

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

PROGRESSIVE PROCESS SERVICE INC.,

Respondent.

X

CONSENT ORDER

Violation No. 05401665

License No. 1279956

(Process Serving Agency)

X

1. Progressive Process Service Inc. ("Respondent") enters into this Consent Order ("CO") with the New York City Department of Consumer Affairs ("DCA" or "the Department") to resolve allegations and/or charges that Respondent violated sections 2-234a(b), 2-233(c)(1)(iii), 2-234, 2-234a(a)(3), and 2-236(c)(2) of Title 6 of the Rules of the City of New York ("6 RCNY" or the "Rules"), and waives any right to a hearing, appeal of or challenge of the allegations, facts or charges alleged by the Department in any forum.
2. 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. In addition, 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 Administrative Code of the City of New York (the "Code").
3. This Consent Order shall constitute an Order of the Commissioner pursuant to Code §§ 20-104, 20-409(a) and shall apply to Respondent and all directors, officers, employees, agents, and subsidiaries, whose acts, practices, or policies are directed, formulated, or controlled by Respondent. The term "agents" shall not include individual process servers unless such individual process servers are owners, directors, officers, or employees of Respondent.
4. Respondent shall continue to be bound by the terms of prior Consent Orders it entered into with the Department. To the extent that there is a conflict between this Consent Order and a prior Consent Order, the terms of this Consent Order shall apply.

INJUNCTIVE RELIEF

5. Respondent shall not assign, distribute, or deliver process for service in New York City to any individual process server that does not maintain an active DCA process server license.
6. Respondent shall ensure that no process server to whom it has assigned, distributed or delivered process to be served in New York City signs an affidavit of service unless the process server created a Global Positioning System Record ("GPS record") for the service, as required by 6 RCNY § 2-233b.

Monthly Record Reviews

7. 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, including records that each process server maintains pursuant to 6 RCNY § 2-233 (“log book records”), 6 RCNY § 2-233a (“233a records”), and 6 RCNY § 2-233b (“GPS records”).
8. Respondent shall prepare a monthly report of its review of the records maintained pursuant to 6 RCNY §§ 2-233, 2-233a, 2-233b by each individual process server to whom it assigns or distributes process using the “Monthly Compliance Report” (attached as Exhibit A). Respondent shall answer each and every question contained in the Monthly Compliance Report, truthfully, accurately and completely. This shall include identifying all record entries that are non-compliant. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years. The failure of an individual process server to provide his or her log book to Respondent shall not be deemed a violation of this provision.
9. 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” (attached as Exhibit B). Respondent shall follow each and every instruction contained in the GPS Investigation Report and shall complete the report truthfully, accurately and completely. Respondent shall maintain its GPS Investigation Reports as Microsoft Excel files for at least seven (7) years.

Disciplinary Actions

10. 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 current “Disciplinary Actions and Non-Compliance Report.” This includes reporting any failure to comply with the requirements of 6 RCNY § 2-233 (concerning bound logbooks), 6 RCNY § 2-233a (concerning electronic logbooks), 6 RCNY § 2-233b (concerning GPS), 6 RCNY § 2-235 (concerning affidavits of service), and 6 RCNY § 2-236 (concerning traverse hearings), and the failure by any process server to provide Respondent with a copy of his or her log book within thirty (30) days. The report to the Department shall be sent via e-mail to Process_Server@dca.nyc.gov in Microsoft Excel format.

Reporting of Traverse Hearings and Results

11. 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 ten (10) 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 current “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.

12. Within ten days of learning of 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 current 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.
13. 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; or (b) a written explanation of why Respondent was unable to learn the final result of the hearing.
14. If Respondent learns of a sustained traverse pertaining to process that it distributed for service in New York City and does not have a copy of the court's written decision, Respondent shall send a written request (an e-mail shall satisfy this requirement) to the plaintiff/petitioner or the plaintiff/petitioner's attorney requesting a copy of the court's decision within thirty days of learning of the sustained traverse. Respondent shall forward to DCA a copy of any court decision sustaining traverse that it receives from the plaintiff/petitioner or the plaintiff/petitioner's attorney within thirty (30) days of receipt.

Electronic Records

15. 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 affidavits of service, work orders, routing sheets, process server log books, instructions to individual process servers and notes submitted by individual process servers.

