

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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March 24, 2010
Start: 1:00pm
Recess: XX:XXpm

HELD AT: 250 Broadway
Hearing Room, 14th Fl

B E F O R E:
KAREN KOSLOWITZ
Chairperson

COUNCIL MEMBERS:
Charles Barron
Michael C. Nelson
G. Oliver Koppell
Julissa Ferreras
Leroy G. Comrie, Jr.
James F. Gennaro

A P P E A R A N C E S

COUNCIL MEMBERS:

Daniel R. Garodnick

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2 CHAIRPERSON KOSLOWITZ: This
3 meeting's called to order. Good afternoon. My
4 name is Karen Koslowitz. And I am the Chair of
5 the Committee on Consumer Affairs.

6 Today, we will be voting on
7 proposed Introductory Bill Number 6-A, a local law
8 to amend the Administrative Code of the City of
9 New York in relation to process servers. I'd like
10 to begin by acknowledging the other Committee
11 members in attendance, Council Member Charles
12 Barron, Council Member Michael Nelson, Council
13 Member Oliver Koppel and the sponsor of this bill,
14 Council Member Dan Garodnick.

15 Consumer debt is a growing problem
16 in New York City with nearly 300,000 consumer debt
17 cases being filed annually in New York City Civil
18 Court; nearly three times the number of cases
19 filed in 2000. Though debt collection practices
20 used to include such outreach to the debtor as
21 phone calls, letters and offers to negotiate a
22 payment plan, today, many debt collectors simply
23 file a lawsuit immediately.

24 Filing a debt collection case, of
25 course, requires proper service of process. Yet,

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2 we are frequently seeing default judgments issued
3 against debtors due to improper service. There
4 are three ways a summons notice can be delivered
5 in New York State; personal service, in which the
6 notice is delivered in person, substitute service,
7 in which the notice is delivered to a person of
8 suitable age and discretion at the person's
9 workplace, residence or dwelling, in addition to
10 being mailed to his or her place of business or
11 last known residence, and, three, nail or mail
12 service, in which the summons is both mailed and
13 physically posted to the person's workplace, home
14 or known dwelling. Unfortunately, some process
15 servers have adopted a fourth illegal method known
16 as sewer service, which is the deliberate failure
17 to deliver a summons followed by a false affidavit
18 of a successful delivery.

19 Current law requires anyone doing
20 business as a process server to be licensed by the
21 Department of Consumer Affairs. Currently,
22 license applicants are only required to be
23 fingerprinted for the purposes of performing a
24 criminal background check.

25 Intro 6-A seeks to increase

1 regulation and accountability of the process
2 server industry. It would divide the current
3 licensing categories into two types of licenses;
4 one for individual servers and one for process
5 server agencies. Licensees would be required to
6 post a bond to cover the cost of any fines
7 incurred or any judgments received by a person who
8 was a victim of improper service. For individual
9 process servers, this bond would be \$10,000,
10 unless they're employed by a process server
11 agency, in which case the agency would be required
12 to post a bond of \$100,000. Those individuals
13 unable to obtain a 10,000 surety bond could
14 deposit \$1,000 into a trust fund created by DCA to
15 cover unpaid fines or judgments levied against a
16 licensed process server.
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18 Intro 6-A would also ensure that
19 individuals harmed by a licensee's violation of
20 the legislation would have the right to a civil
21 cause of action against the process server or
22 process serving agency for damages and other
23 appropriate relief.

24 To increase the reliability and
25 accuracy of process server records, Intro 6-A

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2 would require that a process server carry and
3 operate an electronic device, such as a global
4 positioning device, while serving process to
5 record the date, time and location of service.

6 Excuse me, I have a cold.

7 Intro 6-A would also require that
8 all licensees pass an exam administered by the DCA
9 demonstrating understanding of appropriate service
10 of process, retain records for seven years and
11 provide a statement of employee rights and
12 employer responsibilities to every process server
13 in their employ and keep, for three years, a
14 signed statement that the employee has received
15 and understood such statement.

16 The Commissioner would be required
17 to submit a report to the Speaker 24 months after
18 the law has taken effect detailing the
19 effectiveness of this bill's provision.

20 If there are no remarks from my
21 fellow Committee members, I'd like to begin the
22 vote. But I know there are remarks. So, I'm
23 going to call on Council Member Garodnick.

24 COUNCIL MEMBER GARODNICK: Well,
25 thank you very much, Chair Koslowitz and to

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2 members of this Committee for your dedication to
3 this issue and for your commitment to seeing it
4 through two hearings now and, of course, now,
5 today's vote.

