

# SOUTH BROOKLYN LEGAL SERVICES

Brooklyn Legal Services Corp. B • John C. Gray, Project Director  
105 Court Street, Brooklyn, NY 11201 • (718) 237-5500 or direct 237-5548 • JTyler@sbls.org

---

March 2, 2010

The New York City Council  
Committee on Consumer Affairs  
The Committee Room,  
City Hall, New York, NY

Re: Proposed Int. 6-A- a Local Law to Amend the Administrative Code of the City of New York,  
in Relation to Process Servers

“There is an air of complacency among the process servers . . . they know that nobody is checking on them.” Samson Newman, owner of Aetna Judicial Service.<sup>1</sup>

“It would be extremely helpful for someone to . . . spend . . . time on how [to]. . . identify process servers who are . . . flouting the law and engaging in sewer service. . . .[i]t's very difficult for the system to identify [them.]” Queens Civil Court Judge Diane Lebedeff.<sup>2</sup>

Dear Committee Members,

Thank you for inviting me to testify on this issue. I am employed by South Brooklyn Legal Services (SBLs), an affiliate of Legal Services of New York City. Each year, our offices provide free representation on civil matters to over 60,000 low income New Yorkers within the five boroughs. Our clients are victims of sewer service on a daily basis. Although sewer service is a problem in housing litigation, I will focus my comments on its gigantic role in consumer debt litigation.

---

<sup>1</sup> New York City Department of Consumer Affairs, *Exploratory Public Hearing on Process Server Practices in New York City*, pp. 155 (June 13, 2008).

<sup>2</sup> Testimony of the Honorable Diane A. Lebedeff before the United States Federal Trade Commission, *A Roundtable Discussion on Debt Collection: Protecting Consumers*, December 4, 2009, pg. 32-33. Available at <http://www.ftc.gov/bcp/workshops/debtcollectround/091204-DC/transcript.pdf>

## **I. This Bill Will End Sewer Service**

Last November, I testified that the City Council's 2009 sewer service bill was ineffective. The earlier bill sought to deter sewer service through education and increased liability via bonding. The bill ignored sewer service's main cause- proving it is "extremely difficult."<sup>3</sup> The amended bill fixes this problem by requiring Global Position System (GPS) proof that the process server went to a defendant's home. This simple yet revolutionary solution is akin to DNA testing in paternity case that previously were proven through testimony. By dovetailing GPS proof with a private right of action against a process server who engages in sewer service, the proposed bill will end sewer service in New York City.

## **II. Sewer Service And Its Victims**

Sewer service is the term used when the process server states in an affidavit that he served the defendant when he did not. When a defendant fails to respond to a law suit, the plaintiff wins by default. Armed with a default judgment, a creditor can garnish the defendant's wages or bank account. For example, identify theft victim David W learned that he had been sued for a cell phone bill in Michigan when his wages at Macy's were garnished. The process server claimed to have visited his Harlem address and served a woman between the ages of 35 and 50 who refused to give her name. The only resident there was his 63 year old mother, and she never received such a visit.<sup>4</sup> Similarly, identity theft victim Barbara B lost her entire savings (\$3,000) when a creditor obtained a default judgment by sewer service and emptied her bank account. Ms. B is mentally retarded and cannot use, never mind apply for, a credit card.<sup>5</sup>

## **III. The Epidemic In New York City**

### **A. Sewer Service in 2010**

Sewer service is worse today than ever before. In 1986, 48,000 default judgments due to

---

<sup>3</sup> The New York State Attorney General, the New York City Department of Consumer affairs, The New York City Department of Investigation, *A Joint Investigative Report into the Practice of Sewer Service in New York City*, p. 21. (April 1986).

<sup>4</sup> *Asset Acceptance v. David W*, New York City, Civ. Ct # 074604/06 (New York County 2006).

