

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

-----X
DEPARTMENT OF CONSUMER AFFAIRS

CONSENT ORDER

Complainant,

-against-

BRUCE EASTWOOD

Licensee/Respondent.
-----X

Violation No. 05349376

License No. 1089572

(Process Server Individual)

1. Bruce Eastwood ("Respondent") acknowledges that the New York City Department of Consumer Affairs ("DCA" or "the Department") duly served Respondent with a Notice of Hearing charging Respondent with violations of the following rules: 6 RCNY §§ 2-233(b)(1), 2-233(b)(2), 2-233(b)(4), 2-233(b)(6), 2-233a(b)(3), 2-233b(a)(4)(vii).
2. Respondent enters into this Consent Order ("CO") with the Department to resolve these charges.
3. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representations to the contrary.

DEFINITIONS

4. "Affidavit of Service" means a sworn written statement made under oath before a notary public in which the process server affirms that service of process in a matter was effectuated and the manner in which service was effectuated.
5. "Bound volume" means a book or ledger that at the time of purchase contains a specified number of unfolded sheets of paper or other material that are permanently secured to covers by stitching, glue or any other such method that is calculated to make readily discernable the removal or insertion of one or more sheets after the first use of such volume.
6. "Chronological" with respect to the notation in the process server record or logbook means that each notation shall be entered sequentially according to the time and date of the activity recorded and without leaving any blank spaces between each entry that would allow for the insertion of any additional notation between any two entries.

7. "Contemporaneously" in relation to entries in the process server record or logbook means at or near the time of the event to which an entry is recorded, or within a reasonable time thereafter.
8. A "contest to service of process" means a challenge to the service of process effectuated by a process server alleged in an answer, motion, or other pleading submitted in a judicial, administrative or other legal proceeding on the ground that the service did not comply with the requirements of New York State or other applicable law, including a hearing commonly known as a "traverse hearing," regardless of whether such challenge is waived, settled by stipulation or decided by court order after a hearing.
9. "CPLR" means the New York Civil Practice Law and Rules.
10. "Logbook" shall mean the bound volume in which a process server maintains records of all attempted and effected services of process, as prescribed by 6 RCNY § 2-233.
11. "Material breach" means the failure to comply with this Agreement in whole or in part by commission or omission without legal excuse. A "material breach" is one that substantially defeats the purpose of the contract, i.e., one that is so substantial and fundamental as to tend to defeat the object of the parties in making the contract, and not one that is a slight, casual or technical breach.
12. "Person" shall mean any individual, firm, company, partnership, corporation, association or other organization.
13. "Process" means a summons, notice of petition, order to show cause, subpoena, notice, citation or other legal paper issued under the laws of the State of New York directing an appearance or response to a legal action, legal proceeding or administrative proceeding; provided, however, that if under the laws of the State of New York the mailing of such legal paper is sufficient to effect service, such legal paper shall not be process for the purpose of this Agreement.
14. "Same time" with respect to efforts to make delivery means within two hours before and after of an hour.
15. "Serve" or "service" shall mean the delivery of process in a manner prescribed by the laws of the State of New York.
16. Other terms are defined in 6 RCNY § 2-231.

INJUNCTIVE RELIEF

Duty to Comply With Law

17. Respondent shall strictly and promptly comply with all laws, rules, regulations and requirements of the federal, state and municipal authorities pertaining to process servers and the service of process.
18. Respondent shall not knowingly serve process in New York City for an unlicensed process serving agency. Respondent shall have an affirmative obligation to inquire whether the process serving agency has a required license.

Duties When Effectuating Service on a Natural Person

19. When effectuating service of process by conspicuous place service, Respondent shall at all times comply with the requirements of CPLR § 308.
20. When making diligent efforts to deliver process in accordance with the requirements of CPLR § 308, Respondent shall not make all attempts of service on the same day and no two attempts at delivery shall be made at the same time on different days.
21. Respondent shall make reasonable efforts to confirm whether the address at which service is attempted is the actual place of business, dwelling place or usual place of abode of the person to be served.
22. Respondent shall not deliver process at a location that he knows not to be the actual place of business, dwelling place, or usual place of abode of the person to be served, unless permitted by statute or by binding case law.
23. Respondent shall always write "personal and confidential" on the mailing envelope when delivering or completing service by mail to a business address and shall not indicate on the mailing envelope that the communication is from an attorney or concerning an action against the person sought to be served.

