

NEW YORK CITY  
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

DCWP RULES HEARING: PROCESS SERVICES

VIRTUAL PUBLIC HEARING

REMOTE - VIA TELECONFERENCE

August 21, 2024

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1 MS. KARLINE JUNG: Alright. Thank you,  
2 everyone, for joining. I will get started. Good  
3 morning. My name is Karline Jung. I've been  
4 designated as the Hearing Officer for the public  
5 hearing of the Department of Consumer and Worker  
6 Protection on the proposed rules to amend and enact  
7 rules relating to process servers. This hearing is  
8 being held by teleconference call. It is now 11:03  
9 a.m. on Wednesday, August 21, 2024, and I am hereby  
10 convening the public hearing on this proposed rule.

11 The proposed rule was published in The City  
12 Record on July 22, 2024. The published notice and  
13 rules are available online on the NYC Rules website  
14 and the Department's website. The Department has  
15 proposed these rules pursuant to the authority vested  
16 in the Commissioner of the Department of Consumer and  
17 Worker Protection by sections 1043 and 2203(f) of the  
18 New York City Charter, and section 20-406.3 of the New  
19 York City Administrative Code.

20 This hearing affords the public the  
21 opportunity to comment on all aspects of the rules the  
22 Department has proposed. The Department will  
23 carefully review all testimony and written comments  
24 received at this hearing and will give due weight and  
25 consideration to proposals and recommendations that

1 are submitted for the record at this hearing.

2 To ensure that everyone seeking to testify  
3 today will have an opportunity to do so, I ask that we  
4 all follow these ground rules. During the hearing,  
5 all participants should give due respect and  
6 consideration to the folks offering their testimony,  
7 and please make sure to mute your lines if you're not  
8 speaking. Each witness will have a maximum of three  
9 minutes to provide oral testimony. If your comments  
10 take longer than three minutes, please synthesize your  
11 oral testimony and leave a written copy for the  
12 record. Unlike the limit on time for oral testimony,  
13 there is no limit on the number of pages you can  
14 submit as written testimony or as documents for the  
15 record. The written submission will be made part of  
16 the public record.

17 Now, at this point, if you are looking to  
18 testify today and you have not let, if you have not  
19 yet let me know, please do so in the chat.

20 Okay. So, before we begin, I will remind  
21 everyone to mute your lines until you're called to  
22 provide testimony. Thank you. I will now call the  
23 first witness. You will have three minutes for  
24 testimony and you may begin whenever you're ready.  
25 Paula Parrino?

1 MS. PAULA PARRINO: Good morning.

2 MS. JUNG: Good morning. You can start  
3 whenever.

4 MS. PARRINO: Thank you. So, I'm an  
5 attorney and I'm the president of the New York State  
6 Professional Process Servers Association. My comments  
7 are on behalf of our members and servers through the  
8 industry.

9 The DCWP maintains that its objective is  
10 achieving compliance with the law and not generating  
11 revenue through fines. The rigorous nature of the  
12 enforcement process is not protecting consumers, it is  
13 hurting those who will eventually bear the cost of  
14 steep increa- increases in the litigation process. It  
15 appears as though it's mostly fined recordkeeping  
16 errors, which become fines for thousands of dollars.  
17 Faced with two choices, most servers choose to  
18 maintain their livelihood by signing a consent order.  
19 Unfortunately, these are used against a server at  
20 traverse hearings to damage their credibility.

21 The growth of these regulations by the DCWP  
22 has led to a misalignment between separation of powers  
23 and regulatory mechanisms. The changes call for  
24 rebuttal presumption of the server being in non-  
25 compliance with provisions of section 2-233b(a)(2) if

1 the electronic record is made more than five minutes  
2 after service, and the record may not be made before  
3 service. There are many concerns with this, but  
4 foremost is the idea that if a server does not take  
5 the GPS after the service, then they're in violation  
6 of a law that may put them in harms way. The  
7 violation language is not considering the dangers  
8 servers face when serving process. Five minutes is  
9 not reasonable.

10 The concern with the rebuttable presumption  
11 is equally problematic. The creation is not evidence  
12 itself, but courts consider it to be prima facie proof  
13 of a fact that can be disproven by the production of  
14 sufficient contrary evidence. This can open the door  
15 to additional challenges to service and directly  
16 conflicts with the court's long-term stance on the  
17 server's affidavit.

18 The corporate service additions may cause a  
19 server to not serve a legal paper, which is  
20 detrimental to clients.

21 The proposed changes regarding the caption  
22 are vague and unclear. Will this impact Doe  
23 designations, especially in foreclosure matters?

