

## New York City Department of Consumer and Worker Protection

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend rules applicable to process servers that are licensed by DCWP to implement Chapter 189 of the Laws of 2022, which amended General Business Law 89-cc, and to make additional clarifications for consistency and clarity throughout.

**When and where is the hearing?** DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on Wednesday, August 10, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646 558 8656
  - Meeting ID: 852 4814 5278
- To participate in the public hearing via videoconference, please follow the online link:  
[https://us02web.zoom.us/j/85248145278?pwd=BWKle7U260IHDyDUncYLTehM\\_5Rxxg.1](https://us02web.zoom.us/j/85248145278?pwd=BWKle7U260IHDyDUncYLTehM_5Rxxg.1)
  - Meeting ID: 852 4814 5278

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [Rulecomments@dcwp.nyc.gov](mailto:Rulecomments@dcwp.nyc.gov).
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Wednesday, August 10, 2022. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes. You must submit any comments to the proposed rule on or before Wednesday, August 10, 2022.

**What if I need assistance to participate in the hearing?** You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0396 or by email at [Rulecomments@dcwp.nyc.gov](mailto:Rulecomments@dcwp.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by noon on Monday, August 1, 2022.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

**What authorizes DCWP to make this rule?** Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and section 20-104 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

**Where can I find DCWP's rules?** The Department's rules are in title 6 of the Rules of the City of New York.

**What laws govern the rulemaking process?** DCWP must meet the requirements of section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043 of the City Charter.

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

The Department of Consumer and Worker Protection ("DCWP" or "Department") is proposing to amend rules applicable to process servers that are licensed by DCWP.

This proposed rule amendment would implement Chapter 189 of the Laws of 2022, which amended General Business Law 89-cc, allowing process servers to fulfill the requirement of maintaining "legible records" of all service they make by submitting electronic recorded entries to a third party contractor, rather than requiring them to maintain a hand-written logbook. The proposed rule would give process servers a choice between the two options.

The proposed rule also streamlines process server and process serving agency requirements for the content, storage, retention, and production of records and electronic records, by repealing § 2-233 and § 2-233a, and consolidating such requirements into a new § 2-233.

Finally, the proposed rule makes additional revisions for consistency and clarity throughout the Department rules related to process servers.

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and section 20-104 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

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.

Section 1. Section 231 of Chapter 2 of Title 6 of the Rules of the City of New York is amended as follows:

### **§ 2-231. Definitions.**

For the purposes of the application of Subchapter 23 of Chapter 2 of Title 20 of the Administrative Code, (unless the context indicates otherwise), the following definitions apply.

**Agency service.** “Agency service” means delivering process intended to be served on: (1) the agent for service of the person to be served as designated under CPLR 318, which allows a person, corporation or a partnership to designate an agent for service in a writing filed with the county clerk; (2) an attorney designated as an agent of service as permitted by and in accordance with the provisions of CPLR 303; or (3) a non-resident by service on the Secretary of State as permitted by and in accordance with the provisions of Vehicle and Traffic Law § 253.

**Bound paginated volume.** “Bound paginated volume” means a book or ledger that at the time of purchase contains a specified number of unfolded sheets of paper or other material that are permanently secured to covers by stitching, glue or any other such method that is calculated to make readily discernible the removal or insertion of one or more sheets after the first use of such volume and that that each page in such book or ledger is sequentially numbered starting with the number “1” or contains an indelible label stating the number of pages the volume originally contained.

**Chronological.** “Chronological” with respect to the notation in a process server record or log means that each notation [shall] must be entered sequentially according to the time and date of the activity recorded and without leaving any blank spaces between each entry that would allow for the insertion of any additional notation between any two entries.

**Conspicuous service.** “Conspicuous service” means affixing the process 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; or 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.

**Contemporaneous.** “Contemporaneous” in relation to entries in records means at or near the time of the event as to which an entry is recorded, or within a reasonable time thereafter.

**Corporate service.** “Corporate service” means service of process on a domestic or foreign corporation in accordance with the provisions of CPLR § 311 or RPAPL § 735; or

governmental subdivision (including the City of New York) in accordance with the provisions of CPLR § 311; or a domestic or foreign limited liability in accordance with the provisions of CPLR § 311-a; or the state in accordance with the provisions of CPLR § 307.

