

CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

KEITH WOHL D/B/A  
KENCO PROCESS SERVING



Respondent.

X

**CONSENT ORDER**

NOH # 05333290

License # 1451622

(Process Serving Agency)

X

1. The Department of Consumer Affairs (“DCA” or “the Department”) and Keith Wohl D/B/A Kenco Process Serving (“Respondent”) enter into this Consent Order (“CO”) to resolve charges that Respondent engaged in violations of the following laws and rules: Title 6 of the Rules of the City of New York (“6 RCNY”), Sections 1-16, 2-234, 2-234a(a)(4), 2-234a(b), 2-234a(b)(3) and The New York City Administrative Code, Section 20-101.
2. This CO shall apply to Respondent and any other directors, officers, employees, agents, assignees, successors, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Respondent.
3. Respondent enters into this CO to resolve these charges without the necessity of a hearing.
4. 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.

**INJUNCTIVE RELIEF**

5. Respondent shall, in accordance with 6 RCNY § 2-234a(b), develop and implement policies and procedures set forth in a written Compliance Plan to ensure that individual process servers to whom it distributes process for service act with integrity and honesty and comply with the recordkeeping requirements applicable to process servers. This includes adopting and implementing the following policies:

**Confirmation of Process Servers' License Status**

- A. Respondent shall check the Department's website at least once each month to ensure that all individuals to whom it assigns or distributes process for service in New York City maintain an active individual process server license.

**Screening of New Process Servers**

- B. Prior to assigning or distributing process to an individual process server who has not attempted or effected service of process on Respondent's behalf previously, Respondent shall use the Process Server Screening Protocol available on the DCA Process Server Website ([nyc.gov/processserver](http://nyc.gov/processserver)) as a guide to determine whether the process server is fit to serve process in New York City.
- C. Respondent shall attach a copy of the completed Process Server Screening Protocol with each updated roster of process servers that it submits to the Department pursuant to Title 6 of the Rules of the City of New York, Section 2-234a(d)(2). The roster and screening protocol shall be e-mailed to [process\\_server@dca.nyc.gov](mailto:process_server@dca.nyc.gov) **and** mailed to the following address:

NYC Department of Consumer Affairs  
42 Broadway, 5<sup>th</sup> Floor  
New York, NY 1000  
Attention: Licensing Division

**Confirmation of Integrity of Affidavits of Service**

- D. Respondent shall ensure that each affidavit of service signed by a process server who attempted or effected service of process on Respondent's behalf in New York City is accurate and includes the case caption and index number (if they exist), the name and license number of the process server, and the name, license number and address of the process serving agency.
- E. Respondent shall ensure that no affidavit of service will be signed by a process server who effected service of process on Respondent's behalf in New York City, notarized, or filed with a court unless the process server has created an electronic record of the location, date and time of service as determined by Global Positioning System ("GPS") technology or Assisted-Global Positioning System ("A-GPS") technology.
- F. Respondent shall maintain electronic copies of all signed affidavits of service relating to service of process that Respondent assigned or distributed to an individual process server for service in New York City for at least seven (7) years. Each affidavit of service shall be maintained as a separate electronic file and 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

### **Conducting of Record Reviews**

- G. At least once each month, Respondent shall review the records of each individual process server to whom it assigns or distributes process for service in New York City for completeness and accuracy.
- H. Respondent shall prepare a monthly report of its review of the records maintained pursuant to 6 RCNY § 2-233 (concerning bound logbooks), 6 RCNY § 2-233a (concerning electronic logbooks), 6 RCNY § 2-233b (concerning GPS), and 6 RCNY § 2-235 (concerning affidavits of service), of each individual process server to whom it assigns or distributes process using the “Monthly Compliance Report” available on the DCA Process Server Website. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years.
- I. Respondent shall answer each and every question contained in the Monthly Compliance Report, including all subsequent updates to the report, truthfully, accurately and completely. This shall include identifying all record entries that are non-compliant.
- J. Each month, Respondent shall, for each individual process server to whom it assigns or distributes process for service in New York City, prepare a “GPS Investigation Report” using the review instrument available on the DCA Process Server Website. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years.
- K. Respondent shall follow each and every instruction contained in the GPS Investigation Report and shall complete the report, including all subsequent updates to the report, truthfully, accurately and completely.
- L. Respondent understands that the Department may, from time to time, notify Respondent of GPS records showing that a process server was not at an address that he or she claimed to have attempted or effected service of process. When such a notification is sent to Respondent by the Department, Respondent shall investigate the service in accordance with Instructions 3 and 4 of the “GPS Investigation Report” and submit the completed report to the Department within thirty (30) days of receiving the notification.

