

NEW YORK CITY  
DEPARTMENT OF CONSUMER AFFAIRS

PUBLIC HEARING REGARDING PROPOSED AMENDMENTS TO RULES  
GOVERNING PROCESS SERVERS

42 BROADWAY, 5TH FLOOR

February 28, 2020

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Gail Kagan, NYSPPSA Legislative Chair	5
Paula Parrino, Esq.	10

1 MR. ORTIZ: Good morning. My name is Carlos  
2 Ortiz, and I've been designated as the hearing officer  
3 for the public hearing of Department of Consumer  
4 Affairs on the proposed amendments to rules governing  
5 process servers. This hearing is being held in the  
6 fifth floor conference room of the Department's  
7 offices at 42 Broadway in Lower Manhattan. It is now  
8 10:33 on Friday, February 28, 2020, and I'm hereby  
9 convening the public hearing on this proposed rule.  
10 The proposed rule was published in city record on  
11 January 29, 2020. Copies of the published notice and  
12 rules are available at the table by the door as well  
13 as online. The Department has proposed these rules  
14 pursuant to the authority vested in the Commission of  
15 Department of Consumer Affairs by sections 1043 and  
16 2203(f) of the New York City Charter and Section 20-  
17 104B, 20-406.3 and 20-408 of the New York City  
18 Administrative Code. This hearing affords the public  
19 the opportunity to comment on all aspects of the rules  
20 the Department has proposed. The Department will  
21 carefully review all testimony and written comments  
22 received at this hearing and will give due weight and  
23 consideration to all adequately substantiated  
24 proposals and recommendations that are submitted for  
25 the record at this hearing. To ensure that everyone

1 seeking to testify will have the opportunity to do so  
2 I will strictly follow this simple ground rules.  
3 Anyone seeking to testify must complete a registration  
4 card so you can be correctly identified in the  
5 hearing. Witnesses will be called to testify in the  
6 order they have signed in. Anyone who does not appear  
7 when his or her name is called will be deemed to have  
8 passed over the opportunity to testify. Persons who  
9 have passed over will be called at the end of the  
10 hour. Persons who still do not appear must then sign  
11 in again if they wish to testify. Each witness will  
12 have a maximum of three minutes to testify. Well, we  
13 can be flexible given the crowd. To be fair to  
14 everybody -- oh, no, sorry. If your comments take  
15 longer than three minutes, synthesize your oral  
16 testimony and leave a written copy for the record,  
17 written testimony. Unlike the limit on the time for  
18 testimony, there is no limit on the number of pages  
19 you can submit as written comments or as documents for  
20 the record. The written summation will be made part  
21 of the record as exhibits presented with your  
22 testimony. Emergency exits to this room are out the  
23 door and to the right. Restroom facilities are out  
24 the door and to the left. Please turn off your cell  
25 phones or put them to vibrate. To capture your

1 testimony, for the record, please to be sure to  
2 deliver the testimony from the front, at the desk to  
3 my right. Thank you. I will now call the first  
4 witness, Gail Kagan.

5 MS. GAIL KAGAN: Hi. Nice to meet you  
6 Carlos. My name is Gail Kagan, and I am the  
7 Legislative Chair and the past president of the New  
8 York State Association of Professional Process  
9 Service. NYSPPSA goal is to assure that assit-, a  
10 citizen's right to due process and to act and access  
11 to the legal system. We are committed to service with  
12 integrity, compliance, transparency, accountability,  
13 and to take seriously the auditing and implementation  
14 of GPS technologies and the rules established to  
15 enforce this. Our industry, the process serving  
16 industry, still suffers from the stigma created by the  
17 dishonest process servers in the early 2000s; however,  
18 with regulation changes, more education available,  
19 associations and agencies offering support, server  
20 fraudulent is no longer running rampant as it was when  
21 [unintelligible] [00:02:59] was widespread. I believe  
22 and NYSPPSA believes that we must go forward with the  
23 City and the DCA in partnership and not as  
24 adversaries. We ask that the DCA in implementing  
25 rules and proposing regulations not continue the harsh

1 punishment attitude that went on before. It's  
2 imperative that we make it possible for service to  
3 comply with rules and thrive in this industry. The  
4 public and the press have blamed the process server  
5 for the unfair displacements of tenants in this  
6 housing crisis. Despite, the evidence given by the  
7 process serving industry, and the DCA during the  
8 hearings, the City Council re- responded to public  
9 pressure, and decide to add more rules on an already  
10 overburdened industry. It is clear that these  
11 additional audits are now mandated, and the DCA will  
12 need to execute these new rules. It will be up to the  
13 DCA; however, to make sure that a balance is upheld so  
14 that due process survives. As the agency tasked with  
15 protecting the consumer, the DCA should take into  
16 consideration that due process is a consumer's right.  
17 There are hundreds of papers coming into the City from  
18 New York State Courts in all fields of law. If one  
19 just reviews the housing courts, you will see hundreds  
20 of thousands of notices served each month, which  
21 according to the RPAPL needs to be completed within  
22 seven days. It's clear and in-, with the increase of  
23 papers coming in to the City, and the reduction of  
24 license service since 2012, where there were over  
25 2,000 servers compared to the now 800 servers, the