**Department.** “Department” means the New York City Department of Consumer and Worker Protection.

**Engaged in the business of serving.** “Engaged in the business of serving” means the following:

(1) Service of five or more processes within the City of New York in any one calendar year;  
or

(2) One who assigns, distributes, or delivers processes to another for actual service.

**Image file.** “Image file” in relation to scans of the records kept by process servers or process serving agencies means a file that contains graphic data such that the file is an exact replica of a specific set of data[,] and is saved as a portable data file (“pdf”).

**Legible.** “Legible” with respect to the handwriting in the record kept by process servers and in the scanned or copied images of such record means easily read and discernible in all of its details, and in no way obscured.

**[Paginated.** “Paginated” means that each page in a volume or log, at the time of purchase, is sequentially numbered starting with the number “1” or contains an indelible label stating the number of pages the volume originally contained.]

**Partnership service.** “Partnership service” means service of process on persons conducting a business as a partnership in accordance with the provisions of CPLR § 310, or on a domestic or foreign limited partnership in accordance with the provisions of CPLR § 310-a.

**Person.** “Person” [shall] means any individual, firm, company, partnership, corporation, association or other organization.

**Personal service.** “Personal service” means delivering process within the state to the individual intended to be served process.

**Portable media device.** “Portable media device” as it pertains to electronic record-keeping means an electronic data storage device used to record and store data, such as a flash memory device, CD-ROM or external hard drive.

**Process.** “Process” [shall mean] means a summons, notice of petition, order to show cause, subpoena, notice, citation or other legal paper issued under the laws of the State of New York directing an appearance or response to a legal action, legal proceeding or administrative proceeding; provided, however, that if under the laws of the State of New York the mailing of such legal paper is sufficient to effect service, such legal paper [shall] will not be process for the purpose of this subchapter.

**Process Server.** “Process Server” [shall mean] means a person engaged in the business of serving process upon any person, corporation, governmental or political subdivision or agency.

**Process Serving Agency.** “Process serving agency” [shall mean] means any person, firm, partnership, association or corporation, other than an attorney or a law firm located in this

state, or city marshal, who maintains an office, bureau or agency, one purpose of which is to assign or distribute process to individual process servers for actual service in the City of New York.

**Scanning.** “Scanning” in relation to electronic record-keeping means the process of translating a document into a digital form that can be recognized by a computer. A “scan” with respect to electronic record-keeping is the image file that is created by scanning.

**Substituted service.** “Substituted service” means delivering process within the state to an individual of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the individual to be served; or, as applicable, on an individual of suitable age and discretion who resides or is employed at the property sought to be recovered.

Section 2. 2-232c of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-232c. Process Server Trust Fund.**

- (a) Establishment. There is hereby established a Process Server Trust Fund (hereinafter, “the Fund”) to provide for the payment of outstanding awards to aggrieved consumers and fines owed to the City. The Fund [shall] will be administered by the Comptroller of the City of New York pursuant to § 93 (h) of the New York City Charter.
- (b) Participation in the Fund.
  - (1) To qualify for participation in the Fund, an applicant for a process server license or renewal thereof [shall] must submit with such server's application a copy of its completed application to two sureties approved by the Commissioner for the bond required by § 20-406.1 of the Administrative Code of the City of New York and the original copies of the rejection or denial of such application by such sureties. Pursuant to such section, process serving agencies [shall] are not [be] eligible to participate in the Fund.
  - (2) Any process server who qualifies for participation in the fund may participate by submitting with the application for a process server license or renewal thereof a certified check or money order in the amount \$1,000, made payable to the New York City [Consumer Affairs Department] Department of Consumer and Worker Protection for depositing the amount in such Fund.
  - (3) A bonded licensee may participate in the Fund in lieu of continued compliance with the bond requirement of §20-406.1\_(a) of such Code by submitting proof that consists of an original copy from the process server's current surety denying renewal and the completed applications and original denials from two additional sureties approved by the Commissioner, and upon submitting to the Department a certified check or money order in the amount of \$1,000 made payable to the New York City Department of Consumer [Affairs] and Worker Protection, prior to the expiration or cancellation of the licensee's bond.
  - (4) The required deposit to be made by applicants to participate in the Fund [shall] may not be refundable upon the issuance of a process server license. If the Department denies issuance of a license or renewal thereof, the deposit made by the applicant [shall] must be refunded within thirty days after the application for a license or renewal thereof is denied.
  - (5) Participation in the Fund does not relieve a licensee of any obligation to pay awards or fines imposed by the Department or judgments or arbitration awards rendered against the licensee by a court of competent jurisdiction. [In the event that] If a