Duty to Maintain Proper Records

24. Respondent shall maintain records of attempted and effected service of process in the City of New York as required by General Business Law § 89-cc and 6 RCNY §§ 2-233, 233a, 233b, 235. All such records shall be complete and accurate.

Affidavits of Service

25. Respondent shall maintain electronic copies of all affidavits of service signed by Respondent. Each affidavit of service shall be maintained as a separate electronic file. The electronic files shall be maintained chronologically and named in the following manner:

**Process Server Last Name and First Initial (no spaces)-
Date of Service (YYYYMMDD)-
Unique Identifying Number (to distinguish between multiple services on the same date).**

Example: smithj-20120101-1

Logbooks

26. Respondent shall maintain a record of all service attempted or effected by Respondent in the City of New York in a logbook. Respondent shall ensure that all entries in Respondent's logbook are accurate and complete.
27. All service attempted or effected by Respondent in the City of New York shall be entered in a single logbook until it is complete.
28. Respondent shall ensure that each page in Respondent's logbook, at the time of purchase, is sequentially numbered starting with the number "1" or contains an indelible label stating the number of pages the volume originally contained.
29. All entries shall be made contemporaneously.
30. All entries shall be made in chronological order, which shall mean that each entry be entered sequentially according to the time and date of the activity recorded and without leaving any blank spaces between each entry that would allow for the insertion of any additional notation between any two entries.
31. Each entry in the logbook shall be legible, meaning easily read and discernible in all of its details, and in no way obscured.
32. Corrections shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to, erasing, opaquing, obliterating, or redacting, are prohibited.
33. Respondent shall maintain separate entries in each logbook for every attempted and effected service of process.

34. Respondent shall maintain in his or her logbooks all information required by General Business Law § 89-cc and 6 RCNY § 2-233 with respect to every case in which Respondent attempts to or effectuates service of process, including but not limited to the following:

- a. the name **and** license number of the process serving agency from whom the process was received, or, if not received from a process serving agency, of such other person or organization from whom the process was received;
- b. the title of the action or a reasonable abbreviation thereof;
- c. the name of the individual, company or organization served;
- d. the date and approximate time of service or attempted service;
- e. the address of service or attempted service;
- f. the nature of the papers;
- g. the court in which the action has been commenced;
- h. the index number of the action;
- i. the description of the individual served;
- j. the type of service effected (personal, substituted, conspicuous, or corporate);
- k. for service of process effected by conspicuous service, the color **and** composition of hallway walls adjacent to the door to which process was affixed;
- l. for service of process effected by conspicuous service, the color **and** composition of the hallway floor or doorstep;
- m. for service of process effected by conspicuous service, the location of the premises in relation to stairs, elevators or entranceways; and
- n. for service of process made pursuant to RPAPL § 735(1) using registered or certified mail, the postal receipt number of the registered or certified mail.

Electronic Records and GPS

35. Respondent shall maintain records of attempted and effected service of process in the City of New York in an electronic format that is resistant to tampering, as prescribed by 6 RCNY § 2-233a(a). Respondent shall ensure that the information contained in such records is accurate and complete.

36. Respondent shall maintain the electronic records that are required to be maintained pursuant to 6 RCNY § 2-233a by choosing one of the following methods:

Method 1: Scanning logbooks into image files (e.g., .PDF or .TIFF) and backing up the files to a portable media device in accordance with 6 RCNY § 2-233a(a)(1).

Method 2: Inputting information into the DCA-created Excel spreadsheet (available on the DCA website) and backing up the file to portable media devices in accordance with 6 RCNY § 2-233a(b)(1).

Method 3: Uploading data to a third party service provider in accordance with 6 RCNY § 2-233a(b)(1).

