

COST TO BECOME A SERVER

License----
\$340.00 for 2 years

Test----\$75.00 every 2 years

Fingerprints----\$75.00
onetime charge

Monthly fee for GPS----
\$40.00 (depends on
requested service)

Bond----\$100.00 average
for two years

McDONNELL
7.2014



WILL THERE BE ANY PROCESS SERVERS LEFT IN NEW YORK CITY?

by Irving Botwinick



On May 1, 2014, I celebrated 37 years in business under the name Serving By Irving, Inc. My company is known in the legal profession and throughout the world for its expertise in process serving and in private investigations. We specialize in difficult assignments: the work that others can't or won't tackle. I got my start in process serving

when I was managing a law firm and a process server reported he could not locate the address 350 Fifth Avenue. The address was the Empire State Building! As a joke, I asked the senior partner, "Why don't I get a license and you could pay me to serve the papers?" He agreed, and Serving By Irving was born.

What Is Process?

Process is generally defined to be the means by which a defendant in an action is compelled to appear in Court. In New York State, it historically preceded the filing of papers with a Court (in the federal system the papers were filed first) and was the necessary predicate for an exercise of jurisdiction over the person of the defendant by a court. It usually consists of a summons and complaint. Nowadays, New York's rules have become more similar to those of the federal courts. The index number is purchased first, process is served, and

then filed with the Court. Recently efforts have been made to streamline the procedure to encourage defendants to admit service, so as to cut down on delays caused by service contests.

"Service of process" refers to the manner in which process is delivered to the defendant. It can be either actual or constructive; that is to say, if process cannot be,

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by reasonable efforts, personally delivered to an individual defendant, he can be notified a different way — through an intermediary (a "person of suitable age and discretion") and subsequent mailing, or even by affixing the process to a door, with subsequent mailing. Under those circumstances, the process server cannot prove that the defendant ever received the process he served, only that he followed the rules for service.

Why Is Service Contested?

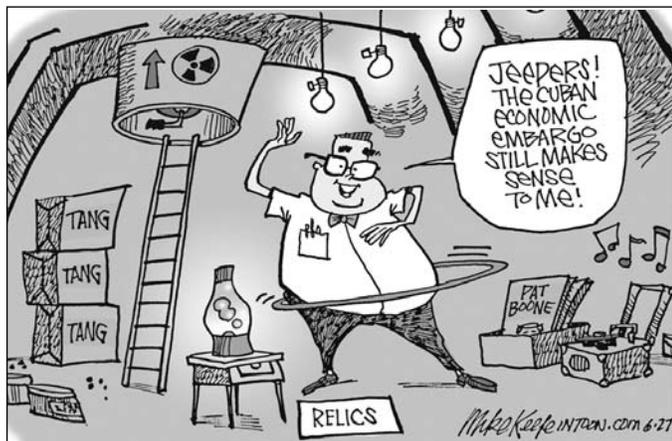
In almost all cases, defendants do not wish to be sued. And in some, plaintiffs have difficulty locating defendants. These are the primary reasons plaintiffs use process servers. They need an expert; they need someone who keeps excellent records. They need someone who can testify in court, if necessary, that service was properly made. Some defendants will contest service of process that they have in fact received. And because of the rules permitting constructive service, some will not have received the process even though the rules of

Irving Botwinick is founder of Serving By Irving, Inc. Specializing in serving legal papers on the hard-to-find, he once scrubbed up as a surgeon to serve a doctor in the operating room. He's climbed fire escapes, engaged in cab chases, and members of his staff gained access to the board room of a major corporation by pretending to deliver a Strip-O-Gram.

Irving Botwinick began in the investigative field in 1964 when he worked with the United States Air Force in the investigative section of Air Force Special Units. He later became an investigator for insurance companies. As a supervisor and manager of claims, his duties included investigating cases.

From 1974-77, Mr. Botwinick was the administrator of the law firm of Kravet, Hoefer & Ryan. In 1977, he founded Serving By Irving, Inc. which is currently the world's leading specialist in process serving. He is the founder and past president of the New York State Professional Process Servers Association, and is a founding member of the National Association of Professional Process Servers. He is a licensed private investigator and the immediate Past President of the Society of Professional Investigators. He has appeared as an expert in the field of process serving and investigations on numerous TV and radio programs, in addition to being called as an expert witness in numerous court cases. Mr. Botwinick has been a lecturer at many colleges.