### **Conducting Trainings**

- M. At least once a year, Respondent shall meet with each process server to whom it assigns or distributes process for service in New York City to conduct a training on the following process server laws and rules: *Title 6 of the Rules of the City of New York, Sections 2-*

231, 2-232, 2-232a, 2-232b, 2-232c, 2-232d, 2-233, 2-233a, 2-233b, 2-234, 2-234b, 2-235, 2-236, 2-237, and 2-238; *New York General Business Law, Section 89-ff*; *New York Civil Practice Law and Rules, Sections 307, 308, 309, 310, 310-a, 311, 311-a, 312*; and *New York Business Corporation Law, Section 306*.

- N. Respondent shall also conduct a training prior to assigning or distributing process to an individual process server who has not attempted or effected service of process on Respondent's behalf previously.
- O. The training shall also consist of a review of the three (3) most recent Monthly Compliance Reports completed for the process server undergoing the training, except with respect to new process servers to whom the Respondent had not previously assigned or distributed service.
- P. At the conclusion of each training, Respondent shall ensure that the process server sign the "Training Acknowledgement Form" available on the DCA Process Server Website.
- Q. Respondent shall maintain electronic copies of the Training Acknowledgment Form for each training it conducts for a period of seven (7) years.

#### **Implementing Disciplinary Actions**

- R. Respondent shall take appropriate disciplinary action against all individual process servers who fail to comply with the process server rules and laws, including, but not limited to, suspending or terminating the process server's employment, agency or other relationship with Respondent.
- S. Respondent shall document all disciplinary actions taken against individual process servers contemporaneously with the actions.
- T. Records of disciplinary actions shall include:
  - (i) all underlying records leading to or supporting the disciplinary action;
  - (ii) all written communications with individual process servers relating or referring to the disciplinary action or the underlying reasons for the discipline; and
  - (iii) notes of any oral communications with individual process servers relating or referring to disciplinary actions or the underlying reasons for the discipline, including the types (interview, phone call, etc.) and dates of the communications.
- U. If no written communications or notes exist relating to a disciplinary action, Respondent shall create a contemporaneous summary of the disciplinary action, its reasons for taking disciplinary action and all communications with the process server relating or referring to the discipline or the underlying reason for the discipline, including the types (interview, phone call, etc.) and dates of the communications.

- V. Respondent shall report to the Department in writing all individual process servers against whom it has taken disciplinary action within ten (10) days of taking the action using the “Disciplinary Actions and Non-Compliance Report” available on the DCA Process Server Website. The term “disciplinary action” includes, but is not limited to, written or oral warnings or reprimands, probation, monetary penalties, suspensions or terminations of employment, and decisions to give a process server less work or no work at all because of their conduct or performance. The report to the Department shall be sent via e-mail to **process\_server@dca.nyc.gov** in Microsoft Excel format.
- W. Respondent shall report to the Department in writing the name and license number of each individual licensed process server who does not comply with the rules or law governing process servers within ten (10) days of learning of such non-compliance using the “Disciplinary Actions and Non-Compliance Report.” This includes reporting any failure to comply with the requirements of 6 RCNY § 2-233 (concerning bound logbooks), the requirements of 6 RCNY § 2-233a (concerning electronic logbooks), the requirements of 6 RCNY § 2-233b (concerning GPS), the requirements of 6 RCNY § 2-235 (concerning affidavits of service), or the requirements of 6 RCNY § 2-236 (concerning traverse hearings). The report to the Department shall be sent via e-mail to **process\_server@dca.nyc.gov** in Microsoft Excel format.
- X. Respondent shall maintain electronic records of any disciplinary actions taken against individual process servers and reports of non-compliance with the process server rules and laws for at least seven (7) years.