37. If Respondent chooses to maintain electronic records by using Methods 2 or 3, Respondent shall ensure that the following information is contained in each entry:

- a. the name of the individual process server to whom service was assigned, entered in two fields (last name, first name);
- b. the license number of the individual process server to whom service was assigned, entered as a seven digit number, where the first number is zero if the process server's license number is less than seven digits;
- c. the title of the action or proceeding, if any;
- d. the name of the individual, company or organization served, if known;
- e. the date that service was effected, entered as MM/DD/YYYY;
- f. the time that service was effected, entered as military time;
- g. the address where service was effected, entered as three different fields such that one field will be for the street address and any apartment number, the second field will be for the city or borough, and the third field will be for zip code;
- h. the nature of the papers served;

- i. the court in which the action was commenced, entered as either Civil Court NYC, Civil Supreme, Criminal, Housing(L/T), or District Court, followed by the county of the court, the judicial department if appellate, or the federal district;
- j. the full index number, entered with all information necessary to identify the case, such as XXXXXX/XX, unless the case is a Civil Local matter, in which case, it will include the prefix of CV, CC, LT, MI, NC, RE, SC, or TS;
- k. if service was effected pursuant to subdivisions (1) through (3) of CPLR §308, a description of the person served, consisting of six fields, including sex, hair color, approximate age, height, weight, and any other identifying features provided by the process server;
- l. whether service was delivered, as indicated by a Y or N;
- m. the type of service effected, entered as a P for personal service, an S for substitute service, a C for conspicuous service, or a CO for corporate service;
- n. if service was effected pursuant to subdivision (4) of CPLR §308 or subdivision one of RPAPL §735, a description of the door and the area adjacent;

- 38. Respondent shall maintain a contract in compliance with 6 RCNY § 2-233b.
- 39. In every instance in which Respondent attempts or effects service of process in New York City, Respondent shall, immediately after attempting or effecting service, create an electronic record of the location, time and date of the attempted or effected service, as determined by Global Positioning System (“GPS”) technology or, in the event that no GPS signal is available at the time of attempted or effected service of process, the location, time and date as determined by triangulated cell tower signals. Respondent shall ensure that the information contained in such records is accurate and complete.
- 40. Except when Respondent cannot obtain a GPS or cellular signal, or attempts or effects service of process at multiple apartments or offices within the same building, in every instance in which Respondent attempts or effects service of process in New York City, Respondent shall ensure that Respondent’s GPS records include a photograph of the outside of the building where Respondent attempted or effected service of process. The photograph must include the front entrance door to the building and, if possible, the number of the building. If Respondent attempts or effects service of process at multiple apartments or offices within the same building, only the GPS record corresponding to the last attempted or effected service of process within the building must include a photograph of the outside of the building. Where Respondent is unable to obtain a GPS or cellular signal in the direct vicinity of the

building where Respondent served or attempted to serve process, Respondent shall, as soon as a GPS or cellular signal becomes available:

- a. take a photograph of the outside of the nearest building in accordance with the instructions above; and
- b. note in the GPS record the address of the photographed building or the nearest cross-section.

Completion of Affidavits and other Proofs of Service

41. Respondent's affidavits of service shall be truthful, contain all information required by law, and contain the following facts, where applicable:

- a. Respondent's license number;
- b. Except where the process effectuated was not received from a process serving agency, the name and address of the process serving agency from whom the process served was received;
- c. A detailed description of Respondent's efforts to effectuate personal delivery within the State;
- d. Respondent's source of the information about the whereabouts of the person to be served;
- e. The location and detailed description of the place where delivery was effectuated;
- f. The time that process was delivered;
- g. A description of the age, height, weight, skin color, and hair color of the person to whom delivery of process was made;
- h. Whether Respondent knows or does not know the name(s) of the person(s) to whom service was delivered.
- i. Where service of process is accomplished by personal delivery, all information confirming that Respondent knew the person to whom process was delivered to be the actual intended recipient of the process; and
- j. Where information required is unknown, Respondent shall clearly state so in the affidavit.

42. Respondent shall not sign his or her name on any affidavit containing any information that may intentionally mislead a reader of the affidavit.

43. Respondent shall not use fictitious names in his or her affidavit to refer to defendants or persons, except when Respondent is unable to obtain the name of the person. Where Respondent is unable to obtain the first name of the person, Respondent shall use either "John" (for a male) or "Jane" (for a female) to represent the first name of the person. When Respondent is unable to obtain the last name of the person, Respondent shall use "Doe" to represent the last name of the person.

