Consumer and Worker Protection

Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Process Servers

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

Public Hearings

Public Hearing

Online comments: 145

- **Jason Tallman**
  2-233 Records (d) (2) proposes that a process server or process serving agency that needs to amend an electronic data entry with their contracted third party must do so by contacting the contractor and the contractor must make the amendment themselves. It is unreasonable and error prone to have the third party contractor make the amendment on the process servers behalf. Furthermore many third party providers have privacy policies in place that prohibit the third party contractors employees from making any changes to its members data. For almost 10 years third party contractors have provided a mechanism for amending electronic records that follows the DCWP's record keeping rules. This particular rule change is unnecessary and creates a huge potential for errors.

  Comment added July 27, 2022 2:31pm

- **Jason Tallman - President NYSPPSA**
  2-240 Audits
  (a) In conducting such an audit, the Department may issue a subpoena by email to a process server for the period identified by the Department in such subpoena for the following records:

  This will put an unnecessary burden on process servers and agency owners. Theoretically the DCWP could ask for a year or more worth of records. What problem is the DCWP having that necessitates this change from 2 months worth of records to an unlimited number of months?

  Preparing records for an audit is a time consuming process for both the process server and the process serving agency. Each additional

month of data that is requested exponentially increases the time involved with preparing the data for that audit request.

Comment added July 27, 2022 2:39pm

- **Scott J Campanella**

  2-233 Records (d) (2) proposes that a process server or process serving agency that needs to amend an electronic data entry with their contracted third party must do so by contacting the contractor and the contractor must make the amendment themselves. It is unreasonable and error prone to have the third party contractor make the amendment on the process servers behalf. Furthermore many third party providers have privacy policies in place that prohibit the third party contractors employees from making any changes to its members data. For almost 10 years third party contractors have provided a mechanism for amending electronic records that follows the DCWP's record keeping rules. This particular rule change is unnecessary and creates a huge potential for errors.

  2-233 Records (d) (2) proposes that a process server or process serving agency that needs to amend an electronic data entry with their contracted third party must do so by contacting the contractor and the contractor must make the amendment themselves. It is unreasonable and error prone to have the third party contractor make the amendment on the process servers behalf. Furthermore many third party providers have privacy policies in place that prohibit the third party contractors employees from making any changes to its members data. For almost 10 years third party contractors have provided a mechanism for amending electronic records that follows the DCWP's record keeping rules. This particular rule change is unnecessary and creates a huge potential for errors.

  Comment added July 28, 2022 10:08am

- **Jeremy Stephens**

The proposed rule changes are burdensome and fines levied are exorbitant and going to end up putting many more PROCESS SERVER's out of business depriving not only the public of due process but law firms and their clients will be jeopardized by not being able to timely and effectively serve defendants. The whole entire civil justice system he's going to grind to a halt

Comment added July 28, 2022 1:13pm

- **Richard A Cecce**
  Rule 2-240 regarding Audits:
  The rule under subsection (a) removes the two month audit period requirement. If you require a process server to provide all records, that will be an enormous burden on the process server, the agencies they serve for and also the independent third party providers. If the intended goal of a compliance audit is to determine if a process server is following the rules, regulations and standards, then more than two months of records would be burdensome in time and storage, as well as time to review.

  Comment added July 28, 2022 1:27pm

- **Domenic Lanza, Esq.**
  Rule 2-240, with respect to audits: The proposed rule under subsection (a) removes the previously existing audit period of two months, and leaves it undefined. The two month period already requires/required a great amount of effort, due to the need to coordinate with both agencies and a third-party provider in order to gather a complete response. Having to comply with a larger audit window would require more time, more effort, and result in a greater loss of earnings during the course of preparing the response. This could also cause delays in service in general during audit periods.

  The goal of an audit is to ensure that the rules of the DCWP are followed to the best of one's ability, and, ideally, followed in their

entirety. I do not believe that a longer audit period helps accomplish this.

Comment added July 28, 2022 1:32pm

- **Domenic Lanza, Esq.**
  Agency Service, as listed in the definitions section, is somewhat confusing. How far is a process server expected to go in order to (1) confirm the veracity of the person's role as agent and (2) obtain the agent's full name, position, and so forth? Additionally, how is this being differentiated from corporate service, which references CPLR 311 (which includes service through an agent)?

  Comment added July 28, 2022 1:35pm

- **Deborah Manley**
  2-240 Audits (a) This proposed change from two (2) months worth of records to an unlimited number of months is unreasonable and overburdening. This proposed rule should NOT be implemented based on the undue strain it puts on the industry and process servers individually. I run and operate a small attorney services business in Buffalo NY. This proposal would cause me to lose a substantial amount of income while using all my time in preparing data for an audit which could be a year's worth of records. Please do not this new rule.

  Comment added July 28, 2022 1:35pm

- **Stacey Radler**
  Rule 2-240: Under this rule (a) the 2 month audit period requirment is being changed to over and above a 2 month period. Producing records for periods over two months (or it could be years) is unfair to the process server. It seems like a tremendous amount of data that the process server would have to prepare. There would also be a unfair amount of pressure put on the agencies and independent 3rd party servers. All of this would take away time from the common goal

of serving our clients. This tremendous amount of added work and possible fines for long periods of time would possibly (and most likely) put a process server under tremendous financial hardship. Many process servers have already gone out of business. Let's not add to these numbers.

Comment added July 28, 2022 1:52pm

- **Deborah Manley**
  Proposed 2-233 (d) (2) Rule change -I am in opposition to the idea of requiring a third-party contractor to make amendments on behalf of the process server when there is a need to amend an electronic data entry. It doesn't seem reasonable as these same 3rd party contractors have policies in effect that prohibit it. In addition, I can only imagine the number of errors that would be created. This is not a good idea, it should not be instituted as a rule!

  Comment added July 28, 2022 2:05pm

- **Stacey Radler**
  I am very confused about agency service. I am not sure how far a process server is expected to go if a person refuses to give their name/title but are authorized to accept service. They can not force someone to give information they are refusing to give. Some clarity on this would be appreciated.

  Comment added July 28, 2022 2:07pm

- **Mike Falsone**
  Currently amendments to the electronic record are made by the server in a way that leaves all the data intact. It seems to work fine. Please do not create an impediment to making corrections.

  Comment added July 28, 2022 2:15pm

- **Victor Rawner**
  Opposition #1

Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement.

A process server being required to produce records for many months (beyond the two month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the process server, the agencies they serve for and also the independent third party. Isnt the idea of an audit to look for a common issue the server might have and not just to look for more fines? 2 months should be enough time to see if an error is recurring- unless its all about making money and not correcting an error.

Having the ability to audit for as long as you want will make the servers unable to earn money and unfairly deprive them of their income. I thought Traverse hearings were to see if a service was legal.

Comment added July 28, 2022 4:10pm

- **Victor Rawner**
  Under the definitions section. Agency Service is still not well defined. Even at governmental offices some authorized clerks refuse to give their name. Please get more specific

  Comment added July 28, 2022 4:14pm

- **Alex Zambrano**
  Rule 2-240 (Audits): subsection (a) removes the two month audit period requirement. Forcing a server to produce records for more than two months would be a massive amount of data for the DCWP to review, and it would put a big burden on the server, the agencies they serve for, and the third party provider. The goal of an audit is to determine how well the server or agency is complying with the rules, regulations, and standards, and it does not seem like using a period longer than two months would help with that. Additionally, having the ability to audit an excessively large amount of time could results in the server losing income by spending a great deal of time

obtaining the data needed to comply, which in turn could lead to even more hardships than there are already in today's economic climate.

Comment added July 28, 2022 4:44pm

- **Nicholas Rivera**
  2-240 Audits.
  This rule removes the two month audit period and replaces it with an unspecified time period. I certainly understand the need to audit in order to make sure the licensee is complying with the rules. With that said, there should be a firm time frame in the rule. If not, the DCWP could request a substantial amount of documentation at once which would be incredibly cumbersome to not only the licensee, but also the DCWP.

  Comment added July 28, 2022 4:46pm

- **Alex Zambrano**
  In the definitions section, Agency Service is confusing. What is expected of a process server if the person states they are authorized to accept, but will not provide their name or title/capacity in which they are accepting? Or if they are lying or mistaken about their role with the business? And how is this differentiated from corporate service, as a corporation can be served through an agent under CPLR 311?

  Comment added July 28, 2022 4:46pm

- **Nicholas Rivera**
  Rule 2-233 (d) 2
  This rule removes the ability of the licensee to amend their own records and instead, shifts that responsibility to the third party provider. Not only does this open the door for miscommunication and errors, but it creates liability for both the licensee and the third party provider. The section talks about needing to implement this in

order to prevent tampering with records. There is currently no tampering with any record when a licensee makes an amendment to a record. When an amendment is made, an entire new record is created underneath the original record, which remains preserved and untouched. I am not sure what this rule change is trying to accomplish. It seems that if a licensee is responsible for the accuracy of their records, and a third party is responsible for the preservation of those records, then the licensee should be the one making any amendments to those records and the third party should be the one who preserve them.

Comment added July 28, 2022 5:17pm

- **Maria Giampilis**
  Rule 2-240: I believe that checks and balances are required to keep the integrity of a profession. I also believe that 2 months of data from a process server should been more than enough to determine that. It becomes questionable when there are so many excessive rules. Process servers aren't making much money to begin with and to take time off to supply a years worth of data would be a tremendous burden.

  Comment added July 28, 2022 9:37pm

- **Gail Williams**
  Rule2-240 regarding audits: It would be a hardship upon a process server, process service agency and third party contractor if they are required to produce records beyond the two month period. It is time consuming for all involved. The audit is to see the rules of the DCWP are adhered to and the two month period is a reasonable timeframe for this purpose.

  Comment added July 28, 2022 10:42pm

- **Gail Williams**

Agency Service: Need clarification what is required of the process server if the person served refuses name and their title but informs the server they are authorized to accept to service.

Comment added July 28, 2022 10:47pm

- **Dainon Ward**

  As an active process server, our time is our livelihood. To not have a determinate audit window would potentially cost servers viable income due to the time and effort it takes to gather this information. The burden on the Servers, Agencies and 3rd Party contractors is beyond the scope of necessity and will only result in further departures of servers in the NY area.

  Comment added July 29, 2022 12:17am

- **Howard Goldman**

  I vehemently oppose the proposed change to rule 2-240, NYC DCWP's section on Audits.

  Giving DCPW the authority to establish random and unsystematic audit timeframes, from two (2) months, the current maximum schedule, up to seven (7) years, will create such a far-fetched and impossible burden on both the process server and his or her agency, scores of servers, will undoubtedly, leave the profession.

  As an agency owner, I have already lost two process servers due to the unreasonable , excessive and yes, punitive nature, of these fines, recently levied against them. Process servers are already unable to pay these fines and to create additional hurdles with arbitrary and uncertain time intervals for its audits, is purely, iniquitous.

  I strongly contest the proposed rule change and urge the DCWP to keep audits limited to two (2) months.

  Comment added July 29, 2022 8:26am

- **carolyn ciulla**
  I oppose the rule change of 2-240 which will allow the DCPW the authority to establish random audit timeframes, from two (2) months, the current maximum schedule, up to seven (7) years, this will be a burden on any agency to comply with.

  Comment added July 29, 2022 10:06am

- **Domenic Lanza, Esq.**
  Conspicuous Service, as listed in the definitions section, is misleading and/or confusing. It does not state whether it applies to CPLR 308(4) and/or RPAPL 735(1). It specifically states that service can be completed by "placing a copy under the entrance door," which is valid under RPAPL 735(1); however, it is NOT valid under CPLR 308(4).

  Comment added July 29, 2022 10:22am

- **Domenic Lanza, Esq.**
  Personal Service, as listed in the definitions section, is either inaccurate, or not fully accurate. Personal Service under CPLR 308(4) includes in-hand service, substitute service, and conspicuous service. This section should either be called "Personal Delivery" (if it is defined as is listed in the proposed rules), or it should be rewritten.

