

Editor's Note:

The following article is reprinted with permission from the April 4, 1999 edition of the Sunday New York Times. Special thanks to NAPPS members Larry Martin and Dave Schirtzer, both of New York, for bringing this piece to my attention. It should be noted that the person who is **the subject of this article is not a member of NAPPS.**

No he wasn't then but he is President of NAPPS today!

What Happens If Process Server Doesn't Serve?

By BRUCE LAMBERT

MINEOLA

FOR two decades, thousands of documents passed through an obscure but flourishing process-serving company here, a couple of blocks from the courthouses in Nassau County's legal and government hub.

Lawyers hired the company, Intercounty Judicial Services, to serve legal papers on people in all kinds of local, state and Federal court cases in Long Island and New York City. They included divorces, foreclosures, negligence claims, liens, wills, evictions, wrongful-death suits, child custody battles, business disputes and criminal trials.

But the discovery of troubling irregularities in the serving of the papers have tainted many of those cases. Former employees say the company frequently forged signatures, falsified information and used a phony notary stamp. And several people say they were victimized when they were not notified of litigation in which they lost property rights or were jailed for contempt.

The charges are so serious that, years after the courts have settled cases, some suits could be reopened and nullified, legal experts say. Some of the irregularities prompted the arrest last year of the company's owner, Norman L. Yellon, also known as Larry. Nassau County's District Attorney charged him with illegally acting as a notary public and offering false statements for filing. He pleaded not guilty and has obtained nine trial adjournments.

In another move against Mr. Yellon last year, the New York State Department of State revoked a notary license he briefly held, ruling that he had acted "unlawfully and with complete disregard for the standards to which a notary is required to conform." Defending himself in an interview, Mr. Yellon said, "I built up a lot of clients in 21 years, and I did it by doing things the right way." He said he was eager to reveal "the conspiracy to put me out of business—that's

the real story." But he declined to elaborate while his criminal case was pending.

The affair highlights the world of process servers and notaries, who operate with scant oversight. Trade groups in both professions promote high standards for their growing industries. New York State has several thousand process servers, including 3,060 registered in New York City, the only jurisdiction requiring them to be licensed. Notaries are even more numerous. Long Island has 54,960 out of 247,059 statewide. Although the functions of process servers and notaries are usually taken for granted, legal experts said they were essential to a business and legal system that relied on authentic documents, certified signatures and proper notifications.

"The sanctity of the system is absolutely critical," said the president-elect of the Nassau County Bar Association, Joel Asarch. "This is something that should concern everybody: the judiciary, the bar, the lay person." The former chairman of the New York State Bar Association's civil litigation section, Mark C. Zauderer, said: "Historically, 'sewer service' has come up from time to time. It's a shame and it's disgraceful when you get massive fraud. It not only has implications for the people involved, but when the public sees that, it impairs confidence in the system."

At the heart of the legal quagmire here is Mr. Yellon, who founded and still runs his process-serving company at 85 Willis Avenue. The office is modest, but its strategic location a short stroll from the courts and many private law offices has helped make it one of Long Island's busiest process-serving companies.

Mr. Yellon routinely notarized the signatures of his process servers on standard affidavits in which they swore they had served legal papers on litigants. There was a big catch, however. For many years—no one knows how many—Mr. Yellon did not have a valid notary's license. In notarizing countless documents

without authorization, he used a phony stamp, prosecutors said.

Shortly after coming under investigation in 1997, he belatedly obtained a license. But because of his prior fraud in posing as a notary and using a false stamp, state officials held a hearing and rescinded the license. More serious than the counterfeit notarizations are accusations of forged signatures and complaints that documents were not served.

A sampling of affidavits from the company shows that the signatures of several process servers do not match the way they signed their official signature cards, voting records or other documents. Three former process servers from his company have sworn that someone else signed their names on affidavits: Joseph A. Quinones, Christopher Farish and Christopher Maturro.

"After working for Mr. Yellon for some time, I became suspicious of and highly uncomfortable with the procedures followed in connection with the signing of affidavits of service," Mr. Maturro wrote in a sworn statement last year. "In or about April of 1992, I realized that many of the signatures purporting to be mine on the affidavits of service in connection with papers I had served were not my own. Shortly thereafter, I confronted Mr. Yellon with my suspicions. I explained to him that it was unacceptable to have someone else signing my name, particularly absent my knowledge. I indicated to him that affidavits of service were legal documents, and if I ever had to testify in court as to the authenticity of my signature, I would tell the truth and indicate to the court that the signature in issue was not mine."