Duty to Report Contested Service of Process

44. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing concerning a contest to service of process by Respondent (known as a “traverse hearing”), Respondent shall submit a report to the Department, within ten (10) days of receiving such notice, using the “Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order,” available on the DCA Process Server Website (nyc.gov/processserver). Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.
45. Each traverse report form notifying the Department of a scheduled traverse hearing shall include at least the following information:
 - a. The date of the hearing;
 - b. The name of the court, county, and judge before whom the hearing is scheduled;
 - c. The index number of the action or proceeding;
 - d. The name of the petitioner or plaintiff;
 - e. The name of the respondent or defendant;
 - f. The process server’s name;
 - g. The process server’s license number; and
 - h. The name of the process serving agency on behalf of whom service was effectuated.
46. Respondent shall learn the final result of each **scheduled** traverse hearing that concerns service of process by Respondent, including any judicial order, cancellation of the hearing, or settlement resolving the challenge to service of process. If traverse was sustained and the judge issued a written decision or order within ninety (90) days, Respondent shall make reasonable efforts to obtain a copy of the court’s order or decision. “Decision reserved” is not a final result.
47. Within ten days of learning the final result of a traverse hearing, Respondent shall notify the Department of the result by submitting a traverse report to the Department using the traverse report form titled “Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order,” available on the DCA Process Server Website. Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.
48. If Respondent was able to obtain a copy of the court’s order or decision on any traverse hearing in which traverse was sustained, Respondent shall submit such order or decision by e-mail to **TraverseReports@dca.nyc.gov** within ninety (90) days of the hearing.

49. If Respondent fails to learn the final result of the traverse hearing and obtain a copy of the court's decision within thirty (30) days of the scheduled hearing date, Respondent shall send a written communication to the plaintiff/petitioner or the plaintiff/petitioner's attorney to obtain the final result and a copy of the court's decision.
50. If Respondent fails to learn the final result and obtain a copy of the court's decision within sixty (60) days of the scheduled hearing date, Respondent shall search the court file for such information.
51. Respondent shall continue to search the court file every thirty (30) days until it learns the final result of the traverse hearing and is able to obtain a copy of the court's decision.
52. If Respondent fails to learn the final result and obtain a copy of the court's decision within ninety (90) days of the scheduled hearing date, Respondent may discontinue the search of the court file for such information.
53. If Respondent has not learned the result of the traverse hearing within ninety (90) days, within 100 days of the scheduled hearing date, Respondent must submit to the Department, by e-mail to **TraverseReports@dca.nyc.gov**, a written explanation of why Respondent has been unable, so far, to learn the final result of the hearing or obtain a copy of the court's decision.
54. Respondent and the process serving agency for whom he or she serves process must **each** submit a completed Traverse Report Form upon learning of the scheduling of a traverse hearing **and** learning the result of a traverse hearing. Process serving agencies may not submit traverse reports on Respondent's behalf.
55. Respondent shall maintain, in one Microsoft Excel file, an electronic record of every traverse hearing scheduled concerning service of process by Respondent. This shall be done by using the Excel spreadsheet titled "Record of Scheduled Traverse Hearings," available on the DCA Process Server Website.

Providing Identification

56. Respondent may not possess, display or wear any badges, insignias, shields, medals or decoration while serving process.
57. Respondent shall display his Department identification card upon request of a person upon whom Respondent is attempting service or any other interested person.

Training and Exams

58. Respondent shall attend any future training about the laws and regulations that relate to and govern the service of process in the City of New York upon notice from the Department that it has determined that there is available within the City of New York one or more programs that provide such training in a satisfactory manner.

Respondent shall attend at least one such program in each license period, if notified that it is available and provide proof to the Department of having attended such training,

Inspection of Records

59. Upon request from the Department, Respondent shall upon reasonable notice produce any records that it is required to maintain pursuant to this Consent Order, the Rules of the City of New York and the New York City Administrative Code.

60. Upon notification from the Department, Respondent shall appear at the Department for a review of Respondent's compliance with the terms of this Agreement and such other issues as the Department, in its discretion, deems appropriate. Respondent shall produce such records as the Department may request at the scheduled meeting. Failure to appear at a scheduled meeting or produce requested documents will constitute a violation of this Consent Order.