#### **Traverse Hearings**

- Y. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process assigned by Respondent to a licensed individual process server was effective (a.k.a. a “traverse hearing”), Respondent shall:
- (i) inform in writing, within two (2) business days, the individual process server whose service is being challenged of the scheduling of the hearing, the date and time of the hearing, the title and index number of the action, and the court and judge before whom the hearing is scheduled; and
  - (ii) 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. Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**. Respondent shall include a copy of all written communications made pursuant to this paragraph with the traverse reports it submits to the Department, as well as all responses received from the individual process server.

Z. Each traverse report form notifying the Department of a scheduled traverse hearing shall minimally include the following information:

- (i) The date(s) of the hearing;
- (ii) The name of the court, county, and judge before whom the hearing is scheduled;
- (iii) The index number of the action or proceeding;
- (iv) The name of the petitioner or plaintiff;
- (v) The name of the respondent or defendant;
- (vi) The process server's name;
- (vii) The process server's license number;
- (viii) The name of the process serving agency on behalf of whom service was effectuated; and
- (ix) The name and license number of every individual process server that you notified of the hearing and date of the notification(s).

AA. 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. Respondent shall also obtain a copy of the court's order or decision on any traverse hearings that actually occur, including any stipulation or court file jacket setting forth the final disposition of the matter. "Decision reserved" is not a final result.

BB. 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**.

CC. Respondent shall append a copy of the court's order or decision on any traverse hearings that actually occur to Respondent's traverse report, including any stipulation or court file jacket setting forth the final disposition of the matter.

DD. 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.

EE. 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.

FF. 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 shall search the court file again for such information.

- GG. 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.
- HH. Within 100 days of the scheduled hearing date, Respondent must submit to the Department, by e-mail to **TraverseReports@dca.nyc.gov** either (a) the final result of the hearing and a copy of the court's decision; or (b) a written explanation of why Respondent was unable to learn the final result of the hearing or obtain a copy of the court's decision.
- II. Respondent and the individual process server whose service is being challenged 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 an individual process server's behalf.
- JJ. Respondent shall conduct an investigation into every traverse hearing scheduled since January 1, 2012, whether or not held, relating to process that was assigned or distributed by Respondent for service in New York City within one (1) month from the Effective Date of this Consent Order. The investigation shall, to the extent possible, be conducted in accordance with the instructions contained in the "Service Investigation Report" available on the DCA Process Server Website.
- KK. Respondent shall also conduct an investigation into every traverse hearing scheduled in the future, whether or not held, relating to process that was assigned or distributed by Respondent for service in New York City within ten (10) days of learning of such hearing in accordance with the instructions contained in the Service Investigation Report.
- LL. Respondent shall follow every instruction contained in the Service Investigation Report and shall complete the report, including all subsequent updates to the report, truthfully, accurately and completely.
- MM. Respondent shall maintain, for seven (7) years, a single report concerning all traverse hearings that Respondent investigated and electronic copies of all documents gathered or created pursuant to its investigations into traverse hearings, including all written communications with individual process servers and notes concerning communications with individual process servers.

#### **Investigating Default Judgments**

- NN. Respondent understands that the Department may, from time to time, notify Respondent of individual process servers whose assigned service of process resulted in a substantial number of defaults, and will provide Respondent a list of such defaults. When such a notification is sent to Respondent by the Department, Respondent shall investigate the services in accordance with the instructions contained in the "Service

Investigation Report” and submit the completed report to the Department within thirty (30) days of receiving the notification.

