assailant can still be charged with a plethora of different crimes, such as, Attempted Assault, Assault in the 3rd degree, harassment and even menacing, in the case where a dog is used, but you do not sustain an injury. Remember that an attempted assault under our section of law is still a felony. The responding officers and District Attorney's office can charge the defendant by merely placing section 110.00 in front of the existing law which will drop the charge of a class "D" felony to a class "E" felony.

In closing, I would like to remind all of you that your personal safety is of the utmost importance to you, your fellow process server and your family. We can easily become complacent due to the routine nature of our business. However, you must always remember the most important rule in our line of work, nothing is more important than to go home at the end of the day to your family, not the service of legal documents.

I am looking forward to seeing you at our quarterly meetings.

Respectfully submitted,

Bernard E. Hughes
NYSPPSA Second Vice President
Arbitration and Grievance Chair
Technology Chair





ASSAULT LAW SECTION 120.00

A person is guilty of assault in the second degree when:

With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person

ASSAULT LAW SECTION 120.05 SUB SECTION 14 (For the Process Server)

With intent to prevent or obstruct a process server, as defined in section eighty-nine-t of the general business law, from performing a lawful duty pursuant to article three of the civil practice law and rules, or intentionally, as retaliation against such a process server for the performance of the process server's duties pursuant to such article, including by means of releasing or failing to control an animal evincing the actor's intent that the animal prevent or obstruct the lawful duty of the process server or as retaliation against the process server, he or she causes physical injury to such process server.

Assault in the second degree is a class D felony.

ATTEMPT OF A CRIME SECTION 110.00

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime

NY Penal Law 120.15

Menacing in the Third degree

A person is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury.

Menacing in the third degree is a class B misdemeanor.

NY Penal Law 240.26

Harassment in the Second degree

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose..

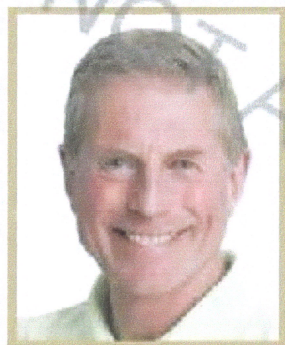
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three of the civil practice law and rules, or intentionally,
as retaliation against such a process server for the performance of
the process server's duties pursuant to such article, including by means
of releasing or failing to control an animal evincing the actor's intent that
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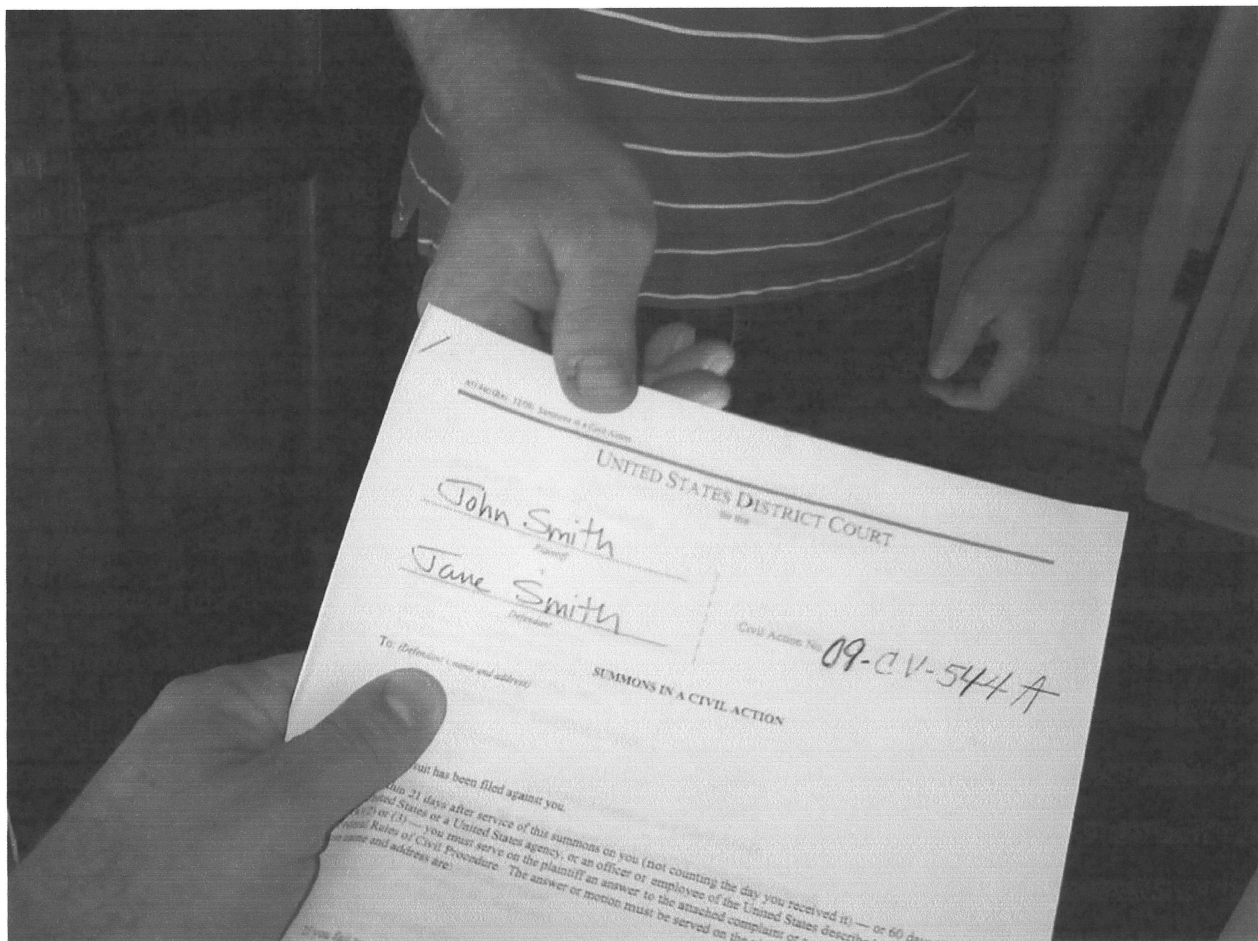
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SERVICE OF PROCESS IN AN ENVELOPE