RESOLUTION OF CONSUMER COMPLAINTS

61. Respondent shall provide to the Department a reply to all consumer complaints to the Department relating to Respondent's process serving activity within ten (10) business days of receiving the complaint.

62. Respondent shall respond to any subsequent communications from the Department concerning the complaint within ten (10) business days.

63. Nothing in this provision waives or diminishes Respondent's obligation to comply with Title 6 of the Rules of the City of New York, Section 1-13.

RESPONDENT'S DUTY TO REPORT CHANGES OF ADDRESS TO THE DEPARTMENT

64. Respondent affirms that the address and telephone number listed with the Department are current and correct.

65. Respondent represents that the following is his or her e-mail address:

_____@_____

66. Respondent acknowledges that the Department intends to use this e-mail address to communicate official matters to Respondent and Respondent agrees to accept such communications and respond to them in a timely manner.
67. Respondent shall notify the Department when his or her address, telephone number or e-mail address changes, in writing, within ten (10) business days of such change.
68. Respondent shall provide such notification in writing to the Department's Licensing Division at 42 Broadway, 5th Floor, NY, NY 10004.

FINES

69. Respondent shall pay a fine of **\$1500** in settlement of all the violations to date in the above-referenced matter. Payment shall be made by money order of bank cashier's check and is due upon execution of this CO.

BREACH OF THIS AGREEMENT

70. A finding, after notice and hearing, that Respondent has committed a material breach of the terms of this Agreement shall be sufficient grounds for the revocation of Respondent's license and for ineligibility to be licensed for a period of five (5) years.
71. Violations of laws, violations of Department rules and violations of this Agreement shall be assessed as separate fines.

WAIVER OF APPEALS

72. Respondent waives any right to a hearing, appeal of or any challenge of the facts alleged by the above-referenced violation under Section 20-104 of the New York City Administrative Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806, in any forum.

DEPARTMENT'S AUTHORITY

73. Nothing in this Consent Order shall be construed to limit in any way the authority of the Department to exercise its regulatory or enforcement powers under Sections 20-104 or 20-409 of the Code.

* * *

74. This Consent Order, and the settlement it represents, constitutes an order of the Commissioner.

- 75. This Consent Order, and the settlement it represents, is not related to and shall not be admissible in any other administrative proceeding, litigation or settlement negotiation, except that it may be admissible in a proceeding or action to enforce the terms of this Consent Order or in any other proceeding brought by the Department against Respondent for conduct as a process server.
- 76. This Consent Order, and the settlement it represents, does not constitute a policy or precedent of the Department.
- 77. If any law or rule enacted in the future directly contradicts any provisions of this Consent Order, the directly contradicted provisions of this Consent Order shall be void. All other provisions in this Consent Order shall remain in full force and effect.
- 78. This settlement shall take effect upon notification to both parties that the Default Decision and Order dated September 3, 2015 in the above-captioned matter has been vacated.

Agreed to by Respondent

Accepted for the NYC Department of
Consumer Affairs

By: Bruce Eastwood

By: Shannon Bermingham 9/21/15
Legal Division

Bruce Eastwood 9/17/15
Signature Date


Signature Date

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24-hour Citizen Service Hotline, or by going online to www.nyc.gov/consumers.

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

-----X
DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF HEARING

Petitioner,

-against-

Violation No. 05349376

BRUCE EASTWOOD

License No. 1089572

Respondent.

(Process Server Individual)

-----X
TO THE ABOVE NAMED RESPONDENT:

In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Sections 2203(f) and 2203(h) of Chapter 64 of the Charter of the City of New York and Sections 20-104 and 20-409 of the Administrative Code of the City of New York ("the Code"), **you are hereby ordered to appear for a hearing** at the Adjudication Tribunal of the Department of Consumer Affairs, located at 66 John Street, 11th Floor, New York, New York, on **THURSDAY, AUGUST 6, 2015 AT 9:30 A.M.**

AND SHOW CAUSE why your license to operate as an individual process server should not be suspended or revoked and why monetary penalties should not be imposed on you based on the grounds specified herein.