<sup>5</sup> *Erin Capital V. Barbara B*, New York City, Civ. Ct #5832/07 (Queens County 2007).

sewer service were entered annually in New York City.<sup>6</sup> Today, 300,000 debt collection suits are filed annually in New York City of which more than 80% result in default.<sup>7</sup> The majority involve debt collectors who pay process servers \$5 per service which leads to sewer service.<sup>8</sup> Because sewer service undermines the legitimacy of the judicial system while preventing defendants from raising legitimate defenses, it is of great concern to judges, the Department of Consumer Affairs (DCA), public interest lawyers and the media.<sup>9</sup> Indeed, Administrative Judge Fern A. Fisher of the Civil Court of the City of New York laments that “many defendants” are not receiving notice from process servers.<sup>10</sup>

## **B. Three Process Servers And a 19<sup>th</sup> Century Mansion**

Jeffrey Taylor’s situation best illustrates the pervasive nature of sewer service among debt collectors in New York City. After his wages were garnished in 2009, Mr. Taylor discovered he had three judgments against him. Each of these judgments involved different process servers working for different process serving agencies.<sup>11</sup> The law firms that hired these

---

<sup>6</sup> The New York State Attorney General, the New York City Department of Consumer Affairs, The New York City Department of Investigation, *A Joint Investigative Report into the Practice of Sewer Service in New York City*, p. 2. (April 1986).

<sup>7</sup> MFY Legal Services, *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate By Defendants in Lawsuits Filed in The Civil Court of the City of New York*. (June 2008).

<sup>8</sup> The Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (2007). See also *Sykes v. Mel Harris, SamServe et. al*, 09 Civ. 8486 (S.D.N.Y. 2009)(alleging Mel Harris contracts for sewer service by paying below market fees and conditioning payment upon effectuation of service.)

<sup>9</sup> Rivera, Ray, *Council Seeks to Crack Down on Process Servers Who Lie*, New York Times (February 28, 2010).

<sup>10</sup> Fisher, Fern, *Press Release* from the Office of the Administrative Judge for the Civil Court of the City of New York, November 04, 2008. Available at [http://www.probono.net/ny/news/article.218908-Administrative\\_Judge\\_Fern\\_A\\_Fisher\\_Announces\\_New\\_Measures\\_to\\_Assist\\_Debtors](http://www.probono.net/ny/news/article.218908-Administrative_Judge_Fern_A_Fisher_Announces_New_Measures_to_Assist_Debtors).

<sup>11</sup> In *Household Bank v Taylor*, Index # 041177/03(New York Civil Court, Kings County 2003) Gene Gagliardi served by nail and mail for AAA Attorney Services on behalf of debt collector Rubin & Rothman. In *Erin Capital v Taylor*, Index # 00697/07(New York Civil Court, Kings County 2007) Robert Ramsey served by nail and mail for Triple A Process Server on behalf of Eltman, Eltman & Cooper. Finally, in *LR Credit v Taylor*, Index # 073464/04(New

process service agencies were also different, as were the plaintiffs who retained the lawyers.

The three process servers allegedly knocked on his apartment door a total of seven times without finding him there. All alleged to have spoken with neighbors (“Jane’ Vargas, “Mr. Young”) or co-tenants (wife “Mary Doe”) to determine that Mr. Taylor lived there and was not in the military. Unbeknownst to these liars is that the apartment is within a gothic mansion surrounded by an wrought iron fence located within the Greenwood Cemetery. But for a moat, the building is as secure as a castle. You cannot enter it without ringing a bell at the gate and being admitted by the cemetery keeper, Mr. Taylor’s father. As for the neighbors, there are none other than the dead.

**C.            35 Debt Collection Law Firms  
+    1 Process Service Company  
= 102,126 Default Judgments By Sewer Service**

Emblematic of the sewer service problem is American Legal Process (ALP), a long island based process serving company that contracted with over 35 large debt collectors who operate regularly in New York City. In 2009, the Attorney General sued to vacate over 100,000 default judgments involving ALP.<sup>12</sup> By seizing computer records, the Attorney General was able to show that ALP’s process servers often claimed service on the same day and same times in counties that were hundreds of miles apart.