6 We know from an extensive study
7 that was done by MFY Legal Services and from the
8 personal stories of New Yorkers that there are a
9 shocking number of our neighbors, up to several
10 hundred thousand a year, who are losing Court
11 cases that they didn't even know about. The
12 reason is that, in many cases, they're simply not
13 served the process of the cases that had been
14 commenced against them. The result for people,
15 who lose Court cases that they didn't know even
16 had commenced, is a crippling effect; bank
17 accounts that are frozen, wages that are
18 garnished. And we thought that it was important
19 to try to address the process challenges that
20 we're seeing with this legislation.

21 Of course, the bill that this
22 Committee heard and on which the Committee will
23 vote today will protect New Yorkers in a few
24 different ways. The first, of course, is that it
25 requires a surety bond insurance in order to

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2 obtain and to maintain the process server's
3 license and to pay out fines levied against them.
4 For individual contractors that are engaged in
5 service of process, there was a concern that the
6 requirement of an individual surety bond was too
7 great a burden, even on those who are doing their
8 jobs right. The amended bill addresses that
9 concern by providing a trust fund into which those
10 individuals can pay.

11 Of course, the Council recognizes
12 the balancing of imperatives that need to be met
13 on this issue. On one hand, the purpose of the
14 bill is to protect consumers from the great harm
15 that is caused by sewer service. On the other
16 hand, we do not want to prevent otherwise fit
17 agencies from being able to obtain a license to
18 serve process. So, it will be important for us to
19 take a look. And we will do this in consultation
20 with the Department of Consumer Affairs over the
21 next 12 months and review the bonding requirements
22 and if it is determined that this is creating an
23 undue barrier for agencies, then, of course, the
24 Council will revisit that issue.

25 The second protection that this

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2 bill creates is one that was examined at the last
3 hearing of this Committee, which is the non-
4 invasive use of global positioning technology to
5 ensure that process servers actually went where
6 they say they did in order to serve process. Now,
7 this is a supplemental rule, which will be in
8 addition to the State-required rules for service
9 of process under the CPLR. It also adds
10 educational and testing elements reporting to the
11 Council and also advising process servers of their
12 rights, as employees, which is something which had
13 not previously done.

14 I believe that, taken together,
15 these measures are going to weed out bad actors
16 without diminishing the opportunities for
17 upstanding agencies to continue their business.
18 It will put process servers on notice that they
19 must uphold their critical role in the legal
20 system and that they will be accountable if they
21 do not. And it will protect working New Yorkers
22 from living in fear that they are losing thousands
23 of dollars and having their entire lives upended
24 as a result of Court cases that they did not even
25 know about.

2 So, again, I want to thank MFY for
3 their advocacy on this issue, Alex Pustilnik and
4 Lacy Clarke, Rob Newman, from the Council for all
5 of their hard work. And I very much encourage
6 this Committee to support this legislation today.
7 I, unfortunately, am not a member of this
8 Committee, so I do not have a vote. But I look
9 forward to having the opportunity to vote yes in
10 the full Council. And, Madam Chair, again, I
11 thank you for your hard work on this and your
12 patience and your advocacy. Thank you.

13 CHAIRPERSON KOSLOWITZ: Are there
14 any other comments? Council Member Koppell.

15 COUNCIL MEMBER KOPPELL: Thank you,
16 Madam Chair. First, let me congratulate and thank
17 my colleague, Dan Garodnick, for bringing this
18 matter forth. I think it's clear, and I've read
19 several of the reports, including the MFY report,
20 and it's clear that there's a scandalous absence
21 of proper procedure being used in connection with
22 these lawsuits and failure to serve properly.
23 It's shocking to me, as an attorney, frankly, to
24 see how the law is being flouted, it would seem.

25 And just one example, and Dan

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2 didn't mention this, Council Member Garodnick
3 didn't mention this, it's hard to believe, but in
4 the Bronx, apparently, in a period of almost a
5 year, there was not one single traverse hearing.
6 Now, it just defies imagination that nobody has
7 challenged the service of process in the Bronx or
8 that the Courts are discouraging traverse hearings
9 or that there's a system which someone raises the
10 issue of service and then, the lawyer involved
11 just drops the case. I mean, there seems to be a,
12 you know, a major problem in the system.

13 And some of the aspects of the
14 bill, many of the aspects of the bill, are aimed
15 at addressing the problem; number one, education
16 requirements for the process servers. I couldn't
17 agree with that more. Number two, more accurate
18 recording of the process serving function by
19 having these GPS. And I've looked at, I actually
20 took the time to go to a demonstration of the
21 technology. And it can be done with a handheld
22 Blackberry or other device. And there are
23 services that will provide recordkeeping for about
24 \$27 a month is the number that was given to me,
25 which doesn't seem to be, to me, to be an

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2 unreasonable burden to put on the process servers.
3 Keeping records for seven years, rather than two
4 years, and again, a good requirement.