  Comment added July 29, 2022 10:29am

- **TRESSA JOHNSON**
  OPPOSITION #1 – UNDER THE DEFINITIONS SECTION CONSPICIOUS SERVICE APPEARS TO MIX 308 (4) AND RPAPL SECTION 735. THIS CAN CAUSE THE WRONG ATTEMPTS/SERVICE TO BE EFFECTED AND IT DOES NOT MAKE A CLEAR DISTINCTION BETWEEN THE TWO. WHILE 308(4) ALLOWS THE SERVER TO SLIDE THE PAPERS UNDER THE DOOR RPAPL SECTION 735 DOES NOT. THIS CAUSE UNCNECESSARY FINES THAT COULD CAUSE AN INDEPENDENT SERVER TO TURN IN HIS LICENSE IF THE FINES FOR SAME ARE EXCESSIVE NOT TO MENTION PUTTING THE ACTION IN JEOPARDY.

Comment added July 29, 2022 10:31am

- **Gail Williams**
  RE: Defininitions Sections: Need clarification, personal service under section 308 includes personal in hand service, personal delivery, suitable age and discretion and nail and mail service. Need to know the differential.

  Comment added July 29, 2022 10:32am

- **John O'Keefe**
  Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735. This has to be written better with more clear delineation. Otherwise it will be a problem from the beginning until it is changed

  Also, as defined, Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service. Again BE PROACTIVE and write this more clearly!!!

  Comment added July 29, 2022 10:35am

- **TRESSA JOHNSON**
  OPPOSTION #2 – UNDER THE DEFINITIONS SECTION PERSONAL SERVICE – IT SHOULD CLEARLY STATE THAT AS PER CPLR 308 PERSONAL SERVICE CAN BE IN HAND SERVICE, SAD SERVICE (SUITABLE AGE AND DISCRETION AND NAIL AND MAIL (CONSPICUOS SERVICE)

  Comment added July 29, 2022 10:36am

- **Gail Kagan**
  There are many reasons to object to the DCA rules. My first objection addressed here is : the proposal in 2-233 Records (d) (2) proposes

that a process server or process serving agency that needs to amend an electronic data entry with their contracted third party must do so by contacting the contractor and the contractor must make the amendment themselves. This is unreasonable. And cause unreasonable delay preparing affidavits. Often times a process server doesn't notice an error or typo. It often takes a fresh eye to catch a misspelling or typo error. Thats why their are editors on most professional writings.

If this proposal goes through, when an agency reviews the data entered by the process server and he has misspelled a word, the review would have to call the process server to contact the third party. The third party would then have to change the record. If they get it right great if not we go around again. Multiple this by even 3 % errors over fifty to 100 or more papers served a week and you have huge delays – especially significant in Court order and Rush papers.

Let alone the li8ability you are adding to the third party – this is not here job.

The DCA is not allowing for Human error, and it seems like just another catch for more fines. MINOR AND UNDELIBERATE TYPOGRAPHICAL ERRORS ARE NOT BAD SERVICE.

Comment added July 29, 2022 10:51am

- **Evelyn Vazquez**
  The proposed rule changes are burdensome and the fines are unreasonably high, so much so that the fines will end up putting many more process servers and process serving agencies, out of business. This will deprive many of due process and puts attorneys and their clients in jeopardy because they won't be able to timely and effectively serve defendants. This will have a domino effect in our civil system and will be felt throughout.

  Comment added July 29, 2022 10:51am

- **Gail Kagan**
  Regarding Rule Rule 2-240: I believe that checks and balances are required to keep the integrity of a profession. I also believe that 2 months of data from a process server should been more than enough to determine if a server is doing poor service. When the City council proposed auditing record in 2018 It was to catch what was perceived by the public to be improper service of process. These audits rarely find improper service what they generally fin is typo and record keeping errors. Which are then penalized with exorbitant and blatantly punitive fines.

  To extend the time for an audit to pick out additional minor errors having nothing to do with the Service of process, is wrong, especially – when the DCA knows full well that they are decimating an industry. They also should understand that the industry cannot attract people to become process server, for the fear of being put under the microscope and fined for fulfilling their duty as a process server to give notice to people in a lawsuit but failing to put a zero in front of their license number. This is an unconscionable misuse of power and badly considered proposal.

  Comment added July 29, 2022 11:06am

- **Nipaul Bhiro**
  In regards to the prospective change beyond the duration of two months time period it's very difficult as is to take time away from serving processes, generating copies in a chronological order which is very, very time consuming much less to seek audits beyond two months. I would think it will be most reasonable to maintain the two months time period. Thank you kindly!

  Comment added July 29, 2022 11:19am

- **Paula Parrino, Esq., NYSPPSA Second Vice President**
  In review of the proposed rules, one item I have a concern about is the removal of the time period for which the Department may issue a

subpoena to a process server (eliminating the two month period and just adding the word “the” period). My concern is not if this would allow for a decrease from the two month period but rather with the removal of a specific time period, it leaves open the option for a much larger range of records to be requested and reviewed. This would put a terrible burden on a process server to work with the third party contractor and their agencies to supply the required records and could result in a loss of revenue for the process server if their focus becomes ensuring that they supply voluminous records for an audit seeking to review records for many months or longer. Respectfully, I believe this needs to be reviewed and adjusted to add in a specific time period (either two months or, if the intent was to make it less than two months, than any time frame up to and including a two month period).

Comment added July 29, 2022 11:50am

- **Christa Centolella**

  The Rules for Service of Process should be the same for all types of matter and DCA laws should be the same throughout all of NYS, not different for NYC or Buffalo areas either. Long audit times prolong and defeat the service being provided. Whether paper or electronic records are kept, it doesn’t matter. Just a record should be kept and for a period of time. Due to the ever changing work force, one can not always be served personally. Our laws need to meet the needs of the people and not be so complicated. We seem to be going in circles that causes lots of opposition and negativity. Vague statements cause confusion. We can eliminate unnecessary enforcement, fines and rising costs if we rethink what is being said, instead of imposing stricter and confusing rules. Also to note, the legal system is also to be used by ALL individuals. I think we forget that many pro se use a neighbor or friend to serve. Not all servers are professionals and it would be impossible for many people to keep these types of compliances proposed. It removes people’s access to the legal system both individually and the businesses that serve.

Comment added July 29, 2022 11:56am

- **Rosemary LaManna**
  2. Contents of records of service.
  xiii. The full index number, which must 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.
  * Supreme Court index numbers are no longer strictly a number and year, since the majority of cases commenced are filed through NYSCEF. It was standard that each county was a number and a year, but this is no longer the case, and being that we have 62 counties in our state, and each county has their own format in assigning their numbers, the server could not be compliant. In most instances, the clients provide the index number endorsed on the papers to be served. It is BEYOND THE SCOPE of process serving if the server is now going to be responsible for the documentation the attorney is presenting for service. I recommend that (xiii) be simplified to read: the full index number assigned and endorsed on the document for service, if a number has been assigned.

  Comment added July 29, 2022 12:17pm

- **Brianna Worrell**
  Hello! I work at a process service company and the proposed rule changes are not thought out and unfair. The fines accompanying these rules could put many process service companies out of busines or in debt. Incorporating a third party to change records would effect process service in a negative way because it is unnecessary and more time consuming. The 3rd party is also at risk for a lawsuit if they were to make a mistake. This change in process service is not supported by me.

  Comment added July 29, 2022 12:36pm

- **Stacey Radler**

308(4) and RPAPL Section 735 seem to be intertwined without delineation in regard to conspicuous service. On one hand you cannot leave papers under the entrance door (308(4)) but it is allowed under the RPAPL Section 735. There deifinitely needs to be clarification to avoid problems going forward.

Comment added July 29, 2022 1:20pm

- **Paula Parrino, Esq., NYSPPSA Second Vice President**
  I note an addition to Section 2-235 – Preparation of Affidavits of Service, the DCWP now seeks to add the following language, "The licensee must not make a false statement in an affidavit of service." The purpose of an affidavit of service is so that no false statements are made, as one is swearing/attesting under the penalty of perjury. My concern is that the new language could be used to encompass honest mistakes that may occur on an affidavit that has no mal intent. It may become necessary to amend the affidavit in order to preserve the integrity of said affidavit. Would an amendment be construed as the original affidavit contains "a false statement?" The wording, perhaps, can be adjusted to include the following language, "The licensee must not make a willful false statement in an affidavit of service."

  Comment added July 29, 2022 3:47pm

- **Christopher Virga, Esq.**
  In many instances the proposed definitions do not match what is set forth in the CPLR and case-law, which exposes the servers to undue penalty by the State. For instance, "personal service" as defined in these proposed changes does not contemplate that personal service under CPLR § 308 includes in- hand, personal delivery, suitable age and discretion service, etc.

  Comment added July 29, 2022 4:53pm

- **Rosemary LaManna**

During the pandemic you heard of many small businesses being economically affected, mostly the small retail stores, entertainment, theaters, restaurants, etc., but there was no public talk about the process serving (legal) industry. The limited process servers that we have within New York City have all suffered an extreme financial hardship during this period, as there were no court filings, and as one moratorium was expiring, a new one was issued, just as we believed it was going to be back to business. Each and every agency that has survived during this period is suffering, and it is so unfortunate that we have lost so many great servers, as they had to make career changes to feed themselves and their families. My point is that the software expense everyone is going to have to incur is going to be difficult for many, as well as for the third-party providers. For the servers, even a single fine of $750 is more then a months compensation over the past two years. If a process server makes an error, especially a repeated error that is not a jurisdictional/negligence issue, the fine should be a warning, as it should be an opportunity to learn, not be punished to the point that you need to walk away from your career. It is time to make our industry strong once again. Thank you for the opportunity to express our thoughts and comments.

Comment added July 29, 2022 5:57pm

- **John Habermehl - SRK Enterprises Albany NY**
  Opposition #1 Definitions section. Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

  Comment added July 29, 2022 6:00pm

- **John Habermehl - SRK Enterprises Albany NY**
  Rule 2-233 (d) 2 will cause unnecessary delays. I am very much opposed to these rule changes.

Comment added July 29, 2022 6:10pm

- **John Shelley**
  I am a software developer for process servers.
  I am in opposition to Proposed 2-233(d)(2) Rule change. This will cause a liability and logistical issue. This will be a burden on my end.
  I am in opposition to Proposed 2-240(a) for the same reasons expressed here by others.

Comment added July 29, 2022 8:52pm

- **Jacqueline Balikowski**
  definitions-this is unclear. the reference to “property to be recovered” is this only for real property actions landlord tenant and foreclosure?

Comment added July 30, 2022 9:19am

- **William S. Maseroni**
  I am a Licensed Individual Process Server and former Agency Owner/Operator.
  I am in opposition to Opposition 1.
  There needs to be some clarification on the proposed change.
  CPRL 308 (4) Commonly referred to and the Nail & Mail – There is no provision in this section for placement under door.

  Nail and Mail: This is also a two-step procedure. If repeated, genuine attempts at personal
  and substituted service have failed, the papers may be served by (1) affixing the papers to the door
  of either the actual place of business, dwelling place or usual place of abode within the state of the
  person to be served, and (2) either mailing the papers to the person to be served at his or her last
  known residence or by mailing them by first class mail to the person’s actual place of business. Such
  affixing and mailing to be within 20 days of each other. The affidavit

of service should describe in
detail the prior attempts at personal service.

Secondly, Real Property Actions & Proceedings Law 735 (1)
Law reads:
Service of the notice of petition and petition shall be made by personally delivering them to the respondent; or by delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered, a copy of the notice of petition and petition, if upon reasonable application admittance can be obtained and such person found who will receive it; or if admittance cannot be obtained and such person found, by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises; and in addition, within one day after such delivering to such suitable person or such affixing or placement, by mailing to the respondent both by registered or certified mail and by regular first class mail.

