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Bloomberg Signs Bill Beefing Up Regulation Of Process Servers; City Bar Backs More Reforms

BY NOELEN G. WALDER

MAYOR Michael R. Bloomberg signed into law yesterday a bill aimed at ensuring that process servers do not cut corners when they notify New Yorkers of lawsuits pending against them.

But according to a report issued by the New York City Bar this week, more needs to be done to address the "crisis" in the process serving industry.

The bill, proposed by Councilman Daniel R. Garodnick of Manhattan, was passed last month by the New York City Council amid increasing reports of "sewer service"—the practice of fraudulently trashing or disposing of summonses meant for consumers, tenants and other alleged debtors.

According to the city bar report, those who are not served face "devastating consequences," including frozen bank accounts and ruined credit ratings.

In 2009, 66 percent of the 241,000 consumer debt cases led to default judgments, the report states.

Meanwhile, *Pfau v. Forster & Garbus*, 2009-8236, a suit filed last year by Attorney General Andrew M. Cuomo on behalf of Chief Administrative Judge Ann Pfau to



Daniel R. Garodnick, Councilman

overturn more than 100,000 faulty default judgments, is in settlement talks (NYLJ, July 23, 2009).

The city's new legislation adopts a number of proposals made by the Civil Court and consumer affairs committees of the city bar, including having applicants pass a test to receive a process server license, requiring servers to use a global

positioning system or other tracking device to record every service attempt, and requiring servers and serving agencies to post a bond to cover the cost of unpaid fines and judgments.

The bill, Intro. 6A, also requires servers to keep electronic records of service for seven years, gives defendants a private right of action against process servers, and directs the New York City Department of Consumer Affairs to submit a report to the City Council in two years on the results of their audits of process servers and agencies.

"We're taking sewer service out of the sewer," Mr. Garodnick said in a March press release.

"With this bill, we fundamentally changed the way we regulate this industry by adding new rules and stimulating » Page 3 enforcement by the Department of Consumer Affairs," he said in an interview.

Jonathan Mintz, commissioner of the consumer affairs department, which licenses 2,081 individual process servers and 143 process server agencies, praised the legislation.

"As proud as we are of the hundreds of intensive investigations, subpoenas, revocation actions, consent decrees and substantial fines we've secured over the last several years, it is our proposal to require electronic verification of service of process that will really make all the difference moving forward," Mr. Mintz said in a statement.

He added that the agency would work with the courts and the city bar to help New Yorkers "identify and assert their due process rights to effective service."

But Janet Ray Kalson, who chairs the city bar's Civil Court committee, said that while the legislation is a good start, it is not "a panacea."

In particular, Ms. Kalson, an associate at Himmelstein McConnell Gribben, said the consumer affairs agency needs to step up enforcement and review cases where defendants have only received notification of pending suits from the court system

Ms. Kalson also suggested that wages for process servers be increased to discourage them from breaking the law.

And the courts should "be aware that sewer service is a rampant problem" and "should not be pressuring pro se defendants to waive a traverse hearing," a hearing in which defendants present evidence to try to prove that they were not properly served.

Deputy Chief Administrative Judge Fern A. Fisher disagrees that the court system as an institution discourages defendants from challenging service, and said courts are stepping up efforts to make sure defendants are aware of their rights.

Carolyn E. Coffey, an attorney with MFY Legal Services and a member of the Civil Court committee, also supports the city's effort.

"It is evident from the attorney general's suit that problems with improper service is a statewide problem," she said in an interview.

A bill now in the Senate (S7265) would require licensing of process servers outside of New York City.

Ms. Coffey said she supports passage of a separate statewide Consumer Credit Fairness Act.

The act, which passed last year in the Assembly, would, among other things, allow defendants in consumer credit actions who raise improper service as a defense to preserve that defense for trial

without having to file a motion to dismiss within 60 days. Currently, defendants who have raised the defense must make a dismissal motion within 60 days.

Meanwhile, Judge Lawrence K. Marks, administrative director of the Office of Court Administration, said the court system is considering whether to expand a pilot program requiring continuing education for process servers.

The program is a joint effort by the court system, the department of consumer affairs, and the Feerick Center for Social Justice at Fordham University School of Law.

But Elliot Meisel, a Manhattan real estate attorney, said he thinks too much time is already spent elevating procedure above substance.

While Mr. Meisel said he agrees that defendants are entitled to protection against "underhanded tactics," he said that frequently litigants argue about the "procedural niceties of process serving" and do not devote sufficient attention to the merits of the case.

"It doesn't matter if someone threw the process through the window in a paper airline. If you are in court, you haven't been prejudiced by the manner in which the process is served. It's not sewer service," Mr. Meisel said.

Online

✦ A link to the new law is posted at nylj.com.