RELEVANT LAW

Service of Process Rules

1. *Civil Practice Law and Rules*. Pursuant to Section 308 of the New York Civil Practice Law and Rules ("CPLR"), service upon a natural person must be made in the following manner:
 1. by delivering the summons within the state to the person to be served; or
 2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of

- suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
 4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
 5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

Affidavit of Service Filing Requirements

2. *Civil Court Proceedings.* Pursuant to Section 208.4 of the Uniform Rules for N.Y.S. Trial Courts, "every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required."

Department of Consumer Affairs Laws and Rules

3. Pursuant to Code § 20-104(f)(1):

The commissioner shall be authorized, upon due notice and hearing, to suspend, revoke or cancel any license issued by him or her in accordance with the provisions of chapter two and to impose or institute fines or civil penalties for the violation of (i) any of the provisions of chapter two of this title and regulations and rules promulgated under chapter two of this title and (ii) any of the provisions of any other law, rule or regulation, the enforcement of which is within the jurisdiction of the department including but not limited to subchapter one of chapter five of this title (the consumer protection law) subchapter two of chapter five (the truth in-pricing-law); provided that such violation is committed in the course of and is related to the conduct of the business, trade or occupation which

is required to be licensed pursuant to chapter two of this title. Except to the extent that dollar limits are otherwise specifically provided such fines or civil penalties shall not exceed five hundred dollars for each violation.

4. Pursuant to Code § 20-409(a), a process server's license "may be suspended or revoked or its renewal denied by the commissioner at any time for the failure of the licensee to comply with any rule, regulation or order promulgated by the commissioner.
5. Pursuant to 6 RCNY § 2-233(b)(1), process servers must record in their logbook "a separate and contemporaneous entry of the date, time and address of every attempted and effected service of process in chronological order in a bound, paginated volume."
6. Pursuant to 6 RCNY § 2-233(b)(2), process servers must record logbook entries "in only one volume at a time, which shall contain every attempted and effected service made by the licensee, until all of the available space in the volume is filled."
7. Pursuant to 6 RCNY § 2-233(b)(4):

If service is effected pursuant to CPLR § 308(4) or RPAPL § 735(1), the entry shall include a description of the area adjacent to the door to which process is affixed including the color and composition of hallway walls, color and composition of hallway floor or doorstep, and location of premises in relation to stairs, elevator or entranceway.
8. Pursuant to 6 RCNY § 2-233(b)(6), process servers must record in their logbook entries "the name and license number of the process server organization from whom the process served was received, or, if not received from a process server organization, of such other person or firm from whom the process served was received."
9. Pursuant to 6 RCNY § 2-233a, process servers are required to maintain records of services and attempted services of process in an electronic format ("233a records").
10. Pursuant to 6 RCNY § 2-233a (b)(3), process servers must record and maintain the following information in their 233a records:
 - (a) name of the individual process server to whom service is assigned, which will be entered as last name, first name;

- (b) the license number of the individual process server to whom service is assigned, which will be specified as a seven digit number, where the first number shall be zero if the process server's license number is less than seven digits;
- (c) the title of the action or proceeding, if any;
- (d) the name of the person served, if known, which shall be entered as last name, first name;
- (e) the date that service was effected, which shall be entered as MM/DD/YYYY;
- (f) the time service was effected, which shall be entered as military time;
- (g) the address where service was effected, which shall be entered as three different fields such that one field will be for the street address and any apartment number, the second field will be for the city or borough, and the third field will be for zip code;
- (h) the nature of the papers served;
- (i) the court in which the action has been commenced, which shall be entered as either Civil Court NYC, Civil Supreme, Criminal, Housing(L/T), or District Court, followed by the county of the court, the judicial department if appellate, or the federal district;
- (j) the full index number, which shall be entered with all information necessary to identify the case, such as XXXXX/XX, unless the case is a Civil Local matter, in which case, it will include the prefix of CV, CC, LT, MI, NC, RE, SC, or TS;
- (k) if service was effected pursuant to subdivisions (1) through (3) of CPLR §308, a description of the person served which shall consist of six fields, including sex, hair color, approximate age, height, weight, and any other identifying features provided by the process server;
- (l) whether service was delivered, as indicated by a Y or N;
- (m) the type of service effected, which shall be entered as a P for personal service, an S for substitute service, a C for conspicuous service, or a CO for corporate service; and
- (n) if service was effected pursuant to subdivision (4) of CPLR §308 or subdivision one of RPAPL §735, a description of the door and the area adjacent.