Larry Yellon, Director and Past President

In my 16 years of lecturing at Hofstra University law school and the numerous classes I have taught for NYSPPSA and NAPPS, the above question has constantly been asked. New York process is notoriously based on interpretive no statutory law, so there is no statute to rely on. With that in mind, I have done some research which has lead to the conclusion that New York process must be served outside of any covering. The court documents that we are assigned to serve, must make defendants aware that they are being served with process. "The service of process is an act of public power and it should be unconditional and clear". See Bonsteel's Will, *supra* at 326, Haak and Town of Wheatland 86 A.D. 2d 961,962,448 N.Y.S. 2d 305,307 (4th Dept 1982). These cases clearly infer that process should not be hidden.



Log Book Bill
Gail Kagan

As you know, the Log Book Bill will be introduced into the Assembly in January of 2018. I have obtained the names of all the members on the committee who can push the bill to the Assembly floor for a vote. These assemblymen are in districts all over the state. Your help in lobbying these people will greatly influence the passage of this bill.

These are the people who need to move the bill onto the assembly floor for a vote.

The mandate of this committee is to aid in economic development of industry in New York State. Assist business to grow, increase job creation, and reduce outdated and unnecessary restriction while supporting measures that allow the market to functioning a manner that is balanced for consumers and businesses.

As you can see, these Assemblymen are from many districts covering the whole state.

The month of **November/December** we need you to write a letter to each one of these member. I would appreciate if you could target those Assemblymen that are in or close to your District.

I will follow up with a visit to them in Albany in January.

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Clifford W. Crouch, 1 Kattelville Road, Suite 1, Binghamton, NY 13901, 607-648-6080
Albany Office, OB 450, Albany, NY 12248

Anthony D'Urso, 45 North Station Plaza, Suite 203, Great Neck, NY 11021, 516-482-6966
Albany Office, LOB 920, Albany, NY 12248, 518-455-5192

Maritza Davila, 249 Wilson Avenue, Brooklyn, NY 11237, 718-443-1205, 718-443-1424 fax
Albany Office, LOB 637, Albany, NY 12248 518-455-5537

David DiPietro, 411 Main St., East Aurora, NY 14052, 716-655-0951, 716-655-0970 fax
Albany Office, LOB 543, Albany, NY 12248

Joseph A. Errigo, 30 Office Park Way, Pittsford, NY 14534, 585-218-0038, 585-218-0063 fax
Albany Office, LOB 527, Albany, NY 12248

David F. Gantt, 107 Liberty Pole Way, Rochester, NY 14604, 585-454-3670
Albany Office, LOB 830, Albany, NY 12248 518-455-5606

Joseph M. Giglio, 700 West State Street, Olean, NY 14760, 716-373-7103
Albany Office, LOB 439, Albany, NY 12248, 518-445-5241

Alicia Hyndman, 232-06A Merrick Blvd., Springfield Gardens, NY 11413, 718-723-5412
Albany Office, LOB 820, Albany, NY 12248

Kimberly Jean-Pierre, 640 W. Montauk Highway, Lindenhurst, NY 11757, 631-957-2087, 631-957-2998 fax
Albany Office, LOB 530, Albany, NY 518-455-5787

Addie Jenne, 317 Washington Street, Suite 210, Watertown, NY 13601, 315-786-0284, 315-786-0287 fax
3 Remington Ave., Suite 1, Canton, NY 13617, 315-386-2037, 315-386-2041 fax
Albany Office, LOB 456, Albany, NY 12248, 518-455-5545

Billy Jones, 202 U.S. Oval, Plattsburgh, NY 12903, 518-562-1986
Albany Office, LOB 639, Albany, NY 12248

Donna A. Lupardo, 44 Hawley St., 17th Floor, Binghamton, NY 13901, 607-723-9047
Albany Office, LOB 824, Albany, NY 12248, 518-455-5431

William B. Magnarelli, 333 E. Washington St., Syracuse, NY 13202, 315-428-9651
Albany Office, LOB 837, Albany, NY 12248

Steven F. McLaughlin, 258 Hoosick Street, Suite 109, Troy, NY 12180, 518-272-6149, 518-272-6313
Albany Office, LOB 533, Albany, NY 12248

Michael Simanowitz, 159-06 71st Avenue, Flushing, NY 11365, 718-969-1508, 718-969-8326 fax
Albany Office, LOB 742, Albany, NY 12248

Frank Skartados, 154 North Plank Rd., Suite 2, Newburgh, NY 12550, 845-562-0888, 845-561-5218 fax
Albany Office, LOB 435, Albany, NY 12248 518-455-5762

Al Stripe, 7293 Buckley Road, Suite 201, N. Syracuse, NY 13212, 315-452-1115
Albany Office, LOB 656, Albany, NY 12248 518-455-4505

Latrice Walker, 400 Rockaway Avenue, 2nd floor, Brooklyn, NY 11212, 718-342-1256, 718-342-1258 fax
Albany Office, LOB 628, Albany, NY 12248 518-455-4466

Raymond Walter, 5500 Main Street, Suite 216, Williamsville, NY 14221, 716-634-1895
Albany Office, LOB 550, Albany, NY 12248, 518-455-4618

We need your help to give NYSPPA a voice.

Of course, the consumer advocates will be against our proposal but their arguments cannot hold more weight than ours since it was the consumer advocates who forced the digital records rules into place in the city.

This is a NYSPPSA Letter to this committee: It includes all the arguments I believe will resonate with this committee:

Amendment to General Business Law Section 89-cc

To: Robin Schimminger , Chair, Committee on Economic Development, Job Creation, Commerce, and Industry

Re: New York Assembly Bill #3939-A

I am writing to urge the Committee on Economic Development to support passage of Assembly Bill #3939-A.

