HOLDING CORPORATIONS ACCOUNTABLE FOR FRAUDULENT LAWSUIT NOTICE

THE CITY AT YOUR SERVICE: EMPOWERING TENANTS AND CONSUMERS TO CHALLENGE IMPROPER SERVICE

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Affordable NYC Now

2026

Landlords and debt collectors sue New Yorkers without providing lawful notice.

New York law, and constitutional principles of due process, require that when an individual is sued—for example, to try to evict them from their homes, or to collect a debt they purportedly owe—they must be provided meaningful notice of the lawsuit, so they can respond to defend themselves.[1] Process servers are the individuals tasked with providing legally sufficient notice, or "service," and must sign affidavits of service attesting to, *inter alia*, the date, time, and description of service.[2] Unfortunately, many process servers do not fulfill their responsibilities to provide legally sufficient service of process. The practice of failing to properly serve defendants, despite swearing otherwise in an affidavit, is called "sewer service," derived from the idea that process servers are instead tossing the legal papers into the sewer.[3]

Without notice of the lawsuits filed against them, defendants cannot appear in court to defend themselves, often resulting in a default in the case and a judgment entered against them. Sewer service has devastating consequences for defendants, who are disproportionately of low income and from communities of color.[4] Sewer service, which is "[o]ften associated with consumer debt collection and landlord-tenant litigation" has its greatest impact on those who are low income or experiencing poverty, and thus "least capable of obtaining relief from the consequences of an improperly imposed default judgment."[5] In housing court, those default judgments can result in evictions; in debt collection cases, default judgments can lead to individuals' wages being garnished or their bank accounts being frozen.[6]

Sewer service has long been rampant in New York. High rates of sewer service caused advocates to push for stronger process server laws in the 2000s and 2010s. In 2010, the New York City Bar Association released a report highlighting the issue.[7] The report noted recent progress and made several additional proposed changes to process server laws, several of which still have not yet been adopted, more than fifteen years later. Although local advocacy efforts successfully made New York City a pioneer in process server reform at the time, sewer service still runs rampant in New York Civil Courts today: there were over 79,000 default judgments across NYC Civil Courts in 2019,[8] and tenants in housing landlord-tenant court non-payment cases failed to file an answer in their cases around 50 percent of the time in 2022.[9] Given the severe consequences of default, these rates of failure to answer cannot be attributed to mere inaction by defendants, and more likely suggests that New Yorkers are still not being properly served, and so are missing out on their day in court.

NYC can facilitate tenant and consumer challenges to improper service.

The persistence of sewer service reflects, in part, a breakdown in information access and information-sharing. Tenants and consumers seeking to challenge improper service often lack timely access to critical information about the process servers who purportedly served them. At the same time, courts evaluating motions to vacate default judgments or dismiss cases for improper service frequently lack visibility into broader patterns of sewer service and misconduct by individual process servers.

New York City can address these gaps by improving access to existing information and by facilitating more effective information-sharing between City agencies, defendants, advocates, and the courts. Specifically, the City should: (1) make information about process servers more accessible to the public, including disciplinary history and affidavits of service; and (2) issue a policy statement to New York Courts recognizing systemic sewer service in Civil Court.

NYC can equip tenants and consumers with the information required to successfully challenge improper service.

When tenants and consumers eventually learn of a lawsuit, through means other than lawful service, they may seek to challenge service as improper in order to vacate a judgment against them, dismiss the case, or, at least, secure their right to appear in court and defend themselves. Although a sworn statement by defendants should be sufficient to rebut the presumption of service created by a filed—though false—affidavit of service, in practice, courts frequently choose not to believe defendants' sworn statements denying receipt of service.[10] Accordingly, defendants may need to present additional corroborating evidence, such as records demonstrating that the process server has a history of misconduct or has filed affidavits of service that are demonstrably false in similar cases. However, because this information is not easily accessible, defendants must attempt to obtain it through burdensome and slow avenues, such as through Freedom of Information Law (FOIL) requests or through the New York State Courts Electronic Filing system (NYSCEF). A defendant making a FOIL request may need to wait weeks or more to receive the requested information, often too late to include in a brief challenging service. Moreover, due to NYSCEF search limitations, defendants or their advocates must perform dozens or hundreds of individual case reviews to find relevant information. As a result, meritorious challenges are weakened or never brought at all.