1 current pool of licensed service cannot be possibly be  
2 handling this amount of service. If you look into  
3 those numbers, they're not -- they don't really  
4 register as real because a number of those servers  
5 don't actually service process. Some are agency  
6 owners. Some are people who work for specific  
7 attorneys or work for specific agencies. So the pool  
8 is much smaller than it actually looks. If you look  
9 at these numbers and compare the service, it's obvious  
10 that unregulated process is going on. By propagating  
11 rules in the way that's more burdensome or impossible  
12 for a process server to comply with, due process  
13 suffers. Instead of getting better service of  
14 process, you -- we're going to cause more attrition of  
15 process servers, overstretch those who remain, and  
16 increase service by unlicensed and illegal process  
17 servers. The New York State Professional Process  
18 Servers Association as the sole voice of the process  
19 server proposes a partnership. Let's work together  
20 with the DCA and the advocates who protect the  
21 consumers to find a solution that satisfies the new  
22 laws and allows the servers to do their job. Let's  
23 encourage servers to perform as they should and help  
24 bring new educated and licensed servers into the  
25 industry. Let the process serving agencies focus on

1 auditing the GPS records so that we can get bad servers  
2 out of the industry. And let's finally stop blaming  
3 the civil process serving industry for the past  
4 misdeeds of greedy attorneys and the process servers  
5 they hired back in the early 2000s. Let's stop  
6 encouraging bad [unintelligible] [00:06:27] in the  
7 housing collection fields to continue to abuse the  
8 consumer by putting unregulated process in the market.  
9 I believe, NYSPPSA believes that we can accomplish  
10 this by acting in concert and finding solutions so  
11 that we can get the best results. We will make  
12 ourselves available at any hearing, at any meeting,  
13 any give time, any day, to discuss this with the DCA.  
14 So with, with that in mind, we went over the rules as  
15 they, they, the things proposed, and we find a couple  
16 of things that we think are going to make it difficult  
17 for process servers to comply with because they're,  
18 they're already burden with the log book, and, and  
19 with the GPS when it functions, when it doesn't  
20 function, the audits, you know, a subpoena, getting  
21 subpoenas. Process servers are already in a stressful  
22 situation just by the very nature of their job. So we  
23 went through it -- the, the rules that were suggested  
24 and, and the way the DCA is suggesting impleting the  
25 new law, and, and it starts with 2-239, the use of

1 emails. The agency suggests that all process servers  
2 and process serving agencies must provide the  
3 department with a, a regular used e-mail address,  
4 that's fine. That's great. The Department may send  
5 licensing documents, subpoenas and notices or requests  
6 and other communications to such address. Well, we  
7 have an issue with them sending subpoenas because e-  
8 mail goes into spam and there's no regu-, no way to  
9 regulate that. So we, we're making a suggestion. You  
10 know, there's no guarantee that somebody's anti-virus  
11 or spam software will not quarantine the e-mail so  
12 subpoenas should not be issued by e-mail only. We  
13 suggest that their -- since the City already created  
14 that portal system, we use the portal additionally to  
15 send, to make notice that there's a subpoena pending.  
16 And, and not only should the e-mail be used by a  
17 message to the ind- individual uploaded on that  
18 portal. We think that the proposed time to respond in  
19 not reasonable, and we suggest a response time of at  
20 least 30 days. Should the notice that, that we, that  
21 we get not be answered then a mailed notice should go  
22 out ge-, alerting the process server that they haven't  
23 responded to the subpoena. In the event that there's  
24 no acknowledgement of the receipt within the 30 days,  
25 give them time, 10 days [unintelligible]

1 [00:09:02]and if somebody blatantly ignores that e-  
2 mail, the portal and the amil request, then the fines  
3 can be enforced. That giv-, because we can't fine  
4 somebody based on something that goes out to  
5 cyberspace. That's just not fair. Paula, do you want  
6 to take this?

7 MS. PAULA PARRINO: Sure.

8 MR. ORTIZ: Is that the end of your  
9 testimony?

10 MS. KAGAN: Well, there's more that, that I  
11 have to say, but I don't want to hog the whole thing.  
12 So I'm going to let Paul speak to some of this. Paula  
13 is also a member of the board of NYSPPSA and I think  
14 that she might have some things that would be  
15 important.