In short your proposal actually confuses the process of service procedure.
More clarity is needed or this proposal shall be removed and allow the process server to follow the current laws that apply. Your proposal attempts to combine two current laws that apply to two distinctive types of service of process. Very confusing quite frankly

Comment added July 30, 2022 10:23am

- **Alexander Zhornitskiy**
  I am in complete opposition to these new rules changes. There is absolutely no reason to make a change to a law or process that has been working flawlessly for the last 10+ years. When the electronic record is amended by the user or process server, the original record remains above untouched in its original form. Furthermore, there cannot be any tampering with the record because the process sever

does not maintain or keep the record and only enters it into the third party database. Thus, if anyone needs to see the original it is still there, plus the record can never be erased or modified in such a way that would insinuate the need to make a rule change, which will undoubtedly put a burden on the WHOLE legal community, from process servers to agencies and law firms now having to spend unnecessary additional time, resources and money. In addition, amending the audit time period rule from 2 months to more than a year will put alot process servers and agencies out of business due to the fact that audits take time and money to put together and coordinate. If the point of an audit is to investigate or ensure the person or subject is following the rules, a 2 month window is more than enough to see whether there is any violations and any more is a over reach by the DCWP not to correct mistakes but to generate income. This law also seems to have a direct correlation to the DCWP recent loss of income after the pandemic and its intent on making its licensees pay for their mismanagement. Not only will this audit rule change be a burden on process servers it will create a tremendous amount of work and use of resources for the DCWP to go through these months of records.

Comment added July 30, 2022 11:55am

- **Calvin Chen**
  These fines are ridiculous and paved to force servers out of the industry. I can actually go out and commit a crime in Ny and not be charged as much as the DCA fines servers. Fining Process Servers $10,000 – $5,000 due to errors in logbooks is absurd and criminal. We are Process Servers and do not make half a million dollars a year but yet, we are fined more than most agencies that actually employ us! These new rules seem very burdensome and are making it difficult to actually serve papers.

  Comment added July 30, 2022 12:27pm

- **John A Habermehl - SRK Enterprises Albany NY**

The language under the definitions section are convoluted and unclear. I am opposed to these changes.

Comment added July 30, 2022 6:25pm

- **jacqueline balikowski**
  under the definitions-conspicuous service- this has definitions from two different sections of law real property (under door is good service) and civil procedure (under door not ok).

  Comment added July 31, 2022 9:43am

- **jacqueline balikowski**
  definitions- personal service this definition seems to limit such to personal delivery, yet the cplr includes substitute as well as nail and mail.

  Comment added July 31, 2022 9:47am

- **Paula Parrino, Esq., NYSPPSA Second Vice President**
  Additional review of the changes also lend to some difficulty with getting work completed and, if needed, corrected in a timely and efficient manner. The new rules seem to propose that only the independent third party provider can make corrections in GPS records. I was wondering the reason behind this change, as currently it seems as though the system works. The integrity of the original record is kept and is tamper-resistant. It would also seem, from a liability standpoint, an independent third party might not want to be responsible for inputting an amendment in data. What if there is a misunderstanding as to the intent of the amendment or what if the third party provider made an error? If that record is questioned and a fine results, there is now tremendous liability on an independent third party. Not only that, but if the independent party can now be held culpable and liable for errors, it negates the power of them being independent and disinterested in the service. Please reconsider this change in policy. Thank you.

Comment added August 1, 2022 7:25am

- **DENISE LOWE**
  CONSPICUOUS SERVICE DOES NOT HAVE A REAL DEFINITION IN YOUR RULES. IT NEEDS TO BE DESCRIBED WITH DETAILS AND SHOULD NOT BE CONFUSING. SEEMS LIKE THE PROCESS SERVER MAY BE FINED FOR DOING THE WRONG AND RIGHT THING AT THE SAME TIME. WAS THIS DONE INTENTIONALLY?

  Comment added August 1, 2022 9:48am

- **DENISE LOWE**
  PERSONAL SERVICE??? YOUR DEFINTION FAILED TO INCLUDE WHAT WE HAVE BEEN FOLLOWING FOR YEARS... THE CPLR 308. AGAIN, WAS THIS DELIBERATE? EVERYTHING SHOULD BE CLEAR WHEN IT COMES TO THE RULES. PLEASE UNDERSTAND THAT THE PROCESS SERVERS HAVE A DIFFICULT JOB AND SHOULD NOT BE FINED FOR YOUR ERRORS.

  Comment added August 1, 2022 10:02am

- **Christine Hanson**
  The proposed changes will be extremely burdensome on Process Servers who are already heavily burdened. This industry has taken a big hit over the last couple years. We have no where near enough servers licensed to cover all five boroughs. When I first started in this industry, we had over 2500 licensed servers and now we are down to a few hundred?!?! Servers are leaving the industry for many reasons but the biggest reason is the extreme amount of fines being placed on them. For a server to be fined tens of thousands of dollars for typos or clerical errors is extremely unfair. Many do not even make that much a year. When GPS became a requirement, the DCA (DCWP) was set out to improve and protect the process service industry. These excessive fines and regulations have done the exact opposite. The city should not look to make money off the backs of the process severs who do not make much money at all.

To change the audit period from two months to a year will cause extreme hardship, especially when the server works for several agencies. The amount of time to prepare for this audit will cause another financial burden on the server. There is no need for this.

Personal service according to CPLR 308 is defined as personal service, substituted service and nail & mail service. We need to be consistent. When judges sign Orders to Show Cause, they refer to personal in hand service as Personal Delivery.

Comment added August 1, 2022 12:41pm

- **Michael Hart**
  2-240 Audits (a) This proposed change from two (2) months worth of records to an unlimited number of months is unreasonable and overburdening. This proposed rule should NOT be implemented based on the undue strain it puts on the industry and process servers individually. More importantly it would cause fees $$$ for service to go up . This will effect the Taxpayer directly at a time when the economy is try to recover..

  Comment added August 1, 2022 1:51pm

- **Bruce Smilowitz**
  2-233
  it is totally error prone to have so many entities involved in making the corrections if there is an error that needs to be corrected – especially a 3rd party,

  if there is an error this should be able to be corrected between the server and or the agency on a simple procedure as in the past, why would you want everyone to be tied up in senseless unnecessary paperwork

  it should be the dcwp that should review the input and rectify together with the server and or the agency the small correction

Comment added August 1, 2022 3:22pm

- **Bruce Smilowitz**
  2-240
  here, again the dcwp wants to take a system that has worked for many years;and burden contractors,agencies and employees with unnecessary work !

  why not have the dcwp have quarterly audits of servers log books and or digital records and not bog everyone down with needless paperwork- it should be there responsibility not the agencies- seems as if they are always passing it along!

  under the definitions section it appears the dcwp is trying to alter accepted rules of service,that have been accepted by the legal community for the longest of times, there are many instances that you cannot get a full name and or corporate title; you then have service through the secy of state;if it shows as active is good service,but then again many of the service address' are not correct and the corporation does not get the papers, the dcwp should not try to rewrite the cplr. if the attorney is not satisfied with an incomplete name he has alternatives,dcwp should leave well enough alone.

  Comment added August 1, 2022 3:23pm

- **bruce smilowitz**
  308(4) and rpapl
  I think they really need to rewrite this and get in step as to the cplr and rpapl 735- the services are not the same and remedies different actions

  Comment added August 1, 2022 3:23pm

- **Bruce Smilowitz**
  Personal Service – from what we see the dcwp has no understanding of the degrees of what personal is ! 308(1)–308(2)–308(4)- MAYBE

THEY SHOULD TAKE THE EXAMS THEY GIVE TO THE PROCESS SERVERS 1

Comment added August 1, 2022 3:24pm

- **Andrew Mega**
  I'd like to comment on my concern regarding the proposed change to Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement.

  I'm very concerned that allowing the DWCP to audit a longer period of time will simply multiply the potential for fines for accidental violations at minimal benefit to the mission of the DWCP to ensure effective process server conduct. I cannot stress directly enough: multiple fines may indeed put me out of business after 11 years and that is extremely frightening to me and my family.

  Comment added August 1, 2022 6:18pm

- **Andrew Mega**
  I would like to request more specificity with respect to the changes to "Personal service" under 2-231 in definitions – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service. This is an essential day-to-day operative statute for me. Personal service is effected with much more nuance than your definition would indicate.

  Comment added August 1, 2022 6:39pm

- **Joshua Miller**
  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. The choice to remove a specified audit period could create an undue burden on the process server by requiring months or years of documentation. As many servers complete hundreds of serves a month, this could create an

enormous amount of records for the server, a third party provider and the DCWP to produce and review. I believe that extending the audit period would place an undue financial burden on the process server. Time spent complying with the audit is time spent away from conducting business and providing a livelihood for the server. Having a finite amount of time for an audit period keeps the process transparent and fair.

Under the definitions section, Agency service is still rather confusing. Oftentimes when serving corporations, the individual will not provide a full name, only a first or last name. This should not cause the service to be invalid. Also, when served, the process server relies on the statements made by the individual when they state that they have been authorized to accept service on behalf of the entity. Requiring the server to confirm this information provided would be difficult if not impossible.

Comment added August 2, 2022 10:19am

- **Josh Miller**
  Under the definitions section, Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)? Regulations need to be much more clear and less ambiguous. Having unclear definitions and policies leaves process servers vulnerable to fines for not following poorly written rules that are confusing and contradictory.

  Comment added August 2, 2022 10:23am

- **Kelly Ryck**
  As stated in the the definitions, substitute service references those who “reside at or are employed at the property sought to be recovered”. Would this only apply to landlord/tenant and foreclosure actions? Or all actions?

Comment added August 2, 2022 10:50am

- **Kelly Ryck**
  Conspicuous Service: THIS IS NOT CLEAR. This definition should clearly state which rules apply for each law. CPLR308(4) and RPAPL Section 735 are different and should not be encompassed under this one definition. It leaves room for error on the part of the process server who will have to pay the price.

Comment added August 2, 2022 11:00am

- **Kelly Ryck**
  Personal Service: This definition is vague to say the least! "Personal Service" by definition under CPLR 308 includes:
  1. by delivering the summons within the state to the person to be served; or
  2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law ; or

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

Again, these broad definitions will only hurt process servers in the long run. Please make this clear and correct.

Comment added August 2, 2022 11:07am

- **Jennifer Gorankoff Katz**
  Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)?

  Comment added August 2, 2022 11:10am

- **Jennifer Gorankoff Katz**
  Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

  Comment added August 2, 2022 11:11am

- **Jennifer Gorankoff Katz**
  Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

  Comment added August 2, 2022 11:11am

- **Jennifer Gorankoff Katz**
  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. If a process server is required to produce records for many months (beyond the two month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the process server, the agencies they serve for and also the independent third party providers. The goal of a compliance audit is to determine how well a person or organization is adhering to rules, regulations and standards. Having the ability to audit an indeterminate amount of time could cause a process server loss of income in just coordinating the data needed to comply with the audit thus depriving them of the ability to earn a livelihood or pay bills, especially in an economy

where inflation has caused a drastic increase in most facets of everyday life.

Comment added August 2, 2022 11:12am

- **Jennifer Gorankoff Katz**
  Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title?

  Comment added August 2, 2022 11:12am

- **Kelly Ryck**
  Rule 2-240/Audits: This change to allow the DCWP to request a process server to produce records for an indefinite time period is outrageous. The burden of the two month period was already extreme to say the least. This will absolutely lead to a loss of income on the part of the agency and/or server. This industry has been hurt enough recently. We don't need additional rules to further hinder our ability to make a living especially when they are completely unnecessary. Two months is more than sufficient to determine if the server/agency is compliant.

  Comment added August 2, 2022 11:17am

- **Kerry Gunner**
  Hello,
  I am adamantly opposed to these changes that are just punishing to hard working individuals in our profession. The job of serving legal process is already a very difficult one, and to have this made even more difficult by these proposed changes to rules (already stringent) will make it impossible for process servers to make a fair honest living. For the life of me, I cannot understand why it would seem like a good idea to make serving legal process any more difficult than it already is, when the vast majority of us are law abiding professionals. There is significantly more fraud in the auto repair industry!

These proposed changes reflect a lack of understanding of statutes, and further confuse and contradict these statutes.
I strongly suggest and ask that perhaps you gain a better understanding of who we are and what we actually do every day, and what we are up against while performing this legally necessary and required service.
These proposed changes seem to be an unnecessary continuation of punishment for problems that were uncovered years ago caused by one or two individuals or agencies that were less than reputable. These problems were dealt with in many ways and reduced immeasurably by new technology and GPS requirements.
I am proud of the work that I and my colleagues do on a daily basis. A little respect is well deserved please. Thank you.