Soon after, Mr. Maturro quit and opened his own company, Country Wide Judicial Services in West Islip. Another look into Mr. Yellon's operations comes from his former officer manager for five years, who agreed to an interview on the condition of anonymity, but who has spoken to prosecutors. Each day the secretaries routinely typed dozens of affidavits of service and stacked them on his desk, she said. He usually arrived in the afternoon and went through the pile, forging the process servers' signatures and falsely notarizing with the phony stamp at the bottom of the page. "I would say 85 to 90 percent of the time, Larry signed them" instead of the process servers, she said. The most disturbing complaints are that documents were served improperly or not at all, contrary to the affidavits. Generally, service is supposed to be made in person, or, if the recipient cannot be found after at least three attempts, by the "nail-and-mail" method of affixing the document to the door and mailing another copy to that

address. But Mr. Yellon's company frequently failed to comply, according to the former office manager. "Most of the time they went to the actual places once or twice, but Larry wasn't paying them very much, usually \$5 per service, so it wasn't worth it to go back, and then they would do nail and mail," she said. Especially for rush orders or for distant locations, she said Mr. Yellon often told servers to fill in the affidavits with fictitious dates and times of service. "Oh, yes, it was standard practice in the office," she said. Although servers are supposed to mail documents themselves, usually the office handled that, the former manager said.

But some mailings were never made. "If it was too big, too much postage, Larry wouldn't mail it at all. If it was \$3 or something like that, he would say, 'I'm not mailing it'

In court records and interviews, several people said they were victims of not being served by Mr. Yellon's company. Christopher H. Thompson, a lawyer from Melville, said he was "absolutely not served" key papers in a suit, and affidavits appeared to have bogus signatures. He said he tried to contact the process server, who did not return the call. Mr. Thompson said he won dismissal of the case on other grounds.

Ruby P. Rosenfeld said she had to spend \$70,000 plus court costs to buy back her ex-husband's share of their Dix Hills home several years ago after an investor bought it for \$3,600 in a bankruptcy sale. Although an affidavit from Mr. Yellon's company said she was notified, she swore she wasn't.

Joseph C. Savaglio, a real estate appraiser in Suffolk, said he was home getting his children ready for the school bus when an affidavit claimed he was not there. He said he also found "clearly fraudulent signatures" supposedly from the same person. He was threatened with jail for contempt in one matter in which he was not notified, he said, so he filed a complaint with the Suffolk police.

Thomas Green of Westbury said he lost his share of his former home in East Rockaway, fell in arrears on child support and ended up in jail, all because he was not notified of a hearing setting the level of support based on his ex-wife's claim that he made \$250,000 a year when he made \$15,000. "We didn't understand what was going on, and it just snowballed," he said. He complained to the Nassau District Attorney.

Dr. Carmine Vasile, an electrophysicist whose work has been granted 30 patents and who was named inventor of the year at Grumman Aerospace, said he lost his share of his \$525,000 home in Lloyd Neck and

other assets because he was never served papers from a marital dispute. He has a feud with Mr. Yellon, who in court papers has denied Dr. Vasile's claims and accused him of "a malicious crusade."

The potential impact of the irregularities in overturning old cases is a complex issue. A service scandal in New York City in the early 1970's spawned a new remedy. The administrative judge of Civil Court, Edward Thompson, found that service in thousands of credit defaults was so corrupt that he set them aside en masse, without each litigant proving every case. His procedure was codified as Thompson's law.

Prosecutors said they had not heard of widespread complaints about Mr. Yellon's operations. But if they win a conviction of Mr. Yellon, they said they would consider asking a court to determine if cases handled by his company should be reviewed. "They have an ethical obligation to disclose that there are irregularities in probably thousands of cases and to notify litigants on both sides," said Leonard M. Ross, a Manhattan lawyer who said he recently found multiple violations in more affidavits from Mr. Yellon's company. Martin B. Adelman, former chairman of the state bar association's criminal section, said such notification "is a very valid point" and would be "a proper exercise of responsibility."

Legal experts say the issue of improper service is effectively waived when people learn about their cases some other way in time to respond in court. But lack of service is a crucial issue in suits in which defendants never respond and the courts issue default judgments against them. Strong doubts about notification open cases to being challenged and overturned.

"Getting notice of a lawsuit is an essential component of due process," said a Hofstra University law professor, Andrew I. Schepard. "For the lawyers and parties involved and the court system, failure to serve is a disaster." A central mystery is why Mr. Yellon did not have a valid notary's license, which is not difficult to acquire. Applicants give their name, address and age and vouch that they have not had a state license or privilege revoked. They must pass a 50-question test on notary rules and pay \$45 in fees for a two-year commission, renewable for two years for \$30.

"This was the very essence of the business the man was engaged in on a daily basis," said Laurence J. Soronin, the state counsel who pressed the charge that revoked Mr. Yellon's belated license. Although Mr. Yellon declined to testify at that hearing, his lawyer, Ronald J. Bekoff, contended that Mr. Yellon got a notary's license in 1979 and then, at some unknown date,

let it lapse. No evidence of the original license was offered. The state destroys old files, but records back to 1991 showed no license. "I can tell you from someone who has known Mr. Yellon for 35 years, who laughed and cried with him in events, there is not a finer moral man in this country than Larry Yellon," Mr. Bekoff told the hearing. Several years ago, his own law firm and Mr. Yellon's company were jointly sued for legal malpractice over a court finding of improper service. That case was settled out of court for \$150,000 in 1992.