24 Then, there is the addition regarding false  
25 statements. What is a false statement? There must be

1 a definition. As Judge Judith Kaye wrote, "However  
2 careful we may be in choosing them, words, even very  
3 simple words are rarely precise." The proposed  
4 addition of this language is seen by our members to be  
5 an attack on their credibility. Doesn't the licensing  
6 process already allow for the agency to determine and  
7 consider the character, competency, and integrity of  
8 the applicant?

9 As part of the increase into how to resolve  
10 what appeared to be a broken system, it was stated  
11 that fundamental fairness dictates that the legal  
12 process afford consumers a reasonable opportunity to  
13 defend themselves. Isn't it ironic that we, the  
14 servers who provide notice in a suit, are now the ones  
15 in need of a method of defending ourselves against the  
16 denigration of our character and clerical fines for  
17 paperwork that could lead to the loss of our  
18 livelihoods? Add to it enforcement of rules that can  
19 adversely affect our safety and we, again, have a  
20 broken system. But, now, servers need assistance to  
21 protect the sanctity of legal process and their role  
22 in it.

23 Today, there are roughly 500 servers. The  
24 stringent requirements have not only weeded out the  
25 bad actors, but also the good. Philosopher Baruch

1 Spinoza said, "He who seeks to regulate everything by  
2 law is more likely to arouse vices than reform them."  
3 Perhaps it is now the litigants who are arousing vices  
4 and the helpless server who needs assistance.

5 Respectfully, we ask that you consider our  
6 voices in your proposed rule changes. Thank you

7 MS. JUNG: Alright. Thank you so much. The  
8 next person I have on my list is Gail Kagan. Gail  
9 Kagan? Okay, we will come back to Gail. Next, I have  
10 Bob Muss- Musser. Apologies in advance if I'm  
11 pronouncing anyone's name incorrectly.

12 MR. BOB MUSSER: No problem at all. Can you  
13 hear me okay?

14 MS. JUNG: Yes, we can hear you.

15 MR. MUSSER: Alright. Well, my name is Bob  
16 Musser. I'm from Florida. I am the vice president of  
17 the Florida Association of Professional Process  
18 Servers. I've been working in this industry for about  
19 35 years.

20 I established a education committee in  
21 Florida 15 years ago. And that education committee  
22 seeks to educate process servers on not only how to  
23 serve process in accordance with the statute, but how  
24 to do so safely and efficiently. And we counsel  
25 process servers to go to and attempt and prepare



1 everything possible ahead of time. Take a picture of  
2 the door and the address, do your GPS lock, start your  
3 app on your phone to indicate that you're in the  
4 middle of starting an attempt of service before you  
5 knock on the door and engage the recipient.

6 We, we have a Violence Against Process  
7 Servers Committee in Florida, and one of my, the  
8 chairman of that committee is on this call. I hope  
9 she's, she'll be able to talk. We are trying to  
10 minimize the interactions between unhappy recipients.  
11 The last thing we'd want to do is, is, is take a  
12 picture of them after they've received the papers and  
13 they are unhappy with you in the first place. It's a  
14 safety issue. It's almost as if this rule was written  
15 by someone who has no experience whatsoever with ever  
16 serving papers in the field.

17 The second point I want to make is that, for  
18 35 years, I've been the president of DreamBuilt  
19 Software. We're one of the two largest companies that  
20 makes software for process servers. We have spent  
21 years making this software as efficient as possible  
22 and as mistake-free as possible. And when you have  
23 end-users in the field on a handheld device that maybe  
24 is 3" x 5" of screen, you don't want them tabbing from  
25 field to field to field, verifying and correcting

1 information. You want them to, to, to change fields  
2 as, as infrequently as possible, to do the best, most  
3 accurate job, and in an efficient manner. Once again,  
4 [unintelligible] [00:09:54] rule about segmenting data  
5 [unintelligible] [00:09:55] was written by someone  
6 looking to make the auditing as easy as possible for  
7 themselves, with no regard for the efficiency of the  
8 people that are actually running a business and trying  
9 to get things accomplished.

10 Those two things are the, are the biggest  
11 problems I see with this current set of rules and the  
12 prospective rules. The, the safety issue is, is  
13 paramount. You can't prohibit people from locking in  
14 their attempts before the serve, and five minutes is  
15 [unintelligible] [00:10:24] lock, a tall apartment  
16 building, you're not going to get a GPS lock while  
17 you're standing right [unintelligible] [00:10:32].  
18 You can do it outside at the front door, get your GPS  
19 locked, then go inside, knock on the door, do your  
20 work.

21 The process servers are trying to notify the  
22 recipients, let them know that there's an action  
23 pending against them. None of these rules make that  
24 any better. Thank you.

25 MS. JUNG: Thank you. Just a reminder to

1 everyone to please make sure that your lines are  
2 muted. Thank you. Next, I have Rosemary LaManna.  
3 Rosemary LaManna?