Comment added August 2, 2022 11:23am

- **Kelly Ryck**
  Agency Service: What if the "agent" refuses their name or title. How is the process server expected to effect service when an individual states they are authorized to accept service on behalf of the agency but refuses this information. This is more common today than ever. Many agents are actually instructed to either provide no name at all, only "agent for service of process" or some are instructed to provide only their first name and last initial, etc. How does a server comply with this rule as it's currently written?

  Comment added August 2, 2022 11:27am

- **Christina Katz**
  Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)?

  Comment added August 2, 2022 11:42am

- **Christina Katz**

Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

Comment added August 2, 2022 11:42am

- **Christina Katz**
  Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

  Comment added August 2, 2022 11:42am

- **Christina Katz**
  Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title?

  Comment added August 2, 2022 11:43am

- **SUSAN SMITH**
  Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)?

  Comment added August 2, 2022 11:48am

- **SUSAN SMITH**
  Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

  Comment added August 2, 2022 11:50am

- **SUSAN SMITH**

Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

Comment added August 2, 2022 11:51am

- **Lisa M Newfrock**
  Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers?

  Comment added August 2, 2022 11:51am

- **Lisa M Newfrock**
  Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

  Comment added August 2, 2022 11:51am

- **Lisa M Newfrock**
  Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

  Comment added August 2, 2022 11:52am

- **Lisa M Newfrock**
  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. If a process server is required to produce records for many months (beyond the two month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the process server, the agencies they serve for and also the independent third party providers. The goal of a compliance audit is to determine how well a person or organization is adhering to rules, regulations

and standards. Having the ability to audit an indeterminate amount of time could cause a process server loss of income in just coordinating the data needed to comply with the audit thus depriving them of the ability to earn a livelihood or pay bills, especially in an economy where inflation has caused a drastic increase in most facets of everyday life.

Comment added August 2, 2022 11:52am

- **Lisa M Newfrock**
  Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title?

  Comment added August 2, 2022 11:53am

- **Chau Nguyen**
  Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

  Comment added August 2, 2022 11:56am

- **Chau Nguyen**
  Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

  Comment added August 2, 2022 11:57am

- **Chau Nguyen**
  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. If a process server is required to produce records for many months (beyond the two month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the

process server, the agencies they serve for and also the independent third party providers. The goal of a compliance audit is to determine how well a person or organization is adhering to rules, regulations and standards. Having the ability to audit an indeterminate amount of time could cause a process server loss of income in just coordinating the data needed to comply with the audit thus depriving them of the ability to earn a livelihood or pay bills, especially in an economy where inflation has caused a drastic increase in most facets of everyday life.

Comment added August 2, 2022 11:57am

- **Chau Nguyen**
  Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title?

  Comment added August 2, 2022 11:58am

- **Chau Nguyen**
  Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)?

  Comment added August 2, 2022 12:01pm

- **jennifer toppi**
  Under the definitions section. Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)?

  Comment added August 2, 2022 12:31pm

- **jennifer toppi**
  Under the definitions section. Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under

the entrance door of the premises but said service is allowed under the RPAPL Section 735.

Comment added August 2, 2022 12:32pm

- **jennifer toppi**
  Under the definitions section. Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

  Comment added August 2, 2022 12:32pm

- **jennifer toppi**
  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. If a process server is required to produce records for many months (beyond the two month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the process server, the agencies they serve for and also the independent third party providers. The goal of a compliance audit is to determine how well a person or organization is adhering to rules, regulations and standards. Having the ability to audit an indeterminate amount of time could cause a process server loss of income in just coordinating the data needed to comply with the audit thus depriving them of the ability to earn a livelihood or pay bills, especially in an economy where inflation has caused a drastic increase in most facets of everyday life

  Comment added August 2, 2022 12:33pm

- **jennifer toppi**
  Under the definitions section. Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title?

Comment added August 2, 2022 12:33pm

- **Paula Parrino**
  Regarding requirements under Electronic records with a third party contractor, (2) content of records of service -section (xvii) if service is effected pursuant to RPAPL Section 735(1) using registered or certified mail, the postal receipt number of registered or certified mail [should be entered into the electronic record]. This requirement seems as though it is an effort to capture what was originally a part of the logbook rule (Section 2-233) with the electronic records.

  When enacting legislation to combat sewer service, one of the key reforms that was proposed was the use of the GPS technology to track the location of the process server while serving in order to "investigate, identify and redress" instances of process service abuse and cases of sewer service. As in the hearings, it was stated by Chairperson Koslowitz, at the time of enactment, "the non invasive use of global positioning technology is to ensure that process servers actually went where they did in order to serve process." The mailing requirement under RPAPL is not a component of electronic record keeping.
  I believe at least one of the current available third party providers does not have a method to capture mailing data, as currently addressed in the proposed rules. My understanding is that once a service is either successful (via personal delivery, suitable age and discretion, conspicuous service, etc.) or unsuccessful, the record is then locked to prevent further tampering. The mailing occurs after the service and thus the record would then need to remain "open" in order to input this information. Further, if the record is no longer "locked" after the last service attempt, there would need be another mechanism created to ensure that the data fields containing service attempts cannot be potentially further compromised. If the independent third party providers must now create new data fields, the software expense that will be incurred will trickle down to the process servers, agencies and their attorney clients, as well.

Please reconsider this as the affidavits of service or mailing contain the mailing information and can be reviewed instead.

Comment added August 2, 2022 1:30pm

- **Gail Kagan**
  I also object to the definition of Conspicuous service:
  Conspicuous service:
  This definition mixes up the CPLR and the RPAPL and does not refer to either law or mention the mailing that go hand in hand with the CPLR 308.4. It also advocates putting a service document under the door which although it is in the RPAPL and Not in the CPLR is quite frankly ridiculous. Why would you put a document under a door, what if there is a young dog in the house who gets hold of it and tears it to shreds. What if the respondent is a hoarder and it gets mixed up in a mess of papers and garbage left lying around the entrance? How will that give proper notice? If the DCWP wants to rewrite laws, they should apply to the state legislature.

  Comment added August 2, 2022 1:30pm

- **Paula Parrino, Esq., NYSPPSA Second Vice President**
  Another thought is the education component. The educational elements that were added are important, but it would be most helpful if there were other educational materials (written in less legalese) as well as possibly workshops, where a server can address concerns they have when serving and the proper way to display said information, in order to avoid a fine.

  Last year, our association addressed the issue of how to handle a service wherein a person is wearing a hat or some other headgear/garment. When you cannot determine a person's hair color or, if indeed, they have hair, it becomes an issue of what should be noted to avoid a process server from receiving a $750 fine for a violation.

Similarly, I would like to suggest that there be further guidance for servers regarding the following:

1. Descriptions – skin color – please provide criteria as to what skin colors should be used by process servers as this can, at times, be a source of issue;
2. Male / female – there are, on occasion albeit not often, times when a server will encounter a person for whom it is difficult to determine if the person is male or female. There are also times when a server encounters someone who is transgender or non-binary. What is the proper way to indicate said information?
3. What happens when a person speaks with a server and then either shuts the door on the server or refuses to open the door beyond a certain point?

There are many other concerns that might occur, as well, when serving a paper. Proper guidance would be useful.

Also, caselaw determines whether or not a service, if contested, can withstand scrutiny. What is the criteria the DCWP looks at to determine what service information or lack of information creates a fine?

Our Association has discussed the fine issue in the past, but it is worth repeating that the fines are exorbitant. A violation that does not rise to the level of "sewer service" should allow for a cure prior to incurring fines that could cost someone their livelihood.

Thank you again for your consideration.

Comment added August 2, 2022 1:54pm

- **Eugene Sokolov**
  I would like to point out that new auditing changes add a punitive layer of actions to process servers without adding any actual protections for the public. Not only does process serving already have

a vast amount of regulations in place, but there is an added inherent danger to the service professionals. Encumbering process servers with additional risk of financial ruin due to clerical procedures at the time of serving will only hurt the professionals and not help anyone.

Comment added August 2, 2022 3:49pm

- **John O'Keefe**
  As the DCA used “The Book” for a money grab it seems many things are purposely left vague and could be used to weaponize the DCWP against process servers. I would like you to address;
  Opposition #1

  Under the definitions section. Substituted service at the end refers to those who reside or is employed at the property sought to be recovered (is this only for landlord / tenant or foreclosure papers)?

  Opposition #2

  Under the definitions section. Conspicuous service seems to have elements of 308(4) and RPAPL Section 735 together without a delineation. For example, under 308(4) you cannot place a copy under the entrance door of the premises but said service is allowed under the RPAPL Section 735.

  Opposition #3

  Under the definitions section. Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service.

  Opposition #4

  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. If a process server is required to produce records for many months (beyond the two

month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the process server, the agencies they serve for and also the independent third party providers. The goal of a compliance audit is to determine how well a person or organization is adhering to rules, regulations and standards. Having the ability to audit an indeterminate amount of time could cause a process server loss of income in just coordinating the data needed to comply with the audit thus depriving them of the ability to earn a livelihood or pay bills, especially in an economy where inflation has caused a drastic increase in most facets of everyday life.

Opposition #5

Under the definitions section. Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title?

Comment added August 2, 2022 4:13pm

- **Tariq Rashid**
  As per DCWP new law for Rule 2-240 regarding Audits: I personally oppose on that one since auditing for more than 2 months would require vast amount of time and resources to gather all the information and to present it to the DCWP. Moreover, during that audit period, if a server has to present that much amount of data in a little time frame window, it can affect on his work schedule as they barely make enough to survive. That could cause the servers to lose their jobs or could make less than what they actually make especially in the current situation where the economy inflation has caused a momentous climb in most angle of our daily life.
  My opinion on this is that the time period should no longer be more than 2 months as it covers enough evidence if they are doing everything correctly.

Comment added August 2, 2022 4:37pm

- **Ronny Stattyn**

  In my reading of the new rules, I am hoping you can clarify a bit about the added requirement to input the certified mail receipt number in the electronic record. That requirement had been for the paper logbooks (Rule 2-233 Records (b) (7)) and it now appears as though the DCWP is trying to fit this requirement into the electronic record keeping rules. If this is the correct interpretation, I have a concern.

  Once I serve a paper and input my information into the electronic records of the third party provider, the record is closed and locked. I cannot make changes to the record, only an amendment for an error. Currently, there exists no mechanism to go in and add a certified mailing number. The goal of the rules is so that once service is either completed as served or completed as a non-service, the records cannot be tampered with, so I am confused about how a mailing that we do after the physical act of serving is complete can be done using any of the current third party providers.

  In discussion with the provider I use, it appears that what is being sought, at this point, is technically impossible; there is no ability right now to input the mailing information into the original service record that was already submitted.

  My understanding is the intent of the electronic record is to guarantee that a person was where they said they were at the time of service attempt. Submitting the certified mail information into a digital record would seem to complicate the review process for everyone. The certified mail information is already on the affidavit of service and there would seem to be no need to add it to the electronic record.

In reading the rules, there is much legalese that makes it somewhat difficult for a layman like me to interpret. I thank you for your clarification.

Comment added August 2, 2022 4:44pm

- **Shanti Pooran**

  I work at a Process Serving Agency for a long time. I have seen the "ups and downs" of this business. In my opinion, process serving is a very difficult and demanding industry. I have witnessed how diligent the servers work, the long hours they put in, the sacrifice they make, and yet they are subjected to a hefty fine for a minor error. So much is required of a server, not just anybody or anyone can do this job. I think more consideration should be given to servers. Servers do adhere to the rules as best how the understand them.

  Comment added August 2, 2022 4:53pm

- **Gail Kagan**

  I object to the definition of Conspicuous Service: in the proposals as listed in Section2-231 /definitions

  This definition mixes up the CPLR and the RPAPL and does not refer to either law or additional requirements . It also advocates putting a service document under the door which although it is in the RPAPL 735 .1 and Not in the CPLR is quite frankly ridiculous. Why would you put a document under a door, what if there is a young dog in the house who gets hold of it and tears it to shreds. What if the respondent is a hoarder and it gets mixed up in a mess of papers and garbage left lying around the entrance? How will that give proper notice?