At least four New York City Process Servers were implicated in ALP. Gene Gagliardi alleged service in Staten Island at 7:58 a.m. and then one minute later in Orange County, some 84 miles away. Issam Omar did the same alleging service at 8:19am in Brooklyn, and one minute later at 8:20 am in Chautauga County (400 miles away.)<sup>13</sup>

The Attorney General also found 3,512 instances where twenty of ALP’s process servers claimed service at different addresses at *exactly* the same time. These included Gene Gagliardi (450 duplicates), Issam Omar (51 duplicates), and at least two additional licensed New York City

---

York Civil Court, Kings County 2004) Azzam Abderrahman served by substitute service (on Mr. Taylor’s wife “Mary Doe”, although he has never been married) for an unknown process service company hired by Mel Harris & Ass.

<sup>12</sup> New York State Attorney General Press Release, *Attorney General Cuomo Sues to Throw out over 100,000 Faulty Judgments Entered Against New York Consumers in next Stage of Debt Collection Investigation* (July 23, 2009)  
[http://www.oag.state.ny.us/media\\_center/2009/july/july23a\\_09.html](http://www.oag.state.ny.us/media_center/2009/july/july23a_09.html)

<sup>13</sup> *Pfau v. Forster & Garbus et. al*, Ind. # 8236-09 (Sup. Ct. Erie County. 2009), New York Attorney General, Memorandum of Law in Support of Verified Petition, pg 13-14 (dated July 20, 2009.)

process servers, John Hughes (182 duplicates) and Michael Pszczola (20 duplicates).<sup>14</sup>

**D. The Ethos of Process Serving Agencies Who Contract with Large Debt Collection Firms: *Don't Ask, Don't Tell.***

In 2008, the Department of Consumer Affairs (DCA) held a public hearing at which a number of process servers and company heads testified voluntarily or via subpoena. One, Jay Brodsky of ABC Process Server, acknowledged that his process servers might make identical or inconsistent service claims for another employer. However, Mr. Brodsky declined to review their log books for such inconsistencies. Instead, his concern was only that services done in his company's name were not internally inconsistent.<sup>15</sup>

At the 2008 hearing, Mr. Brodsky also learned that Mr. Gagliardi was summoned for five traverse hearings over six months in 2007.<sup>16</sup> At that same hearing, another process service executive testified that he would never hire Mr. Gagliardi or anyone he worked with him because of his reputation as a fraud.<sup>17</sup> Nevertheless, ABC continued to employ Mr. Gagliardi until the DCA revoked his license in 2009.<sup>18</sup>

Samson Newman, the head of Aetna Judicial Service, likewise seemed unconcerned that his employees might engage in sewer service. He stated that the log books of the process servers were not his property and he was not at liberty to inspect them.<sup>19</sup> Not surprisingly, he acknowledged that "there is an air of complacency among the process servers, . . . they know that nobody is checking on them."<sup>20</sup>

The culture of these agencies extends to other process serving companies. Indeed, Gene Gagliardi trained others process servers in New York City and worked for numerous process

---

<sup>14</sup> *Id.* at p.11.

<sup>15</sup> *Supra.* note 1 at pp.149-150.

<sup>16</sup> *Supra.* note 1 at pg.144.

<sup>17</sup> *Supra.* note 1 at pg.211.

<sup>18</sup> *Supra.* note 1 at p. 145. In addition, SBLS uncovered 43 debt collection cases in King County served by Mr. Gagliardi in January 2009 on behalf of ABC Process Servers for debt collection law firm Stephen Einstein. The index numbers of these cases begin at 5214/09 and run to 5256/09.

<sup>19</sup> *Supra.* note 1 at pg.152.