process server's license is revoked, surrendered or the process server fails to renew its license, and the Fund is invaded to pay an award, fine or judgment that was rendered against such process server pursuant to the provisions of the Code or these rules, no license [shall] may be issued or reinstated to such process server unless the amount(s) paid out of the Fund on behalf of such process server is reimbursed by such process server in full.

- (c) Invasion of the Fund.
- (1) If the Department has revoked a process server's license or the licensee has surrendered or failed to renew the license, the Commissioner may require that disbursements be made from the Fund to pay to the City any fine, penalty or other obligation the City imposes relating to the violation of subchapter 23 of Chapter 2, Title 20 of the Administrative Code of the City of New York and any rules promulgated thereunder or to pay a final outstanding judgment recovered in an action arising out of the violation of the provisions of such subchapter.
  - (2) No disbursement [shall] may be made from the Fund to pay an award, fine or judgment that is rendered against a licensee who has furnished a bond pursuant to the requirements of § 20-406.1(a) of the Administrative Code of the City of New York or against a process server who was not licensed by the Department or a participant in the Fund at the time of the violation.
  - (3) Disbursement from the Fund [shall] may be made at the discretion of the Commissioner or his or her designee, provided, however, that invasion of the fund [shall] must be limited to no more than \$10,000 for all awards, fines or judgments arising out of a single service of process.
  - (4) The Commissioner or his or her designee may order that partial payment of awards, fines, or judgments be made from the Fund.
  - (5) Nothing contained herein [shall] may be construed to limit the rights and remedies of any party, including the Department, to pursue a cause of action against a process server who is a participant in the Fund.
  - (6) Nothing contained herein [shall] may be construed to provide for the payment of awards or judgments rendered against Fund participants in personal injury actions.
- (d) Accounting. The Commissioner [shall] must, by January 31 of each year, cause an accounting to be made of all of the Fund's activities during the preceding calendar year.

Section 3. Section 2-233 of Title 6 of the Rules of the City of New York is repealed in its entirety and replaced as follows:

### **§ 2-233 Records**

**(a) Duty of individual process server to keep records.** Each process server must maintain records of all service made by them in compliance with the provisions of section 89-cc of the New York General Business Law and section 20-406.3 of chapter 20 of the Administrative Code of the City of New York, as follows:

**(1) Maintenance of records of service.** Process servers must maintain records of all service and attempted service by keeping bound paginated volumes or by storing electronic records with a third party contractor.

**(i) Bound paginated volumes.** Where a process server maintains records in bound paginated volumes, the process server must record each entry separately in chronological order contemporaneous with service or attempted service. The process server must make entries in only one volume at a time, which must contain every attempted and effected service made by the process server, until all of the available space in the volume is filled. A process server who maintains records in bound paginated volumes must also maintain an electronic copy of such

volumes by scanning records into an image file that legibly reproduces in all details the original record the process server maintains in bound paginated volumes. Such electronic record must be kept as follows:

(A) the image file must be named with the date of the service or attempted service recorded in the bound paginated volume and the process server's license number, and must be date and time stamped with the date and time that the file was created; and

(B) such scanning must be done within three business days from the last event recorded in the records; and

(C) the process server must save the scanned image file in a manner that:

(I) ensures the authenticity, reliability and integrity of the scanned image file;

(II) permits the efficient retrieval of the scanned image file;