Mr. Botwinick is a member of the Board of Directors of National Coalition of Concerned Legal Professionals and also of New York State CCLP.



Mike Keefe/Intoon.com

service were properly followed. If the issue of service arises before the judgment is taken, the court will only be interested in whether the rules for service of process were followed. Obviously, if a person did not receive process that was properly served, the judge will likely give that person a reasonable time to respond. On the other hand, if the contest arises after judgment, the judge will be much more likely to rule on the basis of whether the process was actually received. If he believes the defendant did not receive service of process (along with the many papers that would follow it), he will likely vacate the judgment.

Sometimes, errors are made in service of process. And in the worst of cases, plaintiffs engage in "sewer service," i.e., service of process that the plaintiff knows is not likely to notify the defendant of the existence of the litigation. This is a matter of constitutional significance, since the defendant has a due process right to notice and an opportunity to be heard. Moreover, such deficient service often involves outright lies and deceit.

Still, process servers must deal with situations in which there is bad feeling between the parties that the process server might not even know about. Defendants may also be evasive, move around a lot, or be located at great distances from the court; and in those instances the defendants are more than usually likely to contest service.

For their part, courts do not like to have to deal with service issues. Judges may be asked to compel a defendant to appear on pain of default, but our civil litigation system insists upon adjudication on the merits with both sides participating if that is at all possible. Vacating a judgment that has already been issued basically declares all previous proceedings to have been a waste of the court's time. Service issues therefore are seen as distractions that are often time-consuming, vexing and expensive. In these days of budget cutbacks and overloaded court dockets, judges do not want their time wasted in hearings on the sufficiency or propriety of service.

What Are Interlocutory Papers?

A distinction must be made between process, and interlocutory papers. The former refers to the papers that initiate an action, while the latter refers to all the other papers a party serves and files between the time the action is commenced and the end of the action or proceeding.

The law of service of process, which in New York State is contained in the Civil Practice Law and Rules (CPLR) and the General Business Law (GBL), treats them differently. Interlocutory papers can be served by anyone over 18 and not a party to the action, whereas, process may only be served by a licensed process server, unless it is served by someone who is not paid for the service and who has not already served process four other times in the preceding 12 months.

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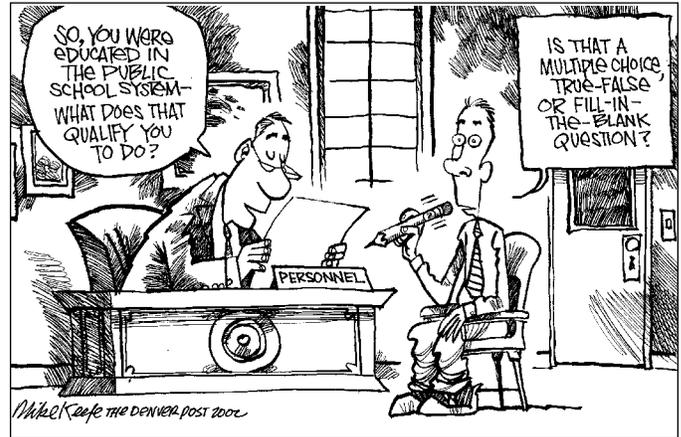
How One Becomes a Process Server

In New York State anyone over the age of 18 can become a process server. There are no exams or fingerprinting needed, no applications to complete and no experience necessary. A teenager out of high school looking for part-time work can serve papers, with no restrictions. He or she makes their own hours, no one looks over their shoulders and they usually work and get paid per assignment or paper served. They can secure their assignments by going to a process serving agency or just asking lawyers if they need work done.

Requirements for New York City Process Servers Are More Stringent

The above, however, is not true in the five boroughs of New York City. The Department of Consumer Affairs in New York City licenses process servers. They were doing that long before I received my license in 1977. During those years anyone over the age of 18 merely went to the Department, filled out a form, had fingerprints taken and paid \$20.00 for a two-year license. In the late 1980s, the fees went up to \$340.00 for a two-year period.

Process servers in New York City have had a bad reputation. In 1983, the Department of Consumer Affairs investigated servers for what is called "sewer service." What was happening was that some process servers would complete an affidavit of service,



Mike Keefe/Denver Post

swearing they served someone with legal papers, but they actually dumped the papers in the sewer; the person remained unaware of legal proceedings pending against him. The true situation would come to light when, for example, someone was now trying to close on the sale of his home, but at the closing it was learned for the first time that this individual had allegedly been served on another matter that now encumbered title to the sale property. Hence, judgments had been filed against the individual that now had to be vacated by proving they had never been served. Some servers were fined, some licenses were revoked and a few servers were criminally charged.