### **Maintaining Electronic Records**

- OO. Respondent shall maintain electronic records in accordance with 6 RCNY § 2-233(c)(1)(i)-(vii) and 6 RCNY § 2-233a(b), including electronic records of daily activity and electronic copies of all affidavits of service, work orders, routing sheets, instructions to individual process servers and notes submitted by individual process servers.
- PP. Respondent shall maintain for seven (7) years electronic image files of the logbooks of each individual process server to whom Respondent has assigned or distributed process for service in New York City.
6. Respondent shall memorialize, in writing, the policies and procedures described in Paragraphs 5(A)-(PP) of this Consent Order in Respondent’s compliance plan.
  7. Respondent shall maintain all records that it is required to maintain pursuant to the Department’s rules and this Consent Order at the address where Respondent is licensed to conduct business as a process serving agency.
  8. Respondent shall make all records that it is required to maintain pursuant to the Department’s rules and this Consent Order immediately available to the Department’s inspectors, upon request, between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding holidays.
  9. Upon written demand or subpoena by the Department, Respondent shall:
    - (i) provide to the Department, within ten (10) days of the demand, any documents or records that the Department deems necessary to ascertain compliance with this Consent Order; and
    - (ii) provide a written response to each specific demand for records, including the identification of the records produced in response to each numbered demand and, if no records are submitted in response to a particular numbered demand, a detailed explanation of why such records are not being produced.
  10. Upon notification from the Department, a principal of Respondent shall appear at the Department within sixty (60) days for a review of Respondent’s implementation of its Compliance Plan, compliance with the terms of this Order and such other issues as the Department, in its discretion, deems appropriate.

**MISCELLANEOUS**

11. Respondent affirms that the address and telephone number listed with the Department are current and correct.
12. Respondent appoints \_\_\_\_\_ as its designated agent who may be contacted regarding this CO and any consumer complaints and represents that the following is his/her e-mail address:  
  
\_\_\_\_\_@\_\_\_\_\_.
13. 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.
14. Respondent shall notify the Department in writing when its address, telephone number and/or e-mail address change within 10 days of such change.
15. Respondent shall notify the Department within ten (10) days of receipt of any (i) complaints, actions or proceedings filed against Respondent by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, or any other agency or association, (ii) actions, proceedings or investigations by any government agency against Respondent; and (iii) results of any actions, proceedings or investigations against Respondent that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or a conviction.

**FINES**

16. Respondent shall pay a fine of \$6,750.00 in settlement of all the violations to date in the above-referenced matter. Respondent shall make a payment of \$2,250.00 by bank cashier's check or money order payable to "NYC Department of Consumer Affairs upon execution of this Consent Order and shall pay the balance plus 1.5% monthly interest over six (6) months in accordance with a payment plan to be signed by Respondent (the "Payment Plan"). The terms of the Payment Plan shall be incorporated into this Consent Order.

**NON-COMPLIANCE WITH THIS ORDER**

17. Any violation of federal, state or city process server laws or rules shall constitute a violation of this Consent Order.
18. Specific violations of this Consent Order shall constitute independent and separate violations of any applicable law, regulation or rule.
19. Violations of laws and rules and violations of this Consent Order shall be assessed as separate violations with separate fines.

20. Respondent's breach of the terms of this Consent Order shall be sufficient grounds for the revocation of Respondent's license and for ineligibility to be licensed for a period of five years.

**WAIVER OF APPEALS**

21. Respondent waives any right to a hearing, appeal of and/or any challenge of the facts alleged by the above-referenced violation under Code § 20-104 or under Article 78 of the New York State Civil Practice Law and Rules (CPLR), §§ 7801-7806, in any forum.

**EFFECTIVE DATE OF CONSENT ORDER**

22. The Effective Date of this Consent Order shall be the date that it is signed by the Department.

**DEPARTMENT'S AUTHORITY**

23. 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 Code §§ 20-104 or 20-409.

Agreed to by Keith Wohl D/B/A Kenco  
Process Serving

Accepted for the Department of Consumer  
Affairs

By: Keith Wohl

By: [Redacted]

Title: *Settlement*

[Redacted Signature] Signature

*4/8/15* Date

[Redacted Signature] Signature

*4/8/15* 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 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 at [www.nyc.gov/consumers](http://www.nyc.gov/consumers).