4 MS. ROSEMARY LAMANNA: I'm here. Good  
5 morning. Good morning, everybody.

6 MS. JUNG: Good morning.

7 MS. LAMANNA: Good morning. And thank you  
8 for accepting my request to comment on the proposed  
9 rule changes for process serving.

10 First, I thank you for adding the language  
11 pertaining to the proof of service being in the format  
12 of an affirmation or an affidavit. And I support this  
13 change. But, unfortunately, I do not agree that  
14 there's a necessity to add Rule 2-235a, duty to  
15 testify truthfully, as it's already covered in section  
16 2-234, a duty to comply with the law. The duty to  
17 testify truthfully is for any and all industries.  
18 That does not belong in the rules for process serving.  
19 That is a matter of ethics and borders being  
20 offensive.

21 When it comes to a traverse hearing, a  
22 process server cannot be scrutinized as to the outcome  
23 of the case. As the process server, they're there as  
24 a witness and does not have a self-representation at  
25 that hearing.

1           As the DCWP protects the consumers and  
2 workers, what is the ramification for a consumer that  
3 has testified, but has not testified truthfully?  
4 There are many cases where a defendant has signed for  
5 documents, photos of the defendant in the photos have  
6 been taken by the server, and service is still  
7 contested. Believe it or not, the server could still  
8 lose the hearing if the appearing attorney cannot lay  
9 proper foundation to get the records in.

10           In addition, the changes to 2-233b of the  
11 electronic record for the GPS requirements, you know,  
12 from all the comments posted online and discussed in  
13 this session, I also strongly disagree with the five-  
14 minute rule for the GPS photo. Any and all process  
15 servers that are taking the GPS photo to be compliant  
16 with their licensing have all taken a written test  
17 that is given every two years, and have passed. We  
18 need to allow the servers to make their own judgment  
19 call when it comes to taking a photo, as every single  
20 service, address, conversation, and document is  
21 unique.

22           Process servers have no idea what's going to  
23 transpire when knocking on a door, especially since  
24 the Ring doorbell trend and COVID. Just recently, we  
25 had a server knocked down several se-, several steps,

1 several cement steps, onto a cement landing. As the,  
2 it was a statute of limitation case, people knew the  
3 papers were coming. They decided to kick the door  
4 open rather than use the handle, knocked the server  
5 down, broke his arm in several places. And, for the  
6 rest of his life, he's going to suffer the consequence  
7 for ringing that doorbell and knocking on that door.

8 There are also times that the server is at a  
9 residence for an extended period of time. Defendants  
10 at an address, we're expected to make due diligence.  
11 We have to ask questions, we have to wait for phone  
12 calls to be made, and we also need to be there and be  
13 that ear for the individual that decides to explain  
14 the nature of the problem. You know, we just pick up,  
15 drop, and leave, you know, you can cause aggression  
16 from the individual. And any professional process  
17 server will be courteous, and not just walk away.  
18 Let's leave this decision in the hands of the server.  
19 Thank you.

20 MS. JUNG: Alright, thank you so much. Next  
21 up, I have Andrew Mega.

22 MR. ANDREW MEGA: Hi. Thank you very much  
23 for allowing me the opportunity to speak. I am a, an  
24 agency, a license owner, and I'm also an individual  
25 licensed server. I've been doing this for 11-plus

1 years now. I started in 2011. And I, I honestly feel  
2 as if the -- I've never really seen an instance of the  
3 DCWP, or formerly DCA, trying to at least show that  
4 it, it has the interest of the process server worker  
5 at heart. I've, I've felt, in fact, consistently  
6 attacked and, and, and not protected. And I, I just  
7 feel as if there should be some semblance of  
8 acknowledgment of the dangers of doing this work, and  
9 how difficult it is to get cooperation from servees.

10 You know, with this amendment that's  
11 proposed for, to 2-233b to limit to five minutes to  
12 create a GPS record is, is really not taking into  
13 account the, the safety concern. And I don't want to  
14 focus my testimony on that, because I feel like it's  
15 been well-established by other commenters, but I  
16 definitely wanted to say that it's just not a safe  
17 proposal.

18 The amendment to 2-235a to, to require more  
19 detail from the server about the business entities and  
20 the people with which we're serving, I think, again,  
21 is not acknowledging the fact that there's a very  
22 difficult hurdle to cross when you're communicating  
23 with somebody and they don't want to accept the  
24 document. You know, oftentimes, we get false  
25 information. I, I recently had someone tell me their

1 name was James Brown and laugh at me. So, you -- I, I  
2 think, I think it's important to, to understand the  
3 difficulty of getting this information that's being  
4 asked.

5 There's established case law that I, I feel  
6 as if maybe this proposal is in conflict with, and  
7 that it's exceeding the judicial reach. It, it  
8 appears that what, what it's doing, in my opinion, is  
9 it's creating more fines, and an easier way to create  
10 more fines for the server without getting to the root  
11 of improving the act of process serving.