This bill would eliminate an outdated New York State requirement that process servers in cities of 1,000,000 or more (i.e. New York City) maintain a handwritten log book. A copy of a sample page of a process server log book is shown in figure 1. Ironically, the State's current log book requirement forces process servers in NYC to keep a handwritten log book while also keeping a computerized log book required by NYC!

In 2010, New York City passed NYC Law 0006-2010, requiring that process servers maintain a digital copy of the record specified by the state's GBL 89-cc. Under the New York City regulations, records are required to be retained for a period of 7 years, as opposed to the 3 years mandated by the state. The rule states that the digital record must be uploaded to an independent third party who would provide the software required to keep and maintain the records. Process servers access this software through their cell phones. The third party must comply with the reporting rules requiring that the records of every process server be accessible to any interested party by subpoena or request.

Since these rules went into effect, process servers have had an arduous increase in their record keeping responsibilities, in that they must:

- Keep a hand-written log book;
- Create a digital record;
- Obtain certified GPS records; and
- Routinely scan copies of the log book to agencies and the Dept. of Consumer affairs for audit.

Prior to enactment of additional record-keeping requirements by the City of New York, over 2000 process servers were licensed with the NYC Dept. of Consumer Affairs. Since 2011, there has been a steady decline in the number of licensed process servers. Last year there were 650 listed on the DCA's roster. Currently, there are approximately 500 process servers licensed in the City of New York. That is a reduction of 75%. It is estimated that there are over 1 million occurrences of service of process per year in New York City. This number is expected to grow. With the number of process servers decreasing each year, there will be a foreseeable and preventable deficiency in the number of process servers, which could seriously impact court proceedings within the City of New York.

In light of ever-changing and rapidly advancing technology, use of a handwritten log book is archaic and burdensome. It is a relic of the past. It requires substantial additional work and time that would be better spent by the process server dealing with the many other aspects of effecting proper and sustainable service and maximizing efficiency, productivity, and accountability. In addition to being outdated, the log book is repetitive due to the strict service documentation guidelines that are in place in New York City.

As previously mentioned, under the current New York City requirements, the process server must upload GPS information to an independent database that is preserved by a third-party provider proficient in the maintenance and security of electronic records. There is a limited and specific time frame after service within which process servers must thoroughly document electronically all services and attempts.

The New York City DCA is a vigilant watchdog of New York City process servers and failure to comply with record keeping requirements often results in dire and punitive consequences for the process server. The DCA routinely conducts audits of the log book as well as the GPS records unnecessarily doubling the burden on the process server and adding to the significant stress process serving as a job already, by its nature, entails. The required electronic documentation must bear a visible GPS tag, which confirms the location where the photo was taken, as well as the date and time the photo was snapped. The third-party vendor must retain the secured records and have the capacity to provide documentation of all attempts/serves made on each job and also within a certain time frame, in chronological order, just as the log book is required to do. The state law, requiring the log book, and the City law, requiring verifiable electronic verification, essentially have the same goal achieved by different means, and constitute unnecessary duplication of effort while serving no valuable purpose.

The log book provides an undocumented, written timeline of services and service attempts. There is no way to independently validate the information handwritten into a log book. In contrast, the third-party companies through which GPS documentation is handled and maintained are able to independently validate each date and time of attempt/service, should the service ever be questioned. While this does not preclude a party from raising questions regarding the service, it does provide a solid method of verifying portions of the affidavit submitted relating to location, date and time which is far superior to a written log book.

The majority of process servers are hard-working individuals. The typical process server starts his/her day around 5:00 a.m. and often works throughout the day into the late evening. In a typical day, a server will make between 25 and 40 attempts at different addresses. During each attempt, they are mandated to contemporaneously handwrite a record in the log book, capture the coordinates of the location, make a digital record of the attempt and upload it to a third-party provider. In polling process servers who have left the business, the main reason cited is the unnecessary amount of recording that needs to be done. The exodus from the profession of process serving continues for this same reason. Process servers specifically name the log book as the most difficult, labor intensive and purposeless aspect of their job.

Almost every profession in existence has been affected by emerging technology. Process serving is no exception. It is to the benefit of all who rely on process service to have methods to correctly document information substantiating the service. Technology emerges from needs in specific areas to improve efficiency and save time and effort. It seems ill-advised, at this point in time to mandate an obsolete system of record keeping such as the process server log book. It is superfluous and less reliable than the electronic documentation required by the New York City regulations.

The requested change in the state law would serve to streamline process server record keeping requirements and make the job of process server more manageable, as well as more enticing to those considering entering the profession, without compromising accountability.

For all the reasons cited in this letter, I strongly urge your Committee to support Assembly Bill #3939-A.

Thank you!

I have included Sample letters for you to use in this campaign.

Please try to personalize them by adding your own comments or antidotes in support of the log book bill

Please CC: your letter to the following people

- Robin Schimminger RSchimminger@ NYAssembly.gov
- garyp@legislator.com and ramamunroek@nyassembly.gov
- Gail Kagan NYSPPSA Legislation Chair Gk.actionsubpoena@gmail.com

SAMPLE LETTERS

Dear Assemblyman.....

As a long-term resident of (Name of City or State), I am writing today to express my sincere hope that you will act on behalf of the best interests of your constituents by arguing and, ultimately, voting in favor of the Process Server Records Bill **Assembly Bill #3939-A** legislation currently in your committee.

With recent changes in technology use of a handwritten log book is out mode. Asking process servers to keep a cumbersome handwritten log and digital records is a wasting of our time and costing us money and jobs. By eliminating the logbook or allowing us a choice of the logbook or Digital record, you will breathe new life into the process serving industry.

I and most of my fellow process servers, appreciate the integrity and conviction of your positions in the past, and so we are confident that you will act courageously and clearly to represent the dominant perspective of your constituents at this important moment and into the future

Thank you

Dear Assemblyman.....