The City—principally through the Department of Consumer and Worker Protection—should take immediate steps to make existing information about process server misconduct more readily accessible to tenants, consumers, and their advocates.

The Department of Consumer and Worker Protection can publicize information about process servers online.

In New York City, process servers are licensed and regulated by the Department of Consumer and Worker Protection (DCWP).[11] The DCWP's current practice of publicizing process server information is insufficient to support timely and effective service challenges. To better combat the pervasive issue of sewer service, DCWP should expand the disciplinary information it readily publishes online by: (1) expanding the scope and detail of the existing Actions Taken Against Process Servers spreadsheet; and (2) creating a digital reading room of disciplinary actions.

1. **DCWP should expand the information contained in its "Actions Taken Against Process Servers" spreadsheet.**

DCWP is required to post notification of its discipline of process servers.[12] DCWP fulfills this requirement by maintaining the webpage "Actions Taken Against Process Servers ("Actions Taken Spreadsheet").[13] The Actions Taken Spreadsheet, while frequently relied upon by advocates, suffers from several severe limitations. First, the Actions Taken Spreadsheet contains only very minimal descriptions of violations. Virtually all recent entries do not specify the reason for the discipline, with most stating only that the action was due to a "Failure to Comply with Process Server Law/Regs." In practice, advocates must guess whether a listed violation reflects a non-substantive recordkeeping mistake or a demonstrated history of signing false affidavits of service—the latter of which carries significantly more weight in a jurisdictional challenge. Second, DCWP removes entries from the Actions Taken Spreadsheet without explanation, causing a loss of vital historical data. Third, the Actions Taken Spreadsheet does not provide access to underlying documents. Thus, the public can only learn more about the disciplinary actions through FOIL requests, which can take weeks or months. These limitations undermine the Actions Taken Spreadsheet's core purpose: providing notice of discipline to the public.

DCWP should immediately revise the Actions Taken Spreadsheet by:

- providing more detailed descriptions of the reason for each action;
- preserving all entries, regardless of type of violation or resolution, and including a date stamp whenever updated; and
- including hyperlinks to the underlying disciplinary documentation.

DCWP would not be the first agency to make such changes: in 2026, the Texas Judicial Branch updated its process server Disciplinary Action Log, which already provided a detailed description of each violation, to include a link to the underlying documentation.[14]

These suggested changes could be implemented immediately and at minimal cost, as DCWP already must reference the relevant documents when adding new entries to the Actions Taken Spreadsheet. Moreover, these changes would be cost-effective in the long-term because it would reduce the need of advocates to rely on regular FOIL requests.

2. **DCWP should create an online reading room with all documentation showing process server misconduct.**

While the Actions Taken Spreadsheet is helpful, it does not include all documentation of process server misconduct. For example, many notorious process servers have a long history of misconduct that pre-date the Actions Taken Spreadsheet; the public could only rely on FOIL to know about older violations. As noted above, DCWP has removed certain entries from the spreadsheet altogether. Additionally, the Actions Taken Spreadsheet does not include notification of all types of misconduct. Among other things, it does not include whether the licensed process server has been the subject or recipient of investigatory subpoenas, notices of intent to deny or revoke licenses, or judicial findings of improper service. This information could significantly affect how a court considers a service challenge. Currently, the only way for the public to access this information is through a FOIL request,[15] which may create delays of a month or more.[16] Reliance on FOIL is particularly ill-suited to the realities of civil court practice, where motions challenging service are often subject to short briefing schedules and delayed access to records can functionally foreclose meaningful relief.