  Comment added August 2, 2022 5:31pm

- **Liz Fusco**

I object to all of these Rules as it puts additional burdens on the Process Servers and will affect the Industry as well. These changes are not to help the Process Server or make their job easier or better or to prevent bad service or even to educate them. These changes are punishing them for a job that is difficult enough. The role of a Process Server is to serve documents not to spend more time completing clerical work than serving. Process Serving is a difficult job. Servers are out morning till night, serving in all weather conditions, dealing with all kinds of situations, completing as many jobs as they can so they can bring home a decent salary. They put wear and tear on their cars, their health all to provide a service so justice can be served in a Court of Law. These changes are just another way to financially burden Process Servers and the Agencies that hire them. The fines that are imposed are ridiculous and are not helping the Server, or the Industry. These fines only benefit the DCA. Just another way to hurt the average person trying to make a living. I agree that there should be rules in place to make sure Process Servers and Agencies are following certain guidelines, but not to the point where it hurts people and their jobs. It is difficult enough to find Servers to serve in the five boroughs, these changes will only decrease the number of Process Servers and caused more damage to the Industry which has suffered enough . Rules are a good thing, but they have to make sense and should make things better not worse. Rules should not be a means to an end. It should be an opportunity to better the system not complicate it. Put yourself in a Process Server's shoes and ask yourself if you were a Process Server and this was the only means of making a living would you think these rules are fair.

Comment added August 2, 2022 6:38pm

- **Jenn Simmons**
  Opposition #1

  Rule 2-240 regarding Audits: The rule under subsection (a) removes the two month audit period requirement. If a process server is

required to produce records for many months (beyond the two month period) or for years, that could be an enormous amount of data for the DCWP to review not to mention the burden it puts on the process server, the agencies they serve for and also the independent third party providers. The goal of a compliance audit is to determine how well a person or organization is adhering to rules, regulations and standards. Having the ability to audit an indeterminate amount of time could cause many problems for not only the process servers but for the agencies as well. Not to mention that there is really absolutely no reason and/or need to require anymore than the current 2 months, in order to assure that all rules and regulations are being followed. Extending that period of time would be both reckless and hazardous.

Opposition #2

Under the definitions section. Agency service is still rather confusing – what is the scope of what is expected of a process server if the person states they are authorized to accept service but will not give their full name or title? If the agency address is a residential address and the owner gives verbal approval to their family member to accept service but they have no affiliation with the business?

Comment added August 2, 2022 8:13pm

- **Jenn Simmons**

Opposition #3

Under the definitions section. Personal service – it does not seem to differentiate that personal service under CPLR 308 includes in hand, personal delivery, suitable age and discretion service and conspicuous service. There needs to be a clear and accurate definition for this and it must include all of the above. There is no room for vagueness.

Comment added August 2, 2022 8:21pm

- **Paula Parrino, Esq., NYSPPSA Second Vice President**
  I was hoping to address a concern, additionally, about the "corporate service" definition. According to the rules, for example, under CPLR Section 311-a – personal service on a limited liability company, there are details as to how to effect personal service upon the LLC including (3) which states, "to any agent authorized by appointment to receive process; OR (4) any other person designated by the limited liability company to receive process." If this is the case, when serving an entity as defined in 311-a, if the server asks if the person is authorized to accept service and they indicate they are, but refuse their full name or their title, and the papers are left for service, will this cause the server to incur a fine? According to caselaw on the matter, courts have found that process may be delivered by a person who has "apparent authority" to accept service and that such authority may be based on the process server's "reasonable belief of the recipient's status and reasonably relies on such representation." This has been found to be true "even where the recipient does not hold one of more of the corporate titles…"

  Can you please elaborate further, so as to ensure compliance with the rules?

  Comment added August 3, 2022 7:37am

- **Paula Parrino, Esq., NYSPPSA Second Vice President**
  While the CPLR and RPAPL have rules for service, judge's interpretation as to what constitutes proper service is often relied upon and case law studied. One concern here, is how the agency will interpret the new definition categories placed into the rules. For example, when serving a corporation, LLC or other entity, the goal is always to effectuate proper service that, if challenged, can withstand scrutiny. The process server can do as much as possible to ensure compliance however they cannot force people to provide names or, even if the name is provided, there is no proof that it is the person's actual name. Case law states that service upon a corporation can be

"delivered to a person who has apparent authority to accept service on behalf of that corporation and that such authority may be based on the process server's reasonable belief of recipient's status and reasonably relies on such representation." Cases also found that this applies, "even where the recipient does not hold one of the corporate titles …" How does the DCWP reconcile this in review of the rules that are being put in place?

Comment added August 3, 2022 8:57am

- **Alexandra Rivera**
  The suggested change to remove the ability for process servers to amend a record is unproductive in my opinion. For a process server to have to reach out to the third party to correct any errors is not only time consuming but not guaranteed. The third party may not want to assist with these changes because it then puts them in the position to be held liable for any errors that may be found. This opens the door for more errors to be made with more people touching a record. It is also going to require more money be paid to these third parties for the time that they have to spend correcting these records when they are only expected to retain these records to ensure they are not being tampered with. Servers spend majority of their time not only out in the field but trying to keep themselves safe as well. Sometimes mistakes are made, the wrong letter/button may be pressed but can be easily fixed/amended. To make the servers have to go through another person to make these changes for them doesn't seem like it will help improve the amount of errors made and will only delay the turnaround time. I do not see this being beneficial to any party in this matter.

  Comment added August 3, 2022 8:59am

- **Domenic Lanza, Esq.**
  Regarding Section 2-233(a)(2)(xiv), I believe that clarification is required for each of the descriptive factors of the person being served. What should a server put if the sex cannot be determined?

What is the appropriate skin color for a person of Hispanic descent? Or Asian descent? What if the individual's hair is covered by a hijab or other religious garment? I have seen fines for this, and I believe that it is a veritable minefield for servers to have to answer these questions themselves without guidance from the statutes.

Comment added August 3, 2022 9:56am

- **Matt Nelson**
  I don't think that having open-ended audit periods is fair. The audits are supposed to be spot-checks of servers and agencies following the DCWP's guidelines, and two months is already quite a long time. A longer period of time does nothing other than force the servers and agencies to spend more time collecting data and, potentially, paying larger fines for very minimal errors.

  Comment added August 3, 2022 9:59am

- **JILLINA KWIATKOWSKI**
  In the definitions section, "Conspicuous Service" is misleading. Although I can see the attempt to define the meaning of what conspicuous service means in both the CPLR and the RPAPL, doing so in one definition may have the result of leading a process server down the improper path of proper service. It is very confusing. I feel strongly that should be broken down into two separate definitions – one for CPLR and one for RPAPL. I am an agency owner in Buffalo, NY. I am a Past President for New York State Professional Process Servers Association and a Past President for National Association of Professional Process Servers. Our goal is to always be educating the process servers. The profession is one of constant learning. It is up to the "higher powers" to implement that knowledge correctly.

  Comment added August 3, 2022 12:40pm

- **Tariq Rashid**

For the agency service, under the definition section, this one is confusing to the point where what if the authorized agent refuse to provide details about themselves, are they still accredited to accept it or not?

Comment added August 3, 2022 12:59pm

- **Christopher Virga**
  The proposed changes to Rule 2-240 no longer specify a defined period during which an audit can take place. This places an undue burden on the server as well as negatively effects the quality and reliability of audit results.

  Comment added August 3, 2022 3:46pm

- **Laura Minniti**
  In regards to wanting GPS uploads chronologically, how does this work if someone is serving 15 plus people at one location? I completely understand the need to accurately and efficiently document the service. However, with bulk serves this could create a huge time delay in their day. This will also create a backup in their schedule and the server could potentially miss other services that they need to get done in the same time frame.

  Comment added August 3, 2022 3:58pm

- **Jason Spector**
  The legislature passes and amends laws (CPLR, RPAPL, etc), defining service of process. The Courts, both at the trial and appellate levels, have interpreted those laws by case law and through the Traverse Hearing process. What grant of authority allows an agency of the executive branch the ability to define and/or redefine what is or is not a good service?

  Comment added August 3, 2022 4:01pm

- **Paul C. Orobello**

I firmly believe that having open ended audits for this length of time is a detriment to servers and the businesses in which they are employed by. It puts them in a hazardous position financially and professionally. Such hefty fines for small errors can cause those who perform this important task to be guarded about their own performances in their jobs. It is an undo hardship to ask these servers to shoulder the risk of such a high fine due to a small error for a occupation that is already very challenging to undertake.

Comment added August 3, 2022 4:06pm

- **Jason Spector**
  Your own records will reflect that there used to be thousands of licensed process servers. According to your website there are currently less than 500. The overwhelming majority of the fines handed out are for technical reporting violations which often amount to more than a month of the process server's net salary. Expanding the time that you audit and by increasing the amount of the basic fines is just a money grab on your part now that you can't fine for logbook violations. In doing so, you will continue to drive the process servers out of the industry and dissuade people from entering this line of work.

  Comment added August 3, 2022 4:20pm

- **Alex Zambrano**
  The preparation of the mailings is time consuming and is not always done immediately after conspicuous/substitute service. As such, for a Server to be able to serve and then to prepare the mailings and having to input the certified mail numbers will cost them so much time. This is also extra time being taken off from them in order to perform proper service and be able to input proper information. All NYC servers will be hindered in performing their jobs correctly for this and many other new task they are required to do. In many cases for eviction matters there could be over 10 services and this will require

10 mailings depending on who is being served, please reconsider this change.

Comment added August 3, 2022 4:39pm

- **Michael Hart**
  With all these proposed changes it seems that you're going to harm the citizens that you allegedly trying to protect.
  Many times when doing a service a process server might find themselves in a dangerous situation where the party that needs to be served does not want to be served. At this point a process server needs to be very careful and tactful in the way they present themselves and the way you ask questions to try to effect service. Some of the people that have encountered in the past have been hiding from child support and have orders of protection against them due to violence. I can understand audits for someone who has had Travis hearings that do not go in their favor. But I do not understand the guilty till innocent audits. But this seems like a fishing Expeditions for audits for people that are following the rules and do the right thing. Process servers go through the licensing process the fees and bonds that are involved with this process also go through the Monies necessary to pay for third-party monitoring. But it seems that the goal post keeps moving. These rule changes seem undo burden on the people that follow the rules. Rather than settling process servers with extra regulations that are not necessary why not provide the tools to protect the public as a whole.

  Comment added August 4, 2022 9:17am

- **Samantha Padilla**
  #1 – Regarding Rule 2-240 – Audits – subsection (a) removes the two-month audit period requirement.

  Expanding this audit range will be extremely overwhelming to the process servers. Having a "set" time frame allows process servers to anticipate the time needed to comply with these audits reasonably.

Setting this time aside for more extensive audit ranges will prevent servers from earning a living wage. Attempting to collect all the necessary information for these audits will significantly impact their time to complete new work. This rule can negatively impact the servers and the industry by pushing more servers to seek a new profession to make a living wage.

Comment added August 4, 2022 12:40pm

- **Samantha Padilla**
  #2 – Regarding Rule 2-233, Records (d) (2) proposes that a process server or process serving agency that needs to amend an electronic data entry with their contracted third party must do so by contacting the contractor, and the contractor must make the amendment themselves.

  I believe this change is unreasonable for both the process server and the agencies. For years they both have had the capabilities to make amendments to the entries when needed. Setting aside time to contact the third party now creates a burden for everyone. The third-party contractor will have to take the time to answer these calls and work with their clients to make the necessary changes to these records. It is also problematic for the agencies and process servers because they do not have control over the amendments. This data is one of the necessary components for random audits, which they will have to provide to prevent future fines. Allowing the third party to have access to change this information is alarming.

  Comment added August 4, 2022 12:56pm

- **Samantha Padilla**
  Regarding Rule 2-240 – Audits – subsection (a) removes the two-month audit period requirement.

  Expanding this audit range will be extremely overwhelming to the process servers. Having a “set” time frame allows process servers to

anticipate the time needed to comply with these audits reasonably. Setting this time aside for more extensive audit ranges will prevent servers from earning a living wage. Attempting to collect all the necessary information for these audits will significantly impact their time to complete new work. This rule can negatively impact the servers and the industry by pushing more servers to seek a new profession to make a living wage.

Comment added August 4, 2022 12:59pm

- **Gail Kagan**

  I would like Clarification with regards to Contents of records of service.