I am writing in support Process Server Records Bill **Assembly Bill #3939-**. I am a small business owner supporting several employees and my own family.

I have carefully studied the Process Server Records Bill **Assembly Bill #3939-**. I and I believe it would eliminate the burden of duplicate record keeping. The argument that the handwritten log book is a necessary tool for the court to prove service, simply does not hold up. Digital records are more transparent and taken at the actual time of service. The log book is simply a transcription of the digital record. This legislations a much need step towards the future and in keeping with the trends of modern technology.

The effect of the legislation on my business will

I request that you use your considerable influence in support of this Bill.

Thank you.

We also need supporters who are not process servers. Please ask friends and or clients that are attorneys or Judges and paralegals to send in a letter of support.

We can get this done this year; if we all work on this together.

Gail Kagan

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Please include this sheet with your 2017-18 Directory

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Monroe Wayne Service
3773 Orchard Street
Walworth, NY 14568
Phone: 585-313-7760
bussc2208@gmail.com
Wayne, Ontario

RICHARD COMSTOCK

Southern Tier Process Service, LLC
P.O. Box 478
Wellsburg, NY 14894
Phone: 607-731-7711
southerntierprocessservice@gmail.com
Chemung, Schuyler, Tompkins, Steuben,
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CLAUDIUS DEFRANCESCO

Flashpoint Investigations, Inc./Process Server
83-03 24th Avenue
East Elmhurst, NY 11370
Phone: 718-610-9096
Fax: 347-464-0712
Toll Free: 877-610-9696
flashpointinvestigations@yahoo.com
New York City

SUSAN F. DUNN

Maverick Process Service
1100 Franklin Avenue, Suite 303
Garden City, NY 11530
Phone: 516-693-1100
Fax: 516-693-1200
maverickprocess@yahoo.com
Nassau, Suffolk, Kings, Queens, NY,
Bronx, Westchester, Putnam

H. ERIC VENNES

Apex Legal Services
13300 Bothell Everett Hwy, Ste 303, PMB 674
Mill Creek, WA 98012
3209 Colby Ave., Ste 107
Everett, WA 98002
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Fax: 425-272-4278
Cell: 206-356-0875
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STATE OF WASHINGTON

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Accu-Serve Process Service, Ltd.
1600 Stewart Ave., Suite 308
Westbury, NY 11590
Phone: 516-565-5911
Fax: 516-565-2246
lcantwell@accu-serve.com

DONNA MARIE PEREZ

f/k/a DONNA MARIE PEREZ CARLUCCI
NJ Legal Process Service LLC
85B Troy Drive
Spartanburg, SC 29581
Phone: 973-801-6173
Fax: 866-400-4194
dperez@njlegalprocess.com

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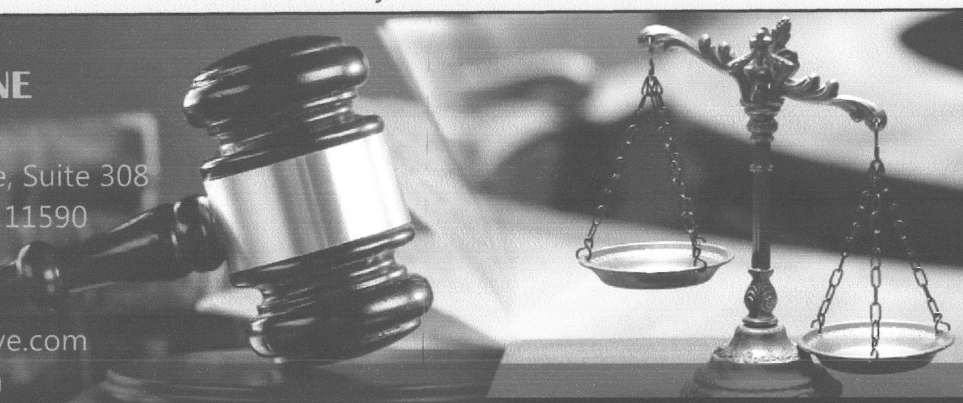


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BENEFITS OF BODY CAMERA USEAGE IN A DIGITAL AGE

Having worked in the process serving industry for more than 15 years, it is my belief that the use of body cameras is not only beneficial but necessary to our profession. Years ago, companies were not routinely taking photos with GPS and time stamps. Doing so has now become the industry norm and is asked for and often expected by clients. I believe that in the near future body camera usage will become the new industry standard. As a business owner, I prefer to be ahead of the curve. On multiple occasions the use of body cameras has protected not only me personally but other servers, clients and my company from possible litigation.

The first time I used video on a service was a few years ago while serving a foreclosure for an estate. After serving one of the defendants, he asked if I was going to serve his sister as well. He provided her name and address and I confirmed that I was headed there next. He warned me to be careful as his sister's husband was a violent man with a history of physical altercations with others including law enforcement. Wanting to document the situation if anything unusual happened, I positioned my vehicle in a way that allowed me to put my cell phone in the front windshield to videotape the encounter. I walked to the residence, knocked on the door and was greeted by a woman who confirmed that she was in fact the defendant. We spoke on her porch where she answered all my questions in a very cordial and pleasant exchange. I thanked her and departed, relieved that the service had been completed without incident.

I received a call from my client the following day. The foreclosure attorney had received a call from the defendant stating that I had broken into the home, assaulted both her and her husband and that both were filing a report with the police stating this. I reviewed the video on my phone and promptly emailed it to my client. My client in turn passed it on to the attorney who immediately thanked me for having this evidence to dispute the defendant's story. From that day forward, I have not served without taking video.

After that event, I mandated the use of GoPro Sessions (the small black cube action camera) from every in house server I work with. The cameras were relatively inexpensive and servers found them easy to use. In my experience, servers feel more comfortable and protected while out serving. There are very few places the servers do not wear body cameras. They do not wear them in health care facilities due to confidentiality concerns or government facilities where they are not allowed. Usage of the cameras documents the service details and eliminates the he said/she said situation if a defendant denies they were served or alleges misconduct.

