

# **JUSTICE DISSERVED**

**A Preliminary Analysis of the  
Exceptionally Low Appearance Rate  
by Defendants in Lawsuits Filed in  
the Civil Court of the City of New York**



**MFY LEGAL SERVICES, INC.  
Consumer Rights Project  
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## Summary of Findings and Recommendations

As the third party debt collection industry has grown, the number of Civil Court cases filed in Civil Courts in New York City has skyrocketed. In 2007, 597,912 civil cases were filed, almost three times the number filed in 2000.

MFY Legal Services, Inc. reviewed available computer data on civil court cases filed in the Bronx, Brooklyn, Queens, and Staten Island in 2007. Troubling trends emerged:

- Seven law firms filed 180,177 cases in the four boroughs studied, 30% of the total cases filed
- Of the 180,177 cases filed, only 15,443 (8.57%) defendants appeared in court
- Nine creditors that frequently sue in the Civil Court (comprising 122,166 cases) were reviewed: the percentage of defendants appearing in court ranged from 5.41% to 9.46%
- A review of a random sample of 91 court cases raised serious questions about the propriety of service by process servers hired by plaintiff debt collectors and the accuracy of their records.

In 2007, MFY Legal Services provided advice, counsel and representation to more than 350 clients who were being sued in debt collection cases. Of these, none had been served properly with a summons and complaint and most did not know that a lawsuit had been filed against them until their bank accounts had been restrained.

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.

The civil justice system is based on the principle that defendants will have an opportunity to be heard in court before a judgment and action to collect on a purported debt is taken against them. It appears that nine out ten New Yorkers who are sued in the Civil Court of the City of New York are being denied their right to be heard because of possibly illegal process serving practices.

Based on our findings, MFY Legal Services recommends that the New York City Department of Consumer Affairs (DCA), which licenses process servers, strengthen its oversight of process servers by implementing the following policies and practices:

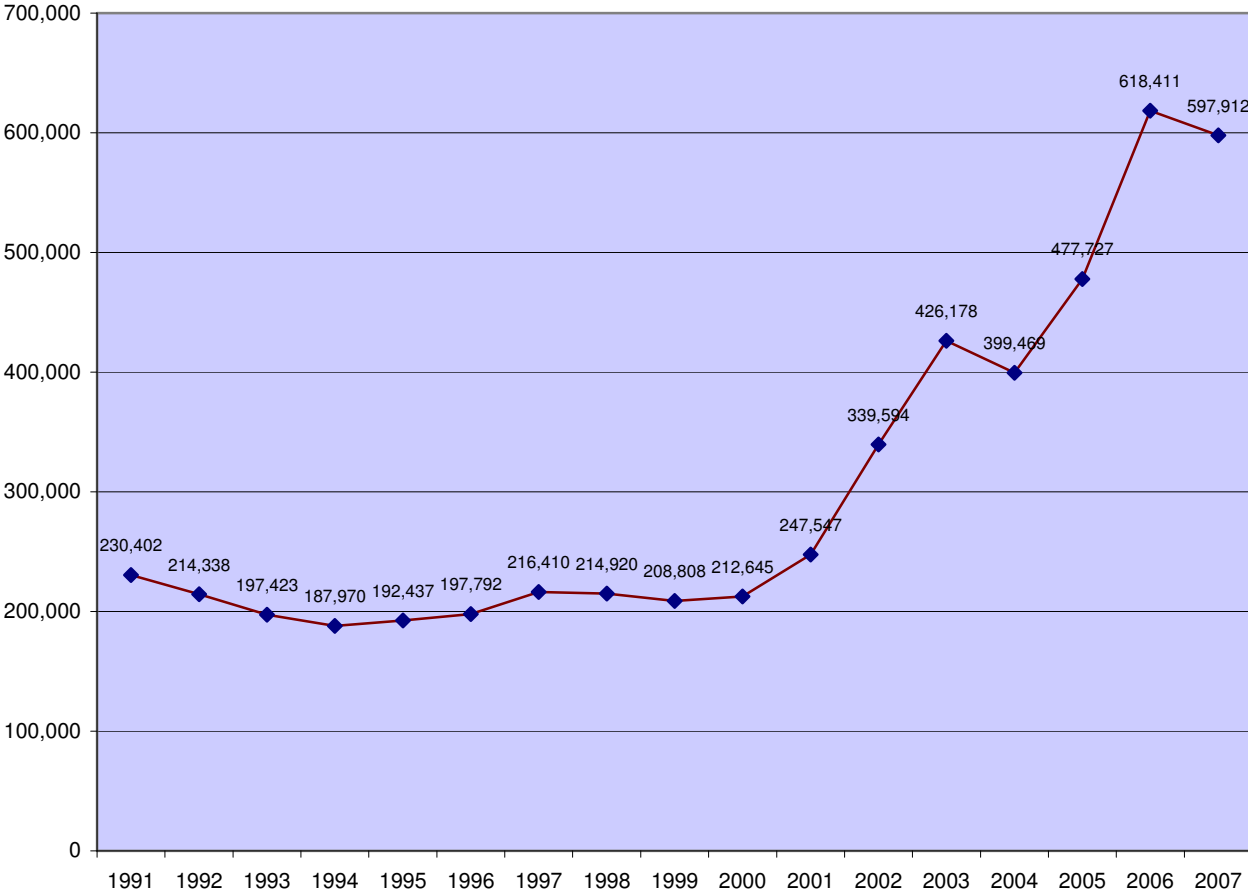
- Conduct comprehensive audits of process server companies and licensed individuals prior to renewal of their license every two years.
- Require process servers to designate DCA as agent for service pursuant to CPLR 318.
- Require record keeping for seven years rather than two years.
- Require process servers to record in their record book how they determined the residence served is the actual residence of a defendant.
- Immediately establish a joint task force with representatives of the Civil Court, DCA, consumer advocates, debt collectors and the process servicing industry to investigate the scope of the problem identified in this Report and to recommend additional solutions.
- Examine the results of the recent amendment to the Uniform Rules for the New York City Civil Court requiring additional notice to defendants in consumer credit transaction cases, and compare those results to affidavits of service filed in those cases.

