

Complying With Compliance

By Scott Gray

Compliance with ever evolving collection practices was the primary topic of the recent conference of the National Association of Retail Credit Attorneys. Ever increasing scrutiny by, and dictates of, the Consumer Financial Protection Bureau (CFPB), a federal agency (established by the Dodd-Frank Act) whose mandate includes writing rules, supervising companies, enforcing federal consumer financial protection laws, restricting unfair deceptive or abusive practices, monitoring consumer risks, and enforcing laws that outlaw discrimination and unfair treatment in consumer finance, are necessitating innovation and change to every stage of consumer finance practices including the process service industry.

Primary issues related to process servers focus on honesty, accountability, privacy, harassment, confidentiality, and data security. Of particular interest to conference attendees was process server location verification through GPS and photographic evidence. Although not yet mandated in Minnesota, a likely eventuality will be that such location tracking requirements will be put in place nationwide for consumer collection actions. The New York City Department of Consumer Affairs already mandates process server tracking within the five boroughs that comprise New York City. Elements of this requirement include an application that resides on a smart phone or tablet whose function is to capture the GPS coordinates, date, time, and a photograph of the location thereby enabling the process server to establish at the very least that he or she was actually at the location at which service was purported to have occurred. While clearly this does not provide any proof of what actually took place with the service itself, it does eliminate any doubt that the server was actually there. The impetus of this burdensome, but reasonable requirement, resulted from a rampant recurrence of the filing of fraudulent affidavits related to “sewer service” in New York. This type of nefarious behavior is certainly not exclusive to New York City. A Twin Cities process serving company was found to be responsible for numerous judgments having been entered based on fraudulent service, for which the process server was convicted of perjury and the judgments vacated.

Although in their infancy, the success of New York City’s

rules have brought openness, honesty and accountability to their process server community, cleaned out the bad actors, and leveled the playing field for those process servers who were already functioning with honesty and integrity as a key element of their business. By examining New York City’s success, it is likely that the CFPB will look to replicate this model across the country in its mandates to the financial services industry. As the leader in process serving in the Upper Midwest, Metro Legal Services strongly supports any efforts to bring greater transparency, accountability, and best practices not just to consumer collection actions, but to all areas of law that necessitate personal service being completed — changes that are sorely needed in a business relying on integrity as its hallmark, but remains entirely unregulated in the state of Minnesota.

In Minnesota, the requirements to be a process server, 18 years of age and not a party to the action, are lacking if not pitifully inadequate. Felons, perjurers, fraudsters, and thieves, none of whom you would want to have at your door for any reason; nonetheless are able to serve legal process in Minnesota and prepare affidavits of service. No regulation, no monitoring, no oversight, no background checks, no training, no auditing, no licensing, no insurance, no continuing education...

We believe it’s time to take this vital aspect of the legal system as seriously as New York City is, as seriously as the Consumer Financial Protection Bureau is, and as seriously as anyone who has been victimized by an unethical process server would.

Minnesotans plying their trades in a variety of industries are subject to licensing, regulation, insurance, and a myriad of other mandates placed upon them by the citizens of the state for their protection — in many instances for protection from consequences potentially far less life altering than the damage that can be caused by an unethical process server.

Scott Gray is the vice president and operations manager for Metro Legal Services with over 30 years of process service experience. Metro Legal Services, in its 43rd year of operation, is the leader in the Upper Midwest in providing ancillary services to the legal community. Questions/comments welcome at 612.349.9512, or visit www.metrolegal.com.