



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
CIVIL COURT COMMITTEE AND CONSUMER AFFAIRS COMMITTEE**

Int. No. 1037-A

Council Members Garodnick, Lappin, Brewer, James, Liu, Gerson and Nelson

A Local Law to amend the administrative code of the city of New York, in relation to process servers.

THIS BILL IS APPROVED

The Civil Court Committee and the Consumer Affairs Committee of the New York City Bar Association submit this statement in support of City Council Intro 1037-A/2009, to amend the laws governing process servers in New York City. The Committees believe that this legislation is necessary to reform the process serving industry, which is replete with problems, with devastating effects on New Yorkers.

It is no secret that New York courts are suffering under the exponentially increasing weight of consumer credit litigation. In 2008, nearly 300,000 debt collection lawsuits were filed in New York City alone. These cases are overwhelmingly brought against low- and moderate- income New York debtors, many of whom are elderly or disabled and nearly all of whom are unrepresented by counsel. Approximately 80% of these cases result in “default” judgments – automatic wins for the debt collector because the defendant failed to appear. The consequences of these judgments prevent low- and moderate-income New Yorkers from being able to support their families, secure housing, and obtain employment.

Based upon our experience as practitioners handling these types of cases, we believe the reason for the high rate of defaults is because consumers never receive notice of the lawsuit as required under the law. Many of the process servers hired to serve papers in consumer credit actions engage in “sewer service” – the practice of failing to serve court papers and filing false affidavits of service with the courts.¹ The New York State Attorney General recently brought civil and criminal charges against a process service agency that allegedly failed to serve New Yorkers in tens of thousands of cases. The Committees believe that the practices uncovered by the Attorney General are far from unique, but instead are too frequent in consumer credit actions.

Intro 1037-A, which pertains to the licensing of process servers and process serving agencies, and the responsibilities of agencies to their employees, would help ameliorate many of the

¹ See, e.g., MFY Legal Services, Justice Disserved (June 2008) (available at http://www.mfy.org/Justice_Disserved.pdf).

problems inherent in the process serving industry in New York City. The bill requires that in order to obtain a process server license from the Department of Consumer Affairs an individual will have to post a \$10,000 surety bond and process serving agencies will have to post a \$100,000 bond. The bond will be used to secure payment of any fine or penalty levied by the New York City Department of Consumer Affairs as well as the payment of any final judgment recovered by a person who has been injured by an improper service of process. In addition, the bill provides for a private right of action against process servers, enabling individuals to seek injunctive relief and damages from servers who engage in sewer service and abuse the legal system. It should be noted that the Committees believe that this private right of action should be explicitly limited to persons who were improperly served with process.

The bill also includes several other important provisions. Process servers will be required to take an examination to obtain a license. Process serving agencies will be required to inform their employees of their rights under minimum wage, overtime, payroll deduction and other employment obligations of their employers. There is also a provision in the bill requiring the retention of employment records for three years and process serving records for seven years in electronic form. Finally, the bill requires the Department of Consumer Affairs to produce educational materials governing the laws and regulations that pertain to the service of process, which will be distributed to all licensed process servers.

This bill will help address many of the inherent problems in the industry and will serve as a deterrent to those who believe they can engage in shoddy service without consequences. We urge the City Council to pass this important legislation promptly.

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