Verifying that someone is a licensed notary entails a simple call to the state at (518) 474-4752, but apparently years passed without anyone checking Mr. Yellon. Critics say that is surprising because lawyers who hire process servers are legally responsible if anything goes awry. Among the lawyers who used Mr. Yellon are several who are now judges. Professor Schepard said, "There are going to be a lot of nervous lawyers out there."

Ultimately, Mr. Yellon was exposed by chance and the persistence of Dr. Vasile. For a decade, Dr. Vasile has been entangled in litigation involving a divorce and bankruptcy, often representing himself against what he said were crooked lawyers and judges. He has repeatedly been overruled, held in contempt, fined nearly \$40,000 for frivolous litigation and even jailed. Whatever the merits of his own disputes, Dr. Vasile scored a breakthrough against Mr. Yellon when he sought help from Family Advocates, a family mediation service. Its director, Milton K. Louvaris, himself a notary, saw inconsistent signatures in the legal papers and also found odd Mr. Yellon's signing with a slashing mark-of-Zorro-style initial. "It really looked suspect," he said. "As a notary, they tell you to write out your name nice and clearly." A call to the state revealed that Mr. Yellon was not a notary. Through a remarkable coincidence, Mr. Louvaris's friends in a volunteer group called Americans for Legal Reform knew a former Yellon employee and put her in touch with Dr. Vasile. Mr. Louvaris also introduced the doctor to a freelance investigative reporter, Coleen Callan. She and Dr. Vasile searched Federal court records for cases handled by law firms that used Mr. Yellon, found suspicious affidavits and contacted some litigants. After complaining to numerous authorities, Dr. Vasile said he was surprised at the lack of response from agencies like the Suffolk District Attorney, the Federal Bureau of Investigation and postal inspectors. Critics say Nassau's prosecution, for misdemeanors, could have considered stronger charges like forgery, perjury, larceny



Chris Chigas'

**CAPITOL
CONSTABLE SERVICE**

and Jim Lambrenos

...together, serving the Legal Profession for more than 27 years...

Nationwide: **1-800-977-0427**

10 Lowell Street • P.O. Box 3315 • Peabody, MA 01961-3315

E-Mail: capitol@constableservice.com

Website: http://constableservice.com

or the fees collected from law firms and a Federal referral for mail fraud. Mr. Adelman of the state bar group said, "There's obvious felony all over the place." The prosecutors said they were hampered by the statute of limitations, hazy recollections and conflicting evidence.

For example, they said some process servers claimed they had authorized Mr. Yellon to sign for them, although three of them signed sworn statements that they had not. One, Mr. Farish, said, "I never knew my name was forged and was never asked for permission."

Professional notary and process serving groups said they were troubled by the Yellon case. "We're all horrified," said Lisa Fisher, director of the American Society of Notaries, which has 20,000 members. "A lot of this activity goes on, and there are no notary police to detect it."

Charles N. Faerber, vice president of the National Notary Association, with 150,000 members, said: "We're for high standards and stiff penalties. What this fellow did makes a mockery of the whole process. If you can't trust the notary, who can you trust?"

Vincent J. Gillis, a board member of the New York State Professional Process Servers Association, said: "He is not someone we would want in the industry."

Such groups said they wanted stronger requirements for training, licensing, record keeping and monitoring of notaries and process servers.

Other suggestions include centralized reporting of violations to detect problem-prone people, requiring servers to obtain a certificate of mailing when sending a document by mail and requiring government authorization for duplicating notary seals. The president of the state process servers group, Irving Botwinick, also said that higher fees help insure proper service, because the low rates paid by some companies are an incentive to cut corners.

"A case like this calls for regulation of these folks," said Professor Shepard of Hofstra. "This should cause reexamination of the whole system."

Copyright 1999 the New York Times Company.
Reprinted by permission

**Your comments on this article,
or any material published in
The Docket Sheet are welcome.**

Process Service and Legal Investigation(361) 881-8655
1-800-841-8655**SMYTH & Associates**711 N. Carancahua, Suite 700
Corpus Christi, Texas 78475**RICHARD SMYTH**
(A - 08712)(361) 879-5045 Digital Pager
(361) 881-8653 Facsimile

Legal Process Service
Professional Service Since 1982
State Lic. #604

- EXPERT AND DILIGENT PROCESS SERVING
Excellent Priority and Immediate Service
Regular Status Updates
- DOCUMENT FILINGS/RETRIEVAL
- SMALL CLAIMS SERVICE

Statewide & National Service Available
24 Hours - 7 Days a Week
Se Habla Espanol
Office Hours: 9am to 5pm

We welcome your request for references
702-471-7255
Fax 702-471-7248
626 S. Eighth Street
Las Vegas, Nevada 89101

For
Professional
Service
In
NEVADA