5 Part of the problem here,
6 unfortunately, is that DCS hasn't done its job of
7 supervising.

8 Then, we come to what I think is a
9 problematic aspect of the bill, which is the
10 bonding requirement. The fact is that the purpose
11 of the bond, in part, is to provide a remedy if
12 someone is injured. And so, there should be a way
13 for someone to recover if they can't recover
14 against the process server because the process
15 server either has disappeared or is judgment-
16 proof.

17 So, the number one is to get a fund
18 that someone can recover against. And that's
19 fine. And I think that should be part of the bill
20 and is part of the bill because it requires the
21 bonding of individual process servers, or, at my
22 suggestion, actually, and I appreciate the sponsor
23 and the Committee for taking the suggestion, for
24 the individual process servers, if they can't get
25 a bond, they put up \$1,000. That \$1,000 is going

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2 to go into this fund which will then be available
3 if someone is injured by not being properly served
4 and has a appropriate claim. That's the way the
5 fund is supposed to work and, hopefully, it will.

6 The problem is that the fund
7 alternative, the deposit to the fund alternative,
8 is not available to the process serving agencies.
9 They are still required, under the bill, to
10 provide a \$100,000 bond. I had suggested that if
11 they couldn't provide the \$100,000 bond, they put
12 up a \$10,000 cash deposit, which would have,
13 number one, which would have an advantage in
14 providing more money to the fund. And one of the
15 concerns of the Department of Consumer Affairs is
16 that there wouldn't be enough money in the fund.
17 They mentioned that there's a similar fund for
18 home improvement contractors. But, there are
19 thousands and thousands of them, so the fund is
20 fairly substantial, even though the contribution
21 is much lower. I think it's about \$100 a year or
22 \$200, not \$1,000. But, in any event, they were
23 concerned that the fund would be too small, having
24 the alternative of a \$10,000 deposit in the fund
25 from the agencies would, at least to some degree,

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2 remedy that.

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I am concerned that certain agencies would not be able to get a bond. Now, if they're large businesses and they're operated appropriately and have appropriate credit, they shouldn't have a major problem, although getting bonds is getting harder and harder.

The problem is that many of these agencies are not large businesses. There are 123 agencies, according to DCA. Many of them, I suspect or I am told, are very small. I know several process serving "agencies" that consist really of one person; one person who serves process himself or herself and then, hires a few other people to help out on an as-needed basis. For that person to get \$100,000 bond may be difficult and not because they don't provide decent service or that they're violating the law, it's merely that they're very small, that they may have some credit problems. And that doesn't mean that they're not following the law. And I think that we may be screening them out, which would also have the added negative consequence of making the business less competitive, as well as knocking

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2 people out of business. And we want to encourage
3 people to be in business.

4 The idea here of those people who
5 push so hard for the bond is that the bonding
6 companies will be gatekeepers; that they'll keep
7 the bad people out. The problem is that bonding
8 companies are not particularly good gatekeepers in
9 this instance because the bonding company is only
10 interested in being sure that they can satisfy a
11 claim that might come up against the bond. So,
12 they're going to be looking at creditworthiness.

13 I suspect that the bad actors here,
14 the people who serve tens of thousands of process,
15 have lots of money. They're probably making a lot
16 of money. It may be easy for them to get a bond,
17 whereas the small agency of one or two people,
18 that does only perhaps a few dozen or a few
19 hundred process servers a month, will not be able
20 to get a bond.

21 And to rely on bonding companies to
22 be the appropriate gatekeeper, I think is wrong.
23 The appropriate gatekeeper here should be the DCA,
24 who licenses. They ought to look into make sure
25 that anybody who has claims against them, anybody

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2 who has a bad record, anybody who's the subject of
3 an unwarranted number of traverse requests, they
4 should not get a license. The proper gatekeeper
5 is not the bonding company. It's DCA. And the
6 bonding company really should only be there to
7 provide security where the individual process
8 server can't meet the obligations of a judgment
9 against it.

10 So, the bottom line is I think by
11 not providing an alternative with respect to the
12 agencies, we are going to make it difficult for
13 certain people to be in this business. I think
14 it's a mistake. It may be hard for them to get
15 back into the business, even if we remedy it.
16 And, as far as I'm concerned, we could deal with
17 this subject now without, in any way, weakening
18 the bill.

19 So, while I appreciate what's been
20 done with the bill and I appreciate the intention
21 of the sponsor to revisit it, it could be so
22 easily remedied by an amendment that would be
23 consistent with the amendment already added to the
24 bill that I really cannot support the bill without
25 that amendment. On the other hand, I think the

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2 bill has an important objective. And I don't want
3 to be seen as being opposed to that objective.
4 So, it is my intention, Madam Chair, to abstain on
5 the vote on the bill.