DCWP already has the authority to maintain these records for public inspection,[17] and now has the opportunity to be pro-active instead of reactive by uploading documentation showing process server misconduct to an online reading room. An online reading room would effectively implement DCWP's duty, reduce duplicative FOIL requests, and improve transparency and utility to the public. Other states have adopted similar models: Montana, for example, maintains an online Licensee Lookup system allowing users to download disciplinary records for process servers.[18]

DCWP already possesses the relevant materials to make this change; it would only need to update how those materials are organized and displayed. This transition could begin immediately. The success of this proposal would be readily apparent by the reduced number of FOIL requests and usage metrics for the online reading room.

3. **DCWP should require process servers to submit affidavits of service to the agency.**

In most housing and consumer debt cases, affidavits of service are the primary—and often sole—evidence that courts rely upon to establish personal jurisdiction over a defendant. Courts routinely accept affidavits of service at face value when determining whether a defendant was properly served, whether a default judgment may be entered, whether a default should later be vacated, and whether to dismiss a case for improper service.

When affidavits of service are examined collectively, however, patterns of suspicious or impossible service practices often emerge. Investigations have repeatedly revealed scenarios in which process servers claimed to effectuate service in multiple locations at the same exact time,[19] alleged service with physically impossible travel times,[20] or routinely swore to serve fictitious household members across numerous cases.[21] While such evidence is highly probative of sewer service, the current functionality of the NYSCEF requires extraordinary effort to uncover these patterns (often involving manual retrieval of hundreds of filings),[22] making this information effectively inaccessible in routine litigation.

DCWP should use its rulemaking power to require that process servers submit all completed affidavits of service to the DCWP.[23] The DCWP should then post all affidavits of service online in a format searchable by the public. If tenants, consumers, and advocates had access to all affidavits of service, they could easily show when process servers swear to impossible or contradictory service, and assess when an individual or agency is engaging in widespread sewer service practices. This access would enable New Yorkers to dispute improper service in their individual cases and to bring affirmative challenges to widespread sewer service practices. Moreover, this would discourage sewer service at the outset, routing out bad actors from the industry.

This proposal would ultimately reduce the cost borne by tenants and consumers due to widespread sewer service, offsetting any additional costs incurred by the City through investment in new technology or staff.

Alternatively, DCWP could work with the Office of Court Administration (OCA), the agency responsible for e-filing,[24] to encourage two straightforward changes to NYSCEF:

- require that parties filing an affidavit of service enter the name of the process server into a discrete, standardized data field; and
- enable case searches by process server name.[25]

The success of this proposal could be demonstrated by tenants and consumers having meaningful access to affidavits of service in other cases that undermine or contradict the affidavit filed in their own case, advocates bringing more affirmative challenges to service, and reduced improper service overall.

The City can issue a policy statement to state courts about sewer service.

Even where defendants present evidence undermining service, courts may be reluctant to credit the sworn denials or may fail to recognize sewer service as a systemic problem, especially when defendants are proceeding *pro se*.[26] DCWP should use its respective authority to issue recommendations on sewer service to support the courts' informed consideration of service issues.[27]

The DCWP should issue a policy statement affirming the prevalence of sewer service and encouraging courts to:

- treat defendants' sworn statements regarding non-service seriously, in both *pro se* and represented cases;[28]
- exercise leniency and afford due consideration to *pro se* tenants and consumers who do not have "sewer-service arguments [ ] couched in legal language,"such as by explaining the applicable procedures and burdens of proof in plain language and dismissing cases *sua sponte* for lack of personal jurisdiction when plaintiffs fail to meet their burden to show service was proper;[29] and
- engage in fact-finding and conduct hearings to determine if service was lawful.[30]

In addition, DCWP should conduct a training program for New York City courts and OCA on sewer service, which could include topics such as: data on consumer complaints, traverse reporting, and process server misconduct. DCWP could begin developing content for these trainings immediately. The success of these proposals can be measured through more frequent hearings on the lawfulness of service, service-based dismissals, denials of default judgments on the basis of improper service, and judicial recognition of improper service patterns in decisions.