(III) contains a backup support system such that the scanned image file must be capable of being reconstructed if an electronic or computer malfunction or unforeseen accident resulting in the destruction of the system or the information contained therein; and

(D) where the process server stores scanned image files on a portable media device, such portable media device must be labeled with the process server's last name, license number, and the date range of the records stored on the device;

(ii) **Electronic records with a third party contractor.** Where a process server maintains electronic records with a third party contractor, the process server must submit recorded entries in chronological order to such contractor within three business days of service or attempted service. The process server must enter a contract with a contractor pursuant to which such contractor must be required to provide services and perform functions consistent with 6 RCNY § 2-233(c), provided, however, the process server may use the services and functions for electronic record storage that a process serving agency has made available to process servers under a contract with a third party contractor.

(2) **Content of records of service.** Each record of service and attempted service must include, at a minimum, the following information:

(i) name of the process server, which will be entered as last name, first name, provided, however, that where a process server keeps records in bound paginated volumes, the name of such process server may be entered on the first page of each bound paginated volume, rather than each record;

(ii) the license number of the process server, which will be specified as a seven-digit number, where the first number must be zero if the process server's license number is less than seven digits, provided, however, that where a process server keeps records in bound paginated volumes, the license number of such process server may be entered on the first page of each bound paginated volume, rather than each record;

- (iii) the name and license number of the process serving agency from whom the process served was received, or, if not received from a process serving agency, of such other person or firm from whom the process served was received;
- (iv) whether service was effected, as indicated by a Y for yes or N for no;
- (v) the title of the action or proceeding or a reasonable abbreviation thereof;
- (vi) the name of the intended recipient of the process, which must be entered in two data fields such that the first data field is the last name of the intended recipient, or, if not a natural person, the name of the entity, and the second data field is the first name of the intended recipient if a natural person;
- (vii) the name of the individual 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 individual, and the second data field is the first name of the individual;
- (viii) the date that service was attempted or effected, which must be entered as MM/DD/YYYY;
- (ix) the time service was attempted or effected, which must be entered as military time;
- (x) the address where service was attempted or effected, which must be entered as three different fields such that one field will be for the street address and any apartment, suite, or room number, the second field will be for the city or borough, and the third field will be for the zip code;
- (xi) the nature of the papers served;
- (xii) the court in which the action has been commenced, which must be entered as either Civil Court NYC, Civil Supreme, Criminal, Housing (L/T), or District Court, followed by the county of the court, the judicial department if appellate, or the federal district;
- (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;
- (xiv) if service was effected pursuant to subdivisions (1) through (3) of CPLR § 308, a description of the person served which must consist of seven fields, including sex, color of skin, hair color, approximate age, height, weight, and any other identifying features provided by the process server;
- (xv) the type of service delivery, which must be entered as a P for personal service, an S for substituted service, a C for conspicuous service, a CO for corporate service, a PA for partnership service, and an A for agency service;
- (xvi) if service was effected pursuant to subdivision (4) of CPLR § 308 or subdivision (1) of RPAPL § 735, a description of the door and the area adjacent including the color and composition of hallway walls, color and composition of hallway floor or doorstep, and location of premises in relation to stairs, elevator or entranceway;
- (xvii) if service is effected pursuant to RPAPL § 735(1) using registered or certified mail, the postal receipt number of registered or certified mail; and



(xviii)if an affidavit of service is filed with the court by the process server, the record shall include the date of such filing.

**(b) Duty of licensed process serving agencies to keep records.** Every process serving agency must keep complete and accurate records for each individual process server to whom it assigns or distributes process to be served. Such records must be kept in a searchable manner that permits ready identification of (i) the daily activity of each such individual process server and (ii) any or all process assigned or distributed for service by the name of the person or entity from whom the process serving agency received such papers for service.

(1) **Maintenance of records.** Process serving agencies must maintain electronic records by copying records to an electronic records management system or by submitting records to a third party contractor.