11. Pursuant to 6 RCNY § 2-233b(a)(1)(i), process servers must obtain a mobile device, such as a telephone or personal digital assistant, that utilizes software that “make[s] an electronic record of the location where, and the time and date when, the record is made as determined by GPS technology or Assisted-Global Positioning System (“A-GPS”) technology, and labels the record with the network date and time maintained by the mobile device, the DCA license number of the process server, the DCA license number of the process serving agency that has distributed the process for service, the name of the plaintiff or petitioner, the name of the defendant or respondent, the docket number (if any), the name of the person to whom process is delivered and a unique file identifier of the process being served.”

12. Pursuant to 6 RCNY § 2-233b(a)(2)(i), on every occasion that a licensed process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately after attempting or effecting service.

13. Pursuant to 6 RCNY §§ 2-233b(a)(2)(ii), 2-233b(a)(4)(vii), process servers must record and maintain the following information in their GPS records:

- (a) a unique file identifier of the process being served;
- (b) the process server's license number;
- (c) the process serving agency's license number;
- (d) plaintiff or petitioner;
- (e) defendant or respondent;
- (f) index number;
- (g) the date that service was attempted or effected according to the device, entered as MM/DD/YYYY;
- (h) the time that service was attempted or effected according to the device, entered as military time;
- (i) the date that service was attempted or effected according to GPS or cellular signals, entered as MM/DD/YYYY;
- (j) the time that service was attempted or effected according to GPS or cellular signals, entered as military time;
- (k) the address where service was attempted or effected;
- (l) the location according to GPS or cellular signals;
- (m) the last name of the individual, company or organization that is the intended recipient of the process;
- (n) the first name of the individual, company or organization that is the intended recipient of the process;
- (o) the last name of the individual, company or organization to whom process was delivered; and
- (p) the first name of the individual, company or organization to whom process was delivered.

14. Pursuant to 6 RCNY § 2-233b(a)(3), process servers must enter into contracts with an independent third party ("GPS Contractor") to provide the global positioning system ("GPS") data storage and retrieval services required by 6 RCNY § 2-233b.

15. Pursuant to 6 RCNY § 2-234:

[Licensed process servers and process serving agencies] shall at all times strictly and promptly conform to all laws, rules, regulations and requirements of the federal, state and municipal authorities relating to the conduct of licensees and the

service of process in the State of New York and the preparation, notarization and filing of affidavits of service and other documents now in force or hereafter adopted during any license period.

FACTS

16. Bruce Eastwood (“Respondent”), is currently licensed by the Department as an individual process server under license number 1089572.

17. Respondent’s current process server license will expire on February 28, 2016.

Recordkeeping Violations

18. Respondent failed to record and maintain the following information in his GPS records:

- a. 9/1/12 @ 6:41, abctrackingnumber 9630851 (date according to both the mobile device and GPS or assisted GPS signals); and
- b. 9/1/12 @ 6:51, abctrackingnumber 9634239 (time according to both the mobile device and GPS or assisted GPS signals).

19. Respondent failed to record and maintain the following information in his 233a records:

- a. 9/1/12 @ 7:16, abctrackingnumber 9634080 (nature of papers served);
- b. 9/1/12 @ 7:33, abctrackingnumber 9630814 (court name);
- c. 9/1/12 @ 7:40, abctrackingnumber 9634067 (description of person served);
- d. 9/1/12 @ 7:46, abctrackingnumber 9625214 (type of service effected); and
- e. 9/27/12 @ 7:33, abctrackingnumber 7565312 (description of door and area adjacent).

20. For the period July 26, 2012 through March 15, 2013, Respondent did not record his services and attempted services in a book or ledger that at the time of purchase contained a specified number of unfolded sheets of paper or other material that were permanently secured to covers by stitching, glue or any other such method that was calculated to make readily discernible the removal or insertion of one or more sheets after the first use of such volume.