FINES

16. Respondent shall pay a fine of \$7,000 in settlement of all the violations to date in the above-referenced matter by bank cashier's check or money order payable to "NYC Department of Consumer Affairs." Payment is due upon execution of this Consent Order.

MISCELLANEOUS

17. If the Department conducts a training on process server laws/regulations in the future and requests in writing that Respondent attend such training, an employee of Respondent with management responsibility shall attend the training, on a date and time set forth by the Department.
18. Upon request from the Department, Respondent shall produce, within fourteen (14) days, any records that it is required to maintain pursuant to this Consent Order, the Code, or the Rules.
19. This Consent Order contains the entire agreement of the parties with respect to the subject matter of the Consent Order. This Consent Order supersedes any understandings or negotiations, whether written or oral, between the parties, and it can only be amended through a written document formally executed by all parties. The Respondent agrees and affirms that it has read and understands this Consent Order, it accurately states the agreement between itself and with the Department, and it enters into and is bound by the terms and conditions stated herein.

BREACH OF THIS CONSENT ORDER

20. Respondent's failure to produce any of the documents required by this Consent Order, the Code, or the Rules shall constitute prima facie evidence that Respondent has failed to maintain those records

and is not in compliance with the underlying terms of the Consent Order, law, or rule for which such documents are required to be maintained. Specific violations of this Consent Order shall, in addition to a breach of this Consent Order, constitute independent and separate violations of any applicable law, regulation or rule. Nothing in this Consent Order shall prevent or otherwise affect the Department's authority to seek any and all available remedies for a breach of this Consent Order, or for a violation of a law or rule, as permitted by the New York City Charter, the Code, or the Rules, including the Department's authority to deny a license application or license renewal application without a hearing.

- 21. The Effective Date of this Consent Order shall be September 1, 2016.
- 22. This Consent Order shall expire four (4) years after the Effective Date.

Agreed to by Progressive Process ^{Service} Servers Inc.	Accepted for the Department of Consumer Affairs
By: Nicholas Rivera Title: Principal	By: [Redacted] Title: [Redacted]
[Redacted]	[Redacted]
Signature _____ Date _____	Signature _____ Date _____

EXHIBIT A

PROCESS SERVING AGENCY MONTHLY COMPLIANCE REPORT

Process Serving Agency Name (the "Agency"):

DCA License Number:

Business Address:

Name of Process Server Whose Records Were Reviewed: Name of Person Performing Records Review:

Instructions:
 • Questions 4-19 require the agency to review each entry in the log book for the month pertaining to process distributed by the agency for service in New York City.
 • Question 26 requires the agency to review each entry in the 233a records for the month pertaining to process distributed by the agency for service in New York City. 233a records refer to the spreadsheet that process serving agencies must maintain pursuant to section 2-233(b)(3) of Title 6 of the Rules of the City of New York.
 • Questions 34-35 require the agency to review each entry in the process server's GPS spreadsheet for the month pertaining to process distributed by the agency for service in New York City. The GPS spreadsheet refers to GPS records that an independent third party maintains on behalf of process servers and that include the fields specified in sections 2-233b(2)(ii) and 2-233b(4)(vii) of Title 6 of the Rules of the City of New York.

IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:													
Item	Description	Yes	No	N/A	Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court	For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
1	Does the process server maintain a record of all attempted and effected services for the agency in a bound volume? <i>"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.</i>												
2	Are the process server's logbooks paginated? <i>"Paginated" means that each page in a volume or log, 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.</i>												
3	Does the process server record attempted and effected services in separate entries? (i.e., entries for attempted and effected services cannot be combined into one line or record)												
4	Are all logbook entries in chronological order? <i>"Chronological" with respect to the notation in a process server record or log 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.</i>												
5	Are all logbook entries legible? <i>"Legible" with respect to the handwriting in the record kept by process servers and in the scanned or copied images of such record means easily read and discernable in all of its details, and in no way obscured.</i>												

IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:													
Item	Description	Yes	No	N/A	Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court	For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
6	Were corrections in the logbook made appropriately? <i>Corrections may 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.</i>												
7	Does every logbook entry contain the name of the entity or individual from whom the process served was received?												
8	Does every logbook entry concerning process distributed by a process serving agency contain the license number of the process serving agency?												
9	Does every logbook entry contain the title of the action (if there is one) or a reasonable abbreviation thereof?												

IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:													
Item	Description	Yes	No	N/A	Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court	For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
10	Does every logbook entry recording a completed service contain the name of the person or entity served?												
11	Does every logbook entry contain the date and time of service or attempted service?												
12	Does every logbook entry contain the address of service or attempted service?												
13	Does every logbook entry recording a completed service contain the type/nature of the papers served?												
14	Does every logbook entry contain the court name (if there is one)?												
15	Does every logbook entry contain the the index number of the action (if there is one)?												
16	For service effected by personal or substituted service, does every logbook entry include a description of the person served, including sex, skin color, hair color, approximate age, height and weight?												

Item	Description	Yes	No	N/A	IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:								
					Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court	For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
17	Does every logbook entry recording a completed service contain the type of service effected (i.e. personal, substituted, conspicuous, or corporate)?												
18	Does every logbook entry recording a conspicuous service include a description of the area adjacent to the door to which process was 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)?												
19	For all service completed by the process server pursuant to RPAPL § 735(1) using registered or certified mail, does every logbook entry include the postal receipt number of registered or certified mail?												
20	Did the process server scan his or her logbook entries for the month into electronic image files?												
21	Is there a separate electronic image file of the logbook for every date that process was served? <i>*For questions 21-23, check the N/A box if, instead of scanning logbooks, the process server chose to enter records into an electronic record-keeping system or upload service data to a third party.</i>												

Item	Description	Yes	No	N/A	IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:								For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
					Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court			
22	Is every electronic image file named with the date of the service recorded in the logbook and the process server's license number?													
23	Was every scan of the logbooks completed within one business day?													
24	Does the process server maintain electronic records pursuant to Section 2-233a of Title 6 of the Rules of the City of New York ("233a records") by inputting service information into a DCA-created Excel spreadsheet?													
25	Does the process server maintain electronic records pursuant to Section 2-233a of Title 6 of the Rules of the City of New York ("233a records") by uploading service information to a third party?													
26	<p>For process servers that maintain 233a records by inputting service information into the DCA-created Excel spreadsheet or uploading the information to a third party, does every entry in the electronic records include the following information:</p> <p>a) the name of the individual process server to whom service was assigned; b) the license number of the individual process server to whom service was assigned; 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 attempted or effected; f) the time that service was attempted or effected; g) the address where service was attempted or effected; h) the nature of the papers served or attempted to be served; i) the court in which the action was commenced, if any; j) the full index number, if any; 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) if service was effected, the type of service effected; 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.</p> <p><i>*Check the N/A box if the process server maintains 233a records by scanning logbooks.</i></p>													

Item	Description	Yes	No	N/A	IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:								
					Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court	For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
27	On the Department's randomly-selected audit date, is the information contained in the process server's affidavits of service consistent with the GPS data maintained by the process server's data storage contractor? <i>* The Department's randomly-selected audit date will be posted on the Department's web site in the first week of the following month</i>												
28	On the Department's randomly-selected audit date, is the information contained in the process server's affidavits of service consistent with the process server's logbook entries?												
29	On the Department's randomly-selected audit date, is the information contained in the process server's logbooks consistent with the GPS data maintained by the process server's data storage contractor?												
30	Please list all traverse hearings involving this process server which the Agency became aware of during the month.		→										

Item	Description	Yes	No	N/A	IF YOUR ANSWER IS "NO" TO ANY OF THESE QUESTIONS, PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:								For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/ Disciplinary Action Taken By The Agency
					Time of Service	Date of Service	Person or Entity Served	Type of Service	Address of Service	Title of Action	Court			
31	For all traverse hearings listed in response to Question 30, is the information contained in the process server's logbooks consistent with the GPS data provided by the process server's data storage contractor?													
32	For all traverse hearings listed in response to Question 30, is the information contained in the process server's affidavits of service consistent with the GPS data provided by the process server's data storage contractor?													
33	For all traverse hearings listed in response to Question 30, is the information contained in the process server's affidavits of service consistent with the process server's logbook entries?													
34	Was a GPS record created for every instance in which the process server attempted or effected service of process in New York City on the agency's behalf?													

EXHIBIT B

