**CRAIN’S NEW YORK BUSINESS**

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**It's getting harder to process**

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Buck Ennis

Process servers like Angel Gutierrez, who deliver notices of legal action, have seen their New York City numbers plunge 40% in two years.

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Angel Gutierrez has run from gun-wielding men, posed as a delivery guy and even dressed up in doctor's scrubs to serve court papers to unsuspecting defendants in the Bronx. Every time he knocks on a door, uncertainty looms.

"You never know if it's going to be Freddy Krueger behind there," said Mr. Gutierrez, 37. His biggest fear these days, however, is that he may lose his livelihood. New rules passed by the City Council in 2010 have pushed costs up for process servers like Mr. Gutierrez, who are retained by attorneys to notify people or businesses of a legal action against them. Already, the number of servers licensed in the city has dropped 40%, to about 1,100, from 1,850 just two years ago. The city now requires servers to take biennial licensing tests, keep extensive records and track their movements on GPS devices, among many other rules. It has also issued heavy fines for failing to strictly adhere to them. Individual servers must post a $10,000 bond every two years with the city's Department of Consumer Affairs to cover the costs of potential fines. Agencies that coordinate the operations of multiple independent servers have to put up $100,000 bonds. Process-server agencies can make six-figure profits, and the amount they must actually pay a bonding agency is a small fraction of the $100,000. At the high end, individual process servers can make $70,000 or $80,000 annually. Top firms in the city include ABC Legal Services, which has 400 employees, and inSync, which traces its roots back to 1940.

**'Sewer service'**

The regulatory crackdown stems from a 2008 investigation by Consumer Affairs that found widespread violations of record-keeping requirements in an industry that tends to operate largely in the shadows. The investigation found that process servers intentionally failed to serve documents to parties in lawsuits—a practice known as "sewer service"—in apparent efforts to prevent them from showing in court.

"For years, too many process servers failed New Yorkers, especially those struggling with debt and those being pursued in court for debts they didn't even owe," a Consumer Affairs spokeswoman said. "Strong local protections ensure consumers actually receive the papers they need to avoid default judgments and have their day in court." The New York City Bar Association supported the 2010 reforms because of the number of cases in which people subject to legal action were not properly served, never showed up in court and were hit with judgments. The scenario was especially common in consumer-debt cases. But process servers say the regulations have been overkill, crippling good actors, forcing firms to close and leading to delays in the legal system. No other municipality in the state regulates the industry, and its practitioners suspect the rules are being enforced in a way meant to generate revenue for the government. Some servers have found different lines of work, while others have migrated to locales with less regulation in New York or New Jersey. Consumer Affairs has been probing potential violations of the new law, launching 145 investigations of agencies and 180 audits of individual servers. Of 40 detailed investigations into individual servers' GPS devices, about a quarter have shown signs of "sewer service," according to the department. Most servers settle rather than fight the charges. Of the 180 individual servers investigated thus far, 98 have acceded to settlement agreements with Consumer Affairs, according to the department. Only five cases have resulted in no action at all from an in-house department tribunal that hears the cases, which have yielded $218,000 in fines. Fines range from $500 for minor errors to the thousands. "It's really a kangaroo court," said Myra Sencer, an attorney who represents process servers before the tribunal.

**Paperwork burden**

Some bigger firms have been forced to hire full-time compliance officers just to keep up. Mr. Gutierrez says he often works 15-hour days, then goes home and spends hours filling out paperwork documenting his stops, after already digitally inputting the same information in a GPS device. It's also difficult to find information about evolving rules and regulations. "My wife has spent a lot of our nights standing next to me, helping me log in," Mr. Gutierrez said.

Process-server companies want reductions in the size of the bonds they are required to post and less responsibility for monitoring independent servers. Servers say paper record-keeping should be streamlined now that they keep data on their GPS devices. Lawyers are also complaining. Some say they pay much higher costs for process service now, because of the dwindling supply. Others say the shortage could lead to a legal logjam. "It used to take two or three days to get someone served," said Ms. Sencer, the attorney. "Now it can take weeks."

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