

# LEOPOLD & ASSOCIATES, PLLC

August 20, 2024

**Via email: [Rulecomments@dcwp.nyc.gov](mailto:Rulecomments@dcwp.nyc.gov)**

New York City Department of Consumer and Worker Protection  
42 Broadway #5  
NY, NY 10004

Re: Commentary on Proposed Rules for Process Serving

Dear Sir or Madam:

I am an attorney duly licensed in New York and I am the principal of a large multi-state law firm. I have a great deal of litigation experience and work with process servers and agencies for my legal proceedings. Acquiring jurisdiction through service of process is essential in our cases. One of the easiest forms of challenge to make from a defendant/respondent standpoint is to allege that service was defective or never accomplished. At a certain point, a traverse hearing then will be held to determine if the defendant/respondent was served in accordance with the relevant laws.

One of the main challenges currently in the traverse hearing realm is the argument that defendant/respondent attorneys are using the fact that a process server signed a consent order with the DCWP as a way of attacking the server's integrity. While an attorney is present to represent the litigant's rights during the traverse hearing, the process server acts solely as a witness to testify as to their role in acquiring jurisdiction. The process server's records are used as evidence at the hearing and, even when a judge finds that a process server has been credible, may still find in favor of a defendant/respondent for various reasons.

A server may serve hundreds or thousands of papers a year. It is reasonable to believe that a certain number of those papers may be challenged for service, as process service is one of the building blocks of a successful case for a plaintiff/petitioner. In addition, at times a defendant/respondent is aware that they are about to be served with legal documents and attempt to evade service or deceive the process server.

As an attorney whose cases rely on service of process that can withstand the strictest of scrutiny, I am appreciative of the GPS requirements and rules that are put in place to help ensure service of process however I know over the last decade since many of these rules have come into effect, that it has had a dramatic impact on the number of process servers available to serve papers in the city of New York. Many servers chose to leave the profession, not because they were "sewer servers" but because the fines were so astronomical and the alleged administrative infractions so onerous, that the profession

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was no longer desirable to people who sought to earn an honest living. The fact that a process server can be penalized and fined for minor errors on an affidavit of service or be deemed a "sewer server" or have their integrity called into question for signing a consent order with the DCWP or because they have a traverse hearing is truly burdensome, not just for the servers themselves but also for the attorneys and clients who rely on the service for their actions.

Furthermore, many process servers have encountered increasingly hostile and aggressive defendants while serving papers. The new proposed rule of having a server take a GPS image AFTER service (and no more than five minutes after service) does not take into account the dangerous nature of the work of a process server or the situations a process server may find themselves in after serving a litigant. Further, in large buildings, often times elevators may not be working and a process server may have to use the stairs in order to leave a premise (many buildings could have 30 or more flights of stairs – something which could take far longer than five minutes to record a successful service after leaving a potentially dangerous or threatening area).

I respectfully request that these rules, as proposed, be amended further in order to help make service of process less burdensome. As part of the legal community, we all want process service to be done correctly and our service to withstand scrutiny, but we must also be realistic and not put unreasonable limitations in place that further serve to disrupt our legal work and cause problems in our actions. Thank you for your consideration.

Sincerely,



Saul O. Leopold