On another occasion, I was serving a foreclosure. I approached the house wearing my body camera and came in contact with a male who was hostile and confrontational. He denied the homeowner lived at the property and stated that he would not accept any documents regarding the property. I explained to him that since he had confirmed he lived at the property, he was required to receive a copy. Again, he yelled that he had nothing to do with the foreclosure and he would not accept the documents. After obtaining his first name (he would not provide his last) and holding the documents out to him for several seconds, I dropped them at his feet as he would not take them. I thanked him and departed.

Soon after, I received a phone call stating that the occupant alleged that I threw the documents in his face and cut his eye. In addition, he alleged that I pulled a firearm and pointed it at him. I could have faced assault and menacing charges. Instead, I emailed the video to the client and the allegations were immediately dropped. Without this evidence, it would have been my word against his. It would have cost me unnecessary worry, stress, time and attorney's fees had charges been filed, regardless of the outcome. There is also the possibility I could have lost my client over the whole ordeal. Again, video evidence had resulted in the end of all accusations.

In another example, my company had served a foreclosure in November of 2016. The female defendant was personally served along with a copy for her spouse who she confirmed lived at the property. In September 2017, I received a call from our client about this 10 month old serve. The female defendant denied she was ever served and stated she had no knowledge of the proceeding. Her attorney had filed a motion to dismiss in which she signed a sworn statement that she was never served.

At my client's request, I pulled the saved video from the hard drive. It was dark and GoPro does not have night vision but we had audio that was very clear. We heard the server ask if the female he encountered was the defendant. She replied in the affirmative. She then confirmed her spouse lived at the residence as well. Both were served properly and the server departed.

I sent this file to our client who then had the audio transcribed for his required court appearance. He admitted the transcript into evidence and played the audio in the courtroom for the judge. Immediately after hearing the evidence, the defendant's attorney stood up and stated that they withdrew their motion. Once again, there was no he said/she said from 10 months ago. There was clear and convincing evidence. My client was ecstatic and commended our forward thinking in implementing this procedure. Both his reputation and ours was upheld.

This last experience caused me to recently upgrade my cameras to law enforcement grade body cameras with automatic night vision so that next time we will have video to go with the audio. I am certain there will be a next time and am confidently ready to dispute any alleged severe misconduct. Usage of body camera video capture protects not only servers and their careers but also my company and its reputation.

Josh Miller
The Chase Agency LLC
NYSPPSA Member
NAPPS Member

“(E)xceptional claims demand exceptional evidence.” Christopher Hitchens

WHY JOIN YOUR STATE ASSOCIATION

By Bob Gulinello, Past President and Founding Member

Process Serving and Investigation Associations are more than a networking opportunity

Several people have asked me recently, "Why should I join a state association? After all, it costs over \$100 per year, and that's a lot of money!" I reply by asking some questions of my own, such as: Do you consider yourself to be a professional? Has the process serving industry been good to you? What can you give back to the industry? Do you believe there is value in working with your peers to being process serving to a higher level of respectability?

I believe that being part of professional associations brings additional credibility to you and your business. I enjoy being associated with some of the most educated and knowledgeable people in the industry. When I am seeking new business, I'm proud to tell potential clients that I'm a member of NYSPPSA and NAPPS. This provides me with a network of professionals all over the world. Our board members are elected to their unpaid positions by their peers because they care about the industry and their livelihoods. Professional associations provide newsletters; hot lines that can provide answers concerning service of particular type of process, websites, membership directories and many other benefits. Also, their members are by far the best the industry has to offer.

It has happened that a good client called me with several rush services that needed to be handled at the same time. The additional manpower I needed to complete the job was right at my fingertips in my state membership directory. I was recently required to attend a Traverse Hearing. After my name, the first questions that were asked were "are you licensed and are you a member of any professional associations? Being able to answer in the affirmative added to my credibility and distinguished myself as a professional who cares about his work.

You can certainly get along in this business by yourself, however, you are selling yourself short. Being part of NYSPPSA has increased my business and I have made some good contacts and great friends. I am able to attend board meetings and brainstorm with representatives of large firms and small companies. We work long and hard to be successful and the people I work with truly care about the future of the process serving industry.

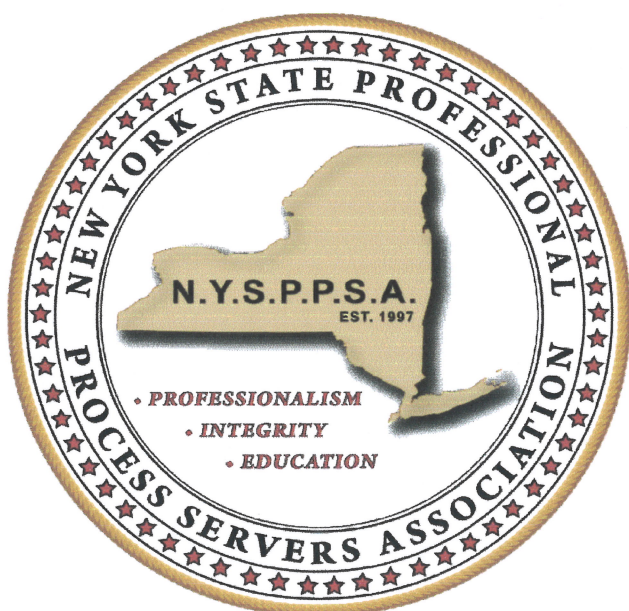
One or two services will cover the annual dues. Instead of looking at it as an exorbitant bill, it should be considered an investment in the future of your business. The sense of pride and accomplishment I have developed through my membership with NYSPPSA can't be purchased at any price.

NYSPPSA

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One Individual, Two Process Servers and Two Physical Descriptions

A Litigator's Thoughts, by Jacob E. Amir, Esq.*

To borrow from the opening line of Charles Dicken's A Tale of Two Cities, it was the best of descriptions, it was the worst of descriptions. Sort of. What do I mean?