(i) **Electronic records management system.** If the process serving agency elects to store records itself rather than through a third party contractor, it must save the record to an electronic records management system within three business days from the last event recorded in the record. Such electronic records management system must maintain electronic records, including the required records described in 6 RCNY § 2-233(b)(2), in a manner that:

(A) ensures the authenticity, reliability and integrity of the electronic records;

(B) permits the efficient retrieval of electronic records;

(C) contains a backup support system such that the electronic records must be capable of being reconstructed if an electronic or computer malfunction or unforeseen accident results in the destruction of the system or the information contained therein.

(ii) **Third party contractor.** Where a process serving agency maintains its records with a third party contractor, the process serving agency must submit records to such contractor within three business days from the last event recorded in the record. The process serving agency must enter into a contract with such contractor pursuant to which such contractor must be required to provide services and perform functions consistent with 6 RCNY § 2-233(c).

(2) **Required records.** Process serving agencies must maintain, at a minimum, the following records:

(i) An electronic file that legibly reproduces the original record of service or attempted service containing all of the individual process server's records maintained pursuant to 6 RCNY § 2-233(a) of this rule for each day on which the individual process server attempted or effected service of the process assigned or distributed to the individual process server by the process serving agency;

(ii) A copy of every routing sheet, work order or other written instruction given to the individual process server;

(iii) Copies of any notes, memoranda or other writings submitted by the individual process server containing information related to the attempted or effected service of process assigned by the process serving agency;

(iv) A copy of every affidavit of service signed by the individual process server for service assigned by the process serving agency;

(v) if an affidavit of service is filed with the court by the process serving agency, the record must also include the date of such filing.

**(c) Storage of records with a third party contractor.** Where a process server or process serving agency uses a third party contractor to maintain records consistent with 6 RCNY § 2-233(a)(1)(ii) or 6 RCNY § 2-233(b)(1)(ii), respectively, such process server or process serving agency must enter a contract with such contractor pursuant to which such contractor must be required to provide services and perform functions that include, but are not limited to:

- (1) maintain a daily backup of all submitted data, and ensure all data is available for review upon request of any and all interested parties;
- (2) maintain the original electronic record submitted by the process server unaltered for a period of not less than seven years;
- (3) prohibit the process server, the process serving agency, or any person to alter the original record;
- (4) maintain the records in a manner that will permit retrieval by the DCWP license number of the process server, the DCWP 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;
- (5) 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;
- (6) provide a backup support system such that the electronic records must be capable of being reconstructed if an electronic or computer malfunction or unforeseen accident results in the destruction of the system or the information contained therein;
- (7) produce upon request by the Department, a copy of the electronic records, or any reasonably described part involved, certified to be true and accurate;
- (8) produce to the Department upon request an MS Excel spreadsheet of the electronic records containing the fields and data format set forth in § 2-233(a)(2).

**(d) Integrity of records.** Corrections to bound paginated volumes and electronic records with a third party contractor must be made only as follows:

- (1) **Bound paginated volumes.** A process server may only make corrections in bound paginated volumes by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to erasing, opaquing, obliterating or redacting, are prohibited.
- (2) **Electronic records with a third party contractor.** A process server and process serving agency must ensure that permissions pertaining to electronic records submitted to a third party contractor will be secured so that the data cannot be deleted upon submission to such contractor. No process server or process serving agency may tamper with data or properties of any electronic record kept pursuant to this section after a file is made by modifying, amending, deleting, rearranging or in any other way altering any such data or properties including, but not limited to, using a meta data scrubber or similar device or program. If a typographical error has occurred or if data contained in the process server or process serving agency's record was accidentally omitted from the electronic data entry, the process server or process serving agency must bring the matter to the attention of the third party contractor, who must make an amendment by creating a new entry in which the original record must be identified by reference in italics within the new entry. Only the process server who attempted or effected process may request that a third party contractor make an amendment to a record of service.

(e) **Retention and production of records.**

- (1) Process servers and process serving agencies must retain all records required to be maintained pursuant to this section for a period of seven years from the date of service. Where a process server is employed as a process server by any person, a copy of such records must also be maintained by such person at such person's principal office for the same period:
- (2) Upon request by the Department, process servers and process serving agencies must produce a copy of any record they are required to maintain pursuant to this section, or any reasonably described part involved, certified to be true and accurate:
- (3) Except where a process server maintains records in bound paginated volumes, process servers must produce, upon request by the Department, the information required to be maintained pursuant to 6 RCNY § 2-233(a)(2) as an MS Excel spreadsheet in a format provided by the Department on its website;
- (4) Upon request by the Department, process serving agencies must produce the information required to be maintained pursuant to 6 RCNY § 2-233(a)(2) as an MS Excel spreadsheet in a format provided by the Department on its website.

