



New York City Council Committee on Consumer Affairs

Process Serving Industry Must Be Reformed

Testimony on Intro.1037/2009 by

Carolyn Coffey, Esq.

Senior Staff Attorney

MFY Legal Services, Inc.

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My name is Carolyn Coffey. I am a senior attorney with MFY Legal Services' Working Poor Project and its Consumer Rights Project. Thank you for the opportunity to testify today about this important legislation.

MFY each year provides direct representation or assistance to over 6,500 clients in New York City. We provide legal training to thousands more. Our clients are primarily the poor and working poor, retirees and the disabled. Our clients routinely are the victims of improper service, otherwise known as "sewer service." Sewer service has long been a problem in the Civil Court of the City of New York, despite previous attempts to address it. Today sewer service is so pervasive that in many types of cases — debt collection cases in particular — it occurs more often than lawful service. Tens of thousands of New York City residents are subject to this abuse every year, most often in consumer debt collection cases and in Housing Court. For this reason, there is an urgent need for reform of the process serving industry.

Last year, MFY issued a Report titled, "Justice Disserved." (A copy is attached to my testimony.) This report looked at over 180,000 cases filed in the Civil Court and catalogued how default judgments due to improper service wreak havoc on the lives of many of MFY's clients, most of whom have low-income wages or rely solely on Social Security, SSI, Veterans Benefits or pensions for support. Our report focused on just seven debt collection law firms and we found a default rate that was extraordinarily high. Similarly, the Civil Court has reported a default rate of 76% in consumer debt cases. The repercussions of default judgments are devastating: instead of having an opportunity to defend themselves in court, consumers first learn of litigation against them when their wages are garnished or their bank accounts are frozen. Similarly, tenants in Housing Court often first learn of the case against them when they come home to find a notice of eviction tacked to their door.

Also last year, the New York City Department of Consumer Affairs held a public hearing on the process serving industry. Testimony of industry insiders — agency owners and process servers alike — confirmed that sewer service is widespread and commonplace. For example, Evan Cohan, a managing attorney at DLS, said, "Consumer debt collection is a big area for sewer service." He attributed this to the fact that the law firms hiring process servers in consumer debt collection cases are paying so little. Jay Brodsky, President of ABC Process

Serving Bureau, said he pays “as low as” \$3 per service, each of which may require a process server to return at least three times on different days and times. Samson Newman of Aetna Judicial Service said he pays \$5 per service in debt collection cases. Both Brodsky and Newman explained that the process servers they hire often do not get paid if service is not completed. Bob Gulinello, a licensed process server, said that when you pay a process server \$5, you are “going to get fraudulent service and sewer service.” He added that in such circumstances proper service “ain’t going to happen.” Of course, not all process servers and process serving agencies operate this way. One company testified to paying \$50 per service and another to paying \$45 per hour. Mr. Cohan of DLS explained that all his process servers are full time employees and his firm has “eliminated the incentive for sewer service, because [its] employees get paid regardless of their success. The incentive . . . to fabricate attempts is eliminated.”

Nothing dramatizes the crisis of improper service in New York more than the filing by the Attorney General of *Pfau v. Forster & Garbus* on July 21, 2009, which seeks to vacate 100,000 default judgments across New York State which are tainted by fraudulent claims of service by a single process serving company.

MFY Legal Services urges the City Council to pass Intro 1037 which would require all licensed process servers to provide the Department of Consumer Affairs (DCA) with a \$10,000 surety bond and would require process serving agencies to provide a \$100,000 bond. These bonds would guarantee payment of fines levied by DCA and judgments issued against the process server or the process serving agency, increasing City revenues and guaranteeing repayment of victims who obtain a judgment against the individual process server or agency. New York City already has adopted a similar bond requirement for Laundries (NYC Adm. Code § 20-294), Home Improvement Contractors (NYC Adm. Code § 20-401(3)), Child-support Debt Collection (NYC Adm. Code § 20-494.1), Vehicle Towing Operator (NYC Adm. Code § 20-499) and the Booting of Motor Vehicles (NYC Adm. Code § 20-532.1).

Also, by requiring a bond, Intro 1037 will drive the “bad apples” out of the industry. Surety companies may require higher premiums and greater collateral from unreliable process servers and process serving agencies. Surety companies may even deny coverage if the individual or agency is unable to meet the surety company’s professional standards. These new standards will help deter people who want to make a “quick buck” by entering the process serving industry and undercutting honest process servers by flouting the legal requirements for services. They will similarly be an incentive for such people already in the industry to leave. The requirement of a surety bond will substantially increase accountability in an industry in which individuals and companies now routinely violate the law with virtually no penalty.

Right now, many individual process servers are actually “employees” of the agencies that hire them, but they are denied their employment rights of a minimum wage, social security

and other protections because process serving agencies improperly treat them as “independent contractors.” With an individual bonding requirement under Intro 1037, this abuse will end because these low-wage individuals will likely not be able to obtain their own surety bond. Instead, they only will be able to work if the process serving agency that hires them acknowledges that they are employees, covers them under its own agency bond, and on this basis the process server seeks a license from DCA.

The bill also requires process serving agencies to provide employees with information about their rights as workers, including their rights under wage and hour laws, and to provide annual training regarding the laws pertaining to lawful service of process. Because employees will be informed of their rights, agencies that underpay and misclassify their employees will have a greater risk of being held accountable. This will serve to reduce or eliminate the incentives that have made bad service inevitable. Knowing that they have a \$100,000 bond at risk will encourage process serving agencies to comply with employment laws and hire responsible employees and will encourage supervision of their employees and compliance with the training mandate of Intro 1037.

Finally, we believe the bill can be strengthened by making it easier for injured victims of sewer service to recover damages, which Intro 1037 will insure are paid because of the new bonding requirement. One way to strengthen the bill is to create a right of action similar to that found in NYC Adm. Code § 20-743.1, which establishes a private right of action for consumers who have been injured by the failure of a tax preparer to follow laws concerning refund anticipation loans. Another option is to authorize the DCA to award treble damages to people who are the victims of sewer service. A similar right to up to treble damages exists for the victims of improper home improvements under NYC Adm. Code § 20-401. We know that the Committee will be hearing suggestions from other supporters of Intro 1037 to strengthen the bill. MFY supports these suggestions as well.

In conclusion, MFY Legal Services urges the adoption of Intro 1037. If Intro 1037 is enacted with the strengthening amendment we propose, the Council will have taken a dramatic step forward in protecting New Yorkers from the harms of sewer service and in ensuring that those individuals who are still the victims of this practice can be compensated when they are harmed.

Again, thank you for the opportunity to testify today.