<sup>20</sup> *Supra.* note 1 at pg.155.

server firms since 1993.<sup>21</sup> Similarly, Michael Pszczola worked for agencies other than ALP, including Capital Process Servers.<sup>22</sup>

**E. Another Indicator of Widespread Sewer Service in New York City: Infrequent Personal Service**

A process server may serve legal papers on a natural person in one of three ways. First, the summons and complaint can be delivered personally by hand to the defendant (“personal service.”) Second, if the defendant is not at home, the process server can give the papers to someone with whom he lives (“substitute service.”) Third, if no one answers the door, the process server must make two more attempts (for a total of three) before he can affix the summons and complaint to the door and mail a copy (“nail and mail.”)<sup>23</sup>

When a process server actually attempts service in accordance with the law, he is able to personally serve the defendant about 40% of the time. This finding was made by the undercover detective who worked as a process server in 1986.<sup>24</sup> When one examines affidavits of service involving debt collectors, personal service is rarely made.<sup>25</sup> Indeed, SBLIS examined 324 affidavits of service related to eight process serving agencies and found a highly suspect personal service rate of 2.73%. The findings are set forth in at Appendix A.

**F. Sewer Service in New York City Dwarfs the Fraud Perpetrated by ALP.**

ALP Process servers (about 20 in number) faked service on 102,126 debt collection cases over 17 months from 2007 to 2008.<sup>26</sup> During that same period over four times as many debt collection cases (425,000) were served in New York City by process servers paid equally poorly (\$5 - \$6 per service.)<sup>27</sup> Since the close of the ALP investigation, another 450,000 debt collection law suits involving \$5 to \$6 service have been filed in New York City.

**IV. Sewer Service’s Three Causes:**

---

<sup>21</sup> *Supra.* note 1 at pg. 211.

<sup>22</sup> See e.g. *CCU, LLC v. Racquel King*, New York Civil Court Ind. # 160975/07 (Kings County, 2007)

<sup>23</sup> N.Y.C.P.L.R. § 308.

<sup>24</sup> *Supra.* note 1 at pg. 16.

<sup>25</sup> *Supra.* note 7.

<sup>26</sup> *Supra.* note 13 at pg. 3.

<sup>27</sup> *Supra.* note 7.

## Low Pay, It Is Difficult to Prove, and It Benefits Debt Collectors

### A. Low Wages Promote Sewer Service

Process servers in debt collection cases such as Mr. Taylor's lie without making any service attempt because they are paid only \$5.00 to \$6.00 per service. Five dollars is the "standard" within the debt collection industry according to a lobbyist for the Process Service industry.<sup>28</sup> Indeed, in the ALP litigation, the Attorney General found that ALP paid its process servers from \$4.00 to \$8.00 per service for debt collection cases with the average being \$5.00.<sup>29</sup> Likewise, four process service company executives testified to the Department of Consumer Affairs that they paid their process servers as little as \$3 to \$6 per service in debt collection cases.<sup>30</sup>

Such low pay buys sewer service, testified Bob Gulinello, a New York City process server with 34 years of experience<sup>31</sup> Indeed, Harry Torres, a process server employed by three process agencies told the DCA he was paid only \$5.00 for each paper he served. He paid a \$1000 fine and accepted a five year license revocation after being charged with sewer service.<sup>32</sup>

The idea that low pay promotes sewer service is hardly novel. In 1986, an undercover New York City detective worked as a licensed process server, six days a week, 15 hours a day. During a month he was given 401 summons and complaints to serve for which he was paid the standard 1986 rate of \$3.00 per effectuated service. After making 537 attempts he served only 217 summons and complaints, resulting in earnings of about \$600 *before* deductions were made for taxes and expenses (such as gas.) This placed his hourly wage at less than half the minimum wage.<sup>33</sup>

---

<sup>28</sup> Chad Marlow, testifying on behalf of the New York State Process Service Association and the National Association of Professional Process Servers, *Transcript of the Minutes of the Committee on Consumer Affairs*, November 13, 2009 Pg. 97.

<sup>29</sup> *Supra.* note 13 at pg. 4.

<sup>30</sup> *Supra.* note 1 at pp. 106, 137, 198.

<sup>31</sup> *Supra.* note 1 at p. 208.

<sup>32</sup> *Department of Consumer Affairs v. Harry Torres*, Amended Notice of Hearing, dated February 2, 2009, and Assurance of Discontinuance, dated February 26, 2009. On file at SBLS.

<sup>33</sup> *Supra.* note 3 at pg. 11.