# 1. The Data

## Growth of Debt Collection Industry

Debt collection is a major growth industry. Debt collectors buy billions of dollars in debt from credit card companies and others each year for pennies on the dollar. Debt collectors earn huge profits even if they collect on only a small percentage of the debt they have purchased. Traditional debt collection practices—contacting the debtor by mail and phone, negotiating and monitoring a payment plan—are labor intensive and time consuming. Over the past five years debt collectors have opted for a quicker approach—filing tens of thousands of lawsuits against alleged debtors. The following chart shows the increase in Civil Court filings in New York City, a large number of which is attributable to consumer debt collection filings:

**Cases Filed in the Civil Court of the City of New York  
(excluding Landlord/Tenant and Small Claims Court Actions)**



## Concentration of the Debt Collection Industry in New York City

Close to one-third of all cases filed in Civil Court of the City of New York in 2007 were handled by seven law firms, based on MFY's review of cases filed in Bronx, Kings, Queens and Richmond counties:

Law Firm	Total Cases Filed
Mel S. Harris & Assoc., LLC	43,506
Cohen & Slamowitz, LLP	41,480
Rubin & Rothman, LLC	31,661
Forster & Garbus	30,032
Wolpoff & Abramson, LLP	19,028
Pressler & Pressler	8,647
Eltman, Eltman & Cooper	5,823
<b>Total</b>	<b>180,177</b>

## Rate of Response by Defendants to Debt Lawsuits

Based on a review of seven law firms and nine creditors MFY commonly encounters in debt collection cases, an appallingly small percentage of defendants appeared in court in response to these lawsuits:

### Seven Law Firms Reviewed

Law Firm	Total No. of Cases Filed	Total No. of Defendants Appearing in Court	Percentage of Defendants Appearing in Court
Pressler & Pressler	8,647	519	6.00%
Cohen & Slamowitz, LLP	41,480	2,836	6.84%
Eltman, Eltman & Cooper	5,823	454	7.80%
Mel S. Harris & Assoc., LLC	43,506	3,808	8.75%
Rubin & Rothman, LLC	31,661	2,941	9.29%
Forster & Garbus	30,032	2,866	9.54%
Wolpoff & Abramson, LLP	19,028	2,019	10.61%
<b>Total</b>	<b>180,177</b>	<b>15,443</b>	<b>8.57%</b>

