

## New York City Department of Consumer Affairs

### Notice of Adoption

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer Affairs by Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b), 20-406.3 and 20-408 of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department adds Sections 2-239 and 2-240 and amends Section 6-30 of Title 6 of the Rules of the City of New York.

This rule was proposed and published on January 29, 2019. A public hearing was held on February 28, 2020. The Department received written comments prior to the hearing and oral comments at the hearing.

### Statement of Basis and Purpose of Rule

The Department of Consumer Affairs (“DCA” or “Department”) is amending the rules governing process servers to implement Local Law 112 of 2019, which requires the Department to conduct audits of certain process servers and creates a notification system for, among other things, suspensions and revocations of, and denials of applications for, process server licenses.

In general, process servers are engaged in the business of serving summonses, subpoenas, notices, citations, or other process that direct an appearance or response to a legal or administrative proceeding. These amendments to subchapter W of chapter 2 of title 6 of the Rules of the City of New York outline the specific documents that the Department may request by subpoena from a process server in connection with an audit by the Department. These rules also explain the procedures surrounding the audit process, including that a process server must produce most of the documents requested electronically, must respond to the subpoena within 20 days, and must certify twice annually whether it has served process in housing court within the previous six months. Finally, these rules also require process servers and process serving agencies to provide an email address to the Department.

In the Notice of Public Hearing, the Department proposed that a subpoena would include a request for, among other things, records required to be kept pursuant to 6 RCNY § 2-233 and § 2-233a. After further consideration, the Department determined that it would request only records required to be kept pursuant to §2-233a, which requires electronic retention of the original records required to be kept by §2-233. For purposes of the subpoena authorized by this rule, the Department determined that it does not need to require submission of the original records required to be maintained by §2-233.

New material is underlined.

[Deleted material is in brackets.]

“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 Amendment

Section 1. Subchapter W of chapter 2 of title 6 of the Rules of the City of New York is amended by adding sections 2-239 and 2-240 to read as follows:

#### § 2-239 Use of Email.

All process servers and process serving agencies must provide to the Department a regularly used email address. The Department may send licensing documents and subpoenas, notices, requests, or other communications to such address.

**§ 2-240 Audits.**

(a) Pursuant to subdivision c of section 20-406.3 of the Administrative Code, the Department may audit any process server that has served at least one summons, subpoena, notice, citation or other process, directing an appearance or response to a legal action, legal proceeding or administrative proceeding that is subject to the provisions of section 110 of the civil court act. In conducting such an audit, the Department may issue a subpoena by email to a process server for a two-month period identified by the Department in such subpoena for the following records:

(1) Records that a process server is required to maintain pursuant to 6 RCNY § 2-233a;

(2) Affidavits of service filed with a court by a process server or on behalf of a process server related to service;

(3) Records of the GPS location, time and date of attempted or effected service of process made pursuant to 6 RCNY § 2-233b(a)(2); and

(4) Documents sufficient to identify all traverse hearings scheduled to occur, whether or not held, by any court, including courts outside of New York City, concerning process served or attempted to be served, and any result of such hearings.

(b) Records described by paragraphs one through three of subdivision a of this section must be produced in electronic form, unless otherwise specified by the Department, and records described by paragraph four of subdivision a of this section may be produced in paper or electronic form.

(c) A process server must comply with a subpoena from the Department within 20 days of the date on which the subpoena was issued, provided that the monetary penalties authorized by 6 RCNY § 6-30 for violation of 6 RCNY § 2-240 shall not apply while such subpoena is the subject of a pending judicial proceeding.

(d) By February 1st and August 1st of each calendar year, a process server must submit, by electronic means, a certification to the Department stating whether it has served at least one summons, subpoena, notice, citation or other process, directing an appearance or response to a legal action, legal proceeding or administrative proceeding that is subject to the provisions of section 110 of the civil court act in the most recent six-month period, as follows: the February 1<sup>st</sup> certification shall cover the six-month period from July through December of the previous year; the August 1<sup>st</sup> certification shall cover the six-month period from January through June of the current year.

(e) Nothing in this section limits the Department's authority to request or inspect records or information pursuant to any other provisions of law or rule, including, but not limited to, the Commissioner's authority to conduct audits of process servers and process serving agencies pursuant to the first sentence of subdivision c of section 20-406.3 of the Administrative Code.

§ 2. Section 6-30 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended by adding new penalties for violations of 6 RCNY § 2-239 and 6 RCNY § 2-240 in alphanumerical order to read as follows:

<b>Citation</b>	<b>Violation Description</b>	<b>First Violation</b>	<b>First Default</b>	<b>Second Violation</b>	<b>Second Default</b>	<b>Third and Subsequent Violation</b>	<b>Third and Subsequent Default</b>
<u>6 RCNY § 2-239</u>	<u>Failure to comply with email requirements</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$900</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$1,000</u>
<u>6 RCNY § 2-240</u>	<u>Failure to comply with audit requirements</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$900</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$1,000</u>