16 MR. ORTIZ: Okay. Thank you for your  
17 testimony. Calling up now Paula Parrino.

18 MS. PARRINO: Thank you. So regarding  
19 Section 2-240 speaking of the audits. Number two,  
20 under subparagraph A, talks about affidavits of  
21 service filed with the court by a process server or on  
22 behalf of a process server related to service. We are  
23 worried about particular addition because process  
24 servers do not generally file their own affidavits.  
25 Very often, there is a court service that might file

1 the affidavits. Now with the advent of e-filing,  
2 there is a lot of e-filing going on that could either  
3 be done by a court service agency or by the attorneys  
4 who are at, at where they're staffed themselves.  
5 Further not every Affidavit of Service is required to  
6 be filed with the court. So our concern is, is that  
7 it would pose a great burden on servers if they  
8 weren't responsible for the actual filing of the  
9 affidavits to then all of a sudden accumulate every  
10 single Affidavit of Service that may have been filed  
11 for a case that they served. So that, that's a very  
12 large concern that we have. It's just really in a lot  
13 of ways not practical.

14 MR. ORTIZ: Mm-hmm.

15 MS. PARRINO: As far as number three, under  
16 section 2-240, the GPS records. We would just like a  
17 little bit of clarification on that because we wanted  
18 to understand if what's being requested is certified  
19 records or rather a printout that the server can  
20 prepare on their own, maybe attesting to something.  
21 So, so we're trying to understand a little bit of  
22 exactly what that requirement is. Subparagraph four,  
23 traverse hearings results. Documents sufficient to  
24 identify all traverse hearings scheduled to occur  
25 whether or not held by any court including courts

1 outside of New York City, concerning process served or  
2 attempting to be served and any result of such  
3 hearings. Again, we're, we're asking for a little bit  
4 of clarification here. Because you know, if, if it's  
5 not the City of New York that has jurisdiction, and  
6 let's say a paper actually emanated from an out of  
7 state court, and happen to served, where, where does  
8 th- that lie? We need some kind of clarification  
9 because we just want to make sure that it's clear to  
10 everyone what their obligations are and maybe further  
11 discussion once there's some clarification on that  
12 issue as well. So we suggested that the language  
13 needs to be changed concerning process served or  
14 attempted within the City of New York and New York  
15 results of such hearings. And then for 4B,  
16 description of the records. We, we wanted to talk  
17 about are they saying the City has the right to decide  
18 if they want electronic or paper records? So again,  
19 just a little bit of clarification with that. Is it  
20 both types of records they want or will one or the  
21 other suffice? And then, we wanted to talk a little  
22 bit about the penalties and the fines that are being  
23 proposed. For many servers, whether or not they are  
24 independent contractors or they are employees of a  
25 service agency, the fines are, are quite high. And I

1 don't think the intention necessarily is for the fines  
2 to be punitive; however, with where they are now, it  
3 could really put an independent contractor out of  
4 business with just one fine because of the amount of  
5 money that's attached to said fine. And rather than,  
6 doing that, we propose a system wh-, of education,  
7 mentorship maybe, whereby if so-, if there is going to  
8 be a fine, a lesser fine that's more feasible for a  
9 process server, and in addition some kind of  
10 additional program or mentorship program which would  
11 allow them to understand why they're being fined and  
12 what they did wrong so that it doesn't occur again.  
13 Because many of the servers really want to do a good  
14 job and they value their position in the, in the whole  
15 court process which really is the foundation for legal  
16 action and as Gail mentioned, it's about due process,  
17 and the whole opportunity for a defendant to be heard  
18 in the action should they actually have a defense that  
19 would be something that they would be able to present  
20 when they're notified. So to me, as an attorney, and  
21 as person involved in the process service in-  
22 industry, process service is the cornerstone of the  
23 action, and it's the underlying foundation of it. And  
24 we want to make sure that it's a strong foundation  
25 because otherwise, the case could fall apart later on.

1           So we want to help the servers and the service  
2           industry actually have service that could withstand  
3           even the strictest of scrutiny. So that's our goal  
4           and those are our suggestions, and we hope that we can  
5           participate and we look forward to clarification so  
6           that maybe we can discuss again further. Thank you.

7                       MR. ORTIZ: Thank you for your testimony.  
8           Seeing that no one else is present to offer testimony,  
9           I shall adjourn this hearing until individual appears  
10          to offer testimony or until 11:30 a.m. whichever comes  
11          first.

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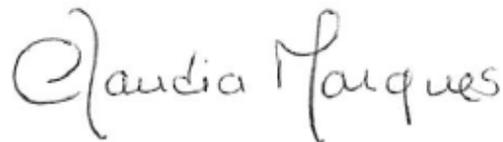
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CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of New York City Department of Consumer Affairs Public Hearing Regarding Proposed Amendments to Rules Governing Process Servers on February 28, 2020 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: March 18, 2020

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