### Nine Creditors Reviewed

Creditor	Total No. of Cases Filed	Total No. of Defendants Appearing in Court	Percentage of Defendants Appearing in Court
Metro Portfolio	2,700	146	5.41%
Midland Funding	26,998	1,698	6.29%
Crown Asset	399	28	7.02%
Capital One Bank	32,088	2,360	7.35%
Erin Capital	6,011	452	7.52%
RJM Acquisitions	1,340	103	7.69%
LR Credit	30,635	2,525	8.24%
Palisades	10,376	884	8.52%
LVNV Funding LLC	11,619	1,099	9.46%
<b>Total</b>	<b>122,166</b>	<b>9,295</b>	<b>7.61%</b>

## How a Defendant Is Served with the Summons and Complaint Appears to Depend on the Process Serving Company

A review by MFY of court files from the Civil Court in Queens and Kings counties show questionable patterns in the way process servers allegedly serve summons and complaints in consumer debt collection cases:

Process Serving Company	No. of Defendants in Sample Who were Allegedly Served	Service by "Nail and Mail"	Service Upon a Person of Suitable Age and Discretion	Service Upon the Defendant by Personal Delivery to Him or Her
Company No. 1	30	17%	83%	0%
Company No. 2	27	93%	7%	0%
Company No. 3	34	18%	64%	18%

## The Courts Are Conducting Few Hearings to Test Improper Service by Process Servers

When defendants appear in court and say they were not properly served with the summons and complaint, the court must conduct a hearing to determine whether it has "jurisdiction" to proceed with the lawsuit. This hearing is called a "traverse hearing." While defendants may waive a traverse hearing and proceed in court to defend their case, MFY has assisted clients who say they were discouraged either by plaintiffs' attorneys or others from asserting their right to a hearing. Because many debt collection cases concern disputes that are past the statute of limitations, MFY has observed that many plaintiffs with old lawsuits would be permanently barred from re-filing their cases if defendants in these cases had asserted their right to a traverse hearing and won. The number of traverse hearings conducted in the Civil Court, in light of the apparent low rate of proper service of the summons and complaint by process servers, is surprisingly low.

County	No. of Traverse Hearings Scheduled by the Court
Bronx (September 24, 2007 to May 22, 2008)	0
Kings (March 13, 2007 to May 22, 2008)	90
Queens (June 4, 2007 to May 22, 2008)	53
Richmond (November 13, 2007 to May 22, 2008)	0

The exceptionally low rate of response by defendants to debt lawsuits raises serious questions. Do over 90% of New Yorkers being sued for debt simply ignore legal notices? While a handful of defendants might inadvertently ignore a legal notice, after 45 years of practice, MFY Legal Services has found that New Yorkers take legal notices seriously and respond by going to court or contacting an attorney for advice and assistance. MFY's own experience in the consumer law arena shows that the defendants do not appear in court because they are unaware of the lawsuit due to improper service.

## 2. Process Serving

### New York State's Statute Regarding Service

CPLR § 308 states the various methods that personal service of a summons upon a natural person may be effected. Specifically, service may be made by:

- Personal Service CPLR § 308(1): "by delivering the summons within the state to the person to be served;" or
- Substitute Service CPLR § 308(2): "by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served," and by mailing the summons to the person to be served at his or her last known residence or actual place of business; or by
- "Nail and Mail" CPLR § 308(4): where service under the first two options cannot be made with "due diligence," service may be effected by "affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode" of the person to be served, and by mailing the summons by first class mail.