Conclusion

Sewer service continues to undermine due process for tenants and consumers across New York City. While broader reforms are necessary to fully eliminate the practice, the City can take immediate, low-cost action to improve transparency and access to information that already exists. By equipping defendants with the tools needed to challenge improper service and by ensuring courts have a clearer picture of systemic misconduct, New York City can meaningfully empower low-income tenants and consumers to successfully fight back against sewer service.

Endnotes

1 There are very specific legal requirements in New York for what kind of notification constitutes sufficient service of process; for example, legal papers must either be actually handed to the person getting sued ("personal" service), or given to another adult in their household ("substitute" service), or, if that is not possible after numerous visits to the person's home, they can be attached to a person's door and also mailed ("conspicuous" or "nail-and-mail" service). C.P.L.R. § 308; R.P.A.P.L. § 735.

2 6 R.C.N.Y. § 2-235.

3 Report, *Out of Service: A Call to Fix the Broken Process Service Industry*, New York City Bar Association Committees on Civil Court and Consumer Affairs at 2 (Apr. 2010), https://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf.

4 In *Burks et al. v. Gotham Process, Inc., et al.*, a class litigation about sewer service, the highest number of class members lived in South Bronx, which is comprised of 80 percent people of color, with an average income of ~$25,000. 20 Civ. 1001 (E.D.N.Y. 2020); *see also* Report, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers*, The Legal Aid Society et al., at 1 (May 2010), https://mobilizationforjustice.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf ("Virtually all (95 percent) of people with default judgments entered against them by debt buyers resided in low-or moderate-income neighborhoods, and more than half (56 percent) lived in predominantly black or Latino neighborhoods.").

5 *Matter of Barr v. Dept. of Consumer Affs. of City of New York*, 70 N.Y.2d 821, 823 (1987).

6 *Out of Service* at 7.

7 *Id.* at 1.

8 *Court Statistics: New York City Civil Court*, New York State Unified Court System, https://perma.cc/CU3A-ZUMH (last accessed May 5, 2026).

9 Ryan Brenner, et al., *Half the Battle is Just Showing Up: Non-Answers and Default Judgments in Non-Payment Eviction Cases Across New York State, 2016-2022*, N.Y.U. Furman Center at 2 (Jan. 2023) https://www.furmancenter.org/wp-content/uploads/2023/01/Half_the_Battle_is_Just_Showing_Up_V3_1.pdf.

10 Nina Lea Oishi, *Judging Debt: How Judges' Practices in Consumer-Credit Court Undermine Procedural Justice*, 133 Yale LJ Forum 271, 291 (Nov. 22, 2023),https://yalelawjournal.org/essay/judging-debt-how-judges-practices-in-consumer-credit-court-undermine-procedural-justice ("[M]ultiple judges disparage a defendant's sworn affidavit that they were not served as a 'self-serving statement,' despite the fact that a self-serving statement is often the only way that a defendant can swear something never happened.")

11 N.Y.C. Admin. Code § 20-104(a).

12 N.Y.C. Admin. Code § 20-409.

13 *Information for Process Server Liability*, NYC Department of Consumer and Worker Protection, https://www.nyc.gov/site/dca/businesses/info-process-servers.page.

14 *Compare Process Servers - Disciplinary Action Log (effective Feb. 27, 2025)*, Texas Judicial Branch, https://www.txcourts.gov/media/1460124/02272025_process-server-disciplinary-actions-log-002.pdf, *with Process Servers - Disciplinary Action Log (effective Feb. 20, 2026)*, Texas Judicial Branch, https://www.txcourts.gov/media/1460782/process-server-disciplinary-action-log.pdf.