6 CHAIRPERSON KOSLOWITZ: Thank you.
7 Council Member Barron.

8 COUNCIL MEMBER BARRON: My concern
9 was similar to Council Member Koppell's concern,
10 the bonding aspect of it. But when you weigh it
11 all and you look at the victims, I think that's a
12 greater concern for me about those who are
13 victimized by that. And I'm a little more
14 satisfied with this bill in that there'll be some
15 more discussion around the question of bonding.

16 And I think the reasonable minds,
17 because one of the hardest things in regulation is
18 that we don't punish the good actors, trying to
19 get to the bad actors. And I think that, to some
20 extent, this bill might do some of that. So, I'm
21 hoping the aspects of the continued discussion
22 around that question of bonding is a serious,
23 serious question. But when I weigh all that's
24 involved in this bill, to me, that the victims who
25 have not received or have went into judgment

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2 because they didn't receive even a chance to go to
3 Court, to me, that's a higher priority. And so, I
4 will be voting for this bill. But I'll be
5 encouraging the sponsor, encouraging all of us to
6 stay on it so that the good actors don't get hurt
7 in our efforts to get at the bad actors.

8 CHAIRPERSON KOSLOWITZ: Thank you.
9 Council Member Nelson.

10 COUNCIL MEMBER NELSON: I concur
11 with my colleague, Charles Barron, in that since
12 time began, the good people always had to somehow
13 pay for the bad people. And it's been that way
14 ever since the first lock was put on a door and
15 thereafter.

16 I had a personal thing with this,
17 too, which I was kind of naive about. Some person
18 was suing me for a totally unmeritorious
19 situation, which was, of course, dropped, 'cause
20 it was totally without merit and bogus. Yet, it
21 costed me some money. But, I was told that,
22 'cause I had a sister in Florida, and he was
23 utilizing a lawyer in Florida, said you know you
24 got to be careful, 'cause somebody down there
25 could say they served you and you could be

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2 arrested at the airport. So, that's what I meant
3 I was naive about this. I said, wow, you know.

4 So, I hope that's one of the
5 scenarios that could be alleviated by this
6 legislation. So, that's a little personal note
7 right there. And thank you and I thank Dan
8 Garodnick, thank you, Madam Chair. And I plan to
9 be voting yes on this Intro.

10 CHAIRPERSON KOSLOWITZ: Anybody
11 else? Okay. Will you call the roll for the vote?
12 And, we're going to hold this vote open. There
13 are some Council Members in transit.

14 WILLIAM MARTIN: William Martin,
15 Committee Clerk, roll call on the Committee on
16 Consumer Affairs, Introduction 6-A. Council
17 Member Koslowitz.

18 CHAIRPERSON KOSLOWITZ: Aye.

19 WILLIAM MARTIN: Nelson.

20 COUNCIL MEMBER NELSON: Aye.

21 WILLIAM MARTIN: Barron.

22 COUNCIL MEMBER BARRON: Aye.

23 WILLIAM MARTIN: Koppell.

24 COUNCIL MEMBER KOPPELL: Abstain.

25 WILLIAM MARTIN: Ferreras.

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COUNCIL MEMBER FERRERAS: Aye.

WILLIAM MARTIN: By a vote of four in the affirmative, zero in the negative and one abstention, item's adopted. Council Members, please sign the Committee report. Thank you.

CHAIRPERSON KOSLOWITZ: Okay. And as I said, this meeting will be held open for the other Council Members. Thank you.

WILLIAM MARTIN: Council Member Comrie.

COUNCIL MEMBER COMRIE: I want to rest my vote--what am I doing? Oh, we're voting on Intro 6-A, the process server bill. I'm not happy with all of the elements of it. But I'm voting aye. I want to register that it's all Damien Butvick's fault why I'm not totally happy with it. I vote aye.

WILLIAM MARTIN: Current vote now stands at five in the affirmative, zero in the negative, one abstention.

WILLIAM MARTIN: Council Member Gennaro.

COUNCIL MEMBER GENNARO: Yes.

WILLIAM MARTIN: Final vote on the

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Committee on Consumer Affairs is now six in the

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affirmative, zero in the negative, one abstention.

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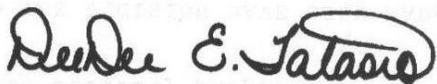
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C E R T I F I C A T E

I, DeeDee E. Tataseo certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "DeeDee E. Tataseo". The signature is written in black ink and is positioned above a horizontal line.Date April 18, 2010