

CIVIL COURT OF THE CITY OF NEW YORK

CHIEF CLERK'S MEMORANDUM

Subject: Review of Affidavit of Service of the
Notice of Petition

Class: CCM - 204
Category: LT-10
Eff. Date: June 8, 2015

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Background

The NYC Civil Court Warrant Manual sets forth the clerk's procedure for reviewing the affidavit of service of the notice of petition when processing a request for final judgment based on the respondent's failure to answer. This procedure includes that "If the papers are not served by a licensed process server, the following statement should appear on the affidavit: "I am over the age of 18, I am not a licensed process server and I have not served more than five papers in this calendar year." If the papers are served by a licensed process server, the affidavit should include his or her license number." To date, if the affidavit of service does not include either the process server's license number or a statement that the person effecting service is not a licensed process server, the clerk does not complete the processing of the request for final judgment and returns the request package to the petitioner with a defect checklist attached noting the missing information.

It has been brought to our attention that there are instances where the proof of service of the notice of petition contains two portions, the upper half of the document recites the in person or conspicuous posting, and the lower half recites the required mailing pursuant to RPAPL 735; and each section is deposed by a different individual.

Absent legislative direction invalidating service where either the process service license number or statement is not included, and as it is not in the clerk's authority to determine whether a single service of process may be divided into two steps, the clerk is directed to "flag" these items for judicial review.

In order to ensure consistent practice, the following procedure is being established:

Procedure

If in reviewing the affidavit of service of the notice of petition, it comes to the clerk's attention that:

- In person service or conspicuous posting and the additional mailing are completed by more than one deponent and/or
- The deponent/effector of service does not include a process server license number or a statement that they are not a licensed process server and have not served more than five papers in the calendar year

The affidavit of service should be flagged bringing the concern to the attention of the reviewing Judge; the request package should **not** be returned to the petitioner with a defect checklist.

Dated: June 4, 2015

Carol Alt

Carol Alt
Chief Clerk