

Good Morning

MY name is Gail Kagan and I am The Legislative chair for the NY State Professional Process servers association

Thank you for giving me the opportunity to speak today on the proposed rule changes by the Department of Consumer and Worker Protection (DCWP),

I stand before you to express my strong opposition to these new provisions, as they raise several concerns that I believe are both unfair and detrimental, not only to small businesses but also to the individuals who serve as process servers, who are essential to our legal system.

The rules—requiring electronic records of service to be made and uploaded within five minutes—are not just impractical. They are, frankly, dangerous.

First, let's talk about safety.

Process servers are no strangers to danger. When we knock on someone's door, we never know what to expect. We've seen horrifying incidents like the one in Missouri, where young Ralph Yarl was shot for simply knocking on the wrong door. This underscores the risks process servers face every single day. We've had process servers attacked by dogs or, as in New York's Diamond District, physically assaulted by security personnel who didn't believe a server had the legal right to take a photograph during service.

It's not a matter of if a confrontation will happen—it's a matter of when.

Forcing servers to stand outside the door of an angry recipient, struggling to upload information on a phone within five minutes, is a recipe for disaster. This unrealistic time frame exposes servers to heightened risks of violent encounters, and frankly, it puts lives in danger.

This is how people get hurt.

In cities like New York, the logistical challenges are even greater. Servers have to navigate stairwells, elevators, and crowded environments. Racing against the clock, they can't always make it out of a building and to safety in five minutes.

It's not just unsafe—it's unworkable.

But aside from the safety concerns, the DCWP is also overstepping its bounds.

Let's be clear: Nowhere in state law does it say that failing to upload service details within a certain time frame invalidates the entire service. Yet, the DCWP is attempting to impose this extra burden, suggesting that if information isn't uploaded fast enough, the entire service is null and void.

This is a significant overreach of DCWP's authority. The rules they're trying to enforce are not grounded in state law.

In essence, the DCWP is creating barriers to the service of legal documents that do not exist under state law. This creates confusion, undermines the role of process servers, and, frankly, harms the very due process they claim to protect.

What we need is a sensible balance—a system that ensures legal accountability without endangering process servers or overstepping the bounds of the law.

Additionally, I'd like to address the new provisions concerning affidavits and affirmations of service.

At first glance, these additions seem straightforward—they emphasize the importance of honesty and accuracy in the documents submitted by licensees. But when we look a little closer, it becomes apparent that this rule is, in fact, redundant.

Let me explain why.

By their very nature, affidavits and affirmations are sworn statements of truth. When a process server signs an affidavit or affirmation, they are legally affirming, under penalty of perjury, that the information contained within is accurate and truthful. This is already a binding legal obligation. So, when the DCWP proposes a rule stating that licensees must not make false statements in these documents, what exactly is being added here?

The truthfulness of an affidavit or affirmation is not optional—it's already a requirement by law. Therefore, the proposed rule doesn't introduce anything new or novel. It simply reiterates what is already fundamental to the purpose of these legal instruments.

But there's another issue that concerns me.

The proposed rule gives the DCWP the authority to deny or revoke licenses based on a "false statement." Now, while I support any effort to weed out intentional dishonesty, we have to ask: *What exactly is meant by a "false statement"?*

Is it only a deliberate attempt to deceive? Or are we including innocent errors—like a typographical mistake? Because we all know that mistakes happen. And courts, quite sensibly, have long recognized that minor errors in affidavits—things like typos or clerical oversights—are not enough to invalidate service or cast doubt on the credibility of the process server. The courts understand that these are ministerial errors, not acts of deception.

So, when we talk about "false statements" under this new rule, are we referring only to intentional misrepresentations? Or is there a risk that any mistake, no matter how trivial, could be labeled a falsehood? This lack of clarity is concerning.

The rule, as it stands, risks over-reaching. It risks punishing process servers for honest mistakes while adding no meaningful deterrent to those who are intentionally dishonest. The result? AGAIN, More confusion, more paperwork, and potentially more unintended consequences for people trying to do their jobs diligently.

Add to this the lack of a cure period in this proposal is alarming.

This is not just a matter of compliance—this is a matter of fairness. A cure period is necessary for businesses to understand and correct potential missteps. It ensures that penalties are reserved for those who intentionally or repeatedly violate the law, rather than punishing every minor or unintentional oversight. Without it, we risk creating a punitive environment where small businesses, who often lack the resources for constant legal oversight, are disproportionately burdened by fines and sanctions.