### Process Servers Rarely Make Personal Service

In order to understand the cause of the exceptionally low rate of response by defendants to lawsuits, MFY staff examined a random sample of 91 consumer debt collection court files to determine the method of service. In a preliminary test, we reviewed court files of cases filed in Queens and Kings counties. Because 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. MFY picked three process serving companies at random. The files indicate that personal service was rarely made. Service to a person of suitable age and discretion accounted for 54 percent of the cases, while "nail and mail" service was the standard practice in 40 percent of the cases, and personal service comprised only 6 percent.

Notably, process servers for two of the companies did not make personal service on any defendants, while one company managed to do so only in 18 percent of cases. Further, the type of service effected by one company in 93 percent of its cases was by "nail and mail," while another process server company served defendants by leaving the summons and complaint with a person of suitable age and discretion in 83 percent of cases.

MFY doubts the accuracy of many of the 91 affidavits it reviewed. For example, one process server almost exclusively served papers by delivering them to a person of suitable age and discretion rather than to the defendant, and in 90% of the cases the person allegedly accepting the papers was a woman. This suggests that some of the 91 affidavits of service were false. Further, in cases handled by MFY almost none of our clients ever were served with a summons and complaint in their debt collection lawsuits. In these cases, our clients provided us with convincing evidence that the process server affidavits were false. A very small fraction of MFY's consumer clients are served personally. Many defendants are served at former addresses, or addresses at which they have never lived, while others, for whom the process servers have the correct address, never received court papers through substituted service or even via the mail. Time and time again, consumers are notified of lawsuits when their bank accounts are frozen, or when they check the public records section of their credit reports and find out a default judgment has been entered against them. A review of the affidavits of service in these cases reveals service effected at former addresses, or on

individuals of suitable age and discretion, who are alleged "co-tenants" or "relatives" of the defendant, but who are not people the defendant knows.

The legal solution to challenge process server affidavits is for judges to conduct traverse hearings. However, often when a defendant files a motion to dismiss the action based on lack of personal jurisdiction due to improper service—and almost always when the defendant is represented by MFY—plaintiff creditors choose to dismiss or discontinue the case, rather than defend service. In fact, according to the Office of Court Administration, only 90 traverse hearings were scheduled from March of 2007 through May of 2008 in Kings County, and 53 hearings were scheduled in Queens from June of 2007 through May of 2008. Even more surprising, there were no reported traverse hearings in the Bronx from September 2007 through May 2008, and no hearings scheduled in Richmond County from November of 2007 through May of 2008. Further, even when scheduled, the vast majority of these hearings did not take place.

The Civil Court should be commended for recently amending the Uniform Rules for the New York City Civil Court to improve notice of lawsuits to defendants in consumer credit transaction cases before default judgments are entered. When they file proof of service, plaintiff creditors now must also submit to the clerk a notice and a pre-printed, stamped envelope addressed to the defendant, with the return address of the Court where the case is filed. The notice, in English and Spanish, states that a summons and complaint have been filed, and that judgment may be granted against the defendant if he or she does not appear in court. MFY's experience with this new initiative is so far positive, as several of our clients have reported receiving the notice, alerting them to the fact that a lawsuit has been filed. However, additional notice is not a substitute for proper service as required by law, and the rule change provides no remedy to the court's lack of personal jurisdiction over defendants when they are improperly served, or not served at all.

### 3. Case Studies

MFY's consumer debt cases follow a predictable pattern: a client only learns that a lawsuit has been filed and a default judgment issued when he or she attempts to withdraw money from a bank or use a debit card. Debt collection companies employ sophisticated technology to quickly issue information subpoenas to all banks in the city in order to find the bank account of the defaulted defendant. A frozen bank account wreaks havoc on the lives of low-income New Yorkers, and in many cases their bank accounts contain only Social Security income or other monies that are not even collectable. The following cases illustrate the trauma and hardship caused when improper service unleashes a devastating chain of events.

**Victor A., 68, of Manhattan, is a blind, disabled senior citizen** whose only source of income is Social Security and SSI. His first notice of a lawsuit against him by a debt buyer was when he attempted to withdraw money from an ATM to pay for medication and learned that two of his bank accounts had been frozen. He was unable to buy the medication, which he needed for a follow-up procedure to an operation for colon cancer. He also was unable to pay his rent for the month, and could not pay his bills. The affidavit of service stated that a person of suitable age and discretion, "John Doe- co-tenant," had been served at his address. Mr. A lives alone and only leaves the house with the help of a home attendant, and knows nobody who fit the description of the "co-tenant" supposedly served. His bank account was frozen for weeks until MFY convinced the debt collection attorney to release his account by sending them proof of his only source of income.