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

**NOTICE OF HEARING**

-----x  
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

NOH # 05333290

KEITH WOHL D/B/A  
KENCO PROCESS SERVING

License # 1451622



(Process Serving Agency)

Licensee/Respondent.  
-----x

**TO THE ABOVE NAMED LICENSEE:**

In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs (“the Department”) set forth in Section 2203(f) of Chapter 64 of the Charter of the City of New York and Section 20-104 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, 11TH FLOOR, 66 JOHN STREET, NEW YORK, NEW YORK 10038 AT 9:30 A.M. ON WEDNESDAY, DECEMBER 31, 2014** to have charges against you heard concerning violations of Chapter 1 of the Code, beginning at Section 20-101 (known as the License Enforcement Law); Chapter 2 of the Code, Subchapter 23, beginning at Section 20-403 (known as the Process Servers Law); Title 6 of the Rules of the City of New York (“6 RCNY”), beginning at Section 1-01 (known as the License Enforcement Rules); and Title 6 of the Rules of the City of New York, Chapter 2, Subchapter W, beginning at Section 2-231 (known as the Process Servers Rules);

**AND SHOW CAUSE** why your license to operate as a Process Serving Agency should not be suspended or revoked, why monetary penalties should not be imposed on you and why you should not be prohibited, based on lack of fitness, from holding any license issued by the Department on the grounds specified herein.

## **FACTS AND APPLICABLE LAW**

1. KEITH WOHL D/B/A KENCO PROCESS SERVING (“Respondent”) has been licensed by the Department as a process serving agency under license number 1451622 since on or about December 7, 2012.

### **Failure to Comply With a Department Subpoena**

2. On March 12, 2014, the Department issued a subpoena *duces tecum* to Respondent demanding that Respondent produce the following records by April 11, 2014:
  - a. Respondent’s compliance plan.
  - b. For the period August 1, 2013 through October 31, 2013, all reports concerning Respondent’s review of the records of individual process servers to whom it assigned, distributed or delivered process to be served in New York City, including all reports that Respondent is required to maintain pursuant to 6 RCNY § 2-234a(b).
  - c. For the period August 1, 2013 through October 31, 2013, the electronic records of daily activity of each individual process server to whom Respondent assigned, distributed or delivered process to be served, including all records that Respondent is required to maintain pursuant to 6 RCNY § 2-233a.
  - d. For the period August 1, 2013 through October 31, 2013, scanned images files of the logbooks of each individual process server to whom Respondent assigned, distributed or delivered process to be served in New York City, including all records that Respondent is required to maintain pursuant to 6 RCNY § 2-233(c)(1)(iii).

- e. For the period August 1, 2013 through October 31, 2013, electronic copies of all affidavits of service signed by individual process servers to whom Respondent assigned, distributed or delivered process to be served in New York City, including all records that Respondent is required to maintain pursuant to 6 RCNY § 2-233(c)(1)(vi), 2-233a(b).
- f. For the period August 1, 2013 through October 31, 2013, electronic copies of every routing sheet, work order or other written instruction given to individual process servers to whom Respondent assigned, distributed or delivered process to be served in New York City, including all records that Respondent is required to maintain pursuant to 6 RCNY § 2-233(c)(1)(iv), 2-233a(b).
- g. For the period August 1, 2013 through October 31, 2013, electronic copies of all notes, memoranda or other writings submitted to Respondent by the individual process servers to whom it assigned or distributed the process regarding the attempted or effected service of process, including all records that Respondent is required to maintain pursuant to 6 RCNY § 2-233(c)(1)(v), 2-233a(b).
- h. For the period August 1, 2013 through October 31, 2013, electronic records of the postal receipt number of registered or certified mail relating to service completed by Respondent or a process server individual to whom it assigned, distributed or delivered process to be served in New York City, including all records that it is required to maintain pursuant to 6 RCNY § 2-233(c)(1)(vii).
- i. All records maintained by a GPS Contractor reflecting the GPS location, time and date of each attempted or effected service of process that Respondent

assigned, distributed or delivered process to be served in New York City during the period August 1, 2013 through October 31, 2013.

