

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of a request that “process server” be designated as an eligible profession for the purchase, sale, and use of body armor.

Date of designation: January 13, 2023

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.¹ Pursuant to Executive Law section 144-a, the Department of State (Department) has created a process whereby individuals and entities may request that the profession in which they engage be added to the Department’s list of eligible professions.² The Department has received a request that “process server” be designated as an eligible profession. Prior to adding a profession to the list of eligible professions, the Department must first determine whether the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor, or whether the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.

Request

The Department has received a request that process server be designated as an eligible profession. Prior to adding a profession to the list of eligible professions, the Department must first determine whether the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor.³

A process server is an individual who serves legal papers upon a party in a pending action. Under New York General Business Law, a process server is:

a person other than an attorney or a party to an action acting on his own behalf who:
(a) derives income from the service of papers in an action; or (b) has effected service of process in five or more actions or proceedings in the twelve month period immediately preceding the service in question.⁴

¹ N.Y. Penal Law §270.21.

² See NYCRR Chapter XIX, Part 905, generally.

³ N.Y. Exec. Law §144-a.

⁴ N.Y. Gen. Bus. Law § 89-t.

In instances where an attorney or agent is not designated on behalf of the receiving party, a process server may deliver such paper directly to such party in-person, or by other means including mail, leaving the papers at the party's residence with a person of suitable age and discretion, facsimile, or overnight delivery.⁵ New York State Civil Practice Law and Rules states that "papers may be served by any person not a party of the age of eighteen years or over."⁶ New York State does not require a professional license for this profession, although licensing is required in the City of New York for anyone serving process more than five times annually.⁷

Notice of this eligible profession request was published on the Department's website on July 13, 2022, whereby the public was invited to submit additional requests relating to these professions. No other requests relating to these requests have been received by the Department, and no public comment has been provided.

Findings of fact and analysis

The role of a process server oftentimes involves in-person delivery of legal papers to an individual in an adversarial context, and there are several reported instances of assaults upon process servers. Assaults against process servers receive heightened criminal sanction under both New York State and federal law. New York Penal Law § 120.05 (14) establishes that a person is guilty of assault in the second degree, a class D felony, if that person acts "[w]ith intent to prevent or obstruct a process server . . . or intentionally, as retaliation . . . including by means of releasing or failing to control an animal" Chapter 73 of the Federal Crimes and Criminal Procedure Law, titled "Obstruction of Justice," assigns criminal penalty for an assault on a process server, to "be fined . . . or imprisoned not more than one year, or both."⁸

The requestor, representing a limited liability company performing process server duties in Upstate New York, states: "This can be a very dangerous job. I am frequently met with angry people who can be aggressive." An international process server company, ServeNow, organizes a national campaign to raise awareness about the dangers faced by process servers, called "Promoting Assault Awareness and Protective Regulations for Servers" (PAAPRS), which "brings to light the hidden dangers in serving legal documents—from aggressive reactions and threats to physical violence and even death."⁹ The parent company of ServeNow reports that "[p]rocess servers notify defendants of upcoming lawsuits or actions, which can sometimes place them in emotionally charged and potentially violent situations," and summarizes several firearms incidents reported on the PAAPRS process server assault map, including:

- An Arizona process server was shot in the back after posting papers on a man's home.
- In Illinois, a state attorney pulled a gun on a process server.

⁵ See CPLR 2103(c).

⁶ CPLR 2103(a).

⁷ NYC Admin. Code § 20-403 and Subch. 23, generally.

⁸ 18 U.S.C. § 1501. This protection first appeared in this section in 1948. This section of law defines a process server as "any officer or other person . . . duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process."

⁹ ServeNow, Support Process Server Safety, available at <https://www.serve-now.com/resources/paaprs>.

- A college president struck a process server with a gun.
- In Maryland, a man fired a gun at a process server just missing him.¹⁰

The New York State Professional Process Servers Association has also been active on the issue of violence toward process servers. The Association supported the law that established New York Penal Law § 120.05 (14), which was passed in 2015 and elevated an assault on a process server from a misdemeanor to a class D felony. The president of the association, at the time, stated that “the level of ‘hostility and aggression’ toward process servers has increased in recent years and sometimes escalated past verbal abuse to physical violence.”¹¹ The justification for the legislation presented in the sponsor’s memorandum of support indicated:

Process servers play an important role in the legal system. Unfortunately, those who ensure a defendant’s right to due process can become targets of assaults by those they are serving documents to. In recent years there has been an alarming increase in attacks on process servers in the state.¹²

Considering the emotionally charged and reactive environment in which process servers practice, in addition to several past incidents of violence against process servers, including assault with a firearm, and specific criminal sanctions addressing assault against process servers in both state and federal penal codes, it is reasonable to conclude that the profession of process server may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor.

Determination

The information set forth above supports a determination by the Department that the profession of process server sometimes requires individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of process server as an eligible profession and adds such profession to the Department’s list of eligible professions.

¹⁰ LAWgical, Map Offers National Snapshot of Growing Problem of Process Server Assault (Nov. 21, 2012), available at <https://www.lawgical.com/blog/map-offers-national-snapshot-of-growing-problem-of-process-server-assault>.

¹¹ N.Y.S. Prof. Process Servers Ass’n, Assaulting a Process Server is Now a Crime in New York (Sept. 25, 2016), available at <https://www.nysppsas.org/news/4274250>.

¹² L.2016, ch.268, Introducer’s Memorandum in Support.