21. For the period July 26, 2012 through March 15, 2013, Respondent did not record records of his services and attempted services in a volume or log that, at the time of purchase, was sequentially numbered starting with the number "1" or that contained an indelible label stating the number of pages the volume originally contained.
22. Respondent failed to include in his logbook the process serving agency's license number for the following attempts or services:
 - a. 1/9/13 @ 15:13 (NY Affordable v. [REDACTED])
23. Respondent failed to include in his/her logbook the description of the area adjacent to the door to which process was affixed for the following conspicuous services:
 - a. 1/10/13 @ 21:26 (Roberto Duke v. [REDACTED])
24. Respondent made a logbook entry for October 27, 2012 at 2:11 p.m. but did not fill in the rest of the entries in the book; instead, Respondent started recording logbook entries in a different logbook.

CHARGES

1. As described in Paragraph 18 above, Respondent violated 6 RCNY § 2-233b(a)(4)(vii) by failing to record and maintain required information in his GPS records. [2 counts]
2. As described in Paragraph 19 above, Respondent violated 6 RCNY §2-233a(b)(3) by failing to record and maintain required information in his 233a records. [5 counts]
3. As described in Paragraph 20 above, Respondent violated 6 RCNY § 2-233(b)(1) by failing to maintain a “bound” logbook for the period July 26, 2012 through March 15, 2013. [1 count]
4. As described in Paragraph 21 above, Respondent violated 6 RCNY § 2-233(b)(1) by failing to maintain a “paginated” logbook for the period July 26, 2012 through March 15, 2013. [1 count]
5. As described in Paragraph 22 above, Respondent violated 6 RCNY § 2-233(b)(6) by failing to record the process serving agency’s license number in at least one of his logbook entries. [1 count]
6. As described in Paragraph 23 above, Respondent violated 6 RCNY § 2-233(b)(4) by failing to record the description of the area adjacent to the door to which process was affixed in at least one of his logbook entries. [1 count]
7. As described in Paragraph 24 above, Respondent violated 6 RCNY § 2-233(b)(2) by failing to make log book entries in only one log book at a time, until all of the available space in the volume was filled. [1 count]

RELIEF SOUGHT

WHEREFORE, the Department demands that an order issue:

- (1) suspending or revoking Respondent's license pursuant to Code § 20-409(a);
- (2) imposing maximum fines on Respondent of \$1000 per count; and
- (3) granting such other relief as is deemed just and proper.

Dated: July 14, 2015
New York, New York

For: Julie Menin
Commissioner

By: 
Alvin A. Liu
Senior Staff Attorney

IMPORTANT INFORMATION FOR RESPONDENTS

You have been charged with violating Laws and Rules of the New York City Department of Consumer Affairs.

FAILURE TO APPEAR AT THE HEARING: If you do not appear at the DCA Adjudication Tribunal on the scheduled hearing date, you will be found guilty of the charges, you will be ordered to pay a fine, and your DCA license(s) may be revoked.

ADJOURNMENTS: Requests for adjournments must be received at least three (3) business days prior to the hearing date. **You may submit your request by e-mail to adjournmentrequests@dca.nyc.gov (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11th Floor, New York, NY 10038. Make sure to include the violation number in your request. In addition, you must send a copy of your request to process_server@dca.nyc.gov or by mail to Alvin A. Liu, DCA Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.

REPRESENTATION: Although it is not required, you may choose to bring a lawyer or authorized representative to the hearing.

TRANSLATION SERVICES: DCA will provide translation services at the hearing for you and your witnesses. You may not use your own interpreter at the hearing.

REASONABLE ACCOMMODATION: If you have a disability and require a reasonable accommodation on the day of the hearing, you must send a request, with proof, before the hearing date to the Adjudication Tribunal at mycase@dca.nyc.gov or call 311 (212-NEW-YORK outside NYC) and ask for “Consumer Affairs Hearing - Reasonable Accommodation.”

SETTLEMENTS: If you wish to discuss a possible settlement of the charges in this Notice of Hearing, you may contact Alvin A. Liu at process_server@dca.nyc.gov at least five (5) business days prior to the hearing date.

For additional information, visit DCA’s website at www.nyc.gov/consumers or call 311.