- j. For the period January 1, 2013 through the date that Respondent responds to this request, documents sufficient to identify all traverse hearings scheduled, whether or not held, concerning service of process that Respondent assigned or distributed to a licensed individual process server (including traverse hearings held or scheduled for such individuals in courts outside New York City).
- k. All documents, including but not limited to e-mails, faxes, letters and memoranda, regarding investigations Respondent conducted or were conducted on its behalf concerning the process identified in the documents responsive to the previous request.
- l. For the period January 1, 2013 through the date that Respondent responds to this request, all documents relating to complaints or concerns, oral or written, by any individual or entity regarding any of the process servers to whom Respondent assigned, distributed or delivered process to be served in New York City.
- m. For the period January 1, 2013 through the date that Respondent responds to this request, all records of disciplinary actions taken against process servers to whom Respondent assigned, distributed or delivered process to be served in New York City.
- n. For the period January 1, 2013 through the date that Respondent responds to this request, all documents concerning any determinations that Respondent

made not to assign or distribute process for service to an individual process server for any reason.

- o. Documents sufficient to identify every process server that Respondent distributed or assigned process to during the period January 1, 2013 through the date that Respondent responds to the Subpoena, and specifying the date that the process server began serving for Respondent.
3. As of the date of this Notice of Hearing, Respondent has failed to produce the following records to the Department:
  - a. For the period August 1, 2013 through October 31, 2013, all reports concerning Respondent's review of the records of individual process servers to whom it assigned, distributed or delivered process to be served in New York City, including all reports that Respondent is required to maintain pursuant to 6 RCNY § 2-234a(b).

#### **Violations of Compliance Plan Requirements**

4. Pursuant to 6 RCNY § 2-234a(b), Respondent is required to develop and implement policies and procedures set forth in a written Compliance Plan to ensure that individual process servers act with integrity and honesty and comply with the recordkeeping requirements applicable to process servers.
5. Respondent's Compliance Plan must, according to 6 RCNY § 2-234a(b)(2)(i)-(vi), contain language requiring it to do the following:
  - (i) at least once each month, review for completeness and accuracy the records of each individual process server to whom it assigns or distributes process;
  - (ii) prepare a monthly written report of its review of the records maintained pursuant to 6 RCNY § 2-233 by each individual process server to whom it assigns or distributes process during that month;
  - (iii) maintain each monthly record review report for at least seven (7) years;
  - (iv) maintain records of any disciplinary actions taken against individual process servers;

- (v) report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance; and
- (vi) make available to the Department, upon request, a copy of its record review procedures, any written reports of the reviews it maintains, and copies of any referrals of individual process servers to the Department.

6. Respondent's compliance plan does not contain language requiring it to do the following:

- (i) maintain each monthly record review report for at least seven (7) years;
- (ii) maintain records of any disciplinary actions taken against individual process servers;
- (iii) report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance; and
- (iv) make available to the Department, upon request, a copy of its record review procedures, any written reports of the reviews it maintains, and copies of any referrals of individual process servers to the Department.

**Failure to Comply With Monthly Record Review Requirements**

7. Pursuant to 6 RCNY §§ 2-234a(b), 2-234a(b)(2)(i), Respondent must, at least once a month, review for completeness and accuracy the records of each individual process server to whom it assigns or distributes process for service in New York City.

8. Respondent failed to, at least once a month, review for completeness and accuracy the records of each individual process server to whom it assigned or distributed process for service in New York City, including:

- a. [REDACTED] (August 2013);
- b. [REDACTED] (September 2013);
- c. [REDACTED] (October 2013);
- d. [REDACTED] (August 2013);
- e. [REDACTED] (September 2013); and
- f. [REDACTED] (October 2013);

9. Pursuant to 6 RCNY §§ 2-234a(b), 2-234a(b)(2)(ii), Respondent must prepare a monthly written report regarding its review of the records maintained by individual process servers to whom it assigned or distributed process for service in New York City.