In contrast, reputable process server agencies in New York City pay their process servers livable wages, such as \$50.00 for routine service or an hourly wage of \$20 to \$45 an hour.<sup>34</sup> Moreover, reputable process serving companies will not accept contracts from debt collection firms because their low pay ensures sewer service.<sup>35</sup>

Even Larry Yelon, the president of the New York State Process Servers Association refuses to accept contracts from large debt collection firms that condition payment on effectuation of service.<sup>36</sup> This contractual provision is standard within the industry.<sup>37</sup> It promotes sewer service because an honest process server who visits an abandoned building, an address that does not exist, or an apartment the defendant no longer occupies, will not be paid unless he lies.

## **B. Sewer Service Is Difficult to Detect under Existing Law**

A process server is required to record in a bound log, in chronological order, the time, place and method of every service attempt.<sup>38</sup> Accurate process server logs are the chief tool used to detect sewer service. Indeed, one could easily detect sewer service if a dishonest process server wrote in his log that he served someone in Brooklyn at 7:58 a.m. and then someone in Orange County at 7:59 a.m.

Obviously, this never happens because dishonest process servers cannot maintain true logs and avoid detection. The Department of Consumer Affairs' recent investigations reveal that inaccurate logs are quite common. Since January 2008, the DCA has subpoenaed the logs of 122 process servers and process server agencies.<sup>39</sup> These have led to charges against 54 process servers for various log violations, *including failing to maintain any logs*. To date, 32 process servers have agreed to maintain proper logs in exchange for increased monitoring and payment of fines, the median being \$300. Typical violations include service attempts not being recorded in chronological order; logs containing spaces, blank pages and altered entries; log books being

---

<sup>34</sup> *Supra.* note 1 at 170, 187, 173.

<sup>35</sup> *Supra.* note 1 at 178, and 187.

<sup>36</sup> *Supra.* note 1 at 130.

<sup>37</sup> *Supra.* note 1 at 138.

<sup>38</sup> Rules of the City of New York - Title 6, Department of Consumer Affairs §2-233 Records.

<sup>39</sup> The subpoenas, resulting charges, and dispositions of the DCA's extensive investigation were obtained via a Freedom of Information law request by MFY Legal Services and are on file at SBLs.

unbound or computer generated; and logs not listing method of service or a description of the person served.

Yet failure to maintain a proper log is not enough to prove sewer service. For the DCA to revoke a process server's licence, it must uncover a blatant lie. Doing so requires complaints from consumers or judges and a dogged investigation. Indeed, in the last 24 months, only eleven (11) of the 52 process servers charged with improper log maintenance have had their licenses revoked. For example, the DCA was able to revoke the license of Harry Torres because it already had three complaints from separate consumers that he faked their service, as well as an allegation that he created a dummy log book in preparation for a traverse hearing.<sup>40</sup> With that information, the DCA demonstrated that Mr. Torres kept incomplete log books to avoid sewer service detection.

Where a consumer complaint does not create such an obvious contradiction, the DCA has to spend a huge amount of time locating affidavits of service and matching time lines to find the lie. Such was the case with Andrew Linauer. The DCA knew his service was suspect due to: a) a 1986 conviction for making a false statement to a public servant; b) a 1990 sanction for poor log keeping; c) a consumer complaint regarding false service; and d) three traverse hearings in two years. To prove his duplicity, the DCA relied not on his log books, which were in disarray. Nor could it review the affidavits of service he filed on behalf of a single debt collector, since they showed service at reasonable intervals. Rather, it had to locate other civil court files involving different debt collectors that employed him, and then aggregate and compare all the purported dates of service. Only after examining affidavits related to three different debt collection firms was DCA able to show a blatant contradiction -two services at 10:30 am at two different addresses for two different debt collectors.<sup>41</sup>

Given the limited resources of the DCA, the odds of sewer service being proven are low. Equally important, the consequences are being caught are slight. Among the 11 process servers who lost their licenses since 2008, the median fine was only \$1,000.<sup>42</sup>

### **C. Collectors of Consumer Debt Benefit From Sewer Service**

Whether the creditor is Capital One or a company that purchases defaulted credit cards, it benefits from sewer service. They seek to collect debts that consumers have said for months that they cannot pay. And these claims of poverty are largely true. Only 17 out of every 100 debt

---

<sup>40</sup> *Supra.* note 30.