12 I do appreciate that the proposal includes  
13 the language for affirmations and affidavits. I, I do  
14 feel that the word "and" instead of "or" is used  
15 frequently, so it, the language will say that the  
16 process server must retain an affidavit and an  
17 affirmation instead of an affidavit or an affirmation.  
18 And I feel like that is a very critical differentiator  
19 and the language should be changed to "or," unless  
20 you're expecting process services to maintain both,  
21 which I don't think is the intention here.

22 And, lastly, the -- I've known a lot of  
23 process servers that have been fined out, out of  
24 existence. They've, they've just left this industry.  
25 And I've, I've known them to be very honest people

1 personally, and I've been very surprised the way that  
2 they've been treated. When we create a proposal like  
3 the denial of license renewal based on a false  
4 statement in an affidavit, I think I, I would really  
5 urge some very strict specificity to what sort of  
6 statement is going to entail a denial of renewal of  
7 someone's livelihood and how they provide for their  
8 family. I, I don't think any vagueness should be in  
9 the language. I don't, I don't think simply saying  
10 that if there's a false statement on an affidavit,  
11 it's grounds for denial of renewal is adequate in any  
12 sense for the consequence that's being described here.  
13 I think we really need a specific description of what  
14 it is.

15 I'll be honest. I don't, I don't know if  
16 I'm exceeding my, my three minutes here, but we, we,  
17 we're all in fear. We're all in fear of the fines  
18 that we might, might en-, it might entail here. And  
19 we never feel protected, and we're on our own. And it  
20 is a scary thing to think that you might lose your  
21 livelihood. These, these fines are extremely  
22 exorbitant. They've always been exorbitant, starting  
23 at \$750.00. These process servers out there can't  
24 afford the fines. And they leave the, the business.  
25 And I don't even know if it's improving process



1 service.

2 I think that's all I've got. Thank you very  
3 much, though. Thank you for allowing me to speak.

4 MS. JUNG: Alright, thank you. Next, I'm  
5 going to go back to Gail Kagan.

6 MS. GAIL KAGAN: Good morning.

7 MS. JUNG: Hi.

8 MS. KAGAN: My name is Gail Kagan and I'm  
9 the legislative chair for the New York State  
10 Professional Process Servers Association. Thank you  
11 for giving me this opportunity to speak.

12 I stand before you to express my strong  
13 opinion and opposition to these new provisions, as  
14 they raise several concerns that I believe are both  
15 unfair and detrimental, not only to small businesses,  
16 but also to the individuals who serve process and who  
17 are essential to our legal system.

18 The rules requiring electronic records of  
19 service to be made and uploaded within five minutes  
20 are just not impractical, they're dangerous. First,  
21 talking about safety, process servers are no strangers  
22 to danger. When we knock on someone's door, we never  
23 know what to expect. We see horrifying incidents,  
24 like the one in Missouri where young Ralph was shot  
25 for simply knocking on the wrong door. This

1           underscores the risk that servers face very day.  
2           We've had process servers attacked by dogs. Or in the  
3           New York Diamond District, physically assaulted by  
4           security personnel who didn't believe a server had the  
5           legal right to take a photograph. It's not a matter  
6           of it's, of if a confrontation will happen, it's a  
7           matter of when.

8                         Forcing servers to stand outside the door of  
9           an angry recipient, who's struggling, struggling to  
10          upload information on a phone within five minutes, is  
11          a recipe for disaster. It's an unrealistic  
12          [unintelligible] [00:20:59]. And I know this has been  
13          talked about before, but this is how people get hurt.

14                        In cities like New York, the logistical  
15          challenges are greater. Servers have to navigate  
16          stairwells, elevators, and crowded environments,  
17          racing against a clock. They can't always make it out  
18          of the building, into safety, in five minutes. It's  
19          just not unsafe, it's unworkable.

20                        But, considering this, the DCWP is also  
21          overstepping its bound. Let's be clear. Nowhere in  
22          the State statutes does it say failing to upload  
23          service detail within a certain amount of time  
24          invalidates the entire service. Yet, the DCWP is  
25          attempting to expo- impose this extra burden,

1 suggesting that if information is not uploaded fast  
2 enough, the entire service is null and void. This is  
3 a significant overreach of the DCWP's authority. And  
4 the rules they're trying to enforce are not grounded  
5 in state law. In essence, the DCWP is creating a  
6 barrier to service of legal documents that do not  
7 exist under state law. What we need is a sensible  
8 balance, a system that ensures the legal  
9 accountability without endangering process servers.