**Jane X., 39, of Manhattan, is a slight, Caucasian woman of Eastern European ancestry** who lives on the Upper West Side. She first learned of a lawsuit against her by a debt buyer when her bank account was frozen and she was unable to withdraw money out of an ATM. The affidavit of service

filed in the action stated that she was served personally and described her as an heavy-set African American woman. MFY advised her to file an order to show cause to have the judgment vacated based on the obvious failure to serve her with the summons and complaint.

**Dorothy Y., 70, of Manhattan lives in senior housing** and her only source of income comes from her Social Security benefits. She first learned of a lawsuit against her on an old Chase card when she received a letter from her bank, informing her that her account had been frozen. Because she had no access to her funds, she was unable to pay bills or her rent on time. The action had been filed in Queens County Civil Court, and the affidavit of service stated that she had been served at an address in Queens from which she had moved seven months earlier. The affidavit of service did not specify which apartment had been served, but described a person of suitable age and discretion whom Ms. Y. did not know or recognize. The case was put on for a traverse hearing three times, but inexplicably adjourned, requiring Ms. Y to keep coming back from Manhattan to appear in Queens. MFY finally represented her at the third scheduled traverse hearing, and the action was dismissed after the hearing.

**Chen Z., 35, of Manhattan**, discovered that he had been sued by Capital One in 1994 only when he returned from a short trip to China in 2007 and discovered that his bank account was frozen and a City Marshal had remitted the funds to the attorney for Capital One. The affidavit of service stated that he had been served in 1994 at an address where his sister had once lived, but where he had never resided. The summons and complaint had allegedly been taped to the door, and the address had supposedly been confirmed by a "Ms. Lee" whom he did not recognize and whom his sister did not know. Because it was such an old case, he had to wait months to get his bank account released while he waited for the file to be requisitioned from the Civil Court. In the meantime, he depended on his friends and family to support him while he had no access to his bank accounts.

**Tracy C., 40, of Manhattan is a single mother working two jobs** to support her son. She first learned of a lawsuit against her by Capital One when she was at the checkout counter at Pathmark, buying groceries, and tried to use her debt card. The affidavit of service in the case stated that she had been served at her apartment by affixing the summons and complaint to her door. It further stated that the address was confirmed by an unnamed neighbor with no description, and that the process server confirmed Ms. C.'s apartment by seeing her name on the door. Ms. C. does not have her name on her door for privacy reasons, and does not know her neighbors. Ms. C. filed an order to show cause, but in the meantime, while the motion was pending, she had no access to her funds and could not pay her bills, rent or her son's expenses.

**Christina K., 37, of Chicago, Illinois**, first learned of a lawsuit filed against her in 2007 in New York County Civil Court when she tried to use an ATM in Chicago and found that her account had been frozen. The affidavit of service filed in the case stated that a person of suitable age and discretion had been served at an address in New York that she had not lived at in over ten years. Because she was in Chicago, she had a difficult time finding legal assistance in New York, and her bank account remained frozen for weeks. MFY agreed to assist her in sending proof of her address at the time of service to the Plaintiff's lawyers, and eventually they agreed to dismiss the case against her.

**George M., 57, of Manhattan**, became disabled and unable to work approximately four years ago; he is now homebound because he is unable to walk without great difficulty. He discovered that a judgment had been entered against him by a debt buyer when his bank account was frozen. The affidavit of service states that the process server served Mr. M. via substitute service by delivering the summons and complaint to a woman in his home. However, Mr. M. does not know of anyone with the woman's name, or who fits the physical characteristics described in the affidavit. Because he is homebound and rarely leaves his apartment, Mr. M. is fairly certain he was home on the day he was allegedly served. As a result



of this improper service and subsequent freezing of his bank account, Mr. M. had to borrow money from his son to pay his rent and bills. MFY represented Mr. M. and scheduled a traverse hearing to contest service, however, the morning of the hearing, the plaintiff agreed to dismiss the case.