Secondly, the new addition to treat each failure to comply as a separate violation opens the door to excessive penalties.

This one-size-fits-all approach to enforcement doesn't account for the context or severity of the infractions. Is it really fair to penalize a server multiple times for a minor error, or to treat each small mistake as a standalone violation? The consequences of this could be devastating, particularly for small businesses and Process servers that are already facing tight margins in a challenging economic environment. We need a system that allows for the proportionality of penalties—one that distinguishes between honest mistakes and willful neglect.

I also am concerned about the proposed rules regarding corporate service.

While anything that helps make service less contestable would likely be welcomed by most process servers—since we are impartial third parties whose sole goal is to deliver the papers to the right person—the specifics of the new rules raise several red flags. If the answers provided by the person accepting service don't precisely match the criteria, does that mean the entire service could be subject to additional challenges? And if so, wouldn't this increase the likelihood of more disputes over the validity of the service? That, in turn, could further complicate matters, especially in cases with time-sensitive constraints like statutes of limitations.

Moreover, what happens if a server decides not to serve the papers at all out of fear of receiving penalties for some technical misstep during the service? Could that lead to a situation where the case is compromised, perhaps even fatally, because the server was hesitant due to the possibility of fines or sanctions?

This seems like a real risk, particularly when it comes to the following provisions under 2-235(a), which applies to businesses. According to this section, the affidavit of service must now contain three very specific pieces of information:

1. The person must explicitly state that they are authorized to accept service, and the server must receive a clear “yes” answer.
2. The person’s job title or their responsibilities must be included.
3. The server must have known the person was the correct type of “agent,” presumably based on the answers to questions 1 and 2.

Doesn’t this degree of specificity require an act of the state legislature? After all, these requirements are not part of the CPLR (Civil Practice Law and Rules) as it applies to the state courts. How can this new rule, which seems to impose far more stringent demands than the CPLR, be enforced without legislative approval? Wouldn’t this constitute a regulatory overreach, where an administrative body is essentially creating new obligations that have never been mandated by the legislature?

Finally, I can’t help but wonder if all this confusion could backfire in terms of both compliance and enforcement. What happens if servers, facing this new labyrinth of requirements, unintentionally miss one small step, resulting in penalties? Could that lead to more cases of servers simply walking away from difficult serves for fear of being fined, ultimately harming litigants?

These points suggest that the proposed rules, while potentially well-intentioned, could do more harm than good—leading to unintended consequences like more contested services and delays that could jeopardize the cases themselves.

Now, let’s turn to the issue of process servers, who play an integral role in the legal system.

This proposed rule with the consequence of increase of fines could be particularly harmful to process servers during traverse hearings. It is not uncommon for opposing counsel to use the fact that a process server has signed a consent order with the DCWP to discredit them in court. Without a cure period, process servers are more vulnerable than ever. Their credibility, their professional reputation, and their ability to perform their duties effectively are all at risk.

Even worse, process servers have no legal representation during these hearings. Per diem attorneys, who are frequently unfamiliar with the specifics of the case or the rules of service, are often hired to represent the plaintiff. This leaves process servers defenseless. They get no voice in court other than the questions put to them, with no meaningful opportunity to be heard, and potentially facing undue prejudice in the courtroom.

Let me be clear: this is not just about regulatory oversight; it’s about fairness and due process.

The DCWP's fining practices are doing more harm than good. Not only are process servers being unfairly targeted and fined for minor clerical errors, but the very balance of our judicial system is at risk." and these new rules seem to add more opportunity for these excessive fines,

It's as if process servers are being treated like cash machines for the city, with minor errors blown out of proportion in order to justify a fine. This isn't just about accountability; it's about making money."

Settlement Agreements and Their Impact

"Now, you might ask, 'Why don't process servers simply fight these fines if they're unjust?' The answer is simple: many can't afford to.

The time, effort, and cost of contesting a fine often outweigh the fine itself, so process servers are pushed into settlement agreements. These settlements aren't admissions of guilt—they're a practical decision made to avoid the drawn-out legal battle. But here's where it gets worse: these settlement agreements are then used against process servers in courtrooms to question their credibility.