  I understand that you want to organize records in a uniform manner, but even though we have supposedly have a uniformed court system in NY State each County and District and Attorney set work up in using a different format as do work coming in from foreign States and being domesticated in NY. These requirements regarding mandated fields, entering prefixes, and uniform case captions is problematic for a number of reasons.

  To require formatting of index numbers in a preset such as XXXXX/XX FORMAT just will not work for several reasons:
  Many cases are served and then filed or just don't require index numbers.
  Cases coming from Foreign jurisdictions and Domesticated in NY wont fit these requirements.

  In addition the requirement for a process server to put in a prefix when a Court or Attorney do not put it on the document is unreasonable.

  Attorneys from various parts of the state and cases from around the state do not follow a set format. And cases are set up in Towns or cities, and foreign States, etc. are not set up as they are in NYC .

It is often times difficult to tell what prefix is appropriate this would require that the process server read and understand the case documents which is over and above their required duties and figure out language and concepts for other states.

This same issue may come up in your suggestion for Civil Court Supreme, Civil Supreme, Criminal, Housing or District court followed by County of the Court the Judicial department or Federal district. These things can not be mandated or fit into your specific order. Attorneys and Judges mandate how the court information must read .We must comply to the higher authority to make our records acceptable to the Court in which they are venued.
Since are serving papers from all over the State and Country and these requirements, especially noting that we can be fined when the affidavit doesn't match the record, just doesn't work.

I think a better requirement is that the Index number and Case information be entered as it is on the document. I respectfully request that you reconsider.

Comment added August 4, 2022 3:16pm

- **Olivia C**

  Rule 2-240 regarding audits seems to be more of a monetary penalty than a learning lesson. Isn't the point of having these fines to deter the servers from improper service, and not to turn them away from the field due to fear of making an honest mistake? The length of time being removed from the audit period can cause serious burdens on servers just trying to make a living, the agencies, and the 3rd party provider. This is extremely time consuming and takes time away from being able to complete future services during the audit. The expectation to be able to produce records from years back, and possibly years back seems unfair to all.

  Comment added August 5, 2022 11:25am

- **Jacqueline Wos**
  RE: Rule 2-233 (d) 2 The validity of this rule is an overload of triggering dominos effects on process servers and Process Agencies'work and no improvement to the pace Justice is rendered. Those, agencies and process servers have legally binding duties to perform: distributing, serving, signing affidavits, amending and managing logging. Ok Logging is no more but distributing, serving and signing affidavits are still a job description for Agencies and Individual Process Servers in the course of services given over by attorneys; therefore Responsibilities process servers and Agencies represent their attempts, complete services and affidavits to Attorneys. Giving to this rule of "amending" to third party contractor is a mean to intentionally undermine and delay Representations of Process Servers and Agencies engaged in Services of Legal Papers, the responsibility doesn't belong to a Third Party Contractors for insignificant reasons! The Amend is not representative of improving relationships of all concerned in the process of serving legal papers. If there were outstanding conditions to withdrawing Amending responsibilities and giving it to Third party contractors, may it be for typos, omissions it would be in the light of making the Department better but it is not. Attorneys, agencies and process servers own the right to continue the initial job description belonging to a frame in the DCWP.
  I am opposing this new rule for reasons.

  Comment added August 5, 2022 1:02pm

- **Tariq Rashid**
  2-233 Records (d) 2 suggests that the process server or process serving agency cannot amend any records, which can only be done by the third-party contractor. I personally oppose for this rule as it is completely outside of their scope and would require them to add staff which is a cost factor. Similarly, if this rule is implemented, all agencies have to wait for the data to be amended before proceeding forward which would delay other tasks that needs to be completed

on time. Third-party contractors have always provided a structure to amend electronic records that completely follow DCWP's record keeping rules and I strongly suggest that it should be kept that way in order to reduce time delays and resources.

Comment added August 5, 2022 3:17pm

- **Gail Kagan**
  I am concerned about the cost of the fines. Usually, a process server is someone looking for flexible work schedule, because he/she is single mom or dad and has kids that they must pick up. It could be that he/she is going to school to get training for a new job, or it could be that process serving is a second job.
  I am not against fines per say when justified, but fines starting at $750 for record keeping errors seem excessive. A process server makes $17- $35 a paper, they make between $35-60m a year.
  I have heard from the DCWP that the amount of these fines is mandated by the City Council. But when asked the City Council has told NYSPPSA to contact the DCWP.
  I believe If a server makes a human error in record keeping, with no malice or bad intent, he should be fined in consideration of the type of error he makes and the amount of money he has. Penalizing process server by handing out fines of over 1500-25,000 and more is excess. It is leading to servers leaving the industry and not renewing their licenses. With the amount of litigation and process coming into the city which is on the rise, and the number of process servers dwindling, we are going to have a problem. The city is already facing a problem with rising costs of service. If these fines continue to be supported by the city process server numbers dwindle, we will have much more unregulated process which is the cause for more and additional problems.

  Comment added August 8, 2022 4:40pm

- **Alinn Guzman**

As a person that has been working in this industry for a couple of years now, I can reiterate much of what has been said before. My personal thought is that the rules that have been proposed are confusing and will cause more record keeping errors than ever. I think that more consideration has to go into these proposals to make it work to achieve your goal of streamlining service of process in the city.

Comment added August 9, 2022 4:45pm

- **Mark Holsey**
  2-231 Definitions.

  The term “employee” should be included in the list of definitions and should be defined as it has already been defined by the Department of Consumer and Worker Protection to mean: “ANY PERSON EMPLOYED FOR HIRE INCLUDING, BUT NOT LIMITED TO, INDEPENDENT CONTRACTORS. ANY PERSON WHO MANAGES OR OVERSEES THE WORK OF ANOTHER. AND ANY PERSON WHOSE EARNINGS ARE BASED IN WHOLE OR IN PART ON SALARY OR COMMISSION FOR WORK PERFORMED.”

  Comment added August 10, 2022 6:02am

- **Alexander Cohen**
  2-231 Definitions
  “Agency Service”
  VTL 253
  By definition, VTL 253 is only used for service on non-residents of New York State, outside of New York State, by mail or process server in that state. How could the DCWP possibly have jurisdiction over a service on a person who does not live in New York and is served outside of New York. If the judication asserted over this type of service is only for the portion of the service that is served on the Secretary of State, this should be made clear. Is any service on the Secretary of State other than VTL 253 an “Agency Service”? Does this

only apply to VTL 253 and not other services on the Secretary of State? What about VTL 254?
This needs clarification

Comment added August 10, 2022 10:57am

- **Alexander Cohen**
  2-231 Definitions
  Conspicuous Service
  This seems to mean any conspicuous service but mixes parts of CPLR 308 (4) and RPAPL 735. This is not clear and needs clarification

  Comment added August 10, 2022 11:01am

- **jacqueline balikowski**
  Definitions- many medical offices routinely give their first name and last initial not their full name but they are authorized to accept. there is a national registered agent whose policy is to refuse to give their name what is a server supposed to do. what is the server supposed to do. i have attached the notice from the agent company who states their counsel has advised them not to provide the authorized persons name.

  Comment added July 31, 2022 9:36am

CSC

Litigation Management
Representative
1-302-636-5400
80 State Street, 10th Floor
Albany, NY 12207
United States
SOP@CSCGlobal.com

CSC

PROCESS SERVER NOTICE

- Upon direction of counsel, we are not able to provide a specific employee name when receiving process. Please use "Legal representative of CSC". If you have "saved" an individuals name, please discontinue use.

- Under New York law, there is no statutory requirement for a registered agent to provide an employee's name when accepting service on behalf of a corporation.

- To the extent a court demands proof of service, the process server may offer to provide testimony regarding the delivery and/or we are willing to provide an affidavit regarding our business process and how certain documents were managed upon receipt.

If you have any questions, please feel free to contact our legal team at 302-636-5400

- **Michelle DiCarmine**
  Rule 2-233 (d) 2
  proposes that a process server or process serving agency that needs to amend an electronic data entry with their contracted third party must do so by contacting the contractor and the contractor must make the amendment themselves.

  This will cause unreasonable delays. Time is important to all businesses. This rule removes the ability of the licensee to amend their own records and instead, transfers that responsibility to the third party provider. This creates liability for both the licensee and the third party provider, this is an unnecessary burden.

  Comment added July 29, 2022 3:07pm

- **Michelle DiCarmine**
  Regarding Rule Rule 2-240 – Audits – subsection (a) removes the two month audit period requirement. Requiring a server to produce records for any amount of time: a month, a year, 2 – 5- 7 years? is massive amount of data and egregiously burdens the server, the agencies they serve for, and the third party providers. Compliance with rules, regulations and standards is the goal and that's reasonable but an unlimited time frame is not. It should be a short window and a stated timeframe.

  Comment added July 29, 2022 3:20pm

- **Michelle DiCarmine**
  Under the definitions section:

  Agency Service: Many time a full name can't be obtained or a title is refused. What is the expectation of the process server under these circumstances. We can't force a response from the person. For example a CSC representative won't provide a name at all citing"

Under New York Law, there is no statutory requirement for a registered agent to provide an employee's name when accepting service on behalf of a corporation" Attached is the notice they provide.

Comment attachment
CSC-Notice.pdf

Comment added July 29, 2022 3:43pm

CSC

PROCESS SERVER NOTICE

- Upon direction of counsel, we are not able to provide a specific employee name when receiving process. Please use "Legal representative of CSC". If you have "saved" an individuals name, please discontinue use.

- Under New York law, there is no statutory requirement for a registered agent to provide an employee's name when accepting service on behalf of a corporation.

- To the extent a court demands proof of service, the process server may offer to provide testimony regarding the delivery and/or we are willing to provide an affidavit regarding our business process and how certain documents were managed upon receipt.

If you have any questions, please feel free to contact our legal team at 302-636-5400

- **Dan Crespo**
  The rule under subsection (a) takes away the two-month audit period requirement. The amount of time and effort in going back months and maybe years I find to be very unfair. The amount of data could be enormous. Having the ability to audit with no determined time frame would cause the process servers so much time. With all time needed to do it the server would not be able to serve and make money to provide for himself and his/her family. Its just not fair.

  Comment added August 2, 2022 2:24pm

- **Dan Crespo**
  Agency Service. I am confused in regards to this rule change. If someone states they are authorized to accept and refuses to give name. Do we not serve it? I know that when the MTA Bus company gets served there is a sign that states: "We Only Issue a Time Stamped For MTA Bus Company We Do not give Names"

  Comment added August 2, 2022 2:59pm

Dan Crespo:

Good afternoon,

With the Conspicuous service rule. With RPAPL section 735 we are allowed to place under the door. In section 308 (4) we must affix it to the door. We need some clarification please.

Best Regards,

Dan Crespo

Preferred Process Servers Inc

166-06 24th Road, LL

Whitestone, NY 11357

718-362-4890

Preferred Process Servers, Inc. would love your feedback. Post a review to our profile.
https://g.page/r/CR2hyJplyj_qEB0/review

PLEASE NOTE THAT QUOTED PRICES ARE FOR (3) THREE ATTEMPTS AT ONE ADDRESS

With regards to CPLR 308. There is no difference between the sections.

Best Regards,

Dan Crespo

Preferred Process Servers Inc

166-06 24th Road, LL

Whitestone, NY 11357

718-362-4890

Preferred Process Servers, Inc. would love your feedback. Post a review to our profile.
https://g.page/r/CR2hyJplyj_qEB0/review

PLEASE NOTE THAT QUOTED PRICES ARE FOR (3) THREE ATTEMPTS AT ONE ADDRESS

The rule under subsection (a) takes away the two-month audit period requirement. The amount of time and effort in going back months and years I find to be very unfair. The amount of data could be enormous. Having the ability to audit with no determined time frame would cause the process servers so much time. With all time needed to do it the server would not be able to serve and make money to provide for himself and possibly his family. Its just not fair.