<sup>41</sup> *Department of Consumer Affairs v. Andrew Linauer*, Notice of Hearing, dated June 2, 2009, and Assurance of Discontinuance, dated August 25, 2009. On file at SBLS.

<sup>42</sup> *Supra.* note 36.

collection cases filed generate any income.<sup>43</sup> The creditor's goal is thus to uncover which of these financially strapped debtors in fact can legally be required to pay something. This is easily done through electronic discovery and wage garnishment. But those powerful weapons cannot be used until after a judgment is entered. If one files 30,000 cases in a year (as did Capital One in 2007) the quickest and cheapest way to separate the 17% who can pay something from the 83% who are legally collection proof is a default judgment. In short, paying process servers low wages that ensures sewer service makes good business sense.

In most non-consumer debt litigation, obtaining default judgments by sewer service makes absolutely no sense. The predominate legal question in most litigation is not can he pay but rather must he pay, i.e. liability. For this reason, plaintiffs and their attorneys pay process servers \$50 and upward to ensure accurate service. Indeed, failure to hire a reliable process server exposes a lawyer to a negligence suit from his client. *Kleman v. Rheingold*, 81 N.Y.2d 270 (1993.)

#### **IV. The Proposed Bill's GPS provision and Private Right of Action Makes Sewer Service Easy to Detect and Punish at Little Cost.**

##### **A. GPS is Cheap and Effective**

At a national hearing before the Federal Trade Commission concerning debt collection, Queens Civil Court Judge Diane A. Lebedeff called for "someone to . . . spend . . . time on how [to] . . . identify process servers who are . . . flouting the law and engaging in sewer service. . . .[i]t's very difficult for the system to identify [them.]"<sup>44</sup>

The GPS portion of this bill answers her call. Under the bill, a process server must maintain GPS proof showing he visited an address where he attempted service. GPS proof of service is cheap, easy to use, and readily available for both the independent process server or one who works with a process serving company as an employee. All of these technologies enable a process server to print out (and save electronically as well as a hard copy) a map that shows the process server's visits during the course of a business day. Most use cells phones for tracking.<sup>45</sup>

---

<sup>43</sup> Statement of a debt collector Raymond Bell, vice president of Creditors Interchange Receivables Management, before the Fordham University Law School forum on Debt Collection, June 18 2008.

<sup>44</sup> *Supra.* note 2.

<sup>45</sup> Verizon maps cell phone movements for \$9.95 a month. [http://products.vzw.com/index.aspx?id=fnd\\_familylocator](http://products.vzw.com/index.aspx?id=fnd_familylocator) Loopt documents the movement of a cell phone in the course of a day. <http://en.wikipedia.org/wiki/Loopt> Google Latitude is free enables an employer to see an employee's location via his cell phone.

For example, Accutrak turns most cell phones into a GPS tracker for \$5.99 to \$9.99 per phone per month.<sup>46</sup> For those who do not like cell phones, there are small transmitters (starting at \$100) that one can carry in the car or one's pocket that will create the same image at the end of the work day.<sup>47</sup> A third option is to photograph the defendant's dwelling with software that "GEO stamps" the photo with the time, date and location of the camera or cell phone camera. Those devices cost from \$5 to \$150.<sup>48</sup> SBLs installed such a device on an Apple I-Phone and captured the attached image during a snow storm from the interior of our office.<sup>49</sup> Our office is located in the heart of a six story office building in downtown Brooklyn and is surrounded by numerous high-rises.

