

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 and add rules relating to process servers.

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 August 21, 2024. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial +1 646-893-7101.
 - Phone conference ID: 675 557 464#
- To participate in the public hearing via videoconference, please follow the online link: <https://tinyurl.com/2wza4u38>
 - Meeting ID: 245 361 440 139
 - Passcode: qT6gLP

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.
- **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 email at Rulecomments@dcwp.nyc.gov. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on August 21, 2024. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before August 21, 2024.

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 email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by August 14, 2024.

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 and 2203(f) of the New York City Charter and Section 20-406.3 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year.

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 Rules

DCWP is proposing to amend and add rules relating to process servers to clarify requirements and ensure consistency with recent changes to state law.

DCWP is proposing to amend sections 2-233, 2-234, 2-235, 2-236, and 2-240 of chapter 2 of title 6 of the Rules of the City of New York (“RCNY”) to allow process servers to submit affirmations in place of notarized affidavits, in accordance with Rule 2106 of the New York Civil Practice Laws and Rules (“CPLR”).

DCWP is also proposing to amend section 2-233(a) of chapter 2 of title 6 of the RCNY so the required fields of information for records of service are consistent with the Department’s website template.

DCWP is also proposing to amend section 2-233(c) and (e) of chapter 2 of title 6 of the RCNY to clarify that the records stored with the third-party contractor must contain required information in the format provided on the Department’s website and that process servers are required to produce such records in this format.

DCWP is also proposing to amend section 2-333b of chapter 2 of title 6 of the RCNY to detail the records that process servers must retain in electronic format and clarify the format in which these records must be produced to the process servers and DCWP by third party contractors and the timing of the creation of these records.

DCWP is also further clarifying the requirements of section 2-235 of chapter 2 of title 6 of the RCNY, and adding a new section 2-235a, to set forth already applicable legal requirements for affidavits and affirmations submitted to court, and for sworn-to or affirmed testimony. See CPLR 306 and Article 210 of the New York Penal Law. Specifically, DCWP adds language to section 2-235 to clarify that when serving a business, process servers must include certain information in affidavits and affirmations of service to ensure the individual served is authorized to receive service.

DCWP is also proposing to amend section 2-240 of chapter 2 of title 6 of the RCNY so that each failure to comply with a document production demand constitutes a separate violation.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-406.3 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make this proposed rule.

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 233 of chapter 2 of Title 6 of the Rules of the City of New York is amended to read 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 § 20-406.3 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 incident 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] in three five 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] the first field will be for the building number; the second field will be for the street name; the third field will be for address details, e.g., apartment, suite, floor or room number; the fourth field will be for the city or borough; and the fifth 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 delivery service, an S for substituted service, a C for conspicuous service delivery, a CO for corporate service, a PA for partnership service, and a V for VTL 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 or affirmation 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 incident 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 and affirmation of service signed by the individual process server for service assigned by the process serving agency;

(v) If an affidavit or affirmation 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 incident 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] required information set forth in 6 RCNY § 2-233(a)(2) in the format provided by the Department on its website.

(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 make corrections in bound paginated volumes only 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 promptly make an amendment to their records of service with the third party contractor. A process server who attempted or effected process may make other corrective amendment, or supplement (such as concerning filing or additional mailing), to the record of service with the third party contractor. Any amendment must be made by creating a new entry in which the original record must be identified by reference in italics within the new entry.

(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] the 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] the format provided by the Department on its website.

Section 2. Section 233b of chapter 2 of Title 6 of the Rules of the City of New York is amended to read 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 § 20-410 of the Administrative Code to carry at all times during the commission of [his or her] their 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 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.

(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, 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. 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. The process server is not in compliance with this provision if its electronic record was made before the time of attempted or effected service. There shall be a rebuttable presumption that the process server was not in compliance with this provision if its electronic record is made more than five minutes after the time of attempted or effected service.

(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 DCWP license number of the process server;
- (c) the 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.

(iii) Each electronic record must include, at a minimum, the following information:

- (a) a unique file identifier of the process being served;
- (b) 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;
- (c) 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;
- (d) the full index number, 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;
- (e) the date that service was effected or attempted according to the device, entered as MM/DD/YYYY;
- (f) the time that service was effected or attempted according to the device, entered in military time;
- (g) the date that service was effected or attempted according to GPS or cellular signals, entered as MM/DD/YYYY;

- (h) the time that service was effected or attempted according to GPS or cellular signals, entered as military time;
- (i) the location where service was effected or attempted, which must include building number, street name, address details, e.g., apartment, suite, floor or room number, city or borough, ZIP code, which must be five digits, and latitudinal and longitudinal coordinates returned by the GPS device in decimal degree format. All address information must be CASS (Coding Accuracy Support System) processed to ensure its accuracy with software graded to be CASS Certified by the National Customer Support Center of the United States Postal Service;
- (j) 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;
- (k) 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
- (l) the DCWP license number of the process server, 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 the person or firm from whom the process was received.