15 *See* N.Y.S. Public Officers Law § 87(2).

16 While DCWP's FOIL responses are already public and searchable on the OpenRecords website, this is not sufficient to provide ready and accessible documentation. First, uploaded records may be impossible to find because the wording of the underlying FOIL requests determines which records appear in searches. Second, many FOIL requests contain documents for several process servers at once; an individual must scour the records to find potentially relevant records for the process server of interest. And third, because the language of the underlying request is not published, the public has no way of knowing if certain documents do not exist or were not specifically requested. The only way to ensure comprehensive responses is by making a separate FOIL request, which can take over a month to receive a response. *Explanation of Time Limits*

for Response, Open Government, New York State, https://opengovernment.ny.gov/explanation-time-limits-response (last accessed May 5, 2026).

17 N.Y.C. Admin. Code § 20-104(c).

18 *License Search*, Montana Department of Labor and Industry, https://ebizws.mt.gov/PUBLICPORTAL/searchform?mylist=licenses, (last accessed May 5, 2026).

19 *See Cuomo v. Serves You Right, Inc., et al.*, Index No. 401867/2010 at 6 (Sup. Ct. 2010) (attorney general investigation finding over 800 occasions in two years of affidavits of service alleging simultaneous service times).

20 *Id.* at 7-8 (describing service with impossible travel times, such as swearing to service 400 miles apart in seventeen minutes).

21 Report, *Deceptive Delivery – The Real Cost of 'Sewer Service' in the Courtroom*, New York Legal Assistance Group 6-7 (Apr. 1, 2025), https://nylag.org/new-report-deceptive-delivery-the-real-cost-of-sewer-service-in-the-courtroom/ (describing pattern of sewer service in a class action litigation involving the systemic falsifying of service of non-existent relatives).

22 In a review of 91 affidavits of service, advocates stated that "[b]ecause collection companies tend to purchase a large number of index numbers at a time, we attempted to look at multiple cases handled by the same process serving company." Report, *Justice Disserved*, MFY Legal Services, Inc., Consumer Rights Project 6 (June 2008), https://mobilizationforjustice.org/wp-content/uploads/reports/Justice_Disserved.pdf. In the two federal affirmative lawsuits challenging sewer service practices, advocates spent time and effort collecting hundreds of affidavits of service from NYSCEF (*Prince v. Boroff, et al.*, 1:24-cv-02706, ECF No. 43 at 11 (S.D.N.Y. 2025) and at the New York City Civil Court's Public Access Terminal (*Burks v. Gotham, et al.*, 1:20-cv-01001, ECF No. 27 at 12 (E.D.N.Y. 2020).

23 *See* N.Y.C. Admin. Code § 20-104(b); N.Y.C.C. § 2203(f).

24 *Administrative Structure*, The New York State Unified Court System (May 4, 2026) https://www.nycourts.gov/LegacyPDFS/admin/AdminStructure.pdf; Admin. Order 158/25, New York State Unified Court System (July 1, 2025). https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/AO.158.25.pdf.

25 These reforms would not alter substantive service requirements or impose new obligations on litigants beyond minimal data entry. Plaintiffs already must file proof of service, 22 N.Y.C.R.R. 1245.3(c)(5), and the identity of the process server is already contained within affidavits. In addition, NYSCEF already generates document-specific data entry fields when filing documents and supports similar search functionality by party name search and attorney name search.

26 *Judging Debt*, at 273-74.

27 *See generally*, N.Y.C.C. § 2203.

28 *See Deceptive Delivery*, at 4.

29 *Judging Debt*, at 287, 302.

30 Report, *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases*, N.Y. Appleseed 30 (June 22, 2009), https://www.ftc.gov/sites/default/files/documents/public_comments/protecting-consumers-debt-collection-litigation-and-arbitration-series-roundtable-discussions-august/545921-00031.pdf.