10. Respondent failed to prepare monthly written reports regarding its review of the records of:

- a. [REDACTED] (August 2013);
- b. [REDACTED] (September 2013);
- c. [REDACTED] (October 2013);
- d. [REDACTED] (August 2013);
- e. [REDACTED] (September 2013); and
- f. [REDACTED] (October 2013).

**Distribution of Process to Process Servers Who Failed to Comply With Recordkeeping Requirements**

11. Pursuant to 6 RCNY 2-234a(a)(4), Respondent “shall not assign or distribute process for service to an individual process server who [] does not comply with the recordkeeping requirements applicable to the service of process in the City of New York.”

12. Respondent distributed process to the following process server(s) even though the process server(s) failed to comply with the recordkeeping requirements contained in 6 RCNY § 2-233 for multiple months:

- a. Elbio Montiel (failed to record the process serving agency's name, the process serving agency's license number, the color and composition of hallway walls for conspicuous services and the location of the premises in relation to stairs,

elevators and entranceways for conspicuous services in his logbook entries for the period August 1, 2013 through December 4, 2013).

- b. Dwayne Thomas (failed to record the county of the court, the color and composition of hallway walls for conspicuous services and the location of the premises in relation to stairs, elevators and entranceways for conspicuous services in his logbook entries for the period August 1, 2013 through October 31, 2013).

**Failure to Comply With Electronic Recordkeeping Requirements**

13. Pursuant to 6 RCNY § 2-233a, a PSA must maintain electronic records of the daily activity of each process server to whom it assigns or distributes process for service in New York City (“EDA records”), in a format provided by the Department (which is available on the Department’s web site) or by uploading the information to a third party service provider. The information shall, at a minimum, contain the following fields and information:

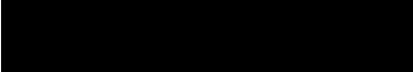
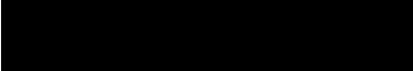
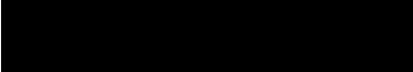
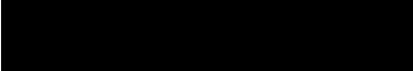
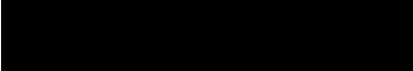
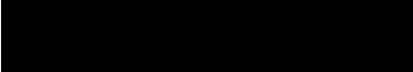
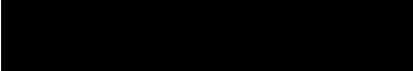
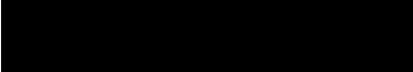
- (i) name of the individual process server to whom service is assigned, which will be entered as last name, first name;
- (ii) the license number of the individual process server to whom service is assigned, which will be specified as a seven digit number, where the first number shall be zero if the process server's license number is less than seven digits;
- (iii) the title of the action or proceeding, if any;
- (iv) the name of the person served, if known, which shall be entered as last name, first name;
- (v) the date that service was effected, which shall be entered as MM/DD/YYYY;
- (vi) the time service was effected, which shall be entered as military time;
- (vii) 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;
- (viii) the nature of the papers served;
- (ix) 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;

- (x) 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;
- (xi) 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;
- (xii) whether service was delivered, as indicated by a Y or N;
- (xiii) 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
- (xiv) 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.

14. During the period , Respondent failed to maintain the following information in its

EDA records:

- a.  (description of person served);
- b.  (description of door and area adjacent);
- c.  (process serving agency name);
- d.  (description of door and area adjacent);
- e.  (process serving agency name);
- f.  (recipient name);
- g.  (recipient name);
- h.  (description of door and area adjacent);
- i.  (description of door and area adjacent); and
- j.  (description of door and area adjacent).