10 Additionally, I'd like to address the new  
11 provisions concerning affidavits and affirmations of  
12 service. At first glance, the addition to the truth  
13 statements seems straightforward. They emphasize the  
14 importance of honesty and accuracy in the documents  
15 submitted by licensees. But when we look a little  
16 closer, it becomes apparent that this rule is, in  
17 fact, redundant.

18 By their very nature, affidavits and  
19 affirmations are sworn statements of truth. When a  
20 process server signs an affidavit or affirmation, they  
21 are legally affirming, under penalty of perjury, that  
22 the information contained within is accurate and  
23 truthful. This is already a binding legal ga-, legal  
24 obligation. The truthfulness of an affidavit or  
25 affirmation is not optional. It's an already, it's

1 already required by law.

2 But there's another issue that concerns me  
3 here. The proposed rule gives the DCWP the authority  
4 to deny or revoke licenses based on a false statement.  
5 Now, while I support any effort to weed out  
6 intentional dishonesty, we have to ask, what exactly  
7 is meant by a false statement? Is it only a  
8 deliberate attempt to deceive, or are we including  
9 innocent errors, like a typographical mistake?  
10 Because we all know mistakes happen. And the courts,  
11 quite sensibly, have long recognized the minor errors  
12 in affidavits, things like typos or clerical  
13 oversights, are not enough to invalidate a statement,  
14 service, or cast doubt on the credibility of the  
15 process server. The courts understand these are  
16 ministerial errors and not acts of deception. So,  
17 when we talk about false statements under this new  
18 rule, are we referring to only intentional  
19 misrepresentations, or is there a risk that any  
20 mistake, no matter how triv- triv- triv- trivial  
21 -- sorry -- could be labeled a false statement? This  
22 lack of clarity is concerning.

23 MS. JUNG: Sorry. I'm going to have to ask  
24 you to wrap up your comments.

25 MS. KAGAN: Okay. So, let me just talk

1 about the issue of process servers who play an  
2 integral role in the legal system. With the proposed  
3 rules, the consequence of increased fines could be  
4 particularly harmful to process servers during  
5 traverse hearings. Even worse, process servers who  
6 have no legal representation during these hearings are  
7 -- get no voice in court, other than the questions put  
8 to them. And, and they have no way to explain what a  
9 [unintelligible] [00:24:40]. The DCWP's fining  
10 process does more harm than good. Not only are  
11 process servers being unfairly targeted and fined for  
12 a minor clerical error, but the very balance of our  
13 judicial system is at risk. And these rules seem to  
14 add more opportunities for excessive fining.

15 MS. JUNG: Alright.

16 MS. KAGAN: The DCWP is an agency designed  
17 to protect and enhance our [unintelligible] [00:25:05]  
18 --

19 MS. JUNG: Sorry. I'm going to have to wrap  
20 up comments now.

21 MS. KAGAN: Sure.

22 MS. JUNG: Alright.

23 MS. KAGAN: Just let me just finish this.  
24 Despite the progress the DC-, the -- New York City  
25 used to have, we once faced a surge of consumer debt

1 collection filings, and with it came bad actors,  
2 unscrupulous practices such as sewer service, while,  
3 which, where important legal documents were discarded  
4 instead of being properly delivered, once plagued our  
5 industry, but those days are behind us. There are  
6 fewer bad actors. Yeah, there are fewer bad actors.  
7 And despite this, we, the DCWP continues to pursue  
8 stricter rules. The outcome is the number of licensed  
9 process servers in this City has plummeted. Process  
10 servers are not --

11 MS. JUNG: Gail, I'm very sorry, but --

12 MS. KAGAN: -- vendors. I'm sorry.

13 MS. JUNG: -- I'm going to have to move on  
14 to the next person.

15 MS. KAGAN: I hear you.

16 MS. JUNG: Yeah, because we have a time  
17 limit of three minutes. But if you have any other  
18 comments, you can definitely submit them.

19 MS. KAGAN: I'll, I'll just forward this to  
20 the thing.

21 MS. JUNG: Yeah, yeah.

22 MS. KAGAN: I'll just forward this as the  
23 comments. Thank you for you time.

24 MS. JUNG: Alright. thank you so much. Up  
25 next, we have Will Foote.

1 MR. WILL FOOTE: Thank you for the  
2 opportunity to share here on behalf of the New York  
3 Legal Assistance Group. NYLAG is a not-for-profit  
4 legal services organization founded in 1990, and we  
5 submit these comments in strong support of the  
6 Department of Consumer and Worker Protection's  
7 proposed amendments to rules relating to process  
8 servers.

