



**NEW YORK
CITY BAR**

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**TESTIMONY OF ANAMARIA SEGURA, MEMBER, CONSUMER AFFAIRS
COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION,
IN SUPPORT OF INT. 6-A**

**NEW YORK CITY COUNCIL
CONSUMER AFFAIRS COMMITTEE HEARING
March 2, 2010**

My name is Anamaria Segura, and I am a member on the Consumer Affairs Committee of the New York City Bar Association. I am testifying on behalf of the Civil Court and the Consumer Affairs Committees of the New York City Bar Association. The New York City Bar supports City Council Intro 6-A, which amends 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 that have devastating effects on New Yorkers.

It is no secret that there is a crisis in the process service industry in New York City and that New York courts are deluged by a massive wave of consumer credit litigation. More than 75 percent of the 300,000 consumer debt proceedings initiated annually in New York City Civil Court result in default judgments, often after sewer service. 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. As a result, each year tens of thousands of New York City residents are deprived of their due process right to be heard before judgments are issued against them. As a result of these judgments, countless New Yorkers are unable to support their families, secure housing, and obtain employment.

Based on our experience as practitioners in this forum, we believe the reason for the high rate of defaults is that many consumers never receive notice that a lawsuit has been commenced against them. Many 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 all too frequent in consumer credit actions.

We believe that Intro 6-A would help ameliorate many of the problems inherent in the process serving industry in New York City. We support the provisions of the bill that require an applicant for a process server license to post a \$10,000 surety bond and process service agencies

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

to post a \$100,000 bond. Such bonds 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 improper service of process.

We also support the provision allowing 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. The Committees believe that this private right of action should be explicitly limited to persons who were improperly served with process.

We also support the new global positioning system (GPS) provision of the bill to the extent that any GPS requirement enhances laws currently in place, including maintenance of logbooks, and with the caveat that we support this provision only if including it will not prevent passage of the entire bill in a timely fashion. The Committees believe that passage of this legislation is urgent and request that the City Council pass it promptly.

The Committees also approve the bill's other important provisions, including the requirements that process servers be required to take an examination to obtain a license; that process serving agencies be required to inform their employees of their rights pursuant to minimum wage, overtime and payroll deduction laws as well as other employment obligations of their employers; and that employment records be retained for three years and process serving records for seven years in electronic form. Finally, we fully support the provision requiring the Department of Consumer Affairs to produce educational materials for distribution to licensed process servers regarding process serving laws and regulations--it is essential that process servers be educated about the laws governing service of process.

This bill will help address many of the problems in the process service 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.

Respectfully submitted,

Anamaria Segura
On behalf of the
Civil Court and Consumer Affairs Committees
New York City Bar Association
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