Section 4. Section 2-233a of Title 6 of the Rules of the City of New York is repealed in its entirety.

Section 5. Section 2-233b of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-233b. Electronic Record of Service/GPS Requirements.**

- (a) General Requirements for GPS. 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 or Assisted-Global Positioning System ("A-GPS") technology, and labels the record with the network date and time maintained by the mobile device, the [DCA] DCWP license number of the process server, the [DCA] DCWP 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] if 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] if 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 the following:
  - a) the GPS or cellular network date and military time maintained by the mobile device;
  - b) the [DCA] DCWP license number of the process server;
  - c) the [DCA] DCWP 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 enter into a contract with an independent third party [(“the Contractor”) pursuant to which the Contractor] who will provide services and perform functions described in paragraph (4) of this subdivision that enable the process server to meet the data storage and retrieval requirements set forth in such paragraph (“the GPS Contractor”). 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 GPS Contractor.

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

- (i) the original digital file must be maintained by the GPS 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 GPS Contractor must maintain the records in a manner that will permit retrieval by the [DCA] DCWP license number of the process server, which will be specified as a seven-digit number, where the first number must be zero if the process server's license number is less than seven digits, the [DCA] DCWP license number of the process serving agency [that has distributed the process for service,] from whom the process served was received, or, if not received from a process serving agency, the name of such other person or firm from whom the process served was received, 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 GPS 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 GPS 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 GPS 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 GPS 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, except that the field may contain the name of every plaintiff or petitioner in the case, provided that the entire record is searchable by a wildcard search of the name of any plaintiff or petitioner;
    - 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, except that the field may contain the name of every defendant or respondent in the case, provided that the entire record is searchable by a wildcard search of the name of any defendant or respondent;
    - c) the full [docket] index 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] entered as [consist of four] three different fields [in the following order:] such that one field will be for the street address and any apartment, room, or suite number, the second field will be for the city or borough, and the third field will be for the zip code. [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 with software graded to be CASS Certified by the National Customer Support Center of the United States Postal Service;

- i) the name of the intended recipient of the process, which must be entered in two data fields such that the first data field is the last name of the intended recipient, or, if not a natural person, the name of the entity, and the second data field is the first name of the intended recipient if a natural person;
  - j) 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[.]; and
  - k) the DCWP license number of the process server, which will be specified as a seven-digit number, where the first number must be zero if the process server's license number is less than seven digits, the DCWP license number of the process serving agency from whom the process was received or, if not received from a process serving agency, the name of such other person or firm from whom the process served was received.
- (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 by 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 GPS 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 GPS 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.

Section 6. Section 2-234a of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-234a. Duties of Process Serving Agencies.**

- (a) Assignment of Process to Individual Process Servers. A process serving agency [shall] must not assign or distribute process for service to an individual process server who:
  - (1) is not licensed to serve process;