9 Every day, our attorneys in our Consumer  
10 Protection Unit and Special Litigation Unit  
11 work with individual consumers and families facing  
12 abusive, deceptive, and unfair debt collection and  
13 lending practices. In many cases where NYLAG defends  
14 clients in consumer debt matters, our client is  
15 unaware of the lawsuit against them until their wages  
16 are garnished, their bank accounts are frozen, or a  
17 lien is placed on their home. After being denied  
18 notice of the lawsuit and due process, consumers are  
19 forced into a position where they must defend the  
20 lawsuit while creditor plaintiffs seek, seek to  
21 enforce judgments against them based on unlawful  
22 service of process, As a result, we scrutinize  
23 unlawful service practices and raise jurisdictional  
24 defenses on the basis of service of process daily.

25 First, DCWP's proposed amendments

1 require process servers to report more accurate and  
2 timely information about attempted or effected  
3 service. The proposed changes to 2-233b(a)(2) state  
4 that if a process server does submit -- does not  
5 submit a timely electronic record following an  
6 attempted or effected service, there exists a rebuttal  
7 presumption that a process server is not in compliance  
8 with this law. This default presumption pro- provides  
9 protection for parties in legal action who may have  
10 faced improper service, and many of whom defend their  
11 cases pro se. Because this presumption is rebuttable,  
12 process servers have recourse to demonstrate any  
13 extenuating circumstances which may arise when  
14 attempting to make a timely electronic record of an  
15 attempted or effective service.

16 New York Legal Assistance Group's Consumer  
17 Protection Unit often works with clients who oppose  
18 default judgments based on inaccurate service. For  
19 example, one of our clients, anonymized here as G.S.,  
20 faced a default judgment for \$10,000.00, where the  
21 process server swore to conspicuous service at a wrong  
22 address. In another example, a client of ours,  
23 anonymized as N.J., defended against a \$2,000.00  
24 default judgment -- \$20,000.00 default judgment where  
25 the process server swore to substitute service on a



1 co-tenant who did not exist.

2 Under the pro- proposed changes, the process  
3 servers in these two cases would have had a  
4 contemporaneous record following the alleged effected  
5 service, indicating the GPS location and manually  
6 inputted information about the alleged effected  
7 service. Instead, no such records were created after  
8 the alleged service attempts, and our clients faced  
9 default judgments for large sums of money based on  
10 improper service.

11 The second of DCWP's proposed changes  
12 outline a more effective framework for holding process  
13 servers accountable when they're found to have made a  
14 false statement in a sworn affidavit or affirmation of  
15 service. The proposed addition to 2-235a clarifies  
16 the duty of a licensee to not make false statements in  
17 affidavits and affirmations of service. In addition,  
18 the proposed section would permit the Commission to  
19 deny any license application or renew -- or refuse to  
20 renew any license, based on false statements in  
21 affidavits or affirmations of service. The proposed  
22 section explicitly provides for due notice and  
23 opportunity to be heard before suspending or revoking  
24 a license for false statements. This framework  
25 protects consumers against the widespread practice of

1 sewer service, where a process server falsely swears  
2 to have effectuated lawful service on a consumer.

3 New York Legal Assistance Group's Consumer  
4 Protection Unit and Special Litigation Unit frequently  
5 see cases with improper service, resulting in default  
6 judgments against our clients, where the process  
7 server had a history of violating process server laws.  
8 These process servers are often still licensed by  
9 DCWP. For example, the process servers mentioned  
10 above, who swore to conspicuous service on our clients  
11 at an incorrect address, both had disciplinary  
12 hearings for multiple incidences of improper service  
13 and improper recordkeeping before the alleged service  
14 on our clients, yet, nonetheless, kept their licenses.

15 I'll conclude my statement by saying that  
16 New York State has a long tradition of being a leader  
17 on consumer protection. These proposed rules continue  
18 that tradition in the context of process server  
19 accountability. And NYLAG respectfully sub-,  
20 respectfully submits these comments and requests the  
21 implementation of the proposed rules. And I'd like to  
22 thank DCWP for the opportunity to participate in the  
23 enactment of these rules designed to provide greater  
24 protections for vulnerable New York consumers. Thank  
25 you.

1 MS. JUNG: Alright, thank you. Before we  
2 move on to the next person, I think I saw someone with  
3 their hand raised. Oh, okay. We will be moving on --  
4 oh. We'll be moving on -- yes, yes. Larry? Okay.  
5 Okay. We will be moving on to the next person,  
6 Michelle Howard.

7 MR. LARRY YELLON: Hello. Larry Yellon  
8 here. Before that, I'm --

9 MS. JUNG: Oh, yes.

10 MR. YELLON: -- a six- year past president  
11 of the New York Association and current president,  
12 four terms, for the National Association of  
13 Professional Process Servers. And from 2012-2016, I  
14 was, presided over the Association, pursuing and  
15 achieving the legislation that made it a class D  
16 felony to assault a process server. And, needless to  
17 say, every single event that occurred that a process  
18 server was assaulted, occurred immediately after the  
19 service took place. And none was taken, none of it  
20 happened before. And I found that our research showed  
21 that had they waited even longer, more assaults would  
22 have taken place.

