



## New York State Professional Process Servers Association

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May 6, 2014

John W. McConnell, Esq.  
Counsel, Office of Court Administration  
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New York, NY 10004

Mr. McConnell:

As President of the New York State Professional Process Servers Association (NYSPPSA), I submit the following comments in reference to **proposed reforms relating to consumer credit collection cases dated April 30, 2014.**

In 2009, the Civil Court of the City of New York adopted its 208.6(h) notice as a requirement to the entry of default judgments pursuant to CPLR sec 3215. At that time, the court took notice of the exception put forth by NYSPPSA, which allowed for default judgments to be entered when a NYSDMV address is evidenced in a certified abstract obtained from the New York State Department of Motor Vehicles and that address matches the address of service of the summons and complaint of the defendant, despite the return of the required 208.6 notice. I am attaching both the April 30, 2014 memorandum from the Court of Administration along with the Chief Clerk's memorandum dated April 21, 2009, which was the effective date of this directive from the NYC Civil Court.

Thank you for your consideration in this matter.

Respectfully submitted,

*Larry Yellon*

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LY/bjk

Cc: email to rulecomments@nycourts.gov



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A. GAIL PRUDENTI  
Chief Administrative Judge

JOHN W. McCONNELL  
Counsel

**MEMORANDUM**

April 30, 2014

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed reforms relating to consumer credit collection cases.

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The New York State Unified Court System has proposed the adoption of reforms in consumer credit collection cases to prevent unwarranted default judgments and ensure a fair legal process, including (1) requiring creditors to submit affidavits based on personal knowledge that meet the substantive and evidentiary standards for entry of a default judgment under New York law; (2) requiring that an additional notice of a consumer credit action be mailed to debtors in courts outside New York City; and (3) providing unrepresented debtors with additional resources and assistance. Public comment is invited on the following proposals:

(1) Amending the Rules of the New York City Civil Court, the City Courts outside New York City and the District Courts to require creditors to submit certain form affidavits when seeking a default judgment in a consumer credit matter. These amendments are intended to eliminate the practice of "robot signing" affidavits and ensure that default judgments are based on non-hearsay allegations and personal review of debtor files. Creditors would be required to submit specific documentation, such as the original credit agreement, in support of default judgment applications to ensure that there is legally sufficient proof of the validity and ownership of the debt at issue (Exh. A);

(2) Expansion to courts outside New York City of 22 NYCRR § 208.6(h), which requires creditors to submit to the court an additional notice of a consumer credit action to be mailed by the court to the debtor at the address where process was served. The court will not enter a default judgment in any case where the additional notice is returned to the court because of a wrong or unknown address. Revisions have been proposed to the language of the additional notice to make it more comprehensible to the average person (Exh. B); and

(3) Expansion to all courts of certain forms now in use in the New York City Civil Court, including an answer form specially designed for unrepresented litigants containing a list of standard defenses that debtors can check off as applicable, and a form Order to Show Cause to Vacate a Default Judgment (Exh. C).

Persons wishing to comment on these proposals should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than May 30, 2014**

**All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration.**

CIVIL COURT OF THE CITY OF NEW YORK

**CHIEF CLERK'S MEMORANDUM**

Subject: NYSDMV Report Used to Validate Address

Class: CCM- 184

Category: GP-20

Eff. Date: April 21, 2009

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BACKGROUND

Recently we have received a number of calls from plaintiffs and process servers on how to proceed when a 208.6 (h) notice is returned to the court by the United States Post Office, as undeliverable. Our current practice is to reject the request for entry of a default judgment and advise the plaintiff's attorney to move by motion or file a notice of inquest so that the court can make a determination as to whether the defendant's address was sufficient. It has been brought to our attention that many envelopes returned as undeliverable are in fact addressed to the same address on record with the New York State Department of Motor Vehicles (NYSDMV). Vehicle and Traffic Law § 505 (5) requires that every Motor Vehicle licensee notify the Commissioner of Motor Vehicles of any change in residence within 10 days of the occurrence of this change. A party who fails to comply with this provision is estopped from challenging the propriety of service made to that address (*see, Sherrill v. Pettiford*, 172 A.D.2d 512, 513, 567, N.Y.S.2d 859; *Lavery v. Lopez*, 131 A.D.2d 820, 571 N.Y.S.2d 182). To allow for the processing of a default judgment after a 208.6 (h) notice is returned to the court as undeliverable we are instituting the following procedure.

DIRECTIVE

The judgment clerk will accept as a valid address the address of the defendant(s) on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles when the 208.6 (h) notice has been returned by the Post Office as undeliverable. A Certified Abstract of Driving Record is accessible using a Dial-in Search Account, available via the NYSDMV website.

When the judgment clerk receives notice of the defendant's address on the Certified Abstract of Driving Record, and that address matches the defendant's address on the returned envelope, if visible, or on the summons and/or affidavit of service, the clerk will disregard the returned 208.6 (h) notice and process the request for default judgment as per CPLR § 3215.

4/21/09

\_\_\_\_\_  
Date

/s/

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Jack Baer  
Chief Clerk