Best Regards,

Dan Crespo

Preferred Process Servers Inc

166-06 24th Road, LL

Whitestone, NY 11357

718-362-4890

Preferred Process Servers, Inc. would love your feedback. Post a review to our profile.
https://g.page/r/CR2hyJplyj_qEB0/review

PLEASE NOTE THAT QUOTED PRICES ARE FOR (3) THREE ATTEMPTS AT ONE ADDRESS

From: Bob Musser <BobM@dbsinfo.com>
Sent: Tuesday, August 9, 2022 9:44 AM
To: Rulecomments
Subject: [EXTERNAL] DCWP Rules Comment
Follow Up Flag: Follow up
Flag Status: Flagged

2-233 Records (d) (2) proposes that a process server or process serving agency that
needs to amend an electronic data entry with their contracted third party must do so
by contacting the contractor and the contractor must make the amendment themselves.

As the President of one of the third party contractors, It is impossible for me to estimate how much this rule change would cost us in man-hours, and equally impossible to estimate how many mistakes would be introduced through this process. Currently, the licensed process server can make another comment about a
particular service, and both the original and the new comment are saved for later review. Putting us in the middle of this process would gain you nothing but errors and
would result in higher fees to the people you are regulating – our customers.

Bob Musser
BobM@dbsinfo.com
www.dbsinfo.com
DreamBuilt Software, Inc.
Makers of Process Server's Toolbox
and supporting software for
Professional Process Servers

- **Kim F Letus**

  As someone who has been employed in the process serving profession for decades, and dedicated much time and effort to improving the efficiency and professionalism of process servers and procedures and statutes governing them, I am very dismayed at the recent introduction of further restrictive and punitive measures that are being entertained by the City. I do not live nor work in the city, but send work to servers and agencies who are located there in order to service my clients.

  1. Audits (Rule 2-240): Proposal removes the two-month audit requirement. Expansion of the time period in the manner proposed will create a huge burden on process servers, who work long hours and must already comply with stringent requirements on the state and local (NYC) level as to methods of service and record keeping. The number of servers in New York City has been drastically diminished over the past few years due to COVID and, yes, due to the requirements DCA has already put into place. I understand the need for accountability, but this goes way beyond that and is massively punitive. I predict that the result will be more servers throwing up their hands and leaving the profession, creating a void in the system of due process in New York City Courts. Due process requires reliable process servers to work effectively and efficiently.

  2. The language in the definitions section is confusing (Agency service): It does not make clear what the process server is required to do if an individual represents they're authorized to accept for the agency but refuses a full name and title. This is a very, very common occurrence today. Years ago, we ran into very infrequent situations where this would happen. However, at present, this is increasingly common.

  Comment added August 1, 2022 12:16pm

- **Kim F Letus**

The proposal specifies suitable age service must be made on a co-resident or someone employed at the address. Except in landlord-tenant matters, this contradicts New York State statutes, which does not require this. I think it is inadvisable to overtly deviate from the State requirement in this regard.

Comment added August 1, 2022 12:19pm

From: Kim Letus <kletus@rondoutlegal.com>
Sent: Friday, July 29, 2022 10:48 AM
To: Rulecomments
Subject: [EXTERNAL] Proposed changes - Process Servers DEFINITION OF CONSPICUOUS PLACE SERVICE
Follow Up Flag: Follow up
Flag Status: Flagged

The proposal combines aspects of CPLR 308(4) and RPAPL 735. These two sections vary in their service requirements, so
this change would have to be more precisely defined if the process server is expected to comply.

Kim

PLEASE SEND RETURN EMAIL CONFIRMING RECEIPT

KIM F. LETUS, NYCPS
CEO, Rondout Legal Services, Inc.
166 Franklin St., Kingston, NY 12401
Mailing: PO Box 4115, Kingston, NY 12402
Tel.: 845-331-6029 Toll Free: 888-331-6029 Fax: 845-331-0570 Fax
Memberships: NAPPS, NYSPPSA (Secretary Emeritus, Robert Marcus Award recipient), Servenow.com

From: Kim Letus <kletus@rondoutlegal.com>
Sent: Friday, July 29, 2022 10:51 AM
To: Rulecomments
Subject: [EXTERNAL] Process server Definitions PERSONAL SERVICE
Follow Up Flag: Follow up
Flag Status: Flagged

There is no clarity here. The term “personal service” under CPLR 308 encompasses personal in-hand delivery, suitable
age service and affix and mail service. This is not delineated in your definition as written.

Kim

PLEASE SEND RETURN EMAIL CONFIRMING RECEIPT

KIM F. LETUS, NYCPS
CEO, Rondout Legal Services, Inc.
166 Franklin St., Kingston, NY 12401
Mailing: PO Box 4115, Kingston, NY 12402
Tel.: 845-331-6029 Toll Free: 888-331-6029 Fax: 845-331-0570 Fax
Memberships: NAPPS, NYSPPSA (Secretary Emeritus, Robert Marcus Award recipient), Servenow.com

From: Larry Yellon <larry@ijslegal.com>
Sent: Tuesday, August 2, 2022 11:40 AM
To: Rulecomments
Subject: [EXTERNAL] Process server rules
Follow Up Flag: Follow up
Flag Status: Flagged

The author of these proposed rules exhibits confusion between the CPLR and the RPAPL. Summons and complaints cannot be slid under a door and there is no requirement for a person of suitable age being served with a summons and complaint to reside at the place of service. Like wise confusion is exhibited by the author when describing Personal Service with no differentiation between Personal service (an umbrella term in CPLR 308) and Personal Delivery CPLR 3081.

From the desk of …… Michele Squitieri

March 21, 2018
Commissioner Lorelei Salas
New York City Department of Consumer Affairs
42 Broadway
New York, NY 10004

SUBJECT: PROCESS SERVER INDIVIDUAL LICENSE

Dear Commissioner Salas:

Please allow me to begin by saying, Thank You! Thank you for serving our city.

I am a NYC Individual Process Server and grateful for this opportunity. This license affords me the opportunity to provide for my family according to our personal needs; which I feel is a blessed luxury, this day and age.

Through my career the structure of process service has changed significantly with regard to the issuance of licenses. The 'method' of process service has been fined tuned and it functions very well. However, the increase in duties and responsibilities of the process server have grown tremendously. There are so many steps that a process server must take to properly complete service in its entirety. With this in mind, I am writing to you in the hope of reconsidering some of the process.

To begin, I would like to address the following topics that are of concern. (1) Educational Materials, (2) Exam, (3) Updates/Communication, (4) Manual Log Book.

EDUCATIONAL MATERIALS:

The materials provided by your office to prepare for the Process Server exam provide relevant and updated City and State laws and rules; it is a useful study guide needed for the process server's exam.

With regard to how the materials are presented is a different story. It is understood that the information reflects how final City law and rules are published in The City Record; the material that [is deleted] and is added makes the study guide so difficult to follow. It is almost like the guide has been established to sabotage the process server from passing the exam. I'll explain why and give examples:

EXAMPLE 1: LEGIBLE RECORD

Page 5 – this section lists all of the information necessary to be recorded in the handwritten logbook….
Page 6 – the process server retains each paper record for 2 years

#6(d) – adds 'from the date of service'
Page 15 and 16 – to retain for 7 years,
Page 26 and 27 – to retain for 3 years

Page 15 –includes another field 'type of service' (P)ersonal, (S)ubstitute, (C)onspicuous,
Page 26 and 27 – the includes an additional field (CO)rporate

Page 15 – includes another field 'postal receipt #", "nail/mail" and "Date of filing AOS if filed by the process server"
Page 26 – includes another field "reg/cert mail"
Page 37 – adds in 'who assigned'

COMMENT: There should be one section for this subject. Why add all of the additional information in the study guide on different pages, even though there were several revisions, the study guide can be used as a valuable reference guide, and each specific subject to include amendments (if necessary) should be together. Or just make the amendments prior to distributing the exam packet.

EXAMPLE 2: TRAVERSE HEARINGS

Page 7 – Notify DCA of conclusion

Page 20 – Notify DCA of hearing – submit a report by certified mail or email with the name and license # of all who served and distributed papers.

Page 24 – obligation to track and report to DCA the results within 10-days of a decision or settlement

Page 24 – process server is to search in court clerk's records 60-days after scheduled hearing, if unsuccessful, search again 90-days after the scheduled hearing and report to DCA no later than 100-days after the hearing.

Page 31 – states the process server is to report to the DCA 10-days from when the process server learns the decision
Page 26 - modifies this obligation to request a status from who assigned service.

COMMENT: Once again, the revisions should override the original instruction and have one clear concise rule in its own category, not broken up on several different pages.

This is important so the process server should know how handle the traverse hearing report to the DCA. The amendments are all over the study guide and make it difficult to reference.

EXAMPLE 3: ELECTRONIC RECORDS

Page 9 – retain electronic records for seven (7) years in electronic form,

Page 20 – amends this to electronic or paper copy,

Page 23 – states copies of AOS that were executed for seven (7) years.

Page 10 – maintained in an electronic database for seven (7) years and are preserved daily

Page 29 – amends this to preserved info uploaded within 1 business day (normal business days Monday – Friday?)

COMMENT: Please be advised that under the category for Legible Record it states on Page 26 and page 27 that the Process Server is required to maintain each paper record for three (3) years……??? Please update the study guide to confirm the accurate time frame.

EXAM:

From my experience, the general rules and regulations with regard to process service in general do not change all that frequently, yet the license term is 2 years with an exam. In essence, why such a challenge for the process server? Who, in retrospect, are not taking a position to take a life in their hands as opposed to an MTA driver, taxicab driver, Airplane pilot, truck driver, Motor vehicle operator… whom for the most part only pay for their license renewal with no exam to confirm their knowledge of their profession or the current laws? Kindly consider a four (4) year test renewal for process servers? The changes to the rules and laws are not frequent enough to have to take a test every 2 years…. If that's the case than Lawyers and Police Officers, Vending licensees should be getting tested as well.

I have recently passed my renewal exam, (I did not score 100) please advise how or why we are not provided with the questions that we incorrectly answered on the exam? With this knowledge it affords the individual the opportunity to strengthen the areas of weakness to be able to serve process legally, properly and efficiently according to the law.

UPDATES:

If the DCA will penalize a process server (i.e. as a result of an unfavorable traverse hearing) for not abiding by the law while effecting service, shouldn't the DCA also communicate with the licensee's when the laws change or are amended? A licensee should not have to pay an additional membership fee for an association in order to obtain current and new laws in effect. We are paying the DCA for this license, we will be penalized by the DCA for not abiding by rules, so why shouldn't the DCA provide updates to the licensee's personally when applicable. This can be directly made to the licensee by written communication, website update, snail mail, webcast or invitation to in person educational clinics hosted by the DCA.

MANUAL LOG BOOK

Out of all of the other suggestions above, this subject has been a concern since the inception of the new license requirements.

As I am sure you are aware, the manual log book is the exact replica (or should be) of what is maintained on the electronic device. The final entry to both the manual log book and the electronic device is recorded on an Affidavit of Service or an Affidavit of No Service. I understand that it's not the penmanship that you need to compare, it is the sequence of events in chronological order that are to be permanently documented. Is there any way possible to eliminate the manual log book and consider the electronic device storage to be used in conjunction with the Affidavit of Service? The amount of information that has to be re-written on the Affidavit, the manual log book, the invoice to the client and sometimes even a report to the client has become a waste of unnecessary time with the electronic device and documents available to record service.

This is just a personal note, but I have recently developed severe carpal tunnel syndrome and in the absence of surgery it has become quite difficult and painful to write with a pen more than I need to. Therefore, your consideration of a more modern alternative to the manual log book would be greatly appreciated.

CONCLUSION: Thank you for your time, support and consideration of my concerns. I have always been under the structure of an employer where conversations were held in person in order to establish a good working environment, and have wanted to share the personal side and experience of having this license since it was revised several years ago. Please accept this as constructive and not as a complaint. Things cannot progress unless we all participate, so I will never know the answers until I ask the question. I also hope, that this has opened the window for ideas to improve so we can all benefit in the reward.

Please feel free to contact me at any of the below methods with any questions or concerns. I do look forward to hearing from you soon.