23 So, now, it is a class D felony in New York  
24 State to assault a process server performing his  
25 duties. Thank you very much.

1 MS. JUNG: Alright, thank you. Next, we  
2 have Michelle Howard.

3 MS. MICHELLE HOWARD: Good morning. My name  
4 is Michelle Howard. I am with the Florida Association  
5 of Professional Process Servers. I serve as a  
6 director on the Board, as well as the chair for the  
7 Violence Against Process Services, and the chair of  
8 the formal education program. I was clued in in  
9 regards to these requirements as to doing the GPS  
10 photos after the service has been effectuated or after  
11 the attempt has been made.

12 As the committee chair for our education  
13 program, we do teach our servers here in the State of  
14 Florida, for best practices and for the safety, that  
15 it is best to go ahead and get those GPS locations and  
16 photos prior to even attempting to knock on the door,  
17 to minimize any negative reaction or interaction with  
18 the servee.

19 As a licensed process server myself for the  
20 past 16 years, I do know that not every individual is  
21 excited to see a process server knocking on their door  
22 and can heighten their responses to an individual who  
23 is unknown to them at their door. As the Violence  
24 Against Process Servers Committee chair, I have  
25 received, in the past 12 months, a minimum of 10

1 complaints that have been reported to our committee in  
2 regards to a negative interaction and encounter with a  
3 servee when a process server remained on property  
4 after they have already effectuated service. It is a  
5 safety issue.

6 In fact, last month, we had a process server  
7 serve an individual, went back to her car to update  
8 her notes in her app instead of pulling away. The  
9 servee came up, threw the documents into the vehicle,  
10 and then reached around and physically assaulted the  
11 process server. I had one last week, that the process  
12 server served the individual. As he was walking away  
13 from the property, had a document that was in excess  
14 of 150 pages thrown at his head.

15 The requirement to do this after the fact  
16 does put the process server in danger. It does  
17 escalate a situation of when a servee is not happy  
18 that they have been served with a legal document or a  
19 lawsuit requiring them to do something they don't want  
20 to do. So, to put your process servers in a position  
21 to have to further defend themselves against a  
22 physical or verbal alter- altercation is unfathomable  
23 to me, just because of the fact of the increased  
24 incidences that we have seen, especially since COVID.

25 I have had three reports in the past eight

1 months in the State of Florida where process servers  
2 were met by individuals, by knocking on the door, with  
3 a gun in their hand. I've had one process server that  
4 was physically had that gun pointed to their head and  
5 threatened that they were going to shoot them. So, to  
6 have this requirement -- and I know I'm repeating  
7 myself, but this is just the passion that I have for  
8 the safety of our profession, not only in the State of  
9 Florida, but nationwide -- is that this requirement of  
10 doing it after the fact increases an incident or a  
11 violent act exponentially. Thank you.

12 MS. JUNG: Thank you. Just as a reminder  
13 for everyone, this hearing is solely for providing the  
14 public the opportunity to provide any comment, and not  
15 for discussion. So, if you would like the opportunity  
16 to testify and you have not yet let me know, and you  
17 have comments that can be said within three minutes,  
18 then please feel free to let me know now.

19 MR. BYRAN MCELDERRY: Can you hear me?

20 MS. JUNG: Yes.

21 MR. MCELDERRY: Yeah, my name is Byran  
22 McElderry. I'm a licensed process server in New York  
23 City. And I usually don't have anything to say, but I  
24 just felt it's my duty to convey my discord with the,  
25 there's two rules that is problematic, particularly

1           that five-minute rules.

2                       That five-minute rule, it is humanly  
3 impossible to upload your GPS information within five  
4 minutes, strictly for the fact that the GPS doesn't  
5 work in five minutes all the time. There's a lot of  
6 radio and signal air traffic, particularly in  
7 Manhattan. And with counter-terrorism measures, law  
8 enforcement, and just people with simple ham radioing  
9 devices in their homes and offices, that GPS signal is  
10 blocked. I've had to go down to the corner and come  
11 back to places where I attempted to effect service,  
12 just waiting to get a lock.

13                      Now, there was a question about what time is  
14 service actually being effected. If I'm standing in  
15 front of someone's door and I serve process to them  
16 and I'm looking, I see a camera over my head, I'm  
17 going to put the time that's on my watch or on my  
18 cellular device. By the time I get out into the  
19 street, I have waited up to 10 minutes before I had an  
20 opportunity to take, even take a picture of the  
21 address, waiting for a signal or waiting for an  
22 elevator or a crowd while I am trying to exit the  
23 premises.