(3) *Contract for Services.* The process server must enter into a contract with an independent third party 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] them 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 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 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 process server or 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 by the GPS Contractor to be true and accurate;

(vi) the GPS Contractor must provide to the process server or 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 process server or the Department upon request, and to any other party according to an appropriate order or subpoena, the process server's electronic record [following information as an MS Excel spreadsheet] in [a] the format provided by the Department on its website.[:

(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 index number, 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, entered as MM/DD/YYYY

(e) the time that service was effected or attempted according to the device, entered in military time;

(f) the date that service was effected or attempted according to GPS or cellular signals, entered as MM/DD/YYYY;

(g)the time that service was effected or attempted according to GPS or cellular signals, entered as military time;

(h) the location where service was effected or attempted, which must include building number, street name, city, ZIP code, which must be five digits, and latitudinal and longitudinal coordinates returned by the GPS device. 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, 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 3. Section 2-234 of chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-234 Duty to Comply with Law.

The licensee shall at all times strictly and promptly conform to all laws, rules, regulations and requirements of the federal, state and municipal authorities relating to the conduct of licensees and the service of process in the State of New York and the preparation, notarization and filing of affidavits of service; and the preparation and filing of affirmations of service and other documents, now in force or hereafter adopted during any license period.

Section 4. Section 2-235 of chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-235 Preparation of Affidavits of Service or Affirmations of Service

(a) [No] A licensee may not sign [or] an affirmation of service 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 must include [his/her] their license number on all affidavits of service and affirmations of service signed by [him/her] them. On [all] each affidavit[s] of service and affirmation of service, the licensee must: (1) specify the papers served; the person who was served; the individual who was delivered service; the date, time and address or place of service; and the manner of service; and (2) set forth facts showing that service was made in an authorized manner. A process server purporting to serve a business entity by delivery of papers to an individual that the process server, upon personal knowledge, avers in the affidavit of service or affirmation of service to be the "agent," "managing agent" or "general agent," or other individual authorized to accept service, also must state in the affidavit of service or affirmation of service, at a minimum: (1) that the process server inquired if that individual was authorized to accept service and received an affirmative response; (2) that the process server inquired of the individual their name and job or responsibilities and the individual's responses; and (3) facts confirming or explaining the statement that the process server knew the individual served was the type of agent specified in the affidavit of service or affirmation of service. The licensee must maintain a copy of [every] each affidavit of service and affirmation of service for at least seven years in electronic form or as a paper copy.

- (b) A licensee must not make any false statement in an affidavit of service or affirmation of service.
- (c) The commissioner may deny any license application or refuse to renew any license, and, after due notice and opportunity to be heard, may suspend or revoke such license, if the applicant or person holding such license, or where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owing ten percent or more of the outstanding stock of the corporation, has been found, in connection with the applicant's or licensee's business, to have made a false statement in an affirmation of service or affidavit of service.

Section 5: Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new section 2-235a, to read as follows:

§ 2-235a Duty To Testify Truthfully

- (a) A licensee may not make any other false statement orally or in writing under oath or affirmation before any court, body, agency, public servant, or other person authorized by law to administer an oath, where the false statement is material to the action, proceeding or matter in which it is made.
- (b) The commissioner may deny any license application or refuse to renew any license, and, after due notice and opportunity to be heard, may suspend or revoke such license, if the applicant or person holding such license, or where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owing ten percent or more of the outstanding stock of the corporation, has been found, in connection with the applicant's or licensee's business, to have made such a false statement.

Section 6: Section 2-236 of chapter 2 of Title 6 of the Rules of the City of New York is amended to read 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 must submit a report to the Department in the manner designated by the Department on its website within ten days of receiving such notice. Such written report 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 log book for each day on which service of the process in issue was attempted or effected, and all affidavits of service and affirmations of service, pertaining to the contested service.

(c) (1) The licensee 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 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 must search for the result in the clerk's file ninety days after the scheduled date of such hearing.

(2) The licensee must report to the Department 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 7: Section 2-240 of chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-240 Audits.

(a) Pursuant to subdivision c of § 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 the period identified by the Department in such subpoena for the following records no longer than two months:

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

(2) Affidavits of service and affirmations 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 each document production demand in 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 will not apply while such subpoena is the subject of a pending judicial proceeding. Each failure to comply with a document production demand in a subpoena is a separate violation.

(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 must cover the six-month period from July through December of the previous year; the August 1st certification 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 § 20-406.3 of the Administrative Code.

(f) A process server or process serving agency must produce [all] each subpoenaed or requested document[s] and record[s] they are required to maintain pursuant to law or rule, even where they maintain their records with a third party. Each failure to comply is a separate violation.

**NEW YORK CITY LAW DEPARTMENT
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**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Process Servers

REFERENCE NUMBER: 2024 RG030

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
Senior Counsel

Date: July 12, 2024

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th 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-47

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

July 12, 2024
Date