Recently, I had a subpoena for a deposition served upon an individual male whom I never met. Three months later, I had a motion to compel the deposition served on that same individual, at the same address where service of the subpoena was effectuated. The first server's description of the individual described a male, tan skin, grey hair, glasses, who was 51-65 years old, 5'4"- 5'8", and 131-160 lbs. The second server described an individual who was male, brown skin, bald, 60 years old, 5'9"-6'0" and 161-200 lbs.

Consequently, where the first process server described a tan skinned man with grey hair who was no taller than 5'8" and weighed no more than 160 lbs., the second process server described a brown skinned man who was up to 6' tall and 200 lbs. While these descriptions were similar, they were distinct enough that an aggressive attorney could at least make a good argument for a traverse hearing. Fortunately, the discrepancies in the physical descriptions became a non-issue when the non-party's attorney wisely agreed to produce his client for a deposition, avoiding any need for judicial intervention.

Nevertheless, I was left frustrated. Two different process servers, within a span of three months, provided to me with affidavits of service containing different descriptions for hair, height, weight and potentially skin color (tan vs. brown was debatable). Which leads me to the point of this article, i.e., physical descriptions in affidavits of service.

We are all undoubtedly familiar with CPLR 306(b), which requires that proof of service by delivery upon an individual shall include a description of the person upon whom service was delivered, including, but not limited to, sex, color of skin, hair color, approximate age, approximate weight and height, and other identifying features." (emphasis added).

A process server's affidavit of service is presumptive proof of service. However, that presumption may be set aside upon a sworn statement of denial from the person allegedly served, requiring the proponent of the affidavit of service to establish by a preponderance of the evidence that service was completed. *Skyline Agency, Inc. v. Ambrose Coppotelli, Inc.*, 117 A.D.2d 135 (2d Dept. 1986). Marked differences in the physical description stated in an affidavit of service versus the person's objecting papers requires a traverse hearing. *Green Point Savings Bank v. Taylor*, 92 A.D.2d 910 (1983).

The person allegedly served may claim lack of service by showing that his or her physical description in the affidavit of service was incomplete or erroneous. Thus, because CPLR 306(b) notes that the proof of service is to include a physical description containing "other identifying features", courts have rejected affidavits of service which did not note such physical features as a beard proven to have been fully grown at the time of alleged service. (*E. & R. Mavin Const., Ltd. v. Lebawohl*, 237 AD2d 126 (1st Dept. 1997).

On the other hand, other discrepancies between an individual's actual physique and what is described in an affidavit of service, such as the approximate weight (*Lincoln First Bank-Central, N.A. v.*

Joe Bombard Chevrolet, Inc., 55 A.D.2d 1048 (4th Dept. 1977)) and greying hair color (*Rowlan v. Brooklyn Jewish Hosp.*, 100 A.D.2d 844 (2d Dept. 1984)), will probably not render a service defective. These discrepancies are generally attributable to changes to a person's physique over time.

The point of this recitation is not to identify every little feature which should be included in the physical description on the affidavit of service. It is, however, to encourage process servers to arm themselves with as much information of the physical description of an individual before engaging in the service, and then record as much of that physical description on the affidavit of service to meet CPLR 306(b)'s dictate to include "other identifying features" in the proof of service.

Would it have been beneficial for me to compare more closely the two physical descriptions in the affidavits of service when I received the second affidavit? Probably yes. But if I had, what then? Assuming the differences were material, this logically meant that one of the physical descriptions was incorrect, potentially leaving me with a questionable service of either the subpoena, or the motion. This would have caused my client to incur needless costs and a delay of time as we faced a potential traverse hearing. Fortunately, the issue did not become litigious.

By the way, both process servers got it partially right and partially wrong. The individual who was the subject of my subpoena and motion to compel is a man in his late 40s, light brown skin, bald, wearing glasses, who is approximately 5'7" and about 160 – 180 lbs. I met him in my office. And no, he does not have "other identifying features" worth sharing.

* Jacob E. Amir is an attorney with Smith, Buss & Jacobs LLP. in Westchester County, practicing in business, construction, real estate and land use litigation and transactions. He can be reached at jamir@sbjlaw.com.



