



Jonathan Mintz
Commissioner

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[Redacted]
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Re: Service of Subpoena for Electronic Records of Service (GPS Records)

Dear Ms. [Redacted]:

This letter responds to your recent inquiry concerning the procedures for obtaining a process server’s electronic records of service, known as GPS Records pursuant to subpoena. In particular, it addresses concerns you raised about obtaining those records when the contractor providing GPS services to a process server is located outside of New York State.

In 2010, the City Council amended subchapter 23 of Chapter 2 of Title 20 of the New York City Administrative Code to add a new section 20- 410. Section 20-410 provides:

A process server licensed pursuant to this subchapter shall carry at all times during the commission of his or her licensed activities and operate at the time process is served or attempted an electronic device that uses a global positioning system, wi-fi device or other such technology as the Commissioner by rule shall prescribe to electronically establish and record the time, date, and location of service or attempted service. All records created by such electronic device shall be maintained in an electronic database by the process server, or if such process server is acting exclusively as an employee of a process service agency, by the process service agency, for seven (7) years from the date such record is created.

Pursuant to Code § 20-410, the Commissioner has adopted 6 RCNY § 2-233b, titled “Electronic Record of Service.” In addition to prescribing the details of the obligation of a process server to make an electronic record of his or her process serving activities, it requires that the record keeping and retrieval functions be provided to the process server by an independent third party contractor. Section 2-233b(a)(3) provides, in relevant part that:

Contract for Services. The process server must enter into a contract with

an independent third party (“the Contractor”) pursuant to which the Contractor will provide services and perform functions described in paragraph (4) of this subdivision that enable the process server to meet the data storage and retrieval requirements set forth in such paragraph[.]

Section 2-233b(a)(4)(v) addresses retrieval of those records, providing, in relevant part, that “the Contractor must produce upon request by the Department, and to any other party according to an appropriate order or subpoena, a copy of the electronic records, or any reasonably described part involved, certified to be true and accurate[.]”

Under the rules adopted by the Commissioner to implement Code § 20-410, the Department considers service of a duly authorized subpoena upon a process server sufficient to require the contractor to produce the records. Upon service of such a subpoena, the process server must direct his or her contractor to provide the requested records. If a contractor fails to provide records in response to a subpoena served upon the process server, the Department will consider the process server to be in violation of Section 2-233b and subject to fines and other sanctions, including revocation of his or her license.

In addition, a licensed process serving agency may be subject to sanctions when a contractor fails to provide GPS records in response to a subpoena served upon a process server. Section 20-406.2 of the Code provides, in relevant part:

Every process serving agency licensed under this subchapter shall:

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b. Be legally responsible for any failure to act in accordance with the laws and rules governing service of process by each process server to whom it has distributed, assigned or delivered process for service[.]

A process serving agency is responsible to ensure that a contractor provides GPS records sought by a subpoena served upon a process server in a matter concerning the service of process that the process serving agency has distributed, assigned or delivered to the individual process server. Its failure to take appropriate action to ensure compliance with the subpoena will subject the process serving agency to sanctions by the Department.

The Department expresses no view whether a court or other tribunal has authority to impose sanctions upon the process server or its contractor when a contractor does not provide GPS records in response to



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a subpoena served upon the process server. However, upon notification by a party, court or tribunal that a contractor has failed to provide records in response to a subpoena served upon the process server, the Department may take action concerning the process server's and the process serving agency's license.

Very truly yours,

A black rectangular redaction box covering the signature of Sanford M. Cohen.

Sanford M. Cohen