



Comments Received by the Department of Consumer Affairs
on
Proposed Amendment to Rules Governing Process Servers

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

NYSPPSA Position regarding the Log Book bill; currently in New York Assembly under the Committee on Economic Development, Job Creation, Commerce and Industry
Bill #3939-A Amendment to General Business Law Section 89-cc

NYSPPSA is in favor of transparency with regards to the service of process. We are proud

of the work we do to insure preserve the integrity in process serving, to educate process servers and to insure due process to consumers.

To attract better candidates to this fields and keep up with emerging technology we have been working to get NY State Assembly Bill A0 3579 passed. which amends General Business law 89A section 89cc as it relates to the handwritten logbook. It passed the Senate under So4977 (a copy is attached)

Prior to the 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 process servers. Last year there were less than 700-800 listed on the DCA's roster. Audits of the logbook and the response to the Housing Crisis is expected to diminish the number of process servers willing to take on certain cases

Litigation in the city of New York grows each year. We believe the housing industry alone creates hundreds of thousands of cases that need to be served each month. That doesn't account for papers from the collection industry, the family and surrogates' courts, slip and fall cases, malpractice and a hundred others.

We know for a fact that process is often being served by people not licensed. Due to the shortage of servers in the city we believe a lot of unregulated people are serving process in the city every day. The rules that were put in place to protect consumers have in fact threatened the transparency of due process.

Considering the ever-changing and rapidly advancing technology, use of a logbook 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.

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 conducts audits of the logbook as well as the GPS records, and have been mandated by the city council to increase these audits.

It is our position that the logbook, 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 logbook.* The records are often illegible, get lost, misplaced, fade and destroyed over time. Since original copies of them are required by the current law, the courts expect original copies of the logbook to be presented in a traverse hearing, requiring servers to duplicate the records by copying over their gps record.

In contrast, the third-party companies through which GPS documentation is handled and maintained can 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 logbook.

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.

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.

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.

We have discussed this rule change with the office of court administration and while they cannot support a change, they are not against it.

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, now, to mandate an obsolete system of record keeping such as the process server logbook. It is superfluous and less reliable than the electronic documentation required by the New York City regulations.

We believe that the proposed bill will increase transparency, allow Agencies to have more be more efficient in auditing the gps record, and allow the industry to attract and educate more servers so the People of the city of New York are better served.

Quil Hagan Legislative Chair

914-963-1944

NYS PPSA

STATE OF NEW YORK

4977

2019-2020 Regular Sessions

IN SENATE

April 3, 2019

Introduced by Sen. SKOUFIS -- read twice and ~~ordered printed~~, and
when printed to be committed to the Committee on Consumer Protection
AN ACT to amend the general business law, in relation to process
server records

The People of the State of New York, represented in Senate and
Assem-
bly, do enact as follows:

1 Section 1. Subdivision 1 of section 89-cc of the general business
law,
2 as added by chapter 340 of the laws of 1986, is amended to read
as
3 follows:
4 1. Each process server shall maintain a legible record of all
service
5 made by him as prescribed in this section. [~~Such records shall be~~
kept
6 ~~in chronological order in a bound, paginated volume. Corrections~~
in
7 ~~records shall be made only by drawing a straight line through the~~
inac-
8 ~~curate entry and clearly printing the accurate information~~
directly
9 ~~above the inaccurate entry. All other methods of correction,~~
including
10 ~~but not limited to erasing, opaquing, obliterating or redacting,~~
are
11 ~~prohibited.] The process server shall preserve such record by
submitting
12 recorded entries to a third party contractor within three days
of
13 service or attempted service, provided, however that
permissions
14 pertaining to such data will be secured so that the data cannot
be
15 deleted upon submission. Records shall be reported in
chronological~~

16 order. It shall be unlawful for any process server to tamper with
data
17 or properties of any electronic record kept pursuant to this
section
18 after an image file is made by modifying, amending, deleting,
rearrang-
19 ing or in any other way altering any such data or properties
including,
20 but not limited to, using a meta data scrubber or similar device
or
21 program. If a typographical error has occurred or if data contained
in
22 the process server's record was accidentally omitted from the
electronic
23 data entry, the third party contractor may make an amendment in
which
24 the original record shall be identified by entering it in italics.
All
25 third party contractors must maintain a daily backup of all
submitted

EXPLANATION--Matter in italics (underscored) is new; matter in
brackets

[-] is old law to be omitted.