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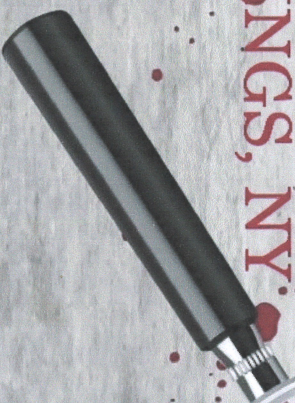
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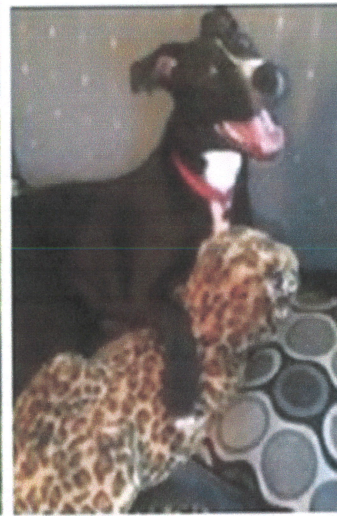
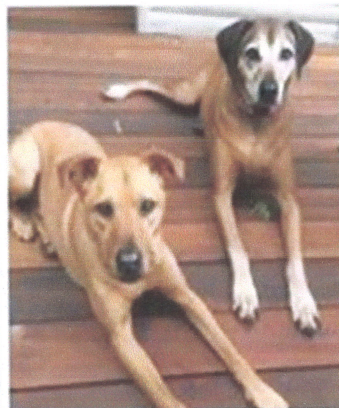
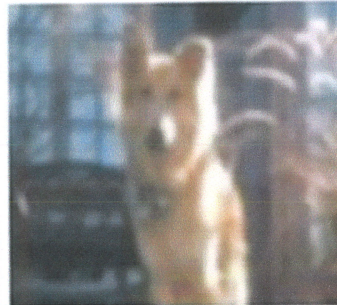
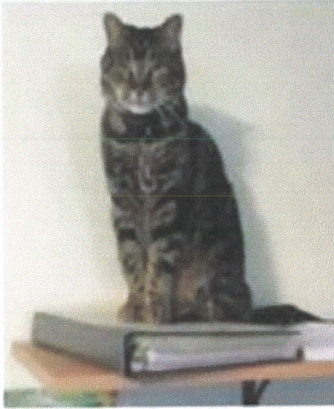
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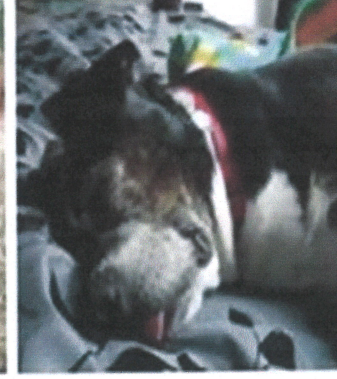
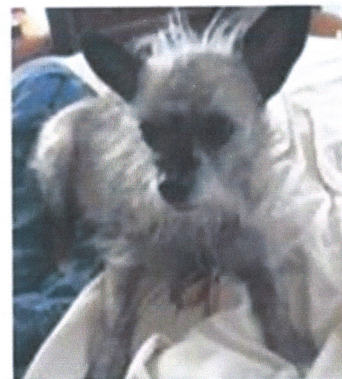
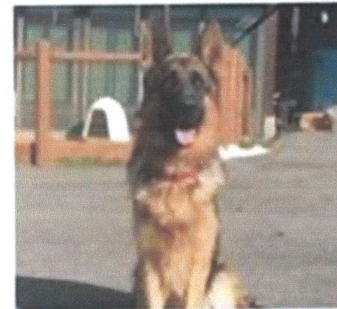
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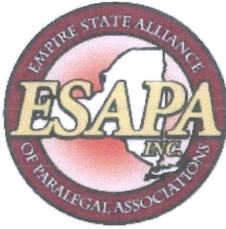


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THANK YOU TO THOSE MEMBERS WHO SENT PHOTOS. PLEASE CONTINUE TO SEND MORE!



Empire State Alliance of Paralegal Associations, Inc.
P.O. Box 14262, Albany, New York 12212-4262
www.empirestateparalegals.org

September 22, 2017

Ellen Eakley
Kim Letus
New York State Professional Process Servers Association
P. O. Box 925
Orchard Park, New York 14127-0925

Re: ESAPA 2017 Education and Leadership Conference

Dear Ellen and Kim:

On behalf of the Empire State Alliance of Paralegal Associations, Inc. (hereinafter "ESAPA"), thank you for your generous support and sponsorship of the ESAPA 2017 Education and Leadership Conference that was held in Syracuse this past weekend. Without generous sponsors, such as yourself, we would not have had such a successful conference. Your support is greatly appreciated. Our heartfelt thank you.

Sincerely,

Edie Feiling
ESAPA President

ekf/

cc: All ESAPA Board Members (via email)

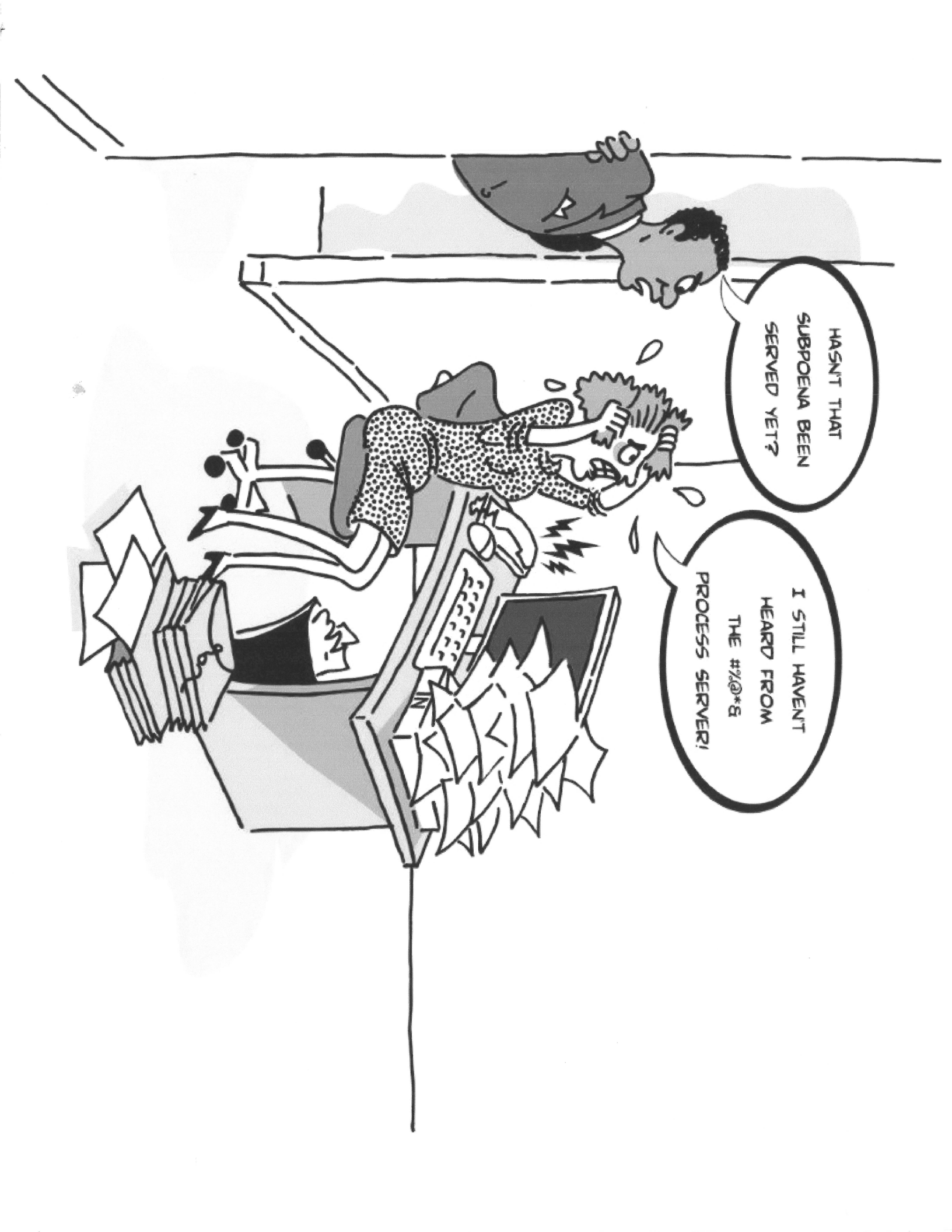
Board of Directors Meeting - Sunday, 1/21/18 at 9:00 am

