



L E G A L

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I N C O R P O R A T E D

Testimony of MFY Legal Services, Inc.

on

Intro. 6-A

Presented before:

**The New York City Council
Committee on Consumer Affairs**

Presented by:

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My name is Carolyn Coffey and I am a senior attorney with MFY Legal Services' Working Poor Project and Consumer Rights Project. Thank you for the opportunity to testify today about Intro 6-A. MFY each year provides direct representation or assistance to over 6,500 clients in New York City and 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 "sewer service." Sewer service has long been a problem in the Civil Court of the City of New York, despite a history of 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 and as a result, tens of thousands of New York City residents are subject to abuse every year. For this reason, there is an urgent need for reform of the process serving industry.

MFY has a long-standing interest in the problem of improper service because of the havoc it wreaks on our clients' lives. As the Council knows, we issued a report in 2008, called "Justice Disserved," which analyzed the high default rate in cases in Civil Court, and concluded that defaults were the result, in large part, of sloppy and illegal service of process.¹ We previously testified in support of Intro 1037, the predecessor to Intro 6-A, and overall we support the current revised version of the bill.

Specifically, MFY Legal Services supports the bonding requirement of Intro 6-A, which would require all licensed process servers and process serving agencies to provide the Department of Consumer Affairs (DCA) with a surety bond in order to obtain licenses. We believe this bonding requirement will guarantee payment of fines levied by the DCA, which licenses process servers, and will guarantee payment of judgments issued against process servers and process serving agencies. By introducing market forces into the process serving industry in the form of surety companies, the bonding requirement of the bill will increase accountability and raise the professional standards of the process serving industry, and will even serve to exclude some of the more unreliable servers.

We also support the provision of the bill requiring process serving agencies to provide employees with information about their rights as workers, including their rights under wage and hour laws, and to provide educational materials regarding the laws pertaining to lawful service of process.

We are pleased that Intro 6-A has been revised to include a private right of action against individual process servers who abuse their power and position to effect service on New Yorkers. This provision is particularly important as it will allow individuals who have been harmed by process servers who do not adequately carry out their jobs to seek appropriate redress in the form of damages, injunctive relief, and attorney's fees.

¹ See MFY Legal Services, *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* (June 2008) (available at http://www.mfy.org/Justice_Disserved.pdf).

Although the language in the global positioning system (GPS) provision of the bill is broad and leaves the details as to how GPS will be implemented to the Department of Consumer Affairs to establish by rulemaking, MFY supports the provision because it is intended to reinforce what process servers already are required to do under applicable laws and pursuant to DCA regulations. The GPS serves as additional verification that a process server was present at a location where he or she claims to have effected service. Nevertheless, we have two concerns.

First, we are concerned that the time required to promulgate satisfactory regulations and allow the process serving industry to acquire GPS technology may unnecessarily delay the implementation of the entire bill and we believe it is critical that that this bill be passed and implemented promptly. Therefore, we recommend that the law become effective no later than 180 days after its enactment, except that the new GPS requirement may take effect at a later date if the DCA needs more time to implement it and to allow process serving agencies sufficient time to purchase equipment and to train employees on the use of this new technology.

Second, we urge the City Council to amend the current bill by adding a severability clause. A severability clause will ensure that the entire bill cannot be enjoined or invalidated in the event that only a portion of it is challenged in court and will make clear that each new requirement under Intro 6-A is intended to go into effect independently of any other requirement in the bill.

In conclusion, MFY Legal Services urges the adoption of Intro 6-A with a severability provision. By passing this bill, the Council will take an important step to protect New Yorkers from the harms of sewer service and in ensuring that those individuals who are the victims of this practice can seek compensation when they are harmed. Thank you for holding today's hearing and thank you for the opportunity to testify today.