24                      And I had made a long list of the reason why  
25 that rule won't work, but it just, it's just not going

1 to work. It's humanly impossible to upload service of  
2 process within five minutes of the service being  
3 effected. I, I believe that that, whoever wrote that  
4 rule are not thinking about the welfare and the safety  
5 of the process servers.

6 Number two, the information regarding  
7 service to corporations and business. Information  
8 relating to corporations and businesses, there are  
9 businesses in New York City whose regular rule is that  
10 they will accept service, but they will not tell you  
11 anything. They'll take the papers and they'll respond  
12 to whatever summary proceeding is given to them, but  
13 they are instructed not to give their name and their  
14 title. Now, me, personally, I have a way of getting  
15 people to talk to me. So, out of 100 services, if I  
16 give you one John Smith, Jane Smith service, it's  
17 because it just, it just couldn't be. And this is the  
18 situation. You'll have people, they'll accept service  
19 of process.

20 You know, in retrospect, no one has to tell  
21 you anything. No one has to tell you anything. And I  
22 don't think that it's fair that I have to suffer a  
23 fine because I am submitting an affidavit of a person  
24 who refused to give this name, although they did say  
25 that they were authorized to accept service. Or in



1 case of residential services, they agreed to accept  
2 service for the person that lived there, whatever the  
3 situation, and they just don't want to give their  
4 name. It's an occupational hazard of this business,  
5 and I don't think that we should be penalized if we  
6 have to submit an affidavit or affirmation that the  
7 person agreed to accept service, but refused to tell  
8 us who they are.

9 So, thank, thank you for giving me --

10 MS. JUNG: I'm going to ask to -- yeah.

11 MR. MCELDERRY: -- the opportunity to speak.

12 MS. JUNG: Alright. Thank you so much. I  
13 see Calvin. You have your hand up. Would you like to  
14 provide testimony?

15 MR. CALVIN: Yes. Everyone keeps saying  
16 that they believe the DCA do not understand how to  
17 serve papers, but I honestly believe they do. And  
18 these rules are made up just to enforce these fines.  
19 Because I had a court case where I explained that same  
20 situation, where I needed time to speak to the  
21 defendant to explain what I was giving them. Then,  
22 for my own safety, I go to my car and enter my  
23 information. Allison Johnson, the DCA lawyer, said,  
24 Your Honor, he admitted he went to his car. The judge  
25 said, yeah, but for his safety. She said it doesn't

1 matter. He broke the rules.

2 So, the DCA does know that these rules are  
3 dangerous, but they do not care because it helps them  
4 infract these fines. They do not care about our  
5 safety. This is basically predatory employment where  
6 they are hiring us just to take money from us with  
7 rules they know that we cannot abide by properly. It  
8 is ridiculous that these fines are sometimes the, the  
9 price of some people's mortgages for their home. Why  
10 in the world am I being fined \$750.00 because I  
11 misspelled a name?

12 I thought this was to ensure the integrity  
13 of process serving. These fines, if you look, if you  
14 would do an audit on the DCA and see the fines, I  
15 guarantee about 90 percent are clerical errors. Not  
16 of these fines are actual sewer service. They're  
17 strictly clerical errors for thousands of dollars.  
18 This is absolutely ridiculous that you're infracting  
19 these rules just to penalize us.

20 And the reason why no one speaks up is  
21 because of retaliation. If a server comes forward,  
22 which I am one of them, and I could guarantee you, and  
23 I could tell you coldheartedly, I have been the victim  
24 of retaliation. For speaking up, I have been audited  
25 two times in a row. I have had my license withheld

1 from me currently, right now, and no one would tell me  
2 why for over six months. I still have a temporary  
3 license, and only way they finally informed me why is  
4 because I had a councilman write to them. I sent  
5 eight e-mails and they would not respond.

6 And I am telling you, this is all predatory  
7 employment. These rules are made not unknowingly, but  
8 specifically for the fines. Nothing to do with  
9 integrity of process serving, nothing to do with sewer  
10 service, it's just a money maker for the DCA. Thank  
11 you.

12 MS. JUNG: Alright, thank you. If there's  
13 anyone else who would like to provide comments or  
14 testimony, please let me know now. Alright. Seeing  
15 no one present to offer testimony, I will adjourn this  
16 hearing until an individual appears to offer testimony  
17 or until 12:00 p.m., whichever comes first. I will go  
18 off camera and adjourn the hearing. Please let me  
19 know if anyone else would like to testify. Thank you.

20 [OFF THE RECORD] [00:43:49]

21 [ON THE RECORD] [00:58:41]

22 MS. JUNG: Alright. Seeing that it is now  
23 12:00 p.m., I will adjourn the hearing. Thank you,  
24 everyone, for participating.

25 [END OF PUBLIC HEARING]

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of DCWP Rules Hearing: Process Servers on August 21, 2024, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: October 18, 2024

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