**Violet S., 49, of Atlanta, Georgia** discovered when her joint bank account was restrained in March of 2008 that a judgment had been entered against her in civil court in Manhattan in a case filed against her in 2007. The affidavit of service indicates that the process server served her by affixing a copy of the summons and complaint on the door of her actual place of residence in New York, New York, and later mailed her copy to that same address. Mrs. S. has lived in Georgia for the past 20 years. As a result of the default judgment that had been improvidently entered against her, Mrs. S. had to seek legal assistance in both Georgia and New York. When MFY appeared in the case on her behalf, the plaintiff agreed to vacate the judgment and to dismiss the case with prejudice.

**Linda L., 29, of the Bronx,** found out a judgment had been entered against her when she attempted to withdraw money from an ATM in January of 2008 and discovered that her bank account was restrained. The affidavit of service states that the process server served her by delivering the summons and complaint to a person of suitable age and discretion at an address Ms. L. had not lived at since 2000. As a result of losing access to her income, Ms. L. struggled to support her five children, and had to rely on family members to get her through the ordeal. MFY represented Ms. L, and rather than schedule a traverse hearing, the plaintiff agreed to dismiss the case.

**Ira K., 61, of Manhattan, was denied public housing** in 2007 because a judgment had been entered against him in a case filed in 2005, which affected his credit rating. He never knew he had been sued until long after the default judgment was entered. The affidavit of service indicates that the process server served Mr. K. by delivering a copy of the summons and complaint to a person of suitable age and discretion at his dwelling place and by mailing him a copy. Mr. K. lives alone, is friendly with all of his neighbors, and does not know the woman who allegedly accepted service for him. When MFY intervened, the case was dismissed because the plaintiff abandoned its claim. However, Mr. K. lost his eligibility for public subsidized housing because the process of vacating the judgment and dismissing the case took longer than the time frame allowed by the housing agency to correct his credit report.

**Terry E., 51, of the Bronx, discovered that he had been sued on an old credit card debt for which** the statute of limitations had run out, when his bank account was frozen. Supposedly Mr. E. had been notified of the lawsuit when a process server served a summons and complaint on a person of suitable age and discretion who allegedly lived with Mr. E. Mr. E. is a working single father who lives with his two young children and does not recognize the description of the woman to whom service had supposedly been made. While his bank account was frozen as a result of the default judgment obtained through improper service, Mr. E. was unable to pay his bills, including children's tuition, for several weeks. With MFY's assistance, Mr. E. asserted the defense of improper service, and the plaintiff agreed to dismiss the case.

## 4. Recommendations

Although MFY Legal Services' investigation is preliminary and further research is needed, the data collected to date raises serious questions about the reliability of process serving practices. The New York City Department of Consumer Affairs is responsible for licensing and monitoring process servers. We believe, therefore, that DCA should take the lead in addressing this problem. We therefore recommend that DCA:

- 1. Conduct comprehensive audits of process server companies and licensed individuals prior to renewal of their license every two years.** The problem of improper service is so severe that the DCA should conduct individualized audits of companies and individuals at the time of their biennial registration. The audit should be under oath and should review the process server's compliance with record keeping and evidence of their actual conduct in serving process.
- 2. Require process servers to designate DCA as agent for service pursuant to CPLR 318. Many process serving companies and individuals reside outside New York City.** To serve legal papers, such as subpoenas, residents of New York City must investigate where the company or individual is to be found and then hire a different process server to serve the papers. If the DCA were designated as agent for service, residents would be able to deliver legal papers to the Agency, ensuring that the licensed process servers and individuals still have records when service is reviewed by the court.
- 3. Require record keeping for seven years rather than two years.** Based on MFY's experience, many defendants may not learn about a judgment entered against them by default until more than two years after the summons and complaint allegedly was served. Law firms and attorneys are required to keep records for seven years. Since service of process is an important component of the legal procedure, records relating to the service of process should also be retained for seven years.
- 4. Require process servers to record in their record book how they determined the residence served is the actual residence of a defendant.** Based on MFY's review of 91 cases in Queens and Kings Counties, and the experience of our own clients, service of process is always allegedly made by leaving papers with a person of suitable age and discretion or by "nail and mail" at the defendants "actual" residence. In many cases, the residence is not the actual residence, because the process server relied on old or incorrect information. The DCA should issue a new rule describing acceptable methods for verifying a defendant's residence and require the contemporaneous recording of relevant information in the process server's log book.
- 5. Immediately establish a joint task force with representatives of the Civil Court, DCA, consumers, advocates, debt collectors and the process servicing industry to investigate the scope of the problem identified in this Report and to recommend additional solutions.** All of the parties listed have relevant information about how process is served in New York City and they should share an interest in resolving the problems describe in this Report.
- 6. Examine the results of the recent amendment to the Uniform Rules for the New York City Civil Court requiring additional notice to defendants in consumer credit transaction cases, and compare those results to affidavits of service filed in those cases.**