- (2) has not complied with the requirements of Section 20-406.1 of the Administrative Code;
  - (3) does not display integrity and honesty in his or her process serving activities; and
  - (4) does not comply with the recordkeeping requirements applicable to the service of process in the City of New York, including maintaining an electronic record of service.
- (b) Compliance Plan. A process serving agency [shall] must develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers. Such Compliance Plan, must include, but not be limited to, the following requirements for process serving agencies:
- (1) The process serving agency [shall] must take appropriate disciplinary action against an individual process server who fails to comply with the law, including, but not limited to, suspending or terminating its employment, agency or other relationship with the individual process server;
  - (2) [The policies and procedures to review the individual] To ensure each process server's compliance with recordkeeping requirements, [shall require] the process serving agency [to] must:
    - (i) at least once each month, review for completeness and accuracy the records of each individual process server to whom it assigns or distributes process;
    - (ii) prepare a monthly written report of its review of the records maintained pursuant to section 2-233 of these Rules of each individual process server to whom it assigns or distributes process during that month;
    - (iii) maintain each monthly report for at least seven years;
    - (iv) maintain records of any disciplinary actions taken against the individual licensed process server;
    - (v) report to the Department in writing the name and license number of each individual licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance;
    - (vi) make available, upon request, to the Department a copy of its record review procedures, any written reports of the reviews it maintains, and copies of any referrals of individual process servers to the Department.
- (c) Implementation Affirmation. A process serving agency in possession of a license issued by the Department on the effective date of this Rule [shall] must submit an affirmation to the Department that it has adopted a written Compliance Plan within sixty (60) days of such effective date. After the effective day of this Rule, no license [shall] will be issued or renewed until the process serving agency files with the Department an affirmation that it has adopted a Compliance Plan.
- (d) Persons to Whom the Agency Assigns Service.
- (1) A process serving agency must notify the Department in [writing] a manner designated on its website at the time of the process serving agency's application or renewal, or at such times as requested by the Department of:
    - (i) the names, addresses, and Department license numbers of each process server who serves process exclusively as an employee of the process serving agency; and
    - (ii) the names, addresses, and Department license numbers of each process server who serves process on behalf of the process serving agency.
  - (2) If additional process servers are assigned process by the process serving agency or a new process server is hired to serve process exclusively as an employee of the process serving agency after the date of such application or renewal, the licensee must notify the Department in [writing] a manner

designated on its website within five (5) days of the new assignment or employee with the names, addresses and Department license numbers of such additional process servers.

- (3) If a process server ceases to serve process exclusively as an employee of a process serving agency after the date of such application or renewal, the process serving agency must notify the Department in [writing] a manner designated on its website within five (5) days that the process server ceases to serve process exclusively as an employee with the name, address and Department license number of such process server.
- (4) The process serving agency must advise the Department of any process server who is misrepresenting his or her license status or his or her compliance with the requirements of Section 20-406.1 of the Administrative Code.

Section 7. Section 2-234b of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-234b. Duty of Process Servers to Report Agencies That Assign Service.**

- (a) A process server must [report] notify the Department in a manner designated on its website of the name and license number of the process serving agency for whom he or she serves process exclusively as an employee when applying for a license or renewal thereof.
- (b) A process server must [report] notify the Department in a manner designated on its website of [to the Department in writing] when he or she ceases to exclusively serve process as an employee of a process serving agency within five (5) days that he or she ceases such employment. The process server must include the name and license number of any other process serving agency that he serves process exclusively as an employee.
- (c) When applying for a license or renewal thereof, a process server [shall report] must notify the Department in a manner designated on its website of the name and license number of every process serving agency which he or she has reason to believe assigns process for service to the applicant.
- (d) A process server applying for a renewal of a licensee [shall report] must notify the Department in a manner designated on its website of the name and license number of every process serving agency from which it has accepted assignment of service of process within the previous two years.
- (e) A process server [shall] must keep a list of the name and address of each process serving agency that assigns service to the process server. The process server [shall] must maintain the list for seven years and produce it upon request by the Department.

Section 8. Section 2-235 of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-235. Preparation of Affidavits of Service.**

No licensee [shall] may sign or notarize or cause to be signed or notarized an affidavit of service until all factual averments have been set forth. The licensee must not make a false statement in an affidavit of service. The licensee [shall] must include his/her license number on all affidavits of service signed by him/her. The licensee [shall] must maintain a copy of every affidavit of service for at least seven years in electronic form or as a paper copy.

