



**REPORT TO THE NEW YORK CITY COUNCIL  
AUTHORIZED BY LOCAL LAW 7 OF 2010**

Presented by the New York City Department of Consumer Affairs  
Alba Pico, First Deputy Commissioner  
January 31, 2014

## **Introduction**

Local Law 7 of 2010 added Section 20-409.3, Subchapter 23 of Chapter 2 of Title 20 to the Administrative Code of the City of New York, which requires that the Commissioner of the New York City Department of Consumer Affairs (DCA) submit a Report to the Speaker of the Council regarding the effectiveness of these regulations on effectuating proper service and improving oversight over the process service industry. Specifically, the law requires that the Report include, among other things, the results of audits the Commissioner has completed of process servers and process serving agencies, including information regarding their compliance with the provisions of the subchapter.

DCA's Rules pertaining to this law went into effect over the course of 2011 and DCA began actively enforcing in November 2011.

## **Local Law 7's Reform of Process Server Regulation**

Local Law 7 and the rules promulgated by the Department to effectuate its objectives added important recordkeeping and other obligations to process server agencies and individuals. They also gave potent tools to the Department of Consumer Affairs to investigate, identify and redress illegal process serving activities, including "sewer service."

Among the key reforms to process server regulation is the requirement that every process server carry with him or her while serving process an electronic device that uses Global Position System technology to tracks the location of the process server while engaged in activity. Before the requirement became effective, the Department had inadequate resources to investigate the activities of a process server suspected of sewer service. An investigation of a single process server for a single day would typically require the Department to devote as many as four days inspectors' time to follow a process server in the field. The Department can now establish the activities of compliant process servers in computer records, and determine the location of a process server on any given day in a matter of minutes. The technology, which is available at a modest cost to individuals and agencies, has greatly enhanced the Department's ability to uncover sewer service. Fully twenty-five percent of the GPS records of individual process servers that the Department has analyzed have revealed strong evidence of sewer service. All of them were subjected to discipline following the Department's institution of proceedings against them.

However, the Department has also learned that nearly half of process servers whose records they have sought are not maintaining GPS records properly or at all. In response, the Department has recently initiated a compliance review of approximately one-third of licensed process servers simply to ascertain whether they are keeping GPS records as required. The Department anticipates engaging in ongoing compliance reviews.

Based on Local Law 7, the Department adopted a rule that requires process server agencies to complete monthly reviews of the records, including GPS records, of the process servers they employ. Before Local Law 7 and the rules were implemented, process serving agencies rarely reviewed the activities of individual process servers, even after complaint of sewer service or other non-compliant activity... Now, when

conducting monthly reviews, the agencies must report to the Department any activity they uncover of non-compliant conduct by individual process servers, and disclose the actions they take to remedy misconduct.

All of these records are available to the courts that hear challenges to service. The Department has conducted several education sessions with Civil Court and Housing Part judges to introduce them to the electronic records, including GPS records, that process servers must maintain in a form admissible in evidence. Courts are more frequently considering GPS information at traverse hearings to determine whether service was proper.

The rules adopted pursuant to Local Law 7 also provide information that process serving agencies can use to determine whether to hire an individual process server. Process serving agencies, as well as members of the bar, frequently seek information about process servers that was not available to them before Local Law 7 and the rules became effective.

### **Number of Individual Process Server Licensees**

- Before the February 2012 renewal period: 1,850 individual process server licensees
- As of January 2014: 1,102 individual process server licensees

As part of the DCA license renewal in February 2012, 1,026 process servers took the exam; 122 failed and 904 passed. There were 832 former licensees who never took the renewal exam.

### **Process Server Investigations from 2012 to the Present**

#### Process Server Individual Investigations

From 2012 through the present, as part of DCA's ongoing investigation into compliance with the new laws and rules, DCA has investigated 187 process servers.

- DCA requested books and records, including GPS records, from 141 of these 187 process servers. Of those:
  - 19 supplied some records in response to their subpoenas or document demands but provided no evidence that they maintain GPS records;
  - 92 provided evidence that they had GPS records. Of those, the evidence showed that 40 are not complying with the requirements governing how the records must be kept;
  - 15 did not respond at all to their subpoenas or document demands; and
  - 15 have responded and DCA is currently reviewing their records.
- DCA has conducted an intensive analysis of the GPS records of 41 of the 92 process servers who supplied them. Of those 41, 11 provided records where the GPS data showed them to be several miles from where they claimed to be in sworn statements. We brought cases against those 11, resulting in 8 settlements, 2 denied renewal applications and 1 whose hearing is scheduled.