## 5. Comments and Methodology

In response to the New York City Department of Consumer Affairs' Notice of Public Hearing dated May 19, 2008, to "assess the nature and extent of abuses in the process server industry," MFY Legal Services is providing a preliminary analysis of civil court data. The data is derived from publicly available information on the New York State Unified Court System E-Courts website; information provided to MFY by the Clerk's Office of the Civil Court of the City of New York; information provided by the New York City Department of Consumer Affairs; and information collected by MFY by reviewing court files in the Civil Court Clerk's Offices in Queens and Brooklyn that were randomly selected by MFY.

MFY reviewed more than 180,000 electronic files that are accessible on the E-Courts website ([www.nycourts.gov/index.htm](http://www.nycourts.gov/index.htm)). This data is retrievable in limited ways. MFY conducted searches by year and county with the data sorted by E-Courts to show in chronological order those cases where the defendant made an appearance. Because the E-Courts system currently provides information from only four of the five counties of the City of New York (New York County is not publicly available), MFY was unable to determine the total number of cases filed by law firms or creditors. However it is reasonable to assume that with the inclusion of New York County in the count of cases, the numbers reported would be substantially higher. Moreover, the sample studied in this preliminary report represents roughly one-third of the total number of cases filed in 2007 in the entire five counties, so it fairly represents the circumstances citywide.

A total of 91 case files from the Queens and Brooklyn Civil Court Clerk's Offices were reviewed by MFY as well. The 91 files were compiled from three groups of between 30-40 cases picked by their consecutive index numbers. Consecutive numbers were used in order to track a single process serving company or process server, because these numbers are usually purchased consecutively in large blocks.

MFY also reviewed its own case data pertaining to individuals seeking our services. In the past 12 months, MFY has provided advice and representation to over 350 clients who were being sued in debt collection cases. In nearly every case where the client was sued in a lawsuit filed in the Civil Court before coming to MFY, our clients first learned of the case against them when their bank account was restrained as a result of a default judgment entered against them. For these clients, the consequences often are dire since the money frozen in their bank accounts is needed for food, rent, medication or other necessities.

In addition, MFY requested information from the New York City Department of Consumer Affairs to determine whether the number of individuals licensed to serve process in the City of New York has kept pace with the three-fold increase in the number of lawsuits filed in the Civil Court. The Department was unable to provide this data in time for this Report.

An in depth explanation of the impact of debt collection lawsuits filed in the Civil Court of the City of New York is found in "DEBT WEIGHT: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor," The Urban Justice Center (October 2007). In this report, 600 court files were randomly examined. With regard to the rate in which defendants appeared in court, the findings in this preliminary analysis of over 180,000 records is consistent with the rates found in the UJC report.

For further information, please contact:

**Consumer Rights Project – MFY Legal Services, Inc.**

299 Broadway, New York, NY 10007 212-417-3700

Carolyn Coffey ([ccoffey@mfy.org](mailto:ccoffey@mfy.org)) and Anamaria Segura ([asegura@mfy.org](mailto:asegura@mfy.org)), Staff Attorneys