

## NOTICE OF PUBLIC HEARING

**Subject:** Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Rule Regarding the Licensing of Process Servers.

**Date/Time:** June 13, 2011 at 11:30 a.m.

**Location:** Department of Consumer Affairs  
66 John Street, 11<sup>th</sup> floor Hearing Room  
New York, NY 10038

**Contact:** Erik Joerss  
Director of City Legislative Affairs  
Department of Consumer Affairs  
42 Broadway,  
8th floor  
New York, N.Y. 10004  
(212) 487-4248

### **Proposed Rule Amendment**

NOTICE IS HEREBY GIVEN IN ACCORDANCE WITH THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-104 (b) of Chapter 1, Title 20 of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Department intends to adopt new rules regarding the licensing of process servers. This rule implements the statutory requirement that process servers must carry portable devices equipped with GPS.

The proposed Rule was not included in the Regulatory Agenda because at the time the Regulatory Agenda was prepared, the Department had not decided to adopt the rule.

### **Instructions**

Written comments regarding this amendment may be sent to Erik Joerss by mail or electronically through NYC RULES [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by June 13, 2011.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided are asked to notify the Office of the Commissioner at the above address by June 1, 2011.

Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9 a.m. and 5 p.m. at the office of Erik Joerss.

### **Statement of Basis and Purpose of Proposed Rule**

Section 20-104 (a) of the New York City Administrative Code confers on the Commissioner jurisdiction and control over all licenses issued under Chapter 2 of such Code, which includes process servers who are required to be licensed according to Subchapter 23 of Chapter 2 of Title 20 of the Code. Section 20-104 (b) grants the Commissioner the power to set forth rules necessary to carry out his or her powers and duties, to require licensees to keep such records as he or she may determine are necessary or useful to carrying out the purpose of Chapter 2 governing licensing laws and all other laws conferring such powers upon him or her, and to protect the health, safety, convenience and welfare of the general public with respect to licensed activities.

Those powers include the authority to:

- set forth rules prescribing how licensees maintain records that they are by law required to keep;
- require that licensees, their employees and agents, conduct their activities consistent with the requirements of the laws applicable to the service of process in the City of New York and with standards of honesty and integrity; and
- require the licensees to notify the Department and the public when they fail to carry out their duties in a competent and lawful manner.

This new rule, section 2-233b of subchapter W of chapter 2 of title 6 of the Rules of the City of New York, implements section 20-410 of the Administrative Code which was added by Local Law 7 of 2010. Section 20-410 requires licensed process servers to carry and operate a device to establish electronically and record the time, date and location of service or attempted service, (at the time process is served or attempted). In hearings on the provision held by a committee of the City Council, witnesses presented evidence of the widespread prevalence in New York City of “sewer service,” an illegal practice in which process servers falsely claim to serve summonses and other process on parties to legal proceedings. The false service of legal papers is particularly common in consumer debt collection cases, where it deprives consumers of the opportunity to defend themselves against creditors’ claims that are frequently incorrect or even entirely false. As a result, consumers are subjected to wage garnishments or other damaging efforts to collect debts that are not legally justifiable.

By requiring process servers to carry a device that will record the location and time of service of process, section 20-410 provides a modern, technological tool to detect and deter “sewer service.” Such confirmation data will also help those process servers falsely charged with “sewer service” to defend themselves by providing independent corroboration of their location when they served the disputed process.

According to the rule, a licensed process server must carry and operate a mobile device using Global Positioning System (GPS) technology that makes an electronic record of the location where process is served or attempted to be served, including the date and time. If a GPS signal is unavailable, the mobile device must use triangulated cellular tower signals to establish the date and time when the record is made. The device must transmit a completed record automatically to an independent third party contractor. The process server’s contract with the independent third party must provide that the contractor will store the electronic records for seven years without allowing the process server access to delete or alter the original record. The third party must agree contractually with the process server to make the electronic records available to the Department upon request with specified information and in specified formats, including interactive electronic street maps. The rule provides that, in place of securing his or her own contract, a licensed process server may use services that a process serving agency has contracted from an independent third party.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

## **RULE**

Subchapter W of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new section 2-233b to read as follows:

### **§ 2-233b Electronic Record of Service**

(a) General Requirements. A process server licensed pursuant to this subchapter must comply with the requirement of section 20-410 of the Code to carry at all times during the commission of his or her licensed activities, and operate at the time process is served or attempted, a device to establish electronically and record the time, date, and location of service or attempted service as follows:

#### (1) Equipment.

(i) The process server must obtain a mobile device, such as a telephone or personal digital assistant, that utilizes the software necessary to make an electronic record of the location where, and the time and date when, the record is made as determined by Global Positioning System (“GPS”) technology, and labels the record with the network date and time maintained by the mobile device, the DCA license number of

the process server, the DCA license number of the process serving agency that has distributed the process for service, the name of the plaintiff or petitioner, the name of the defendant or respondent, the docket number (if any), the name of the person to whom process is delivered and a unique file identifier of the process being served.

(ii) The mobile device must be equipped with the software necessary to make an electronic record of the location where and time and date when the record is made, as determined by triangulated cell tower signals, in the event that at the time of the effected or attempted service of process a GPS signal is not available.

(iii) The mobile device software must automatically add that location, time and date information to the electronic record as soon as a GPS or cellular signal reaches the device if neither a GPS nor a cellular signal is present at the time the process server causes the electronic record to be made.