- Courts scheduled hearings regarding whether service was proper (known as “traverse hearings”) for 53 process servers, but these process servers failed to notify DCA of the hearings or the hearing results as required by law. DCA issued violations to all 53. 39 of these 53 process servers entered into settlement agreements and 6 went to hearing where 1 was found guilty and the other 5 never appeared and default decisions were issued. 8 currently have hearings scheduled.
- In total, 133 of the 187 process servers investigated were found to have violated the law.
  - 106 entered into settlement agreements requiring them to:
    - maintain complete and accurate electronic records;
    - maintain records documenting their efforts to confirm the accuracy of defendants’ addresses;
    - take photographs of the buildings where they serve or attempt to serve process;
    - provide copies of traverse hearing decisions to DCA; and
    - attend trainings mandated by DCA.
  - 10 had their license renewals denied;
  - 5 surrendered their licenses;
  - 12 went to hearings where seven resulted in fines and license revocations, two resulted in fines and license suspensions, and three resulted in fines.
- Courts are more frequently considering GPS information at traverse hearings to determine whether service was proper. See *40-60 Elbertson Realty Corp. v. Volodymyr Tkachyshym & John Doe*, Decision/Order (Queens Civ. Ct. May 28, 2013) (ruling service improper because process server did not bring GPS records or logbook to traverse hearing); *West Gramercy Assocs. LLC v. Iron Star, Inc. d/b/a Retreat*, Decision and Order After Traverse (N.Y. Civ. Ct. Feb. 25, 2013) (ruling service improper in part because there was no GPS evidence); *FIA Card Services N.A. v. Chau Lam*, Decision/Order (N.Y. Civ. Court Aug. 20, 2012) (ruling service improper in part because GPS coordinates did not match the coordinates for the defendant’s home); *Arden Realty Corp. v. Anthony Parson*, Report of a Traverse Hearing (N.Y. Civ. Ct. June 21, 2012) (ruling service improper because process server did not produce any GPS evidence). With respect to these 4 cases, DCA issued charges against 3 process servers (1 was revoked after failing to respond to DCA’s subpoena and 2 settled) and is still investigation the other one.

### **Process Serving Agency Investigations**

From 2011 through the present, DCA has brought cases against 135 process serving agencies for violations of various process server regulations.

- 68 agencies entered into settlement agreements requiring them to prepare monthly compliance reports using a template created by DCA
- 1 agency entered into a settlement agreement requiring it to provide copies of traverse hearing decisions to DCA
- 5 agencies entered into settlement agreements requiring them to:
  - perform background investigations before hiring any process servers

- prepare monthly compliance reports using a template created by DCA
- randomly review the GPS records of their process servers for sewer service
- investigate whether service was proper in all cases where service is challenged by a civil litigant and a traverse hearing is scheduled
- provide copies of traverse hearing decisions to DCA
- 1 of these 5 agencies was also required to hire an independent monitor to oversee the process serving activities of the agency for 6 months
- 28 agencies entered into settlement agreements requiring them to pay a fine
- 11 agencies entered into settlement agreements requiring them to surrender their licenses
- 21 agencies went to a hearing, where 18 defaulted and all 21 were issued fines.
- 1 agency has a pending hearing.

### **Outreach and Education**

- In August 2013, DCA hosted an Open House for all process server licensees to learn more about the law. About 110 people attended the event.
- DCA has conducted trainings on new process server regulations for State Court judges and practicing attorneys.
- DCA has also met repeatedly with the industry association representatives and individual service agencies and servers, and has also provided educational materials to the industry on our public website.
- DCA has developed a webpage dedicated to the process serving industry ([nyc.gov/ProcessServer](http://nyc.gov/ProcessServer)), which contains:
  - Educational materials for process servers, including:
    - a compilation of New York City and State laws and rules pertaining to process
    - a link to the “New York City Marshals Handbook of Regulations” a
    - FAQs for process servers who need to take the Process Server Individual Exam
  - Legal interpretations that DCA issued in response to inquiries about process server rules and laws.
  - Information on how a process server or agency can apply for or renew a license, as well as links to documents that must be submitted with applications.
  - Traverse Report Form that process servers and agencies can use to report to DCA when a traverse hearing is scheduled and the result of the traverse hearing.
  - Traverse Report Form for judges and legal advocates.
  - Complaint Form for legal advocates.
  - Forms to assist process server agencies in ensuring that process servers comply with the law and Rules. Forms include:

- Monthly Compliance Report. Agencies may use this form to record the results of their required monthly review of process server records.
- Disciplinary Actions and Noncompliance Report. Agencies may use this form to report noncompliance with the process server laws to DCA that they discover during their monthly record reviews and during the ordinary course of business.
- Global Positioning System (GPS) Investigation Report. Agencies may use this form to randomly audit the services made by their process servers to ensure that the process servers are not committing sewer service.
- Service Investigation Report. Agencies may use this form to investigate particular services that are the subject of traverse hearings or where somebody has complained that service was improper or not made.
- Settlement agreements and Tribunal decisions concerning the process serving industry dating back to 2009.

### **Complaints Submitted By Consumers and Legal Advocates**

Since February 2012, DCA has received complaints from consumers and legal advocates against 53 licensed process servers. After reviewing the complaints, DCA took action against 24 of them, resulting in 13 settlements, 5 license surrenders, 4 license revocations (2 after a hearing and 2 after defaulting), 1 default where the process server was fined, and 1 hearing where we are awaiting the Tribunal's decision.

This included 4 complaints of sewer service where DCA's investigation revealed that the process servers were not creating GPS records for any of their services. These 4 cases settled.

We have 13 investigations pending.

### **Next Steps**

In December 2013, DCA issued 316 subpoenas to process servers for GPS records. This group was selected at random and represents about a third of all process servers with the goal of reviewing all process servers in three phases for compliance with GPS-related rules.