**Failure to Comply With Affidavit of Service Requirements**

15. Pursuant to Section 89-ff of the New York General Business Law and 6 RCNY § 2-

234, all affidavits of service must contain the following information:

- (i) the process server's license number;
- (ii) the process serving agency's name; and
- (iii) the process serving agency's address.

16. Respondent failed to include the process serving agency's name on the following affidavits of service that it prepared:

a.



## CHARGES

### Charge 1: Failure to Comply With a Department Subpoena

1. Respondent violated 6 RCNY § 1-16 by failing to make available for inspection by the Department the monthly record review reports Respondent is required to maintain under 6 RCNY § 2-234a(b). [1 count]

### Charge 2: Violations of Compliance Plan Requirements

2. Respondent violated 6 RCNY § 2-234a(b) compliance plan by failing to include language in its compliance requiring it to do the following:
  - a. maintain each monthly record review report for at least seven (7) years;
  - b. maintain records of any disciplinary actions taken against individual process servers;
  - c. report to the Department in writing the name and license number of each licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance; and
  - d. make available to the Department, upon request, a copy of its record review procedures, any written reports of the reviews it maintains, and copies of any referrals of individual process servers to the Department.

[1 count]

### Charges 3-4: Failure to Comply With Monthly Record Review Requirements

3. Respondent violated 6 RCNY § 2-234a(b) by failing to, at least once a month, review for completeness and accuracy the records of each individual process server to whom it assigned or distributed process for service in New York City. [6 counts]
4. Respondent violated 6 RCNY § 2-234a(b) by failing to, at least once a month, prepare monthly written reports regarding its review of the records maintained by individual process servers to whom it assigned or distributed process for service in New York City. [6 counts]

**Charge 5: Distribution of Process to Process Servers Who Failed to Comply With Recordkeeping Requirements**

5. Respondent violated 6 RCNY § 2-234a(a)(4) by distributing process to process servers who failed to comply with logbook recordkeeping requirements contained in 6 RCNY § 2-233. [2 counts]

**Charge 6: Failure to Comply With Electronic Recordkeeping Requirements**

6. Respondent violated 6 RCNY § 2-233a(b)(3) by failing to maintain information in its EDA records required by 6 RCNY § 2-233a(b)(3)(i)-(xiv), including:

- a. [REDACTED] description of person served);
- b. [REDACTED] description of door and area adjacent);
- c. [REDACTED] process serving agency name);
- d. [REDACTED] description of door and area adjacent);
- e. [REDACTED] process serving agency name);
- f. [REDACTED] recipient name);
- g. [REDACTED] (recipient name);
- h. [REDACTED] 20 (description of door and area adjacent);
- i. [REDACTED] 6 (description of door and area adjacent); and
- j. [REDACTED] 58 (description of door and area adjacent).

[10 counts]

**Charge 7: Failure to Comply with Affidavit of Service Requirements**

7. Respondent violated 6 RCNY § 2-234 by failing to include the process serving agency's name on affidavits of service that it prepared. [1 count]

**Charge 8: Lack of Fitness**

8. By virtue of the activities described above, Respondent violated § 20-101 of the Code by failing to maintain the standards of integrity, honesty and fair dealing required of licensees.

**WHEREFORE**, the Department demands that an order issue: 1) suspending or revoking Respondent's license; 2) imposing maximum fines on Respondent for each and every charge set forth herein; and 3) granting such other relief as is deemed just and proper.

Dated: November 18, 2014  
New York, New York

For: **Julie Menin**  
Commissioner

By:   
Senior Staff Attorney  
Legal Division

## 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](mailto:adjournmentrequests@dca.nyc.gov) (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11<sup>th</sup> 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](mailto:process_server@dca.nyc.gov) or by mail to Alvin A. Liu, DCA Legal Division, 42 Broadway, 9<sup>th</sup> 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](mailto: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](mailto: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](http://www.nyc.gov/consumers) or call 311.