## (2) Operation of Equipment.

(i) On every occasion that a process server attempts or effects service of process, the process server must ensure that the mobile device makes an electronic record of the GPS location, time and date of the attempted or effected service immediately after attempting or effecting service. In the event that no GPS signal is available at the time of attempted or effected service of process, the location, time and date will be determined by triangulated cell tower signals.

(ii) Each electronic record must be labeled with:

- a) the GPS or cellular network date and military time maintained by the mobile device;
- b) the DCA license number of the process server;
- c) the DCA license number of the process serving agency that distributed the process for service;
- d) the name of the plaintiff or petitioner;
- e) the name of the defendant or respondent;
- f) the docket number, if any;
- g) the name of the person to whom process is delivered; and
- h) a unique file identifier of the process being served.

(3) Contract for Services. The process server must contract with an independent third party (“the Contractor”) that provides services and performs functions described in subparagraph (4) and that enables the process server to meet the data storage and retrieval requirements set forth in such subparagraph, below; provided, however, that if the process server performs process serving activities distributed to him or her by a licensed process serving agency, the process server may utilize the device and facilities for the electronic record of service that the process serving agency obtains under a contract with a Contractor.

(4) Data Storage and Retrieval. The electronic record must be automatically transmitted electronically from the mobile device to the Contractor as soon as a GPS or cellular signal is available and location, date and time are entered into the electronic record. The Contractor must store the electronic record according to the following terms:

(i) the original digital file must be maintained by the Contractor unaltered for a period of not less than seven years;

(ii) neither the process server nor the process serving agency will be permitted to alter the original data, but may obtain copies of the original data file;

(iii) the Contractor must maintain the records in a manner that will permit retrieval by the DCA license number of the process server, the DCA license number of the process serving agency that has distributed the process for service, the name of the plaintiff or petitioner, the name of the defendant or respondent, the docket number (if any), the name of the person to whom process is delivered and a unique file identifier of the process being served;

(iv) the Contractor must maintain the records in a manner that will ensure that their integrity is adequate for admissibility in a judicial proceeding under the rules of evidence applicable in the state of New York;

(v) the Contractor must produce upon request by the Department, and to any other party according to an appropriate order or subpoena, a copy of the electronic records, or any reasonably described part involved, certified to be true and accurate;

(vi) the Contractor must provide to the Department upon request a street map in hard copy format and access to an interactive electronic street map that display the locations where the digital records were recorded with a date and time provided by GPS or cellular date and time;

(vii) the Contractor must provide to the Department upon request, and to any other party according to an appropriate order or subpoena, such software as may be necessary to display the electronic records in an MS Excel spreadsheet, 2003 version or later, with the following fields and in the following data formats:

- a) Plaintiff or petitioner, which must be specified by the last name of the first plaintiff, or, if not a natural person, the name of the entity;
- b) Defendant or respondent, which must be specified by the last name of the first defendant, or, if not a natural person, the name of the entity;
- c) the full docket number, which must be entered with all information necessary to identify the case, such as XXXXXX/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;

- d) the date that service was effected or attempted according to the device, which must be entered as MM/DD/YYYY;
- e) the time that service was effected or attempted according to the device, which must be entered in military time;
- f) the date that service was effected or attempted according to GPS or cellular signals, which must be entered as MM/DD/YYYY;
- g) the time that service was effected or attempted according to GPS or cellular signals, which must be entered as military time;
- h) the address where service was effected or attempted, which must consist of four fields in the following order: building number, street name, city; and zip code, which must be five digits. All address information must be CASS (Coding Accuracy Support System) processed to insure its accuracy;
- i) the name of the person to whom process was delivered, which must be entered in two data fields such that the first data field is the last name of the person, and the second data field is the first name of the person.

(b) *Provision of Equipment and Services by Process Serving Agency.* A process serving agency licensed according to this subchapter may provide to licensed process servers the device and services required by subparagraph (a) according to a contract with an independent third party. For purposes of this Rule, a third party will not be considered independent if any officer or owner of ten percent or more of the shares of the licensed process serving agency has any interest, direct or indirect, in the third party.

(c) *Report to Department.*

(1) Within sixty days after the effective date of this Rule a licensed process server must submit to the Department in a form approved the Commissioner a certification that he or she has secured the contract required by this Rule and identifying the name, address and account number of the Contractor(s) providing the required device and services. After sixty days after the effective date of this Rule, no process server license will be issued or renewed unless the applicant submits such a certificate.

(2) A licensed process server must submit to the Department an amended certification within two days of entering into a contract with a different Contractor.

(3) In place of submitting the certificates required by the preceding provisions, the licensed process server may submit a certification in a form approved by the Commissioner affirmed by an owner or officer of a licensed process serving agency that the device and services the process server is required to obtain are provided by the agency under a contract with an independent third party.

(d) *Compliance with all laws.* Compliance with the requirements of this Rule does not relieve a licensed process server of the obligation to make or maintain records required by any other federal, state, or local law, rule or regulation.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Process Server GPS Requirements**

**REFERENCE NUMBER: 2010 RG 156**

**RULEMAKING AGENCY: Department of Consumer Affairs**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: May 4, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1526**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Process Server GPS Requirements**

**REFERENCE NUMBER: DCA-1**

**RULEMAKING AGENCY: DCA**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

          /s/ Matthew Margolin            
4, 2011  
Mayor's Office of Operations

May  
Date