

## **Best Practices for Service of Process: Lessons Learned from Recent Reforms made in New York City**

Service of process requires exquisite attention to detail with expertise on the statutes in each state and country. If your process server is unreliable or blatantly dishonest, a domino effect of errors will result. Consider the following actual scenario:

### **NYC “Sewer Service”**

In response to complaints from people being sued who claimed they were never served papers, it was found that many process servers in New York City were illegally dumping papers instead of serving them. The New York City Council passed legislation strengthening rules for process servers. The bill’s 2010 sponsor, Councilman Daniel Garodnick, said that raising industry standards and using new technologies will give New Yorkers a fair chance to answer claims against them.”

As of November 12, 2011, New York City process servers must carry and operate an electronic device that records the Global Positioning System (GPS) location while serving process. They must keep electronic records of their serves, and track serves with GPS in accordance with the Commissioner’s rules. In addition, New York requires all process servers within each of the 5 boroughs (Manhattan, Brooklyn, Bronx, Staten Island, and Queens) to be licensed through the NYC Department of Consumer Affairs. Individual process servers must pay a surety bond of \$10,000, and agencies must pay a bond of \$100,000 to be effective for their entire license term. Process servers must also pass a test on relevant rules and laws before being issued a license or renewal.

### **New York Regulations a Benchmark for Best Practices**

They say necessity is the mother of invention, and in this case, new rules were necessary. While each state has their own process service requirements, the recent New York City standards should be adopted by any process server interested in following superior business practices. Perhaps what happened when Citibank tried to collect \$34 Million in credit card debt could have been avoided. According to the Consumer Financial Protection Bureau (CFPB), two law firms hired by Citibank violated the Fair Debt Collection Practices Act by altering affidavits filed in New Jersey after they were executed. The illegal changes included the date of the affidavits, the debt allegedly owed or both. Both law firms admitted no wrongdoing as part of the enforcement action but were required to pay a combined \$80,000 to the CFPB’s Civil Penalty Fund. Additional enforcement violations required Citibank to stop collecting the credit card debt and provide nearly \$16 million in consumer relief.

### **Proper Communication is Key**

Successful process servers are properly trained and licensed to ensure the highest level of compliance. When hiring a process server, make sure they are properly screened and thoroughly vetted. If they are ever required to testify in a lawsuit, their credibility will surely come into question. Characteristics to look for in a process server or process service company include expert knowledge of process service legal requirements, the ability to conduct litigation support services in an ethical manner, attention to detail and excellent communication throughout the entire process. In addition, most reputable service firms are part of professional Process Service Associations or are affiliated with licensed, bonded and insured investigative firms.

## Tips to Keep in Mind When Submitting an Assignment

1. Check and re-check the address of the defendant who is being served (Costly errors can be avoided by making sure the address is correct.)
2. Double check the document for spelling errors. (Defendants can't be located if the name is spelled incorrectly.)
3. If applicable, don't forget to include specific instructions and/or advanced fees with the documents.
4. Clearly describe the preferred method of service required:

(For example, according to New York Civil Practice Law and Rules, the methods of service WITHIN New York State include)

- a. Personal Service: 3 Ways
  - i. Personal Delivery – Delivering papers to the person to be served
  - ii. Substituted Service: 2 Required Steps-
    1. Step 1: Delivering to a person of suitable age and discretion
    2. Step 2: Mailing the papers by first class mail to the person to be served at his or her last known residence or mailing them to his or her actual place of business (The envelope to be used for the mailing must be marked “Personal and Confidential” and must not show in any way the envelope contains papers about a legal action against the person being served.
  - iii. Serving an Agent – delivering the initiating papers to a designated agent - someone chosen by the person to accept process (this method cannot be used in divorce actions)
- b. “Nail and Mail” Service – If several genuine attempts at personal and substituted service have failed, and the case is not a divorce case, the papers may be serviced by taking the following 2 steps:
  - i. Step 1: Affix the summons to the door of either the actual place of business, dwelling place or usual place of abode of the person to be served *and*
  - ii. Step 2: Mail the process by first class mail to the person to be served at his or her last known residence or to his or her actual place of business
    1. The affidavit of service by “nail and mail” must describe in detail the times and places of all the previous attempts at personal service, before “nail and mail” service was used.

In conclusion, when it comes to submitting Service of Process, accuracy and communication is key. Taking the time to check and re-check your information before you submit your assignment can save countless hours and dollars. If you follow the tips outlined above, and make sure your process service company is licensed *and* uses GPS technology, you should have no problem having your service processed in a timely and cost-effective manner.