**B. The Bill's Private Right of Action Prevents Dishonest Process Servers from Using GPS Fraudulently.**

Any process server who thinks they can fool the GPS and simply drive-by a defendant's home without making an attempt is in for a rude awakening. GPS Mapping or Geotagging includes time lines. If you have seven summons to serve on Second Avenue between Houston and 23<sup>rd</sup> Street, you cannot spend ten minutes driving that distance without creating proof of your fraud. Because the bill provides a private right of action, anyone who detects such fraud can bring an action for statutory penalties, as well as compensatory and, where the violation is willful, punitive damages. And because of the bill's \$10,000 and \$100,000 bonding provision for individual process servers and agencies, respectively, recovery is guaranteed.

If a process server drove slowly enough, or parked for a long time, he probably could obtain GPS data that hid sewer service. However, the GPS provision would significantly decrease the harm caused by that dishonest process server. Right now, because logs are so easily faked and sewer service so difficult to detect, the sky is the limit on how many fraudulent

---

<http://www.google.com/latitude/intro.html> Mobile Spy maps a cell phone's movements for about \$200 a year. <http://www.mobile-spy.com/howitworks.html>

<sup>46</sup> <http://www.accutracking.com>

<sup>47</sup> <http://www.rmtracking.com/>.

<sup>48</sup> Eye-Fi works in over 1,000 models of cameras; starting at \$59.99. <http://www.eye.fi/how-it-works/features/geotagging> GeoLogTag for iPhone acts as a GPS data logger on photos taken with any digital camera for \$4.99. <http://www.apptism.com/apps/geologtag> GPS Image tracker (GPS-CS3KA) is a chip one installs on a digital camera to record time, date and location to each photo for \$149.99. <http://www.sonymstyle.com/webapp/wcs/stores/servlet/ProductDisplay?storeId=10151&catalogId=10551&langId=-1&productId=8198552921665751075>

<sup>49</sup> See attached Exhibit 1.

services a dishonest process server can make. Indeed, ALP process servers claimed to make up to 100 service attempts in a single day.<sup>50</sup> Such fraud gives graduate-school income (\$400 to \$500 a day) to anyone. With the GPS, a slow driving process server who decided to space his service attempts by an acceptable 15 minutes would be limited to 32 service attempts in a single, eight hour day. This is the equivalent of \$20.00 an hour, the starting wage one could earn for a reputable process server.<sup>51</sup> Given that one can earn up to \$50.00 an hour as a process server, the financial incentive for faking service is eliminated especially when one runs the risk of losing one's \$10,000 bond to a private litigant.

Moreover, GPS makes it difficult for a process server to make one failed attempt at an empty home and then lie that he served a fictitious occupant by substitute service. Any process server who does so may create a statistical record that establishes sewer service. The 1986 study involving the detective who performed by-the-book service showed personal service at almost 40% with substitute service only at 53%. Moreover, the detective was unable to serve almost half of the papers he was given because the defendant had moved.<sup>52</sup> A high rate of substitute service will be suspect and be actionable pursuant to the bill's private right of action and bond

## V. GPS Is Not an Invasion of Privacy

Under the proposed bill, any process server wishing to hide her stops or routes between service attempts can simply turn off the GPS unit or cell phone. Then, when she arrives at the address she wishes to record, she can simply turn the unit on. No log is needed regarding the route taken from one address to the next, or where the process server spent time between service attempts.

Requiring GPS for process servers is legal. When addressing privacy in the work place, courts weigh the needs of the employer against the employee's expectation of privacy.<sup>53</sup> Here, the government stands in the shoes of the employer. Its GPS proposal is based upon the public's need to curb sewer service. This need is astronomical. The courts have deemed sewer service an epidemic. In ALP, the Attorney General has spent thousands of hours with agents, computer scientists, and statisticians to disclose fraud among a single process service company using 20 process servers. The DCA has investigated over 100 process servers in the last two years at

---

<sup>50</sup> *Supra.* note 13 at 15.

<sup>51</sup> *Supra.* note 32.

<sup>52</sup> *Supra.* note 3 at pg 9-10.

<sup>53</sup> Diane Cadrain *GPS on Rise; Workers' Complaints May Follow* HR Magazine, (April 2005) available at [http://findarticles.com/p/articles/mi\\_m3495/is\\_4\\_50/ai\\_n13629523/](http://findarticles.com/p/articles/mi_m3495/is_4_50/ai_n13629523/)

great expense. While these efforts no doubt raise fear in process servers, (just as the 1986 investigation and criminal prosecutions did), their lasting effect will remain minimal unless detection of sewer service is simplified.