Judges and attorneys see that a server has settled a fine, and suddenly their reliability is in question. This practice, using minor clerical errors to discredit process servers, undermines their professional reputation. It damages their standing in the courtroom, where their impartiality and integrity should be respected, not doubted."

Erosion of Judicial System Integrity

"And this brings us to the heart of the matter: the integrity of our judicial system.

Process servers are not just administrative workers—they are a critical part of ensuring that legal proceedings move forward fairly. They deliver documents that are crucial for due process. When the credibility of process servers is unfairly attacked, it doesn't just hurt them—it weakens the entire system.

When process servers are fined and discredited for small mistakes, the fairness of the judicial process itself is undermined. Courts and judges begin to doubt the reliability of service, introducing a bias that can affect the outcome of cases. This isn't just an administrative issue—it's a fundamental threat to the checks and balances that our justice system depends on."

Case Law Supporting Process Servers

"But it's important to remember that the law has been clear on this point: minor flaws in an affidavit do not invalidate the service.

Let me give you a few examples from case law. In

Simonds v. Grohman, In

Beneficial Homeowner Service Corp. v. Girault

Chemical Bank v. Darnley AND MANY OTHERS

Time and again, the courts have ruled that minor discrepancies should not result in the invalidation of service. Yet here we are, with the DCWP levying fines as if these minor mistakes are evidence of dishonesty."

Injustice to Process Servers

"The result? Injustice to process servers.

Imagine doing your job correctly, only to have a typo or a minor discrepancy in paperwork result in a fine that not only costs you money but also calls your professionalism into question. This is the reality for many process servers today."

Erosion of Professional Integrity and Judicial Balance

"And the broader consequence of this? We see an erosion of the professional standards of process servers, who are essential to the functioning of the legal system.

When process servers are unfairly penalized, it discourages professionalism, and it disrupts the delicate balance within the judicial system. The courts rely on process servers to do their job impartially, and if their credibility is compromised, the entire system suffers."

In conclusion

The DCWP is an agency designed to protect and enhance the daily economic lives of New Yorkers, ensuring our communities thrive. They license over 45,000 businesses across more than 40 industries, and their mission is to enforce key consumer protections and workplace laws, aiming to balance the scales in favor of fairness and equity. It's a responsibility they should take seriously.

However, in recent years, we have seen an alarming trend where this department, instead of promoting equity, has been overreaching with increasingly stricter rules and aggressive fining – specifically targeting process servers.

New York City, like many places, once faced a surge of consumer debt collection filings in the early 2000s, and with it came bad actors. Unscrupulous practices such as "sewer service"—where important legal documents were discarded instead of being properly delivered—once plagued our industry. But those days are behind us. There are fewer bad actors, and the industry has worked hard to regulate itself.

Despite this progress, the DCWP continues to push stricter rules. The outcome? The number of licensed process servers in the city has plummeted. What once was a profession of over 2,500 individuals has now dwindled to less than 500. This aggressive enforcement isn't just choking an industry – it's strangling the very core of due process.

Process servers are not average vendors or businesses. They play a critical role in the legal system. Without us, people would not receive the necessary notices about legal actions being taken against them. Without us, the right to defend oneself in court becomes meaningless. We are integral to ensuring justice is done fairly and transparently.

Yet, the DCWP's procedures for revoking a license are unjust. For a process server, losing a license means losing their livelihood. Many of these individuals, when faced with the potential loss of their business, find that legal assistance is too costly. While criminal defendants receive legal aid, where is the equivalent for those whose ability to provide for their families is at risk?

This year, we saw the mayor sign the **Small Business Forward Executive Order**. Its purpose? To encourage small businesses, reduce fines, and offer warnings or cure periods for first-time violations. Yet, in stark contrast, the DCWP has continued entrapping process servers. Labeling someone a "sewer server" because they lost a traverse hearing, despite completing their duties, is unjust.

We need to remind the DCWP that the process serving industry is not just another small business sector – we are the custodians of due process. Our work ensures that individuals have their day in court and that the legal system functions fairly for all. The department's current trajectory is destroying an industry essential to justice in New York City.

It's time for fairness. It's time for protection. It's time for the DCWP to recognize the difference between ensuring safety and enforcing overzealous fines on an industry that is already highly regulated.

Thank you.

Gail Kagan