Section 9. Section 2-236 of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-236. Duty to Report Hearings Contesting Service.**



- (a) Whenever a process server or process serving agency receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process made or assigned by such licensee was effective, the licensee [shall] must submit a report to the Department [(attention of Counsel's Office), in writing, by certified mail, or by email to an address] in the manner designated by the Department on its website within ten days of receiving such notice. Such written report [shall] must include:
- (1) the title and index number of the action;
  - (2) the court and the judge before whom the hearing is scheduled;
  - (3) the date(s) of the hearing; and
  - (4) the name and license number of every licensee who effected service or assigned or distributed the process for service.
- (b) On request, such licensee must provide copies of all records, including but not limited to, routing sheets, the pages of the licensee's logbook for each day on which service of the process in issue was attempted or effected, and all affidavits of service, pertaining to the contested service.
- (c) (1) The licensee [shall] must attempt to learn the result of such hearing, including any judicial order or voluntary settlement resolving the challenge to service of process, by making a written or email request to the party on whose behalf the challenged service of process was made or the party's attorney for a written report of the result of the hearing. Sixty days after the date of the scheduled hearing, if the party or its attorney has not provided to the licensee a written report of the result of such hearing, the licensee [shall] must search for the result in the file in the office of the clerk of the court where such hearing was scheduled to occur. If the clerk's file does not contain a result sixty days after the hearing, the licensee [shall] must search for the result in the clerk's file ninety days after the scheduled date of such hearing.
- (2) The licensee [shall] must report to the Department [by certified mail or email] in the manner designated by the Department on its website (i) within ten days of learning the result, or (ii) that it made attempts to learn the result and was unable to do so not later than one-hundred days after the scheduled date of such hearing.

Section 10. Section 2-238 of Title 6 of the Rules of the City of New York is amended as follows:

**§ 2-238. Use of Zip Codes.**

All additional copies of process mailed pursuant to the requirements of CPLR § 308(4) or RPAPL § 735(1) [shall] must include on the envelope as part of the address the proper zip code of the person served.

Section 11. Section 2-240 of Title 6 of the Rules of the City of New York is amended as follows:

**§ 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] the 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] 2-233(a);
  - (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. Records described in paragraph two of subdivision a of this section must be produced in chronological order.
  - (c) A process server must comply with a subpoena from the Department within twenty 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] will 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 1st certification [shall] must cover the six-month period from July through December of the previous year; the August 1st certification [shall] must 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.
  - (f) A process server or process serving agency must produce all subpoenaed or requested documents and records they are required to maintain pursuant to law or rule, even where they maintain their records with a third party.

Section 12. Section 6-30 of Title 6 of the Rules of the City of New York is amended as follows:

### **§ 6-30 Process Servers Penalty Schedule**

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule [shall] also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation [shall constitute] constitutes a separate violation of the law or rule.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods [shall] run concurrently.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

<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>
Admin. Code § 20-403	Operated as an unlicensed process server or process serving agency.	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day
Admin. Code § 20-406.2	Failure to comply with the responsibilities of process serving agencies	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin. Code § 20-406.3	Failure to maintain proper records	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin. Code § 20-410	Failure to maintain electronic record of service	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-233	Failure to comply with recordkeeping requirements	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
[6 RCNY § 2-233a]	[Failure to comply with electronic recordkeeping requirements]	[\$750]	[\$1,000]	[\$900]	[\$1,000]	[\$1,000]	[\$1,000]

6 RCNY § 2-23 3b	Failure to comply with global positioning system recordkeeping requirements	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 4	Failure to comply with all federal, state and municipal laws, rules, regulations and requirements	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 4a	Failure to comply with the duties of process serving agencies	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 4b	Failure to comply with the duty of process servers to report agencies that assign service	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 5	Improper preparation or maintenance of affidavit of service	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 6	Failure to comply with the duty to report hearings contesting service	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 7	Improper wearing of insignia	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-23 8	Improper use of zip codes	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000

6 RCNY § 2-23 9	Failure to comply with email requirements	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
6 RCNY § 2-24 0	Failure to comply with audit requirements	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

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

**RULE TITLE:** Amendment of Rules Relating to Process Servers

**REFERENCE NUMBER:** 2022 RG 048

**RULEMAKING AGENCY:** Department of Consumer and Worker Protection

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

Date: June 28, 2022

Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Amendment of Rules Relating to Process Servers**

**REFERENCE NUMBER: DCWP-19**

**RULEMAKING AGENCY: Department of Consumer and Worker Protection**

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/ Francisco X. Navarro

Mayor's Office of Operations

June 28, 2022

Date