Recently, in 2009, the topic of sewer service again made the headlines when a process serving company

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Mike Keefe/Intoon.com

lied about their service of over 100,000 matters in consumer debt actions. The owner of the process serving company went to jail and that's when the process serving rules and regulations of the Department of Consumer Affairs dramatically changed.

Today, in order to secure a process server's license, an individual must complete an application, be fingerprinted, take an exam, be bonded and secure a GPS tracking application through a third-party company that monitors each case. Servers are now and have been recently audited, and have been heavily fined, as well as having been threatened by the Department of Consumer Affairs. Obviously these requirements drive up the cost of doing business for process servers.

Supervisory Work to Run a Process Serving Company

The paperwork is enormous for both the individual as well as the process serving company. For example, a

company must review each server's records once a month, and check each page in the server's log books for any cross-outs, errors, mistakes such as dates and times, hair color, weight, height, etc., of the person served as well as confirming that the location served matches the record produced by the server's GPS device. Some companies have 20, 30 or 40 process servers per month serving papers for them. Imagine the time this takes to carefully review each detail.

I do not know of any other licensed person or company that requires this type of scrutiny. For example, my company and I are private investigators licensed by the State of New York, which required a one-time test (not every two years), fingerprints and bonding. When it comes time to renew, we simply fill out a form, renew our bond and send in a fee. There are no compliance records required or threats of audits.

The cost to become a process server is as follows:

License	\$340.00 for two years
Test	\$75.00 every two years
Fingerprints	\$75.00 one-time charge
Monthly fee for GPS	\$40.00 depends on requested service
Bond	\$100.00 average for two years

The bond for an individual covers \$10,000.00, while for a process serving company it's \$100,000.00 (the bond cost for a company is about \$1,000.00 for two years).

In addition to the recordkeeping, process servers as well as their companies are faced with certain time demands; for example, whenever there are Traverse hearings (a hearing usually held before a judge or referee when service is contested to determine the validity of the service), it can be very time consuming for the process server, with no remuneration.

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salutes CCLP's fight for meaningful legal recourse for low-income workers

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The result of all these changes and requirements is that many servers have decided it is no longer a viable job for them. With the amount of time it takes to serve a paper, plus the cost of gas, tolls, wear and tear on their cars, and all the above fees to maintain the license, many servers decide it is just not worth it.

Many years ago there were over 2,000 licensed process servers in the City of New York; the number is now down to about 500. The diminishing number of servers may result not just from the burdensome conditions on holding the license and practicing as a process server, but also from less demand for process servers. For example, years ago attorneys took on larger volumes of personal injury and medical malpractice cases. However, the laws have since changed in those areas limiting litigation to severe injuries and thereby reducing the number of cases filed requiring service.

Conclusion

Process servers serve an essential role in our legal system. What does the future hold in store? Will there be service by Facebook or Twitter? I've seen several cases where the attorney requested the court to approve serving by FedEx.

I believe personal service of process will be around for many more years. Jurisdiction over an individual is most important for a lawsuit. Relying on securing jurisdiction

by mail or any other means other than a server knocking on your door is far away.



Illustration by Peter K. McDonnell

Editor's Afterword: Coalition of Concerned Legal Professionals is dedicated to the fight for meaningful access to the courts for low-income workers, and as part of our benefit program, our CCLP chapters have organized thousands of attorneys over the years to provide legal advice and education to the low-income members and constituents of organizations with which CCLP collaborates. Too often, both the cost of retaining an attorney and the fees and expenses of prosecuting litigation leave low-income workers without access to the courts. Retaining a process server is only one of many such expenses. The heightened requirements spoken to by the author result in process servers having to raise their fees.

As Mr. Botwinick notes, those who cannot afford the cost of process service may enlist someone over the age of 18 who is not a party to the action to serve the papers for them, so long as that individual has not served process (i.e., served the papers initiating a lawsuit or a hearing for an order to show cause) more than four times in the previous year. The Help Center of the New York State Supreme Court, Civil Branch, for example, publishes a bulletin entitled "How to Serve Legal Papers," which explains in detail the process someone must follow to serve process and execute the affidavit of service. This explanation can be found at <https://www.nycourts.gov/courts/1jd/supctmanh/Self-RepForms/HowServe.pdf>.



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