In contrast, a process server has no expectation that her physical presence at a defendant's address is private as she is regularly attesting in public documents that she was at such an address. On the other hand, it is quite reasonable for a process server to expect her visit to a doctor or friend to remain private. Given the ease in turning off the GPS device during such breaks, the bill is sound and legal.

## VI. Conclusion:

### **The Bill's Innovated Solution to an Intractable Problem Must Be Adopted**

Some may say that GPS is gimmickry. However, advances in technology are adopted in legal proceedings when they advance justice. In the 1980's DNA testing supplanted oral testimony for establishing paternity.<sup>54</sup> Similarly, in the 1990's electronic bank matching was enacted, thereby guaranteeing that fathers and mothers owing child support had their assets seized.<sup>55</sup> In 2001, debt collectors were allowed to serve information subpoenas electronically on banks to locate bank accounts of consumer debtors.<sup>56</sup>

While New York City will be the first to require GPS technology, its use is not unprecedented. An enterprising process server in Wisconsin guarantees his work with GPS.<sup>57</sup> GPS also is being used by the New York City Department of Buildings in response to fraud among its inspectors. In 2008, a building inspector faked a report stating he had inspected a crane. Eleven days later the crane collapsed, killing seven people. In 2009, the Buildings Commissioner imbedded GPS mapping devices on all of his 379 inspectors' cell phones stating the tracking system was "a simple, innovative way to ensure inspectors reach their assigned

---

<sup>54</sup> *Jeter v. Clark*, 486 U.S. 456 (1988) (striking down a six year statute of limitations to bring paternity action since "increasingly sophisticated scientific tests facilitate the establishing of paternity regardless of the child's age")

<sup>55</sup> New York Social Services Law §111-h (8) and §111-s. (enacted in 1998 to conform with federal mandates enacted in 1996.)

<sup>56</sup> N.Y. C.P.L.R. Sect. 5224(a)(4)

<sup>57</sup> This process server purchased a \$100 "data logger" from Qstartz. It creates reports and screen shots each day similar to Accutrack's without any subscription fee. <http://www.randyscott.us/GPS%20screenshot.asp>.

locations and are held accountable for their important work.”<sup>58</sup>

The work of process servers is equally important. The City Council should support this sound and innovative bill.

Sincerely,

**Johnson M. Tyler, Esq.**  
Unit Director  
Social Security/Consumer Rights  
718-237-5548  
[Jtyler@sbls.org](mailto:Jtyler@sbls.org)

---

<sup>58</sup> Fernandez, *Buildings Dept. to Track Inspectors via Cellphone and GPS Technology*, The New York Times, (August 28, 2009).  
<http://www.nytimes.com/2009/08/29/nyregion/29inspectors.html>

Appendix A

<b>Law Firm</b>	<b>Process Service Agency</b>	<b>Nail &amp; Mail</b>	<b>Sub-stitute</b>	<b>Personal</b>	<b>Sample Size</b>
NYS Attorney General	N/A	7%	54%	<u>39%</u>	214
Total for all debt collection firms of SBLS survey	All listed below	36%	61.30%	<b>2.73%</b>	324
Rubin & Rothman	AAA Attorney Service	9%	88.5%	1%	72
Pressler & Pressler	Executive Attorney Service	74%	22.5%	4.5%	27
Eltman & Eltman	Triple A Process Services	61%	34	4%	23
Stephen Einstein	ABC Process Servers	56%	44%	0	43
Mel Harris	Samserv	0%	98%	2%	38
Mel Harris	Accu-Serve	59%	37%	3.5%	57
Solomon & Solomon	unknown	23%	77%	0%	18
Goldman, Warshaw & Parrella	AAA Attorney Service	20%	66%	13%	15
Cohen & Slamowitz	Capital Process Servers	52%	40%	8%	50