Respectfully,
Michele Squitieri

Michele Squitieri, DCA license # 1423106
121 Home Place
Staten Island, NY 10314
(cell) 917-226-2551
email: UVBS@OPTONLINE.NET
Cc: NYC Department of Consumer Affairs Business Counsel
via email:

NYLAG
New York Legal Assistance Group

August 10, 2022

Commissioner Vilda Vera Mayuga

Department of Consumer and Worker Protection

42 Broadway

New York, NY 10004

Dear Commissioner Mayuga,

On behalf of the New York Legal Assistance Group ("NYLAG"), we offer the following comments on the Department of Consumer and Worker Protection's ("DCWP") proposed amendments to the rules applicable to the process servers licensed by DCWP. As attorneys and advocates working directly with New Yorkers who are served with process, or more often, who are alleged to have been served with process but fail to receive actual notice of a lawsuit, we seek to share our experience and provide relevant feedback regarding the proposed amendments. NYLAG applauds DCWP's continued efforts to safeguard the integrity of process serving laws and regulations that ensure that all litigates receive timely and proper notice of legal proceedings and have their due process rights honored. The below letter provides some background on our work and specific comments about the proposed amendments.

I. About NYLAG

NYLAG is a not-for-profit legal services organization located in New York City. NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG serves immigrants, veterans, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, people with disabilities, patients with chronic illness or disease, low-wage workers, lowincome members of the LGBTQ community, Holocaust survivors, as well as others in need of free legal services.

In particular, NYLAG represents litigants in every court system in New York State and works with thousands of unrepresented litigants each year. Specifically, through its Consumer Protection Unit, NYLAG works with thousands of consumers every year who face litigation, but because of unlawful practices by process servers, never receive notice of the lawsuit. This lack of notice creates catastrophic consequences for New Yorkers, many of whom are low income, have limited English proficiency, and are

unfamiliar with the court system. When New Yorkers are deprived of their day in court because they never receive notice of a lawsuit, the resulting default judgment results in wages being garnished, bank accounts frozen, loss of housing, and other severe consequences that threaten their financial stability and even health and wellbeing.

It is crucial to ensure that process servers act lawfully and fulfill their responsibility to properly deliver notice of lawsuits so that New Yorkers are not unfairly deprived of their day in court and do not face consequences of losing without ever even knowing that a case had been filed. Sewer service—the practice of falsely claiming to serve litigants with notice of the lawsuit when no notice was ever provided—is endemic in the New York State Court System and is a well-documented phenomenon.[1] Advocates have brought multiple class action lawsuits challenging the sewer service practices of plaintiffs who file thousands of lawsuits in the New York State Courts.[2][3] The New York State Attorney General has even been required to take action against process serving agencies who routinely falsified affidavits of service and engaged in widespread fraud by filing knowingly false affidavits of service.[3]

Sewer service disproportionately impacts New Yorkers who have the least access to resources and are forced to navigate legal proceedings *pro se*. The New York State Court of Appeals noted: "Often associated with consumer debt collection and landlord-tenant litigation, questionable service practices have their greatest impact on those who are poor and least capable of obtaining relief from the consequences of an improperly imposed default judgment."[4] NYLAG's clients are among those forced to face the severe consequences of default judgments due to lack of service. Our clients are deprived of their due process rights when process servers fail to fulfill their duties to provide notice of lawsuits in conformity with the law.

II. Recommendations

NYLAG applauds the DCWP's efforts to ensure that process servers maintain true, accurate, and complete records of service and that those records of service are legible and available. NYLAG supports the creation of a digital method for maintaining records of service. However, we suggest that DCWP use this transition to electronic record keeping as an opportunity implement four changes: 1) Extend the

[1] *See, e.g.* The Legal Aid Society et. al., Debt Deception: How Debt Buyers Abuse The Legal System to Prey on Lower-Income New Yorkers 1 (May 2010) *available at* http://www.neweconomynyc.org/wpcontent/uploads/2014/08/DEBT_DECEPTION_FINAL_WEB-new-logo.pdf.; Mobilization for Justice, Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York (DATE) *available at* http://mobilizationforjustice.org/wp-content/uploads/reports/Justice_Disserved.pdf.

[2] *See, e.g.*, *Burks et al. v. Gotham Process et al.*, 20 Civ. 1001 (E.D.N.Y. 2020) (class action case filed by NYLAG complaining of defendants' unfair practices in failing to lawfully serve process); *Dupres v. Houslanger*, 19 Civ. 6691 (E.D.N.Y. 2019) (class action complaint filed by NYLAG complaining of defendants' unfair practices in litigating and opposing consumers' challenges to motions challenging service of process); *McCrobie v. Palisades, et al.*, 1:15-CV-00018 (class action challenging the unfair practices of enforcing aged judgments that were obtained through alleged failure to serve process); *Sykes v. Mel Harris*,

[3] -CV-8486(DC) (S.D.N.Y.) (class action alleging improper service in debt collection cases.) [3] *Pfau v. Forster & Garbus et al.,* Index No. 2009-8236 (Erie County Supreme Court) (July 2009) [4] *Barr v. Department of Consumer Affairs*, 70 N.Y.2d 821, 822-23 (1987).

amount of time by which individual process server and process serving agency licensees must retain records related to service of process; 2) Provide that upon request records related to service must be made available within a reasonable amount of time to a litigant challenging service of process in a judicial proceeding; 3) Increase penalties assessed for process servers' and process serving agency's failure to comply with the rules; and 4) Require that process servers record detailed information describing the location of service of process. These changes will not be overly burdensome for the licensee given that all records will now be in electronic form.

A. Increase the Amount of Time Process Servers Must Retain their Records

NYLAG also strongly urges the DCWP to increase the period for retention of process server records. As judgments can be enforced for a period of up to twenty years[4], NYLAG strongly recommends that process servers and process serving agencies by required to maintain records for the same amount of time.

Increasing the required time period for records retention will provide for fairer adjudication of issues related to personal jurisdiction and improper service. Access to records relating to service is vital, as many litigants do not learn about default judgments obtained through falsified service until long after the records related to service have been destroyed. NYLAG routinely works with litigants who first learn about a default judgment about which they had no notice more than a decade after the lawsuit was initiated.

For example, NYLAG recently assisted Luis[5] through the Consumer Debt Volunteer Lawyer for a Day ("VLFD") program in Queens County Civil Court. VLFD is a program created by the Office of Court Administration that provides limited scope representation, advice, help with negotiating settlement agreements, and arguing motions before the judge to unrepresented litigants in consumer debt cases. VLFD representation is limited solely to the day on which the consumer has an appearance in a debt collection case. Luis had challenged a default judgment based on the fact that he had not received any notice of a lawsuit (allegedly commenced in 2003) until late 2021, when the judgment creditor levied his bank account. Despite the passage of *over eighteen years*, the creditor was executing on a judgment about which Luis had no knowledge, not only creating extreme financial hardship, as Luis lost access to his funds, but a logistical challenge as well. Luis had to figure out why his bank account was frozen while he knew nothing about the lawsuit and had no access to any information.

Upon learning of the judgment, Luis immediately went to court to challenge the default judgment on the basis that the court lacked personal jurisdiction because he had never been notified of the lawsuit. Due to Luis' advocacy, the court found that the presumption of service had been rebutted and scheduled a traverse hearing to determine if service had been proper. At the traverse hearing, the process server appeared but had no records of the service. The process server alleged that he had destroyed the

[4] N.Y. C.P.L.R. § 211(b).
[5] Names and identifying features have been changed to protect the confidentiality of clients.

records due to the passage of time. This lack of information severely hampered Luis' ability to challenge the process server's credibility and deprived him of an opportunity to assert his legal rights.

Requiring process servers to maintain their records for the same period that a judgment can be enforced would prevent unfair situations like this from occurring. Since creditors enforce judgments decades after they are entered, and litigants may only learn about judgments years after they are entered, process servers and process serving agencies should be required to maintain their records for a minimum of twenty years.

B. Require Process Servers to Make Records Available upon Request

As described above, due to widespread sewer service, particularly in consumer debt and landlord tenant matters, many defendants only learn about a lawsuit after a default judgment has been entered against them. Frequently, defendants are only aware of a lawsuit when the plaintiffs attempt to execute on the judgment, many years after it was entered.

In order to ensure that all litigants have equal and complete access to all records relevant to a case, particularly in situations where a defendant may not learn about the judgment until years after the judgment was entered, the rules should establish a mechanism for litigants to request records of service relating to their case. The rules should require process servers and/or process serving agencies to comply with these requests and provide copies of records related to the service, such as the process server's logbook and/or electronic records of service and GPS records, within a

reasonable amount of time of the request.

In conclusion, we encourage DCWP to expand the record keeping requirements to allow for better transparency and easier access to records related to service of process. These recommendations will help ensure that unrepresented defendants are alerted to lawsuits against them and they are provided full opportunity to assert their legal defenses in a timely and fair manner.

C. Increase the Penalties Assessed for Failure to Comply with These Rules

The consequences of improper service are devastating for New Yorkers who are robbed of their day in court because of a lack of notice. Increasing the penalties assessed, particularly those related to 6 RCNY § 2-234 (failure to comply with all federal, state and municipal laws, rules, regulations, and requirements); Admin Cod. §

20-406.3 (failure to maintain proper records); and 6 RCNY § 2-235 (improper preparation or maintenance of affidavit of service) will deter process servers from engaging in unlawful behavior or falsifying affidavits of service. Raising the financial penalty for unlawful behavior will mean that process servers can no longer consider violations a mere "cost of doing business" and will incentivize strict compliance with the rules that govern process server conduct.

D. Mandate that Process Servers Report Detailed Data About the Location of Service

In addition to the information process servers are mandated to collect, process servers should be required to collect additional information about the service. Requiring the collection of additional information will incentive process servers to complete service of process in accordance with the law. Additionally, requiring the collection of more information will make it easier for litigants who are asserting a personal jurisdiction defense due to lack of service to demonstrate that service was, in fact, improper.

Specifically, for all forms of service, not only service effectuated pursuant to CPLR § 308(4) or RPAPL § 735, process servers should also be required to provide a description of the premises where service was effectuated, noting if the service address is a private home, multi-family home, apartment building or other type of dwelling; the color of the address and a general description of its appearance. Many process servers do include this information, but the rules should mandate that they do so. Process servers should also be required to report how they gained access to the premises, report the total amount of time expended on the service attempt, and be required to take a GPS photo of the front door of an apartment, rather than the building, if the process alleges nail and mail service. We submit that these additional data points will not be burdensome given that the information can be recorded electronically.

III. Conclusion

In conclusion, we applaud the DCWP for taking steps to ensure that process servers fulfill their obligations when undertaking service. We encourage DCWP to expand the record keeping requirements to ensure that anyone who is faced with the consequences of a default judgment as result of improper service has access to the records of service regarding their case. The above recommendations will help ensure that debt defendants are alerted to lawsuits against them and given full opportunity to assert their legal defenses in a timely and fair manner.

Sincerely,

Lisa Rivera, Esq.
President and Attorney-in-Charge Daphne Schlick, Esq.
Director, Consumer Protection Unit
New York Legal Assistance Group
100 Pearl Street, 19th Floor
New York, NY 10004
(212) 613-5000

From: rosemarieann9@gmail.com
Sent: Tuesday, August 9, 2022 5:38 PM
To: Rulecomments
Subject: [EXTERNAL] DCWP NOH Process Service
Follow Up Flag: Follow up
Flag Status: Flagged

I wish to state my concerns regarding Section 6-30, Process Servers Penalty Scheduled. Process serving is a very necessary, vital and honorable profession. Yet as all Process Servers are aware of, this can be a very dangerous profession as you never know who you may be facing on the other side of that door. It is not unusual for their lives to be threatened by an irate, unstable person or even an animal. Many times people refuse to open the door, and they have to make numerous visits. When the DCWP first began monitoring this service, there were over **2000** servers in the city; now there **are 500 or less!** Many of these new, proposed regulations will make their job that much more difficult and impede them in performing to the best of their ability. One fine can now be as much as **$750!** Quite an exorbitant amount. For multiple infractions, their licenses may be suspended or revoked. Reading these proposed violations, it seems to me it would not be very difficult to make an honest mistake and then be fined. It appears to me they are being set-up to fail. I urge you to please reconsider these new regulations and take into account all of the comments here. Process servers are just trying to make an honest living. Please do not hurt their livelihoods. I respectfully request and urge you to reconsider these proposed changes.

Thank you,
Rosemarie Balance

I find that the proposed rules and fines would create a hardship for many process servers, agencies and law firms.

Anthony Rosario

Assistant Managing Clerk