Courtyard by Marriott - Tarrytown, NY OR.....

ANNOUNCING
LIVE INTERACTIVE STREAMING OF OUR
BOARD MEETING



Join us Sunday, 1/21/18 - 9am
Log on to **NYSPPSA.org** and follow the
link or go to our Facebook page at
Facebook.com/NYSPPSA1
and be a part of the meeting!!

A black and white cartoon illustration. A man in a suit is standing and shouting at a woman sitting at a desk. The woman is looking extremely stressed, with sweat drops around her head and her hands on her face. She is sitting at a desk cluttered with papers, a keyboard, and a computer monitor. A large stack of papers is on the floor next to the desk. The man is holding a briefcase. The scene is set in an office environment.

HASNT THAT
SUBPOENA BEEN
SERVED YET?

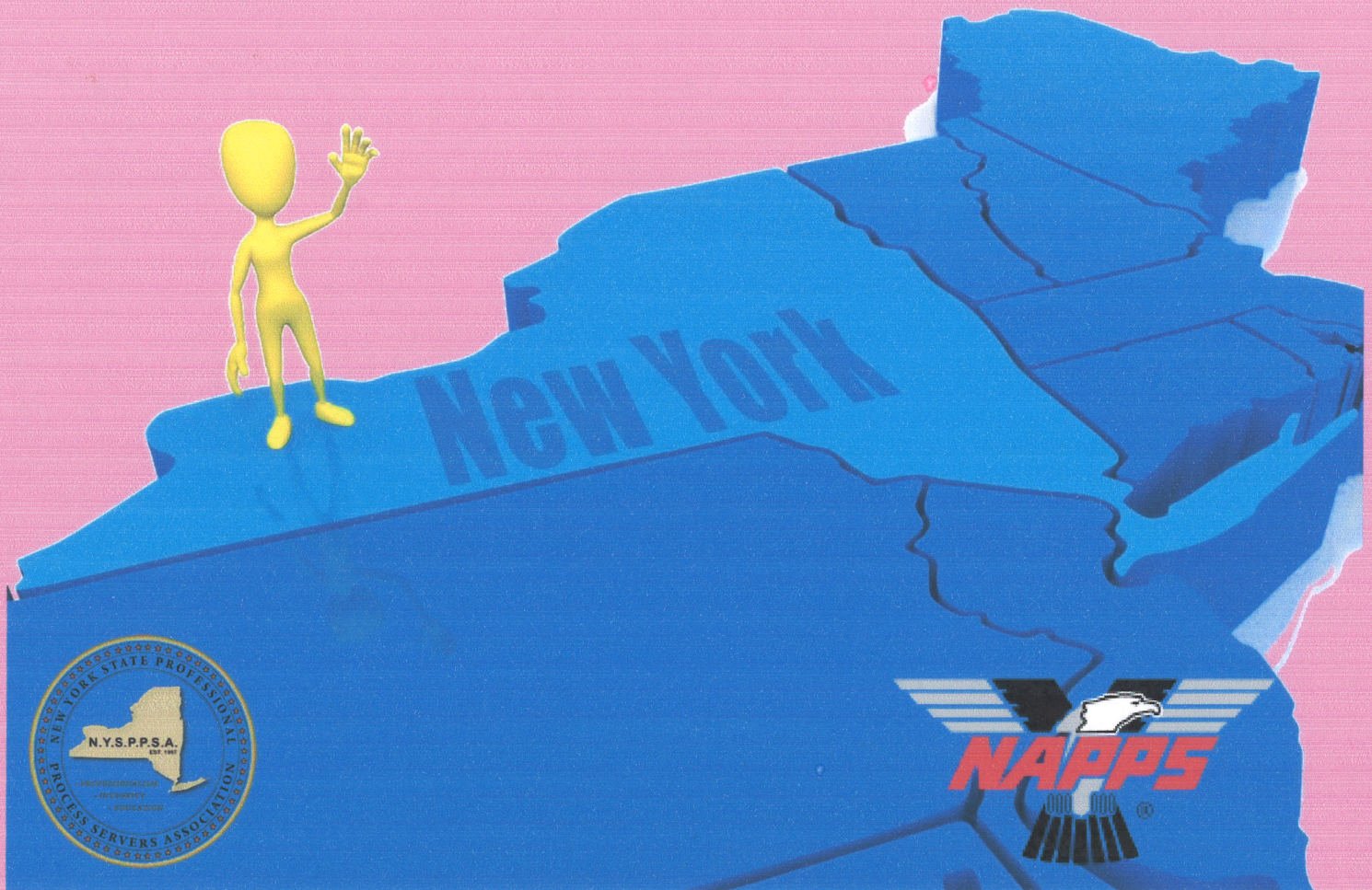
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Jillina Kwiatkowski • Jillina@smartserveprocess.com • www.smartserveprocess.com