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1 data, and all data must be available for review upon request of any
and
2 all interested parties.
3 § 2. This act shall take effect on the thirtieth day after it
shall
4 have become a law.

From: [Rosemary LaManna](#)
To: [Ortiz, Carlos \(DCA\)](#)
Subject: Proposed Rule Changes Pertaining to Process Servers
Date: Friday, February 28, 2020 4:49:03 PM

Good afternoon Mr. Ortiz,

Unfortunately due to an illness, I was unable to attend the open hearing this morning that took place wherein the Proposed Rule Changes for Process Servers were presented.

Before I express my concerns about the changes, please understand that I am not an individual that is against licensing, and I express my concerns as I've been working in this industry continuously for 33 years.

2-239 Use of Email & 2-240 Audits

There is not guarantee that an individual's anti virus or spam software will not quarantine and e-mail with attachments.

- Solution/proposal – The City has recently created the portal for the purpose of reporting data to them. Not only should an email be used, but a message to the individual server be uploaded to the portal. With this, the time to respond should be at least 30 days. If there is no acknowledgement of receipt within thirty days, a notice should be required to be sent via the United States Post Office alerting them that they have not responded and giving them a specific date to cure same. If someone has just ignored the e-mail, portal and mail request, then the fine should be enforced, but you cannot fine someone based on cyberspace.

#2 Process Servers do not generally file affidavits of service. In the age of e-filing, many clients have opted to file their own affidavits, to save the expense of third party filing same. In addition, affidavits filed with the Federal Court are not accessible to the public, and the attorneys that file same, do not provide the agency or the individual server with same. For many cases, it is not even a statutory requirement to file all affidavits of service. Then we have the issue with several Civil Courts wherein they will not stamp or acknowledge the filing of affidavits. Providing affidavits seems to be redundant and an overload for anyone auditing the affidavits, as the process servers GPS records that are maintained by the third-party has all of the same information that is reflected on the affidavit of service.

#3 As far as the GPS records go, is the department looking for a certification from the third-party, or just a print out that the server can obtain from his/her own personal account? Certification of the records are not in control of the server, and may not be able to be ascertained within the time frame specified by the Department. The server should not be held liable as to the production of the documents from a DCA approved third-party, unless of course he/she is negligent in requesting same.

#4 The proposed language is very vague, as the City does not have jurisdiction for services that are made outside the City of New York. I feel for clarity the language needs to be changed to "concerning process served or attempted within the City of New York, and any result of such

hearings.” For example if an action is brought in Nassau Supreme Court, yet the party is served in Queens County, and that service is challenged and heard in a court outside the City, that should be reported, but not if a service is made in Nassau County, wherein a license is not required, and the hearing is held in Nassau Supreme Court.

#4b I’m unclear if this just give the agency the right to ask for submission electronically and/or paper? I’ve heard through the industry that servers have actually remitted their original log books for extensive periods of time to the DCA Office, which would be detrimental to any case wherein they needed to attend a hearing or an inquest. The digital record from the third party is already being provided, so the collection of the logbook should not be required.

#4c Fines truly are not the answer. What our industry needs for quality process servers, is Education/Support. A required session, similar to a continued education class on-line or in person every six months would clarify any questions an individual server may have. We need to make the DCA a place that is not just about FINES, but a source of education, without fear of asking a question or a concern to the individual server.

#4d It is not clear as to what this paragraph means. I’m wondering if the intention was to say if “he/she has been served with at least one summons, subpoena, notice pertaining to service?” As it is now, they must report in the portal if they serve any these documents pertaining to a Housing Court proceeding. Please review.

Section 6-30 of Subchapter B... These fines threaten the livelihood of the server, and as written with what has been proposed above, could be enforced should an email not be received. I understand if an email, as well as an additional notice is sent in the mail, but for someone to be fined when there is no proof that an email is received is unjust.

I thank you for allowing me to send you my concerns and thoughts pertaining to the proposed changes. Could I perhaps suggest, that these changes be withdrawn at this time, and six months prior to the next renewal they be presented once again, so that they can be perfected, and there will be no server that goes without full knowledge of same, as it could be incorporated with their education materials to review prior to testing again.

Thank you again for taking the time to read and listen to my concerns.

Sincerely,

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